PROCEEDINGS

OF

THE COURT OF BISHOPS,

ASSEMBLED FOR

THE TRIAL

OF THE

Right Rev. George Washington Doane, D. D., L. L. D.,

BISHOP OF NEW JERSEY.

NEW YORK:
STANFORD AND SWORDS, 137, BROADWAY.
1852.

THE RECORD

OF THE

Proceedings of the Court of Bishops,

ASSEMBLED FOR THE TRIAL OF

THE RT. REV. GEORGE WASHINGTON DOANE, D. D., LL. D.,

BISHOP OF NEW JERSEY,

UPON

A PRESENTMENT

MADE BY

THE RT. REV. WILLIAM MEADE, D. D.,

BISHOP OF VIRGINIA,

THE RT. REV. CHARLES PETTIT McILVAINE, D. D.,

BISHOP OF OHIO, AND

THE RT. REV. GEORGE BURGESS, D. D.,

BISHOP OF MAINE.

NEW YORK:
STANFORD AND SWORDS, 137 BROADWAY.
1852.

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PROCEEDINGS, ETC.

First Day.

CAMDEN, NEW JERSEY, *October* 7, 1852.
10 *o'clock*, A. M.

THIS being the day, the hour and the place designated by the Presiding Bishop, in conformity with the provisions of Canon III. of 1844, for the assembling of the Bishops to form a Court for the trial of the Rt. Rev. George Washington Doane, D. D., LL. D., Bishop of the Diocese of New Jersey, on a Presentment made by the Rt. Rev. William Meade, D. D., Bishop of the Diocese of Virginia; the Rt. Rev. Charles Pettit McIlvaine, D. D., Bishop of the Diocese of Ohio, and the Rt. Rev. George Burgess, D. D., Bishop of the Diocese of Maine, there appeared the Rt. Rev. John Henry Hopkins, D. D., LL. D., Bishop of the Diocese of Vermont; the Rt. Rev. Benjamin Bosworth Smith, D. D., Bishop of the Diocese of Kentucky; the Rt. Rev. Jackson Kemper, D. D., Missionary Bishop of Wisconsin and Iowa; the Rt. Rev. Samuel Allen McCoskry, D. D., D. C. L., Bishop of the Diocese of Michigan; the Rt. Rev. William Heathcote De Lancey, D. D., D. C. L., Bishop of the Diocese of Western New York; the Rt. Rev. William Rollinson Whittingham, D. D., Bishop of the Diocese of Maryland; the Rt. Rev. Alfred Lee, D. D., Bishop of the Diocese of Delaware; the Rt. Rev. John Johns, D. D., Assistant Bishop of the Diocese of Virginia; the Rt. Rev. Manton Eastburn, D. D., Bishop of the Diocese of Massachusetts; the Rt. Rev. Carlton Chase, D. D., Bishop of the Diocese of New Hampshire; the Rt. Rev. Alonzo Potter, D. D., LL. D., Bishop of the Diocese of Pennsylvania; the Rt. Rev. George Upfold, D. D., Bishop of the Diocese of Indiana; the Rt. Rev. William Green,

D. D., Bishop of the Diocese of Mississippi; the Rt. Rev. Francis Huger Rutledge, D. D., Bishop of the Diocese of Florida, together with the Bishops making the Presentment, and the Bishop Respondent.

The Meeting was opened by Morning Prayer, conducted by the Bishop of Vermont.

At the conclusion of Morning Prayer all persons present, with the exception of the Bishops, retired.

On motion of the Bishop of Maryland, the Bishop of Vermont (being the Senior Bishop present) was called to the chair.

On motion, the Bishop of Florida was requested to act as Secretary, *pro tempore*.

The Bishops then went into an election by ballot for President of the Court; which resulted in the election of the Bishop of Vermont.

An election was next made, by ballot, of a Clerk; which resulted in the election of the Rev. Jonathan Mayhew Wainwright, D. D., D. C. L., Secretary of the House of Bishops, and Provisional Bishop elect of the Diocese of New York.

The Clerk was authorized to appoint an Assistant, subject to the approval of the Court; whereupon he designated the Rev. John Henry Hopkins, junr., Deacon, of the Diocese of New York; who was approved by the Court.

The Bishop of Vermont read the following communication:

"*To the Court of Bishops assembled at Camden, New Jersey, on the 7th of October, A. D.* 1852.

"Right Reverend and Beloved Brethren,

"We are assembled on an occasion which is, beyond all others, the most painful and afflicting to every member of the Church of Christ, and especially to her Chief Pastors, on whom, as the responsible agents, the task of discipline depends, in its highest earthly form of administration. And, therefore, it seems the more incumbent on each of us, not to cast an unequal burden on the rest, by shrinking

from his own share of this unwelcome task, through the love of ease, or dread of censure, or any other selfish motive; but to come forward in our place, in humble and firm reliance on the help of God, and deliver our judgment as in His sight, without fear, favour or affection. So important, in the primitive ages, was the performance of this work, that a punctual attendance on the Provincial Councils, held twice a year for the purposes of discipline, was enjoined on every Bishop, under the penalty of suspension for neglect. And assuredly, it is no less obligatory on us, although we are not liable to the same punishment for delinquency by any express Canon of our own; because the duty resting upon us is precisely the same in principle, and we are bound to perform it on the same high grounds of regard for the rights of an accused Brother, of respect for the privileges of our own ministerial Order, and of reverence for the majesty of those sacred laws which guard the purity of the priesthood in the Church of God.

"Such, then, is clearly the general rule. And yet, like all other general rules, it ought to have its exceptions, and when any of those exceptions can be pleaded, a Bishop should be excused from his attendance as a Member of the Court. The party accused has no right of challenge, because we do not sit here as jurymen, but as judges, *ex officio;* and hence, like the House of Lords in England, or the Senators in the United States, the work of judgment belongs to our very Office, and no other men can be called on to discharge our duty, if we should be set aside. But still, even as judges, it seems reasonable that we should apply to ourselves the rules which govern in the case of other judges, who are forbidden to try a cause if they be nearly related to the party, or have any personal interest in the result, or even if they have been previously employed as counsel in the case, since these are all admitted reasons for doubting their impartiality. I presume, therefore, that under similar circumstances, any Bishop would be justified in excepting to himself, and I doubt not that you would all agree to decide that his excuse would be satisfactory.

"There is, however, another ground which has appeared to my mind entitled to take rank with these, although I am not prepared to say that I can claim on its behalf any positive precedent. And it is on this that I rest my own request to be allowed to decline the seat of judgment on the present occasion. Some twenty years ago, when our accused brother and myself were Presbyters in the Diocese of Massachusetts, there was a serious difficulty between us. I

have no intention to enter into the details of the matter, nor do I ask you to say whether he or I were in the wrong, because I do not stand here to enter the slightest complaint against him on account of the transaction, nor am I conscious of any bias whatever as regards the present case, unless it be that of sympathy on his behalf, and a desire that his course may be vindicated to the satisfaction of the whole Church, after due investigation. But yet, when I learned that a Presentment had been made, and I reflected upon the duty which I, as one of his judges, might be called on to perform, this old and almost forgotten difficulty rose to my memory, and I could not feel satisfied that I should be acting with due delicacy and consideration for him, if I did not decline to act as one of his judges, so far as my own individual opinion was concerned; and thus give him the benefit of the right of challenge, by challenging myself.

"On this ground, therefore, I request to be excused from attending the Court as one of its Members. I have put my application into writing, in order that it may appear on the Record, with the decision thereupon, and I tender it in person, as a point of respect towards the Court, and as a proof that I consider it the solemn duty of every Bishop to answer to his name on the canonical summons of the Church, unless hindered by the act of Providence; and to submit the validity of his excuse for withdrawing, to the judgment of his Brethren.

(*Signed*) "JOHN H. HOPKINS,
"*Bishop of Vermont.*"

Whereupon, on motion of the Bishop of Wisconsin and Iowa it was

Ordered, That the Bishop of Vermont be not excused.

The Bishop of Mississippi, on behalf of the Respondent, expressed the full assent and wish of the latter, that the Bishop of Vermont should be a Member of the Court.

The Bishop of Pennsylvania offered the following Preamble and Resolution, which were unanimously adopted:

The Bishops assembled as an Ecclesiastical Court at Camden, New Jersey, October 7, 1852, cannot meet without expressing their profound sensibility at the deep bereavement which the Church has very recently sustained in the loss of three of her oldest and most experienced Bishops. They desire to record their affectionate veneration for their memories, with their lively sense of the affliction

which has thus been brought upon their respective dioceses and families, and of the pointed and most impressive admonition thus addressed by Providence to each one of their surviving Brethren in the Episcopate, urging them to greater zeal and devotion in the discharge of their private and public duties.

Resolved, That a copy of this Minute be transmitted to each of the afflicted families, with assurances of the sympathy felt for them by the members of this body.

On motion of the Bishop of Maryland, it was

Ordered, That when this Court adjourns, it will adjourn to meet to-morrow morning, at 11 o'clock, A. M., in Burlington, in the City Hall. Pending the discussion previous to the adoption of this order, the following communication was read:

"The undersigned respectfully, but earnestly, requests, that the Court of Bishops will adjourn to Burlington: on the ground that his witnesses are, with scarcely an exception, there; and that they are persons, whose duties and occupations require them to be there, so that he would be deprived of the testimony of many of them, and subjected to great expense, in regard to such as may attend. He represents, also, the great personal inconvenience, to himself, of being withdrawn from his home; his family being in affliction, and requiring his presence. And he submits, that, as his transactions were there, he may claim to be tried in their presence, who, for twenty years, have known his daily life.

"He farther adds, that convenient accommodations will be provided, for the Court; and, that invitations, to all its members, have been given, by families residing in Burlington, who will cheerfully and cordially receive and entertain them.

(*Signed*) "G. W. DOANE,
"*Bishop of New Jersey.*

"CAMDEN, *October* 7, 1852."

The following communication, addressed to the Presiding Bishop in the Court, was read:

"NEW JERSEY, *October* 7, 1852.

"*To the Right Reverend, The Presiding Bishop, in the Court assembled for the trial of Bishop Doane.*

"RIGHT REV. AND DEAR SIR,

"The Committee appointed by the Diocese of New Jersey to appear before you, touching the presentment and trial of Bishop

Doane, respectfully ask, that before any action shall be had, they be allowed to read the 'written representation on behalf of that Diocese, setting forth its legal and canonical position and rights,' which they have prepared. The Convention of New Jersey asks to be heard.

(*Signed*) "SAML. L. SOUTHARD,
"*Chairman.*

"By order of the Committee."

On motion of the Bishop of Michigan, it was

Ordered, That the above communication be laid upon the table for consideration to-morrow.

On motion, the Court adjourned.

Second Day.

BURLINGTON, *October* 8, 1852.
11 *o'clock*, A. M.

THE Court met, pursuant to adjournment.

Present, as yesterday; with the exception of the Bishop of Mississippi.

The Session was opened with the reading of the Litany, and other prayers, by the Bishop of Kentucky.

The Minutes of the meeting of yesterday were read, and, after amendment, were approved.

The communication from a Committee of the Diocese of New Jersey was called up; when the Bishop of Western New York moved the following order:

Ordered, That the request of the Committee of the Diocese of New Jersey be complied with.

Whereupon, the Bishop of Pennsylvania offered, as a substitute, the following:

Whereas, Any question touching the rights and interests of the Diocese of New Jersey can, with more propriety, be entertained at a later stage of these proceedings, and any facts which it has to communicate can then be received without irregularity: therefore,

Ordered, That the request be not granted.

The Ayes and Noes being called for, the substitute was adopted by the following vote:

Ayes: The Bishops of Vermont, Kentucky, Delaware, Assistant of Virginia, Massachusetts, Pennsylvania, and Florida:—7.

Noes: The Bishops of Wisconsin and Iowa, Michigan, Western New York, Maryland, New Hampshire, and Indiana:—6.

The Bishop of Western New York offered the following order:

Ordered, That when the Presentment to be tried shall have been read, before proceeding farther, the Committee of the Diocese of New Jersey be allowed to read before the Court the written representation on behalf of the Diocese, setting forth its legal and canonical rights, which they have prepared.

The Ayes and Noes being called for, the Order was adopted by the following vote:

Ayes: The Bishops of Wisconsin and Iowa, Michigan, Western New York, Maryland, New Hampshire, Indiana, and Florida:—7.

Noes: The Bishops of Vermont, Kentucky, Delaware, Assistant of Virginia, Massachusetts, and Pennsylvania:—6.

The Bishop of Mississippi, having been prevented from attending earlier by disappointment in regard to a conveyance, appeared and took his seat.

Ordered, That, when this Court adjourns, it will adjourn to meet to-morrow morning at half-past ten o'clock.

The Court then adjourned.

Third Day.

BURLINGTON, *October* 9, 1852.
$10\frac{1}{2}$ *o'clock*, A. M.

THE Court met, pursuant to adjournment.

Present, as yesterday.

The Session was opened with the Litany and prayers, by the President.

The Minutes of yesterday were read and approved.

The Bishop Respondent gave notice that, at the proper time, he shall make request that the doors of the Court be opened to the public.

On motion of the Bishop of Maryland,

Ordered, That a Committee be appointed to ascertain and report whether this Court is duly constituted in conformity with the Canon.

The President appointed the Bishops of Michigan, Delaware, and New Hampshire as the Committee.

Whereupon, the Committee retired, and subsequently offered the following Report:

"The Committee appointed to ascertain whether the provisions of the Canon, under which the Court has been summoned, have been complied with, beg leave to report:—

"That, owing to the death of the Presiding Bishop, they have no farther evidence before them than is already in the possession of the Court; and ask to be discharged.

(*Signed*) "Saml. A. McCoskry.
"A. Lee.
"Carlton Chase."

On motion of the Bishop of Michigan,

Ordered, That the Committee be discharged.

On motion of the Bishop of Western New York,

Ordered, That the Presenting Bishops and the Bishop Respondent be asked whether they are ready to proceed to the trial.

Whereupon, the Presenting Bishops replied that they are ready.

The Bishop Respondent replied that he is ready to hear the Presentment read.

The Bishop of Maryland asked leave to place on the record the following statement; and it was

Ordered, That leave be granted.

"The undersigned, dissenting from the order of the Court to call on the Presenting Bishops and the Bishop Respondent, in order to proceeding with the trial, desires to put on record, before proceeding to the trial of the Presentment now just read, his opinion and belief that, by reason of sundry material informalities in the call of this Court, and, more especially, by reason of the entire absence of any

evidence that the Canon has been duly and truly observed in the call of this Court, the Bishops now assembled are incompetent to proceed to the trial of the Presentment, and that whatever may be done by them in the premises will be irregular, null, void, and of no consequence.

(*Signed*) "WILLIAM ROLLINSON WHITTINGHAM,
"*Bishop of Maryland.*

"BURLINGTON, *New Jersey, Oct. 9th*, 1852."

The Presenting Bishops produced their Presentment, which was read by the Clerk, as follows:

"*To the Bishops of the Protestant Episcopal Church in the United States of America.*

"The undersigned, that is to say, the Rt. Rev. William Meade, D. D., Bishop of the said Church in the Diocese of Virginia; the Rt. Rev. Charles Pettit McIlvaine, D. D., Bishop of the said Church in the Diocese of Ohio; and the Rt. Rev. George Burgess, Bishop of the said Church in the Diocese of Maine; having had complaint made to us by four respectable laymen of the Protestant Episcopal Church in the Diocese of New Jersey, all of whom are Communicants and Vestrymen of their respective parishes, touching the conduct of the Rt. Rev. George Washington Doane, D. D., Bishop of the said Church in the Diocese of New Jersey, and having examined into the same, with the evidence which has been laid before us, in virtue of the authority reposed in us by the Canons of the said Church, do present to our Brother Bishops, the said George Washington Doane, as guilty of crime and immorality, in the matters and things hereinafter more particularly set forth, thereby setting an evil and pernicious example to the Clergy and Laity of the said Church, to the great and grievous injury of the said Church, and in violation of his high duties as Bishop in the same, and of the solemn vows which he pronounced at his consecration; and we do solemnly demand a trial of the said George Washington Doane, pursuant to the provisions of the Canons of the General Convention of the said Church, in such case made and provided.

"SPECIFICATION 1. That the said George W. Doane, Bishop as aforesaid, during the whole or a very large part of the period in which he has held and exercised his said office of Bishop, has habitually incurred numerous and large debts, far beyond any actual or probable means possessed or reasonably anticipated by him, of ever

repaying said debts; the aggregate of said debts being not less than two hundred and eighty thousand dollars, and probably amounting to three hundred thousand dollars, at the date of his assignment in March, 1849, when the value of the entire property and estate of the said George W. Doane, according to a valuation made by himself under oath, did not amount to more than a comparatively small part of the debts so actually incurred; a large amount of these debts, viz., the sum of one hundred thousand dollars, being a lien upon the real estate held by the said George W. Doane, which lien largely exceeded the actual value of the said real estate, while the only means possessed by him for the payment of about two hundred thousand dollars was his personal property, which, according to a valuation thereof made by him, the said George W. Doane, under oath, amounted only to the sum of seventeen thousand four hundred and eighteen dollars and fifty cents.

"SPECIFICATION 2. That he, the said George W. Doane, Bishop as aforesaid, in a pamphlet, printed and published in February, 1852, entitled 'The Protest and Appeal of George Washington Doane, Bishop of New Jersey,' etc., in answer to certain allegations concerning the large amount of his debts, and the inadequacy of his means to the discharge of the same, professes and declares, that the money so borrowed and the debts so incurred by him, were borrowed and incurred 'in his venture for Christian education in the two institutions' of St. Mary's Hall and Burlington College, and thus in the cause and service of God: whereas in truth not only could the appropriation of moneys so obtained to the establishment and support of those institutions constitute no proper or sufficient justification of acts so placing in jeopardy the property of others, to the great injury of the cause of Religion; but the said assertion is without foundation in fact, as all the sums shown to have been expended on or about such institutions would not equal a moiety of said debts.

"SPECIFICATION 3. That on or about the 30th of April, 1846, the said George W. Doane, Bishop as aforesaid, did present a subscription paper for the building of a new church in Burlington to Horace Binney, Esq., for the purpose of obtaining the name of said Binney to said paper, and after said Binney had refused to said George W. Doane, to sign his name or to allow his name to be signed to said paper, as promising to pay any money to the said object, he, the said

George W. Doane, in the Diocese of New Jersey, did, without the knowledge of said Binney, write the name of said Binney on said paper as the subscriber of one thousand dollars, and that said George W. Doane presented or caused to be presented said paper, with said name thereon, to sundry persons for their subscriptions.

"SPECIFICATION 4. That he, the said George W. Doane, after writing the name of said Binney as aforesaid, and obtaining subscriptions subsequently to the amount of more than thirteen thousand dollars for the building of said church, did, on the 28th day of May, 1847, in the Diocese of New Jersey, write in a letter to Thos. Milnor, Secretary of the Vestry of St. Mary's Church, Burlington, the following statement, viz.: 'Let me here say, that in procuring a subscription of more than $13,000 no man or woman put in a single word of condition or the slightest claim for equivalent, unless Mr. Binney so makes out his case;' which statement was untrue in this, namely, that several of the subscriptions which made up the said amount were conditional, and were known so to be by the said George W. Doane at the time of writing said letter.

"SPECIFICATION 5. That, at various times during the years 1846, 1847 and 1848, in the Diocese of New Jersey, the said George W. Doane, then being Bishop as aforesaid, by false assertions and pretences, and under solemn assurances of repayment and of security against all loss, prevailed upon Michael Hayes, a citizen of the county of Burlington, to endorse notes to a large amount; and having procured from said Hayes several of such endorsements to notes without date, thereby preventing said Hayes from identifying said notes when they fell due, and falsely representing to said Hayes the amount of the responsibilities which he, the said Hayes, had incurred, the said George W. Doane procured from said Hayes divers other additional notes, securities, or endorsements, upon the false pretext and under the false representation that such additional notes, securities or endorsements were required and should be used merely in renewal of the other previous notes or securities, whereon said Hayes was then responsible, and then about to come to maturity, and that no increase of previous responsibility would be incurred; and having induced and prevailed upon said Hayes to give such additional endorsements, did, in violation of said promises and assurances and in fraud of said Hayes, fail and omit to apply such additional notes, or some of them, to the purposes for which they

were given, and on the contrary did employ them for the purpose of raising more money, thus increasing ultimately the responsibilities of said Hayes nearly threefold, without his knowledge or consent.

"SPECIFICATION 6. That the said George W. Doane, Bishop as aforesaid, in the year 1848, in the Diocese of New Jersey, falsely representing, by himself and his authorized agents, that if he could obtain a loan of fifty thousand dollars, it would enable him to relieve himself from, and to pay the whole of his floating debt, and that he would so appropriate said money, applied to Michael Hayes aforesaid, for a subscription of two thousand dollars to said loan, and procured the same, and afterwards a further subscription of one thousand dollars, on the positive assurance that, from said fund thus procured on loan, the entire debt of said Hayes by his endorsements should be paid, and he exonerated from all responsibility; and having thus prevailed upon said Hayes to pay said amount of three thousand dollars, he, the said George W. Doane, regardless of said promise and assurance, did neglect and omit to apply any portion of said money so obtained to the liquidation or payment of the debt due to said Hayes, or to the exoneration of said Hayes from his responsibilities as endorser as aforesaid.

