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THE

PROCEEDINGS OF THE COURT

UNDER THE THIRD CANON OF 1844

IN 1845

CITY OF NEW YORK, IN THE OFFICE OF THE CLERK OF THE COURT

THE TRIAL

OF THE

RIGHT REV. BENJAMIN T. ONDERDONK, D. D.

BISHOP OF NEW YORK

AS A PUNISHMENT MADE BY THE

BISHOPS OF VIRGINIA, TENNESSEE, AND GEORGIA

BY AUTHORITY OF THE COURT.

1845

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THE

PROCEEDINGS OF THE COURT

CONVENED UNDER THE THIRD CANON OF 1844,

IN THE

CITY OF NEW YORK, ON TUESDAY, DECEMBER 10, 1844,

FOR

THE TRIAL

OF THE

RIGHT REV. BENJAMIN T. ONDERDONK, D. D.

BISHOP OF NEW YORK;

ON A PRESENTMENT MADE BY THE

BISHOPS OF VIRGINIA, TENNESSEE, AND GEORGIA.

BY AUTHORITY OF THE COURT.

NEW YORK:

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PROCEEDINGS, ETC.

Tuesday, Dec. 10, 1844.

SEVERAL of the Bishops of the Protestant Episcopal Church in the United States of America, attended in the upper room of the Sunday-school building attached to St. John's Chapel in the city of New York, in pursuance of notice from the Presiding Bishop convening them at the said place on said day at 10 o'clock, A. M., for the trial of the Rt. Rev. Benjamin Tredwell Onderdonk, D. D., Bishop of New York, under Canon Third of 1844 ; on a Presentment by the Rt. Rev. William Meade, D. D., Bishop of Virginia, the Rt. Rev. James Hervey Otey, D. D., Bishop of Tennessee, and the Rt. Rev. Stephen Elliott, D. D., Bishop of Georgia.

The Rt. Rev. Philander Chase, D. D., Bishop of Illinois ; the Rt. Rev. Thomas Church Brownell, D. D. LL.D., Bishop of Connecticut ; the Rt. Rev. Levi Silliman Ives, D. D. LL.D., Bishop of North Carolina ; the Rt. Rev. John Henry Hopkins, D. D., Bishop of Vermont ; the Rt. Rev. Benjamin Bosworth Smith, D. D., Bishop of Kentucky ; the Rt. Rev. Charles Pettit McIlvaine, D. D., Bishop of Ohio ; the Rt. Rev. George Washington Doane, D. D. LL.D., Bishop of New Jersey ; the Rt. Rev. Jackson Kemper, D. D., Missionary Bishop for Wisconsin and Iowa, and Provisional Bishop of Indiana ; the Rt. Rev. Leonidas Polk, D. D., Bishop of Louisiana ; the Rt. Rev. William Heathcote De Lancey, D. D., Bishop of Western New York ; the Rt. Rev. Christopher Edwards Gadsden, D. D., Bishop of South Carolina ; the Rt. Rev. William Rollinson Whittingham, D. D., Bishop of Maryland ; the Rt. Rev. Alfred Lee, D. D., Bishop of Delaware ; the Rt. Rev. John Johns, D. D., Assistant Bishop of Virginia ; the Rt. Rev. Manton Eastburn, D. D., Bishop of Massachusetts ; the Rt. Rev. John Prentiss Kewley Henshaw, D. D., Bishop of Rhode Island ; and the Rt. Rev. George Washington Freeman, D. D., Missionary Bishop for Arkansas, were present.

The Rt. Rev. William Meade, D. D., Bishop of Virginia ; the Rt. Rev. James Hervey Otey, D. D., Bishop of Tennessee ; and the Rt. Rev. Stephen Elliott, D. D., Bishop of Georgia, appeared as Presentors.

The Rt. Rev. Benjamin Tredwell Onderdonk, D. D., Bishop of New York, appeared as Respondent.

The Rt. Rev. the Bishop of Illinois read Morning Prayer.

On motion of the Rt. Rev. the Assistant Bishop of Virginia, it was

Resolved, That the number of Bishops required by the Canon to constitute a Court being present, the senior Bishop be requested to act as their presiding officer.

Whereupon the Rt. Rev. the Bishop of Illinois, the senior Bishop of the Protestant Episcopal Church in the United States, took the chair.

Ordered, That this Court will now proceed to appoint a Clerk.

Ordered, That the election of Clerk be made by ballot.

The Rev. Bird Wilson, D. D., a Presbyter of the Diocese of Pennsylvania, and Professor of Systematic Divinity in the General Theological Seminary, was nominated.

The President appointed the Rt. Rev. the Missionary Bishop of Arkansas, teller, to collect and declare the votes for Clerk, and the Court proceeded to ballot.

Whereupon it appeared, that all the votes had been cast for the Rev. Bird Wilson, D. D., and he was accordingly declared unanimously elected Clerk of the Court.

Ordered, That Bishop Whittingham be requested to act as Secretary until Dr. Wilson can be notified of his appointment, and shall enter upon its duties.

The Rt. Rev. the Bishop of Maryland accordingly proceeded to act as Secretary.

Ordered, That Bishop Whittingham be requested to inform the Rev. Dr. Wilson of his appointment, and to request his attendance at the next meeting of this Court.

Ordered, That a Committee of three be appointed to examine and report whether the Canonical preliminaries for the constituting of a Court for the trial of a Bishop have been duly observed.

Whereupon, on suggestion of the President, that nomination should be made,

The Rt. Rev. the Bishops of North Carolina, Vermont, and New Jersey, were respectively nominated, and on motion were appointed said Committee.

Ordered, That a certified copy of the Canon under which this Court assembles be provided for its use by the Clerk; and also that a copy be placed by him in the hands of the Rt. Rev. Benjamin T. Onderdonk, D. D., and one of the Presenting Bishops respectively.

Decreed, That in conformity to the suggestion expressed by the Presenting Bishops in this case, it is the opinion of this Court, that the Bishops presenting cannot, under the Canon, be considered as members of the Court in any sense.

Decreed, That foreign Missionary Bishops are not entitled to sit as members of the Court provided for in Canon Third of 1844.

Ordered, That the Court shall meet at half-past nine in the morning, to be opened with prayer by the President. Further ordered, That the Court shall adjourn each day at three o'clock in the afternoon.

Ordered, That this Court do now adjourn to meet at half-past nine to-morrow morning.

The Court accordingly adjourned.

Attest,
W. R. WHITTINGHAM, *Clerk.*

SECOND DAY'S SESSION, }
Wednesday, Dec. 11, 1844, half past 9 A. M. }

The Court convened for the trial of the Rt. Rev. Benjamin T. Onderdonk, D. D., Bishop of New York, met pursuant to adjournment.

The President opened the proceedings with the Psalter for the day, and prayers.

The list of Bishops of the Protestant Episcopal Church in the United States was called over, upon which it appeared, that the Rt. Rev. the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the Northwestern Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the Southwestern Missionary Diocese, were present.

The Presenting Bishops and the Respondent severally appeared.

The record of the first day's session was read, amended, and approved.

The Secretary read a letter by him received from the Rev. Dr. Wilson, respectfully declining, for various specified reasons, to act as clerk of the Court.

It was ordered by the Court, that the Rt. Rev. Dr. Whittingham, the Bishop of Maryland, be requested to act as the Clerk and Secretary of this Court; and that an assistant Clerk, being a Presbyterian not of the Diocese of New York, be appointed on his nomination, by ballot by the Court.

The following report was presented and accepted:

The Committee appointed to examine whether the provisions of the canon under which we are assembled have been complied with, respectfully report, that they have discharged their duty, and find that such provisions have been duly complied with.

(Signed,) L. S. IVES, *Chairman.*

It was ordered by the Court, that the Clerk be instructed to have as many copies of the Presentment as may be wanted by the Court, duly certified, furnished for the use thereof.

The Rev. Anthony Ten Broeck, a Presbyterian of the Diocese of New Jersey, was nominated by the Clerk to be his assistant, if chosen by the Court.

The Court went into ballot upon the nomination, and upon the declaration of the votes, it appeared that the nomination was adopted.

It was ordered by the Court, that the Clerk be empowered to procure the attendance of an officer authorized by law to administer oaths, and that the testimony in this trial shall in all cases be given on oath.

The President then asking whether all parties were ready for procedure to trial, the Presentors and Respondent severally made answer that they were.

The Rt. Rev. the Bishop of Virginia, on behalf of the Presenting Bishops, put in a copy of the Presentment, which, by direction of the President, was read by the Assistant Clerk.

PRESENTMENT.

To the Bishops of the Protestant Episcopal Church in the United States of America:

THE undersigned, that is to say, the Right Reverend William Meade, Bishop of the said Church in the Diocese of Virginia, the Right Reverend James Hervey Otey, Bishop of the said Church in the Diocese of Tennessee, the Right Reverend

Stephen Elliott, jun., Bishop of the said Church in the Diocese of Georgia, do hereby, in virtue of the canonical authority reposed in them, present to their brother Bishops, the Right Reverend Benjamin Tredwell Onderdonk, Bishop of the said Church in the Diocese of New York, as being guilty of immorality and impurity in the several specifications hereinafter more particularly set forth; and they do solemnly demand a trial of the said Benjamin Tredwell Onderdonk, pursuant to the provisions of the canons of the General Convention of the said Church, in such case made and provided.

ARTICLE I.—The said Bishops presenting as aforesaid do hereby present and allege, that the said Benjamin T. Onderdonk, on or about the first day of June, in the year of our Lord one thousand eight hundred and thirty-seven, being then Bishop of said Church in the Diocese of New York, was engaged in a tour of official duty, and was proceeding to the town of Syracuse, in Onondaga county, in said Diocese of New York, for the purpose, among other matters, of ordaining the Reverend Clement M. Butler to the Priesthood; that on his way to, and near the said town of Syracuse, the said Clement M. Butler, together with his wife, met him in a carriage, for the purpose of conducting him, the said Benjamin T. Onderdonk, to the said town.

That the said Benjamin T. Onderdonk entered the said carriage and took his seat on the back seat thereof, by the side of the said lady; that they two alone occupied that seat, the said Clement M. Butler and a person driving, occupying the front seat; that thereupon afterwards the said Benjamin T. Onderdonk impurely and unchastely put his arm around the body of the said lady, and in an improper and unbecoming manner pressed the said lady towards him; that the said lady endeavored to repress the said familiarities, and to bring said Benjamin T. Onderdonk to a just sense of his duty in that behalf; that the night came on before the said parties reached the end of their journey; and that after it became dark, the said Benjamin T. Onderdonk renewed his said improper conduct, and impurely and unchastely did pass his hand down and along the person and the legs of the said lady; and did otherwise behave toward her in so rude and indecent a manner, that she, the said wife of the said Clement M. Butler, was obliged to claim the protection of her husband; and thereupon she left her seat in the said carriage, and rode upon the front seat thereof for the rest of the journey; in doing which she was obliged to sit upon her husband's lap; and that owing to, and in consequence of, the said conduct of the said Benjamin T. Onderdonk, the said lady became seriously sick, and her health was so much affected as permanently to injure her constitution;—all which said actings on the part of the said Benjamin T. Onderdonk, the said Bishops presenting do charge as being in violation of his duty as Bishop, and contrary to his consecration vow in that behalf, and to the great scandal of the Church of Christ.

ARTICLE II.—The said Bishops presenting do further present and allege, that the said Benjamin T. Onderdonk, Bishop as aforesaid, at the said time and place mentioned in the last specification, was under the influence of, and improperly excited by, vinous or spirituous liquors drunk by him, the said Benjamin T. Onderdonk, contrary to his duty as Bishop, and his consecration vow in that behalf, and to the scandal and injury of the said Church.

ARTICLE III.—And the said Bishops presenting do further present and allege, that on or about the first day of August, in the year of our Lord one thousand eight hundred and thirty-eight, the said Benjamin T. Onderdonk, being then Bishop as aforesaid, was travelling in a public stage from Batavia, in the Diocese of New York, to Utica, in the same Diocese, for the purpose of attending a meeting of the Convention of said Diocese, then about to be held at Utica; that the only passengers in the said stage were the said Bishop and the Reverend James A. Bolles, and a young woman, to the said Presenting Bishops unknown, and whose name they are not able to furnish; that the said Bishop and young woman occupied the back seat, and the said James A. Bolles the middle seat of the said stage; and that thereupon afterwards the said Benjamin T. Onderdonk impurely and unchastely put his arm around the body of the said young woman, and took other indecent liberties with her person; and behaved in so improper and unbecoming

a manner, that the said young woman endeavored to get beyond the reach of the said Benjamin T. Onderdonk, and finally, with a view to escape his rudeness, left the stage before reaching the place of her destination;—which said conduct of the said Benjamin T. Onderdonk the said Bishops present, as being contrary to his consecration vow in that behalf, and to the scandal and injury of the Church aforesaid.

ARTICLE IV.—And the said Bishops presenting do further present and allege, that on or about the twentieth day of July, in the year of our Lord one thousand eight hundred and thirty-nine, the said Benjamin T. Onderdonk, then being Bishop as aforesaid, visited Westchester County, in the Diocese of New York, for the purpose of officiating in St. Paul's Church, East Chester; that the said Bishop dined at the house of Isaac U. Coles, Esquire, and after dinner walked with Miss Ann Wilson, then governess in the family of the said Coles, and Miss Chadwick, (of Boston,) in the garden attached to the house of said Coles; that thereupon afterwards upon reaching a retired part of the garden, said Bishop seized an opportunity when the said Miss Chadwick was separated from the said Ann Wilson, and did rudely and grossly insult the said Ann Wilson, by impurely and unchastely thrusting his hand into her bosom, to her great astonishment and fright; and did otherwise so misbehave himself to the said Ann Wilson, that she was obliged hastily to leave the said Bishop, and retreat to the house of the said Coles; which said conduct of the said Benjamin T. Onderdonk, the said Bishops present as contrary to his consecration vow in that behalf, and to the scandal and injury of the Church aforesaid.

ARTICLE V.—The said Bishops presenting do further present and allege, that between the months of May and July, in the year of our Lord one thousand eight hundred and forty-one; to wit: on or about Sunday the 13th day of June, in the said last mentioned year, the said Benjamin T. Onderdonk, then being Bishop as aforesaid, visited St. James's Church, Hamilton square, New York city; that soon after the services of the church were ended, and on the day last aforesaid, he left the said church in a carriage, in company with Miss Helen M. Rudderow, a young lady, to proceed as a guest to the house of her brother, John Rudderow, Esquire; that while riding in the said carriage by the side of the said young lady, he, the said Benjamin T. Onderdonk, impurely and unchastely thrust his hand beneath her dress upon the bosom of the said Helen M. Rudderow, to her great alarm and consternation, and in violation of the proper duty of a Bishop, and in breach of the consecration vow of the said Benjamin T. Onderdonk, to the great scandal and injury of the Church of Christ.

ARTICLE VI.—The said Presenting Bishops do further present and say, that on the same day mentioned in the last specification, the said Benjamin T. Onderdonk, Bishop as aforesaid, was received at the house of the said John Rudderow, in the parlor thereof, by Jane O. Rudderow; and that thereupon the said Benjamin T. Onderdonk, impurely and unchastely, thrust his hand into the bosom of the said Jane O. Rudderow, and upon being repelled, took other indecent and unbecoming liberties with the said lady, in violation of his duty as Bishop, and his consecration vow in that behalf, and to the great scandal and disgrace of his said office.

ARTICLE VII.—And the said Bishops presenting do further present and allege, that on or about Sunday, the seventeenth day of July, in the year of our Lord one thousand eight hundred and forty-two, the said Benjamin T. Onderdonk, then being Bishop as aforesaid, held a confirmation at Zion Church, Long Island, in the Diocese of New York; that after the services were ended the said Benjamin T. Onderdonk returned to the house of the Reverend Henry M. Beare, where he was a guest, in the carriage of the said Henry M. Beare, in company with Mrs. Charlotte Beare, the wife of the said Henry; that the said Benjamin T. Onderdonk and Charlotte Beare occupied the back seat of the said carriage, and the other persons in the same were so situated as to have their backs towards the Bishop and the said Charlotte; that thereupon the said Benjamin T. Onderdonk impurely and unchastely put his arm around the body of the said Charlotte Beare, drew her towards himself, and at the same time felt her bosom in an improper and indecent manner, so as to scandalize the feelings of the said lady, and cause her to remove herself from him as far as the side of the carriage would permit, to avoid his rude-

ness; in violation of his duty as Bishop, and his consecration vow in that behalf, and to the disgrace of his said office.

ARTICLE VIII.—And the said Presenting Bishops do further present and allege, that in the afternoon of the said seventeenth day of July, in the year of our Lord one thousand eight hundred and forty-two, the said Benjamin T. Onderdonk held a Confirmation at Whitestone Chapel, on Long Island aforesaid, and after the services went to spend the evening at the residence of Joseph L. Franklin, Esquire, on said island; that about nine o'clock at night, the Bishop was returning home to the house of the said Henry M. Beare, where he was a guest, and was accompanied in the carriage of the said Henry M. Beare by the said Charlotte Beare, the wife of the said Henry M. Beare, she being constrained by circumstances to ride with the said Bishop against her own desire, and she and the said Bishop sitting alone on the back seat; that while thus on their way the said Benjamin T. Onderdonk again insulted the said Charlotte Beare in the grossest manner, by impurely and unchastely putting one arm around her body, while he thrust his other hand beneath her dress, upon her naked bosom; that upon the same being repelled, the said Benjamin T. Onderdonk repeated the indignity, and finished his acts of rudeness by passing his hand in the most indecent manner down the body of the said Charlotte Beare, outside of her dress, so that nothing but the end of her corset-bone prevented his hand from being pressed upon the private parts of her body: all which acts and doings threw the said Charlotte into the deepest distress;—to the manifest scandal and injury of the Church of which the said Benjamin T. Onderdonk was a Bishop, and in violation of his vows before God, solemnly entered into on his consecration.

ARTICLE IX.—And the said Bishops presenting do further present and allege, that at sundry other times within the seven years last past, the said Benjamin T. Onderdonk, while Bishop of said Diocese of New York, and within the limits of the said Diocese, has impurely and unchastely laid his hands upon the bodies of other virtuous and respectable ladies, whose names have come to the knowledge of the said Bishops, so that he is of evil report within the limits of the said Diocese, and in other parts of the Protestant Episcopal Church in the United States of America; to the manifest scandal of the Church of Christ, and the disgrace of the office of the said Benjamin T. Onderdonk: and nothing prevents the presentation of these cases on separate specifications, but the want of a civil process by which to compel witnesses to testify to the truth of these matters.

Dated this seventh day of November, in the year of our Lord one thousand eight hundred and forty-four.

Signed,

WILLIAM MEADE, D. D.,
Bishop of the Protestant Church of Virginia.
JAMES H. OTEY,
Bishop of the Diocese of Tennessee.
STEPHEN ELLIOTT, Jun.,
Bishop of the Diocese of Georgia.

The President then called on the Respondent for his plea.

The Rt. Rev. Benjamin T. Onderdonk, D. D., Bishop of New York, as Respondent, pleaded NOT GUILTY to the charges made and contained in the Presentment.

It was ordered by the Court, that so much of the Presentment as is contained in the ninth article of the said Presentment, be stricken out as not proper for trial, being without reasonable certainty as to time, place, or circumstances.

It was ordered by the Court, that the Presenting Bishops furnish the Court with the names of those witnesses for whom they require citations.

It was ordered by the Court, that the Presentors inform the witnesses

that their presence will be required on Friday morning, at half-past nine o'clock.

It was ordered by the Court, that when the Court do adjourn, they adjourn to meet this afternoon at five o'clock, to adjourn again at seven.

The Court then adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Wednesday, Dec. 11, 5 P. M.

The Court met, pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The record of the morning's session was read, amended, and adopted.

A motion was made for the following order, viz:

Ordered, That in proceeding to investigate the charges in so much of the Presentment as relates to transactions alleged to have transpired anterior to the date of three years prior to the date of the Presentment, the Court do so with the protest—that such charges (said charges being for immoralities, and not for any offences made criminal by the laws of the land) are brought forward contrary to the spirit of our canons, which require, in all cases of moral character, testimonials for the three preceding years only.

On the question being put, the yeas and nays were ordered, and called by the Clerk; upon which the motion was lost, the votes being—

Illinois, no—Connecticut, aye—North Carolina, aye—Vermont, no—Kentucky, no—Ohio, no—New Jersey, aye—North Western Missionary Diocese, no—Louisiana, no—Western New York, aye—South Carolina, aye—Maryland, aye—Delaware, no—(Assistant) Virginia, no—Massachusetts, no—Rhode Island, no—South Western Missionary Diocese, no.

Ayes 6—Noes 11.

The Court then adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

*Friday, Dec. 13, 1844, }
half-past 9, A. M. }*

The Court met pursuant to adjournment. Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The record of the proceedings of Wednesday evening was read, and adopted.

Ordered, That the Court do now proceed to the trial.

The Respondent then informed the Court that he had given notice to the Presentors that he should employ Counsel, and that he had engaged the

services of David B. Ogden, Esq., in that capacity. He also asked permission of the Court to employ an amanuensis, and to introduce the Rev. Edward N. Mead in that capacity.

Ordered, That the request of the Respondent be granted.

The Presenting Bishops then informed the Court that they had engaged the services of Hiram Ketchum, Esq., as Counsel. They also asked permission of the Court to employ an amanuensis, and to introduce Stephen Cambreleng, Esq., in that capacity.

Ordered, That the request of the Presenting Bishops be granted.

Ordered, That during the trial the Court will meet each day at half-past 9 o'clock A. M., and adjourn at 4 P. M.

David B. Ogden, Esq., appeared in Court as of Counsel for the Respondent.

Hiram Ketchum, Esq., appeared in Court as of Counsel for the Presenting Bishops.

Ordered, That the Counsel of the parties have time to prepare the case, until half past 9 o'clock to-morrow morning.

Ordered, That the Court do now adjourn.

Attest,

W. R. WHITTINGHAM, *Clerk.*

*Saturday, Dec. 14th, 1844. }
half-past 9 A. M. }*

The Court met pursuant to adjournment. Present, the Bishops of Illinois; Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The record of the proceedings of yesterday was read and adopted.

Ordered, That when the Court is cleared, the Presenting Bishops, the Respondent, and the Assistant Clerk be not included in said order.

The Counsel for the Presenting Bishops then opened the case in behalf of the Presentment.*

May it please the Court—

Although the position I now occupy might be regarded as worthy of professional ambition, yet I feel bound to say that it is not one of my own seeking.

I was called upon a few weeks since by the Presenting Bishops to assist as counsel in the management of the case before the Court of Bishops, if counsel should be required; that is, in the event of the Respondent appearing by counsel. I regretted the application to me, yet, having been made, I did not, upon reflection, consider myself at liberty to decline it. For, first, the application came from three of the most respectable Bishops of the Church, acting, as they believed, under a high sense of duty; and the service solicited was directly in the line of my profession. Secondly, I am a member, though an unworthy one, of the Protestant Episcopal Church; and it did appear right to me, that if counsel were employed, it was desirable that they should be members of the Church.

* The opening speech of Counsel was sent by him to the Clerk, while the Journal was in press, with the introductory remark, "Mr Ketchum opened the case on the part of the Presenting Bishops substantially as follows."

But while I consented to act as Counsel, I distinctly informed the Rt. Rev. Presentors that I could not appear in any sense as a volunteer. I was anxious, and am now anxious, to be explicitly understood on this point; for I have long known Bishop Onderdonk, and though I could not lay claim to an intimate acquaintance, yet our relations, so far as I know, have been very friendly: certainly no other feelings have been entertained on my part. It is now about twenty years ago since I had a public discussion with the Bishop, at the capitol of this state, before a committee of the Senate. I have often had occasion to say, since that discussion, and say it now with great pleasure, that he sustained his side of it, not only with distinguished ability, but with the candor and courtesy of a Christian gentleman. Since that time, after long attendance upon her ministrations, I have seen fit, in the maturity of my judgment, such as it is, to unite myself to the communion of the Protestant Episcopal Church; and more than seven years ago, the hands of the Respondent were laid on my head, in the holy rite of confirmation. I must not, therefore, be regarded, in any sense, a volunteer in supporting the Presentment against him.

I appear as the counsel of the Presenting Bishops; but in representing them, and acting under their instructions, which accord entirely with my own inclinations, I shall try this cause with the utmost candor and liberality toward the Respondent. I contend not for victory—but desire to present and investigate the evidence fairly; and I now say, that if after a fair and impartial investigation of the facts, your minds shall arrive at the conclusion that the Respondent is not guilty—none in this Court, or out of it, will be more gratified with that result than the Presenting Bishops and their Counsel. I am willing to stipulate with my learned friend on the other side, that our Bishop shall have a fair trial.

I feel some embarrassment lest any attempt, on my part, to instruct a Court confessedly so learned and venerable as that which I have the honor to address, in their duty, should seem presumptuous; but perhaps my daily familiarity with the administration of justice in the courts of law, will enable me to make some suggestions to this Court not wholly out of place. The government of the Church, I respectfully submit, like the civil government, is divided into the legislative, the judicial, and the executive departments. The House of Bishops is a part of the Legislature of the Church, as the Senate is a branch of the National Legislature, or, perhaps, more like the House of Lords in England; which is composed of members whose term of office, like that of the Bishops, is perpetual. Here, however, the Bishops act not as part of the Legislature of the Church, but as the judiciary. There is yet another department in which the Bishops act in their spiritual capacity—of which it is not necessary now to speak—but here they compose the judicial department of the Church; they are clothed, not with their surplices, or their gowns, but, in contemplation of law, they are invested with the ermine of the judiciary; and the only difference between this and other Courts is, that here that ermine is supposed to be some shades whiter and purer than elsewhere. I have thought proper to remind the Court of these distinctions, because I understand something has been said about the alleged offences, or some of them, being outlawed. Now, I need not inform the Court that the Canons of the Church, which are the statutes of the Church, make no provisions for the outlawing of offences, and if the Legislature of the Church have made no such provision, this Court, sitting in its judicial capacity, have no more power to make such a provision than the humblest slave who communicates at her altars. The Court cannot make law, but they must adjudicate the law as they find it—they have no legislative power.

Let us now turn to the pleadings in the case. The Presentment sets forth the offences charged, with time, place, and circumstances, according to the requirements of the Canon. The plea of the Respondent is, *Not Guilty*. This, then, is the issue for you to try—is the Bishop guilty, or not guilty, of the offences specifically set out in the Presentment? All the evidence offered, bearing upon this point, ought to be received by the Court,—any evidence not relevant to this issue, should be rejected.

The first case mentioned in the Presentment is that of Mrs. Butler, the wife of the Rev. Clement M. Butler, a very respectable Presbyterian of the Church. The facts, as they will be proved, will make out a case of more aggravated criminality

than that charged in the Presentment. Mr. Butler was to be ordained to the priesthood in Syracuse, where he was officiating as a clergyman. On or about the first of June, 1837, he went from Syracuse to Ithaca, in a private carriage, accompanied by his wife, and a person who drove the carriage, for the purpose of meeting the Bishop, and conveying him to the place of ordination. Having taken in the Bishop at Ithaca, and on their return, in the evening of the day, the Bishop, sitting on the back seat with Mrs. Butler, began his familiarities with the young lady, then recently married, by putting his arm around her waist, and drawing her close to his side. This was observed by the husband, and permitted, at first, by Mrs. Butler, who had long known the Bishop. She at length became annoyed by these familiarities, and slightly rose and gently removed the Bishop's arm from around her person, and laid his hand upon his knee, and observed to him, mildly, in the hearing of her husband: "Bishop, this is a sacred hand, it has been laid upon the heads of many of my friends in confirmation, and to-morrow it will be laid upon the head of my husband in ordination." This gentle, but keen reproof, seemed, for the moment, to be heeded by the Bishop. Shortly after, however, he suddenly encircled the lady with his arm, and pressed, or clasped her bosom. She struck down his hand, and he immediately, in a most indelicate manner, grasped her thigh. Whereupon, she instantly left the seat, and sat upon her husband's lap on the front seat. Without going into further detail, in statement of the proposed proof, let us inquire into the character of this offence. This is the conduct of a Bishop of the Church of Christ, it will be recollected. Now, I speak not of the personal indignity, or insult, offered to Mrs. Butler, but here is, if I may be allowed the expression, an assault upon the soul. What could more effectually convince a person receiving such treatment at the hands of a Bishop, that he regarded religion as a cheat, a delusion, and that his pretended attachment to it was mere hypocrisy? What course of conduct would have a more direct tendency to murder the soul? This is the light in which I desire to present these offences to the Bishops of the Church.

Mr. Ketchum then went on to state the evidence which he intended to offer under the other charges in the Presentment, observing that he might not be able to state it precisely as it would turn out in proof, from the fact that his opportunity of conferring with the witnesses had been slight. These, remarked Mr. Ketchum, are the facts which I believe we shall prove in support of the Presentment: As to the course of the defence, he went on to say: I am not able to anticipate what it may be; but it has been given out publicly, that this Presentment has been instigated by party spirit, and is the result of a conspiracy formed by the Bishop's enemies in the Church. I suppose that the real question for your determination is—are the charges alleged true or false? If they are true, it is of small moment how, or by what motives the inquiry was instituted. Still, however, a conspiracy is alleged. Now, I have to say that no objections will be made to the proof of such conspiracy, if any should be offered. If such proof is offered, we stand prepared to rebut it, and show precisely how the prosecution was instituted. We will show that it had not its origin in this diocese, but that it was entirely a Southern movement, and chiefly promoted by the Rev. Mr. Trapier of Charleston. We profess our entire readiness to meet the allegation of conspiracy, whenever it is brought forward and attempted to be sustained by proof.

When witnesses for the Presentment were about to be called, the Counsel for the Respondent objected to the reception of evidence pertaining to matters of more than three years' standing, and asked that the objection might be recorded.

The Counsel for the Presentment asked permission of the Court to introduce a female friend as an attendant upon the female witness about to be brought in.

Ordered, That the permission requested be granted.

The Counsel for the Presentment asked permission that the Rev. Paul Trapier attend upon Mrs. Butler, her female friend being absent.

Ordered, That the permission requested be granted.

Frances Livingston Butler was called up by the Counsel for the Presentment.

The oath was administered to the witness by Dayton Hobart, Esq., a commissioner legally empowered for the administration of oaths in the State of New York, and appointed in this case by the Clerk of the Court.

The Counsel for the Presentment commenced the examination in chief of Mrs. Frances L. Butler.

Pending the examination, the Counsel for the Presentment stated that he had understood from the Counsel for the Respondent, that he designed having an associate, and therefore asked permission of the Court to have the assistance of Gerardus Clark, Esq., in the management of the case on the part of the Presentment.

Ordered, That the permission asked be granted.

Gerardus Clark, Esq., made his appearance in Court as associate Counsel for Presentment.

FRANCES LIVINGSTON BUTLER.

Direct Examination.

1. What is your name ?

Frances Livingston Butler.

2. Are you the wife of whom ?

Rev. Clement Moore Butler.

3. When was you married to Mr. Butler ?

On the 3d of April, 1837.

4. Where did he then reside ?

He resided at Syracuse, in the State of New York.

5. Had he charge of a church there ?

He had.

6. When was he ordained Priest ?

On the 2d of June, 1837. I think that is the date. The Journal of Convention will show. One thing I wish to say. It is rather a singular thing that I do not recollect the date of my marriage. Several anniversaries occur in that month. I do not remember whether it was the 3d or 13th.

7. By whom was your husband ordained Priest ?

By the Rt. Rev. Benjamin T. Onderdonk.

8. Did you witness the ordination ?

I did not.

9. When Bishop Onderdonk came to ordain your husband, did your husband, accompanied by you, meet him on the way ; and if so, where ?

He did, at the village of Ithaca.

10. In what sort of a vehicle did you go ?

In a barouche wagon, with two seats.

11. Who accompanied you, besides your husband ?

A man, as driver, whose name was Peck. He was not the owner of the carriage. He had business in Ithaca, and was glad to drive us there. He was a parishioner of my husband.

12. Of what church was your husband rector ?

I think it was Zion Church. There was but one church there.

13. What time did you receive the Bishop in the carriage ; at what time of the day, and where ?

So nearly as I can recollect, it was a little before sunset. If the ordination took place on the 2d of June, it was on the 1st. It was at the house of Mr. Munn.

14. How was the company seated in the carriage ? Please describe.

The Bishop was seated behind the driver, Mr. Butler beside the driver, and I beside the Bishop, on the back seat.

15. How long did it take you to accomplish the journey from Ithaca to Syracuse ?

We left I think before sunset, and arrived the next day about an hour before the time appointed for service. We were delayed. We had not intended or expected to ride at night. We were delayed by bad roads going down to Ithaca ; so that we stayed all night at a place called Dryden, on the way to Ithaca, about ten miles from Ithaca. We were again delayed, by finding that there were to be two services at Ithaca, instead of one ; and again delayed after the second service, by a storm of rain and lightning.

16. Did you ride all night on your return to Syracuse ?

We did, except when we rested the horses, which we did three times.

17. Now, Mrs. Butler, I want you to state what occurred between you and the Bishop while you were riding in that carriage ?

I scarce know how or where to begin. Shall I begin at what occurred at Mr. Munn's, from that time ? We received the Bishop at Mr. Munn's, on my part

with all cordiality, inasmuch as I had long known him as a friend of my father, and had always considered him *my* friend; and my confidence in the purity of his character was unhesitating. I noticed immediately, that his breath was tainted by something he had been drinking:

By the Court. Bishop McIlvaine.

18. Had any conversation taken place between the witness and the Bishop prior to his getting in the carriage?

I think not, sir.

(Witness resumed narrative.) At first, after we rose the hill out of Ithaca, the Bishop read letters which he had received; the sun had then set; he read them by the fading sunset light, or by the twilight that followed the sunsetting. When I first noticed that his breath was tainted by something he had been drinking, I was neither surprised nor pained by it, for I was aware that he habitually used wine and ardent spirits, but was not aware to what extent. After he had finished reading his letters, I found with some alarm, that he became unusually talkative, and that he spoke so indistinctly that I could not always understand him. He first put his arm around my waist and drew me towards him; this he repeated once, perhaps twice. He had often done this when I was unmarried, and I had permitted it, although always disagreeable to me; because I believed him incapable of wrong. At this time, however, I removed his hand each time, because I saw that he was not himself. I was exceedingly fearful lest our driver should discover it; as he was a man who had but recently become interested in church affairs; and for whose spiritual interests my husband was deeply solicitous; and also because during our ride to Ithaca, he had often or he had strongly spoken of the inconsistencies of professing Christians, as having been a great stumbling-block in his way to heaven. The Bishop persisted in putting his arm about me, and raised his hand so as to press my bosom. I then rose and withdrew the arm from behind me, and laid the hand upon his knee, and said to him in a raised tone of voice, hoping to bring him to himself, and wishing to attract Mr. Butler's attention, that a Bishop's hands were sacred in my eyes, and that his were, particularly so, because they had been laid upon the heads of many I loved in confirmation, and were about to be laid upon my husband's head in ordination. He made but little answer, but for some little time let me alone. During this time I thought of the awful disgrace that would come upon him, and his family, and upon the Church; if his state and conduct that night were known. I had a lingering hope that he had been betrayed into taking more than was habitual to him, and that in this way he had been betrayed into intoxication; and I hoped that his insult to me was unintentional. I therefore decided upon keeping silence upon this subject, and upon preventing, so far as in me lay, its ever becoming known. While sitting in thought, I found he was again moving: I waited to see whether he might not be merely steadying himself in his seat, as the roads were rough, when he suddenly and violently again brought his hand upon my bosom, pressed and clasped it. In some horror I struck the hand with all my force, and he withdrew it; but immediately grasped my leg in the most indelicate manner. I sprang forward to my husband, and told him I could no longer sit with the Bishop; I must sit with him. I was greatly distressed, and he, Mr. Butler, held me on his knee for some time; and after that I rode sometimes on his knee, and sometimes on a carpet bag at his feet. We stopped twice during the night, resting at Homer an hour or two, as nearly as I can recollect. During all our time of stay at those places, my whole efforts were needed by my husband to soothe him, he being violently incensed, and declaring that Bishop Onderdonk should not ordain him. We stopped that morning about day-break, at a place about ten miles distant, I should think, from Syracuse—perhaps fifteen miles. Here we again rested, and breakfasted. During the ride from Homer to this latter place, the Bishop slept heavily. When we left the last stopping-place, I persuaded Mr. Butler to sit back with the Bishop, in order to avoid the remark that would be occasioned by his sitting alone. No conversation passed between the Bishop and myself after I changed my seat: nor have I since seen him, except in Convention, until now.

19. Did the Bishop make any remark when you left the back seat?

He did not, nor did he afterwards remark upon the way in which we rode.

20. Was it a clear and warm night on that occasion ?

It was warm, but not clear ; it drizzled somewhat about midnight.

21. Did the Bishop make any remark about the state of the weather ?

Not that I recollect.

22. Did he make any remark about your sitting on the front seat ?

I have answered the question. He did not; not that I recollect.

23. Was the top of the barouche up ?

Yes, sir. But I do not recollect whether half way, or all the way.

24. Was you exposed entirely to the inclemency of the weather on the front seat ?

I was, sir ; but the weather was by no means severe.

25. What occurred on the next day ?

When we got home I was very much distressed in mind and body ; and both unable and unwilling to attend the ordination.

26. Was Mr. Butler ordained by Bishop Onderdonk ?

He was ordained by him, though suffering under great distress.

27. Did Mr. Butler state to you the reasons why he was ordained ? [*Objected to and ruled out.*]

28. What was the effect of Bishop Onderdonk's treatment towards you, on your health ?

I always supposed that some weeks of indisposition were caused by the distress that I went through with that night.

29. When and where was you indisposed ?

In my own house, sir ; where I boarded, rather, at Syracuse.

30. Did your indisposition immediately succeed that night ?

It did.

31. When, and to whom, did you first communicate these facts ?

Never minutely to any one, until since this cause has been on the carpet, except to my husband that night. I have since avoided conversation, even with him, on the subject.

32. Do you now reside in Syracuse ?

I do not, sir.

33. Where do you now reside ?

In the city of Boston.

34. How long ?

Since the 25th of May last, or about that time. Mr. Butler's institution took place on the 25th of May last, and we arrived there a day or two previous.

35. Did you remain at Syracuse up to the time of your removal to Boston, and if not, where did you live in the mean time ?

At Utica about six months ; at Palmyra two years ; at Baltimore about seven months ; at Georgetown, D. C., two years and a half ; and thence moved to Boston.

36. What time did you remove from Syracuse ?

The May following the ordination, in 1838.

Cross-Examination, by Counsel for Respondent.

1. You have said in your direct examination, that when you spoke to the Bishop about the sanctity of his hands, he said but little. I now wish you to state what he did say.

I cannot recollect. I recollect no conversation at all, except some remarks on the roughness of the roads in the Indian country.

2. What was the distance from Ithaca to Syracuse ?

About 50 miles.

3. In what part of this journey was it that you quit your seat with the Bishop, and went to your husband, as you have stated ?

It was between Ithaca and Dryden.

4. This was, then, within the first ten miles of your journey, was it ?

About that.

5. Did you never after, in any part of your journey, sit on the back seat with the Bishop?

I think not. I recollect no change.

6. Are you positive?

I am as positive about this, as about any thing so immaterial as it seems to me. Some things I distinctly recollect, other things I have no recollection of. This is one of the latter.

7. When you told your husband that you could no longer ride on the seat with the Bishop, did you tell him the reason why?

I did, but not by any means in detail.

8. Did your husband after that, of your knowledge or within your hearing, say any thing to the Bishop on the subject?

I recollect nothing said on the subject.

9. How long after you spoke to the Bishop about the sanctity of his hands, was it that you left the Bishop, and went upon the front seat with your husband?

It is so long ago that I do not recollect accurately; but I should think fifteen minutes.

10. Do you think your husband heard those observations made by you to the Bishop?

He did, sir. I spoke in a loud tone, in order to attract his attention.

11. Have you any recollection that night before you left the seat with the Bishop, of having complained to him that you felt very chilly and cold?

I have no such recollection.

12. Upon your arrival at Syracuse, did the Bishop go with you to your lodgings?

He did not, sir.

13. Was he not at your lodgings that day?

He was not, sir.

14. Now, Mrs. Butler, I wish you to recollect yourself—do you not remember that he was there in the course of that day, and that you and your husband took him about your house, and into your bedroom, and showed him how comfortably you were accommodated?

I recollect no such proceeding.

15. What was your maiden-name?

Hart.

16. Where does your father reside?

In Walden, in Orange county, state of New York.

17. How old were you when married?

I was twenty, I think, sir.

18. Had not the Bishop, for many years, been very intimate with your father's family?

He had been quite so.

19. Was not his manner towards you and all the family—the children—very kind and parental?

His manner had been always affectionate, and I supposed it parental.

20. Now, Mrs. Butler, will you be kind enough to tell us when you first mentioned these circumstances to any person besides your husband, and who that person was?

I have no recollection of ever mentioning them, in detail, to any person whatever, until I was called upon to make my affidavit. I have alluded to them in several instances—in three instances that I recollect, and but three that I recollect.

21. When were you called upon to make this affidavit, and where, and by whom?

Perhaps I was wrong in saying I was called upon to make an affidavit: my husband was called upon to make one, in Philadelphia, during the sitting of the last General Convention. Upon his return home, he showed me what he had written, and I found it correct, except, perhaps, in one little matter.

22. What was that little matter?

I would rather not answer the question. Mr. Butler can answer it.

23. I must insist upon an answer.

It was nothing of any great importance, or I should not hesitate to answer.

24. We will judge of that.

Mr. Butler understood me to say, that I was afraid the Bishop would pull up my clothes, whereas I said he was so violent he *might* do it.

25. Do you know the object of your husband in going to Philadelphia? Was he a delegate to the Convention?

He was not a delegate: he went at the earnest solicitation of a gentleman who desired to establish a religious periodical, to obtain the approbation of the Bishops for that periodical.

26. Mrs. Butler, have you never told your father the circumstances of this case?

I have not, sir. He questioned me, for the first time, upon the subject last spring, and I told him that what had passed was of such a nature that I did not like to talk about it; that he had placed his hand upon my leg in a very indelicate manner; and that I was perfectly convinced that his intoxication, at the time, led to his doing so. My father said I might have been mistaken. I told him I could not tell him all, but I was not mistaken.

27. You have mentioned, a little while ago, that you had, in three instances, alluded to this subject. What were those instances?

To my sister-in-law, Miss Harriet Butler, at Troy; to my friend, Miss Catharine Bruce, of this city; and to my father. I think I spoke to my sister, who lived with me at or near that time; I did not speak to her *at* that time, she being absent at boarding-school, and very young.

28. Mrs. Butler, after your husband returned to Boston, and showed you that affidavit, to whom did you next speak on the subject?

I think, my uncle, Mr. Moore. I recollect, now, having spoken to Mr. Moore upon the subject, early last spring, he being in conversation upon the rumors which were rife. His name is Thomas William Channing Moore, of the city of New York. He sailed day before yesterday for Buenos Ayres.

29. Was the conversation with him after you saw the affidavit, in New York or Boston?

He visited my house shortly after Mr. Butler's return from the General Convention at Philadelphia; but I do not remember whether at that time I had seen the affidavit or not. Mr. Butler did not show it to me as soon as he got home, he being quite confident as to the truth of each circumstance mentioned in the affidavit; but he did show me, within—I cannot say how long a time—and apologized for not showing it before, because of his certainty with regard to its contents.

30. To whom did you next mention it?

I do not recollect mentioning it to any one else in the city of Boston; but in New York I have mentioned it wherever I have been staying, among my friends, without any hesitation.

31. Did any body call upon you to inquire about it, and who?

No, sir, I have not been called upon, that I recollect.

32. Have you been sent for by any person, to call upon them?

I have not been. I have seen Bishop Meade since I came to town; he told me that possibly the case would be tried without a lawyer, and I had better put down in writing what I had to say, he thinking that the Court would receive such written testimony, and that it would save my feelings to have it put in that form.

33. Did you reduce it to writing?

I did, sir.

34. Did you know before you left Boston to come to this city, the object of your coming hither?

I did, sir; I was subpoenaed to come as witness in this case by the Prosecuting Bishops.

I believe so; I do not recollect the form of subpoena. It was signed by Bishop Chase.

Direct examination resumed.

37. In your cross-examination you said you had told these circumstances to no person in detail; in your direct examination you said to no person except your husband; how do you mean to be understood?

Of course, as in my direct examination.

By the Court.

By Bishop Doane.

1. In directing your language to arrest the attention of your husband, did you think you could do so without arresting the attention of the driver?

I thought I could.

2. Did you have reason to think that the driver's attention was drawn to what took place?

Not at the time; but from the fact that he never asked me any questions afterwards on the subject, I supposed it was.

3. Did you have any other evidence or reason to believe that these circumstances became known in Syracuse?

I had not.

By Bishop De Lancey.

4. What was the name of the Church at Palmyra where you resided?

Zion Church, I think.

5. What was the name of the Church in which your husband ministered at Baltimore, and Georgetown, respectively?

He was a missionary at Baltimore, assisting from time to time Dr. Johns in Christ Church. The Church in Georgetown was called St. John's.

6. Did Bishop Onderdonk in reading his letters appear to understand what he was about?

Yes, sir, I thought he did.

7. Was there any thing in his conversation that night, or in the manner in which he said it, that induced you to think he was intoxicated?

He spoke very thick, and talked a great deal during the early part of the ride.

8. Did you go to sleep yourself during the ride?

I did not, sir; not at all through the night.

9. Did your husband go to sleep?

I do not recollect that he did.

10. You spoke of the Indian country you came through; what Indian country did you mean?

The Onondaga tract.

By Bishop Ives.

11. You spoke of meeting Bishop Onderdonk at Ithaca. At what time did you arrive?

At a late breakfast hour; it must have been 9 o'clock.

12. Did you attend service that morning at Ithaca?

Yes, sir.

13. How many times?

I do not recollect whether I went in the afternoon or not.

14. Did you dine with the Bishop that day?

I did not.

15. At what time did you meet him after service?

I think we spoke with him at the chancel after the morning service; that is all I recollect.

16. Did you see or speak with Bishop Onderdonk on the day that you arrived at Syracuse?

I have never spoken with him since. I did not on that day.

By Bishop Gadsden.

17. Did you think at the time that the Bishop would have acted towards you as he did if he had had his full consciousness?

I thought he would not have done so.

18. Do you now think that his conduct was wholly owing to intoxication?

I am afraid it was not.

19. Your unwillingness to attend the ordination, was it because you considered him an intemperate man, or because you regarded him as impure?

Because I thought him both.

By Bishop De Lancey.

20. Do you recollect the form of the carriage? was there a back to the front seat?

I do not recollect distinctly.

21. Did the driver continue to be connected with the parish ?

He did.

22. Did you ever mention this subject, or any part of it, at Palmyra, where you resided ?

I think I there mentioned it to my sister who lived with me, as having altered my opinion of Bishop Onderdonk.

23. At the time of the Convention of the Diocese of New York, held in Utica, in 1838, were you in Utica at that time ?

I was.

24. At or about that time, or during your residence in Utica, did you ever mention this subject to any person there ?

I recollect no such mention. I was exceedingly guarded on the subject.

25. During or about that period, do you recollect having heard this subject talked upon ?

I do not, sir—not this case ; except that I knew my husband had mentioned it.

26. From whom did you know this ?

From himself.

27. Did your husband tell you to whom he had mentioned it ?

He did, sir ; and how it came about : it was to Rev. Mr. Lucas, then settled at Auburn.

28. Did you ever say to any one, in these various conversations on the subject, that Bishop Onderdonk actually attempted to lift your clothes ?

I never did say so ; but in showing to my husband what he did do, he saw that in doing it, my clothes were somewhat raised ; but it was unintentional on my part, conveying to him the impression that the Bishop had attempted to do so.

29. When did you first discover that your husband had made a mistake in his apprehension of your account about lifting your clothes ?

When he showed me the affidavit, which I have seen but once, and only at that time.

30. Was this at Boston ?

It was.

31. Did you ever hear this story in relation to what occurred on the ride from Ithaca to Syracuse, connected with a statement that Bishop Onderdonk had attempted, during that ride, to lift your clothes ?

I recollect no such statement. I should have contradicted it, if I had heard it.

32. Have you any reason to think that your husband ever spoke of this transaction, with that statement ?

I have no reason, except that I know he mentioned the circumstance to Mr. Lucas and Mr. Irving, and probably under the same impression with which he gave his affidavit.

33. Did your husband ever state to you what he did tell Mr. Lucas and Mr. Irving ?

He did not, sir.

34. Is your memory such a one as that you rely upon it with certainty as to names, dates, places, and circumstances ?

With regard to places it is ; with regard to circumstances it is ; with regard to dates, not unless I have previously determined to impress them upon my memory ; with regard to names, I am very good at that.

By Bishop Ives.

35. You mentioned in your direct examination, that when the Bishop approached you, you raised your voice to attract the attention of your husband. Do you mean that you raised it above your ordinary voice ?

I mean that I raised it above the tone in which I was then conversing with Bishop Onderdonk.

36. What were you then saying to him ?

I do not suppose that I recollect every thing. I remember we spoke of the roughness of the roads in the Indian country.

37. Did you speak then in your ordinary tone ?

Yes, sir. During a part of the time, Mr. Butler joined in the conversation. I recollect hearing Bishop Onderdonk speak of the Rev. Mr. Ten Broeck, and of having received a letter from him, a part of which I think he read aloud.

38. Were the roads so rough as to require a distinct tone of voice ?

The rattling of the carriage was such as to require it. It had been raining; the roads were very heavy.

By Bishop De Lancey.

39. Had you any conversation with Bishop Onderdonk after you left the back seat? I have stated that I had not.

40. How far is the Indian country from Syracuse?

I do not recollect. I think from five to ten miles. I am not certain. My impression is, that it is within from five to ten miles from Syracuse.

Cross-Examination resumed.

35. How great a distance does the road run through the Indian tract?

I do not recollect. I do not think more than five miles.

By the Court.

By Bishop Gadsden.

41. Was there much space on the seat between you and the Bishop?

It was an ordinary sized carriage, a barouche wagon — what they call a "carryall."

By Bishop Brownell.

42. Were you in the Indian country when you had the conversation alluded to with the Bishop?

O no, sir; it was just after we left Ithaca, or between that and our first stopping-place, Dryden.

By Bishop Whittingham.

43. When did you tell Mr. Butler that the Bishop was so violent, &c.?

I whispered it to him as he drew me forward upon the front seat.

By Bishop Ives.

44. Did you make any excuse at the time for going to the front seat?

I do not recollect making any at all. I was excessively agitated. I do not recollect distinctly any thing from that time until we reached Dryden—I mean any thing that occurred in the carriage.

Cross-Examination resumed.

36. Did your husband sit with his face towards the back seat, or towards the horses?

Towards the horses.

The Court adjourned to six o'clock this evening.

Attest,

W. R. WHITTINGHAM, Clerk.

Saturday, December 14th, 1844, }
6 o'clock, P. M. }

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The Counsel for the Presentment called in the Rev. Clement M. Butler, Miss Jane O. Rudderow, Miss Helen M. Rudderow, the Rev. James A. Bolles, and the Rev. Jesse Pound; who were severally sworn, by Dayton Hobart, Esq., commissioner.

The Rev. CLEMENT M. BUTLER was examined.

Direct examination.

1. What is your vocation, and where do you reside?

I am a minister of the Protestant Episcopal Church in the city of Boston.

2. When, and by whom, and at what place were you ordained Priest?

On the 2d of June, 1837, by the Rt. Rev. Benj. T. Onderdonk, at St. Paul's Church, Syracuse.

3. On the Bishop's approach to Syracuse on that occasion, where did you meet him? In what vehicle was you, and who accompanied you?

At Ithaca, in a two-horse carriage—I scarcely know how to describe it—the cover springing from the back, and extending over the front seat. Mr. Peck and my wife, Mrs. Butler, accompanied me.

4. Who returned with you in the carriage?

Mr. Peck, my wife, and Bishop Onderdonk.

5. How were the parties seated in the carriage?

Mr. Peck and myself on the front seat, Bishop Onderdonk and my wife on the back seat; my wife behind me, the Bishop behind Mr. Peck.

6. What distance did you ride, and on what day, and at what time of day did you start on your return?

About fifty miles; just before sunset on the first day of June, the day next preceding my ordination.

7. What occurred during the ride from Ithaca to Syracuse, as far as you discovered, between Bishop Onderdonk and Mrs. Butler?

I first noticed the Bishop's arm about my wife's waist; I saw him draw her towards him in a manner that I thought indelicate; I saw her gently remove his hand from behind from off her waist. A second time I saw his arm about her waist; again I saw that he was sitting without his arm about her waist. Looking again I saw it again about her waist. My attention was then turned to the front part of the carriage. Looking around again, I saw my wife slightly raised, carrying the Bishop's hand around to his knee. Then I heard her say, that that hand was a sacred thing to her; it had been laid upon the heads of many of her friends in confirmation, and was to be laid upon my head to-morrow. Nothing occurred after this, until my wife touched me upon the shoulder. She said she could not sit there, that she must come over with me. As she came over and sat in my lap, I asked her what had happened. She whispered to me, and I understood her to say that the Bishop had been very rude to her, and had attempted to pull up her clothes. She was very much agitated, and told me she would tell me at the next stopping-place more fully. We arrived, I think, at Dryden; myself and wife went into a separate room to take some refreshment. There she told me the Bishop had put his arm around her waist, and pressed her bosom with sudden and violent motion. She struck down his hand; he placed it upon her thigh, and grasped it hard. There was nothing in this that led me to change my opinion, at the time, that she had told me the Bishop attempted to pull up her clothes. I then told her I must speak to the Bishop; that I would not return with him; that I would not be ordained by him. She soothed me, and dissuaded me, saying that the Bishop might have taken more wine than he was aware of, and did not know what he was doing. She also said I was not in a fit state of mind to speak to him. I promised her for the present that I would not speak to him. We then rode to Homer. I revolved on the way what I ought to do. I concluded that I would be ordained, say nothing about it, treat the Bishop with the civility that my official relation required, and with no more. The next stopping-place was about twelve miles from Syracuse, where we breakfasted. We arrived in Syracuse about ten o'clock. I was examined at the house of General Granger by old Mr. Pardee. Service commenced at eleven o'clock, and I was ordained Priest by Bishop Onderdonk.

8. What was the appearance of Bishop Onderdonk when Mrs. Butler spoke to him about the character of his hand?

I do not remember that he said any thing; and I believe he was embarrassed.

9. Did or did not the Bishop appear to be excited by spirituous or vinous liquor? He did.

10. What were the indications of such excitement?

Very high spirits and thickness of speech, first noticed by me when he was reading a letter from Mr. Ten Broeck?

11. Did the Bishop take any spirituous liquor during the journey?

Not that I know of.

12. Did Mrs. Butler remain on the front seat during the whole night?

Yes.

13. Did the Bishop make any remark about her removal?

None that I remember.

14. Did he request her during the night to return to the back seat?

I did not hear him.

15. During any part of the drive, did you sit on the back seat with the Bishop?

My first impression was that I did not; on recalling circumstances, I think that I did from the breakfasting place.

16. Did any, and what conversation pass between you and the Bishop while sitting on the back seat together?

The only conversation I recollect was about the badness of the roads in the Indian country, compared with some others the Bishop had lately passed over.

17. Did Mrs. Butler witness your ordination?

No.

18. After the occurrences spoken of, was Mrs. Butler indisposed? and if so, for what length of time?

She was sick for about a week. I then took her to Pompey Hill, because she was still very feeble. In a few days she was taken sick again, and I returned with her. She remained very sick between two and three months.

19. What was the cause of that illness?

I always attributed it in the first instance to her very great excitement and distress during that ride.

20. When, and to whom, did you first communicate the knowledge of these circumstances?

Never, until I heard rumors of a similar kind. First, to the Rev. Mr. Lucas, of Auburn, in the fall of the same year.

21. To whom, and when, did you next communicate the knowledge of these circumstances?

According to the best of my recollection to the Rev. Mr. Irving and the Rev. Mr. Gallagher, at Palmyra, in the spring or summer of 1839. I had previously told old Mr. Hubbard, of Stillwater, at the Special Convention at Utica, that I knew of such a case.

22. Besides these, to whom did you tell it, and when, previous to the last General Convention?

I told it to Mrs. Isaac Lawrence, I cannot remember when. I mentioned it to Bishop Meade, on a visit to him at Millwood, in 1840 I think, in the spring of that year. I mentioned it to Dr. Henshaw, when I was a missionary at Baltimore, during the winter of 1840-41. Besides these, I do not remember having mentioned it to others, though I may have done so. After the rumors of investigation in the Seminary, after I was applied to to give my testimony on this subject before the Committee appointed to investigate the affairs of the Seminary, I told it to some persons in Boston.

23. Did you dine with the Bishop on the day of your ordination; and if you did, at what place, and under what circumstances?

I did not.

24. Where did the Bishop dine on that day?

I think at William Cook's.

25. Was you invited to dine there?

I was.

Cross-Examination.

1. Was there a back to the front seat of the carriage upon which you and the driver sat?

I think there was.

2. How then did your wife get from the back seat, and sit upon your lap? Did she climb over that back?

She came over very quickly, I believe over the back.

3. After she got upon your lap, did she sit with her feet towards the horses or towards the back seat?

Towards the horses, with a carpet-bag and trunk I think immediately before us.

4. Did she continue sitting in that way all the rest of the journey until you got upon the back seat with the Bishop?

She sat upon my lap until we reached Dryden, and after that alternated between sitting on my lap and on the carpet-bag in front, all the rest of the way, until I changed my seat.

5. You have stated that you saw the Bishop put his arm two or three times around the waist of your wife, and her put it away; were you looking then at the Bishop?

I was sitting sideway on the seat, so that I could see my wife and the Bishop distinctly, and was talking with them both.

6. Must not the Bishop then have known that you was looking at him?

Yes, sir.

7. Did you then make any observation either to your wife or to the Bishop on the subject?

I made none to the Bishop. I had no opportunity to make any to my wife.

8. How happened it, sir, when you saw the Bishop taking indelicate liberties with your wife, that you said nothing to him or to your wife?

Because I was unwilling to expose the Bishop before Mr. Peck, and because, although I thought it was indelicate, I did not think it of such a character as to call for remark from me at the time.

9. How far is it from Ithaca to Dryden?

I think about twelve miles.

10. Did all the improprieties that occurred between the Bishop and your wife occur during that twelve miles?

Yes, sir.

11. How long did you stop at Dryden?

Long enough to rest the horses and take some refreshment.

12. Did the Bishop take refreshment in company with you and your wife?

No, sir.

13. Did he take any refreshment at all at Dryden?

Not that I am aware of.

14. During the whole of the time that the Bishop and your wife sat upon the back seat, were you turned towards them so that you could see them?

While it continued light enough to see, I was turned towards them the greater part of the time.

15. Was this a dark, or a moonlight night?

It was a cloudy night, and very dark during one part of it.

16. Was the extreme darkness you speak of after you left Dryden, or before you arrived there?

I cannot remember—I only remember that Mr. Peck got out on one occasion to find the road, because it was so dark.

17. Did you hear the conversation that took place between your wife and the Bishop, while they sat together on the back seat?

I heard and joined in conversation. I do not remember what it was, except that the Bishop talked much of the bad roads he had passed over, and we of the bad roads we had passed over, particularly through the Indian country.

18. Was there any conversation about the badness of the roads through the Indian country until you got upon those roads?

Yes, there was: we told him what a bad road we would have to pass over.

19. Have you any recollection of the Bishop's having got into a sound sleep, while sitting on the seat by your wife?

No; and I feel sure that he did not, because the conversation did not fall up to the time of her changing her seat.

20. Have you any recollection of your wife having complained to the Bishop or to you, that night, that she felt chilly or cold before leaving the seat with the Bishop?

None.

21. Are you sure that the carpet-bag you speak of, was between the front seat and horses, or was it between the front and back seat?

I feel confident that it was between the front seat and the horses.

22. This back that you have spoken of, to the front seat, was it a wooden back or a leather strap?

I cannot recollect.

23. Have you ever, since this occurred, spoken to the Bishop on the subject?

I have avoided speaking to him upon this or any other subject.

24. Do you mean to be understood as saying, that you have never had any conversation with the Bishop since you were ordained?

I mean to be understood to say, that I never have had when I could avoid it.

25. How often have you conversed with him since, when you could not avoid it, and upon what occasions?

I cannot remember precisely how often. The first occasion was his passing through Syracuse keeping some appointment. I heard of his being at Syracuse House, but did not go until word was sent me by one of the gentlemen of the Vestry. There, I sat with him, conversing with him, with other gentlemen, until a carriage was provided for him to go on with his appointments.

26. Did you then meet him in a friendly manner?

I treated him as I had determined to do, with civility, no more.

27. You say that one of your vestrymen sent to let you know the Bishop was there. Did you know he was there before you got such information?

Yes, sir. I heard it through some source which I have forgotten.

28. How long before?

Perhaps half an hour.

29. Do you remember any other occasion on which you saw him and conversed with him, when you could not avoid it?

I was at the Convention at Utica, and do not recollect speaking to him except in the aisle of the church, as he was entering the church. He shook hands with me, and rapidly passed on. There was nothing more than the morning salutation.

30. Do you remember any other occasion on which you have spoken to him?

I unexpectedly to myself met him at dinner at Mr. Irving's, in Geneva.

31. Did you converse with him there?

Yes, sir.

32. Was this dinner at Mr. Irving's before or after you had told Mr. Irving the circumstances in relation to your wife?

I think it was after, and am confirmed in this opinion by Mr. Irving's recently relating at my table, in Boston, his noticing my coldness of manner towards the Bishop and his embarrassment to me.

33. Did you go by invitation to dine at Mr. Irving's that day?

I did.

34. Did you not know that the Bishop was to dine there?

I did not.

35. Are these the only times you have seen the Bishop to speak with him since your ordination?

I cannot recall any other times.

36. When you communicated these facts to Mr. Lucas, did you request him to say nothing about it to anybody?

I believe I did.

37. When you mentioned them to Mr. Irving, did you make the same request of him?

I did.

38. How was it with Bishop Meade when you communicated to him,—did you make the same request there too?

I do not remember that I did.

39. What induced you to go to Philadelphia during the sitting of the last General Convention?

To hear the proceedings of the Convention, and to forward the interests of a new publication about to be commenced at Boston.

40. Had you received any letter upon this subject from any person in Philadelphia, before you went there?

I received no letter from any person in Philadelphia on the subject.

41. Had you a letter from any other place?

Previous to the examination of the committee on the affairs of the Seminary, I received a letter from Mr. Gallagher, asking me if I was willing to give my testimony with regard to Bishop Onderdonk's treatment of my wife; and also one from Mr. Barnwell, to the same effect.

42. When were these letters received: before you went to Philadelphia?

Yes: the letter of Mr. Gallagher is dated Sept. 25.

43. Did you know then, before you left Boston, that when you got to Philadelphia you would be requested to go before the Committee you have spoken of?

No, I thought I should not.

44. Why did you think so, after having received those letters?

I had engaged to go with Dr. Vinton, at the beginning of the session of the General Convention. I had declined to go with him after the receipt of these letters, for fear that I should be called upon to give my testimony on this subject, which I had declined doing before the Committee appointed to examine into the affairs of the Seminary. Not hearing of any movement of examining into the case, I thought I could go on without my testimony being required.

45. You have stated that you were afraid to go on with Dr. Vinton, lest you might be called on to testify as to these circumstances—do I now understand you that these fears were dissipated from the mere fact that you had not heard at Boston of any steps being taken in relation to any investigation of the conduct of Bishop Benjamin T. Onderdonk?

Yes; because Dr. Vinton had promised to write to me if any thing of interest to me occurred.

46. Had you not a conversation with your wife on this subject, shortly before you left Boston for Philadelphia?

I had several conversations with her after the receipt of the letters of Mr. Gallagher and Mr. Barnwell.

47. After your arrival in Philadelphia, who first spoke to you on this subject?

I really cannot recollect.

48. Did you make an affidavit there?

Yes.

49. Who drew that affidavit?

I drew it.

50. At whose request?

I cannot say it was at the request of any one. Bishop Meade asked me if I would be willing to give my testimony in the case. I said I would, and I then drew the affidavit.

51. Do you remember that any body had spoken to you before Bishop Meade, on that subject?

Dr. Tyng said to me, when he met me, "So you have been sent for, have you?" and I said, "No." I recollect Mr. Gallagher's speaking to me, but whether before or after, I cannot remember. I recollect, the morning that I drew up the affidavit, Mr. Gallagher and Dr. Hawks were walking together; Mr. Gallagher asked me if I had drawn up my affidavit. I told him I had not. He said it was time I should do so.

52. Did Dr. Hawks make any remark?

I asked Mr. Gallagher, and he told me, if I would ask Dr. Hawks, he would tell me how to do it. I asked Dr. Hawks if any legal form or phraseology was necessary. He answered that all that was necessary was a simple statement of the facts as they occurred. That is all I said to him, or he to me, on the subject.

53. If I recollect right, you said that Mr. Gallagher was one of the gentlemen to whom you mentioned these circumstances.

I did.

54. Did you enjoin secrecy upon him at the same time?

I did so, and received the following letter.

[COPY.]

NEW YORK, Sept. 25, 1844.

Rev. and dear Brother:

After so long an interval of silence, I am pained to renew an intercourse, formerly so agreeable to myself, by reverting to a subject which, to a mind like

yours, must be attended with sensations of a revolting nature.' I trust, however, that a sense of duty, which could alone induce me to address you upon such a subject, will overcome your instinctive repugnance so far, at least, as to leave you free to consider what course it becomes you to adopt in view of the demands of truth and righteousness. I am led to address you in consequence of a conversation which I have held to-day with our brethren Messrs. Trapier and Barnwell, who have been appointed, as you are aware, on a Committee to investigate the truth of rumors affecting the Seminary. Among other subjects, the reports of various immoralities alleged against Bishop B. T. Onderdonk, which have long been afloat, have been deemed within the scope of their inquiries from his connection with the Institution. I was surprised to learn from them that your name had been mentioned as one who had been exceedingly aggrieved, and would testify to the most serious delinquencies. You will remember a conversation which I had with you in the year 1839, at Palmyra, in which you recounted the aggravated injuries which you had suffered. I had regarded this in so confidential a light as never to have mentioned your name in connection with that of the Bishop, save on one occasion, to our common friend the Rev. Stuart Hanckel, and that accompanied by the strictest injunction of secrecy. I find, however, that Mr. Hanckel has inadvertently communicated the affair to Mr. Barnwell, who, not being aware of the confidential nature of the communication, felt it to be his duty to make it a subject of inquiry. I stated to him that it ought not to be divulged without your consent, upon which he expressed an intention to write you on the subject. While I deeply regret that I have been unintentionally the means of thus far extending the knowledge of a transaction of so painful a nature, (which I have learned, however, since my arrival in this city, is extensively known here,) I trust that you will be willing to make that sacrifice of feeling which the present crisis and the leadings of retributive Providence seem to demand. How much of the disgrace which has been brought upon the Church by this guilty individual might have been avoided if his grievous immoralities had met with that timely exposure which justice demanded! Now that the question of exposure has been providentially revived, must not a serious responsibility rest with those who, by concealment, would be instrumental in continuing a wicked man in a position in which he cannot fail to exercise a fatal influence in the Church? In this opinion our friend Irving, to whom you confided likewise the affair, fully concurs. Should you express to the Committee your willingness to testify, and should it be considered by the brethren who have been engaged in this matter a duty to pursue it to trial, your evidence would not be given before a Convention agitated by party feeling, but before a Court of Bishops, where there would be no occasion of publicity, or danger of an unnecessary infringement of delicacy. It would be accompanied by testimony, which, should you consent to appear, can be amply obtained, to various other acts of intemperance and licentiousness. It would come up freed from any plausible imputation of party persecution, inasmuch as Mr. Trapier, who is one of those who would engage in the presentation, is known to be a strict High Churchman. As your decision upon this subject involves interests of great magnitude, and lasting importance to the purity of the Church, I trust that every personal consideration will be waived, and the severe demands of duty, however painful, faithfully met.

That God may guide you, in this and in all things, to a right judgment, is the sincere prayer of

Your affectionate friend and brother,
J. B. GALLAGHER.

P. S.—I should be gratified to hear from you as early as practicable. Address me, to the care of Hamilton Murray, Esq., No. 58 Pine-street, New York.

Rev. C. M. Butler.

55. Did you answer that letter?

I did. I declined to appear, on the ground that if ample testimony could be obtained to various other acts of intemperance and licentiousness,—regarding, as I did at the time, the word licentiousness as having reference to overt acts,—I did not think that I ought to be called upon to testify.

56. How came you to change your mind upon that subject, and consent to testify?

Because, when I arrived at Philadelphia, I found, by Mr. Gallagher's explanation of his letter, that he had in mind such cases as this of which I had knowledge, and that it was important that my testimony should be given. Besides this, as it had been well known that I had stated these facts, I felt called upon, as an honorable man, to abide by the statement, if a trial should be instituted.

By the Court.

By Bishop Ives,

1. Did you always repeat these circumstances with the aggravated one of the Bishop's attempting to lift the clothes of your wife?

Not always. Sometimes I stated the general fact of her being insulted in the carriage.

2. Can you tell in what cases you did repeat this aggravating circumstance?

I cannot.

3. Did you make affidavit to that circumstance?

Yes; and whenever I should be called upon to state the circumstances in detail, I should have mentioned that fact, because it was my strong impression, from the first account given to me by my wife. I had never talked with her about the details, after the first conversation.

4. Do you mean after the first conversation, to the date of the affidavit?

I do.

5. What then were the various conversations you spoke of as had with your wife on this subject, before leaving Boston?

It was upon the painfulness of the whole matter, and her reluctance to have to testify to it, all in a very general way.

6. Did you have a conversation with the Rev. Mr. Norwood of Virginia, on this subject?

I cannot remember that I did; I will not say that I did not.

7. Did you ever have a conversation with the Rev. Dr. Hawks on this subject, prior to the one related as occurring at the General Convention?

Never.

By Bishop De Lancey.

8. How long an interval elapsed between the times of Bishop Onderdonk's putting his arm around your wife?

A short time; I should say not more than five or ten minutes.

9. What interval occurred between the time of her speaking about the sanctity of his hand, and her removal to the front seat?

A somewhat longer interval; so that it became from thick dusk quite dark—fifteen or twenty minutes.

10. At what time of the night, then, did she come to sit on your lap,—before dark, or after?

After dark.

11. Did the indelicacies which you saw, take place nearer to Dryden or to Ithaca?

Nearer to Ithaca—soon after ascending the hill.

12. How far were you from Dryden when she removed to the front seat?

I cannot remember; I only remember that the ride seemed long.

13. Did Mrs. Butler say any thing at Dryden about the Bishop's attempting to lift her clothes?

She said nothing to counteract my first impression with regard to it; and added a circumstance that she had not told me when she first came on my lap; that is, the movement of her dress as he grasped her thigh.

14. Did she ever correct your misapprehension about the Bishop's attempt to lift her clothes?

After I showed her the affidavit, which I had made at Philadelphia, she then said that I had misapprehended; that what she had said was, she did not know but the Bishop was about to pull up her clothes; and I understood her as saying that he attempted to do so.

15. Did you ever hear any person, while you were in Western New York, re-

fer to this story, connected with the statement of the Bishop's attempt to lift her clothes ?

I do not remember that I ever did.

16. Did you ever speak of this subject to the Rev. Dr. Hale, of Geneva.

I cannot recollect that I did. I will not say that I did not. I was very intimate with him.

17. Did you ever speak to any one about these circumstances, at Utica, during the Special Convention of '38, and if so, to whom ?

Mr. Hubbard mentioned the rumor of what Mr. Bolles had said, and I mentioned that I knew of a similar case. That is the only person to whom I remember to have mentioned the circumstance.

18. Upon the ride from Ithaca to Syracuse, did you or did your wife go to sleep ?

It is my strong impression that we did not either of us.

19. Was the Bishop's embarrassment when Mrs. Butler spoke to him about his hand, very perceptible to the eye ?

It was perceptible by his casting down his eye, and more evident to me from his making no rejoinder, more than a cold assent of "Yes."

20. Did you observe in the topics of conversation with the Bishop any indications of intoxication ?

I do not remember the topics of the conversation, further than the one I have mentioned.

By Bishop Gadsden.

21. Were your relations with the Respondent perfectly friendly before the occurrence of this ride ?

Perfectly so, so far as I know.

22. Did I understand you that you were examined by but one person before your ordination ?

I was examined by but one person. Some other person came into the room during the examination. The examination consisted of four or five questions.

23. Is it your opinion that the constitution of Mrs. Butler was permanently affected by the occurrence on that ride ?

It is most decidedly : for she was extremely agitated, and went immediately to bed on her return home.

24. Did you ever mention this occurrence to your father ?

Never, because I was unwilling to give him pain.

By Bishop Doane.

25. Had any thing led you to be suspicious of the character of the Bishop before this ride, so that you kept your eye upon him ?

I had heard at Syracuse of the Bishop's drinking too much wine at the Syracuse House with Mr. Todrig, but never of improprieties of this kind.

26. I understood you to say, that you first mentioned this occurrence in the fall of 1837 ; was it because you then heard of any thing of this kind ?

It was.

27. Was Mrs. Butler perfectly well before this ride ; in good health ?

She was of a delicate constitution, but enjoyed good health up to this time from her marriage.

28. How was she affected ?

She was taken at that time with fainting and sick turns.

29. How long did these continue ?

I cannot specify. I only remember she was very feeble during all that period.

30. What symptoms of disease followed this ?

After her return from Pompey, she had a succession of sick and fainting turns, by which she was very much prostrated.

31. Does she continue out of health now ?

She is of a very delicate constitution, easily prostrated by exposure and fatigue.

32. Have you apprehended any thing like symptoms of consumption ?

I always have, from my first acquaintance with her, previous to her marriage.

33. Was she of the temperament commonly called nervous ?

Not more than ordinarily.

34. Do you remember on what day it was, that you met Mr. Gallagher and Dr. Hawks together?

No, I cannot remember.

35. Was it before the subject of Dr. Hawks' consecration came up in the General Convention, or after?

It was after.

By Bishop De Lancey.

36. Have you any children?

Yes, sir, two.

37. What is the age of them respectively?

The one is upwards of six years old, the other is two and a half; the elder was born on the 3d of April, 1838.

38. Has Mrs. Butler ever had any miscarriages?

She gave birth to a child, which died one half hour after birth, at Palmyra!

39. Was her constitution, in your judgment, affected by that circumstance.

No more than the birth of any child would affect a person of delicate constitution.

Direct Examination resumed.

36. Did you know at what time the memorial upon this subject was introduced to the House of Bishops?

I did not. I did not know that such a memorial had been made, until after my arrival in Philadelphia.

37. On your arrival in Philadelphia, did you understand that there had been such a memorial?

Soon after my arrival I heard of it.

38. Did you hear of it as *having been* presented to the House of Bishops?

I heard that a memorial had been presented.

39. Did you hear that before you met Mr. Gallagher and Dr. Hawks, in the way you have testified?

I am confident I did.

40. Was Mrs. Butler, at the time of your ordination, a communicant of this Church?

She was.

The Court then adjourned to meet on Monday, the 16th inst., at half past 9 o'clock, A. M.

W. R. WHITTINGHAM, *Clerk.*

*Monday, December 16th, 1844, }
half-past 9 o'clock, A. M. }*

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The Counsel for the Respondent introduced to the Court, David Graham, Esq., as his associate Counsel.

The Rev. JAMES A. BOLLES, having been sworn in Court on Saturday, the 14th, was called.

Direct Examination.

1. What is your vocation, and where do you live?

I am a clergyman, Rector of St. James's Church, Batavia, Western New York.

2. How long have you been a clergyman ?

Eleven years.

3. In August, 1838, did you accompany the Rt. Rev. Bishop Onderdonk, of New York, in a stage-coach, anywhere, and where ?

I did ; but I am not certain whether we took the stage at Batavia or at Le Roy. My impression is, that we took a private conveyance to Le Roy, and there, after dinner, took the stage for Utica.

4. Who, besides you and the Bishop, were in the stage, and how were the parties located ?

As near as I can remember, there were four persons in the stage when we got in. The Bishop and myself took the middle seat ; upon the back seat, there was a young woman, and, I think, a little girl ; there was, I think, a man and a boy sitting upon the front seat. I am pretty certain. I have an idea that there was a person in the stage having a large bundle, but whether on that occasion, or some other, I am not positive.

5. Did the same passengers continue in the stage until your arrival at Utica ?

They did not.

6. Who left ?

I believe they all left before we arrived at Utica ; they were way-passengers.

7. Did you know any of these passengers, besides Bishop Onderdonk ?

No, sir.

8. Did the Bishop continue on the same seat with you until your arrival at Utica, and if not, to what seat did he remove ?

I do not remember that the Bishop removed from the seat at all ; but the stage stopping at Canandaigua, and taking a different set of passengers, I am unable to say on which seat the Bishop did ride from Canandaigua.

9. During any part of this ride, did the Bishop sit upon a seat with a young lady ?

Not that I remember.

10. Was there any conversation between the Bishop and any young lady, or a lady in the stage ?

There was.

11. When and where did the conversation take place ?

I should think it commenced very soon after we left Le Roy, and continued until the lady left the stage. I do not mean to say that this was an incessant conversation with the young lady ; the passengers generally conversed, as passengers do in a stage-coach.

12. Who was this young lady ?

I do not know.

13. Did the Bishop know her ?

I presume not.

14. What occurred between this young lady and the Bishop in the stage ?

The Bishop took her hand, and conversed with her in that position.

15. Is that all the Bishop did to her ?

I did not see him do any thing more.

16. Did he put his arm about her ?

Not that I saw.

17. Did the lady withdraw her hand, or seem in any other way annoyed by the Bishop's conduct ?

She did withdraw her hand, and seemed to be somewhat embarrassed.

18. What did she do ?

I do not remember that she showed this embarrassment in any other way than by slightly blushing.

19. Did she withdraw herself at a greater distance than she was from the Bishop ?

Not that I remember ; I should think not.

20. How long did the Bishop hold her hand ?

I think the occurrence took place in this way : the Bishop turned around to converse with her, and the lady put her hand upon the strap which crossed between the seats, and the Bishop put his hand upon hers, and she very soon withdrew it.

21. Did the lady leave the stage in consequence of this familiarity?

That I cannot say.

22. Did she leave the stage before she arrived at her journey's end?

She left the stage at Lima; and I previously understood her to say that she intended to go on to Bloomfield or Canandaigua; I do not remember which.

23. What did the Bishop converse about with the lady?

That I am unable to say. I only remember that some conversation occurred about the country as we were passing—that is, as to the particulars of the conversation—and the Bishop took the little girl and lifted her up to show her something out of the window; about which they were conversing.

24. How large was this little girl?

Eight or ten years old, I think.

25. Was she in company with the lady?

I have been trying to recollect whether the little girl got out with the lady, or whether she belonged to the man with the boy; and I do not remember when or where she got out.

26. Is your recollection fresh as to the circumstances that occurred on that occasion?

It is not.

27. Was there any thing in the manner of the Bishop towards that lady which seemed to you at the time indelicate or improper?

I thought at the time that it was foolish and indiscreet, liable to misconstruction.

28. Did you regard the mere taking of the lady's hand on that occasion as foolish and indiscreet?

Yes, sir.

29. Did you ever, and when, recapitulate these circumstances to the Bishop?

I had a conversation with the Bishop about them, soon after this, at the time of the Convention at Utica. I think I did not "recapitulate these circumstances to the Bishop."

30. Did you, during the session of that Convention, and while the facts were fresh in your recollection, communicate the knowledge of them to any person, and to whom?

[This question was objected to by the Counsel for the Respondent, as tending to impeach or correct the party's own witness.]

The Court sustained the objection; the Bishop of Ohio dissenting, on the ground that the question went to ascertain the strength and nature of the impression made on the mind of the witness at the time, by the transaction concerning which he was giving evidence.]

31. Did any thing else besides that which you have already stated, occur between the Bishop and the lady, during their ride together in the stage?

A circumstance has occurred since I came to this city, to remind me that the Bishop took the hand of the lady again, after she had taken it from the strap; but I do not distinctly recollect it.

32. What was the circumstance that occurred to remind you of what you have stated? (Objected to and overruled.)

33. Have you any recollection of what occurred besides what you have stated?

No, I have not.

34. You say you had a conversation with the Bishop immediately after, at Utica; what was that conversation?

I cannot say what I said to the Bishop, or particularly what he said to me; but substantially, I went to the Bishop for the purpose of correcting a report which had gone abroad, and also stating to him precisely what I had said. I called upon the individual who went with me to whom I had stated it, to say to the Bishop what I had said. Dr. Hawks stated to the Bishop what I had said, and where there was a difference of recollection I corrected the Doctor.

35. What did the Doctor state, and wherein did you correct him?

The Doctor stated that the Bishop's hand was somewhere near, or on, or at the lady's private parts; I corrected the Doctor by saying that it was not so.

36. What was your correction—how did you state it was?

That is the circumstance to which I referred a short time ago, as refreshing my

recollection, as to the Bishop's taking the lady's hand a second time ; and I am quite sure that my correction consisted in saying that the Bishop's hand was near the lady's lap. His hand rested over the strap.

37. What else did Dr. Hawks say at that time ?

I think that, with the exception of that, the statement was very much as I have given it. I do not remember any other disagreement.

38. Do you remember nothing else that was said by Dr. Hawks, or by yourself, to the Bishop on that occasion ?

I remember that I expressed to the Bishop my regret that I had mentioned what had occurred. When the subject of the lady's leaving the stage was mentioned to me a little while ago in this examination, and I was asked the reason, I said I did not *know* why ; but at the time I drew the inference that the lady stopped before she had arrived whither she was going. In our conversation with the Bishop that subject came up ; and I remember that he spoke of the impropriety of drawing any such inference. I remember nothing else stated by me or by Dr. Hawks in that conversation.

39. What did the Bishop say in that conversation ?

I think the Bishop expressed his surprise, and did not know at first to whom I referred. He asked me something about the little girl—whether it was her, I think ; I told him it was not her, but the other. The Bishop, as far as I remember, neither affirmed nor denied the facts. The witness desires to explain. I referred by facts to whatever transpired, and to what I said, and the Doctor said for me at that time.

40. In that conversation you spoke of having regretted that you had mentioned the subject. To whom did you say that you had mentioned it ?

To Dr. Hawks.

41. Did you refer to any other person ?

I did not, and I do not remember having mentioned it to any other person at that time.

42. What time do you mean ?

The first and only person that I mentioned this to was Dr. Hawks, before the conversation with the Bishop referred to. Dr. Hawks, in this conversation with the Bishop, stated that he (Dr. Hawks) had mentioned the circumstance to another individual. Dr. Hawks made this statement by way of apology for what had occurred, and to exculpate himself from the charge of blame for having made this public.

43. Was the name of that person used in this conversation ; and if so, what was it ?

I do not remember that it was.

44. Was any thing further said by the Bishop, on that occasion ?

I do not remember any thing.

45. Any thing in reference to communicating the result of that interview to other persons ?

I do not remember. We shook hands with the Bishop when we came away ; and expressed ourselves satisfied of his integrity, and that he had no evil intentions.

46. Was any thing said about imprudence ?

No, sir, I do not think there was. We did not go to reprove the Bishop, but rather to explain *my* agency in the exaggerated reports which had been made out of what I had told to Dr. Hawks.

47. Was the statement of Dr. Hawks, made to Bishop Onderdonk, correct in all respects, except so far as amended by you at that time ?

I do not remember any other correction now, but there may have been.

48. Did you make any memorandum of these transactions at the time ?

I have an impression that I did—I believe I did—but I have not been able to find it.

49. Did you show that memorandum to any person, and to whom ?

Not to any one, that I remember.

50. What induced you to mention these circumstances to Dr. Hawks at the time ? [This question was objected to by the Counsel for the Respondent, as tending to elicit the *opinion* of the witness, and not *facts*. The Court sustained the objection.]

51. Have you any further recollection of what occurred in the stage ?

I have not. I have a recollection that I was exceedingly surprised at Utica, that there had been any thing made out of my conversation with Dr. Hawks, to the extent which was talked of.

Cross-Examination.

1. When you say in your direct examination that in this conversation with the Bishop, at Utica, he neither admitted nor denied the facts stated by you or for you, do you mean to be understood in speaking of the facts as they were, after you had corrected Dr. Hawks ?

Certainly I do. I corrected him immediately, and was surprised that he said what he did.

2. Have you any doubt in your own mind that there were two persons sitting on the front seat of the stage during the time that this lady you have spoken of was in the stage ?

No, I have not.

3. Was this in the day-time or in the evening ?

In the day-time.

4. Did these persons who sat upon the front seat, sit with their backs to the horses, or to you and the Bishop ?

They sat with their backs to the horses, facing the Bishop and myself.

5. Are you certain that this lady left the stage at a place short of the one at which she intended to leave it ?

No, I am not.

By the Court.

By Bishop Ives.

1. Are you certain in your own mind that the Bishop did not know this lady ?

I have never thought that he did, yet I cannot say that he did not.

2. After this conversation with the Bishop did Dr. Hawks express any opinion whether it was a sufficient explanation or not as to the Bishop's conduct ?

I do not remember any expression of opinion. I remember that we both shook hands with the Bishop.

3. Did you have any conversation with Dr. Hawks subsequently on this subject immediately, I mean ?

I do not remember any immediately ; the subject was dropped, as I understood.

4. Have you since had any conversation with Dr. Hawks on the subject ?

(Waived for the present.)

By Bishop McLvaine.

5. You said you remembered the Bishop spoke of the impropriety of your drawing a certain inference concerning the lady's leaving the stage, What was that inference ?

The inference was, that she had left the stage before reaching her place of destination.

6. What was the impropriety complained of by the Bishop ?

I thought that the young lady was somewhat embarrassed by the Bishop's attentions, and that she left the stage before she had intended to.

7. Did the Bishop complain of your having inferred the lady left the stage in any degree on account of his conduct towards her ?

Yes, sir : he thought there was no ground for such an inference.

8. When you and Dr. Hawks left the Bishop, after the conversation with him at Utica, you expressed yourself satisfied that the Bishop had no evil intentions in the matter referred to in that conversation—had you before that conversation supposed or suspected that he had evil intentions ?

No, I had not any such idea.

By Bishop De Lancey.

9. Did you yourself converse with the lady in the stage ?

Yes.

10. Did the lady partake in the conversation ?

She did.

11. Did the lady say any thing to indicate that she left the stage in consequence of the Bishop's taking her hand?

We all got out of the stage at Lima; it was the place for changing horses; and I thought the way in which the lady said she would not go any further, was indicative of some little feeling. She said, "You may take my trunk down, I will not go any further."

12. In regard to your visit to the Bishop with Dr. Hawks, at Utica, was the Bishop requested by you or Dr. Hawks to state or explain what *did* occur in the stage?

No, sir, he was not.

By Bishop Doane.

13. Did you hear the lady express any intention as to the place to which she was going, before she left the stage?

I think she had previously spoken of going to Bloomfield or Canandaigua, and hence I noticed her getting out at Lima.

14. If she had expressed no such purpose, would you have been struck with her leaving the stage as she did?

I think I would not.

15. Who helped her out of the stage?

I do not know; but I am inclined to think the Bishop did.

16. Did the little girl go with her?

I cannot say.

17. Did any one accompany her to the public house at which she stopped?

I think not. Neither the Bishop nor myself went into the house.

18. Was the Convention at Utica a *Stated* or *Special* Convention?

I think it was a Special Convention.

19. Are you not certain that it was?

I am not.

20. What special subject was to come before that Convention?

The division of the Diocese; and it *was* a Special Convention; we had an adjourned Special Convention afterwards, I think in the city of New York.

21. Had there been any conversation, or was there then current in the Diocese any conversation, as to an assistant to Bishop Onderdonk, if the Diocese were not divided?

Yes, sir, there was.

22. What names were prominent as candidates?

(Waived for the present.)

By Bishop Gadsden.

23. The Presentment says that the Bishop put his arm around the body of the young woman: did you witness any thing of the kind?

I did not.

24. The Presentment says that the Bishop took other indecent liberties with her person: what were they?

This Presentment has been drawn up without any conversation with me by the Presentors. I saw no indecent liberties; I saw none that I considered indecent liberties, or that could come under that name.

25. So far as you know, did the said young woman endeavor to get beyond the reach of the said Benjamin T. Onderdonk?

No, sir.

26. Was the lady seated directly behind the Bishop, or diagonally?

The lady and a little girl were on the back seat. The Bishop and myself were on the middle seat. The Bishop, to converse with her, turned around; and that would leave the lady more in a diagonal direction from him than immediately behind him.

By Bishop Ives.

27. Did the young woman sit directly behind the Bishop or yourself?

Behind the Bishop.

Direct Examination resumed.

52. In your interview with the Bishop, accompanied by Dr. Hawks, did you understand that Dr. Hawks had seen the Bishop before on this subject?

No, I did not.

53. What was your understanding on the subject?

I am very sure that he had not. I know he felt a little unwilling to go with me.

54. Where was this interview?

I believe it was at the house of Mr. Hollister, the house where the Bishop was staying.

55. In the conversation, did Bishop Onderdonk say that he had been spoken to before on the subject, or was this the first knowledge that he had that this matter had been spoken of?

I have always supposed that this was the first knowledge the Bishop had of it.

56. Was not this meeting in a church, or in the Vestry-room of a church?

No, sir.

57. Who was with the Bishop when you went to see him?

I have a recollection of our going from one room to another—a parlor—where we might be alone. Who was present I know not.

58. Was Dr. Taylor there?

O no, I think not. He was not present at the interview, and I think he was not there when we went in. I remember his being consulted about our going.

59. Consulted by whom?

I think I saw him; but whether Dr. Hawks was with me, I know not. I know he (Dr. Hawks) objected to going.

60. Did you consult Dr. Taylor? (Objected to, and waived for the present.)

61. Who commenced the conversation with the Bishop, you or Dr. Hawks?

I believe that I did.

62. Can you now recollect what were the terms employed by you in the commencement of that conversation?

I do not remember the terms, nor the language, but I do remember substantially, that I said to the Bishop that an unfortunate occurrence had taken place—that I had mentioned a small occurrence that took place during our ride. I think I then mentioned the fact that Dr. Bayard had been to me and told me that this circumstance had been greatly exaggerated, and that I had come there for the purpose of an explanation. I referred to Dr. Hawks to tell the Bishop what I had said.

63. Did you say any thing to the Bishop at that time about having communicated it to any other person than Dr. Hawks?

I did not. Dr. Hawks mentioned that he had communicated it to Dr. Taylor, and he (Dr. Hawks) threw the blame upon Dr. Taylor, so far as there was any.

64. Did you say in that conversation that you had spoken to Dr. Taylor about it?

Not that I remember.

Cross-Examination resumed.

6. When you arrived at Lima, you have stated that you all got out of the stage, and that the lady said to the driver, "Take off my trunk, I will go no further"—was this said by her before she went into the house; or had she been in the house, and then did she come out and give this direction?

She said this just as she got out of the stage, before she had been in the house.

7. Did she meet any friends there?

I do not know. She was undoubtedly acquainted in that part of the country. She lived about there somewhere. I inferred this from her being a way-passenger, from her having a small hair trunk on the seat with the driver, and from her conversation.

8. You observed, sir, in your direct examination, that you understood that it was her intention to proceed in the stage as far as Bloomfield, or Canandaigua. Did you understand that it was her intention to go on with you on that day, and not to stop at any intermediate place?

No, I do not know that any thing was said about it.

Direct Examination resumed.

65. You said the Bishop lifted up the little girl, and she sat on the back seat. How did he do this?

He lifted her up over the strap, and showed her something out of the window. I remembered nothing about it, except as it was referred to in the conversation with the Bishop: then I remembered it.

66. Did he replace the little girl on the back seat, or did she remain on the middle seat?

I do not remember.

67. Did any other passenger besides yourself notice, as far as you discovered, the intimacy between the Bishop and the lady?

Not that I know of. Nothing was said to me about it.

68. You have said that the lady showed some feeling. After further taxing your recollection, can you say whether she said any thing, and what?

My statement as to her feeling, referred to her getting out of the stage, and to what she said to the driver.

69. Did the lady hear you address the Bishop by his title?

I presume she did.

By the Court.

By Bishop Ives.
28. At this time—I mean the time of your relating this matter first, or before the occurrence—had you heard of any other case of like impropriety alleged of the Bishop?

I had heard the case of Mrs. Butler—not before the occurrence, but at the Convention, before I related this. And if I had not heard *that*, I should probably not have spoken of *this*.

29. From whom did you hear it?

I think I heard it from Dr. Hawks.

By Bishop Hopkins.

30. Was the Bishop seated at your right hand, or at your left?

I think the Bishop was at the left.

31. When he turned around to converse with the lady, did he turn towards you or from you?

He turned towards me.

32. When he took hold of her hand the *second* time, as it lay near her lap, how long did he keep hold of it?

I do not know. I should think not more than two or three minutes.

33. You said she seemed embarrassed, and blushed slightly: was this when the Bishop had hold of her hand the first or the second time?

Both times.

34. Did the lady make no attempt to withdraw her hand the second time, nor otherwise notice it?

I did not observe any attempt.

By Bishop McIlvaine.

35. What interval of time occurred between the Bishop's taking her hand the first and second time?

I cannot remember.

36. Can you say *about* what interval you suppose it was?

No, sir. I do not recollect any thing which would enable me to judge; but I should think not a long time.

Cross-Examination resumed.

9. How long were you with the Bishop in the stage with this lady?

From Leroy to Lima, twenty-two miles.

10. About what time?

Between three and four hours.

11. Did the stage stop between Leroy and Lima?

It stopped two or three times—probably at Avon for the passengers to get out.

By the Court.

By Bishop McIlvaine.

37. About what period of the journey did these things take place?

They commenced pretty soon—perhaps after we had gone half way from Leroy to Lima.

By Bishop Doane.

38. Did the Bishop seem desirous to avoid observation of what he was doing?

No, sir.

39. Did what he did, seem to attract the attention of those on the front seat?

Not that I remember.

40. Were you anxious lest it should?

I think I was.

41. Do you remember doing any thing to divert the Bishop's mind, so that those on the front seat might not observe it?

No, I do not.

42. Did you at any such time yourself address the lady, to interrupt any such proceedings?

I do not remember addressing her for that purpose.

By Bishop Brownell.

43. Was the lady particularly reserved during the latter part of the journey, or was she as free to converse as during the first part?

I have no recollection of any difference in that respect.

Cross-Examination resumed.

42. Did these occurrences of which you have spoken—I now mean the Bishop's taking hold of her hand while in the stage, in the manner you have stated—occur before your arrival at Avon, or after?

After we left Avon, and a short time before we reached Lima. I perhaps should not have thought of the occurrence; but there being a large Methodist school at Lima, I did not know but this girl might be a Methodist, and misconstrue the Bishop's conduct, so as to injure our Church in that vicinity. It made a deeper impression on my mind from that circumstance.

By the Court.

By Bishop McIlvaine.

44. Did any conversation take place between the Bishop and the lady after the last taking of her hand?

Yes.

45. Was that conversation in an ordinary tone of voice, or in a suppressed voice?

In an ordinary tone of voice.

By Bishop Doane.

46. How old did this lady seem to be?

I should think about twenty-five.

47. Was any thing said of her going to the school at Lima, either as scholar or teacher?

Nothing that I remember.

48. Was any thing said of the little girl being taken to the school?

Nothing that I remember.

49. Did the lady express any interest in the school?

The school was an object of sight and conversation before we reached Lima. It stands upon high ground. I have no recollection of any thing to enable me to say that the girl understood any more than that it was a Methodist school.

50. Did it never occur to you that she might have been connected with the school, or had friends there?

I cannot say that it did.

By Bishop Ives.

51. Was there any thing singular in her dress in any way?

She was a plain country girl—plain in her dress.

By Bishop Henshaw.

52. You said you were apprehensive that misconstruction of the Bishop's conduct might do injury to the Church in that vicinity—had you any fear that a faithful report of it would prove injurious?

No, I had not, in connection with the fact of his being a Bishop. In a notoriously bad man such conduct would have been indicative of a bad design; but it did not

occur to me, nor do I think, that the Bishop had any impure or lustful desires towards the woman.

By Bishop McIlvaine.

53. Was it merely your reliance upon the character of the Bishop that prevented you from supposing that his conduct proceeded from improper desires?

No, sir. Any man of good character in the community—it would be wrong to attribute improper desires to him, simply in consequence of any thing which had occurred.

By Bishop Doane.

54. Did you hear of the occurrences with Mrs. Butler before you mentioned this at all?

I think the occurrence with Mrs. Butler was mentioned at the time, and before I mentioned this, in the same conversation.

55. Did you attach serious importance to this occurrence before that of Mrs. Butler was mentioned?

I did not.

Direct Examination resumed.

70. After the case of Mrs. Butler was mentioned, did you attach serious importance to what you saw in the stage?

No, sir, I did not. I was greatly surprised when I found that it was so regarded by others.

By the Court.

By Bishop Doane.

56. In the case of Mrs. Butler, as it was stated to you, was there any mention of an attempt to lift her clothes?

No, sir.

MISS HELEN M. RUDDEROW, having been sworn in Court on Saturday, the 14th, was called.

Direct Examination.

1. Where do you live?

Fiftieth-street, city of New York.

2. Are you the sister of John Rudderow?

I am.

3. In the month of June, 1841, did you ride in a carriage with Bishop Onderdonk, of New York?

I did.

4. From what place, and to what place?

From St. James's Church to Sixty-first street, our former residence.

5. Where is St. James's Church?

Sixty-ninth street, Hamilton Square.

6. About what time was that?

12th of June, 1841.

7. Did you sit on the same seat with the Bishop in the carriage?

I did.

8. Who was in the carriage besides?

Rev. James C. Richmond.

9. On what seat of the carriage did he sit—with his face towards you, or otherwise?

On the front seat of the carriage, not facing me.

10. Was there any other person in the carriage on the front seat?

There was not.

11. Did Mr. Richmond drive the horses?

He did.

12. Was there any other person on the back seat, besides you and the Bishop?

No, sir.

13. State clearly and distinctly what the demeanor of the Bishop to you was, on that occasion.

We had not proceeded very far from the church, when Bishop Onderdonk put his arm around my neck, and thrust his hand into my bosom: this he continued to do. I was very much surprised and agitated, and would have jumped from the carriage, had it not been for exposing him to the Rev. Mr. Richmond. He kept repeating the offence until we reached home, where he was to dine with us. I immediately went to the room occupied by my sister and myself, and told her what had happened. I entreated her to go down and entertain him, as the family were not yet prepared to do so; she consented, upon condition that I should follow as soon as I could sufficiently compose myself; which I did, and found my mother and sister-in-law with them.

14. Will you excuse me for asking whether or not it was upon your naked bosom that the Bishop thrust his hand?

It was, sir.

15. Did or did not his hand extend below the top of your dress?

It did.

16. What remark, if any, did you make to the Bishop in the carriage?

I cannot recollect.

17. What did you do in the carriage?

I endeavored to resist the insult, but could not.

18. On which side of you was the Bishop seated?

On the left side.

19. Had the Bishop been officiating that morning in Church?

He had.

20. Was it Sunday?

It was.

21. Had there been confirmation that morning?

No.

22. Did the Bishop remain and dine with you?

He did.

23. Did you live with your brother?

I did—this was his house.

24. Are you a communicant of the Protestant Episcopal Church?

I am.

25. Were you at that time?

I was.

The Court then adjourned.

Attest,

W. R. WHITTINGHAM, Clerk.

Tuesday, December 17th, 1844, }
half-past 9 o'clock, A. M. }

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

Cross-Examination.

MISS HELEN M. RUDDEROW

1. What is your present age?

Thirty-two.

2. Had you been acquainted with Bishop Onderdonk previous to the occasion to which you have referred?

I had.

3. How long had you been acquainted with him previously?

Ten years.

4. Had you conversed with him frequently during that period of ten years, or at all?

I had conversed with him occasionally.

5. Had you met him at the house of any friend or relative during that period?

I had not.

6. Where did you meet him on the occasions on which you conversed with him?

At the church.

7. At what church?

St. Paul's Chapel.

8. Was that the extent of your acquaintance with him—your meeting him at church and conversing with him on those occasions?

It was.

9. Were those meetings casual ones, after the service of the Church was over?

I sometimes saw him before service, as well as after.

10. Did you see him in the church or in the vestry-room?

In the Church.

11. Do you mean in coming into the church, or in going out of it?

Sometimes the one, and sometimes the other.

12. Did any other conversation pass between you and the Bishop on those occasions than the ordinary salutations?

There did.

13. What was the nature of those conversations?

He sometimes spoke of the state of the Sunday-school, and religious matters.

14. Have you ever, since the occasion spoken of in your direct examination, met Bishop Onderdonk?

I have.

15. How often?

Once since that occasion.

16. When and where did you so meet him?

I saw him at St. James's Church in July, 1843.

17. Was that on Sunday?

It was.

18. Did the Bishop officiate in that church on that day?

He did.

19. When did you meet him on that day?

The Bishop came up to me before morning service.

20. Where were you when he came up to you?

I was in a pew, teaching a class.

21. Was any person in company with you at that time, excepting your class?

There was not.

22. Was any person in company with the Bishop at that time?

The Rev. Mr. Dowdney came to the pew-door with him.

23. Did Mr. Dowdney remain at the pew-door while the Bishop did?

Not all the time.

24. Did the Bishop first address you, or did you first address the Bishop?

The Bishop first addressed me.

25. What did he say?

He inquired after my health, and the health of our family.

26. Was there any thing else in that conversation on the part of the Bishop?

There was not. With the exception that he inquired after my Sunday scholars, and taught them the Collect for the day.

27. Do I understand you that after your reply to his inquiry, nothing further passed between you and the Bishop on that occasion?

Nothing further than I have stated about the Sunday scholars.

28. Did the Bishop remain with you, or near you, while teaching the Collect to the scholars?

He stood a short distance from me.

29. Whither did he go then?

He went to an adjoining pew, and spoke to another of the teachers.

30. Did you shake hands with the Bishop on that occasion?

I did.

31. Did the Bishop officiate that morning in the church?

He preached the sermon.

32. Did you meet the Bishop again during that day?

I met him again in the afternoon, but did not speak to him.

33. Where did you meet him?

At the church.

34. Was that before or after the afternoon service?

It was before the service; I mean before the afternoon service.

35. Did you not meet him at the close of the morning service that day?

I did not.

36. Did not you and your sister remain in the church after the close of the morning service, and as Bishop Onderdonk was leaving the church, meet him, and address him in a very friendly manner?

I did not.

37. Did either of you?

My sister met him; I cannot tell her manner towards him.

38. Did you not speak to him at all on that occasion?

I did not.

39. Did your sister converse with him on that occasion?

I presume she did; but I was not present.

40. Who first spoke on the occasion of their meeting—the Bishop, or your sister?

I do not know.

41. In what part of the church was this?

In the vestibule.

42. Did you and your sister come out together?

We did not.

43. Had you and your sister occupied the same pew that morning?

My sister presided at the organ.

44. Were you in the organ-loft with her?

I was.

45. Did you leave the organ-loft together?

We did not.

46. Did you go down stairs together?

No.

47. How far apart were you in going down stairs?

Some distance; I cannot exactly tell how far. I was in the organ-loft, and we were separated some sixteen or seventeen steps, and quite a space.

48. Do you mean that you remained in the organ-loft until your sister had got to the foot of the stairs, or the vestibule of the church?

I do.

49. Where did you first join your sister on that occasion, after you left the organ-loft?

In the body of the church.

50. Did you remain in the organ-loft until the Bishop left your sister?

Nearly all of the time.

51. Did you come down at all before the Bishop left your sister?

I did not.

52. You say that on that occasion your sister met the Bishop—did she shake hands with him when they met?

As I was not an eye-witness, I cannot tell.

53. Do you mean that you did not see the Bishop and your sister together at that time?

[This question was objected to by Counsel for the Presentment, on the ground that it was irrelevant, relating to collateral matters. The point having been argued by counsel on both sides, the Court was divided in opinion; the Bishops of Kentucky, Ohio, Delaware, and Massachusetts sustaining the objection; the Bishops of Illinois, Connecticut, Vermont, New Jersey, North Western Missionary Diocese, Louisiana, Western New York, and Maryland; the Assistant Bishop of Virginia, and the Bishops of Rhode Island, and the South Western Missionary Diocese, overruling the objection. The Bishop of South Carolina declining to give an opinion in the premises. So by a majority of the Court it was overruled.]

I went to the stairs to see whether the Bishop had gone, and returned; I found he had not.

54. Did you find the Bishop and your sister talking together at that time? (Objected to.)

He was talking with others.

55. Was your sister there, at the foot of the stairs, or at the vestibule? (Objected to.)

I cannot exactly say.

56. Was she among the persons with whom the Bishop was conversing as you have mentioned? (Objected to.)

She was present certainly.

57. How long was it after your sister left, before you went down from the organ-loft, and found the Bishop still at the vestibule? (Objected to.)

Perhaps five or ten minutes.

58. Did you remain in the organ-loft for the purpose of avoiding meeting the Bishop? (Objected to.)

I did.

59. Did you tell your sister so? (Objected to.)

I do not remember that I did.

60. Did you say any thing to your sister respecting the Bishop at that time, or respecting your reason for not going down with her? (Objected to.)

I do not know that I did.

61. You say that your sister and yourself met, after the Bishop had left, in the body of the church—did you say any thing to your sister respecting the Bishop when you so met?

It is very probable I did.

62. Can you not be more certain whether you said any thing or not respecting the Bishop?

I cannot remember exactly what I said to her about the Bishop.

63. Did you reprove your sister for having met and conversed with the Bishop? (Objected to. Modified thus, after argument by counsel—)

64. Did you reprove your sister for having met, and, as you presumed, conversed with the Bishop? (This question was waived for the present.)

65. You say that you presume that your sister conversed with the Bishop in the vestibule—did you at the time presume that she conversed with him there?

I thought it was probable, from circumstances.

66. Had you at the time any doubt of it?

I had some doubt of it.

67. What were the circumstances which induced you to suppose that your sister conversed with the Bishop?

Others being present, remarks might have been made if she had not.

68. Did you reprove your sister for having met, and, as you presumed, conversed with the Bishop? (Objected to and the following substituted—)

69. Did you advise your sister to remain in the organ-loft, with a view to avoid the Bishop?

There was no remark made to my sister upon the subject.

70. You have spoken of the Rev. Mr. Dowdriey—was he present at the time last referred to, when your sister met Bishop Onderdonk at the vestibule of the Church?

He was.

71. Did he continue there until you afterwards joined your sister in the body of the Church as you stated? (Objected to—objection not sustained.)

I presume that he did.

72. Have you any doubt that he did?

No.

73. Was your sister with you at the church on the morning of the day when Bishop Onderdonk laid his hand upon your person, as you have described?

She was, and was obliged to leave before the service was over; she was taken ill with a nervous headache.

74. Was any other member of your family with you at church that morning?

My brother was; it was my married brother, Mr. John Rudderow, not the brother now present.

75. Was it the person present yesterday, during the whole of your direct examination?

It was.

76. Did your brother leave the church in company with you?

He did not.

77. Did you see him when you got into the carriage to ride home?

I did not.

78. Did you see him after you got home; and if so, how soon?

I do not think that I did see him until towards evening.

79. Whose wagon was this in which you rode home?

It belonged to the Rev. James C. Richmond.

80. Was it a covered wagon or an open one?

It was a covered wagon.

81. Describe the wagon.

It was a four-wheeled carriage with two seats, the top extending over the whole.

82. Were the sides of the wagon closed; and if so, how far?

As far as the back seat extended, and a little beyond.

83. Had the wagon side-doors.

It had not.

84. Were the front and sides of the wagon open, excepting the part extending to the back seat, and a little beyond?

They were.

85. How far beyond, or in front of the back seat, was the wagon closed?

It might have been a quarter of a yard.

86. Could you not plainly see out of the side of the wagon, on either side, as you sat upon the back seat?

By leaning a little forward I could do so.

87. Could not a person sitting on the back seat be plainly recognised by persons meeting the wagon?

By observing very minutely they might.

88. Could not a person thus sitting be observed in merely passing?

I should think not.

89. Was this a high wagon or a low one?

It was a high carriage.

90. Do you mean to say, now, that a person meeting that carriage directly, could not discover at once that there were two persons sitting on the back seat?

No, sir, not at once.

91. Was the top of the carriage up or down at that time?

It was up.

92. Was the back curtain up or down?

It was down.

93. What kind of a day was this?

A stormy day.

94. Did you meet any persons on your ride home?

I do not remember seeing any one.

95. How far was your ride?

Nearly a mile.

96. How long in point of time was your ride?

I should suppose half an hour.

97. Were the roads muddy ?

They were.

98. Before the Bishop put his hand upon your shoulder did he make any remark ?

If he did, it was not to me.

99. Did he make any remark to any one ?

He might have spoken to the person driving, but I don't recollect.

100. Was there any conversation between you and the Bishop from first to last, during that ride ?

I think there was not any thing more than monosyllables passed between us.

101. What were they ?

In the conversation that passed between Mr. Richmond and Bishop Onderdonk I was referred to, and made very short replies.

102. Did the Bishop and Mr. Richmond converse continually during the ride ?

Mr. Richmond talked a great deal.

103. Did the Bishop converse at all ?

Yes, sir, somewhat.

104. Do you remember the subject of their conversation ?

No, sir, I do not.

105. Did Mr. Richmond turn round, during that ride, to converse ?

Partly so.

106. Did he turn round so as to see your face or the Bishop's.

He could see the Bishop's.

107. Did he turn round in this manner repeatedly ?

Only occasionally.

108. How long after you left the church was it before the Bishop put his hand upon you ?

Perhaps not five minutes.

109. Did he say any thing to you before putting his hand upon you ?

He did not.

110. Did he first put his hand upon your breast, in the manner you have described ?

He put his arm around my neck.

111. Did you say any thing to him ?

I did not.

112. Did you push his hand away ?

I did.

113. How long after that-before he repeated the act ?

Immediately.

114. What did you do then ?

I endeavored to move, but could not.

115. Whither did you endeavor to move ?

I was tempted to leap from the carriage.

116. Do you mean that you moved for that purpose ?

I attempted to do so.

117. How were you prevented ?

By the consequences that might result.

118. How long did the Bishop's hand continue upon your person the second time ?

Until we reached home.

119. Did he immediately, after he laid his arm around your neck the second time, thrust his hand into your bosom, in the way you described ?

He did.

120. Did you attempt to remove his hand from your bosom ?

I did.

121. In what way ?

By placing my hand upon my breast.

122. Did you attempt in any other way to escape from the embrace of the Bishop ?

I endeavored to remove from him.

123. Did you do this repeatedly, or only once ?

Several times.

124. Did these attempts on your part continue until your ride was terminated ?

They did.

125. Did you in any manner remonstrate with the Bishop ?

I did not : we would have been heard by Mr. Richmond.

126. Was Mr. Richmond conversing with the Bishop during any of these attempts on your part to escape ?

I think he was.

127. Had you not, previously to this time, been upon terms of great intimacy with Mr. Richmond ?

He visited our house as our pastor.

128. Had you not corresponded with him, in writing ?

No, sir.

129. You say that immediately upon your return home, you informed your sister of this occurrence ; did you inform any other member of your family of it that day ?

There was a cousin in the room at the time—Miss De Groot.

130. Did you mention it to any other member of your family that day ?

No, for various reasons, I did not.

131. When, and to whom, did you first mention it, after that day ?

To my married sister, Mrs. Dr. Eadie, shortly after. I cannot remember, but within three months after.

132. When, and to whom, did you next mention it ?

To my mother, during the next fall.

133. Have you made any affidavit, or sworn statement, in relation to this matter ?

Yes.

134. When did you make that affidavit ?

Within the last three months.

135. Who prepared that affidavit for you ?

Mr. Richmond—Mr. James C. Richmond.

136. Have you ever told these facts to Mr. Richmond, before he prepared that affidavit ?

I did.

137. When did you first tell Mr. Richmond ?

In 1843, in May.

138. Did you volunteer this statement to him, or did he call upon you on the subject ?

He asked me what had occurred during the ride, and I could not speak truly.

139. Did you ever yourself, after the ride, make a memorandum in writing of the facts ?

Never.

140. How are you enabled to say with certainty the precise day of the month, week, and year, on which the ride took place ?

The Bishop had been administering the rite of confirmation at Astoria during that month, and that impressed it upon my mind.

141. Where is Astoria ?

Nearly opposite what was then my place of residence, on Long Island.

142. What sort of a dress did you wear, on the occasion of that ride ?

I had a low-necked dress on.

143. Had you any shawl, or other covering of the neck, upon you ?

I had a shawl.

144. Was the Bishop's arm over or under your shawl ?

It was over the shawl.

145. Did he part the shawl upon your bosom for the purpose of putting his hand under your dress ?

I had not it (the shawl) exactly up upon my throat ; it was thrown loosely over my shoulders.

146. After the Bishop's hand was first removed, as you have stated, did you draw your shawl around your neck?

I think that I did.

147. When he put his hand upon you the second time, did he open or part your shawl?

Yes, sir.

By the Court.

By Bishop Doane.

1. Did you dine in company with the Bishop on the day of the ride?

I did.

2. Had you any conversation with him at dinner?

Very little.

3. Was there a back to the front seat of the carriage in which you rode?

I cannot remember.

By Bishop De Lancey.

4. Who invited you to ride in the carriage with Bishop Onderdonk?

Mr. Richmond.

5. You mentioned Miss De Groot as present; when you first mentioned the occurrence to your sister, did Miss De Groot hear you mention it?

Yes, sir, I think she did.

Pending the cross-examination of the last witness, the Rev. Thomas House Taylor, D. D., Rev. Paul Trapier, Rev. Henry M. Beare, and Mrs. Charlotte E. Beare, respectively appeared in Court, and were severally sworn by Dayton Hobart, Esq., commissioner.

The Rev. THOMAS HOUSE TAYLOR, D. D., was called as a witness by Counsel for the Presentment.

Direct examination.

1. Did you attend the Convention at Utica in 1838?

I did.

2. What is your vocation, and where do you live?

A Presbyterian of the Protestant Episcopal Church in the United States, and Rector of Grace Church in the city of New York.

3. During the Convention of 1838, at Utica, did you have a conversation with the Right Reverend Benjamin T. Onderdonk, in respect to certain charges that had been made against him by the Rev. Mr. Bolles?—and if you did, please state the whole of that conversation.

In speaking of events that transpired so long ago, I must necessarily be cautious as to the precise words used; but the subject-matter of conversation is very fresh in my recollection. I went to Bishop Onderdonk, not only in consequence of charges made by Mr. Bolles, but others, which I repeated to the Bishop. I told him that he was charged with habitual intemperance; that he had been repeatedly drunk upon that visitation; that he was charged with taking improper liberties with females; that Mr. Bolles saw him taking indecent liberties with a young woman in a public stage on the day before; that Mr. Bolles had mentioned the circumstance to Dr. Hawks, but, as he said, with no intention that it should become publicly known, but rather that Dr. Hawks should speak to Bishop Onderdonk on the subject; that he (Mr. Bolles) was greatly distressed at finding it so publicly talked of; that I had advised Mr. Bolles to come immediately to Bishop Onderdonk, and tell him the whole story himself; that as to the charge of drunkenness, I had told Dr. Hawks I would refer to him for the proofs; and entreated Bishop Onderdonk to see Dr. Hawks and Mr. Bolles; and that I would send them to him. Bishop Onderdonk assured me that the charges were not true. As to drunkenness, he had taken nothing but a little port wine and water during that visitation, which was necessary to correct the effects of the lime-stone water he was compelled to use; that as to the circumstance complained of by Mr. Bolles,

the female was a mere child ; that he had lifted her from her seat in order to enable her to see some object that was engaging the attention of the other passengers, and was in the act of putting her down, when seen by Mr. Bolles ; that, in short, he regarded every thing I had told him as idle stories, which he prayed I would not allow to disturb me. (The Bishop saw that I was annoyed, and therefore said this.) I then told him that I would send Dr. Hawks and Mr. Bolles to him ; and then left him.

4. Where was this interview—in a church, a private house, or where else ?

In the vestry-room of the Episcopal Church at Utica, where the convention was held.

5. Who was present beside you and the Bishop ?

No one.

6. How came you and the Bishop in the vestry-room ?

I requested the Bishop, while sitting in the chancel, to allow me a few moments' conversation with him on matters of the utmost importance to himself. He then prayed to be excused for a few moments by a crowd of gentlemen who were around him, and he led the way into the vestry-room of the church. As I entered I turned the key to secure us from intrusion, and then commenced the conversation.

7. Had Bishop Onderdonk at this time seen Mr. Bolles ?

He had not, to my knowledge or belief. I do not believe he had seen him.

8. Did he seem to receive the intelligence, as to the charge made by Mr. Bolles, as for the first time ?

I should suppose that he did so receive it.

9. Do you know that he was called upon afterwards by Mr. Bolles ?

After leaving Bishop Onderdonk I met Dr. Hawks and Mr. Bolles in the street, and told them to go immediately to the Bishop, that he was ready to receive them. They left me and entered the church to see the Bishop.

10. Did you see them with the Bishop ? (Objected to and withdrawn.)

11. In that conversation between you and the Bishop, was there any thing said about a lady in the stage, not a child ?

In the reply of the Bishop, nothing ; my repetition of the charge of Mr. Bolles was, that the Bishop had taken improper liberties with a young woman.

Cross-Examination.

1. Was there any other statement made by you of the charges which had been preferred against the Bishop, excepting in the manner stated in your direct examination ?

When I made the charge of drunkenness, the Bishop would reply ; and when I repeated the charges of Mr. Bolles, he would in like manner reply, as stated in the direct examination.

Direct Examination resumed.

12. When you repeated the charge of Mr. Bolles that the Bishop had taken improper liberties with a female in the stage the day before, do you mean to say that he replied to that charge by the declaration, that he had taken up a little child in the manner you have stated ?

The Bishop's reply was, as to the charge of Mr. Bolles, she was a mere child, (that is, to the best of my recollection,) and he had lifted her from her seat in order to enable her to see something at which the passengers were looking.

By the Court.

By Bishop De Lancey.

1. When the Bishop made this remark about the child, did you repeat the charge by Mr. Bolles that it was a young woman ?

Not to my recollection.

2. Did you seek from the Bishop any further explanation about any of these charges at that time, or did you refer him to Mr. Bolles and Dr. Hawks, as the authors of the charges, with whom the explanations were to be made ?

I did not seek for any further explanation from the Bishop, but referred him to Dr. Hawks, who told me he had the proofs in his possession as to the charges of intemperance, and to Mr. Bolles as the author of the charge of improper conduct with a female, alluding to the case in the stage.

By Bishop Doane.

3. Did the general expression, "taking improper liberties with females," include any more than Mr. Bolles' charge?

It did.

4. Did you refer the Bishop to any person for the proofs of the general charge of "taking improper liberties with females?"

I do not remember that I did, for they were vague rumors, not sufficiently definite to fix my serious attention.

5. Did the statement, then, of Mr. Bolles give importance in your mind to these vague rumors, so as to lead you to include them in your expostulation with the Bishop?

From the manner in which it was first communicated to me, it certainly did

Direct Examination resumed.

13. You stated that the Bishop discovered that you was annoyed by these rumors; was he apparently agitated, or otherwise?

He was not as much agitated as I had supposed he would have been; but led me to suppose that he regarded all such accusations as idle tales.

14. As idle tales, not worthy of notice?

I should hesitate to say that he used that expression. The tone of his reply was, that there were so many such stories afloat, that it was useless for him to attempt to meet them, and he assured me that they were entirely without foundation.

Cross-Examination resumed.

2. In your last answer, do you give your own conclusion, from the Bishop's manner as to the number of stories afloat, and the inutility of an attempt to meet them, or do you give his language?

I intended my reply to convey the idea that such was the tenor of his remarks. I do not pretend to give the language.

By the Court.

By Bishop Whittingham.

6. Did you understand the Bishop, in alluding to the number of idle stories afloat, to allude to stories concerning himself only?

I did not understand him as alluding to himself only, but to himself among other people.

The hour having arrived, the Court adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Wednesday, December 18th, 1844, }
half-past 9 o'clock, A. M. }

The Court met pursuant to adjournment. Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, Delaware; the Assistant Bishop of Virginia; the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

Miss Jane O. Rudderow, having been sworn in Court on Saturday, the 14th, was called up as a witness by the Counsel for the Presentment.

The Counsel for the Presentment read to the Court the form of an affidavit, which he proposed to put in, showing that Ann Wilson, a witness duly summoned to appear in this case, in behalf of the Presentment, had refused to appear, and asked the interference of the Court to compel the attendance of said witness.

The Court was then cleared.

Ordered, That the Counsel for the Presentment be informed that this Court has not the power, under the Constitution and Canons of this Church, to issue a citation to compel a witness to show cause for non-attendance under penalty of any spiritual censure.

The Bishops of Illinois, Connecticut, North Carolina, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, and Maryland; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, and the South Western Missionary Diocese, voting in the affirmative; the Bishops of Vermont, Kentucky, and Rhode Island, voting in the negative; the Bishops of Ohio and Delaware declining to vote.

The Bishop of Vermont gave notice of his intention to record his dissent.

Ordered by this Court, That any members of this Church, whether of the clergy or laity, having been duly cited, according to the provisions of Canon third, of eighteen hundred and forty-four, "On the trial of a Bishop," to bear testimony in this case, and refusing to comply with said citation, shall be reported by the President and Clerk of this Court to the ecclesiastical authority of the Diocese to which said offending witness or witnesses may belong, as refusing to comply with said citation, with a request to the said ecclesiastical authority to take such order in the case as, in the judgment of said ecclesiastical authority, the case may seem to demand.

The Bishops of Illinois, Vermont, Kentucky, Ohio, Louisiana, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, voting in the affirmative. The Bishops of Connecticut, North Carolina, New Jersey, the North Western Missionary Diocese, Western New York, and South Carolina, voting in the negative.

The Bishop of South Carolina gave notice of his intention to record his dissent, with the reasons.

The undersigned, entertaining the opinion that there should be a strict construction of all penal laws, and not being able to discover in the Canon for the trial of a Bishop, any authority given to the Court of Bishops, or to any member of the Court, to issue a citation for the appearance of a witness, respectfully dissents from the decision of the Court, in virtue of which they have exercised the power of issuing a citation to a witness in the case now before the Court.

It appears to the undersigned, that under the Canon for the trial of a Bishop, it is for the Presentors to bring forward "the witnesses," for "the accused to produce his testimony," and for the Court to declare respectively whether the accused be guilty, or not guilty, of the charges in the Presentment.

C. E. GADSDEN,

Bishop of the Diocese of South Carolina.

Dec. 18, 1844.

Ordered, That a Citation, signed by the President of this Court, in the name thereof, be made to Miss ANN WILSON, to attend on this trial.

The Counsel being admitted,
MISS JANE O. RUDDEROW was again called up as a witness by the Counsel for the Presentment.

Direct Examination.

1. Where do you live ?

At the foot of Fiftieth street, on the East River.

2. Are you a member of the P. E. Church, in full communion with that church ?
I am. I have been a communicant nine years.

3. Did the Rt. Rev. Bishop Onderdonk of this diocese ever, and when, take improper liberties with your person ? If he did, please state what they were particularly, and the time when.

On the 13th of June, 1841, Bishop Onderdonk visited St. James's Church, in this city. I left church before the close of the morning service, in consequence of a nervous headache. He returned with my sister Helen to dine, at the house of my brother, at the foot of 61st street, on the East River. I went down into the drawing room, at sister Helen's request, to see him. He was standing by the centre-table when I entered. He advanced to meet me with extended hand, and said, "My daughter, I must cure you of these nervous headaches," and led me to the sofa. I sat down in the centre of the sofa. Bishop Onderdonk immediately insulted me.

4. Please say what he did ?

He thrust his hand in my bosom. I moved to the other end of the sofa. He followed me, and repeated the insult. I was afraid to scream, or even reprove him; for my two brothers were in the hall. I was fearful for his personal safety, and did not expose him for the sake of the Church. I was relieved by the entrance of my sister-in-law, Mrs. John Rudderow. We were summoned to dinner. I was reserved at the table, for I could scarcely keep from tears. After dinner we went on to the piazza. Bishop Onderdonk requested me to show him Mr. Schermerhorn's house; which I did by walking to the north end of the piazza. He threw his arm around my neck; I retreated into the drawing-room; where my mother, and sister, and sister-in-law immediately followed me. It was a stormy day; and I went to the window-shade to go underneath it, but not to raise it, to see if it had ceased raining. We were determined to go to Sunday-school, though we expected but few children to be present. Much to my surprise, Bishop Onderdonk was immediately by my side, and repeated the insult in the same manner as I stated before. I threw his hand away from me, and retreated from underneath the shade. I observed my mother regarding me intently. We repaired to the Sunday-school, and left my mother and sister-in-law to entertain him.

5. Please state how far the Bishop put his hand in your bosom ?

The first time not very low down. The second, very low.

6. Did he, or not, put his hand on your naked bosom ?

He did.

7. Was the back, or the palm of his hand, *next* to your naked bosom ?

The palm of his hand.

8. Did he, or not, grasp your naked bosom ?

The second time he did.

(Objected to after answer.)

9. What use did he make of his hand when in your bosom ? Please state particularly.

He pressed it.

10. Any thing more ?

No.

11. In what way did he press it ?

It is scarcely in my power to describe.

12. How long had you known Bishop Onderdonk before this occurrence ?

About ten years.

13. Did he confirm you ?

He did.

14. Did he confirm your sister Helen ?

He did, at the same time that I was confirmed.

15. When and where ?

In the year 1835, in St. Paul's Chapel

Cross-Examination.

1. What is your age ?

Twenty-nine.

2. Have you been in attendance in this building during every day of this trial ?

I have.

3. Did you come here, and return home in company with your sister Helen on those occasions ?

Certainly.

4. Have you conversed with her respecting the testimony she gave on this trial ?

I have.

5. Has she stated to you the testimony which she gave ?

In part.

6. Do you mean all the material parts of it ?

I do.

7. What was the first occasion of your seeing the Bishop, after 13th June, 1841 ?

To speak with him, at his study, in November or December, 1842.

8. When you saw the Bishop at his study in November or December, 1842, did you call upon him, and with whom ?

I called upon him with Miss Riker.

9. What did you state to the Bishop was the object of your call ?

To get his consent to the Benevolent Society of St. James's Church, meeting in the church to sew. Mr. Dowdney, the Rector of the Church, had objections, and said, if we had the Bishop's consent, we might meet there.

10. Were you accompanied on that occasion by any male protector ?

No.

11. Did Miss Riker accompany you upon your invitation ?

No, I accompanied Miss Riker upon her invitation.

12. When Miss Riker invited you to accompany her to the Bishop's, did you state to her the outrages which you have described in your testimony ?

They had been stated previously to her.

13. Why then did you consent to accompany her ?

She would not go alone ; and our Society would have had to be abandoned.

14. Had that Society no other members than you and Miss Riker ?

It had.

15. When you entered the Bishop's house did you find him in his study ?

No.

16. How long did you remain there before he came ?

A few minutes.

17. Did he come from another part of the house or from the street ?

I presume he came from another part of the house.

18. Did you and Miss Riker rise and shake hands with him as he entered ?

He advanced and extended his hand to us, and we did shake hands with him.

19. How long did you remain in the Bishop's study upon that occasion ?

I should think about twenty minutes or half an hour.

20. Did you converse with the Bishop upon any other subject than the matter of the Society ?

I can only recollect that we conversed about our families, and about the Society

21. Did you converse freely with the Bishop upon those subjects ?

Upon the Society we did. Not very freely upon the other.

22. Did you shake hands with the Bishop upon leaving his study ?

I did not.

23. Did the Bishop extend his hand to you on leaving ?

I did not turn around to see.

24. Do you mean to say that you took your departure abruptly ?
I do.
25. When and where did you next meet the Bishop ?
In St. James's Church, in June, 1843.
26. In what part of the church ?
In a pew where I was teaching my class, near the Vestry-room.
27. Before or after service ?
Before service.
28. Did you shake hands with the Bishop on that occasion ?
When the Rev. Mr. Dowdney introduced me.
29. Do you mean to say that you did not recognise the Bishop until introduced by Mr. Dowdney ?
I do not.
30. Did not Mr. Dowdney know that you were acquainted with the Bishop ?
He did.
31. Why then did he introduce you ?
Circumstances led Mr. Dowdney to suppose that the Bishop had insulted us, or me.
32. Had you told him the circumstances ?
No, sir.
33. Did he ask your permission to introduce the Bishop ?
No, but he requested that we would use the Bishop well when he came to the church.
34. Did you know before you went to church that morning that the Bishop was expected to officiate ?
We did.
35. Did your sister know it ?
Yes.
36. After the morning service was over, and before you left the church, did you again meet the Bishop ?
Yes, we usually stayed in church ; we did not go home.
37. Did you go home that morning ?
No.
38. Where did you meet the Bishop ?
I was standing on the stairs of the gallery when the Bishop was about to pass out, and I met him there.
39. Did you shake hands with the Bishop on that occasion ?
Not that I recollect.
40. Did he extend his hand to you ?
I do not remember.
41. Did you talk to the Bishop at all at that time ?
I answered the Bishop's compliments about the music.
42. Did you not in return compliment him for the sermon ?
Never.
43. What did you say to the Bishop ? What conversation passed ?
The Bishop complimented me on playing the organ. I told him that he would possibly say so to me, of course. . No, said he, I have said it to Mr. Dowdney in the Vestry-room. He said he had not heard as fine music in some time. He asked me who it was that played while the congregation were going out of church. I told him that Mr. Oakey played the people out. He said it was not a very charitable thing, or something to that effect, to play the people out of church. That is all I can recollect.
44. Did you not come down stairs for the express purpose of meeting the Bishop, and greet him cordially when you met him ?
I did not either ; the greeting was all as I have stated.
45. Were you in the vestibule of the church with the Bishop at that time ?
I was on the stairs that led to it.
46. How long did you remain there ?
A sufficient time for a carriage to come for the Bishop. I cannot be certain that one did come for him ; the time was about long enough for one to come from the neighborhood for him ; about five or eight minutes.

47. Did this conversation between you and the Bishop continue during that time ?

No ; he talked to Miss Riker and Mr. Alvord, one of the vestrymen.

48. Did you remain on the stairs until the Bishop left ?

I did. I could not pass into the Church. The Bishop stood in the door.

49. Where was your sister then ?

She was up stairs.

50. Was she up there during the whole of that time ?

She was.

The hour of adjournment having arrived, the Court adjourned.

Attest,

WILLIAM R. WHITTINGHAM, *Clerk.*

Thursday, December 19th, 1844, }
half-past 9 o'clock, A. M. }

The Court met pursuant to adjournment. Present, the Bishops of Illinois, Vermont, Kentucky, Ohio, New Jersey, the North-Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware ; the Assistant Bishop of Virginia ; and the Bishops of Massachusetts, Rhode Island, and the South-Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The President read a letter from the Bishop of Connecticut, accounting for his absence by reason of sickness in his family.

The Counsel for the Respondent submitted to the Court a motion, that the Court direct the Presenting Bishops to grant the Respondent and his Counsel access to the depositions of the witnesses examined, and to be examined, on which the Presentment is founded.

The motion was objected to by Counsel for the Presentment, and argued by the Counsel on both sides.

The Court was then cleared.

Opinions were taken in order, and upon calling for the decision of the Court, it appeared that the motion was not granted.

The Bishops of North Carolina, New Jersey, Western New York, and Maryland, voting for granting ; and the Bishops of Illinois, Vermont, Kentucky, Ohio, the North-Western Missionary Diocese, Louisiana, South Carolina, and Delaware, the Assistant Bishop of Virginia, and the Bishops of Massachusetts, Rhode Island, and the South-Western Missionary Diocese, voting against granting.

Upon the declaration of the decision, the Bishop of Georgia, in behalf of the Presenting Bishops, then rose and declared the willingness of the Presenting Bishops to grant the Respondent, and his Counsel access to the depositions of the witnesses examined, and to be examined, on which the Presentment is founded, and liberty to have copies of the same.

The *cross-examination* of Miss Jane O. Rudderow then proceeded.

51. When your sister returned from Church on the 13th of June, 1841, did you see her before you had met the Bishop in the house ?

I did.

52. Where ?

In our bedroom, where I was sitting.

53. Did she tell you, or give you any account of an insult, alleged to have been offered to her by the Bishop?

She did.

54. Upon her requesting you to go down and see the Bishop, did you refuse to do so?

Yes; I told her I was afraid.

55. Were any of your brothers in the house at that time?

Both were.

56. In what part of the house?

In the hall.

57. When you met the Bishop, was he in a drawing-room opening from the hall?

He was.

58. Was he alone in the room?

He was.

59. What were your brothers doing in the hall?

I cannot answer.

60. Did they remain in the hall while you and the Bishop were together in the room?

They did.

61. Was the door leading from the hall into the room open or shut?

It was wide open.

62. In what part of the room was the sofa?

Between the door which led into the hall and the front window.

63. Did it extend nearly to the casing of the door?

It did quite.

64. Was the table, at which the Bishop was standing when you entered the room, in the centre of the room, fronting the door?

It was.

65. What was the Bishop doing when you entered the room?

He was standing by the centre-table, with a book in his hand, I think.

66. Had he his face or his back towards you, as you entered the room?

He had his face towards me.

67. Can you inform me what was the distance between the table and the door at which you entered?

About eight or ten feet.

68. Who spoke first, you or the Bishop?

The Bishop.

69. When he led you to the sofa, did you pass near the door?

I did.

70. How did he lead you to the sofa?

By one of my hands.

71. Did you feel no alarm at that act, after what your sister had just told you?

I did not, for I was in my own house.

72. What kind of a dress had you on?

I had a *high-neck* dress on.

73. Did it cover your shoulders, as the dress you now have on does?

It could not be considered a high-neck dress unless it did.

74. Did it come pretty close around your throat?

Not close around my throat, but as high as ladies' dresses usually are.

75. How was it fastened around your waist and chest?

The dress was hooked behind, as ladies' dresses usually are.

76. Was the dress open upon your chest?

Yes, a little way down, about the top of the chest-bone.

77. Was it a close or loose dress around your waist and chest?

It was a close dress; hooked behind.

78. When you took your seat on the centre of the sofa, as you have described, and the Bishop thrust his hand into your bosom, was he standing or sitting?

He was sitting.

79. On which side of you was he sitting?

On my right, between me and the door.

80. Did the door continue wide open during the aggressions of the Bishop, which you have described ?

It did.

81. When the Bishop first put his hand in your bosom on the sofa; did you remonstrate with him in any way ?

I did not ; I was afraid my brothers would hear me.

82. Did the Bishop accompany the first act with any remark ?

He did not speak during the act.

83. Did he say any thing before the act, except what you have stated in your direct examination ?

Not that I recollect.

84. Did the Bishop, during any portion of these transactions, unhook your dress ?

He did not.

85. When you moved to the end of the sofa, after the first act, was it immediately repeated by the Bishop, without any remark on his part ?

It was.

86. How did you disengage yourself at that time from him ?

My sister-in-law came into the room almost directly after, and the Bishop started and moved to the other end of the sofa.

87. Did you see your sister-in-law until after she had entered the room ?

I did not see her, but heard her coming.

88. Had the Bishop moved away from you when you first saw your sister-in-law in the room ?

He moved away as soon as he heard her coming.

89. You say that the reason why you did not scream, nor reprove the Bishop, was that your two brothers were in the hall ; how did you know that they were in the hall ?

I saw them there when I came down stairs ; and when I first came into the room I heard them.

90. Do you feel confident that they were in the hall during the whole time ?

I do not : it is not possible for me to answer.

91. How many inmates were there in the house at the time ?

My mother, brother and wife, my other brother and sister, my aunt, a female cousin who was staying with us, my brother's four children, and three servants.

92. Where, relatively to the drawing-room, was the dining-room ?

It was opposite ; but the doors were not opposite ; the dining-room door was about a yard nearer the front of the house.

93. Were the preparations going on for dinner while you and the Bishop were in the room ?

They were.

94. Describe the preparations going on.

I could scarcely do that ; the entrance from the kitchen to the dining-room was on the other side, and not by the hall.

95. Was the dining-room door open as you passed into the drawing-room ?

I did not notice.

96. Were you summoned to dinner immediately after the entrance of your sister-in-law into the drawing-room ?

In about a quarter of an hour.

97. Did you remain in the room during the whole of that time ?

I do not recollect—I presume I did.

98. Did your sister-in-law remain ?

She did ; my mother likewise, and my sister Helen.

99. When did your mother and sister enter the room ?

Almost immediately after my sister-in-law did ; my mother entered first.

100. Was there a general conversation in the room, before dinner ?

I do not recollect.

101. Did your nervous headache continue until dinner-time ?

I think it did. My nervous headache, if I had any at that time, was so absorbed in the fright and astonishment, that I cannot recollect.

102. Who composed the party at dinner that day?
My mother, my sister-in-law, my sister Helen, and I do not recollect whether my cousin was present or not; my brothers were not there; the Bishop and myself were also present.
103. Do you remember how long the dinner lasted?
I do not—it was about half an hour or three quarters.
104. Was there a general conversation kept up at the dinner-table, in which you and your sister participated?
My sister and myself did not take much part in the conversation; it was mostly carried on by my mother and the Bishop.
105. You said in your direct examination, "After dinner we went on the piazza" who went?
My sister Helen, and, I think, my mother, and my sister-in-law, the Bishop and myself.
106. Who took the Bishop's arm?
I do not know that any one did.
107. Did you all go out to the piazza immediately from the dinner-table?
We did.
108. Had you any conversation with the Bishop on the piazza, excepting what you have stated.
I do not recollect.
109. When you walked to the north end of the piazza with the Bishop, were any of the other persons you have mentioned on the piazza?
They were all there.
110. Did they all continue upon the piazza until you retreated into the drawing-room?
I think they did.
111. Was this piazza entirely open from one end to the other?
It was.
112. Was there any lattice-work on either side?
On the south side there was, but the north side was open.
113. When the Bishop threw his arm around your neck at that time, as you have stated, was there any thing said by you or by him?
I do not recollect.
114. Which way were you looking when the Bishop threw his arm around your neck?
I was looking towards the north.
115. Which way did the Bishop look then?
I do not know.
116. Do you mean that he had his arm around your neck before you knew which way he was looking?
I did not look at the Bishop at all; I only knew he was along-side of me.
117. Was his back or his face towards you?
I presume his face was towards me; I did not look at him. As I said before, I cannot tell which way he was looking.
118. Did you and he walk together to the end of the piazza?
We did certainly, as he asked me to show him Mr. Schermerhorn's house.
119. Did he put his arm around your neck immediately upon reaching the end of the piazza?
I think he did.
120. When you say you retreated into the drawing-room, do you mean that you abruptly-disengaged yourself from the Bishop, and left the piazza?
I do.
121. Was this observed by any of the other persons upon the piazza?
I do not know; for they were plucking roses at the other end.
122. Did the Bishop follow you into the drawing-room, before you went to the window-shade?
He did.
123. Did he *approach* you before you went to the window-shade?
We were all seated in the drawing-room, before I rose to go to the window-shade.

124. Was your object in going to the window-shade to avoid the Bishop?

It was to see if it rained, that we might go to the Sunday-school, to avoid the Bishop's society at home.

125. When he repeated the insult as you state, were you standing inside of the window-shade or outside?

I was standing between the window-shade and the window.

126. What part of your person was covered by the window-shade?

I was covered by the window-shade about to the middle of my person. The window-shades were very long.

127. Did the Bishop raise the window-shade and go under it?

He did.

128. How wide was the shade?

About four feet wide, hanging outside of the casing.

129. Of what material was this window-shade?

It was a painted window-shade; dark lemon color.

130. Were the other persons whom you have mentioned as having been on the piazza, in the room at this time?

They were.

131. Did this window-shade, when you and the Bishop were under it, conceal your persons from the observation of those in the room?

It did.

132. Did you immediately retreat from the window-shade when you threw his arm from you?

Certainly.

133. Did the Bishop leave at the same time?

I do not remember.

134. When you saw the Bishop coming under the window-shade did you attempt to retreat?

The Bishop insulted me as soon as I knew he was there.

135. Did he raise up the window-shade, or turn it aside for the purpose of going under?

As I was standing under the shade it of course raised the shade from the casing. He raised it a little to come under. He must have done so, I think.

136. Did he raise it above his own head and pass under it, or did he turn it aside?

I did not observe.

137. How long an interval was there between your being on the piazza and going under the window-shade?

I do not recollect exactly; I should think some 5 or 10 or 15 minutes.

138. Did the Bishop sit down in the room after he came from the piazza, and if so, how long?

He sat down until I went to the window, and followed me immediately to the window.

139. Was he conversing with you while you were sitting down?

I think he was not conversing with me.

140. With whom was he conversing?

I do not recollect; with my mother, most probably.

141. Did you mean to be understood that the Bishop abruptly left the person with whom he was conversing, and followed you to the window-shade?

He must have done so, of course.

142. Did you know that the Bishop was to officiate anywhere that afternoon, and if so, where?

At St. Michael's Church, Bloomingdale.

143. Did you know at what time he was to leave your brother's house for that purpose?

I do not know exactly; he was to leave after 2 o'clock—between 2 and 3.

144. What was your dinner-hour that day?

One o'clock. We always dine at one on Sundays.

145. At what time did you go to the Sunday-school that afternoon?

We started from home about 2 o'clock.

146. How long was that after the occurrence at the window-shade ?

We left as soon as we could put on our bonnets.

147. Had the Bishop left before you did ?

He had not.

148. Did you tell this story to your sister on the way to the Sunday-school ?

I did.

149. Did you tell it to any other person that day ?

I did not.

150. When and to whom did you first tell it after that day ?

To my sister, Mrs. Brown, a few weeks after. I cannot be more precise than that.

151. Did you ever tell it to your mother, and when ?

I did, the following fall.

152. Did you tell it to your brothers at any time, and when ?

At the time we sent our affidavits to Philadelphia, in October last.

153. Did you tell it to them before you made the affidavits, or after ?

Before.

154. Who prepared your affidavit ?

The Rev. James C. Richmond.

155. Did he request you to make an affidavit of the facts ?

He did.

156. When did you first communicate to Mr. Richmond the facts you have stated ?

It was in May or June, 1843, when he asked us the question. He asked sister Helen first, and then I communicated *my* statement to him.

157. Have you accompanied Mr. Richmond to any other person, to obtain an affidavit against the Bishop ?

I did.

158. When Mr. Richmond asked you to make the affidavit, for what purpose, and for whom, did he represent it as being intended ?

The purpose was, for the sake of truth, and for the sake of the Church.

159. To whom did he say the affidavit was to be sent, and what use did he say was to be made of it ?

We understood it was to be sent to the House of Bishops.

160. Did Mr. Richmond tell you so ?

He did not directly, sir ; he simply stated that this thing was going on—that affidavits were being sent in to the House of Bishops ; and of course we understood, by that, that ours would be sent likewise.

161. Did you know at that time that Mr. Richmond had expressed a hostile feeling towards the Bishop ? (Objected to, and waived for the present.)

162. When you accompanied Mr. Richmond to the other person referred to, for the purpose of getting an affidavit against the Bishop, did he go at your request, or you at his ?

I proposed going with him.

163. Did you know at that time that Mr. Richmond was desirous of getting affidavits against the Bishop ?

It was painful for Mr. Richmond to collect any affidavits, but he had been told where they could be obtained.

164. How do you know that it was painful to Mr. Richmond ?

He expressed himself so.

165. What was the state of the weather when you were out on the piazza ?

I have stated before that it was a stormy day ; but it had ceased raining then.

166. At what time in the fall of the year in which the occurrences you have testified to took place, did you tell the story to your mother ?

It was one of the three months of autumn—I cannot recollect which.

167. Was that before or after Mr. Richmond went to Europe ?

I think it was after he sailed. I do not recollect.

168. Do you remember when Mr. Richmond went abroad ?

I do not. I believe, however, it was the autumn of 1841. I think it was—I will not be certain.

169. Do you know when he returned ?

He arrived in Boston on Easter-day, 1842. I did not see him until just before my mother's death, which occurred on the 2d of July, 1843.

170. Do you know that Mr. Richmond returned sooner than he expected? (Objected to, and waived for the present.)

171. Were you present when your affidavit was drawn up by Mr. Richmond?
I was.

172. After your return from your visit to the Bishop at his study, in 1842, did you express yourself to the Rev. Mr. Dowdney gratified, or otherwise, with your visit?

I do not think I said any thing to him about it.

173. Did you ever say any thing to Mr. Dowdney in relation to that visit?
I do not remember.

Direct Examination resumed.

16. You have stated your object in visiting the Bishop at his study to be to obtain his consent to use the church for the accommodation of a Sewing Society—who got up and mainly sustained that society?

My sister Helen, Miss Riker, and myself.

17. What accommodations had you for the society?

None but the church.

18. What was Mr. Dowdney's objection to your using the church for that purpose?

He did not think it a proper place for sewing.

19. For whose benefit did that society sew?

For the perfectly destitute in the neighborhood.

20. You have stated that you left the Bishop abruptly, when you visited him at his study—why did you leave him abruptly? [Objected to by Counsel for Presentment, upon hearing the answer of the witness, upon the ground that said answer went to *opinion*, and not *fact*, and to scandalize his client. The question was withdrawn, and the following substituted.]

21. Did the Bishop do any thing, and what, at the time you left his study, to cause you to leave abruptly, as you have stated?

He put his arm around my neck, and his two fingers inside of my shawl.

22. Was Miss Riker then present?

Miss Riker was then going out of the study door. I was on my way out.

23. At the dinner table, when you dined with the Bishop, did your manner towards him occasion any and what remark, on the part of your mother?

[This question was objected to by Counsel for Respondent, and the objection was sustained by the Court.]

24. At the dinner table what was your manner towards the Bishop?

It was restrained, for I could scarcely keep from bursting into tears.

25. When the Bishop visited the Church in 1843, as testified to, did the Rev. Mr. Dowdney intimate a request that the Bishop should be invited to your house to dinner?

(Objected to by Counsel for Respondent, and waived.)

Cross-Examination resumed.

174. You say that when the Bishop put his arm around your neck, as you were leaving his study, that Miss Riker was going out of the study door, and you were on the way out: was Miss Riker in such a position as that she could have seen the act you have described?

Her back was towards us.

175. Have you ever sworn to this fact in any affidavit?

Mr. Graham may find it in my affidavit; I have not seen the affidavit, nor a copy, nor any thing of the kind, since it was given.

176. Did you mean in that affidavit that Miss Riker was compelled to quit in haste?

I cannot answer for Miss Riker; Miss Riker must answer for herself.

177. If you cannot answer for Miss Riker, how did you come to swear in your affidavit that *we* were compelled to escape from the door in utmost haste?

I did not say that I would not swear to it now.

178. Whom did you mean by the word *we* in your affidavit?

Miss Riker and myself.

179. Did you tell this to Miss Riker immediately after it occurred?

I did.

180. Where is Miss Riker now?

I do not know. I presume she is at home; I have not seen her within two weeks.

181. Did you tell it to Miss Riker until after you left the house?

I told her just after we left the steps.

Direct Examination resumed.

26. You stated that Bishop Onderdonk addressed you at the foot of the stairs in St. James's Church, in 1843, and complimented you for your performance on the organ: are you a professional performer on the organ?

No.

27. Was you employed by the Church to play on the organ?

(Objected to and waived.)

28. You have stated that you proposed to go with Mr. Richmond to get an affidavit: whose affidavit was that?

Mrs. Gabriel L. Lewis.

29. Why did you propose to go with him?

[This question was objected to by the Counsel for the Respondent, on the ground of its entering into the secret, *motives* of the witness, not declared by *acts*. The objection was overruled by the Court: the Bishops of North Carolina, New Jersey, Western New York, and Maryland, voting to sustain it; the Bishops of Illinois, Vermont, Kentucky, Ohio, North Western Missionary Diocese, Louisiana, South Carolina, and Delaware, the Assistant Bishop of Virginia, and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, voting to overrule it.]

To ascertain the lady's views in person.

By the Court.

By Bishop De Lancey.

1. Please describe how you sat respectively at the dinner-table when the Bishop dined at your house?

My mother sat at the head of the table, my sister-in-law at the foot; on the right of my mother sat my sister Helen and myself; on the left of my mother sat Bishop Onderdonk, and my cousin (if she was present, which I do not distinctly remember) next to the Bishop.

2. Did Bishop Onderdonk walk with you from the parlor into the dining-room, or lead you in?

He did not.

3. Did you communicate to Mr. Richmond your reason for going with him to obtain the affidavit of Mrs. Lewis?

I did.

4. Did you converse with him during the ride or walk, or both, on the subject of charges against Bishop Onderdonk?

I did.

5. Did you talk freely with him upon that subject?

I did.

By Bishop Doane.

6. You stated that you and Miss Riker left abruptly, in consequence of something the Bishop did, and yet you state that when he did it, Miss Riker was going out of the study door and you were on your way: how do you reconcile this?

I thought I was understood. I did not say that Miss Riker and I were both going out of the door, but that she was, and I was on my way towards the door.

7. What do you mean then by saying that you left abruptly ?

By not bidding adieu, and walking fast out.

8. But did you not say that you were on your way, that is, had started to go when this occurred ?

We had risen to go, but the Bishop detained us to give us a Journal of the Convention.

9. Then, by saying that you left abruptly, am I to understand that you did not start abruptly ?

You are.

By Bishop De Lancey.

10. Did the Bishop grant the request to use the church for the Sewing Society ?

He did.

By Bishop Gadsden.

11. Were there any acts of the Bishop previous to the 13th of June, 1841, with which you had found fault, and what were they ?

I had always esteemed him most highly. There were not.

12. On parting with Miss Riker, how did the Bishop take leave of her ?

I do not remember.

13. Have you been always a member of St. James's congregation, and if not, of what other have you ?

Not always of St. James's : for a long time of St. Paul's, and then of Calvary, then of St. James's, and now of St. Mark's.

By Bishop Whittingham.

14. Had you, previously to the occurrence of 13th of June, 1841, any reason to suspect Bishop Onderdonk of being capable of impropriety of deportment towards females ?

I had not.

15. Was your dress on the 13th June, of the same make as that worn by your sister Helen on the same day ?

No, sir.

16. Was your dress on that day made according to the then prevailing fashion ? Not altogether, sir.

Direct Examination resumed.

30. Was there any difficulty in the Bishop's putting his hand in your bosom, arising from the fashion of your dress ?

No.

The hour of adjournment having arrived, the Court adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

*Friday, December 20th, 1844, }
half-past nine o'clock, A. M. }*

The Court met pursuant to adjournment. Present, the Bishops of Illinois, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

MRS. CHARLOTTE E. BEARE, having been sworn on Saturday the 14th instant, was called up as a witness by the Counsel for the Presentment, and examined.

Direct Examination.

1. What is your name?
Charlotte E. Beare.
2. Who is your husband?
Rev. Henry M. Beare.
3. Where does he reside?
At Bayside, on Long Island.
4. Is he a Rector of a Church there; and of what Church, and how long has he been such?
Zion Church, Little Neck, since two years ago last May.
5. When was you married?
Eighth of June, 1842.
6. Do you know the Right Rev. Bishop Onderdonk?
I do.
7. When was you first introduced to him?
Twelfth of July, 1842.
8. Did Bishop Onderdonk ever visit your house; and when was the first occasion of his doing so?
Seventeenth of July, 1842.
9. Are you a member of the Protestant Episcopal Church; in full communion with the same?
I am.
10. How long have you been a communicant?
Since 1840.
11. On what occasion was it that the Bishop first visited your house?
To hold confirmation in Zion Church.
12. Did you ride in the same carriage with him on that day?
I did.
13. More than once?
I did.
14. In what part of the day was the first ride; and from what place, and to what place?
After the morning service; from church to our home.
15. What was the distance from the church to your home?
About a mile.
16. Who rode in the carriage with you besides the Bishop; and how were the parties seated?
My husband's mother and his nephew, who were sitting on the front seat; the Bishop and myself on the back seat.
17. On which side of the Bishop did you sit?
At his right hand.
18. Will you please state what occurred between you and the Bishop during that ride?
The Bishop put his arm around me in an unbecoming manner, which caused me to draw from him. There is nothing more to state of that ride.
19. On what part of your body did the Bishop put his hand when he put his arm around you as you have stated?
His hand pressed upon my bosom.
20. When did you first communicate the knowledge of this transaction to any person, and to whom?
To my husband soon after we returned home; he walked home.
21. What was said by you to your husband when you first communicated the fact to him; and what was his reply?
I told him in this way; that I did not wish to ride with the Bishop in the afternoon, as I thought him too familiar in his manners. He asked me in what way I told him the occurrence of the morning, and he expressed great surprise. He said, "If you can avoid it, do not let it alter your manner towards him while he is in our house." That was all.

22. You say you rode with the Bishop a second time that day ; from what place and to what place ?

From Mrs. Franklin's house to our house ; about a mile and a half.

23. Did the Bishop dine at your house on that day ?

He did ; after the morning service.

24. Who composed the party at dinner ?

My husband's mother, the Bishop, my husband's brother, his nephew, my husband and myself. I think that was all.

25. What occurred between you and the Bishop at your own house, between the morning and afternoon service ?

The Bishop put his arm around me, and once raised my head by my chin, and kissed me.

26. Who was present ?

I think there was no one in the room but my husband's mother.

27. How did you go to church in the afternoon ; and who accompanied you ?

I rode with Mr. Thomas Beare, my husband's brother ; the Bishop rode with my husband, and I think his nephew, in another carriage.

28. Where did you go after the afternoon service ; and who accompanied you ?

To the house of Mr. Joseph L. Franklin. I rode as far as the top of the lane with Thomas Beare ; he was going directly home, and not to Mr. Franklin's. I left his vehicle and rode the remainder of the way with the Bishop and my husband, which was about a quarter of a mile.

29. How long did you, in company with the Bishop and your husband, remain at Mr. Franklin's ?

Until about 9 o'clock in the evening.

30. Was Mr. Franklin one of your husband's parishioners ?

He had a pew there ; but did not attend regularly. He belonged to the Flushing Church.

31. How did you ride home—with whom—and how were the parties seated ?

In a one-horse family barouche, our own, with two seats to accommodate four persons. The Bishop and myself were on the back seat, my husband and his nephew on the front.

32. Do you remember on which side of the Bishop you rode ?

At his right hand. My husband sat in front of me ; his nephew in front of the Bishop.

33. State, as particularly as you can, what occurred between you and the Bishop on this last ride ?

The Bishop put his arm around my waist ; then raised it, and put it across the back of my neck ; he thrust his hand into the neck of my dress, down into my bosom. I threw his hand from there ; he immediately put it upon the lower part of my person. I pushed it aside from there, and he then with the other hand repeated the same upon the other side of my person ; but removed it towards the centre of my person. I threw it aside. That is all.

34. When he put his hand in the neck of your dress, on your bosom, was it, or not, your naked bosom ?

It was my naked bosom.

35. When he put the first hand on the lower part of your body, as you have testified, was the outside of the hand, or the palm of the hand, next to your person ?

The palm of the hand.

36. What did he do with that hand ?

He pressed it upon my person.

37. When he put the other hand upon your person, and removed it to the centre of your person, was the outside or the palm of his hand next to your person ?

The palm of his hand.

38. Please describe what he did with that hand, when on your person.

He placed it near my knee, and moved it along my leg, up to my hip, and the centre of my person.

39. Is there any further answer to the last question ?

There is not.

40. Did you communicate the knowledge of this transaction to your husband, and when?

I went immediately to my room when we reached home. My husband soon followed me. He asked the cause of my agitation; I told him the Bishop had insulted me. He replied, "Say no more now; let us join the family, and have our evening devotions." I calmed myself, and went down into the room.

41. Was that all that occurred before you went down?

Yes; we went immediately down.

42. In what part of the ride was it that the Bishop insulted you?

When we were near our own lane, or the lane leading to our house.

43. Did you say any thing to the Bishop on that occasion, and what?

Nothing in reference to this.

44. Did you say any thing, and what?

No, I did not.

45. After the occurrence stated, did you speak to the Bishop before you got to the house?

I have no recollection of doing so.

46. When did the Bishop leave your house on that occasion?

The following morning, immediately after breakfast.

47. Did he remain during the night?

He did.

48. From the time when you was first introduced to the Bishop, to the time he came to your house, as you have stated, did you see him?

I did not, until I met him at the church.

49. When did you meet him at the church?

In the morning of that day, before service.

50. Did he come to your house before that service?

He did not. I think I am right when I state that.

51. With whom did the Bishop leave your house when he took his departure?

My husband took him to College Point, about seven miles from our house.

52. In what manner did he take leave of you when he was about to depart?

He approached me and took my hand; and advanced, as I supposed, to kiss me; I drew from him, and he did not do it. I did not extend my hand; he took it. After he was seated in the carriage, he raised his hand to his lips, and waved it to me.

Cross-Examination.

1. Have you at any time made an affidavit, or any other statement in writing, of the transactions to which you have just testified?

I have made no affidavit. I drew up a statement in writing.

2. When did you draw it up?

I think about three weeks since.

3. Is that statement in existence now?

It is destroyed.

4. For what purpose did you prepare it?

To refresh my memory, and to show it to my uncle. He had not previously known the facts—I should say the particulars.

5. Was that statement at any time out of your possession?

My husband had it at one time, and so did my uncle.

6. When did you destroy it?

Some time during the last week.

7. Do you mean since you first attended here to testify on this trial?

I cannot say that it is destroyed. I have not destroyed it. I left it at home lying about. I have not seen it since last week.

8. Do you mean that you left it carelessly at home lying about, or that you have preserved it, so that it cannot be found by any person?

I cannot say where it is.

9. Have you at any time read a statement of this matter, prepared by your husband, or by any other person?

I never saw one.

10. Has any such statement been read to you by any one?
Never.
11. Do you know that your husband, or any other person, has prepared a statement purporting to give the particulars of the transactions referred to?
I know of none but his affidavit.
12. Have you read his affidavit, or has it been read to you?
I have neither seen nor heard it.
13. Have you stated these transactions to any other persons besides your husband; and if so, to whom?
To my aunt Grosvenor, to my aunt, Mrs. John P. Austin, and to Mrs. Kip, her mother. To no others before my husband's affidavit was given.
14. When was your husband's affidavit given?
A few days, I think, before the close of the General Convention.
15. Do you know whether any person applied to your husband for that affidavit; and if so, who it was?
Rev. James C. Richmond. He did not give it to him.
16. To whom did he give it?
I really cannot say. It was given in the city of Philadelphia.
17. Did Mr. Richmond apply to you for an affidavit?
I think he did not, to myself.
18. Did he apply to your husband, as you have reason to believe, for an affidavit from you?
I think he did.
19. Was Mr. Richmond going to Philadelphia about that time?
He was.
20. Did your husband ask you to give your affidavit of the facts?
He did not.
21. Are there any other persons to whom you stated these facts, previous to the making of the affidavit referred to, than those whom you have already mentioned?
I spoke of it to no one but those I mentioned; and not to them until I was asked by my aunt Grosvenor. I was not directly asked by the others.
22. How long after the occurrences you have testified to, was it when you made the first statement to either of the persons whom you have named?
About eighteen months.
23. When did you first see Bishop Onderdonk after July 17, 1842, and where?
I think it was about the 10th of May, 1843, at the house of Mr. Franklin, the gentleman before referred to.
24. Upon what occasion did you see him there at that time?
The marriage of Miss Franklin, which was solemnized by the Bishop.
25. Did you know, before you went to Mr. Franklin's, that the Bishop was to be there?
I supposed he was.
26. Had you any conversation with the Bishop on that occasion?
I had not.
27. Did you speak to him, or he to you?
He bowed, and I returned it, as we passed into the refreshment room.
28. Was your husband with you then?
He was.
29. Did any salutation, and if so, what, pass between your husband and the Bishop?
I do not remember that any words were spoken at that time. He bowed.
30. Did any conversation, on the occasion of this visit to Mr. Franklin's, pass between your husband and the Bishop?
He will remember that better than I do. I cannot say.
31. Did you not shake hands with the Bishop on that occasion?
I did not.
32. When, and where, did you next meet the Bishop?
At the house of the Rev. Dr. Schroeder—on the Bishop's annual visitation—in the village of Flushing. It was, I think, about the 12th of July, 1843.
33. Was it in the day-time, or in the evening?

In the day-time.

34. Was your husband with you?

He was.

35. How long were you and your husband in company with the Bishop on that occasion?

Not many minutes. We met him when we entered, and again just before we left.

36. Did you remain in the same room in which the Bishop was during your stay?

We did not.

37. Describe, then, the circumstances of that visit, and of your meeting the Bishop when you entered, and when you left the house.

When we entered the room where the Bishop was sitting, Dr. Wainwright was in conversation with him; I was leaning on Dr. Schroeder's arm; Miss Strong and my husband came after us. We spoke to the gentlemen sitting there, and went immediately out of the room. The gentlemen referred to were the Bishop and Dr. Wainwright. After going through the other parts of the building, near the foot of the stairs leading to the chapel, we met the Bishop, Archdeacon Cummings, and Dr. Schroeder, who had left us in the meanwhile, to meet the Archdeacon, as I suppose. I do not remember that any conversation occurred there—some questions passed between my husband and the Bishop. We left immediately after that.

38. What was said between yourself, your husband, and the Bishop, on your *first* meeting, as you have described?

I remember only the common salutations at meeting.

39. Do you include in those, shaking of hands?

Not myself.

40. Did the Bishop extend his hand to you?

I do not remember that he did.

41. Are you positive that you did not shake hands with him?

It is my firm belief that I did not.

42. When you and your husband again met the Bishop, at the foot of the stairs, what were the questions which passed between your husband and the Bishop?

They were with regard to my husband's examination, and if the Bishop was coming to our house.

43. Did *you* take part in the conversation?

I did not.

44. What were the words, as near as you can recollect them, of your husband's inquiry about the Bishop's coming to your house?

"Will you come to my house to dinner?"

45. Was that expressed coldly, or with apparent cordiality?

I should think, coldly, as his eyes were averted from the Bishop while asking him.

46. Did you join in the request?

I did not.

47. What was the Bishop's reply to your husband's request?

It was in the affirmative. It is impossible for me to remember all the words; I know that he assented.

48. Do you not recollect the Bishop's saying that he already had an invitation to dine with Mr. Franklin on the next day?

I cannot recall it to my mind.

49. Do you not remember that you and your husband, or one of you, *urged* the Bishop, notwithstanding his excuse, to dine with you the next day?

I remember nothing of the kind.

50. When you say that you remember nothing of the kind, do you mean to be understood, that nothing of the kind took place, or that it *may* have taken place, and you have forgotten it?

I know that he was not *urged*.

51. Did not the Bishop say that he would accept your invitation, provided you would take care that, in doing so, he gave no offence to Mr. Franklin, or to that effect?

I do not remember that any thing was said about Mr. Franklin.

52. Was there no conversation whatever respecting the invitation to dinner, except your husband's question already stated, and the Bishop's reply in the affirmative?

I remember none.

53. Did you and your husband, or either of you, shake hands with the Bishop on leaving him?

I did not; my husband can answer for himself.

54. I wish you to answer as to your husband's *act*, on the occasion just inquired of. I can simply say that I did not see him.

55. Am I to understand you from your description of your manner towards the Bishop, on the occasion of your visit to the Rev. Dr. Schroeder's, that it was studiously repulsive towards the Bishop?

I cannot say that it was studiously repulsive, for I determined to treat him civilly as my Bishop.

56. Who accompanied you to your carriage upon leaving Dr. Schroeder's, and helped you into the carriage?

I cannot remember any one but my husband.

57. Did not the Bishop?

I cannot remember if he did.

58. Was your object, and that of your husband, in going to Dr. Schroeder's that day to meet the Bishop?

We had a friend with us who was anxious to see confirmation—we arrived too late to witness it.

59. Who was that friend?

Miss Strong.

60. Was she staying at your house?

She was.

61. Did she return home with you?

She did.

62. Was not confirmation to take place in your husband's church the next day?

It was.

63. Was the object you have stated for going to Dr. Schroeder's the only one?

She expressed a desire to witness confirmation, and also to view Dr. Schroeder's institution.

64. The next morning, when you first saw the Bishop, where did you meet him?

After the morning-services were concluded, in the vestry-room.

65. Did you not meet him in the vestry-room, before the morning-service?

I did not.

66. Was your husband in the vestry-room when you met the Bishop there?

I cannot say as to that.

67. Did you speak to the Bishop when you met him?

I did, and introduced some friends. They were female friends. I should say, a female friend.

68. Were you not in the vestry-room before the morning-service, assisting your husband in making arrangements with the vessels, &c., for the communion?

It is my custom to do so, but I cannot recollect it on that morning.

69. Did you not go to the church that morning with your husband?

It is my impression that he went before me, to be examined as a candidate for Priest's Orders, preparatory to his ordination that day.

70. In the vestry-room that morning, before morning-service, do you not remember that the Bishop complimented you upon being so good a clergyman's wife, in consequence of your assisting in preparations for the Holy Communion?

I do not remember it.

71. Who was the friend whom you introduced to the Bishop in the vestry-room, after morning-service?

Mrs. Kip, the mother of my aunt by marriage.

72. Did any conversation take place between you and the Bishop at that time? I cannot recall any.

73. I have not asked you *what* was said, but whether *any* conversation took place between you and the Bishop?

I must reply as before, that I have no recollection of any.

74. Did you shake hands with the Bishop on that occasion?

I think I did not.

75. Did he extend his hand to you?

I do not remember that he did.

76. Did the Bishop *ever* approach you without extending his hand to you?

I cannot remember that he has extended it since that occurrence, except the morning when he left.

77. Was your manner upon this occasion towards the Bishop such as to impress upon an observer the idea of coldness on your part towards him?

I do not know what impression it made upon others, but my reserve was marked by friends.

78. By whom?

By both Miss Strong and Mrs. Kip.

79. Do you not remember the Bishop's shaking hands with you at that time, and congratulating you upon your husband's ordination?

I do not.

80. Did you state to Miss Strong, or to Mrs. Kip, when they remarked upon your reserve, that there was any reason for it?

I did not. I was particularly desirous of keeping it from them.

81. How long after this was it when you told the occurrences of the 17th of July, 1842, to Mrs. Kip?

About six months.

82. You say it is usual with you to assist your husband in the vestry-room, in making arrangements for the Communion: have you any recollection of having departed from your usual custom that morning; if so, for what reason?

It is my impression that he had already arranged them when I reached the church, as I did not go over until near church-time, with my friends, and there were gentlemen in the vestry-room.

83. Then you *do* recollect departing from your custom that morning?

I cannot recollect it, but my impression is that when I reached the church, the things were already arranged.

84. Did your husband ride or walk to church that morning?

I cannot say whether he walked or whether he rode.

85. Did you not bring the Communion vessels with you in the carriage to church?

It is my impression that my husband took them with him.

86. Does that refresh your recollection as to whether he rode or walked?

It does not, for he frequently takes them over in his hand.

87. When you left the church to return home that morning, in whose company did you leave?

In company with Mrs. Kip and Miss Strong.

88. Where were your husband and the Bishop at that time?

The Bishop was at the church when we left. I think my husband did not go home with us. I cannot remember.

89. Do you mean to be understood that you do not remember whether the Bishop was accompanied home by your husband, or not?

I know that they did not come home together; but I cannot remember whether Mr. Beare rode with us, or walked with his brother.

90. Did the Bishop come alone?

The Rev. Mr. Goodwin brought him to our house, in company with the Rev. Mr. Sweetzer.

91. Were those gentlemen present at the services in your husband's church that morning?

They were.

92. Were they invited to dine at your house that day?

They *did* dine there, so I suppose they were; but I do not remember.

93. When the Bishop and the gentlemen accompanying him reached your house, did you not shake hands with all of them?

I did not.

94. Did you with *any* of them ?

I did not.

95. Did you enter into conversation with the Bishop after he reached your house ?

I had no conversation with him.

96. Did he not speak to you at all, when he reached your house ?

I did not see him when he reached the house.

97. When you first saw him, did he speak to you ?

I did not enter the room until the dinner was near ready. I do not remember his addressing me particularly.

98. Do you mean to say that he did not address you at all before dinner ?

I cannot positively say he did not, but I say I cannot recall it.

99. Did you purposely avoid meeting the Bishop before dinner ?

I wished to be in his presence as little as possible. I must say that I avoided conversation with him ; but I was busy in my domestic affairs outside.

100. Who were the party at dinner ?

Mrs. Kip, Miss Strong, the Bishop, the Rev. Mr. Goodwin, Rev. Mr. Sweetzer, Mr. Thomas Beare, I think his son, a lad of twelve or thirteen years, my husband and myself, and two grand-children of Mrs. Kip, from five to eight years of age : that is all I remember.

101. What seat at table did you occupy ?

The head of the table.

102. Your husband where ?

Opposite me.

103. Where did the Bishop sit ?

It is my impression that he sat the second on my right.

104. Did you converse with the Bishop during dinner ?

I merely helped him to the dishes that were before me. I have no recollection that any thing further passed between us.

105. Did not the Bishop address himself to you at all during dinner ?

I cannot recollect that he did.

106. Is it possible that he could have not spoken to you during dinner without your noticing such a circumstance ?

Whether it be possible or not, I cannot recall it.

107. Did you converse with anybody else during that dinner ?

I cannot remember that I did ; for my reserve was remarked again by my friends.

108. Did your husband converse with the Bishop, or the Bishop with your husband ?

It is my impression that the conversation was general among the gentlemen—I cannot say.

109. Did you see the Bishop and your husband together, apparently in conversation, before dinner ?

I did not.

110. Do you mean to say that you treated the Bishop, during dinner, with such palpable neglect that it was remarked by others ?

I meant to treat him with civility—I cannot say that palpable neglect was remarked, but only my general reserve.

111. How long did the dinner last ?

I think we soon concluded, as there was a very short intermission—I cannot fix the time definitely.

112. After dinner, what became of your husband, yourself, and the Bishop ?

I think we immediately prepared to return to church, and all went to church.

113. Who went with the Bishop ?

The Rev. Messrs. Goodwin, and Sweetzer, and I think Mrs. Kip.

114. With whom did *you* go ?

I think Miss Strong, my husband, his brother, and myself, went in our carriage.

115. Did you meet the Bishop at the church before or after the services of the afternoon ?

I think we all reached the church at the same time, and went to the vestry-room. I remember that the Bishop's son opened the door at the time—I do not know his name—it is my impression it is Henry.

116. Who officiated that afternoon?

I think Mr. Sweetzer read the service; the Bishop preached and administered confirmation.

117. Do you remember how many were confirmed?

My impression is but three.

118. Did you meet the Bishop in the vestry-room after the afternoon services were over?

I think I did, as I remember going in with the Bishop's daughter and his daughter-in-law.

119. Did you speak to the Bishop in the vestry-room?

I think not.

120. I desire you to be as distinct as possible in your recollection, whether you spoke to the Bishop, or the Bishop to you, in the vestry-room that afternoon.

I have no recollection of exchanging any words with the Bishop.

121. Is it your belief that you did not?

It is my belief.

122. Did nothing pass between you and the Bishop when he left the church to return to Flushing?

I cannot remember any thing: but I suppose he must have bid me good afternoon—but I cannot remember it.

123. Do you not suppose that he shook hands with you also?

No, I do not.

124. Have you ever met the Bishop since?

I have not met him since.

125. Did the Bishop ever address to you any immodest or indelicate language?

He never did.

126. Were the insults which you have described in your direct examination, accompanied by any expression whatever on the part of the Bishop?

They were not.

127. You say that the first insult offered you by the Bishop, was on your way home after morning service, on the 17th of July, 1842. What has fixed that precise date with so much accuracy in your memory?

It was the time the Bishop appointed for confirmation in our church, and the first time he visited our parish.

128. Have you refreshed your recollection in any way, as to the date, by reference to the almanac or any other source?

I have not refreshed my recollection in any way; but I think I stated the truth when I said so. By referring to the Bishop's annual visitation, it can easily be decided.

129. Do you remember what kind of a day that was?

It was a pleasant day in July.

130. Will you describe the wagon in which you were riding home that morning?

It was a one-horse family brouche to accommodate four.

131. Was it a covered carriage?

It had a top, but the side-curtains were up, as they usually were; so that the sides were open from the back seat forward.

132. Were the sides of the back seat open, or closed?

They were closed.

133. Was the back curtain up, or down?

It is my impression that it was down. It was usually kept so.

134. Had you and the Bishop been in conversation, before he made the first improper advances towards you that you have described?

I think the conversation was general, between the Bishop, my mother-in-law, and myself.

135. Did your mother turn around during that conversation, so as to face yourself and the Bishop?

I really do not remember as to that.

136. How did the persons in the carriage sit, relatively to each other?

My mother sat in front of me, and the little boy in front of the Bishop. That is my impression.

137. Did the little boy who drove, sit upon the side of the carriage on which the driver generally does ?

He did not.

138. Your mother then sat upon the driver's seat ?

She did.

139. Do you remember how long this ride occupied ?

I should suppose eight to ten minutes.—That would be rather too short.

140. Had you ever conversed with the Bishop, before you got into the carriage with him that morning ?

On one occasion, once before.

141. You had been introduced to him, I understand you, five days before this occurrence. Had you had any conversation with him before this occurrence, except a casual one on your introduction ?

I had no conversation with the Bishop, but at the time when I was introduced to him. We then dined together at the house of the Rev. Mr. Goodwin:

142. Was your conversation then confined to the table, or did you converse with him apart from the rest of the company ?

We were in the presence of nine or ten clergymen. The Bishop offered me his arm, to go in to dinner, and I sat by him at dinner. I do not remember that I had any particular conversation with the Bishop apart by himself.

143. Did the conversation in the carriage cease after the Bishop first placed his hand upon you ?

I do not remember that it did.

144. How long was that before you reached home ?

When we were more than half way home.

145. Did yourself, your mother, and the Bishop, continue to converse after this ?

I cannot recollect distinctly as to that. It is my impression that they did. I cannot say distinctly whether I did.

146. Did the Bishop help you out of the carriage when you reached home ?

I think he must have done so, but I cannot say distinctly.

147. The second insult in point of time was at your own house between the morning and evening service, as you stated—was it before or after dinner ?

The first at the house occurred before dinner.

148. Was any one present ?

Mother Beare was present.

149. Was that the occasion on which the Bishop put his arm around your waist ?

It was.

150. Did he press your person on that occasion ?

He put his hand upon my waist ; I cannot say that he pressed it ; his arm was around my waist.

151. Have you forgotten whether he pressed any part of your person at that time ?

I have stated he did not.

152. Did you push his arm from you, or in any other way disengage yourself from him ?

I did not push his arm from me. I moved my position.

153. Did he say any thing at the time he took this liberty with you ?

I do not remember that he did.

154. Were you standing or sitting at that time ?

I was standing in the door.

155. Was your mother standing or sitting ?

I think she was sitting.

156. Did the Bishop advance towards you, and if so, from what part of the room, and how far ?

I was standing in the door, and he approached ; I cannot tell from what part of the room.

157. This, you say, was before dinner ; did you see your husband after this before dinner ?

I cannot remember that I spoke to him ; I suppose that I saw him.

158. Did you relate to him this insult before dinner?
I did not.
159. Did you ever relate it to him before he made his affidavit?
I told him all the particulars, and I suppose I included this one.
160. Did you tell him, any time before he made his affidavit, that the Bishop had kissed you on that day?
I did tell him.
161. When, particularly, did the Bishop kiss you, in the manner you have stated?
I think it was not long before we left for the afternoon service.
162. In what room was this?
In our usual sitting-room.
163. Who was in the room besides yourself and the Bishop?
I recollect no one but my mother Beare.
164. Did she see this?
She did.
165. Did you or she make any remark on the subject to the Bishop?
We did not.
166. Did the Bishop say any thing, when he approached you for this purpose?
It is my impression, that he made some such expression, as "my daughter."
167. Did you at the time regard these two circumstances in the house as insults to you?
I should have done so from any one else but the Bishop?
168. Why not from the Bishop?
I had too much confidence in him to suppose that he would offer me an insult in my own house.
169. Was not that confidence shaken by what occurred on your morning ride?
It certainly was somewhat shaken.
170. After afternoon service that day, you say that you rode towards Mr. Franklin's as far as the top of the lane with Mr. Thomas Beare—how far was that from Mr. Franklin's house?
About a quarter of a mile.
171. When Mr. Beare stopped to leave you at the top of the lane, where was the vehicle in which your husband and the Bishop were?
It was at the same place, it is my impression, waiting for us.
172. Was any person on the seat with the Bishop when you overtook them?
I think he was alone upon the back seat. I cannot say for certain.
173. Who were upon the front seat at that time?
My husband, and I think his nephew. I cannot say distinctly. I forget these little things.
174. Did you request your brother-in-law to drive you down to Mr. Franklin's?
I do not think I did.
175. Did you take the same seat with the Bishop without hesitation?
I took the seat that I was accustomed to in riding. I cannot remember my thoughts at the time.
176. Did you converse freely with the Bishop during the ride to Mr. Franklin's?
I cannot say that I conversed *freely* with him; I do not remember what I did say.
177. Did you take the Bishop's arm on getting out at Mr. Franklin's?
I have no recollection of doing it; though I do not think I did.
178. Did you converse with the Bishop there during the evening?
I saw very little of him; there were a number of others present.
179. The question is repeated.
I cannot remember that I did.
180. Was your brother-in-law staying at your husband's house at this time?
He came to pass the Sunday with us. He stayed at our house that Sunday night.

181. Who invited the Bishop to Mr. Franklin's that evening ?

I suppose Mrs. Franklin must have done so.

182. Do you remember what kind of a night that was—dark or light ?

My impression is, that it was a dark night.

183. Was there any light or lamp upon the carriage ?

There was not.

184. How long were you in going home ?

I do not know what answer to give to that ; the length of time I cannot tell.

185. How long were you in the carriage that night, before the Bishop put his arm around your waist ?

I have before stated that it was when we were near our lane, which is about a quarter of a mile long,—I think it is ; it might be more or less.

186. Had you conversed with the Bishop before that, after leaving Mr. Franklin's ?

We had all been in conversation together.

187. The question is repeated.

I think that I did.

188. What kind of a dress had you on that night ?

It was a high neck dress, though not as high as the present fashion.

189. Had you any shawl, or outer dress ?

I had not ; simply a collar to my neck.

190. Did the Bishop offer you any indignity before you had nearly approached the lane leading to your house ?

He offered none at that time but what I have stated.

191. After you reached home, were the family devotions performed as usual ?

They were.

192. Who officiated ?

My husband ; the Bishop declined, I think.

193. How long did you sit up after that ?

I retired immediately to my room.

194. Did your husband also ?

He did.

195. Did the Bishop also ?

I think he did. I left him in the study.

196. Did the Bishop breakfast with you the next morning ?

He did.

197. Did you converse with him during breakfast-time ?

I did not.

198. Up to the time of his departure, did you that morning say any thing to him, or he to you ?

I do not remember that any thing passed between us.

199. Did he take leave of you, and shake hands with you, as he left the house ?

He approached me, and took my hand.

200. Was that in the house, or on the front steps ?

It was in the study.

201. You say that the Bishop declined performing the family devotions ; did he not state that when in the house of a clergyman, he always wished that clergyman to perform the domestic religious exercises ?

I do not remember it at that time : but I remember to have heard him say that every man was patriarch in his own family.

Direct Examination resumed.

53. Did Mrs. Beare, your mother, breakfast with you and the Bishop, at the time he left on the occasion of his first visit ?

She did not.

54. Why ? (Objected to and withdrawn.)

55. On the occasion of your first ride with the Bishop, was it on Sunday ?

It was.

56. Was the Holy Communion administered on that day ?

I think it was. My husband was a Deacon, and could not administer it. I think he appointed that day for the purpose, in consequence ; that the Bishop might administer it.

57. You have spoken in your cross-examination, of the conversation at Mr. Franklin's, do you remember any thing about it ? was it religious conversation, or what other ?

I do not remember any religious conversation. I remember some remarks that were made by Mr. Smythe.

58. Were they in the presence or hearing of the Bishop ?

They were in his presence, and I think he could have heard them.

59. What were they ?

Some one remarked to Mr. Smythe, See the liberties the Bishop is taking with your lady. Miss Franklin was engaged to him. He replied, Yes, if his office did not protect him, I would revenge myself.

60. Was this said playfully, or otherwise ?

I considered it playfully.

61. What was the Bishop doing to Miss Franklin ?

He put his arm about her, and laid his hand upon her shoulder. That is all I saw.

62. What church did you go to in the afternoon of the day of the first occurrence ?

To the Chapel at Clintonville—the White Stone Chapel.

63. Was the confirmation spoken of in that church ?

It was.

Cross-Examination resumed.

202. Was not Mr. Smythe afterwards married to Miss Franklin ?

He was.

203. Who married them ?

Bishop Onderdonk.

204. Were you and Mr. Smythe the only persons who saw the affair between the Bishop and Miss Franklin on the occasion referred to ?

There were several present.

205. Did the Bishop make any reply to this playful remark of Mr. Smythe ?

I do not remember that he did.

By the Court.

By Bishop De Lancey.

1. When the Bishop spent the night at your house, and when you retired for the night after prayers, did you bid the Bishop "good night" ?

It is my impression that he said "good night," and I believe that I replied, but I cannot tell.

2. Are you positive that the Bishop said "good night" to you first ?

My impression is, that as I went out of the door to go up stairs, the Bishop said "good night" to me, before I spoke to him.

By Bishop Gadsden.

3. When the Bishop called you "my daughter," were you surprised at the expression ?

I was *not* surprised. The first day he met me, he addressed me very affectionately that way.

The Court then adjourned.

Attest,

WM. R. WHITTINGHAM, Clerk.

*Saturday, December 21st, 1844, }
half-past 9 o'clock, A. M. }*

The Court met pursuant to adjournment. Present, the Bishops of Illinois, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South-Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

Gerardus Clark, Esq., of Counsel for the Presentment, put in an affidavit of the service of citation of this Court upon Miss Ann Wilson, which affidavit was read, and filed with the Clerk of the Court.

The Counsel for Respondent consented to receive the notice of affidavit read in Court on the 19th inst., as though it had been duly sworn, and to have it so filed by the Clerk.

The Counsel for the Presentment then moved the Court for the appointment of a Commissary to take the written deposition of Miss Ann Wilson, whose attendance on the trial cannot be obtained.

The motion was opposed by the Counsel for the Respondent, and argued by the Counsel on both sides.

The Court granted the motion. The Bishops of North Carolina, New Jersey, Western New York, South Carolina, and Maryland, dissenting.

The dissenting Bishops directed the Clerk to enter upon the records of the Court, the following reasons of their dissent:—

[COPY.]

The Bishop of North Carolina dissents, on the ground that no sufficient evidence has been furnished the Court, that the attendance of the witness cannot be obtained.

(Signed,)

L. S. IVES.

[COPY.]

The Bishop of Western New York dissents, because he thinks no sufficient means have been used to induce the witness to attend; because mere unwillingness to attend does not appear to be sufficient reason to allow a Commissary to take the testimony; because no actual disability on the part of the witness to attend is proved to the Court; because if unwilling witnesses are allowed to have their testimony taken out of Court, then the ends of justice may be defeated.

December 21, 1844.

(Signed,)

W. H. DE LANCEY.

The Bishop of New Jersey dissents for the above reasons; and for the further reason, that the construction of the Canon thus adopted, puts the Respondent in any case at disadvantage, as compared with the Presentors, who have the selection of their own witnesses, and every opportunity to ascertain their ability and willingness to testify, before they make the Presentment.

(Signed,)

G. W. DOANE.

The Bishop of Maryland dissents for the above reasons; and because, as he understands, the course of the Presentment in this case has tended to induce the refusal of the witness to attend.

(Signed,) W. R. WHITTINGHAM.

The Court appointed Dayton Hobart, Esq., a Commissary to take the written deposition of Miss Ann Wilson.

The REV. HENRY M. BEARE was called up as a witness by the Counsel for the Presentment, and examined.

Direct Examination.

1. What is your name?
Henry M. Beare.
2. Occupation?
A minister of the gospel.
3. Where is your residence?
At Bayside, Long Island.
4. Are you a Rector of a Church there, and how long have you been such?
I am; of Zion Church, Little Neck; and have been since the 1st Sunday of May, 1842.
5. What is the name of your wife?
Charlotte E. Beare.
6. In the year 1842, and what time in that year, was you visited at your house by the Right Rev. Benjamin T. Onderdonk?
I was, on the 17th of July, in that year.
7. For what purpose did the Bishop visit you?
To hold confirmation in Zion Church, Little Neck.
8. After the morning service did the Bishop return home with you, and if he did, who accompanied him in the carriage?
He did come to my house, (he had not been there in the morning,) accompanied by my wife, my mother, and my nephew.
9. Did the Bishop dine with you that day?
He did.
10. Did he go to church with you in the afternoon?
He went to the Clintonville or Whitestone Chapel.
11. After the evening service where did the Bishop go?
To the house of Mrs. Joseph Franklin.
12. Did he return home with you that night, and at what hour?
He did; I think about nine o'clock.
13. In what description of carriage did you ride, and who composed the company in that carriage?
It was a one-horse family barouche; the company consisted of Bishop Onderdonk, my wife, my nephew, and myself.
14. How were the parties seated?
Mrs. Beare and Bishop Onderdonk were on the back seat, and my nephew and myself were on the front seat.
15. How long did the Bishop remain at your house?
Until the next morning after breakfast.
16. Where did he go then, and who went with him?
He went to College Point; I accompanied him.
17. Did you accompany him any farther, or did you leave him there?
I accompanied him no farther, and left him there.
18. When did you next see Bishop Onderdonk?
I called in company with several clergymen at his house, I think it was about ten days afterwards.
19. What clergymen?
The Rev. Mr. Higbee, Dr. Milnor, and Dr. Muhlenberg.

20. Did you call on the Bishop at the request of any person, and of whom?
I called at the request of Dr. Muhlenberg.

21. Did you see Bishop Onderdonk, and where?

I met him in his front-room, (his study,) and he took us into the back-room.

22. Who were present in the back-room at that interview?

Bishop Onderdonk, Rev. Drs. Muhlenberg and Milnor, and the Rev. Mr. Higbee and myself.

23. Now please state fully all that was said in the hearing of the Bishop, or by the Bishop, in that interview.

As far as I can remember I will state. Bishop Onderdonk commenced by speaking to me very affectionately, stating what a high regard and respect he had for me; and that he would not intentionally, I think that was the word, wound the feelings of Mrs. Beare or myself. I then asked Bishop Onderdonk whether he denied what Mrs. Beare had said he had been guilty of. He said he did not deny it, but that Mrs. Beare had misunderstood, or misconstrued his motives. He then told me to offer an apology to Mrs. Beare, and if she demanded any further apology he was willing to make her one. I said I would mention it to Mrs. Beare. I think that was the amount of the conversation that passed between me and the Bishop. Dr. Milnor addressed Bishop Onderdonk, and stated, I think, that there were rumors about him. I think so; I was very much agitated at the time; I do not know distinctly what Dr. Milnor said. I think he advised the Bishop to be careful, or cautious. That is as much as I can distinctly recollect of the remarks made by Dr. Milnor to Bishop Onderdonk.

24. What had been said in that interview to the Bishop, which induced him to say, that he would not wound the feelings of Mrs. Beare or yourself?

There was no previous conversation. The Bishop commenced it in that way, taking me by the hand.

25. Do you know to what he referred?

The treatment offered to my wife.

26. How do you know he referred to that?

Because he had been previously called upon by Dr. Milnor, Dr. Muhlenberg, and Dr. Wainwright.

27. How do you know that?

I was told so by Dr. Muhlenberg.

28. Was any thing said in the interview you have named about that previous call, and what?

I think not.

29. Did the Bishop refer to any communication made to him previously by either of those gentlemen?

I think he did not.

30. Did you learn, and when, that the Bishop had offered indignity to your wife?

I did, on Sunday morning immediately after morning-service, and in the evening after our return from Mrs. Franklin's.

31. From whom did you learn this?

From Mrs. Beare herself.

32. Did you give information of this fact to any person, and to whom, and at what time?

I gave information early on the following morning, not in detail, however, to my brother, Mr. Thomas M. Beare; afterwards on the same day, at College Point, to the Rev. John Kerfoot, and to no other person at that time.

33. Who was Mr. Kerfoot, and where did he reside?

Mr. Kerfoot was a Professor in St. Paul's College, and resided there.

34. Where is he now?

I think it is at Hagerstown, Maryland.

35. To whom, and when did you next communicate this fact?

To my brother, Wm. Beare, about a year since.

36. Did you ever communicate this intelligence to Dr. Muhlenberg?

I did, I think, the day after Bishop Onderdonk left College Point.

37. Was Mr. Kerfoot present then?

He was not.

38. Did you go to Dr. Muhlenberg at his own request? [This question was objected to by Counsel for Respondent, and waived.]

Cross-Examination.

1. When did you first meet Bishop Onderdonk, after the 18th of July, 1842, when you separated at College Point?

I think it was nine or ten days afterwards, on the occasion referred to in my direct examination, and at the Bishop's house.

2. When did you next meet him?

I think I called at the Bishop's house a few months previous to my ordination to the Priesthood, which took place on the 16th of July, 1843, as I think. It was on a Sunday morning that I was ordained.

3. How often, and when, and where have you met him since the call last mentioned?

I met Bishop Onderdonk at Dr. Schroeder's institution on the Saturday previous to my ordination to the Priesthood: I met him the next day at the church: I again met him at St. John's Chapel, New York, at the anniversary of the Sunday-schools of the city, after Easter last: again in the afternoon of the same day, in St. Clement's Church: and again at the consecration of Christ Church at Oyster Bay, on Long Island, in the latter part of June or July last, (I think it was at that time.) I do not remember any other times that I have met the Bishop.

4. When you went to the house of the Bishop, in company with the Rev. gentlemen you have named, nine or ten days after the 17th of July, 1842, did you go there for the express purpose of meeting the Bishop upon the subject which was then conversed about?

I did.

5. Give, if you can, the words in which the Bishop first introduced the subject.

As well as I can remember I will state it; I was very much agitated, and cannot be expected to recollect very accurately.

The Bishop commenced by saying, "Mr. Beare, I have a very high regard and respect for you, and would not wound your or Mrs. Beare's feelings intentionally. This is a very painful subject." I think he asked me to be seated, and he would explain what had occurred. When we were seated he said, "I can assure you of my kind feelings towards you, Mr. Beare, and towards your wife." I then said to Bishop Onderdonk, "Do you deny, sir, what Mrs. Beare says you were guilty of?" He said, "I do not deny it. But Mrs. Beare has misunderstood or misconstrued my motives." Then he said, "Offer an apology to Mrs. Beare, and if she demand any further apology, I am ready to make it." That is, as far as I recollect my having any conversation with the Bishop.

6. Before the question put by you to the Bishop, viz.: "Do you deny, sir, what Mrs. Beare says you were guilty of?" had any reference been made to Mrs. Beare by name, or to any statement which she had made?

Nothing further than the Bishop's expression of kind feeling towards her.

7. Did not the Bishop express himself to you, in that conversation, in the words or to the effect following: that from complaints which he had heard as proceeding from you, it had been imputed to him that he had wounded your and your wife's feelings—that this was distressing to his feelings—and that he could not, and did not, admit the truth of your wife's statements, but that that did not cause him to be the less pained by reason of your feelings having been hurt on the subject?

He said it was painful to his feelings, but did not deny what Mrs. Beare said.

8. Was not his answer to your question to this effect: that he did not mean to question your wife's veracity, for that persons might often give wrong impressions of facts without intending to deceive?

I understood Bishop Onderdonk to say that he did not deny what Mrs. Beare stated, but that she misunderstood or misconstrued his motives.

9. Was not your question in these words, or to this effect: do you question my wife's veracity?

I do not remember putting that question.

10. Is your recollection so distinct as to enable you to say with certainty that that was not the form of your question?

That was *not* the form of the question.

11. When you left the Bishop's study, did not you and he shake hands together very warmly?

I cannot say warmly; we shook hands, but not warmly.

12. During the 17th July, 1842, and after your wife made to you the first statement respecting an indignity from the Bishop, did not you and your wife freely converse with the Bishop?

I cannot say *freely*.

13. Did your wife take part in any conversation with the Bishop during dinner that day?

I do not remember particularly—I cannot say decidedly.

14. Is it your belief that she did, or did not?

I think it probable that she treated the Bishop respectfully.

15. Do you not *know* that she did?

I cannot say decidedly.

16. Can you not say whether your wife conversed with the Bishop during his stay at your house on that occasion?

I heard him conversing with Mrs. Beare in my study.

17. In what part of the day?

Just after the morning service, and before dinner.

18. Was it after or before her communication to you?

I think it was before.

19. What was said in that conversation?

Bishop Onderdonk said he was happy to see me so pleasantly situated, (he remarked this to both of us—we were standing together,) and happy to be with us. I do not remember any further conversation.

20. Did your wife make any remark at that time?

I cannot say positively.

21. How long did you and your wife, and the Bishop, remain in the study at the time just referred to?

A short time, dinner being near ready. The Bishop went to an upper room to wash his hands; and I think he said he had some letters from his son, which he wished to read.

22. On your return from Mr. Franklin's that evening, how long did you and your wife sit up, in company with the Bishop?

From ten to fifteen minutes.

23. How was that time occupied?

In offering up family prayer. Mrs. Beare immediately retired then to her room, and the Bishop soon went to his room.

24. Did you request the Bishop to officiate at family prayer, and what reply did he make?

I offered the Bishop the prayer-book, and asked him to officiate. I think he simply declined at that time.

25. Did he not say that it was his rule, that in the house of a clergyman, the clergyman himself should perform family devotions?

I do not recollect his saying that.

26. Did you not know that that was his rule?

I heard him make a remark somewhat similar to that, when I asked him to ask a blessing at dinner.

27. Did the Bishop shake hands with you and your wife before you separated that night?

I think not with Mrs. Beare, but with myself, I think.

28. Did your wife and the Bishop converse together the next morning at breakfast?

I remember no conversation passing between them.

29. Do you mean to be understood that nothing was said by the Bishop to your wife, or by her to him, during breakfast-time that morning?

I remember of no conversation passing between them.

30. Did any conversation pass between them before he left the house ?
I heard no conversation between them.
31. When the Bishop started in the wagon with you, did he take leave of your wife, and if so, in what manner ?
He *did* take leave of her, and took her hand.
32. Was your mother with you at breakfast that morning ?
She was not.
33. Did she not come down stairs to take leave of the Bishop ?
Not for that express purpose.
34. Did she take leave of the Bishop ?
I cannot say from personal observation.
35. Was the Bishop treated by yourself and wife, while at your house, after the morning ride on Sunday, until he left your house the next day, with marked coldness ?
I would not say with marked coldness.
36. Did your wife in your presence ever, after the occurrence of 17th of July, 1842, converse with the Bishop ?
She had no conversation—it may be a few questions were proposed at table, respecting the dishes before her.
37. Was her manner such as to show a disinclination to converse with the Bishop, in every instance when they met, after the occurrence referred to ?
Yes, sir ; whenever in my presence, I think so.
38. Must not the Bishop have observed this ?
I should suppose so.
39. Was *your* manner to him reserved, on all occasions, when you met him after those occurrences ?
Not cordial, as it had formerly been.
40. Was it reserved, so as to be apparent ?
I wished it always to be respectful, as to my Bishop.
41. The question is repeated.
I should suppose so.
42. On the Saturday before your ordination to the priesthood, when you met the Bishop at Dr. Schroeder's, did you invite him to dine with you the next day ?
I said to him, " Bishop Onderdonk, will you take dinner with me to-morrow ?"
43. What was his reply ?
I think he said, " I thank you, sir."
44. Did he not say that he had an invitation to dine at Mr. Franklin's ?
I did not hear him say so.
45. Did you not *urge* him to dine with you, in consequence of *some* excuse he made ?
I do not recollect of urging him.
46. Did he not make some excuse which induced you to repeat the request ?
I really cannot remember that I repeated the request.
47. Was your manner cordial in giving the invitation, or was it formal and cold ?
It was not cordial, but respectful.
48. Was your wife in the vestry-room of your church the next morning, while you and the Bishop were in the room, before service ?
I think not.
49. Was she *after* service ?
She was.
50. Did the Bishop shake hands with you and her, in congratulation upon your ordination that morning ?
I did not see the Bishop shake hands with my wife. I think he did with me.
51. Was your ordination that day the subject of conversation between yourself, your wife, and the Bishop, after you reached home ?
I do not remember of my wife engaging in any conversation with the Bishop.
52. Was her manner at dinner that day so reserved as to be apparent ?
It was. Shall I go on to explain ? I wish merely to remark that it was noticed by Mrs. Kip, of Brooklyn, and Miss Strong, of this city. [To what follows "it was," in this answer, objection was made by Counsel for the Respondent, but waived ; so the answer stood.]

53. Did your wife converse with the Bishop during dinner, the day of the ordination?

She did not.

54. Did she speak to him at all?

She asked him to partake of the dish that was before her.

55. Do you remember in what way the communion vessels were carried to the church on the day of your ordination?

I carried them myself, in a box, in which the vessels are always taken.

56. Did you walk or ride to the church?

I think I walked.

57. Who usually prepares the vessels, linen, &c., for the communion at the church on communion days?

Sometimes I, and sometimes my wife, takes them from the box. They are prepared at home, wrapped up in a cloth, and taken out in the vestry-room. I then place them upon the table.

58. How large was this box which you carried to church that morning?

It is a tin box, about fifteen inches by seven or nine. I can easily carry it.

59. How came you to carry that box as you walked to church that morning?

I often do so.

60. How did your wife go to church that morning?

She went in a wagon, with Mrs. Kip, Miss Strong, and I think my brother Thomas Beare, who drove.

61. Was the night of the 17th July, 1842, a light or a dark one?

I do not think it was very dark.

62. Was it moonlight?

I cannot remember.

63. Was it light enough to enable you to distinguish the persons of your wife and Bishop Onderdonk, on the back seat of the wagon, as you rode home?

I did not turn around to see.

64. Did you converse with the Bishop on your way home that night?

I did.

65. Did you not during the conversation direct your face towards him?

I think not, for I was driving.

66. Was the communion administered in your church on the 17th of July, 1842?

I think not. It was the day of confirmation; I believe the bishop did not administer the communion.

67. Did your brother, Thomas Beare, dine with you on the day of your ordination?

He did.

68. Is he the brother to whom you mentioned, on the 18th of July, 1842, the Bishop's treatment of your wife, on the preceding day?

He is.

69. Had not your wife told you, before your visit to Mr. Franklin's with the Bishop, and your ride home with him that night, of the alleged insult of the morning?

She had.

70. Have you at any time since the occurrence of 17th July, 1842, spoken to any person in very friendly terms of the Bishop?

I know of no one to whom I have spoken in that way.

71. Have you spoken in that way to the Rev. Mr. Goodwin?

I cannot remember it.

72. Or to the Bishop's sons, Henry and William, or either of them?

I have inquired of those sons respecting the Bishop—how his health was.

73. Have you to either of them spoken with satisfaction of the Bishop's having dined with you in July, 1843?

I have no recollection of it.

74. What is your impression as to the fact?

I think not.

75. Did you not, in a conversation with one of the Bishop's sons, lay particular stress on the fact, that you had induced the Bishop to dine with you in July, 1843, notwithstanding he had another invitation?

I have no remembrance of such a thing.

76. When did you first make a memorandum, or statement in writing, of the transactions to which you have referred in your testimony?

In the month of June, 1844, during the General Convention. On or about the 21st of October, 1844. My first answer of June was a *lapsus linguae*.

77. Did any person, and if so, who, apply to you for an affidavit?

Yes, sir, the Rev. James C. Richmond.

78. When did he so apply?

On the Friday night previous to the closing of the General Convention.

79. Did he apply to you for your wife's affidavit?

He did.

80. Where did he make this application?

At my house, Bayside, Long Island.

81. Did you express yourself, upon leaving the house of the Bishop, at the interview, in the presence of the Rev. gentlemen whom you have named, or after that interview, satisfied with the explanation of the Bishop?

Not satisfied with the apology made for his conduct, but because he said he did not deny what Mrs. Beare had stated.

82. Is that the only expression you have made in relation to the Bishop's explanation?

I cannot call to mind any other.

83. Was it not remarked among the Rev. gentlemen who accompanied you, and assented to by you, after leaving the Bishop's house, that the matter was settled, and there was an end of it, or to that effect?

I think that Dr. Muhlenberg remarked, "We will say no more about this matter."

84. Did you assent to that remark?

I kept perfectly quiet; I left the matter in their hands.

Direct Examination resumed.

39. What induced you to ask the question of Bishop Onderdonk, "Whether he denied the statement made by your wife?" (Objected to and withdrawn.)

You have stated in your cross-examination, "I asked Bishop Onderdonk whether he denied the facts stated by my wife;" what induced you to ask that question?

[This question was objected to by the Counsel for the Respondent, and after argument by the Counsel on both sides, the objection was sustained; the Bishops of North Carolina, New Jersey, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, sustaining the objection; and the Bishops of Illinois, Vermont, Kentucky, Ohio, the North Western Missionary Diocese, and Louisiana, dissenting.]

By the Court.

By Bishop Doane.

1. Did you go to the Bishop, after Mrs. Beare's statement to you, and tell him his fault?

I did not.

By Bishop Gadsden.

2. In the carriage in which you rode with the Bishop, how near was you to the Bishop?

I sat on the right hand of the front seat, and the Bishop on the left hand of the back seat.

3. Did your wife sit behind you?

She did.

4. How near was she to you?

I cannot state exactly the distance.

5. Was she near enough to touch you with her hand?

Yes, sir.

6. What is the age of your wife?

She is in her 25th year.

7. What is your age ?

I was born Sept. 14, 1815.

8. How long had you been married at the time of this transaction ?

I was married on the 8th of June, preceding, in the same year.

By Bishop Ives.

9. Did I understand you rightly, that in riding with the Bishop in the evening, after having heard of the Bishop's insult to your wife, in the morning, you did not turn your face around during that ride to observe him ?

I do not particularly remember doing so.

By Bishop De'Lancey.

10. When the Bishop and you separated, on the night that the Bishop spent at your house, did he bid you "Good-night?"

He did.

11. Did he bid your wife "Good-night" when she retired to her room, after prayers ?

I naturally suppose that he did.

12. Did your wife bid the Bishop "Good-night?"

I cannot say positively.

13. Did you bid the Bishop "Good-night?"

I did.

14. Did the Bishop administer the communion in your church at any time after the alleged indignity to your wife ?

He did.

15. Did you partake of it at his hands ?

I did.

16. Did your wife partake of it at his hands ?

She did.

17. Have you said to any person, since the alleged indignity to your wife, that you had nothing to say, or bring, against Bishop Onderdonk, or words to that effect ?

I have not said so.

By Bishop Eastburn.

18. On what occasion did you receive the holy communion at the hands of the Bishop, after this occurrence ?

At the time of my ordination to the priesthood.

By Bishop Johns.

19. Was that the only occasion ?

I now remember no other, with reference either to my wife or myself.

By Bishop De'Lancey.

20. While you were in Deaton's orders did the Bishop ever administer the communion for you, at your church ?

I do not remember his doing it.

The Rev. James Milnor, D. D., was called up as a witness by the Counsel for the Presentment, and sworn by Dayton Hobart, Esq., commissioner.

It was ordered by the Court, that next week, besides the morning session, on every day except Christmas day and the day before Christmas, the Court will hold evening sessions, to commence at 7 o'clock.

The hour of adjournment having arrived, the Court then adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Monday, Dec. 23d, 1844, }
half-past 9 A. M. }

The Court met pursuant to adjournment. Present, the Bishops of Illinois, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North

Western Missionary Diocese, Louisiana, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayer.

A letter was received from the Bishop of Western New York, excusing his absence on the ground of illness.

The REV. JAMES MILNOR, D. D., having been sworn on Saturday the 21st, was called up as a witness by the Counsel for the Presentment, and examined.

Direct Examination.

1. What is your vocation?

A minister of the Protestant Episcopal Church, and Rector of St. George's Church in this city.

2. In or about the month of July, 1842, did you visit Bishop Onderdonk, of this city, at his house, in company with the Rev. Dr. Muhlenberg, and others; and if so, who accompanied you on that occasion?

I did, in company with the Rev. Dr. Wainwright, Rev. Dr. Muhlenberg, and Rev. Dr. Higbee.

3. Did you see the Bishop on that occasion; and if so, please state what conversation was had between you, the Bishop, and the other gentlemen?

We did, in his study. I had been requested to introduce to the Bishop's attention the subject on which we called. I accordingly stated to him the purpose of our visit; this was an allegation made by the Rev. Mr. Beare, of improper familiarities on the part of the Bishop towards his wife. I told him that these were said to have occurred in a carriage, in which he rode with Mrs. Beare, in the first place in going to or from church in the forenoon. The church was, as I understood, the church at Little Neck, where the Bishop confirmed that day. That familiarities of a still more objectionable kind had been offered by the Bishop, in the evening; in riding from a house where they had taken tea—the house of a parishioner, I understood—to Mr. Beare's house. That Mr. Beare had communicated the facts to the Rev. Dr. Muhlenberg, who committed them to writing; and I think I requested Dr. Muhlenberg to read the statement; which he did. In my communication to the Bishop, I stated that I understood from Dr. Muhlenberg, that he had advised Mr. Beare to have this matter brought before the Bishop: that he, Dr. Muhlenberg, offered to come down to the city on the business; and that I had been waited upon by Dr. Wainwright and Dr. Muhlenberg, and requested to accompany them. After the subject had been presented to Bishop Onderdonk; he positively denied the charge; and expressed his astonishment, that a lady of respectable character, as he presumed Mrs. Beare to be, should make such assertions. Mr. Beare was not present, nor had I seen him since the alleged occurrence, nor communicated with him in any manner with reference to it. Mrs. Beare I had never seen, (nor have I to this hour.) The Bishop was asked, either by myself or one of the gentlemen, I do not recollect which, whether he would be willing to see Mr. Beare. He said he had no objection. We then took our leave of the Bishop.

4. What was the manner of the Bishop, when he made the denial of the statement, as presented by Dr. Muhlenberg?

Perfectly composed.

5. Did he or not seem indignant at the charge?

His expression, as already stated, indicated that.

6. When the Bishop expressed a willingness to see Mr. Beare, was any, and what remark, made by Dr. Muhlenberg, as to seeing Mr. Beare?

I think he said he would send him word to come down the next day.

7. Did you call upon the Bishop again on this subject; and if so, when, and in company with whom?

I called the next day, in company with the Rev. Messrs. Beare, Muhlenberg, and Higbee—Dr. Wainwright having sent an apology for his absence, on account of the occurrence of a domestic affliction since the day before.

8. Before you went the second time, had Mr. Beare, to your knowledge, been informed of what occurred in the interview the day before?

He had.

9. Will you please state, according to the best of your recollection, what occurred, and what was said by the Bishop, and the other gentlemen present, in the second interview?

We found the Bishop as before, in his study—his front study. He took us into the back-room, I think, and closed the door. He addressed himself to Mr. Beare, and expressed his regret that any circumstances should have occurred to offend the feelings of Mrs. Beare; that he had a great regard for *him* and his wife, and had certainly not intended to wound her feelings. Mr. Beare asked him, in substance, whether he denied the allegations of Mrs. Beare, to which he answered in the negative; but said, she had put a misconstruction upon what had occurred. I think it right to state, that at this interview the Bishop was much affected. Tears stood in his eyes as he made this declaration, and Mr. Beare was also much affected. The protestations of the Bishop as to his having no improper intention, were repeated several times. If I am not much mistaken in my recollection, the question was more than once put by Mr. Beare to the Bishop, whether he meant to say that Mrs. Beare's assertions were not true; to which, as often as it was proposed, which I believe was more than once, the Bishop answered that he did not; but that she had misconstrued his motives. There does not any thing else occur to me at this moment, in regard to the conversation or occurrences at that interview.

10. Did you say any thing, and what, on that occasion, to Bishop Onderdonk?

I do not remember that I did, until the conclusion of the conference; but I may have done so.

11. What did you say at the conclusion of the conference?

I cannot, probably, recollect the very words; but, on rising to retire, as I believe, after we were on our feet, I intimated to the Bishop that I hoped what had occurred in this instance would put him on his guard in future; that I had heard rumors of a similar kind. To which the Bishop replied in words of this import: "In regard to rumors of this kind, Doctor, about clergymen, there are few who have not, at some time, had occasion to encounter them." To which I answered, that I did not know how that might be, but, in regard to myself, I had been nearly thirty years in the ministry, and had never had occasion to encounter such a difficulty. That is, I believe, the substance of what occurred before we left the presence of the Bishop.

12. Will you state, as well as you remember, what the allegations of impropriety, on the part of Bishop Onderdonk towards Mrs. Beare, were, as they were stated by yourself to the Bishop?

I think it right to state as preliminary to the answer to this question, that I never made a note in writing in reference to any thing connected with this subject; and that I forbore to speak in relation to it until it became a subject of conversation in the city of Philadelphia, during the sitting of the last General Convention. I mention this to account for any inaccuracy that may occur in what I shall state in regard to the incidents themselves. The substance, I think, was to this effect. That in the morning of the day of the Confirmation by the Bishop at the Church at Little Neck, Mrs. Beare rode in the same carriage and on the same seat with Bishop Onderdonk, either in going to or from church—I do not recollect which. That, in the afternoon, when they went to the other church of Mr. Beare, which is, I think, at Clintonville, where a second Confirmation was to be held, Mrs. Beare objected to riding with the Bishop, and on her husband inquiring the reason why she so objected, she answered that she did not like to ride with the Bishop, he was too familiar. Accordingly, as I understood it, she did not ride to the church in the afternoon with the Bishop, but in another carriage with her brother. That, after the afternoon service, she rode in the same carriage with her brother, to the house where they took tea—if I remember right, a Mr. Franklin's. That, in going home in the evening, from this house to Mr. Beare's, there was no other conveyance for Mrs. Beare but her husband's carriage. Accordingly, she rode in the same carriage and on the same seat with Bishop Onderdonk, to Mr. Beare's. That in the course of that ride the familiarities complained of were offered, which con-

sisted in the Bishop's sitting very close to her, feeling her person in a way which she considered indecent, and at length putting his hand down her bosom—her naked bosom, I think. That she resented these advances, so far as to put his hand away from her bosom, and so on. I do not know that there was stated in the Bishop's presence, the reasons why she did not make any outcry, and therefore I presume I am not at liberty to state what was alleged on that subject.

13. Did you leave the Bishop's house in company with Dr. Muhlenberg, Mr. Higbee, and Mr. Beare?

I did.

14. Immediately on leaving the house, was any opinion expressed by Mr. Higbee and Dr. Muhlenberg, as to the Bishop's acknowledgments and statements on that occasion?

[This question was objected to by the Counsel for the Respondent, and the objection was sustained by the Court, the opinions being severally taken, and unanimous:]

Cross-Examination.

1. Were the statements made by you to the Bishop, and given in answer to the 12th direct interrogatory, made upon the occasion of your first visit to the Bishop, in company with the Rev. Drs. Wainwright, Muhlenberg, and Higbee?

I believe they were.

2. Have you a distinct recollection of the particulars of that interview, or have you intended to give the substance of it merely?

As I have already mentioned, having never made any memorandum on this subject, I can at this distance of time only state the substance of what passed; but I have a distinct recollection, that I left the Bishop's house under the impression that he positively denied the charge. It was that impression, made during the conversation, that induced me to propose that Mr. Beare should be confronted with the Bishop.

3. Was this denial made by the Bishop after your narration of the charge made against him?

I think it was.

4. Did not the Bishop at that interview say that he was certain that if he could see Mr. Beare, and have a conversation with him, he could satisfy him that his wife must have been mistaken, and express a hope that he would see Mr. Beare the next day, at the consecration of Christ Church, Brooklyn?

I think I recollect something of the kind stated in the first part of the question; the latter I do not remember.

5. Are you certain that Dr. Muhlenberg read the statement on that occasion, to which you have referred in your direct examination?

That is my impression.

6. Have you a distinct recollection that the Bishop's denial related to the facts, and not to the impressions given by Mrs. Beare?

I do not know that I could make that distinction. It appeared to me like a positive denial of the whole thing.

7. Do you recollect the form of expression in which that denial was made?

He said the charge was utterly unfounded. I mentioned in my direct examination the same thing.

8. Did he, in making this general denial, refer to the whole statement you had made?

I presumed so at the time. When I so speak, I refer only to the statement of charges of impropriety against him.

9. Was any thing said by Dr. Muhlenberg at the first interview, on the authority of Mr. Beare, respecting the Bishop's department at Mr. Franklin's towards Miss Franklin, who was engaged to be married to Mr. Smythe, a gentleman present at Mr. Franklin's at the time? If so, please state what it was.

I recollect no such circumstance.

10. Was any reference made, either at the first or second interview, to the Bishop's having put his arm around the waist of Mrs. Beare, or his having kissed her at Mr. Beare's house, in the interval between the morning and afternoon service, on the day of the alleged improprieties?

I recollect having heard such a circumstance, but do not remember whether it was mentioned in either of our conferences with the Bishop or not.

11. You have stated in your direct examination that Mr. Beare asked the Bishop, in substance, whether he denied the allegations of Mrs. Beare; to which the Bishop answered in the negative, but said that she had put a misconstruction upon what had occurred; do you mean in that answer to give the words which were used by the parties, or their substance, as you now recollect them?

The latter.

12. May not the Bishop have said, in answer to Mr. Beare's question, that he did not mean to charge Mrs. Beare with intentional falsehood?

I believe the Bishop did say so.

13. Did not the Bishop refer to Mrs. Beare's excitement and agitation, as a reason why she might, though unconsciously, have made erroneous statements?

I have no recollection of any such thing.

14. Did you, or any of the other Rev. gentlemen present, take part in the conversation between the Bishop and Mr. Beare?

I do not remember whether we did or not.

15. Do you remember that at the close of the conversation, and as the Bishop and Mr. Beare were separating, they clasped each other warmly, by the hand, and parted from each other with emotion.

I remember that the Bishop offered his hand to Mr. Beare, and that Mr. Beare accepted it; and that the Bishop expressed his sorrow, that any thing should have occurred to offend the feelings of Mrs. Beare; and I think he added, that if any further apology to Mrs. Beare was necessary, he was ready to make it. There was emotion manifested, both on the part of the Bishop and Mr. Beare.

16. Did not Mr. Beare say to the Bishop that he was satisfied, and trusted his wife would be?

I have no recollection that he did.

17. May not such a remark have been made at the time they separated, and you have forgotten it?

I think, if it had been, I should have remembered it; because there were subsequent circumstances inconsistent with it. [Here a discussion arose before the Court.] Since this matter has been under discussion, a circumstance has occurred to me in regard to Mr. Beare's expression of satisfaction, which I think was mentioned in the presence of the Bishop. This was, that Mr. Beare stated that he was satisfied with the Bishop's withdrawal of his denial of Mrs. Beare's allegations; on which subject Mr. Beare had, all along, expressed the greatest sensibility.

Direct Examination resumed.

15. You were asked on the cross-examination, "Are you certain that Dr. Muhlenberg, on that occasion to which you have referred in your direct examination, read the statement made by him of the charges against the Bishop by Mr. Beare?" I will ask, did you hear that statement read more than once?

If I am wrong in my recollection of Dr. Muhlenberg having read it before the Bishop, then I have heard it but once, which was before we went there.

By the Court.

By Bishop Johns.

The proposal to send for the Rev. Mr. Beare to confront him with the Bishop—did that proposal originate with the Bishop, or with the gentlemen who waited upon him?

I think I proposed it.

Cross-Examination resumed.

18. You said upon your direct examination, that the Bishop expressed a willingness to see Mr. Beare; was not that expression made promptly and unhesitatingly, when you made the suggestion referred to in the last preceding answer?