"SPECIFICATION 7. That he, the said George W. Doane, Bishop as aforesaid, so being indebted on the promissory notes so endorsed, as in the preceding specifications, by said Michael Hayes, in or about the month of August, in the year of our Lord one thousand eight hundred and forty-nine, in the Diocese of New Jersey, procured and consented that his wife, Mrs. Eliza G. Doane, should enter into an agreement with said Michael Hayes, by which it was in substance agreed, that he the said Hayes should compromise upon such terms as he could, with the holders of such notes, and should be repaid to the extent of a moiety of what he should thus pay, in annual instalments of $1000 each, with interest, out of the income payable to the said Eliza G. Doane by the Trustees of her late husband in Boston; and should for that purpose receive a power of attorney from said Eliza G. Doane, authorizing and directing said Trustees to make such payments; and said compromise having been effected, and said power of attorney executed and delivered, said George W. Doane requested said Hayes not to send said power to Boston, promising that he would himself pay said

annual instalments of $1000 and interest; but said George W. Doane, Bishop as aforesaid, having paid the first of said instalments, which fell due in January, 1850, has not paid the second or any part thereof; but on the contrary, when told by said Hayes that he would complain to the Convention of the Diocese, he, the said George W. Doane, answered said Hayes, that if he took that course he would get nothing, for that he, the said George W. Doane, would put himself on his defence; and said Hayes, on sending his said power to Boston, has not been able to procure any other or further payment under said agreement, on the ground that another party, a son of said Eliza G. Doane by her former husband, had presented an order from her, under which he claimed payment from said Trustees of the whole or part of the sum claimed by said Hayes, so that, in fact, said Hayes has not been relieved from his heavy responsibilities.

"SPECIFICATION 8. That he, the said George W. Doane, so being Bishop as aforesaid, in the years 1846, 1847 and 1848, in the Diocese of New Jersey, prevailed upon and induced Joseph Deacon, of the County of Burlington, to endorse sundry notes of him, the said George W. Doane, under false representations and pretences of his ability to meet said notes when they should respectively fall due, when at the time the said George W. Doane was hopelessly insolvent; and the said George W. Doane, when some of the said notes were about falling due, prevailed upon said Deacon to endorse other notes, under the assurance that they would only be used for the purpose of renewing notes already given, and obtained such endorsements of notes without date; when in fact said George W. Doane, in violation of his promises and assurances, not only failed and neglected to provide for said notes as they respectively fell due, but on the contrary, instead of applying said notes so given for the single purpose of renewing others, applied them in whole or in part to other purposes, leaving the notes so to have been renewed still outstanding, and largely augmenting the responsibilities of said Deacon, without his knowledge or consent, and greatly to the injury of his worldly estate.

"SPECIFICATION 9. That said George W. Doane, Bishop as aforesaid, in the year 1848, in the Diocese of New Jersey, falsely representing in person and by his authorized agents, that if he could obtain a loan of $50,000, it would enable him to pay off the whole

of his floating debt, including said responsibilities of said Joseph Deacon, and that the money thus procured should be thus appropriated, induced said Deacon to subscribe $2000 as a part of said $50,000, and subsequently $1000; which said sum of $3000 was paid by said Deacon, confiding in said assurances and promises, and he, the said George W. Doane, having thus procured said sum of $3000, in violation of his said promises, never appropriated said sum or any part thereof to relieve said Deacon from his said responsibilities, nor has he ever repaid, or secured the repayment of, the same or any part thereof.

"SPECIFICATION 10. That in or about the years 1846, 1847 and 1848, in the Diocese of New Jersey, he, the said George W. Doane, being Bishop as aforesaid, did, when he must have known that his affairs were inextricably embarrassed, borrow of the Rev. Reuben J. Germain, a Presbyter of the said Diocese of New Jersey and then principal of St. Mary's Hall in Burlington, an institution under the control of said George W. Doane, and said Reuben J. Germain then being Treasurer of the Diocesan Convention of New Jersey, sums of money belonging to said Convention, and in the hands or under the control of said Germain, Treasurer as aforesaid, without giving any security for the repayment of said money so loaned, other than the personal obligations of the said George W. Doane, which he very well knew to be no adequate security; the said Germain also not having given any security for the faithful performance of his duty as Treasurer as aforesaid, and it being his duty to invest said money only on undoubted security; and the said Germain, as Treasurer as aforesaid, having in order to procure said moneys so loaned, as aforesaid, or a part of the same, at the instance of the said George W. Doane, Bishop as aforesaid, sold out or obtained payment of good mortgages, stocks, or other securities belonging to said Convention, and in his hands as Treasurer as aforesaid; none of which loans, acts, or proceedings were for several years made known to said Convention, to which said property and money rightfully belonged; nor was such debt, so contracted, stated in the list of the debts of said George W. Doane, attached to his deed of assignment and attested by his oath, nor did they ever come to the knowledge of the said Convention, until brought out at its meeting in May, 1849, by specific and urgent interrogatories.

"SPECIFICATION 11. That the said George W. Doane, Bishop as

aforesaid, in the attempt to obtain the aforesaid loan of $50,000, as contained in Specifications 6 and 9, did, in the Diocese of New Jersey, represent, and induce his agents to represent, to several persons to whom application was made for assistance towards said loan, namely, Michael Hayes, Joseph Deacon, Sarah C. Robardet, John Black, John Irick, Matthew McHenry, and J. J. Spencer, that it would be a perfectly safe investment on good security, when he well knew that the only security that could be given was upon property already under heavy mortgages approaching nearly to its whole value, and when, in fact, no other security has been given, and the value of the security given to half the subscribers to the loan, was diminished by one half, since the other subscribers were only creditors who funded a portion of their debts in said loan, in the hope of so securing the rest.

"SPECIFICATION 12. That in October, 1848, he, the said George W. Doane, Bishop as aforesaid, in the Diocese of New Jersey, being then, as he must have well known, utterly insolvent, borrowed of the Rev. Alfred Stubbs, then Presbyter of the said Diocese of New Jersey, and Treasurer of the Society for the Promotion of Christian Knowledge and Piety, an association of members of the Protestant Episcopal Church in said Diocese, the sum of $1000, belonging to the said Society, and in the hands of said Stubbs as Treasurer, and which it was the bounden duty of the said Stubbs to invest on undoubted security, and did promise that he would without delay give satisfactory security for the repayment of said loan; whereas, the said George W. Doane, in neglect and violation of his said promise, did give no other security than his own judgment bond, which was not satisfactory to said Stubbs, and could only be made available in certain contingencies, and was thus no effectual security, and in fact did not prove available; which money so loaned was not, so late as the 24th of February, 1852, either repaid or secured.

"SPECIFICATION 13. That the said George W. Doane, Bishop as aforesaid, having for a long period purchased groceries of Thomas Dutton, of Burlington, New Jersey, for the use of his own family and that of St. Mary's Hall, and that of his Mother, and having also given his notes to said Dutton for groceries furnished to the families of the teachers connected with St. Mary's Hall and Burlington College, did from time to time promise payment of the account of the said Dutton and of said notes, but utterly failed to keep such

promises, so that the said Dutton, being in declining health and possessed of but small property, was deeply distressed and declared his utter want of confidence in the word of the said George W. Doane, and at the time of his death, just before the said Doane made his assignment to his creditors, did leave his family in impaired circumstances through the misconduct of the said George W. Doane, and to the great dishonour of Religion and his high office in the Church of God.

"SPECIFICATION 14. That in the year 1847 or 1848, in the Diocese of New Jersey, he borrowed of Mr. Page, of the City of Burlington, who was at that time a clerk in the store of Thomas Dutton, the sum of $500, which he afterwards repeatedly promised, but has ever since wholly neglected to pay, and which debt he did not mention in his attested list of debts as aforesaid.

"SPECIFICATION 15. That the said George W. Doane, Bishop as aforesaid, in violation of his solemn obligation as a minister of the Church of God, to 'forsake and set aside, as much as he might, all worldly cares and studies,' did not only entangle himself in a vast and unnecessary accumulation of worldly transactions, but, to the great dishonour of his office as a Bishop, and relying on the confidence of others in his official character and station, did attempt to create and preserve a fictitious credit by drawing checks and counter checks on various Banks, viz., the Bank of Princeton, the Mechanics' Bank of Burlington, the Morris County Bank, the People's Bank of Paterson, &c., in the Diocese of New Jersey, and transmitting the same from one Bank to another, in a manner esteemed disreputable and unallowable among merchants and other men of business, so that his transactions of such kind, in the single Bank of Princeton, amounted, in less than two years, to wit, from January 1st, 1847, to October 14th, 1848, to $138,000.

"SPECIFICATION 16. That, during the period between the years 1847 and 1849, in the Diocese of New Jersey, he, the said George W. Doane, Bishop as aforesaid, repeatedly drew and delivered, in payment of moneys which he owed, or, as good and available, many checks or drafts on the Mechanics' Bank of Burlington, on the Bank of North America in Philadelphia, and other Banks, for sums of money, when at the times said checks or drafts were given, he had either no funds to his credit in said Banks, or to an amount insuffi-

cient to meet said checks or drafts when presented for payment, and which said checks, or some of them, still remain unpaid and unsatisfied. Several of said checks were by said George W. Doane drawn in favour of or delivered to Michael Hayes, others to Joseph Deacon, and others to Mrs. C. Lippincott, one to Charles Woolman, one to Wm. B. Price, and others to Cash or Bearer. He also drew a check on said Mechanics' Bank of Burlington for the sum of $2200 and transmitted the same to the Princeton Bank, in payment of a debt due by him to said last-mentioned Bank, when there were no funds in said Mechanics' Bank to his credit at the time said check was drawn or was presented for payment. And the said George W. Doane persisted in drawing such checks or drafts after he had been informed by an officer of said Mechanics' Bank that the practice was irregular and must not be continued. He also, on the 3d day of March, A. D. 1843, drew a promissory note, payable to Wiley & Putnam, booksellers in the City of New York, for the sum of $197 93 cents, payable at the Bank of North America in Philadelphia, when the said George W. Doane kept no account in said Bank, and provided no funds for the payment of the said promissory note when the same arrived at maturity, but suffered the same to be protested.

"SPECIFICATION 17. That in repeated instances, and on several occasions, during the years 1847, 1848 and 1849, in the Diocese of New Jersey, he abused the confidence reposed in his sacred office by false promises and deceptive practices, used for the purpose of obtaining money, credit and property; among other instances, in the following, viz: He induced by such means, a young man named Wm. B. Price, who had provided funds to meet a business engagement of his own, to loan to him the sum of $450, or other large sum, by solemnly assuring said Price that he would return the same in time to enable said Price to meet his engagement; and said George W. Doane did give said Price a check on the Mechanics' Bank of Burlington for the amount so borrowed, which check when presented at said Bank was refused payment on the ground of there being no funds in said Bank to the credit of said Doane. He prevailed upon Sarah C. Robardet to loan to him the sum of $3000 by a solemn promise to give her, as security for repayment, a mortgage upon property worth $6000, and instead thereof gave her a mortgage upon property not intrinsically worth that sum, and which, as ascertained afterwards by said Sarah C. Robardet, was at the time said mortgage

was given subject to a prior incumbrance of $2500, which said prior incumbrance has been since only partially removed.

"He, the said George W. Doane, being largely indebted to Mrs. C. Lippincott, a lady asserted by him in his pamphlet, entitled 'Bishop Doane's Protest,' &c., to be 'connected by marriage with his family,' and to have been 'for many years as one of his family,' and to whom he had given security for the moneys due her by him, did, in violation of the special claim on his protection arising out of said domestic relations, induce her to place said security in his hands under his promise to return the same, which promise he has wholly neglected to perform, but has used the property on which said security was given her, to secure some other creditor or creditors.

"He, the said George W. Doane, did make or represent that he had made, a collection in the parish of St. Mary's Church, Burlington, for the purchase of books for a parish library, or other such object, and did obtain from Herman Hooker, bookseller in Philadelphia, a number of books for said object, to the amount of about $70, which amount, though earnestly applied for by said Hooker, has never been paid, and was not mentioned on the list of debts sworn to by said George W. Doane.

"SPECIFICATION 18. That he, the said George W. Doane, so being Bishop as aforesaid, on the 29th day of March, A. D. 1849, in the Diocese of New Jersey, made an affidavit before John Rodgers, Master in Chancery, which was appended to a paper or document purporting to be 'An Inventory of the Estate Real and Personal of George W. Doane, of the City and County of Burlington, assigned to Garret S. Cannon and Robert B. Aertsen, for the benefit of his creditors, together with a list of his creditors and the amount of their respective claims,' and immediately following what purported to be an 'inventory of estate,' in which said affidavit he did, in due form of law, 'being duly sworn upon the Holy Evangelists of Almighty God,' depose and say that the above was 'a true and perfect inventory of all his real and personal property, together with the value thereof, as near as he could ascertain,' whereas, in truth and in fact the said inventory did not set forth the true and actual value of very many articles of property therein enumerated, as near as said George W. Doane could ascertain; and in particular, said document did not truly set forth the value of the several articles of furniture and household goods and other articles in Burlington Col-

lege, St. Mary's Hall, and his house at Riverside, but stated and set forth the said articles, or many of them, at values known by said George W. Doane at the date of said affidavit to be below the true value of such articles, and in each of the said particulars the said document was grossly false and erroneous, within the knowledge or the means of knowledge of the said George W. Doane at the date of such affidavit.

"SPECIFICATION 19. That he, said George W. Doane, so being Bishop as aforesaid, on the 29th day of March, 1849, in the Diocese of New Jersey, made an affidavit before John Rodgers, Master in Chancery, which was appended to a paper or document, being that part of the document mentioned in the preceding specification, which purported to be a 'List of Creditors' of said George W. Doane, in which said affidavit the said George W. Doane, having been duly sworn according to law, did depose and say that 'the above' (meaning said list of creditors) was 'a true, full and perfect list of all his creditors, with the amounts severally due to them, as far as he hath been able to ascertain, according to the best of his knowledge;' whereas, in truth and in fact, as was well known to said George W. Doane, the same was not 'a true, full and perfect list of his creditors and of the amounts respectively due to them;' but, on the contrary, was deficient in many particulars, among others in the following, viz.:

"It did not set forth as among his creditors the names of the several parties and persons following, to whom he was then indebted, and who should have been included in said list.

"It did not set forth the name of the Convention of the Diocese of New Jersey, or of the Treasurer of said Convention, to whom he perfectly well knew that he was indebted in a sum exceeding $7000;

"It did not set forth the name of the People's Bank at Paterson, to which he was indebted in the sum of $250;

"It did not set forth the name of the Trenton Banking Company, to which he was then a debtor to the amount of $800, or other large sum;

"It did not set forth the name of the Princeton Bank, to which he was then indebted to the amount of $1077, or other large sum;

"It did not set forth the name of the Bucks County Bank, to which he was indebted to the amount of $1000, or other large sum;

"It did not set forth the name of the Morris County Bank, to which he was then indebted to the amount of $650, or other large sum;

"It did not set forth the name of the Camden Bank, or that of the Medford Bank, to each of which said Banks he was largely indebted;

"It did not set forth the name of H. R. Cleaveland, to whom he well knew that he owed about $15,000;

"It did not set forth the name of William Chester, to whom he knew that he owed $800;

"It did not set forth the name of Sarah Robardet, to whom he well knew that he was indebted in the sum of $3000;

"It did not set forth the name of George Zantzinger, wine-merchant, to whom he was indebted in the sum of $1200, or other large amount;

"It did not set forth the name of Mr. Page, of Burlington, to whom he was indebted in the sum of $500, or other large amount;

"It did not set forth the name of Herman Hooker, to whom he was indebted in the sum of $70, or other considerable sum;

"It did not set forth the name of Gideon Humphrey, of Burlington, to whom he was indebted in the sum of $3000;

"It did not set forth the name of Isaac B. Parker, and others in trust, to whom he was indebted in the sum of $50,000;

"It did not set forth the fact that there were outstanding checks, drawn by him on the Mechanics' Bank at Burlington, and then in the hands of various persons to him unknown.

"And the said list was deficient in setting forth the amounts severally due to the creditors named, amongst others in the following particulars, viz.:

"It is set forth that Michael Hayes was a creditor to the amount of $17,500, whereas said Hayes was at that time a creditor to the amount of $29,000;

"It is set forth that Joseph Deacon was a creditor in the sum of $23,450, whereas said Deacon was then a creditor to the amount of about $30,000;

"He, the said George W. Doane, in the particulars set forth in this specification, manifestly showing a sinful disregard for the sacred character and solemn obligations of an oath.

"SPECIFICATION 20. That the said George W. Doane, while engaged during several years in transactions largely involving the pecuniary interests of many persons, as well as his own honour and

the honour and interests of the Church of Christ, and being under the strongest obligations to a proportionate accuracy and fidelity, yet kept no true and accurate account of his checks, endorsed notes, or other notes, debts, or engagements, and adopted no regular system of book-keeping at the institutions under his control; and, according to his own statement, had no accounts whatever which would enable him to preserve an acquaintance with the real state of his affairs.

"SPECIFICATION 21. That the said George W. Doane, at the sale of his personal effects in 1849, in the Diocese of New Jersey, for the benefit of his creditors, acquiesced in the sale of the said effects or a portion of them, and especially of his valuable library, at a price much below their real value, and without such due and proper exposure for sale as would have made them yield the largest amount to his creditors; and afterwards received the same for his own use and benefit; in violation of his obligation to be in all things an example of strict justice and self-denying integrity.

"SPECIFICATION 22. That he, the said George W. Doane, in the several particulars herein before mentioned, employed his high office of Bishop, and the confiding trust reposed in him in consequence thereof, in practising deception upon Presbyters over whom he exercised power and influence in the Diocese of New Jersey, to wit, the Rev. Alfred Stubbs, the Rev. Reuben J. Germain, and the Rev. John D. Ogilby, D. D., and upon women connected with his own pastoral charge, to wit, Mrs. C. Lippincott, Mrs. S. C. Robardet, Mrs. A. C. Winslow, and others upon whom such influence might operate.

"SPECIFICATION 23. That when an attempt was made in the Convention of the Diocese of New Jersey in the month of May, 1849, by one of his Presbyters, to wit, the Rev. Henry B. Sherman, to obtain information as to the securities of the Episcopal Fund belonging to said Convention, he, the said George W. Doane, endeavoured to intimidate said Presbyter, and to deter him from the performance of his duty and the exercise of his rights: and when Michael Hayes, a short time previous to the Convention of the Diocese of New Jersey, in the year 1851, in the City of Burlington, intimated to him, the said George W. Doane, his intention to bring matters at issue between them before the Convention of the Diocese

of New Jersey, the said George W. Doane endeavoured to deter him from so doing, by threatening that if he did so, he, the said George W. Doane, would put himself on his defence, and he, the said Hayes, would get nothing; and when Joseph Deacon, on a certain occasion in the year 1849, threatened to go before the Grand Jury of Burlington County to enter complaint against him, he endeavoured to intimidate said Deacon, and to deter him from so doing by threats of personal violence accompanied with menacing gestures and manifestations of great anger, and said to him, the said Deacon, 'If you do so, I'll kill you, I'll kill you!' the said Deacon being a very aged man, and at the time alone with said George W. Doane in an apartment of his house at Riverside.

"SPECIFICATION 24. That he, the said George W. Doane, Bishop as aforesaid, in the Diocese of New Jersey, has violated his trust as guardian of the young child of the late Rev. Benjamin D. Winslow, by employing, for his own purposes, money, the property of said child, which came into his hands as such guardian, and not at all securing its repayment.

"SPECIFICATION 25. That he, the said George W. Doane, Bishop as aforesaid, prevailed upon Wm. H. Carse, then in his employ at Burlington, as gardener, to loan to him the sum of $519 13 cents, and to borrow from a friend the further sum of about $590 for the use of said George W. Doane; and notwithstanding his repeated promises of repayment, he utterly neglected and failed to perform the same for a long period, until compelled to compromise and settle the matter by the reproachful and menacing letters of said Carse's wife.

"SPECIFICATION 26. That he, the said George W. Doane, Bishop as aforesaid, in the Diocese of New Jersey, notwithstanding he has been for years in a state of utter insolvency, has nevertheless continued to indulge in unnecessary and unbecoming expensiveness of living, inconsistent with strict integrity, and especially with the proper example of a Bishop in the Church of God, while he knew that many of his creditors were suffering for the want of money which he owed them, and which he had induced them to trust in his hands on account of their confidence in his ability to pay, and in his representations and promises.

"SPECIFICATION 27. That he, the said George W. Doane, Bishop

as aforesaid, in his pamphlet before mentioned, published in February, 1852, and entitled 'The Protest and Appeal of George Washington Doane, Bishop of New Jersey,' in the Diocese of New Jersey, having deliberately and with solemn appeal to Almighty God, declared his 'perfect and entire innocence and integrity as to all and singular the charges made against him,' has asserted what is entirely false, and made representations which were adapted greatly to mislead the public mind, among others in the following particulars, viz.:

"He avers that his debt was 'not personal to himself,' when the whole of the same was contracted solely on his own responsibility, and under no necessity or obligation, and when a large part of the same was connected with no public or ecclesiastical object.

"He says that 'the Treasurer of the Convention lent him his uninvested funds temporarily on his notes,' when the said loans had been, and had been intended to be, as permanent as any others.

"He says that 'the Treasurer had a precedent for this, before the Episcopate of the undersigned,' when no real precedent for transactions like this had existed.

"He states that 'there were several Banks in New Jersey at which special friends of the undersigned and of his work were influential as Presidents and Cashiers—on which he was permitted to draw short drafts, from time to time, to be discounted and placed to his credit,' and that 'at their maturity they were duly met,' whereas no such permission had been given him.

"He asserts that 'Michael Hayes has acknowledged, as can be proved, that he declared under oath before the Grand Jury in August, 1850, that he had no cause of complaint against the undersigned,' whereas the said Michael Hayes has made no such declaration.

"He asserts, in reference to the transaction alleged in the 1st Specification of the 8th Charge against him, as given in the said pamphlet, that 'there was no refusal of a check on the Burlington Bank.'

"He asserts that 'he continued to enjoy, uninterrupted and undiminished, the confidence of his Convention, the confidence of his Diocese, the confidence of the Trustees and patrons of the College and of the Hall, the confidence of his friends, and the confidence of the community;' when he well knew that the confidence of the community and of many individuals in his Diocese was much diminished.

"He asserts that 'no charges have been brought against him by any respectable or responsible person,' when such charges were contained in a pamphlet published by the Rector of a respectable parish in his Diocese, with the unanimous approval of the Wardens and Vestrymen of the same.

"He asserts that he was the bearer of a letter from the former Treasurer of the Society for the Promotion of Christian Knowledge and Piety, to the Rev. Mr. Stubbs, containing the funds which he afterwards borrowed from said Stubbs; when, in fact, the said funds were carefully delivered by the said Treasurer to the said Stubbs in person.

"He avers that in all his transactions 'nothing was ever done but in good faith.'

"He avers that 'for twelve years nearly he kept all his large and various engagements.'

"He asserts that the investment of the funds of the Convention in his notes 'was considered safe,' and 'has been perfectly secured.'

"He asserts that 'a memorandum of the debt due to the Convention was sent in to Mr. Aertsen, though, as it proved, too late to be included in the list' of his debts; when it was in his power to have inserted it at any moment prior to taking the oath subscribed to said list.

"He states that the 'only ground' of the 'allegation' which he denominates 'false,' that he drew checks on the Burlington Bank when he had no money in said Bank, 'was his habit of making his account good every day at three o'clock,' and that 'provision was made to meet his checks daily until the sickness occurred;' whereas he well knew that they had often been left without funds to meet them at said hour, and that many have never been paid.

"He denies entirely having made any pretence that notes endorsed for him by Michael Hayes were to renew notes which had been previously endorsed by said Hayes.

"He states that 'Mrs. C. Lippincott was most intimately acquainted with the business risks and relations of the undersigned,' and acted, in lending him the funds, 'with the fullest intelligence and most perfect freedom;' when, according to his own statement, neither he nor any other person was intimately acquainted with the actual condition of his affairs, so as to act in connection with them with the fullest intelligence.

"He affirms, with reference to the proceedings of the Grand Jury of the County of Burlington, that 'it was through no influence of his

direct or indirect, nor with his privity, that any thing was done or not done, considered or reconsidered;' when it was indeed through his personal persuasion and his efforts to arrange compromises with two of his creditors, that such proceedings were dropped.

"SPECIFICATION 28. That the said George W. Doane, being indebted to the Camden Bank on the 25th day of December, in the year of our Lord 1848, in the Diocese of New Jersey, upon a promissory note drawn payable to Joseph Deacon for the sum of $1000, which said promissory note was protested; and a suit having been subsequently prosecuted on said note against the said endorser, Joseph Deacon, and a judgment obtained for the amount of said note, together with interest and costs; the said Bank, at the request of said Joseph Deacon and George W. Doane, or one of them, on the 7th day of December, A. D. 1849, agreed that the Bank should relinquish their judgment against the said Joseph Deacon if he would pay the sum of $750, and the said George W. Doane would agree to pay the balance, and the said George W. Doane did thereupon agree to pay the sum of $286 14 cents if the Bank would give him time; and the Bank agreed that the said George W. Doane should fix upon such time for payment as would suit him, and draw his notes accordingly, and the said George W. Doane thereupon agreed to pay the same in four instalments, and drew four notes, having an interval of several months between the time of payment, and amounting, in the aggregate, to the sum of $286 24 cents; that the said notes, as they respectively arrived at maturity, were unpaid, but were renewed from time to time until the 9th of November, A. D. 1850, and were protested for non-payment, and the amount of discount and interest and protest increased the aggregate amount of said notes to the amount of $316 32 cents, and that the said promissory note still remains unpaid.

"SPECIFICATION 29. That the said George W. Doane, Bishop as aforesaid, on or about the 5th day of June, A. D. 1850, in the Diocese of New Jersey, being indebted to the Camden Bank upon a promissory note endorsed by Michael Hayes for the sum of $100, and being unable to pay the said note when it arrived at maturity, applied to the Cashier of said Camden Bank, and requested him not to protest the same, assuring him that if he would not protest said note, he, the said George W. Doane, soon after his return home, would send to said Cashier the money to pay the said note, or would

send him a new note for the same with Michael Hayes's endorsement; and that the said Cashier, relying upon the said promise of the said Bishop Doane, did not protest said note, and by his omission so to do, the said Camden Bank lost the security of the said endorser on said note, who was abundantly able to pay the same. And that the said George W. Doane, disregarding his promise and assurance aforesaid, wholly neglected to send the money for the payment of said note, or to send a new note for the same with Michael Hayes's endorsement, though frequently requested so to do, and that said note still remains unpaid.

"SPECIFICATION 30. That the said George W. Doane, Bishop of New Jersey, for many years past, and particularly between the years 1845 and 1852, was in the habit of obtaining much larger supplies of intoxicating drinks for the use of his table than was becoming or proper in a minister of the Gospel, and of contracting large debts for the same; and was also, during the same period of time, in the habit of using intoxicating liquors in such quantity as to be unduly excited thereby, to the great grief of the friends of the Church and the dishonour of his High and Holy Office.

"And that the said George W. Doane, on or about the 10th day of November, in the year of our Lord 1851, on board the steamboat Trenton, then running between the City of Philadelphia and the City of Burlington, in the Diocese of New Jersey, was in a state of intoxication.

"And that the said George W. Doane, in or about the month of November, in the year of our Lord 1847, in the Borough of Bordentown, in the Diocese of New Jersey, was intoxicated.

"SPECIFICATION 31. And that the said George W. Doane, at various times during the years 1846, 1847, 1848 and 1849, in the Diocese of New Jersey, well knowing that Joseph Deacon was an old man, and occasionally fond of drinking intoxicating drinks, and also knowing that the family of said Joseph Deacon were averse to said Joseph Deacon's endorsing for said George W. Doane, and that the said Joseph Deacon had declared his unwillingness to continue to endorse for him, did go to the house of said Joseph Deacon, and there drink cider-brandy with the said Joseph Deacon, and after he had drunk with said Joseph Deacon, did persuade the said Joseph Deacon to endorse more notes for the said George W. Doane, and sometimes the said George W. Doane did ask the

said Joseph Deacon for some of said brandy, and did sometimes invite the said Joseph Deacon to go out of doors with him, and did sit or lie in the shade of a tree and drink cider-brandy with the said Joseph Deacon until he had persuaded him to endorse more notes for him, after said Joseph Deacon had expressed a determination not to endorse any more notes for said George W. Doane.

"WILLIAM MEADE, D. D.,
"*Bishop of the Prot. Epis. Ch. in Virginia.*
"CHARLES PETTIT MCILVAINE, D. D.,
"*Bishop of the Prot. Epis. Ch. in Ohio.*
"GEORGE BURGESS, D. D.,
"*Bishop of the Prot. Epis. Ch. in Maine.*

"*July* 22, 1852."

On motion of the Bishop of Indiana,

Ordered, That the Committee of the Diocese of New Jersey be now admitted. Whereupon they appeared and read as follows:

"*To the Right Reverend the Bishops of the Protestant Episcopal Church, assembled upon the Presentment of the Right Reverend George W. Doane, Bishop of the Diocese of New Jersey.*

"RIGHT REVEREND FATHERS,

"The Convention of the Diocese of New Jersey, at an adjourned meeting held at the City of Newark, on the 14th day of July last, to receive, and act upon, the Report of the Committee appointed at the Annual Convention, held on the last Wednesday in May preceding, 'to make a full investigation of all the charges which had been preferred against the Bishop,' adopted the following resolution, viz.:

"*Resolved,* That a Committee of four clergymen and three laymen be appointed, by ballot, to lay the Report of the Committee, and the accompanying evidence, before the Court appointed for the trial of the Bishop of this Diocese; and that such Committee present a written representation, on behalf of this Convention, setting forth its legal and canonical position and rights, and earnestly and respectfully urging the Right Rev. Bishops, to consider whether (apart from all abstract questions of power) it will be wise, or just, or for the peace of God's Church, to proceed further upon the charges laid before them.

"The undersigned were appointed the Committee under this reso-

lution. They have annexed hereto the Report, and evidence referred to therein.

"In the further discharge of the duty assigned to them the Committee are conscious of the serious responsibility they have assumed, and the deep importance of the subject they are instructed to discuss. A large majority of the representatives of the Clergy and Laity of New Jersey have declared that such grave and momentous rights of the Diocese are involved in this presentment, as to demand that they be stated to your body.

"To you, then, as bearing the chief office in the Holy Apostolic Church—to you, as constituting the highest and most solemn tribunal now known to our branch of that Church, we, your brethren in faith and hope, address, on behalf of the Diocese of New Jersey, this its earnest and dutiful representation.

"We would first call your attention to a statement of the action of the Conventions upon this subject.

"In the year 1849, at a Convention of the Diocese, then assembled, a resolution was offered for the appointment of a Committee to investigate the truth of various reports, alleged to prevail, impeaching the honesty and truth of the Bishop of the Diocese.

"The only reason suggested for the adoption of this resolution, was, that rumours existed affecting his character, and that they had been embodied in an anonymous article in a public print.

"The Convention refused to act upon such a ground;—refused to treat the fame of the Bishop, and peace of the Diocese, as matters of such light moment, as to place them at the mercy of every idle report of ignorance or enmity.

"But it was then distinctly avowed by those who most strongly opposed the resolution, that they would urge the Convention to act, whenever any responsible persons would affix their names to written charges involving criminality.

"Two succeeding Annual Conventions of this Diocese were held without a renewal of the subject. The Churchmen of New Jersey had a right to suppose that the intent to institute a canonical inquiry was abandoned.

"On the 17th of March, 1852, a Special Convention was held. It was called to consider and express its judgment upon the subject of a letter addressed by three Right Reverend Prelates to the Bishop of the Diocese. Restricted by the terms of the call, and a Canon of the Church in this Diocese, to action upon this definite matter, the Convention could go no further than to declare its continued con-

fidence in the uprightness of the Bishop, and 'to affirm, on behalf of the Convention of the Diocese, that it had ever been ready to investigate charges duly made and presented.'

"It is unquestionable that the Conventions were not called upon by any provision of any law, to institute an inquiry until the allegations were presented in a formal, definite shape. It is undeniable, that to have volunteered such an inquiry without that prerequisite, would have been unjust, unprecedented and unbecoming. It is equally clear, that when charges, duly attested and vouched for, were exhibited, the duty became manifest and imperative. They were called to perform it, as well for the redemption of their plighted faith, as for the fulfilment of their canonical obligation. At that Special Convention, held on the 17th March, 1852, when that body were thus shut up from the consideration of all matters but the one which had been mentioned in the call, a solemn pledge was given that an investigation should be had. The Annual Convention was to assemble on the 26th of May, when they would have an opportunity to redeem the pledge. Yet, it is worthy of remark, that that pledge was not regarded; and that before the time for the assembling of Convention, action was taken to procure a trial. We feel that herein a wrong was done to the Diocese of which she may well complain.

"In this connection we may also refer to the language of the first letter which was addressed by the three Presenting Bishops to Bishop Doane. They say, with justice, and in strict accordance with the meaning of the Canons, and the spirit of all ancient law, that 'it is only when a Diocesan Convention refuses to institute inquiry, (which the Convention of New Jersey has never done,) or neglects to do it *for too long a period,* they can be expected to interfere. Now, the only period which elapsed, after the charges were first brought to the knowledge of the Convention in such a form that they could entertain them, till the *investigation* was *begun,* was, from the Special Convention in March to the Annual Convention in May! Could the case then have arisen, in which, because of our 'too long neglect,' others were called on to interfere? It is evident that it had not, and the Diocese is so far *without fault.*

"In accordance with their duty and their pledge, the Convention which assembled on the 26th May, having learned from the Address of their Diocesan that charges were preferred against him, not only in the paper which was sent originally with the first letter, to which we have referred, but in a second paper, which purported to be a

Presentment of Bishop Doane, did promptly adopt, among other acts, the following preamble and resolution:

"*Whereas,* The exhibition of charges, in a paper signed by three Bishops of the Church, justifies this Convention, consistently with its avowed principles, to proceed in the matter, and furnishes the first and only occasion on which any Convention of New Jersey has had the opportunity of exercising its solemn duty and clear right, under the Canon for the trial of Bishops, to investigate, in the first instance, accusations against the Bishop;

"*And whereas,* This Convention, while it reaffirms the entire confidence in the purity and integrity of the Bishop, which it has heretofore declared, is conscious of the grievous wrong and ill consequences of keeping such charges hanging over him and the Diocese: therefore,

"*Resolved,* That a Committee of seven lay members of this Convention be appointed, by ballot, on open nomination, to make a full investigation of all the charges contained in the aforesaid paper; that the Committee proceed with diligence in the discharge of its duty, and that it report to an adjourned meeting of this Convention.

"The Report of this Committee was presented to the Convention of the Diocese on the 14th of July last, was accepted, and resolutions were adopted, of which the following are copies:

"*Resolved,* That the result of the investigation and the evidence now laid before the Convention renew and strengthen the confidence heretofore expressed in the integrity of the Bishop of this Diocese, and in our opinion, fully exculpate him from any charge of crime or immorality made against him.

"*Resolved,* That the Convention of New Jersey has now fulfilled the duty which previous Conventions have expressed their readiness to fulfil, of making a full, searching and honest inquiry into any allegations against the Bishop when formally brought before it upon definite charges; and we appeal to the Church at large to ratify our declaration that it has been performed faithfully and in the fear of GOD.

"The resolution first herein stated, and under which we address you, was also then passed.

"We have presented this historical detail of the action of the Conventions of New Jersey as essential to understand the views we will now offer as to her legal and canonical rights and position.

"We submit to you, as a clear proposition, that these proceedings of the Convention were, under the Canon for the trial of a Bishop, entirely and strictly legal.

"The power conferred upon a Convention to present, involves the authority to make every necessary investigation, in order to guide the judgment and conscience of the members to a right decision. This investigation, thus inherently within its province, may be conducted by a delegation from the body as well as by that body at large. The results and the acts of such subsidiary Committee become by adoption those of the Convention; and the decision and judgment of the latter are entitled to the same weight as if every piece of evidence had been heard and every act of the Committee had before it.

"Now, Canon III. of 1844 secures to the Convention of the Diocese to which the accused Bishop belongs, the right to make presentment whenever the Convention shall determine by a two-thirds vote of each Order that their Bishop has committed any of the offences named in the Canon and should be put upon his trial thereon.

"This law of the Church has two objects in view. *First,* to grant the power of presentment to the Diocese; *Second,* to guard and control that power, so as to prevent hasty, partial or doubtful presentment. To these objects we desire particularly to call the attention of this Court. The mode and manner, the time when, by whose authority, and under what facts and circumstances, a free man may be put upon trial for crime, lie at the foundation of all just laws affecting life, liberty and character. All free governments guard this initiatory point in criminal proceedings with scrupulous care. They will not place the lowest citizen under the ordeal of trial until he be solemnly charged with guilt by responsible legal authority. Any thing short of this would be but to sport with the lives and character of their people, making a trial but a cruel experiment upon the innocence of the accused. There have been times, both in Church and in State, when this important principle was disregarded; when, upon the mere rumour or suspicion of crime, men were suddenly brought to trial and compelled to pass through the inquisition of fire and water to prove by the quantity of endurance the strength and virtue of their character—times, when, instead of the diligent inquiry and the true presentment, rumour, allegation or public opinion constituted the grounds upon which the accused was forced to undergo the expense, the hazards and the contumely of a public trial. To guard against

enormities such as these, the Canon to which we have referred was enacted. Its provisions protect alike the character of the Bishop, the rights of the Diocese, and the peace and purity of the Church at large. Under this law of the Church the Diocese of New Jersey has acted. It has performed the duty imposed upon it as the Presenting Body. It has investigated the charges. It has considered the question of presentment, and it has pronounced its judgment thereon. The legal effect of these proceedings is, that the Presenting Body, the Diocese, has adjudicated upon the question of presentment, and determined that there is no cause to present the Bishop for trial upon any of the charges which were preferred against him at that time.

"The Diocese of New Jersey having thus discharged this high official duty in obedience to a Canon of the Church, and in a matter involving the good name of the Bishop and the integrity of her members, now claims that her action and judgment in the premises should be received with that full faith and credit which the law gives to proceedings of a Court acting upon matter legally submitted to its discretion and judgment. That the Diocese of New Jersey has the right to ask for this confidence in its proceedings, will be granted, when it is considered what importance is given to these proceedings by the law of the Church.

"How, and by whom, a Bishop is to be presented for trial, is no idle ceremony—no mere form to get a party into Court. It is a procedure involving high duties and deep responsibilities. The Presenters are not common informers; they are the Church of the Diocese; the Laity and the Clergy, in public Convention assembled; representing every parish, and speaking for every member of the Church. The Bishop is the party to be presented for trial. His character, his virtues and his vices, are the subjects to be investigated; and the Church at large, its purity and character, to be affected by the result. To this Body, thus constituted and thus acting, the law of the Church has intrusted the important duty of presenting a Bishop for trial. Again, the Canon in conferring the power to present, gives to each Diocese the right to determine for itself the question of presentment or no presentment, upon the charges made. No other body in the Church can deprive the Diocese of this right or control its exercise; neither can the diligence or the honesty of the Diocese, in this present matter, be questioned, for the purpose of nullifying its legal procedures.

"The law has clothed us with the right of presentment, and

intrusted us with the duty of performing it. We have exercised this right, and we have performed the duty.

"We have performed it in obedience to the law of the Church, and according to its pure spirit and meaning; and we now claim that our action in the matter should be respected. In our judgment, it is the obvious intention of the Canon to make the Convention the leading and controlling Presenting Power. For weighty reasons, the Diocese is placed between its Bishop and the bar of this Court. The way to the trial is through the Convention. True, there is another path to this Court pointed out in the Canon, designed, it may be, for cases of heresy; but it is on all sides confessed, that it should only be taken from necessity. The plainly marked course—the guides, the precautions and the directions—pointed out by the law, most clearly indicate which of these two ways to trial should have the preference in the first instance. But, when it is shown, as it has been in this case, that the way to presentment through the Diocese has been free to all responsible accusers of the Bishop, and the doors of the Convention thrown open for the reception of their charges; that such of those charges as were then made, have, in fact, been received and investigated; and that the Convention has solemnly determined that their Bishop ought not, on those charges, to be put upon trial; the prior rights of the Convention can no longer be questioned, without impeaching the legality and purity of its proceedings.

"But, in vindicating the legality of these proceedings, we need not assert an exclusive jurisdiction in a Convention, to present upon charges of the nature of those in question. We need not even insist upon the theory that the right resides primarily in that Body; and that it is only in case of its neglect or unfaithfulness, that the right of three Bishops arises. Cogent as are the reasons in support of this doctrine, it is not necessary for the case we would present to you that it should be adopted; we only ask now (as touching the charges which have been examined) a recognition of the principle of a concurrent jurisdiction in three Bishops and a Convention. We have never heard of a construction of the Canon which gives a primary right to three Bishops to present; unless, therefore, the primary right exist in a Convention, (as there is great reason to conclude it does,) it must be concurrent.

"Now, it cannot be said that the presentment previously made by the Bishops interposes a bar to the exercise of this right, which, at least, is concurrent. No action had been taken under that present-

ment, except the summons to the Bishops of the Church to attend at the time and place mentioned. No Court was in existence when these proceedings were instituted, prosecuted or concluded. No Court could exist, until seven Bishops *had assembled.* We know of no analogy in civil proceedings which would prohibit this action of the Convention, until, at least, a Court was instituted before which an issue could be joined and a trial had.

"The Record of the Committee of Inquiry which we have laid before you, will speak far better than any language of our own, of the labour, the fidelity, the solicitude for truth with which the investigation was conducted, and cannot but entitle it to your confidence and respect.

"Before a tribunal thus sanctioned by the Canon, thus within the scope of the legislation of the Church—open to every accuser, courting every source of information, invoking every witness to attend it—before this legitimate and impartial tribunal have these charges been sifted and pronounced unfounded. And solemnly and deliberately has the Convention of the Diocese, the Grand Inquest of the Church therein, passed upon them, pronouncing them false or frivolous; and in the fear of God and true allegiance to his Church, declaring that there is no ground for a presentment upon these or any of these allegations.

"What is there to abate the effect of this decision? Not that some witnesses, though called upon, have declined to testify. Their silence, if not proving their inability to inculpate, at least supplies no warrant for a further inquiry. Not that the parties on whose statements this presentment was made have refused to attempt their corroboration. We claim here the benefit of the rule of law and justice, that when a party has had full opportunity, in a competent tribunal, to sustain his allegations, and neglects it, he shall be thereafter precluded. And we submit it to you and to the decision of impartial men in the Church every where, that the lay accusers by whom these charges were made, and who were not only invited to appear, but were offered by the Committee the largest liberty of cross-examining those whose testimony should be taken, (even if they doubted sincerely the legality or power of such a Committee,) were *bound* to appear, to help in the discovery of the truth; and in the *hope* that his character might be cleared, they should have felt constrained to appear by the law of charity. It was not pretended that if they had gone before the Committee they would have thereby surrendered their right to appear in this Court. No harm could

then have resulted from their obeying the summons; and their attendance might have resulted in the clearing away of their doubts, and the removing of prejudice from their minds.

"Nor can it with reason be said that the investigation so made, was but *partial,* and that the effect was thereby abated. We maintain *the reverse.* The Presentment contained all the charges. Even more were included, no doubt, than they ever expected to prove. *Every count* in an indictment is seldom sustained. And these charges were *not* made *under oath!* Their authors were not *responsible* in the eye of the law. They might, they even now may, *refuse* to appear, and yet that Presentment which contained all the matter that in this Court they could be permitted to prove was treated by the Committee as if every charge had been *sworn to,* and would be sworn to again; and they were met by more than *assertions,* such as the Presentments contain—by testimony which was carefully taken, and every witness put *upon oath!* They confronted *mere declarations* with the oaths of unimpeachable, responsible men! We maintain that, in treating these charges exactly *as if* they were sworn to when the accusers refused to appear and be sworn, and they had no assurance that any accuser but one would *ever* consent to be sworn, was doing *more* than justice required—was showing partiality to the accusers; that, by the rule of the Gospel, the charges might have been promptly dismissed, when no man appeared to condemn him; and that wrong, if wrong has been any where done, has been done *to the accused.*

"And as to the Right Reverend Presenters, it is most true that the Canon unavoidably treats them as parties, and regards them in some measure as contestants; but it is the true construction of that Canon—it is the demand of justice as well as the dictate of charity, to assume that they are seeking for truth and not for victory; and that your conviction that this Presentment should be dismissed will be hailed with satisfaction by them.