It was.

The Counsel for the Presentment proposed that two members of the Court assist in the examination of Miss Ann Wilson by the Commissary already appointed.

An agreement of the Counsel in the case to that effect was read and adopted, with the insertion of the names of the Bishops of North Carolina and Ohio, in the following form, viz :

It is agreed, That the examination of the witness Miss Ann Wilson, be conducted before the Commissary already appointed, by and in the presence and under the direction of the Rt. Rev. Bishops Ives and Melvaine ; the presence of Counsel, and the use of written interrogatories furnished by the parties, being dispensed with.

Other witnesses, whose testimony was desired by the Counsel for the Presentment, not being in attendance,

The Court adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

*Tuesday, December 24th, 1844, }
half-past 9 o'clock, A. M. }*

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, South Carolina, Maryland, and Delaware ; the Assistant Bishop of Virginia ; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The Rev. Wm. A. Muhlenberg, D. D., being called as a witness by the Counsel for the Presentment ;

The Rev. John F. Schroeder, D. D., the Rev. Frederiek J. Goodwin, and the Rev. Henry W. Sweetzer, being called as witnesses by the Counsel for the Respondent, were severally sworn by Dayton Hobart, Esq., the commissioner.

The Rev. WILLIAM AUGUSTUS MUHLENBERG, D. D., was called as a witness by Counsel for Presentment, and examined.

Direct Examination.

1. What is your vocation ?

A clergyman.

2. In or about the month of July, 1842, did you visit Bishop Onderdonk of this city, at his house, in company with Rev. Dr. Milnor and others ; and if so, who accompanied you on that occasion ?

I did, accompanied by Dr. Milnor, Dr. Higbee, and Dr. Wainwright.

3. Did you see the Bishop on that occasion—have any conversation with him ; and if you did, please state fully and in detail what that conversation was, as well between you and the Bishop, as all the other conversation that occurred on that occasion in the presence and hearing of the Bishop ?

I saw the Bishop ; but at this distance of time I cannot be sure of the precise words that were used by either party on that occasion. According to the best of my recollection, what passed was in substance as follows :—After Dr. Milnor had stated the object of the interview, I related to the Bishop what I had received from Mr. Beare a few days previous, concerning certain liberties which Mr. Beare said the Bishop had taken with his wife. I entered into the particulars from notes

which I took when Mr. Beare related the circumstances to me. (I have not those notes—they have been destroyed; they were mere catch-words, and perfectly unintelligible to any one besides myself.) The Bishop denied each of the particulars as I stated them; I mean the particulars of the offences alleged. The Bishop said, that if he saw Mr. Beare he thought the thing could be explained, or words to that effect. I replied, I will bring Mr. Beare. The Bishop said he would be happy to see him; and we made an appointment to meet on the morrow.

4. What were the alleged offences, as you stated them to the Bishop?

The Bishop had kissed Mrs. Beare; that he had put his hand on her naked bosom; and on her body below the corset-bone, outside of her dress.

5. Did you state the particulars to the Bishop fully, as they had been stated to you by Mr. Beare?

I did.

6. Did the Bishop deny those particulars in general, or in particular?

He denied them one by one, as I proceeded, except that of kissing Mrs. Beare.

7. What was the manner of the Bishop when he made these denials?

It seemed to be that of great astonishment.

8. Did you call the next day; and if so, who accompanied you?

I did, in company with Dr. Milnor, Dr. Higbee, and Mr. Beare.

9. Did you see the Bishop on that occasion, and have any conversation with him; and if so, please state all the conversation during the interview, and in the Bishop's presence, as well between you and the Bishop, as all the other conversation?

I saw the Bishop, and almost all that was said came from the Bishop himself. He began with saying how much he was grieved that any thing had occurred at his visit to Mr. Beare's that had given Mr. Beare or his wife any pain. He repeated this in a variety of language, expressive of his deep regret for having wounded Mr. Beare's feelings: Mr. Beare asked the Bishop whether he denied the truth of the things which I had stated the day previous. He said, no; but Mrs. Beare misunderstood me, or words to that effect. The Bishop said he had a warm and affectionate manner, which might sometimes be misconstrued. After a while, Mr. Beare repeated the question whether the Bishop meant to deny Mrs. Beare's statements, as given by me. The Bishop again said, no, and went on to explain how Mrs. Beare might be mistaken.

10. Did he explain putting his hand on her naked bosom; and if so, how?

No; he referred to no particulars in any of his explanations, I think. He dwelt upon his intentions to do nothing wrong. He frequently assured Mr. Beare to that effect; and apologized to him if *he had* done any thing which had offended Mr. or Mrs. Beare. That was the substance of what passed. The interview lasted about half an hour.

11. What was the Bishop's manner during this second interview—was he calm, or agitated?

He seemed much agitated, and said he had passed a very unhappy night.

12. Did Dr. Milnor say any thing to the Bishop, and what, at the close of that conversation?

At the close of one of the interviews, I do not recollect which, in the way of respectful admonition, I should say, on the importance of great prudence and circumspection on the part of the Bishop, as evil reports of the like nature had got abroad. That, I think, was the import of what Dr. Milnor said.

13. What did the Bishop say in reply to that?

That all men in public life were more or less subject to evil report, or something to that effect.

14. Was any thing said in the hearing of the Bishop, as to his explanations, whether satisfactory or not?

I cannot speak positively that any thing was said in the presence of the Bishop. The Bishop having several times apologized to Mr. Beare, asked whether he could do any thing more.

Cross-Examination.

1. When the Bishop, after having made the apologies you have spoken of, asked

if he could do any thing more, was any thing said in reply to that question by anybody, and by whom?

I think Mr. Beare said that he was satisfied. My recollection is indistinct; I was so engrossed with my own feelings, that I cannot now testify precisely what was said by either party.

2. I want you, if you can, to try and recollect the words used by the Bishop in answer to the question put to him by Mr. Beare, whether he denied what Mrs. Beare said. Did not the Bishop say, "I do not mean to question the truth or veracity of Mrs. Beare, but she has misconstrued or misunderstood what took place!"

As far as I can recollect, the Bishop's words were, "No, my dear brother, I do not deny Mrs. Beare's word; but I think she misunderstood me."

3. At this second interview at the Bishop's, were the particulars of the charges, as had been stated by you at the first meeting, repeated by anybody?

They were not.

4. Do you recollect, at the first interview at the Bishop's of which you have spoken, stating any thing, of Mr. Beare having stated to you, impropriety of conduct on the part of the Bishop with a Miss Franklin?

I do not recollect. Upon further reflection I think I did, and that it was among the notes which I had taken on the statement of Mr. Beare. I recollect it distinctly now that it is brought to my mind.

5. Do you recollect what the statement referring to Miss Franklin was?

I cannot speak with respect to improprieties, but I understood that Mr. Smythe was not willing that Miss Franklin should go up and take a seat upon a tree beside the Bishop.

6. Do you recollect any thing being said at that first interview in connection with the reference to Miss Franklin, that the Bishop's conduct towards her had been such as very much to hurt the feelings of Mr. Smythe, or words to that effect?

I can only say, I have no distinct recollection.

7. When the Bishop answered the question put to him by Mr. Beare, whether he denied what Mrs. Beare had said, was there any thing to induce you to believe at that time that the Bishop referred to the particular charges which had been made against him, or generally to any charge being made against his purity or morality?

I thought he referred to those particular statements.

8. You have said in your direct examination that Mr. Beare's question to the Bishop was, whether he meant to deny Mrs. Beare's statements, as mentioned by you the day before; I want to know whether you mean to be positive about the latter part, or whether you merely inferred that the statement referred to by Mr. Beare, was the one made by you the day before?

I am positive that Mr. Beare's question referred to the statement I had made the day before. He said so; his language was, "Bishop, do you deny what was stated by Dr. Muhlenberg, yesterday?" or words to that effect.

By the Court.

By Bishop McIlvaine.

1. When you say that Mr. Beare expressed himself *satisfied* at the conclusion of the interview, did you understand him as meaning, that he was satisfied with the Bishop's apology, or with his having declared that he did not deny Mrs. Beare's statements?

I have already said, that I was at that time so much taken up with my own feelings, that I cannot say how I interpreted it then.

2. Were you yourself satisfied with the apology at that time?

I was not.

By Bishop Doane.

3. You have stated that in the second interview the Bishop appeared much agitated, and began with words designed to sooth Mr. Beare; was there any thing in Mr. Beare's manner to produce such feeling in the Bishop; and to lead to such language?

I do not recollect that there was.

Cross-Examination resumed.

9. Do you remember whether the Bishop and Mr. Beare, upon meeting at that interview, shook hands together; and whether there was or was not mutual emotion at the time?

I do not remember. I think the Bishop shook hands with us all.

10. Did he also shake hands with you all, including Mr. Beare, at parting?

I think he shook hands with us all; but I have already said, I felt so badly myself, I cannot say what took place with others.

The evidence for the Presentment was here closed, with the exception of that of Miss Ann Wilson, to be presented in writing.

The REV. JOHN FREDERICK SCHROEDER, D. D., was then called as a witness by Counsel for the Respondent, and examined.

Direct Examination.

1. What is your occupation and place of residence ?

I am a Presbyterian of the Diocese of New York, and reside in Flushing.

2. Are you acquainted with the Rev. Henry M. Beare and his wife ?

I am.

3. Have you any recollection of seeing Mr. Beare and his wife in company with Bishop Onderdonk, any time in the year 1843 ?

I have.

4. At what place did you then see them so in company, and at what time of the year ?

In the middle of July, at St. Ann's Hall, Flushing, and at Little Neck, near Flushing.

5. Did any, and what, conversation take place between Mr. Beare, or his wife, or both of them, with the Bishop, at those times ; if so, state as near as you can recollect what passed in that conversation ?

At Flushing, the only topic of conversation that I remember, was the dining of the Bishop on the next day at the Rev. Mr. Beare's. In my house at Flushing, Mr. and Mrs. Beare were presented to the Bishop by me ; and during that interview the request was made by Mr. Beare, that the Bishop would dine with him the next day. The Bishop plead a previous engagement. The Rev. Mr. Beare urged, and the Bishop then consented. At Little Neck, on the next day, after the ordination of the Rev. Mr. Beare, in the vestry-room of his church, I heard the Bishop congratulate Mrs. Beare, on the advancement of her husband to the Priesthood ; to which she replied with evident satisfaction. I remember no other conversation.

6. At the meeting at your house, between the Bishop and Mr. and Mrs. Beare, do you recollect whether they shook hands together, and appeared glad to see the Bishop ?

I do not remember that they shook hands ; but I expected, and thought I observed, great cordiality on the part of Mr. and Mrs. Beare.

7. Have you any recollection whether Mrs. Beare did or did not join her husband in urging the Bishop to dine with them the next day ?

I have not.

8. Did you perceive in either of those interviews, in your own house, or at the church at Little Neck, any thing like coldness towards the Bishop, on the part either of Mr. or Mrs. Beare ?

I did not.

9. Do you remember at what particular place in your house it was, that this invitation to dinner was given ?

In the front parlor of that part of the house called the Rectory.

Cross-Examination.

1. Is there any thing, and what, that impressed the conversations to which you have alluded on your memory ?

There is : a conversation with the Rev. Mr. Beare and his wife, and a recurrence to observations made by myself at the time to others.

2. When and where was the conversation referred to, with Mr. and Mrs. Beare ?

At his house, three weeks ago.

3. For what purpose did you go to his house ?

To refresh my memory, and aid him in refreshing his, on the subject of charges brought against the Bishop.

4. Who requested you to go to his house?

No one.

5. Had you, prior to going to his house, mentioned your knowledge of these conversations to the Bishop?

I had not.

6. Had you mentioned it to any other person or persons, and to whom?

To several members of my family, and to the Rev. Mr. Goodwin. I believe to no other.

7. How came you to mention it to your family?

From hearing that Mr. Beare and his wife were acting in a manner which I thought inconsistent with their past conduct, since alleged difficulties.

8. How came you to mention it to Mr. Goodwin?

Because he was present at my house, on the day when Mr. and Mrs. Beare were there, and I thought that he might have observed, what I did not.

9. Where was Mr. Goodwin when you made this communication to him?

At No. 20 John-street, in this city.

10. For what purpose did you go to see Mr. Goodwin, when you mentioned it to him?

I met him casually.

11. Is 20 John-street a private house?

No—it is the depository of the Sunday-School Union of our Church.

12. Who commenced the conversation between you and Mr. Goodwin, relative to Mr. Beare?

I think that I did.

13. Have you any doubt that you did?

My answer implies that, of course. I am not certain, but I think so.

14. Before seeing Mr. Goodwin, as you have stated, had you seen the Bishop on this subject, or any one on his behalf?

I had not seen the Bishop, nor any one on his behalf.

15. Was you in doubt as to the conversations testified to by you, with Mr. and Mrs. Beare, before you visited them three weeks ago, as stated?

I was not.

16. Why, then, did you say that you visited them for the purpose of refreshing your recollection?

To refresh my recollection as to facts, and not words.

17. What facts?

Their apparent cordiality, especially Mrs. Beare's accepting my invitation to be presented to the Bishop.

18. Had you any doubt of these facts before you visited them?

I had *not*, myself, but heard they had.

19. From whom did you hear that they had?

From many persons, who spoke of affidavits which they had made.

20. Name the persons?

I remember Mr. Thomas C. Butler, at 20 John-street. Of others I cannot speak by name.

21. Do you mean that you do not *recollect* the names of others?

It was a topic of such common remark, that I cannot specify.

22. Can you specify *no* name, but that of Mr. Butler?

I think not.

23. Did you inform Mr. and Mrs. Beare, when you visited them, three weeks ago, of the object of your visit?

I did.

24. What did you say to them, in respect to the object of your visit? State particularly.

I stated that I called to ascertain whether they remembered what I did.

25. Were Mr. and Mrs. Beare both present?

They were.

26. Was any other person present, and who?

My son, John Frederick, a lad of seventeen.

27. Did you state to Mr. and Mrs. Beare why you wished to obtain information from them, such as you have referred to ?

I did.

28. What did you say in reference to that ?

That I wished our testimony to be alike.

29. Did you say, then, that you was going to be a witness in this matter ?

I did not.

30. Had you been subpoenaed as a witness ?

I had not.

31. Had you been requested to attend by anybody, and by whom, as a witness ?

I had not, at that time.

32. Why, then, was you desirous of knowing whether your testimony and Mr. and Mrs. Beare's would agree ?

I thought their conduct since they were at my house, as stated, to be inconsistent with their conduct at that time ; and I thought that I might possibly be summoned as a witness.

33. Did you say so to Mr. Beare ?

I did.

34. Did you, or not, tell Mr. Beare that you came to visit him as his friend ?

I did not in words, but have often visited him as his friend, since his residence at Little Neck.

35. Did you ever tell any person, and what person, the conversation which occurred between you and Mr. Beare, on the visit last referred to ?

I have told members of my own family, and the Rev. Mr. Goodwin, and the Counsel, last evening. I told the Bishop last night, and once before, since my interview with Mr. Beare, which was the first time I spoke with the Bishop on the subject—which are the only times I have spoken with the Bishop on the subject.

36. How long after you visited Mr. Beare did you communicate to the Bishop the first time, the conversation which then took place ?

It was during the same week.

37. On what day of the week was the visit made to Mr. Beare ?

On Wednesday, at noon.

38. On what day did you make the communication to the Bishop ?

On Thursday or Friday of the same week.

39. Where was the Bishop when you made the communication to him ?

In his study.

40. Did you come to the city on purpose to make that communication ?

I did not.

41. Did you go to visit Mr. and Mrs. Beare for the purpose of getting statements from them, to be communicated to Bishop Onderdonk ?

I did not.

42. At the conversations testified to by you, between Mr. and Mrs. Beare, and Bishop Onderdonk, who was present besides yourself and them ?

At my house the conversation as stated, was by the door of my front parlor, in the presence of the Bishop alone ; and at Little Neck in the presence of several clergymen.

43. What clergymen ?

There were in the vestry-room, the Archdeacon of Trinidad, the Rev. Mr. Goodwin, the Rev. Mr. Sweetzer, I think the Rev. Dr. McVickar also, and the Rev. Mr. Beare.

44. Were these gentlemen all present when Mrs. Beare entered the vestry-room ?

I think they all were, I know that several were.

45. Was Mrs. Beare, when she entered, accompanied by any person, and by whom ?

By a lady ; I think Miss Strong.

46. Did she introduce the lady to the Bishop ?

I do not know.

47. Did the lady say any thing to the Bishop ?

I did not hear her say any thing.

48. Was the lady with her all the time that she remained in the vestry-room ?
I do not remember, there were so many in the vestry-room, which was small.

49. Were there more ladies in the vestry-room than Mrs. Beare and Miss Strong.

I think not.

50. When Mr. and Mrs. Beare were presented by you to the Bishop, as you have testified, had they just entered the room, and were they unattended ?

I had been with them to my green-house, heard them regret that they were too late for the Confirmation, proposed to them to be presented to the Bishop, and they promptly consented, and were presented by me then, without delay, in the front parlor, to which we proceeded from the green-house.

51. Who walked from the green-house with you ?

Mrs. Beare, who accepted my arm.

52. Who walked with Mr. Beare ?

A lady, whose name, I think, was Miss Strong.

53. Do you *know* Miss Strong ?

She was introduced to me, I think, on that occasion.

54. Did you all enter the room where the Bishop was, together ?

We did not.

55. Who did not ?

Mr. Beare and the lady with him, Miss Strong.

56. Did you and Mrs. Beare alone enter the room where the Bishop was ?

We went together through the open door of the parlor, leading to the portico ; and in about a minute Mr. Beare, alone, followed us, leaving the lady on the portico.

57. Was Mrs. Beare presented before Mr. Beare came up ?

The moment before.

58. You have stated that you do not recollect that she shook hands with the Bishop, but as you expected, you thought you observed, great cordiality ; what were the manifestations on her part of such cordiality ? please describe.

Her countenance and manner.

59. During the presentation of Mrs. Beare, did she still hold on to your arm ?

When I presented her she was on my arm.

60. Did she *say* any thing ?

I do not remember what she may have said.

61. The question is repeated ?

Had she not, I think I must have taken notice of it.

62. I ask you now again, Did she shake hands with the Bishop ?

I do not remember.

63. If she had not shaken hands would you not have noticed it ?

I think not.

64. If you had not expected that her reception of the Bishop would be cordial, would you have noticed her manner of reception ?

I had no reason to expect any thing but cordiality between them, and therefore expected it, and must have observed any seeming coldness.

65. After your presentation of Mrs. Beare, did Miss Strong enter the room where the Bishop was ?

I do not remember.

66. Was Miss Strong presented to the Bishop ?

Not by me, nor at all that I know of.

67. Can you recollect the words used by Mr. Beare in the invitation of the Bishop to dinner ?

The request I well remember, but not the words.

68. When was your attention first called to this conversation, after it occurred ?

I spoke of it immediately that I heard of their feelings towards the Bishop.

69. When was that ?

Since the meeting of the General Convention.

70. Did you present any other person to the Bishop on that day ?

I did, several ; eight or ten ladies, several of the clergy, and other gentlemen.

71. Can you, at this time, recall the manner of either of these persons when presented to the Bishop, besides that of Mr. and Mrs. Beare ?

I can recall nothing inconsistent with the prevailing cordiality of the occasion.

72. If there had been different shades of cordiality exhibited on the part of persons presented, do you think you could now recall the difference of those shades of cordiality?

I think that I could remember any thing inconsistent with the good feeling of the occasion.

73. You have said, in your direct examination, that the Bishop congratulated Mrs. Beare on the advancement of her husband to the priesthood; to which she replied with evident satisfaction. What did she say?

Her precise words I do not remember; but her manner I distinctly remember.

74. Did she say any thing?

I think she did, or I must have taken notice of it.

75. Did you not feel, Doctor, on both the occasions testified to, at your house, and at the church, happy yourself?

I did.

76. Was any person present with the Bishop when you entered the parlor at your own house?

There may have been in a remote part of the room, but I do not remember; the room is large.

77. What was the Bishop doing at that time?

He had gone into the room after dinner, but whether alone or with company, I cannot say.

78. Was Dr. Wainwright in the room?

I think not at that time—at the time of the presentation referred to.

Direct Examination resumed.

10. You have stated that during the interview at which Mr. and Mrs. Beare were presented to the Bishop by you, the request was made by Mr. Beare that the Bishop would dine with him the next day, and that the Bishop, after pleading a previous engagement, and being thereupon urged by Mr. Beare, accepted the invitation. Are there any circumstances which fix your recollection of that fact? and if so, please to state them.

[This question was objected to by the Counsel for the Presentment, and its admissibility argued by Counsel on both sides, and the objection overruled by the Court, on the withdrawal of the last clause and alteration of its form by the Counsel for the Respondent; as follows, viz.:]

You have stated that during the interview at which Mr. and Mrs. Beare were presented to the Bishop by you, the request was made by Mr. Beare that the Bishop would dine with him the next day, and that the Bishop, after pleading an engagement, and being thereupon urged by Mr. Beare, accepted the invitation. Did any circumstance occur, soon after, tending to fix that conversation in your memory?

A circumstance did occur the next day to fix it firmly.

11. You have stated that you do not recollect the names of persons other than Mr. Thomas C. Butler, who referred to statements by Mr. and Mrs. Beare, at variance with your recollection, because it was a topic of such common remark as to prevent your specifying names. At what time was it such topic?

At the time of the General Convention. I never heard it before. I mean that I never heard of any difficulty between the family of Mr. Beare and the Bishop until that time, and suspected none.

12. When you proposed to Mr. and Mrs. Beare to be presented to the Bishop, and they promptly consented, upon what part of the premises were you?

At the green-house.

13. How far was that from the room in which the presentation took place?

About 100 feet.

14. After you had presented Mrs. Beare to the Bishop, did she hold on to your arm; or let it go?

She let it go. I turned to see and present Mr. Beare, and then presented him.

15. How long was it before she resumed your arm?

The time occupied by the conversation between Mr. Beare and the Bishop, about two or three minutes; after which we proceeded to view the premises with their female friend Miss Strong.

16. You have stated that you well remember the request of Mr. Beare to the Bishop to dine with him, but not the *words*—do you remember the *manner*, and if so, describe it.

I remember that the manner was cordial, for I must have observed the contrary.

17. Do you recollect who waited on Mrs. Beare to her carriage, when she left your house?

The Bishop and myself.

Cross-Examination resumed.

79. Do I understand you as saying that you never heard of any difficulty between Bishop Onderdonk and Mr. or Mrs. Beare, before the meeting of the General Convention?

I never had heard of it before, and then heard it with surprise.

80. Had you never heard before of a meeting of several clergymen at the house of the Bishop, to converse with him on the subject of an alleged insult to Mrs. Beare?

I never heard of it until the time of the General Convention?

81. Why did you say you expected the meeting of Mrs. Beare and Bishop Onderdonk would be cordial?

Because the Bishop had always spoken to me in the kindest terms of Mr. and Mrs. Beare, and was to ordain him on the next day.

82. Where was Mr. Beare, when you and the Bishop handed Mrs. Beare to her carriage?

I think that he was already in the carriage, having just unfastened the rein of his horse, and brought the carriage to the door.

83. Was Miss Strong in the carriage?

I think not.

84. Did you not see her get in the carriage?

I must have seen her, of course. I do not distinctly remember the particulars of her getting in.

85. Who attended Miss Strong to the carriage?

We all went together from the house to the carriage. By "all" I mean the Bishop, the two ladies, and myself.

86. Are you sure that Mr. Beare did not attend his wife, or Miss Strong, to the carriage?

I have a reason for thinking that he did not—I am not *sure*. His uniform practice to bring his own horse from the post at the stable, to the door, leads me to think that he did so on that occasion.

87. Did both you and the Bishop have hold of the hand or arm of Mrs. Beare, in conducting her to her carriage?

I do not remember that either did.

88. By waiting upon her to her carriage, then, you mean that you and the Bishop walked with her to the carriage?

I mean that we descended the stairs leading from the door of the house to the carriage at the foot of the stairs.

89. Can you now say that Mr. Beare did not hand his wife to the carriage?

It is my impression that he did not.

90. Can you be more positive?

I cannot.

The hour of adjournment having arrived, the Court adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Thursday, December 26th, 1844, }
half-past 9 o'clock; A. M. }

The Court met pursuant to adjournment. Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The Rev. Frederick J. Goodwin was called up as a witness by the Counsel for the Respondent.

Henry A. Smythe, called up as a witness by the Counsel for the Respondent, was sworn by Dayton Hobart, Esq., the Commissioner appointed by the Clerk.

The Rev. FREDERICK J. GOODWIN was examined.

Direct Examination.

1. What is your profession, and where do you reside?

I am a Presbyter of the Diocese of New York, and reside in Brooklyn.

2. How long have you resided there?

I went there in January last, remaining until the first of June, and returned the 7th of November.

3. Where did you reside during the years 1842 and 1843?

In Flushing; except that I was absent 2 or 3 months. I commenced residing there in December, 1837, and left January, 1844.

4. Do you know the Rev. Henry M. Beare and his wife, and if so, how long have you known them?

I do know them, and have known them from their first residence at Little Neck, in the town of Flushing.

5. Were you present at the ordination of Mr. Beare to the Priesthood, in July, 1843?

I was.

6. Where did it take place?

In the church at Little Neck.

7. Were you in the vestry-room of that church after morning service?

I was.

8. Whom did you see there on that occasion?

The Bishop of New York, the Rev. Mr. Sweetzer, the Rev. Dr. Schroeder, I think, Mrs. Beare, and a Miss Strong—perhaps some others, though I do not particularly recollect. The Rev. Mr. Beare was present.

9. Did you hear any conversation between the Bishop and Mrs. Beare, or observe their deportment towards each other; if so, state and describe both?

I do not recollect of hearing any conversation that passed between them at that time. Their deportment towards each other seemed perfectly kind, and friendly and cordial in every respect.

10. Did you dine at the house of the Rev. Mr. Beare on that day?

I did.

11. Who composed the party at dinner?

The Bishop, the Rev. Mr. Sweetzer, the Rev. Mr. Beare and wife, Miss Strong, and myself. There may have been one or two others, though I do not recollect of any.

12. Do you recollect whether or not Mr. Beare and his wife, or either of them, conversed with the Bishop during dinner?

I do. They both conversed with the Bishop.

13. Describe the manner of that conversation, whether free and cordial, or constrained and reserved, on the part of Mr. or Mrs. Beare?

On the part of both of them it seemed to me perfectly free and cordial.

14. Do you know whether the Bishop had been invited to dine at Mr. Franklin's on that day; and state the circumstances of your knowledge, and how and when the invitation was given?

The Bishop was invited to dine at Mr. Franklin's on that day. The invitation was given me some few days previous by Mrs. Franklin, to be extended to the Bishop. I did extend that invitation on the arrival of the Bishop in Flushing, on the Friday preceeding the Sunday.

15. Did you at any time, and when, meet Mr. Beare on board the Flushing steamboat; had you any conversation with him in which the Bishop was referred to; if so, state as near as you can the particulars of that conversation?

I did meet Mr. Beare, about 14 months since, on-board the Flushing steamboat. He did speak of the Bishop. The circumstances which led to it are as follows: He remarked to me that he had subscribed for the Protestant Churchman. I suggested to him, that it might be regarded by some as arraying himself against the Bishop. He replied he should be sorry to have it so regarded; that he had none but kind feelings to the Bishop; that he had taken the paper because he thought it would prove a practical family paper, such as he believed was needed in this Diocese. This was the substance of the language, and I have reason to believe, almost the very words. I felt it due to Mr. Beare, to state this conversation to the Bishop; which I did the very day, or if not the very day, certainly within a few days.

16. What was the manner of Mr. Beare in his allusion to the Bishop?

It was such as led me to believe that he had the highest esteem and respect for the Bishop.

17. Was this conversation before or after the dinner at Mr. Beare's, about which you have testified?

As near as I can recollect, it must have been about two months after the dinner at Mr. Beare's.

18. With whom did you ride from the church to Mr. Beare's, the day you dined there?

I rode, I think, with the Bishop and the Rev. Mr. Sweetzer.

19. Have you any doubt that you rode with the Bishop?

I cannot recollect with certainty with whom I rode from the church to Mr. Beare's house.

20. Were you present at the reception of the Bishop by Mr. and Mrs. Beare, at their house, and did you see them together before dinner, and if so, describe the manner of Mr. and Mrs. Beare towards the Bishop, in those instances.

I was present during the interval between services, with the Bishop and Rev. Mr. Sweetzer, at Mr. Beare's house. The manner of the Rev. Mr. Beare and his wife towards the Bishop, before dinner, at the table, and after dinner, was perfectly kind, friendly, and respectful.

Cross-Examination:

1. At the dinner about which you have testified, do you recollect whether Mrs. Beare said any thing, and what, to the Bishop?

I recollect that she spoke to the Bishop. What she said I do not recollect.

2. At the vestry-room what did Mrs. Beare say to the Bishop?

I do not recollect that she said any thing; it is very possible that she might; and I am inclined to believe that she did.

3. Before the dinner or meeting in the vestry-room, had you ever heard that Bishop Onderdonk had insulted Mrs. Beare?

Never.

4. Had you before these times ever heard that there had been any difficulties whatever, between Mr. Beare, or Mrs. Beare, and the Bishop?

Never.

Direct Examination resumed.

21. Was there any thing, in the manner of Mr. and Mrs. Beare, or either of

them, towards the Bishop, on any of the occasions to which you have testified, indicating that there was any difficulty or coldness between them?

Not in the slightest degree; their manner towards the Bishop was as kind and friendly in every respect, as it could well have been.

By the Court.

By Bishop McIlvaine.

1. When were you first led to review the transactions to which you have testified, and to examine your recollection of them?

Within some 3 or 4 weeks past.

By Bishop De Lancey.

2. Was the manner of Mr. and Mrs. Beare, on the occasion of the dinner, less kind, or cordial, or friendly towards Bishop Onderdonk, than it was to yourself, or to the other clergymen present?

It was not.

The REV. HENRY W. SWEETZER, having been sworn on Tuesday, the 24th inst., was called by the Counsel for the Respondent, and examined.

Direct Examination.

1. What is your profession, and where do you reside?

I am a Presbyterian of the Episcopal Church, in the Diocese of New York. My residence is at the Astoria Institute, at Astoria, on Long Island, about four and a half miles from Flushing.

2. How long have you resided there?

Since two years ago last October.

3. Were you at the church at Little Neck, of which the Rev. Mr. Beare is minister, on the morning of his ordination to the Priesthood?

I was present.

4. When did you arrive at the church, and by whom were you accompanied?

It was some time before the commencement of the morning prayer; I do not remember how long. I was in company with Bishop Onderdonk, and the Rev. Mr. Goodwin, of Flushing.

5. On your arrival at the church, did you enter the vestry-room, and if so, who was there at the time, or at any time, before the commencement of morning service?

I went immediately into the vestry-room with the persons before named. There were present, besides Rev. Mr. Beare, Archdeacon Cumming of Trinidad, Rev. Dr. McVicker, Rev. Dr. Schroeder, Rev. Mr. Van Bokkeem. These are all the persons whom I distinctly remember as present.

6. Did you see Mrs. Beare in the vestry-room before the commencement of the morning service?

I have an indistinct recollection of Mrs. Beare being present; but, from a remark that was made to her, commendatory of her qualifications as a clergyman's wife, made some time during the day that I was there, my impressions are that it must have been in the vestry-room.

7. What was the remark, and by whom made?

I cannot remember the words distinctly that were used; but the substance of the remark was that she made a very excellent clergyman's wife. The remark was made by the Bishop to Mrs. Beare.

8. What circumstance led to the making of that remark?

It was in reference to her preparing the elements for being placed upon the altar in the church.

9. Do you remember how she received the remark of the Bishop?

I have no recollection on that point.

10. Did you see Mr. and Mrs. Beare in the vestry-room after morning service?

I did.

11. Who besides were there ?

There was one lady present, a Miss Strong ; there were some of the clergymen before mentioned, present ; but I do not remember which. The Bishop was present.

12. Did you hear any conversation between the Bishop and Mr. or Mrs. Beare, in the vestry-room, or observe their deportment towards each other, and if so, state and describe them.

I did hear conversation between them, and observed their deportment. I do not remember the words used by the Bishop ; in substance, he congratulated Mrs. Beare upon the elevation of her husband to the office of the Priesthood. Mrs. Beare received the congratulation with much apparent satisfaction and good feeling.

In regard to Mr. Beare's deportment, I do not recollect, but he appeared, so far as I remember, much gratified.

13. Did you dine at the house of Mr. Beare on that day, and if so, who composed the party at dinner ?

I did dine there. The persons present, so far as I remember, were Miss Strong, the Bishop, Rev. Mr. Goodwin. I remember no others besides the members of the family. I mean Mr. and Mrs. Beare.

14. With whom did you ride to the house of Mr. Beare from the church ?

I have no distinct recollection.

15. Were you present at the reception of the Bishop by Mr. and Mrs. Beare, at the house, or did you see them together before dinner ? If so, describe the manner of Mr. and Mrs. Beare towards the Bishop, in those instances.

I was present. I did see them in the same room before dinner. I thought their manner of receiving the Bishop was very respectful and courteous. I mean to include both their reception of the Bishop and the interval which occurred before dinner.

16. Do you recollect whether or not Mr. and Mrs. Beare, or either of them, conversed with the Bishop during dinner ?

I remember nothing except the ordinary courtesies of the table.

17. Will you describe the manner of Mr. and Mrs. Beare at dinner, towards the Bishop, whether free and cordial, or constrained and reserved ?

So far as I remember, it was free and cordial.

18. Was there any thing in the manner of Mr. and Mrs. Beare, or either of them, towards the Bishop, during any part of that day, indicating any difficulty between them, or coldness on their part towards him ?

I saw nothing whatever to induce such a belief.

Cross-Examination.

1. When, after the dinner spoken of, did you first speak of the manner of Mr. and Mrs. Beare towards the Bishop on that occasion, and to whom ?

I do not remember the time, nor the person.

2. Was it before the session of the General Convention ?

I think it was not.

3. Did you ever speak to Mr. Goodwin on the subject, and when ?

I have spoken with him, but I do not remember when.

4. Was it since this investigation commenced, or before ?

I cannot distinctly remember, but I think it was since.

5. Did you first speak to Mr. Goodwin on this subject, or he to you ?

I do not remember.

6. Did you ever speak to Bishop Onderdonk on the subject, and when ?

I have had conversation with him, on Monday evening of this week.

7. Never before ?

Never before.

8. You say you heard conversation between Mrs. Beare and Bishop Onderdonk, in the vestry-room ; what did she say in that conversation ?

I do not remember.

9. Did she say any thing?
I think she did.

By the Court.

By Bishop De Lancey.

1. Was the manner of Mr. and Mrs. Beare towards the Bishop, on the occasion of the dinner, or on any of the occasions when you saw them together, less cordial, kind, or friendly, than it was to yourself, or other clergymen present?
It was not.

Cross-Examination resumed.

10. Have you any recollection of the particular manner of Mrs. Beare towards either of the clergymen present at the dinner, or elsewhere?

I have no recollection of any thing in particular, except her deportment towards the Bishop as before mentioned, and towards myself. I mean her treatment *in general*, of the Bishop.

11. Can you *now* remember that she said any thing, and what, to the Bishop that day?

I remember only of her speaking with the Bishop; the particulars of the conversation I do not remember.

12. Are you sure it was a conversation?

I cannot remember whether it was a conversation between the Bishop and herself *alone*.

13. Do you remember any one observation made that day by Mrs. Beare to the Bishop; and if so, what was it?

I do not remember any *particular* observation.

14. Do I understand you as saying any thing more than this: That the demeanor of Mrs. Beare on that day, in her own house, was lady-like to her husband's guests?

I can only testify in respect to her general deportment, which was, certainly, lady-like.

Direct Examination resumed.

19. If there had been any coldness or reserve on the part of Mrs. Beare towards the Bishop, would you, or not, have observed it?

I most certainly should have observed it.

Cross-Examination resumed.

15. Had you heard of any difficulties before that time between Mrs. Beare and the Bishop?

I had heard nothing.

By the Court.

By Bishop Whittingham.

2. Would you ever have suspected the existence of difficulties between Mr. and Mrs. Beare and the Bishop, in consequence of what you then observed?

I never should have suspected any thing of the kind. I was very much astonished when I heard of the difficulty.

HENRY A. SMYTHE was called up as a witness for the Respondent, and examined.

Direct Examination.

1. What is your occupation, and place of residence?

I am a merchant in Pine-street, and reside at the corner of Thompson and Amity streets.

2. Are you a married man; and what was the maiden name of your wife?
I am. My wife's maiden name was Mary F. Franklin.
3. What was your wife's father's name, and where does he now reside, and where did he reside in the summer of 1842?
Joseph L. Franklin—at Bayside, Flushing, where he has resided several years.
4. Were you married in the summer of 1842, or when were you married?
I was married in May, 1843.
5. Did your wife, then Miss Franklin, reside with her father at Bayside in the summer of 1842?
She did.
6. Have you any recollection of being at the house of your father-in-law at any time in the month of July, 1842, in company with Bishop Onderdonk and the Rev. Mr. Beare and his wife?
I have.
7. Was this in the evening?
It was in the afternoon.
8. Do you remember how long the Bishop and Mr. and Mrs. Beare remained at Mr. Franklin's that evening?
Until after tea.
9. Was it dark at the time they left, or did they leave before?
I do not remember; but it strikes me they were anxious to leave before dark; I do not remember particularly.
10. Have you any recollection, during the time they were at Mr. Franklin's, of seeing the Bishop take any improper liberties with your present wife?
No, sir. I may add, that she was not a person who would encourage those things.
11. Have you any recollection of having said at that time, in consequence of seeing the Bishop's conduct towards Miss Franklin, that if it was not for his station, you would take satisfaction of him, or any words to that effect?
It would be well for me to remark, that I had known Bishop Onderdonk for several years, and in different parts of the State, and felt well acquainted, or on terms of jesting occasionally; and I believe I made some such remark in jest; which I should not have done if I had felt that the Bishop had ever taken any improper liberties, within my knowledge.
12. Was that remark made by you to the Bishop himself, or to any third person?
It being a joke, it was intended for him to hear. I might remark, at the same time, that the Bishop went on a platform in a tree, in front of the piazza, with my intended at that time, after my inviting her to go, and her playfully refusing to go with me—which called these remarks from me in jest.
13. Who married you?
Bishop Onderdonk.
14. Has Bishop Onderdonk, ever since this occurred, continued to be on terms of intimacy with your father-in-law's family, and with yourself and wife?
I cannot say as to my father-in-law's family. I know he has been in the habit of visiting them, whenever he has visited the churches in that quarter. As for myself, I have invited the Bishop, when I have seen him, to visit me; which he has not done, as I have been a housekeeper but a short time.

Cross-Examination.

1. Do you remember on what day of the week it was when you saw the Bishop at Mr. Franklin's, as you have testified?
I do not. I generally visited there from Saturday until Monday. I should think it likely this was on Saturday; at any rate, there were some services the next day, I should judge, as near as I remember; it is my impression the Bishop was expected there at dinner the next day.
2. When the Bishop went up in the tree on the platform, and Miss Franklin was with him, she having playfully refused to go up there with you, did the Bishop humor the joke?
We were all in the spirit of joking.
3. Did the Bishop lay his hand or his arm on Miss Franklin's shoulder?

I should judge not ; for those things generally do not take place without some encouragement on the part of the female.

4. Do you mean to say that the Bishop did not do so ?

Not to my knowledge : and I generally took some notice of my intended's ways ; a man is not apt to be blind in that quarter.

5. Would you have considered it an indignity worthy of your notice, if the Bishop had playfully put his arm on Miss Franklin's shoulder ?

No, sir ; inasmuch as he was intimate with the family, and looked upon in the light that he was.

6. Please recollect, with more certainty if you can, whether this occurrence was on Saturday or Sunday ?

My impression is it was Saturday.

Pending this cross-examination, Mrs. Mary Franklin, the Rev. John Dowdney, and John F. Schroeder, Jr., appeared in Court as witnesses for the Respondent, and were severally sworn by Dayton Hobart, Esq., Commissioner.

Direct Examination resumed.

15. Did you meet the Bishop at the house of Mr. Franklin on any other day during that year, than the one of which you make mention ?

I cannot say that I did : never in company with Mr. and Mrs. Beare, except at that time.

16. Did you observe whether there was any coldness or reserve on the part either of Mr. or Mrs. Beare towards the Bishop during that afternoon or evening ?

I did not observe any.

17. If there had been any such coldness or reserve on the part of Mr. or Mrs. Beare, towards the Bishop, would you have observed it ?

I think I should, most certainly. There were no persons present but the family, Mr. and Mrs. Beare, and the Bishop. If there had been a large party I might not have observed it.

Mrs. MARY FRANKLIN was called up as a witness by the Counsel for the Respondent, and examined.

Direct Examination.

1. What is your husband's name ?

Joseph L. Franklin.

2. Where did you reside in July, 1842, and where have you ever since resided ?

At Bayside, Flushing.

3. In the summer of 1842, was Bishop Onderdonk at your house, in company with Rev. Mr. Beare and his wife ?

They were at my house, and spent the afternoon there. I think it must have been at the time of Confirmation in Mr. Beare's church.

4. Do you remember how late they stayed at that time ?

I do not. I think they left early, as he was in the habit of leaving early.

5. Before or after dark ?

It was after tea.

6. Did Mr. and Mrs. Beare, or either of them, show any coldness or reserve towards the Bishop, on that visit to your house ?

I did not see any thing like it.

7. Do you recollect the period of the ordination of Mr. Beare to the Priesthood ?

I do.

8. Had you invited Bishop Onderdonk to dine with you, on the Sunday upon which that ordination took place ? and if so, through whom had you given the invitation ?

I did, through the Rev. Mr. Goodwin, to dine that day, or make us a visit whenever most convenient to him.

9. Did you expect him to dine with you on that day?

I did—and went to the church to bring him home.

10. Did you, or not, speak to him on the subject after the morning service, and tell him you had come for him?

I did speak to the Bishop, and tell him that I came expressly for him. He said he would be most happy, but seemed to feel himself engaged to Mr. Beare. The words I cannot remember, but he seemed to consider himself engaged, and referred me to Mr. Beare to make arrangements; and that if Mr. Beare gave him up, he would return with me.

11. Did you see Mr. Beare; and if so, what passed between you and him on the subject?

I did see Mr. Beare, and urged him to give up the Bishop, and allow him to return with me. I do not remember the words Mr. Beare used, but he refused me, and I went home without the Bishop.

12. Where was this conversation between you and Mr. Beare?

In the front of the chancel of the church at Little Neck.

13. On the first occasion of which you have spoken, when the Bishop was at your house, in company with Mr. and Mrs. Beare, did you observe any impropriety, or undue freedom, on the part of the Bishop, towards your daughter, now Mrs. Smythe?

I did not.

Cross-Examination.

1. Did you observe any playful liberties towards your daughter, on the part of the Bishop?

Nothing more than he was in the habit of doing—patting her on her shoulder, and calling her “my child.”

By the Court.

By Bishop De Lancey.

1. Did Mrs. Beare hear the conversation between you and her husband, about the Bishop's dining with you or with them?

That I cannot say. I merely spoke to Mrs. Beare that day, but cannot say where she stood when I spoke to Mr. Beare.

Direct Examination resumed.

14. Upon the occasion when the Bishop spent the afternoon at your house, as you mentioned, in company with Mr. and Mrs. Beare, did you invite or expect the Bishop to spend the night at your house?

I did. His trunk was brought down and put in his room, expecting him to remain with us. I mean the room which he had previously occupied, two or three years before when he visited us.

15. Had he stayed at your house the night before?

He had not.

16. Why did the Bishop not stay at your house that Sunday night?

Mr. Beare took him home with him; and I felt a little hurt at Mr. Beare, as he knew that we expected the Bishop to remain at our house. That was one reason why I thought Mr. Beare ought to have allowed him to dine with us on the subsequent occasion, having taken him previously.

Cross-Examination resumed.

2. Do you remember that any thing was said by Mr. Beare, and what, as to the Bishop's going home with him that night?

I do not remember what passed at the time.

3. Did you ask Mr. Beare to give the Bishop up on that occasion, or did you only invite the Bishop himself to remain?

I have not a distinct recollection of what passed at that time.

4. Do you remember whether or not the Bishop declined when invited to remain that night?

I do not remember.

5. What day of the week was it when Mr. and Mrs. Beare visited you, in company with the Bishop?

Having nothing to designate it, I do not recollect.

6. Do you remember whether it was on the day of Confirmation?

I am not positive; but I think it was the day before. I may be mistaken in the day.

Direct Examination resumed.

17. You say that Mr. Beare knew that the Bishop was to stay at your house that night; how do you know that?

I received a note from Mr. Beare, wishing to borrow Mr. Franklin's horses to send for him. I wrote to Mr. Beare, saying, (he had said his horse was not able to go,) he need take no trouble about bringing the Bishop, as I would see that he came—we expected him at our house. I then invited Mr. and Mrs. Beare to meet him there, which was the cause of their coming.

18. Did you inform them, in that note, that you expected the Bishop to stay at your house?

I think I did.

19. Did your horses and carriage bring the Bishop to the church that morning?

Our horses did not, they were engaged; and Mr. Goodwin brought the Bishop to our house.

20. Did the Bishop go from your house that morning to church?

He did not go from our house; he had not been at our house.

21. When was the Bishop's trunk brought to your house?

The afternoon that Mr. and Mrs. Beare met him there.

22. Was his trunk left at your house that night?

I am under the impression it was. There was a great deal of difficulty about taking it in Mr. Beare's wagon. The arrangement was to leave the trunk, and that the Bishop should call for it in the morning. Mr. Beare brought the Bishop round the next morning, on his way to the Point, which makes me think that the trunk was left.

23. When the difficulty arose about getting the trunk in the wagon, did you say any thing about the Bishop's staying at your house that night?

I have not a distinct recollection, but most probably I did, as we were all disappointed in his not remaining there that night.

24. Did you express that disappointment at the time?

Certainly. It was understood by all.

Cross-Examination resumed.

7. Can you now recollect whether the Bishop declined to remain during the night?

I do not.

8. Did you see the Bishop on his first arrival at your house that afternoon?

I did.

9. Who accompanied him?

Mr. Goodwin brought him down, as I have stated.

10. Were Mr. and Mrs. Beare at your house when he arrived?

They were not.

11. How long afterwards did they arrive?

I cannot say positively how long.

12. Did Mr. Goodwin remain at your house with the Bishop any, and what length of time?

I do not recollect whether he stayed to tea or not, but I think not.

13. Did any other person accompany the Bishop besides Mr. Goodwin?

I think not.

14. When was this note written by you to Mr. Beare—on the day of his visit to you, or the day before?

I think the day before; certainly *not* that day. I rode to Flushing to see Mr. Goodwin to make arrangements about bringing the Bishop to our house, as our horses would be in the city.

15. Was this on the occasion of the ordination or confirmation?

Confirmation.

16. Did you see the Bishop that morning, after morning service at the church?

I do not recollect whether I spoke to him after church; I was there at the confirmation.

17. After you wrote the note, then, you did not speak to the Bishop until he was brought to your house in the afternoon by Mr. Goodwin?

I did not.

The Rev. JOHN DOWDNEY was called up as a witness by the Counsel for the Respondent, and examined.

Direct Examination.

1. What is your profession, and where do you reside?

I am a Presbyterian of the Church in the Diocese of New York, and reside at present in the city of New York.

2. Are you the Rector of a church in this city?

I am the Rector of St. James's Church, and have been connected with it for more than three years; one year as assistant minister, the last two as Rector.

3. During your connection with that church, did you know Helen M. and Jane O. Rudderow as attendants at and communicants of that church; and if so, up to what time?

They were parishioners of St. James's Church until within the last sixteen months. They left a year ago last July.

4. Do you remember any occasion during the year 1843, when Bishop Onderdonk had been officiating at that church, when any interview took place between him and the Misses Rudderow, either or both of them, in that church? if so, state the particulars thereof, as nearly as you can recollect them.

I was present at two interviews on the same day, in the morning—one before, the other after service. It was on the occasion of a confirmation. I brought the Bishop to the church that morning from his residence in Franklin-street. As we came into the church before service, the Misses Rudderow were sitting near the chancel rail, engaged in teaching their Sunday-school classes. I walked with the Bishop towards the vestry-room, and in so doing we passed very near the Misses Rudderow. They were sitting almost in the passage. I then saw mutual salutations, of a very friendly character, between the Bishop and the two Misses Rudderow.

There was a good deal of conversation at the time on both sides, between the Bishop and these ladies, which lasted, I think, several minutes. We remained there during the conversation, and then passed into the vestry-room. That, I believe, is the substance of all that took place during that interview.

There were several questions asked and answered; but I do not remember the particulars of the conversation. Of this, however, I have a distinct recollection, that there were very friendly greetings and remarks on both sides. The conversation was, I think, generally on the state of the parish, and the increase of scholars in the Sunday-school.

There was some inquiry made as to the Psalm or Hymn to be sung, on the part of the Misses Rudderow. I ought to say that the confirmation did not take place until the afternoon; the Bishop engaging to spend the day with me, I preferred having the confirmation at the second service.

5. Do you remember whether either or both of the ladies shook hands with the Bishop, on occasion of their first meeting?

I believe they both shook hands with him very cordially.

6. Have you any doubt on that point?

I have not.

7. Proceed now to state the particulars of the second interview between the Bishop and these ladies in the church?

After the morning service, I accompanied the Bishop towards the door of the church. There is but one door, the centre door. As we passed out of the church into the vestibule, we again met the Misses Rudderow; at that second interview there was conversation, and friendly greeting between them and the Bishop, of the same friendly character as before service. The conversation, I think, continued for some time, and was very animated; that is, for two or three minutes—for three or four minutes, I should think so, particularly on the part of Miss Jane Rudderow. There was laughing, and loud remarks on the part of Miss Jane Rudderow.

I heard something said about the music at that time. I do not now remember what the conversation was about in other respects. I remember distinctly there was something about the music. I will merely say, as explanatory, there were several parishioners standing near us, and during the conversation I was talking with them in the vestibule, and near the outer door. What I have said to the Court, and what I may say, is founded upon my very best recollection of the circumstances occurring at the time.

As to the general statement, I am quite positive; as to the minor particulars I do not feel quite so positive. I would also add a word in illustration of my meaning:—as to the shaking hands, and friendly salutations and remarks, I feel quite positive; but as to the words that passed in conversation, I am not so positive. I would also add:—during the second interview, I might have left the Bishop for a moment or so, for the purpose of conversing with my parishioners.

8. Are you certain that the two Misses Rudderow were present and took part in the conversation at the second interview just described?

Of that I feel quite certain.

9. Did they, or either of them, shake hands with the Bishop, on meeting at that second interview?

Of that I cannot speak with certainty. My impression, however, is, that they did, as the Bishop left the church.

10. Where did the Bishop and the ladies stand, relatively to each other, at the second interview?

In the vestibule near the inner door. Neither of the parties was on the stairs to my knowledge. I would add in continuation of that, one of the Misses Rudderow, Miss Helen Rudderow, might have been on the lower step. The stairs start immediately from the inner door.

11. Do you remember that any thing was said by either of the ladies in that conversation, in reference to the Bishop's sermon that morning?

I do remember very distinctly, that one or both of them, I think Jane, spoke in great praise of the sermon—spoke very highly of the sermon—saying that it was a good High Church sermon, and that she liked it very much. The remark was made to the Bishop.

12. What were the circumstances which led to the visit of Miss Jane Rudderow to the Bishop's study, relative to the benevolent society of your Church, as you knew them yourself, and as you learned them from her? Please state them fully.

A benevolent society was formed in the parish, of which Mrs. Thomas Addis Emmet was the Directress. Understanding from the Misses Rudderow that they intended to use the church for the purpose of cutting out garments, sewing them together, and fitting them to the persons for whom they were intended, I strongly advised them not to think of meeting in the church for any such purpose; alleging as my reason, that it was contrary to the laws of the Church that such use should be made of its consecrated edifices. Perceiving that my advice had very little effect upon the Misses Rudderow, I read to them portions of the Consecration Ser-

vice, in the Prayer-book; particularly that portion which declares that after consecration, the building is set apart for holy uses, and not to be used for any thing unhallowed or common. This advice of mine still having no effect, I stated to them the Bishop's well-known opinion on that subject, in the hope that they would respect the Bishop's authority and wishes. When I spoke of the Bishop, Miss Jane Rudderow said that the Bishop would waive, in their case, any personal objections that he might have to the use of the church for such a purpose. Miss Jane Rudderow at once said, that she would call herself upon the Bishop, being sure that he would grant her permission; and giving as a reason for such a permission on the part of the Bishop, his previous kindness to them.

The remark was, when I spoke of the Bishop's objection, "Oh, if that's all, the Bishop will grant us any favor."

They asked me if I would consent, in the event of the Bishop's granting them permission. I told them again and again, that the Bishop's permission in that matter would not change my own opinion, as to the impropriety of such use of the church.

I also added, that I was bound by higher considerations than the Bishop's opinion; viz. the law of the Church, which expressly forbade such use of its consecrated edifices. I said to them, repeatedly, that it was not necessary for them to use the church, as they could meet at each other's houses. I also offered to provide a suitable room for them, for the use of their society.

Still perceiving that Miss Jane Rudderow was bent upon having a personal interview with the Bishop in relation to this matter, I endeavored to dissuade her from going to the Bishop's study, by saying that that would appear improper in the estimation of my parishioners, and that they ought to be satisfied with my conscientious objections to such use of the church. I wish to add, that the members of our congregation generally disapproved of their intended visit to the Bishop, being disposed to sustain me in my decision.

13. Did you see Miss Jane Rudderow after her visit to the Bishop at his study; and if so, how long after?

I saw her and her sister the next day, or within a few days after.

14. Did Miss Jane Rudderow at that time say any thing respecting her visit to the Bishop; and if so, what did she say?

She said the Bishop treated her very politely, and gave his consent to the proposed use of the church. I expressed very great regret and sorrow, on hearing that they had been to the Bishop, to them, and to others in the parish.

15. What reply did she make to that?

I do not remember the words exactly; but I told them that my own opinion and purpose were unchanged.

Pending the examination, the hour for adjournment having arrived, the Court adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Thursday, Dec 26, 1844, }
7 o'clock, P. M. }

The Court met pursuant to adjournment.

Present as in the morning.

The Rev. E. Y. Higbee, D. D., called up as a witness by the Counsel for the Respondent, was sworn by ——— Richardson, Esq., as commissioner, duly authorized by the State of New York to administer an oath, and appointed by the Clerk pro hac vice a Commissioner of this Court.

The examination of the REV. JOHN DOWDNEY was then proceeded with.

16. Was any thing further than what you have stated, said in that conversation respecting the interview with the Bishop in his study?

There was nothing of any consequence—nothing having a direct bearing upon this subject.

Witness here desired to correct a part of his testimony given in answer to question 4. Having stated that the Misses Rudderow were seated with their classes near the chancel rail, he would correct it, by saying that they were in the pews nearest to the chancel rail.

Cross-Examination.

1. You have said that Miss Jane Rudderow visited the Bishop at his study—did any person accompany her, and who was that person?

I believe that she was accompanied by Miss Riker.

2. Did she request Miss Riker to accompany her to the Bishop's, or did Miss Riker request Miss Jane Rudderow to accompany her?

I have every reason to believe that she requested Miss Riker to accompany her.

3. Who is Miss Riker?

She is a member of St James's parish. She is a communicant.

4. Did you ever converse with her on the subject of this visit?

I did.

5. More than once?

I conversed with her in the presence and hearing of Miss Rudderow; I believe on different occasions.

6. When did you last converse with Miss Riker on the subject?

I do not remember to have conversed with her since the time of their visit to the Bishop's study.

7. When did you last converse with Miss Riker?

Yesterday.

8. Have you not, in any recent conversation with Miss Riker, referred to this visit?

I believe not. I wish to correct myself. It now occurs to me that I have. It was just named by Miss Riker, not by myself, for a moment. It was just alluded to.

9. When was that?

It was a little over two weeks ago.

10. Was you requested by Bishop Onderdonk, or any other person, to see Miss Riker on this subject, since the commencement of this trial?

I cannot say that there was any direct request made of me. I offered, myself, to converse with her.

11. To whom did you make the offer?

It was, I believe, to the Bishop, and others, I cannot remember whom. I believe, however, Mr. Graham was one.

12. Who else?

I do not remember distinctly; they, however, were friends to the Bishop.

13. Within what time was this offer made?

It was, I believe, within a month or six weeks.

14. Do you now say that you cannot recollect the names of the persons to whom you made this offer?

I do not recollect the names of all. I gave the names of two. My impression is that I did not converse with any others very directly on the subject. It was with the Bishop and his Counsel. I wish to state on what point I was to converse with her. I had understood that Miss Jane Rudderow complained of some insult on the part of the Bishop, at that interview; and knowing that Miss Riker was present, I wished to know from Miss Riker whether there was any truth in Miss Jane Rudderow's complaint. That was the only object for which I held any conversation with Miss Riker. I asked Miss Riker if she would testify to what took place at that interview, because I believed she would testify to the truth. That, I believe, was my first and only conversation with Miss Riker on the subject, for a few moments only.

15. Is that the conversation which you have before referred to, between you and Miss Riker on the subject?

I think it is the only conversation I have had with Miss Riker on the subject, since these proceedings were commenced.

16. Who commenced that conversation?

I did.

17. What did you mean just now by testifying under your oath, that the subject was alluded to by Miss Riker and not by you?

The visit to the Bishop's study was there alluded to, by Miss Riker, and not the general subject upon which I was just questioned. I wish to add, that my conversation with Miss Riker was particularly to ask her whether she would testify as to whether the Bishop had insulted Miss Rudderow.

18. Did you tell Miss Riker at that time that you was requested to see her on the subject, by Bishop Onderdonk and Dr. Seabury, or either of them?

I now remember—the mention of Dr. Seabury's name reminds me that I mentioned the subject to him. I had some conversation with him on the subject; his name did not occur to me before. I do not know that I said that I was requested to do so; I offered to do so, and the gentlemen before-mentioned, the Bishop and Dr. Seabury, expressed a wish that I should do so. I do not remember that I told her that I had offered; I might have said that it was the Bishop's wish I should see her; I do not remember very distinctly; I might have said so.

19. Where did you see her on the occasion referred to?

At St. James's church.

20. Was it since Miss Jane Rudderow gave her testimony in this cause?

It was, I believe, previous to her giving testimony; several days previous.

21. When did you first hear that Miss Jane Rudderow complained of ill-treatment at the Bishop's study?

I believe that I first heard of it from Dr. Seabury, since these proceedings were commenced; I may have heard it from the Bishop, but I think it was from Dr. Seabury. I can speak confidently now, that it was from Dr. Seabury.

22. Where did you receive this communication from Dr. Seabury?

At Dr. Seabury's residence.

23. Did he send for you to make this communication to you?

I do not think that Dr. Seabury sent for me. I felt anxious to hear from Dr. Seabury; when I heard there were affidavits made, I was anxious to know what they were about. My object in going to Dr. Seabury's was to get information in relation to the charges brought against the Bishop.

24. What affidavits do you refer to?

The affidavits on which the Presentment is founded. I never heard until within a short time before the Presentment was made, what the charges against the Bishop were, except in one case, and I believe that Dr. Seabury gave me the first information on the subject.

25. Did he give you that information when you went to see him, as you have before testified?

I cannot say when—I might have seen him on other occasions.

26. Did not Dr. Seabury request you at the time when you went to see him, to call on Miss Riker, in respect to any insult alleged to have been offered to Miss Jane Rudderow?

He did not request me. I told him that I had the means of getting information on the subject, as Miss Riker was one of my parishioners; I also told him that I would see her and ascertain something about it. Dr. Seabury replied, "I wish you would."

27. After you had seen Miss Riker, did you report to Dr. Seabury what she said?

I might have told Dr. Seabury afterwards what Miss Riker said. I believe it was some time after that, that I saw Dr. Seabury. I did not see him immediately afterwards. I did not see him, either, for the purpose of telling him what had been said.

28. Did you report to Dr. Seabury?

No; that implies that I was sent by Dr. Seabury, and went in obedience to his order, and reported what I had heard. I wish to say that Dr. Seabury and myself conversed together on this subject as members of the same Diocese and friends of the Bishop, and without any plan or design.

29. Did you tell Dr. Seabury what Miss Riker said to you?

I do not recollect. I spoke of the interview and the conversation; but—I believe that I told Dr. Seabury of the interview and of the remarks of Miss Riker, and said that she did not wish her name mentioned in this matter.

I wish to say to the Court that, having heard a good deal of conversation in relation to these proceedings, and having spoken with a number of clergymen on the subject, I cannot remember distinctly what occurred in every case.

30. Before Miss Jane Rudderow went to see the Bishop, as you have testified, how many interviews did she have with you on the subject of the contemplated visit?

I cannot say exactly; we always met at the church, and at Sunday-school, on Sunday and other days of service. A great deal of conversation passed at different times. There were scarcely any other persons present but the Misses Rudderow and Miss Riker. I think that she spoke several times of her intention of going to the Bishop.

31. Were there any other persons, and who, in your congregation, that took an active interest in the benevolent society spoken of, except these three ladies?

There were several others. I do not remember all their names, as I believe I never met but once with them in their society. I would name, however, Miss Harriet Delafield, Miss Margaret Grenzsbach, Mrs. Emmet—I believe that Mrs. Peter Schermerhorn was an officer of the society—I think she was. I will add two more names—Miss Kniffen and Miss Rutter.

32. How many of these ladies did you ever see and converse with, on the subject of the society?

All that I have named, with the exception of Mrs. Schermerhorn. I now recollect two other names—Mrs. White and Miss Mills; and a third, Miss Moore.

33. Did you ever see, in reference to the society, any but the three ladies first referred to, except the *once*, when you met with the society?

Yes, sir.

34. Who were the most efficient members of the society?

On the occasion that I refer to, there were seven or eight members at work. The three persons first named—the Misses Rudderow, and Miss Riker.

35. You mentioned that you offered to get a room for the society, do you mean that you offered to hire and pay for a room?

I said that I should be willing to do that, rather than that they should meet in the church. There *was* a room, however, which we hired for the purpose of holding religious services on Sunday afternoon, which room was offered to them for their use.

36. Where was that room?

It was about three quarters of a mile from St. James's Church. It was used for general purposes. It was not a dwelling-house. It was two stories high.

37. Was a tavern kept in that building?

No, sir.

38. Who lived in the house?

No persons occupied it. I first offered them a room very near the church, within a few yards of the church; objections were made to that, as there was a tavern in the house. It was a tavern. There was a bar in the lower room.

39. What objection was made by the ladies to the other building?

The objection, I believe, was its distance from the church.

40. You have said, that other members of the congregation, or that members of the congregation agreed with you in thinking that the visit should not be paid to the Bishop. Who were they?

I cannot remember the names now. I know that Miss Grenzsbach, and Mrs. White, and Miss Rutter, made objections.

41. After the visit to the Bishop, when and where was it, that Miss Jane Rudderow expressed herself gratified with her interview with the Bishop?

It was at the church, and very soon after: I do not remember exactly when.

42. Who was present besides you and Miss Jane Rudderow?

I believe that Miss Helen Ruddcrow and Miss Riker were present—I can say positively that they were. They were generally together.

43. Do you remember the language employed by Miss Jane Rudderow?

I do not remember the precise words. The word "politely" was used in connection with the subject.

44. Are you sure that it was not Miss Riker who gave this account of the interview?

Miss Riker also spoke of the interview. I am sure that it was not Miss Riker. They both spoke of the interview in terms of gratification.

45. When you and the Bishop entered the church, in 1843, and saw the Misses Rudderow attending to their classes, did you, or not, introduce the ladies to the Bishop?

I have no recollection whatever of introducing the ladies to the Bishop.

46. Can you answer the last question more positively?

I think that I could say, positively, that I did not.

47. Before that time was you aware that the Misses Rudderow felt unpleasantly towards the Bishop?

I was aware that Miss Helen Rudderow felt unpleasantly towards the Bishop, but I was not aware that Miss Jane Rudderow did, except so far as she sympathized with her sister—not from any personal reason.

48. Had you, before that time, requested these ladies to treat the Bishop kindly or respectfully, when he should visit the Church?

No, sir. I would add, I believe I expressed to them a wish that every thing connected with the services might pass off pleasantly.

49. Do you recollect what the young ladies said to the Bishop before the morning-service?

I do not remember, further than what I said this morning in my direct examination.

50. When you said to the young ladies, that you hoped every thing would pass off pleasantly, what did they reply?

I do not remember the exact words of the reply.

51. Were they not these words, "We shall not forget that we are ladies?"

I do not believe that such words were used; at least I have no recollection of hearing such words.

52. After the morning service, are you *sure* that both of the Misses Rudderow were present during the conversation with the Bishop to which you have testified in your direct examination?

They were both present, both very near the Bishop.

53. What other persons were present? Please name them.

Mr. Albano Alvord, one of the Vestry of the parish, was present, and heard the conversation. He was waiting for us to accompany him to his residence; we were going to dine with him; he was standing with us, and bore part in the conversation. There were several of the parishioners who were very near us. I cannot name them now. Mr. Peter Schernerhorn was, I know; Mrs. Jones and Miss Delafield, I believe, were present, and very near us at the time.

54. Was Miss Riker present?

I believe she was near us.

55. When was your attention first called to these transactions, after the day of their occurrence?

At no time, by any other person. I mentioned recently, however, that such transactions had taken place.

56. When did you first speak of them?

It was recently, within a few weeks. I think it was after the General Convention. It *might* have been *during* the Convention.

At ten o'clock the Court adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Friday, Dec. 27, 1844, }
half-past 9, A. M. }

The Court met, pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter and prayers.

The examination of the Rev. JOHN DOWDNEY was resumed.

Direct Examination resumed.

17. When was the first conversation which you had with Miss Riker alone upon the subject of the visit to the Bishop?

A little more than two weeks ago.

18. Have you had any other conversation with her alone on the subject?

No, sir.

19. When you spoke in your cross-examination of conversations with Miss Riker, shortly after the visit to the Bishop's, who did you mean to be understood were present at those conversations?

Miss Helen and Miss Jane Rudderow were always present.

20. When you called upon Miss Riker about two weeks ago, did you first allude to the subject of the alleged insult to Miss Jane Rudderow on the visit to the Bishop's, or did she?

She did; I commenced conversation on the general subject. During the conversation she alluded to the visit to the Bishop's. I then stated to her the object of my conversation. I asked her if she would testify as to what took place at the Bishop's.

21. Did the benevolent society of which you have spoken, after your objection to the use of the church, use either of the rooms which you had previously proposed, and if so, which of them?

They used the public room of which I have spoken; not the tavern, but the one in the two-story house I have described.

22. Was, or not, that room a more suitable or central place for the use intended than the church?

It was a much more suitable and central place.

23. When Miss Jane Rudderow communicated to you the circumstances of her visit to the Bishop's study, did you say any thing to her, and if so, what, upon the subject of her going to the Bishop's, as connected with her sister's difficulty?

I said to her that I wondered she should go, under the circumstances of Helen's insult; and wished her not to mention that insult again, as no one would credit the statement, she (Jane) having put herself in the Bishop's way without any sufficient reason. She always told me that Helen alone was insulted, and that she (Jane Rudderow) had always been treated very politely by the Bishop.

Cross-Examination resumed.

57. Did you doubt that the two Misses Rudderow and Miss Riker sincerely desired the use of the church for the benevolent society?

I have reason to believe that they were anxious for the good of the parish.

58. The question is repeated.

They wished the use of the church; I did not think they were sincere.

59. Why did you doubt their sincerity?

Because there were many things in the conduct of the Misses Rudderow, at times, which led me to doubt their sincerity.

60. Did you doubt the sincerity of Miss Riker?

I have always believed Miss Riker to be a sincere and excellent person.

61. The question is repeated.

I cannot answer in any other way.

62. The question is repeated.

I cannot judge correctly as to Miss Riker's sincerity in that particular; I always thought that she was too much under the influence of the Misses Rudderow.

63. You have said, in your direct examination, that you stated to Miss Jane Rudderow that you wondered she should go to the Bishop's under the circumstances of Helen's insult, and wished her not to mention that insult again, as no one would credit the statement; when was that, where, and who were present?

It was said at St. James's Church, in the hearing of Miss Helen Rudderow and Miss Riker, subsequent to the visit to the Bishop's study.

64. In what year?

The visit to the Bishop was in the winter of 1842-3. I cannot say whether this conversation was in '42 or '43.

65. Did you ever have more than one conversation with the Misses Rudderow and Miss Riker, all together, upon the subject of the visit, after it was made?

I cannot say, on that particular subject, our conversations being of a general character.

66. In speaking of an insult to Miss Helen, what insult did you refer to?

This question was objected to by the Counsel for the Respondent, and the opinions of the Court being severally taken, the objection was sustained.

The Bishops of Illinois, North Carolina, New Jersey, Western New York, South Carolina, and Maryland; the Assistant Bishop of Virginia, and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, sustaining; and the Bishops of Connecticut, Vermont, Kentucky, Ohio, the North Western Missionary Diocese, Louisiana, and Delaware, dissenting.

67. You have said, in your direct examination, that she, Jane Rudderow, always told you that Helen alone was insulted; and that she, Jane, had always been treated very politely by the Bishop: when and where were you so told by Miss Jane Rudderow?

During our conversations on the subject at St. James's Church. The precise time when, I cannot state.

68. More than once?

Yes.

69. When first?

The subject was so often named when we were present, that I cannot remember when it was first named. They very often talked about it, and always seemed to take pleasure in talking about it, which they did against my own wish.

70. Can you now specify one occasion, time, and place, when they talked about it?

I cannot distinctly specify the time or times. The place was St. James's Church.

71. What did they, or either of them say, in any one of these conversations on this subject?

This question was objected to by the Counsel for the Respondent; and the opinions of the Court being severally taken, the objection was overruled.

The Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, overruling; the Bishops of Western New York and Maryland dissenting; and the Bishop of South Carolina declining to give an opinion.

I do not remember the precise words. The conversations took place during a year and a half. I do not remember the days of the month on which we conversed on the subject. It was first named to me very soon after my connection with the parish, by Miss Helen M. Rudderow, in the presence of her sister and Miss Riker. The reason why she named it, I think, was this: she wished to disparage the Bishop in my estimation, she disapproving very much of the Bishop's conduct, in his opposition to the plans of the Rev. James C. Richmond.

72. What did she say on that occasion?

She did not state to me the particulars of the insult; but I remember asking her why she did not resent it at the time. On other occasions I asked them what the insult was. They said they would not tell me. I then said, "Do not mention it to me again."

73. Did they ever mention it to you again?

They afterwards spoke of it.

74. How came Miss Jane Rudderow to tell you that the Bishop had always treated her politely; what called for such a remark on her part?

She gave it as a reason why it was not improper for her to go to the Bishop's study.

75. Did Miss Jane Rudderow ever say, in any of the conversations spoken of, that she would not go alone to the Bishop's study?

I do not believe that she ever said so.

76. Do you know why she was accompanied by Miss Riker on that visit?

I do not; I think, however, that Miss Riker offered to go with her.

77. Did not Miss Riker, to your knowledge, in offering to go with her, say that she would protect her, or words to that effect?

No.

78. Have you endeavored to procure testimony for Bishop Onderdonk on this trial?

I have

79. Any besides that of Miss Riker?

Yes.

80. What other?

Mr. Alonzo A. Alvord and Miss Rutter.

81. When, and at whose request?

At the request of the Counsel for the Bishop.

82. Have you met and conferred with Counsel on the subject?

[This question was objected to by the Counsel for the Respondent, and under advice of the Court, withdrawn, and modified by Counsel as follows: Apart from mentioning to Counsel what you could testify in the cause, have you conferred with them upon the defence of the Respondent, and aided them by your advice and services, in making out that defence?

Objection being again taken to the modified form, the opinions of the Court were severally taken, when the objection was overruled, the Bishops of Illinois, Vermont, Kentucky, Ohio, the North Western Missionary Diocese, Louisiana, and Delaware, the Assistant Bishop of Virginia, and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, overruling it; and the Bishops of Connecticut, North Carolina, New Jersey, Western New York, South Carolina, and Maryland dissenting.]

I have acted, I trust, in this matter, entirely under a sense of duty to my Church; I have conferred with Counsel as to what I knew of the interview of the Misses Rudderow with the Bishop.

83. Is that all that has passed between you and the Counsel?

That is substantially, I believe, all that has passed, connecting with it the names of Mr. Alvord and Miss Rutter, as before said—I offered to go and see them on this matter.

84. Have you not exerted yourself to prevent this trial of the Bishop?

I certainly was very anxious that the trial should not take place if it could be avoided; I, however, have made no direct exertion to prevent it.

85. Have you made any indirect exertion?

I think I have not made any exertion to prevent it, having uniformly said that, if the Bishop were guilty of the charges, we ought to know it.

86. Have you done any thing, and what, to suppress this inquiry?

I have done nothing to prevent the trial.

87. After you learned from Miss Helen Rudderow that she had had a difficulty with the Bishop, were you and the Misses Rudderow upon friendly terms?

Yes.

88. Were they active and useful members of your church?

[This question was objected to by the Counsel for the Respondent, and the objection was sustained by the Court, the Bishop of the North Western Missionary Diocese dissenting.]

Pending the examination of this witness, HENRY M. ONDERDONK was called up as a witness by the Counsel for the Respondent, and sworn by Dayton Hobart, Esq., the Commissioner appointed by the Clerk.

The REV. EDWARD Y. HIGBEE, D. D., was then called by the Counsel for the Respondent, and examined.

Direct Examination.

1. What is your profession, and place of residence?

I am a Clergyman of the Protestant Episcopal Church, and reside in the city of New York.

2. Did you, in or about the month of July, 1842, visit Bishop Onderdonk, in company with the Rev. Drs. Muhlenberg, Milnor, and Wainwright; and if so, state where that interview with the Bishop took place, and all that passed during the interview?

I did visit Bishop Onderdonk, in company with those gentlemen, in or about the month of July, 1842. The interview took place in the Bishop's own house. As nearly as I can recollect, Dr. Milnor stated, in general terms, that a complaint had been made by the Rev. Mr. Beare, of the conduct of the Bishop at a recent visitation of Mr. Beare's parish. I should have said, improper conduct in relation to Mrs. Beare.

Dr. Milnor, I think, stated the matter only in general terms; that the improper conduct alleged, took place in a carriage while riding to or from church. After this general statement by Dr. Milnor, I think that Dr. Milnor referred to Dr. Muhlenberg for a more specific statement. Whereupon Dr. Muhlenberg drew, I think, from his pocket, a paper containing notes which he had made previously to the interview.

The statement thus made by Dr. Muhlenberg from his notes, was not, to my mind, a clear one. The Bishop listened very attentively to the statements of both gentlemen, and manifested a great deal of astonishment, and I thought at the time, indignation. He stated in reply, in very few words, that he had always been in the habit of meeting Mr. and Mrs. Beare as a father would his children; (I speak now the substance, rather than the precise words that were said;) that he was perfectly aware that his manner was familiar, but that if there was any impurity of feeling, or evil thought, (or something to that effect,) in relation to his deportment, or the mutual deportment of the parties, it was not to be attributed to him. He stated that he should deeply regret to impute any such feeling to Mrs. Beare; but that if such a statement was persevered in, it would be unavoidable.

It was then proposed—I had thought by the Bishop himself, until I was corrected by Dr. Milnor, in a conversation with him, as I believe—that Mr. Beare should have an interview with the Bishop, on the next day, in our presence. This was agreed upon, and we left the Bishop.

3. Do you recollect what was the language, or manner, or both, of the Bishop, in assenting to the proposal to see Mr. Beare the next day?

I hardly know how to answer that question, as I was under the impression, until a few days since, that the Bishop made the proposal himself.

4. Can you state what Dr. Muhlenberg stated on that occasion, in relation to the charges referred to ?

I cannot. I confess it was, to my mind, a confused statement. I do not remember it.

5. Did the proposed visit to the Bishop take place the next day, in company with Mr. Beare ; and if so, state fully what took place on the occasion of that visit ?

The proposed visit did take place on the next day, in company with Mr. Beare. Dr. Muhlenberg, and Dr. Milnor, with myself, were present. Dr. Wainwright was not there.

The former interview had taken place in the study ; this, I think, was held in the room back of the study. The Bishop began the interview, by saying to Mr. Beare, (I now will speak substantially, I do not pretend to recollect the very words,) that he had heard with great pain, or that he was deeply grieved at having heard, that some part of his conduct or deportment had given offence to him and his wife. He assured Mr. Beare that he was free from all intention of giving offence. He expressed his regret, and desired Mr. Beare to express the same to Mrs. Beare.

He then, in reply to some question or suggestion, said that he had no design in any thing he had said, to impeach the motives or veracity of Mrs. Beare ; but that she was *mistaken*, or some word to that effect. I do not recollect that after that any conversation of importance took place, until we were about leaving ; when we all shook hands with the Bishop, and Dr. Milnor said, in substance, to the Bishop : I hope, Bishop, that this will show us all, or show you, the necessity of being very cautious, or very careful, in all our deportment.

The Bishop's reply was, that he felt the kindness of Dr. Milnor's advice, but that he supposed Dr. Milnor knew well, or was aware of, the liability of clergymen to evil reports, and that scarcely any one, or no one, had been as long in the ministry as he (the Bishop) had without slanderous reports being raised against him.

Dr. Milnor's reply was : that he did not know as to the general fact ; but that no such false reports, or no such reports, as far as he knew, had been raised against himself.

He stated, also, how long he had been in the ministry. The interview ended there ; at least, I do not recollect any thing further.

6. You state that the Bishop, in reply to some question or suggestion, said that he had no design in any thing he had said to impeach the motives or veracity of Mrs. Beare, but that she was mistaken, or some word to that effect ; was that said in reply to a question put by Mr. Beare ?

I believe it was, though I had forgotten that fact until it was brought to my mind ; I think by Dr. Milnor.

7. Was, or not, Mr. Beare under the influence of strong emotion, during the whole interview ?

I think he was.

8. Was, or not, the Bishop deeply affected ?

The Bishop appeared much affected.

MISS MICHAL ROBERTS RUTTER, and WILLIAM H. ONDERDONK, being called as witnesses by the Counsel for the Respondent, were respectively sworn by James P. Howard, Esq., a Commissioner duly authorized to administer oaths, by the State of New York, and appointed by the Clerk of the Court a Commissioner of the Court for that purpose *pro hac vice*.

The REV. EDWARD Y. HIGBEE, D.D., was then cross-examined by the Counsel for the Presentment.

Cross-Examination.

1. You have said, in your direct examination, that your recollection of the facts occurring at the interviews with Bishop Onderdonk had been corrected by Dr. Milnor ; I now ask, have you much confidence in your own recollection of those facts ?

I answer that I did not say that my recollection of the facts in general was corrected by Dr. Milnor, or did not mean to say so, if I did; but I specified two facts—I intended to do so. Of those two particular facts I cannot speak, of course, with the confidence of one who recollects for himself.

2. Have you much confidence in your own recollection of the facts in general? I have confidence in my recollection of the facts that I have stated.

3. Before you went to the Bishop's the first time, did Dr. Muhlenberg state to you charges of impropriety of conduct made by Mr. Beare against Bishop Onderdonk?

Either Dr. Muhlenberg or Dr. Milnor did; I do not remember distinctly which. It was a subject of conversation when I was with them, and before we went to the Bishop.

4. Were those charges so stated to you before you went to the Bishop, restated in the presence of the Bishop?

This question was objected to by the Counsel for the Respondent, and after argument by the Counsel on both sides, the objection was overruled by the Court. The Bishops of Vermont, the North Western Missionary Diocese, Louisiana, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, overruling it; and the Bishops of Illinois, North Carolina, Ohio, New Jersey, Western New York, South Carolina, and Maryland, dissenting.

They were not stated in the same manner to the Bishop, that they were stated to me before.

5. Did you not comprehend the statement as made to the Bishop?

I knew very well what Dr. Muhlenberg intended to state to the Bishop; but as a statement I thought it confused. I intended to say, that had I obtained my first knowledge from that statement, my knowledge would have been most imperfect.

6. Was any thing, and what, said in the statement made before the Bishop about the Bishop's putting his hand on the naked bosom of Mrs. Beare?

I recollect an allusion to it, but exceedingly indistinct, as it seemed to me, owing to the evident embarrassment of Dr. Muhlenberg.

7. Was the idea conveyed to the Bishop that he was charged by Mrs. Beare with putting his hand upon her naked bosom?

I really can speak rather of the ideas conveyed to my own mind, than of those conveyed to the mind of the Bishop, or of any other person. There was nothing in the language of the Bishop, that I recollect, which showed that such an idea had been conveyed to his mind.

8. Was there any thing said in that conversation with the Bishop respecting a charge that he had put his hand upon the thigh of Mrs. Beare, and other parts of her body?

I do not remember that any thing was said of the kind.

9. What were the charges that the Bishop heard with astonishment, and indignantly denied, as you have stated?

I have not so stated: I did not use the words "indignantly denied." I stated, or meant to state, that the Bishop received the communication from those gentlemen with astonishment, and, as it seemed to me, indignation.

10. What were the alleged charges against the Bishop, made at the first interview?

Dr. Milnor stated generally, and with clearness, that while riding to or from church, the Bishop in the same carriage with Mrs. Beare, and sitting on the same seat, had used familiarities at which both Mr. and Mrs. Beare felt deeply aggrieved.

I do not pretend to recollect the words. I only speak substantially. I do not recollect that Dr. Milnor was more specific than I have stated. I think he then referred to Dr. Muhlenberg, who spoke from his paper with evident embarrassment and confusion, as I thought.

11. Were the familiarities specified?

Dr. Muhlenberg evidently meant to do so: I did not think his statement a successful one.

12. Did the Bishop demand further particulars?

I do not recollect that he did.

13. Did the Bishop say, in that conversation, directly or indirectly, that Mrs. Beare's motives must have been impure?

He said, if there were impure thoughts, or motives, or feelings (I am not sure of the word) in the case, they were not to be attributed to him; that the person imputing them was responsible for them, if any existed. He also stated, that he should regret to impute such feelings to Mrs. Beare; but that if such a story was persevered in, it could not be avoided; or words to that effect.

14. At the second interview, were the particulars of alleged familiarity stated?

No.

15. What was the difference in the manner of the Bishop at the first and second interviews!—did that difference strike you, and was it afterwards the subject of remark by you?

There was a difference in the manner of the Bishop in the first and second interview. The difference did strike me; but I do not recollect whether it was the subject of remark or not—it may, or may not have been.

16. If the difference *did* strike you, can you not now state what that difference was!—and if you can, do so.

At the first interview the Bishop appeared, as I have said, astonished and indignant; at the second interview the Bishop, as I thought, met Mr. Beare with sorrow rather than with indignation.

17. Was you not disappointed at the manner in which the Bishop met Mr. Beare on the second day?

I do not know that I was so much disappointed as displeased.

18. Why displeased?

I had never seen Mr. Beare before—never heard of him; that I know of. I knew him first in his connection with this story. My own peculiar temperament led me to think that he ought to have been met (supposing his story to be untrue, which I did) with severe rebuke.

19. Did you not express to the Reverend gentlemen with you, immediately after you left after the second visit, your feelings of disappointment or displeasure at the conduct of the Bishop in the reception of Mr. Beare; and if you did, what did you say?

I may have done so. I think it very likely I did; though I do not recollect the fact.

20. Did Mr. Beare, at the second interview, call upon the Bishop more than once, to know whether he denied the statements of Mrs. Beare?

I do not recollect that he so called upon him at all.

21. Did any person, during that interview, call upon the Bishop, to know if he denied the statements of Mrs. Beare?

I certainly do not recollect any such demand.

22. Will you say, that during the second interview, Mr. Beare did *not* call upon the Bishop more than once, to know whether he denied the statements of his wife?

Either Mr. Beare, or some one in his behalf, asked a question, or made a suggestion, relative to the Bishop's intending to impute falsehood to, or question the veracity of, Mrs. Beare. But I do not recollect anything said about the statement of Mrs. Beare in that connection.

23. Was that suggestion or question made more than once during the conversation?

It may have been; though my impression is that it was not; the interview having been very short.

24. Did you feel or express displeasure at the manner in which the Bishop replied to that question?

I felt displeasure at the time, and may have expressed it; though I do not recollect; I said nothing certainly in the Bishop's presence

Direct Examination resumed.

9. Did you then feel, or express, or have you at any time since, entertained or expressed any opinion adverse to the innocence of the Bishop, of the charges referred to in the two interviews you have spoken of? (Objected to and modified.)

In any expression of displeasure you may have made at the manner of the Bishop, on the second interview, could you have meant to convey, or did you convey, any opinion adverse to the innocence of the Bishop in respect to the charges referred to? (Objected to and modified.)

9. Did your displeasure, as stated at the conclusion of the second interview, arise from any doubt at that time, of the Bishop's innocence of the alleged charges?

(Objected to, and objection unanimously overruled.)

It is somewhat hard to recollect the mingled emotions of an occasion of excitement so long ago. I have to say that my displeasure arose, chiefly because I thought that the answer of the Bishop might seem to give a color to an infamous charge; though my own act, conjointly with the gentlemen with me, immediately after we left the Bishop, shows that I could not have believed in his criminality. That act was the agreement between us that the matter ought to be considered as finally settled, and that we should not speak of it again.

The Court then adjourned to meet at 7 o'clock the same evening.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Friday, December 27th, 1844, }
7 o'clock, P. M. }

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Rhode Island, and the South Western Missionary Diocese.

The examination of the Rev. E. Y. HIGBEE, D. D., was continued.

By the Court.

By Bishop Doane.

1. You said in your direct examination in answer to the question, What was the language and manner, or both, of the Bishop in assenting to the proposal to see Mr. Beare the next day? "I hardly know how to answer that question, as I was under the impression, until a few days ago, that the Bishop made the proposal himself, meaning by that that you were under that impression until corrected by Dr. Milnor." If such a proposition had been made to the Bishop, and not, as you yourself supposed, by him, do you think you could have forgotten the Bishop's reception of it? I do not believe that I should have forgotten the Bishop's opposition to it, had he opposed it.

2. Did not the Bishop, as you may now recollect, himself say that if he saw Mr. Beare, he thought the thing could be explained, or words to that effect, and did not Dr. Muhlenberg reply, I will bring Mr. Beare?

I am under the impression that in effect, the Bishop did say some such thing, which led to my impression, that the proposition originated with the Bishop.

3. Are you certain, now, that the proposition did not originate with the Bishop?

No; I am not positive from my own recollection, except as my memory has been refreshed, as I believe, by Dr. Milnor: who did not seek to refresh my memory; but it was a casual observation between us, in which we spoke of our common recollections on the subject.

By Bishop Ives.

4. Was any thing said at the second interview which must have revived in the mind of the Bishop the particulars of alleged indiscretions, as stated at the first?

I do not recollect that any thing of the kind was said.

5. Did, or did not, the answer of the Bishop at the second interview, to the inquiry whether he intended to question the veracity of Mrs. Beare, show that his mind was rather fixed upon the impurities alleged, than upon the particular statements made?

I do not recollect any thing which indicated that the Bishop referred to the particular statements.

6. Did you understand the Bishop as admitting, on the second interview, what he had denied on the first?

No; I cannot say that I did.

By Bishop McIlvaine.

7. Did Dr. Muhlenberg, on the first interview, when he stated the allegations made by Mrs. Beare against the Bishop, go into particulars concerning the acts complained of?

It appeared to be his object to do so, but his statement was confused.

8. Can you remember, now, any of the particulars of his statement, and if any, what?

I cannot recollect them as stated by him. The only recollection I have, was an allusion of which I spoke this morning; the allusion was to an allegation of Mrs. Beare, that the Bishop had put his hand upon her bosom.

By Bishop Lee.

9. Did Mr. Beare say any thing, and what, at the second interview?

Mr. Beare said, certainly, very little. I recollect nothing that he did say, unless it was he who made the suggestion, or asked the question of the Bishop, relative to the Bishop's impeachment of his wife's veracity.

By Bishop Johns.

10. Did the Bishop, at the interview on the first day, deny the particulars of the charges, as stated by Dr. Muhlenberg?

I understood the Bishop as replying to the general charge of impropriety, or impurity, entering into no particulars, so far as I remember.

11. Did you regard that as a reply to Dr. Muhlenberg's statement?

I regarded it as a general reply to the allegations made. I supposed then, and still suppose, that the Bishop derived his knowledge of the allegations chiefly from Dr. Milnor. I regarded it as a reply to the allegations made both by the one and the other.

12. Did you consider all the allegations, as stated by both of the gentlemen, as denied by the Bishop on that occasion?

I certainly regarded all the allegations, so far as impurity or impropriety were charged, as denied by the Bishop.

13. At the interview of the second day, do you remember whether there was any similar denial of the same allegations on the part of the Bishop?

On the second day there were no allegations made, in general, or in detail. In the Bishop's expression of regret that any thing had occurred which could give pain to Mr. or Mrs. Beare, he again, I think, alluded to his paternal feeling for them, but disavowed any intentional offence, or any intentional impropriety; and again, in what the Bishop said in relation to Mrs. Beare's veracity or motives, I understood the Bishop to say she was mistaken.

14. Did you regard the Bishop as intending to say, that Mrs. Beare was mistaken as to his motives, or as to the facts as alleged?

I regarded the Bishop as intending to say, that she was mistaken as to the general charge of impropriety, and mistaken as to the facts, so far as they had been communicated to him; and involved the charge of impurity and impropriety.

By Bishop McIlvaine.

15. You have said in a late answer that you supposed, at the first interview, and do still suppose, that the Bishop derived his knowledge chiefly from Dr. Milnor; was his statement of Mrs. Beare's allegations, or was Dr. Muhlenberg's the more particular and distinct?

Dr. Milnor's statement was quite distinct, but not a very particular one; so far as I recollect, it was general, and not particular. It was much more *distinct* than Dr. Muhlenberg's, and as Dr. Muhlenberg's was not a distinct statement, I am unable to compare the two as to particularity.

16. You have said that Dr. Muhlenberg, in his statement, *did* speak of the particular statement of Mrs. Beare; as to the Bishop's placing his hand on her bosom; did the Bishop deny that particular of Mrs. Beare's statement?

I have said that Dr. Muhlenberg made an allusion to it. I understood it, I presume, from the fact of my having been made acquainted with the particulars before we went to the Bishop's. I have no evidence that the Bishop understood the particulars as attempted to be stated by Dr. Muhlenberg. I understood him to reply to the general allegation of improprieties.

By Bishop Ives.

17. Did you understand Mr. Beare as being satisfied with the explanation of the Bishop at the interview referred to?

Mr. Beare, I think, did not say whether he was or not. He shook hands with the Bishop at parting, and the parting appeared to be mutually kind and friendly.

By Bishop Whittingham.

18. Do you recollect whether any conversation passed between the Bishop and Dr. Muhlenberg while the latter was making his statement in the first interview?

I do not recollect that fact; such a conversation *may* have taken place, but I do not recollect it.

19. You spoke, in your direct examination, of a paper which Dr. Muhlenberg drew from his pocket, as you thought, when he made his statement; did he appear to you to read from that paper?

No, he did not. The paper appeared to contain short notes, which he used to refresh his memory.

By Bishop Henshaw.

20. You have stated that you considered the Bishop's denial at the first interview to relate to a general allegation of impurity or impropriety. Did Dr. Milnor, or Dr. Muhlenberg, or yourself, make any such general allegation at that interview, or was the allegation referred to by either or all of you at that interview confined to the specific allegations of Mrs. Beare?

I stated that the Bishop's reply related to the general allegation made on that occasion, by which I meant a general charge of impropriety in connection with the case of Mrs. Beare.

By Bishop Polk.

21. You have stated that you did not know whether Mr. Beare was satisfied with the explanation of the Bishop or not. Were you, and the gentlemen who accompanied you to the Bishop, satisfied with the explanation?

I have stated that I do not *recollect* whether Mr. Beare said he was satisfied or not. In regard to my own satisfaction, and that of the gentlemen with me, I can only say, that we were so far satisfied of the absence of criminality, that we agreed that the matter ought to be considered as then and there settled.

By Bishop Mellvaine.

22. Did Mr. Beare concur in that conclusion?

I do not speak of the conclusion of the absence of criminality as having been expressed in so many words, but of the agreement that the matter ought to be considered as then and there settled; at which agreement I *think* Mr. Beare was present, though I am not perfectly certain.

23. When you speak of the concurrence of the other gentlemen with you as to the absence of criminality, do you mean only that you inferred such to have been their conclusion, from the fact of the agreement, that the matter ought to be considered as then and there settled?

So far as the other gentlemen are concerned, I mean it as an inference from the fact of that agreement; because I, as an honest man, could not, with a belief of the Bishop's criminality, have consented to allow it to be settled in that way.

Cross-Examination resumed.

25. When and where was the agreement just referred to, made?

It was immediately after we left the Bishop's, before we parted, in the street.

26. Did you converse on the subject before the agreement was made?

There was very little conversation passed between us, I think.

27. In that conversation, or in making the agreement referred to, or at any time before you separated, did either you or Dr. Milnor, Dr. Muhlenberg, or Mr. Beare, say that you believed the Bishop innocent, or any words to that effect?

I do not recollect that it was said by any of us.

28. Did either of the gentlemen named, including yourself, say any thing at that time unfavorable to the Bishop?

I do not remember. I was, as I stated this morning, displeas'd with certain parts of the Bishop's manner at the interview, and may have expressed it, though I do not recollect that I did.

29. Did you not say at that time, that you believed the Bishop guilty, or words to that effect?

No.

Direct Examination resumed.

10. Was the purpose of the interview on the first day fully completed before the suggestion as to Mr. Beare's meeting the Bishop the next day, or was it suspended upon that suggestion being made, to be renewed the next day?

The object proposed in going to the Bishop was, as I understood the matter, accomplished; it being simply to state to the Bishop the report that we had heard, and receive his explanation.

11. Was it any part of your purpose to suggest a meeting with Mr. Beare in your presence?

I never thought of it, and I do not think any thing was said of it by the other gentlemen.

12. On the second day was any suggestion made before you parted from the Bishop, either on the part of Mr. Beare, or any of the other gentlemen, including yourself; as to a necessity for further explanation with the Bishop?

I heard no such suggestion made, and I made none.

13. When did Dr. Milnor recall to your recollection, as you have stated, the circumstances of these interviews, or any of them?

I had a conversation with Dr. Milnor on the general subject, during the General Convention in Philadelphia; I do not recollect precisely what passed then. I had subsequently a conversation with him on the first or second day of this trial, when we met casually.

14. When you speak of a conversation with Dr. Milnor on the general subject, do you mean the subject generally of charges against the Bishop, or the subject of the case of Mrs. Beare?

I mean the subject of the case of Mrs. Beare.

15. Did you then understand that that case was to be included in the charges against the Bishop?

I did. I understood so from Dr. Milnor.

Cross-Examination resumed.

30. Who sought the interview in Philadelphia on this subject, you or Dr. Milnor?

Dr. Milnor—in Philadelphia.

31. Did you then say to Dr. Milnor, or at any other time, that you had forgotten nearly the occurrences in the interviews spoken of, or words to that effect?

I do not recollect whether it was in Philadelphia or here; but I remember stating to him and to others, that after our second interview with the Bishop, as we regarded the matter settled, I had dismissed it from my mind, and now found difficulty in recalling the order of the occurrences, or something to that effect.

32. That statement I presume was true?

That statement was true. Dr. Milnor said the same thing.

33. I understood you to say substantially that Dr. Muhlenberg intended to make

a particular statement of the alleged improprieties of the Bishop in his demeanor towards Mrs. Beare; can you now say that the Bishop did not understand the particulars which Dr. Muhlenberg endeavored to state?

I certainly cannot say that he did or did not understand them.

34. If he did understand the particulars stated, or attempted to be stated, by Dr. Muhlenberg, did he or not deny the truth of those particulars?

Objected to, and modified as follows:

Were the terms of the Bishop's denial such that if he did understand the particulars, his answer would have amounted to a denial of them?

This was again objected to, but the objection was overruled—The Bishops of Vermont, Kentucky, Ohio, the North Western Missionary Diocese, Louisiana, Delaware; the Assistant Bishop of Virginia; and the Bishops of Rhode Island and the South Western Missionary Diocese, overruling it.

The Bishops of North Carolina, New Jersey, and Maryland, dissenting; the Bishop of South Carolina declining to vote.

I understood the Bishop to deny the charge of impropriety or impurity. I am unable to express the opinion which appears to be demanded by the question.

35. Can you now recollect any more particularly than you have stated, the terms of the Bishop's denial?

I have stated the whole matter to the best of my recollection.

Direct Examination resumed.

16. Had you more than one interview with Dr. Milnor on this subject in Philadelphia?

I believe not.

The Court then adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

*Saturday, December 28th, 1844, }
half-past nine o'clock, A. M. }*

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The Counsel for the Respondent read to the Court the affidavit of the Rev. C. M. Butler, a letter of the Rev. C. M. Butler to the Rt. Rev. Wm. Meade, D. D., explanatory of Mr. Butler's affidavit, but not in evidence; the affidavits of Jane O. Rudderow and Helen M. Rudderow; and the affidavit of the Rev. Henry M. Beare.

Copy of the affidavit of the Rev. Clement M. Butler, in the matter of the Presentment against the Rt. Rev. Benj. T. Onderdonk :

I, Clement Moore Butler, testify, according to the best of my recollection, to the following facts, which occurred on the day and night previous to my ordination as a Presbyterian of the Diocese of New York, in the spring of the year 1837; the precise date of which ordination can be ascertained by a reference to the Journal of the Convention of the Diocese of New York for that year.

The day previous to my ordination, I and my wife, and Mr. Peck, a member of my then parish of Syracuse, went in a carriage to Ithaca, for the purpose of bringing the Rt. Rev. Benjamin T. Onderdonk to Syracuse, the distance being about 50 miles. We left Ithaca about one hour before sunset, the Bishop and my wife being in the back seat, and myself and Mr. Peck, who drove the carriage, on the front seat. Very soon after leaving Ithaca, it was evident to me that the Bishop had been drinking wine or other stimulant to such a degree as greatly to elevate his spirits, as also to affect his speech. I observed, also, that he had his arm about my wife, and occasionally pressed her to him in a way which seemed to me improper and indelicate. She felt it to be so, and removed his hand two or three times, in a way that she thought would prevent his doing it again; and finding that it did not prevent him, the last time she removed his hand she endeavored to recall him to a sense of his impropriety of conduct, by making a remark to the effect that that hand was a sacred thing, which she regarded with great interest, as having been laid upon her head in confirmation, and upon the heads of so many ordained to the ministry, and so soon to be laid upon the head of her husband. After it became dark, the conversation of the Bishop, and the fumes of the carriage, convinced me more fully that he was under the influence of wine or other stimulant—a conviction which was confirmed when my wife touched me upon the shoulder, and whispered to me that she could not sit there, and must come and sit with me. She quickly changed her seat, and sat in my lap, in great agitation and distress. When we stopped for the first time at a tavern to rest the horses, and we got out, she told me that the Bishop's conduct had become grossly improper; that, as she supposed, scarcely knowing what he did, he began to pull up her clothes. Then it was that she immediately changed her seat. Under the excitement of the moment, in great agony of mind, I told her that I should go to the Bishop and tell him that I would not ride with him, that I would not be ordained by him, and that I would expose him.

She literally held me back from going, and it was from regard to her feelings, and from realizing the force of the remark, that I was not in a fit state of mind to speak to him as I ought, that I refrained.

During the greater part of the remainder of the journey, the Bishop slept or dozed; and Mr. Peck and myself and wife occupied the front seat all the way into the village of Syracuse. I was ordained that morning, at a service which commenced at 11 o'clock. Whether or no Mr. Peck observed the condition of the Bishop, who sat immediately behind him, or conjectured the reason why my wife left the seat, I cannot tell, as I never conversed with him upon the subject.

It may be proper to add, that during my ride home, my mind revolved the question, under the greatest agitation and distress, whether I ought to refuse to be ordained by the Bishop, and give an account of his conduct to the Standing Committee. I confess that it did seem to me to be my duty, but as I was called upon to decide hastily, as I was inexperienced in the ministry, as I shrank from publicity, and from the exposure of one occupying so high a station in the Church, and above all, as I was so indignant at the insult, that knowing I should act under the most intense excitement, I feared I should act rashly and improperly, I resolved to say nothing. I, therefore, did the greatest violence to my feelings that I have ever done, and was ordained; and when the day closed, I felt it to have been, as I feel it now, the most painful one of my life. That I have not since instituted any action, has arisen from a feeling that the proper time had been allowed to pass; and also, no doubt, from a shrinking from the making public of an event to me and my wife so painful.

On the day of my ordination I declined to dine with the Bishop, on the ground

of fatigue and illness, under which I was really suffering. My wife went to her bed; and was confined to it and her chamber for several weeks, from the effect, as she believed, and I believe, of her great agitation and distress,—a sickness which I have always thought was a permanent injury to her delicate constitution. This event was the more distressing to her, that she had, until that time, ever regarded the Bishop with the greatest reverence and respect, as her father's friend and her own spiritual father and guide.

(Signed,) CLEMENT MOORE BUTLER.

Sworn and subscribed, the 16th day of {

October, A. D. 1844, before me, }

(Signed,) PETER HAY, *Alderman.*

I certify the above to be a true and faithful copy, made and collated by me.

W. R. WHITTINGHAM, *Clerk of the Court.*

Dec. 21, 1844.

Copy of a letter of the Rev. Clement M. Butler, (under date of Nov. 1, 1844,) relative to his affidavit in the matter of the Presentment against the Rt. Rev. Benj. T. Onderdonk, D. D.

[COPY.]

BOSTON, Nov. 1, '44.

RT. REV. AND DEAR SIR—

The circumstances under which my deposition with regard to Bishop Benj. Onderdonk's treatment of my wife was made, are, I believe, well known to you. I went to Philadelphia without any knowledge that I should be called upon to state the facts; and, therefore, when I was suddenly called upon for my testimony, not having the opportunity of conferring with my wife, I was under the necessity of hastily recalling the main circumstances as best I could. I had never made the *particulars* of that trying scene the subject of conversation with my wife, and could, therefore, only refer to my own impressions of it—somewhat dimmer in some of the details, but painfully vivid with regard to the main facts. Upon yesterday reading the deposition to my wife, I found that in some slight particulars I had misapprehended her, and that in some others her recollection corrected my own. My anxiety that the case, precisely as it occurred—no better nor worse—should be before you, induces me to make the correction of the details. I should have done this—repulsive as the task is—before now, had I known where to direct you. I now write in some uncertainty, but a friend in New York, to whom I inclose it, will be able, I hope, by inquiry, to find where you are.

My wife fully confirms, by her recollection, my statement of the Bishop's intoxication—as she does not hesitate to call it. In what she said when she removed the Bishop's hand, she did not, as I supposed, include the remark that his hand had been laid upon her head in confirmation, as she was not confirmed by him. That which caused her to leave her seat was not precisely as I have stated it, but similar. It seems that he placed his hand upon her breast and pressed it. She hastily removed it, and he again placed it upon her leg, and in a very improper way squeezed it, and in so doing slightly raised her clothes. Then it was that she *struck* it away, as she expresses it, and immediately whispered to me that she would sit with me. My own strong impression was, and is, that we rode all the way into Syracuse with the Bishop alone on the back seat, and the three in front. She states it, however, as her distinct recollection, that some time before we entered into Syracuse, (after it became light,) I sat with the Bishop on the back. As I do not claim a distinct recollection of this point, and she does, I suppose her to be in the right. Lastly, with regard to her sickness, I find from her that she left her room about a week after the event, and after another week's feebly keeping up, she was taken very ill and continued so for several weeks. I had confounded the two attacks as one in time, as I had always believed her sickness at

the time to have originated in the excitement and distress of that night. Indeed, my recollection of events in detail—always imperfect—is in this case made the more dim by the excitement of my mind in dwelling upon the fact of the Bishop's condition, and his insult of my wife, and the absorbing character of my meditations as to what course I ought to pursue.

I do not think that these particulars are of moment; but I am anxious that the statements should be accurately correct.

On reading this over to my wife, she says it is perfectly correct, according to her recollection.

Respectfully and truly,

Your obedient servant,

(Signed)

C. M. BUTLER.

I certify the foregoing to be a true and faithful copy, made by my hand, this 21st of December, 1844.

W. R. WHITTINGHAM,

Clerk of Court, &c. &c.

Copy of the affidavits of Jane O. Rudderow, and Helen M. Rudderow, in the matter of the Presentment against the Right Reverend Benjamin T. Onderdonk, D. D. :

NEW YORK, Oct. 11, 1844.

I testify that between the month of May and July, A. D. 1841, Benjamin Trédwell Onderdonk, D. D., Bishop of the Diocese of New York, visited St. James's Church, Hamilton square, New York city. At the close of the morning service, he came to my brother John Rudderow's house, in a one-horse four-wheeled carriage, with seats for four persons. My sister Helen Maria Rudderow came to our chamber, where I sat with a female cousin. My sister Helen burst into tears, and in the greatest agitation told us that she had been grossly insulted in the carriage; that had it not been for exposing the Bishop to the Rev. Mr. Richmond, who was driving, on the front seat, she would have sprung from the carriage; that she pushed his hands away from her bosom—and very low down in her bosom; and then begged me to go down to the parlor, where the Bishop was, lest my brother should discover the trouble. I went down. He was standing by the centre-table. He took my hand. I sat down on the centre of the sofa. He sat down near me; and in an instant, as quick as thought, he thrust his hand into my bosom, very low. I started from him to the end of the sofa; he followed and repeated the insolence; at that moment footsteps were heard, and through the already open door entered my sister-in-law, Mrs. John Rudderow, when he sprang to the other side of the sofa; and I cannot remember what immediately followed. My mother soon came in; dinner was served, and we hardly spoke to him at the table; for which our mother afterwards reprovèd us. After dinner, my sister, and mother, and sister-in-law being still in the room, I went to the window and lifted the shade to see if it still rained, as we were determined to go at once to Sunday-school, to get rid of him, though we knew there would be no children at the Sunday-school; for it rained very hard. We left him almost unceremoniously; and once afterwards, (on a matter of business,) with Miss R. R., (not my sister, who refused to go,) thinking that with a stranger, and saying that we would be safe, we were compelled to escape from the door in the utmost haste. I should have stated that he repeated his insolent behavior, doing the same thing, under the window-shade. I thrust his hand against the window, and rushed out. My mother afterwards asked me, "Jane, what did the Bishop do to you, that made you look so when you came from the window? for I can read your face like a book; and you looked so deeply mortified." His whole visit at our house did not exceed two or three hours; as Mr. Richmond called to take him to St. Michael's Church, Bloomingdale. Dinner and all, we were not in the same house with him more than an hour and a half. The Rev. Mr. Dowdney several times requested us to have the Bishop at dinner, on his visit, June 18th, 1843, but

I answered, (and Helen also), "He never shall dine at our house again; or if so, we will not be present."

(Signed) JANE O. RUDDEROW.

Sworn to before me, }
Oct. 12, 1844. }

(Signed) JAMES HARPER, Mayor.

I testify that every word of the above is true. He grossly insulted me in the carriage. I should prefer saying that Mr. Dowdney *hinted* at our having the Bishop at dinner.

(Signed) HELEN M. RUDDEROW.

Sworn to; this 12th day of }
Oct., 1844, before me, }

(Signed) JOHN McCABILL, Notary Public.

I certify the foregoing to be a true copy of the original, duly collated, and found correct.

WILLIAM R. WHITTINGHAM, Clerk of the Court.

Dec. 21, 1844.

Copy of the Affidavit of the Rev. Henry M. Beare.

CITY OF PHILADELPHIA, SS.

I, the Rev. Henry M. Beare, minister of Zion Church, Little Neck, Long Island, New York, do depose to the following facts:—

In the month of July, A.D. 1842, the Right Rev. Benjamin T. Onderdonk, Bishop of New York, came to my parish to hold a Confirmation, I having charge, at that time, of two places of worship, viz. Zion Church, and Whitestone Chapel.