"We claim, then, and submit, that the refusal of the Convention of New Jersey to present the Bishop, after this open and fair investigation into the truth of these charges, is equivalent to a dismissal of a Presentment by a lawful court.

"We mean not to defend this position upon grounds essential to make it, in a civil tribunal, a perfect plea in bar. We mean to rest it upon the great truth of law and equity, that one full, free and honest inquiry into charges involving fame or rights, is sufficient to meet the demands of public justice or of private complaint. Of

this high truth the plea in bar, with its technicality, is but a narrowed exposition and proof.

"There is one answer, and we believe there is but one, to be offered against the validity and force of this decision of the Convention.

"It is, that this conclusion has been obtained by indirect and improper influences, from a Committee and Convention determined to exculpate the Bishop, and resolved to refuse an honest hearing to his accusers.

"We boldly meet and repel this imputation. We beg you to look upon the names of the large body of Clergymen, faithful and devoted ministers of God, whom it condemns. We ask you to consider the long list of honoured Laymen of New Jersey whom it brands. We point you proudly to the list of that Committee—to the names, which every where among us, and as far as they are known, are pledges of intelligence, of honour, of uprightness and of truth, by which it is adorned!

"We insist there is no other alternative, between declaring that this action of the Convention has been true and righteous, or stamping the reputation of these men with an indelible mark of unsurpassed infamy. And we cannot, since only this alternative remains, since the rejection by this Court of their proceedings must involve this imputation on us all—we cannot, we ought not, in duty to the Diocese we represent, refrain from the comparison of the *number* of complainants, and of the members of both Orders of Convention by whom these proceedings have been instituted, and by whom they are approved. Surely, where the odds are so tremendous, as the records of the Conventions show, and the majority are living in the full communion of the Church, and are beyond the taint of a reproach, sincerity, impartiality and truth are quite as likely to be found among the many as to be appropriated by the few! Allowing for the weakness and the ignorance of some, there still must be some virtue among them all. We press one thought with earnestness: it is, that, while you may allow the *accusers* to have been *misled* by other men, if the alternative shall be adopted that these proceedings were designed to screen the guilty from the punishment he merited, there is no escape *for us,* for the Convention, for the Committee of Investigation, for 'the Church of the Living God' in our State!

"They came indeed to this inquiry with a deep sense of the gratitude due to the Bishop for diffusing the blessings of religious education. They came with a strong desire that he might pass through

the ordeal unharmed. We will not insult your Christian hearts by the supposition that this wish is not as ardent in your own bosoms as in theirs. But if this feeling be a disqualification for doing justice, then you must confine the circle of his judges to the ignorant or the unfriendly.

"But, after all that has been done, the cry of some is that he should be *tried,* and tried upon the very charges that have been investigated and are found to be untrue. Apart from its injustice, there is no advantage we can see. The charges (or at least all those to which we now refer) can only at the most be backed by those who make them *under oath;* and the testimony on the part of the accused is already taken under oath, disproving by witnesses as unimpeachable, and by dates, and facts, and circumstantial evidence (which never lies) the charges which are made.

"The cry of some is, 'Let him be tried! Let him clear himself of these charges of crime and immorality, and purge the Church of the odium they cast upon it!'

"Those who believe, without investigation, that our Bishop is guilty of these charges, should listen to these cries. Those who love litigation and relish the bitter strifes of a public prosecution will be moved by them and long for *the trial of a Bishop.*

"The morbid sentiment of the age may yearn for the exciting performance; and bigotry and fanaticism, jealousy and malice may be gratified by seeing a man put upon the rack of trial for the purpose of satisfying public opinion. But the Diocese of New Jersey cannot permit itself to be moved by such influences. We cannot present our Bishop upon those charges, because we have found them to be untrue. We cannot consent to his trial upon them, because we are satisfied of his innocence. We believe that presentments and indictments are intended for the *guilty,* not for the innocent; and although they do not always lead to conviction and punishment, they seldom fail to leave a stigma on the character of the accused. But there are other and higher considerations than personal injustice to our Bishop as a man, which make it the duty of the Diocese of New Jersey to protest against this trial. The accused is our Bishop, our Father in the Church, connected by all those holy and sacred ties by which God and the Church have bound us together. His character and his reputation for good or for evil must reflect upon the Diocese.

"For nearly twenty years his walk and conversation have been familiar to us. We know his virtues, and are not blind to his

faults. We respect him as a man. We love him as our Bishop. To relations so paternal, to knowledge so intimate and associations so sacred and responsible, the Church has wisely intrusted, in cases of presentment, as well the character of her Bishops as the rights of her respective Dioceses over which they preside. Under these legitimate and sacred influences the Diocese of New Jersey has examined the charges brought against her Bishop and found them to be untrue. Our confidence in him is unabated and his usefulness among us undiminished; and we appear before this Court to-day to say to you and to the Church, that the Diocese of New Jersey has justly, fairly and legally examined into this matter, and 'finds no fault in this man touching those things whereof they accuse him.' And yet again, if the question is asked, why the Convention of New Jersey, with a faith so firm in the purity of the Bishop, seek to arrest the proceedings of this Presentment, we reply that they have *the rights of the Diocese* to sustain, and the character of its Clergy and Laity to defend. Placed by the Church as watchmen and guardians of the purity and peace of the Diocese, with at least equal power and closer personal solicitude, their duty in this case has never been neglected; their duty has been earnestly met at the first moment when conscience or law permitted them to act. The Diocese of New Jersey has searched into these accusations. The Diocese of New Jersey has pronounced a verdict of acquittal and now stands before you to plead that verdict in all its canonical force and its moral weight; to present it as the expression of her deep and heart-felt conviction that enough has been done, so far as concerns the charges that have been examined, to meet every claim of law or truth, and that for you to proceed with a trial would be unjust to the Bishop, injurious to the Church at large and degrading to herself.

"Right Reverend Fathers,

"So much the undersigned submit, in the discharge of their important duty, touching those accusations which the presentment, as originally made, contained. We are informed officially that *another* paper, which is called 'a new Presentment' of our Bishop, has been served upon him, and that the Court have had another summons to assemble at the same time and place, and at a given hour.

"We will not speak of our surprise. We will not raise the question *why* was this new paper served. We will not stop to ask *when*

it was served. We care not even to insist, as well we might, that the serving of the *new* Presentment is a practical abandonment of the charges in the old. We will not urge that the renewal of these charges in the new Presentment, after the investigation they have had, with only the change of some expressions, the omission of some instance or the addition of some case, (by which sameness of the papers is not altered,) and the appending of some other charges, which must have been well known to the accusers when the first Presentment was prepared, looks like an effort to avoid the difficulty, that the Diocese of New Jersey has investigated and adjudicated upon them. We will not dwell upon the fact that the renewal of *those* charges after the investigation that was had, is a direct impeachment of the fairness with which the investigation was conducted, or of the right of the Diocese of the accused to institute examination.

"We will not ask, after the argument that has been made, whether this change in the Presentment is canonical—is usual—is legal. We will not ask what Court this is; the one to try the Bishop of New Jersey on the *old* Presentment, or the Court to try him on the *new*. We will not ask whether both Presentments shall be tried; or, if but one, which shall be heard: or, if a man is to be twice tried (which is to be the case if *both* the *Courts* assemble, and the *Presentments* are both heard) for the identical offences: or, if abandoning the *old* specifications, which are the greater portion of the new, a Court has liberty to try a part and leave a part untried. And we forbear all comment on the nature of this movement, and on the disrespect which has been paid by the originators of these charges to the most solemn action of an independent Diocese of members of the Church of God.

"What has been read to you, touching the first Presentment, applies to all the charges in the new which are identical with those examined; and forms (together with testimony which was taken, and which we have the honour to supply for your inspection) our answer to those charges, whether in the old or in the new; and the verdict of the Convention of New Jersey, as regards those things which at that time had been preferred. The change in the mere style of the Presentment cannot *revive* the crime which was alleged, nor destroy the value of the *refutation*.

"And, (as respects whatever there is new,) in the name of New Jersey, in the name of its Diocesan Convention, as representatives of its collective people, and its piety and wisdom, we ask and claim

that you forbear to enter on this trial at the instance of Bishop Doane's accusers, until the Diocese *now summoned* to assemble in Convention, shall have had the opportunity to do its duty in the full investigation of the latest charges, as well as of the first. We take it that the object is the discovery of truth, and that this is of more moment than the process by which it is obtained. No rights are to be sacrificed by the adjournment of the Court; but rights essential to the liberty of Christian freemen must be disregarded if our claim shall *not* be heard. We hope that every one of you would willingly be spared the painful duty of the trial of a *Brother*.

"We make this claim respecting whatsoever may be *new* in the Presentment on the following grounds:

"If the interpretation of the Canon, which harmonizes with the dictates of sound wisdom and with the spirit of all ancient laws, shall be allowed, that to the Diocese belongs the right of primary investigations in questions of morality, though not, perhaps, so strictly in instances of heresy, our claim is good. It is as sound concerning the new charges as the old. Upon this theory, the refusal to allow the Diocese the opportunity will be tantamount to the rejection of her claim, and the disregarding of her past investigation, and of the verdict she has given.

"We claim it on the ground that it has been conceded by the Presenting Bishops in their letter. If when the charges in the old Presentment were first made, they felt that only when the Diocese *refused,* or else *delayed* 'too long,' or else *imperfectly performed* the duty of investigation, they could be called upon to interfere, it is as true of all that has been added now. No time has yet been given! Respecting these new matters, it cannot be pretended that the Diocese has been *unwilling,* or *procrastinating,* or *unfair.* Give her the opportunity, and test her character. See if she will refuse, delay or deal unfairly. She claims it at your hands.

"*Lastly,* the case is *one.* In point of time the alleged offences are not new; they were known to have been alleged before, by those by whom they are preferred: and with the substance, and nearly all the words, of the first charges, they make up the paper to which we now refer, and upon which they ask to have the Bishop tried. They can only be considered *as a part of the same case.* We have, the Diocese already has, taken the case in hand. The Diocese alone, then, should complete it. The Convention has been called. We pledge you that the Churchmen of New Jersey will recognise the duty, and will address themselves to its discharge.

"Right Reverend Fathers,

"We have done with our argument; almost with our appeal.

"Fathers,

"The eye of God is on us: the God of truth, of patience, and of charity!

"Fathers,

"We have no other aim than that of justice; no other object than the promotion of religion. In the course which we pursue, we are mindful of your liberty, and are not forgetful of God's glory.

"Fathers,

"We recognise your Office in the Church, your dignity, your worth and your responsibility. And until the voice of that Convention which is summoned can be heard, with profound respect and reverence, and in the name of the Diocese of New Jersey which we are called to represent, we ask you to forbear.

"God grant you grace and wisdom so to act, that the rights of all may be respected, and that Christian love and peace may be preserved.

"Saml. L. Southard. "Harry Finch.
"James A. Williams. "Charles W. Rankin.
"Elias B. D. Ogden. "Daniel B. Ryall.
"J. W. Miller.

"Camden, New Jersey, 7 *October*, 1852."

On motion of the Assistant Bishop of Virginia,

Ordered, That the Presenting Bishops have leave to make a written reply to the statement from the Diocese of New Jersey, and that, for this purpose, they be permitted to have access to this Document.

On motion of the Bishop of Maryland,

Ordered, That the Document presented by the Committee of the Diocese of New Jersey, containing statements to which allusion was made in the Address just read, be laid upon the table of the Court.

Ordered, That, when this Court adjourns, it will adjourn to meet on Monday, at 11 o'clock, A. M.

The Court then adjourned.

Fourth Day.

BURLINGTON, *October* 11, 1852.
11 *o'clock*, A.M.

The Court met, pursuant to adjournment.

Present, as at the last session.

The Session was opened with the Litany and prayers, by the President.

The Minutes of the last session were read and approved.

Ordered, That when the Court adjourns this day, it will adjourn at 3 o'clock, P. M.

Ordered, That the Court will hereafter hold two sessions daily, viz., from 10½ o'clock, A. M., till 1½ o'clock, P. M.; and from 3 o'clock, till 5¼ o'clock, P. M.

On motion of the Bishop of Western New York,

1. *Ordered,* That no Member of the Court shall make more than one argument or statement of views on any question, except by permission of the Court.

2. *Ordered,* That, in deciding all questions before the Court, the opinion of the Members shall be given in the order of seniority, after the President shall have given his opinion.

The Presenting Bishops read their Statement, in reply to that of the Committee of the Diocese of New Jersey.

"*To the Right Reverend the Bishops constituting the present Court.*

"BRETHREN,

"The undersigned, who have appeared before you in the most painful and responsible position of Presenters of our Brother, the Bishop of New Jersey, for a trial before you, feeling ourselves called upon, by all the imperative considerations of solemn duty to God and His Church which moved us to that act, to place on your record a reply to the argument which you have permitted a Committee of the Diocese of New Jersey to present, would now respectfully solicit your attention thereto.

"But first allow us to say that we deeply realize the very painful

relation to this Court, in which our presentment has placed of necessity, our Brother, the Respondent in this case; and we feel the duty, and will endeavour most truly to fulfil it, of treating the subject in hand in as much abstraction from him personally, and his feelings, as its just argument will permit. We think we know enough of our own hearts to be enabled confidently to say that we entertain no other than the kindest feelings towards him; that beyond our official duty as Bishops and Presenters, we have no interest enlisted in the further prosecution of this issue; that to see him cleared, by a faithful sifting of evidence, according to the mode prescribed by the Church, from the charges we have felt constrained to bring, so that he and the honour of the Church may be vindicated in the eyes of all well-judging men, would be to us the same matter of joy and thankfulness, that it would be to all of you; and consequently that if, in the course of our present argument, we should seem to be led to the expression of thought, or the use of words, more painful to the feelings of the Respondent than the merits of the subject demand, or the law of kindness would allow, it is our mistake, not our design; it is against, not in accordance with our aim and effort. With these preliminary remarks, we beg to place before the Court some considerations, exhibiting the exceeding seriousness, the grave responsibility, the critical importance of the duty to which you are now called, in deciding upon the question before you. When the request was made to you that the Committee, representing the Convention of the Diocese of New Jersey, might be permitted to appear at your bar, and present a written argument having for its declared object the persuading the Judges in this case to adopt a certain interpretation of the law under which alone they sit, in order that they might be induced to dismiss without trial the charges we have brought at so great a sacrifice of personal feeling, and under so solemn a sense of duty to the Church, we felt ourselves called on to resist such request by all the means canonically within our reach. We urged that to admit them and their argument was against the provisions of the law under which this Court is constituted, and by which it must proceed; that no parties are known to that law, and consequently none can lawfully appear at this bar, but the Judges, the Presenters, and the Respondent; that the admission of any other to influence in any way your decisions, would be as inconsistent with the rules and usages of Courts of analogous jurisdiction, and with the fundamental principles of jurisprudence, as with the terms and provisions of our

Canon law, and would therefore institute a precedent of the most dangerous character to the future discipline of the Church. But our objections were overruled. We submitted respectfully to the authority of the Court. The Committee was admitted. They presented and read a document previously printed. It is material at this stage of our remarks that the Court should bear in mind, that a part of the argument of the Committee rests upon the fact of a new Presentment having been made after the Convention of New Jersey, by its representatives, had investigated the charges contained in a former Presentment; that the determining consideration which led us to make that new Presentment was the doubt, to say the least, resting upon the legality of the act of our late venerable Presiding Bishop, postponing the trial of the former from the time first appointed, to a later day, and thus making doubtful the legality of a Court assembled on that day. The Committee place much of their objections upon the ground, that this Presentment is a new one. The Court will please also to bear in mind, that not only was the postponement of the former Presentment so entirely against our wishes and convictions as Presenters, that we have never ceased to complain of it; not only was it so contrary to the convenience and arrangements of the Bishops, that several who could and would have attended the trial at the first appointed time, are not and cannot be in attendance now; but, although it was stated by the late Presiding Bishop in his notice of the postponement, that several Bishops were represented to him as desiring the postponement, we are nevertheless assured in writing under the hand of the late lamented Bishop of Rhode Island, that, when it was proposed that the Bishops (of whom he was one) assembled in New York to send delegates to England, 'should unite in a request to the Senior Bishop to postpone the trial,' in order that Bishops might go and yet attend it—'an examination of the Canon satisfied many of them that in so doing he would *transcend his power,* and that accordingly the delegates elect announced their purpose not to leave the country under such circumstances.' 'If, however,' (said Bishop Henshaw,) 'Bishop Doane *assented* to the postponement, under the peculiar circumstances, I cannot believe he would object to the trial proceeding on the ground of this technical difficulty.' The Presenters have felt themselves bound to call the attention of the Court to these particulars, lest they should be held under responsibility for the new Presentment beyond what they are willing to acknowledge.

"It is said by the Committee of the Convention of New Jersey respecting the new charges contained in this Presentment, that 'they were known to have been alleged *before* by those by whom they are preferred.'

"It is not only true that the Presenters had heard of the alleged offences during the preparation of the first Presentment, but that they had actually determined on introducing two of them, those touching pecuniary delinquency. The omission of these was accidental. The others were also under consideration, but were omitted for want of time to make sufficient inquiry and be assured of proper witnesses. This deficiency being supplied before the second Presentment was adopted, the lost charges were inserted; and the Presentment thus completed was sent with all possible expedition to the Presiding Bishop. Unexpected delays in preparing the necessary copies to be sent to the other Bishops, and in the mail itself, were the only causes known to us through which it failed to reach its final destination until the evening on which it was served upon the Respondent.

"The step which you are now called to adopt, (if you listen to the prayer of the Committee of the Convention of New Jersey,) is one which, in our humble view, should not be taken till after the most solemn consideration of what is justly expected of this Court, under the vows of your consecration as Bishops, for the sustaining the discipline, the vindication of the purity, and consequently the protection of the light of this Church, as a city set on a hill in the midst of a gainsaying world, nor then without the most imperative and certain convictions of positive obligation. The question is whether, after you have assembled here from various and distant parts, on a canonical call to try a Presentment made undeniably in strict accordance with the letter of the law, and involving charges so numerous and so heavy against one of your own order—on whose vindication, his own usefulness and the Church's honour so much depends—you will, on the plea of a party unknown to the law under which you sit, decline all investigation of those charges, suffer them to stand in all their naked awfulness, untried and thus unalleviated; going out to all the world against a Brother Bishop with their perpetual testimony, going down to all generations, a blot so dark—not only upon the reputation of a single Bishop, but upon the good name of our whole ministry and our whole Church. Let it not be answered that these charges have been tried by a Committee of the Convention of the Diocese of New Jersey. *Investigated* to a certain extent, and

in a certain way, we grant they have been, but *tried* they have not been. Does this Church acknowledge any thing as the trial of a Bishop except it be before one single tribunal, and that the very one now assembled? Does this Church acknowledge any thing as a trial of a Bishop, except under the single law by which this Court is constituted, and according to its mode of investigation? Is it competent to any Diocese to set up its own tribunal for the examination of charges against a Bishop, and then claim that its examinations shall have the weight and place and force of a trial by the only Court known to the Church for such an office, as if the one could possibly stand as a satisfactory substitute for the other? Can an investigation pretend to approximate to the dignity and sufficiency, though confessedly without the form, of such a trial as your Canon demands, which by its own professions was entirely *ex parte*—at which not only could there be no cross-examination of witnesses, at which not only did almost every witness relied on by the Presenters refuse to attend, because they knew it was not the tribunal required by the Church—but at which by positive resolution of the Convention of New Jersey, the motion to notify the presenting Bishops, and allow them to attend the investigation by their Attorney to cross-examine witnesses, and produce rebutting testimony, was rejected?* Are the ends of a regularly constituted judicial tribunal, under the law of our whole Church, and alone depended on by our whole Church, to be thus satisfactorily attained? Should a Christian Bishop lying under the weight of such charges as these before you, and yet conscious of innocence, desire them to be allowed to remain so untried, (a desire which we understand the present Respondent pointedly to disclaim,) we should exceedingly wonder. How any Christian Bishop, conscious of innocence, could help demanding, in justice to himself, that every impediment to his trial not absolutely insurmountable should be overleaped, in order that he might have the privilege of being confronted face to face with the testimony against him, we do not understand. That the Convention of a Bishop so presented on such charges, and one professing the greatest affection for their Bishop, the greatest zeal for his reputation and happiness and usefulness, and above all the most entire confidence in his innocence, in the impossibility of the charges being sustained by evidence, should be so earnest to set aside this canonical trial so looked to and waited for by the whole Church, and to set it aside mainly on the ground of certain views entertained by them, and

* See Journal of the 59th Annual Convention of New Jersey, page 22.

perhaps no where else, concerning their position and rights: yea, that they should say in so many words, '*we cannot consent to his trial, because we are satisfied of his innocence,*' is, we confess, to us a matter of the deepest astonishment. We should have supposed that it would have been a far more friendly expression towards their Bishop, to have said, '*we cannot consent to his trial not taking place, because we are satisfied of his innocence.*' But we would respectfully submit that the Diocese is not the only, nor the most important Ecclesiastical Body, that has a deep interest, and that expects its interests to be considered in the decision now before you. There is a body of Clergy and a body of Laity constituting the Protestant Episcopal Church in this whole land, the Church under whose authority and law you are now sitting, that is now compassing you about as a great cloud of witnesses, and looking most earnestly upon your every act and movement, realizing how critically the dignity of its laws, the character of its discipline, the purity of its morals, the reputation of its ministry, the honour of the Gospel, are now dependent not only on your decision of the present question, but, if it be not carried, your further doings at every step of the progress of this case.

"As for ourselves, the Presenters, we have no personal interests at stake which your determination, in deference to the claim and urgency of the Committee of the Convention of New Jersey not to try this present issue, would not most amply sustain. If the case is so clear and the charges are so incapable of proof as that Committee declares, then as far as we are personally concerned, under the heavy responsibility we have assumed, it is far better for us that you grant their request. For we venture to assure you that, in that case, we should feel perfectly confident that in the eyes of the Church in general, and of all people, the bare design of the Committee so urgently pressed on such grounds would be our vindication and praise.

"But we appear not here for ourselves. We represent, as you also represent, Right Reverend Brethren, all that great cloud of witnesses, the whole Church, which is now solemnly waiting upon your deliberations. That is the great party in this case which remains to be heard. If under the present motion the trial of the Respondent be dismissed, our trial before that tribunal is ended. We are perfectly confident in its verdict to our clearance.

"But allow us, Right Reverend Brethren, most respectfully to remind you that then your trial at that great tribunal begins.

The Church must be satisfied. Whether you will have fulfilled your consecration vows 'to diligently exercise such discipline as by the authority of God's Word and the order of this Church is committed to you,' will then be tried. That you will well and conscientiously consider the position in which you are therefore now placed and the critical pass to which you have now arrived, we freely trust. We proceed to show that the Committee of the Convention of New Jersey have presented no reason which can shield this Court from the strong dissatisfaction which the refusal to proceed with the trial now pending must occasion.

"The Presenting Bishops cannot adequately express the surprise and mortification with which they behold the peaceful and orderly conduct of a judicial tribunal in a solemn investigation invaded and interrupted by the presentation of the strange and unusual remonstrance and appeal of the Committee of the Convention of New Jersey. For the first time in the annals of American jurisprudence has the course of justice been subjected to the direct influence of a legislative body. Against the introduction of this influence we have hitherto opposed our sternest remonstrances. These have proved unavailing, and now we are compelled to meet and expose the perversions of fact and the distortions of law, behind and beneath which that Committee have assailed the freedom and independence of your judicial character. However much we deplore the ill example of the precedent, we are far from regretting the opportunity it affords us to present to this Court a full narrative of the efforts to procure and to evade a judicial investigation of the crimes laid to the charge of the Respondent. The legal result contemplated by the remonstrance of the Convention, is a discontinuance of all further proceedings on this Presentment. They ask that the Court refuse to try those specifications of the Presentment which have been investigated by the Convention, because the presentment *now* pending was found only after the Convention had acted upon them. They propose a like dismission of the charges not investigated by the Convention, on the faith of its pledge to investigate them hereafter. The Presenting Bishops presume that this future investigation will be a repetition of the past: and that past investigation has not so conciliated their confidence or respect, as to induce them willingly to commit the purity of the Episcopate to such an ordeal under such auspices. They invoke the solemn attention of the Court while they retrace the course of events touching the attempts to procure a trial of the charges against the accused,

which the Committee have undertaken to narrate, but which they have very imperfectly and inaccurately represented.

"At the Convention of 1849 a resolution was offered reciting the requisition of the Scriptures, that a Bishop should be of good report of them that are without, and reciting also, that public rumour, as well as newspaper publications, had made serious charges against the Bishop, and creating a Committee to make such investigations as should establish the innocence or justify the presentment of the accused; and that resolution was, after full debate and discussion, lost by a unanimous negative.

"The fact of the newspaper publications, and of the prevalence of the public rumours alleged, was notorious. They were not denied or disputed; but admitting their existence, the Convention refused to institute an inquiry as to their truth or falsehood.

"The Committee have informed us as to the reasons of this refusal —and they throw some light on the chances of holding the Bishop of New Jersey to a due responsibility through his Convention.

"We are told 'they refused to treat the fame of the Bishop and peace of the Diocese as matters of such light moment, as to place them at the mercy of every idle report of ignorance or enmity.'

"But the Convention did not even take the trouble to inquire whether these public rumours *were* idle reports of ignorance or enmity, or the reverberating echoes of the voice of truth.

"Whether true or false, malignant, or urged in good faith, they made the Bishop of evil report among them that were without. The Bible required him to be not merely blameless *in fact,* but to be of good report. The evil report was, therefore, the very thing to be avoided, cleared up, and dispelled; yet that task the Convention refused to attempt, contenting itself with its own preconceived confidence in his purity.

"The Convention were as unmindful of the Canons of the Church as of the precepts of the New Testament, when they refused to regard prevailing reports and imputations on the character of the Bishop as adequate reasons, not for trying the Bishop, but for inquiring into their origin, so as to dispel or confirm them. The XXXVIIth Canon of 1838, makes it the duty of the Bishop, if a minister *'be accused by public rumour of crimes and offences,'* to see that inquiry be instituted as to the truth of such public rumour. The analogy should *compel* a Convention, whose Bishop is accused by public rumour, to inquire as to the truth of such public rumour. The character of a Bishop is quite as delicate, much more important,

not less likely to be assailed, and more powerful in example for evil or good. It should therefore be guarded with even greater care than that of the presbyter; but to refuse inquiry is not to protect, but to expose it to the tongue of calumny.

"Nor is it true that the Convention of 1849 gave any assurance that a suitable investigation would follow upon the presentation of charges by responsible names; for the declarations in debate, of a few of its prominent members, bound nobody but themselves.

"The Convention therefore left on the character of the Bishop, clouds which, while most seriously darkening his good name, have cast their shadow over the whole Church.

"The statement of the Committee, that 'two succeeding Annual Conventions were held without a renewal of the subject,' if true in the letter, is not accurate in spirit and substance.

"At the following Convention of 1850, an effort on the part of some members of the Convention, to obtain satisfaction as to the security of the Episcopal Fund, then in the hands of the Bishop, under the circumstances detailed in the 10th Specification, was frustrated by the abrupt adjournment of the Convention. The purpose of the adjournment may be conjectured, with no little certainty, from a similar transaction of the following year.

"Before the meeting of the Convention of 1851, Michael Hayes, one of the chief creditors of the Bishop, and one who had been specially injured, had publicly declared his intention to complain in a definite shape to that Convention. It was widely known that he had prepared a formal affidavit for the purpose, and the Bishop had been apprised by him of his intention. The friends of the Bishop, in the Convention, knew that Mr. Halsted stood prepared to bring the matter to the attention of that body. The Convention, under these circumstances, met in May, 1851, and on the first day of its session, contrary to its usage, and after Mr. Halsted was known to have retired for the day, hurried over its indispensable business; pushed its work so far into the evening as to crowd out the religious services appointed for that season; omitted the examination of the Treasurer's accounts, which could not be passed on the first day of the Convention, and abruptly adjourned *sine die,* late in the evening. So anxious were they to avoid meeting the charges of Michael Hayes, now among the most serious that are urged against the Bishop. Such were the circumstances under which the 'two succeeding Conventions were held without a renewal of the subject.'

"Nor was Michael Hayes the only accuser of the Bishop, of a responsible character, prior to that Convention.

"In September, 1850, the Rector of St. Michael's Church, Trenton, read to the Vestry and Wardens of his church a statement embodying the facts which now form the 11th, 18th and 19th Specifications of the presentment, and the Wardens and Vestry caused it to be printed and published, and circulated through the Diocese under their avowed sanction. The Bishop and the members of the Convention cannot plead ignorance who were the Rector, and Wardens, and Vestrymen, of one of the most important parishes in the Diocese. It is not supposed that *all* of them—it is not known that *any* of them, were of such little repute and character that charges distinctly urged, in print, by them against their Bishop, were unworthy of notice or investigation. They were neither *idle rumours,* nor *newspaper publications.* Responsible names were answerable for the truth of the charges; yet the Convention dissolved under apprehension of an investigation which they were anxious to avoid, yet feared, if asked, to refuse.

"In despair of redress from such a Convention, four laymen of respectable standing, all communicants of the Church, all members of the Convention, and all officers of parishes, sought redress in the other method pointed out by the Canon. They laid *nineteen* charges, drawn up in due form, and accompanied by the affidavit of Michael Hayes as to some of the most material, before the three Presenting Bishops, and desired their official intervention as Presenters to procure a trial of the accused. Other Bishops were solicited to assume the ungracious task of Presenters; but, while admitting the duty of some of the order to make the inquest, they all for various reasons, personal to themselves, declined to proceed in the matter.

"Still reluctant to force on the Bishop of New Jersey the vexation and scandal of a public trial, the three Bishops addressed him their letter of the twenty-second September, 1851. The response was 'The Protest, Appeal, and Reply of George Washington Doane, Bishop of New Jersey.'

"The meaning and the object of that letter have been greatly perverted. It was intended as a kindness; it sought to save the Bishop the humiliation of a public trial, if the purity of the Church could be assured by a less public process.

"The Bishop denounced it as 'an uncanonical, unchristian, and inhuman procedure'—repelled its suggestions with scorn, heaped contumely on its authors, and summoned them before the judgment

seat of God, to answer for the injustice, indignity and cruelty of their conduct. He summoned the Special Convention of March, 1852.

"It is true that this Convention was confined to the subject mentioned within the call, but the Committee are seriously misleading this Court when they insinuate that any investigation of the charges against the Bishop was beyond the terms of the call. The language of the call is decisive.

"The Convention were summoned 'to consider and express their *judgment* on the *official conduct* of the Bishops of Virginia, Maine, and Ohio, as *touching* the rights of the Bishop and the Diocese, in dictating a course *to be pursued by them*' in their letter addressed to him, dated 22d September, 1851, &c. The letter and the articles of charge which the three Bishops requested should be investigated before a Special Convention, are set forth in the Protest and Appeal. To it is reference made for the documents which were to form the subject of consideration. The letter contained the charges, and without them was unmeaning.

"The Convention therefore was, by the words of the *call,* commissioned to consider and express their judgment on the rights of the Bishop and the Diocese; now these rights, as to the Diocese, are asserted to include the exclusive right of priority in deciding through the Convention, on the presentment of their Bishop. *That* is the very point of the present application. They were therefore called to consider of the course to be pursued by *them,* in consequence of the dictation and the threat of the three Bishops; neither they nor the Bishop seemed to have entertained any doubt as to the extent of their jurisdiction at that Convention.

"The limitation of it has the appearance of an afterthought.

"The Bishop in his address declared that the action of the Convention of 1849, *is insisted on as final.* 'The action has taken place in your Diocesan Convention. The Bishops cannot take it up.' But, while excluding the *Bishops,* he admits the power of the Convention.

"He says he did not invite investigation, but 'his answer was, to whomsoever will, if you desire investigation, come and make it. Made in a canonical way, &c., &c., he meets it in a moment.'

"The Convention seem quite clear as to their power. Three resolutions were proposed and adopted, embodying the decision of the Convention on the very point.

"The first sustains the Bishop's refusal to call a Convention for the special purpose of investigation at *the dictation of the Bishops.*

"The second resolution goes entirely beyond what the Committee would represent as the limits of the power of the Convention. It declares that *in view* of the vote of *the Convention* of 1849, and *'of all that has since occurred in reference to the alleged charges against our Bishop,* they have entire confidence in his purity and uprightness.'

"What is this but a passing on the very matter to be investigated? It is declaring the result of an actual investigation, for it is done in view of the vote of 1849, and all that has since transpired relative to the charges.

"The third resolution goes still farther, and declares that *no investigation is required.* It was equally competent for the Convention to have come to an opposite conclusion. If it could vote that the Bishop was *pure,* it could say that he was *impure.* If it could say that no investigation was needed, it could say, 'we think that such and such charges *do* need investigation.' Nor can they escape under the plea of the want of a responsible name; for the four laymen stood responsible for the nineteen charges, and the Bishops stood behind them, and the affidavit of Michael Hayes gave the sanction of an oath.

"The Convention then refused again to hold the *Bishop responsible* before the Church.

"The Committee are singularly unfortunate in their complaint that the Presenting Bishops, between the Special and the Annual Convention of 1852, disregarded the pledge of the Special Convention that an investigation should be had, and that, before the time for the assembling of the Annual Convention, action was taken by them to procure a trial. The Committee inaccurately represent the proceedings of the Special Convention. It gave no pledge that it or any other Convention would investigate the charges preferred against the Bishop by the four laymen. On the contrary, the resolutions adopted by that Convention—the only authentic evidence of its *views*—expressly declare its solemn opinion that the best interest of the Diocese and of the Church at large, requires no such proceeding. This was a pledge not to investigate any of these charges. The resolutions do declare that the Convention of the Diocese *had* ever been ready to make such investigation on charges duly made; but its readiness is best estimated by its acts; and they have been a continued series of refusals or evasions. The three Bishops had thus urged a call of a Convention to investigate specific charges. That Convention formally replied that the interests of the

Church required no such proceeding. This was a declaration that it would not investigate.

"The three Presenting Bishops waited the result of the Special Convention. They were mortified at the exhibition of devotion to an individual, at the cost of the reputation of the Church of God. They had but one path, and they resolved to tread it—thorny though it might prove.

"They entered on a formal and careful investigation of the charges preferred against the accused. The evidence before them satisfied them of his guilt on all the specifications in the Presentment first made; and they said so—as the law required them to do—in the shape of that Presentment. It was forwarded to the Senior Bishop, and he designated the 24th day of June as the day of trial, and summoned the Court to meet.

"It was *now irrevocably fixed* that an investigation would be made, and a trial had before an impartial tribunal—unless some mode could be contrived to evade it.

"The Diocesan Convention *was now* called on to investigate the very matters which, a few months before, had been treated as not requiring investigation. The Convention of 1852 met. A Committee was elected to make a full investigation of all the charges in the Presentment.

"It was moved to include all other charges. This was voted down. The Committee proceeded to its work, and the Report is the monument of its industry.

"We enter now on no criticism of its contents. It stands self-condemned by its parentage, its purpose, and its result. The Convention reiterate the old pretexts in their resolutions. The recital affirmed that the Convention had always been ready to investigate charges duly made and presented, yet no Convention had ever been found which avowed its willingness to enter on such an investigation.

"It declared that the paper signed by the three Bishops furnished the first and only occasion for that Convention to investigate charges against their Bishop: yet it requires a refined logic to discriminate between the *paper signed by three Bishops* and *the paper signed by four Laymen.*

"They expressly claim the sole and exclusive right of first passing on the propriety of a Presentment of their Bishop. *They* therefore have no right to attribute any peculiarity to the paper signed by the Bishops, distinguishing it from that signed by any other responsible

persons. They do not admit it to be a valid *Presentment;* for if so, then the *case* is instituted, and nothing but a Court can try it. They act on this theory, and call it, *not a Presentment,* but a paper signed by three Bishops.

"It is therefore the paper *signed* on which they proceed, and they had a paper signed by the four laymen—and indeed authenticated by the Bishops also—before the Special Convention. It was not, therefore, the first occasion, on their own principles, on which they were called on to exercise their exclusive right of first investigation.

"They cannot maintain that the Convention is only to act on the presentment by the Bishops, for that is not the purpose of the presentment mentioned in the Canon. That presentment is to be, not the basis of a conventional inquisition, but the thing to be tried.

"The whole scheme, therefore, stands exposed.

"The Convention now investigates, because either investigation or trial is inevitable. The Convention embrace the former alternative, and try the last effort at escape from the dangers of a trial.

"We are pointed proudly to the list of that Committee conducting the investigation.

"We do not wish to diminish aught of that pride; but we shall not scruple to scrutinize the composition of that Committee, and its fitness for the duties with which it was charged. We trust it will not be considered as impertinent if we remark that, of the seven members of that Committee, the Chairman, Mr. Ryall, was a zealous supporter of the accused in the Convention. He *was* Chairman of the Committee appointed by Bishop Doane to examine Mr. Germain's accounts, and was cognizant of, and did not disclose, Mr. Germain's illegal transfer of the Episcopal Fund to Bishop Doane without security—which was one of the charges to be investigated—and he was Chairman of a Committee which reported, contrary to the truth, that the Fund was secured. He was a Trustee of the College, where his children had been educated. Mr. Harker was a creditor of the Bishop, and so interested in sustaining the Bishop. Mr. Potter was a judgment creditor and a Trustee of the College, and so having a like interest. Mr. Whitney was a Trustee of the College, and so having a like interest.

"The names of the Committee had been put on paper, and circulated exactly as they were elected, before the assembling of the Convention.

"Their investigation was wholly *ex parte*—no notice having been given to the Bishops, who, it was pretended, had given the only

foundation for the investigation, and the Convention having actually voted down a resolution proposing that such notice should be given.

"As an attempt to discover the truth, it was necessarily a failure.

"The material witnesses in support of the charges were not before them. Of thirty-eight named by Mr. Halsted, and all material and important, only five were examined, as appears from the Report itself.

"The remonstrance of the Committee describes the whole proceeding with singular accuracy, when, in deprecating a trial, it says, 'the charges can only at the most be backed by those who make them under oath; and the testimony *on the part of the accused* is already taken under oath, disproving by witnesses as unimpeachable, and by dates and facts, and circumstantial evidence (which never lies) the charges which are made.'

"The only difference is, the Committee heard *one side*—the Court is asked to listen to both sides, and weigh the evidence.

"Not only were the material witnesses for the prosecution *absent*, but there was no cross-examination of those called on the Bishop's side. No one was there to cross-examine them. They could cover up the facts in what cloud of generalities they might see fit. Yet even *now* the evidence strengthens greatly the case to be made by the prosecution.

"No one of the tests for eliciting truth was applied in the proceeding.

"As an assurance of the truth of its findings, the Report is utterly worthless.

"The resolutions of the Convention, passed on the reception of the Report, are as worthless as the evidence and findings of the Report. They can, at best, only indicate the concurrence of the Convention in the opinion of the Committee: and the value of that opinion we have already exposed.

"The third resolution, however, indicates the purpose to be served in the Report.

"To that resolution, we owe this strange invasion of the independence and sanctity of the judicial functions of this Court; the gross insult put on your Episcopal prerogatives; and the humiliation of your dignity to the position of dependants on the will or the caprice of a Diocesan Convention, for the liberty to exercise the prerogative, conferred by the Canon, of trying one of your peers for crimes of deep malignity, however supported by irresistible evidence.

"The third resolution directs the Committee to present a written representation of 'the legal and canonical position and rights of the Convention, and to urge the inquiry whether it will be wise or just, or for the peace of God's Church, to proceed further upon the charges laid before the Court.'

"This resolution presents first a claim of legal right, and secondly an appeal to your discretion.

"The latter rests for its influence on the weight to be attributed to the body passing the resolutions and making the representation.

"The Committee, conscious of this, venture on a contrast between the number of the Convention and that of three Bishops, and proudly rest on the elevated character they ascribe to the Committee and the Convention, as the guarantee of the fulness and fairness of the investigation.

"When we turn to the record of the Convention, we are surprised to learn that in a Diocese comprising sixty-four ministers, only about *thirty-seven* are entitled to a voice in the Convention;

"That of these thirty-seven, only twenty-two voted on any resolution;

"That the resolution, now under consideration, was carried by a vote of seventeen, less than a majority of all the Clergy entitled to a vote in Convention;

"That six of those who voted were missionaries, appointed by the Bishop whose guilt or innocence was in question, removeable at his pleasure, depending on him for their vote and their daily bread, and so subject to his will; that one was upon another occasion put on the list of missionaries after he had been excluded from his seat which he had claimed on other ground;

"That four other voters were employees in the Bishop's college or school;

"That Mr. Stubbs, another voter, was deeply implicated in one of the greatest charges against the Bishop.

"Consequently, half the Clergy in the Convention cannot be considered as impartial triers of the matter to be investigated.

"The vast majority of the impartial Clergy are silent spectators of the scene in which they shrank from being actors. Their opinion is not before us.

"Of the Lay vote we have not the means of so close an analysis.

"But we are struck by the significant fact, that while there are fifty-nine parishes entitled to representation, only twenty-eight parishes were present by their *delegates;* and they, we presume,

were chiefly parishes of the Clergy who appeared; and that, of these twenty-eight, only nineteen voted in favour of the resolution.

"How this analysis of the vote upon the resolution can be reconciled with the averment of the Committee, that 'a large majority of the representatives of the Clergy and Laity of New Jersey have declared that such great and momentous rights of the Diocese are involved in this presentment, as to demand that they be stated to your body,' we submit to the consideration of this Court.

"It remains, that the vast majority of the Laity of New Jersey are silent in this great appeal. They urge no interruption to the ordinary course of justice.

"They who make this unheard of claim are a small minority of both Orders; speaking their devotion to the Bishop, rather than the opinion of an impartial and independent inquest.

"The claim is therefore destitute of every element of strength. To the character of a full and fair investigation of the matter charged against the Bishop, the proceeding of the Convention has no pretence of title.

"To call it a trial is a gross perversion of language. It has no one quality of a trial. Parties were not cited; witnesses were not confronted; pleas were not entered; charges were not preferred; no judges were present. A Committee sat in the presence of the Bishop and his counsel, sent for whom they pleased, made up their Report, and returned it to the Convention. It concludes nothing. If *adverse,* it would only have been the ground on which the Convention might have made a presentment. But of itself it would not have been even a presentment. Still less could it be considered a *judgment* concluding the merits, whether for or against the accused.

"It is therefore no fair or full expression of the opinion of the Clergy and Laity of New Jersey.

"It is no full and fair investigation of the matters laid to the Bishop's charge.

"It is no trial in form or in substance of any one of the charges.

"It is entitled to no weight whatever before this Court, were it regularly before it.

"It is a gross invasion of the prerogatives of the Court of Bishops; a glaring attempt to persuade or overawe them in the performance of their duty. They should repel it promptly and decisively.

"II. But the Committee are instructed to urge its legal effect.

"We might well spare ourselves the trouble of replying on this

point till the Committee have made up their own minds in what light they will themselves regard the resolutions of the Convention.