On the morning of the appointed day, the Bishop went from my house to Zion Church, and there held a Confirmation; the services being over, the Bishop returned to my house, in my two-seated wagon, in company with my wife and mother, and, as I believe, with my young nephew, a lad then of 11 or 12 years of age.

The Bishop and my wife occupied the back seat, my mother and nephew were on the front seat, with their backs to the Bishop; my nephew was driving. I walked home, (about a mile,) and as soon as I reached home, my wife, in some agitation, took me to her room, and then informed me that she thought the Bishop was too familiar, and had taken liberties with her which she did not like; that on her ride home from church the Bishop had put his arm around her, and drawn her close to him, while with his hand he had felt her bosom; that she had quietly removed his hand, and endeavored to draw herself away from him as far as the seat would allow, in which she succeeded. I, at that time, had heard nothing of similar acts of misconduct on the part of the Bishop, and therefore told my wife that perhaps she had misunderstood his motives; but she persisted in her belief, that his motives were impure.

In the afternoon the Bishop went to hold a Confirmation in the other church under my charge, viz., at Whitestone Chapel, my wife, privately to me, declining to ride in the same carriage with him. My wife, accordingly, rode to the chapel with my brother, Thomas M. Beare, in his carriage or buggy, while the Bishop rode in my barouche-wagon, with my nephew and myself.

The services being ended, we all returned in the same vehicle in which we had gone, until we came to the gate and lane leading from the main road to the residence of Joseph Franklin, Esq. We had engaged to take tea with Mr. Franklin's family, and at the gate my brother Thomas (not intending to be one of the party at Mr. Franklin's) left us and drove onward to my own house, my wife coming into the carriage where I was, in order to ride up the lane to Mr. Franklin's house. About six or half-past six in the evening, we reached Mr. Franklin's residence, where we spent the evening; and about nine at night, we, that is, the Bishop, my wife, I, and my young nephew, before mentioned, started in my barouche-wagon for home. The Bishop and my wife occupied the back seat, I

and my nephew were in front: I drove; and, up to a short period after my arrival at home, I still thought that my wife had been mistaken as to the Bishop's conduct of the morning, and I had not the least suspicion of him. Immediately after we reached home, my wife again spoke to me, in private, and told me that the Bishop had repeated his indecencies: I told her we would have family prayers immediately, when we could retire, and she could then inform me of particulars. When we were in our chamber alone, my wife told me that the Bishop had, as in the morning, put his arm around her, drawn her forcibly to him, and thrust his hand within her dress, so that it was on her naked bosom, that she indignantly threw it from her, that he repeated it, when she again threw it off angrily, and nothing prevented her from screaming out, instantly, but the fact that my little nephew was by my side, and that, through his agency, the matter would then be made public, and she dragged into a notoriety painfully distressing to a virtuous and respectable female; besides this, she recollected that the distance from her home was short, and that she would therefore soon be delivered from his presence. After she had thus indignantly thrown his hand off several times, in the manner above stated, the Bishop, she informed me, in a most indecent manner passed his hand down her body, and the bone of her corset alone protected her from the gross indignity of having his hand pressed upon the private parts of her body.

She spent the night in a state of mind bordering on madness, and my agony was but little short of hers. The next day (Monday) the Bishop was to be at Dr. Muhlenberg's school, at College Point, seven or eight miles distant. Immediately after breakfast he was to take his departure, and approached my wife to take leave—seemingly offering to kiss her. She drew back. As the wagon left the house he turned, and kissed his hand to her once or twice. I had no servant-man to send with him to Dr. Muhlenberg's; I did not like to trust my nephew a distance so far, and besides, I wished very much to see some of my brethren as soon as I could, for consultation, and I knew I should meet them at College Point; I therefore resolved to take him there myself. On our ride very little was said between us, and my manner was so cold and reserved that I suppose he must have remarked it. When we arrived at the Point, I sought for the Rev. Mr. Kerfoot, (now of Maryland,) and told him my story, asking his advice. He proposed to me that we should ask God's direction, and we knelt down together, he making a short prayer asking for guidance. He then said he would confer with Dr. Muhlenberg, and I immediately returned home. It was a few days after this that I received a note from Dr. Muhlenberg, desiring to see me at College Point, where I immediately went; and in reply to Dr. Muhlenberg's inquiries, I told him the story as already set forth in this paper; and as I proceeded, the Doctor took notes of it in writing, so framed as to be unintelligible to any one, should they be lost; and the Doctor said he would see the Bishop on the subject.

I heard no more from Dr. Muhlenberg until about a week's time, when I received a note from him asking me to meet him at Flushing, that I might accompany him to New York. I did meet him, and we rode down together in his wagon. On our ride he told me that on the day before, he, Dr. Milnor, and Dr. Wainwright had gone to the Bishop, and that Dr. Milnor had opened the subject of his, the Bishop's, misconduct towards my wife; when Dr. Muhlenberg went on with it, he, the Bishop, denied fact after fact, as stated by Dr. Muhlenberg. Dr. Muhlenberg then read to him from the notes he had taken, when the Bishop said that he would like to see Mr. Beare, and explain the matter to him. Dr. Muhlenberg then said to him, "Would you like to see Mr. Beare?" The Bishop answered, "Yes." "Then," replied Dr. Muhlenberg, "you shall see him." Dr. Muhlenberg went on to inform me, that it was to fulfil that promise he wished me to go to New York, and that an appointment had been made for me to see the Bishop that afternoon at four o'clock. Accordingly, at four o'clock, Dr. Milnor, Dr. Muhlenberg, the Rev. Mr. Higbee, and I, met at the Bishop's house, when the Bishop took us into a private room, and his manner betrayed great agitation. The Bishop began by addressing himself to me, and said it was a very painful subject, and that my wife had misunderstood his intentions. I said to him, "Do you deny the facts, sir?" He answered with embarrassment and agitation, "Mr. Beare, I would not deny that what your wife says is true, but she has misconceived my motives." He then went on with

extravagant professions of regard for me, said he would not think of insulting me or my wife, and much to the same purpose. There was other conversation between him and me on the subject, the exact particulars of which I cannot undertake to give, as to me it was very painful: suffice it to say, that his agitation and embarrassment were very great, that he finally burst into tears, said he would not contradict the statement of facts my wife had made to me, that he begged my forgiveness, and would beg that of my wife also, and was ready to make any reparation I would demand. Up to this time the other gentlemen, I think, had said nothing. After this, Dr. Milnor, in a very dignified manner, spoke to the Bishop of rumors affecting his character, and entreated him to be circumspect: We then left the Bishop's house; and on parting with the gentlemen, they said they thought my wife and I had shown great Christian forbearance.

(Signed,)

HENRY M. BEARE,

Minister of Zion Church, Little Neck, L. I.

Sworn and subscribed, on this 21st day }
of October, A. D. 1844, before me. }

(Signed,) GEO. GRISCOM, Alderman.

I certify the above to be a faithful and correct copy of the original, duly collated with the same, this 30th of Dec., 1844.

W. R. WHITTINGHAM, Clerk.

The Counsel for the Presentment read in Court a certificate of John Rudderow, showing that the attendance of Miss Rebecca P. Riker, a witness desired by the Counsel for the Presentment, could not be procured; and asked the interposition of the Court, by a citation to said witness to attend forthwith.

Ordered, That the Clerk issue a citation to Miss Rebecca P. Riker, to attend the Court forthwith.

Miss Michal Roberts Rutter was called as a witness by the Counsel for the Respondent, and having been sworn on the 27th instant, was examined.

1. What is your name?

Michal Roberts Rutter.

2. Where do you reside?

At Yorkville.

3. Are you a member of the Episcopal Church?

I attend it, but I am not a communicant.

4. Are you a member of the Benevolent Society of St. James's Church?

I was.

5. Are you acquainted with Miss Jane O. Rudderow?

Slightly.

6. Was she a member of that Society with you in the month of December, 1842?

She was.

7. Have you any recollection of a conversation upon the subject of calling on the Bishop, to see whether he would not give his consent to your society meeting in the church?

Yes.

8. Was Jane O. Rudderow present at that conversation?

She was.

9. Will you be kind enough to state what passed in that conversation, and particularly what was said by Jane O. Rudderow?

On Mr. Dowdney's objecting to our sewing in the church, I said, "Never mind Mr. Dowdney's consent. We will obtain the Bishop's leave." Miss Jane O. Rudderow said, "I will call on the Bishop." I said, "Do you know him?" She said, "Yes, intimately." That is all I recollect that passed.

10. Did you ever hear her say anything after this of her having called upon the Bishop?

I did not.

The Counsel for the Respondent moved the Court, that the summing up by Counsel might be so arranged, as that Counsel might alternate, the last turn being given to one of the Counsel for the Respondent. Pending the discussion on the motion, addresses were made to the Court by the Bishops of Virginia and Tennessee, objecting to it as Presenting Bishops, in their own names.

The motion was refused.

The Bishops of Illinois, Vermont, Kentucky, Ohio, Louisiana, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, refusing; and the Bishops of North Carolina, New Jersey, the North Western Missionary Diocese, Western New York, South Carolina, and Maryland, dissenting.

Aaron L. Poyer, a witness called by the Counsel for the Respondent, and the Rev. Jonathan M. Wainwright, D. D., a witness called by the Counsel for the Presentment, were severally sworn by Dayton Hobart, Esq., the commissioner for that purpose.

The REV. JONATHAN M. WAINWRIGHT, D. D., was then examined.

Direct Examination.

1. What is your profession, and where do you reside?

I am a clergyman, and reside in the city of New York, No. 10 Hubert-street.

2. In or about the month of July, 1842, did you, in company with Dr. Milnor, Dr. Muhlenberg, and Dr. Higbee, visit Bishop Onderdonk of this city, at his own house; and if so, did you see him?

I did.

3. Was the object of your visit communicated to him; and if so, by whom?

Before going further in answering the questions that may be put to me, I wish to explain the circumstances under which I made that visit, as it will exhibit to the Court the reason why I am not enabled now to give more *definite* answers to such questions as may be put to me. A very dear child of my own had died suddenly the night before. Being in great affliction, I went, not intending to take any active part in the interview, but merely because I would not permit my brethren to go on a painful errand, in reference to which I had been the means of inviting them, without accompanying them. In other words, I did not think it right to allow my private griefs to prevent my sustaining them, as far as need be, by my presence. I now answer: my impression is that Dr. Milnor first stated that we had come upon an unpleasant errand, or words to that effect. After further introductory observations, the purport of which I do not remember, he referred to Dr. Muhlenberg for a fuller statement of the object of the visit.

4. Did Dr. Muhlenberg proceed to give such statement; and if so, was it a statement in detail or not?

My recollection is too indistinct to say to what extent it was in detail.

5. Do you remember any facts which he communicated on that occasion?

I cannot at this time discriminate between what was mentioned then, and what he had told me previously. What I mean to say is this, that within two, or three days certain facts were communicated to me by Dr. Muhlenberg; and I cannot at this period of time assign this statement of facts to one day or the other.

6. Can you remember whether the statement of facts, made before you saw the Bishop, and in the interview with the Bishop, corresponded?

[Objected to by the Counsel for the Respondent, and the objection sustained by the Court. The Bishops of Connecticut, North Carolina, Vermont, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New

York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, sustaining it; and the Bishop of Illinois dissenting.]

7. Can you remember whether the statement made by Dr. Muhlenberg to the Bishop was from written notes or not?

I cannot remember.

8. Was it a long or a short statement?

I wish here to refer to my preliminary observations. My child was dead in my house, and I was there simply because I would not withhold my personal presence from my brethren in their discharge of a painful duty. The whole matter is exceedingly indistinct in my recollection, I must confess, and I cannot separate in my own mind, at this distance of time, what Dr. Muhlenberg said at the Bishop's, in connection with this subject, and what he had previously communicated to me.

9. Did the statement of Dr. Muhlenberg occupy five minutes, ten minutes, or fifteen minutes? State as nearly as you can recollect.

My impression is that it must have been from five to ten minutes, but I have not a distinct recollection enough to be more explicit.

10. Was the statement of Dr. Muhlenberg clear or indistinct?

It was clear enough to me from knowing the previous circumstances, but whether it would have been clear to any one else I am sure I cannot recollect.

11. With what was the Bishop charged on that occasion?

I did not understand him to be charged with any thing—by us, I mean. The object of our visit was to state that he had been charged by Mr. Beare with using indecent familiarity with his wife, and our object was to let him know that this charge had been made. We did not charge it ourselves.

12. What allegations of impropriety of conduct were stated to the Bishop on that occasion?

I before answered that my memory did not serve me for details in that interview at this distance of time.

Cross-Examination.

1. Have you any recollection of any thing being said at that time of the propriety of an interview between the Bishop and Mr. Beare upon this subject; if any thing was said on that subject, have you any recollection by whom it was first suggested?

I recollect that there was something said on the subject of the propriety of such an interview, but from whom the suggestion first came I cannot recollect.

2. Have you any recollection whether the Bishop did or did not, if the original suggestion did not come from him, readily assent to it?

My strong impression is that he readily assented to it.

By the Court.

By Bishop Johns.

1. Did the statement made by Dr. Muhlenberg, at the Bishop's, meet your expectation of what it would be?

I had formed no expectation about it; because there was no previous arrangement, to my knowledge, as to who should or who should not make statements of the matter. The gentlemen went to the Bishop's without me. They left me at my house, finding my child was dead, after a brief interview with me; I not intending to go with them, and they not desiring me to go; but after they had left my house a few minutes together, I was so strongly impressed that I ought not to let my private griefs interfere with what I esteemed a public duty, that I followed them, and overtook them just as they were entering the Bishop's study; therefore I knew of no arrangement as to who was to speak in the matter.

2. Do you recollect whether you were at the time struck with any want of clearness in Dr. Muhlenberg's statement?

I do not recollect to have been struck with any want of clearness. I do not remember to have been impressed, one way or the other, in reference to this point of clearness of statement.

By Bishop Ives.

3. Do you recollect any thing about it ?

No. As to the details of the whole matter, my impression is too indistinct to give any testimony.

By Bishop Johns.

4. Was there, on the part of the Bishop, any denial of the truth of the statement made by Dr. Muhlenberg ?

I understood the Bishop to deny it.

By Bishop Whittingham.

5. Did you so understand him with reference to the details, or to the general purport of the statement ?

I must answer, to the general purport of the statement ; because it is not distinct in my own mind how far details were charged at that time.

By Bishop Polk.

6. When you left the house of the Bishop, did you feel that you had performed the duty you went to discharge, as you have stated in your answer to question 11 in your direct examination ?

I did feel that I had performed my duty, in being instrumental in bringing to the Bishop's knowledge the charge made against him by Mr. Beare.

AARON L. POYER was then examined.

Direct Examination.

1. Where do you reside, and what is your business ?

No. 37 West Broadway. My occupation is that of a hair-dresser ?

2. Are you a member of the Episcopal Church ?

I am.

3. Are you a communicant, and how long have you been so ?

I am, and have been for about 13 years.

4. Are you acquainted with the Rev. Henry M. Beare, of Long Island ?

Perfectly so.

5. Does he often come to your shop ?

He does every 6 or 7 weeks.

6. Have you any recollection of a conversation with him in your shop during the last summer, in relation to Bishop Onderdonk ?

Mr. Beare declared the Bishop to be a great favorite of his ; and whenever he came to the shop I asked him about his friend, the Bishop.

7. The question is repeated ?

Nothing more than my inquiring how the Bishop was, and when he had seen him.

8. What answer did he make when you asked him that question ?

If he had seen the Bishop he would tell me he was very well.

9. Is that all the conversation you remember to have had last summer ?

Yes, sir ; that I remember. Bishop Onderdonk and Mr. Beare met in my shop the last summer, and they appeared to be very sociable and friendly together.

Cross-Examined.

1. What did they say to each other ?

I cannot say ; they shook hands, and appeared to be very friendly.

The Rev. James Milnor, D. D., was then again called as a witness by the Counsel for the Presentment, and examined by them.

Direct Examination resumed.

REV. JAMES MILNOR, D. D., recalled.

16. When you was before the Court on a former occasion, you spoke of a statement made by Dr. Muhlenberg to Bishop Onderdonk, in your presence, and that of

Dr. Wainwright, and Dr. Higbee; will you now state whether that statement was a clear and distinct one, or confused and indistinct?

[This question was objected to by the Counsel for the Respondent; when the objection was unanimously overruled by the Court.]

I have a not very exact recollection of the character of that statement; but so far as I remember, it was sufficiently clear and distinct. I recollect no remark at that interview, on the part of any one, to the contrary.

17. Was Bishop Onderdonk informed at that time of the specific allegations of acts of impropriety, alleged to have been committed by him towards Mrs. Beare?
[Objected to and withdrawn.]

18. After you left the house of the Bishop, at the second interview, and before you separated from Dr. Higbee, do you remember what was said by him, as to the guilt or innocence of the Bishop?

Yes, sir.

19. Please state it.

Dr. Higbee said to me, with some emotion in his manner, "What a lie he told!" That remark was made to me; whether it was made so that the rest could hear, I cannot say.

In justice to Dr. Higbee, I ought to state, that since the pendency of this trial he has mentioned to me that he did not recollect having used that expression; but added, I felt very indignant, and I might have said so. Before we separated, I think at the corner of Broadway and either Franklin or Walker street, Dr. Higbee made a remark of this kind to Mr. Beare: "You were very forbearing with the Bishop; but if he had treated my wife so, I would have kicked him out of the house." That remark I distinctly recollect.

20. Did you, and the Reverend gentlemen who accompanied you from the house of the Bishop, after the second interview, come to any agreement before you separated, that the Bishop was innocent?

[This question was objected to by the Counsel for the Respondent; when the objection was overruled by the Court.]

The Bishops of Illinois, Connecticut, Vermont, Kentucky, Ohio, the North Western Missionary Diocese, Louisiana, Western New York, and Delaware; the Assistant Bishop of Virginia, and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, overruling it. The Bishops of North Carolina, New Jersey, South Carolina, and Maryland, dissenting.]

We did not.

21. Did you agree that you would say nothing about it, and did you state your reasons for that agreement at the time; and if so, what were they?

We did agree that,—at least it was a sort of understanding, I do not remember the exact terms in which it was said,—that we would not speak of the transaction. I do not remember that any reasons were given at the time.

Cross-Examination.

19. When did you first mention these matters after their occurrence?

I may, in a single instance, have confidentially spoken of the matter to one clergyman; at what time since the occurrence, I cannot remember.

20. Who was that clergyman?

It was Rev. Dr. Turner. I think it proper I should add, that I should not have remembered it had it not since been mentioned to me by Dr. Turner. Neither to my wife, nor any member of my family, nor any other person, so far as I believe or recollect, have I ever mentioned the circumstance until during the late General Convention.

21. Did you mention it in Philadelphia during the session of the General Convention; and if so, to whom?

To the Presenting Bishops. The difficulties of the Bishop became a subject of conversation. Many persons spoke to me on the subject; some appearing to have no knowledge of my acquaintance with the affair, but communicating it to me as new information. To such I did not communicate the fact; I received the infor-

mation, but said nothing myself. In other instances, persons spoke to me who had heard of our interviews with the Bishop; and in those cases I either confirmed or corrected the statements they made, according as the facts required.

22. Was Dr. Hawks one of the persons with whom you conversed on the subject in Philadelphia?

He was not, to my recollection.

23. Were you called upon by any person, and if so, by whom, for the purpose of obtaining from you a statement of the facts, with a view to the presentment of the Bishop?

I received a written communication, signed by five members of the House of Clerical and Lay Deputies, to the purport that they understood I was acquainted with the fact of indecencies offered to the person of the wife of the Rev. Mr. Beare, and also with instances of intemperance on the part of the Bishop, and requesting me to make an affidavit of the facts, to be laid before the Presenting Bishops, I think. I sent them a written answer, declining to make a voluntary affidavit, in that extra-judicial way; but when legally or canonically called upon, I should be ready to testify to what I knew. I communicated to Dr. Wainwright and Dr. Higbee the letter and my answer; of which answer they expressed their approbation.

By the Court.

By Bishop Ives.

1. Had you, before the first interview with the Bishop, a full and distinct knowledge of the facts alleged by Mr. Beare.

They were communicated to me by Dr. Wainwright and Dr. Muhlenberg, when they called upon me to accompany them to the Bishop's.

2. Can you be certain that you were not aided in your understanding of what Dr. Muhlenberg stated to the Bishop, by your previous and particular knowledge of the facts?

I think I made the first communication, and not Dr. Muhlenberg. The facts were stated to me in my study. They might have aided my understanding of what Dr. Muhlenberg stated in the presence of the Bishop; but I remember no confusion in that statement.

3. Was Dr. Higbee, in making the remark as you have stated, after the second interview, apparently under strong excitement?

Dr. Higbee's statement to me, as I have already given it, sufficiently indicates the state of his mind. He said he was indignant. To any state of feeling that was indicated by Dr. Higbee, I would by no means apply the term "strong excitement."

By Bishop De Lancey.

4. Was Dr. Muhlenberg at all agitated in making his statement to Bishop Onderdoun, in the interview with him?

I do not remember that he was.

5. Was Mr. Beare a party to the understanding had after you left the Bishop, not to speak of the transaction?

I do not recollect that he said any thing on the subject, but I considered him included in that understanding, and he so considered himself.

6. Was the Rev. James C. Richmond one of the persons with whom you conversed on this subject in Philadelphia, or elsewhere?

Mr. Richmond several times attempted to speak with me upon the subject, and I as often declined conference with him with regard to it.

7. You said that you received a letter in Philadelphia from five members of the House of Clerical and Lay Deputies; what was the date of that letter?

I do not recollect, but will furnish the date; it was during the sitting of the General Convention.

8. What are the names of the persons by whom that letter was signed?

Rev. Paul Trapier, Hon. Mr. Memminger, Col. Morris, these three of South Carolina; Rev. Mr. Gallagher, of Georgia, and Dr. Dubois, of Ohio.

By Bishop Gadsden.

9. You said there was a mutual understanding that you and the gentlemen would say no more about it; were any reasons, and what, given for coming to such an understanding?

I do not remember that any statement of reasons was made at that time.

10. What were the reasons in your own mind for coming to that understanding?

[Objected to and withdrawn.]

You have said Col. Morris was of South Carolina; do you know whether or not he was a member of the late Convention of the Diocese of New York?

I saw him there, and presume he was; but I understood he was a delegate from the Diocese of South Carolina to the last General Convention.

By Bishop McIlvaine.

11. In the understanding spoken of after you left the Bishop's, was it understood by you and the other gentlemen present, that the matter of which you had then spoken to the Bishop was to be considered as finally settled and disposed of?

I do not remember any such terms being used in the course of our conversation. It may be proper for me to add, that we endeavored, all of us, to soothe the feelings of Mr. Beare as much as possible.

12. Were there any facts or remarks which served to explain Dr. Higbee's words, "what a lie he told," and if so, state what these facts or remarks were?

I cannot state the precise words which may have passed, but I well remember our speaking to each other of the difference in the Bishop's treatment of the matter on the first and second interview; that is, his positive denial on the first day, and his appeals to Mr. Beare on the second. From all that passed, he undoubtedly referred to the denial of the Bishop on the first day.

By Bishop Whittingham.

13. Are you quite sure that you could not have misunderstood Mr. Higbee, and that he had reference to no other person but the Bishop, when he spoke of a lie having been told?

From all that passed, I feel certain that he could have referred to nothing else.

14. What *did* pass, to make you feel so certain?

I think I have already stated that the difference in the conduct of the Bishop on the first and second occasion, was the subject of conversation among us all, including Dr. Higbee.

15. But does that make you certain that Mr. Higbee referred to the denial of the Bishop of the first day?

From all that passed I could infer nothing else.

16. Do you now recollect any thing to authorize your inference that the Bishop's statement or conduct on the *first* day, and not on the second, were in Dr. Higbee's mind when he used the words spoken of?

I infer it from the whole conversation.

17. May I conclude, then, that you recollect nothing more on the subject than you have stated?

I do not at this time.

18. Did Mr. Higbee, in the remark which you stated that he addressed to Mr. Beare before you separated, say or do any thing which indicated that he meant to affirm that the Bishop had treated Mr. Beare's wife in the way alleged, or to make you quite sure that he did not intend ironically to reproach Mr. Beare with what he considered inconsistent tergiversation?

In answer to the first part of this question, I say that every thing in the conversation held after leaving the Bishop's, led me to the conclusion that there was no difference between us as to the truth of Mrs. Beare's statement. As to his speaking ironically, I have never had any such conception.

The Court then adjourned.

Attest,

W. R. WHITTINGHAM, Clerk.

Monday, December 30th, 1844, }
 half-past 9 o'clock, A. M. }

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The President laid before the Court a letter from the Rev. James Milnor, D. D., inclosing a letter from the Rev. Paul Trapier and others, to him, Dr. Milnor; and his, Dr. Milnor's reply: said letters having been referred to in the evidence on Saturday, the 29th, and then promised by Dr. Milnor in his testimony.

The Bishop of North Carolina made to the Court a return of the commission for the examination of Miss Ann Wilson, on which he had been appointed on Monday, the 23d inst.; which return was read and ordered to be entered on the record, as follows, viz:

The undersigned, the Commissioners with D. Hobart, Esq., appointed by the Court of Bishops in the matter of the Presentment of the Rt. Rev. Benjamin T. Onderdonk, Bishop of New York, beg leave respectfully to make the following report:

On Thursday, the 26th of December, in pursuance of our duty, we called at the house of Miss Ann Wilson, No. 16 Varick Place, and were received by a servant, who immediately informed Miss Wilson of our presence. She returned for answer, that she was too much indisposed to see company. Whereupon we requested the servant to inform Miss Wilson that we had called to inquire whether she would consent to give her testimony as required. The servant replied, that the message would be useless, as her mistress had resolved not to see any one on the subject of her testimony. Upon our insisting upon the message being taken to her, the servant left us, and returned for answer, that Miss Wilson positively refused to speak with any one on the subject.

Whereupon, upon the suggestion of the Bishop of Ohio, the Bishop of North Carolina, on the same day, addressed to Miss Wilson the following note; and the subjoined answer was returned.

L. S. IVES,
 Bishop of North Carolina.
 CHAS. P. McILVAINE,
 Bishop of the Diocese of Ohio.

[COPY.]

Bishop Ives respectfully informs Miss Ann Wilson, that with Rt. Rev. Dr. McIlvaine, and D. Hobart, Esq.; he has been appointed by the Court of Bishops to take her testimony, and requests that she will reply in writing whether she will consent to give the same in the case of Bishop Onderdonk; and if so, at what time and place.

New York, Dec. 26, 1844.

[COPY.]

A communication under date of 26th inst., addressed by Bishop Ives to Miss Wilson, has this day been received; and in reply to the inquiry whether Miss W. will consent to give her testimony in the case of Bishop Onderdonk, Bishop Ives is re-

spectfully informed, under Miss W.'s authority, that no testimony can be given by her in the case in question. And the use of her name being altogether unauthorized, this opportunity is taken to request that Bishop Ives will adopt such measures as may seem proper to have it withdrawn from the proceedings.

New York, Dec. 28, 1844.

The Bishop of Virginia, in behalf of the Presenting Bishops, addressed the Court, making a statement concerning the fourth article of the Presentment.

The REV. EDWARD Y. HIGBEE, D. D., was again called up as a witness by the Counsel for the Respondent.

Direct Examination resumed.

17. It has been stated in testimony, by the Rev. Dr. Milnor, that upon leaving the house of the Bishop, after the second interview to which you have testified, you said to Dr. Milnor with some emotion in your manner, "What a lie he told!" Will you please to state to the Court whether you used such an expression, or if not, what opinion you expressed or intended to convey to Dr. Milnor and to the other gentlemen, respecting either or both of your visits to the Bishop? State fully your language and opinions on the subject at that time, with all the attendant circumstances.

I do not recollect using such an expression, neither is it quite in my usual style of speaking; yet from the state of my mind at the time, as nearly as I can recollect it, I may have used such an expression. I believe I have already stated to the Court that I went away from the Bishop's displeased with the interview. I laid great stress upon what seemed to me not entirely consistent between the conversation of the Bishop at the first and second interviews. At the first interview the Bishop spoke with apparent indignation of such a story being told by Mr. and Mrs. Beare, and I thought his remarks did not exonerate the motives of Mrs. Beare; at the second interview, the Bishop, I thought, was too anxious to relieve Mrs. Beare's motives, and to avoid impeaching her veracity. If I used the expression referred to it must have referred to this.

18. Did you intend to convey the idea by any such expression, that the Bishop had admitted his guilt at the second interview, and therefore had falsely denied it at the first?

I could have meant no such thing, for the Bishop did not admit his guilt at the second interview. I say this because I could not have forgotten such an admission, and because the conversation which took place between the Bishop and Dr. Milnor at the close of the second interview, was inconsistent with such an admission having been made.

19. It has also been testified to by Dr. Milnor, that before you and the other gentlemen separated after the second interview, and, as he thought, at the corner of Broadway and either Franklin or Walker street, you made a remark of this kind to Mr. Beare: "You were very forbearing with the Bishop, but if he had treated my wife so, I would have kicked him out of the house." Do you remember that or any similar remark on your part, and if so, what induced you to make it? If not, state the remark you did make, and the idea you intended to convey to Mr. Beare.

I think it very likely that I made such a remark, though I do not remember it. It, however, is a somewhat lighter form of expression than I should be likely to use on such an occasion; for I believed then as I believe now, that any man who really thought that such outrages had been committed upon his wife, would have deemed that the smallest possible measure of punishment. I certainly could not have intended by that remark to imply my belief in the Bishop's guilt. I recollect perfectly well at the time that I believed the conduct of Mr. Beare, in his forbearance, inconsistent with the charges which he was said to have presented.

20. Did any thing pass after the close of the second interview at the Bishop's, and before you and the other gentlemen separated, which induced you to believe

that Dr. Milnor did not entertain a conviction of the Bishop's guilt of the indecencies alleged? If so, state what it was.

I was not aware when we separated, that there was any difference of opinion in the matter, between Dr. Milnor and myself. I do not recollect any declaration of Dr. Milnor's indicating such a difference, but supposed that *he*, no more than I, believed in the Bishop's criminality; for I most assuredly could not have agreed with him and Dr. Muhlenberg, to arrest the matter there, had I believed for one moment, that the Bishop was almost an adulterer in fact, and quite an adulterer in heart.

By the Court.

By Bishop Gadsden.

24. Was there an agreement or was there not, on the part of yourself, Dr. Muhlenberg, Mr. Beare, and Dr. Milnor, that the matter should not be made known to any one?

There *was* such an agreement between Dr. Muhlenberg, Dr. Milnor, and myself. Mr. Beare, I think, was present, and assented, but I am not perfectly sure.

25. Was there any thing *said* by either of the gentlemen present, on the subject of this agreement?

I remember only the fact of our agreement—what was *said* particularly I do not remember.

By Bishop De Lancey.

26. Was this a written or a verbal agreement?

Verbal.

27. Do you recollect who first suggested or proposed the agreement?

I do not. It was not a subject which occasioned any difficulty or discussion.

28. How long a time did you gentlemen continue together after you left the Bishop's house; and where did you separate?

I do not think we could have continued together longer than fifteen or twenty minutes. I think we separated somewhere in Franklin street—the street in which the Bishop resides.

Cross-Examination resumed.

36. Was the agreement spoken of, express or implied?

It was certainly not an implied one. As nearly as I can recollect, it was expressed; and I have conversed with Dr. Milnor on the subject since. He told me in Philadelphia, during the session of the General Convention, that he had sacredly observed the agreement, or words to that effect; that he had mentioned the matter to no one, not even to his wife.

By the Court.

By Bishop Doane.

29. You said you did not recollect who first proposed the agreement; can you recollect whether you did yourself?

I cannot recollect that I did. It seemed to be a result in which we consented almost without suggestion.

The Rev. JOHN DOWDNEY was again called up as a witness by the Counsel for the Respondent.

Direct Examination resumed.

24. Were you familiar with the house, which was occupied by the family of the Misses Rudderow, in the summer of 1841?

I have been frequently there.

25. Have you, within a few days past, examined the width of the windows of the front room in the first story, which was occupied in 1841, as a drawing-room?

I have

26. What was the width of each of those windows
(The witness produces a string, measured in Court as two feet nine and a quarter inches.) This is the width of the opening in the wall, from jamb to jamb.

27. How deep is the recess in each of those windows?

(The witness produces a string, measured in Court as one and a half inches.) That is the depth.

28. What kind of a house is that?

A frame house; an old-fashioned frame house.

29. Do you recollect the position of the stairs, leading from the first to the second story; and if so, were they so situated as to enable a person coming down to see into the drawing-room, the door being opened?

The stairs start nearly opposite the door of this drawing-room, so that any person coming down stairs might readily perceive what was going on in the room near the windows.

30. Can you state the width and length of the hall?

I should think the width of the hall about six feet; the length, from the front door to the back door, I should think twenty-five feet.

Cross-Examination resumed.

89. Did you measure these windows yourself, personally?

I did.

90. Are you used to measuring windows?

No, sir.

91. Can you be quite sure that you were accurate in this measurement?

I endeavored to be very accurate.

92. How did you measure?

I had assistance. A boy held the string at one end; I held it at the other, and cut it off with my knife.

93. Who is that boy?

A son of Alderman Towle.

94. Did you visit that house at the time when the Rudderows lived there, so as to know that the room in which you measured the windows, was the drawing-room?

No, sir.

95. Were there any fixtures for blinds on the inside when you went there?

I went there to see a parishioner of mine, who removed into the house after the Rudderows left it—Mr. Wm. H. Mott.

96. Did you never visit that house when the Rudderows lived there?

I never did.

97. Were there any fixtures for shades when you went there?

I do not recollect; I cannot say positively.

98. On which side, as you enter, from the river front, is the drawing-room—the right or left?

On the left as you enter from the river; on the right as you face the river.

99. Which way does the door open into the drawing-room?

I cannot say with certainty. I think the door opens towards the window. It swings that way. I do not wish to be positive.

100. How many windows are there in the room?

There are two, and a door opening into another room.

101. Who lives there now?

It is empty; unoccupied.

Direct Examination resumed.

31. Is there a crevice between the door and the casing, when it is open; and if so, what is the width of it?

Yes, about $\frac{1}{2}$ an inch wide.

Cross-Examination resumed.

102. Did you measure that crevice ?

No.

By the Court.

By Bishop Lee.

1. What should you estimate, as nearly as possible, the size of the drawing-room in question to be ?

I cannot say. The room is not a large one : there are four rooms on the floor.

By Bishop De Lancey.

2. Did you examine the windows of the other rooms of the house on the same floor ?

I did examine other windows, and found them of the same width.

The Counsel for the Respondent read to the Court the letter from the Rev. James Milnor, D. D., laid before the Court by the President, and the letter from the Rev. Dr. Milnor to the Rev. Paul Trapier, and others, therein enclosed.

The Counsel for the Presentment read to the Court the letter from the Rev. Paul Trapier, and others, to which the letter of Dr. Milnor just read was a reply.

The Counsel on both sides jointly moved an adjournment, that they might have time to prepare for summing up.

The motion was granted.

The Bishop of South Carolina moved the Court to pass an order, in the following terms, viz :

That inasmuch as each of the charges in the Presentment has been sustained by only one witness, contrary to the injunction laid down by the Apostle Paul in his first Epistle to Timothy, v. 19, that the Presentors have leave to withdraw it.

The Court, on motion, heard the written opinion of the Bishop of South Carolina, and proceeded in the discussion of the motion to pass the order proposed by him. After the delivery of opinions by several members, the Court postponed the order for future advisement ; such advisement when taken, to be without further discussion.

The Court then adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

*Tuesday, December 31st, 1844, }
half-past 9 o'clock, A. M. }*

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware ; the Assistant Bishop of Virginia ; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The Clerk moved the Court that he be allowed the assistance of a sworn reporter, to take the arguments of Counsel in the summing up.

Ordered, That the motion of the Clerk be granted, provided the Counsel on both sides consent, and approve of the person employed as reporter.

The Bishop of South Carolina obtained consent of the Court to make the following entry on the record, viz :

The Bishop of South Carolina, though he has the utmost confidence in the principle he asserted in the order which he prepared for consideration yesterday, yet asks leave to withdraw it, for the present.

JOHN RUDDEROW was called up as a witness, by the Counsel for the Presentment, and sworn by Dayton Hobart, Esq., the Commissioner, &c.

JAMES ALEX. HOUSTON, M. D., was sworn, faithfully and truly to report the arguments and proceedings in this Court, for the use of the Court, and to communicate the same to none others, by Dayton Hobart, Esq., the Commissioner, &c.

JOHN RUDDEROW was examined.

Direct Examination.

JOHN RUDDEROW duly sworn.

1. Are you the brother of Miss Jane O. Rudderow ?

I am.

2. Did she reside with you in 1841, and where ?

She did, in 61st-street, near the East River.

3. Do you remember the occasion when Bishop Onderdonk dined at your house ?

I remember that he did dine there.

4. At the time of his dining there in 1841, was this one of the shades (Counsel holds up a window-shade) before one of the drawing-room windows ?

It was.

5. Were the windows alike, and the shades of the same dimensions ?

They were.

6. Have you measured this shade ? If so, what is the length and breadth ?

I have. It is seven feet long by three feet three inches broad.

7. Did it come down below the glass of the window ?

It did, about 18 inches.

8. How was this shade hung—outside of the casing, or inside; and how far from the window ?

It was hung outside of the casing; and from the fixtures, I think it was about four inches out from the glass of the lower sash.

9. Did you hang it yourself ?

I did.

10. What is the length and breadth of the hall ?

I never measured it. I cannot answer.

Cross-Examination.

1. What was the height of the bottom of the window from the floor ?

About two and a half feet.

2. What were the dimensions of that room ?

I cannot tell. I never had occasion to measure it myself. If I should guess (it is nearly three years since we lived there) it is about 16 by 18.

By the Court.

By Bishop De Lancey.

1. Did the recess of the window extend to the floor ?

It being a hard-finished wall, there was a wooden wainscoting immediately below each window.

2. Did the lower sill of the window extend into the room ?

I am not very certain about that. I think it likely it was.

By Bishop Hopkins.

3. How deep was the whole wall of the house, from the inside plastering to the outside of the weather-boards ?

I never measured that. I should think from six to eight inches.

Direct Examination resumed.

11. You said the recess was how deep?

Two inches and a half, from the lower sash to the outside of the casing.

Cross-Examination resumed.

3. Is it more than an inch and a half from the outside of the moulding?

It is two and a half inches to the sash. I should judge it was one and a half inch to the moulding.

The Counsel for the Presentment put in an affidavit of the service of the citation of the Court upon Miss Rebecca P. Riker, which was read, and ordered to be filed.

DAVID GRAHAM, Esq., of Counsel for the Respondent, then proceeded to address the Court, as follows:

May it please the Court:—We have at length reached that stage in this important and solemn investigation, when it becomes my duty, as one of the Counsel for the accused, to address you on his behalf. In entering upon the performance of my duty, I but do justice to my own feelings when I say, that I do so with a degree of embarrassment such as it has rarely been my lot to experience. It is not from any want of confidence in the innocence and integrity of my client, and it certainly is not from any distrust of the impartiality of his judges, that I say this; but, feeling as I sensibly do, the novelty of my own position—appreciating the extraordinary course which has characterized this prosecution, and disappointed, as I certainly am, at the manner in which it has been conducted, after the professions of fairness and impartiality which were made in the opening of the case, I cannot but entertain the sentiment to which I have referred.

At the outset of this case, the Court, the accused, and his Counsel, were led to believe that the Counsel who represented the prosecutors, and the Right Reverend Presenters themselves, intended simply to place the facts before the Court, as well on the part of the accused, as on that of the Presentment; and the learned gentlemen who represent the prosecution here, certainly did not hold out any reason to justify the Court in believing, that it would be conducted on the principles on which controversies in courts of law are conducted; or that the zeal and ingenuity of Counsel were to be pressed into the case, for the purpose of enforcing on the judgment of the Court, a conclusion favorable to the side on which their services were enlisted.

Speaking for myself,—and I doubt not I may also for my learned associate,—when I took my seat in this Court, for the purpose of aiding in the defence of the accused, I did so under the impression that my duty would be easy, and that my responsibility would be light. I supposed that the extent of my task would be to aid, by counsel and advice, the accused, by offering suggestions as to his legal rights. I had no idea—had I entertained such an idea, I would have shrunk from this contest,—that I was entering here on the trial of a case strictly as Counsel, to perform the mere duties of that office, or that I was coming before the Court for the purpose of contending with the learned Counsel on the other side, in a strife for victory and success.

I make these remarks, may it please the Court, not for the purpose of impeaching the motives of the learned Counsel on the other side, or those whom they represent on this occasion; but I make them for the purpose

of directing the attention of this venerable Court to the duty which they are now called upon to perform. I am sensible that in the discharge of my duty, I shall fall far short of what may be expected—not of myself, for I know that little can be expected from me—but far short of that which the occasion calls for, and which the duty to the accused, on the part of Counsel, would seem to impose on those occupying that relation to him. So much the more is the responsibility of this Court enhanced; so much the more solemn becomes the duty they are called upon to discharge. And I have said what I have, that the responsibility may be thrown from me, and devolved entirely upon those who, in the event of this case, are to determine on the guilt or innocence of the accused. You, his judges, stand here to determine an issue infinitely more important to him than one of life or death. You stand here to determine whether a man who has grown grey in the midst of this community—who has partaken, in no limited measure, of the honors and the respect of the society in which he has lived—who has risen to dignity and rank in the Church of which he has long been an honored minister, and is now an honored head, is to be disgraced, in the bosom of that Church and in the centre of that society to which he has been an ornament. You, I say, are to dispose of this issue, and I trust that I am not travelling beyond my duty in saying that I anticipate from the result at which you are to arrive, a full realization of all the consequences which may follow an adverse judgment. If the accused be guilty of immorality—if he have dishonored and disgraced the Church of which he is one of the heads—if he have become an unworthy member of the community in which he lives, you, as the fathers of that Church, are bound to punish him, and to punish him severely. But if this assault has been made upon him for other and ulterior purposes—if you are sought to be made the instruments of striking him down for the purpose of gratifying other motives than those which should have been legitimately connected with this prosecution—and if you find that of these charges he is not guilty, and that the motives alleged did not properly attach themselves to his conduct, then I call upon you to perform what I know will be to you all a grateful and pleasing duty, that of restoring him with unblemished reputation to society, to the Church, and to the bosom of that family of which he is the honored and revered head.

With these preliminary remarks, which are perhaps entirely unnecessary to the tribunal before whom I have now the honor of appearing, I shall proceed, as briefly as possible, to discharge the duty which rests upon me. In doing so, it will be to me a matter of deep regret that I shall be compelled to occupy necessarily much of the time of the Court; but I trust that my apology will be amply found in the satisfaction which every member of the Court will experience, in having given a full and fair hearing to the grounds of defence which that duty will require me to present.

In order that the remarks which I have to make may be the more readily understood, and that each portion of the argument which I intend to address to the Court may naturally follow upon the other, I shall divide the consideration of this case into three grand propositions.

In the *FIRST* place, I shall inquire *what is the charge upon which the accused is on trial?*

In the *SECOND* place, I shall direct the attention of the Court to *those principles of divine and human law by which the determination of that charge is to be ascertained and proved:*

And in the THIRD place, I shall proceed to consider *the evidence by which the charge is sought to be sustained.*

First, then—what is the charge against the accused ?

By the recent Canon adopted by the General Convention, it is provided that the trial of a Bishop shall be on a presentment in writing, specifying the offences of which the accused is alleged to have been guilty, with reasonable reference to time, place, and circumstance. Such presentment may be made for any crime or immorality—for heresy—or for violation of the constitution or Canons of the Church. The Canon then proceeds to prescribe the mode in which the presentment is to be made. Under this Canon, the Rt. Rev. Presenters, being three of the Bishops of the Church, have made a Presentment, the charge in which is in the following words: "The undersigned, that is to say, the Rt. Rev. William Meade, Bishop of the said Church in the Diocese of Virginia; the Rt. Rev. James Heryey Otey, Bishop of the said Church in the Diocese of Tennessee; the Rt. Rev. Stephen Elliott, Bishop of the said Church in the Diocese of Georgia, do hereby, in virtue of the canonical authority reposed in them, present to their brother Bishops, the Rt. Rev. Benjamin Tredwell Onderdonk, Bishop of the said Church in the Diocese of New York, as being guilty of immorality and impurity in the several specifications hereinafter more particularly set forth: and they do hereby solemnly demand a trial of the said Benjamin Tredwell Onderdonk, pursuant to the provisions of the Canons of the General Convention of the said Church in such case made and provided." They present the Rt. Rev. Benjamin T. Onderdonk as "being guilty of immorality and impurity." That is the charge—and this charge is sought to be sustained, both by the specifications subsequently set forth, and the evidence adduced in their support. The charge against the Bishop then is, that he is guilty of immorality and impurity; and the question now before this Court is, whether that charge has been sustained by the evidence adduced.

From the course of the trial it would seem to have been supposed by the learned Counsel on the other side, (and some of the members of the Court may have entertained a similar impression,) that the only question before this Court is, whether the several specifications which are set forth as evidence of this charge, have been proved, and whether the Respondent is guilty of the matters contained in those specifications. I desire to call the attention of the Court to what I regard as an error in this respect. The question is one of immorality and impurity on the part of the Bishop, with reference to the time of presenting this charge, unfitting him for the discharge of the duties of his office; and the specifications are but the particulars of the facts from which the inference of this present immorality and impurity is sought to be drawn, on the part of the Presenters. The question before the Court, then, and the decision sought in this case, is whether the Respondent, by reason of any facts which are proved or alleged against him, possesses now such an immoral and impure heart and mind as to render it improper that he should be longer allowed to minister in the sacred office which he fills.

As an illustration of the correctness of this position, and to show that I am quite correct in stating this to be the true and only issue before the Court, let me suppose a case fully exemplifying the meaning of my argument. Suppose that the charge was, that the Respondent is guilty of immorality and impurity by reason of certain specifications, setting forth, that on a

single occasion, seven years ago, he had been intoxicated—that on another occasion, eight years ago, he had been intoxicated—and that in another instance, six years ago, he had been intoxicated—and setting forth six or seven different occasions on which he had been in a state of intoxication, all of them occurring more than three years ago, but without any allegation of a habit of intoxication,—would the Court, though every one of the specifications were proved precisely as alleged, presume the Respondent to be immoral and impure, by reason of the truth of these specifications? Would they not permit the principle of forgiveness and atonement of these errors on his part? Would they not say, that although the facts were proved, yet that they were isolated facts, not entering into the general composition of his character? Would they not say that they did not prove a general habit of intoxication, and as a consequence, that he was not to be regarded as thereby unfitted for the exercise of the holy office from which he was sought to be deposed?

I put this as an illustration; and it is the stronger, inasmuch as one of the very specifications in this Presentment contains an allegation that in 1837 he had allowed himself to drink too freely of vinous or spirituous liquors; and I therefore adduce it as an illustration,—not as a possible case,—but one growing out of the facts now before the Court; and I again ask, whether, if such specifications had been made as of themselves did not show an uniform habit unfitting the Respondent for the performance of the duties of his Episcopal office on a general charge of immorality; he could be convicted?

I shall perhaps have occasion, hereafter, to enlarge upon this argument; but in the outset I lay down this proposition without stopping further to illustrate it. But while upon this subject I take leave to call the attention of the Court to another error which seems to have crept into the management of this case on the part of the prosecution, and of which it is proper that the mind of the Court should be disabused. I have already referred to what I regard as the error of considering these specifications as specific crimes alleged against the Respondent, on account of which, if he should be convicted, this Court would be bound to inflict punishment upon him. I now refer to another, and which, when presented to the mind of the Court, will strike them, I think, with very great force.

It seems to have been supposed by the learned Counsel on the other side that this Court are sitting in the investigation of these charges; in the character and capacity of a jury; and that it is their duty simply to find the facts, and to determine whether the truth or falsity of the specifications has been ascertained and established.

In the courts of law, where the different functions of judge and jury are distributed among different officers, and ulterior powers are assigned not merely to the court, but also to executive officers, in relation to a charge preferred, this position would be perfectly sound. In such a court, when the party is charged with any particular offence, he is called upon to plead to the indictment; the issue upon which is to be submitted to the jury as to the truth or falsity of the fact alleged. The jury have nothing to do but to determine whether the charge be proved or not, and a verdict of “guilty,” or “not guilty,” is the mere traverse of the issue, whether the charge be true or false. The function of the jury then ceases; and the function of the court begins; and the question for them is, whether, assuming the facts to be proved as the jury have found them, they constitute a crime for which

the party can legally be punished. If there be no crime, it is then the duty of the court, notwithstanding the finding of the jury, to arrest the judgment, and not permit the party to be sentenced on the conviction. If, on the other hand, they find that there is a crime in the matters alleged, the function of the Court then is to pronounce judgment on the guilty party. If the case should be of such a character as that that judgment should not be carried into effect, by reason of a long life of virtue after the commission of the offence, or other facts and circumstances entitling the party to the merciful consideration of the government, the executive function then commences, and the act of pardon becomes its province.

Here, then, we have in the civil government three separate functions; that of the jury to find the fact; that of the Court to determine whether a crime be involved in that fact, and whether sentence is to be pronounced; and that of the executive, to decide whether under the fact as proved, and the sentence as pronounced, judgment should be carried into effect. In ecclesiastical cases, this Court unite in their action the functions of all these departments, which in the civil institutions of the State are distributed as I have just described. In such cases it is for this Court to decide, first, whether, if the charges be proved, they constitute a crime, subjecting the accused to punishment; in the second place, whether, if they do constitute a crime, such a length of time have not intervened, or such a course of virtuous life and action have not been shown, as to render the Respondent not a fit subject of punishment, but to entitle him to be discharged from the bar of the Court. In a word, this Court is to decide the fact—the question of crime—the sentence—and whether the sentence is to be carried into effect.

I therefore suppose that in narrowing, as the opposite Counsel have endeavored to do, the inquiry to the mere ground of ascertaining whether the facts alleged are proved or not, there is an entire misapprehension as to the nature of the functions of this Court, and the character of their duty, and that they must pass upon the questions I have suggested, before they arrive at the result of their deliberations in this case. And the result of these principles is that the Court must, if it decide that the specifications, not the charge—for I wish that distinction to be borne in mind—have been proved—then proceed to determine whether after all, a crime has been committed—whether the existing “immorality and impurity,” charged in the Presentment, be in point of fact a necessary consequence of the truth of these facts, and even then, if the Court arrive at this conclusion, that they are to take into view the life and character of the party, the rarity of the acts charged, and the various motives to be attributed to them, and as a consequence of all, to determine whether he is a proper object of censure or punishment.

If I am correct in the view which I have suggested, that this is a charge of present “immorality,” and that it is a question of the present unfitness of the Bishop for continuance in his office, let me again suggest to the mind of the Court, not for the purpose of inducing them to reconsider the decision which I understand them to have made,—that no legal bar or limitation, by reason of mere lapse of time, would be recognised,—how far the charge of present immorality can be sustained by the proof of facts long gone by, and not of themselves necessarily rendering the mind of the party accused impure and immoral? In other words, I may put to the Court the question, and I do so, as introductory to the discussion of the second proposition of my argument, upon which I now enter, whether, as a matter of legal conclusion or fair inference, without invoking any arbitrary rule of law in its support, the charge of present unfitness, arising from “immorality and

impurity," can for one moment be sustained by isolated instances, if you please, of intoxication, occurring several years back? In doing so, I shall not, however, present it as matter of mere legal objection to which they are bound to yield, but, in another view, when I come, as I presently shall, to the character of the evidence by which the charges against the accused must be sustained.

It is conceded on all hands, that there is no charge, no pretence of charge, against the Respondent, excepting those which appear in the specifications before the Court. It is, I say, conceded, for although I am aware that there is in the specifications themselves, and the last one particularly, which was stricken out by the Court, a clause, imputing general immorality to the Respondent, and though I am fully aware that efforts have been studiously made to poison the mind of this whole community, and which may probably have reached the ears of this Court, with the belief that other and numerous similar charges can truly be alleged, yet I call upon the learned Counsel to join with me in the admission, that there is no pretence of any charge, except the four or five cases attempted to have been proved, occurring during the last seven or eight years against the accused. And the very remark made by the Counsel, at the close of the evidence, that the Court are bound to exclude from their consideration every matter not proved in evidence, not being even authorized to decide on any information which they themselves possess, though it might be positive information on matter of fact, if independent of the evidence offered on the trial, I invoke, in support of the allegation, that on this record, in every incident and instance, excepting the four or five cases which are presented before the Court, the Respondent stands before this community, and before this Court, without taint and without reproach.

Assuming it then as true, that there is one offence in 1837—another in 1838—two others in 1841—and one in 1842—I ask the attention of the Court to the principles on which a case involving such facts, occurring at such remote periods of time, ought to be determined.

The learned Counsel will not deny the proposition,—which I do not invoke the aid of authority to sustain, because I am not desirous of burdening, unnecessarily, the patience of the Court—that it is a principle well settled, and long practised upon at common law, until reduced to the form of a statute, that in the prosecution of any demand, or in the case of an allegation of crime of a stale character, every intendment is to be made in favor of the innocence of the party. It was, and is, indeed, a principle of law, that every person is to be held innocent until proved guilty; but when the charge was an ancient one—when by reason of the impossibility of explanation—or of recollecting distinctly the circumstances in which the party was placed at the time—it was fairly presumable, as a moral conclusion, that the party might be innocent, and yet not able to prove himself so, the common law applied this principle with greater force, and presumed the innocence of the party more strongly than in a case of recent origin. It was a rule, applicable not merely to the enforcement of private right, but also to the punishment of public wrong, that if a case were brought before the Court after a great lapse of time, it might be fairly inferred, that although the evidence might be strong against him, the party might be at a loss to explain, consistently with his innocence, and the law, therefore, stepped in and afforded, or at least presumed, a sufficient explanation.

This principle existed at common law, and was applied to the peculiar

facts and circumstances of each particular case. There was no precise period limited within which a debt could be sued for, or a crime prosecuted, or the assertion of private right, or vindication of public right against public wrong, presented. But in each particular case, according to its circumstances, the presumption was made in favor of the party. The evidence of this principle, and the necessity of establishing some general, and if you please, arbitrary rule, led to the enactment in England, and in the States of this Union, of the statute of limitations. This statute was not designed to lay down any new rule or principle. It was not intended for the first time to assert the principle that a strong presumption existed against the fairness of an attempt to overhaul an old transaction, but it was designed to limit *the time* when causes of action could be presented for judicial inquiry. By it an action on a bond was limited to twenty years—on a book account, or mercantile transaction, or contract, evidenced, for example, by a promissory note, to six years—for assault and battery to four years—for slander to two years. So also in criminal cases; according to the statutes of Great Britain, and, I believe, of every State in this Union, a party cannot be called on to answer any criminal accusation, or placed on his defence on any criminal charge, after the lapse of three years from the time of the alleged commission of the offence; the only exception being in the case of murder, for the obvious reason, that discovery may not take place till long after the act, from the flight of the guilty party or other causes, which may render the prosecution impossible within any definite period of time. But in treason—a capital offence—in highway robbery—in arson—in all the higher, and lower, and intermediate grades of offences, the provisions of the statute have fixed the period of three years as that beyond which no inquiry shall be made into any criminal accusation against a party. The guilt is not the less flagrant; but the law wisely and humanely presumes an actual explanation to be impossible, by reason of the lapse of time, and throws around him its protecting shield. It does not grant impunity to crime, nor does it regard the punishment of the offence as less desirable for all the purposes for which punishment is inflicted; but it will not permit a man to be put upon the necessity of explanation or defence of acts apparently inconsistent with his innocence, after the time to which I have alluded, from considerations of policy as wise as they are humane.

I allude to this principle, not, as I have said, for the purpose of inducing the Court to reconsider or change their decision that no legal bar exists, but for the purpose of inviting their attention to the wisdom of the common law rule, or limitation, on this subject, in order that its soundness may, in some degree, guide their judgment and discretion in determining upon the character and degree of proof and explanation required on the part of the Respondent, accused as he is of transactions which have long since occurred, and which, at this distance of time, however innocent he may be, it is impossible to explain. Surely, if it be wise and politic that a man who has offended against the laws of the State by the most flagrant criminality, shall not be called upon to defend his acts after three years have elapsed from the time of their commission—surely, upon every principle of common sense, and reason, and humanity, this Court should say that the Respondent ought not to be called upon to explain acts evanescent in their character, committed five, six, or seven years; or, as in one of the instances in this case, eight years ago. And surely, acting on this sound and benign principle of the common law, you will make the intendment which both the statute and common law have

made, and give the party the benefit of the presumption of innocence, even although entirely unable to explain his conduct.

The Counsel on the other side will probably say that I am invoking principles and statutes which have been frowned upon by the Courts as bolstering up dishonest defences, and that in a court of conscience like this, they should not prevail. Lest such an argument, which is not an uncommon one, should be resorted to against me, I invite the attention of the Court to the language of one of the most eminent jurists in the land—Mr. Justice Story—upon the character and effect of these presumptions, and of the statutes to which I have alluded; as designed to give them perfect efficacy. In the case of *Bell vs. Morrison*, 1 *Peters' U. S. Reports*, 360, that learned judge observes: "It has often been a matter of regret, in modern times, that in the construction of the statute of limitations, the decisions had not proceeded upon principles better adapted to carry into effect the *real objects* of the statute; that, instead of being viewed in an unfavorable light as an unjust and discreditable defence, it had received such support as would have made, it *what it was intended to be, emphatically, a statute of repose*." It is a wise and beneficial law, not designed merely to raise a presumption of payment of a just debt, from lapse of time, but to afford security against stale demands," [and for a stronger reason, against stale prosecutions,] "after the true state of the transaction may have been forgotten, or be incapable of explanation, by reason of the death or removal of witnesses. It has a manifest tendency to produce speedy settlements of accounts, and to suppress those prejudices which may rise up at a distance of time, and baffle every honest effort to counteract or overcome them."

To this last expression I particularly call the attention of the Court, as embodying most strongly the reason of the rule of construction so clearly enforced, and as most emphatically applicable to the case now before them; as will be, perhaps, more apparent when we come to look at some of the motives which have influenced this prosecution.

Here, then, is a principle of the common law carried out in the statutes of every state in this Union, taken from the early establishment of the principle; both at common law and by statute, in the mother country; regarded as a statute or principle of repose, for the protection of a party from being called upon to answer to an unjust demand, or an unjust allegation, after a period of time when the law steps in with its wise and benign presumption, and says he ought not to be called upon to answer, because, presuming him to be innocent, from the very staleness of the allegation or charge itself, and by reason of accidents to which human nature is subject, calculated to prevent the proof of his innocence, they will regard his defence as established by the mere presumption of the law itself.

But to show that this rule is not confined to the courts of common law, but has been applied by the Ecclesiastical Courts in England, I will now advert to an authority more analogous to the principles on which this Court proceeds, and perhaps therefore the more binding on the consciences of the members of this venerable tribunal. I refer to the case of *Bennett vs. Bonaker*, decided in the Arches Court of Canterbury, in 1838, and reported in 3 Haggard's Ecclesiastical Reports, 17-56. It was a suit brought under letters of request from the Chancellor of Worcester, by William Bennett, described as a parishioner and church-warden of Churchhoneybourne, against the Rev. William Baldwin Bonaker, the Vicar of that parish, for neglect of duty, and other irregularities, and was commenced in 1828. The

substance of the charge was, "for neglect of, and irregularity in the performance of divine offices, as Vicar of the said parish, and for indecently and irreverently digging the soil or ground of the church-yard, and the said parish, and thereby disturbing the bodies of the dead buried therein, and for other irregularities and excesses." These charges were based upon twenty-seven specifications, the most of them alleging the acts to have been committed in 1824—four years before the institution of the proceedings. And in reference to this fact, *Sir John Nicholl*, in his very elaborate judgment, resulting in a dismissal of the charges, observes—(p. 26)—"When the charges were brought in, it was strongly complained, on the part of the defendant, by his Counsel, that he was called to answer these charges four years after most of them were alleged to have happened. The Court felt, in a considerable degree, the justice of that complaint, but was of opinion [as this Court has determined in the present case] that it formed no legal bar to the prosecution. All the Court could do, was, *first*, to expect clear proof of the charges, it being a criminal suit; and, *secondly*, on the part of the defendant, to allow of general explanation; for after such a lapse of time, it was hardly possible to produce direct contradiction or distinct explanation of each specific charge of neglect of duty."

Upon this weight of authority, then, and upon the reasons adduced in its support, I confidently call upon the Court to apply these principles to the present case; and although no *legal* bar exists to this prosecution—or upon which the evidence brought to support it can be excluded—to presume strongly the innocence of the Respondent, and, as was done in the case just cited—*first*, to require of the prosecution clear proof of the charges; and, *secondly*, on the part of the Respondent, to allow a general explanation; inasmuch as after such a lapse of time, it is hardly possible to produce direct contradiction or distinct explanation of each of the specifications embraced in this presentment. And I call upon the Court to adopt, as the first proposition in relation to the rule of evidence on this subject, that every inference, as against these charges, by reason of their antiquity, is to be drawn by the Court—that not merely the presumption of the common law in favor of the innocence of the accused party should be applied, but that in a case of stale charges like the present, that presumption should be more strongly applied; that the prosecution should be required to produce proof of the clearest character; and that the Court should receive, on the part of the defendant, the most general explanation, and give him the fullest benefit of the inference of his innocence on account of the utter impossibility, after so great a lapse of time, of explaining facts distinctly and clearly, no matter how innocent he may be of the accusations which they embrace.

Another proposition upon the rules of evidence, to which I desire the attention of the Court, is one which, it strikes me, it is in this case peculiarly incumbent on them to admit, and carry with them in their examination of these specifications; and as bearing on the proof brought forward to sustain them.

Here are some four or five different allegations; some of them, it will be admitted, proved very lightly, while others, it will be contended, have been very strongly established. The learned Counsel on the other side, will probably insist that the case which is thoroughly proved, gives strength to that not so fully proved; and that the effect of the whole, is to establish a series of concurrent acts, all demonstrative of the general charge alleged. The Court will at once perceive the fallacy of such an argument. Nothing, it

seems to me, can be clearer than that that which is partly proved can borrow no strength, as far as the inference of its proof is concerned, from another fact partly or even wholly proved; and that each circumstance of the case, constituting one of the minor facts, tending to the establishment of the general charge, must be proved with as great particularity and conclusiveness as the general charge itself; and the argument cannot be sound which assumes, as it must necessarily do, that because the charge in the case of Mrs. Beare, for instance, is proved, therefore also that in the case referred to by Mr. Bolles is proved. The true and correct rule on the subject is, that each specific charge must be taken up, and the inquiry be made, independently of any others, *is it proved?* When each is proved as distinctly and as clearly as if it were the only issue, then, and then only, the Court are at liberty to put them together, in order to ascertain what is the character and extent of the general charge.

The Court will permit me on this point to refer to an elementary work on Evidence, of unquestioned authority, (Mr. Starkie,) in which it is laid down, (vol. 1, p. 571, 7th American edition,) "that the circumstances from which the conclusion is drawn, should be fully established. If the basis be unsound, the superstructure cannot be secure. The party upon whom the burden of proof rests, is bound to prove every single circumstance which is essential to the conclusion, in the same manner, and to the same extent, as if the whole issue had rested upon the proof of each individual and essential circumstance."

Relying upon the clearness and force with which the proposition itself, and the reasons in its support are thus stated, I commend it with confidence to the favorable consideration of the Court.

Another proposition for which I shall contend, and the discussion of which I approach with a great degree of diffidence, as it involves the examination of matters with which I am not professionally very familiar,—and it is the last and most controlling one in determining the weight of the testimony,—relates to the character of the evidence, which this Court, sitting as a spiritual tribunal, is bound to require at the hands of those who present these charges against the character and conduct of the Respondent.—On this point I shall not make the vain endeavor of enlightening the members of this Court by any argument of my own, (for certainly it would be a most presumptuous attempt on my part,) on a subject with which they are necessarily, by reason of their sacred office, so thoroughly conversant.—I shall, therefore, in justice to myself, and in deference to the Court, content myself with a reference to such evidence of the rule to which I are about to refer, as has fallen within my reach.

And first, I refer to the Jewish law, as found in the Old Testament, which appears to be the original foundation of all the rules on the subject. Thus, in Deut. xvii. 6, it is said: "At the mouth of two witnesses, or three witnesses, shall he that is worthy of death, be put to death; but at the mouth of one witness he shall not be put to death." So in Numbers, xxxv. 30: "Whoso killeth any person, the murderer shall be put to death by the mouth of witnesses; but one witness shall not testify against any person to cause him to die." And again, in Deut. xix. 15: "One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth; at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established."

These are all the references which I shall make relative to the rule, as

it existed under the old dispensation; and submitting them without comment, I pass to the more important consideration of the rule, as it is derived from divine authority, under the dispensation of our Saviour—as it was recognised and regarded by the primitive Church—and as it has descended to us from the earliest period of the history of the Church to the present time.

And first, I invite the attention of the Court to the words of our Saviour, as they will be found in Matt. xviii. 16. “But if he will not hear thee, then take with thee one or two more; that in the mouth of two or three witnesses every word may be established.” And again, in John, viii. 17, “It is also written in your law, that the testimony of two men is true.” These passages show, that the rule under the old dispensation already cited, was recognised and regarded, as I reverentially submit, by our Saviour as a subsisting and binding regulation. But as a more direct authority on the subject, emanating from one of the Apostles, in the early formation of the Christian Church, and carrying with it the implied, if not the express sanction of his Divine Master, I refer to the first epistle of Paul to Timothy, the 5th chapter, 19th verse, wherein it is written, “Against an elder, receive not an accusation but before two or three witnesses.”

Upon this passage, the slight opportunity which I have been able to embrace since the closing of the testimony, has placed within my reach a number of expositions, to which I shall respectfully invite the consideration of the Court. Before proceeding to do so, however, I will refer to the fact that in the Apostolical canons, containing the discipline of the primitive Church, and by some ancients as well as moderns believed to have been framed, or at least to have been the very rules observed by the Apostles themselves, is to be found this very striking provision: “Admit not an heretic to give in evidence against a bishop, nor any one single witness, though he be a communicant: for the Scripture saith, ‘At the mouth of two or three witnesses shall he that is worthy of death be put to death, but at the mouth of one witness he shall not be put to death.’” It is the 67th canon in the edition to which I refer.

Bishop DOANE.—It is the 75th of this collection.

Mr. GRAHAM.—I now return to the passage I have cited from Paul’s Epistle to Timothy, and I would here remark that the words of the original have not, in the received translation, been correctly, or at least literally rendered. The words which are translated “unless before” are in the original *επι μη επι*, the literal translation of which is, “without unless upon,” [or “by,”] being an evident pleonasm, which the translator has endeavored to obviate in the accepted version, by the substitution of words conveying, as he supposed, the meaning, though not the literal sense of the original. I have also the authority of Dr. Macknight, in his translation, for this criticism. His translation is, “Against an elder receive not an accusation *unless by* two witnesses,” or as he renders it more literally, “Against an elder, *whether he be a bishop, a presbiter, or a deacon*, receive not an accusation, *unless it is offered to be proved* by two or three *credible* witnesses.” And in his note to his literal translation, “*unless by* two or three witnesses,” he observes: “This, I think, is the proper translation of the clause. For I see no reason why an accusation against an elder should not be received, *unless in the presence* of witnesses. But I see a good reason for not receiving such an accusation, unless it is offered to be *proved by* a sufficient number of credible witnesses. This method of proceeding puts a stop to groundless accu-

sations of the ministers of religion." (*Macknight on the Epistles, vol. 4, pp. 248, 249, 1st Am. Ed.*) So also in Rosenmüller's commentary on the same passage, it is said: "By the term 'πρεσβυτερον' or 'elder,' as here used, some understand one who is of advanced age; others understand *elder* by rank, which is more in accordance with the preceding words. By the law of Moses, no one could be condemned of a crime unless the accusation was proved by two witnesses. But a common man (*vir plebeius*) could be taken, or an inquisition against him could be commenced at the word of one witness; but not so against a Senator, to whom a presbyter (or elder) was regarded as equal. The reason is simple. Those who correct the crimes of others are always accustomed to suffer the hatred of many, and the judgment of the whole people in favor of the elder when he is elected, easily outweighs one witness." (*Rosenmülleri Schol. in Nov. Test. vol. 5, p. 56, Nuremberg Ed. of 1808.*)

To the same effect, also, it is said in Pole's *Synopsis of the Critics and other interpreters of the Scriptures*, "Against an elder (*presbyterum*) either 1, by age, or rather 2, by rank or dignity, as the context teaches, receive not an accusation (that is, an ecclesiastical censure) unless, &c. There is here a pleonasm or double negation, *εκτος ει μη επι*, as in 1 Cor. xiv. 5, and xv. 2. He appears here to instruct the president, (*præsidem*), who is called the bishop, *επισκοπος*, for it was the duty of such to direct or supervise the actions of the elder. Timothy was then a bishop in the Ephesian presbytery. Query? What need was there of this new precept concerning elders, when in every accusation it had a place? Deut. xvii. 6. Hence some have supposed that it ought to be expunged as superfluous. But the accusation is one thing, the judgment upon the accused, of the judge acquitting or condemning him, another. By the law of Moses, no one could be condemned of a crime unless upon an accusation proved by two witnesses. But by the testimony of one witness, who was not infamous, a common man (*vir plebeius*) could be taken, or an inquisition could be commenced against him; but not so against a Senator, to whom an elder was regarded as equal. In the trials (*judiciis*) of the Jews there were three parts or stages: 1. The admission of the cause or suit, when the Judge receives the accusation. 2. The proof of the cause, by the oath of the accuser. (*Heb. vi. 16.*) 3. The examination of the cause, by the arguments adduced on both sides. Observe, it is not said *condemn not*, but *receive not an accusation*; repel those who bring the charge. And why not? Ans. 1. On account of the weight of the party, and the dignity of his office, he is not therefore to be spoken against without strong reason, for his infamy is connected with the public scandal of the whole Church; wherefore, it is for the interest of the whole Church that his character be not easily injured. 2. Because the opinion in his favor, of the whole people, when he is elected, easily outweighs one witness.

Mr. KETCHUM. The whole people?

Mr. GRAHAM. Not, I suppose, in the *democratic* sense, in which that term would now be understood.

Bishop HOPKINS. In the primitive church it was always done in the most democratic manner.

Mr. GRAHAM proceeded with his quotation.

"3. Because depraved persons are always ready to exaggerate against their prelates and pastors, their faults. For those who correct the crimes of others are wont to incur the hatred of many, which is the malignity of

the human mind." (*Pole's Synopsis*, vol. 4, p. 1080, *Lond. edit. of 1676.*)

As further showing the sense in which this passage has been understood, I beg leave also to refer to the observations of a learned commentator, of another branch of the Christian church. I allude to Henry's Exposition of the Old and New Testament, in which, in commenting on this passage, are to be found the following observations:—"Concerning the accusation of ministers. (v. 19.) 'Against an elder receive not an accusation but before two or three witnesses.' Here is the scripture method of proceeding against an elder when accused of any crime. Observe, 1st. There must be an accusation; it must not be a flying, uncertain report; but an accusation, containing a certain charge, must be drawn up. Further, He is not to be proceeded against by way of inquiry; this is according to the modern practice of the Inquisition, which draws up articles for men to purge themselves of such crimes, or else to accuse themselves; but, according to the advice of St. Paul, there must be an accusation brought against an elder. 2d. This accusation is not to be received unless supported by two or three credible witnesses: And the accusation must be received before them; that is, the accused must have the accusers face to face, because the reputation of a minister is, in a particular manner, a tender thing; and therefore, before any thing be done in the least to blemish that reputation, great care must be taken that the thing alleged against him be well proved, that he be not reproached upon an uncertain surmise." (*Henry's Bible*, vol. 6, on 1st Tim. v. 19.)

In addition to these authorities, it will be found, that in the Constitution of the Presbyterian Church, in this country, this rule has been expressly adopted. It is provided in the chapters respecting the forms of process in the judicatories of that Church, that no complaint, or information, on the subject of personal and private injuries, shall be admitted, unless those means of reconciliation, and of privately reclaiming the offender, have been used, which are required by Christ. (Matth. xviii. 15, 16.) And that in all cases, the ecclesiastical authorities, in receiving accusations, in conducting processes, or inflicting censures, ought to avoid, as far as possible, the divulging of offences to the scandal of the Church, because the unnecessary spreading of scandal hardens and enrages the guilty, grieves the godly, and dishonors religion. And again, that the judicatory, in many cases, may find it more for edification to send some members to converse in a private manner with the accused person, and if he confess guilt, to endeavor to bring him to repentance, than to proceed immediately to citation. And, especially, in respect to process against a Bishop or minister, they have provided, that as it is the duty of all Christians to be very cautious in taking up an ill report of any man, it is especially so of a minister of the gospel. If, therefore, any man know a minister guilty of a private censurable fault, he should warn him in private; but if he persist in it, or it become public, he should apply to some other Bishop of the presbytery for his advice in the matter. And following up the spirit of these injunctions, based as they are upon the precepts and example of our Saviour himself, and therefore the most fitting guide of the discipline of his Church, they have solemnly declared, in the 7th article of the first of the chapters to which I have referred, that "no crime shall be considered as established by a single witness." (*Const. Presb. Church*, pp. 428, 429, 433, *Philad. Ed. of 1806.*)

This rule, then, deriving its authority, as it unquestionably does, from

the old dispensation,—from the fact that it was referred to by our Saviour in at least two instances, as a subsisting regulation—from its enforcement by one of his earliest and chosen followers and Apostles—from its recognition in the canons of the Primitive Church, and from the additional fact that it has been traced down through the regulations of all the Christian denominations, and approved by the most learned commentators of every sect in the Christian Church, would of itself, I contend, in this Court, administering judgment according to the obligations imposed upon it by the discipline of that Church, be of unanswerable force and authority. It will be found, however, that it has been regarded in the Ecclesiastical Courts, in England, as a very practical rule, and as not necessarily going back to the source to which I have referred; but as in itself a wise and proper regulation. And accordingly, the Court will find, in the Ecclesiastical Law, it is laid down, as a distinct rule of evidence. I cite, on this head, from *Burn's Ecclesiastical Law*, (a work regarded by the ecclesiastical courts in England as of the highest authority,) under the title *Evidence*, the following passage: “A single witness is not sufficient in the civil law; and the spiritual court will not allow of one witness only, but there must be two at the least; and if the point is merely spiritual, the temporal courts will not grant a prohibition.” And in a note to this passage, it is said: “The canonists have borrowed this, as they have most of their rules of evidence, from the civil law, which does not permit a single witness to be heard. *Unius testis responsio non audiatur, etiamsi præclara curie honore præfulgeat. Cod. 4, 20, 9. Dig. 22, 5, 12.* A cause therefore which rested on the testimony of a single witness, uncorroborated by any other evidence, was to be dismissed without tendering the suppletory oath. *Noodt ad Dig. 22, 5.*” To the same effect, also, I refer to *Gibson's Codex*, 1011.

These authorities, of which I can only say that regarding them, as I do, of the very highest ecclesiastical authority, binding upon the conscience of an ecclesiastical court, and designed by our Saviour, and those who have carried out his precepts, to be the guide and rule of conduct of spiritual judicatories, I submit to the Court, as entirely conclusive on this subject. But I do not stop here. There are other reasons showing the propriety of the rule; for it is not necessary that it should be regarded—though I think it is the bounden duty of the Court so to regard it—as a mere abstract and imperative rule, aside from the reasons on which it rests. Even in the civil courts there are two instances perfectly familiar to every lawyer, and analogous in principle to the case before the Court, in which the testimony of two witnesses is necessary; and without which the party cannot be convicted, no matter how respectable, honorable, or above reproach, the character of the single witness may be. *First*, I refer to the law of evidence, in the case of treason. It is a common law principle, enforced in England by statutory regulation, and in this country by constitutional provision, that no man shall be convicted of that crime unless on the testimony of two witnesses. What is the reason of the rule? As given in all the elementary writers on the subject, and by most learned judges who have enforced its application, it is this: that the fidelity of a man to his allegiance shall be presumed, and he shall have the benefit as against every single witness, of his own assertion and declaration in favor of his allegiance. Now let me apply the rule and its reason to this case. What is the charge against the Respondent? It is that in violation of his consecration vow—in breach of his high trust—in treason therefore to that

religion, which he was bound to preach and practise, and to his solemn oath; he has committed the acts alleged against him. These are the allegations, and if true, they are, therefore, within every analogy, so many acts of treason to his vow and obligation. Now if in a court of law, the veriest vagrant cannot be convicted of treason to the state, on the oath of the most respectable citizen, can it be possible that this Court of a Christian Church will apply a more lax rule in determining upon the guilt of a Bishop, upon a charge of treason to the Church and to his God; than that which, in the civil courts, protects the life and liberty of a party under impeachment for the crime of treason against his government? The analogy appears to me to be perfect, and so satisfied am I of its applicability in the present case, that I would have no hesitation in resting this defence, even were there no other analogy, on this single principle which the common law, with all its rigor and severity, has yet sanctioned and adopted.

But there is, if possible, a still stronger analogy. I refer to the case of perjury. It is known to every tyro in the law, that a party cannot be indicted, or accused, or convicted of perjury, unless on the evidence of two witnesses; and no matter how degraded the accused party may be—no matter how obviously false the oath which he has taken—yet if the fact of its untruth be supported by only one witness, the party cannot even be put upon his defence. The moral ascertainment of the fact of his guilt may be perfectly clear and certain; but yet the law gives the most degraded outcast the benefit of his own oath as against that of any one witness against him, and he cannot be convicted, unless upon the preponderating evidence of another witness establishing the same fact. Is there, let me ask, no analogy between that case and the present? Is not perjury in its worst sense imputed to the respondent? What is the language of these specifications? Why, that in violation of his consecration vow, the most solemn oath that can be taken by man—in disregard of the awful responsibility which it imposes—in contempt of his holy office, perjuring himself before his God, he has committed the offences charged upon him! In the name of all that is reasonable and just—in the name not of humanity, but of right and justice, I ask whether the accused in such a case ought not to be allowed the benefit of his own oath, against which the concurrent testimony of two witnesses ought to be required? Surely, even if there be no soundness in the reasons given by the learned commentators whom I have cited for the rule, as they lay it down, based upon the respect for the office, and the presumption that malicious and evil-disposed persons may fabricate charges against a party holding the highest office in the Church, it can hardly be possible, where the crime of perjury is involved in the question of his guilt, that that wise and just principle of the law which is extended for the protection of the most degraded outcast, on a charge of perjury, will be refused to a Bishop of the Church, when charged with the enhanced and aggravated guilt of a violation of his consecration vow. It seems to me, and I respectfully submit it as unanswerable, that in the first place, the authority of the Christian Church demands of you to give weight to, and to be bound by the rule to which I have referred; and that, in the second place, the reason of the common law, with all its stringency and severity against crime presents, in the cases to which I have referred, a complete and conclusive analogy. And I therefore, in conclusion of this branch of my argument, submit with confidence to the

Court, that nothing can be clearer, both upon authority and upon principle, than that the testimony of at least two witnesses should concur to establish the fact of guilt against the Respondent; and that it should not concur, as the learned counsel will say it may, by the establishment of different and independent facts, each by a single witness, but in the spirit of one of the rules to which I have referred, in respect to each independent fact, as if it constituted the only issue before the Court. It would be perfectly absurd to say that you have two witnesses to the guilt of the party, when in reality each of the distinct specifications which must be distinctly and independently established, is proved by the oath of but a single witness. It would be doing violence both to reason and language to say that such a fallacy is within either the letter or spirit of the rule, that no charge shall be made against a party, unless proved by the testimony of at least two concurring witnesses.

Regretting that I have so long trespassed upon the attention of the Court, in dwelling upon these points, which I regard as the general propositions running through the whole of this case, and which must govern the Court in their deliberations, I shall now proceed, with as much brevity as possible, under the third and only remaining point of the analysis originally presented in the outset of my remarks, to call your attention to the proofs by which these charges and specifications are sought to be sustained. In doing so, I shall consider together the first two specifications, because they have reference to the same occurrence—the case of Mrs. Butler.

The first specification charges, that “the said Benjamin T. Onderdonk, on or about the first day of June, 1837, being then Bishop of the said Church in the Diocese of New York, was engaged in a tour of official duty, and was proceeding to the town of Syracuse, in Onondaga county, in said Diocese of New York, for the purpose, among other matters, of ordaining the Rev. Clement M. Butler to the Priesthood; that on his way to and near the town of Syracuse, the said Clement M. Butler, together with his wife, met him in a carriage, for the purpose of conducting him, the said Benjamin T. Onderdonk, to the said town; that the said Benjamin T. Onderdonk entered the said carriage and took his seat on the back seat thereof by the side of the said lady; that they two alone occupied that seat, the said Clement M. Butler and a person driving, occupying the front seat, with their backs turned towards the back seat; that thereupon, afterwards, the said Benjamin T. Onderdonk impurely and unchastely put his arm around the body of said lady, and in an impure and unbecoming manner pressed the said lady towards him; that the said lady endeavored to repress the said familiarities, and to bring the said Benjamin T. Onderdonk to a just sense of his duty in that behalf; that the night came on before the said parties reached the end of their journey, and that after it became dark, the said Benjamin T. Onderdonk renewed his said improper conduct, and impurely and unchastely did pass his hand down and along the person and the legs of the said lady, and did otherwise behave towards her, in so rude and indecent a manner that the said wife of the said Clement M. Butler was obliged to claim the protection of her husband, and thereupon left her seat in the said carriage, and rode upon the front seat thereof for the rest of the journey, in doing which she was obliged to sit upon her husband’s lap; and that owing to and in consequence of the said conduct of the said Benjamin T. Onderdonk, the said lady became seriously sick, and her health was so much affected as permanently to injure her constitution. All which said actings on the

part of the said Benjamin T. Onderdonk, the said Bishops presenting do charge as being in violation of his duty as a Bishop, and contrary to his consecration vow in that behalf, and to the great scandal of the Church of Christ."

The second specification charges, "that the said Benjamin T. Onderdonk, Bishop aforesaid, at the said time and place mentioned in the last specification, was under the influence of and improperly excited by vinous or spirituous liquors, drunk by him, the said Benjamin T. Onderdonk, contrary to his duty as Bishop and his consecration vow in that behalf made, and to the scandal and injury of the said Church."

Before considering the testimony in support of these two specifications—which I shall do with very great brevity, the more especially as I had not the advantage of being present in Court and hearing the testimony of the witnesses in their support—I must be permitted to call the attention of the Court to a fact applicable to all the specifications except one, and I certainly do it without intending to impute to the Right Rev. Presenters any design or desire to transcend their duty; at the same time I cannot forbear advertng to the fact that the Right Rev. Respondent has been placed upon trial, upon a Presentment founded on charges, only one of which was attempted to be sustained by the oath of any party directly cognizant of an alleged offence at the time the Presentment was made.

Bishop GADSDEN.—I wish the Counsel to repeat the last observation.

Mr. GRAHAM.—This Presentment, I mean to say, was made upon mere rumor, mere hearsay evidence, in regard to every charge embraced in it except one. It is so in the case of Mrs. Butler; in the case referred to but not proved by Mr. Bolles; in the case of Mrs. Beare; and in the case of Miss Helen Rudderow. In the case of Miss Jane Rudderow alone, was the affidavit of the party alleged to have been insulted, before the Presenters. I advert to this matter with becoming delicacy, I trust, but at the same time I cannot help advertng to it as revolting to my sense, at least, of what is due to the character and rights of every citizen, and as a circumstance which, if it had occurred in a civil tribunal, would have been frowned upon most indignantly by the Court. Here then is a party charged with high crimes and misdemeanors—made the gazing-stock of the whole public—upon affidavits and statements not one of which could be received in a court of law, or even in this Court, where the rules of evidence are not so stringent, in support of the charge; and yet here he is placed upon his trial upon eight or nine charges involving, as is supposed, the most heinous guilt, when but one of them was proved by any thing like legal testimony, before the presenting body.

What would be thought of a grand jury (to whose duties those of the Presenters in this case are clearly analogous) who should indict a man for any crime, no matter what, upon hearsay merely, without the testimony of a single witness cognizant of the facts? These affidavits may have been untrue when made, and I will show this Court that the statements referred to in many of them were so; and yet, by the course adopted, the Respondent has been subjected to the harassing process of this trial—scarcely on the pretence of proof in the hands of the Presenters, when the charges were preferred. I advert to this as a fact which ought to induce the Court to scrutinize very closely the testimony upon which it is now sought to establish these charges. And, as I have already said, I do so without the slightest intention of doing—what I regret to say one of

the Rt. Rev. Presenters permitted himself to do, with respect to the Counsel for the Respondent—arraigning the motives of those who have made this Presentment.

But to return to the specifications themselves. How is this charge on the part of Mrs. Butler sustained? Carrying out the general principles and rules already laid down, and which I advanced as preliminary to my examination of the evidence, in order to obviate the necessity of repeating them—it is, at the most, sustained only by a single witness. That will not, I suppose, be controverted. But let us see how far it is sustained even by that witness. If I understand the English language, it is not only not supported, but expressly contradicted, and therefore in no sense is it sustained even by this single witness. What is the story which she tells? In the first place, furnishing a key in the outset of her testimony for some charity towards the accused, she states that from her infancy up to girlhood and womanhood, she had been intimately acquainted with the accused, and that he was in the habit of extending to her marks of affection and paternal caresses, which, whatever the Court may think with regard to their discretion, certainly in themselves involved nothing criminal, and cannot be so construed as to justify the charge of immorality and impurity.

She next states that she perceived, shortly after the commencement of the ride in question, that the Bishop had been drinking, and then goes on to say: "When I first noticed that his breath was tainted by something he had been drinking, I was neither surprised nor pained by it, because I was aware that he habitually used wine and ardent spirits, and was not aware to what extent. After he had finished reading his letters, I found, with some alarm, that he became unusually talkative, and that he spoke so indistinctly that I could not always understand him. He first put his arm around my waist, and drew me towards him; this he repeated once, perhaps twice. He had often done this when I was unmarried; and I had permitted it, although always disagreeable to me, because I believed him incapable of wrong. At this time, however, I removed his hand each time, because I saw he was not himself. I was excessively fearful lest our driver should discover it, as he was a man who had but recently become interested in Church affairs, and for whose spiritual interest my husband was deeply solicitous; and also because, during our ride to Ithaca, he had strongly spoken of the inconsistencies of professing Christians, as having been a stumbling-block in his way to Heaven. The Bishop persisted in putting his arm about me, and raised his hand so as to press my bosom. I then rose, and withdrew his arm from behind me, and laid the hand upon his knee, and said to him in a raised tone of voice—hoping to bring him to himself, and wishing to attract Mr. Butler's attention—that a Bishop's hands were sacred in my eyes, and that his were particularly so, because they had been laid upon the heads of many I loved, in confirmation, and were about to be laid on my husband's head in ordination. He made but little answer, but for some little time let me alone. During this time, I thought of the awful disgrace that would come upon him and his family, and upon the Church, if his state and conduct that night was known. I had a lingering hope that he had been betrayed into taking more than was habitual to him, and that in this way he had been betrayed into intoxication; and I hoped that his insult to me was unintentional. I therefore decided upon keeping silence upon the subject, and upon preventing, so far as in me lay, its ever becoming known. While sitting in thought, I found he

was again moving. I waited to see whether he might not be merely steadying himself in his seat, as the roads were rough, when he suddenly and violently again brought his hand upon my bosom, pressed and clasped it. In some horror, I struck the hand with all my force, and he withdrew it, but immediately grasped my leg in the most indelicate manner. I sprang forward to my husband, and told him I could no longer sit with the Bishop—I must sit with him. I was greatly distressed, and he, Mr. Butler, held me on his knee for some time; and after that, I rode sometimes on his knee, and sometimes on a carpet-bag at his feet. We slept twice during the night, resting at Homer an hour or two, so nearly as I can recollect. During all our time of stay at those places, my whole efforts were needed by my husband, to soothe him—he being violently incensed, and declaring that Bishop Onderdonk should not ordain him. We stopped that morning about day-break, at a place about ten miles distant from Syracuse, perhaps fifteen. Here we again rested, and breakfasted. During the ride from Homer to this latter place, the Bishop slept heavily. When we left the last stopping-place, I persuaded Mr. Butler to sit back with the Bishop, in order to avoid the remark which would be occasioned by his sitting alone. No conversation passed between the Bishop and myself after I changed my seat; nor have I since seen him, except at Convention, until now.”

These, then, are the circumstances as detailed by Mrs. Butler. Now, suppose that every word were true, what is the *gravamen* of the charge against the Bishop? I apprehend it is the intoxication. It is, indeed, made the subject of a specific charge. I respectfully submit, then, that this is the *gravamen* of the charge put forth by Mr. and Mrs. Butler; because, if he were in the state described by the latter, then the moral motive could not have attached independently of the act of intoxication; and on this subject, without dwelling upon it, for I do not mean to make it a prominent ground of defence, I offer the very sound rule of law as to how far intoxication may be taken as explaining the motive of a supposed crime. I am aware that the general principle in courts of law, is, that intoxication aggravates the crime, because the party is then guilty in a double sense, having first made himself an irrational being, and then committed the offence. But, when the crime depends on *motive*, or *intent*, the law admits the distinction that then the intoxication may be regarded upon the question of motive, and the crime itself, so far as *intent* is concerned, may be held not to have been committed. I refer on this subject to *Russell on Crimes*, p. 8, where it is said, that “although voluntary drunkenness cannot excuse from the commission of a crime, yet when, as upon a charge of murder, the material question is, whether an act was premeditated, or done only with sudden heat and impulse, the fact of the party being intoxicated has been holden to be a circumstance proper to be taken into consideration.” There, as here, the question is one simply of intent. It is that which constitutes the crime; and the circumstance of intoxication is, therefore, proper to be taken into consideration, for the obvious reason that it goes to show that the act was induced by a state of feeling which of itself deprives it of deliberate intent, and renders the allegation of immorality and impurity on the part of the Respondent entirely untenable. I put it to the Court, then, as a consideration entitled to great weight, not as controverting the general principle respecting the immorality of intoxication, but as showing that the intent and motive are explained away by the attendant circumstances.

There is one other feature about the testimony of Mrs. Butler which will probably strike the Court more forcibly than myself, as I did not hear her give her evidence, and which I also submit. Here is a lady coming forward and testifying, seven or eight years after they occurred, to these circumstances, and testifying to them too with a degree of precision and accuracy only reconcilable with the inference which I suggest, without imputing any improper design to her—that they have been exceedingly well digested. I ask whether it is within the range of possibility or probability, that a witness who, according to her own account, has not even conversed with her own husband on the subject since the occurrence took place, seven or eight years ago, could yet, with entire adherence to truth, come forward now with a perfect narration of all that took place, even to the minutest details? It is here proper to bear in mind that clear proof—not such as this witness has given,—a precise narrative—but proof which has probability on the face of it—proof surrounded by a little forgetfulness, and deriving from that very fact additional confirmation—that proof of this character should be insisted on in a case like the present. Is it not, I repeat, most extraordinary, in connection with the remark just offered, that this witness, according to her own story, has not had the advantage of refreshing her memory by conversation with her husband; and yet her evidence is given with a precision of style as remarkable as if her story had been written and carefully committed to memory? To my mind, at least, it is not reconcilable with probability—with the accuracy of the story—with its actual and real truth, (and here again I disclaim any purpose of imputing a corrupt motive to the witness,) that testimony of this character should be implicitly or safely relied upon as free from that spirit of exaggeration, which, without imputing falsehood, should yet detract greatly from its credibility. And, in connection with this idea, there is a fact in the story of Mrs. Butler, which struck my mind as having a most controlling influence on the interpretation of her evidence. On the occasion when the first aggression was made—which was, as she describes it, as gross as any thing could be—she represents herself as seated beside a man in a state of intoxication, and who had just placed his arm under and around her, and pressed her bosom. She supposed this act to be unintentional, and explained it on the ground that it was an innocent freedom, such as he had been in the habit of taking occasionally from her infancy. Now, if she is so charitable in relation to the first aggression, the apology being just as applicable to the second, though not to the same extent, why may she not be mistaken in the construction now placed upon the second incident to which she refers? Why not, for some motive or cause impossible for us to divine, and which, after the lapse of years, it is impossible to explain, may she not have been induced to exaggerate the subsequent portion of her story, and from the state of her alarm and nervousness, produced by the condition in which she says she found the Bishop, why may she not have been led mistakenly to suppose that the latter circumstance proceeded from some bad motive, indicating an immoral or impure state of mind on the part of the Bishop? Is it not perfectly reasonable—is it not fairly reconcilable with every just presumption of fact, that such was the case? But, again, it is a most remarkable fact, (and I make this observation in relation not only to this witness, but to every other of the witnesses testifying to these acts of aggression,) that an indignity of so gross a character could have been committed upon her, and that

human nature did not at the moment break over every barrier, and resent the affront. Can it be possible that men possessing the ordinary feelings and emotions of men, can believe that the frivolous excuse offered in this case—that is, the fear of jeopardizing the spiritual welfare of the driver, Peck—would have been sufficient to account for her tame submission to such gross insults? Can it be possible that any rational, thinking man, can regard with favor an excuse like that, when the impulse of a wronged and offended woman must have overcome every restraint, and when the man guilty of committing such an indignity on her person must have been punished on the spot to the full extent of female vengeance? It seems to me too absurd for belief. In cases of this kind all motives of prudence are overcome, because nature herself governs the action, and breaks over every obstacle to her struggle for protection against insult and aggression. I say, therefore, it is incredible that if this lady had sustained this indignity, she could have silently submitted to it for the flimsy reason she has given—her concern for the spiritual condition of Mr. Peck, the driver—a reason which I must say almost seems as if it had been given in mockery of that piety which it affects to exhibit. And are not these gross improbabilities such an explanation as comes within the rule to which I have referred, and which ought to be received with regard to an occurrence taking place many years ago, and of which a direct contradiction or explanation is impossible? And ought they not to be regarded as a full and sufficient defence against such an allegation as the present?

But it seems this story was known in Utica in July, 1838. It was there the subject of conversation, and was known to the Rev. Dr. Hawks, and others of the clergy of the Church. Is it not your duty to believe, if you attach to these gentlemen responsibility for faithfulness in the discharge of their duty to the Church, that if these charges had then reached their present aggravated form, some attempt would have been then made to bring the Bishop to punishment, or to an account for the offence? But what do we find? Why, that six and a half years after these facts were detailed to Dr. Hawks, Dr. Taylor, and others high in the Church, and by them passed over, they are now brought forward and made the foundation of a Presentment against the Bishop; and all this after the charges had been communicated to, and set aside by, men bound by the most solemn obligations to discharge their duty to the Church and to the cause of religion and virtue, and who are not, I believe, to be suspected of any such warm personal attachment to the accused as to warrant the belief that regard for him interfered with their conscientious discharge of duty! I say, therefore, that there is something more than mere lapse of time to be taken into view, as an explanation of these charges. The offence complained of by Mrs. Butler was a thing talked of, canvassed, and dismissed years ago, and only revived now, when it becomes necessary for other purposes, having no connection with the complaint itself. For these purposes it is now raked up, and the Bishop is held to the conclusion of guilt, according to the argument of the opposite Counsel, unless, after this lapse of time, he can satisfactorily explain the circumstances, and establish his innocence. I say, then, that the motives appearing on the face of the prosecution itself, the long silence respecting the accusation, the passing it over under the circumstances already referred to, the peculiar incidents connected with its reproduction now, the extreme minuteness of the evidence of the single witness who sustains it, the frivolous

excuse offered by her for her inexplicable conduct on the occasion in question, all constitute grounds of defence which in my judgment the Court cannot possibly resist.

But the Counsel will say that Mrs. Butler is sustained by another witness, and will refer you to the testimony of her husband. What is that testimony? It appears, that Mr. Butler was riding with his wife on that occasion, and in his affidavit before the Presenters, he stated that the Bishop attempted to raise the clothes of Mrs. Butler; and I have very good reason for believing that that single fact, stated in the affidavit, was the only one on which, upon the ground that no charitable answer could be given to it, strong reliance was placed as rendering this prosecution of the Bishop necessary. In regard to all the other facts, some explanation, it was admitted, might be conceived. The fact of putting an arm around a lady's waist could be explained, consistently with the absence of vicious motive, and might have been the result of mere accident and without design. But the fact of raising her clothes could not be explained so as to remove the imputation of immorality and impurity. And yet, strange to say, acting under the full knowledge of this fact, he would have you believe that he permits the Bishop to remain in his carriage, takes him to the place of his destination, and permits him to lay his unhallowed hands upon his head the next day in ordination! I ask whether it is not charity to Mr. Butler to discredit his story, and infer that he acted under some other motive, and that he did not believe that any thing was done by the Bishop designed to be offensive, or which he as a husband ought to have construed as offensive? Can it be possible? Is there a mantle of charity broad enough, or a principle of Christianity that could cover the conduct of a man who could be present and permit such an indignity to be offered to his wife without attempting to resent it? Is it conceivable that any man would permit it without, I was going to say, punishing, but, as applied to this meek minister, I will say admonishing the guilty party? Is it possible to conceive that the husband who believed such a story of wrong to his wife, could allow the author of the indignity to be the instrument by whom he himself was admitted into the ministry of God? I cannot believe it. I cannot believe that any man on the face of the earth is depraved enough to exhibit such an utter want of sensibility, such an utter want of all that is due to the dignity of man. And yet that is the story which Mr. Butler would have you believe!

But is there nothing else to contradict it? He is brought here for the purpose of confirming the testimony of his wife. He is the man through whom this accusation has found its way into this Presentment. And coupled with the very affidavit on which this Presentment was founded, you have an apologetic letter, taking back the most aggravated features of the charge to which he permitted himself to swear. In view of the fact that he has stated in his affidavit that attempts were made to raise his wife's clothes, and that he retracts it in his letter, how can this Court say that he is to be relied upon in all or any of the other essential particulars to which he has testified? If in the very *gravamen* of the charge he has been so greatly mistaken, or as he very modestly expresses it in his letter, showing not a very high sense of morality, I must say, fallen into a "trifling" inaccuracy in his statement, how can the Court rest satisfied of his accuracy with regard to the other, and in comparison, minor points of his testimony? I regard his story as a tissue of exaggeration from beginning to end; and I

submit that the whole story of Mrs. Butler, and the motives attributed to the Bishop in the first instance, have since received their exaggeration for some reason not avowed in this case,—or that at least it is impossible for the Court to say to what precise extent that story is true. And no principle is better settled, than that when it is impossible to ascertain how much of a story is true, and what part is false, the whole is to be discarded. You cannot rely upon certain portions likely to be true, when your moral certainty has been shaken by the fact that a portion of the story is certainly untrue or clearly improbable.

But we have been called on to explain this charge; and I ask again, what explanation can be given under the circumstances? Can it be explained by any human testimony whatever? or can any defence be offered except that afforded by a close examination of the allegation itself, and the testimony offered in its support, resulting in a conviction of the improbability of the greater portion of the story as tested by the ordinary motives of human action?

I will not venture to suppose that such a charge could be presented against any member of this Court; but let each member place himself in the position of the Respondent, and say how, after such a lapse of time, he could make a more satisfactory explanation than that now offered by the accused? Nay, in the very Presentment we are deprived of the opportunity of explanation. In the affidavit of Mr. Butler, the name of Mr. Peck is given as a party who was present on the occasion in question; but in the specification the name is omitted, and Mr. Peck is described as a person unknown; and we are thus precluded, until the trial has commenced, from the possibility of gaining any clue to the testimony, or even the name of that individual. It was incumbent on the prosecution to have produced that witness. He, according to this account, was cognizant of scenes and circumstances which he could not have readily forgotten. I do not say that the name of this witness has been designedly withheld for the purpose which has been effected, but I do complain that it has not been furnished to us, within the spirit of the Canon under which the charge is made. I pass over, with these remarks, the charge in relation to Mrs. Butler, leaving to my learned associate, who so ably conducted her cross-examination, and whose impression of the evidence in that case will necessarily be stronger on that account, to complete the analysis and review of the testimony in support of the first two specifications. I shall, before leaving this subject, however, refer for a moment to the charge of intoxication. Suppose it to be proved, as it is charged, that the Respondent, on a certain occasion, seven or eight years ago, had drunk too freely of wine, and was somewhat excited by it. Is it not sufficient to say that that is the only charge, and only pretence of any accusation of that character throughout the whole of that time? And I ask, whether, even supposing that fact to have been admitted by the Respondent, any member of the Court would hesitate a moment in discharging him from any necessity of entering on an explanation of that circumstance, or even any penitence on the subject; by reason of the fact that his whole course of life, both before and since that occurrence, is a sufficient atonement for that exception to his general conduct. This of itself is a reason, and strong argument in favor of the position which I assumed at the outset of my remarks, that the present immorality—the present unfitness—the present condition of mind of the party—is, after all, whatever the form of the specifications, the only legitimate subject of inquiry.

I come now to the charge attempted to be sustained by the testimony of Mr. Bolles—the *third* specification,—which alleges, “that on or about the 21st of August, 1838, the said Benjamin T. Onderdonk, being then Bishop as aforesaid, was travelling in a public stage from Batavia to Utica, both in the same Diocese of New York, for the purpose of attending the meeting of the Convention of the said Diocese, then about to be holden at Utica; that the only passengers in the said stage were the said Bishop, the Rev. James A. Bolles, and a young woman, to the said Presenting Bishops unknown, and whose name they are not able to furnish; that the said Bishop and young woman occupied the back seat, and the said James A. Bolles the middle seat of the said stage; and thereupon afterwards, the said Benjamin T. Onderdonk impurely and unchastely put his arm around the body of the said young woman, and took other indecent liberties with her person, and behaved in so improper and unbecoming a manner that the said young woman endeavored to get beyond the reach of the said Benjamin T. Onderdonk; and finally, with a view to escape his rudeness, left the stage before reaching the place of her destination; which said conduct of the said Benjamin T. Onderdonk, the said Bishops present as contrary to his consecration vow in that behalf, and to the scandal and injury of the Church aforesaid.”

I do not know that I am justified in occupying the attention of the Court with any remarks on this charge, as it is most manifestly unsustainable by the evidence offered in its support. The Counsel on the other side may not, however, take that view of it. At all events, I will be able to show, without occupying much time, that the acts described in the testimony of Mr. Bolles, so far from indicating any immorality, or impurity, or indelicacy, on the part of the Bishop, were of the most innocent character, without any motive whatever, and altogether free from any such imputation as that described in such glowing terms in the specification which we are now examining.

Upon this branch of the case, however, there were three questions put to Mr. Bolles by the Right Rev. Bishop of South Carolina, (Bishop GADSDEN,) the answers to which entirely dispose of the charge in question. As they appear in the record they are:

“By Bishop GADSDEN—The Presentment says the Bishop put his arm around the body of the young woman; did you witness any thing of the kind? No, sir, I did not.”

“By same—The Presentment says that he took other indecent liberties with her person; what were they? *Ans.* This Presentment was drawn up without any consultation with me by the Presenters. I saw none that I considered indecent liberties, or that could come under that name.”

“By same—So far as you know, did the said young woman endeavor to get beyond the reach of the said Benjamin T. Onderdonk? *Ans.* No.”

It was notwithstanding attempted to be proved here, for the purpose of showing that the Bishop was guilty of impurity, that on a special occasion, when waited on upon this subject, he attempted to deny certain facts proved by Mr. Bolles. The conversation, so far as he was concerned, however, had reference to a fact testified to by Mr. Bolles, namely, that the Bishop had taken up a child from the back-seat of the carriage, in order to show it something which attracted attention as they were passing along the road; and so determined was the disposition to eke something out of this conversation prejudicial to the Bishop, that the Counsel for the prosecution, failing

entirely in the case itself, as it stood on the testimony of Mr. Bolles, the only witness cognizant of the facts, have endeavored by the evidence of Dr. Taylor to cast suspicion upon the transaction. If the learned Counsel had intended to redeem the pledge given in the opening, he would at once have abandoned that charge, and asked permission of the Court to strike it from the Presentment. I do not know whether he intends to press it now or not, or whether or not he entertains the idea that there is any thing in this charge. But I put it to the Court, on their recollection of the evidence, whether it can for a moment be sustained. Their own witness has failed them, and in the face of his positive testimony, how can they expect the Court to credit the charge?

I come now to what I suppose the opposite Counsel regard as one of the most important charges—the *fifth*—resting on the testimony of Miss Helen Rudderow; passing over the *fourth* specification—the witness to whom it refers having sent a letter to the Court, from which it seems that the charge was made without her authority, and which is therefore understood to be abandoned. The fifth specification charges, “that between the months of May and July, 1841, to wit, on or about Sunday, the 13th day of June, in said last mentioned year, the said Benjamin T. Onderdonk, then being Bishop as aforesaid, visited St. James’s Church, Hamilton-square, New York city; that soon after the services of the church were ended, and on the day last aforesaid, he left the said church in a carriage, in company with Miss Helen M. Rudderow, a young lady, to proceed as a guest to the house of her brother, John Rudderow, Esq.; that while riding in the said carriage, by the side of the said young lady, he, the said Benjamin T. Onderdonk, impurely and unchastely thrust his hand beneath her dress, upon the bosom of the said Helen Rudderow, to her great shame and consternation, and in violation of the proper duty of a Bishop, and in breach of the consecration vow of the said Benjamin T. Onderdonk, and to the great scandal and injury of the Church of Christ.”

Before discussing the evidence bearing upon this charge; I take occasion to say, that it is not my intention to weary the patience of the Court by examining the minor discrepancies in, and contradictions of, the testimony of any of the witnesses, but merely to advert to the leading facts as testified to by them, and to call the attention of the Court to what I deem the most palpable improbabilities in these statements, as well as to adduce from extrinsic sources, such contradictions as may tend to show the stories ought not to be believed.

And first, then, I ask whether a more improbable story on its face was ever told, than that by Helen Rudderow in relation to the insult alleged to have been offered to her by the Bishop? What is it? In substance it is this; that after church service on the morning in question, an invitation was extended to the Bishop to dine at the house of her brother; that she and the Bishop got into the carriage of the Rev. Mr. Richmond, the Rector of the church, to go to the house of Mr. Rudderow; that the distance was about three quarters of a mile, and that the time occupied in performing the journey was half an hour—(a most unusual length of time, certainly); that immediately after getting into the carriage, the Bishop made a most indelicate assault upon the person of the lady, without being noticed by Mr. Richmond, who, although driving the horse, was yet engaged in conversation with the Bishop, and was not absolutely obliged to have an eye on the animal constantly—country clergymen’s horses not being, I believe, partic-

ularly addicted to running away—(a laugh.) She says that after the first advance, which she repelled, the Bishop thrust his hand into her bosom, and kept it there during the whole of the ride—that this was done, with a third party, a clergyman, sitting in the same carriage, on the front seat, engaged too in constant conversation with the Bishop—with many persons probably passing along the road; in fact, with every thing, as to time, and place, and circumstance the most likely to lead to observation, detection, and exposure.

[Bishop HOPKINS—That is not exactly the testimony.]

Bishop McILVAINE—She states that the Bishop “continued to thrust his hand into her bosom.”

Mr. GRAHAM—The statement is, I think, as I have given it; but, supposing it to be as suggested, that the attempt was frequently repeated, it only renders the story more improbable, as it shows the greater probability of detection.

Bishop HOPKINS—So that we have the testimony right, sir, it is all that we want.]

Mr. GRAHAM proceeded—Upon this statement, then, I ask the Court, is it possible that any man could have acted in the manner in which the Bishop is represented to have acted by this witness? Is it possible that any man of sense,—without saying one word—without making a single advance in the shape of language, either indelicate or otherwise, as she states—with a lady of whom he knew very little, could take such liberties as those described? Is it at all within the limits of possibility, that a man could, while riding, in broad daylight, in a wagon in company with a clergyman with whom he was constantly engaged in conversation, take such liberties with a lady sitting by his side—thrust his hand into her bosom repeatedly, and keep it there—and yet escape detection and exposure? Is it at all probable that any man could have been guilty of such folly as to incur such a risk? Did the Bishop know that the lady would not at once resent the insult? Had he any reason to suppose, assuming her story to be true, that her sense of the insult would not have broken forth, and at once exposed him? Certainly she has given us no ground for supposing that she was of such a frivolous or wanton disposition, as to warrant the belief that she was not likely to resent such an affront with the promptitude and decision of a virtuous and indignant female. Yet she would have us believe that the Bishop actually committed the offence with the certainty before him of instant exposure!

But let me ask the Court, is it possible that the circumstances could have occurred, consistently with any of the motives which ordinarily attach to human action? Is it at all possible that this conduct could have been unobserved by Mr. Richmond, with whom not only the Bishop, but the lady herself, was conversing all the time, to the extent on her part, as she cautiously avers, of returning very short answers to the remarks addressed to her?—a circumstance of itself calculated to excite attention. I repeat, can it be possible that a gentleman could thrust his hand into the bosom of a lady, sitting beside him in a carriage, she having a high-necked dress, too, and do this repeatedly, and yet escape the observation of a third party sitting immediately in front of them, and engaged in conversation with them?

[Bishop FREEMAN—I feel it to be my duty to confirm the original statement of the Counsel. When asked, “How long did the Bishop’s hand con-

tinue on your person the second time?" she replied, "Till we reached home."

Bishop LEE.—I wish here to make a correction. The Counsel spoke of her dress as being a "high-necked" one—

Mr. GRAHAM—I was about to correct myself on that point. I believe she said it was a low-necked dress—but that, as is obvious, only renders the story more improbable, inasmuch as with such a dress detection was still more likely, the hand being more readily observable.]

Mr. GRAHAM proceeded.—I now come to the testimony of the other Miss Rudderow, in relation to whom the sixth specification charges, "that on the same day mentioned in the last specification, the said Benjamin T. Onderdonk, Bishop as aforesaid, was received at the house of the said John Rudderow, in the parlor thereof, by Jane O. Rudderow, and that thereupon the said Benjamin T. Onderdonk impurely and unchastely thrust his hand into the bosom of the said Jane O. Rudderow, and upon being repelled, took other indecent and unbecoming liberties with the said lady, in violation of his duty as a Bishop and his consecration vow in that behalf, and to the great scandal and disgrace of his said office."

Now if the story told by Helen Rudderow be improbable, as I think is most manifest, what will the Court think of that of the other young lady, her sister? It appears that immediately after Miss Helen had returned home, she went up stairs and found her sister, who by reason of a sick headache, had left church early, and returned home; that Miss Helen at once communicated to Jane what the Bishop had done, and requested her to go down stairs and "entertain him," she promising to go down herself as soon as she could become somewhat more composed; and that in consequence of this request, Jane immediately, and without the slightest hesitation whatever, went down stairs, and although perfectly apprized of the state of mind attributed to the Bishop on the part of Helen, at once hastened to entertain him. She found the Bishop standing at the centre-table; he immediately accosted her; said he must cure her of her sick headache, and taking her by the hand, which she gave without any reluctance, led her to the sofa, which stood near the door, which was open, and her brothers being at the same time in the entry; and then, without saying a word, the Bishop committed upon her the first indecency of which she complains, as she describes it in her testimony. Well, then, it seems that without being at all alarmed by this conduct on the part of the Bishop, and with the story of her sister's wrongs yet ringing in her ears, she remained in the room, contenting herself with the precautionary measure of merely moving to the other end of the sofa—upon which the Bishop, as she says, followed her, and repeated the insult. Still she gave no alarm. It would indeed appear, that all these ladies who have been insulted in this gross way, are actuated by very different principles of resentment from those which usually manifest themselves in the sex, and the total absence of which, under circumstances like these, is, I apprehend, wholly inexplicable. From an unwillingness to give any alarm which would attract the notice of her brothers in the entry, she remained perfectly quiet! She heard footsteps on the stairs, and the Bishop, hearing them also, hastily moved to the other end of the sofa—rushed, I think she says.

[Bishop LEE—"Sprang."]

Mr. GRAHAM—That's the word: "sprang" to the other end of the sofa. Well, the lady whose footsteps were heard, entered the room. She was

the sister-in-law of the young lady, and if the story of the witness be true, is it possible that she could have failed to observe some evidence of confusion or embarrassment on the part of one or both of the parties on the sofa? Yet she is not produced here, and no attempt is made to offer any corroborative evidence on her part, by showing what she could not but have observed. I ask, is not this of itself significant? And is it not a fact, at least worthy of attention, that not a single member of that household, some of whom must have observed some evidences of the occurrences described, is produced on this occasion?

And here, now, let me inquire, is the story of the young lady probable? Is the statement at all reasonable? Does it carry with it probability on its face; that the Bishop could, in a room with the door wide open, accessible to the lady's mother and sister-in-law, with her brothers in the entry, with all the certain means of detection, with an absolute impossibility of escape, without any knowledge of the disposition, certainly of the willingness of the party, have acted as this witness would have us believe? Is such a course of conduct probable on the part even of an idiot?—who would, in the absence of reason, have yet instinct enough to preserve him from the commission of acts so certain of detection and of punishment. Yet to all these insults the young lady quietly submitted, and that, too, after she had been told of what had taken place in relation to her sister!

But to proceed with her story. Her sister-in-law enters the room; she is herself in some confusion, but nobody observes it. The Bishop is also confused, but nobody observes it. Her sister-in-law enters the room—does this young lady who has just been so grossly insulted, leave it—does she at once retire? She had a good excuse for withdrawing, without creating suspicion, by reason of the ailment of which she complained, and her sister-in-law's presence effectually relieved her from the necessity of "entertaining" the Bishop; yet, does she leave the room? No! She remains, and takes part in the conversation until dinner-time. She then takes her seat at the dinner-table—the Bishop is, of course, there. During all this time nothing appears in the conduct or manner of either of these young ladies, that attracts the attention of any one. Immediately after dinner the company separate; they withdraw to the piazza for the purpose of viewing the surrounding scenery—the Bishop among the rest. This young lady, whose nervous headache had, it appears, miraculously disappeared, and who, if desirous of escaping from the Bishop, had that very good excuse, instead of retiring to her room and giving vent to her feelings of mortification and shame, follows the rest of the company to the piazza. The person nearest to her appears to have been the Bishop. He asks her something about the house of Mr. Schermmerhorn, which was to be seen at a short distance, and then, again, while these six or seven persons are present, and while she and the Bishop are walking on the piazza, with their backs turned to the rest of the company, she avers that he again took improper liberties with her person—that the Bishop again thrust his hand into her bosom through her high-necked dress!

[Bishop LEE—Is that testified to?

MR. GRAHAM—It is, in substance, though I do not pretend to be strictly accurate in regard to the precise words in which she gave her evidence; and that, because I do not desire to fatigue the Court by reading the minutes of testimony which they will doubtless carefully review. If I be in error in any particular so far as the substance is concerned, however, the

Court can readily correct me, and I shall esteem it as a favor if they do. The point of my remark is not at all affected, whether she testified that the Bishop put his arm around her waist, or thrust his hand into her bosom—both actions were alike liable to certain detection, by the six or seven persons on the piazza.]

Mr. GRAHAM proceeded—She then goes on to say, that she immediately retreated into the room, whither she was immediately followed by the Bishop, and that in a short time all the other members of the family were collected there, and engaged in conversation, in which the Bishop took part—that being anxious to know whether it was raining; (which she could easily enough have ascertained while on the piazza immediately previous,) she arose and went to the window—“as quick as thought” (that may not have been the expression, but it was the idea—) that the Bishop abruptly broke off from conversing with her mother, started up after the young lady, rushed behind the window curtain of three feet three inches in width, and again thrust his hand into her bosom—she still giving no alarm, but quietly retreating from the window. With the recital of this last indignity, the tragical story of Miss Jane Rudderow terminates.

Now, I ask the Court with perfect confidence, whether they can believe the stories of these young ladies as they are told in the direct examination? I ask, is it possible that these insults could have been perpetrated upon them over and over again, and under the circumstances described, without their being observed by some one? Or whether any woman would have submitted to such an indignity without immediately taking some means to prevent its repetition or to punish the offender? The feelings of a virtuous woman would in such circumstances have broken forth irresistibly—the feelings of the family would have been excited and aroused—and the aggressor, be he Bishop or any thing else, would have been expelled the house, whose inmates he had insulted, and whose hospitality he had so grossly outraged. I say this, because it is not in human nature that any man could so grossly insult two virtuous females—again and again insult them—and yet not only have escaped summary vengeance, but not even the slightest intimation have been conveyed to him from any quarter that he had been guilty of the least misconduct. But yet such is the story these young ladies would have us believe. They would have us believe that they were both wantonly, vilely, and repeatedly insulted by the Bishop; and that yet no reproof escaped them—no confusion betrayed the wounded feelings of the woman—no indignant manifestation of disgust appeared!

I should have no hesitation whatever, in leaving this story of the Rudderows on their own mere narration, and feel the most perfect confidence in the judgment of the Court upon it without offering a word of contradiction or comment. But the learned Counsel on the opposite side will strenuously insist upon their truth, and will no doubt infuse a vast deal of virtuous indignation into his comments upon their evidence, which I must endeavor to anticipate and neutralize, by pointing out a few of the contradictions which they have encountered from witnesses whose motives and veracity are beyond suspicion or question.

The opening Counsel himself admitted; in one of the addresses that were made to the Court during the incidental discussions in the case, that if it could be proved that on any subsequent occasion these young ladies met the Bishop on the same terms of cordiality as before the alleged offences,

the Court might be justified in entertaining the belief that the indignities complained of could not have been perpetrated, notwithstanding their testimony on the trial. That conclusion is as just as it is unavoidable. If these ladies had received these indignities, certainly on every subsequent occasion they would have avoided the aggressor, and their conduct would uniformly have shown that they entertained a proper sense of their own dignity, and of the gross misconduct of the Respondent. In this, and in another case to which I shall more especially refer hereafter, we have introduced all the evidence that was reasonably to be expected in proof of the innocence of the accused. We could not, of course, directly contradict these charges by direct testimony. At all events, we could not prove by direct testimony that the Bishop had not committed the acts complained of. With a view, therefore, to furnish the only testimony accessible by us, and to show that this story is grossly exaggerated, at least, if not wholly untrue, we have introduced a mass of testimony clearly irreconcilable with their evidence. First, we have adduced evidence relative to the meeting of the parties a year after the date of the occurrences described by these young ladies. The Court cannot have forgotten the manifest attempt on the part of both to evade any inquiry relative to that meeting, obviously, because they were aware of the inference which would inevitably result from any admission of the truth. Accordingly, you will recollect that it was with great difficulty that a direct answer could be obtained from them to any inquiry on this subject, and, after all it was apparent that something was kept back. There was a want of frankness and candor which the Court must have observed. For instance, without going into it minutely, it will be recollected that one of the Misses Rudderow stated that the Bishop was "introduced by Mr. Dowdney," evidently with the view to leave the impression that there was no cordial greeting on her part, and that she took the Bishop's hand, not from respect to him, but on account of the gentleman who effected the introduction. So in relation to the meeting on the stairs or in the vestibule after the morning service. Miss Helen Rudderow evidently wished to make it appear that she had remained in the organ-loft for the purpose of avoiding the Bishop: showing an evident desire on the part of these witnesses not to inform the Court frankly, but to avoid in their testimony any admission calculated to help the inference which they saw must be drawn from the truth of the transaction. In this connection, I ask the Court to recollect the manner in which Jane attempted to get rid of the effect of her meeting with the Bishop at his study, in December, 1842, and her excuse for going (out of a society of ten or twelve persons) on a voluntary mission to him for the purpose of soliciting a favor. According to her account of it, she went to the Bishop's house under a sort of moral constraint, as she would have the Court to believe—because *she* was the only person who could have done so with the best hope of success—and she was willing to submit to a lesser evil to accomplish a greater good. Now take our witnesses, and it is perfectly apparent—it is incontrovertible, that on all these subsequent occasions, at all these interviews, there was a cordiality of manner between the parties wholly inconsistent with the inference or pretence that the facts of which they complain on a previous occasion had any existence.

In the first place, as to the meeting in the church, we have presented the testimony of the Rev. Mr. Dowdney. He is not, I admit, a very expert or practised witness; but I think I may safely appeal to the Court whether

the obscurity of his manner does not arise from an excessive conscientiousness, and a dread (entertained often by the most honest witnesses) that the English language is a sort of trap for their consciences, of which they must at all times be exceedingly wary. Mr. Dowdney could certainly have no motive in coming here to mislead the Court, and by perjury to falsify the testimony of these young ladies. If he had come with such a design, he surely would have had a story better prepared, and bearing on more important points than those upon which he has given his testimony. In substance his evidence is this—that one morning, about a year after the time to which the evidence of the young ladies referred, he met the Bishop at the church—that they walked up the aisle together—that the ladies were there, and at once cordially recognised and saluted the Bishop: One of them pretends that Mr. Dowdney introduced the Bishop, but Mr. D. swears that the recognition was cordial and voluntary. Certainly there must be an attempt on the part of one or other of the witnesses to mislead the Court in some way—which of them, it is most probable, I leave the Court to judge. Is it not most probable on the part of the individual on whose sense of delicacy the point in question most strongly bears? It was incumbent on the part of the lady to prove the virtuous indignation felt by her on account of the former conduct of the Bishop, by showing that she treated him uniformly afterwards with coolness. She therefore could not, consistently with a becoming feeling of pride, admit the fact proved by Mr. Dowdney, that she and her sister met the Bishop in a frank, and cordial, and friendly manner. And if any contrary feeling had existed, it certainly was not possible that it could have escaped the notice of even the most casual observer.

I think it is not going too far to argue, if we suppose that the Bishop possessed common sense, and he had been conscious of having offered such an insult and affront to these ladies, that he would have studiously avoided them. That he would not have been willing to expose himself to their reproach, or what would have been more probable, the repulsion which he was naturally to expect? Yet we find him, with the frankness of innocence, meeting them; giving them his hand in cordial salutation, entering into conversation unreservedly with them, and extending to them courtesies which were as freely and frankly returned.

But in addition to all this, we have the fact of the subsequent interview of Jane Rudderow with the Bishop, at his study, which, it seems to me, puts down any pretence that these indignities could have been offered not only to herself but to her sister. I certainly cannot suppose that any female of proper feeling could be guilty of such an indignity to her own sister, as voluntarily, and unnecessarily, to extend to a man who had offered such an affront as that stated in her evidence, the unusual courtesy of seeking him out, waiting upon him at his house, and consenting to become a suppliant to him for a favor. Yet it is in evidence, that Jane Rudderow, in December, 1842, went to the house of the Bishop, in company with Miss Riker, for such a purpose. It is true she states that Miss Riker induced her to go with her on that occasion. But in this she is expressly contradicted by the testimony of Mr. Dowdney and of Miss Rutter, both of whom agree that Miss Jane, when this subject was spoken of, volunteered to go to the Bishop's house; and that on the question being asked if she knew the Bishop, she replied that she knew him intimately, thus conveying an impression to Miss Rutter, utterly irreconcilable with that which she would now have the Court to believe. The only solution of her conduct consis-

tent with ordinary female delicacy is, that she went there because there was no pretence, or ground of pretence on her part, of any indignity having been offered her by the Bishop, and because she was quite unconscious of the existence of any cause that ought to have disturbed their friendly relations. To suppose any other state of facts, would be to impute to her, that in going there she was guilty, of a wanton compromise of that dignity of character which is never wanting where female virtue is outraged, or even where it exists. And is there any doubt of these facts? Have we not proved, beyond a question, if the testimony of Mr. Dowdney and Miss Rutter be true, and there are no reasons to suspect the contrary, that these young ladies, upon these several occasions, acted in such a manner as to repel the belief that the Bishop had previously insulted them? And how can the prosecution escape from the effect of the contradiction of the witnesses by whom these charges are attempted to be sustained? Our witnesses could have no motive to mislead the Court. While those to whom they stand opposed have every motive, so to color the transactions referred to, as to reconcile them with a becoming sense of wounded delicacy, and thus endeavor to convince the Court, even against probability, that they had uniformly acted consistently with these feelings, and with the truth of the story they have told. It is a sound and salutary principle of law as well as of morals, that a witness who is false in one thing, or who either prevaricates, or misrepresents, or distorts particular facts upon which he cannot well be mistaken, is to be discarded altogether, as false in all. Of the soundness of the rule, no question will, I am sure, be made; but, as tending to illustrate its force in the present instance, I beg leave to refer on this point to a case decided by the Supreme Court of the United States, the case of *The Santissima Trinidad*, 7 Wheaton, 338, which was a libel founded upon the allegation of illegal equipment and illegal augmentation of force within the ports of the United States. In commenting upon the testimony of the witnesses to sustain the libel, Mr. Justice Story makes these general observations, the applicability of which to the present case cannot but strike the Court: "If the cause stood solely upon the testimony of the witnesses who have been examined on behalf of the libellants, we should have great hesitation in admitting the conclusions which have been drawn from it. The witnesses, indeed, speak directly and uniformly either to the point of illegal equipment, or illegal augmentation of force within our ports. But their testimony is much shaken by the manifest contradictions which it involves, and by declarations of facts, the falsity of which was entirely within their knowledge, and has been completely established in proof. It has been said, that if witnesses concur in proof of a material fact, they ought to be believed in respect to that fact, whatever may be the other contradictions in their testimony. That position may be true under circumstances; but it is a doctrine which can be received only under many qualifications, and with great caution. If the circumstances respecting which the testimony is discordant be immaterial, and of such a nature that mistakes may easily exist, and be accounted for in a manner consistent with the utmost good faith and probability, there is much reason for indulging the belief that the discrepancies arise from the infirmity of the human mind, rather than from deliberate error. But where the party speaks to a fact in respect to which he cannot be presumed liable to mistake,—as in relation to the country of his birth, or his being in a vessel on a particular voyage, or living in a particular place—if the fact turn out otherwise, it is extremely difficult to exempt him

from the charge of deliberate falsehood; and courts of justice, under such circumstances, are bound, upon principles of law, and morality, and justice, to apply the maxim of '*falsus in uno, falsus in omnibus.*'²² The Counsel on the opposite side will, however, probably—upon their assumption that the evidence of the witnesses is shaken in some of its minor particulars—insist that the Court is still to determine, upon a review of it, whether the main fact is not established, and that the whole of the testimony is by no means to be discarded, because certain portions of it may be untrue. I admit this to be so, as to unimportant discrepancies or contradictions. But how can it apply to facts tending to show the sense entertained by the complaining parties of the very acts of which they complain, and going conclusively to disprove, upon every sound principle of reasoning, the improbability and untruth of the facts themselves, or at least of the coloring with which they are now invested?

If then I have been successful in showing either such a glaring probability in the direct testimony of the witnesses for the prosecution, or such a direct contradiction of them with respect to collateral circumstances of such a character as that they could not have forgotten or be mistaken in regard to them, I ask the Court on what ground they can withhold from the testimony of these witnesses the application of that sound and salutary principle of the law to which I have referred? You are surely not to set about the dangerous and uncertain task of groping between truth and falsehood. But if the story itself be tainted with falsehood, if it be irreconcilable with that most certain standard of truth—the motives which ordinarily influence and control human action—and if, in addition to all this, it be plainly and palpably contradicted in material points by reliable and disinterested testimony, the protection of innocence, and the sound and salutary administration of justice, alike require that it should be utterly disregarded.

I come now to the last case embraced in these specifications—the case of Mrs. Beare, stated in the 7th and 8th articles of the charges. The 7th specification charges, "that on or about Sunday, the seventeenth day of July, in the year of our Lord one thousand eight hundred and forty-two, the said Benjamin T. Onderdonk, then being Bishop, as aforesaid, held a confirmation at Zion Church, Long Island, in the Diocese of New-York; that after the services were ended, the said Benjamin T. Onderdonk returned to the house of the Rev. Henry M. Beare, in company with Mrs. Charlotte Beare, the wife of the said Henry; that the said Benjamin T. Onderdonk and Charlotte Beare occupied the back seat of the said carriage, and the other persons in the same were so situated as to have their backs towards the Bishop and the said Charlotte; that thereupon the said Benjamin T. Onderdonk impurely and unchastely put his arm around the body of the said Charlotte Beare, drew her towards himself, and at the same time felt her bosom in an improper and indecent manner, so as to scandalize the feelings of said lady, and cause her to remove herself from him as far as the side of the carriage would permit, to avoid his rudeness; in violation of his duty as a Bishop, and his consecration vow in that behalf, and to the disgrace of his said office."

The eighth specification charges, "that in the afternoon of the said seventeenth day of July, in the year of our Lord one thousand eight hundred and forty-two, the said Benjamin T. Onderdonk held a confirmation at the Whitestone Chapel, on Long Island aforesaid; and after the services went to spend the evening at the residence of Joseph L. Franklin, Esq., on said

Long Island ; that about nine o'clock at night the said Bishop was returning home to the house of the said Henry M. Beare, where he was a guest as aforesaid, and was accompanied in the carriage of the said Henry M. Beare by the said Charlotte Beare, the wife of the said Henry M. Beare, she being constrained by circumstances to ride with said Bishop against her own desire ; and she and the said Bishop sitting alone on the back seat ; that while thus on their way, the said Benjamin T. Onderdonk again insulted the said Charlotte Beare in the grossest manner, by impurely and unchastely putting one arm around her body, while he thrust his other hand beneath her dress upon her naked bosom ; that upon the same being indignantly repelled, the said Benjamin T. Onderdonk repeated the indignity, and finished his acts of rudeness by passing his hand in the most indecent manner down the body of the said Charlotte Beare, outside of her dress, so that nothing but the end of her corset-bone prevented his hand from being pressed upon the private parts of her body. All which acts and doings threw the said Charlotte into the deepest distress ; to the manifest scandal and injury of the Church of which the said Benjamin T. Onderdonk was a Bishop, and in violation of his vow before God, solemnly entered into at his consecration."

The testimony in support of these charges is derived wholly from Mrs. Beare ; and I cannot refrain from remarking on it in the outset, that a more gross and infamous outrage than that which she has imputed to the Respondent, cannot be conceived ; and that unless the Court are prepared to say, upon the most satisfactory and clear evidence, even supposing themselves not bound by the rules of divine and human law, to which I have referred, that this charge has been sustained, that they are called upon to give the Respondent the benefit of the rational doubt which is created by the monstrous character of the accusation, and allow it of itself to be a sufficient and perfect exculpation.

What are the facts to which Mrs. Beare testifies ? She states that after Church, in the morning of the day to which she refers, she was riding with the Bishop and her husband's mother, in a carriage driven by her nephew, and was seated with the Bishop on the back seat—her nephew driving, and her mother-in-law sitting with him on the front seat ; and that the Bishop, without saying one word, of any kind, put his arm around her in an unbecoming manner, which caused her to draw from him, and that his hand pressed upon her bosom. This was the whole of the first aggression.

Now it is a very remarkable coincidence, that Mrs. Beare introduces this first indignity, to the Court, under precisely the same circumstances as Miss Helen Rudderow, without a single word being uttered by the Bishop in advance of the insult. The Court are to recollect, that this was a lady to whom the Bishop had been introduced only on the 12th of the same month, (the act complained of being on the 17th,) and that when thus introduced to the Bishop he had merely met her at dinner—and the extraordinary fact therefore is presented, which you are called on to believe, that the Bishop, on again meeting this lady, with whom he was so slightly acquainted, without knowing any thing of her character or her temper, without having had the slightest opportunity of forming any judgment as to how such an advance would be received, in an open carriage, in mid-day, in company with her mother-in-law and nephew, and while they were conversing together, as she admits, actually offered her an insult of the grossest character, and pressed his arm around her waist, and his hand upon her bosom,

without uttering one word, and with almost a moral certainty of immediate detection and exposure by the lady herself, and the other parties in the carriage!

Upon the face of the story itself, I ask the Court, can they indeed seriously regard it as at all probable? Well, the lady goes on to say that she was very much distressed by the circumstance, and that when she reached home she communicated it to her husband, who attempted to explain it by saying that the Bishop could not have meant any thing. She next proceeds to narrate, what, strange to say, is wholly omitted in the specifications—that once before dinner, and once after dinner, in her own house, the Bishop repeated indignities of the very character which had occurred in the carriage, and that too in presence of her mother.

[Bishop McILVAINE. Her husband's mother.]

Mr. GRAHAM. I thank you for the correction; it was, I find, her mother-in-law.]

Mr. GRAHAM proceeded. So that after she had intimated the matter to her husband, and before dinner, another attempt was, she avers, made; and a still more direct one made after dinner, not mentioned to any body, and not embraced in these affidavits. And yet, notwithstanding all these indignities, the lady goes on to state that in proceeding to the house of Mr. Franklin, where they were invited to spend the evening, with all her pretended disgust at what had passed, she got out of her brother-in-law's carriage, at the head of the lane, a distance of only a quarter of a mile, (because, forsooth, her brother-in-law desired immediately to return to her husband's house,) and took her seat in another carriage beside the Bishop, and was thus driven to the house of Mr. Franklin. I mention these facts for the purpose of showing that the spirit of exaggeration has evidently entered into the story told by Mrs. Beare; and I was exceedingly glad that the witness was brought to state it, because it showed the true state of her mind on this subject; and from the manner of the Counsel I was led to believe that the crowning act of all these enormities was about to be drawn out. During the visit at the house of Mr. Franklin, Mrs. Beare stated, in reply to the question of the Counsel, "Did not something very remarkable occur at Mr. Franklin's?" that the Bishop had been engaged in conversing with Miss Franklin, and that Mr. Smythe, to whom she was then engaged, said in the very hearing of the Bishop, in reference to some undue freedom on his part, that if it were not for his gown, he (Mr. S.) would have inflicted personal chastisement upon him. Now, after all the parade with which this fact was brought out, on her own admission, it appears to have been a mere playful remark, solemnly dragged into the case for the purpose of prejudicing the Bishop; and when we have the testimony of Mrs. Franklin and Mr. Smythe on the subject, it turns out to have been no remark at all—no remark whatever having been made on the occasion by Mr. Smythe, pointing to any freedom on the part of the Bishop.

Well, after the incidents of that evening at Mr. Franklin's, including, of course, the very "remarkable incident" elicited with such solemnity by the Counsel, Mr. and Mrs. Beare return home, and during her ride homeward, her husband and nephew being on the front seat, she goes on to say, and I shall give the story in her own words: "The Bishop put his arm around my waist, then raised it, and put it across the back of my neck; thrust his hand into the neck of my dress, down into my bosom. I threw his hand from there—he immediately put it upon the lower part of my per-

son. I pushed it aside from there, and he then, with the other hand, repeated the same upon the other side of my person, but removed it toward the centre of my person. I threw it aside. That is all." She is then asked, "When he put his hand in the neck of your dress, on your bosom, was it or not on your naked bosom?" She answers, "It was my naked bosom." After stating that in all these instances the palm of the Bishop's hand was next her person, she testifies that he placed one of his hands "near her knee, and moved it along her leg up to her hip, and the centre of her person." And all this was done, without a word of any kind addressed to her by the Bishop, without a lisp of remonstrance on her part; she sitting immediately behind her husband, and near enough, as she says, to have touched him, and without any interruption of the conversation which was going on!

Need I ask whether, upon the face of this narrative, describing, if it be true, one of the most gross outrages which the mind can conceive, there is not stamped the most glaring and palpable improbability? Could the one-tenth of it have occurred to any woman without an outcry or alarm—without remonstrance or complaint—without an appeal for protection, to the husband, who, no less than herself, was outraged by the act? Is it not too much to believe, that human nature could have been so restrained, as she would have you suppose, by respect for the *office* of the Bishop, or by the fear of attracting the notice of the little boy in front, as to have prevented her from instantly resenting the indignity?

I ask this Court to judge of this story by the impulses of human nature, and not by a straight-laced stoicism, repulsive to every ordinary sensibility of the human heart. Is it credible that any man, I care not who he is, riding with a lady to whom he was almost a perfect stranger, could place his hand on her bosom, and on other parts of her person, and perpetrate the other outrages attributed to the Respondent, so revolting in their character that I will not offend the ear of this sacred tribunal by their repetition, and yet not a murmur at the indignity escape the victim?

But, to proceed with the narrative. Mrs. Beare reaches her home in company with the Bishop and her husband. She tells these facts to her husband after her return, and before they part from the Bishop for the night. The husband, on hearing her story, says, "Well, never mind, say nothing about it, and we will go down and have family prayers." They go down to family prayers, continuing the hospitalities of the household, which he had so grossly outraged, towards the Bishop—manifesting towards him the same outward marks of deference as before, they meet him in the study, and after joining with him in prayer, they retire. Is there any man—is there any thing possessing the form of a man, to say nothing of the soul and the attributes of man, who would not, as Dr. Higbee expressed himself to Mr. Beare, have "kicked the author of such outrages out of his house?" Or is there any cold feeling of respect for the *office* of Bishop, which would have protected *him* from consequences which would have been summarily visited upon any other offender, under circumstances of similar atrocity?

But is it not, at all events, a most remarkable thing, that Mr. Beare should not have manifested even so much feeling and emotion on the subject as to have spoken to the Bishop? One would suppose that the bursting emotions of his heart would have sought some vent, and that if he had not the manliness to chastise the man who had outraged the feelings and person of his wife, and assailed his own honor in the tenderest point, he would at

least have made some effort to relieve his mind of the pressure then resting upon it. But what is his conduct?

Why, he tells his wife to say nothing about it, and to come down and join in prayers; and he actually compels the wife of his bosom, whose feelings and person had been outraged beyond description, to come down and meet the man who had so insulted her, and not only to meet him, but to join with him in prayer—a prayer which, under such circumstances, was little less than an insult and mockery of the God to whom it was addressed! A more particular narrative of the case was made by her to her husband, after they had retired for the night; but still, no resolution was formed of different conduct towards the Bishop; and in the morning, we find these three persons seated at the breakfast-table, in all the cordiality of the most unbroken social intercourse; and after a friendly parting with Mrs. Beare, the Bishop leaves the house, and is cosily driven a distance of seven miles, by her husband, to his place of destination. Now if the husband was told such a story as that now related, and believed the one-hundredth part of it, what should we expect of his conduct during that ride? Mr. Beare pretends that he was silent all the way. But if the evidence of subsequent witnesses be true, he could not have been silent all the way. But even admitting that he was, it only shows that he could have had no wrongs of which to complain; for it would have been utterly impossible for him to have been associated so nearly with the man who had, if not in fact, yet most assuredly in heart, committed adultery with his wife, as Dr. Higbee well expressed it, without giving some vent to his deep and irrepressible sense of the insult and the wrong.

This, then, is the story of Mrs. Beare—the only witness by whom these charges are sought to be sustained—I say the only witness, for the story of Mr. Beare is nothing. The corroboration which he gives adds nothing to the credibility of the story itself. He knew, personally, nothing of the facts; and he merely sustains his wife, by stating that the story is the same as when first told to him. Their feelings and motives are the same. What their motives are it is impossible for us to fathom, and it may be impossible even to conjecture; but that there are motives, as yet unexplained, at work in other portions of this case, we have most abundant evidence. It was attempted to sustain this narrative of Mrs. Beare—for the learned Counsel felt the necessity of sustaining it—by referring to the evidence adduced in relation to what occurred in the Bishop's study. On the first occasion, the Bishop was waited on by three or four of the clergy—Drs. Milnor, Muhlenberg, Wainwright, and Higbee. They had heard of some story, and they waited on the Bishop for the purpose of informing him of certain rumors they had heard, derogatory to his character. Whether this statement was made with great clearness, or with great obscurity, is not very apparent from the testimony. Some of the witnesses think that it was made with great indefiniteness, and that Dr. Muhlenberg read from a paper the general substance of the story. The Doctor's recollection is not very distinct as to the character of this paper, and the other gentlemen cannot give any clear statement with regard to it, inasmuch as, considering the whole matter satisfactorily settled at the time, they had dismissed it from their minds, and do not pretend to any precision in their recollection of what occurred, and much less so with regard to the language used by any party on the occasion. Now, I am quite willing to take this testimony together and get at the probable facts; because, in cases like this, we have

no alternative in the examination of testimony, given after a long interval, than to examine and compare, and weigh and test its accuracy by its probability. I suppose, and respectfully suggest, that this ought to be the course of the Court on this subject. They may have proceeded to state this accusation, but it is clear, that they were met by the denial of the Bishop, for it is human nature, we know, at once to deny a false accusation, without waiting for or dwelling upon specifications. And I am the more confirmed in the belief that the particulars could not have been given so fully, as to have been explicitly denied, because the Bishop wished to see Mr. Beare himself. This desire was expressed at an early period in the interview, and affords strong ground for the belief that there had been a *general* statement of the accusation, and a general denial. The subject of an explanation must naturally have been presented to the mind of the Bishop, and probably suggested the interview with Mr. Beare. The strong probability of this state of facts, ought at all events to lead the Court to look very narrowly at the transaction, and reconcile its apparent discrepancies by the safe test of probability. It is brought in for the purpose of making an impression upon the Court as to the inconsistency of the Bishop in his declarations on the first interview and on the second. On the occasion of the second interview, all the gentlemen already named were present, with the exception of Dr. Wainwright, who was prevented by the death of one of the members of his family. The moment that these gentlemen enter, the Bishop, having anticipated the visit of Mr. Beare, approaches him with great affection of manner and with strong emotion, expressing himself to the effect that he regretted that any thing had taken place on his part that should have occasioned any pain to the feelings, either of Mr. Beare or of his wife. Some other remarks were made, but immediately upon this something is said by Mr. Beare on the subject of the veracity of his wife, but of the precise character of which we have no definite information. Some of the witnesses think that the expression of Mr. Beare was, "do you deny the statement made by Dr. Muhlenberg, or that of Mrs. Beare?" to which the Bishop replied, "I do not desire to impute wilful falsehood to Mrs. Beare." There is, however, an indistinctness on this subject amongst the witnesses, and I certainly do not intend to follow the Counsel into an attempt to show that any of these witnesses intended to misrepresent the matter. Some of them think the expression was, "do you deny the statement of Mrs. Beare?" whilst the testimony of both Drs. Higbee and Milnor would seem to show that it was, "do you impeach the word of Mrs. Beare?" meaning to put the inquiry which was nearest to his heart, whether the veracity of his wife had been impeached, by the remarks of the Bishop on the preceding day. I think I have a right to infer that this was the purport of the remarks, and that the reply of the Bishop, so far from indicating any desire to escape from the resolute ground taken on the previous day, was rather to stand firm in his denial, and at the same time to exhibit a motive which was as pure and benevolent as any that ever actuated human conduct—that of soothing the feelings of Mr. Beare, instead of planting in his bosom the poisoned arrow of an impeachment of the veracity of his wife. The Bishop might certainly have met the subject with greater severity of manner. But there were kind relations subsisting between him and this young man, just entering upon life under his friendly auspices; and instead of confronting him, as a more austere man would have done, he kindly and generously sinks his own sense of the injustice sought to be in-

flicted on his character by a false story, and endeavors to soothe the feelings of Mr. Beare, whose great and overwhelming fear was, that the veracity of his wife had been impugned.

Now I ask whether the Court will undertake, out of all this uncertainty of evidence, to impute falsehood to the Bishop, or an admission of this atrocious charge? I think, in this dilemma, the Court will have but little hesitation in discerning the alternative to which justice and reason point. They will put that construction on the testimony which is most consistent with the purity of the Bishop, and his personal character, and with the probabilities of the whole case itself. It just now occurs to me, moreover, that it is most conclusive that the Bishop did not intend to make the admission in the second interview, which the opposite counsel will endeavor to show that he did, inasmuch as if he had, the fact would have been recollected by all the witnesses present, with still more distinctness than the language used by him on the preceding day.

But there is a feature connected with this case, to which I beg to call the attention of the Court, and which is as much a matter of legal conclusion, as it is perhaps more appropriately within the spiritual capacity in which the Court are to determine this case. It will be recollected that the testimony of all the witnesses who accompanied Mr. Beare, concurs in this—that he and the Bishop and the parties separated with feelings of strong and of kind emotion; and that the Bishop gave vent to his feelings in tears; and finally, the very instant they left the house, spontaneously, and as all the witnesses agree, without one word being said in suggestion of the subject—speaking from their hearts and judgments—they arrived at the conclusion, and expressed the determination, that the matter ought to rest where it was, and that nothing further was to be said about it. Now I ask this venerable Court if they even believe that some indiscretion on the part of the Bishop had been made apparent—not to the extent alleged by Mrs. Beare, for I would not insult the understanding of the Court by calling that an indiscretion—but that some indiscretion had appeared, and that on the exhibition on his part of this kind and Christian feeling, these reverend gentlemen, some of them his seniors in point of years, were satisfied that he was innocent, as they must have been, or they would not have arrived at the conclusion that the matter ought to be for ever set at rest;—I ask this Court whether, under these circumstances, the admonition administered to the Bishop by Dr. Milnor, ought not to be deemed sufficient, and whether he should not now receive an honorable acquittal? I put it to this Court, that in relation to this last charge, which has been hunted up against the Respondent—his subsequent life—above reproach and above suspicion, ought to be admitted as a sufficient exculpation for any mere indiscretion which may have been alleged; and, I ask, whether the admonition extended by Dr. Milnor, with the concurrence of the other reverend gentlemen, is not all the discipline which such a case demanded?

Is there in that Church which you represent, no principle of Christian forgiveness? Is it possible that you sit here as inquisitors—that years after the transactions have occurred; and attaching the very worst motives to acts which were reviewed at the time, and after the best possible fruits have resulted from the discipline then administered, you are still to exercise the stern office of the judge, and inflict punishment in the face of repentance?

I well recollect an eastern allegory, which, as exemplifying the beauty

of that great object of our faith—sincere and Christian repentance—struck me in my youth as most glowingly describing the divinest attribute of our holy religion—the forgiveness of a repentant sinner.

A fallen angel is represented as imploring re-admission into Paradise. The prayer is granted, upon the condition of presenting at that gate “the gift that is most dear to Heaven.” Buoyant with hope, she goes forth in pursuit of the precious offering. She finds, and ever and anon, presents the purest emblems of all that is holy in the sensibilities of the human heart—but she is again and again rejected. Undismayed, yet desponding, she continues her pursuit; and in her wanderings, her eye falls upon a child at prayer—near him a man hardened with the guilt of years—seared with crime—eagerly intent, upon the artless child—his eye moistened by a tear—and at length falling upon his knees in prayer. She catches the precious tear, returns with it in a transport of joy, and receives the promised boon so long sought, and so long deferred. May I not then exclaim, in the beautiful language of the poet,

“Oh! is it not thus
That the precious tears of repentance fall?
Though foul his very plagues within,
One heavenly tear hath dispell'd them all.
And hymns of joy proclaim through heaven,
The triumph of a soul forgiven.”

But I do not admit that the alleged charge against the Respondent has been in any degree sustained. The testimony of Mr. and Mrs. Beare is shaken in every material point by the strong improbabilities which we have introduced as attending the circumstances under which it is brought forward; and surely if there be any foundation in truth for the comments which I have made in relation to the evidence of the other witnesses, they certainly have tenfold force when applied to this lady and her husband. Suppose Mr. Beare willing, for the sake of the Church, to allow the Bishop to pass out of his house without any expression of indignation, is it to be believed, that on a subsequent occasion, he would have sought the Bishop for the purpose of extending to him again the hospitalities of his house, and have almost prostituted the person of his wife by again placing her in his presence? And yet what are the facts? We have, on this subject, the testimony of the Rev. Dr. Schroeder, who swears to an interview, in relation to which there can be no mistake. Either Dr. Schroeder is perjured, or the account of that interview is true. The Counsel on the opposite side seemed to wonder that the Doctor's memory was so precise and accurate with regard to matters which, as they suppose, could not have particularly arrested his attention at that time. Doubtless some of the members of the Court are personally acquainted with that gentleman; and if so, to them I appeal for the fact, that his retentiveness and clearness of memory constitutes one of the most remarkable peculiarities of his character. But he states a reason why he could not have forgotten the facts, which cannot but commend itself to the judgment of every sound mind. “If there had been any want of cordiality,” says he, “on the part of Mrs. Beare towards the Bishop, I could not but have noticed it, for the Bishop always spoke kindly of her and her husband;” and therefore, and for the additional reason, that a circumstance occurred, as he states, the next day, to fix the facts in his memory—he swears positively, that on the

occasion when the Bishop was invited to dinner by Mr. Beare, the invitation was pressed upon him, although he pleaded a prior engagement; and that Mrs. Beare was present, and enforced the invitation, in manner at least, if not in language. Now, if there were but that one fact in the case, in answer to this charge—that after the Bishop had actually pleaded a former engagement as an excuse for not accepting that extended by Mr. Beare, the latter still insisted on the Bishop accepting it, and finally prevailed on him to do so—it would of itself contradict as fully, and as strongly every thing testified to in relation to the outrage alleged in the case of Mrs. Beare, as if a dozen witnesses had, in terms, contradicted her whole statement. Can any man for a moment reconcile the facts sworn to by Dr. Schroeder, at this interview, with the feelings which must have existed between the parties, had the story of Mrs. Beare been true?

I would here call the attention of the Court to what most forcibly impressed itself on me, that in no single answer which she gave to a great variety of questions, did Mrs. Beare admit, that, from the time of that insult, upon the occasion of all or any of her meetings with the Bishop, she had ever exchanged a word with him. Thus, for instance, at the dinner at her own house a year after, she gave it to be understood, that she had merely handed the dishes to him at the table, but without addressing to him a single word; and yet how differently has the fact been represented by the other witnesses, and how, in this as in other particulars, has her story been contradicted by the evidence of the Rev. Messrs. Goodwin and Sweetzer, showing the existence of such a state of feeling between the parties as was not only improbable but absolutely impossible, on the supposition that the alleged outrages had been perpetrated. Their meeting at church the next morning, after the interview at Dr. Schroeder's, was proved by those reverend gentlemen to have been cordial and friendly. The manner of Mrs. Beare at the table was of the same character. There is no attempt to contradict this most material fact. If it had been possible to contradict it they could easily have done so. Their brother, their mother, and other friends were present at that dinner. Can there then be any mistake or doubt about this fact? In the evening, at Mr. Franklin's, we have proved that the social intercourse between the parties was equally friendly and cordial. Mrs. Franklin and Mr. Smythe testify, that they did not observe any thing, in manner or act, to interrupt in the slightest degree the harmony that prevailed, which, if it had occurred, they must have observed.

Now it is not human nature that this state of things could have existed, and yet that the story told by Mr. and Mrs. Beare is true. We have the testimony of the Rev. Mr. Goodwin bearing on the same point. That gentleman met Mr. Beare, in a steambot coming from Flushing, long after the alleged occurrences, and seeing the latter reading the *Protestant Churchman*, he made some remark to him, to which Mr. Beare replied, speaking in terms of the greatest esteem for the Bishop, and expressing a hope that his taking that paper would not be construed into any feeling of unkindness or unfriendliness towards the Bishop—a circumstance slight in itself it is true, but of importance when viewed as throwing light on the great question in this case—the motives by which the parties were actuated, and the state of feeling existing between them. Then we have produced Mr. Poyer, a colored man of respectability and a communicant of this church, who testified that on several occasions, after the alleged aggressions, when in his shop, which is very much frequented by clergymen of the Episcopal

Church, Mr. Beare expressed himself concerning the Bishop in such a manner as indicated the existence of the most cordial and friendly feelings towards him.

Having thus reviewed the evidence as applicable to the cases of Mrs. Beare and the Misses Rudderow, I put to the Court, then, this emphatic question—have we not furnished the only explanation that, consistently with the most perfect innocence, could have been looked for or expected? An explanation going far beyond what, in one of the cases cited to the Court, is regarded as an abundant defence, to charges preferred years after the alleged facts have occurred. Of the case of Mrs. Butler it is hardly necessary to speak; for after eight years, what explanation could be furnished, or even expected or required, beyond what the improbability of the story carries with it? In that case, too, we were kept altogether in the dark with respect to the name of the person who was driving the carriage; and at this length of time it is absurd, nay, I may almost say wicked, to hold the Respondent rigidly to the disproof or explanation of circumstances, which could not possibly have left any impression on his mind, and respecting which, from mere lapse of time, no explanation could be given.

But it may be said—and it will undoubtedly be said—by the Counsel on the other side, that these witnesses have not wilfully perjured themselves; and that the Court cannot come to such a conclusion by any fair or legitimate reasoning from the evidence in the case. There is no necessity for such a conclusion, or for such an explanation of the glaring contradictions which I have established. These matters, it seems, have been the subject of gossip, in the different neighborhoods where they had their origin. These stories have been communicated, over and over, by the parties to their confidential friends. Within the last six or eight weeks, it has become important to certain parties, that the Respondent should be destroyed; and emissaries have been sent to these neighborhoods; they have sought out the authors of these stories; and, without imputing any extreme corruption to *them*, it is sufficient to believe that they have been led to regard themselves as in a position in which they were required, either to sustain their stories, or to stand convicted as slanderers of the accused. One thing is certain—that until the cloud began to gather around the head of the Respondent, during the sitting of the late General Convention, all these virtuous feelings, which have been slumbering for seven or eight years in one case—and for two years and a half in the most recent one, would have continued to sleep, had they not been waked up for purposes, which I am, perhaps, not at liberty to impute; and which I certainly will not travel out of the testimony to expose. It is certain, however, that some busy-bodies have been at work in the Church, for the purpose of crushing the Respondent; and have been used by others for the purpose of carrying the design into effect. I call, then, upon this venerable Court, as they would guard the purity of this Church, and preserve its discipline from prostitution for the basest purposes, to look at the motives which are apparent in this prosecution; and to resolve that the force of their high authority, as wielded by this body, shall not be perverted to the accomplishment of such unhallowed purposes.

I will not longer detain the Court, by reviewing at greater length the facts of this case, or the principles which it involves; but will leave to my learned associate to enforce with much greater power than I can employ, such views of the case as he is so well able to present. I have thus at-

tempted, with great feebleness, I am sensible, to discharge the duty which I have felt to be imposed upon me on this occasion. The solemn and momentous duty which rests upon the Court, does not demand any enforcement from me. It is, I am well aware, realized in all its magnitude and interest, by every member of this venerable tribunal. But, in conclusion, I will say, that believing, as I do, in the entire innocence of the accused, I confidently call upon you to render him a prompt and speedy deliverance. But if, in the mists of exaggeration and contradiction, to say the least of it, which surround the case, you discover—which I cannot—any thing indicating indiscretion on the part of the accused, but, free from the taint of moral impurity, remembering how deeply he has already suffered and atoned, I conjure you by the sacred vow under which you act—by that religion, whose ministers and fathers on earth you are—I conjure you—I trust without irreverence, by the holy name of the God whom you adore—“attach crime to the intention, and to nothing else—absolve the innocent in heart—and when you return to this bar with your judgment, say to my client, in the blessed words of the redeeming Son of that God: ‘Go, and sin no more!’”

The Court then adjourned to meet at 7 o'clock, P. M.

Attest,

W. R. WHITTINGHAM, *Clerk*:

*Tuesday, December 31st, 1844, }
Seven o'clock, P. M. }*

The Court met pursuant to adjournment. Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

GERARDUS CLARKE, Esq., commenced the summing up of evidence on the part of the Presentment.

May it please the Court:—At this protracted stage of the investigation, it may be some gratification to the Court to learn, that in the remarks which I intend to submit to them, I hope to occupy but a small portion of their time, compared with that which has been consumed by the learned Counsel who has preceded me. The demand made upon him and upon myself is essentially different. He had a defence to project and to sustain, without facts to aid him. I am called upon to sustain a charge upon facts, and hence my task is far more simple and direct.

Under whatever aspect this case may be viewed, however, it cannot be denied that it has devolved both upon the Court and upon the Counsel a duty of the most painful and extraordinary character. To my learned associate and myself has been assigned the unwelcome task of presenting for your

consideration and judgment, certain charges affecting most deeply the moral character and official standing of one of your own order—one of the fathers of that Church which I have ever been accustomed to venerate and love. Yours is the still more solemn and responsible duty of receiving these charges, of ascertaining their truth or falsity, and of pronouncing judgment upon them, uninfluenced by prejudice or partiality—without fear, favor, or affection.

On an occasion so entirely novel—in a matter of such solemn import, who of us can say that he does not feel a degree of responsibility altogether unusual in the trial of causes? Who is there that can say that he has not felt, during the progress of this investigation, emotions of the most painful and melancholy character? As to myself, although not altogether unaccustomed to address judicial tribunals, I can safely say, that I never rose to perform such a duty under greater embarrassment than that which I now feel;—an embarrassment not arising from any doubt in my own mind as to the propriety and necessity of the course pursued in this case, but solely from the importance of the investigation itself—important to the distinguished party accused, to the Church, and to religion at large. And selected though I may have been, to take a part in this investigation, probably with some reference to my profession, I yet can assure you that I have felt nothing of that partisan zeal or ambition which usually influences a lawyer in the performance of professional duty. I have felt no vehement desire for victory, in the usual sense of that term. Victory! what is a victory in this case to the cause which I am called on to sustain? To sustain these charges is to overwhelm with disgrace, one under whose episcopal supervision I have passed no inconsiderable portion of my life—one whom I have been accustomed to respect as the head of the Church in the Diocese in which my lot has been fixed—one who has recently performed the solemn rite of Confirmation on my only daughter—one at whose hands I have myself repeatedly joined in the most solemn offices of our religion! Think you, then, Rt. Rev. Fathers, that in the performance of the duty assigned me on this occasion, I can be actuated by any paltry personal motive of ambition for victory? or that I can be influenced by any hostility towards the distinguished party accused? or entertain any other sentiments than those of deep sorrow and mortification? I entirely disclaim and disavow any other desire than that truth and justice may prevail.

On the other hand, however, if the accused party be guilty of the charges, and he should yet gain a victory on this occasion—a victory by a judgment of acquittal at your hands; then I hesitate not to say that a deeper wound will be inflicted on that Church, which is an object of veneration and love to us all, than has yet been suffered by her from any other cause, at any period of her history in this country.

I regret much that any remarks have fallen from any one, during the progress of this investigation, in regard to the origin of these proceedings; and that any insinuations should have been made, in any quarter, relative to a conspiracy; or that the charges have been preferred out of any other motive than that of a conscientious feeling of duty, on the part of those who have preferred them. Such insinuations I know to be utterly unfounded in fact; and I entirely disavow and deny that any thing has been connected with the investigation that is not apparent to all. The learned Counsel who has preceded me, has insinuated—and indeed; from interrog-

atories put during the progress of this trial, it was very evident that an impression of that character has been studiously attempted to be made—that this trial had been got up by enemies of the Bishop. It is not so. We stand here prepared (expecting, from what had been said in the public prints, that an attempt would be made to produce the impression that the trial was the result of a conspiracy) to show, that no ground whatever existed for such a charge. We had a witness in readiness to prove that the surmise was entirely groundless. We could have shown the origin and progress of this investigation up to the moment it was brought before this Court. But there was no opportunity afforded for our producing the witness, as not a particle of proof was offered to lead us into that inquiry, and therefore we were forced to dispense with his examination.

But from what has already appeared—from the letter produced by Dr. Milnor, it must be evident to all how this matter originated;—that it had its origin in another State, and with gentlemen belonging to a Southern Diocese—with those who had nothing whatever to do with the controversies or the difficulties which have prevailed in this Diocese. That fact must be, I think, apparent to all the members of the Court. It took a definite shape, undoubtedly, during the session of the late General Convention, and from circumstances which transpired there; although a determination that an inquiry should be made had been previously formed. It is well known to every member of this Court, that a memorial was presented to the House of Bishops, embracing the substance of the present charges: an inquiry was thought necessary, and an inquiry was set on foot which resulted in the necessity of this presentment. That painful duty devolved on the three Rt. Rev. gentlemen who appear as the Presenters in this case—who having, amidst great anxiety of mind, but with perfect consciousness of the purity of their motives, discharged *their* duty, now call on you for the performance of yours.

In the consideration of the subject before the Court, I shall view it in reference to two points: first, as to the nature of the offences with which the accused party is charged; and secondly, as to the proof brought to sustain the accusation.

It is true, that no crime, in the usual acceptation of the term, is charged upon the accused party. But in a moral point of view, and with regard to the sacred office which he holds, and in the eye of Almighty God, very serious crimes are imputed to him; and if he be guilty in any one of the particulars charged in this presentment, then I hesitate not to say, that he has fallen from his high estate—disgraced the office which he holds as an ambassador of Jesus Christ—and inflicted a deep and lasting wound upon that Church whose dearest interests were in part committed to his care.

What, may it please the Court, is a Bishop? What are the duties he assumes—what are the qualifications required of him? In the language of a great moral poet concerning what a Minister of the Gospel ought to be, I would say—

“That were I to describe a *Bishop*, such as Paul,
Were he on earth, would hear, approve, and own,
Paul should himself direct me—I would trace
His master strokes, and draw from his design;
I would express him, simple, grave, sincere—
In doctrine uncorrupt, in language plain,
And plain in manner—decent, solemn, chaste.”

In the Epistle of that great Apostle to Timothy, which forms a part of the Consecration Service of our Church, the qualifications and character of a Bishop are distinctly marked out. 1 Timothy iii. 2-7. "A Bishop must be *blameless, the husband of one wife, vigilant, sober, of good behavior, given to hospitality, apt to teach; not given to wine, no striker, not greedy of filthy lucre; but patient; not a brawler, not covetous; one that ruleth well his own house, having his children in subjection with all gravity; (for if a man know not how to rule his own house, how shall he take care of the Church of God?) not a novice, lest being lifted up with pride he fall into the condemnation of the devil. Moreover, he must have a good report of them, which are without; lest he fall into reproach and the snare of the devil.*" In the Epistle of the same Apostle to Titus a similar description of the qualifications of a Bishop is presented, and in the Consecration vow imposed by the Ritual of our Church, the party consecrated promises obedience and conformity to this doctrine; and he, moreover, promises that he will "*deny all ungodliness and worldly lusts, and live soberly, righteously, and godly in this present evil world; that he may show himself in all things an example of good works unto others, that the adversary may be ashamed, having nothing to say against him.*"

I read these passages, although they are of course perfectly familiar to you, in order that it may be distinctly seen what is the nature of the issue to be tried in this case. The object of the present investigation is to ascertain whether this solemn vow has been violated by the accused party, and to such a degree as to call for the judicial interference of the highest authority of the Church.

What, then, is the nature of the charge preferred against the accused? It is—as the Counsel preceding me has well said—it is the charge of immorality and impurity,—immorality of the most debasing character, and totally inconsistent with the existence of true religion in the heart. If the charges are true, what do they show? Why, that although Bishop Onderdonk has, through a period of six or seven years, performed all his official duties with perfect regularity, yet that he has during the whole of that period, and in the midst of his official acts, been guilty of indulging the most licentious and debasing passions; that at the same moment that he was calling on his flock, to forsake the evil of their ways—to resist the evil propensities of their nature—to repent and be forgiven,—he was continually yielding to those propensities in himself, exhibiting the worst possible example; and endeavoring to corrupt individual members of his flock. They show that in every instance specified in the Presentment, he was guilty of adultery in his heart. And what were the occasions selected for the perpetration of those acts which presented the lamentable evidence of the existence of these unhallowed emotions and propensities? Why, in the case of Mrs. Butler, embracing the first and second specifications, he was on his way to perform the solemn office of ordination on her husband. In the case narrated by Mr. Bolles, he was about proceeding to the Convention of his Diocese, to deliberate upon high and solemn duties. In the case of the Misses Rudderow, he was proceeding on a Sabbath from the house of God to the dwelling in which he was to be an honored guest. In the case of Mrs. Beare, he had just performed the solemn rite of Confirmation, and was returning from the sanctuary to the house of his friend, whose wife was the object of his assault,—showing thereby that no duties, however solemn—no places, however sacred—no times, however holy—no persons, however en-

titled to his respect—were sufficient to restrain his libidinous propensities. But it is unnecessary for me to dwell on the nature of these offences. The Counsel on the other side has conceded that the charges are of a very aggravated character, and that, if they be true, they constitute a case against the accused which shows that he is entirely disqualified for the sacred office he holds. It is, therefore, entirely unnecessary for me to detain you by any further remarks on this point, and I shall proceed at once to the consideration of the second point, which has reference to the nature of the proof brought in support of this accusation.

The first case contained in the Presentment, is that of Mrs. Butler; and before I proceed to the examination of it, I beg leave to call the attention of the Court to some points submitted by the Counsel on the other side.

First, in regard to the number of witnesses. The Counsel supposes that these charges must in every instance be sustained by two witnesses, or else they fall; and he calls upon this Court to say, by their verdict, that unless in every case the charges are sustained by two witnesses, the Presentment entirely falls to the ground, as unsupported by proof. For the purpose of maintaining this position, he appeals first to the Jewish law, and secondly to the law as laid down by our Saviour, in different passages in the New Testament referring to the Jewish law. Now in regard to the doctrine which he derives from the Jewish law, it is unnecessary for me to dwell long upon it. It is undoubtedly true, that according to the Jewish law, certain crimes could not be established unless upon the evidence of at least two witnesses; but I wholly deny that there is any thing in the dispensation of the New Testament which recognises that rule of the old Mosaic code. The Counsel has indeed referred us to Matthew xviii. 15; 16, and 17. But I ask, does that passage contain a recognition of the Jewish doctrine as stated in Deuteronomy? Certainly not. The words are, "If thy brother shall trespass against thee, go tell him his fault between him and thee alone: if he shall hear thee, thou hast gained thy brother; but if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established." Now who is the witness of the *fact* in this case? The party who makes the complaint, and he only; and in case the trespasser refuses to listen to him, he is enjoined to take with him two or more witnesses, before whom the charge may be made. They are to be the witnesses of the *accusation*, not of the *fact*. The party who suffered the wrong, is the accuser, and the others are the witnesses of the accusation. The same explanation is applicable to 1 Tim. v. 19. But I defy the gentleman to show any passage in the New Testament which recognises the doctrine, that a charge cannot be sustained unless there are two or three witnesses to the fact. There is no such doctrine to be derived from the New Testament. But the Counsel cited another passage—John viii. 17 and 18. Now does the Counsel really intend to deduce from that passage the doctrine that two witnesses are necessary? Our Saviour teaches no such thing. All that he intends, by this reference to the Jewish law, is to convince the Jews themselves by appealing to their prejudices, and thus convicting them by their own law. It is for that purpose only that he refers to the Jewish code, and not for the purpose of re-enacting the rule under the new dispensation which he came to establish. So also in Hebrews, x. 28: the Court will perceive that in this, as in all the other passages, there is reference to the Jewish law, because the text is addressed to the Jews; and in order to overcome their

prejudices, an appeal is made to their own law, by which they are shown to be condemned. But there is no recognition of the binding force of the Mosaic rule as to two witnesses, under the new dispensation.

Then as to the civil law, to which the learned Counsel also referred in support of his extraordinary position, all I have to say is this: I admit that according to the civil law this plurality of witnesses is necessary to establish a charge—but I deny that we have adopted the civil law either in our political or ecclesiastical institutions; and according to Phillips, the civil law prevails only where it has been expressly recognised and established. Now neither in this country nor in England does the civil law prevail, except, perhaps, in the ecclesiastical courts of England, and then it is in every instance, I believe, adopted by Canon. In this Court, we have established an independent system of our own. The Church in this country has adopted laws and Canons of its own; and unless by the Constitution and Canons of the Church the civil law is recognised and established, it is not of any binding force in this or any other ecclesiastical Court.

Upon the subject of the civil law, and to show the absurdity of it on this point of two witnesses, and that it has been abandoned, I refer to 3d Blackstone's Commentaries, 370:

“One witness (if credible) is sufficient evidence to a jury of any single fact. Our law considers that there are many transactions to which only one person is privy; and therefore does not always demand the testimony of two, as the civil law universally requires. *‘Unius responsio testis omnino non audiat.’* To extricate itself out of which absurdity, the modern practice of the civil law Courts has plunged itself into another. For as they do not allow a less number than two witnesses to be *plena probatio*, they call the testimony of one, though never so clear and positive, *semi plena probatio* only, on which no sentence can be founded. To make up, therefore, the necessary complement of witnesses, when they have only one to a single fact, they admit the party himself to be examined in his own behalf, and administer to him what is called the *suppletory oath*; and this immediately converts the half proof into a whole proof. By this ingenious device, satisfying at once the forms of the Roman law, and acknowledging the superior reasonableness of the law of England, which permits one witness to be sufficient, and lays it down as an invariable rule that *“nemo testis esse debet in propria causa.”*

[Mr. OGDEN.—You are reading from a note in that book, I believe.]

Mr. CLARKE.—Yes, but the language is Blackstone's.]

Mr. CLARKE proceeded—Now the Counsel on the other side endeavors to draw an analogy between this and some other cases in which two witnesses are required under the common law, and refers to the cases of treason and perjury. His argument presented a very beautiful analogy on this point between the crime of treason and that with which the party before the Court stands charged; but unfortunately the analogy fails, because he places the reason of the rule in treason on an entirely different footing from that of the law itself. He supposes that in the case of treason two witnesses are necessary because the party accused is supposed to be under the oath of allegiance to his country, and therefore that one witness ought not to be suffered to controvert that allegiance, as that would be only oath against oath. That is not the foundation of the requirement, as I shall be able to show the Court; and therefore that part of his argument entirely fails. “The instances of treason and perjury are exceptions to the rule.” In the case of perjury,

undoubtedly two witnesses are necessary, because you are going to convict a party of swearing falsely—which you cannot do on the single oath of another party. The reason is here quite apparent. But what is the reason in the case of treason? “In the case of treason, it is a mere rule of policy devised for the protection of the liberty of the subject.”—1st Starkie, sec. 364. And these are the only cases to which the learned Counsel referred, or can refer, where two witnesses are requisite under the statute, or by the common law in this country; and the reasons for the exception in the case of treason, are entirely different from those assigned by him. In the case of treason, he would have the Court to suppose that it was required because the party accused is to be presumed to be under the oath of allegiance to the government. I have shown that this is a fallacy.

Then with regard to the lapse of time, the learned Counsel has endeavored to draw another analogy. But before I proceed to this point, allow me to add a word or two in illustration of the absurdity of the rule attempted to be laid down with respect to the requirement of the two witnesses. In this country a man can be condemned for any crime, except the two already mentioned, on the testimony of one witness. He may be sent to the scaffold, he may be sentenced to the State Prison for life, on the evidence of one witness. See then the dilemma to which the Court would be reduced by the adoption of such a rule as that insisted on by the learned Counsel! You could not degrade a Bishop whom the civil tribunals had sentenced to the gallows or to the State Prison, because you had not two witnesses to the fact of his guilt! Is this Court at this enlightened era in any danger of adopting a rule of evidence which would lead to such absurdities as these?

So in regard to lapse of time, although this Court has already disposed of that point, yet as it has been alluded to by the learned Counsel, it may be well to show that there is no reason whatever in it. The whole doctrine is, that in law, when a great lapse of time has intervened between the commission of the crime and the trial, it ought to be taken into account in all doubtful cases and all doubtful points, to the benefit of the accused. But if carried any further than this, and a rigid rule of limitation is adopted, precisely the same difficulty arises as in that of two witnesses. If you limit cases in this way, you shut out from the reach of your authority offences punishable in the civil tribunals. A man guilty of murder, forgery, or any other felony, three or four years ago, is liable to trial and punishment by the statutory laws. And shall a rule of evidence be adopted by which it will be out of your power to try and to degrade a Bishop who may be sent to the State Prison by the civil tribunals? I think not.

[MR. OGDEN.—I don't exactly understand your argument.

MR. CLARKE.—I am showing to what absurdity the adoption of a statute of limitation in our ecclesiastical system would lead.

MR. OGDEN.—No, but do you mean to say that a man who has been guilty of forgery can be brought to trial after three years have elapsed since the commission of the act?

MR. CLARKE.—No, not in case of forgery under *our* statute, but the statutes of the different States vary in this respect; and I will refer to the case of *crim. con.*, in which you can bring an action within six years, even under our statute.]

MR. CLARKE.—I am satisfied that the Court are not going to be governed by any rule of limitation which might lead to such absurdity as I have men-

tioned. If you do adopt any rule on the subject, I should suppose it would be that which prevails in our courts of equity; and what is that? Why, in cases of fraudulent concealment, you can bring the action in the courts of equity at any period within six years after the discovery is made. In cases of breach of trust, and in all other cases not specially mentioned, you may bring it within ten years after the causes of action accrued. Now I ask the Court, if any analogy is to be drawn between the statute of limitation and the practice of the Court, ought it not to be founded on this rule with respect to breaches of trust? Here is an important trust committed to the party accused, which, if the charges are true, he has violated, and adopting the rule which prevails in our courts of equity, he might be proceeded against at any time within ten years for the commission of the act.

These are all the remarks with which I intend to trouble the Court in regard to the two points raised by the opposite Counsel.

I now have to consider the evidence produced before you for the purpose of sustaining the charges in this Presentation.

The first case is that of Mrs. Butler. And before I proceed to consider that case, permit me to remark that there appears throughout this investigation, and throughout the argument of Counsel, an attempt to establish a defence on the ground that the circumstances proved by the witnesses are, in some instances, inconsistent with the charge made. It has also been attempted to be shown that the witnesses brought in support of the charge have contradicted each other, and in some instances themselves. On this point I beg to refer the Court to some very sensible remarks made in 1 Starkie, 467.

“It is to be observed that partial variances in the testimony of different witnesses on minute and collateral points, although they frequently afford the adverse advocate a topic for copious observation, are of little importance, unless they are too prominent to be ascribed to mere inadvertence or defect of memory. I know not (says Dr. Paley) a more rash or unphilosophical conduct of the understanding, than to reject the substance of a story by reason of some diversity in the circumstances with which it is related. The usual character of human testimony is substantial truth under circumstantial variety. This is what the daily experience of courts of justice teaches. When accounts of a transaction come from the mouths of different witnesses, it is seldom that it is not possible to pick out apparent or real inconsistencies between them. These inconsistencies are studiously displayed by an adverse pleader, but oftentimes with little impression on the minds of the judges. On the contrary, a close and minute agreement induces the suspicion of confederacy and fraud. Numerous, and sometimes important, variations present themselves; not seldom, also, absolute contradictions; yet neither the one nor the other are deemed sufficient to shake the credibility of the main fact.”

Now in regard to the testimony of Mr. and Mrs. Butler, and of Misses Rudderow, and that of Mr. and Mrs. Beare, it is quite possible some discrepancies may be presented in the various statements; but I ask the Court whether, under the authority just cited, a variation by different witnesses in the narration of circumstances is to be regarded as shaking their testimony as to the main fact, when they agree in that?

There is an important fact connected with this case, in respect to the character of these witnesses. The Court will have observed that all the testimony offered in support of these charges comes from communicants—

from the sons and daughters of the Church. The Presenters have not gone out into the world to seek for witnesses against the accused party. They have not gone beyond the pale of their own Church. In all instances, and it is a remarkable fact, the witnesses are communicants of our Church: If then the accused is to be found guilty, if he is to be condemned, it will not be on the testimony of enemies, but on that of members of his own flock; and as we will show you, members of his own flock who can have no earthly object but the establishment of the truth.

Well, then, we now come to the case of Mrs. Butler. It is not necessary to go into any detail of the facts related by her. They will be fresh in the recollection of every member of the Court, and are too humiliating and disgusting to be repeated oftener than is absolutely required. The Counsel on the other side will concede that if *that* charge be proved to the satisfaction of the Court, then at that time, whatever may be the case now, the accused party was altogether disqualified for the high and holy office which he holds, and that the only way in which he could have got rid of such disqualification, must have been by subsequent repentance and amendment.—Who then are Mr. and Mrs. Butler? Are they unknown to the members of this Court? Are they strangers, whose characters require to be examined into and proved? Certainly not. Mr. Butler is the son of a clergyman, well known to every member of the Court. His father was a distinguished clergyman of Troy, whose fame was in all the Churches; and I venture to say that there never has been a man reared in this State, with more care as to his moral character and principles than Mr. Butler. He was indeed brought up according to the strictest principles of our religion, and he comes before you with that character. And who is his wife? Is she unknown to this Court? Her father was the most intimate friend of the party accused. She was herself no stranger to him. She had been brought up under his eye. She had from her youth experienced from him that kind of affectionate regard which, as she herself says, she once “supposed parental,” and which the Counsel attempted to show had in truth been exhibited towards her. I ask, then, could these two witnesses come forward with any other motive to establish these facts than from a sense of duty? Do they come here with any hostile feelings to the party accused? Do they not evidently and undeniably come here for the discharge of the painful, but the holy and sacred duty, of establishing the truth in this important investigation?

Well, then, how stands the case presented in the testimony of these two highly respectable and unimpeachable witnesses? Mr. Butler being in deacon's orders, and settled at Syracuse, knowing that the Bishop was coming on that route of visitation; from the most affectionate consideration for him, goes fifty miles for the purpose of meeting him, and carrying him to his place of residence; and this lady, showing the affection which she then entertained for the Bishop, accompanies her husband on that journey of fifty miles. She does meet him, and he proceeds with her and her husband to the place where he was to fulfil his appointment. She travels the whole night in order to enable the Bishop to reach his place of destination in due season for the ordination; and it was during that awful night that these transactions took place which are the foundation of one of the charges now presented against the accused.

The Counsel who has already addressed you did not—I regret exceedingly that he did not—hear the testimony of that lady; for in the whole

course of my experience, I have never seen a witness who went through such an ordeal with more distinguished credit. I ask the Court to remark her sitting in that chair, and say whether there was the slightest indication on her part of any hostility towards the party accused? Could you, from any thing you saw or heard, imagine that she was governed by any other feeling than a sincere desire to state the truth? Such, then, is the case of Mrs. Butler, sustained in part by the evidence of her husband; indeed, I *may* say wholly sustained, for in addition to his testimony on the stand, a reading of the affidavit of Mr. Butler was asked for, and it is now in evidence before you; and that affidavit narrates all the particular circumstances of that case. It is true that we could not have offered that affidavit—as to all its main features it was undoubtedly hearsay. He had the narration from his wife, and we could not have made his version of it testimony; but our opponents had a right to do so, and they have availed themselves of it, and you have now before you the testimony of both as to all the facts.

Well, what are the comments of the Counsel on the story of Mrs. Butler? Why, that it appears to him so direct, so straightforward, so clear, that it must have been a made-up story! That it was made for the occasion, not dictated by her consciousness of truth, by a determination to tell the truth! That is the inference which the Counsel wishes the Court to draw, and for what reason? Not from any confusion in her manner—not on account of any deviations from what every person who heard her testimony must have regarded as a continual flow of truth; but the Counsel thinks “because she told so straight a story, it must necessarily have been made up!” Now, I have heard Counsel argue ably and successfully, that because a witness was confused in the manner of testifying—because manifest inconsistencies in his statements appeared in regard to the several facts testified to, the inference was to be drawn that the truth was not told—that the witness was guilty of a fatal inconsistency, which destroyed the force of his testimony. But quite a different course is adopted by the Counsel on this occasion; this lady’s testimony is impugned because it is so direct, so straightforward. Oh! but, says the Counsel, if that testimony is true—if the Bishop was ever guilty of that misconduct towards Mrs. Butler, was it probable that she could have behaved in the way she states?

The gentleman entirely overlooks in his argument the relative position of these witnesses and the party accused. How was Mrs. Butler situated? She was then but 19 or 20 years of age—she had been brought up under the eye of the Bishop—her father had been his particular friend; she found the Bishop laboring, as she thought, under the effects of intoxication, and she was willing to hope that the indignities which she experienced from him arose from that cause—not having heard any thing at that time which would have led her to suppose that they evinced a prevailing licentious propensity. She was therefore in these circumstances, and acting under these impressions, disposed to submit to the indignity rather than make an outcry. But yet she did make an appeal to the Bishop himself, which I should have supposed would have melted the most obdurate heart. What was it? Why, she kindly took the hand which had been the instrument of that indignity, and placing it modestly and gently on his knee, said, “Bishop Onderdonk; I have been accustomed to respect that hand—it has been laid on the heads of many of those whom I love—to-morrow it is to be laid in ordination on the head of my husband”—disgrace it not, pollute it not by such conduct as this! That is the appeal that she made, and for the express purpose of bringing him to

a proper sense of his misconduct, and also of attracting the attention of her husband, without exposing the matter to the driver. And I ask, cannot the Court appreciate the motives of this lady? Were they not laudable? and do they not commend themselves to every honorable mind—to every feeling heart?

It seems that Mr. and Mrs. Butler had taken with them in the carriage a man who was but slightly attached to the Church, and who had some suspicion of the purity of the clergy who ministered in it. That had been the subject of conversation from Syracuse to Ithaca, therefore we can easily account for the extreme unwillingness of the lady to make any exposure of the highly improper conduct of the Bishop in the presence of this man. She thought that the indignity would not be repeated; but it was repeated, and with added grossness, and she was finally compelled to fly from her seat beside the accused to the lap of her husband, on the front seat, and there she remained during the whole of the night, inclement as it was, because it was no longer safe for her to remain where she had been seated. And it is a remarkable feature in this case, that the Bishop never made any allusion to this movement on her part, and never asked for any explanation whatever. Such is her testimony. She relates all this to her husband on the first opportunity. What is *his* conduct? Was it not that which would have been the conduct of any other virtuous man? He says at the moment, "I will not be ordained by the Bishop! I will not ride with him! I will not have any thing to do with him!" And it was with the greatest difficulty that his wife succeeded in soothing his feelings so as to induce him to go on, or be ordained by the Bishop the next day. But the Counsel asks, "If such an indignity was offered, why was there not more noise made about it?" It will readily occur to the mind of every one that there were various reasons why a great noise was not made about the matter. Mr. Butler was a young man just entering the ministry; he had never heard of any thing against the Bishop; he thought that this, perhaps, was only a single instance of indiscretion; if he came out and exposed him, what was the consequence? Why, he would be called on to meet a very powerful opponent; and how? On the testimony of his wife, who would thus be exposed to all the harassing and painful consequences of accusing a Bishop of such gross enormities. Was not all that more than sufficient to appal a man of stronger nerves than Mr. Butler? There were many reasons to operate in keeping him silent, and but one that he should expose the Bishop—the conviction that he was corrupt, and ought to be exposed. Under the influence of these feelings, then, Mr. Butler refrained from denouncing the conduct of the Bishop on that occasion. Perhaps he erred in this; if so, it was the error of a kind heart.

But I ask, was not the subsequent conduct of Mr. Butler consistent throughout? I admit he did not pursue the course which I myself would have adopted, and which doubtless many of those whom I now address would have pursued. But was not his conduct consistent after he had resolved on that course which he should adopt? The Counsel has founded his argument almost wholly on what he calls the improbabilities of this case—improbabilities arising from the character of the charge itself, and the conduct of those parties towards the Bishop subsequently. And how is this? Mrs. Butler, it will be recollected, never saw the Bishop from that time till she saw him here, with the exception of one single occasion, at the holding of the Convention at Utica. She never exchanged a word with him on any subject since that time, and only saw him once. We therefore search in vain for any inconsistency in *her* conduct. Now, with regard to Mr. Butler;

he says that on one occasion the Bishop did pass through Syracuse; but did Mr. Butler go to see him? Did the Bishop call upon Mr. Butler, then the only clergyman of our Church in that village? Not at all. That is certainly a remarkable fact in the case, showing as it does a consciousness on the part of the accused that he had been guilty of some impropriety of conduct. Mr. Butler was informed, however, by one of his vestry, that the Bishop was there, and he was asked if he knew it before, and he said he did; he knew it half an hour before, but he did not think it proper to wait on the Bishop, nor would he have done so, had he not been sent for for that purpose by one of his vestry. Was it not then perfectly proper and perfectly consistent that he should go? He was then obliged either to call on the Bishop, or to tell the vestryman the reason why. Then the whole transaction would have come out. But that would have been directly contrary to the course which Mr. Butler had marked out for himself. Mrs. Butler and her husband had determined after that time to have no intercourse with the Bishop that they could possibly avoid. They meant to treat him with the civility due to his office, if forced into his company; but Mr. Butler did not think it proper to call upon him voluntarily, and would not have called at all but for the reasons before stated. But he did go, under the circumstances, and met the Bishop, in company with some other gentlemen, and remained with him till his departure. This is all the intercourse he has had with the Bishop, except meeting him once, at the time of the Convention at Utica, when they exchanged the ordinary salutations in passing. And I believe, with these two exceptions, Mr. Butler has never met with the Bishop since the transactions complained of in the Presentment.

Are the Counsel on the other side then really prepared to say that they have made out the conduct of Mr. and Mrs. Butler to be so inconsistent and improbable, that they must be convicted of perjury? Is there any thing to suspect in their testimony? On the contrary, I ask triumphantly, is not the conduct of both the lady and her husband perfectly consistent throughout? Unless I am entirely mistaken, there never was a charge more completely made out, and more thoroughly corroborated by the subsequent conduct of the parties. The only argument of the Counsel was based on the assertion, that it was improbable that the Bishop could commit such an offence; or that if it had been committed, the parties would have treated the Bishop differently.

The Counsel put several questions to Mr. Butler, for the purpose of showing that he was engaged in a conspiracy in getting up this presentment: in this, however, he signally failed. Mr. Butler states, that having settled in Boston, and hearing there was trouble of this description brewing in Philadelphia, he at once determined not to go to that city, although he had previously made arrangements to go there with his friend, Dr. Vinton. He was apprehensive he might be called on to testify, and therefore determined not to go. But his friend promised to write him in case any investigation should be going on, and not hearing any thing from him, he concluded that the matter had passed off, or been laid aside, and accordingly went to Philadelphia. This shows how carefully he acted—how reluctant he was to be made a witness in this case. Mr. and Mrs. Butler must be regarded as unwilling witnesses, and appear here only from an imperious sense of duty.

But the Counsel has attempted to show that there is some discrepancy in their testimony; but that is as completely and satisfactorily explained, as it is possible for any difference in human testimony to be. It will be recol-

lected, that Mr. Butler, in his affidavit, stated that the Bishop attempted to pull up his wife's clothes. Mrs. Butler corrected that as soon as she heard of it. How is this to be explained? Mrs. Butler, when she left the seat beside the Bishop and went forward to her husband, stated the difficulty in a whisper. Mr. Butler swears to that, and so does she. And it will be recollected that one part of the charge is, that the Bishop caught her by the thigh, and probably somewhat raised her clothes, as she says; that in communicating the matter to her husband, he thought that she told him that the Bishop *had* attempted to raise her clothes, which was incorrect—she only expressed a *fear* he would do so; and, it is to be borne in mind, that both mutually agreed to dismiss the subject from all remark—and thus he remained under that erroneous impression to the time he made the affidavit in Philadelphia.

[Bishop IVES—It is explained on the ground that she feared that the Bishop would do so—mere apprehension on her part.]

Mr. CLARKE—That may be so. But now I ask the Court whether that discrepancy, arising from mere misapprehension, is not too small a matter on which to ground a serious argument? She, in her fright and agitation, in getting over that seat, makes this hurried communication, and this misapprehension on his part becomes imprinted on his mind; and forms part of his recollection of the transaction; and as the subject was not again brought up between them, the misapprehension remained uncorrected. But when he made the affidavit, it is evident that he made the statement in the firm belief that it was true; but when, on his return from Boston, he showed the affidavit to his wife, she confirmed every part of it but that, which she contradicted immediately, and Mr. Butler immediately wrote to Bishop Meade, informing him of the mistake. Now, according to the rule quoted from Starkie, this fact goes to confirm the veracity of both witnesses; because, if they had intended to make up a story to impose upon this Court, they would have undoubtedly agreed in all the details of their statement: that is the case with all those who attempt to impose on others by a preconcerted and false story.

But the Counsel asks Mr. Butler if he did not meet the Bishop at Utica, on another occasion. He admits that he did, *unexpectedly*,—at dinner, at the house of Mr. Irving; and he is then interrogated—

[Bishop DE LANCEY—It was at Geneva.]

Mr. CLARKE—Yes, it was. He is interrogated closely as to how he conducted himself, and his account is entirely consistent. He said he treated the Bishop with civility, and entered into conversation with him, just so far as to avoid exciting any suspicion that any degree of doolness existed on his part, or any hostile feeling towards the Bishop. This is perfectly consistent with Mr. Butler's fixed determination relative to the course which he resolved to pursue. If he, a presbyter, had been particularly cold towards the Bishop, it would at once have attracted attention, and led to that explanation which Mr. Butler had determined to avoid. If he had pursued a different course on this occasion, it would have been at once asked by Mr. Irving, "Why have you insulted the Bishop? you have not only insulted him, but you have also insulted me, whose guest he is—what is the reason for such conduct?" Therefore Mr. Butler states that he *did* treat the Bishop with civility on this occasion, and the explanation is obvious.

I have nothing further to say on this case: unless I am entirely mis-

taken, it stands unimpaired by any thing that has been, or can be offered in opposition.

The next case is that related by Mr. Bolles; and the Counsel seems to think that this charge has wholly failed. I admit that the testimony of this witness is different from what we expected, and from what we had reason to expect, and different from what the witness had stated on former occasions. I admit the principle that we cannot impeach our own witness. I do not intend to attempt it; but I *do* intend to show that Mr. Bolles has exhibited an extraordinary want of memory in regard to that transaction.

What is the charge? That in riding in the public stage, the Bishop sat in the back seat with a young lady, and that he put his arm around her, and took indecent liberties with her person. Mr. Bolles says that he and the Bishop sat on the *middle* seat, and that the lady and a child sat on the back seat; and that, in the course of the ride, the Bishop, being quite a stranger to the lady, probably never having seen her before, placed his hand upon hers, which she had happened to place on the strap dividing the seats. Now, according to my view of moral and decent behavior, that was a gross impropriety. Perhaps, if it stood alone, unconnected with any other case, it would not appear so strange; but when it is immediately preceded by such a case as that to which I have just alluded, it certainly must be considered in the light of a very gross impropriety. I ask, what gentleman is there in this community, having a proper regard for his own character, who ever takes such liberties with females in the public stage? But he did not stop there. She withdrew her hand—and as Mr. Bolles states, “blushingly” withdrew it. Did he stop? He had an opportunity of witnessing the effect produced by the first liberty—but did it satisfy him? Not at all. He again seizes her hand, and holds it in his, for what length of time I know not. And how did the action strike Mr. Bolles at the time? As it would every other man of proper feeling—as a gross impropriety on the part of the Bishop. I think I can show that such was his impression then. He *now* states that it was a foolish act, and liable to misconstruction. That is the view he takes of the action now; but it was not the view he took of it at the time. It is in evidence before you, that when they reached a certain village where there was a Methodist school, Mr. Bolles supposed that the lady was going to get out there, which he greatly regretted. Why? Because he says he feared that she might relate this matter in such a manner as to operate to the injury of the Church! That was the conclusion in his mind then; and I ask, what clearer evidence could you desire as to the light in which he regarded the conduct of the Bishop on that occasion? And it is, moreover, evident from his statement, that the young lady left the stage before she reached her destination, in order to avoid the annoyance she had suffered.

Then, again, when Mr. Bolles got to Utica, very soon after his arrival he relates this matter to Dr. Hawks, and about the same period to Dr. Taylor also—before Mr. Bolles and Dr. Hawks went to the Bishop, on the subject.

[Bishop LEE—That is not in evidence.]

Mr. CLARKE—I believe it is, sir. Did he consult Dr. Taylor before he told him the story? Dr. Taylor had heard Mr. Bolles' story before he (Mr. Bolles) and Dr. Hawks went to the Bishop.

Clerk of Court—Read from minutes of evidence, sustaining the accuracy of the statement of the learned Counsel.]

Mr. CLARKE proceeded—I ask, then, what is the impression made on Dr. Taylor? It is evident that that story was the only inducement which led him to call on the Bishop. How did Dr. Taylor view it? Why, so important did he regard the matter, that although he found the Bishop engaged with several gentlemen in the church, yet he begged five minutes' interview with him, and the Bishop was constrained to excuse himself to those who were with him, and to accompany Dr. T. into the vestry-room, for the purpose of receiving his communication. Dr. Taylor turned the key of the door, and then related the story told by Mr. Bolles. How did the Bishop receive this statement? He denied the charge—told Dr. Taylor not to be at all annoyed about it—and said that it was only a little girl that he had taken up, for the purpose of showing her something on the road. But I wish the Court to mark one fact. Did the Bishop tell Dr. Taylor that there was a young lady in the stage? Did he not entirely omit that fact? And I ask, for what reason? Has the Counsel given any explanation of that omission? It appears to me to be a very fatal one. It is very evident, from the statement both of Dr. Taylor and of Mr. Bolles, that the story was deemed of such importance as to lead to the calling of the Bishop out into the vestry-room, for an explanation; and that then he referred to his taking up the little child, which was true; but he entirely omitted to state that there was also a young lady in the stage, in regard to whom the charge was made. That omission, as I have just said, appears to me very remarkable. It certainly does require some explanation.

These are all the remarks that I intend to offer on the case of Mr. Bolles. But it occurs to me that I made an omission of some importance in the case of Mrs. Butler. During the course of that terrible examination of five hours, the question was put—and it must have been suggested by some one for the evident purpose of involving her in some inconsistency—“whether, after all that had occurred between her and the Bishop, he had not visited her house, and whether she and her husband had not taken him all over it, for the purpose of showing him how well they were accommodated?” What was the answer? Why, that she and her husband had never done so—that no such proceeding had ever taken place; and so satisfied was the Counsel that he had been misled, that when Mr. Butler came to be examined, the question was not put to him.

I come now to the case of the Misses Rudderow; and I shall consider these two specifications together, as they are closely connected.

Now what is the testimony of Miss Helen Rudderow? Why, that in 1841, when the Bishop visited St. James's Church, for the purpose of performing the rite of confirmation—but which, in consequence of some mistake, was not administered on that occasion—her sister having been obliged to go home before services were over, by reason of a nervous headache, she invited the Bishop to dinner. I am not sure whether he had not been previously invited,—at all events, the invitation was extended by her. He accepted it, and was, with her, driven in the carriage of the Rev. Mr. Richmond, to the residence of her brother, Mr. John Rudderow. During that short ride of one mile, those gross acts were committed.

The Counsel has animadverted on the improbability of the story told by this lady, because she states that the drive of one mile occupied half an hour. I have no doubt it seemed a very long period to

her; but it must also be recollected, that the roads were very bad, and that the carriage was drawn by a parson's horse, which the Counsel has told you is not usually an animal greatly addicted to running away. No doubt the extraordinary and painful situation in which the young lady was unhappily placed on this occasion, made the time occupied in returning home appear longer to her than it really was. But the indignity was committed during that ride; and so agitated was she when she got home, that she immediately ran up stairs and left the Bishop below—made a short communication to her sister, relative to the manner in which she had been treated, and burst into tears, requesting her sister to go down and entertain the Bishop. Well, the Counsel has labored hard to prove the improbability of this conduct; and indeed his whole argument is directed to that effort. But here is a fact, sworn to by a communicant of the Church,—is it to be disregarded and disbelieved, because the transaction testified to appears improbable? I admit that on their face, *all* these charges appear improbable. They must always appear so. A charge of impropriety of conduct against a Bishop of the Church, must always appear improbable, God forbid that the time should ever come, when such charges would not appear improbable! Whether the accused party in this case has availed himself of that fact, and has intended to avail himself of that circumstance, in the commission of all these acts, it is not for me to say. But I ask the Court whether they are prepared to say, that because the charge is, on the face of it, improbable, Miss Rudderow is therefore to be regarded as swearing falsely in regard to it? Here she stands, a communicant of the Church, with no earthly motive for appearing here, but to establish the truth,—and I ask, are the Court prepared to reject her testimony, because she swears to that which must of necessity ever be regarded as improbable—the commission of an act of gross and immoral character, by a Bishop of the Church? I apprehend not. I believe that the Court are not prepared to regard this witness as perjured, on such grounds, as have been presented by the learned Counsel on the opposite side. All argument founded on the mere improbability of the act, is destroyed when the fact is proved by competent and credible witnesses.

But the sister of the lady went down stairs in accordance with her request, and found the Bishop in the parlor standing at the centre-table, with a book in his hand. He immediately on seeing her, with that politeness which is characteristic of him, took her hand and seated her on the sofa. After sitting there for a short time, he committed upon her also the indignity which she describes. She removed herself to the other end of the sofa, and he followed her and repeated the indignity. Footsteps were heard on the stairs; and then, according to her statement, the Bishop sprang to the other end of the sofa. Afterwards, at the dinner-table, it appears that both the ladies behaved with such coolness and reserve to the Bishop that it was the subject of remark. However, they undoubtedly treated him with the courtesy that a guest at their table required. After dinner the company retired to the drawing-room, and there, on Miss Jane's going to the window for the purpose of seeing whether it had ceased raining, and having lifted up the blind, the Bishop followed her and committed another indignity. Well, this also the Counsel represents as improbable. I admit it. But I ask, is it not sworn to by a witness fully entitled to belief? Is it to be admitted that a Bishop of the Church can commit all sorts of

indecencies and crimes with impunity, and only feel obliged to offer the defence that it is improbable that a Bishop could be guilty of such offences in order to be at once acquitted?

But it is said that the testimony of these two witnesses is shaken by that of the Rev. Mr. Dowdney. He has attempted to show that the conduct of these two ladies towards the Bishop a year afterwards is entirely inconsistent with the facts alleged by them. Now how stands this? Mr. Dowdney is brought here for the purpose of sustaining the Bishop, and I ask whether, under the circumstances, he comes with a claim to full credit, when he differs from a witness as respectable as himself? Is he an indifferent witness? Has he not lent himself for the purpose of sustaining this defence? He admits that he has been running to Dr. Seabury and others, and consulting with Counsel, for the purpose of preparing this defence; that he consulted Mr. Graham six weeks ago.

[Bishop WHITTINGHAM.—No, that is not the evidence.]

Mr. CLARKE.—I think it is; he said he had consulted Mr. Graham six weeks ago, and that gentleman said he knew nothing about it till within about the last three or four weeks. Mr. Dowdney says—

Bishop LEE.—I should like that point looked into before the Counsel proceeds further.

Bishop WHITTINGHAM.—The testimony is that he had consulted Mr. Graham and others, within a month or six weeks.”]

Mr. CLARKE proceeded.—I do not mean to say that Mr. Dowdney's intention was to swear falsely; I only say that he swears carelessly, and that he comes before the Court under such circumstances as to make it apparent that he is willing to forget things that operate to the prejudice of the cause he undertook to sustain, while he recollects minutely every thing that favors the defence.

[Bishop WHITTINGHAM.—As the character of a witness is concerned, I wish to know if the Counsel means to say that the witness testified that he consulted Mr. Graham six weeks ago?]

Mr. CLARKE.—Yes, sir.

Bishop WHITTINGHAM.—Then it is not so in the minutes. He says that he “saw Mr. Graham and *others* within a month or six weeks.”

Mr. CLARKE.—Well, I am willing to take it that way—the difference is very slight.

Bishop IVES.—That, however, does not exactly mean that he saw Mr. Graham six weeks ago.

Mr. CLARKE.—Why, it probably may be taken to mean that he saw him five weeks ago; that is the usual inference drawn from an expression of that kind—and even four weeks ago Mr. Graham knew nothing of this case.]

Mr. CLARKE proceeded.—But then Mr. Dowdney attempts to show the inconsistency of those ladies by their subsequent conduct towards the Bishop. Well, how was that? The young ladies agreed perfectly with Mr. Dowdney in the main particulars of that interview. They met the Bishop in a friendly manner. They never intended to make this case the subject of a public charge against the Bishop. They were females; they knew nothing of the Bishop's conduct anterior to this; they did not know but this was the only case of the kind; they were not willing to place themselves in the awful position of sole accusers of their Bishop, and had marked out a line of conduct precisely like that of Mr. and Mrs. Butler. What is their own

account of that interview alluded to by Mr. Dowdney? They state that when the Bishop entered the church they were engaged in teaching their classes in pews, and that the Bishop came up and was introduced to them, as Jane says, by Mr. Dowdney—Mr. Dowdney says there was no introduction. Now I think the probability of the case is in favor of the Misses Rudderow. It is reasonable to suppose that Mr. Dowdney would naturally introduce the Bishop, and then that they spoke to him and entered into conversation with him, and that he made inquiries about the scholars, and stayed there so long as to teach the children the collect for the day. Now Mr. Dowdney says nothing about the Bishop's teaching the children the collect for the day, but states that the whole time spent in the church was occupied in conversation with the ladies. Very probably the Bishop entered into conversation with the children and taught them the collect of the day, but this Mr. Dowdney did not notice, or does not remember. He said also that the ladies were sitting in the middle of the passage, and that the Bishop had to go very near them in order to get to the chancel. But on the next day Mr. Dowdney comes forward and states that his memory had failed him on this point, and that the ladies *were* in their pews, precisely as they themselves had stated; showing that in this instance, at least, the memory of the ladies was more faithful than his. And I ask you whether that fact alone does not show conclusively, that you can place greater reliance on the testimony of these ladies than on that of Mr. Dowdney?

But is not this discrepancy between the ladies and Mr. Dowdney a very trivial matter on which to base an argument? The ladies had never related this story to Mr. Dowdney, consequently they did not on this occasion exhibit any coolness or reserve towards the Bishop, which could have excited the attention of their pastor, and which would inevitably have led to that explanation which they were determined to avoid. The same explanation is perfectly satisfactory as to the conduct of one of the young ladies in meeting the Bishop as she came down from the organ-loft. We are perfectly ready to admit that the Bishop was treated with civility there also; but, as I have shown, there is nothing whatever inconsistent in that, any more than in the case of the other witnesses. Mr. Dowdney states that Miss Riker was present on this occasion. We have made every exertion to induce her to appear here, but we have failed. Why does she not appear? I can find another reason than the unwillingness of her brother. Mr. Dowdney is still the pastor of Miss Riker. She is a communicant of his church at this very hour, and if she were here, it would be either to convict Mr. Dowdney or the Misses Rudderow of, I will not say perjury, but of some mistake about this matter.

Mr. Dowdney comes here evidently with the most *friendly* feelings towards the accused. I think I shall be able to demonstrate that he also comes with the sentiment of *hostility* to the young ladies. It appears that they and he had some difference with regard to the use of the church by a benevolent society. He had very high notions about the sanctity of a church, and believed that it ought not to be used for any other purposes than those of divine worship; and although the ladies solicited the use of it for the holiest of purposes, he would not grant it to them. He would have you to infer that Miss Jane Rudderow said she would go to the Bishop and see if he would not grant her the use of the church. Now, is that true? They have produced Miss Rutter, of whom Mr. Dowdney had spoken, and she says that *she* herself made the proposition, and told Mr. Dowdney

and Miss Jane Rudderow, that she didn't care—she would appeal to the Bishop, and that then Miss Jane Rudderow said she would accompany her. This led to the inquiry if she was acquainted with the Bishop, to which she replied, that she was on terms of intimacy with him. Well, that was true; she had been a member of St. Paul's Church, and had been under the supervision of the Bishop for many years; she had been in the habit of conversing with him, and might with just propriety say that she was on terms of intimacy with him. There was nothing whatever inconsistent in her offering to accompany the other lady to the Bishop for the purpose of soliciting the use of the church. The opposite Counsel say that it is very improbable that she would offer to go to the Bishop after the indignity she described; but this has already been explained, and shown to be perfectly consistent with the line of conduct she had marked out for herself; and if such an argument as that is to prevail, which is so repeatedly urged, and which is based upon mere improbability, then there is an end of all truth and justice. This Court must be governed by those principles of confidence in the honesty and integrity of unimpeached witnesses, which prevail in every court of justice.

But how did the Bishop regard the application for the use of the church? Why, in a more sensible light than Mr. Dowdney, and he at once acceded to the request of the ladies. And we find that this Mr. Dowdney, who had such a nice sense of propriety, and who was so particularly desirous of preserving the church from any sacrilegious use, was yet quite willing that these young ladies, his parishioners, and communicants of his church, should go to a common tavern, well known to all who are familiar with the localities of the island. But he said he offered them another place, which was an unoccupied building. This was on the ninth of December, the coldest season of the year—a very liberal offer indeed. These were all the accommodations which the scrupulous Mr. Dowdney offered to these young ladies; and because they would not accept it, he has probably entertained sentiments of hostility towards them from that time till the present. They afterwards quit his church. Whether that operated as an additional cause of hostility it is not for me to say. But those are the circumstances in which he comes here to testify. He told us that he had been to see Mr. Alvord, one of his parishioners, who was present at the time of the interview between the Bishop and Miss R., and that he would come to confirm his evidence. Has Mr. Alvord come forward? Has he not avoided us entirely? Have I not a right to draw the inference that Mr. Alvord, on recollection, found that he could not sustain Mr. Dowdney?

I shall not dwell longer on the testimony of these young ladies. It appears to me to stand unimpeached and unimpeachable. They have sworn to facts, improbable I admit, because facts affecting so seriously the moral character of a man holding such a station, must always appear improbable—but they are facts well established, and entitled to full belief upon every principle of evidence that properly governs the minds of men.

I come now to the last case mentioned in the presentment, which is that of Mrs. Beare. I shall not go over the details of that case, showing the outrageous indignity offered to her; the Counsel himself concedes that, if true, it was one of the most atrocious acts that could be committed by any man. We have not then to go into any discussion as to the criminality and enormity of that act. The Counsel

has himself conceded that if guilty of such an act, the Bishop must be regarded as disqualified for the office he holds. The only question, therefore, is, is the testimony of the witness true?

I beg the members of the Court, then, to refer to the testimony of Mrs. Beare, and to her manner of giving it. There sat that lady under the examination of the Counsel and the Court for near six hours. Is there any part of her testimony that is not perfectly consistent with itself—that is of itself inconsistent with the statement which she had previously made? Mrs. Beare states the indignity. I will not go into the details—they must be fresh in the recollection of all—they cannot soon be forgotten by any who heard them? How do the Counsel attempt to get rid of it? It is sworn to by the wife of a clergyman of the church, (she herself a communicant,) stating all the particulars, minutely and in detail. I ask you how is it to be got rid of? The Counsel resorts to the same course of argument as in the other cases. The story is, he says, “improbable;” and he also alleges that it is inconsistent with her subsequent conduct.

As to the improbability of Mrs. Beare's statement, I will not recur to the argument I have repeatedly urged in reply. If I have not already shown, I need not attempt again to show, that this argument, founded on improbability, is a complete *non sequitur*, and cannot for a moment be entertained in opposition to direct and unimpeached testimony. Then as to the argument that her subsequent conduct was contradictory of her statement, let me ask, what was that conduct? It seems that on one occasion she met the Bishop at Dr. Schroeder's house, a year after the transaction, and her statement is, that she was led into the parlor by Dr. Schroeder, and there saw the Bishop engaged in conversation with Dr. Wainwright, and that she bowed to him, giving the usual salutation, and passed on without a single word being exchanged between them, or if any thing was said, it was the ordinary salutation. She passed on into another part of the building, with a friend who was desirous of inspecting the establishment; and that subsequently she met the Bishop in the chapel, and there Mr. Beare, who was to be ordained by him next day, told the Bishop that he expected him to dine with him the next day. Mrs. Beare is then put under a rigid cross-examination, which lasted for hours. She was asked, if the invitation to dine was not *pressed* upon the Bishop, and if he did not plead a previous engagement? She did not recollect that; but if it did take place, if the Bishop did mention to her husband that he had a previous engagement with Mr. Franklin, is the mere circumstance of its not being recollected by Mrs. Beare, (or perhaps not heard by her,) to be the foundation of an argument for impugning her testimony on oath? For the purpose of contradicting her, Dr. Schroeder is introduced. Now the story that he relates is this—that he found Mr. and Mrs. Beare in the garden—that he took them to the green-house, and presently inquired if they would not be presented to the Bishop? Well, that appears to me an extraordinary proposition. It is not for me to say that it is not perfectly true; I only say that it strikes me as a most extraordinary proposition, when we consider that he was aware of their being well acquainted with the Bishop, and that they expected to meet him. Had he informed them of the Bishop being in the house, and asked them if they did not wish to go in and meet him, the statement would appear probable and natural; but that he should ask these two individuals if they would not be presented to the Bishop, appears very strange to me, although it may be in accordance with the etiquette which prevails among

the clergy. He then states that he went into the house, and found the Bishop in the front parlor, and that he presented Mrs. Beare and afterwards Miss Strong. This is the statement he gives, and that on that occasion their greeting was friendly and cordial. When Mr. Schroeder comes to be cross-examined, he cannot state what Mrs. Beare said, or that she exchanged a single word with the Bishop. The greeting was *cordial*—and yet cordial as it was; he could not recollect whether a word was uttered by Mrs. Beare! He cannot say that she even shook hands with the Bishop. Now, is the Court prepared, on testimony like that, to say that the statements of Mr. and Mrs. Beare are untrue? Are they prepared to say, because Mr. Schroeder chose to construe the conduct of Mrs. Beare as being cordial towards the Bishop, that therefore her testimony is not to be credited? I am satisfied the Court will never come to such a conclusion. Dr. Schroeder says that he went down to Mr. Beare's house for the purpose of refreshing their memory and his own; and yet he afterwards, in a subsequent part of his testimony, states that he recollected all these circumstances perfectly well. Why, then, did he go down there for the purpose of refreshing his memory? Was it not for the purpose of having some conversation with them which he might make use of here as a witness for the defence? On the day succeeding that on which this visit was made, he came to the city, and communicated, as he tells us, all he heard to the Bishop. A witness pursuing that line of conduct, in our courts of law, is not very favorably regarded. How such testimony may be viewed here, it is not for me to say. Then it was attempted to show that the conduct of Mr. and Mrs. Beare was inconsistent with the main fact when they met the Bishop in the vestry-room. And they have produced testimony on that point. Now Dr. McVickar and the Bishop's sons were also present on that occasion, but the only witnesses produced are Dr. Schroeder, Mr. Goodwin, and Mr. Sweetzer; both of the latter gentlemen think that the greeting was cordial, and yet both, when put under cross-examination, cannot recollect that Mrs. Beare said one word—they don't even know whether she shook hands with the Bishop. Is not this extraordinary—that they should say the greeting was cordial, and yet cannot describe any thing of its character? How do you reconcile that with the known character of these gentlemen? They were prepared to expect that every one should meet the Bishop with cordiality. Mrs. Beare did not intend to be marked in her coldness towards the Bishop, and hence the witnesses (not noticing any coldness) chose to call her conduct cordial.

Then in regard to Mr. Goodwin's meeting Mr. Beare on board the steamboat; it appears that Mr. Beare was reading the *Protestant Churchman*, which elicited some remonstrance from Mr. Goodwin, and in reply to which Mr. Beare spoke of the Bishop in terms of kindness, and hoped that he would not be offended at his taking that paper—and that is all that is said about it. Well, then, it appears that Mr. Sweetzer and Mr. Goodwin dined with the Bishop at Mr. Beare's house on the day of the ordination. How could Mr. Beare do otherwise than invite the Bishop to dine at his house on that occasion, being the day of his ordination to the priesthood? If he had not extended that invitation to the Bishop, his conduct would have necessarily excited remark, and that he was determined to avoid. He was determined to act with civility towards the Diocesan—and why? He had committed his grievances to four respectable clergymen of this city; and within a week after the transaction. They did not think proper to proceed

with the matter. He had done what a prudent man should have done. He had intrusted the matter to the hands of these older clergymen, and as they did not see fit to proceed in it, he resolved to pursue that line of conduct towards the Bishop which the testimony describes.

Again, in regard to the conduct of Mrs. Beare towards the Bishop when at her house, she states that she did not enter into conversation with him, merely offering him the dishes on the table, and treating him with the ordinary courtesy that is extended to a guest at table. Now, Mr. Goodwin thought that she did converse with the Bishop at table, but Mr. Sweetzer sustains Mrs. Beare; he could not recollect any conversation between them, except that of the ordinary courteous intercourse of the dinner-table. It certainly does appear to me that the evidence of Mr. and Mrs. Beare, as to their conduct towards the Bishop on the occasion spoken of, is not only not shaken, but rather confirmed by the very witnesses brought to impugn it.

We now come to the interview at the Bishop's house, on which I intend to be very brief. It appears that Mr. Beare, feeling himself very much aggrieved by the conduct of the Bishop towards his wife, communicated the matter to Mr. Kerfoot, a professor at Dr. Muhlenberg's establishment; and so important did Mr. K. view the matter, that he proposed that they should go to prayer on the occasion, and ask for guidance from above. They did so, and after that was over, Mr. K. said he would communicate the matter to Dr. Muhlenberg, and ask his advice. He did communicate it accordingly. Dr. Muhlenberg sent for Mr. Beare, heard his story, took minutes of it, and immediately came to town and consulted Drs. Milnor, Wainwright, and Higbee, and the result was a united determination to call upon the Bishop. Dr. Milnor has testified to what took place on that occasion in the Bishop's study; Dr. Muhlenberg, partly from his minutes, and partly from memory, related the whole story. What was the conduct of the Bishop? He gave the whole story an unqualified denial. I ask the Court to recollect the evidence of Dr. Milnor and Dr. Muhlenberg on this point. Well, they thought it an extraordinary thing that the wife of a clergyman of the church should prefer such a charge against the Diocesan, and that there should not be the slightest foundation for it. They asked the Bishop, or it was suggested that Mr. Beare should be called in and confronted with the Bishop. Mr. Beare was sent for, and all the clergymen who were present on the occasion just now alluded to, with the exception of Dr. Wainwright, accompanied him to the Bishop's. Immediately on their entering, the Bishop asked them to walk into a back room, the door of which he immediately closed, and then taking Mr. Beare's hand, expressed himself in the strongest terms of kindness and affection, and regretted that any thing should have occurred to wound the feelings of Mrs. Beare or of himself. Mr. Beare was not satisfied with that kind of explanation; he put the question to the Bishop more than once—"Bishop Onderdonk, do you intend to deny the statement made by my wife?" He said, in reply, "I do not deny it, but she misconstrued my motives." Misconstrued his motives! Why, what motive could he have had for putting his hand into the bosom of another man's wife? Misconstrued his motives! The idea is an absurdity. Mr. Beare puts it to him again—"do you deny the facts?" "No," says he, "but she misconstrued my intentions." The Bishop appeared to be very much affected and burst into tears—stated that he had great affection and regard for Mr. and Mrs. Beare—and was willing

to make any apology to Mr. B. that might be satisfactory to him and his wife. What! willing to make an apology to the man who had falsely and calumniously accused him of such gross misconduct? Recollect, that at this time the full particulars of the charge had been communicated to him. If untrue, would he not have demanded an apology *from* Mr. Beare and his wife, for the gross slander which they had uttered against him? But he does not ask any such thing. He bursts into tears, wrings the hand of Mr. Beare, and expresses his willingness to make an apology. Is that the conduct of an innocent man? Judge ye! Then it was that after they left the presence of the Bishop, Dr. Higbee said to Dr. Milnor—"what a lie he told!" I ask the Court to remember that extraordinary observation. Is it not evident that the impression had been made on Dr. Higbee's mind, (as it had been on Dr. Milnor's,) that the Bishop had retracted his denial of the preceding interview, and that he now admitted what he had denied the day before? Can that observation be explained in any other way? The Counsel very ingeniously labored to get rid of this remark. His anxiety to gloss it over evinced how well he was aware of its effect. But in his laborious effort to get rid of it he signally failed.

Well, these clergymen, after leaving the Bishop's house, walked up to the corner of Franklin street and Broadway, talking, no doubt, of this subject, and when they got there Dr. Higbee addressed Mr. Beare, and said—"Mr. Beare, you have shown very great forbearance; had it been my case—had such an indignity been offered to my wife, I would have kicked him out of the house." Dr. Higbee does not now recollect these extraordinary observations, and we are bound to believe him. But still they were made, as has been proved by Dr. Milnor, and I cannot but say that this failure of memory on the part of Dr. Higbee appears most extraordinary. Dr. Higbee does not pretend to deny that he made such a remark: he only says that he does not recollect it. He was, he says, in a state of great excitement; he thought that the Bishop did not behave with sufficient energy. But what did the remark itself mean? Why, it could only mean that he was dissatisfied with the gross inconsistency of the Bishop.