"Their argument is one long series of misapplied names and misconceived principles. A brief exposition of the true nature of the proceedings of the Convention and of the three Bishops, as defined by the Canon, the ultimate and only law of this Court, will exempt us from pursuing the Committee through the labyrinth of their perplexities.

"The policy of the jurisprudence of modern times, in England and America, has interposed between the citizen and a prosecution for a public offence, a public body, or public bodies, charged with inquiring into the propriety of putting a party on his trial.

"Such are our grand juries; such are the House of Commons and the House of Representatives touching impeachments; such are courts of criminal jurisdiction, together with the attorney-general, relative to informations for misdemeanors, filed by the latter with the leave of the former.

"The functions of these bodies are solely those of *inquest.* They make *inquiry ex parte,* and institute or *refuse* to institute prosecutions as they see fit, under all the circumstances. They can only order a prosecution, or find a bill, on *evidence;* but that evidence is confined to *one side,* that of the *prosecution,* and none other is allowed to be brought before them. The reason is, they try nothing; they merely inquire whether such a case is made out as makes it fit that the party accused should be put on *his trial.* But though they must have evidence before they can put a party on his *trial,* they can and do open the investigation into an alleged or supposed crime, on the information or rumour of any fact putting them on inquiry, and promising to reward research by discovery.

"The finding of a true bill by one of these inquests, a grand jury for instance, does not *condemn* the accused. It is merely a declaration that the jury believe him guilty, and the necessary prerequisite of a trial.

"The failure or refusal to find a bill is no more an acquittal, than the finding is a conviction of the accused. Neither bars subsequent proceedings. Neither is conclusive on any one, or on any thing. The same jury may refuse to-day, and find a true bill to-morrow, for the same offence; or, one grand jury may refuse, and a following one may find, a bill; or, the Court may allow an information to be filed, either before a grand jury shall have refused

to find a bill, or after it has refused; or, even when it has found one, if the prosecuting officer prefer that mode of proceeding.

"If no body authorized will find a bill or allow an information, the party cannot be tried; but he is not acquitted; and any subsequent grand jury, or the court at a future day, may proceed by bill or information at its pleasure. Such a thing as pleading the *refusal* of one such body, with a view to quash the *finding* of another, is an absurdity of which no law book furnishes an example.

"The *trial* of the accused, when the accusation is once instituted by any body known to the law as authorized to institute it, is a totally different affair.

"The thing to be tried is, the bill found by the grand jury, the impeachment by the House of Representatives, or the information by the attorney-general.

"The trial is not before an inquest proceeding *ex parte,* but before a court, on formal pleadings, in the presence of the parties, where witnesses are confronted, sworn, cross-examined, and its result is, not putting a party on trial, but putting an end to the trial; making an end of the whole accusation; either finally discharging the prisoner by acquittal, or finally condemning him by a conviction. The one is the beginning, the other is the end, of controversy.

"Now, the claim of the Convention of New Jersey is, that its investigation, and its resolution declaring the result of that investigation to be the exculpation of the Bishop from any charge of crime or immorality made against him, shall exclude the right of this Court to try him, on a presentment made by three Bishops, for the crimes and immoralities so investigated.

"This is the only intelligible shape in which we can state the vague and shifting forms of appeal, entreaty, remonstrance and argument, in which the Committee have clothed their meaning.

"The facts are—1. The declaration of the Special Convention that there was no cause for investigation. 2. The Presentment ordered for trial on the 24th of June. 3. The Convention which passed the resolutions, and had the investigation in question. 4. The adjournment of the trial. 5. The consequent making of a new Presentment, now about to be tried before this Court, summoned for that purpose according to the Canon.

"The progress of this trial the Convention claims a right to arrest, by virtue of the course of events above narrated.

"This Court is created by the highest authority known to the

American Church. It is not in any particular subordinate or amenable to the Convention of the Diocese of New Jersey.

"On the contrary, it draws its authority from a source paramount to the laws and Canons of the Convention of New Jersey, and which that Convention is bound to obey.

"Unless therefore the Canons of the General Convention give that of New Jersey the authority claimed, it does not exist, but is an illegal usurpation.

"The only Canon in existence on the subject, is that entitled 'Trial of a Bishop,' the IIId Canon of 1844.

"That Canon gives the Convention one right, and only one right; unless therefore that right be the one now claimed, or necessarily involves it as a legal sequence, it has no existence.

"It is futile to involve the spirit of the ancient Canons, for however explicit, they are not of higher authority than the Canon of our General Convention—even if they be any rule to bind us under any circumstances. The question is, What does the law of *our* Church say on the matter?

"Now that Canon declares (Section I.) that the trial of a Bishop shall be on a Presentment in writing, that it may be for any crime or immorality, &c., &c., and then proceeds:

"'Such 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; and it may also be made by any three Bishops of this Church.'

"This is every word giving the Convention any power in the matter at all.

"Prior to this Canon no such case could have arisen, consequently no power can have existed prior to the Canon, and we have only to ascertain its meaning.

"Bearing in mind the explanation above given, of the relations of the inquest instituting a prosecution, and the Court trying the Presentment, there is no doubt to which of those bodies the Convention is assigned.

"It is plainly an inquest to put a party on trial, not a court finally to try any one or any thing.

"It is also, in the event of its making a presentment, made a

party to *such presentment* for the purpose of conducting *that* presentment.

"These are its only functions. But if so, there is an end of the legal claims of the Committee, for—

"An inquest can try nothing so as to make a *final decision* upon it. Its whole action contemplates and is preparatory to a *trial.* Therefore the investigation of the Convention was not a *trial*—the resolution of the Convention fully exculpating the Bishop, was not a verdict nor a judgment of acquittal. It was in no sense final or conclusive on any one. The same Convention could the next day have renewed the investigation, found a Presentment and put the Bishop in course of prosecution before this very Court.

"It is therefore a gross misuse of legal language to speak of his having been acquitted, and of a verdict in his favour.

"He has never been tried, and the Convention of New Jersey, if it had assumed to try him, had no jurisdiction so to do.

"All that the Convention did, was—*that they did not present him.*

"But the Canon does not say that the *failure* of the Convention to present shall destroy the power of three Bishops to make a presentment. *If it did,* it would be an absurdity, for if the Convention did not act, the Bishops by the hypothesis *could not.* If the Convention did present, then the presentment by the Bishops would be nugatory.

"Nor does the Canon say that the *refusal* of the Convention to present shall prevent a subsequent presentment, and for the same crimes, by the Bishops. It bases no rights of *either* presenting power on the failure or the refusal of the other. It settles no questions of precedence in time or dignity, consequently none exist.

"Nor does any analogy of other presenting bodies lend countenance to the supposition that a refusal of *one* to present, prevents another from presenting. Such a thing is unheard of in any law book. It therefore has no foundation in the analogies of jurisprudence, nor is the analogy of concurrent jurisdictions applicable. That applies only where one of two different tribunals, both having cognizance of the same matter, has the matter in hand. In that case another concurrent court will not touch it. But that is not this case. Both presenting bodies are the instruments of the same court. Whichsoever makes the presentment, the trial is before the same court. No question of precedence can ever arise, except as to the right to conduct a prosecution actually instituted,

and then the party which first instituted it would hold the control of its own proceeding.

"But that question would not arise if one presented after the other had *refused* to present; for there would not be any attempt to carry on two prosecutions before the same or concurrent tribunals at the same time. It would be more like the case of a new suit in one court, after a nonsuit or other inconclusive termination of a prior suit in another tribunal, which is no bar to the second suit.

"The right of *priority* set up for the Convention has no foundation in the Canon, and it is in itself unmeaning. If it mean that the Convention have the first right to present their Bishop, one of two results follows. Either the right of the Bishops depends on the action of the Convention, or it does not. If it do not, then it is independent and free from its influence. If it do, then the Bishops, if they present *at all*, must either present *before* the Convention have acted *at all* and then the prior right is given up. Or they must present after the Convention have presented; and then it is an absurdity: or they must present after the Convention have refused to present; and then we are in the very case of our right.

"It is plain, therefore, not only that the Canon does not give any such priority, but that it is an absurdity; or it proves that we are rightly before this Court, and above the power of the Convention.

"If it should be said, that in the absence of any special priority given to the Convention, its refusal bars the subsequent right of the Bishops; then it must follow, by the same reason, that a prior refusal of three Bishops bars the Convention; and a prior refusal of any three Bishops bars the whole bench of Bishops and the Convention; which is an absurdity.

"The simple truth is, that the General Convention meant to create two sources of prosecutions, to protect the purity of the Church. The Convention might need to protect its Diocese; the whole Church was interested in the purity of each of its Bishops. The General Convention therefore gave the Local Convention, as well as the whole Body of Bishops, the right of calling any Bishop to account before his peers.

"The spirit of ancient Canons has nothing to do with the matter; for such a thing as a trial of a Bishop before or by his Diocesan Convention or Presbytery, is unknown in ancient history. Any responsible man could put the Bishop on his defence before the Synod of the Province, and no presentment by a Local Convention was requisite. We throw more guards around our Bishops.

"The suggestion that the Convention has sole cognizance of presentments for crime, and that three Bishops can present only for heresy, is merely the interpolation of a proposed Canon, never enacted, into the midst of a Canon which it was intended to repeal, but did not repeal. In point of fact, the Convention never for a moment had before it any proposition on which the Canon authorizes it to pronounce. It never was *moved to present the Bishop.* It is only on such a motion that the Canon gives it any rights at all. It requires the presentment by a Convention to be by *resolution to present;* and forbids the vote to be taken on the same day on which the resolution is offered. But there was never a resolution to present *at all,* and therefore the Convention never took the first step to acquire *any* rights under the Canon.

"But all this discussion might have been cut short, but for the importance of the principle involved, by the simple and decisive consideration that the Convention of 1852 was not so organized as to have even jurisdiction of the question of presentment.

"The Canon requires that for such purpose two-thirds of the Clergy entitled to seats should be present.

"There were thirty-seven or thirty-eight Clergymen so entitled in New Jersey; but only twenty-two were present, which do not amount to two-thirds of thirty-seven or thirty-eight.

"The Canon likewise requires that two-thirds of the parishes canonically in union with the Convention, be represented.

"But though there are fifty-nine parishes in New Jersey, only twenty-eight were so represented.

"It follows that the Convention was never so constituted as to be able to make a valid presentment of the Bishop. If, therefore, a refusal to present be of any avail *at all,* it must be at least by a Convention whose opposite vote could have given an opposite result. The refusal of this Convention was, therefore, a nullity for lack of jurisdiction.

"The Presentment, therefore, stands clear of all difficulties. If so, then the Canon expressly excludes any and every other proceeding by this Court, besides the trial of this Presentment. The second section declares, that upon a presentment made in *either* of the modes pointed out in Sec. I. of this Canon, the *course of proceeding shall be as follows.*

"Now we have a Presentment in one of those modes, formally specifying crimes and immoralities laid to the charge of the accused, of which this Court has jurisdiction.

"The Canon, therefore, commands you to proceed to the trial of the Presentment, whether you approve or disapprove of the making of it, whether you think it just or unjust, for the good or for the injury of the Church.

"Your functions are simply judicial, you have no discretion to proceed or not to proceed. The Presentment being found and ordered for trial, you, like every other Court, are the passive judges of the law and of the fact; you take no steps, you cannot refuse to proceed at the instance of any person, till that Presentment be finally disposed of by trial and judgment, ending for ever the cause, exculpating or convicting the accused, and placing, between him and the future, the record of his conviction or acquittal, for a perpetual memorial; a protection of the accused, or of the Church; an end of the controversy, and of the floating scandal which now vexes the Church and tarnishes her name.

"In conclusion, we beg leave to say, that we regard this whole application as irregular, and in plain violation of the express words of the Canon, which says, 'upon a presentment, the course of proceeding *shall be as follows,*' and does not prescribe or allow of any such intervention of a Diocesan Convention;

"That we regard it as highly derogatory to the Episcopal Order, that a Diocesan Convention should assume the precedence over them in commencing prosecutions against Bishops, when the Canon subjects the Convention to many limitations and provisos, but leaves any three Bishops free to present when and as they choose;

"That we regard it as of evil example thus to allow the claims of a Diocesan Legislature to intervene and arrest the course of justice, with matters not of judicial cognizance, but appealing to the prejudices, the feelings, or the fears of the Bishops; and we cannot but ask, what would have been thought of the Legislature of Mississippi, had it sent a Committee to New Orleans to remonstrate with the Court of the United States against subjecting their governor, Quitman, to a trial, or of the judges of that Court, had they debated, for days, the propriety of dismissing the prosecution because of such remonstrance?

"We further submit that the wisdom of the General Convention, in providing two presenting bodies, has been signally illustrated in this cause, for it must be apparent that the Convention of New Jersey was incapable of sitting even as a fair inquest on a Presentment.

"We now stand here full-handed with proof of the allegations of

the Presentment, and earnestly pray you, by your regard for your sacred vow, faithfully to administer the discipline of this Church; by your regard for its purity and reputation, by the stain which the dismissal of this prosecution must leave on its spotless robe, not to inflict so deadly a blow on it, as to leave the accused to be numbered among its chief Pastors, untried and unacquitted.

"We do not desire to shrink from the responsibilities of our position. We stand here as the Presenters of the accused, because we believe *him guilty*. We ask for his trial, because we expect to prove the Presentment we have made.

"With such expectations and belief, it would be hypocrisy to pretend to wish him to be freed from the prosecution, without regard to the manner and the means.

"If he be innocent, none will rejoice more than we at his acquittal. If he be guilty, we shall lament, as we are bound to do, his escape from the legal penalty by any contrivance of judicial novelties.

"We ask a fair, full, and impartial trial; and we pray God to give to the Respondent a good deliverance.

"WILLIAM MEADE, D. D.,
"*Bishop of the Prot. Epis. Ch. of Virginia.*
"CHAS. P. MCILVAINE, D. D.,
"*Bishop of the Prot. Epis. Ch. in Ohio.*
"GEORGE BURGESS, D. D.,
"*Bishop of the Prot. Epis. Ch. in Maine.*"

The Bishop of Indiana offered the following Preambles and Resolutions:

Whereas, previous to the making of the Presentment now before this Court, the Convention of New Jersey had investigated most of the matters contained therein, and had determined that there was no ground for Presentment: therefore,

Resolved, That, as to the matters thus acted upon by said Convention, this Court is not called upon to proceed further.

Whereas, the Diocese of New Jersey stands pledged to investigate any charges against its Bishop that may be presented from any responsible source; and whereas, a Special Convention has been called, shortly to meet, in reference to the new matters contained in the Presentment now before this Court: therefore,

Resolved, That this Court, relying upon the said pledge, do not now proceed to any further action in the premises.

Ordered, That the above Preambles and Resolutions be laid upon the table, for the present.

The Court then adjourned.

Fifth Day.

CAMDEN, NEW JERSEY, *October* 12, 1852. }
10½ *o'clock*, A. M. }

THE Court met, pursuant to adjournment.

Present, as at the last Session.

The Session was opened with the Litany and Prayers, by the President.

The Minutes of the last Session were read and approved.

The Bishop of New Jersey asked for an opportunity to examine the reply of the three Presenting Bishops to the application made by the Committee of the Diocese of New Jersey. Whereupon, it was

Ordered, That, for this purpose, the Court take a recess until 3 o'clock, P. M.

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3 *o'clock*, P. M.

The Court met.

The Presenting Bishops having objected to further discussions growing out of the Representation of the Committee of the Convention of New Jersey, and having claimed that the Bishop presented be now called upon to plead to the Presentment: it was,

On motion of the Bishop of Pennsylvania,

Ordered, That the Bishop of New Jersey have leave to make informally any statements which he may think necessary to correct what he regards as misapprehensions of fact, contained in the Reply of the three Presenting Bishops.

The Bishop of New Jersey then proceeded to make his statement to the Court.

The hour of adjournment having arrived,

Ordered, That the Court do now adjourn.

Sixth Day.

BURLINGTON, *October* 13, 1852.

THE Court met, pursuant to adjournment.

Present, as yesterday; with the exception of the Bishop of Florida.

The Session was opened with the Litany and Prayers, by the President.

The Minutes of the last Session were read and approved.

The Preambles and Resolutions offered by the Bishop of Indiana were called up; and the Bishop read a statement containing his views in relation to them.

On motion of the Bishop of Pennsylvania,

Ordered, That, before the Members of the Court be called upon to present their views upon the questions now before the Court, the Presenting Bishops and the Bishop Respondent be heard upon said questions, if they desire it.

At 1½ o'clock, P. M., the Court took a recess.

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3 *o'clock*, P. M.

The Court met.

The Bishop of Florida appeared, and took his seat.

Letters were received and read, from the Bishop and the Assistant Bishop of Connecticut, excusing their absence in consequence of sickness.

The Presenting Bishops and the Bishop Respondent having been fully heard, and the hour of adjournment having arrived,

The Court then adjourned.

Seventh Day.

BURLINGTON, *October* 14, 1852.

THE Court met, pursuant to adjournment.

Present, as yesterday.

The Session was opened with the Litany and Prayers, by the President.

The Minutes of the last Session were read and approved.

The Members of the Court proceeded, in order, to express their views upon the Preambles and Resolutions proposed by the Bishop of Indiana.

The Clerk asked leave of absence for the afternoon's session: which was granted.

At 1½ o'clock, P. M., the Court took a recess until 3 o'clock, P. M.

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3 *o'clock*, P. M.

The Court met.

The Members of the Court resumed the expression of their views, in order, upon the Preambles and Resolutions proposed by the Bishop of Indiana.

The regular hour having arrived,

The Court then adjourned.

Eighth Day.

BURLINGTON, *October* 15, 1852.

THE Court met, pursuant to adjournment.

The Session was opened with the Litany and Prayers, by the President.

The Minutes of the last Session were read and approved.

On motion of the Bishop of Pennsylvania,

Ordered, That the Opinions of the Members of the Court be now delivered.

Whereupon it was decreed, that

Whereas, Previous to the making of the Presentment now before this Court, the Convention of New Jersey had investigated most of the matters contained therein, and had determined that there was no ground for Presentment: therefore,

Ordered, That, as to the matters thus acted upon by said Convention, this Court is not called upon to proceed further.

Whereas, The Diocese of New Jersey stands pledged to investigate any charges against its Bishop that may be presented from any responsible source; and whereas, a Special Convention has been called, shortly to meet, in reference to the new matters contained in the Presentment now before this Court: therefore,

Ordered, That this Court, relying upon the said pledge, do not now proceed to any further action in the premises.

From this Decree six Members of the Court dissented, to wit: the Bishops of Vermont, Kentucky, Delaware, Assistant of Virginia, Massachusetts, and Pennsylvania.

The Bishop of Virginia, on behalf of the Presenting Bishops, then offered to put in a copy of a Presentment, bearing date upon the 30th day of March, 1852; and asked that the Court now proceed to Trial thereon.

On motion of the Bishop of Maryland,

Ordered, That this Court decline to receive the same.

Ordered, That the Bishop Respondent have leave to enter the following upon record:

"The Respondent, with leave of the Court, records his exception to the application made to this Court by the Presenting Bishops, to offer another Presentment, and proceed to trial on the same."

Ordered, That the Presenting Bishops have leave to enter the following upon record:

"The Presenting Bishops record their exception to the application of the Respondent for changing the place of the meeting of this Court from Camden, the place appointed by the Presiding Bishop, to Burlington."

On motion of the Bishop of Delaware,

Ordered, That the President of the Court, the Bishop of Pennsylvania, and the Rev. the Clerk, with the assistance of the Rev. the Assistant Clerk, take order for the publication of the Records of this Court, and the opinions of the Judges, and for securing the copyright of the same.

From the above Order, the Bishop of Maryland recorded his dissent, as follows:

"As regarding the procedure contemplated by the proposed order as utterly beneath the dignity of this Court, and in every respect improper and inexpedient, fraught with evil itself, and fruitful in resulting evil, both immediate and contingent, the undersigned dissents.

"William Rollinson Whittingham,
"Bishop of Maryland."

The Minutes of the Session were read and approved.

On motion of the Bishop of Pennsylvania,

The Court then adjourned *sine die.*

OPINIONS OF THE MEMBERS OF THE COURT.

OPINION OF THE BISHOP OF VERMONT,

PRESIDENT OF THE COURT.

THE motion now before the Court, to my mind, appears opposed to every sound principle of justice. The Bishop of New Jersey has been accused of sundry grave offences, by the three Bishops of Virginia, Ohio, and Maine, under the authority of the IIId Canon of 1844, and this Court has been summoned and organized for the express purpose of trying the Presentment. It has been read before us, accordingly, in due form, but instead of calling on the accused party to plead, the Court (six Bishops dissenting) has granted leave to a Committee of the Diocese of New Jersey, acting by the order of her Convention, to claim on behalf of that Diocese a right to arrest our judicial action, on the ground that the charges made against their Bishop have been sufficiently investigated by a Committee of seven laymen, that the Bishop has been pronounced fully acquitted of all blame, and that their *"legal and canonical position and rights"* justify them in *"earnestly and respectfully urging the Court of Bishops to consider whether (apart from all abstract questions of power) it will be wise, or just, or for the peace of God's Church, to proceed further upon the charges laid before them."* The three Presenting Bishops opposed the reception of this application, and I concurred with five other members of the Court, in the opinion that it ought not to be admitted, because the Diocese, in its own right, cannot legally become a party on the record, being neither inculpated in the Presentment, nor capable of being made, canonically, subject to our jurisdiction. I held, however, that the effect or validity of its action, whatever it may be, might be regularly brought before the Court, in case the accused Bishop

should urge it in the form of a plea in bar or in abatement, or on a motion to quash the Presentment, either of which courses was open to him. It would also be competent, as I conceived, for him to use the Resolutions of his Convention, if he thought fit, as testimony on the trial, from which he might very properly argue that the charges against him could not be true, so long as the opinion of the Diocese was so warmly in his favour. But since the Bishop himself expressly refused to adopt the act of his Convention in any of these modes, and insisted that his Diocese should be heard on their own independent right, as if they were a sort of superior Court empowered to issue a writ of prohibition, I could not consent to admit an application which seemed, to my mind, entirely inconsistent with the duty of our Office, and utterly irreconcilable with any legal or ecclesiastical principle.