But I find I have occupied more of the attention and time of the Court than I intended. I have very little to add.

It does appear to me that if ever there was a case presented to any tribunal, which was proved beyond the possibility of contradiction or doubt, it is the one now before you. The facts charged are sworn to by persons known to you. As I have stated in another part of my argument, we have not gone into the by-ways, and out of the pale of the Church, for witnesses. Every witness on the part of the prosecution is a member of the Church—a communicant—one of the flock of the party accused. If he be condemned, therefore, it will be on the evidence of members of his own flock, of those who have been brought up under his own supervision. These witnesses came here without any earthly motive inconsistent with perfect purity of intention, and a desire to tell the truth. They are strangers to each other, never having met before. They have given their statements with a degree of minuteness and straightforwardness, I never saw equalled on any other occasion. Their evidence has been consistent throughout, and has withstood all the attacks and subtlety which ingenious Counsel could employ to overthrow it. The Counsel is, therefore, driven to the desperate resort of calling upon you to regard them all as perjured, because they have related what he terms "improbable stories." Are you prepared thus

to condemn the sons and daughters of our Church? But if you do not so regard them; if you believe they have stated the truth, then, I ask, has not a case been made out which calls for the interposition of this Court, and the exercise of the highest authority of our Church?

In regard to the consequences of finding a verdict of guilty, it is not for me to speak. We are taught in holy writ, that "it must needs be that offences will come, but wo unto that man by whom the offence cometh." "If thine eye offend thee," the injunction of our Saviour is, "pluck it out." If thine hand or foot offend thee, it is to be cut off and cast from thee. So, if a member of your sacred body becomes corrupt and disqualified for performing the office assigned him, he is to be removed. The operation may be painful, but it is unavoidable. Scripture points out the remedy: the Church demands it: Religion requires it: Christ himself enjoins it. If, then, these charges are true, we call upon you, as the great conservators of religion and morality, to vindicate the purity of the Priesthood, and to make an example that shall stand as a beacon in the annals of our Church in all time to come.

Mr. CLARKE here concluded his argument, having spoken nearly three hours. Just as he sat down—

Bishop WHITTINGHAM said—I have one word to ask the Counsel. He has, in the course of his remarks, attributed to witnesses statements which they never made. Does he desire that inaccuracies be retained in the report?

Mr. CLARKE—I am not conscious of having stated any thing that is not in the record. If I have, any discrepancy can be corrected.

At the close of his argument the Court adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Wednesday, January 1st, 1845, }
half-past 9 o'clock, A. M. }

The Court met pursuant to adjournment. Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

DAVID B. OGDEN, Esq., then concluded the summing up of evidence in behalf of the Respondent.

In rising to ask the attention of the Court to some observations on this case, I feel myself much embarrassed, and indeed almost overwhelmed with the great solemnity of this tribunal. For the first time, I stand before the highest ecclesiastical tribunal of the Church to which I belong; composed of the fathers of that Church in which I was baptized in my earliest infancy, and in which I have been a communicant for many years. It is the Church that of all things on this earth I most love, and in whose peace, prosperity, and unity, I feel an interest which I am utterly unable to describe. I stand,

then, before this awful tribunal to defend one of your brethren—a man who has hitherto sustained in this community a reputation unimpeached and unsuspected—who has in this, the largest Diocese in these United States, enjoyed, and still continues to enjoy, the affection of the clergy and the people almost to an unlimited extent: I may then, surely, well say that I feel almost overwhelmed, when I consider the importance of the case, and the solemnity of the tribunal in whose presence I appear. I do, with all sincerity and reverence, declare, that I now regard myself speaking, as it were, in the particular presence of my God; and bound, therefore, by every consideration, to say not one word that I do not think justified by the evidence before me, and called for by my duty to myself.

May it please the Court, if I know any thing of my own heart, if I am any judge of my own feelings, I wish not to protect the guilty, nor to interpose any shield between justice and its victim. If I had believed that the evidence in this case was such as to have justified a conviction of the Respondent, I should have proposed to the Counsel on the other side to submit the case to the Court without argument, and without a single observation on the part of Counsel. But after having given this evidence the most calm and deliberate consideration which God has enabled me to bestow upon it, bringing to bear upon it the professional experience of now nearly fifty years, I have arrived at the decided conclusion that there is no evidence in this case that can justify this Court, or any Court, or any jury on earth, in finding a verdict against my client. And feeling this conviction most strongly, I should regard myself as abandoning my duty to myself—to the honored gentleman whom I defend—to the Church—and to the sacred cause of justice, if I did not make an effort, however feeble and unavailing it may be, to bring the minds of this Court to the same conclusion to which I have myself arrived.

In the observations which I intend to make to the Court, I shall be as brief as I think the nature of the case and my duty require. I am not in the habit of making very long speeches, and I certainly shall avoid a long speech on the present occasion; and I shall not, therefore, if I possibly can avoid it, repeat any of the observations made by my associate Counsel, not only because I would thus unnecessarily occupy your time, but also; because, in going over that ground, I am satisfied I shall rather weaken than strengthen the argument.

The first question to which I beg to call the attention of the Court, is, what are you to try in this Presentment? This depends upon the Canon and upon the Presentment. The Canon authorizes the presentment of a Bishop for any crime, or immorality, or heresy; or for the violation of the Constitution and Canons of the Church, or of that branch of it in the Diocese to which he belongs. Now, the Presentment in this case is for no crime. It is for no heresy. It is for no violation of the Canons and Constitution of the Church. It is for immorality and impurity; and unless the defendant can be convicted for immorality and impurity, he must be acquitted under this Presentment.

Now, if the Court please, what is meant by this charge of immorality and impurity? Impurity and immorality existing twenty years ago? Certainly not. It means *present* immorality and impurity. It means a *present* unfitness to fill the dignified office which he holds. The Canon can mean nothing else. Now, I ask this Court, is it possible that they can undertake to convict the Respondent here of immorality and impurity, when the very

last transaction on which it is pretended to ground the charge, occurred at least two and a half years ago? And it is here particularly worthy of remark, that although every effort has been made to hunt out cases on which to find charges against the Bishop, the very latest that can be brought forward dates two and a half years ago. Such is the evidence on which you are asked to find this Respondent guilty—guilty of present immorality and impurity.

The Court will recollect, that when this communication was made to him about this Mrs. Beare, which is the last transaction presented, he expressed great sorrow and regret that any thing should have occurred. He was admonished by Dr. Milnor, and from the time that that admonition was received, he has been as pure, for aught that appears before this Court, as any one of the judges now trying him. And I do put it to the Court, with the utmost confidence, that even admitting every charge in this Presentment to be proved, still not one tittle of evidence exists to show that Bishop Onderdonk is not now as pure and moral as any man that lives. We are all sinful men. We are liable to fall. We are all subject to the infirmities of human nature. I ask, is there a man in this Court who can say that in the whole course of his life he has never committed an immoral act? Is there a single gentleman who hears me, who can undertake to say that in the course of his life he has never been guilty of conduct of which he is now ashamed, and which he deeply regrets? If such a man there be among you, let him cast the first stone!

I might here, in my own judgment, rest the case, in the entire confidence that an immorality committed two and a half years ago is not sufficient to convict a man of immorality now. And, unless this honorable Court are prepared to say that it is so, there is an end of it all; because there is not the smallest proof of present immorality or present impurity. In an ordinary case, involving ordinary considerations, I should then be quite willing to leave the case here; because I think I would leave it on ground on which I am immovable. It is a rock on which this defence can rest with perfect safety. But inasmuch as this case is to be decided by the opinions of the Court, and not by mine, and as different minds may, and no doubt do, take different views of the case, it is my duty to proceed to the further investigation of it. I shall endeavor to do so in as plain and intelligible manner as I can adopt.

Before proceeding to consider the evidence in detail, I am compelled to express my surprise, and sorrow, and regret, at the manner in which this case has been managed on the part of the Presentment. In the opening argument of my learned friend, there were great professions of charity—of liberality—of a desire that the whole truth should come out; and yet, in every stage of the case, we have been met by every possible objection that the ingenuity of counsel could suggest, in order to shut out the truth. I mean not—I certainly never intended to cast any reflection on the Presenting Bishops. I have believed, and must still believe, that they have acted from a solemn sense of duty—a painful duty, as I have no doubt they felt it; and I had supposed that if these gentlemen found that the Bishop ought not to be convicted, they would rather rejoice than be disappointed at the result. But something fell from one of the Presenting Bishops, the other day, at which I was perfectly astonished. He charged the Counsel of the Respondent with suppressing evidence—with preventing them from getting witnesses. I ask where is the ground and foundation for such an enormous charge? I

should consider myself as guilty, in the highest degree, and as quite unworthy of standing in this Court, or any other, if I could commit such an offence as the suppression of evidence in any case whatever. I should have passed over this remark, as altogether unworthy of notice, were it not that it shows the rancor with which this prosecution is carried on. It is, indeed, quite significant on that point.

There was another suggestion, made by the Counsel who addressed the Court last evening, which commands a passing notice. He said that the good of the Church required this investigation, and the conviction of the Respondent. I was thus led to ask myself, is this so? Every man who hears me entertains for this Church the supremest regard, and if the Court be once persuaded that the "good of the Church" demands the conviction of the Respondent, I ask what chance has the Respondent? That observation could have been made only for the purpose of invoking your love for the Church against my unfortunate client—a proceeding, of which, in my opinion, the gentleman ought to be ashamed—an argument which he never ought to have attempted. May it please the Court, this cry of "the good of the Church!"—"the good of the Church!" has led to the perpetration of more iniquity on this earth, than has any other appeal to the passions of mankind.

It was the regard of the Jews for their church that induced them to call out "Crucify him! crucify him!" It was the cry of "the good of the Church" that led our blessed Redeemer to the cross. It was the cry of "the good of the Church" that produced the martyrdom of holy St. Stephen. It was the cry of "the good of the Church" that led to the establishment of the Inquisition, and all the horrors and enormities of that accursed institution. The cry of "the good of the Church" has put thousands of martyrs to death, and has, I repeat it, produced more bloodshed, and desolation, and cruelty on this earth, than any argument ever yet used by man. Let it not be said that, in this enlightened day, there is no danger from this appeal. I tell you, Bishops, that the human heart is the same in all ages. It is the same now that it was in the bloodiest days of the Inquisition—the same as it was when the blessed Saviour was crucified on Calvary. Man is still the same being that he was when he was driven from the gates of paradise. He has the same passions—the same prejudices—the same feelings,—and if you once convince a Bishop that "the good of the Church" requires the conviction of the Respondent, there is imminent danger that he will trample under foot justice, mercy, and truth.

My observations on this subject are not now made for the first time. They are the result of deep-rooted and long-cherished feelings in my bosom. They are founded on history—on the history of mankind, during all ages. Once actuated by this blind zeal for the Church, men go on headlong, conscientiously believing that they are right, but trampling under their feet all that is right. So it was with the Jews. They were zealous for their ancient and beloved Church. They thought they were right, even when they were nailing the Redeemer to the accursed tree; and he, you all recollect, prayed, "Father, forgive them; they know not what they do!" He thus charged no evil intention upon them. He knew that they acted from motives which they supposed to be good, and, therefore, he prayed for their forgiveness, because "they knew not what they did." But will it excuse the blind and maddened zealot, when he pleads that he knew not what he did? I beg the Court to be cautious. Our Church is the Church of God—that God whose distinguishing attributes are truth, justice, and

mercy. The God of the Church can never require that justice should be trampled under foot, truth disregarded, and mercy forgotten.

I do not know that I am called on to say a word more on this point. The peace of the Church is what you all desire: it is that which we all love and pray for. Has it been promoted by this presentment? It is an historical fact, of which all the Bishops who hear me must be fully aware, that for the last two years, or for nearly that period, there has been every possible effort made in this Diocese to destroy the Bishop. Since this spirit went abroad, we have had two Conventions, and in both he has been sustained by majorities that were overwhelming; showing the great confidence which the Church reposes in him; and yet, permit me to say—because I was a member of both these Conventions, and can, therefore, speak with some authority on the subject—that during the whole period of the sessions of these Conventions, there was not a single whisper of these charges—not one. Now I ask every member of this Court, did the peace of the Church require that these old, stale charges—charges which had been communicated long since to clergymen, acted on, and buried in oblivion—should be resuscitated for the purpose of rending the Church to pieces? I repeat it. Never, in the whole course of this controversy, until the meeting of the General Convention in Philadelphia, was a single whisper uttered by any human being, of the existence of these charges. They were entirely forgotten. They had been, by common consent, buried—never to make their appearance. And how it is possible that the peace of the Church can be promoted by bringing these old charges to life again, I am totally at a loss to conceive. It is certainly one way, and a most extraordinary way, of preserving the peace of the Church;

It is said that there is a great excitement in the Church on this subject. Permit me to make a few observations on that point. I never heard—and I presume on a question of such a public character my word will be taken—I never heard of the existence of one of these charges until I was leaving this city for the purpose of attending the late General Convention in Philadelphia. When we got there we heard a rumor of charges against the Bishop. I inquired what they were, and then for the first time I heard of these matters, or some of them at least. Agents were then employed to disseminate the rumors, and to collect charges. I speak that from the evidence in this case, because it is proved here that Mr. Richmond went and obtained the depositions of the Misses Rudderow, and that he came on here and got those of Mr. and Mrs. Beare. Here then was a person sent on from Philadelphia for the purpose of collecting these old stories, and giving them shape and form. Letters were written from Philadelphia, and other quarters, setting forth that Bishop Onderdonk must be destroyed, and in that way it was endeavored to get up an “excitement” in the public mind to bear upon the Bishop; and now that very “excitement,” thus created, is here produced as an argument to show that he ought to be sacrificed! There was no excitement before the General Convention met; and in support of this assertion, I appeal to every member of this Court. It was at that Convention that the excitement was got up; and thus created, and thus spread and fostered, it is now actually urged here as a reason for the conviction of the Respondent. I can hardly trust myself before this honorable Court to characterize, as it deserves, such a course of proceeding, and such a line of argument.

May it please the Court—the Church requires nothing at your hands but

justice. The interests and peace of the Church require that you should never suffer one of your brethren to be sacrificed because there is public excitement. The only question is, Is he guilty? If you believe that he has not been proved guilty, and so declare in your verdict, then the Church is set at rest, and there is an end of this "public excitement."

I now proceed, with the permission of the Court; to consider the evidence before you; and, first, I beg to lay down three or four principles, which are not only the results of the law on the subject, but are also dictated by common sense.

In the first place, when the facts testified to by the witnesses are improbable in themselves, it requires much stronger evidence to support them than if they were probable, because the improbability is against the laws of our nature regulating our belief.

In the next place, when the witnesses are testifying to these improbable facts, the law and common sense require that they should be consistent in their stories—consistent with each other—that they should not tell one story at one time, and another at another time. For, although in ordinary cases, as was stated by the learned Counsel, the law undoubtedly is, that small contradictions ought not to destroy the testimony of witnesses; yet when the facts are improbable, and require more than ordinary testimony to support them, the rule is a good one, founded on common sense and common law, that the evidence of the witnesses must be perfectly consistent throughout.

I will now consider the evidence, having laid down these principles, to which I am confident the good sense of all who hear me must accede.

The first case is that of Mrs. Butler. Now as it regards that case, however it may have been insisted upon by different clergymen in the Diocese, I am authorized to say, that the first word the Bishop ever heard of it was during the sittings of the General Convention. He never heard of such a case until he attended that Convention. Now let us look at this. Here is a man charged, for the first time, with improper conduct towards this lady, upwards of seven years ago. I ask this Court, if clergymen of this Diocese knew the fact—if they knew he had been guilty of such imprudence—why did they suffer it to sleep? Have they just now, at this late day, awoken to a proper consciousness of their duty to the Church? Have their eyes been only opened now to a perception of their duty? I believe not. I am bound to believe, for the honor of these gentlemen, that they regarded the fact as totally unimportant—that it fixed no just charge upon the Bishop, and that therefore, and therefore only, they said not one word about it.

There is another important fact about this. These Presenting Bishops knew that there was a third party in the carriage on that occasion—Mr. Peck, the driver. His name has been all along withheld from us—I do not say designedly withheld; but the effect is the same on the case of the Bishop. Never, until she was called as a witness, did we know that any other human being was said to be present, except Mr. Butler; and it is my duty to say to the Court, that the moment we heard of that, we sent for this Mr. Peck, and not until this day could we get an answer. We now find that this Mr. Peck has gone to South America, and it is therefore impossible to obtain his testimony. But it is to my mind a most extraordinary fact, that while this charge is made up in the story of Mr. and Mrs. Butler, the name of the only witness, who could have possibly assisted the Bishop, is not given. We never saw the affidavit, and knew nothing whatever of this Mr. Peck, until Mrs. Butler and her husband came here to testify.

In the next place, in regard to this matter of Mrs. Butler, the reason of the Bishop's conduct is, throughout their testimony, placed on the ground that he was intoxicated. That it was so, cannot be denied by the Presenters; because in the very charge it is stated that he was intoxicated or drunk. Now, I beg leave to remind the Court, that the charge here is immorality and impurity. It is a charge directly affecting the heart and intentions of the Bishop at that time. It is not like a case of crime at law, where drunkenness is an exaggeration of the offence; but it proceeds entirely on the idea that there were impure and immoral intentions in the mind of the Bishop at that time. Now, if he were so intoxicated that he could have no use of his mind—so intoxicated that he did not know what he was about—then the Court must say that drunkenness was the crime, and not the conduct on which the complaint is founded. I admit that drunkenness is an immorality. There is no question about that. But all that I desire to impress upon the Court is, that if these witnesses are to be believed, and the second article in the Presentment is to be believed, all these acts were done when he was intoxicated. But, says the gentleman, why this is no justification. Still, I answer, there is no crime charged here. There is no technical crime charged here. But to show what these Presenters think of that immorality, they have attached to it the word "impurity," a term not used in the Canon, showing their idea of it; that when the Canon speaks of immorality, they meant impurity. Now, a case has been cited, by my associate, from Russel, that in murder, the highest crime, except treason, known to the law, there must be clearly made out premeditated malice; and drunkenness is always to be taken into consideration by the jury in passing upon a man accused of that crime. But here, when the entire offence charged consists of impurity of heart, drunkenness is, in my opinion, an entire defence.

If I am right here, then I ask the Court, are you prepared to convict this man of drunkenness, because, to use the language of Mrs. Butler, he was "overtaken" seven years ago? Is subsequent repentance not to be allowed? Is the fact of a man's continuing from that time till this, sober, and abstaining entirely from all excess, to be no excuse for that solitary act committed seven years ago? In other words, are you to degrade and destroy this man on account of circumstances that took place seven years ago; and of the repetition of which there is no evidence under heaven before you?

But let us examine Mrs. Butler's evidence a little more. Now suppose she was mistaken, and that the Bishop was perfectly sober, is there any thing in her testimony proving any impurity on the part of the Bishop? I say there is not. I do not mean to read the evidence, as it will be all read over to you before you proceed to judgment. But Mrs. Butler says that the Bishop put his arm round her waist, and pressed her to his bosom, and that in the sight of her husband, who sat upon the front seat, and swears that he saw it. Now can any man in his senses believe that a man with impure motives would undertake to take liberties with a man's wife in his presence, and when he knew the husband was looking at him? If all the witnesses on earth were to swear to it, I would not believe it; and if the Counsel mean to say, that because Mrs. Butler has sworn to it, it is evidence of the impurity of the Bishop, I reply that human nature contradicts it. However she may swear to it, it is not and it cannot be true. But again: she says that the Bishop repeated this action, and pressed her bosom. Now remember she states that the roads were rough. The Bishop

might have had his arm around her waist, and his hand been raised, and yet he be as innocent as any one here. But she took away his hand gently, and addressed him in the manner she stated to the Court. Now I ask, is it possible that a virtuous woman, with whom such a liberty had been taken as she pretended to describe, could have coolly said—"why, sir, that hand is sacred to me," and so on, as she states? This shows one of two things—either that this woman was not irritated at what the Bishop had done—that there was nothing in his conduct that she considered an insult; or, that she was lost to all human feeling. But she proceeds. She says that after that the Bishop sat still for some minutes. She thought he would not repeat the offence. He did repeat it. She says he placed his hand on her bosom, which he pressed. All may have occurred from the jolting of the carriage. She goes on, and states that she started, and that he grasped her thigh, and that she knocked his hand away, and went off to her husband. Now it was not on account of what the Bishop had done, but on account of what she feared he might do; it was her apprehension of what she imagined, and not indignation at what had happened, which induced her to go to her husband. Well, now, this is all that occurred, according to this woman's own testimony; and I ask every Bishop here, whether upon that evidence, of a transaction which took place seven years ago, he is prepared to convict the Respondent.

But I have something to add on this evidence of Mr. and Mrs. Butler; and if I do not show that they are perfectly inconsistent, and prove their own story entitled to no consideration, I am no judge of the weight of evidence. We have the affidavit of Mr. Butler, on which this Presentment was formed. Mr. Butler says in his affidavit that they left the town of Ithaca about an hour before sunset. The first place they stopped at was Dryden, a distance of ten miles. The Court will recollect that this transaction occurred in the month of June—the period of the year when the days are the longest, and when twilight continues upwards of an hour after sunset. Mr. Butler says that these improper approaches of the Bishop began immediately on rising the hill after they left Ithaca. He is asked, how long before you arrived at Dryden did your wife come to you? He replied, "I cannot say; but it appeared to me to be a long time." Now they left Ithaca an hour before sunset. They must have arrived at Dryden in about two hours. Suppose, then, that she went to her husband half an hour before the arrival at Dryden, all the occurrences described must have taken place within one and a half hour after they left Ithaca, and consequently before it was dark. Again, in his affidavit he says, after his wife came upon the front seat with him, he and she and Mr. Peck occupied it all the way into the village of Syracuse. Now his wife swears that when they left the breakfast-table, he, by her permission, sat with the Bishop on the back seat until they got to Syracuse. How is this to be reconciled? He swears positively one way, and his wife just as positively another! Which of them is to be believed? In my opinion this shows that the testimony of this man is not worthy of reliance; for permit me here to remind you that an occurrence of this kind was calculated to make an indelible impression upon the mind. There is not a man here, who, if such a thing had happened, would not have recollected with distinctness every particle of it. It would have made an impression that nothing could have wiped off; and yet we find this Mr. Butler swearing positively to a fact, contradicted by his own wife, and in which he is, beyond all ques-

tion, incorrect—for he himself swears that he thinks he rode with the Bishop into Syracuse—thus flatly contradicting his own affidavit. Again, in his affidavit, Mr. Butler states that his wife touched his shoulder and whispered to him that she could not sit there, and must come and sit with him; and he goes on and says—“she quickly changed her seat and sat on my lap in great agitation and distress.” Now what did she say when she came on his lap? Only that she could not sit with the Bishop any longer, but must sit with him; and that was told in a whisper. “She was in great agitation.” If she had told him any thing else, do you believe that he could have forgotten it? Remember that this was the critical moment; every circumstance and every word must then have been indelibly impressed upon his memory. He goes on and states, that when they stopped at Dryden she told him that the Bishop’s conduct had been grossly improper, and that, as she supposed, scarce knowing what he did, he had begun to lift up her clothes. According to that deposition, this was all that that woman said to her husband.

Now I ask the Court, what is the evidence given before them now? What is the affidavit sworn to positively, and that one too on which this Presentment was formed? Let us, then, see how it accords with the statement made here. “My wife,” says he, “touched me on the shoulder and said she must come over to me; she came, and sat on my lap. I asked her what had happened; she whispered to me, and I understood her to say that the Bishop had been very rude, and had attempted to pull up her clothes.” In his affidavit he swears that all she told him was that she could not sit with the Bishop any longer. Now he swears that she added to that, and whispered to him that the Bishop had attempted to pull up her clothes. That is directly contradictory to his affidavit. Now these two statements are quite irreconcilable. According to the testimony of Mrs. Butler, she told him nothing at Dryden about the pulling up of her clothes. But she goes further, and she says that she never told her husband that the Bishop had attempted to pull up her clothes. Is not this extraordinary? He swears, without any reservation, that she did. She denies it positively. But there is a still more palpable contradiction than this. She swears that she never told her husband the Bishop had attempted to pull up her clothes, but that she was afraid he would pull up her clothes. Mrs. Butler says that her husband got the idea of the Bishop’s attempting to pull up her clothes from her having shown him how the Bishop placed his hand on her thigh, by which her clothes were partially pulled up. He swears directly contrary. He swears that it was from her telling him in a whisper when she first came and sat on his lap; whilst she swears expressly that she never did tell him so. I ask the Court, is not this a palpable inconsistency? Is not the one arrayed against the other?

And again, Mrs. Butler swears, that when her husband returned from Philadelphia, he showed her the affidavit he had made; and that it was correct in every thing except the clause relating to pulling up her clothes. Mr. Butler has sworn that the affidavit was incorrect in another part, because he states in it that he rode with her and Mr. Peck all the way to Syracuse; while she swears that that is not true. How is this to be reconciled? Again, she says in her examination here, that her husband did not show her the affidavit immediately after his return from Philadelphia, because he was so sure it was correct. Now it is astonishing that this man should be so perfectly assured that this is quite correct, when it is contra-

dicted in two instances by the testimony of his wife; and now admitted by him in both of these instances to be not correct; does not this show that Mr. Butler undertakes to give a false coloring to his story? It is utterly impossible that he could be merely forgetful, with regard to facts calculated to make a clear and lasting impression on his mind.

But, if the Court please, there is another portion of this testimony on which I think it proper to comment. In the course of the cross-examination, I asked Mrs. Butler: "Madam, are you sure that you yourself rode all the way from Dryden to Syracuse on the front seat?" Her answer was extremely cautious—"I think I did." I repeated the question: "Madam, are you certain?" "Why," says she, "I am as certain as I can be of such an unimportant matter;" and in all the examination I could not get her to commit herself to a direct statement, whether she did or not. Why this caution? Because she supposed it possible that Mr. Peck might be brought forward; and that if he were, he could have proved that she rode the greater part of the way with the Bishop. We sent for Mr. Peck; and, as I told the Court, he has gone to South America. But she did not know that. But why this excessive caution? Why could she not have said "yes" or "no"?

[Bishop HOPKINS—Do I understand that Mr. Peck was cited to appear before the Court?

Mr. OGDEN—Of course we did not cite him until we ascertained whether he could be found, or not. We wrote to Syracuse immediately after we obtained his name; and we did not receive an answer till yesterday. He is not to be found; he has gone to South America.]

Mr. OGDEN proceeded—Could this woman's excessive caution have proceeded from any other cause than that I have just stated? She must have known whether she rode all the way on the front seat or not. Oh! says she, that is very immaterial,—I think otherwise; and I wanted to bring out the fact. I repeated the question over and over again; but all to no purpose. Now, I ask the Court, if this woman intended to testify with all candor on a subject which she could not possibly have forgotten, would she not at once have said: "No, sir; I did not ride on the seat with the Bishop; I could not." But Mr. Peck is not here; and the Bishop's evidence cannot be heard, and the Court must, therefore, take hers. And this one circumstance ought, I think, to have great weight, in showing you the danger of convicting a man on the unsupported evidence of any woman. Why, there is not one of you, that in the discharge of your pastoral duties, may not encounter a bad woman, who may accuse you of the crime of adultery; and I ask, if her single testimony were to be allowed against you, what safety could there be for you? It is the most dangerous of all evidence; and I repeat, that when the evidence is upon its face improbable, it requires the utmost consistency on the part of the witness, to support the charge. I trust that I have shown that the testimony of these witnesses is totally inconsistent with itself, and with each other.

But the gentlemen will say, all the material facts are sworn to, and may be true. But still they may not be true; and that is enough for my purpose. If there is a shadow of doubt resting upon the evidence, it is enough to acquit my client. He is not to be convicted, he cannot be convicted on doubtful evidence. I have shown that the affidavit and the deposition of the two witnesses, are absolutely false in sundry particulars; and there is no escape from the application of the principle—*falsus in uno, falsus in omnibus*.

nibus. I cannot rely upon the testimony of a witness proved to be false in any one particular; because it shows that the witness has either wilfully sworn falsely, or is careless of what he swears; and in both cases, he is alike unworthy of credit.

One word more on this testimony; and I have done with it; I have already dwelt longer on it than I intended. Mr. Butler is a clergyman of our Church. It was the duty of Mr. Butler, if he believed the Bishop to have been guilty of the acts now charged, to have made a representation of the matter to the proper ecclesiastical authority at the time. Why did he not do so? Why, he was a young man, and did not wish to ruin the Bishop! But young as he was, he knew that there was an ecclesiastical authority in the State—that the matter would be taken out of his hands by them, and that they would convict and punish the Bishop. But Mr. Butler is perfectly silent—and better for him had he remained silent. He went about retailing his story to the enemies of the Bishop, advising them: “Say not a word about it. I tell it to you in confidence;” and in this silent, insidious way endeavoring to destroy the reputation of the Bishop, and undermine it in such a way as was, in my opinion, altogether unworthy of a clergyman and a gentleman. He ought to have related his grievance, if he had any, to the proper authority, and not to have gone about retailing it insidiously, for the purpose of destroying the reputation of his Diocesan. It is said that this case was mentioned at Utica to Dr. Hawks, and others. Now, if that be true, why did not Dr. Hawks communicate it to the ecclesiastical authority? Was it consistent with their duty, as Christians and as ministers of the Church, to keep the matter festering in their bosoms, until a *proper* time should arrive, when they could bring it out like a clap of thunder? I ask every sensible man who hears me, what was their duty towards the Bishop—towards the Church—towards their God? Was it not to have had him tried and convicted at the time, or else to have buried the charge in oblivion for ever?

I come now to the case of Mr. Bolles. Now what is his charge? [Mr. O. read the specification, which need not be repeated here.] Now how is this attempted to be proved? By Mr. Bolles. He is the only witness. They cannot contradict him. But so far from sustaining the charge, he directly contradicts it. Where these Presenters got the foundation of this charge I know not; but I do know that it was a gross misapprehension, and a gross misstatement of the fact; and I must be permitted to say, that it was a *wilful* misstatement of the fact. In the first place, it is not true that Bishop Onderdonk and this young lady sat on the back seat at all. It is not true, that they were the only persons in the stage; for Mr. Bolles distinctly swears, that there was not only a little girl, but grown persons, on the front seat, looking directly at the Bishop, and who might have seen every movement. The charge is, that he put his arm around the young lady's waist. It is not true. Mr. Bolles says it is not true. All that he swears was done by the Bishop, was his taking the young lady by the hand. Their own witness contradicts their charge. They have, indeed, got Dr. Taylor here for the purpose of confirming it, but his testimony has quite the contrary effect. There is also this important point,—Mr. Bolles says expressly, that he never told any body at Utica about it, except Dr. Hawks. It is not true, therefore, that Dr. Taylor heard it from Mr. Bolles. Mr. Bolles does not say so. He swears that he never told any body but Dr. Hawks; Dr. Hawks and Mr. Bolles went to the Bishop at the recommendation of Dr.

Taylor. Dr. Hawks stated the facts contrary to truth. Mr. Bolles says he never said that the Bishop took the young lady by the waist. Now the presumption is, that it must have been in the affidavit of Dr. Hawks, that this charge was made; for Mr. Bolles swears, that he was the only person to whom he communicated the matter. Either Mr. Bolles, therefore, has perjured himself, or the facts set forth in the charge do not, in any way, support the Dr.'s allegations. But Mr. Bolles is their own witness, and they cannot dispute his contradiction of their charge. This charge is, therefore, entirely unsupported.

As I pass from this case to the next, will the Court permit me to refer, for a moment, to a point of which the Counsel who addressed you last evening attempted to make a great handle. He asked why I did not put the question to Mr. Butler which I had put to his wife, relative to their showing the Bishop about their house. I did not repeat the question, because the Bishop said that that was on occasion of another visit. The argument had not the slightest foundation.

The next case is that of the Misses Rudderow. Miss Helen Rudderow says that she went, in '41, with the Bishop from St. James's Church to her brother's house, a distance of a mile—that they rode in a one-horse wagon belonging to the Rev. Mr. Richmond—who was the only other person in the wagon, and who drove the horse—and, according to her account, the moment they started the Bishop began to take liberties with her. Now, in the first place, the Bishop was almost a stranger to her, and it is certainly not a little extraordinary that the Bishop should have been weak and foolish enough to do so in the presence of Mr. Richmond, who was looking round and conversing with the Bishop—and who, as I believe you all know, talks enough. Is it at all probable that the Bishop could have taken the liberties she describes without attracting the attention of Mr. Richmond? On the very face of this story there is such an air of improbability that I should be quite satisfied to leave it with you without a syllable of comment. But let us go on a little further, and see whether she is consistent in her statement. She says that when she got home, she went up stairs to her sister's room, and asked her to walk down and entertain the Bishop until the rest of the family should be present. In other words, she requested her sister to go down and extend the civilities of the house to a man, who, according to her account, had insulted her in the grossest manner, and who, surely, was entitled to no sort of courtesy. The word, if I remember right, was "entertain." The Court will correct me if it is not so. Now it does seem to me that a proud woman—that a virtuous woman—a woman of right feeling, would, so far from treating him with civility, not have thought of doing so—would never have asked her sister to go down and "entertain" him. Again, her cousin was there—why not examine her? She could have proved what Helen said at that time. But she is not here, and the story rests entirely on the unsupported testimony of Miss Helen and her sister Jane. It does seem to me that this fact alone is sufficient to discredit the whole;—that she could not have been so insulted, or she would not have been so anxious to have the Bishop treated with civility. The Court will recollect the testimony of Mr. Dowdney on this point. He saw her treat the Bishop with great cordiality, and meet him afterwards, conversing with him as if nothing had happened. Now, is it possible that a woman, feeling herself insulted as she pretends she was, could have gone, afterwards, and received him with any thing like cordiality? It is contrary

to human nature. This is one of those facts contrary to the very principles of human nature, which ought not, and cannot, be believed, no matter how sworn to. Again, if the Bishop had taken these liberties with this woman, it could not possibly have escaped the observation of Mr. Richmond. But that gentleman observed nothing. And it is remarkable that the Bishop himself never heard of it till the General Convention at Philadelphia. Is not this remarkable?

Miss Jane Rudderow goes afterwards to the Bishop's house—volunteers to go—declares that she is very intimate with the Bishop, and proposes to go and solicit from him a favor. Is this consistent with her story? If no insult had ever been offered to herself, would she not have resented that offered to her sister? Why, it is impossible. She would die sooner than act in such a manner—a manner so entirely contrary to the feelings and principles of a spirited and high-minded woman. Indeed, the story of Miss Jane Rudderow is a most remarkable one. It is more like the testimony of a crazy woman than any thing else. Her sister told her of the conduct of the Bishop to herself. Jane, then, in accordance with her request, went down stairs to “entertain” the Bishop. She found him standing at the centre-table, looking at a book. She had been put on her guard by her sister, that the Bishop was not a man to be trusted with a female, and yet she gives the Bishop her hand, and allows him to lead her to the sofa—almost inviting, as it were, the Bishop to put an insult upon her. She says the door was wide open, and that her brothers were in the entry, and could have entered the room at any moment. The Bishop then, according to her account, committed the act with every chance of detection staring him in the face. But she says that the Bishop put his hand into her bosom—that she retreated to the other end of the sofa—that the Bishop followed her there, and repeated the insult, and that he desisted only on hearing footsteps on the stairs, when he again moved to the other end of the sofa. But she does not stop here. This is a wonderful story. After dinner they went out on the piazza—seven or eight persons were there; the Bishop asked where Mr. Schermehorn's house was—and she walked to the other end of the piazza for the purpose of pointing it out to him; the moment he got her there, she swears that he repeated the insult! This is done when all these persons are on the piazza! Is that probable? Is it possible? But this is not all. They all return to the house. After dinner, Miss Jane, who wishes to go to the Sunday-school, approaches the window for the purpose of ascertaining if it rains. The Bishop starts up, follows her, and the moment she gets to the window, and in the face of all the family, puts his hand into her bosom. These who can believe this, may. I do not believe one word of it.

But, again, in all her conversations with Mr. Dowdney, Jane never pretended that the Bishop had insulted her. Mr. Dowdney swears to that. Is not this extraordinary? Her only complaint was with respect to the insult offered to Helen. Then again, when she proposes in presence of Miss Rutter, to go to the house of the Bishop, she is asked, “Do you know the Bishop?” she replies, “Oh! yes, I know him intimately.” Is that consistent with the story of the repeated insults she had received? Not only that, but Mr. Dowdney states that he saw her meet the Bishop at the vestibule of the Church, and that her greeting was quite cordial. What! treat the man who has repeatedly insulted her sister and herself with any

thing like cordiality! Why, a virtuous woman would utterly spurn such conduct.

With these observations I leave the case of the Misses Rudderow.

The gentleman will say, What! do you destroy the credit of these two girls? Is the reputation of respectable females to be thus trifled with? I reply, Is the reputation of a minister of the great God not equal to that of any woman? I am the last man on earth who would voluntarily attempt to destroy the reputation of a female for veracity; but when I come to compare it with the reputation of the Church, and one of her Bishops and Fathers, in my opinion it amounts to nothing.

I come now to the testimony of Mrs. Beare. I have endeavored to weigh it carefully; and I regard it as the most inconsiderable offered in behalf of the Presentment. I may be mistaken. I am aware that we are apt to lean towards our client. But I have regarded this case as quite too solemn for the indulgence of any such merely professional feelings, and I have, therefore, studiously endeavored to be governed in forming my judgment strictly by reason.

Now what is Mrs. Beare's testimony? She says that on a certain occasion; no matter what, the Bishop came to pay a visit to the church in which her husband officiated—that she rode home with him from the church in the morning, in a carriage, in company with her mother and brother, I think, but it is not material with whom—and that, during that short ride, in mid-day, she being almost an entire stranger to the Bishop, he took improper liberties with her—pressed her to him—that when she got home she complained to her husband; he cautioned her to say nothing about it, and hinted that she might have been mistaken—that in the afternoon she declined riding to church with the Bishop, and that therefore, he and her husband went in one carriage, while she accompanied some relatives in another—that they were engaged to drink tea, in the evening, at the house of a Mr. Franklin—that she rode with her brother-in-law on her way, thither to the top of the lane—that she then got into the same carriage with the Bishop and her husband—that they remained at Mr. Franklin's till about 9 o'clock in the evening—that they then all got into the carriage and returned home—that, in the course of that ride, the Bishop not only repeated the insult of the morning, but also committed much more gross indignities, putting his hand into her bosom as far as he could get it, and then passed it down her person till he placed it on her thigh. This is her story, stated, I believe, as she told it. Now on it I have one or two remarks to make, which carry perfect conviction to my mind. She had been insulted in the morning. She had refused to ride to church with the Bishop in the afternoon, and also on the way to Mr. Franklin's in the evening, for fear of a repetition of this offence; and yet we find her, after dark, putting herself precisely in the same situation which she had so resolutely refused to occupy in the day-time! How is this to be accounted for? She was afraid to ride with the Bishop in the day-time, even in company, and under the eye of her husband; but, after dark, when nobody could possibly see, she actually courts a repetition of the insult which, she alleges, the Bishop committed upon her in the morning. All this was done quite voluntarily on her part. Is it at all credible—is it at all possible that any woman could act in such a manner? Could she put herself absolutely in such a situation, as invited a repetition of an offence against which every virtuous feeling revolted? It does seem to me

that this argument alone is conclusive against the reception of her evidence. She never could have felt herself so insulted, as she now states she was, on the morning of that day, or she could not by any possibility have behaved in such a manner in the evening.

Again, she says that after they got home they had family prayers, and that afterward, when she got into the room with her husband, she told him of this tremendous insult. She was, she says, agitated all night. She could not sleep. She was kept awake by the same feelings, and this unhappy pair passed the entire night brooding over this terrible insult; and yet the next morning at breakfast, this lady, instead of absenting herself on some plea, comes down to the table, treats the Bishop with cordiality, and extends to him all the friendly hospitalities of the house. Is this probable? Why not make an excuse, any excuse on earth, rather than meet the man who had so grossly insulted her. But she comes down as usual; not a word of complaint is uttered, not a hint of disapprobation is given, and the Bishop leaves the house in the full belief that he left behind him the same kind feelings which had greeted him on his arrival.

But if the Court please, this testimony does not stop here. Some weeks afterward, I do not know how long, nor is it important, the Bishop goes there on another occasion. He goes to ordain Mr. Beare. Now, if he had believed the Bishop to be an adulterer in heart, would he have ever suffered him to ordain him—could he ever have consented to receive the order of the priesthood from such polluted hands? If he had the feelings of a man he never could. Mr. and Mrs. Beare go to the house of Dr. Schroeder for the purpose of meeting the Bishop. There was no avoidance of the Bishop by them; quite the contrary. At all events we find them there. Dr. Schroeder, after showing them the green-house, asked if they would be presented to the Bishop. They acceded, and the meeting was a cordial one. According to Dr. Schroeder, they met in the most friendly manner, and shook hands.

Mr. KETCHUM.—They did not shake hands.

Mr. OGDEN.—I don't know—the Court will correct me if I am mistaken.

Mr. OGDEN proceeded.—Dr. Schroeder was asked if there were any apparent coolness on the part of Mr. and Mrs. Beare. "None on earth," was the reply; and if there were, he must have observed it. Mr. Beare asked the Bishop to dine with him the next day; the Bishop replied that he had engaged to dine with Mr. Franklin. "But you must dine with us," was the answer of Mr. Beare; and finally, the Bishop, after speaking about the getting rid of the previous engagement, yields to the solicitation of Mr. Beare. Now Mr. Beare is asked if he had any recollection about this prior engagement having been alluded to by the Bishop, but all he says is, that he asked the Bishop to dine; concealing the fact of the prior engagement, and that he insisted on its violation. How is this? Is not this a very significant fact? But the gentleman will say "this was only common civility towards the Bishop, on the part of Mr. Beare." What! common civility to the man who had insulted his wife in this gross manner—to him who had committed adultery with her in his heart! Why, if they had met the Bishop with cold civility, it might have been consistent with the story; but to ask him to dine, and to press the invitation even to the violation of a prior engagement, is that cold civility? This fact alone is conclusive evidence that they could not have entertained towards the

Bishop those feelings which were unavoidable had these gross insults been offered to Mrs. Beare.

But what happened at dinner? Mr. Goodwin was there, as was also Mr. Sweetzer. Did they observe any thing like coolness? Not at all. They are very positive about that. There was not the slightest indication of the kind. Now is it possible that a woman feeling herself grossly insulted, and her husband being aware of the fact, would have entertained the author of the insult as a guest, and treated him with the utmost cordiality and kindness.

Then they went in the vestry-room in the morning, and again the conduct towards the Bishop is marked with perfect cordiality. Mrs. Beare and her husband are both entirely wanting in the exhibition, in the slightest degree, of those feelings under which they must of necessity have labored, had they been smarting under the sense of the wrongs which they now describe. If this case rested solely upon the testimony of these witnesses, I am confident that not a Bishop who hears me could for a moment think of finding the Bishop guilty. But it is attempted to bolster up this evidence; and how? This brings me to the interview with the Bishop. It seems that Mr. Beare, on the day succeeding this transaction, went down to College Point, and related the facts to a clergyman whose name I have forgotten.

[Mr. KETCHUM—Mr. Kerfoot.]

Mr. OGDEN—Yes, to Mr. Kerfoot, and no doubt the statement was highly colored. This clergyman was very much surprised, and said he would communicate the matter to Dr. Muhlenberg. He did so, and Dr. Muhlenberg—who, I am happy to say, behaved in a manner alike creditable to him as a gentleman and as a Christian minister,—came to the city immediately, and consulted Drs. Milnor, Wainwright, and Higbee. After consultation, those gentlemen determined that the matter ought at once to be brought before the notice of the Bishop, and they accordingly proceeded in a body to the Bishop's house. When they got there, Dr. Milnor, as the eldest Presbyter, I presume, was called on to break the matter to the Bishop. Dr. Milnor, then, according to his statement, observed that there were serious charges against the Bishop, to the effect, that he had committed some indignities upon Mrs. Beare, and then referred to Dr. Muhlenberg for all the particulars. Dr. Muhlenberg then stated the matter more fully, referring to a paper containing the heads of the accusation. After the charges were stated, the Bishop declared positively that they were unfounded, and, according to the testimony of Dr. Higbee, this denial was made with some indignation. A proposition was then made by somebody—by whom it does not appear—some think it was made by the Bishop, others that it was made by Dr. Milnor—but at all events it was proposed and acceded to by the Bishop, that Mr. Beare should be requested to come to the city and meet the Bishop. Next day, accordingly, all came again, except Dr. Wainwright, who was unavoidably absent. When they met, the Bishop shook Mr. Beare's hand—expressed regret that he should suppose any thing could have occurred to hurt his feelings—expressed great regard for Mr. Beare, as well he might, for he had been his *protégé* and been brought up under his eye, as if he had been his own son;—the Bishop is asked if he meant to deny what had been said? He replies that he did not mean to call in question the veracity of Mrs. Beare, but that she was mistaken; another witness says that the

expression of the Bishop was, that she had misconstrued his motives. That being the main point on which Mr. Beare appeared to be so much agitated, he was satisfied with this declaration of the Bishop, and there the matter remained. Such, then, is the testimony offered to sustain the evidence of Mr. and Mrs. Beare.

Now, in the first place, what evidence have you as to what passed at the Bishop's house during that interview? Charges had been made—Dr. Muhlenberg repeated them. Dr. Milnor says that Dr. Muhlenberg read the charges from a paper; in that he is certainly mistaken. The charges were not written out. The paper in question, according to Dr. Muhlenberg's own account, contained only "heads" of the statement, intelligible only to himself; and Dr. Higbee says that this statement was made in such a confused manner that he could not have understood it had he not heard the story before. Dr. Wainwright says that his memory of the occurrences is not very clear, as, on account of the distress in his family at the time, his mind was so occupied that he could not undertake to recollect all that passed with perfect accuracy. Dr. Muhlenberg was very much excited, and in that condition his faculties are not the most collected, but he thinks he read the charges correctly. Dr. Milnor thinks that the statement was made from a paper; but I believe it was made orally. It is altogether very doubtful that the charges were presented specially, in all their enormity, to the Bishop; at all events, he denied them. Well, then Mr. Beare comes the next day, and the argument of the gentleman is, that although the Bishop denied the charges on the first day, yet that he admitted them on the next. Is that true? Mr. Beare was very much agitated—why? Because he thought that the veracity of his wife was suspected. The great thing in his mind was to get rid of that charge, and he asked the Bishop, in words or in effect, "Do you mean to call in question what my wife has said?" The Bishop replies, "I do not mean to call in question the veracity of your wife at all, sir. I have a great regard for you and your wife; I do not call in question her veracity—but she is mistaken." Some say that the term was, "misconstrued;" others that it was, "misunderstood;" but the purport evidently was, that she had been "mistaken." The Bishop never meant to admit the truth of the charge, but he denied that he meant to call in question the veracity of Mrs. Beare, hoping thus to allay the excitement and agitation of her husband on that point. Dr. Higbee says he so understood it. But the gentleman says that the conduct of Dr. Higbee after that interview was very extraordinary; that he said to Dr. Milnor, "How he lies!" and that he said to Mr. Beare, "Why, if he touched my wife, I should kick him out of the house!" What is Dr. Higbee's explanation? Surely his own explanation is as satisfactory, and is entitled to as much weight, as the mere inference of another party. He says that, in the first place, the Bishop denied the principal charge altogether; and so also he understood him on the second occasion: but on the first, he understood him as calling in question the veracity of Mrs. Beare, while he denied any such intention on occasion of the second interview; and hence Dr. Higbee considered him inconsistent, and admits that he *might* have uttered the exclamation stated, though he has no recollection of having done so. Well, then, as regards the declaration of Dr. Higbee, that if the Bishop had touched his wife, he would have kicked him out of the house, the explanation of the Doctor is—and it is satisfactory—that if he had *believed* the Bishop guilty, he would have done so and so; but

that he did not regard him as guilty is evident, he says, from his agreeing with Dr. Milnor not to say another word about the matter. If Drs. Milnor and Muhlenberg had supposed that the Bishop admitted on this occasion the truth of the charges, and contradicted his own denial of the previous day, does any Bishop here suppose that they would have concealed his guilt, and agreed to say nothing more about the matter? No. The very fact that these venerable and pure-minded men came to such a conclusion speaks volumes, and is irresistible conclusion that they had not the slightest doubt of the Bishop's innocence.

I have now offered all the remarks on the evidence with which I intend to trouble the Court.

I have, however, to say a word relative to the point in this case. Every one of these charges has been supported only by one witness. The rule is well settled, in my opinion, that, both by the divine and civil law, one witness is not sufficient to convict a man of such charges as these. I have always understood that, by the Jewish law, and also by the Christian law, as laid down by our Saviour, and by his apostles, and sustained by the practice of the primitive Church, the testimony of two witnesses was absolutely necessary to convict a man of an offence. On this point I beg to cite *Burn's Ecclesiast. Law*, vol. ii. 208. Now this is a spiritual Court; and according to this authority, no Churchman can be convicted upon one single witness, there must be at least two. And in *Gibson's Codex*, 1011, the same principle is laid down, and commented on at some length. The same principle applies in cases at common law. Thus in the case of perjury, as was stated by my associate, two witnesses are necessary, and why? Because the oath of a single witness cannot be taken as sufficient proof of the violation of his oath by the accused party. And let me ask, is not the defendant here under oath? I know of no oath more solemn than the consecration vow. Is this defendant, then, to be denied the privilege which the law and reason extend to the party accused of perjury?

But, if the Court please, I have heard it intimated, that although none of the charges has been supported by the requisite amount of legal testimony, yet inasmuch as they all go to prove the one general charge of immorality and impurity, they are to be added together and thrown into the scale. Against that doctrine I most solemnly protest. What is the law upon this subject? It expressly prescribes that you cannot fix a charge upon a man except by two witnesses. You must proceed here precisely as they do in courts of law; every specification not proved is to be cast aside, and each is to be passed upon separately. If not, what is the consequence? Here are four charges: taken separately they are nothing; taken together they amount to something—that four eiphers make a unit—according to a species of arithmetic that I cannot understand. Now not one of these charges has been legally proved. They are just so many eiphers.

If the Court please, I shall conclude after a few additional remarks. I have already detained you too long.

There does appear to me, with all due deference to the Presenting Bishops, and any other gentlemen who have taken an active part in these proceedings, not only a disregard of the peace of the Church, but a desire almost to break in pieces the most peaceful Diocese on the continent. One having more general confidence in the purity of the Bishop cannot exist. These Presenting Bishops—with all due deference I say it—are rending the Church. They were bound, in my feeble judgment, to have

acted very differently. Independently of all other considerations, the selection of the time in which these charges were made, was to my mind an act of as gross cruelty as could be perpetrated by any men upon their fellow-being. At the very moment when my client was weighed down to the very dust by the unfortunate case of his brother—when he and his family could hardly hold up their heads in the community,—that moment was seized upon to rake up against him all these old transactions, passed and forgotten years ago. But this is a Court of mercy. It is a Court organized in the name of the great God of justice and of mercy. From your decision there is no appeal. I now commit this case to your hands, with the earnest prayer, that you may be enabled to decide it under a due sense of your solemn obligations to the Church, to justice, and to your God.

HIRAM KETCHUM, Esquire, then concluded the summing up of evidence, on the part of the Presentment.

May it please the Court :—

I now rise to execute the last act of the most painful professional duty in which I have ever been engaged. If, in the course of this trial and long investigation, I have at any time manifested impatience, or discovered any want of self-control, I freely confess that I have acted unworthily of the high trust committed to me, and I now make the only atonement in my power, by asking the pardon of the Court.

I shall, after a few preliminary observations, proceed to state the reasons for the opinions which I have formed of the testimony in this case. These reasons will, I doubt not, receive from the Court all the consideration that they merit; but my opinions, any further than they are sustained by sound arguments, however sincerely entertained, are to have no weight with the Court, for I am here as Counsel in the cause. As Counsel, from the first I have endeavored to conduct the case with liberality and candor; but still, I have been advocating one side, in opposition to the Counsel on the other side, and my opinions, and my solemn asseverations as to my opinions, are to have just as much weight as the asseverations of the Counsel on the other side, and no more, and that is—nothing.

It has not been my duty to institute that thorough, that searching scrutiny of the mind, and of the heart, which would detect and expel every thought, every feeling, every opinion, and every prejudice, inconsistent with the impartial decision of this case—that has not been my duty, but that is the high and solemn, and, I may add, awful duty of every member of this Court. You are to judge this case, and after you have judged it, you yourselves are to be judged. You are to be judged, not by the Church of this Diocese only, but by that great company which composes the Church of the United States, and by the public at large. And if your decision shall commend itself to the approval of your own consciences, in the sight of God, it will, I doubt not, receive the approbation of the Church of Christ, and the public. I say here, what as an Episcopalian I am most proud to say, that I have an abiding confidence not only in the learning, but in the wisdom and purity of this tribunal. I have seen your action on former occasions, and I believe that the religious community, and the public at large throughout the United States, have as much confidence in this tribunal as in any other in the land. I believe that it may be said, without boasting, that the Bishops of the Protestant Episcopal Church in this country have, at all

times, been a pure body of men. They have shown, on many occasions, and on a recent occasion, to the admiration of the Protestant world, their purity of doctrine; and, whenever an opportunity presents, they are prepared to vindicate their purity of morals.

I shall proceed to make some remarks upon the evidence, but before I do so, permit me to notice some things about the defence. We were told before we came here, whether on the authority of the Respondent or not, I will not say, that there was to be a conspiracy proved against the Respondent—that this prosecution was the result of a conspiracy. When I opened this case I alluded to this notorious fact; I stated then, that although the defence might not have the legal right to enter upon such a course of evidence, yet I was willing that they should; I promised to waive all legal objections to the evidence, if offered. Where is the evidence of the conspiracy? Echo answers, where? Throughout this long investigation, not one witness has been presented to prove the alleged conspiracy. We offered to sit longer, but no such proof has been attempted. And it is here proper to remark, that not one of the witnesses who have appeared to sustain these charges, has exhibited the slightest desire to do so from motives of animosity against the Respondent, or from any wish that this matter should be prosecuted against him. Where is the evidence, from beginning to end, that Mr. and Mrs. Butler, the Misses Rudder, or Mr. and Mrs. Beare, had any desire for the prosecution of this case? But, it is said, there are other parties who have urged this matter forward. Who are they? Why, the letter introduced here, and written by Mr. Gallagher to Mr. Butler, discloses something in reply to that. Here is the letter: it is dated at New York, September 25th, 1844.

“REV. AND DEAR BROTHER,—

“After so long an interval of silence, I am pained to renew an intercourse formerly so agreeable to myself, by reverting to a subject which, to a mind like yours, must be attended with sensations of a revolting nature. I trust, however, that a sense of duty, which could alone induce me to address you upon such a subject, will overcome your instinctive repugnance, so far at least as to leave you free to consider what course it becomes you to adopt in view of the demands of truth and righteousness. I am led to address you in consequence of a conversation which I have had to-day with our brethren Messrs. Trapier and Barnwell, who have been appointed, as you are aware, on a committee to investigate the truth of rumors affecting the Seminary. Among other subjects, the reports of various immoralities alleged against Bishop B. T. Onderdonk, which have long been afloat, have been deemed within the scope of their inquiries, from his connection with the institution. I was surprised to learn from them that your name had been mentioned as one who had been exceedingly aggrieved, and could testify to the most serious delinquencies. You will remember a conversation which I had with you in the year 1839, at Palmyra, in which you recounted the aggravated injury which you had suffered. I had regarded this in so confidential a light as never to have mentioned your name in connection with that of the Bishop, save on one occasion to our common friend, the Rev. Stuart Hanckel, and that accompanied by the strictest injunction of secrecy. I find, however, that Mr. Hanckel has inadvertently communicated the affair to Mr. Barnwell, who not being aware of the confidential nature of the communication, felt it to be his duty to make it a subject of inquiry. I stated to him

that it ought not to be divulged without your consent, upon which he expressed an intention to write you on the subject. While I deeply regret that I have been unintentionally the means of thus far extending the knowledge of a transaction of so painful a nature, (which I have learned, however, since my arrival in this city, is extensively known here,) I trust that you will be willing to make that sacrifice of feeling which the present crisis and the leadings of retributive Providence seem to demand," &c. You have heard the whole letter read.

Here you see the origin of this proceeding.

[Bishop GADSDEN.—Is that letter in evidence?

Mr. KETCHUM.—It was referred to by the defence, and is now before the Court.]

Mr. KETCHUM proceeded—It is true that the Clergy of this Diocese did not move in this matter, but certain gentlemen in the Diocese of South Carolina did think proper to move in it. Had they a right to do so? You know the laws and institutions of the Church. These gentlemen thought there was a Professor in the Theological Seminary, which belonged to the Church at large, who ought not to be intrusted with the instruction of the students. Did it belong to the New York Diocese alone to exercise supervision over the Professors in that Seminary? Had these gentlemen of South Carolina, indeed, no right to move in the matter? They had a right, most unquestionably, and they have availed themselves of that right. They, and the committees appointed by them, did move in the matter; and it was their suggestion which called persons together, with a view to collect and examine these flying rumors, in order to see if grounds for charges existed. They found that there were grounds for charges. They made the investigation through agents, it is true. The charges were presented to the House of Bishops. That body could take no action on the application from South Carolina, but three Bishops could present the matter to the House, and have the Respondent tried. These three Bishops were found, and now that the Presentment has been made, and the charges investigated, I submit to the candor and good sense of every gentleman composing this Court, if it was not necessary for the good of the Church, for the good of religion, and for the Respondent himself, that this investigation should be made? But that's the whole history of the origin of this Presentment, and where is there anything of conspiracy. These gentlemen have presented to you their charges. Whether they had good reason, or not, for doing so, will be best determined by the fact whether they have proved them or not. Even if the charges be not proved, there are sufficient reasons for justifying the conduct of these Presenters; and if the charges be sustained, you will of course say that they have done their duty. There is nothing of malice in that. Thus much for all that we have heard about conspiracy. Thus much for what I believe has been stated by the Respondent himself as the cause of this prosecution. Thus much for what one of the religious presses of this city has said on this subject. Where is the evidence of conspiracy? It is not here—it is not anywhere.

Again, the learned gentlemen, Counsel for the Respondent, have both gone through their defence with great power; and I submit to every member of this honorable Court, if it is not perfectly apparent that if you find the Bishop innocent of these charges, you have to find that every one of these witnesses who swore against him is perjured. There is no alternative left you by the

argument of the Counsel: you have to find that Mr. Butler, a very respectable presbyter of this Church, and his wife, a communicant of the Church—that the two Misses Rudderow, of spotless character, actively engaged in promoting the objects of the Church—that Mr. and Mrs. Beare, also of the highest character, are all perjured witnesses. If you find the Bishop innocent, they go from this Court bearing, in all time to come, the brand of perjury. There is no escape from that conclusion. The Counsel have left us no escape; for they took no other ground in their defence. Such, then, is the inevitable consequence, so far as affects the witnesses, of a verdict of acquittal:

On the other hand, if you find the Respondent guilty, there are consequences of the most deplorable character that would result. You are trying a brother—you are to determine whether he shall be cut off,—for there is no middle ground on this subject. You are to determine whether or not he is to be deprived of his high office—whether, in all time to come, he is to be shut out from the sympathies of mankind—whether that is to happen to him, which would cause his wife, and his children, to regret that he had not died when he could have left them the inheritance of an honorable name; though that had been the only inheritance he could bequeath. You are to cut off the man with whom you have often taken sweet counsel—who has long been your brother—and he is to stand divided from you forever! I believe that you have not so much of the Roman in you, as to be insensible to these consequences. I know, and I rejoice to say that I know, your hearts yearn for his acquittal. But while your hearts yearn for his acquittal, those same hearts, like the heart of Eli, the priest of old, tremble for the ark of God committed to your keeping.

You are to decide this case without respect to consequences on the one side or the other. You are to determine whether the Respondent is guilty or not of these charges—that is the question, and that is to be decided from the evidence.

Now I shall proceed, in the first place, to investigate the case of Mrs. Beare. I do this, because, as I shall show the Court, that case is entirely free from all the difficulties which have been attempted to be raised here with respect to the evidence, and the number of witnesses. I therefore wish to take up that case in the first instance, which is clear of all these objections. I mean to go through with the examination of Mrs. Beare's case, candidly, deliberately; and if I should state any portion of the evidence differently from the notes of the Clerk, or of any member of the Court, I pray to be corrected at the time, although I am of opinion that the entire evidence should be read over to the Court, before they proceed to deliberate on their judgment; and, therefore, any slight inaccuracy of mine may not be of much importance. Still, I desire to be corrected, if I should appear to be in error on any point.

[Bishop IVES.—May I ask the Counsel, whether, in case of any doubt resting on the mind of any member of the Court, he may not be at liberty to suggest it to the Counsel in order to have it cleared up?

Mr. KETCHUM.—Certainly, sir.]

Mr. KETCHUM proceeded—What is the case of Mrs. Beare? It appears Mrs. Beare was married on the 8th June, 1842; on the 12th of July of the same year, she was first introduced to Bishop Onderdonk; on the 17th day of the same month, the Bishop visited the church of which Mr. Beare is pastor, and that in the drive home the Bishop put his arm around

Mrs. Beare, and, in an unbecoming manner, pressed his hand upon her bosom.

[Bishop GADSDEN.—I really think that the Counsel should read the Presentment and the evidence, in order that the discrepancies may be seen.

Bishop POLK.—I hope the Counsel may not be interrupted.

Bishop GADSDEN.—I made the suggestion in accordance with the request of Counsel himself.

Mr. KETCHUM.—I will consider the question of a variance between the allegations in the Presentment and the proof, when I come to examine the testimony of Mr. Bolles.]

Mr. KETCHUM proceeded with the statement of Mrs. Beare's testimony: "Immediately after their return home, Mrs. B. told her husband that she did not wish to ride with the Bishop in the afternoon, as she thought him too familiar in his manners. She told her husband the occurrence of the morning—he expressed great surprise, but remarked to her—'if you can avoid it, do not let it alter your manner towards him while he is in our house.'"

In the interim, between services, Mrs. Beare testifies, that "the Bishop put his arm around me, and raised my head by my chin, and kissed me."

"After the afternoon service, went to the house of Joseph L. Franklin—there was some levity on the part of the Bishop—came away about nine o'clock in the evening—rode home in a one-horse family barouche—Mrs. Beare sat on the back seat on the right of the Bishop, her husband sitting in front of her, and the nephew of Mr. Beare sitting before the Bishop. On the drive the Bishop put his arm around Mrs. B.'s waist—then raised it and put it across the back of her neck—thrust his hand into the neck of her dress, down into her bosom—she threw his hand from there—he immediately put it upon the lower part of her person—she pushed it aside from there—he then, with the other, repeated the same on the other side of her person, but removed it towards the centre of her person—she threw it aside. When the hand was put in the neck of her dress, it was upon her naked bosom; the hand upon her person pressed her person palm inward—the other hand he placed near her knee—removed it along her leg up to her hip, and the centre of her person—palm of the hand inward."

I believe every word of that statement is true. I am going to show that it is true—I am going to demonstrate that it is true. I believe that it is true, first, because Mrs. Beare has sworn to it. Who is Mrs. Beare? Many years ago, and before I was a student of law, I remember having been in Court in this city during the progress of some interesting trial, and I heard Bishop Hobart called on the stand to testify as to the character of a lady; and the Bishop's answer struck me so forcibly that I have never forgotten it. "I have known her well," said he, "and her character is more than irreproachable." I apply that phrase to Mrs. Beare;—her character is more than irreproachable. She is a lady of purity—of honor—of piety—or, to sum it all up in the description given of her by the Respondent himself—"she is a pastor's good wife." I believe her statement, then, because she has sworn to it. I saw her manner as she delivered her testimony, and I have had some experience in observing the manner of witnesses—from her manner, I believed her.

Well, then, how does she proceed with her statement? She communicated the matter to her husband, immediately on arriving home—and what did he do? Why, I will tell what he did not do—he did not do what the learned Assistant Minister of Trinity Church, a Doctor of Divinity, would have

done—he did not kick the Bishop out of the house—no, he did not do that, but I will tell you what he did—he *prayed with him*, sir. I admit that that was not natural. I believe that Mr. and Mrs. Beare had got a little beyond human nature in this respect. I admit, that as a minister of Jesus Christ, he had something of the spirit of that Master, who directed his disciples to pray for those “who despitefully used them.” He said to his wife, “after prayers we will think of this matter—let us first pray.” He performed family worship, in company with the Bishop, and then they retired to their chamber. They passed a sleepless night. What followed in that chamber we are not permitted to ask: we only know that they did not sleep—and when the secrets of all hearts are laid bare, I have no doubt it will be seen that they did that unnatural thing in that chamber which would not have disgraced a Doctor of Divinity of Trinity Church—they prayed for the Bishop!

What next did they do? Mr. Beare accompanied the Bishop next day; he did not reprove him. I admit that he ought to have reproved him to his face. And when the Bishop of New Jersey put the question, (it was a proper one,) “Did you go and tell him his fault alone?” I admit it, it was a proper question; I admit that Mr. Beare ought to have been able to answer in the affirmative. But, if he did not do that, he did the next best thing: he went to the nearest clergyman, his brother of about the same age, and to him he communicated the matter. And what did they do? They knelt down and prayed to Almighty God for guidance. Now this may be called very Methodistical—this may be called fanatical; but I do not believe that a Court of Bishops of the Protestant Episcopal Church of the United States of America, will so decide. I believe they will even go so far as to declare that they consider this was better than to have kicked the Bishop out of the house, though we have the authority of a Doctor of Divinity in favor of that, as the proper course in such a case. But they prayed to God for guidance. When he told that story to the Rev. Mr. Kerfoot, now a Presbyter of the Diocese of Maryland, and who, I have been informed, has been here since this trial commenced,—I believe he told the story as he tells it now. I could not call the witness to say whether he did not tell it then as now, but the defence could have called him; but they did not. If any discrepancy had existed between the story of Mr. Beare, as told by him then, and as he tells it now, it would have been shown; but Mr. Beare told the story to Mr. Kerfoot as he tells it now.

[Bishop WHITTINGHAM.—I beg to interrupt the Counsel for a moment, as he has appealed to me. He is bringing before the Court what is not in evidence.

Mr. KETCHUM.—Mr. Kerfoot is a Presbyter of Maryland. I have understood that he is now in this city, and has been here since the Court commenced its sessions. I only leave the matter before the Bishops as a matter of inference. If Mr. Beare had told that story differently to Mr. Kerfoot, could we not have had him?

Bishop WHITTINGHAM.—Did the Counsel try to get his evidence?

Mr. KETCHUM.—I say, as a matter of law we could not produce him—we could not sustain our own witness in that way; but the other side could have impeached him by Mr. Kerfoot, if his testimony would have impeached Mr. Beare. I do not mean to say that he would not have come if requested. The Bishop of Maryland will not so understand me.]

Mr. KETCHUM proceeded—The next day, or about the same time, the Rev.

Dr. Muhlenberg was informed of the matter—by whom it was taken down, not *verbatim*, but the particulars committed to writing. And Dr. Muhlenberg, like a Christian, (and I rejoice to give him all due praise for his conduct;) came to this city for the purpose of advising with his brethren how the matter should be communicated to his Diocesan. He conferred with Drs. Milnor, Wainwright, and Higbee; and they resolved to communicate it, and they did communicate it to the Bishop. What occurred at that interview? We are to decide this matter according to the best evidence in our possession. We are not to conjecture, but to go according to the rules of evidence. Now what took place? Let us hear what Dr. Milnor says: "I stated to him the purpose of our visit. This was an allegation made by the Rev. Mr. Beare, of improper familiarities on the part of the Bishop towards his wife. I told him that these were said to have occurred in a carriage, in which he rode with Mrs. Beare—in the first place, in going to or from the church; in the forenoon, (the church was, as I understood, the church at Little Neck, where the Bishop confirmed that day;) that familiarities of a still more objectionable kind had been offered by the Bishop in the evening, in riding from a house where they had taken tea."

This is the general statement to which Dr. Milnor swears. He prepared the way for the statement of Dr. Muhlenberg. Let us now hear what he says, as he is the person most likely to remember with clearness and distinctness the statement made by him, as it had been most probably a matter of premeditation: "After Dr. Milnor had stated the object of the interview, I stated to the Bishop what I had received from Mr. Beare a few days previous, concerning certain liberties which Mr. Beare said the Bishop had taken with his wife. I entered into the particulars from notes which I took when Mr. Beare related the circumstances to me. The Bishop denied each of the particulars as I stated them—I mean the particulars of the offence alleged.

"What were the alleged offences as you stated them to the Bishop?"

"A. I don't know—that the Bishop had kissed Mrs. Beare; that he had put his hand on her naked bosom, and on her body below the corset bone, outside of her dress.

"Q. Did you state the particulars to the Bishop, fully, as they had been stated to you by Mr. Beare?"

"A. I did.

"Q. Did the Bishop deny these allegations in general or in detail?"

"A. He denied them one by one as I proceeded, except that of kissing Mrs. Beare.

"Q. What was the manner of the Bishop when he made these denials?"

"A. It seemed to be that of great astonishment."

This, then, is the evidence as to what occurred at that interview. What did the Bishop say? Why, he indignantly, and with astonishment, denied the charges, all and singular; and I will tell you what more he did, according to the testimony of Dr. Higbee; and that appears not to have been premeditated and studied—he carried the war into the enemy's camp: he said if any improper feeling existed, it must have been on the part of Mrs. Beare! He charged it upon her: if this matter were persisted in, he was sorry to say he would be bound to take that ground. Thus stands the case, by the concurrent testimony of two witnesses—opposed only, and not opposed fully, by one—and he not remembering particularly what occurred; but thus stands the matter as it was left by the parties on that day. The Bishop stood where his Presbyters rejoiced to see him stand—erect—a

Bishop. "I deny it—there has been no impropriety on my part." Well; the next day these gentlemen, with the exception of Dr. Wainwright, saw the Bishop again, by appointment; and with them came also Mr. Beare. The Bishop on this occasion thought proper,—I do not know that the circumstance is of any consequence, but it is as well to mention it,—he thought proper to shut the door; he took them into the back room, and closed the door. I will now ask your attention to Mr. Beare's evidence:—Mr. Beare being requested to state what occurred at his interview with the Bishop, in company with Dr. Milnor and others, said, "that Bishop Onderdonk commenced by speaking of me very affectionately—stating what a high regard and respect he had for me—that he would not intentionally (I think that was the word) wound the feelings of Mrs. Beare or myself. I then asked whether he denied what Mrs. Beare said he had been guilty of. He said he did not deny it; but that Mrs. Beare had misunderstood or misconceived his motives. He then told me to offer an apology to Mrs. Beare, and if she demanded any further apology, he was willing to make her one."

This timid man, that seems not to have had courage enough to kick anybody out of the house, but who knew how to pray—this timid man, who is afraid to speak to a Bishop, except when that jewel, his wife—and she is, I am sure the Court all agree with me in saying, indeed, a "jewel"—is attacked;—this timid man is now afraid of no man; he boldly demands of the Bishop, "Do you deny what Mrs. Beare has said?" And the Bishop says, "Oh! I don't deny it—I don't deny it—but she mistook my motive!" He don't deny the acts, but he denies the guilt. Such is the evidence as to this interview, sworn to by Mr. Beare, and by Drs. Milnor and Muhlenberg.

We have, in the case of Mrs. Beare, the evidence of four witnesses: First, we have that of Mrs. Beare, to the commission of the acts, from which she draws an inference of impurity;—Secondly, we have that of Mr. Beare, Dr. Milnor, and Dr. Muhlenberg, to the admission of the facts by the Bishop, though he denies the inference. Now, am I mistaken, is there any learned Bishop here who is pressed by this argument as to the necessity of more than one witness? Well, then, here we have four witnesses to the fact; for the confession of a party is the highest evidence in the law. "A voluntary confession made by a person who has committed an offence, is evidence against him, upon which he may be convicted, although the confession is totally uncorroborated by other evidence." "The voluntary confession of the party in interest," says Chief Baron Gilbert, "is reckoned the best evidence; for, if a man swearing for his interest can give no credit, he must certainly give most credit when he swears against it." *Roscoe's Criminal Evidence*, 35. Here, then, is the proof that the facts were committed—proof only of one witness as to the guilt; but that is an inference which the Court may make from the facts. Mrs. Beare can only infer guilt from the acts. If a man knocks me down, I can swear that he intentionally knocked me down, and contrary to law; and yet the criminality consists in the intent, which is to be inferred from the act; and, in cases where but one intent can be inferred from a particular act, by the common consent of mankind, the law infers that intent. Now, what but a guilty intent, can be inferred from a man putting his hand in the naked bosom of a young and beautiful woman? The Bishop denied the justice of such an inference in his case, but I think the judg-

ment of this Court will hardly sustain him. These acts are proved and admitted—the inference of guilt is irresistible from the acts—and therefore, the guilt of the Respondent, in the case of Mrs. Beare, is established by demonstration little short of mathematical. But one witness seems to attach a different meaning to what the Bishop said—

[Bishop IVES—May I make one remark? There is a part of Dr. Milnor's evidence to which I wish to draw the attention of the Counsel. It is the concluding portion of it:—"The Bishop replied, 'In relation to rumors of this kind,' " &c. It seems to me that he regarded this rumor of Mrs. Beare, as connected with others of a similar nature, which he appears to deny. Dr. Milnor immediately replied, not as if the Bishop had admitted these things, but says, "I don't know how that might be."]

Mr. KETCHUM—If there is any thing to be inferred from that fact favorable to the Respondent, he is certainly entitled to it; but let it be remembered that the same witness that swears to *that* fact, testifies to the *other* facts, as to the admission—and, in these particulars, he is corroborated by another witness. Now, admitting the force of the argument as to the number of witnesses required, how do we stand? Here is Mrs. Beare's statement as originally made, proved not only by herself, but by the testimony of others. It is proved—it is demonstrated. If there be any defective link in this chain of demonstration, I should like to see it pointed out. Well, then; if we have fairly arrived at this conclusion, what have we proved? We have proved "ADULTERY IN HEART;"—and, if the view of the Counsel on the other side be correct, that when a Bishop commits adultery in his heart, he is a Traitor to his Church, because he has violated his consecration vow—then we have proved him to be a Traitor.

If it be true, as is contended by the Counsel on the other side, that his oath of allegiance to his Church is violated, when he is guilty of such acts, then, we have proved him not only an adulterer in heart, but a traitor and a perjurer! Here we are: these are no inferences of my own making—these are inferences from the facts—which cannot be questioned—which cannot be denied:—they result not from the ingenuity of Counsel, but from putting together the evidence, which any man can do. But what is the evidence in opposition? Why, I need not go over the testimony of Dr. Higbee, whom I have often heard bear eloquent testimony, and always with more pleasure than on this occasion. I do not mean to say that Dr. Higbee has any design to waver from the truth, either in one way or the other:—I do not believe he has. But Dr. Higbee has reflected upon this subject—perhaps I am at liberty to suppose that he is a friend of the Bishop—that he earnestly desires his acquittal. He has reflected on this subject, and his recollections have taken the mould of his desires. I have not, therefore, the same confidence in what Dr. Higbee says, for this human heart is a very deceitful thing; I have not as much confidence in what he says now, as in what he said at the time of his interview with the Bishop—and what did he say then?—"What a liar he is!"—That's Dr. Higbee speaking out the impulses of his heart on the occasion. "What a liar he is!"—Why? Because that Bishop whom he had seen on the previous day, standing proudly erect, saying, "I am not thus to be assailed—if I do not owe it to myself, I owe it to my family—to the Church—to the community, to repel this attack—I deny the charge!"—he saw on the next day, descending to be the meek and humble apologist to the man who had injured him! He saw him put himself almost on his knees before the man

who had dared to calumniate him!—How could he sympathize with that conduct? I do not mean exactly to say, that a Bishop ought to have knocked down a man that would dare to tell him so. But I believe he should stand erect, and say, "I deny it!" When smitten, his Divine Master had said—"If I have done evil, bear witness of the evil—but, if well, why smitest thou me?" So the Bishop, if innocent, ought to have said—"if I have done well, why slanderest thou me?" Instead of this he puts himself almost on his knees before this man, and *admits* that, which on the preceding day, he had so indignantly denied—so that Dr. Muhlenberg testifies that he was not satisfied with the Bishop's conduct in the affair—and Dr. Higbee leaves, exclaiming, "What a lie he told!"

But we are told that although these gentlemen have sworn to what took place on that occasion, that because they agreed to say nothing about it, we must draw the inference that they were perfectly satisfied of the Bishop's innocence. Is that logical? Dr. Muhlenberg was not satisfied. Dr. Higbee did not seem to be satisfied, from his strong remark already referred to. The agreement was to pass the matter over, it is true; and that, it is alleged, proves just the contrary of what is asserted, that they were satisfied of his innocence. It seems to me that this is not the just inference. They may have been satisfied with his tears of penitence. They may have had a thousand reasons, which they were not bound to unfold to the Court, for refraining from making these things publicly known—they may have seen, as I am told was the fact, that there was then no canonical way of getting this offence properly investigated; and that, perhaps, the offender had wiped out the offence by his penitential tears:—and, therefore, that it was not worth while to proceed. But, by their own testimony, that action on their part does not prove, what has been sought to be inferred from it, that they thought the Bishop innocent.

Now, have I redeemed my pledge? Have I proved that every word that Mrs. Beare states is true? If I have, what follows? Why, we have surmounted all the difficulties in the case from beginning to end. There is not a single objection which came from the Counsel on the other side, which is not obviated by this very act and these very conclusions.

What is the great argument of our opponents? Why, that the Bishop did not commit these acts, because it was impossible! I admit the force of that argument. I say to this house of venerable Bishops, that no accusation of a private person is to be taken against a Bishop, of a high offence, without strong evidence of its truth. I say, if one of you who has led a godly life for a number of years, were accused by any one person, I care not how high his standing in society, or how unimpeachable his veracity—a consistent, unimpeached character—and the high obligation to purity resting upon you, are to be a shield which should ward off all ordinary attacks—that is of itself enough. The general good character of any man is not worth having unless it furnish such a shield. It is not to be presumed of a Bishop that he would do an act of the description charged, contrary to his vows, and to his best interests. Such a charge is not to be believed or entertained for a moment, unless made out on competent proof. But when it is made out—when it is proved that he is capable of committing such an act once, the bar is at once removed to the improbability of the repetition of the act in any circumstances; prove to me that he is capable of doing it in the secret chamber, and I draw the inference that he is capable of committing it anywhere. Prove to me that he has once so far overcome his

convictions of duty, and violated his solemn vow; though no eye but God's saw him—and I will prove to you that he is capable of any thing; after that, whatever he may do, I shall not be surprised. "There are three things too deep for me," says the wisest of men, "the way of a serpent on a rock, the way of a bird in the air, the way of a man with a maid." First prove to me the heart, the *animus* in a Bishop to do such things, and then, I believe, he can make deliberate calculations how far his official character may shield him—he will learn to estimate exactly how much the word of a Bishop will weigh against the allegation of a woman.

If all this be true—if I have made out this case, there is at once a flood of light admitted which illumines our path back as far as 1837. There is nothing more about improbabilities to be urged—there is the ascertained point, and from this the mind can easily go back, and find nothing at which to start in surprise and doubt.

And now, having established this, let me proceed to the other end of the chain, and that is the case of Mrs. Butler. But before I enter upon the examination of this case, it is necessary for me to examine the question of evidence. I need not read the charge made in the case of Mrs. Butler; the Court are sufficiently familiar with its details. Have we proved it? If we have, facts are certainly made out which deserve the censure of the Court. Do you believe it? How will the mind arrive at the conclusion that any allegation is true which rests on human testimony? How are you required to prove a fact? What amount of testimony is demanded? In law, and in morals, the solution of this question is not without difficulty. Various opinions have been entertained on this subject, in different ages and countries, and these opinions have been incorporated into the rules of evidence, as laid down in different legal codes. The question for you to decide is, under what code of law, in respect to the rules of evidence, you now sit here? What rules of evidence are binding on you as a Court? The object and end of all these codes is one, the ascertainment of truth. As an abstract question, your inquiry would be, which of these rules would be the surest guide to the temple of truth? By which of them can the mind arrive at a point where it may securely rest its belief; that is the inquiry. All these rules are merely to aid the inquirer after truth; and if unfettered by legal enactments, you would be free to adopt that rule which you most approved. But the true question is, what rules are binding upon this Court? Now there are three codes spoken of; the Levitical, the Canon or the civil law, (which is the same thing, so far as this point is concerned,) and the common law. Which of the codes was in contemplation of the Legislature of the Church, when they made the Canon, constituting a Court for the trial of a Bishop? The statutes, which are the Canons of the Church, provide no rule. I believe that is admitted. There is no express Canon on the subject: In reference to what rules, then, was the Canon made? The Canons prescribe that the Bishop shall be arraigned before the Court. They determine that he shall be tried on the evidence of witnesses. Your Canon has provided for all the formularies of the trial; the witnesses are sworn. Now arises the question, what rules of evidence are you, as a Court, to regard? I maintain that it is as clear as yonder sun, that you are to have regard to none other than the common law rules. Now for the proof. You cannot very well enter into the mind of the Legislature. I cannot ask the Bishop of Vermont, or of Rhode Island, or of North Carolina, all of whom were parties in making

the law, what is meant by that law ; but can I gather from the Canon itself any indications as to the rule which was in the mind of those by whom the Canon was made ? Let us look at this. I am sorry that my learned friends on the opposite side have not found it convenient to remain, because I should have wished to present this argument in their hearing. What is the Canon ?

" § 1. The trial of a Bishop shall be on a presentment in writing, specifying the offence of which he is alleged to be guilty, with reasonable certainty as to time, place, and circumstances. Such presentment may be made for any crime or immorality, for heresy, for violation of the Constitution or Canons of this Church, or of the Church in the Diocese to which he belongs. Said presentment may be made by the Convention of the Diocese to which the accused Bishop belongs, two-thirds of each order present concurring, *provided* that two-thirds of the Clergy entitled to seats in said Convention be present, *and provided also*, that two-thirds of the Parishes canonically in union with said Convention be represented therein ; and the vote thereon shall not in any case take place on the same day on which the resolution to present is offered ; it may also be made by any three Bishops of this Church. When made by the Convention, it shall be signed by a Committee of Prosecution, consisting of three Clergymen and three Laymen, to be appointed for that purpose ; and when by three Bishops, it shall be signed by them respectively, in their official characters.

" § 2. Such presentment shall be addressed to 'The Bishops of the Protestant Episcopal Church in the United States,' and shall be delivered to the presiding Bishop, who shall send copies thereof without delay to the several Bishops of this Church then being within the territory of the United States. *Provided*, That if the presentment be made by three Bishops, no copies shall be sent to them. *And provided further*, That if the presiding Bishop be the subject of the presentment, or if he be one of the three Bishops presenting, such presentment shall be delivered to the Bishop next in seniority ; the same not being one of the three presenting, whose duty it shall be in such case to perform all the duties enjoined by this Canon on the presiding Bishop. Upon a presentment made in either of the modes pointed out in section 1 of this Canon, the course of proceeding shall be as follows :

" § 3. The presiding Bishop shall, without delay, cause a copy of the presentment to be served on the accused, and shall give notice, with all convenient speed, to the several Bishops then being within the territory of the United States, appointing a time and place for their assembling together ; and any number thereof, being not less than seven, other than the Bishops presenting, then and there assembled, shall constitute the court for the trial of the accused ; he shall also, at the same time, cause at least thirty days notice of the time and place of trial to be given, both to the accused, and to the parties presenting him, by a summoner to be appointed by him ; and shall also call on the accused by a written summons to appear and answer. The place of trial shall always be within the Diocese in which the accused Bishop resides. If the accused Bishop appear, before proceeding to trial, he shall be called on by the Court to say whether he is guilty or not guilty of the offence or offences charged against him ; and on his neglect or refusal, the plea of *not guilty* shall be entered for him, and the trial shall proceed : *provided*, that, for sufficient cause, the Court may adjourn from time to time : *and provided also*, that the accused shall at all times during the trial have liberty to be present, to produce his testimony, and to make his defence.

“ § 4. When the Court proceeds to trial, some officer authorized by law to administer oaths, may, at the desire of either party, be requested to administer an oath or affirmation to the witnesses, that they will testify the truth, the whole truth, and nothing but the truth concerning the matters charged in the presentment, and the testimony of each witness shall be reduced to writing. And, in case the testimony of any witness whose attendance on the trial cannot be obtained is desired, it shall be lawful for either party, at any time after notice of the presentment is served on the accused, to apply to the Court, if in session, or if not, to any Bishop, who shall thereupon appoint a commissary to take the deposition of such witness. And such party, so desiring to take the deposition, shall give to the other party, or some one of them, reasonable notice of the time and place of taking the deposition, accompanying such notice with the interrogatories to be propounded to the witness; whereupon it shall be lawful for the other party, within six days after such notice, to propound cross-interrogatories; and such interrogatories and cross-interrogatories, if any be propounded, shall be sent to the commissary, who shall thereupon proceed to take the testimony of such witness, and transmit it, under seal, to the Court. But no deposition shall be read at the trial unless the Court have reasonable assurance that the attendance of the witness cannot be procured, or unless both parties shall consent that it may be read.

“ § 5. The Court having fully heard the allegations and testimony of the parties, and deliberately considered the same, after the parties have withdrawn, shall declare respectively, whether, in their opinion, the accused be guilty or not guilty of the charges and specifications contained in the presentment; in the order in which they are set forth; and the declaration of a majority of the Court, being reduced to writing and signed by those who assent thereto, shall be considered as the judgment of the said Court, and shall be pronounced in the presence of the parties, if they choose to attend. And if it be that the accused is guilty, the Court shall, at the same time, pass sentence, and award the penalty of admonition, suspension, or deposition, as to them, the offence or offences proved, may seem to deserve: *provided*, that if the accused shall, before sentence is passed, show satisfactory cause to induce a belief that justice has not been done, the Court, or a majority of its members, may, according to a sound discretion, grant a rehearing: and in either case, before passing sentence, the accused shall have the opportunity of being heard, if he have aught to say in excuse or palliation; *provided*, that the accused shall not be held guilty unless a majority of the Court shall concur, in regard to one or more of the offences charged, and only as relates to those charges in which a majority so concur.”

Now, I submit to the Court, whether that Presentment in writing is not analogous to an indictment at common law? Has it any analogy to a bill filed in an ecclesiastical court, or in a court of civil law? I do not pretend to be very familiar with ecclesiastical law, but I have run this matter over cursorily, and I believe that this proceeding in the ecclesiastical court is analogous to a proceeding in the court of chancery of this country, which is a court derived from the civil law, and in which you proceed by bill, and the defendant comes in by his answer; each charge being specifically set forth, and the defendant being obliged to answer fully the charges, *seriatim*, or his answer is good for nothing. Now, if I had been proceeding against the defendant in an ecclesiastical court, governed by the rules of the civil law, I suppose it would have been my duty to have filed my bill, and to have demanded from him, under oath, if I chose, — though I might waive that, — a specific answer to each charge. That

answer, if under oath, and untrue, would have subjected him to an indictment for perjury; but he pleads "not guilty," and I do not choose to place the Respondent in the predicament in which his Counsel place him; I do not intend to make that an equivalent to a denial under oath. I say it is a plea known to the common law courts, and is equivalent merely to his saying, "I wish to be put on trial; I require you to prove your allegations." I therefore relieve the learned Bishop from the predicament in which, as I have already said, he has been placed by his Counsel. I say he has not committed perjury, though his denial may not be true. He is not a traitor to the Church; if that plea be not true. Therefore, with great respect, I submit that the legislators, when they made this Canon, had in their eye the mode of proceeding at common law. I understand that the late Bishop Hobart wrote an able article on this subject, to show that our ecclesiastical institutions of the Episcopal Church were formed and framed upon an analogy with the civil institutions of the country; that the two Houses were meant to be analogous to the Houses of Congress;—of that I cannot speak, however. I merely refer to this authority, doubtless in the possession of the Bishops, as entitled to high respect. The Canon goes on: "When the Court proceeds to trial," &c. Well, now, that is not a canon or civil law proceeding; for in the courts of chancery the witnesses are examined out of court, before the chancellor is permitted to read the depositions on which he proceeds to hear and decide the cause. The complainant puts in his bill—the defendant files his answer; then the case is put at issue. The parties go before an examiner in chancery, by whom the testimony is taken; and when the cause again comes before the chancellor, these depositions are all read, and he hears the testimony without the benefit of seeing one of the witnesses. Now, the great excellence and glory of the common law is that which was so earnestly contended for by the Bishop of South Carolina, in framing this very Canon—the privilege enjoyed by the court and jury of seeing the witnesses, and judging from their deportment, whether they speak the truth. That is, I say, one of the excellencies of the rule of common law; the witness is seen, and the tribunal before which he appears, can draw the inference from his manner, as well as from the circumstances, whether he testifies truly or not.

Then comes the finding, and after that the sentence, and in all the enactments relative to them, the order and course of an indictment at common law are pursued. Now, I maintain that the fact is proved, as far as the subject is capable of proof; that the legislature of the Church, when they established this Canon for the trial of a Bishop, had in their minds' eye the order of procedure at common law. Why? We have no notions of evidence, any of us, only as we have learned it from books, and as matter of mere speculation, except those derived from the common law. Take the great body of any legislative assemblage, and they have no idea of any manner of procedure for the establishment of truth by human testimony, other than that pursued in the Courts. The Convention of the Church knew no other process than that observed in courts of law, and that is familiarly known to us all from our youth. Take any of the learned Bishops; suppose a charge is brought before him—he asks, Can you prove it? By whom? By John Doe. Is he a respectable man? Is he worthy of credit? The modes of proof inculcated by the common law are instinctively recognised and pursued, none other is thought of. The testimony of one respectable witness, worthy of credit, who swears to a fact which he has had an opportunity of

knowing, commands belief, unless that testimony be shaken by other testimony. The common law mode of proof incorporates itself with all our proceedings in the trial of parties; and it is not to be supposed that a company of Americans, composing a part of the great political society which has made the law of the land, establishing the common law, have met in a Convention, and made a provision for the processes of a trial, without reference to the course and order pursued in a court of common law.

But the display of learning by the Counsel on the opposite side, renders it necessary for me to go a little farther on this point, and consider the provisions of different codes. I wish to make one remark in this stage of the argument, that it is not to be inferred that you have adopted the canon law, because you are an ecclesiastical body. I do not know that the canon law is binding on this Court, unless it be specially enacted. How do we come to be governed by the common law? We have nothing to do with common law, as Americans, except as we adopt it; but in all the civil institutions of the country it has been adopted, and hence we are governed by it.

Now, so far as government and discipline are concerned, you are a separate Church; you are not, in acts of legislation or government, connected with the Church of England. It was only very recently that they acknowledged you to be a Church at all. You have no legislative connection with that body. You are a distinct and independent body. If you, therefore, the Protestant Episcopal Church of the United States of America, adopt the rules and regulations of any other body, you must do it by positive enactment, just as the civil institutions have adopted the common law of England. You are an independent Church in legislation, and if you have not adopted the canon law of England by positive enactment, it is no more binding on you than the Levitical law.

Now, first, as to the Levitical law, referred to by the Counsel, as laid down in the nineteenth chapter of Deuteronomy, verse fifteenth: "One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth; at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established." This does not, as you will perceive, refer to any one crime. It refers to every crime; and it was a provision of the same law, that the witnesses should cast the first stone. Nobody here will pretend that the Levitical law is binding upon us. But if the law in respect to the number of witnesses be binding, all the other provisions are also binding upon us; we are then bound to oblige the witnesses to cast the first stone. I do not, therefore, think it at all necessary to go into an elaborate effort to show that the Levitical law is not of binding authority. The Court will see how that law works, in 1 Kings, ch. 21. The learned Bishops all very well recollect that Naboth had a vineyard, and Ahab wanted to get it. He could not obtain it for love or money. But this covetous and wicked man determined to avail himself of the rule of the Levitical law, in order to obtain possession of his neighbor's property, and following the counsel of his wife, Jezebel, he adopted a course of proceeding related as follows:

"But Jezebel his wife came to him, and said unto him, Why is thy spirit so sad, that thou eatest no bread? And he said unto her, Because I spake unto Naboth the Jezreelite, and said unto him, Give me thy vineyard for money: or else, if it please thee, I will give thee another vineyard for it: and he answered, I will not give thee my vineyard. And Jezebel his wife said unto him, Dost thou now govern the kingdom of Israel? Arise, and

eat bread, and let thy heart be merry: I will give thee the vineyard of Naboth the Jezreelite. So she wrote letters in Ahab's name, and sealed them with his seal, and sent the letters unto the elders and to the nobles that were in his city, dwelling with Naboth. And she wrote in the letters, saying, Proclaim a fast, and set Naboth on high among the people: and set two men, sons of Belial, before him, to bear witness against him, saying, Thou didst blaspheme God and the king. And then carry him out, and stone him, that he may die. And the men of his city, even the elders and the nobles who were the inhabitants in his city, did as Jezebel had sent unto them, and as it was written in the letters which she had sent unto them. They proclaimed a fast, and set Naboth on high among the people. And there came in two men, children of Belial, and sat before him: and the men of Belial witnessed against him, even against Naboth, in the presence of the people, saying, Naboth did blaspheme God and the king. Then they carried him forth out of the city, and stoned him with stones, that he died. Then they went to Jezebel, saying, Naboth is stoned, and is dead." (1 Kings, ch. xxi., verses 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.)

This robber and murderer succeeded by his two witnesses—there was no alternative. The testimony of these "sons of Belial" would have slain the High Priest. Now I think that this law was an unwise one, for the object of all law, relative to evidence, is to get at the truth; I think we know how to get at that better than the Jews did.

[Bishop WHITTINGHAM—Perhaps it might not be unwise for the Counsel to spare the discussion of the wisdom and purity of this divine regulation, as it would save the time of the Court.]

Mr. KETCHUM—I do not know that it was a "divine regulation;" and if it were, it was not intended for all time. Prove to me that it was the law of God, and now of binding authority, and the argument is ended.

[Bishop HOPKINS—It was a "divine regulation," in the same sense as the law relative to divorce.]

Mr. KETCHUM proceeded—My argument is, that our common law rules are best adapted for getting at the truth. I find, on this point, the following remark in *Scott's Commentary*, on the passage in the 26th chapter of Matthew, relative to the false witnesses brought against our Saviour. "The professed entertaining of false witnesses against Christ will not seem strange, if it be remembered that among the Jews in action against seducers of the people, or false prophets, it was lawful to say any thing true or false, no man being prevented to say any thing in defence of them."

The authority given for this by Scott is *Hammond*.

[Bishop CHASE—Will the Counsel be so kind as to read that authority again.]

Mr. KETCHUM complied with the request of the learned Bishop, and proceeded—I suppose, with great respect for the wisdom of that law, that it was not so well devised as ours. But if you are to take the Levitical law as the rule on the question of evidence, you must, as I have already remarked, take it altogether. Then comes the question—has the Levitical law been adopted by, and made part of the fundamental law of, the Church of Christ?

I will not stop to comment on the passages from the New Testament, noticed by my learned associate: But in 1 Timothy, 5th chap. 19th verse, I find the following passage:—"Against an elder receive not an accusation but before two or three witnesses." Now I do not pretend to be very

learned in this matter, and so I will not take upon me to say whether it means "before" or "by" two or three witnesses.

The learned members of the Court know how and where to look for the authorities on this passage, and, above all, to compare one passage of Scripture with others. But, adopting the construction of my learned opponents, I suppose this was a direction to proceed against an elder exactly as the Jewish law proceeded against any man for any offence; all that St. Paul meant was, to adopt the law of the country, with regard to witnesses—just exactly the position at which I desire to arrive. It was a received opinion, that to establish the proof of any offence, two witnesses were necessary;—and St. Paul meant to adopt it, and introduce it into the practice of the Christian Church of that day and country—and, accordingly, he directs Timothy not to receive an accusation against an elder, except by two or three witnesses. Learned commentators may put a different construction upon the passage; but I contend, with great respect, that it is obvious that St. Paul meant simply to introduce the known and established law of the Jews, in regard to two witnesses.

Thus much for the Levitical law, as far as it was introduced into the Church of Christ.

Now we come to the Canon law. Here I beg to refer to "Burn's Ecclesiastical Law," vol. 1, p. xxi., of the Introduction. This authority says: "The Canon law sprung up out of the ruins of the Roman empire, and from the power of the Roman pontiffs. When the seat of the empire was removed to Constantinople, many of the European Princes and States fell off from the dominions of the emperors, and Italy among the rest. And the Bishops of Rome, having been generally had in esteem as presiding in the capital city of the empire, began to set up for themselves, and by degrees acquired a temporal dominion in Italy, and a spiritual dominion throughout Italy, and almost all the rest of Europe. And thereupon the several Princes and States, did willingly receive into the body of their own laws the Canons of councils, the writings of the holy fathers, and the decrees and constitution of the Popes."

According to the Canon law, two witnesses were required to prove an offence. I need hardly inform the Court, that all the duties now performed by our surrogates in this country—such as proving wills, and distributing estates, after the decease of a testator or intestate—are performed in the ecclesiastical courts of Great Britain. Therefore, that department grants letters of administration, and does all things which are, I dare say, familiar to the members of this Court, as occurring in the Bishops' courts in England.

I suppose this to be the rule, that if any question arises in the ecclesiastical court, of which the courts of common law have jurisdiction, the ecclesiastical court will be compelled, by a writ of prohibition, to proceed according to the course of the common law.

[Bishop HOPKINS—Yes, in cases of that kind.]

Mr. KETCHUM. — For instance, a Bishop commits an assault and battery; he may be tried and condemned in the civil court on the evidence of one witness; I suppose that in proceedings against him for the like offence in the ecclesiastical court, the same amount of evidence would convict him: If not, you can see in what a dilemma the ecclesiastical authority would be placed, as was well explained by my learned associate. A Bishop could be indicted and put in prison for an assault; and yet, the

ecclesiastical court could not try him, because they had not two witnesses to testify to the commission of the offence. He might even be sent to the gallows, and yet the ecclesiastical court be entirely debarred from acting in his case. Then, I suppose, that a writ could issue to the ecclesiastical court, directing that as to this offence they should be governed by the rules of common law. If not, what confusion would arise! The idea of a Bishop in prison for a crime, whom his Church could not touch, would be an absurdity not to be tolerated for a moment.

But if you come to an offence purely spiritual, heresy, for instance, in which the common law has no jurisdiction, then, I suppose, would operate in full force the Canon law prescribing two or more witnesses.

I have gone through with this argument somewhat in detail—I do not know that it was necessary to do so; but doubt might possibly exist, in the mind of some member of the Court, and it was therefore my duty to meet that supposed difficulty, and endeavor to remove it.

But the gentleman on the opposite side has advanced an argument which I will show is perfect *felo de se* as to his own proposition. He thinks proper to say, that in this case there is but one charge, with numerous specifications. That he assumes. But I have supposed, and do still suppose, that each one of these specifications presents a distinct charge; and that, without any recital or preamble at all, this would have been a good presentment of each offence. But I will show you that he has killed his own argument.

In this country, there are two witnesses required to prove a case of treason. But the courts have established, that every overt act of treason needs not to be proved by two witnesses—that if you bring one witness to one act, and another to another act, so that two witnesses testify, you have then made out the charge satisfactorily. (1 Burr's Trials, 196. Greenleaf, 292.) Greenleaf says, "We have already seen that a voluntary confession out of court, if proved by two witnesses, is sufficient to warrant a conviction; and the crime is well proved if there be one witness to one overt act, and another witness to another act, of the same species of treason." The rule would, undoubtedly, be the same in the ecclesiastical court. For instance, I charge the Bishop with intemperance, and prove by a witness that to-day he was intoxicated—yesterday, by another witness—and so go on, proving several overt acts of intemperance, each by a single witness: have I not, in that case, succeeded in proving the charge by the testimony of "two or three witnesses?" (1 Haggard, 182, 463.) Sir William Scott says, "By the ancient ecclesiastical law, I conceive one witness to the fact, and one to the circumstances, was sufficient, and would be so still in a proceeding in that form, according to the ordinary rule of ecclesiastical law, which satisfies its own demand of two witnesses, by receiving one to the fact, and one to the circumstances." I contend that we have answered the requirements of the gentleman. He says that we have but one charge with several specifications. Well, now if we prove one specification by one witness, and another by another witness, it will be seen, that according to the argument of the gentleman himself, if these are to be regarded as overt acts, that we have made out the general proposition.

I now come to examine our own law. "This open examination of witnesses *viva voce*, in the presence of all mankind, is much more conducive to the clearing up of truth, than the private and secret examination taken down in writing before an officer, or his clerk, in the ecclesiastical courts,

and all others that have borrowed their practice from the civil law—where a witness may frequently depose that in private, which he will be ashamed to testify in a public and solemn tribunal. There an artful or careless scribe may make a witness speak what he never meant, by dressing up his depositions in his own forms and language; but he is here at liberty to correct and explain his meaning if misunderstood, which he can never do after a written deposition is once taken. Besides, the occasional questions of the judge, the jury, and the counsel, propounded to the witnesses on a sudden, will sift out the truth much better than a formal set of interrogatories, previously penned and settled; and the confronting of adverse witnesses is also another opportunity of obtaining a clear discovery, which can never be had upon any other method of trial. Nor is the presence of the judge during the examination a matter of small importance; for, besides the respect and awe with which his presence will naturally inspire the witness, he is able, by use and experience, to keep the evidence from wandering from the point in issue. In short, by this method of examination, and this only, the persons who are to decide upon the evidence have an opportunity of observing the quality, age, education, understanding, behavior, and inclinations of the witness—in which points all persons must appear alike when their depositions are reduced to writing, and read to the judge in the absence of those who made them; and yet as much may be frequently collected from the manner in which the evidence is delivered, as from the matter of it. These are a few of the advantages attending this, the English way of giving testimony, *ore tenus*,—which was also, indeed, familiar among the *ancient* Romans, as may be collected from Quintilian, who lays down very good instructions for examining and cross-examining witnesses *viva voce*. And this, or somewhat like it, was continued as low as the time of Hadrian; but the civil law, as it is now modelled, rejects all public examination of witnesses.”—Blackstone’s Com. vol. 3, p. 372–3.

I have thus the authority of that great man; and it becomes my Saxon blood, notwithstanding the authority of the Levitical law, to declare that the common-law mode of investigation is the best mode of eliciting the truth, and that is, after all, the great object of all judicial inquiry.—(1 Starkie, 470.) This author lays it down, “The maxim of law is, *ponderantur testes, non numerantur*. No definite degrees of probability can in practice be assigned to the testimony of witnesses; their credibility usually depends upon the special circumstances attending each particular case; upon the connection with the parties, and the subject matter of litigation; their principles, characters, the manner of delivering their evidence, and many other circumstances, by a careful consideration of which, the value of their testimony is so well ascertained, as to leave no room for mere numerical comparison.”

[Bishop GADSDEN.—Will the Counsel oblige me by informing us whether it is *testes* or *testis*?

Mr. KETCHUM.—*Testes*.]

Mr. KETCHUM proceeded.—Now I go on with the examination of the evidence. What is it? Mrs. Butler testifies, that when riding with the Bishop he took certain liberties with her; putting his arm around her, and drawing her towards him; that her husband observed this, and was displeased; but that she had noticed that the Bishop was somewhat excited by wine, and was not willing to believe that he meant any thing wrong. The liberty

was repeated, and the lady took his hand and laid it upon his knee, saying, as you have heard, "This is a sacred hand." Up to this time, two witnesses were cognizant of the conduct of the Bishop. That afterwards, a space of fifteen or twenty minutes, Mrs. Butler testifies, he proceeded to the other indignities which she describes. These indignities the second witness did not see; but she immediately sprang over to her husband—was in great alarm, and so continued throughout the night. Therefore, we have not the evidence of two witnesses to the whole of this transaction; but as near as we possibly can, we have to the whole. Here two witnesses have sworn to these facts. Are they to be believed? Is Mrs. Butler to be believed? Why not? Was there any thing in her manner—which you all had the opportunity of observing—to induce you to think that she was not telling the truth? She has been, so far as we can ascertain, religiously brought up. She is a daughter of a presbyter of the Church. It is to be presumed that she was furnished with all the instruction which the Church wisely supplies her children. She has been confirmed; she has taken upon herself the obligations of a Christian. On arriving at a proper age she was married. She has become a communicant of the Church. Is there the slightest reason to doubt the truth of her testimony, or to induce the belief that she swears falsely? Certainly not. No man here present, ever saw a witness sustain an examination better than she did—with more clearness—with more perfect intelligence. I never saw, and I venture to say the Counsel here who were my seniors in years, never saw a witness whose manner was more in favor of the truth of her testimony. She testified clearly. She stood here with a perfectly irreproachable character. If it were not, it could, and would have been shown.

Well, now, the next test is, does she speak of that which she knows? If these facts are true, they must have made upon her mind an indelible impression—she must remember them as freshly and as clearly, as the day after they happened. She positively swears to them: her husband swears to what he saw. Both swear exactly as to what each saw. From that time they may have forgotten some things. Mr. Butler may not recollect a conversation, so long ago, with perfect accuracy, but he would be able to recollect what he himself saw, and what attracted his attention at the time. He remembers the motions of the Bishop; he recollects perfectly all that he saw. She recollects the other facts which did not come under his notice. Both thus testify to the facts of this case. I am not going to examine the deposition of Mr. Butler; I leave that to the Court hereafter, and I venture to say that the Court, when the evidence is read over to them, will say that there is a manifest desire on the part of Mr. Butler to testify to the exact truth. Who is Mr. Butler? If he be thrown aside, it must be because he is regarded as a perjured witness. The Counsel do not relieve us from that alternative. If you believe these witnesses, then you must believe the Bishop to be guilty; if not, they are to be regarded as perjured witnesses. Who, then, is Mr. Butler? His father was, I believe, the first Episcopal presbyter I ever heard; old Dr. Butler was a man of the highest respectability. No man of any denomination of Christians, or of any business in life, surpassed him in purity and elevation of character. This is his son, brought up in infancy in the way in which he should go, and he chose his father's path. Now, I want to know if that same Mr. Butler is not under as high obligations as this Bishop to tell the truth? When he was confirmed he entered into as solemn an obligation

as that of the Bishop. When the holy orders of the priesthood were conferred upon him, he assumed an equally solemn obligation. I desire to know on what considerations the Bishop should be placed on a higher elevation than Mr. Butler, as to the possession of all that constitutes grounds for belief? As a witness, on the stand here, is he not to be believed as well as the Bishop? He may not be equally learned and wise, but in testifying to a fact, I want to know why he is not entitled to as much credence as any Bishop who hears me? Well, now, both witnesses testify to these facts. Shortly after—not very long after—the act was committed, Mr. Butler states the same thing to the Rev. Mr. Lucas. We could not bring Mr. Lucas here, but they could have done so.

[Bishop GADSDEN—He is dead.]