The Court, however, by a majority of one, have decided otherwise, and the application of the Diocese has been granted. The Committee of the Convention have read an elaborate and ingenious argument to sustain their claim. The three Presenting Bishops have replied in a written answer. The accused Bishop has pressed upon the Court, with much energy and eloquence, what he regards to be the rights of his independent Diocese. And now it is moved accordingly, (not on behalf of the Bishop, since he has not yet been called upon to plead or answer to the Presentment in any form whatever, but on behalf of the Diocese,) that this Court shall arrest the proceedings and dismiss the case, in consideration of the action which the Convention of New Jersey have already taken; and in further consideration of the action which they intend to take, at their next meeting on the 27th of the current month. That is to say, in plain words, that we, the Bishops of the Church, who are the only tribunal possessing the canonical right and power to try the accused, shall abandon our duty, and refuse to judge the cause, because seven laymen, appointed by the Convention of New Jersey, have investigated the bulk of the charges, and the remainder are to be investigated, in due time, under the same authority!

It is certainly my wish to treat the question with all respect and courtesy, but I cannot disguise my admiration at the boldness and singularity of this claim. For here is a body who have no judicial powers whatever, asserting a right to anticipate the proceedings of the only regular Court—seven laymen superseding the solemn duty of fourteen Bishops—a Diocesan Convention appointing a Committee to take the work of episcopal discipline out

of episcopal hands—a fraction of the American Church independently resolving that the law of our highest legislature, the General Convention, shall be virtually set at naught by their paramount act of nullification! Let this novel kind of jurisprudence be extended from the Church to the Commonwealth, and we shall presently behold a marvellous revolution in the administration of justice. On the same principle, a committee of private soldiers, appointed by the regiment, may investigate the charges against their Colonel, pronounce him acquitted, and then intervene to save him from a Court Martial! A town meeting may settle the merits of an indictment, and relieve the judges and the jury from all responsibility! The legislature of a single State may vote that a man, arraigned for the violation of an act of Congress, having proved his innocence to their satisfaction, ought not to be tried before the constituted authority! Nay, the father of a family may even have a domestic tribunal of his children and his personal friends, to decide beforehand the grounds of a public prosecution, and the lawful judges may be told to go home, (as this Court has actually been,) because their work has been already done sufficiently for all the ends of justice!

But notwithstanding the manifold absurdities which the principle thus introduced by the Convention of New Jersey seems to involve, according to my judgment, I owe it to my respect for the sincerity and good intentions of those who have adopted it, to consider their argument in detail. And I willingly concede to it all that can be claimed, on the score of eloquence and ingenuity.

The case comes before us under the IIId Canon of 1844, which provides that a Bishop may be presented for heresy, or for any crime or immorality, by the Convention of his Diocese, and that "he may also be presented by any three Bishops." This part of the Canon (the only part material to the present question) was copied from the previous law, adopted by the General Convention three years before. It fell to my lot to have first moved the introduction of the rule, and therefore I claim to know the real spirit and meaning of it. And this I shall explain, according to the fixed maxim of legal interpretation, which always looks to the previous state of the law, in order to determine the true intent of the alteration.

Let it be well observed, then, that from the first settlement of our American Church, in the year 1789, the mode of trying Bishops was left to the Dioceses, by the express words of the Constitution, so that it was necessary to alter the Constitution before the Canon

of 1841 could be adopted. That alteration, accordingly, was proposed in 1838, establishing the present rule, as laid down in our sixth Article, "The mode of trying Bishops shall be provided by the General Convention." Up to the year 1841, when this Article was adopted, the Dioceses, each in its own way, had the entire control of our most important branch of discipline; and, with the single exception of Vermont, a Canon for the trial of the Bishop stood at the head of every system of Diocesan legislation.

The object of the change, therefore, was not what the Convention of New Jersey, through its Committee, has assumed, viz., "*First, to grant the power of presentment to the Diocese, and second, to guard and control that power, so as to prevent hasty, partial, or doubtful presentments.*" It was not the *first,* because the Dioceses not only had the power of presentment already, but that power was even confined to them alone. And it was not the *second,* because there was no danger of hasty, partial, or doubtful presentments; and if there had been, there is not a word in the Canon which guards against this supposed peril. Nor was such a provision necessary; for the apprehension of that sort of evil is purely imaginary. The presentment of a Bishop is too serious a matter to be lightly undertaken. It involves, in the very nature of the case, a vast amount of odium, of time, of expense and trouble. And hence the real danger has been, in all ages of the Church, not that Bishops were likely to be tried too easily, but that they were seldom likely to be tried at all.

Instead of these supposed objects, the design of the change introduced in the Constitution and the Canon was to give the power of presenting a Bishop to three of his Brethren, and to place the mode of proceeding in the hands of the General Convention, where it properly belongs. True, indeed, the old power of the Dioceses to present was not taken away, but left as it had been. A concurrent power, however, was conferred upon the Bishops, for the following reasons; and these reasons, to every mind of genuine Catholic principle, are worthy of attention.

First, because, from the earliest days of primitive Christianity, it was an acknowledged branch of the Bishops' official duty to correct the evils which might arise within their own Order. And this was so universally true, that there is not a single instance in the whole history of the Church, previous to our American system of the year 1789, where a Diocesan Convention was canonically allowed to present their Bishop.

Secondly, because every principle of religious policy would dic-

tate the propriety of saving the Diocese, as much as possible, from the strife and confusion which must usually arise, through the agitation of such a question. The assailing of a Bishop in his own Convention can hardly ever fail to arouse the bitterest feeling between his friends and his foes. The clergy must become estranged from each other; families, divided; parishes, thrown into discord; and all the ordinary course of duty, disturbed and unhinged. When, therefore, a presentment may be necessary, it is infinitely better for the peace of the Church that it should come from the Bishops, who, living at a distance, and totally disconnected with the clergy and the people of the accused party, can perform their painful duty without lighting up the flame of dissension within the Diocese itself.

Thirdly, because the very sense of reverence for the relation between the Bishops and their clergy, must approve the ancient mode of action which the Canon introduced. For that relation is of a patriarchal character. The Bishop in the midst of his Diocese, is likened by the Church to a father amongst his children. Hence, there was an indecency, and almost an inhumanity, in our American plan of forcing the Diocese to be the accuser; and for this reason also, it was felt to be a relief to place the power in other hands. For who would compel a man's own family to rise up against him, however guilty he might be? Who, if an accusation must be brought, would not prefer to keep the household from being the prosecutors, and choose rather to commit the distressing duty to those who might at least fulfil it without that peculiar anguish which must wring the heart, when the children rise against the parent?

And fourthly, because it was reasonable to believe that the work of presentment would be more calmly performed, and with a far better prospect of solemn and impartial consideration, by three Bishops, for the very reason that they would regard the matter at a distance, free from all the local prejudices, the personal ties and affections, and the personal dislikes, which might naturally be expected to exist amongst the clergy and the laity of the Diocese, and which must be likely, in most cases, to affect their action. Moreover, it is at a distance, rather than at home, that the practical effect of reports concerning a Bishop's course is best understood, in relation to the Church at large; because his Office makes him a public man, and of all public men it is emphatically true that they establish, sooner or later, a public impression, which shows the real bearing of their influence, for good or evil. Hence, it is easy to perceive

the profound philosophy of the Apostle's maxim, that a Bishop "must have a good report of them which are without, lest he fall into reproach and the snare of the devil."* For the devil has no snare with which he catches more unwary souls, than the reproach which is brought against the Church of God by the evil character of the clergy. And if a Bishop fall into that snare, he cannot fail to injure, instead of advancing, the great mission of the Church, as "the light of the world."

For these reasons, the change introduced by this Canon in giving a concurrent power to any three Bishops to present a Brother, instead of confining that power, as before, to the Convention of his Diocese, was hailed by all intelligent and reflecting Churchmen, as a most important step in the right direction. I have shown that it was no hasty movement, but the very contrary; since it was necessary, in order to make the change, that an Article of the Constitution should be remodelled, in the year 1838; and then came the Canon of 1841, which laid down the main principle, but without any details of the mode of proceeding; and lastly came the present Canon of 1844, in which those details were supplied. During the whole of those nine years, there was no opposition upon the subject, and no doubt expressed as to the wisdom and propriety of the alteration. It was undeniable that our former system of confining the presentment of a Bishop to his own Diocese, was a pure American novelty, which had not the slightest pretence of primitive authority, and which could be found in no other regularly constituted Church throughout the world. It was manifest, to every sound and thoughtful mind, that it grew out of the position of our Church in her infant state, and was, at the time of its adoption, not a matter of choice so much as of necessity, since it is very plain that, if three Bishops must present when we had only three Bishops altogether, there could be no administration of episcopal discipline at all. Independently of that, however, it is well known that the pride of STATE RIGHTS was then the general feeling every where throughout our youthful Union, and that a long period elapsed before the American people learned the meaning of a true national amalgamation, under the teaching of that eminent man who has been so justly styled the Defender of the Constitution. Hence it was a natural and almost inevitable result, that our ecclesiastical unity, for a considerable period, should be held with a feeble hand, as if it were subordinate to the rights of sovereign Dioceses, since each State constituted a

* 1 Tim. iii. 7.

Diocese, and the political feeling in the one, operated, by a strong association, upon the ecclesiastical feeling in the other. It needed time for the Church, as well as for the States, to grow up to maturity, so as to realize the great Catholic principle which binds us together as one Body. And thus we have only come, by degrees, to the true point of view, which shows us where our theory needs to be reduced to practice. And much still remains to be done by the Supreme Council of the Church in her General Convention, before we are entirely rid of the old prejudice of State-right supremacy, which sometimes works, with surprising force, under the alluring name of the Independence of Dioceses.

I have been thus long in showing the meaning and spirit of the Canon which governs this case, in order to prove, conclusively, that it never could have been intended to give to a Diocesan Convention the preference over any three Bishops, either in priority or in authority, which the Committee of New Jersey claim.

For it is a settled maxim of law, as well as of reason, that the meaning of a statute is to be gathered chiefly from the purpose for the sake of which the Legislature has enacted it. And that purpose, in the case of the Canon, was undeniably not to operate upon the existing power of the Dioceses, which was left just as it was before; but to bring in the old and primitive right of the Bishops to institute a complaint against any of their own body, without being dependent, as they had been hitherto, upon the tardy and uncertain movement of a Diocesan Convention. That this, therefore, should be taken as the proper key to the construction of the Canon, seems to me the only legal and rational conclusion:—First, because it was the sole object for which the Canon was passed; Secondly, because it is the manifest meaning of the words employed, that the right of presentment shall belong to the Diocese and to any three Bishops equally; Thirdly, because, if the General Convention had intended that the right of the Bishops could not be exercised, until the Diocese had refused or unreasonably delayed to act, they would have declared their intention by saying, that *in case the Diocese should not proceed within a certain time, it should then be lawful for any three Bishops to present,* or by some equivalent expression. Instead of which, the Canon sanctions the right of both parties without any restriction, and we have no power to bind either of them in subjection to the other, since this would be tantamount to making a new law. It results, of course, that as the Diocese and the three Bishops have an equal right to present, the party which first un-

dertakes the act, gains the jurisdiction. For no rule is better settled than this: "When different Courts have concurrent jurisdiction, that before which proceedings are first instituted, and whose jurisdiction first attaches, cannot be ousted of its jurisdiction by subsequent proceedings in another Court."* Fourthly, because, if any preference were given, the right of the Bishops has the best claim, as being not only the very object for which the Canon was passed, but the most accordant with the whole practice of primitive antiquity. Fifthly, because, in the case of Bishop Onderdonk, which occurred during the very year in which the Canon was enacted, and when every one concerned must have known the meaning, three Bishops proceeded to present at once, without the least idea of waiting for the action of the Diocese, and the lawyers of the Bishop, who stood in the first rank for professional science, and one of whom (the late David B. Ogden, Esq.) was a Member of the General Convention, took no exception to their course; although it was perfectly certain that if the present doctrine of New Jersey could then have been maintained, it would have effectually protected the Bishop from the possibility of a trial.

In my opinion, therefore, the only questions to be determined are these: *First,* What right has the Canon given to the Diocese of New Jersey in this matter? Certainly not a right to *try* their Bishop, but only to *present him for trial. Secondly,* Has the Diocese exercised this right of presentment in time, so as to gain a priority over the three Bishops? Certainly they have not, because they have not presented him at all, but on the contrary, after the three Bishops had actually completed their first Presentment, and a day had been appointed for the trial, and thus the whole right of Presentment had passed into their hands, the Convention of New Jersey undertake to try the case themselves, by a committee of seven laymen, pronounce a triumphant acquittal; and on the strength of this, deny the right of the three Bishops to present, deny our right to try, and thus virtually nullify the Canon, by claiming the whole power of Presentment, as fully, to all intents and purposes, as if no such law had ever been passed by the General Convention.

Their mode of arriving at this extraordinary result next claims attention.

The Committee of New Jersey inform us that the Presenting Bishops, in a certain letter which they addressed to the accused

* Bacon's Abr. 2, p. 826, Phil. Ed. of 1843, where several cases are cited.

Bishop, had said that, "*it is only when a Diocesan Convention refuses to institute inquiry, or neglects* TO DO *it for too long a period, they could be* EXPECTED TO INTERFERE." And this the Committee claim as a construction of the Canon. But I cannot see what this Court has to do with that letter, which, for aught that appears, was a private communication, and which is stated to have been sent a considerable time previous to the act of Presentment. Were it otherwise, however, I do not perceive that the extract, which the Committee have laid before us, necessarily bears the meaning which they infer, because the three Bishops do not seem to be alluding to their *power* under the Canon, but only to the circumstances under which they could be *expected* to exercise it. Neither is it competent for three Bishops, not acting judicially, to fix the construction of the Canon. Nor would such a construction be, as the Committee assume, "*in strict accordance with the meaning of the Canon, and the spirit of all ancient law;*" for in truth it would be in direct opposition to all ancient law, and to all ecclesiastical practice from the beginning.

Resting, nevertheless, on this erroneous assumption, the Committee of New Jersey undertake to show that the Convention of the Diocese had always signified *its readiness to act,* whenever any responsible persons would affix their names to written charges against their Bishop, involving criminality. To this I answer, that the Convention of New Jersey do not appear, at any of their sessions, to have adopted such a resolution; and if they had, *readiness to act* is one thing, and *action itself* is another. Indeed the whole of the real action of the Diocese proves that at no time whatever did the Convention even contemplate the possibility of presenting their Bishop. On the contrary, they put down every movement of the kind, and proclaimed their entire confidence in his purity and integrity. Assuredly this was honourable to their Bishop, and laudable in themselves, but it is totally irreconcilable with the profession that they were ready to present, or that they had the slightest idea of presenting him.

On the 26th of May, 1852, the Convention of New Jersey met, and were informed by the Bishop in his Address, that charges were preferred against him by the three Bishops, and a day named for trial. On this the Convention proceeded to pass the following Preamble and Resolution:

"*Whereas,* The exhibition of charges, in a paper signed by three Bishops of the Church, justifies this Convention, consistently with

its avowed principles, to proceed in the matter, and furnishes the first and only occasion on which any Convention of New Jersey has had the opportunity of exercising its solemn duty and clear right, under the Canon for the trial of Bishops, to investigate, in the first instance, accusations against the Bishop;

"*And whereas*, This Convention, while it reaffirms the entire confidence in the purity and integrity of the Bishop, which it has heretofore declared, is conscious of the grievous wrong and ill consequences of keeping such charges hanging over him and the Diocese: therefore,

"*Resolved*, That a Committee of seven lay members of this Convention be appointed, by ballot, on open nomination, to make a full investigation of all the charges contained in the aforesaid paper, and that it report to an adjourned meeting of this Convention."

On the 14th of July following, this Committee brought in their Report, from which it is manifest that none of the principal witnesses had appeared against the Bishop, and that a large amount of testimony was taken in his favour. The Convention adopted the Report, and thereupon,

"*Resolved*, That the result of the investigation, and the evidence now laid before the Convention, renew and strengthen the confidence heretofore expressed, in the integrity of the Bishop of this Diocese; and, in our opinion, fully exculpate him from any charge of crime or immorality made against him."

Then follows the Resolution appointing another Committee to lay their investigation before this Court, and to urge us to consider whether it will be wise, or just, or for the peace of God's Church, to proceed further on the charges laid before us.

Before I proceed to examine this document, it is proper to observe that the first Presentment, on which the Convention predicate their action, was afterwards, in my opinion, virtually merged in a second, on account of the late Presiding Bishop's having postponed the day of trial, from the 24th of June to the 7th of October. This second Presentment, however, contained the same charges as the first, and also some additional ones, which new charges the Committee of New Jersey pledge themselves to have examined in the same manner. On the strength of their past investigation therefore, before seven laymen, they claim to have sufficiently tried the charges contained in the first Presentment; and, on the pledge to investigate the new charges, they claim that the Court must ad-

journ until the Convention shall have first decided whether they will present their Bishop or acquit him.

Thus, then, we have before us the acknowledgment of the Convention, that the three Bishops had actually proceeded to present the Bishop of New Jersey, previous, as they say, to their having had *"the opportunity"* of investigating the charges brought against him. On the face of those charges, however, there appears to be a plain contradiction to this proposition. For they consist chiefly of matters transacted within the Diocese, and it seems quite impossible that the facts could have reached the ears of three Bishops in Virginia, Ohio, and Maine, and yet be unknown entirely to the members of that Convention. I presume, therefore, that they must mean to limit the proposition, by the condition already mentioned, where the Committee admit that so far back as 1849, the Convention refused to make inquiry into the truth of various reports, which had appeared anonymously in a public print, but that *"those who opposed the Resolution, distinctly avowed that they would urge the Convention to act whenever any responsible persons should affix their names to charges involving criminality."* Here, therefore, the following questions may arise, viz., whether the *opportunity* was not always as open to one party as to the other? Whether scandalous allegations, published in a newspaper three years before, were not sufficient notice to put the Convention on inquiry? And whether the Presentment actually made by three Bishops can possibly be nullified, merely because the Convention, though they had full knowledge of these scandalous publications brought home to them in a resolution offered by one of their own members in 1849, (to say nothing of what their own ears might have heard from other quarters,) did not choose to give them any attention, until the three Bishops had completed their action?

I am clearly of opinion, however, that under the Canon of the Church, we have nothing to do with such inquiries. The Court cannot go behind the Presentment, in order to determine which of the two parties, the Diocese or the three Bishops, had the first knowledge of the facts. Such an investigation would demand a distinct trial of itself, and when we should have gone through the inquiry, it would amount to nothing. The Canon gives both parties an equal right to present. Suppose the Convention had presented, would any one contend that this should not be effectual until all the Bishops in the Church had obtained the same amount of information, so that any three among them should have the same

opportunity as the Diocese? If this claim would be absurd, much more is the other claim inadmissible, when it is plain, from the statement of the Committee themselves, that they had positive knowledge of these scandalous charges so long before.

The three Bishops, therefore, were the first to present, confessedly. Therefore they gained the priority of jurisdiction over this preliminary act. And therefore the Diocese had no power left under the Canon by which, according to the settled legal principle, they could oust the Bishops of their jurisdiction. By what right, then, did they undertake to appoint a Committee to investigate, when, by the express directions of the Canon, the investigation *after a presentment was made*, must be conducted by the Court of Bishops? Where does the Canon give them authority to inquire whether three Bishops of the Church, in making such presentment, had done their duty? And above all, by what rule of ecclesiastical or legal propriety, do they undertake to deprive those Bishops of their plain canonical right, by insisting that the Diocese must exercise their authority first, and that, if they choose to pronounce an acquittal, the Presentment of the Bishops shall be accounted null and void, and the discipline laid down by the authority of the General Convention shall become impossible?

It has been said, however, that even if the Bishops gained a priority by the first Presentment, they lost it by the second, because the action of the Diocese came in between. But this cannot be pretended on any ground of legal principle, for the first Presentment had never been formally withdrawn. And although I grant that it was virtually merged by the fact of making a second Presentment containing the same charges, yet there was no interval in which the three Bishops could be said to have relinquished their jurisdiction, because the first Presentment remained in full force until the second absorbed it, and therefore their jurisdiction was continuous, and without interruption. But in my opinion, this point, under the present state of the facts, is of no importance. For even if the three Bishops had made no Presentment until after the Diocese had completed their action, there was nothing in that action then, and there is nothing in it now, that could hinder the exercise of the presenting power. Under the plain provisions of the Canon, the Diocese have a right to present, but they have no power whatever to prevent three Bishops from presenting, unless by first finding a Presentment themselves. Their undertaking to try the case, and pronounce a sentence of acquittal when an actual Presentment had been made,

and was then pending, was of no canonical force whatever, but was rather an interference with the authority which the Church has ordained, and which I consider it the solemn duty of this Court to execute.

No principles in the law of the land are better settled than these, viz., that the refusal of one Grand Jury to find an indictment, in no wise prevents another Grand Jury from giving it their sanction; and that nothing really terminates a criminal cause except it be a regular verdict or sentence by a Court of lawful jurisdiction. The same maxims govern every ecclesiastical tribunal, because they are founded upon the immutable rules of justice. Hence the Convention of New Jersey have neither concluded the three Bishops, nor this Court, nor even themselves, by their assumption of authority. They have only shown a singular degree of boldness and of talent, in a vain attempt to nullify the Canon of the Church, and to cut loose the wholesome bands of discipline, under a delusive and vague notion of the independent rights of their Diocese. And while I cannot but admire their devotion to their Bishop, and cannot but feel that it goes far, of itself, in proof that he must be possessed of high qualities and rare attraction, to have at his command a body of such fervent adherents, yet I dare not, in the performance of my judicial office here, shrink from a decided disapproval of the course which the Diocese has taken, and of the false principle on which it rests for justification.