Mr. KETCHUM proceeded.—He also told the Rev. Mr. Irving. Both these witnesses have pursued a course of conduct entirely consistent with the fact that this indignity was committed on Mrs. Butler, and I again ask why they should not be believed? The argument that the Bishop is incapable of doing such an act, has lost all its force, if we believe the testimony in the case of Mrs. Beare; because, if you prove that in 1842 he did it, you have a right to presume that it was quite possible for him to do it in 1837. Upon this subject, therefore, I do not know that it is necessary to detain the Court long. I shall refer them only to one remark offered on the other side, and I am very sorry, on the Respondent's account, to hear such an argument—that because the Bishop was intoxicated, he is not to be charged with guilty intent; and they have cited 8th Russel, wherein it is laid down that a man might be acquitted of a charge of murder on the ground of intoxication. That is a case in which premeditation is necessary to constitute the crime. But if an assault and battery, or any other crime not requiring premeditation, be committed by a party in a state of intoxication, the guilty intent is inferred from the act. If a man steals the property of another, it is as well a felony if he be intoxicated as if he were sober. Our charge is not that the Bishop was guilty of a premeditated act towards the lady; but it is that he was so impure that he was overcome by the mere contact of his position beside the lady. It is not at all essential to our case to show that the act was premeditated. It is enough for us to prove that he did it. But then, even in the case before us, we have not charged that degree of drunkenness, which would exempt him from punishment in case of murder. It is not a total loss of his faculties, but an exhilaration. He was under the influence of wine or spirituous liquors; he was not drunk, but he was excited—not sufficiently excited to have been bereft of reason, but sufficiently excited to do, perhaps, those things which otherwise he could have avoided. Therefore, the argument in favor of drunkenness cannot be applied to his benefit. But Mrs. Butler thinks it was improper desire and drunkenness; in her cross-examination she is willing to suppose that the excitement, produced by vinous or spirituous liquors, helped this on. I am willing to suppose, and I do suppose, that the origin of all this course of conduct was excitement produced by intoxicating liquors. It began in such excitement, and it has been continued without such excitement. He broke over the bounds of duty, in the first instance, in allowing himself to be overcome of such excitement, and having taken the first step, he has gone again and again when he had not the apology of excitement, if that were, indeed, an apology. I suppose that to have been the cause of the difficulty originally—I have not any doubt of it in my own mind; and on

this point I was most forcibly struck by one of the afternoon lessons of our Church, read since this trial was commenced: "But they also have erred through wine, and through strong drink are out of the way; the priest and the prophet have erred through strong drink, they are swallowed up of wine, they are out of the way, through strong drink; they err in vision, they stumble in judgment." I believe he first erred "through wine and strong drink," and so he has gone on from that time to this.

But I hasten to the testimony of Mr. Bolles, on the next charge in the Presentment. Now I will consider a suggestion made by the learned Bishop of South Carolina. In that case we have not proved the charge as alleged, and I noticed the question put by that Bishop at the time. I understand the Canon to be this, that you shall state the offence, with time, place, and circumstance. The offence, in this case, is the impurity charged. If I say, in allegation of this, that at such a time he put his right arm around a lady, and that in that act he was guilty of impurity, and it turns out that it was his left arm, still I believe it will be admitted that the charge is sufficiently made out. The requirement is to make out at what time and place the alleged impurity was manifested; and to make them out with such measure of distinctness and accuracy, as may enable the defendant to show what he was doing then and there. But if he did an improper act, he cannot escape by saying that the improper act is not precisely alleged as it has been proved.

Here is a charge of impurity. I give the time, place, and circumstance as far as I can. The time and place I give accurately, but the precise circumstances of the offence I cannot give exactly. But that does not furnish sufficient ground of escape for the Bishop.

Now I place the Bishop in the stage. We have said that he sat on the back seat; but he did not. That's the ground of escape set up by the Counsel, because we did not allege that the act was committed on the second seat. My position, however, is, that you must charge the offence generally: if intoxication, intoxication; if impurity, impurity; and you must state the circumstances and the manner as well as you can, but you are not held to the strictest proof as to the precise manner. If the Bishop could deny the place and circumstances, as well as taking hold of the lady's hand, that were something. But I take it that we are not bound to prove the charge precisely as alleged. If the substance of the offence be charged, if time and place be given, and the circumstances also, as accurately as practicable, though not precisely as in the proof, I think the Respondent is put on his defence; and if the substance be proved, he is to be found guilty. Well, then, is the substance of this charge proved? I do not dwell on it, but I make one suggestion. Mr. Bolles sat in this stage, and saw the Bishop do a thing to a lady which he thought very foolish. He felt alarmed for the Church. He thought it was an act capable of misconstruction. He thought it might be proclaimed to the disadvantage of the Church. What are the mitigating circumstances in the mind of Mr. Bolles? Why that there could not be any immoral intent, because the *Bishop* did it? Now I think if I make it clear that the Bishop was capable of committing that act, and was likely to commit it, then do I not produce a state of facts which ought to outweigh Mr. Bolles' deduction? If I recollect right, Mr. Bolles said, that had the act been committed by an impure man, he would have regarded it as done with impure

intent. But if I can lead this Court to believe, that from other acts committed by the Bishop, he was quite capable and quite likely to take hold of that lady's hand from impure motives, then I destroy the presumption in favor of the Bishop, which Mr. Bolles deduces; and it is for the Court to judge whether or not he acted from impure motives. We do not try acts here, so much as intentions. I think the learned Doctor of Divinity of Trinity Church for giving me that expression. It is "adultery of the heart" that we are to try. What says the Scripture?—"He that looketh on a woman to lust after her, hath committed adultery with her in his heart." And if we cannot condemn for looking merely—when the look proceeds to acts, however slight, which demonstrate intention, then I suppose there can be no doubt of the commission of adultery in the heart; and if that be shown in this case, I suppose the Court will hardly be prevented from finding the Bishop guilty, because we have not made out the offence precisely according to the allegation charged. However, I now leave this case with the Court.

I next proceed to the case of the Misses Rudderow. Did you see any thing in the manner of Miss Helen Rudderow calculated to shake your confidence in her veracity? She testifies clearly as to the facts. She communicated them to her sister and to others, at and near the time they occurred, for Mr. Dowdney recollected, that when he came to the parish, he understood that she alleged some improper conduct against the Bishop. She stated things then as she states them now. What is the answer of the Counsel? Why, that it was improbable the Bishop could do it—that he could not do it without being observed by Mr. Richmond. One of the learned Counsel said it was not expedient for any one of the Bishops to try the experiment of placing parties in the position these were placed. But I advise them to try it. Let them see how far the hand can be employed in the way alleged without attracting the attention of a person situated as Mr. Richmond was, in front. If I were a judge in this case, I would try that experiment. I say that it was perfectly practicable to have it appear as if the hand were carelessly reposing on the back of the carriage, and then to thrust it into the bosom of the lady without attracting the notice of the person in front. I believe that all that could be done very readily; and I believe that persons experienced in the matters could tell how far it could be done. But these learned Bishops are not to judge from their own experience how this could be done. Why, I suppose if I were to ask one of the learned Bishops whether he thought it possible that his pocket-book could be taken from his pocket without his knowing it, he would answer that he thought it impossible. A gentleman coming from the interior, and not aware of the arts practised in the city, would be willing to say, perhaps, that testimony to that effect was not to be believed—that the thing was impossible. But those who live in large cities, and are aware of the dexterity of thieves and pickpockets, would say that all that was quite possible. If you had told a man twenty years ago that conveyances could be made which would carry you sixty miles in two hours, he would of course have exclaimed—Oh, that is impossible! But now everybody knows the possibility of this. The Bishops understand this argument perfectly, for that is the argument against the miracles of the Christian religion itself, carried out in all its details by the great infidel philosopher, Hume. Any one of the Bishops can estimate the force of that argument. It is the impossibility of the thing that is urged

by the opponents of the truths of the Christian religion, and the living witness is not believed because the testimony contravenes the experience of the laws of nature. The infidel will not believe that the dead were made to live again, because the greater probability is that the laws of nature could not be violated. That argument can be met, and it has been met. But it is precisely the argument of the learned Counsel in this case. Here, to be sure, is no case of miracle; but the Counsel represent the act as unnatural—as impossible—as revolting to human nature. Why, I think what you may regard impossible and revolting, would be testified to as quite possible by yonder man who stands at the corner watching to betray female innocence, day after day; and by thousands in this city who are in the very embraces of death. Give me the man with strong lustful desires, unrestrained by moral principle, and I tell you that nothing is impossible to him: He will accomplish his object, and that in ways utterly unsuspected and unknown by the pure and virtuous man.

The difficulty in the case, and there is none other, is, that the Bishop would do the thing at all. Now I may speak of a case which was notorious. A few years ago, in a neighboring city, there dwelt a minister of the gospel, not an Episcopalian, learned, accomplished—moving in the best society; and yet that man would start with his family for the house of God, and return on some pretence or another to his dwelling, and there hold in foul embrace a negro wench, his cook. Why, every man said that was impossible, and it would not have been believed if sworn to by the negro wench; but in the honesty of his heart, when he was found guilty of other offences, he confessed the whole. He laid the whole open—he confessed his deeds, black as they were—submitted to the discipline of his church; and, after some twenty years of suspense, accompanied by penitence, he has, I believe, been restored.

Now, we must not talk of things being impossible. The impossibility exists only in your own want of experience. It is because you do not know. Take the illiterate man, and tell him of the result of chemical combinations, and he says it is impossible. And because you do not happen to be versed in the ways of gross vice, things may seem impossible to you that are very possible to those who have passed therein—who are themselves familiar with the devices and practices of iniquity.

[Bishop EASTBURN—The individual just referred to by you was deranged, and has not been restored.]

Mr. KETCHUM proceeded—Well, perhaps all *vice* is derangement; we will not stop to discuss that now. This argument of impossibility, when presented in opposition to the positive evidence of an unimpeached witness, ought not certainly to have much weight.

Now I pass on to the next case—that of Miss Jane Rudderow. You heard the testimony of that witness, and marked its perfect clearness; and you will see, by examining the elementary treatises on this subject, that it is one of the characteristics of truth. She entered the drawing-room—the Bishop took her by the hand, and led her to the sofa, the door being wide open. Now, if she wanted to tell a falsehood she might have shut the door. But it was open, and so she at once stated it was. And the Rev. Mr. Dowdney has testified that that door opened upon the sofa. I believe that it did not—that it opened the other way.

[Bishop WHITTINGHAM.—Mr. Dowdney was not certain on that point.]

Mr. KETCHUM.—No—I believe he was not certain. But the lady told that fact without the slightest hesitation; a fact which she would, in all probability, have concealed or falsified, had she been desirous of giving an untrue story. What occurred there in the room? It is all very easily explained if you will admit one thing—that is, that the Bishop impurely desired her—that he was hot in the pursuit; and that he was under such an impulse must have been the case, because he rushed behind the blind after her; and we have had Mr. Dowdney here with a string, and Mr. Rudderow with the blind, and have seen that these persons could stand under the blind. Well, all I can say is, that this is clearly testified to by an unimpeached witness; and nothing on earth can be urged against it but the argument of improbability. Weigh that argument against the positive oath of this witness; and you will determine how the scale preponderates.

But we have had attempts made to contradict this witness. By whom? By this Rev. Mr. Dowdney, for whom I desire to entertain the highest respect. I wish I could. But he comes up and testifies under a strong bias in favor of the Bishop. That's in evidence. He has offered himself as a willing aid to the Bishop. Well, now, I have no objection to that. I honor the man who stands by his friend in trouble. If I had a friend similarly situated, and I thought him an honest man, I don't know any length to which I would not go, in my efforts to serve him. I do not object to that. But when a man, thus influenced, offers himself as a witness, he is very likely to have all his recollection of facts follow the bias of his inclinations. He first desires to have it so—he next thinks it possible that it might have been so—and he finally thinks it was so. That's precisely the way. I remember to have heard a friend of mine from New Jersey, who was very much experienced in the law, relate the manner in which a procurer of witnesses, whom he had seen, could get a witness at any time to testify, very honestly, to what he did not know at all. He would say to his witness: "Well, John, you remember you were talking on such a day to such a man," (describing something that might have taken place, from the relation of the parties.) He would reply: "Well, really, I don't remember that." Next day he would be accosted in the same way by somebody else; and, after the experiment had been repeated for a sufficient length of time, John would become perfectly satisfied that he did remember it, and would swear to it through thick and thin.

[Bishop IVES.—The Counsel will pardon me for interrupting him, but I suppose that anecdote may be applied to all the witnesses, as well as to one. (A laugh.)

Mr. KETCHUM.—Oh! certainly.]

Mr. KETCHUM proceeded.—Well, here is Mr. Dowdney who wants it to be so. How can we be convinced that he is not deceiving himself? I will not stop to read his evidence, but I ask you to remember, when you hear it read, the remark I now make. When asked who had spoken to him, requesting him to see Miss Riker, he could not recollect. I then asked, "Did not Dr. Seabury speak to you?" and his reply was, "Oh! now you mention it, I remember that Dr. Seabury did." And I suppose Dr. Seabury is as great a bugbear behind the scenes as Dr. Hawks, and yet Mr. Dowdney positively affirmed that he knew nothing of a transaction that had occurred so lately; and I do not think, if Dr. Seabury be such a person as he has been described to me, that any one who had had an interview with

him was likely soon to forget it. But he does not remember any thing of Dr. Seabury until we draw it out of him. Now let me refer to 1 Starkie, 458, (note.) "Where proof is actually given of a fact which a witness could not but know and recollect, his expressing himself with doubt and uncertainty is to be regarded as an act of wilful misrepresentation." Please apply that rule when Mr. Dowdney's testimony comes to be read. I need not attempt to bring any evidence to show that he has a strong bias. He was a commissioned string-measurer, ordained by the Bishop; the only one I ever saw in Court.

Now Mr. Dowdney contradicts Miss Rudderow in one particular, with respect to the interview in the Church. She says that her sister was not present, whilst he avers that she was present. Well, now, what motives had the Misses Rudderow for misrepresenting this matter? It seems to me entirely inexplicable that they should purposely unite in misrepresenting such an immaterial fact. They had, in the morning, met and greeted the Bishop; and you will recollect that Mr. Dowdney swears that he requested the ladies to treat the Bishop well, for he had heard of the indignity formerly offered them, and rather suspected that there would be a cool reception. He said there was something like a request that they would treat the Bishop well.

[Bishop IVES.—That's not the evidence. He expressed a wish that every thing might pass off agreeably.]

Mr. KETCHUM.—Yes, I believe that was it. Well, that showed a fear of something disagreeable. He was doubtless happy to see that the meeting was cordial. The ladies might just as well have stayed together when the Bishop went out, and it would have made the case quite as strong against him. But they do state the case differently from Mr. Dowdney, and he stands as one to two. We could not produce Miss Riker, notwithstanding we tried. But Mr. Dowdney testifies that Mr. Alvord was there, whom they could have produced, but *did* not bring forward, and the inference, therefore, is, that Mr. Alvord could not sustain him.

Then comes the other matter, as to going to see the Bishop. There, I think, Mr. Dowdney is contradicted. I do not mean to refer to the evidence particularly, but it seems to me that, according to his testimony, Miss Rutter was one of those who took the side of Mr. Dowdney, as objecting to the use of the Church by the benevolent society.

[Bishop IVES.—I do not think that Miss Rutter was named as objecting.]

Bishop WHITTINGHAM.—She was named as one of the efficient members of the society.

ASSISTANT CLERK.—I find by referring to the minutes that Miss Rutter did object.

Mr. KETCHUM.—This shows, then, some carelessness in the testimony of Mr. Dowdney.]

Mr. KETCHUM proceeded—Here, then, we have all these ladies testifying to these facts. Well, what was there inconsistent with her former conduct, in Miss Rudderow's going to the house of the Bishop to solicit from him the use of the church for a favorite object? This learned Mr. Dowdney had undertaken to prove that the use of the church, for such purposes, was entirely against the laws of the Church; and she not being herself very well versed in the ancient fathers, and the critical interpretation of the Scripture authorities—and as she could not at all understand how the church could be desecrated in the service of benevolence towards the

poor and destitute, having perhaps read something about David's eating the show-bread of the altar, when he was in danger of famishing from want of food,—and so, with a strong womanly desire to carry out her object, she resolves to go to the Bishop, and she does go to him, and he decides in her favor. I think you will find in the evidence that he said, "Let the Bishop decide as he may, you shall not have the church, for the law is above the Bishop." But she gets the church. Well, now supposing that she was desirous of doing this good act, and of procuring the use of the church for this purpose, and no other method being presented, was there any thing at all inconsistent with her former relations to the Bishop, in visiting him for the purpose of soliciting his interference? The Bishop had insulted her sister and herself. She had communicated the fact to her married sister, Mrs. Brown, and to her mother. But it was resolved not to make war upon the Bishop. Well, we must have war or peace. There is no neutrality. There is no middle ground in these cases. She was a communicant of the Church; and he was her authorized Bishop. She could not be fomenting her wrath all the time. It became necessary to appeal to the Bishop in a mere business matter, and she accompanied Miss Riker for that purpose, knowing that whatever had been his conduct, he was invested with authority to decide, and that his opinion might be in her favor. Now I can see nothing in that at all out of the way. You, I, and every gentleman here are compelled every day to have business relations with men whom we dislike—men that have, perhaps, insulted us. We know something of that in a crowded city, where we are daily obliged to come in contact, nay, to have business relations, with men whom we heartily despise. Hers was precisely a case of this sort. This lady had a certain object to accomplish—she was pressing for it with great zeal. She went to the Bishop for the purpose of gaining this object; and from this, forsooth, the gentleman frames an argument about improbability and inconsistency.

The same course is pursued with respect to the case of Mrs. Beare. Mr. Beare had official relations with the Bishop, and his wife was constrained to forbear. He was coming to ordain Mr. Beare, and if an invitation to dine had not been extended to him, it would have been at once remarked as out of the way. Well, he goes to the house of Mr. Beare, and of course is treated with civility. The conduct of Mr. Beare and his wife is perfectly consistent. It is precisely that which we had reason to expect. The same argument applies to the case of Miss Rudderow. There was nothing inconsistent in the conduct of either of these ladies. They had resolved to bury the matter, and so it would have remained buried had not the Diocese of South Carolina—

[Bishop GADSDEN.—Not the Diocese.]

Mr. KETCHUM.—Well, individuals in the Diocese, taken measures to bring the matter forward, and had not the Bishops made the Presentment; and then, in a manner contrary to their original wish, unwillingly, the witnesses come forward and testify. Are they to be sent back with the imputation that you regard them as perjured, because it has been shown that their conduct has been consistent with their original design, to bury this matter in oblivion? I think not.

But now, having detained the Court longer than I intended, and yet having, doubtless, omitted much that I ought to have said, I must rapidly proceed to a conclusion.

You are to pronounce your sentence. You are to take the Respondent to your arms. You are to endorse him, and send him forth as an accredited Bishop of the Church of Christ—as a medium through which the Holy Ghost may be communicated; or you are to say that he is an unworthy member of your order, and is no longer to be regarded as one of the accredited Fathers and Bishops of this Church. What is the charge? It has been suggested, I learn, that it was of a trivial character. Why, I do not know any offence which is so great an enemy to the religion of Jesus Christ, as impurity. When I consider its secret ravages upon the soul—when I consider the amount of impure thoughts, which are themselves adultery—I see that there is no greater enemy of the Christian religion, and of its practical progress in the world, than impurity. And here is an officer in the army of Jesus Christ, placed upon the watch-tower to give notice of the enemy's approach, and lo! he embraces the enemy! He allows him to enter and pollute the camp! What would be done were a military officer so to violate his trust? Would he not at once be deprived of his commission, and branded, and punished as a traitor? The governing power would say, "Be no more officer of mine!" Perhaps he might be retained in the army, but he would be stripped of his office, for who would enlist, or go to battle, under an officer who had betrayed his trust?

Here, then, is a commander in one of the grand divisions of the Church of Christ. It is said that if you have any doubt of his guilt you must acquit him. I know that that is a wholesome rule of law in our civil courts; but it will not do for the army of Christ to say, that here is a general in command that we cannot positively say is guilty, but whom we very much suspect of guilt. Will it do for the House of Bishops to send forth a suspected officer to command, because they cannot say he is absolutely unfit to be intrusted? And yet I think you must have clear evidence on which to convict; but remember, gentlemen, remember that he is an officer of the army—that this army can only prosper by obtaining a constant succession of recruits. Your great business is to enlist these recruits. You are the generals of this army. The Commander-in-chief, whose eye is upon you all, has told you to take care of his Church; and I maintain that one great object of this trial is the fulfilment of that command. You cannot sit as a House of Bishops without considering, in all that you do, the good of the Church. Now, if you think that the good of the Church will permit the Respondent to remain as one of its highest officers, I say "Amen." It is not for me to interpose my judgment against yours; but, while you show mercy to him, forget not your obligations to the Church of Christ.

The Court then adjourned to seven o'clock, P. M.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Wednesday, January 1, 1845, }
seven o'clock, P. M. }

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese,

Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

It was ordered by the Court, that all the testimony taken in the case be now read over from the Record.

The Clerk read the testimony of Mrs. Frances L. Butler, of the Rev. Clement M. Butler, of the Rev. James A. Bolles, of Miss Helen M. Rudderow, of the Rev. Thomas H. Taylor, D. D., of Miss Jane O. Rudderow, and of Mrs. Charlotte E. Beare.

The Court then adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Thursday, January 2, 1845, }
half-past 9 o'clock, A. M. }

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The Clerk read the testimony of the Rev. Henry M. Beare, the Rev. James Milnor, D. D., William A. Muhlenberg, D. D., the Rev. John F. Schroeder, D. D., the Rev. Frederick J. Goodwin, the Rev. Henry W. Sweetzer, Henry A. Smythe, Mrs. Mary Franklin, the Rev. John Downey, the Rev. Edward Y. Higbee, D. D., Miss Michal R. Rutter, the Rev. Jonathan M. Wainwright, D. D., Aaron L. Poyer, and John Rudderow.

The affidavits on which the Presentment was founded, and which had been read in Court—viz. of the Rev. Clement M. Butler, the Rev. Henry M. Beare, and Misses Jane O. Rudderow and Helen M. Rudderow—were then read by the Clerk.

The third Canon of 1844 was read by the Clerk, by order of the President.

The Court then adjourned to meet at 3 o'clock, P. M.

Attest,

W. R. WHITTINGHAM, *Clerk.*

Thursday, January 2d, 1845, }
3 o'clock, P. M. }

The Court met pursuant to adjournment.

Present, the Bishops of Illinois, Connecticut, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President directed the Clerk to read the specifications in the Presentment in order.

The Court proceeded to declare, respectively, their opinions upon the several specifications.

The first specification having been read :

The Bishops of Illinois, Connecticut, Vermont, Kentucky, Ohio, Louisiana, and Delaware ; the Assistant Bishop of Virginia ; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, respectively declared the opinion that the Respondent was *Guilty* of the specification just read.

The Bishops of North Carolina, New Jersey, the North Western Missionary Diocese, Western New York, South Carolina, and Maryland, respectively declared the opinion that the Respondent is *Not Guilty*.

The second specification having been read :

The Bishops of Illinois, Connecticut, Vermont, Kentucky, Ohio, Louisiana, and Delaware ; the Assistant Bishop of Virginia ; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, respectively declared the opinion that the Respondent was *Guilty* of the specification just read.

The Bishops of North Carolina, New Jersey, the North Western Missionary Diocese, Western New York, and Maryland, respectively declared the opinion that the Respondent is *Not Guilty*.

The Bishop of South Carolina gave an opinion, which was ruled out, but ordered to be entered on the Record of the Court, as follows, viz :

Guilty of one instance of improper excitement by vinous or spirituous liquors, but not of drunkenness.

The third specification having been read :

The Bishops of Illinois, Connecticut, North Carolina, Kentucky, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware ; the Assistant Bishop of Virginia ; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, respectively declared the opinion that the Respondent is *Not Guilty* of the specification just read.

The Bishops of Vermont and Ohio gave opinions, which were ruled out, but ordered to be entered on the Record of the Court, as follows, viz :

The opinion of the Bishop of Vermont :

Guilty of conduct unbecoming, indiscreet, and open to injurious constructions hurtful to the ministerial character.

The opinion of the Bishop of Ohio :

Guilty of conduct indiscreet, unbecoming, and such as necessarily to expose him to constructions hurtful to his character and office.

The fourth specification having been read :

It was ordered that it be entered on the Record that the fourth specification has not been tried.

The fifth specification having been read :

The Bishops of Illinois, Connecticut, Vermont, Kentucky, Ohio, Louisiana, and Delaware ; the Assistant Bishop of Virginia ; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, respectively declared the opinion that the Respondent was *Guilty* of the specification just read.

The Bishops of North Carolina, New Jersey, the North Western Missionary Diocese, Western New York, South Carolina, and Maryland, respectively declared the opinion that the Respondent is *Not Guilty*.

The sixth specification having been read:

The Bishops of Illinois, Connecticut, Vermont, Kentucky, Ohio, Louisiana, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, respectively declared the opinion that the Respondent was *Guilty* of the said specification.

The Bishops of North Carolina, New Jersey, the North Western Missionary Diocese, Western New York, South Carolina, and Maryland, respectively declared the opinion that the Respondent is *Not Guilty*.

The seventh specification having been read:

The Bishops of Illinois, Connecticut, Vermont, Kentucky, Ohio, Louisiana, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, respectively declared the opinion that the Respondent was *Guilty* of the said specification.

The Bishops of North Carolina, New Jersey, the North Western Missionary Diocese, Western New York, South Carolina, and Maryland, respectively declared the opinion that the Respondent is *Not Guilty*.

The eighth specification having been read:

The Bishops of Illinois, Connecticut, Vermont, Kentucky, Ohio, Louisiana, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese, respectively declared the opinion that the Respondent was *Guilty* of the said specification.

The Bishops of North Carolina, New Jersey, the North Western Missionary Diocese, Western New York, South Carolina, and Maryland, respectively declared the opinion that the Respondent is *Not Guilty*.

The Declaration of the majority of the Court was then reduced to writing, and signed by those of the members of the Court who assented thereto.

The Court then adjourned.

Attest,

W. R. WHITTINGHAM, *Clerk*.

Friday, January 3d, 1845, }
half-past 9 o'clock, A. M. }

The Court met pursuant to adjournment. Present, the Bishops of Illinois, Connecticut, North Carolina, Vermont, Kentucky, Ohio, New Jersey, the North Western Missionary Diocese, Louisiana, Western New York, South Carolina, Maryland, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts, Rhode Island, and the South Western Missionary Diocese.

The President opened the proceedings with the Psalter for the day, and prayers.

The Presenting Bishops and the Respondent appeared in Court.

The President ordered the Declaration of the majority of the Court, reduced to writing, and signed by those who assented thereto, to be read in Court, and pronounced as the judgment of the same; as follows, viz:

THE undersigned, being the majority of the Court of Bishops, convened under the authority of the 3d Canon of A. D. 1844, passed in the General Convention of the Protestant Episcopal Church of the United States, to try the Presentment addressed to the Bishops of the said Church by the Right Reverend William Meade, Bishop of the Diocese of Virginia, the Right Reverend James Hervey Otey, Bishop of the Diocese of Tennessee, and the Right Reverend Stephen Elliot, Jr., Bishop of the Diocese of Georgia, against the Right Reverend Benjamin Tredwell Onderdonk, Bishop of the Diocese of New York—do hereby declare that the said Court, having fully heard the allegations and testimony of the parties, and deliberately considered the same, after the parties had withdrawn, did declare respectively, whether, in their opinion, the accused was guilty or not guilty of the charges and specifications contained in the Presentment, in the order in which they are set forth; and the undersigned, being a majority of the said Court, were thereupon found to have concurred in pronouncing that the said Right Reverend Benjamin Tredwell Onderdonk is guilty of the first, the second, the fifth, sixth, seventh, and eighth articles, containing the charges and specifications therein expressed of the said Presentment, as by reference to the same will more fully appear; and do, thereupon, declare him guilty of immorality and impurity, as the same is charged in the Presentment, and set forth in the said specifications.

In testimony whereof, the said majority have hereunto set their hands, at the session of the said Court, holden in the city of New York, on the 2d day of January, A. D. 1845.

PHIL. CHASE,

Bishop of Illinois, and Sen. Bishop and President of the Court.

THOS. C. BROWNELL,

Bishop of the Diocese of Connecticut.

JOHN H. HOPKINS,

Bishop of the Diocese of Vermont.

B. B. SMITH,

Bishop of the Protestant Episcopal Church in the Diocese of Kentucky.

CHAS. P. M'ILVAINE,

Bishop of the Protestant Episcopal Church in the Diocese of Ohio.

LEONIDAS POLK,

Bishop of the Diocese of Louisiana.

ALFRED LEE,

Bishop of the Diocese of Delaware.

JOHN JOHNS,

Assistant Bishop of the Protestant Episcopal Church in Virginia.

MANTON EASTBURN,

Bishop of the Diocese of Massachusetts.

J. P. K. HENSHAW,

Bishop of Rhode Island.

GEO. W. FREEMAN,

Missionary Bishop for Arkansas, &c.

The fifth section of the third Canon of 1844 was then read.

The President announced to the Respondent the judgment of the Court.

The Respondent rose and read a paper to the Court, offering his reasons in excuse or palliation of the sentence to be passed, as follows:

RIGHT REV. FATHERS AND BRETHREN :

By the decision of a majority of your Right Rev. body, I am pronounced "guilty" of several charges which have been preferred against me ; and in conformity with the canonical provision, I am now before you to declare whether I have aught to say in excuse or palliation.

Human courts, Rt. Rev. Brethren, can take cognizance only of outward actions. It is by these I am to be righteously judged by you, or by any human tribunal: for God alone seeth the heart. The acts laid to my charge are declared by a majority of your Court to be proved: nor does it now become me to question the truth of your decision;—but in excuse, or palliation, I hereby protest, before this Court, and before Almighty God, my entire innocence of all impure or unchaste intention.

It is the intention, Rt. Rev. Fathers and Brethren, which constitutes guilt; but it is not every outward act that interprets the inward intention. There are, indeed, acts, such I mean as adultery, incest, fornication, which are undoubted proofs of indwelling impurity; and these acts are wisely and mercifully defined, and forbidden, under adequate penalties, by human laws. Such acts are justly punished by human tribunals, because they have been previously defined and prohibited; and they are safely punished by human tribunals, because they are unquestioned proofs of guilt, and may be adjudged so to be without danger of encroaching on the rights of man, or the prerogative of God. But the acts for which I am arraigned before you are not of this description. They are of a new and unprecedented class for judicial cognizance; and I further plead that they are not, necessarily, proofs of impurity, and that, therefore, they are not safely punishable; that they are not defined and forbidden by prescript laws, and that, therefore, they are not justly punishable by any human tribunal.

As the acts laid to my charge are not of that decisive character as to be safe matters of judicial cognizance, so neither are they of that number in their kind as to be proofs of habitual impurity. Habitual impurity of thought, such as to condemn a man before God, may exist without showing itself in gross crimes; yet surely it can never be proved to exist by six or seven acts, not amounting to forbidden crimes, separated, some of them, by an interval of one, two, or more years, and extending altogether through a space of more than five years. On this ground I further plead in excuse or palliation, that the acts charged are too few in number to constitute habitual impurity.

As the acts laid to my charge are few in number, so are they remote in time, retrograding from two and a half to seven and a half years ago. And though my conscience does not upbraid me with impurity in the acts alleged, (the most of which I heard for the first time, in October last, as alleged to my discredit,) yet have I long lived in a state of repentance for all my sins known and unknown, and habitually sought forgiveness for them from the mercy of God, for the sake of his Son Jesus Christ. And as no act, for nearly two years and a half, is, or can be appealed to, to show the insincerity of my repentance, or profession of repentance, I further plead in excuse or palliation, that the acts charged on me are too remote in time to convict me of present guilt.

If suffering were an atonement for faults, I might plead the anguish of mind to which myself, my family, and I will add, my Diocese, which is dearer to me than both, have been subjected by interruption of my pastoral labors,

and the injuries and indignities to which, from the first step towards a presentment, I have been constantly exposed.

If the consciousness of human fallibility, the fear lest, by possibility, the innocent *may* be punished, should restrain the confidence or mitigate the rigor of judgment, I would beseech my Rt. Rev. Brethren to remember, that there is not, as in most other judicatories, an appeal from their decision. The sentence which you will pronounce, Rt. Rev. Brethren, will be re-considered by no other Court in the Church, but is at once the first and the last which the existing laws of the Church provide.

As punishments, in all human justice, are graduated to crimes, I respectfully request that the Court will bear in mind these grounds of excuse or palliation, (if they be accepted as such,) in order that they may righteously proportion my sentence to the offences of which, by a majority of their number, I am convicted.

Thus much, Rt. Rev. Fathers and Brethren, I have thought that I might say, consistently with Christian humility; and due respect for the decision of a majority of your Court. To enter into a consideration of the evidence on which this decision is founded, and of the influences which in my humble, though perhaps too partial judgment, have combined to produce it, would be neither respectful to you, nor consistent with the canonical privilege which is now awarded to me. On these points, therefore, I am *at present* silent, as in duty bound, and am content to wait with meekness the sentence which you are about to pronounce. That I look forward to this sentence with deep anxiety, I do not affect to disguise. But believe me, Rt. Rev. Fathers and Brethren, my anxiety is not solely for myself; but also for the Church, and for this Court. As respects me, your decision is final for this world, and your power supreme. But, brethren, solemnly protesting as I have protested, and do now protest, before Almighty God and this Court, my entire innocence of all impurity, unchasteness, or immorality, in the acts laid to my charge, and confiding, as I firmly do, in the justice of Almighty God, and the honest judgment of His Church, I of course believe that an unjust sentence of this Court will neither be ratified in Heaven, nor sustained on earth, after the light of reason and truth shall have dispelled, as it surely will dispel, the mists of prejudice and passion. That the sentence which my right reverend brethren are now to pronounce on the most unworthy of their number may not alienate from our body the confidence of the Church, and plunge her into irretrievable distraction, may God, of his infinite mercy, grant through Jesus Christ.

The Respondent and the Presenting Bishops then withdrew from the Court.

The fifth section of the third canon of 1844 was then again read.

The Court then proceeded to give opinions, respectively, on the sentence to be pronounced.

OPINION OF THE BISHOP OF ILLINOIS.

THE Respondent having been found GUILTY, it is next to be adjudged as to the grade of punishment to be inflicted.

The opinion of Bishop Chase is as follows :

The President of this Court for the trial of the Rt. Rev. Benjamin Tredwell Onderdonk, Bishop of New York, January 3, 1845, being called on in his place to perform the painful duty of pronouncing sentence, and feeling deeply the importance of the subject, and his own responsibility to God the Judge of all men, observes and adjudicates as follows :

While hearing the testimony given in this Court, on this trial, by the Rev. Dr. Higbee, the Presiding Bishop was deeply impressed with the following sentiment, viz., that if the Respondent, Bishop Benjamin T. Onderdonk, were guilty of the acts offered to Mrs. Beare, he would deserve a punishment of a most degrading nature,—even that of “*being kicked out of doors.*”

When cross-examined on this point, he further observed, that this was, in his opinion, the mildest form of disgrace which he could think of inflicting for such a deed, or words to that effect. This decided and reiterated opinion from a clergyman of high standing, and a witness summoned on behalf of the Respondent, was of a leading character, and evidently served to turn the course of defence into a decisive channel. Accordingly, in the sequel of the trial, the accents grew fainter and fainter in palliation of the deeds of immorality and impurity alleged.

It was admitted by the Counsel of the Respondent, that if he, Bishop Onderdonk, were guilty of the facts specified, punishment the most exemplary would be his due, and the same *should* be inflicted on him.

The only remaining plea, therefore, was that the facts alleged were “*improbable,*” and therefore cannot be supposed to have taken place. This was the opinion and plea of the defence.

The Court having decided to the contrary of this plea and this opinion, pronounced, yesterday, the Respondent GUILTY.

It now behooves this Court to consider and determine the *grade* of punishment to be inflicted.

There are three grades mentioned in the Canon: first, *degradation*; second, *suspension*; third, *admonition*.

The President of this Court decides and pronounces the first and highest of these three grades, viz., “*degradation from the Christian ministry.*”

His reasons are, first, that he would have expected the like punishment, had the same allegations been made, and in like manner proved against himself, as they have been made and proved against his brother of New York.

The second reason is that which has been alluded to and urged by the Respondent’s Counsel, viz., that the misdemeanors alleged in the Presentment involve a propensity to licentiousness, and indicate habits of intentional vice utterly inconsistent with the purity of a Christian, and peculiarly disgraceful to the sacerdotal character. Every minister of the holy Jesus, especially the Bishops of his Church, ought to remember what the Lord saith of “*adultery in the heart,*” when manifest only by a “*look*” of “*lust.*” (See Matt. v. 28.)

And they ought also to remember, and they should never forget, the case of Eli and his sons; how, by a false tenderness towards his own family, he brought shame on the Israel of God, and by winking at the sins of impurity in his sons, incurred the heavy displeasure of the Almighty, in the destruction of himself and all his race. (1 Samuel, iii. 11.)

“Behold, saith the Lord, I will do a thing in Israel, at which *both* the ears of every one that heareth it shall tingle. In that day I will perform against Eli all things which I have spoken concerning his house. When I begin I will also make an end: for I have told him that I will judge his house forever, for the iniquity which he knoweth: because his sons made themselves vile, and he restrained them not.”

In pursuance of this divine denunciation, the ark of the Lord was taken captive by the heathen; the sons of Eli, Hophni and Phineas, were slain; and the aged and too indulgent Eli, the High Priest, was precipitated to death.

That we may escape these punishments, let us avoid the sins which led to them.

Signed this the 3d day of Jan., A. D. 1845.

PHILAN. CHASE,
President of the Court.

OPINION OF THE BISHOP OF CONNECTICUT.

BEING called upon for my opinion in regard to the sentence which ought to be awarded to the Respondent in this case, I avail myself of the opportunity to offer a brief statement of the considerations which have guided my mind in my decision of the several specifications contained in the Presentment.

I fully concurred in the decision which struck from the Presentment the general charge contained in the ninth article. I considered it as deficient in the “specification of time, place, and circumstances” required by the Canon.

The fourth article of the Presentment was not tried;—the principal witness, to whom a citation was issued, having refused to attend.

The second article charges the Respondent with having been on a certain occasion “improperly excited by vinous or spirituous liquors.” The facts sworn to on this specification are of an equivocal character, and the opinions of Mr. and Mrs. Butler are not conclusive evidence to my mind. But as the facts charged have been fully admitted by both the Counsel of the Respondent, I have been obliged to consider him as *guilty*.

The facts charged in the third article of the Presentment rest altogether upon the testimony of the Rev. Mr. Bolles. Whatever impropriety that testimony may be thought to indicate, it fails entirely to sustain the charge contained in the Presentment, and I must consider the Respondent *not guilty*.

The chief *gravamen* of the Presentment rests on the facts charged in the first, fifth, sixth, seventh, and eighth articles. I begin with a consideration of the seventh and eighth articles of the Presentment. The facts charged in these articles are the most recent in point of time, and they are so nearly

related that they may well be considered together. The facts here charged are sustained by the positive and clear testimony of Mrs. Beare, and supported circumstantially by that of her husband. I consider their truth to have been virtually admitted by the Respondent, at the interview with the Rev. Mr. Beare, and the Rev. Drs. Milnor, Muhlenberg, and Higbee; and I regard the testimony of the three first named gentlemen as evidence of this virtual admission. I am therefore compelled to say, that the facts charged in these articles are proved, and that the Respondent is guilty.

The facts stated in the first article of the Presentment, though most remote in date, are nearly allied to those just considered in the 7th and 8th articles, being indicative of the same state or habit of mind in the Respondent. They are proved by the positive testimony of Mrs. Butler, which is corroborated by the testimony (direct and indirect) of her husband. They are circumstantially supported by the facts proved under the 7th and 8th specifications, and they have been virtually admitted as true by both the Counsel of the Respondent, who plead his excitement by vinous or spirituous liquors in extenuation of the offences alleged against him. I am therefore bound to consider him guilty of the facts charged in this article.

The allegations contained in the fifth and sixth articles of the Presentment, are nearly connected in time, and nearly related in character. Those contained in the fifth article rest mainly on the single testimony of Miss Helen M. Rudderow; while those embraced in the sixth article, rest, in like manner, on the testimony of Miss Jane O. Rudderow. In both cases the testimony is positive and clear; and I consider the testimony of both these ladies strongly supported by the habit of mind developed in the proof of the first, seventh, and eighth specifications. I therefore find the Respondent *guilty*, on the fifth and sixth articles of the Presentment.

The defence of the Respondent rests mainly on the insufficiency of the evidence; on alleged inconsistency in the conduct of the principal witnesses; and on the utter improbability of the offences charged in the Presentment.

It will hardly be contended, that all the regulations of the Levitical law, in respect to evidence, shall be regarded as obligatory at the present day; and I consider the injunction of St. Paul, (1 Tim. v. 19,) rather as a recognition of the laws of the land in which he lived, than as laying down a rule of evidence to be forever binding upon all Christian men. The Canon under which we are acting, seems rather to have been framed with reference to the common law of England, and the laws of our own country, than with any regard to the civil law, or to the ecclesiastical laws of other nations.

The charges preferred are to be in the nature of an Indictment, and the defendant is required to plead "guilty or not guilty." By the civil or canon law, the proceedings must be by bill, and the Respondent must give his answer in writing, and (generally) on his oath. These proceedings are not familiar to the members of the General Convention who frame our Canons. But the public mind of our country is deeply imbued with the principles of the common law, and I must apply these principles to the construction and carrying out of the Canon before us; at the same time, I am of opinion, that the evidence in support of the foregoing charges would be fully sufficient under the provisions of the ecclesiastical laws of England.

With regard to the conduct of the witnesses, subsequent to the offences charged, I can see no such inconsistency as is alleged. Each separate case of affront, (except that of Miss Jane O. Rudderow,) must have been sup-

posed, at the time, to stand alone ; and in each case it seems to have been decided, on mature reflection, to bury the injury in silence. I think I can perceive sufficient reasons for this course, without imputing to the witnesses a light sense of the insults offered to them, or a tame acquiescence in those insults. The peace of the Church, and the honor of the Episcopal office, may have been deemed worthy of grave consideration, when brought in conflict with personal wrongs. But apart from such considerations, the public mind would have been slow to believe so flagrant a charge when preferred by a single witness against a Bishop of the Church. I may rather say, the witness would have been deemed a calumniator, and those who abetted such a witness would have been denounced as conspirators. That such a result must have followed, is very evident, I think, from the incredulity which is manifested in regard to the charges now on trial, though supported by the concurrent testimony of so many witnesses. But if in each separate case, the injured parties did not deem it expedient to expose and denounce the Respondent, then their subsequent course is perfectly consistent. If they had treated him in the way they must have felt that his conduct deserved, or even with coldness, their deportment would have become matter of observation, and they would have been called upon for explanations which they could not render. A dignified, Christian courtesy, therefore, seems to have been the course most consistent with the line of conduct they had marked out for themselves, under circumstances of so trying and delicate a nature. That the charges preferred in this Presentment, against a Bishop of the Church, are, *prima facie*, almost incredible, will readily be admitted. They indicate a habit of mind, and a fatuity of conduct, altogether unique and extraordinary. But a mere probability cannot stand against the positive testimony of so many unimpeached and (as we may presume) unimpeachable witnesses. I am, therefore, compelled to find the Respondent guilty on the first, second, fifth, sixth, seventh, and eighth specifications contained in the Presentment, and on the general charge of immorality and impurity.

It is my opinion, that the appropriate penalty provided by the Canon under which we are acting, is SUSPENSION.

THOS. C. BROWNELL,
Bishop of the Diocese of Connecticut.

New York, Jan. 3, 1845.

OPINION OF THE BISHOP OF NORTH CAROLINA.

The following opinion, the reading of which was, in my view, most unjustly arrested and forbidden in the proper place, is introduced here.

THE solemn question is now submitted to my judgment, whether the Rt. Rev. Benjamin T. Onderdonk, Bishop of New York, is *guilty* or *not guilty*, according to the testimony adduced in this Court, of the allegations contained in the Presentment made against him by the Rt. Rev. William Meade, the Rt. Rev. James H. Otey, and the Rt. Rev. Stephen Elliott. In forming my opinion on this question, my only solicitude has been to be governed by the spirit and precepts of that Gospel by which at last we must all be judged.

The first point, which presents itself to my mind, relates to the *amount* of testimony required to sustain an allegation against an accused brother. And here the Gospel, in my view, is explicit and imperative. Its direction, 1 Tim. v. 19, is as follows:—"Against an elder receive not an accusation, but before or *under two or three* witnesses;" or, according to the sense of the best authorities, "unless it be testified to by at least two or three witnesses." This direction, given by the HOLY GHOST—given to a *Bishop*—given to *guide his judgment* on charges preferred against an elder—is precisely applicable to the present case; in which Bishops, subject to the authority of the Holy Ghost, are called upon to give judgment in respect to accusations brought against an elder of the Church in the highest sense. I feel that I should do violence, therefore, to my clear convictions of duty, were I to attempt, by any means, to evade this Evangelical rule;—a rule, which the Church adopted in her best and purest age,* and from which she has not since felt herself at liberty to depart.

It is said, I am aware, that this rule of the Gospel is liable to conflict with the rule of the common law. Be it so. This is not an objection to be addressed to the mind of a Christian Bishop, bound in his conscience to act on the irreversible principles of the law of God: It is true, that, in some respects, the laws of our country, being the laws of imperfect men, are felt by the Church to be at variance with the spirit and requirements of the divine law; and that the decisions of temporal Courts are not always in accordance with the judgment of her tribunals. It is urged, I know, that to require *two* witnesses in the ecclesiastical courts, while one witness is admitted in the secular courts, might lead to an acquittal by the Church, of the man who was pronounced guilty by the State. Were this *inevitably* the case, which law is to yield, the human or the divine? But, suppose the amount of testimony, required to establish an allegation, be the same in both descriptions of courts; would this necessarily secure the same *decision* in both? Do not the differences in men's perceptions, and judgments, and motives, even in the same case and on the same testimony, often lead to opposite results? And hence, have we not before us constant examples, in which one court reverses the decision of another, or one jury renders a different verdict from another? But if, in the present case, we

* See Apostolic Canons—75 Canon.

are to admit, for the above reason, the necessity of acting upon the common law rule of evidence; we should, for the same reason, insist upon an *unanimous* verdict; as this is required of juries under such law. Besides, if in this Court we allow, as in our temporal courts, only *one* witness to a fact; then the lowest menial, arraigned at the bar of those courts, has an important advantage over a Bishop here: inasmuch as the evidence before a jury to obtain an unanimous verdict, must necessarily be stronger and more decisive, than is needed here where a bare majority may condemn. In addition to this, the accused, under the common law, has the privilege of challenging the members of a jury, on the ground of interest or prejudice; while each jurymen is made to declare, under oath, that he has not prejudged the case; nor formed his opinion as to the guilt or innocence of the prisoner. So that in the present trial, where there is neither challenge nor oath, and where a simple majority are to decide, the justice of the common law, even had the Gospel imposed no rule of evidence, would seem to demand a more than ordinary strength of testimony. I am obliged, however, by the rule of the Gospel before laid down, to insist, in the present case, upon *two* witnesses to each accusation made against the Respondent.

It may be said, perhaps, that if one witness testifies directly to a fact, circumstances corroborating this fact may be adduced in the place of the second witness. Admitting this view to be entirely consistent with the Gospel rule, yet how does it affect the testimony in this trial? To my mind, *most unfavorably*; as every circumstance attendant upon the alleged immoralities, goes to weaken the testimony adduced; to show, not that the witnesses actually perjured themselves, but that, under the influence of imagination and prejudice, and party bias, they have made an overstatement of the facts. Now, what are the circumstances, under which the alleged misdemeanors are said to have been committed? Some of these will be better exhibited under the specifications, to which they more properly belong. Still, there are certain circumstances, which characterize every case. (1) A Bishop is charged with immorality and impurity, on the testimony of a single communicant. And a Bishop, too, who had exhibited from his boyhood and youth, peculiar marks of piety, and freedom from "the lusts of the flesh;" and had passed a ministry of thirty years or more, in the same city and congregation, without reproach or suspicion. It might be demanded, surely, that such a Bishop should not be pronounced guilty, except upon the most stubborn and unquestionable proof; that his character and solemn assertion of innocence, should be allowed equal weight with the testimony of one respectable witness. But (2) a Bishop is charged with immorality at a *time*, when he is known to be especially odious to his accusers on the ground of doctrine; and to have gained a signal triumph on this ground in two successive Conventions of his Diocese. This circumstance, to say no more, ought not to be without its influence on the mind of the Court in its judgment of the testimony. Again (3) a Bishop is charged with having committed immoral acts under circumstances the most extraordinary—circumstances, in every case, admitting of immediate detection—as having made rude assaults upon wives in the presence of husbands, upon sisters within reach of brothers, upon parishioners at the side of pastors! The improbability here is enough, surely, to demand scrutiny and caution in respect to testimony. Again (4) a Bishop is charged on the word of witnesses, who themselves were the alleged victims

of his lustful violence, but without any expression on their part, at the time, of that virtuous indignation which, upon the commonest principles of human nature, might have been looked for; without exclamation, or such act of resistance as would attract the notice of persons in the same carriage or apartment. Even could we account, on the score of peculiar temperament or embarrassment, for the quiet submission under the alleged assaults, of a single virtuous female, is it possible to believe that *four* such females—the number testifying—should *all*, under the circumstances, have consented to the outrage with no more audible and emphatic expressions of resentment, than such as appear in their testimony? Again (5) a Bishop is charged by witnesses with having grossly and violently assailed their virtue, some *three* or *four* or *seven* years ago; who, at the time of the insult, did not think it of a character sufficiently grave to demand exposure; and whose husbands, too, in some cases presbyters of the Church,—notwithstanding the solemn vows of their office conspired with the impulse of a fresh indignity, to prompt them, in the Church's name, if not their own, to demand satisfaction,—consented to pass over the alleged immorality in silence. Again (6) a Bishop is charged with assaults upon the virtue of the witnesses years ago; while it is in proof, that many of these witnesses have since shown towards this Bishop a kindness and cordiality, wholly incompatible with the sense of wrong complained of in their testimony. Again (7) a Bishop is charged with acts of "immorality and impurity," upon proof known for years to the most aged and respectable presbyters of his Diocese, but without any action or attempt on their part to secure his Presentment by the Diocesan Convention—the body, first of all, intrusted by the general Canons with this duty. These circumstances, all of which, more or less, bear upon the testimony of each witness, tend, in my view, greatly to weaken such testimony; while they demand of this Court the most charitable judgment of the Respondent's acts.

The first article of the Presentment charges the Respondent with "immorality and impurity" in his conduct towards Mrs. Frances Livingston Butler, in the summer of 1837. The allegation is founded on the affidavit of her husband, the Rev. Clement M. Butler. The only witness to that part of the allegation, which could possibly imply "immorality or impurity," is the abovenamed lady. Her testimony must be viewed under all the discrediting circumstances detailed in the above seven particulars; and, besides, as directly at variance with the testimony of her husband in the gravest specification of his affidavit—the specification known to have produced more prejudice against the accused than any other contained in the Presentment; viz. that the accused *attempted to raise the clothes of his wife*; a thing which she, in her testimony, calls "*a little matter*," and which her husband, in a letter explaining the discrepancy, represents as of *trifling moment*. This, with various minor contradictions, which will be readily seen by a comparison of their testimony, leaves too little proof upon which to convict the Respondent. In my opinion, therefore, on this first article, he is *not guilty*.

The second article charges him with "immorality and impurity," in being, on the above occasion, "under the influence of, and improperly excited by, vinous or spirituous liquors." The *indefiniteness* of this allegation must necessarily render the proof indefinite, and hence the impression on the mind of the Court altogether doubtful: It must be dismissed, therefore, as too vague in itself, and consequently as not of necessity implying guilt

in the Respondent, even were it sufficiently proved. It is my opinion, therefore, that on this article he is *not guilty*.

The third article, founded on the affidavit of the Rev. Dr. Hawks, is contradicted in every material point by the only witness (the Rev. Mr. Bolles) adduced for the prosecution. On this, therefore, in my opinion, the Respondent is *not guilty*.

The fourth article was dismissed by the Court for want of proof. That this failure was not owing to want of exertion on the part of the Presenters, will be seen by reference to their various petitions to the Court, and to the correspondence between the Commission and Miss Ann Wilson.

The fifth and sixth articles are submitted with the single remark, that, to my mind, the absurdities of the testimony are too palpable and enormous for any human belief. I shall not hesitate here, therefore, to pronounce the Respondent *not guilty*.

The seventh and eighth articles charge the Respondent with "immorality and impurity" in his conduct towards Mrs. Charlotte Beare, the wife of the Rev. Henry M. Beare, during the summer of 1842. This allegation rests upon the testimony alone of this lady. She may be pious, and incapable of intentional misrepresentation; still she is shown to be fastidious and sensitive in the extreme. That which made a strong impression on her mind, in her ride with the Bishop in the morning, seems, upon its being told to her husband, to have had little effect upon him, but to have been regarded and treated as the exaggeration of an over-wrought fancy. He urges the Bishop to pass the night with him, against a previous invitation to remain at Mr. Franklin's; although, in going to his house, the Bishop must ride on the seat with Mrs. Beare. And on the way, too, his suspicions were so little excited by her complaint of the morning, that, according to his testimony, he did not even once look round to note the Bishop's conduct. And then, when he had arrived at home, and been informed by his wife of the second assault, his composure is utterly inconsistent with a full belief of the indignity alleged. He returns with her to the parlor, requests the offending Bishop to conduct the family devotions, and leaves him, with the usual tokens of good will, for the night. Morning comes, and they are all again seated quietly together at breakfast. Soon after this, Mr. Beare takes the Bishop in his carriage to Collège Point. On the way they stop at Mr. Franklin's. No coldness is here observed in Mr. Beare's manner towards the Bishop; and, indeed, no word of complaint or remonstrance is spoken, although they were alone during that morning's ride. Neither is there a word spoken respecting this matter, to any of the brethren at the Point. The Bishop is suffered to go on his way; and days elapse, before the matter becomes sufficiently important to require notice. In all this, there is, to my mind, a manifest want of confidence at first, on the part of the husband, in the correctness of the apprehensions of the wife. Something he believed; but it required time and frequent repetitions of the story, to fix in his mind a full belief of all that she has here testified. The excited state of Mrs. Beare, and the manifest incredulity of her husband, at least for a time, are enough to cast suspicion upon the testimony; to produce in the mind of the judge a fear, if not a conviction, that imagination has been mistaken for fact. Besides this, the subsequent conduct of Mr. and Mrs. Beare towards the Bishop greatly increases the difficulty, especially when we consider that the cordiality and friendliness of that conduct, although testified to by four or five most credible witnesses, is wholly forgotten by

themselves. They profess to have no recollection of having urged the Bishop, on his next visitation, to dine with them, notwithstanding his engagement at Mrs. Franklin's; while the Rev. Dr. Schroeder and Mrs. Franklin testify directly to the fact. Viewing Mrs. Beare's testimony, standing as it does alone, under the light which it thus reflects upon itself, I cannot regard it as conclusive or satisfactory.

It is pleaded, I know, that what is called the confession of the Bishop to the Rev. Drs. Milnor, Muhlenberg, and Higbee, supplies a second witness. It cannot be denied, that if the Bishop confessed the truth of the facts alleged in this case, it is sufficiently established. But here the testimony is confused, and somewhat conflicting. It seems that these gentlemen all agree in the fact, that at their first interview with the Bishop he denied these facts, or such of them as involved impurity; and denied them with apparent indignation. They also agree, that at the second interview the Bishop appeared to be much affected, and endeavored to soothe Mr. Beare; assuring him of his high regard, and that he did not *question the veracity of his wife*. Now to my mind, this last declaration, coupled with the deportment of the Bishop at the second interview, is not only perfectly reconcilable with his deportment and denial at the first interview, but also is obliged to be reconciled with them, if we admit, as we do, the truth of the testimony of Dr. Milnor. In the first place, the indignant denial of the first interview *may* be reconciled with the ready admission of the second. The *denial* was made in respect to actions alleged by a lady to be *impure*, and made under a sense of injustice. The *admission* was made, not to the lady bringing the allegation, but to her husband; between whom and the Bishop there subsisted the most affectionate confidence. When, therefore, at the second interview the Bishop addressed Mr. Beare, he addressed an intimate friend, for whom he felt the warmest interest, and whom he regarded as being under a misapprehension in respect to himself. What conduct then more natural, than that of the Bishop towards his young friend? The change of circumstances demanded in the Bishop a change of deportment. And when he replied to the inquiry of Mr. Beare, "Do you question the word or veracity of my wife?" "No, I do not question her *veracity*; but you know how easily in some minds innocent things may be magnified into faults,"—I see in this no necessary contradiction of what he had affirmed the previous day. But, in the second place, the testimony of Dr. Milnor, as to his admission of the Bishop, is absolutely irreconcilable with the idea of the Bishop's having admitted on the second day, what he had denied on the first. Let us examine. On the supposition that the Bishop admitted on the second interview the allegations of Mrs. Beare, which he denied on the first, Dr. Milnor, at the conclusion of these interviews, must have approached the Bishop, and, with the conviction burdening his mind that the Bishop had been guilty, by his own confession, not only of gross impurity, but also of direct and palpable falsehood, addressed him in the following language: (I give his own words,) "I hope, Bishop, that what has occurred in this instance will put you on your guard in future—particularly as I have heard other rumors of a similar kind." Now, is this the language of admonition, which a grave and holy presbyter, laboring under the above supposed conviction of his Bishop's impurity and falsehood, would have employed? Even making all due allowance for his respect for the Episcopal office, still, I ask, could the Rev. Dr. Milnor, in thus solemnly using his rightful prerogative, employ words, which, on the above supposition, must have en-

tirely defeated his own purpose, and confirmed the Bishop in self-delusion? But the Bishop replies to the Doctor. Is the reply such as we should have looked for from one who had just *confessed his guilt*? "In regard to rumors of this kind, Doctor, about clergymen, there are few who have not at some time had occasion to encounter them." Now, if Dr. Milnor had understood the Bishop as having confessed his guilt, would he not have replied to this in somewhat such language as the following: "This may, perhaps, be a sufficient answer in regard to unsubstantiated rumors; but as you have *confessed* the truth of Mrs. Beare's statements, I do not see how it can apply here." Instead, however, of such a course of remark, the Doctor simply rejoins to this effect: "Why, Bishop, I have been a clergyman in this city for some thirty years, and I am not aware that any such rumors have been in circulation about myself." Immediately upon this the reverend presbyters leave the Bishop's presence. But what course do they adopt concerning what had passed? Do they act like presbyters convinced of their Bishop's guilt? It is true, one of them expresses his disappointment at the result of the interview, in very strong terms. What, however, is their *united action*? For this must be regarded as the true exponent of their settled conviction about the matter. *They agree to drop it, and never again to mention it.* Here their testimony concurs. We are bound, therefore, in charity to themselves to infer, that they considered the Bishop as *having made no confession of guilt, and as having done nothing which really called for the discipline of the Church.*

On this last specification, therefore, my opinion is, that the Respondent is *not guilty.*

It is said, I am aware, that the allegations, all having respect to the same kind of acts, strengthen each other. This may be true, when we come to consider the motive or habit of mind of the actor; but not in determining the *fact* of his having acted as alleged. The rules of evidence under the common law require, that each fact alleged must be proved, as if it were the only one. But, in assigning motive or character to an action, we may safely inquire into the frequency and the circumstances of its commission. For example: A prisoner, arraigned for murder on a number of indictments, must be tried on each, as if it stood alone. And, in case the evidence on each should be found insufficient, no jury would for one moment think of allowing their number to operate in supplying this deficiency of proof. But if a prisoner, already convicted of manslaughter, should be arraigned for *murder*; and the question was, whether the act proved had been committed with *malicious intent to kill*, then it might be lawful in settling this question to have respect to his disposition and character, as developed on former trials. The case before us, however, involves simply a question of fact: Is the Respondent guilty or not guilty of the immoral acts, as severally specified in the Presentment? *Each act*, therefore, must upon every rule of evidence be proved, as if it were the only one charged. And, as each act, in my opinion, has *not been proved*, I consider the Respondent *NOT GUILTY* under the Presentment.

L. SILLIMAN IVES,
Bishop of North Carolina.

*Adjudication of Sentence in the Case of the Presentment against the
Rt. Rev. Benjamin Tredwell Onderdonk, D. D., Bishop of New York,
by the Bishop of North Carolina.*

[THE Bishop of North Carolina, in submitting the following *considerations* for the mildest sentence upon the Respondent, does it with the distinct avowal that, in his judgment, these considerations should have secured the Respondent's *acquittal*; and that nothing but the provisions of the Canon, and duty to the accused, could have moved him to concur in any sentence.]

In consideration,

1. Of the long, faithful, and irreproachable ministerial life of the Rt. Rev. Benjamin T. Onderdonk, convicted by a majority of this Court of certain allegations of immorality;

2. Of the character of these allegations, viewed in connection with the naturally free and paternal manner of the said Bishop;

3. Of the staleness of the acts alleged in the Presentment against him, and of which he stands convicted;

4. Of the peculiar and remarkable circumstances under which these acts are alleged to have been committed;

5. Of the fact that these acts were not considered at the time by the offended parties as of sufficient consequence in themselves to call for investigation;

6. Of the still more extraordinary fact, that after the things charged had come to the knowledge, and, in one case, actually been made the ground of the solemn and deliberate action, of three or four of the most distinguished presbyters of this Diocese; they were dismissed, or, by common understanding and agreement dropped as not calling for further notice;

7. Of the not less singular circumstance, that although the improprieties alleged had, for some years, been known; and the first and highest authority for presentment had, by Canon of the General Convention, been lodged in the Diocesan Convention; yet that no member, either clerical or lay, of the Diocese of the said Bishop has, according to the plea set up, made the smallest effort for his presentment;

8. Of the aggravating circumstance, that the said Bishop has for years been suffering under the imputation of the gravest charge sworn to by a presbyter of the Church; but actually withdrawn from the Presentment, as unfounded, and sworn to be false by one of the witnesses; and,

9. Of the gratifying fact—gratifying I doubt not to every member of the Court—that the said Bishop of New York, whatever may have been his previous habit of mind, has for nearly three years last past, and since the caution he received from the Rev. Dr. Milnor, given the best proof in an irreproachable life that that habit has been overcome; and that he is now successfully and valiantly leading the hosts of God against the world, the flesh, and the devil:—

In consideration of these things, and still adhering to the conviction declared in my opinion, that the Respondent is *not guilty*;

I, LEVI SILLIMAN IVES, Bishop of North Carolina, adjudge to the said Rt. Rev. BENJAMIN TREDWELL ONDERDONK, Bishop of New York, the *smallest degree of admonition* which the Canon, under which we pass sentence, will admit.

OPINION OF THE BISHOP OF THE DIOCESE OF VERMONT,

ON THE PRESENTMENT OF THE RT. REV. BENJAMIN T. ONDERDONK, D. D.

IN pronouncing sentence as one of the members of this Court, and on an occasion of such grave and peculiar interest, I think it due to the judicial character of my office, and to the high importance of the cause, to state my opinion at large, together with the reasons of my decision.

The accused stands before us on a solemn Presentment by three Bishops for IMMORALITY, according to the provisions of the third Canon passed by the General Convention at its session A. D. 1844. The specifications relied upon in proof of the general charge, exhibit sundry acts of an indecent and grossly insulting character towards respectable ladies, which the Respondent is said to have committed in despite of their indignant resistance, by thrusting his hand into their bosoms, and otherwise using such immodest familiarities with their persons as are utterly irreconcilable with the profession of a private Christian, much more intolerable in the case of a minister of the Gospel, and most of all, inconsistent with the pure example a Bishop, who is pre-eminently bound to set a pattern which the clergy and the people of his charge may safely follow.

In addition to these, the Presentment specifies one instance of undue and improper excitement with vinous or spirituous liquor; and to the whole, embracing six distinct offences from the month of June, A. D. 1837, to the month of July, A. D. 1842, the accused has entered the plea of NOT GUILTY. I place out of view, in this enumeration, the third specification, which was not fully proved; although I, together with another of the Bishops, presented a verdict which we conceive to have been warranted by the evidence. I also put out of view the fourth specification, which was not tried at all, by reason of the very reprehensible conduct of the witness, who refused to give her testimony. And the ninth article of the Presentment, which was deficient in the canonical requisites of time, place, and circumstance, was stricken out by order of the Court—so that the six remaining offences constituted the whole, which, by a majority of eleven to six, have been decided against the accused, after a long and laborious trial of twenty-one days, and a careful examination of the law and the testimony, with the assistance, on both sides, of able and experienced Counsel.

As one of the eleven Bishops who united in the verdict of guilty, I shall now proceed to state my view of the case; and this I shall probably be best able to do with clearness and precision, by considering the principal points of the argument presented by the Counsel for the accused.

It was eloquently urged on behalf of the Respondent, that the whole proceeding was to be discountenanced because it disturbed the peace of the Church—because it was the offspring of party feeling, engendered by theological controversy, and because it was brought forward by a conspiracy to destroy the Respondent's character and usefulness from motives of personal enmity.

Now to this preliminary statement I could attach no weight whatever, because the first part of it involved what I deem a serious error *in princi-*

ple, and the remainder was based upon an error *in fact*, totally unwarranted by the testimony, and on the face of it bearing the aspect of a very odious charge against a considerable number of the clergy and laity of the Church, including the three Presenting Bishops, and the witnesses; whose characters are certainly unimpeached, and therefore, as this Court may fairly presume, are unimpeachable. For we cannot forget that the Counsel on the other side not only denied the accusation in positive terms, but openly invited the proof of this alleged conspiracy, and formally waived their right to object to it, although in strictness it was irrelevant to the issue. On the ground of their consent, several members of the Court, of whom I was one, expressed their willingness to listen to the evidence; and yet the Counsel for the Respondent declined the opportunity thus fairly afforded to them. Under these circumstances I should have thought it due to candor to withdraw this gratuitous and offensive charge. And I confess myself unable to discover how the repetition of it in any form could be justified, even under the largest allowance for the art of rhetorical amplification.

The error in *principle*, according to my view of the matter, lies in the supposition that the peace of the Church can ever be invaded by a just administration of discipline, since there is nothing more important to her peace than the right performance of this very duty. We might as well be told that the peace of the community will suffer by the prosecution of offenders against the laws of the land, as that the peace of the Church can suffer by the prosecution of offenders against the sacred rules of her divine institution.

The inspired injunctions of St. Paul are numerous and weighty on this very point. And certain it is, that the peace which might be for a time preserved in appearance by the toleration of corruption, especially in the clergy, would only lead in the end to the utter subversion of the Church, either by forcing the better portion of her people to cast off all respect for her authority, or, if the infection should become universal, by converting her into a synagogue of Satan, while all her spiritual privileges should be taken from her faithless hand, and given to others. We have to thank God, however, that our system, on this whole important subject, sheds the clearest light upon the path of duty. For not only do our ordination services set forth in the most solemn and affecting terms the purity of conduct required by our office, and the duty of our being examples to the flock of Christ—not only do the Canons of the Church expressly direct that the clergy shall be subject to inquiry and trial for every departure from their sacred vows—but even in our 26th article, whose especial object it is to show that the unworthiness of the minister doth not hinder the effect of the sacraments, we read, at the close, the following words: “*Nevertheless it appertaineth to the DISCIPLINE of the Church that INQUIRY be made of evil ministers, and that they be ACCUSED by those that have knowledge of their offences, and finally, being found guilty, by just judgment, be DEPOSED.*”

But what becomes of all this admirable provision for discipline if the fear of disturbing the peace of the Church is to deter our Bishops from bringing to justice an offending colleague? And if those who in the language of our article “*have knowledge*” of the offences of an evil minister refuse to bear witness to the facts, and if others exert themselves to stifle investigation by working upon the interests or the fears of their weaker brethren, can there be a doubt in any honest and thoughtful mind that such persons commit a grave trans-

gression against the God of Truth, oppose the wholesome laws of the Church, and, so far as in them lies, nullify one of the plainest maxims of religious duty? Offences of a similar character, obstructing the administration of justice in our temporal courts, are rightly punished by fine and imprisonment. (Bl. Com. 4, 126; 6 East. 464.) And, therefore, while I lament that there are any among our ranks who pay more respect to the summons of an earthly magistrate than to the rules of our system or to the authority of this Court, yet I rejoice that the majority are resolved to do their duty before God without fear, favor, or affection; confident that the only peace worth desiring is the peace which His blessing secures, and leaving the consequences to Him who has promised that all things shall work together for good to those that love Him.

But this brings me to the next branch of the defence to which the Counsel for the Respondent has invited our attention. We have been told that the Canon under which we are called to act authorizes us only to try *present* immorality, whereas the most recent acts charged in the Presentment occurred more than two years ago, and immorality *then*, is not sufficient to prove immorality *now*.

Assuredly, if this argument were admitted, it would not only be a complete defence against this Presentment, but against all Presentments, and in all cases whatever. Happily, however, there is nothing in the Canon on which so strange an incongruity can be fairly chargeable. Most manifest it is, that immorality can only be proved by *acts*, and that those acts cannot be *present*, but must needs be *past* and *finished* before it is possible to make them the basis of the accusation. Hence it results that if *present* immorality be the only ground of trial, while, nevertheless, the acts by which alone it can be proved must needs be *past* before a trial can be ordered, we should have our whole discipline reduced to a palpable mockery, demanding conditions which are perfect contradictions in terms. I cannot think so meanly of the intellect of the Counsel as to suppose them converts to their own reasoning, although they seem to have thought it plausible enough for the tribunal to which it was addressed.

True indeed it is that the acts charged against the Respondent are not recent. But where are we to draw the line? The *gist* of the Presentment lies in the violation of the consecration vows, and any breach of the Respondent's solemn promises to God and the Church may be made a ground of accusation. We can find no other limitation than this, and have neither the right nor the power to create one. Hence, although we may regret that the facts in evidence before us have not long ago been made the subject of investigation, yet it is not our province to convert delay into impunity. Probably they would have been noticed, as they ought, if the defect in our Canon law had been supplied at an earlier day. But even if it be granted that justice has slept too long, would it follow that she ought never to be awakened? Or will it be seriously supposed, that because the accused ought to have been pronounced guilty two, four, or seven years ago, therefore he should be proclaimed innocent now?

It has, however, been said that this lapse of time is sufficient to authorize the inference of repentance. To this I reply, first, that repentance is a *fact* requiring *positive testimony*. And, secondly, that the inference which we are asked to draw, even if allowable in the absence of proof, would be utterly absurd in the present case, because it would contradict the plea of *Not Guilty*, which the Respondent has placed upon the record. How preposter-

ous would it be to infer that he has repented of his offences, when he thus denies that he ever committed them!

I was quite unable to perceive the consistency of this notion of repentance with the next argument of the Respondent's senior Counsel, in which it was insisted that there was no *immorality* in the acts specified. Not without extreme surprise, I confess, did I listen to this assertion. Nor can I believe, that if similar liberties had been taken with his own female connections, he would have hesitated about their immoral character and tendency. I do not think it necessary, by any means, to impute adulterous designs to the Respondent, nor to assume any secret motive beyond that which must, in ordinary construction, be connected with the acts themselves. But what father could tolerate such conduct towards his daughter? What brother towards his sister? What husband towards his wife? The common sense and instinctive judgment of every civilized community would condemn such acts as utterly unworthy any moral man. How unworthy then of the professing Christian! Could any private person be admitted to the communion—any candidate to the ministry—any priest to the episcopate, in the face of such testimony? And how passing strange, that when the hands of the chief pastor in our largest Diocese have been busied in wounding every sentiment of female delicacy, and outraging all the modesty and decorum of the sex, the zeal of the most devoted advocate can go so far as to say that in all this there was no immorality!

Two other lines of defence, however, have been taken, of which one turns upon the number of the witnesses and the other upon their credit. The first of these assumes that there must be two witnesses for every distinct specification of the Presentment; and this has been ingeniously argued from the language of the Mosaic law, from the precept of St. Paul to Timothy, and from the ecclesiastical law of our mother Church of England. And as it is a point of great importance and some apparent difficulty, and one that has had considerable influence upon the verdict of the minority of the Court, I shall enter fully into the argument, in the hope of illustrating the principles of our past as well as of our future action.

In order to treat the subject with all the fairness in my power, I shall commence with the evidence of the Holy Scriptures, and then take up the authority of the civil and canon law. And I think it will be manifest, on the whole, that we are under no obligation to regard the rule for which the Respondent's counsel have contended, but that we are bound to apply the maxims of evidence as derived from the common law, and universally practised in our age and country.

I willingly grant that the *general* rule of evidence in the Mosaic system required two witnesses to the *substantial* charge, or the *corpus delicti*. But to this general rule there were many exceptions, as plainly appears from the cases mentioned in the Book of Deuteronomy, xxii. 13–29. There was a great *principle*, however, in this divine system, of far higher importance than any mere question about the number of witnesses, namely, the principle of equal rights in the administration of justice which it secured to all men. For it cannot be pretended that the Mosaic law furnished any peculiar protection to the priesthood. The same evidence which was admissible against the lowest and the least of the people, was admissible against the High Priest himself; and the law of the Church and the law of the land were one and the same. Now if it were possible in our age and country to give the protection of such a rule to the whole community, there

might be some plausible ground on which we could sustain it. But as this is plainly out of our power, why should we make an invidious and unjust distinction in favor of the clergy? And if we adopted such a rule, under these circumstances, should we not purchase this matter of detail at the cost of violating the fundamental principle of the Jewish law, which enjoined the same free and equal administration of right to the priest and the layman?

As the matter now stands, we do indeed differ from the Mosaic law in this and many other details, but we agree with it in its most important principle. Who would be so unwise as to sacrifice such a principle for the sake of an unimportant detail?

My second answer, however, may to most minds be much more conclusive. It is simply this, that the Gentile Church of Christ is subject in no respect to the civil or ecclesiastical polity of the Mosaic system. That point was distinctly settled by the Apostolic counsel at Jerusalem, (Acts. xv.) and therefore no one can consistently aver that the rule of evidence enjoined on the ancient Jews was ever designed to bear on us with the slightest weight of obligation.

The whole array of scriptural authority, therefore, must be reduced to the single text in St. Paul's first Epistle to Timothy, [v. 19.] "Against an elder receive not an accusation but before two or three witnesses," on which we may be quite satisfied with the commentary of the learned Hammond, as follows: "What is the meaning of receiving an accusation here," saith he, "must be explained by the judicial proceedings among the Jews, where, before the giving of the sentence, there were three parts, first, *the admission of the cause, or suit*, when the judge doth not reject the complaint or accuser, and that is here *κατηγορίαν παραδέχασθαι*, to admit an accusation. After the complaint is admitted, then, second, there is the *confirmation* of the suit or complaint when the accuser confirms his suggestion by oath. The third part is the searching out of the cause by arguments afterwards produced and considered of by the judge. The first of these only, it is that belongs to this place, *the admission of the complaint or accusation*, which against a *πρεσβύτερος* or governor of the Church is not allowed under two or three witnesses in respect of the gravity of his person and weight of his office or calling, who must not be defamed (as the being brought into court is a kind of defamation) if there be not great cause for it." The same interpretation is given in Poole's Synopsis: "*Aliud est Accusatio aliud Judicium de accusato sine sententia Judicis absolventis vel. condemnantis. Lege Mosis nemo damnari poterat criminis nisi causâ probatâ per testes duos. At poterat ad unius testis (qui non erat infamis) dictum vir plebeius capi, aut contra eum inquisitio incipi; non ita autem contra senatorem cui æquiparatur Presbyter. In judiciis Hebraeorum tres erant partes sine gradus. 1. ADMISSIO CAUSAE sive litis quum Juxta accusationem non rejicit. Id hic est κατηγορίαν παραδέχασθαι. 2. Confirmatio litis accusatoris juramento. 3. Inquisitio litis argumentis utrinque productis. Nota non dici, NE DAMNA, sed NE RECIPE ACCUSATIONEM repelle delatores. Et cur non? Resp. 1, Ob gravitatem personae et momentum atque dignitatem muneris illius," &c.*

Now it is perfectly plain from this, that the Apostle, in his precept to Timothy, was not contemplating the point of evidence upon the trial at all, but the quite distinct question of the caution which the ecclesiastical judge should use in receiving charges against his presbyters. For surely it is manifest, that the receiving of the *accusation* must be a prior and distinct act on the part of the judge, and the receiving of the *evidence* must be a

subsequent and very different matter. The accusation is the charge; or, as we should say in the case before us, the Presentment against the accused party. This accusation St. Paul desires Timothy to receive, not privately but openly, *before two or three witnesses*, who might consult with him as to the importance of the charge, and the propriety of calling on the party to answer, so as to secure the careful deliberation necessary before the actual commencement of any judicial proceedings against the clergy, in whose trials there was more danger of strife and dissension arising, than in those of other men. In precise accordance with this most natural interpretation of the text, our own Canon provides, that no accusation shall be received against a Bishop, unless it be approved and presented by *three of his brethren*; thus fulfilling to the letter, in the very first step towards judicial action, all the conditions which the Apostlé requires. *Before these witnesses*, our presiding Bishop has received the accusation; and this was done before the Respondent was cited to appear; before we were called upon to occupy the seat of justice, before the party was bound to answer; and therefore, before it could certainly be known whether any witnesses would be needed on the trial. Hence the *witnesses to the reception of the Presentment*, must be carefully distinguished from the *witnesses to the truth of the facts* on which the Presentment is founded. The language of St. Paul may be properly applied to the one, but has no relation whatever to the other.

Thus much may suffice for this supposed authority. But I must go farther and say, that if the words of the Apostlé had been as express as the Respondent's Counsel were willing to assume, they would only prove the rule laid down for Timothy, without at all affecting the question of its obligation on the Church in our day. For the distinction is universally admitted among theologians, between the *doctrines of faith*, which are unchangeable, and matters of *temporary discipline*, which the Church has changed, and may change at any time for sufficient reason; such as the kiss of charity, the love-feast, or *agape*, the order of deaconess, the washing of feet, the anointing with oil, the direction which obliged women to wear veils in their public assemblies, the rule forbidding men to wear long hair, the mode of worship prescribed to the Corinthians, and other matters of a like nature. Nothing, therefore, can be more evident to my mind than the conclusion, that the objection to the testimony, founded on the supposition that St. Paul laid down a permanent law for the Church, requiring two witnesses to prove on the trial each distinct specification of the charge, is altogether untenable.

I now come to the other and more plausible assertion, that the rule of evidence which demands two witnesses for each fact, is a part of the canon law retained and fully established in the ecclesiastical courts of the Church of England, and therefore binding on this Court.

Both parts of this complex proposition I deny, and shall endeavor to show, first, that the rule for which the Respondent's Counsel contend is not always exacted in the ecclesiastical courts of the civil and canon law; and, secondly, that even if it were, it would by no means follow that we ought to be bound by it.

The general rule, undoubtedly is, that a single witness is not sufficient in the civil law; nor in the canon law, which is mainly based upon it. But this rule is subject to a variety of exceptions. Thus, for example, the learned commentator, Blackstone, (iii. 370,) speaks of one of the contrivances for evading the strictness of its application. "To extricate itself out

of the absurdity of this rule," saith he, "the modern practice of the civil law courts has plunged into another. For as they do not allow a less number than two witnesses to the *plena probatio*, they call the testimony of one, though never so clear and positive, *semi plena probatio* only, on which no sentence can be founded. To make up, therefore, the necessary complement of witnesses when they have one only to a single fact, they admit the party himself (plaintiff or defendant) to be examined in his own behalf, and administer to him what is called the *suppletory oath*, and if his evidence happen to be in his own favor, this immediately converts the half proof into a whole one. By this ingenious device, satisfying at once the forms of the Roman law, and acknowledging the superior reasonableness of the law of England, which permits one witness to be sufficient where no more are to be had; and, to avoid all temptations to perjury, lays it down as an invariable rule that '*nemo testis esse debet in propria causa.*'"

Again, there have been many decisions in the English superior courts requiring that *temporal incidents*, coming collaterally into question in the spiritual courts, must be taken as proved, if the evidence be such as would suffice at common law; and prohibitions have been granted accordingly, because the ecclesiastical judges would not allow one witness to be sufficient: (see cases of Richardson and Desborough, Shotter and Friend, Bredon and Gill, in Burn's *Ecc. Law*, ii. 240.)

Again, it is laid down as a clear principle of the civil law, from which the canonists have confessedly taken most of their rules of evidence, that "a complete proof might be adduced without any witness, by deeds or instruments, and the evidence of ONE WITNESS CORROBORATED BY CIRCUMSTANCES, or circumstances without a witness, furnish conclusive proof in crimes as well as civil actions," (ib. p. 239, in note to Tyrwhit's edition.)

And again, the "ordinary rule of ecclesiastical law is satisfied by receiving one witness to the fact, and another to the circumstances," (*Hutchins v. Denzilo*, 1 *Hagg. Repp.* 182.) Thus, in a suit for defamation it is sufficient if there are TWO WITNESSES WHO SPEAK SEPARATELY TO FACTS OF DEFA- MATION, COMMITTED AT DIFFERENT TIMES, (*Crompton v. Buller*, 1 *Hagg. Repp.* 463.) So in treason, viz. the case of the *Regicides*, *Kelyng*, 9, long before 7 and 8 *Will*, 3 c. 3, § 2, "it was resolved by the judges, that one witness to prove one act, tending to compass the king's death, and another witness to prove another act, tending to the same end, was sufficient; and that there need not be two witnesses to prove every overt act tending to the same treason," (ib.)

Here, then, we see that even the ecclesiastical courts themselves allow one witness to each fact belonging to the same charge, and that the same license is admitted in the secular courts on a trial for treason; that circumstances will supply the place of one witness; that temporal incidents arising collaterally must be allowed to be proved by one witness, or the superior courts in England will prohibit the ecclesiastical judges from proceeding; nay, that these judges, by the ingenious device of a suppletory oath taken by the party, allow their half-proof by a single witness to be converted into a whole one, so that nothing seems wanting to prove how liberal the Canon law is in its admission of exceptions, nor how little the Respondent's Counsel would gain if indeed this Court could resolve to bind itself to such a system. For certain it is that the first and second specifications have been proved, and the seventh and eighth specifications still more largely, by testimony abundantly sufficient according to the practical administration of the

ecclesiastical law of Europe, while the case of *Crompton vs. Butler*, above cited, would fully sustain the amount of evidence to the fifth and sixth specifications. Hence the case before us stands perfectly clear of the difficulty even on the principles of the Canon law.

But although the question seems thus easily disposed of, so far as the present trial is concerned, yet I should think myself blameworthy, if I suffered it to be supposed that I for one could consent to be governed by the maxims of the civil and canon law in preference to the far more simple and eligible system of our day and nation. I shall therefore go on to show that we are not, and ought not to be subject to it, but that we are, and ought to be, rather subject to the rules established and recognised in our own age and country, since thus only can we sustain the great fundamental principle already proved from the Mosaic dispensation, viz., that the maxims of truth and righteousness, and the administration of justice, should always, as far as possible, be one and the same, whether they be applied to priest or people.

That they were so in ancient Israel, I have shown sufficiently, and it cannot be disputed that the same conformity existed in the Church: for everywhere in her history we find the utmost respect paid to the common law, or the law of custom, without the slightest desire to erect a different system for the administration of justice within the Church herself, until the despotism of the papacy, after the eleventh century, forced its canon law among the nations of Europe. Before that period it was only in those parts where the civil law of ancient Rome prevailed that the judicial system of the Church was accommodated to its rules and forms of proceeding. For, as the Gospel became extended amongst the various nations which had overrun the Roman Empire, the Church yielded to the customs of each age and people; and while she endeavored to preserve the unity of faith and worship, she justified the rule of expediency in all those inferior things which belonged to discipline, and were therefore admitted to be alterable in their nature.

That such was the fact, especially in the ancient Church of England, is incontrovertible. "In the time of our Saxon ancestors," says Blackstone, (Com. iii. 62,) "there was no sort of distinction between the lay and the ecclesiastical jurisdiction. The county court was as much a spiritual as a temporal tribunal; the rights of the Church were ascertained and asserted at the same time and by the same judges as the rights of the laity. For this purpose the Bishop of the Diocese, and the alderman, or, in his absence, the sheriff of the county, used to sit together in the county court, and had there the cognizance of all causes, as well ecclesiastical as civil; a superior deference being paid to the Bishop's opinion in spiritual matters, and to that of the lay judges in temporal."

"It was not till after the Norman conquest," continues this distinguished author, "that the papal doctrine of all ecclesiastical persons and causes being solely subject to ecclesiastical jurisdiction, was received in England, when William I. (whose title was warmly espoused by the monasteries, and by the foreign clergy whom he brought over in shoals from France and Italy) was at length prevailed upon to establish this fatal encroachment, and separate the ecclesiastical court from the civil." The ecclesiastics, governed by the influence of the pope, took their rules of proceeding from the Decretals of Gratian, which were modelled after the newly revived civil law in the following century; and hence the temporal courts followed the laws of England, while the spiritual courts followed the laws of Rome. The opinion of this great jurist, therefore, is positive

and clear, that the canon law, in England itself, has no inherent force; but rests merely on the allowance of custom. "The civil and canon laws," saith he, "considered with respect to any intrinsic obligation, have no force or authority in this kingdom; they are no more binding in England, than our laws are binding at Rome. But as far as these foreign laws, on account of some peculiar propriety, have in some particular cases, and in some particular courts, been introduced and allowed by our laws, so far they oblige, and no farther, their authority being wholly founded on that permission and adoption. In which we are not singular in our notions; for even in Holland, where the imperial law is much cultivated, and its decisions pretty generally followed, we are informed by Van Léeuwen, that it receives its force from custom and the consent of the people, either tacitly or expressly given; for otherwise, he adds, we should no more be bound by this law, than by that of the Almans, the Franks, the Saxons, the Goths, the Vandals, and other of the ancient nations. Wherefore," continues Blackstone, "in all points in which the different systems depart from each other, the law of the land takes place of the law of Rome; whether ancient or modern, imperial or pontifical."

On the same ground does the learned Boehmer place the civil and canon laws in Germany, viz., on the ground of usage, consent, and custom. These are his words: (Boehm. Jus. Eccl. Protest. T. I., p. 96, Lib. 1; Tit. II., § xxi.) "*Quamvis itaque nulla publica auctoritate decretum (Sc. Gratiani) corroboratum sit inde tamen minime inferri potest illud authenticam decidendi vim non habuisse. Habuit revera eadem fata in foro quæ juri Romano obtigerunt. Hoc nulla publica lege receptum aut approbatum, respectu Germaniæ jus plane extraneum imo ita comparatum est ut in plurimis a moribus Germaniæ abhorreat, et institutis antiquis e diametro adversetur. Et tamen legistarum usu, applicatione doctrina, et commendatione adeo receptum est quamvis in subsidium, ut de authentica ejusdem auctoritate et vi decisiva nemo amplius dubitet. Non ergo mirandum quod decretum Gratiani eadem facilitate, ipso usu et PRAXI per decretistarum artes labore et studia tandem receptum fuit.*"

Here, then, we behold the true ground of all the authority which the civil and Canon laws can justly claim, even in those countries where they have been for ages in full vigor, viz., the ground of custom and usage. But these laws have never been adopted by us. We have no custom, usage; nor allowance, which can be pleaded in their favor. Our system of Canon law is indeed young and imperfect, but it has, thus far, plainly been modeled, not upon the plan of those Roman formularies, but in close analogy with the clear and simple jurisprudence of our own day and country. Nay; the very Canon under which we are called together in our judicial character, can only be understood consistently with the established principles of the common law. For the description of the presentment, the phraseology of the plea, the taking of the testimony, the allowance of counsel, the call upon the accused to address the Court, if he thinks proper, after the verdict, upon the issue, and before the sentence is declared,—all this shows that the framers of the Canon were governed by the common law, and had no idea whatever of engrafting upon our branch of the Church the scions of the old imperial and papal system.

Indeed, I might well ask how our ecclesiastical legislature—the General Convention—could be supposed to intend that we should be governed by a code with which there is not a man among us familiar? Who was there in either

of the Houses that had ever seen a trial at Doctor's Commons, or knew the mode of proceeding in these ecclesiastical courts? How could we have performed our painful duty at all, if we had not been guided by those laws to which we are accustomed, and those principles which we understand? And can there be a notion more extravagant and preposterous than this: that the legislature of the Church shall be supposed to have intended an absurdity; that the judges of this Court should be expected to administer justice according to a code of which they must needs be profoundly ignorant; and that the parties should have the benefit of Counsel who could know but very little, if any thing, of the laws which are to govern the case?

How plain, then, does it seem, that we must be guided by the simple analogy of the common law, since thus only the whole becomes practicable, direct, and clear; the Legislature, the Court, the Counsel, the Church at large, and the surrounding community, all enabled to comprehend the duty to be performed without difficulty or hesitation.

Seeing, therefore, that on every principle of sound construction, our system of American Church-legislation must be interpreted by the analogy of our own established and familiar system in the courts of common law, and not by the canon law, which has been derived from the Church of Rome, and is nowhere in existence in this country, except in the hands of the Roman priesthood, I have only to remark, briefly, on the testimony given in support of the Presentment, and so conclude an opinion which has carried me far beyond the limits which I anticipated.

The witnesses who have come forward to prove these specifications, are manifestly influenced by no resentment, and so far are they from having volunteered their testimony, that they appear to have been urged to a fulfilment of their trying duty by a conscientious sense of their Christian obligations, involving no small share of endurance and self-denial. Several of them sustained the most minute examination and cross-examination for more than five hours together. The ladies who passed through this painful ordeal deserve much praise for the gentle firmness and strict propriety which marked their whole deportment, and I trust they will reap an ample reward in the approbation of that Divine Redeemer, who is the truth itself, and in the favor of all his faithful and consistent people.

As to their characters, no attempt has been made by testimony to impeach them. And the industrious effort to contradict them in a few trifling and unimportant particulars, did not seem, in my mind, to affect their credit in the slightest degree.

Never, in the course of many years experience, have I seen such a body of witnesses. Clergymen of unspotted reputation, their wives exemplary and blameless, communicants active and zealous of good works—such are the persons, on whose solemn oaths we have decided this afflicting issue. And I do not hesitate to say, that if I could admit a single doubt of the substantial correctness of their evidence, I should be compelled to abandon all faith in human testimony.

Nothing now remains of this most painful duty but the pronouncing of the sentence, which, after the most mature reflection, seems due to the discipline of the Church and the character of her clergy. It is my judgment, then, that the Respondent be deposed from the office of a Bishop, and from all the functions of the Christian ministry. Willingly would I have chosen the lighter sentence of indefinite suspension, if that would have relieved the afflicted Diocese of New York from a bond which can no longer be con-

tinued with any good result to its interests or welfare. But I do not see how the Court, in passing such a sentence, could avoid the risk of making many suffer for the sake of one, thus indirectly punishing the innocent along with the guilty.

I shall add no comments upon the melancholy character of the task, which, in the order of Divine Providence, has devolved upon us. Alas! who can contemplate the result to the Respondent, without a yearning of spirit and a deep searching of heart, to which no ordinary power of language can give utterance! Who can think, without humiliation and sorrow, of the occasion given to the enemies of God to blaspheme, when for the first time, I believe, since the Reformation, a Bishop has been tried and condemned for immorality!

Yet, if the Church has cause on the one hand to mourn over the grievous errors which have called for this correction, she has cause on the other for fervent gratitude to God, that vigor and energy enough are found within her to administer it without respect of persons. "IT MUST NEEDS BE THAT OFFENCES COME." There never was an age exempt from them—there never will be until the end of this dispensation. The "WO," however, is pronounced on "HIM BY WHOM THE OFFENCE COMETH," and not upon the Church which vindicates the honor of her Divine Head and the character of his ministry. The gloom, the distress, and the agitation of this solemn chastisement, will soon pass away. But the purifying effects of it; I humbly trust, will be deep and lasting. For henceforth it will be understood that no individual among us stands so high in influence or station, as to bid defiance to the Church's discipline; and the office of a Bishop will be more revered than ever, when it is known that it is only an instrument of good, without the possibility of it becoming a refuge for evil.

May the affecting lesson be profitable to every soul among us! May he that thinketh he standeth take heed lest he fall! May the spirit of godly fear and self-distrust, and watchfulness, and prayer, abide on all the ministers of the sanctuary! And may our Heavenly Father, the Almighty dispenser of all mercy, and truth, and grace, and consolation, sanctify this our painful work of duty; and direct its ultimate results to the glory of His holy name, to the edification of His Church, and to the final salvation and felicity of our offending brother, through Jesus Christ, our Lord!

J. H. HOPKINS.

OPINION OF THE BISHOP OF KENTUCKY.

THE opinion of the Bishop of Kentucky is in favor of suspension—

1. Because the punishment of degradation is reserved for crime; and immorality, not crime, is here alleged and proved.
2. Because the analogy of the case of the late Bishop of Pennsylvania is so nearly similar, that no sufficient reason appears to his mind for varying the amount of penalty then fixed upon.

OPINION OF THE BISHOP OF NEW JERSEY.

DECLARATION OF OPINION

IN THE

COURT OF BISHOPS,

ASSEMBLED FOR THE TRIAL OF THE RT. REV. BENJAMIN T. ONDERDONK, D. D., BISHOP OF NEW YORK;

Prepared, and intended but not permitted to be read, *before* the decision of the question, "guilty," or "not guilty?"

I AM called on to declare whether, in my opinion, the Respondent in this case is "guilty" or not "guilty" of immorality and impurity, in the following article, of the Presentment, which has just been read, viz., "That the said Benjamin T. Onderdonk, on or about the first day of June, in the year of our Lord 1837, being then Bishop of the said Church in the Diocese of New York, was engaged in a tour of official duty, and was proceeding to the town of Syracuse, in Onondaga county, in said Diocese of New York, for the purpose, among other matters, of ordaining the Rev. Clement M. Butler to the Priesthood; that on his way to, and near, the said town of Syracuse, the said Clement M. Butler, together with his wife, met him in a carriage, for the purpose of conducting him, the said Benjamin T. Onderdonk, to the said town; that the said Benjamin T. Onderdonk entered the said carriage, and took his seat on the back seat thereof by the side of the said lady; that they two alone occupied that seat, the said Clement M. Butler and a person driving occupying the front seat; that thereupon, afterwards, the said Benjamin T. Onderdonk impurely and unchastely put his arm around the body of the said lady, and in an improper and unbecoming manner pressed the said lady towards him; that the said lady endeavored to repress the said familiarities, and to bring said Benjamin T. Onderdonk to a just sense of his duty in that behalf; that the night came on before the said parties reached the end of their journey, and that after it became dark, the said Benjamin T. Onderdonk renewed his said improper conduct, and impurely and unchastely did pass his hand down and along the person and legs of the said lady, and did otherwise behave towards her in so rude and indecent a manner, that she, the said wife of the said Clement M. Butler, was obliged to claim the protection of her husband, and thereupon she left her seat in the said carriage, and rode upon the front seat thereof for the rest of the journey, in doing which she was obliged to sit upon her husband's lap; and that owing to, and in consequence of, the said conduct of the said Benjamin T. Onderdonk, the said lady became seriously sick, and her health was so much affected as permanently to injure her constitution. All which said actings on the part of the said Benjamin T. Onderdonk, the said Bishops presenting do charge as being in violation of his duty as Bishop, and contrary to his consecration vow in that behalf, and to the great scandal of the Church of Christ."

I feel that the "opinion" I am thus called to give, is the most important I have ever given; and I must be allowed to enter at some length into the grounds on which I give it. It is a most extraordinary case. It is as important as it is extraordinary.

The Respondent stands before us in his native place. For more than fifty years he has resided in this city; the scene of his education, and the chief seat of his labors, as it is the home of his birth. His childhood and his youth were singular in purity and piety. For almost three and thirty years he has exercised the ministry of Christ. For twenty years he was connected with the largest parish in our whole communion; assiduous in all the duties, exemplary in all the relations of his office. A most devoted pastor; faithful and capable, quite to a proverb, in what is called "the business of the Church," diocesan and general; the kind, and careful, and laborious teacher of young men in preparation for the ministry; directing in their theological training a multitude of our most useful ministers, and several of the Bishops. From his earliest connection with the ministry, he enjoyed the fullest confidence of that most singular discerner of the characters of men, the honored HOBART; and from the nearest place to him, as counsellor and fellow-helper in the cares and labors of his office, was called to be his successor in the apostleship. Before his elevation to that office, and for some years afterwards, it may be said, without the fear of contradiction, that never any word was heard to call in question his ministerial, his religious, or his moral character; while no man can be found to say, that he has ever seen a more entire and unreserved devotion of soul and body to the Church. Of his administration of the Diocese of New York, before and after its division, the record is before us all, in the continual, unexampled increase and prosperity which God has granted to the prayers and labors of His servant. A blessing much enhanced, and rendered more significant by this, that in two successive Conventions of the Diocese, the last which have been held, when his Church principles, and his policy as Bishop, were made the subject of the freest discussion, and most direct and vigorous opposition, he was sustained by overwhelming majorities in both of the two orders: and not a man among two hundred clergymen, or among the lay representatives of one hundred and sixty-four congregations, to hint at the preferment of a single charge against him. That three short months should have produced a change so great and so disastrous in the position of the Respondent, is among the aspects of the case which make it extraordinary, to the very borders of romance. Is it not extraordinary, and well nigh without example, that such a childhood, such a youth, and such a manhood, should justly lead to such a posture in old age? Is it not extraordinary that, if there be just grounds, and were, and they notorious (as it is said) as long ago as 1838, that in neither of these two Conventions,—I do not say the canonical minority in the two orders; I do not say an aggregate majority of the whole body; I do not even say a responsible though small minority;—but I do say, one single man of clergymen or laymen, could be found to move for an investigation, in redemption of the honor of the Church? This surely is a case most extraordinary. And as important as it is extraordinary. I do not mean, immense as that must be, in its bearings on the Respondent and his Diocese alone. I mean as it affects, and must affect, for ever, our whole Church; its mutual intercourse, its present interests, its future influence, its history, its name, and fame. It is the first carrying out of the canonical provision for the trial of a Bishop. The

weight and value of the Church's discipline hereafter, in all its branches, and in all its bearings, will much depend on the decision of this case: that, as we promised at our consecration that we would be, so we now approve ourselves to be, "so merciful that we be not too remiss; so minister discipline that we forget not mercy."

Is the Respondent "guilty or not guilty of immorality and impurity," as stated in the "article" now before us? To say that he *is* guilty of present "immorality and impurity" by reason of an act committed, if committed more than seven years ago, is obviously absurd. "Immorality," in Johnson's definition of it, is "want of virtue—contrariety to virtue." "Impurity" is a quality or habit of the mind or heart. To hold that he who ever has been tainted by the passage of an impure thought, is guilty of it now, would be to shut us all out from the sight of God. Needful for all of us that prayer of David, in his penitence, "Oh, remember not the sins and offences of my youth!" It never can be held that if this charge were proved to the full, it would establish "immorality and impurity," at present. I make this remark once for all, as applying, in proportion to its date, to every charge in the Presentment: and I put it to the heart of every Bishop to say now, whether, if all of them should be established, he could sustain, against the admitted silence of two years and a half, the expression of the Presentment, "*being* guilty of immorality and impurity;" that is to say, *now* addicted to immoral or impure habits.

But is the charge, as it now stands, established? In setting forth a charge so old in date, the Presentment lays itself under severe responsibilities, as to the nature of the evidence required for its establishment. The rule is granted on all hands, as founded, not on any law, but on the just allowance for infirmity of men, in failure of memory, in the death or absence of material witnesses, in bar of frivolous, vexatious, or vindictive prosecutions, that, in such cases, the clearest proof shall be required for every allegation; while general explanations are to be allowed in the defence. This is the voice of human nature, older than all statutes, and more authoritative than any. It is incorporated in every statute book. It is adopted, without statute, in the courts of equity. It is of obvious and universal obligation. It especially applies, in the latter portion of it, that general explanations are to be allowed in the defence, to cases such as this, where the immoral acts alleged are of a nature seldom susceptible of a direct rebuttal. The Presentment, in taking in matters of allegation so remote in time, is to be held, therefore, to the adduction of the clearest and the most abundant proof.

Is the specification of "immorality and impurity," as it stands in article I. of the Presentment, so sustained? It is "an accusation against an elder." It is an accusation made in a Church Court. It is held, therefore, in strictest terms, to the Church rule. Now, what is that? Where shall we look for it? To holy Scripture, first. If God has spoken, man must not object or qualify. I turn then to the three Epistles, which have been always held as the inspired directory of order and of discipline for the whole Church, in every age. I find the apostle Paul, writing by inspiration of the Holy Ghost, giving express directions to the first Ephesian Bishop, (1 Tim. v. 19,) "Against an elder receive not an accusation but before two or three witnesses," clearly intending, as the original; and all received expositors will show,*

* I invite particular attention to the authorities which follow. I begin with POOLE, who, in his exposition of this text, condenses and combines the critical

on the authority of "two or three witnesses." I go not back for any confirmation of this rule to the Old Testament. It needs no confirmation. The apostle had the mind of Christ. What he enjoins is to us an injunction from the Lord our God. We are not to object to it from any consideration of consequences. We are not to qualify it by any consideration of convenience. It is, "Thus saith the Lord." He saith it who knows all possible

authority of Erasmus, Beza, Scultetus, Tremellius, Molinæus, Illyricus, Pagninus, Castalio, Vorstius, Piscator, Danæus, Pricæus, Hammond, and Grotius, relying chiefly on the last. "Against an elder," (either, 1, in age; or more properly, 2, in honor or dignity, as the context shows,) "receive not an accusation," (or ecclesiastical charge,) "except under two," &c. [In the original, he says (literally, *unless, if not*) there is a pleonasm, or double negation; which, in Greek, as scholars know, makes the denial more intense.] A ruler seems to be instructed here, called by eminence, an overseer, or Bishop. For it belonged to such to regulate the conduct of elders. Timothy, at that time, presided over the elders at Ephesus. It may be asked, What need of this new rule concerning elders, when of every accusation it is written, as in Deuteronomy xvii. 6, "At the mouth of two witnesses, or three witnesses," &c. ? From this consideration some have thought the text should be erased, as being superfluous. But the bringing of an accusation is one thing, and the trial of the accused, whether the sentence of the judge acquit him, or condemn him, is another. By the law of Moses, no one could be condemned for any crime, but on the testimony of at least two witnesses. ["One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth: at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established." Deut. xix. 15.] One of the common people, however, might be arrested, and an investigation of his case commenced, on the testimony of one witness, not being an infamous person. It was not so, however, with a member of the Sanhedrim, to whom an elder is here made equal. In Jewish proceedings at law, there were these three stages. The *admission* of the charge, when the judge does not dismiss the complaint; its *confirmation*, by the oath of the complainant; and its *trial*, when the proofs and arguments on either side are brought. Observe, the apostle does not say *condemn* not; but *receive not an accusation*, (except on the authority of two or three witnesses.) Repel informers. And why so? 1. By reason of his weight of character, and of the importance and dignity of his office. He is not to be discredited, therefore, without great cause; for his discredit is joined with the scandal of the whole Church. It concerns the whole Church, therefore, that his reputation be not easily impaired. 2. Because the judgment of the whole people in his behalf, at his election, readily outweighs a single witness. 3. Because the people are severe towards those that are set over them, and feed them, and habitually exaggerate their failings. For such is the malignant temper of the human mind, that those whose duty it is to reprove the faults of others, are much exposed to their ill-will. In the case of old men, there is this farther consideration, that evil should not lightly be believed of one advanced in years, whose past life is his protection, and his very name a mark of dignity. *In loco*.

HAMMOND, discussing, in his full and learned way, the three gradations in a Jewish suit at law, concludes as follows: "The first of these only it is that belongs to this place, the *admission* of the complaint, or accusation, which, against a presbyter, or *governor*, of the Church, is not allowed under two or three witnesses, in respect of the gravity of his person, and weight of his office or calling, who must not be defamed, (as the being brought into the Court is a kind of defamation,) if there be not great cause for it." *In loco*.

WHITBY, first rendering the text, "Against an elder receive not an accusation but upon the testimony of two or three witnesses," proceeds to say: "Whereas the law had taken care that *no man should be condemned*, but by the mouth of *two or three witnesses*, the Apostle, knowing how much the Church would suffer by the rash accusation of her governors, bishops, and presbyters, seems to rise higher,

results, and never is unmindful, in one commandment or one ordinance, of the infirmities of his poor human creatures. I take the apostolical injunction, therefore, as it stands, and I apply it literally. It is not true that he intended merely to enjoin the application to an elder, of a rule which held among the Jews for every man's protection; nor that he meant to enforce through Timothy, the Jewish usage on this subject.

not suffering an accusation to be admitted against them, without the like number of witnesses." In loco.

BLOOMFIELD, *in loco*, refers to Whitby, and translates "before," *under the testimony of "two or three witnesses."*

MACKNIGHT, paraphrasing the text thus—"Against an elder, whether he be a bishop, a president, or a deacon, receive not an accusation, unless it is offered to be proved by two or three credible witnesses," says, in his note, "this," ("by two or three witnesses.") "I think, is the proper translation of the clause. For I see no reason why an accusation against an elder should not be received, unless in the presence of witnesses. But I see a good reason for not receiving such an accusation, unless it is offered to be proved by a sufficient number of credible witnesses. This method of proceeding puts a stop to groundless accusations of the ministers of religion." *In loco.*

THOMAS SCOTT. "The character of an elder or pastor was of very great importance: it would therefore be improper not only to condemn him, but even 'to receive an accusation against' him, except it was attested by two or three credible witnesses. Many might be disposed to revile those faithful ministers, whose doctrine and reproofs had offended them; and indeed, the grand enmity of 'the accuser of the brethren,' and of all his servants, would be excited against them. It was therefore highly reasonable that no accusation, tending to bring the conduct of an elder to a public investigation, and thus to impeach or endanger his character, should be regarded, if supported only by one solitary testimony, which his denial of the crime must at least counterbalance." *In loco.*

BURKITT sustains the same views, "because it is the interest of the Church of Christ, that the reputation of its ministers should be supported; and because prejudiced persons will be ready to accuse without reason." *In loco.*

DODDRIDGE, speaking, *in loco*, of the elders of the Church, says—"Great care should also be taken that their reputation, on which their usefulness will so much depend, may not be lightly impeached. Accordingly, do not receive an accusation against an elder, unless on the testimony of two or three credible witnesses, for the single report of any one person is not material enough to set against the word of an elder maintaining his own innocence."

ADAM CLARKE. "Be very cautious of receiving evil reports against those whose business it is to preach to others, and correct their vices. Do not consider an elder as guilty of any alleged crime, unless it be proved by two or three witnesses. This the law of Moses required in respect to all. Among the Romans, a plebeian might be condemned on the deposition of one credible witness; but it required two to convict a senator. The reason of this difference is evident; those whose business it is to correct others, will usually have many enemies: great caution should therefore be used in admitting accusations against such persons." *In loco.*

MATTHEW HENRY. "Here is the Scripture method of proceeding against an elder, when accused of any crime. Observe, 1. There must be an accusation; it must not be a flying, uncertain report; but an accusation, containing a certain charge, must be drawn up. Further, he is not to be proceeded against by way of inquiry: this is according to the modern practice of the Inquisition, which draws up articles for men to purge themselves of such crimes, or else to accuse themselves; but, according to the advice of St. Paul, there must be an accusation brought against an elder. 2. This accusation is not to be received unless supported by two or three credible witnesses; and the accusation must be received before them, that is, the accused must have the accusers face to face, because the

It was to the Bishop of the Church at Ephesus that he was giving direction, for the use and government of Greeks, and not of Jews; and so of the whole Church, in every age, through all the world; and it comes in, you will observe, in the midst of other precepts, touching elders, which are most clearly of a catholic and abiding application. "Let the elders that rule well, be counted worthy of double honor," 1 Timothy v. 17. "Against an elder receive not an accusation, but before two or three witnesses," 19. "Lay hands suddenly on no man," 22. I put myself, then, and I must put myself in this, and every similar case, upon the literal sense of the Apostle's rule. "I cannot go beyond the word of the Lord my God to do less or more." I bound myself to this when I was consecrated, saying, in answer to the question, "*Will you diligently exercise such discipline as by the authority of God's word, and by the order of this Church, is committed to you?*" "*I will so do by the help of God.*" I find nothing in this apostolic rule of one witness, and circumstances amounting to another; an interpretation of it strangely unavailing in the present case, where circumstances uniformly make against the testimony of the single witness by which any accusation in the whole Presentment is attempted to be sustained. All that I read is, "Against an elder receive not an accusation,"—receive not *any* accusation,—"but before, or under, or by, or on the authority, or upon the testimony of two or three witnesses." That it was so understood in the early ages of the Church, I prove by the seventy-fifth of the Apostolic Canons: "An heretic is not to be received as witness against a Bishop, *neither only one believer*; for in the mouth of two or three witnesses, every word shall be established." I appeal to the established rule of canon law, as bringing down with it this

reputation of a minister is, in a particular manner, a tender thing; and therefore, before any thing be done in the least to blemish that reputation, great care must be taken that the thing alleged against him be well proved, that he be not reproached upon an uncertain surmise." *In loco.*

GIRDLESTONE. "It is no uncommon thing for the clergy, instead of being held in honor of their brethren, to be the marked objects of censure, slander, and indignity. So apt are men to fancy that any fault which they can find or feign in their teachers, may serve for excuse of like failings in themselves. So unreasonably do they expect that perfection in their fellow-creatures, which is to be met with only in our one great High Priest, eternal in the heavens. Well might each private Christian herein adopt the rule, which is prescribed to Timothy concerning an elder, to receive no accusation against such, 'but before two or three witnesses.' Hush, let us say to those who are finding fault with our pastor, I dare not so much as listen to your accusation, much less can I listen with satisfaction. If what you say be true, it could do me no good to hear it. Take the charge to them which are in authority. Take with you at least two or three witnesses, and lay the matter before the rulers of the Church. It is their duty to inquire. It is their duty, and I trust they will discharge it faithfully; it is their duty to rebuke before all the ministers, who sin, 'that others also may fear.' I trust that they will not forget the Apostle's solemn charge, to observe these things, 'without preferring one before another, doing nothing by partiality.' However much inconvenience it may cost us, let us not refrain in such a case from offering them our testimony, as to the things we know. This may help to justice. And whether it substantiate innocence, or tend to the removal of the guilty, it will promote the glory of Christ. But let us, at the same time, be continually on the watch that we neither revile, nor suffer others in our presence to revile, our ministers in private. Such censure is more easy, and to our selfish nature more agreeable, than a public accusation. But it is at once cruel and unjust to them, hurtful to ourselves, and detrimental to the honor of our Lord." *In loco.*

ancient precept; citing from Bishop Gibson's master work, "In the spiritual courts they admit no proof but by *two witnesses at least*."—*Codex Juris Ecclesiastici Anglicani*, 1011. I claim the practice of the civil law, in this behalf, not as a rule, but as a witness; and I reject the claim that the common law must be allowed to limit the Apostle, on the same ground that the binding force of the civil law, as law, would be rejected; that this Church has not enacted its adoption. On the simple, but to me, sufficient word of the Apostle, I require two witnesses for the support of this; and (to save time, I add,) of every other "accusation" included in the Presentment now before us. And, as there is to that which constitutes the "accusation," the implication of criminality, no other than the single testimony of Mrs. Butler—her husband saying expressly of all that he saw, "I did not think it of such a character as to call for notice at the time,"—I am bound by my consecration vow to say, it is not proved.

I am aware that it is said, the "accusation" is the whole Presentment, and this but one of several specifications under it. I ask, if this were the only article, whether it would not be "*an accusation?*" I ask, if every specification or "article," is not, in like manner, "*an accusation?*" and then, I ask, is not the Apostle's rule, the Church's rule, God's rule, this Court's rule; "against an elder receive not *an accusation*,"—*any accusation*—but on the testimony of "two or three witnesses?"

I am aware that it may be said this rule was for the government of the Presenting Bishops. It was for them to say whether every "article" or "accusation" was sufficiently sustained. That taking this for granted, it comes before us now endorsed with their three names, and so maintained by full "three witnesses." But this would prove too much, since it would substitute their signatures for evidence, and make presentment condemnation. I grant that it was for them to apply the Apostle's rule. I wish they had done so. But if they had, if they had sent to us with every "article" or "accusation" the Scriptural full measure, "three witnesses," it would still have remained for us to try their testimony. I remind the Court, that at an early stage in these proceedings, the question was raised, what should be the number of witnesses required for any charge, and its decision laid over for a subsequent consideration; and I insist, that what was binding as the Scriptural rule on the Presenting Bishops, *in receiving any "accusation,"* is binding *a fortiori*; on this Court, in trying every "accusation" included by them in this Presentment.

I am aware of what is called the argument by cumulation; that an unproved charge is made to lend its color to another unproved charge, so that one proved charge is made up of the two. Against this view, I hold, that, of any number of specifications under a charge, all must be proved as fully as if there were but one. I hold that no number of specifications, however great, if none of them be fully proved, sustain a charge. It might as well be claimed, that, from any series of mere *minus* quantities, *plus* ever could result. I cite on this subject the sufficient authority of Starkie's well-known work on *Evidence*. "The circumstances from which the conclusion is drawn should be fully established. If the basis be unsound, the superstructure cannot be secure. The party upon whom the burden of proof rests, is bound to prove every single circumstance which is essential to the conclusion, in the same manner, and to the same extent, as if the whole issue had rested upon the proof of each individual and essential circumstance."—*Third American Edition*, I. 607.

But I am not disposed to leave the matter even thus. Suppose the objection waived to the character and competency of the evidence. Is it sufficient, then, to establish the acts charged in this "article," and to establish them as acts of immorality and impurity; and does it follow, that to deny these conclusions is to charge the witness as a perjured person? Immorality and impurity, as qualities or habits, are evil from their seeking evil ends; and acts are either good or bad, in morals, according to their aim. It is true that we infer the intention from the act; but it is also true, that where the intention of evil is not manifest, the acts of men are entitled to any sufficient explanation of them, which involves no evil purpose. In the first place, then, is there not great exposure to over-estimation of the facts alleged, in the impression with which the witness started on the journey, that the Respondent was not quite himself? I do not at all allow that her impression was correct; but she, it seems, adopted it, and began to be suspicious of it, from the moment of their meeting at the house of Mr. Munn. Should it not be thought of, in the consideration of her testimony, as giving to her estimate of what occurred, an exaggerated and probably a distorted character? Should it not be taken in connection with all she has said, and all she thought, to mitigate and correct it? And now, as to the intention of evil, in the Respondent, what could it have been? What could have originated—what could have encouraged it? Where was the opportunity? What was to come of it? In this case, (and, it may as well be stated here, in every case alleged,) ulterior evil seems impracticable. The actions charged, were passages that could lead to nothing. In carriages—in the presence or immediate reach of husbands, or near relations, or of a Christian Minister—or in a room with doors wide open—can any thing be thought of more improbable? I do not reason from the office, or supposed character, of the Respondent. I rather reason from the very nature of things. No, or but little previous acquaintance, (except in the case of Mrs. Butler, who had been a child upon his knee)—no expectation of future intercourse—no attempt to renew it—with no insidious preparation—without a word—without a look of evil—suddenly, abruptly, roughly. Is this the working of the will of a seducer? Is this the driving of a lust towards its end? Is this, as all experience goes, *in rerum natura*? I think not. What then? Is the witness to the present allegation a perjured person? Are all the other witnesses perjured in like manner? I make no such presumption. Doubtless in the affidavit, and in the testimony under this present article, there are discrepancies not easy to be reconciled. The improbability of the statement, that a considerable portion of ten or twelve miles were driven after dark, when the parties started an hour before sunset, on a day when twilight lasted two hours after the sun was down; and continued to drive steadily on. The disagreement between the affidavit and the testimony of Mr. and Mrs. Butler, as to when and how the most offensive impression was first received by him. The singular want of understanding, for so many years, between the witness and her husband, as to this point, so that that which never did occur, and which she never said occurred, should yet be sworn to in his solemn affidavit. But I leave all these to state what I believe to be the true solution of this case, and of the rest. The Respondent is a man of free and unsuspecting nature. The law of kindness overflows in him. He has indulged it always in acts of great familiarity. He has acquired a habit which might easily permit, in him, freedoms of posture and of gesture, which another, with less purity of heart,

might carefully avoid. It has been manifest in all his intercourse. It is proverbial. Those who have known him well, think nothing of it. In every ten to whom it might occur, there might be nine to do so; the tenth might view it otherwise. I do not justify it; I regret it. But there never seems to have been the thought of harm in it. It never sought concealment: it was never gone after: it was never followed up: it was done with the manner of a father to a child: it was accompanied with words to that effect, as several witnesses have testified. He had been so extensively connected, as a pastor and as a friend; so many had grown up upon his knee, as with the present witness; these acts of fondness had so insensibly stolen on, from infancy to childhood, to girlhood, to womanhood; they had so shaped his whole demeanor, that they were done, when done, without a thought, and never thought of afterwards. In these ways, a carelessness of manner was acquired, which rendered postures that might be mistaken, and motives that might be misconstrued, and gestures that might be misconceived, and contacts that never were intended, an easy thing; and yet, however liable to error, in the judgment of the second person, or of the looker-on, in him without a thought of evil. It is so that I account for what must have occurred, to give any semblance to the statements of the witness under this, as under the other articles. Less occurred, I have no doubt, than in her excited apprehension was supposed: Less occurred, I have no doubt, than to her recollection, overwrought by recent agitations, and the conforming influence of sympathy, especially on female temperaments, now appears. I feel well satisfied that; had she not been governed, at the time, as she admits she was, partly by her remembrance of the kindly ways of her father's familiar friend; and partly by what she supposed the excitement of his condition, the woman nature that was in her would have overleaped the thought of prudence, and found rescue long before. Nothing, as I believe, on full consideration of the evidence, was done, that had in it the thought of immorality or impurity. I therefore "declare" the Respondent, in my "opinion," *not guilty* of the charge, or charges, alleged in Article I. of the Presentment.

II. I am called on to declare whether in my opinion the Respondent is "guilty" or "not guilty" of immorality and impurity in the following "article" which has just been read, viz: "that the said Benjamin T. Onderdonk, Bishop as aforesaid, at the said time and place mentioned in the last specification, was under the influence of, and improperly excited by, vinous or spirituous liquors, drunk by him, the said Benjamin T. Onderdonk, contrary to his duty as Bishop, and to the scandal and injury of said Church."

If it were proved that this were so, it could not be alleged as a charge of *present* immorality. To have been "improperly excited" seven years and a half ago, could not be claimed as going to establish the existence now of evil habit. Not to say that by the very language used, a question of less or more is introduced, entirely inconsistent with the terms of a Presentment. But such as it is, it is by no means proved. It is not alleged that any thing was drunk upon the road. The duties of the day—a full morning service, and a sermon, with the Holy Communion; a full evening service and a sermon, with Confirmation—and setting out directly after the latter, hardly allow the opportunity which such a charge required. It rests on the smell of the breath, on a talkative disposition, on the supposed thickness of the voice, and on sleeping heavily, all which might have occurred without improper excitement; and against all which are to be set the admitted facts, that

many letters were read, some read aloud, and all without the slightest failure in articulation or intelligence.

I therefore declare the Respondent, in my "opinion," *not guilty* of the charge or charges alleged in Article II. of the Presentment.

III. I am called on to declare whether in my "opinion" the Respondent in this case is "guilty" or "not guilty" of immorality and impurity in the following "article" which has just been read, viz: that "the said Benjamin T. Onderdonk, being then Bishop as aforesaid, was travelling in a public stage from Batavia, in the Diocese of New York, to Utica in the same Diocese, for the purpose of attending a meeting of the Convention of the said Diocese, then about to be held at Utica; that the only passengers in the said stage were the said Bishop and the Rev. James A. Bolles and a young woman to the said Presenting Bishops unknown, and whose name they are not able to furnish; that the said Bishop and young woman occupied the back-seat, and the said James A. Bolles the middle seat of the said stage; and that thereupon afterwards, the said Benjamin T. Onderdonk impurely and unchastely put his arm around the body of the said young woman, and took other indecent liberties with her person, and behaved in so improper and unbecoming a manner, that the said young woman endeavored to get beyond the reach of the said Benjamin T. Onderdonk, and finally, with a view to escape his rudeness, left the stage before reaching the place of her destination: which said conduct of the said Benjamin T. Onderdonk, the said Bishops present as contrary to his consecration vow in that behalf, and to the scandal and injury of the Church aforesaid."

It would be fatal to this article, were there no other objection to it, that it comes into the Presentment on inferior evidence, where there was better to be had. Three Bishops, under this Canon, come in the place of two-thirds of two-thirds of the whole number of clergy in any Diocese; and of two-thirds of two-thirds of the whole number of parishes canonically in union with the Convention in said Diocese; they are thus made equal to four-ninths of any Diocese. It is a tremendous responsibility. It must be borne with very inferior opportunities, and with a liability to error greatly increased. It must, therefore, if the peace of the Church, and the fraternal intercourse of the Bishops are to be preserved, be exercised with the most rigorous care. It should not have suffered itself, in this case, to make use of any other person's affidavit, when the only witness, Mr. Bolles, was equally accessible. "There is, however, as it seems," says Starkie, "but one rule of policy which operates as a general principle of evidence; the exclusion in other cases being casual and fortuitous, and depending on grounds unconnected with the principles on which the system is founded. This rule or principle consists in requiring the best evidence to be adduced, which the case admits of; or rather, perhaps, more properly, in rejecting secondary and inferior evidence, when it is attempted to be substituted for evidence of a higher and superior nature. This is a rule of policy grounded on a reasonable suspicion, that the substitution of inferior for better evidence, arises from some sinister motive; and an apprehension that the best evidence, if produced, would alter the case, to the prejudice of the party." I. 102. I desire here, once for all, to disclaim any doubt of fairness in the Presenters, in this case. I look at facts, as they have come before us. As to the first "article," that it was sustained by but one witness, so to this, besides that objection, I also object, that that one witness, by his affidavit, was not made the basis of the charge; but the affidavit of a person

who was not a witness, and who could, therefore, give but hearsay evidence, used for that purpose. Nor does the testimony of the only witness at all sustain the charge. It is proved by him that the particulars were otherwise than they are charged. It is proved by him, that he attached no serious importance to what did occur; and never would have mentioned it, but for the rumor of the Butler case, which met him at Utica. It is proved by him, that in the conversation of himself and a third person with the Bishop, had at Utica, immediately thereafter, he (the witness) expressly corrected, and positively denied, what constitutes, in this Presentment, the whole *gravamen* of the charge. I therefore declare the Respondent, in my "opinion," *not guilty* of the charge or charges alleged in Article III. of the Presentment.

IV. As no evidence has been adduced under the fourth "article" of the Presentment, I of course "declare," as my "opinion," that the Respondent is *not guilty* of the charge or charges alleged in it.

V. I am called on to declare, whether in my "opinion" the Respondent in this case is "guilty" or "not guilty" of immorality and impurity, in the following "article," which has just been read, viz., "that between the months of May and July, in the year of our Lord 1841, to wit, on or about Sunday the 13th day of June in the said last mentioned year, the said Benjamin T. Onderdonk, then being Bishop as aforesaid, visited St. James' Church, Hamilton Square, New York city; that soon after the services of the Church were ended, and on the day last aforesaid, he left the said church in a carriage in company with Miss Helen M. Rudderow, a young lady, to proceed as a guest to the house of her brother, John Rudderow, Esq.; that while riding in the said carriage, by the side of the said young lady, he, the said Benjamin T. Onderdonk, impurely and unchastely thrust his hand beneath her dress, upon the bosom of the said Helen M. Rudderow, to her great alarm and consternation, and in violation of the proper duty of a Bishop, and in breach of the consecration vow of the said Benjamin T. Onderdonk, to the great scandal and injury of the Church of Christ."

Referring to the statement made at length, before, of habits of innocent familiarity in the Respondent, which, to one who did not know him well, (as was the case with the witness to this, and every other article in the Presentment, since the first,) might easily present the appearance of improper freedoms; considering the time and place, and circumstances of the alleged occurrence, as involving an inevitable exposure; considering the absence of that instinctive refuge which a woman finds or makes, who feels herself insulted; considering the subsequent deportment of the witness in this case towards the Respondent, as inconsistent with the thought, at that time, that she had been so aggrieved; considering that she stands alone in the Presentment as a witness to this charge, appearing chiefly in her sister's affidavit, upon hearsay merely; considering that in her general attestation, in her own brief affidavit, that "every word" of her sister Jane's "is true," when she was not a witness of what is alleged to have occurred between the Respondent and her sister, and could know it only on her statement, she has shown herself not clearly sensible of the solemnity of testimony under oath, I declare the Respondent, in my "opinion," *not guilty* of the charge or charges alleged in article V. of this Presentment.

VI. I am called on to declare whether in my "opinion" the Respondent in this case is "guilty," or "not guilty," of immorality and impurity in the

following "article," which has just been read, viz. : "that on the same day mentioned in the last specification, the said Benjamin T. Onderdonk, Bishop as aforesaid, was received at the house of the said John Rudderow, in the parlor thereof, by Jane O. Rudderow, and that thereupon, the said Benjamin T. Onderdonk impurely and unchastely thrust his hand into the bosom of the said Jane O. Rudderow, and upon being repelled, took other indecent and unbecoming liberties with the said lady, in violation of his duty as Bishop, and his consecration vow in that behalf, and to the great scandal and disgrace of his said office."

On the same grounds as those alleged before, under the last article, increased by greater improbability, if that be possible, that the acts of the Respondent, at the time, could have been such as to be thought insulting, and by fuller evidence of subsequent cordiality, evincing a continued absence of such conviction; rejecting the single witness, as insufficient, by the rule of the Apostle, to prove any "accusation" against the Respondent; and deeming what did occur between them as fully met by the explanation given before, of the Respondent's manner, I declare him *not guilty*, in my "opinion," of the charge or charges alleged in article VI. of this Presentment.

VII. I am called on to declare whether, in my "opinion," the Respondent is "guilty," or "not guilty," "of immorality and impurity," in the following "article" which has just been read. "That on or about the 17th day of July, in the year of our Lord 1842, the said Benjamin T. Onderdonk, then being Bishop as aforesaid, held a confirmation at Zion Church, Long Island, in the Diocese of New York: that after the services were ended, the said Benjamin T. Onderdonk returned to the house of the Rev. Henry M. Beare, where he was a guest, in the carriage of the said Henry M. Beare, in company with Mrs. Charlotte E. Beare, the wife of the said Henry; that the said Benjamin T. Onderdonk, and Charlotte E. Beare, occupied the back seat of the said carriage, and the other persons in the same were so situated, as to have their backs towards the Bishop and the said Charlotte; that thereupon, he, the said Benjamin T. Onderdonk, impurely and unchastely put his arm around the body of the said Charlotte, drew her towards himself, and at the same time felt her bosom in an improper and indecent manner, so as to scandalize the feelings of said lady, and cause her to remove herself from him as far as the side of the carriage would permit, to avoid his rudeness, in violation of his duty as Bishop, and of his consecration vow, in that behalf, and to the disgrace of his said office."

In the absence of more than one witness, (the article in the Presentment, moreover, contrary to the rule alleged before from Starkie, is founded on the affidavit of the husband of the witness, and not on her own;) in the extreme improbability that an impression then received of actual impurity would have kept silence under it, and again exposed itself to a repetition of the same, rather than walk a quarter of a mile, through Mr. Franklin's lane, or request Mr. Thomas Beare to go that much out of his way; in the much greater improbability that such an impression would have exposed itself at night to such a repetition, when, for all that has been shown, the other carriage, and the boy that drove it in the morning, might have been employed; and explaining whatever did occur to excite the apprehension of an undue freedom, by the indulgence in the careless way alluded to be-

fore, I "declare" the Respondent *not guilty*, in my "opinion," of the charge or charges alleged in Article VII. of the Presentment.

VIII. I am called on, finally, to "declare" whether, in my "opinion," the Respondent in this case is "guilty," or "not guilty," "of immorality and impurity," in the following "article," which has just been read, viz.: "that in the afternoon of the said 17th day of July, in the year of our Lord 1842, the said Benjamin T. Onderdonk held a confirmation at Whitestone Chapel on Long Island aforesaid; and after the services, went to spend the evening at the house of Joseph L. Franklin, Esq., on said Island. That about 9 o'clock at night, the said Bishop was returning home to the house of the said Henry M. Beare, where he was a guest, and was accompanied, in the carriage of the said Henry M. Beare, by the said Charlotte, the wife of the said Henry—she being constrained by circumstances to ride with the said Bishop, against her desire, and she and the said Bishop sitting alone on the back seat. That while thus on their way, the said Benjamin T. Onderdonk again insulted the said Charlotte E. Beare in the grossest manner, by impurely and unchastely putting one arm around her body, while he thrust the other hand beneath her dress upon her naked bosom; that, upon the same being indignantly repelled, the said Benjamin T. Onderdonk repeated the indignity, and finished his rudeness by passing his hand in the most indecent manner down the body of the said Charlotte, outside of her dress, so that nothing but the end of her corset bone prevented his hand from being pressed on the private parts of her body: all which acts and doings threw the said Charlotte into the deepest distress, to the manifest scandal and injury of the Church, of which the said Benjamin T. Onderdonk was a Bishop, and in violation of his vows before God, solemnly entered into on his consecration."

I apply to this "article" as the *substratum* of my explanation, the solution given throughout, before. I grant that there may have been what seemed to the witness (again the single witness) an undue familiarity of manner; and that, in the careless way before described, motions may have been made, and contacts may have occurred, without a thought or consciousness in the Respondent, which she misunderstood and misapplied. But I am unable to resist the natural argument from my reliance on a woman's instinct, especially with her husband within her reach, against her *then* appreciation of them in the way set forth in the Presentment; and I find it impossible to reconcile the uncalled for acts of courtesy and hospitality which have been clearly proved, with such a sense of wrong as is therein declared. The strength of this case lies in the supposed admission by the Respondent, at the second interview, with sundry of the clergy, as inconsistent with his alleged denial, at the first. The testimony here is somewhat difficult to reconcile. I put myself, that I may get their sense, as nearly as may be, in the place of the witnesses of the alleged admission. I suppose myself to have understood the Respondent, on the second day, to admit that he had done the gross acts charged in the Presentment; and, I then ask myself, how is it possible that Dr. Milnor, Dr. Muhlenberg, Dr. Higbee, and, above all, Mr. Beare, as Dr. Milnor positively testifies, could have consented, expressly or by implication, to "say no more about it?" I feel myself compelled to stand between their characters as Christian men, and Christian ministers, and such an explanation. On the other hand, I suppose the great anxiety of Mr. Beare to have been, to have his wife relieved from the denial of her veracity, (as Dr. Muhlenberg, I think, expresses it, "her word,") which had been just reported to him; and

the Respondent readily admitting that he designed to bring no charge against her *veracity*, at the same time that all that she alleged against himself, as being offensive, was without foundation, and the mere result of her misapprehension; and the conclusion then becomes most natural. Mr. Beare was relieved from the impression that his wife was charged with lying. All were relieved from the impression that immorality or impurity was necessarily involved in her statement of the case. And they parted with the understanding that the affair was settled, and no more to be said about it. And there is a further, and, if possible, even more conclusive test, that this is the true solution, in the closing words of the second interview. If the Respondent really owned his guilt, and Dr. Milnor understood it so, are not his admonition, and the Respondent's answer, most remarkable? We are to suppose Dr. Milnor, when the Respondent had not only confessed impurity, but convicted himself of falsehood, coolly addressing him as follows: "I hope, Bishop, that what has now occurred, will put you on your guard; the more, as I have heard of other similar rumors!" This is surely not the language of an aged Presbyterian, whose mind was burdened by his Bishop's confession of aggravated immorality, denied by him only the day before. And what does the Respondent reply? "In regard to rumors of this kind, Doctor, about Clergymen, there are few that have not, at some time, had occasion to encounter them." Is this the answer of one who had just owned his guilt? And if it had been, if he had so understood it then to be, could the rejoinder of Dr. Milnor have been what has been stated? Must it not rather have been in words to this effect: "In regard to rumors not admitted, Bishop, your remark is well; but as you have just confessed all that relates to Mrs. Beare, I see not how it can apply to you." I thus dispose of the weight attempted to be brought to bear upon this case by the alleged discrepancy between the Respondent's conduct at the first, and at the second interview; and am compelled to "declare" him *not guilty*, in my "opinion," of the charge or charges alleged in Article VIII. of this Presentment.

G. W. DOANE,
Bishop of New Jersey.

ADJUDICATION OF THE SENTENCE.

The undersigned has declared his "opinion" that the Respondent in this case is *not guilty* of "immorality and impurity," as charged in the Presentment. He holds to that conviction. A majority of the Court, however, have declared that in their "opinion" he is "guilty;" and by the Canon, "the Court," of which the undersigned is one, must now "pass sentence, and award the penalty of admonition, suspension, or deposition." The undersigned, and those who agreed with him in "opinion," must withhold themselves from the further action of "the Court," and so expose the Respondent, who, in their "opinion," is *not guilty*, to the highest sentence which the Canon knows; or else they must unite in consenting to a lower sentence on one, who, in their opinion, is deserving of none. Between these two, the undersigned does not permit himself to hesitate. "Deposition," by the present canonical provisions of this Church, is irrevocable. Should

such be the decision of a majority of this Court, not only the Respondent, but themselves would be cut off from any future beneficial action. The undersigned is bound in conscience, so far as in him lies, to avert a result so unjust and so unhappy. Therefore, although he has voted that the Respondent is "not guilty," and still believes him so, his "sentence" is, *that he receive the lightest "admonition" permitted by the Canon.*

G. W. DOANE,
Bishop of New Jersey.

FARTHER ADJUDICATION OF THE SENTENCE.

The Court having failed, in two several scrutinies, to "pass sentence" on the Respondent, by a majority of their votes, the undersigned now consents to "suspension," to avoid "deposition."

G. W. DOANE,
Bishop of New Jersey.

OPINION OF THE BISHOP OF THE NORTH WESTERN DIOCESE.

I vote for admonition.

Had I been permitted yesterday to give my real opinion, I would have said that articles 1st, 3d, 5th, 6th, 7th, and 8th, were not proved, according to the Apostolic rule, 1 Timothy, v. 19; by which I consider myself bound to judge in this case.

Article 2d, Not proved.

Article 4th, Not proved; no evidence being brought forward.

And I would have added in reference to articles 7th and 8th, as follows: If the declarations of the Bishop, which he made to the Rev. Mr. Bearo, had been considered by the Reverend gentlemen who were present on that occasion, an acknowledgment of guilt, they were solemnly bound to present him (the said Bishop) for trial; or, at all events, they could not have agreed to bury the subject.

JACKSON KEMPER.

OPINION OF THE BISHOP OF LOUISIANA.

[CONCURRED IN BY THE BISHOPS OF RHODE ISLAND, AND THE SOUTH WESTERN
MISSIONARY DIOCESE.]

THE undersigned, constituting a part of the majority of the Court duly convened in St. John's Church in the city of New York, for the trial of the Rt. Rev. Benjamin Tredwell Onderdonk, Bishop of the Protestant Episcopal Church in the Diocese of New York, according to the provisions of Canon III., "On the trial of a Bishop," passed by the General Convention of the Protestant Episcopal Church in the United States of America, at its session held in October, 1844, having in their individual capacity, as members of said Court, given their verdict respectively, that their accused brother is guilty of several of the charges and specifications contained in the Presentment upon which he has been tried, deem it proper, under the peculiar circumstances of the case, to enter upon the records of the Court a brief statement of the reasons by which they were influenced in the rendition of the verdict aforesaid.

First. The direction of St. Paul to Timothy, (v. 19,) "Against an elder receive not an accusation, but before, or by, two or three witnesses," was in this case strictly complied with, inasmuch as three of his brother Bishops presented *accusations* of immorality against the Respondent.

Secondly. Though some of the immoralities with which the Respondent was charged were alleged to have been committed more than three years ago, yet, as no limitation to the inquiry of the Court, in cases of criminal prosecution, is fixed or recognised by the Canons of the Church; and as the acts alleged in the Presentment all occurred since the elevation of the Respondent to the Episcopate, and were charged against him as violations of his consecration vows; and inasmuch as this Court, before entering upon the trial, after full discussion, solemnly decided that none of the accusations could be rightfully dismissed on account of the remoteness of the period when the facts on which some of them were founded, took place—the undersigned felt sacredly bound to enter upon the examination of all the allegations contained in the Presentment, and to pronounce upon each of them a sentence of Guilty or Not Guilty, according to the law and the testimony.

Thirdly. Although two of the specifications on which the Respondent has been found guilty, viz., the fifth and sixth, are respectively supported by the clear and direct testimony of only one unimpeached witness each, yet, as this was the full amount of testimony which could possibly be expected, considering the peculiar nature of the allegations; and inasmuch as immoralities of the same kind, alleged in specifications first, seventh, and eighth, were proved, either by the testimony of two witnesses, as in one case, or, as in the two others, by the clear and direct testimony of one unimpeached witness, and corroborated by the acknowledgment of the Respondent himself, to other witnesses, whose testimony has been given on this

trial, we are of opinion that the witnesses to the several specifications administer mutual support to each other; and, for these reasons, and others which might be stated, the undersigned are persuaded that the verdict of Guilty, which it has been their painful duty to pronounce against their offending brother, as to the charge of immorality and impurity set forth in the several specifications in the Presentment upon which that verdict has been given, is sustained by the full number of witnesses, and the full amount of testimony that was ever required by the Levitical or the ecclesiastical, by the statute, the common, or the canon law, in support of a like verdict in any case of criminal prosecution.

LEONIDAS POLK,

Bishop of the Protestant Episcopal Church in the
Diocese of Louisiana.

J. P. K. HENSHAW,

Bishop of Rhode Island.

GEO. W. FREEMAN,

Missionary Bishop for Arkansas.

OPINION OF THE BISHOP OF WESTERN NEW YORK.

In the name of God, Amen.

I, William H. De Lancey, Bishop of the Diocese of Western New York, do hereby declare, that in my opinion the Rt. Rev. Benjamin T. Onderdonk, D. D., Bishop of the Protestant Episcopal Church in the Diocese of New York, who has been presented under Canon iii. of 1844, by the Rt. Rev. William Meade, D. D., Bishop of Virginia, the Rt. Rev. James H. Otey, D. D., Bishop of Tennessee, and the Rt. Rev. Stephen Elliott, D. D., Bishop of Georgia, as guilty of immorality and impurity, in several specifications,

Is not guilty of immorality and impurity, as specified in the first article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the second article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the third article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the fifth article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the sixth article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the seventh article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the eighth article of the aforementioned Presentment :

And, having had no testimony offered against him in support of the specification in the fourth article of the aforementioned Presentment, is to be held, and is by me, believed to be *not guilty* of the charge of immorality and impurity therein alleged.

Given as my opinion, in Court assembled to try the said Rt. Rev. Benjamin T. Onderdonk, under the aforesaid Presentment, January 2, 1845.

WILLIAM H. DE LANCEY,
Bishop of the Diocese of Western New York.

I reserve to myself the right to put on the records of the Court, if I should think fit, the grounds and reasons of the opinion.

W. H. DE LANCEY.

New York, Jan. 2, 1845.

G R O U N D S

OF THE

OPINION OF THE BISHOP OF WESTERN NEW YORK.

HAVING solemnly declared my opinion that the Right Rev. Benjamin Tredwell Onderdonk, D. D., Bishop of the Diocese of New York, is NOT GUILTY of the charges and specifications laid against him in the Presentment made by the Right Rev. Wm. Meade of Virginia, the Right Rev. James H. Otey of Tennessee, and the Right Rev. Stephen Elliott of Georgia; and having claimed the right to put on the records of the Court the grounds and reasons of my opinion, I herein set forth the views, principles, and considerations, which have led me to the opinion which I have declared in this case.

I bring to the decision of the question no aid from the previous knowledge or study of law, or the practice of it in any court.

I have never before sat on any ecclesiastical tribunal. My guide must be the plain common sense which God has given me, enlightened by the Scriptures of truth, and swayed by the best judgment I can bring to bear upon the character of the testimony given, and the force of the circumstances which modify its influence on my mind.

It must be admitted, that the canon, under which the court is constituted and compelled to act, is, in many respects, defective. It leaves unsettled and even untouched many most important points, on which the minds of members of the court have been much embarrassed. It fixes no rule as to the number of witnesses necessary to prove a charge. It fixes no rule as to the limitation of time, beyond which charges are to be regarded as stale and undeserving of investigation. It is somewhat dubious as to the question, whether the Presenters can sit as judges. It gives no power to challenge the right of a Bishop to act, as juror and judge, who for any reason may be supposed to be inimical to the accused party. It fixes no penalty for witnesses not appearing, when summoned. It fails to explain the meaning of the term "suspension," or whether the Court can limit it or not. It provides no mode of removing the sentence of suspension. It compels those, who think an arraigned person not guilty, to vote upon the question of his punishment. It puts the Presenters in the attitude of accusers, committed to the necessity of convicting the accused, in order to justify their own action in making the Presentment. Under such a Canon, we have been compelled to grope our way through the investigation of this case, even with the advantage of able counsel on both sides; sometimes as the analogy of courts of law would direct; sometimes as courts-martial should furnish the model; sometimes as the common law would guide us; sometimes as the civil law would point out; sometimes as the ecclesiastical law would dictate; and sometimes (and on one or two most important particulars) thrown back upon the direct declarations of the Holy Scriptures, as they would bear upon the case.

The Court itself bears the twofold character of jury to try the cause, and judge to expound the law.

A Presentment is, of necessity, founded on *ex-parte* testimony. In this case, but one or two of the parties aggrieved, have made depositions for themselves. In the other instances, other individuals make affidavits of what they know, not of themselves, but from the aggrieved parties. Thus Mr. Butler and Mr. Beare make the affidavits of the alleged insults to their wives, respectively. In the case of Mr. Bolles, Dr. Hawks makes the affidavit on which the Presentment is made. The mere Presentment, therefore, proves nothing, except, as its allegations may be supported by the testimony adduced on the trial. But the affidavits on which it is founded may, in my opinion, properly be used as tests of the accuracy and credibility of the witnesses concerned; for, if they swear before the Court differently from what they did in their affidavits for the Presenters, such diversity must, as far as it goes, affect unfavorably their testimony.

The Court is to try the Presentment, as it is made. It has no power to make a new presentment. It can decide only, whether the presentment is made according to the Canon; whether it is so made, that the charges and specifications can be tried. And, if these points are settled affirmatively, it is to hear the evidence; and, having deliberated upon it, to decide whether the accused party is, or is not, guilty of the offences *as presented*; and, if guilty, then to award and pronounce the sentence. The Canon seems to tie down the Court to the mere question of guilty or not guilty, of the offences *as charged*, and does not allow of saying any thing but yea or nay to that question.

No part of the Presentment, which is uncanonically made, can properly bear upon that part which is canonical. No allegations, rumors, or stories, which exist in the public mind out of the Court, can be allowed to have influence, as evidence, upon the opinion I am to form of these charges and specifications. They are to be decided by the evidence actually produced in relation to them; and not to be affected by any proofs, or evidence, or allegations of other matters of a similar kind, which may or may not be true, but which are not before me in this issue.

Neither the suspicion, nor even the knowledge of bad motives, or folly, or mistake in the ulterior origin, or actual getting up of the Presentment, either on the part of the Presenters or of those who procured and laid before them the affidavits on which it is founded, or of those who directly or indirectly instigated, suggested, and fostered the proceeding in its remoter origin, can be allowed to have any influence in judging of the truth of the charges and specifications in the form and shape in which they are made in the Presentment. Each charge and specification must stand on its own merits and claims to truth. I must isolate each charge and specification, as if it were the only one contained in the Presentment, and try its truth by itself,—by its own testimony and circumstances,—by what applies to it, and not by the testimony and circumstances which belong to another distinct charge and specification.

Nor can the deficient proof of one charge and specification be added to the deficient proof of any other charge and specification, in order that together they may amount to reliable evidence, any more than the putting together of half a dozen paralytics would help to make them all sound, or even to make one sound man.

In considering the testimony, it becomes necessary for me to settle in my

own mind the question, as to the number of witnesses essential to the establishment of each charge and specification. To me the supreme law on this subject is Holy Scripture. The laws of man may vary from Scripture on this point, as they do on the subject of marriage and divorce. I could not concur with the counsel for the Presenters in declaring, that the law of God, as given to Moses, was not so good for the elucidation or ascertainment of truth, as the common law. The law of God the Father in the Old Testament*—the law of God the Son in the New Testament,† as given by His own lips—and the law of God the Holy Ghost, as given through the inspired Apostle, St. Paul, to Timothy,‡ exacting more than one witness, appears to me to leave me no option in requiring at least two witnesses to each charge and specification, however differently the varying law of man may permit, or enjoin. I can conceive of no fair exposition of 1 Timothy v. 19, "*Against an elder receive not an accusation, except before two or three witnesses,*" which can justify me in disregarding so explicit an injunction, or one so pertinently and obviously applicable to this case. Now there is but one direct witness to each specification, except as to the second article.

When I come to qualify this testimony of each single witness, by the circumstances attendant on the transaction, instead of finding them to furnish the weight of an additional witness, they seem to me to weaken the allegations of the single witness by their inconsistency with the other allegations, the character, and the very nature of the witness.

The question being a question of the *extent* of familiarities—whether they were such as of necessity imply the criminal, impure, and immoral feelings and desires on the part of the Respondent, which form the *gravamen* of the charge against him; I must look to the circumstances of the case to ascertain whether they are capable of an interpretation consistent with purity of feeling; whether they actually occurred to such an extent, as of necessity and unavoidably to infer such criminality; and whether the circumstances and conduct of the parties show, that they were so interpreted and understood by the aggrieved individuals at the time, and by those to whom they were then made known.

I place great reliance on incidental evidence—that which comes out, as a necessary and unavoidable inference, from acts of the parties, or from their omissions to act, where the circumstances of the case, if the allegations were true, would require them to act. Thus the law of virtue and modesty requires resistance, immediate and persevering, to the extent to which the power of the party can go against aggression. The law of honesty requires truth to be told firmly, however gently. The law of Christian duty forbids connivance at crime, just as I understand the law of the land forbids compounding felony. If the acts of individuals—whose virtue, honesty, or Christian duty is assailed—conform to what the law respectively requires, it confirms the testimony. If these acts and proceedings do not so conform—if they are in direct hostility to what this law of virtue, honesty, or Christian duty would require—then to my mind the testimony of the witness is proportionably weakened, and its credibility may

* Deut. xvii. 6. Numbers xxxv. 30. Deut. xix. 15.

† Matt. xviii. 16. John viii. 17.

‡ The Second Canon of 1802, of the Diocese of New York, which continued in force until 1834, required two witnesses to substantiate any charge. See p. 118 of Onderdonk's Edition of N. Y. Journals.

even be wholly destroyed. Thus, if persons of high character and standing in the Church are privy to, and cotemporary with acts in the Bishop which appear immoral, and have the power of presenting him, or making an effort to have him presented, and yet do not take such step; I must infer, that those acts, however they appear now to have been immoral, could not in reality have been so; or he would have been *then* arraigned and tried. The fact, that they were not noticed, brought to light, and tried at the time, by those whose obvious duty it was to take such steps, and who had it in their power to do so, forces me to conclude, either that the persons were connivers at the immorality, which the high character of the parties forbids—or else, that the acts were at the time capable of a construction not implying immorality or guilt; and, if they were so at the time, the mere lapse of time could not impart an immorality to them, which they did not *then* have.

Now, since the year 1834, the Diocese of New York has had a Canon for the trial of a Bishop, (see Canon xvii. of 1834, of Diocese of New York;) which Canon gives to the Convention, if in session, and to the Standing Committee during the recess of the Convention, the power, by a vote of two-thirds, to present a Bishop, and have him tried. Since 1837, eight Conventions have been held in this Diocese, and no steps have been taken, no voice lifted, no vote given, no motion made to present the Respondent by the clergy or laity, to some of whom these various alleged criminal acts were known. Could they have been deemed so immoral, so criminal, so incapable of explanation, so nakedly outrageous as they are now testified to be, and yet not at the time have led to an attempt at canonical investigation and censure by those who knew all about them? If it be said that the Convention was too cumbrous or uncertain a body to take up such charges and act upon them, and this circumstance deterred them, I answer, that, during the recess of the Convention, the Standing Committee of the Diocese, which consists of eight persons, viz: four clergymen and four laymen, have, by the aforesaid Canon, the right to present. If it be said that the acts were known only to a few, and they thought it best to say nothing about them, I answer, that I must believe that Dr. Hawks, Mr. Lucas, Mr. Bolles, Mr. Butler, in 1838, and that Drs. Milnor, Muhlenberg, Wainwright, Higbee, Turner, and Messrs. Richmond, Beare, and others, have not only failed to do their duty, but actually conspired (by an agreement on the part of some of them, in regard to the case of Mrs. Beare) to connive at the criminality of the Bishop, and conceal his guilt. Some of these clergymen have been members of the Convention of the Diocese again and again. Can I now declare to be immoral, impure, and criminal, acts which transpired from two and a half to seven and a half years ago, when they, who were cotemporary with them, and knew them in all their aggravation, whose duty it was to have them punished, if of the evil nature alleged, and who were members of the very canonical body which had committed to it the power and duty of originating action in the case, did at the time omit to take, urge, or recommend any canonical action in regard to them? In the absence of all evidence that such omission was at the solicitation of the Respondent, and with the testimony before us of his uniform denial of the truth of these rumors as alleged against him whenever brought to his notice, he is entitled, in my opinion, to the inference in his favor that they were not, at the time of the occurrence, of the criminal extent and immoral character now ascribed to them.

It is in favor of the Respondent, that the witnesses are not volunteer wit-

nesses; that they come reluctantly, after urgings; that some of them have tried to avoid being brought forward in connection with these charges. None of them seem to have acted or come forward with any strong conviction of the highly criminal and immoral character of the Bishop's acts, as charged in the specifications. It is not with the prompt and stern sense of duty to the Church, not with feelings of outraged modesty insisting on redress and vindication, that they appear. They are dragged into Court. While the reluctance of the witnesses to come forward is most satisfactory evidence that they are not knowingly parties to any conspiracy in this case against the Bishop; it does at the same time as forcibly evince to my mind, that the acts alleged could not have been of so clearly outrageous and immoral a nature on his part as the Presentment declares, or there would have been less indisposition to appear in the case.

It is very remarkable, that in every case of the alleged assaults upon the modesty and virtue of females, third parties were present or accessible; and that in no one case is the Respondent testified by the party concerned to have been resisted as effectually, as in the circumstances of the case he might easily have been. Mrs. Butler allows the Bishop to put his arm about her. Mr. Butler sees him in the position several times, and does not think it worth noticing, though he thought the Bishop overcome with wine at the moment:—That is, a husband sees a man whom he believes to be "excited by liquor" embracing his wife with his arm, and quietly determines that he will take no notice of it; when a word on his part—a single word of even respectful admonition—might have arrested the proceeding and all its consequents! Christian duty may account for the forbearance from anger and excitement on the occasion: it does not account for his utter silence. Mrs. Butler's overstrained and enigmatical language about the Bishop's hand is not only contrary to all nature, as a reproach or rebuke for criminal familiarity with her person, but might have been called forth by the most innocent freedom, that paternal manners and fatherly intimacy with the lady would allow. In the case of Miss Helen M. Rudderow, *a single word* to Mr. Richmond would have intercepted and ended the most extraordinary continuance, for nearly half an hour, in an half-open carriage, on a public highway, during a general conversation in which all the persons more or less partook, of the alleged insult. She says she felt like jumping out of the carriage, if she could have done it, to save herself from the Bishop's hand; and yet she could not speak *a single word* to preserve her person from insult, though *at the very time* engaged in conversation on general topics, both with Mr. R. and the Bishop! She feared to expose the Bishop to Mr. Richmond! She would have exposed him to Mr. R. by jumping out of the carriage, as in her cross-examination she says she attempted to do, but was afraid to expose him by a word, which would have been equally effectual. In the case of Miss Jane O. Rudderow, by simply rising and leaving the room after the first alleged insult, or by speaking in a tone to attract her brothers' attention, or by calling them in without actually exposing the Bishop to their indignation, (the thing she says she was afraid of, and gives as the reason for making no outcry,) she had been safe. But she, too, is silent. In the case of Mrs. Beare, the same extraordinary silence under a most aggravated alleged insult is preserved: when a word, even an offer to take a seat by the side of her husband, and place the boy behind with the Bishop, would have shielded her entirely. To me all this appears compatible only with a very limited extent of familiarity; and wholly unaccountable.

ble, if the familiarity was actually of the criminal nature and extent alleged.

I listened with attention to the analysis of the testimony by the learned counsel on both sides, and regard it as unnecessary here to review the same in detail. Granting all allowance to the ordinary character of human testimony, which is substantial truth with circumstantial variety, yet the variations of the testimony from the precise charges of the affidavits and the Presentment, the looseness of some of the allegations, the inconsistency of the gravity of the charges with the quiescent conduct of the witnesses under the alleged insults, the subsequent intercourse of almost all the insulted parties with the Respondent characterized by cordiality, or at least by no change in demeanor towards him, and the fact that each specification except one rested upon the testimony of a single direct witness, could not but impress me with the conviction that these matters were resolvable into exaggerations of such familiarities as are liable to misinterpretation and highly imprudent, but not implying of necessity the guilty criminality which the Presentment charges. I could not but be struck with the fact, that the charges in the affidavits were stronger than those in the Presentment; that the terms of the Presentment were stronger than the testimony of the witnesses; so that there was a sort of diminishing or vanishing scale of allegations in the case, the lowest and weakest point of which was the actual testimony produced.

No word or look of a corrupt, impure, or unbecoming character is alleged by any of the witnesses to have accompanied the familiarities complained of—a circumstance, constituting in my view additional evidence of the absence from them of an impure and immoral character; and that they were not of the criminal extent alleged.

That imprudences do not imply immorality, and that even acts which bear the appearance of crime may yet be devoid of the reality, is the ground taken by the Ecclesiastical Court consisting of Bishops McIlvaine, McCoskry, and Kemper, which sat in October, 1837, in the case of the present Bishop of Kentucky, (the only trial of a Bishop hitherto known in this country,) and which declared him guilty in several instances of the act as specified, but without criminality—even using in reference to the second charge, embracing forty-two specifications and affecting moral character, in one case the following language, “Guilty of a careless and unauthorized statement, but acquitted of insincerity;” and in another case, “Guilty of the facts alleged; an evil motive not appearing, but indiscretion manifest;” and in another case, “Guilty of inconsistency, reconcilable, however, with honesty;” and in another case, “Guilty in this, that the facts alleged are true, and the Court cannot reconcile them with propriety or justice. It is believed, however, that the accused did not urge his view with regard to the money after it was objected to;” and, in five other instances, “Guilty without criminality—incautious language is proved without evidence of wrong intention;” and finally upon the whole charge, as covering the preceding specifications, declaring as follows, viz: “After mature consideration of the evidence to the several specifications under charge 2d, the Court find the accused not guilty of the charge; at the same time that they cannot acquit him of having sometimes, in seasons of mental excitement, used language in a manner so careless and indiscreet as naturally to expose him to a suspicion of insincerity, which a wide spread and long established reputation contradicts.”*

* See “Sentence of the Court in the case of the Convention of the Diocese of Kentucky, vs. the Rt. Rev. B. B. Smith, D. D.”

That general good character should weigh down mere rumors and unsustained allegations, appears to me to be obviously proper. How far it should weigh against even sworn statements of transactions of old date, it is difficult to say. That it should have some weight is, I believe, allowed. In the case of the consecration of the present Senior Bishop, many years ago, as Bishop of Ohio, against whom an affidavit of some highly improper, not to say criminal act was produced by respectable parties, the late Bishop White took this very ground, and would not oppose the consecration on account of such affidavits; holding that testimonials produced to the general good character of the clergyman assailed, were a sufficient security that there must be some mistake or misapprehension in the matter. In this view he is said to have had the sanction of the late Judge Washington, to whom he submitted the grounds of his opinion.*

In looking to the respective characters of the Respondent and the aggrieved parties, I do not institute any comparison in favor of either. The Respondent is a Bishop, and they are communicants. Both are to be believed as declaring what they think to be truth. They affirm—the Bishop denies. Abstractedly, I put them on an equality. I ask myself, then, has the Bishop's conduct been consistent with his denial? I must answer, yes. A uniform denial of these charges as idle tales, and a treatment of the parties with no variation of manner or intercourse, braving investigation for years, openly and boldly exposing himself, in the discharge of his duties, to obloquy and ill feeling from some who harbored the evil reports, not restrained by any apparent fear of offending and irritating them by avowal of views of theology or policy to which they were known to be inimical—this appears to me to be the conduct of a man not conscious of liability to criminal charges being brought against him.

On the other hand, how has it been with the aggrieved parties in this case? Has their conduct been consistent with their affirmations? I cannot say, yes. They have repeated their respective stories again and again in private, alleging grievous insult; and yet, not only have taken no steps (except in the cases of Mrs. Beare and Mr. Bolles) to confront the Bishop themselves, or have him confronted by their friends, much less have they sought to have the charges officially investigated by any proper tribunal; but they now most reluctantly come forward in the case, and, although entirely independent on the Bishop in every matter, are, by the influence of others, dragged into Court, to testify responsibly what they have so often avowed on the irresponsibility of private allegation; and not only so, but have, after the alleged insults, every one of them, (except Mrs. Butler, who never met him again,) treated the offending party with more or less respect, and maintained more or less of a continued intimacy or intercourse with him.

If, then, on a comparison of the allegations of the two parties, I should incline to place more reliance on the denial than on the affirmation, I do but conform to what appears to me to be the dictate of common sense.

In the case of the events testified to by Mr. Bolles, they were brought to the Bishop's knowledge by Mr. Bolles and Dr. Hawks, on the urgent advice of Dr. Taylor; and the result was at once so to strip the charge of the aggravations connected with it, and to reduce it from crime to imprudence, that now the Court does not hesitate, on the testimony of Mr. Bolles himself, to acquit the Bishop.

* For this statement I am indebted to Bishop Kemper.

In the case of Mrs. Beare, the alleged immoralities were brought to the Bishop's notice; and the result was, after an interview between the Bishop and Mr. Beare on the subject, in the presence of sundry clergymen, that Mr. B. and the gentlemen present, on no solicitation of the Bishop, come to an understanding with each other, that no further steps are to be taken in the case; and both Mr. and Mrs. Beare not only treat him with respect, but extend to him the hospitality of their house. So that, whenever the Bishop has been confronted by these charges at the time, it resulted in such explanations as to avert the idea of criminality.

I do not consider the uniformity of the Bishop's denial of these charges as affected by what passed at the interview in relation to Mrs. Beare's case. At the first interview, all the witnesses testify to a distinct denial. At the second interview it does not appear that the charges were distinctly renewed in such a form as to call for distinct denial. The question of Mr. Beare was, in substance, as to the Bishop's denial of his wife's veracity. The answer of the Bishop was naturally directed to softening the absolute denial of her veracity into a form which would not irritate and exasperate Mr. Beare by a new issue as to his wife's credibility. He tells him that he would not question his wife's veracity, but that there is some mistake or misapprehension in the matter. I do not think that this can fairly be considered a shrinking from his denial of the alleged insults, and certainly is not, in my judgment, to be taken as a confession of guilt.

The charge of drunkenness, or, as it is worded, of being "improperly excited by vinous or spirituous liquors," I regard as disproved by incidental testimony in relation to Mr. Peck, as it fell from Mrs. Butler. The circumstances which proved to Mr. B. and Mrs. B. that the Bishop was in the condition alleged, were his tainted breath, his high spirits, his thickness of speech, and his talkativeness. Now of all these Mr. Peck, being in the carriage, was as cognizant as Mr. and Mrs. B. They were as perceptible to him certainly as to Mr. B., who was on the front seat beside Mr. Peck. Moreover, Mrs. Butler testifies that Mr. Peck was peculiarly sensitive to improprieties of professing Christians; that such improprieties constituted the obstacle to his conversion; and it is obvious that both Mr. and Mrs. B. were very anxious that a good impression should be made upon Mr. Peck by the Bishop, as Mr. P. had recently connected himself with the Episcopal Church. From Mr. Peck's state of mind, then, it is to be supposed that he would be alive to any impropriety, and instantly repelled in disgust from the Episcopal Church, by the knowledge of so gross an instance of it in the Bishop, as partial or even suspected drunkenness. But was this the case? Mrs. Butler says explicitly, No! To the question, "Did the driver" (Mr. Peck) "continue to be connected with the Parish?" her answer is, "He did." To my mind the inference is plain, that the account of the condition of the Respondent is *exaggerated* by the witnesses. The thickness of speech is explained by his having preached twice, instituted a clergyman, and held a confirmation that very day, before the ride commenced. A single glass of wine would have produced the tainted breath. And the talkativeness and high spirits, somewhat inconsistent with thickness of speech, are easily resolvable into the well known cheerful and courteous disposition of the Respondent, and his meeting with the recently married son and daughter of his old friends, and who had ridden fifty miles to meet him; the lady herself having always been

regarded and treated by him as a daughter, and for the ordination of whose husband he was to take a journey of fifty miles by night.

The result of the whole view of the case has been, not only to make me doubt of the guilt of the Respondent, (and with a *doubt* upon my mind, I could not be justified in pronouncing him guilty,) but also to satisfy me that there was no such testimony, supporting each charge and specification, as the Scripture to my mind requires me to exact, in order to convict a Christian brother of criminal, impure, and immoral conduct, as charged and specified in this Presentment.

While, therefore, I can see in the conduct of the Bishop on these several occasions much to condemn, as imprudent, foolish, and likely to be misunderstood and misrepresented to the injury of the Church; yet not seeing in it satisfactory proof of an extent of familiarity, implying criminal and immoral and impure desires or designs, as charged in the Presentment, I have answered, (my conscience and judgment concurring,) to the question propounded by the canon in regard to each charge and specification as laid in the Presentment, that in my opinion the Respondent is *not guilty*.

The sentence of suspension pronounced upon the Respondent was voted for by me, because, although declaring him not guilty, the Canon requires me, as one of the members of the Court, to vote upon the question of what penalty shall be awarded to the accused party, when found guilty by a majority of the Court. The question of guilty or not guilty is one question, on which the whole Court must vote. The question, whether, if declared guilty, he shall be admonished, suspended, or degraded, is another question, on which also the whole Court must vote. Believing him not guilty, I must, if compelled to vote, give my vote for the lowest degree of punishment, viz., admonition. Failing to procure that award, and compelled to vote on the question again, I vote for the next lowest degree of punishment, viz., suspension, in which a majority of the Court having concurred, it becomes the canonical penalty awarded by the Court. Failing also to obtain from the Court a limitation of the sentence to one year, and to allow him the private exercise of his ministry; I am compelled to acquiesce in the final decision of a majority of the Court; which suspends the Right Rev. Benjamin Tredwell Onderdonk, D. D., from the exercise of his office as Bishop, and from his ministerial functions.

W. H. DE LANCEY,
Bishop of the Diocese of Western New York.

NOTE.—I wish to put on record, also, that I, with others, opposed the publication of the proceedings of the Court, and of the testimony in the case; because, however much it might favor the Respondent, by showing the precise extent of the charges and the actual character of the testimony, to publish them, such publication would tend to injure the very moral and religious feeling of the Church and of the community, which the act of discipline upon the Respondent was designed to promote. The majority of the Court decided otherwise.

W. H. DE LANCEY.

OPINION OF THE BISHOP OF SOUTH CAROLINA.

THE Bishop of South Carolina gives his opinion as follows :

It cannot be denied, that our brother the Bishop of New York, from early manhood to the present time, when he has passed the meridian of life, has been unreservedly and zealously devoted to the service of the Church ; and that he has been, and continues to be, eminently useful. But there is "no man that sinneth not," and there are sins which do "easily beset us ;" and if one person be liable to sins of the flesh, another to sins of the world, covetousness or ambition, and a third to sins of the devil, falsehood or slander, "envy, hatred, malice, and all uncharitableness," it is not for man to decide which is the greater sin. If the acts of sin be repented of, the individual cannot truly be called an immoral man ; and the evidences of a true repentance are, habitual public confession of sin and supplication for pardon, the stated participation of the holy communion, and amendment of life, or in other words, living "soberly, righteously, and godly."

With respect to the specifications before us, (except one, in a modified degree, explained in my vote,) I believe our brother is not guilty. As to the two most serious specifications—to suppose a man would attempt the virtue (for it amounts to that) of a wife in the presence, hearing, and close by her newly-married young husband, is preposterous and ridiculous.

Such a suspicion might possibly be entertained of a madman, or a fool, or a reckless creature, entirely without character. "*Quem Deus vult perdere prius dementat.*" But who questions, in the present instance, the vigor of intellect, the experience of life, the tried integrity, the piety, charity, and self-denial.

The beginning of this prosecution was not right. The first movement was rumor, (created and fanned, as I believe, by carelessness, or folly, or dislike, or revenge,) which has existed for several years, but the most part of it never met my ear until in or after February, 1844 ; and I understood the said rumor had been in circulation among the members of the Convention of the Diocese of South Carolina, which was held in that month. The second movement was previous to, or during, the sitting of the General Convention, which was in October, 1844.

The first ostensible movers to direct action, were not the persons who considered themselves aggrieved ; nor were they members of the Diocese of New York, especially obligated and interested in the matter, but of three other Dioceses. The first application for redress was not, as it should have been, to the Convention of the Diocese of New York, but to the House of Bishops, which had no authority in the case. This course of proceeding appears to me unfavorable to truth and justice, and to the sacred independence of each Diocese ; and too favorable to party spirit, and to schism.

The Presentment, in addition to "immorality," names "impurity," which is not named in the Canon, and therefore ought not to have been named in the Presentment. The allegations characterize the acts in a way which prejudices the accused, and adopt epithets which are indefinite, or relate to manners, not to morals. The alleged offences are of so old a date,

that charity requires us to believe, if they were committed, they have been repented of.

The Apostle Peter's great sin being repented of, was not only forgiven, but he was permitted to retain his high office; and who will say that he did not exercise it to edification? Charges of old date cannot be investigated satisfactorily, by reason of the death or removal of material witnesses, and of the imperfection of human memory, and perhaps the inveteracy of prejudice.

The circumstances, in this case, constitute an *a priori* argument of great weight—such as the character and age of the Respondent, his paternal official relation to the parties, the place and the time—which authorize the belief that there must be misunderstanding or misconstruction. Holy Scripture (1 Thess. v. 22) sanctions the distinction between evil and that which may have the appearance of it. Familiar manners are peculiarly liable to misunderstanding, by persons who may have adopted ascetic or blue law, or other overstrained notions of morality—by persons under the influence of prejudice—and in those places, and at those times, where and when there exists a fierce conflict of opinion, and feeling, and interest; for example, at times of political excitement, in our own country, persons of character, till then unimpeached, and truly unimpeachable, have been charged with the most improbable, gross, and unnatural crimes.

The witnesses to all the specifications as to which the verdict was "guilty," were the very persons who considered themselves injured, and who, having made affidavits or statements out of Court, were under strong temptation to sustain them, and therefore cannot reasonably be considered impartial witnesses; and moreover, their testimony before the Court, their statements, as set down in the Presentment, their affidavits, letters produced, and conversations attested, exhibit discrepancies in several very important particulars.

The conduct of the complainants at the time of, and subsequent to, the alleged improprieties, has been remarkably inconsistent and difficult to be explained.

All the specifications except one, viz., the second, were attempted to be proved by the testimony of one person; and the very attempt was wrong, being contrary to the injunction of the Apostle Paul to the Bishop at Ephesus—"Against an elder receive not an accusation but before two or three witnesses."—(1 Tim. iv. 19.) And the Divine Wisdom, under the old dispensation, laid down this rule. "One witness shall not rise up against a man for any iniquity, or for any sin: at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established." (Deut. xix. 15; xv. 17; Numb. xxxv. 30.) To this authority the apostolical Canon, the 75th, defers. An heretic is not to be received against a Bishop, neither only one believer, for "in the mouth of two or three witnesses shall every word be established." It cannot be said, that although there was but one witness for each act, yet there were circumstances corroborating her testimony; even if this were true, still there would be only one witness, and Holy Scripture demands two witnesses: and the credibility of each one must be fortified by circumstances, or it will be questionable. But in the present instance the circumstances went to discredit the witness—that is, to manifest defect of memory, or of prudence, or of consistency.

It might be asked, are the memory and judgment of the material witnesses to be regarded as infallible? Were they perfectly free from pre-

Judice? from the strongest of prejudices—that connected with party theology? Are they to be supposed capable of drawing the line of demarcation with perfect accuracy between manners and morals—evil, and the appearance of it? Have they in the beginning and progress of this matter, at all times manifested the charity which thinketh no evil? Is it given to any mortal to discern the thoughts and intents? Are we not told, “The Lord seeth not as man seeth. The Lord (that is, he only, he exclusively) looketh at the heart.” (1 Sam. xvi. 7.) Are we not enjoined, “Judge not according to the appearance?” (John vii. 24.) The scribes and Pharisees did not charge the person in John viii. 3, on suspicion, or on the ground of a doubtful act.

But waiving the scrutiny of the testimony, and the considerations named, the undersigned insists that each act from which it was attempted to prove immorality, each act which gives any the least color to the imputation of impure feeling, has but one witness. In its sternness the common law allows of a single witness. But an ecclesiastical court ought to be governed by the law of Scripture—the more strictly just law of the civil code. It is inconsistent with justice and humanity to create a precedent for allowing character to be sworn away by one person. And we have a solemn warning how dangerous it is to depart from the scriptural rule, in a late trial, when a Presbyter was convicted of a gross crime, and ruined in property by the secular court, on the testimony of one person; and it has since been fully established that he was entirely without guilt.

Good will come to our brother from this prosecution, for “it is good to be afflicted.” No good will come to our ecclesiastical confederacy. I pray God that much evil may not come to it; that it may not be shaken to its very centre by the proceedings and decision in this prosecution.

The occasion reminds us to cling with tenacity to, and to be thankful for, the divinely-ordered, the essential independence of each Diocese; and for the blessed promise to (not a particular Church, or association of Churches, which may pass away, but to) the Church Catholic—the Church regarded as one—that she shall outlive every shock, under the protection, and guidance, and favor of the divine Head and Lord.

C. E. GADSDEN,
Bishop of the Diocese of South Carolina.

NOTE. It has been published in a pamphlet as follows: “On the first or second day of the Convention, our Bishop was informed, in the presence of several of his Presbyters, in the vestry-room of St. Michael’s Church, that a resolution, requesting the Trustees from our Diocese, to move in the Board an inquiry into the state of the Seminary, would probably be proposed,” &c.

Never, till I read that pamphlet, did I know there was any the least connection with that “inquiry” and the moral character of the Rt. Rev. Professor. I thought, up to this time, (Jan., 1845,) that the inquiry, and “the rumor” referred to in the resolution of the Convention, had *exclusive* reference to errors in theology.

OPINION OF THE BISHOP OF MARYLAND.

Having been, as I think, improperly hindered from making the following declaration of opinion, at the time prescribed by the Canon, I avail myself of the opportunity allowed, before passing to sentence, to read it, with a view to its thus obtaining a place on the record of the Court.

W. R. WHITTINGHAM.

In the Name of God, Amen.

In my opinion the Rt. Reverend Benjamin Tredwell Onderdonk, D. D., Bishop of the Protestant Episcopal Church in the Diocese of New York, having been presented by the Right Reverend William Meade, D. D., Bishop of Virginia; the Right Reverend James Hervey Otey, D. D., Bishop of Tennessee; and the Right Reverend Stephen Elliott, D. D., Bishop of Georgia, as guilty of immorality and impurity in several specifications;—

Is not guilty of immorality and impurity, as specified in the first article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the second article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the third article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the fifth article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the sixth article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the seventh article of the aforementioned Presentment :

Is not guilty of immorality and impurity, as specified in the eighth article of the aforementioned Presentment :

And having had no testimony offered against him in support of the specifications in the fourth article of the aforementioned Presentment, is to be held, and is by me believed, to be not guilty of the charge of immorality and impurity therein alleged.

Given as my judgment, in the Court assembled in the case, this second day of January, in the year of our Lord one thousand eight hundred and forty-five.

WILLIAM ROLLINSON WHITTINGHAM,
Bishop of Maryland.

The reasons of the above opinion and judgment, it is my intention to furnish hereafter, for entry upon the record of the Court.

WILLIAM ROLLINSON WHITTINGHAM,
Bishop of Maryland.

Reasons for the Opinion of the Bishop of Maryland, in the case of the Presentment against the Rt. Rev. Benjamin Tredwell Onderdonk, Bishop of New York.

THE Presentment against the Bishop of New York comes before me burdened with many improbabilities, which must be taken into account in weighing the testimony by which it is supported. Among these I do not reckon the improbability of heinous transgression on the part of one so high in office in the Church. That has its weight; but its weight is no greater in this case than it must be in the case of any Presentment against a Bishop for crime or immorality. The improbabilities now in view, are peculiar to the present case.

The Presentment sets forth immorality and impurity as a prevalent disposition of mind, evidenced by repeated acts spread over a series of years. The existence of such a disposition of mind in one filling so public a station, circulating so constantly in society through the wide extent of so large a Diocese, holding free and habitual intercourse with such multitudes of people—by no means all friendly disposed—without detection and exposure, through so long a series of years, is in a high degree improbable. The manifestation of such a disposition in the kind of acts charged, and under the circumstances specified, and no otherwise, is very improbable; and it is equally improbable, had more overt acts, of a worse description, been committed, that reports so long and so extensively known as those concerning the allegations in the Presentment have been proved to be, should not have called out the knowledge of them, and placed them within the reach of the diligence of the suggesters and framers of this Presentment.

Another kind of improbability grows out of the number and silence of the persons cognizant of the allegations made, in connection with their character and standing in society. It is very difficult to believe that so many clergymen, several of them of the very highest repute for wisdom and piety, should have so long connived at such guilt as is charged in the Presentment. If true, the charges of that document are charges against every clergyman who knew of them and kept them secret. The only ground on which the conduct of so many, so intelligent, so respectable clergymen can be justified, is that they did not believe the stories which they heard; or, knowing and believing certain facts, did not regard them as susceptible of the coloring put upon them in the Presentment.

Still another improbability appears in the conduct of the individuals professedly aggrieved. One such instance of forbearance as both Mr. Butler and Mr. Beare must have manifested, had they at the time regarded the treatment of their wives in the color now given it, is sufficiently unlikely—the occurrence of two, under circumstances so nearly similar, is greatly so. It is not to be explained by a recurrence to Christian principle, operating similarly in the hearts of Christian men; because Mr. Butler and Mr. Beare did *not*, on their own showing, act on Christian principle; they did not tell their brother of the fault now alleged, and in the spirit of meekness expostulate with him; the sin which they chose not to reprove, their charity did not cover.

The discretion of the females, in all the instances of alleged insult, is

equally extraordinary. Placed, in every instance, in situations affording opportunity of instant discovery of the insult to the persons most concerned, most entitled, and best able, to check and punish it, they appear, in every case, for a time, and, in all but one, throughout, by silence and abstinence from every mode of giving an alarm, to have connived at the conduct which they now represent as an insufferable outrage. The subsequent conduct of all, Mrs. Butler alone excepted, is similarly strange and inexplicable. They exchange civilities with him by whom they have been insulted. They receive and render courtesies. In every instance they share the friendly meal; in one it is proffered and urged upon the offender, as a guest. They gossip with others of liberties and improprieties; but to the party on whom they charge them, they give no hint or token that he has ever given them offence. In three instances, he remains in utter ignorance that any thing which may have passed between him and them, has been taken amiss; nay, in two, to satisfy him that it has not, he has the strong evidence of an unsolicited visit from one of the two aggrieved sisters.

The charge of immorality and impurity in the acts alleged, acquires improbability from the circumstances, in every specified case. That any one possessed of common sagacity and self-conduct, (to say nothing of his bearing the office of a Bishop,) should have chosen to indulge his evil dispositions in circumstances so unfavorable, is hardly conceivable. An open carriage on a public road, (in two instances in broad daylight,) in the company of other persons, (in two instances the husband of the lady alleged to have been insulted,) are the last situations in which one would suppose a man, having a character to lose, likely to give rein to impure desire, and indulge in immoral practices.

The time, too, in every instance, increases the improbability. After, or before, or between the most solemn services of the holy religion of which he is a minister, the Respondent is charged with having grovelled in his impurity and immorality. Precisely when he might be expected, if ever, to have been free from unchaste desires, even if habitual, he is alleged to have given them their range.

The mode is as strange as the time. No previous or subsequent joviality, frolicsomeness, liberty, or even lightness of speech or manner, is alleged. Without an indecent word, without a hint or expression capable of evil construction, without, so far as appears in evidence, a look or gesture (apart from the alleged manipulation) significative of impure excitement, the insults are represented to have been, deliberately, coldly, almost solemnly perpetrated, unexplained, never followed up, on persons the most unlikely to permit them, at times the most incongruous, under circumstances the most likely to bring about detection, summary punishment, and deep, irremediable disgrace.

Most of these improbabilities inhere in the Presentment, on its very face; all have been fully brought out in the course of trial. They do not make the charges absolutely incredible—incapable of proof—but they do make it the duty of a judge to require the very strongest and fullest testimony for their support.

Now, what has been the evidence adduced on trial, to sustain these charges? In every case, of a single witness only; that witness in each case an interested witness, and in each case discredited. In the case of Mrs. Butler—Mr. Butler saw nothing immoral or impure, that he felt disposed to complain of as an improper liberty. What he retailed throughout

the country for seven years, was his wife's story, exaggerated by her fancies, carelessly heard and recklessly repeated, even to the very verge of perjury. Had he never made to Mr. Irving, and Mr. Lucas, and Mr. Hubbard, and Bishop Meade, and Dr. Henshaw, and Mr. Gallagher, and probably many more besides, the false and wholly unfounded representation that the Respondent had attempted to lift Mrs. Butler's clothes, this Court would probably never have been called together.

The origin of that falsehood, to my mind, utterly discredits Mrs. Butler's evidence. Hard as it is to say it, justice demands the expression of the opinion, that the woman who, *from the actions which Mrs. Butler herself has ascribed to the Bishop*, could jump to the conclusion that "he was about," or "likely," "to pull up her clothes," was in a frame of mind capable of putting gross misconstruction upon innocent or even accidental movements, and not likely to make any allowance for any freedom which the relation (by her admitted to have been almost filial) between herself and the friend of her father, and of her own childhood, might have prompted, and excused, if not justified.

Mrs. Butler, it appears, naturally of a nervous temperament, had been greatly fatigued by the long, rough ride of the preceding day and night. Again undergoing fatigue, she was, in the physical sense of the terms, irritable and excitable. Recently married, and within a year a mother, it is not marvellous that her excitability should take a particular direction. A single misconception of a caress, such as she testifies she had often before admitted and received from the Bishop, in equal purity and unsuspectingness on both sides—a misconception perhaps owing to a jolt of the carriage moving over an uneven road—might originate a train of misconstructions, and the active imagination, which out of a grasp of the leg (if that *did* occur) could run on to divine an intention to lift the clothes, might easily lend significance to contacts and pressures growing out of the uneasy motion of a carriage on a deep and broken road.

I see no evidence, therefore, of immoral and impure conduct on the part of the Bishop in the ride with Mrs. Butler. She, the only witness, is likely to have mistaken the precise nature and occasion of the *acts* about which she testifies; of their *intention*, (in which alone the criminality of such acts, apart from the occasion, must be sought,) she has convicted herself of incompetency to judge, by the groundless suspicion communicated to her husband, and so long by him regarded and reported as the statement of a fact. The inherent improbabilities of the charge all weigh against such worthless evidence, and lead me to believe Mr. Butler and his brother clergymen, and Bishop Meade, for the four years between 1840 and the date of the Presentment, right in their *conduct*, whatever may have been their opinion; and to pronounce the Bishop, what they treated him as being, *not guilty* of the first specification in the Presentment.

The testimony in support of the second article of the Presentment, deserves only to be characterized as absurd and self-confutatory.

The Presentment has not ventured to charge inebriation, or intoxication. It is only undue, or improper excitement, by vinous or spirituous liquors, that is alleged. What is such undue or improper excitement? No quantity of vinous or spirituous liquors can be taken, without producing *some* excitement. Is, therefore, all or any excitement improper, and presentable? If not, where is the limit, within the line of intoxication? The evidence, in support of the specification, is, that the Bishop "talked a

great deal," "talked thickly," "slept heavily during the night," (after a day of fatiguing duty, while riding all night,) and that "his breath smelt of wine, or spirituous liquors." A single glass of wine, taken at Mr. Munn's, whence it is said he started on that ride, would account for the latter circumstance; and it appears impossible to account for it otherwise; for he did not join company with Mr. and Mrs. Butler after a full carouse, or deep potations, but at the close of the protracted religious services, in which he had borne the principal part, without, it is presumable, any public indications of disqualification by indulgence; of which evidence, might, and, no doubt, would have been produced, had it existed. The "much and thick" talking, weigh little against the evidence that, at the same time, though in a carriage in rough motion, and with fading light, he was able to read several letters, parts of them aloud, and to discourse intelligently of their contents. No incoherency, no absurdity, no incongruity; above all, no indecency of talk is testified. The "much" talking, for aught that appears, was the innocent indulgence of unsuspecting frankness; the "thick" talking, perhaps, the imagination of those whose nice senses had detected the "fumes" of liquor; or, more likely, the somewhat affected articulation of organs fatigued by hard duty through the day. The second specification of the Presentment is wholly unsupported by the testimony, and I find the Respondent *not guilty* of the same.

The third specification has been still more miserably sustained. Every circumstance charged has been disproved by the only witness competent to testify. Nothing alleged in this article took place as there recounted; and what did actually take place, was regarded by the witness and reporter, not as impure and immoral, but as, at the utmost, "foolish and indiscreet;" and, certainly, as described by him, requires no little sensitive suspiciousness to give it a color deserving of that light censure. On the showing of the very testimony adduced for the Presentment, the Respondent is *not guilty* of the charge and specifications set forth in its third article.

The fourth article has not been tried. The fifth and sixth articles, teeming with improbabilities as they stand in the Presentment, have been connected by the testimony with a tissue of improbabilities still more astounding; and yet depend, each, upon the unsupported evidence of a solitary witness, without the slightest corroborative or circumstantial proof; that witness, in each case, being discredited by her own conduct at the time and subsequently, and giving evidence on the trial with a plain disposition to color facts and keep back testimony.

In the case of Helen Rudderow, it is improbable that a ride of three quarters of a mile should have consumed half an hour; it is very improbable that during all that time, save five minutes, a man sitting on the back seat of an open carriage with a lady, should have kept his hand thrust far down in her bosom, pressing and grasping it, as they passed through a street on New York island, at mid-day; it is exceedingly improbable that a lady so abused, possessing any degree of self-respect, should have made no outcry; it is in the highest degree improbable that this should have taken place with another person in the carriage, within hearing, sight, and reach; that person a man, a clergyman, the friend and pastor of the insulted female, and he be in no way solicited to attend and interfere; but it is most of all improbable that that person should have been the Rev. James C. Richmond, keen-sighted, active, observant, as all who know him know he is; and that he should have been in conversation with both the parties thus strange-

ly situated, exchanging questions and replies with both, frequently turning so as to look the alleged transgressor in the face, and should have seen and known so little of the matter, that while his diligent agency is recognisable in every part of the proceedings resulting in this Presentment, he can testify nothing even corroborative of the evidence of Miss Rudderow, which he reduced to writing and procured to be made in the shape of an affidavit.

That affidavit discredits the witness whose sole testimony is to establish this tissue of improbabilities. By swearing, in the postscript to Jane Rudderow's affidavit, that every word her sister has therein said is true, Helen Rudderow has proved her own unfitness to bear testimony upon oath; for of most of the statements thus confirmed she *could* have had no personal knowledge, and some are incontestably disproved.

The conduct of Miss Rudderow, as described by herself, discredits her testimony. It is not conceivable that any virtuous female, treated as she represents herself to have been during nearly half an hour, would welcome to her home the man by whom she had been outraged, and send down a younger sister to bear him company, and "entertain" him in a room alone. The woman who *could* do so is unworthy of belief: the woman who can represent herself as having done so, compels me, in mercy to her, to reject her evidence. Such testimony, destitute of the slightest corroboration, is greatly outweighed by the many and extreme improbabilities of the story which depends on it; and I have no hesitation in concluding that, of immorality and impurity in the manner specified in the fifth article of the Presentment, the Respondent is *not guilty*.

With relation to the allegations of Jane O. Rudderow, it is hard to say which occasions most surprise, the tenor of her testimony, or the absence of other testimony to support it, considering what she testifies. That any man of decent character (setting out of view his position as a clergyman and a Bishop) should have had the hardihood at first greeting a young woman in her own house, in an open room, within hearing of her two brothers grown to man's estate, to insult her, as Miss Rudderow describes herself to have been insulted, is sufficiently improbable; that she should have suffered it, (and that, too, after previous warning by her sister,) without outcry, or the slightest intimation to her brothers that their company was desirable, is still more improbable; that she, and her equally insulted sister, should have quietly dined with him, and suffered his company after dinner, is very strange; but, that then she should have given him an opportunity of conversation remote from others, by going with him to the end of the piazza; that there he should have repeated his insult in the presence of half a dozen others, a mother's quick eyes among them, without protest from her or notice on their part; and that again, a few minutes afterwards, in a small room with several others present, he should avail himself of her going to the window; to rush after her, pass with her behind a painted window-shade that hung four inches from the glass of an outside window, and beneath that semi-transparent covering again perpetrate the outrage of thrusting his hand far down into her naked bosom through a high-necked, close-fastened dress, without resistance on her part, or attracting any observation by the company in the room, whose sole and honored guest he was;—these are improbabilities surpassing belief. Where is the sister-in-law who was in the piazza, and in the room, when these things are said to have taken place? She personally appeared in Court. Why did she give no evidence? Of course, because she had none to give. She knew nothing of all this. It took place

in her presence, her sister says ; but she cannot corroborate the testimony of that sister by the recollection of a single circumstance. In the affidavit of Jane Rudderow, the remark of her mother, now deceased, is related. She cannot be called upon to give testimony. The sister-in-law who can, saw nothing, heard nothing, knew nothing of the marvels that were going on before their eyes, or within their hearing. Of the subsequent conduct of the Rudderows, their own reluctant testimony makes it clear enough that it has been inconsistent, and throws discredit on their alleged grievances ; that of Jane is wholly irreconcilable with any degree of womanly sensitiveness and delicacy, if, previously to her voluntary offer to call upon the Bishop in his study, to which Mr. Dowdney and Miss Rutter testify, she had really received from him the treatment recounted in her testimony. On the unsupported word of such a witness it is impossible to receive the tissue of improbabilities strung together in her story. Without other and better proof, I cannot but believe the Respondent *not guilty* of the immorality and impurity charged against him in the sixth article of the Presentment.

The seventh and eighth articles, distinct allegations, but parts of the same story, have the peculiarity of a show of support for the testimony of the single witness on whom, in that, like all the others, they depend. If the allegations, as they now stand in the Presentment, were ever made to the Respondent, and admitted by him, they would, by that confession, be sufficiently proved. It has been contended that they were so made, and admitted ; and to that effect, the testimony of Drs. Milnor and Muhlenberg has been adduced. On the other hand, the united testimony of all present, that at the interview when they were first made known to the Respondent, he denied them ; the admitted uncertainty whether that denial had reference to the criminal character given to what passed between him and Mrs. Beare, or to the attempted statement of what did pass ; the discrepant testimony of Drs. Milnor and Muhlenberg, as to the way in which that statement was made ; the clear, distinct, and full evidence of Dr. Higbee, as to his impression of the denial made at the first interview, and the kind of admission made at the second ; and the evident treacherousness of Dr. Milnor's memory, which has betrayed him into contradictory statements relative to a matter of no less importance than his own faithfulness to the agreement or understanding, after those interviews, to make no further mention of the transaction ; afford abundant ground to doubt the correctness of Dr. Milnor's uncorroborated recollections, and to acquiesce in the impression of Dr. Higbee, which alone is reconcilable with what all admit to have taken place between Dr. Milnor and the Bishop, at the close of the second interview, and with the honesty and piety of character of all four clergymen concerned ;—to wit, that the Bishop did not admit the allegations as implying guilt, but sought to reconcile a difference, which he, in the most charitable view of the conduct of his accuser, attributed to mistake and misconception.

The charge of impurity and immorality in the case of Mrs. Beare, then, and the specifications on which that charge is grounded, still rest on the single testimony of Mrs. Beare. When presented to the Respondent by his brethren of the clergy, he denied them with indignation ; and there is not the slightest evidence to fix what extent he meant to give to his subsequent declaration that he would not impeach the veracity of Mrs. Beare.

What he would not do, Mrs. Beare herself has compelled this Court to do, by her unfortunate statements concerning a written document in which she had set down the particulars of her story. The witness who could pos-

itively declare of such a document, "it is destroyed," and then, within five minutes, be brought, by the searching interrogatories of Counsel, to admit, in so many words, "It is *not* destroyed," cannot claim credit for veracity: Neither does Mrs. Beare's very remarkable want of memory concerning transactions which one would suppose she, of all others, would be least likely to forget in any their minutest circumstances—transactions subsequently to her alleged insult, with him by whom she complains of having been insulted—wear the appearance of veracity. It is as hard to believe that she and her husband could have so entirely forgotten all that sufficient witnesses have proved to have passed between them and the Bishop, subsequently to the transactions now made ground of accusation against him, as it is to conceive how such things could have passed between them and him, had they at the time believed him to be guilty of the immorality and impurity now laid to his charge.

Whether the manner of the Bishop in the morning's ride with Mrs. Beare, which has been made the subject of the seventh article of the Presentment, was not too free and caressing for the lively sensibility of that lady; whether it was not accounted for, and justified by the more than ordinary intimacy, and paternal intercourse, of the Bishop with her husband from his boyhood, and the consequent filial relation of the wife to the husband's old friend and second father;—these are questions not for this Court to solve. Our business is with the extent and intentions of the freedoms taken. Were they immoral in their nature? Were they impure in their design? Mrs. Beare's own account of them does not prove that either she or her husband so regarded them, when she first made her complaint to him. She thought them "unbecoming," "too familiar;" she did not like them: and he sympathized with his newly-married wife, as was natural. But did they think the acts criminal? They do not say so. They cannot: for if they did, the conduct of both, for the remainder of the day and evening, would be set in an extraordinary light; and the husband, who, knowing and believing his wife to have been grossly insulted in the day-time, had placed her again that night in the situation that had exposed her to the insult, would deserve a name harsher than I care to introduce. Mr. Beare did not believe the story now before the Court, when he took his wife home from Mr. Franklin's in the evening ride, which is made the subject of the eighth specification. There is no evidence that he ever believed it, except so far as to be sure that it had foundation, to be confident in his wife's veracity, to acquit her of intentional false witness. Now it is observable that Mrs. Beare, like Mrs. Butler, was newly-married when these occurrences took place. A new station in life had brought with it new notions of propriety, of dignity, of decency. What, as in Mrs. Butler's case, the girl might have suffered without a thought of impropriety, the bride regarded in a different light; the caresses of a parent were no longer uppermost in her mind, and what, under other circumstances, might have been taken as they were meant, for tokens of paternal fondness, became disgusting under another construction, lent them by the prevailing current of her affections. That Mrs. Beare, having once misconstrued the attention of the Bishop, is capable of so framing her narrative of what then and subsequently transpired, as to make it bear her out in her misconstructions, the whole tenor of her testimony, too plainly shows. Ingenuousness, frankness, and candor, are not the characteristics of that testimony. It was painful to listen to the efforts of Counsel to obtain from this witness direct and positive answers on topics which it

was her interest to avoid. There is too much in the testimony of Mrs. Beare that looks like convenient forgetfulness, evasion, and coloring by partial and imperfect statements, to leave a doubt that when she had once committed herself to her husband as to the character of the Bishop's familiarities, she was capable of viewing and representing every thing that might subsequently occur, in the aspect most favorable to her declared anticipations. Into the details of her representation of the occurrences in the second ride, I do not care to go, for obvious reasons. Setting aside moral improbabilities, there are circumstantial difficulties in her statement that will not bear examination; and that statement has the additional disadvantage of being set forth quite differently in her own evidence, in the affidavit of her husband, and in the recollections of Dr. Muhlenberg—no two agreeing in the minute details which alone give explicitness and atrocity to the alleged offence. I cannot receive such facts, from such a witness, under the witness's own coloring. Whatever may have taken place between the Bishop and Mrs. Beare on that occasion, I find no adequate support for the charge of designed indecency on his part, improbable as the person, the time, and the circumstances make it. There must be more and better evidence, before I can convict the Respondent of the immorality and impurity alleged in the seventh and eighth specifications of the Presentment. To my mind he appears now, what I believe him to have appeared to the four clergymen who first brought the allegations to his notice, *not guilty* of such immorality and impurity.

The specifications severally unproved, cannot jointly make up proof of guilt. To do that, the whole must be regarded as one fact, of which each specification then becomes an essential circumstance; and the same degree of proof becomes necessary to establish such essential circumstance, that is requisite for the establishment of the entire fact which it is taken to make up.

The failure of proof under each specification, has destroyed an essential circumstance of the general charge; and the failure under all, has left that charge wholly devoid of existence, and therefore incapable of proof. Guilt has not been proved in either of the specifications alleged in the Presentment; it would be equally absurd and unjust to consider it as proved, apart from the specifications and out of them. The Respondent is *not guilty* of immorality and impurity, as specified in the first, second, third, fifth, sixth, seventh, and eighth articles of the Presentment. Not having been tried on the fourth, there remains no specification of the alleged immorality and impurity. He is, therefore, *not guilty* of the charge at all.

This being my opinion, grounded on the reasons adduced, (among many others that might be given,) it is unnecessary that I should examine the question whether these accusations, being sustained each only by a single witness, can be entertained at all by this Court. Other members of the Court have learnedly and conclusively shown that they cannot. For me, it is enough to find them all improbable, and each unproved, to be assured that, whether rightly entertained or not, they must needs be dismissed, on the principles that govern all human judgments in the investigation of the evidence of facts and motives.

WILLIAM ROLLINSON WHITTINGHAM,
Bishop of Maryland.

OPINION OF THE BISHOP OF DELAWARE.

THIS Presentment before the Court contained nine articles. Of these, the 9th was struck out by the Court, as not possessing that particularity of time, place, and circumstances, which the Canon requires. Upon the 4th article, no evidence has been brought before the Court; the citation issued to obtain the attendance of a witness being disobeyed, and that specification is, therefore, to be left out of its consideration.

There remain the specifications in Articles I., II., III., V., VI., VII., and VIII., upon which proof has been offered, and upon which each member of the Court is to pronounce whether, in his opinion, the accused be *guilty*, or *not guilty*.

Upon these specifications, I pronounce as follows: viz., upon

- Article I.—Guilty.
- “ II.—Guilty.
- “ III.—Not guilty.
- “ V.—Guilty.
- “ VI.—Guilty.
- “ VII.—Guilty.
- “ VIII.—Guilty.

As it regards the above charges, the proof presented in relation to Article III. does not substantiate the specification. Evidence was presented that the Respondent had behaved in a foolish and indiscreet manner, in a public stage, but not that he had committed the most objectionable acts charged in the article.

The specification in Article II. is of an offence of a different nature from that charged in the other articles, and being the single offence of the kind, and having occurred more than seven years ago; although, as it was satisfactorily proved to my mind, I am compelled to pronounce the Respondent guilty, it has little influence upon the determination of the *sentence* recommended.

The specifications in the other articles, viz., Art. I., V., VI., VII., VIII., are all of offences of a similar class, brought forward in support of the general charge of immorality and impurity, set forth in the opening paragraph of the Presentment, and alleged to have occurred in connection with four different persons.

The verdict which I have felt it a solemn duty to pronounce upon these specifications, is grounded upon the direct and distinct attestation of credible witnesses to all the material facts therein set forth; which facts being satisfactorily proved, the deduction of guilt, as charged in the Presentment, is unavoidable. The witnesses who testified to the truth of these facts before the Court, are all of them communicants of the Church; persons of unimpeached character, and several of them ministers of the Gospel. Their testimony has been subjected to a cross-examination of the most extended, minute, and searching kind, without impairing its credibility. All those circumstances which are considered important for the ascertainment of

truth, such as previous character, manner of testifying, &c., and especially subjection to cross-examination, were such, in the present case, as to confirm very strongly the credibility of their evidence. This evidence is, itself, so positive and distinct, and comes from those who must be cognizant, certainly, of the truth or untruth of the facts charged, that it is impossible to avoid one of these conclusions: either, on the one hand, that those facts are sustained; or, on the other, that the witnesses have deliberately perjured themselves upon this solemn occasion. There seems to me no door of escape from one or other of these deductions.

The chief reasons urged by the Counsel for the Respondent, or otherwise suggested on his behalf to the Court during the progress of the trial, are the following:

I. The extreme improbability of such acts being committed by a person in the station of the Respondent, and under circumstances which made him so liable to detection and exposure. That there is such improbability is not to be denied, and the benefit of the presumption thence arising is to be given, without doubt, to the Respondent. It furnishes a reason for requiring distinct, positive, and unimpeached testimony to the matter in question. But antecedent improbability cannot be allowed such weight as to destroy the force of direct testimony. The commission of any immoral act by a minister of the Church of Christ must be considered as improbable, but in spite of this presumption, it is found necessary to provide canons of discipline for the clergy.

The question for the Court to decide is, whether, in the exercise of a sound discretion, giving its due and reasonable influence to the presumption of innocence, arising from this and other sources, the charge is supported by sufficient proof. In the estimate of this proof, it is to be borne in mind that the question of improbability, in reference to the peculiar concomitant circumstances of each case, applies as well to the testimony of witnesses as to the Respondent's innocence. It is to be reasonably supposed that a fabricated story will be invested only with such incidents as are most probable, and not embarrassed by the addition of such as are unimportant to the object in view, not likely to occur, and opening each of them a door for contradiction and detection.

II. A *second* argument is the length of time which has elapsed since the facts charged occurred. This objection cannot well apply to the most recent specifications contained in articles seventh and eighth. It applies with most force to the case charged in article first—that of Mrs. Butler. Did the latter case stand alone, the weight of this objection would be greatly enhanced. The principle, however, that where there are several charges of a similar nature, the chain may be carried back beyond what would be a proper limit to the more remote, if single and alone, is one obvious and well established. A single item of a long account, falling within the time fixed by the statute of limitation, takes the whole account out of the operation of the statute.

The Canon for the trial of a Bishop provides no period of limitation. Weighty reasons may be urged why there should be no such provision. A violation of the consecration vow of a Bishop may be likened to a breach of a trust confided; and it is well known that a much longer period of limitation applies in law to cases of that nature. Neither can it be conceded that the neglect of those persons immediately cognizant of the offence to take measures for investigation and punishment, should conclude the

Church at large, deeply interested in the purity and good conduct of each of its chief ministers, and ignorant for a length of time of said misconduct.

In the absence of any provision of limitation in the Canons of the Church, the Court have no right to make one. All that can be reasonably required in the present case is, that all due caution should be exercised in relation to the proof of the more remote charges; and that if the more recent accusations should be disproved, and only the more remote established, this fact should have its proper influence in the determination of the sentence.

III. Another argument has been strongly urged upon the Court from the provision of the Levitical law, and the direction given by the Apostle: 1 Tim. v. 19: "Against an elder receive not an accusation but before two or three witnesses;" and the same rule as adopted by the civil law, which is in use in the ecclesiastical courts of England.

Respecting this argument I remark—

1. That it does not apply to the charges contained in Arts. I., VII., and VIII. To the first of these Mr. and Mrs. Butler both testified. The principle in question does not require that each shall testify to all and singular of the facts and circumstances of the offence charged.

In the case of Mrs. Beare, contained in Arts. VII. and VIII., there is before the Court, in addition to the testimony of Mrs. Beare, the distinct admission of the facts charged, by the Respondent himself, testified to by three credible witnesses. This is evidence of the strongest kind.

2. The requirement of two witnesses to an accusation is not equivalent to requiring two witnesses to each particular charge contained in the accusation.

3. The purport of the apostle's injunction is to require the same amount of evidence against an elder which the law of the land then required in all cases of criminal accusation.

4. The provisions of the Canon (third of 1844) seem throughout to recognise the common law as that which applies to the procedure, evidence, &c., under it. That the principles of the Canon law of England are therein adopted or implied, or that the Church designed to depart from the rules of the common law relative to evidence, is not, in the absence of any positive legislation, to be presumed. One absurdity which would follow from the adoption of the principle in question would be, that a Bishop might be convicted in the civil tribunals of a crime, the penalty of which is imprisonment or death, upon testimony which would not warrant an ecclesiastical court in degrading him.

IV. The 4th argument arises out of the testimony produced on the part of the Respondent with the purpose of contradicting the witnesses for the Presenters. There is no testimony offered to disprove the general character of the witnesses as to truth or veracity. In regard to the charges in articles I. and II., there is no evidence before the Court except that for the Presentment. In reference to the charges embraced in articles V. and VI., there is presented the testimony of the Rev. J. Dowdney to contradict, upon some points, the Misses Rudderow. The testimony of this gentleman is, however, by no means of that clear and distinct character which the purpose for which it is adduced must require. His recollection is confused upon circumstances occurring within a very brief period, and his own testimony is not without contradiction from

himself, and another witness on the same side. It is not therefore evidence to warrant the discrediting of the testimony of the Misses Rudderow.

In reference to the contradictions attempted of the evidence given by Mr. and Mrs. Beare, were the facts involved material, which in my view they are not, they would be deprived of all weight by the admission of the offences charged by the Respondent, not more than ten days after the time of their occurrence, testified to by the Rev. Drs. Milnor and Muhlenberg, and Mr. Beare. I am forced to the conclusion, that the direct testimony offered for the Presentment has not been shaken by the counter-evidence on the part of the Respondent.

With regard to the sentence which is demanded by a verdict of guilty—my own conviction is determined by the considerations following:

1. The facts proved are such as would seriously impair the reputation and good standing of any person claiming a respectable character and position.

2. They are a palpable violation of the solemn consecration vow of a Bishop.

3. They were committed in close connection with the exercise of the sacred functions of the Respondent's office.

4. The facts proved are indicative of an unholy and impure state of heart.

5. The offences charged and proved are a violation of the sanctity of domestic life, and of the confidence which belongs to the ministerial character. The effect of treating them as light and venial by this tribunal, must be seriously to prejudice that freedom, cordiality, and confidence of intercourse between ministers and the members of their flocks, which are so essential to the efficiency of the work intrusted to them.

6. It seems impossible that one holding the high station of the Respondent, after having been proved guilty of the offences charged in this Presentment, can afterwards exercise the functions thereof to the edification and well-being of the Church of Christ.

7. Our sentence in this matter, is to lay down, upon an occasion of the most solemn character, a rule of morals for the Church of Christ.

8. On a recent painful occasion, wherein the House of Bishops received from an offending brother, an acknowledgment of excessive use of stimulating drinks, and a request, on his part, for the exercise of discipline; and after the resignation of his Episcopal charge, made and accepted, the penalty awarded was, unlimited suspension. Beyond this, there is but one grade of penalty—and, in the present case, I am forced to the painful conclusion, that this higher measure of punishment follows inevitably from the verdict rendered.

A weighty objection also, in my mind, to the infliction of the same penalty of suspension, as in the previous case, is the fact, that such sentence will not dissolve the tie between the Respondent and his Diocese, neither have the Court any power to do this in connection with such sentence.

As a member of this Court, I must, under a solemn sense of duty, vote for *displacement*.

ALFRED LEE,
Bishop of Diocese of Delaware.

OPINION OF THE ASSISTANT BISHOP OF VIRGINIA.

THE Assistant Bishop of Virginia has no wish (he certainly does not deem it necessary) to explain his course in connection with this painful trial.

He regards the testimony as a full justification of the verdict in which, with nearly two-thirds of the Court, he has united, and is satisfied to submit it, without comment, to the consideration of the Church. With regard to the punishment appropriate for the offences which have been proved, conviction in such case is itself, in his view, a virtual degradation.

He sees not how any one found guilty of such offences can return to the duties of the Episcopate with any hope of regaining confidence, or of advancing the interests of pure and undefiled religion; and therefore he is of opinion that the proper sentence in this case is deposition.

J. JOHNS,

Assistant Bishop of the Protestant Episcopal Church
in the Diocese of Virginia.

January 3d, 1845.

OPINION OF THE BISHOP OF RHODE ISLAND.

In giving my verdict in this trial of the Respondent, the Rt. Rev. Benjamin Tredwell Onderdonk, Bishop of the Diocese of New York, I could not fail to pronounce him guilty of the various specifications on which he has been convicted; because otherwise I must believe that many witnesses of unimpeached character, all of them communicants of the Church, and some of them ministers of good standing at her altars, have, without any conceivable motive, wilfully perjured themselves.

Of the righteousness of this verdict—clearly sustained by the full number of witnesses, and the full amount of testimony ever required by any law, whether divine or human, in criminal prosecutions—I have no doubt. The question now is, not as to the guilt or innocence of the accused, but as to the sentence which should be pronounced by this Court. That sentence, whatever it may be, is to be considered, not as a punishment of the offender, but simply as an act of discipline, designed to *vindicate the laws and preserve the purity of the Church.*

As to the Respondent, it is the design of this act of discipline to lead him to repentance, that his salvation may be insured, by the mercy of God, through Jesus Christ our Lord.

My long acquaintance and affectionate intercourse with this accused brother, would incline me to the most lenient and merciful sentence by which the purity and welfare of the Church might be secured. I was much affected by the address of the Respondent, in palliation and excuse of the offences of which he has been convicted. I was glad to find that there was in it no denial of any of the acts of which he had been proved guilty by the testimony. Of the absence of adulterous lust and *impure intentions*, which he avows, God only can judge. It is not our prerogative to

judge the heart. I can only judge of the *acts* themselves, as proved by the testimony

Those acts are, in my judgment, immoral in their very nature—entirely inconsistent with the consecration vows of a Bishop, and a cause of scandal and reproach to the Church of God. I am willing to give full credit to the professions of the Respondent as to his *present* freedom from the like habits, and of his sincere repentance and reformation of all his past sins. Had this acknowledgment and declaration of the Respondent been made before the Presentment, or even when he was called upon to plead to it at the commencement of this trial, I should have been inclined to give him the solemn admonition of this Court, accompanied with the words of our Saviour to a pardoned penitent—"Go, and sin no more." But the Respondent, by his own proceedings in the case, has precluded the possibility of exercising this degree of clemency without bringing dishonor upon the Court, disgrace upon the Church, which her Bishops represent, and exposing its discipline to contempt. He has pleaded *not* guilty to the charges and specifications in the Presentment, and compelled us to go through a very tedious and impartial investigation of the facts. As the result of that investigation, he has been found guilty by the Court. Now that the verdict has been rendered, it is *too late* to plead a professed repentance and reformation as a palliation or excuse of the acts proved. If it were not for the perplexing and interminable evils which might be expected to result from leaving the Diocese of New York in connection with a Bishop suspended from the exercise of his Episcopal functions, I might perhaps vote for his suspension; but under the circumstances of the case, I believe it to be required by the purity of the Church, and true mercy to the Respondent, that he be deposed.

J. P. K. HENSHAW,

Bishop of Rhode Island, and Provisional Bishop of Maine.

St. John's Church, New York, Jan. 3d, 1845.

OPINION OF THE BISHOP OF ARKANSAS.

In consequence of the solemn affirmation of the Respondent of his innocence of all evil and impure intentions in the acts of which he has been proved and pronounced guilty, and of his solemn declaration before Almighty God and in presence of this Court, that he is now, and has been for several years past living in a state of penitence for all his sins, which affirmation and declaration he has urged in palliation of his offences; and considering that none of the acts of which he has been proved guilty was committed within the period of more than two years last past, I am brought to the conclusion that it would be the *severity* of justice and of the discipline of the Church, to inflict the highest censure authorized by the Canon under which this trial has been conducted. But as the offences proved are of such a nature as necessarily to bring great scandal upon the Church, and consequently to call for the decided action of this Court, my opinion is, that the sentence passed upon the Respondent should be *suspension*.

GEO. W. FREEMAN,
Missionary Bishop of Arkansas.

AFTER the delivery of opinions, the Court proceeded to scrutiny.*

On the first scrutiny it appeared that the Bishops of Illinois, Vermont, Ohio, Louisiana, and Delaware; the Assistant Bishop of Virginia; and the Bishops of Massachusetts and Rhode Island, voted for deposition;—

The Bishops of Connecticut, Kentucky, and the South Western Missionary Diocese, voted for suspension;—

The Bishops of North Carolina, New Jersey, the North Western Missionary Diocese, Western New York, South Carolina, and Maryland, for admonition.

On the second scrutiny, it appeared that the Bishops of Illinois, Vermont, Kentucky, Ohio, and Louisiana; the Assistant Bishop of Virginia; and the Bishop of Rhode Island, voted for deposition;—

The Bishops of Connecticut, South Carolina, Maryland, Delaware, Massachusetts, and the South Western Missionary Diocese, voted for suspension;—

The Bishops of North Carolina, New Jersey, the North Western Missionary Diocese, and Western New York, for admonition.

On the third scrutiny, it appeared that the Bishops of Illinois, Vermont, Kentucky, Ohio, Louisiana, and Delaware; the Assistant Bishop of Virginia; and the Bishop of Massachusetts, voted for deposition;—

And the Bishops of Connecticut, North Carolina, New Jersey, the North Western Missionary Diocese, Western New York, South Carolina, Maryland, Rhode Island, and the South Western Missionary Diocese, voted for suspension;—

Whereupon it appearing that a majority of the Court concurred in the sentence of suspension;—

The President pronounced suspension to be the sentence of the Court.

A form of declaration of suspension having been drawn up was adopted by the Court, as follows, viz :

THE Court of Bishops of the Protestant Episcopal Church, convened under the authority of Canon III. of 1844, of the General Convention of said Church, for the trial of the Presentment of the Rt. Rev. Benjamin Trédwell Onderdonk, Bishop of the Diocese of New York; by the Rt. Rev. William Meade, Bishop of the Diocese of Virginia; the Rt. Rev. James Hervey Otey, Bishop of the Diocese of Tennessee; and the Rt. Rev. Stephen Elliott, jun., Bishop of the Diocese of Georgia, upon certain charges and specifications in said Presentment set forth; having fully heard the allegations and testimony of the parties, and deliberately considered the same, and a majority of the said Court having declared that in their opinion the accused is guilty of certain of the charges and specifications contained in the Presentment;—which declaration of a majority of the Court has been reduced to writing, and signed by those who assented thereto, and has been pronounced in the presence of the parties; and the Court having proceeded,

* Several members of the Court having requested to have their *actual votes* on the sentence recorded, it was thought best to publish the whole, as appears on pages 332, 333.

after hearing the accused, to pass sentence upon the accused, in conformity with the provisions of the said Canon, and having determined that the penalty to be affixed and pronounced in said case shall be that of *suspension*—

It is hereby *ordered and declared*, that the sentence of this Court upon the Respondent is *suspension* from the office of a Bishop in the Church of God, and from all the functions of the sacred ministry,—and this Court do hereby solemnly *pronounce and declare* that the Right Rev. Benjamin Tredwell Onderdonk is suspended from all exercise of his Episcopal and ministerial functions—and do order that the notice of this sentence required by said Canon be communicated by the Presiding Bishop, under his hand and seal, to the Ecclesiastical authority of every Diocese of this Church.

PHILANDER CHASE,

Senior Bishop, and President of the Court of Bishops.

[SEAL.] Given under my hand and seal, this third day of January, A. D. 1845, in the city of New York.

It was ordered by the Court, that the Presiding Bishop, the Rt. Rev. the Bishop of Virginia, and the Rt. Rev. the Secretary, with the assistance of the Rev. the Assistant Secretary, take order for the publication of the Records of this Court; the testimony taken, the arguments of Counsel, and the opinions of the Court, and for securing a Copyright of the same.

The Record of the Court was then read over by the Clerk, and approved.

The Court then adjourned *sine die*.

Attest,

W. R. WHITTINGHAM, *Clerk.*

VOTES OF THE COURT

First Scrutiny.

THE BISHOP OF ILLINOIS.	Bishop of Illinois: <i>Deposition.</i>
THE BISHOP OF CONNECTICUT.	Bp. of Connecticut; Let the Respondent be <i>Suspended.</i>
THE BISHOP OF NORTH CAROLINA.	I have declared by my vote that I consider the Rt. Rev. B. T. Onderdonk, Bishop of New York, <i>not guilty</i> of the charges alleged in the Presentment; but as I am called upon by the Canon for my sentence, I hereby pronounce that he receive as slight an admonition as the Canon will admit. L. Silliman Ives, Bp. of No. Ca.
THE BISHOP OF VERMONT.	<i>Deposition.</i> John H. Hopkins, Bishop of Vermont.
THE BISHOP OF KENTUCKY.	Let him be suspended. B. B. Smith, Bp. of the P. E. Ch. in the Dio. of Ky.
THE BISHOP OF OHIO.	Bishop of Ohio: <i>Deposition.</i>
THE BISHOP OF NEW JERSEY.	I have declared the Respondent not guilty, and so believe him; but as a majority of the Court have decided otherwise, and sentence must be passed, mine is: Let him receive the lightest admonition contemplated by the Canon. G. W. Doane, Bishop of New Jersey.
THE BISHOP OF THE NORTH WESTERN MISSIONARY DIOCESE.	<i>Admonition.</i> Jackson Kemper. 3 Jan. 1845.
THE BISHOP OF LOUISIANA.	The Bp. of Louisiana votes for <i>Deposition.</i>
THE BISHOP OF WESTERN NEW YORK.	<i>Admonition.</i> W. H. De Lancey.
THE BISHOP OF SOUTH CAROLINA.	Inasmuch as the Canon seems to make it necessary that some penalty should be awarded, the Bp. of South Carolina is in favor of <i>Admonition.</i>
THE BISHOP OF MARYLAND.	My sentence is for the lightest degree of <i>Admonition.</i> William Rollinson Whittingham, Bishop of Maryland.
THE BISHOP OF DELAWARE.	<i>Deposition.</i> Alfred Lee.
THE ASSISTANT BISHOP OF VIRGINIA.	For <i>Deposition.</i> J. Johns.
THE BISHOP OF MASSACHUSETTS.	<i>Deposition.</i> M. Eastburn.
THE BISHOP OF RHODE ISLAND.	Let him be deposed. J. P. K. Henshaw.
THE BISHOP OF THE SOUTH WESTERN MISSIONARY DIOCESE.	Let him be suspended. Geo. W. Freeman, Miss'y Bp. of Arkansas.

UPON THE SENTENCE.

Second Scrutiny.

Deposition. Bp. of Illinois.
 Bp. of Connecticut: Suspension.
 Admonition. L. Silliman Ives,
 Bp. of No. Ca.

Deposition. John H. Hopkins,
 Bishop of Vermont.

Under the conviction that the effect of conviction must be forever to destroy the usefulness of the Respondent, I accede to the vote of those who are in favor of Deposition.
 B. B. Smith, Bp. of the P. E. Ch.
 in the Dio. of Ky.

Bp. of Ohio: Deposition.

Admonition. G. W. Doane.

Admonition. Jackson Kemper.

Bp. of Louisiana: Deposition.

Slight admonition. W. H. De Lancey.

I accede to Suspension.
 Bp. of the Diocese of
 South Carolina.

My sentence is for *admonition*, but perceive, that there is no hope of securing a majority of votes for that, I accede to the sentence of *Suspension*.

William Rollinson Whittingham,
 Bp. of Maryland.

2d Voting:
 Suspension. Alfred Lee.

For Deposition. J. Johns.

Suspension. M. Eastburn.

Deposition. J. P. K. Henshaw.

Let him be suspended.
 Geo. W. Freeman.

Third Scrutiny.

Bp. of Illinois: Deposition.
 Bp. of Connecticut: Suspension.
 Suspension, to ward off Deposition.
 L. Silliman Ives,
 Bp. of No. Ca.

Deposition. John H. Hopkins,
 Bishop of Vermont.

Deposition. B. B. Smith, Bp. of the P. E. Ch.
 in the Dio. of Ky.

Bp. of Ohio: Deposition.

There being twice a failure to unite in any sentence, I accede to Suspension.
 G. W. Doane.

Kemper: Suspension.

Bp. Louisiana: Deposition.

Suspension. W. H. De Lancey.

3d vote:
 I accede to Suspension.
 Bp. So. Carolina.

My sentence is for *admonition*, but in the conviction that a majority will not be given for that sentence,

I accede to the sentence of *Suspension*.
 William Rollinson Whittingham,
 Bp. of Maryland.

Deposition. Alfred Lee.

For Deposition. J. Johns.

Deposition. Manton Eastburn.

Suspension. J. P. K. Henshaw.

Suspension. G. W. F.

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