For what is the meaning of the phrase, THE RIGHTS OF A DIOCESE? Is it the right of a Diocese to nullify, directly or indirectly, the plain provisions of the Canon, enacted by the representatives of the whole Church and the Bishops in General Convention? Is it the right of a Diocese to erect a tribunal of seven laymen to try, or rather to exculpate their Bishop, for the purpose of stopping the regular course of ecclesiastical discipline? I say *rather to exculpate,* because the Report of the Committee shows that the principal witnesses for the charges contained in the Presentment refused to attend, under the just conviction that the tribunal was uncanonical. Is it the right of a Diocese to call that a *trial,* where the testimony on one side could not be heard, and where the testimony on the other was given without cross-examination? Is it the right of a Diocese to come before this Court, the only tribunal in the Church which has the power to try a Bishop, and tell us that "*enough has been done so far as concerns the charges to be examined, to meet every claim of* LAW *or of truth;* and that for us to proceed with a trial would be *unjust to*

the Bishop of New Jersey, injurious to the Church at large, and degrading to the Convention?" And is it the right of a Diocese, with respect to the new charges which they do not pretend to have examined, *"to ask and claim that we forbear to enter on this trial until the Convention, now summoned to meet, shall have had the opportunity to do its duty, in the full investigation of the latest charges, as well as of the first,"* thereby intending, I presume, that seven laymen shall be appointed again, to supersede us in the performance of our official duty?

If these be the Rights of Dioceses, I should be glad to know when they were conferred, or by what branch of the Church of Christ they were ever claimed or exercised, before they were assumed by the Convention of New Jersey.

With respect to the other phrase, AN INDEPENDENT DIOCESE, a definition is equally desirable. According to my judgment, it is a phrase without any meaning, unless it be a very bad one. A diocese cannot be independent in its legislation, because its laws must always be subordinate to the General Convention of the whole Church, of which it is but one member. If its Bishop be infirm, and it be required to give him an Assistant, it cannot be independent, because it must have the consent of the whole Church for the consecration of the elected person. If its Bishop be dead, it cannot be independent, because, without the same consent, it cannot have a successor. And if its Bishop be the subject of evil report, it cannot be independent, because the other Bishops are the only tribunal in the Church who are authorized to try, and either acquit or condemn him. The truth is, that this phrase can never be reconciled with genuine Catholicity. It belongs of right to the Puritan school, and its influence all tends in a schismatic direction.

It is my opinion, therefore, that the claim of the Diocese of New Jersey to arrest the course of justice in the case of this Presentment, is wholly unsupported, and that the trial must go on to a regular and canonical termination. I believe that the attempt to stop our proceedings, if it succeeds, will produce no other result than a transient sense of victory on the part of the Diocese, which will be followed by a serious time of trouble and mortification. Even on the score of expediency, I should greatly fear the result, for this is not the age, nor is this the community, in which the general mind will be satisfied with a course so liable to be regarded as an evasion of justice. I am quite willing to trust the strong convictions of the Convention of New Jersey, that their Bishop would come out of the

ordeal with credit and with honour, if the trial proceeds; and for this reason, likewise, I must express my surprise, that they should prefer the imperfect investigation of seven laymen, before the solemn verdict of the regular and only lawful tribunal, supposing, as I am bound to do, that they believe their own solemn professions. But, whatever the end might be, much as I deplore the necessity which has brought us together, and heartily as I should rejoice to congratulate our accused Brother on a safe and full deliverance, I am thoroughly persuaded that the Church of Christ can never lose, but gain, by the faithful administration of discipline, and that our only safe course on this and every other occasion, is to do our duty without fear, favour or affection, and commit the result to God.

For I cannot, on my own part, regard the action of the Court in any other light than that of an imperative obligation. The Canon expressly declares that, upon a Presentment being made, "the course of proceeding *shall be* as follows:" and then points out the course which the Bishops, when assembled, must pursue. Much has been said, in the argument, of our legal discretion. But we have no right to depart from the Canon of the Church on any imaginary ground of expediency. Doubtless there is such a thing as legal discretion. But this is a discretion used *according to law,* and not a discretion to trample on the law, at our will and pleasure. Here is a regular, canonical Presentment, read by the Presenters, and recorded on our minutes. Here is the accused Bishop, prepared for the trial, on the very spot selected by himself, for the greater convenience of his witnesses. Here is the Court of Bishops, brought together from Maine to Florida, for the very purpose of hearing and deciding this single case? What *legal discretion* have we to pin our faith upon the opinion of seven laymen, and virtually devolve our judicial functions upon a self-constituted body, who have no right or power to try the cause at all? What *legal discretion* have we to treat this Presentment as a nullity, and deny justice to the three Bishops who demand it canonically at our hands? And what aspect shall we exhibit before the Church and the world, if we shrink from the fulfilment of our especial functions, and leave the controversy which we alone have authority to settle, in a worse state of strife and confusion than it was in before?

It is not to a course like this, that the term *legal discretion* is applicable. It is not for a course like this, that the Apostles instituted the work of discipline, and committed it to the hands of the Bishops

who succeeded them. I know that it is an ungracious work. I feel that it is a most painful one. And yet I see no alternative. The trial, in my opinion, must proceed.

JOHN H. HOPKINS,
Bishop of Vermont.

OPINION OF THE BISHOP OF KENTUCKY.

BELIEVING this Court to be duly constituted for the trial of the case before it, and the presentment substantially regular; and that the action of the Convention of the Diocese of New Jersey presents no impediment in the way of its canonical action, I am of opinion that the Resolutions before us ought not to pass.

B. B. SMITH.

OPINION OF THE BISHOP OF WISCONSIN AND IOWA.

A RESPECTABLE body of men, ranking high in the community, and devotedly attached to the Church, request us now to leave this subject to their examination, under the solemn pledge of being impartial. They claim, and they unquestionably possess, co-ordinate powers, at least, with any three Bishops. Moreover, it has been proved, that their inquiries relative to the conduct of Bishop Doane began prior to the date of the Presentment now before us. The case, I presume, is a novel one, and so doubtless is the Canon under which we are assembled. If no precedent can be found, we must exercise, each one for himself, the faculties with which we are endowed. Will not the Convention, in this case, do justice? Have they not a deeper interest in the inquiry than any other portion of the Church? Can it be imagined, for a moment, that they would be willing to retain as their spiritual Head an unrighteous man? Their standing, their honour, to say nothing of the eternal interests of themselves and their children, are at stake. They, above all others, if true to their own characters, their welfare, and the Gospel they profess to love, will be most anxious to be relieved from the oversight of an ungodly Bishop. Let them then, before God, and in the first place at least, after solemn and minute inquiry, pro-

nounce their Bishop an innocent man; or be prepared, as good men and true, to assist the Bishops of Virginia, Ohio and Maine, in presenting him for trial. I vote for the Resolutions.

JACKSON KEMPER.

OPINION OF THE BISHOP OF MICHIGAN.

I WAS the original mover of the Resolutions now before this Court. I withdrew them, that I might have an opportunity to state what agency I had in the postponement of the trial. This was simply to present the letter addressed to me by the counsel of Bishop Doane, to the Presiding Bishop. The whole matter was left to his judgment. In the application made by the counsel, there was a distinct and positive declaration made, that whatever doubts might exist as to the power of the Presiding Bishop, no advantage would be taken by him or Bishop Doane. The latter took no part in the application. After the explanation thus given, I should have again offered the Resolution, had it been necessary, as I consider their adoption by this Court, to be essential to the peace of the Church, and in entire accordance with the letter and spirit of the Canon. With these remarks, I proceed to state the reasons for my opinion.

In the construction of the Canon, "Of the trial of Bishops," I agree in the opinion of the three Presenting Bishops, expressed in their letter to Bishop Doane, "that action should first take place in the Diocesan Convention." And again, "it was only when a Diocesan Convention refused to institute inquiry, or neglected to do it for too long a period, or performed the duty unfaithfully," that the Bishops were expected to interfere. This is the true intent and meaning of the Canon, and had it been adhered to, many of the difficulties which now surround our action would have been avoided. There was no ground or reason for this Presentment, for the Convention of New Jersey had not neglected inquiry, much less refused to interfere. On the contrary, that Diocese had, in 1849, and since, pledged itself to institute and prosecute inquiries into the truth of any charges which should be brought forward by any responsible persons against its Bishop. It had redeemed its pledge, and in a manner which satisfies me, and ought to satisfy every one, that it was not unfaithful to its promise.

In the true construction of this Canon, the first action in regard to the Presentment was to proceed from the Diocese, not from any three Bishops of the Church. Their powers did not come into exercise until after some clear neglect of duty on the part of a Diocesan Convention. Even if this were not so, the utmost that could be said on the other side was, that the powers of the Diocese, and of the three Bishops were concurrent. In such a case, the body which first entertained jurisdiction over the subject, would be entitled to retain it, and finally to adjudicate upon it. The first Presentment had been voluntarily withdrawn, or *withheld,* or abandoned by the Presenters, without any agency on Bishop Doane's part, and another and enlarged Presentment had been brought forward. This was done, *after a written statement* from the counsel of Bishop Doane, addressed to the counsel of the complainants, that no advantage would be taken, by the former, of the adjournment which had been granted by Bishop Chase. This second Presentment was posterior in date to the whole action of the Diocese of New Jersey. This, as I have observed, commenced in 1849, and was fully consummated in 1852, and of course the three Bishops could not interfere with that action, or deprive it of its legitimate effect. The Diocese had investigated and dismissed the charges embraced by the Presentment now before the Court, except as respects the *new* matter introduced into it; and had also distinctly pledged itself to investigate, and do whatever was right, with regard to any new matters which might be alleged against its Bishop. I am content, therefore, to leave these matters with the Diocese, and consider its action on the charges which it had examined, as final and conclusive.

It could not have been the intention of the Church in passing the Canon, to place a Diocese in direct conflict with three Bishops of the Church, (which would be necessarily the case were this Court to act upon the Presentment now before it, after the prior action of the Convention of New Jersey,) nor to put the General Church in opposition to any particular independent Diocese.

This would be the case, if this Court entertain the Presentment before it. It would lead to endless difficulties, and eventually separate the Dioceses, now united for the better promotion of the religion of our blessed Lord. No Diocese could or would submit to such an interference, as its independence would be lost, and its whole action placed under the supervision of foreign Bishops, and

a power would be raised up in the Church, far worse than the power of Rome.

I trust, therefore, that the decision of this Court will save us from such consequences, and establish on a firm basis the *entire* independence of Dioceses, only limited, by express and well-defined concessions for the common good.

I therefore vote for the Resolutions.

SAML. A. MCCOSKRY.

OPINION OF THE BISHOP OF WESTERN NEW YORK.

HAVING presented my views of the case at length, orally, before the Court, and not having time to write them out in full, I put on record the *facts and papers* before me, and the *conclusions* to which the consideration of them has brought my mind.

THE FACTS AND PAPERS.

On the twenty-seventh day of April, 1852, the following notice was received at my house in Geneva:

"*To the Rt. Rev. W. H. De Lancey, D. D., LL. D., Bishop of the P. Epis. Church in Western New York.*

"VERY DR. BROTHER,

"I hereby, according to Canon, give you notice of the presentation for trial of the Rt. Rev. G. W. Doane, D. D., LL. D., Bp. of the P. Ep. Ch. in New Jersey, a copy of which accompanies this.

"And I hereby certify you of the appointment of the 24th day of June, 1852, as the time, and Camden, New Jersey, as the place, for the assembling of the Bishops for the trial of the accused.

"PH. CHASE,
"*Pres'g Bp.*

"JUBILEE COLLEGE, *April* 20, 1852."

It was accompanied by a Presentment, printed, signed by William Meade, D. D., Bishop of the Prot. Epis. Church in Virginia; Charles P. M'Ilvaine, Bishop of the Prot. Epis. Church in Ohio; George Burgess, Bishop of the Prot. Epis. Church in Maine; and dated in the City of New York, the thirtieth day of March, A. D. 1852, presenting George Washington Doane as being chargeable with crime and immorality under twenty-seven specifications.

On the 25th of May, 1852, I received at Geneva, the following notice from the late Presiding Bishop, Philander Chase, of Illinois:

"Jubilee College, *May 17th*, 1852.

"By request of a number of Bishops of the P. E. Ch. in the U. States, and also of the Counsel of the Rt. Rev. G. W. Doane, D. D., LL. D., I hereby postpone the trial of the said Bishop from the 24th of June, until the 7th day of October, 1852; the *place* not being changed.

(Signed) "Philander Chase,

"*Senr. and Presiding Bp. of the House of Bishops.*

"Rt. Rev. W. H. De Lancey, D. D., LL. D.

"*Bishop of Western New York.*"

I did not request the postponement of the trial; but, having been appointed, with the Bishop of Michigan, by a meeting of Bishops held in New York, on the 29th of April, 1852, a delegate to attend the closing services of the third Jubilee of the Society for the Propagation of the Gospel in Foreign Parts, I left New York for England on the 29th of May, 1852, and returned to New York on the 2d of October, 1852. On the 4th of October I saw the following notice, which had been received at my house at Geneva on the 1st of September, 1852:

"Robin's Nest, Peoria Co., Ill.

"Jubilee College, *Aug. 25th*, 1852.

"Right Rev. W. H. De Lancey,

"*Bishop of Western New York.*

"I have received this day a new Presentment of the Rt. Rev. Geo. W. Doane, Bishop of New Jersey, containing additional charges, alleging as the reason of such Presentment, that it had been questioned by many whether the postponement of the time of trial on a former Presentment were justified by the Canon. It therefore (I having received such Presentment) becomes my duty, under the Canon for the trial of a Bishop, to give you notice of the same, and appoint the time and place of trial.

"I therefore appoint the seventh day of October next, ten o'clock A. M., the place Camden, New Jersey, in the Hall of the Library Association, corner of Market and 24th Street, then and there to traverse the several specifications made in the said new Presentment, a copy of which is herewith transmitted.

"Philander Chase,

"*Presg. Bp.*"

It was accompanied by a Presentment, printed, signed by William Meade, D. D., Bishop of the Prot. Epis. Ch. in Virginia, Charles Pettit McIlvaine, D. D., Bishop of the Prot. Epis. Ch. in Ohio, George Burgess, D. D., Bishop of the Prot. Epis. Ch. in

Maine, dated July 22, 1852, presenting George Washington Doane, as guilty of crime and immorality, under thirty-one specifications.

Neither of these Presentments had on it any certificate of the Presiding Bishop, that it was a copy of the Presentment delivered to him.

Under these papers fourteen Bishops met, with the Presenters, and the Bishop presented, at Camden, New Jersey, on the seventh day of October, 1852, elected a President and Clerk, and adjourned to Burlington, New Jersey, at the request of the Bishop presented, and in opposition to the declarations and exceptions of the Bishops presenting.

The Convention of the Diocese of New Jersey, through a committee, applied to be heard before proceeding to trial. The Presenters opposed their being heard. The Bishops decided that they should be heard, immediately after the Presentment shall be read.

On the ninth of October a single Presentment* was put in by the Presenting Bishops, dated July 22, 1852, and having on it no attestation of the late Presiding Bishop that it was the original, or an attested copy, of the Presentment delivered to the late Presiding Bishop. It was read by the Clerk.

The Committee of the Convention of New Jersey read before the Court, on Saturday, the 9th of October, a written Paper stating the views of the Convention of New Jersey, which had examined the charges and specifications of the first Presentment, and found in them no sufficient ground for presentment, pledging the Convention to investigate the additional charges in the second Presentment, for which purpose the Convention was to meet on the 27th of this month of October; and asking the Court not to proceed. It was put on record of the Court.

The Presenters read before the Court on Monday, the 11th October, a written Paper in answer to the Paper of the Convention of New Jersey, urging the Court to proceed to trial, of which Paper printed copies were promised to the Bishops. It was put on record of the Court.

The Bishop of New Jersey, thus presented, avowed himself ever ready to stand a just and fair trial before a canonically constituted and conducted Court.

With these facts and papers, and the several arguments I have heard in Court before me, I reach the following conclusions:

* This was the *second* Presentment. The Presenters subsequently applied to the Court for the trial of the Bishop on the *first* Presentment also.

AS TO THE COURT,

It is uncertain whether we are assembled canonically, as a special Court to try the first Presentment, or as a special Court to try the second Presentment, or as a general Court to try both Presentments, or as any Court at all.

AS TO THE PRESENTMENT,

It is uncertain whether we have canonically before us the first Presentment, or the second Presentment, or both Presentments, or any Presentment at all.

AS TO THE PRESENTING POWERS,

It is uncertain which of the two Presenting Powers recognised by the Canon—the New Jersey Convention, and the three Bishops—first moved in the matter of the Presentment, and thus precluded the other Presenting Power from acting in the case; and whether the fact that one Presenting Power did move in the case, shuts out the other Presenting Power from touching the case; and whether a Presenting Power can make two Presentments of the same Bishop, with the option of putting in one or other of them as it may choose.

AS TO THE QUASHING OF THE PRESENTMENT,

It is uncertain whether, under the Canon, the postponement of the meeting of the Court by the Presiding Bishop, from June 24 to October 7, 1852, quashed the first Presentment; or the act of the Presenters, in withholding it and putting in another Presentment, quashed it; or whether it could be quashed without the action of the Court; or whether it has been, or could be, quashed at all.

AS TO THE PAPER HANDED IN BY THE PRESENTERS,

It is uncertain whether we have before us the actual Presentment made by the Presenters, inasmuch as the original Paper, transmitted by the Presenters to the Presiding Bishop as the first Presentment, is not before the Court, nor any certified copy thereof; and inasmuch as the Paper dated July 22, 1852, put in by the Presenters and read before the Court, is neither the original Presentment sent to the Presiding Bishop, nor a certified copy thereof.

AS TO THE POWER TO POSTPONE THE COURT AND TO RECEIVE A NEW PRESENTMENT,

It is uncertain whether, under the Canon, the Presiding Bishop had the canonical power to postpone the meeting of the Court from the 24th June to the 7th of October; and whether he had, under the Canon, any power to receive and act upon a second Presentment of the same Bishop, by the same Presenters, before the first Presentment was canonically disposed of.

AS TO THE PRIMARY RIGHT OF PRESENTMENT,

It is uncertain whether the power of Presentment in a Convention is not primary, and that of the Bishops secondary; so that if the Convention examines as a Grand Jury, and dismisses charges, as not sufficient ground for Presentment, any three Bishops can canonically take up the same charges and ground a Presentment upon them; or whether the Convention of a Diocese and the Bishops do possess a co-ordinate power of Presentment.

These uncertainties in the case would, if the Court proceed to trial, make it a trial before a Court of doubtful jurisdiction, on a doubtful Presentment, with contesting Presenters—a Diocesan Convention at issue with the three Bishops as to the rightful exercise of the Presenting Power—with no authorities or precedents of Church Law to settle the questions, and under a Canon for trial, admitted by almost all, to be most wretchedly defective.

A trial, under such circumstances, on whichever side its decision might be, if the decision should touch any secular interests of the parties, would be liable to be tested by a civil Court, which would, as I understand, simply ascertain if this Court had or had not conformed to its powers and rights as conferred upon it by the Canons, laws, and usages of the Protestant Episcopal Church, and would not be likely to confirm the decision of a Court of doubtful jurisdiction.

AS TO THE CANON,

It is a law of a few years' existence, and is admitted generally to be so defective in its provisions, as utterly to fail of ensuring a just and righteous decision. It was so regarded and declared, in my judicial opinion, at the only trial that has been held under it. Its more obvious defects are such as these:

1. It allows a Bishop who has been in controversy and dispute with a Bishop on trial, to sit in judgment on him, as in this case.

2. It allows an Assistant Bishop to sit in judgment on a trial where the Bishop to whom he is an Assistant is one of the Presenters, as in this case.

3. It gives no power of challenge to the Presented Bishop against any member of the Court and Jury.

4. It provides for no appeal from the decision of the Court to any other Church tribunal.

5. It compels the Presenting Bishops, who are the jury of inquest, to appear before the Court in a body, and act as Prosecutors in the case.

6. It has no provision to compel witnesses to come before the Court and testify.

In the interpretation and application of this Canon, there is no law or rule requiring the Court to be guided by the analogy of Courts of law or equity, or by the analogy of Courts Martial, or by the analogy of the Civil Law, or by the analogy of the Common Law, or by the analogy of English Ecclesiastical Courts, or by the analogy of Ecclesiastical Proceedings in the early ages of the Church, and determining by which of these analogies the Court should be guided.

The defects of a Canon, or the difficulty of interpreting and applying it, constitute no reason for wholly refusing to try a case; but they constitute a valid reason, in my opinion, for not hurrying to trial a case embarrassed with such serious difficulties and questions as are seen above to lie across the path of this Court.

And especially is there reason for not precipitating this trial, or any trial of a Bishop, in the solemn fact that there is now before the Church for consideration, to be acted on by the next General Convention, and formally referred to that Convention which is to meet within one year from this time, A NEW CANON* for the trial of a Bishop, remedying many of the defects of the existing Canon, taking from the Bishops this power of presenting for crime or immorality, restricting that power to the Diocesan Convention, and allowing a Bishop to make a Presentment in cases only of heresy and false teaching.

There being, under the existing Canon, ten distinct Presenting Bodies, one permanent, viz., the Convention of the Diocese of New Jersey, and nine voluntary and out of the Diocese, viz., any three of twenty-seven Bishops, and these Presenting Bodies being accessible

* See pages 55 and 88 of Journal of General Convention of 1850.

to all who have charges and complaints to make against the Bishop of New Jersey; and the adoption of the Order of the Court now under consideration, not having the effect of stopping a regular and Canonical Presentment and trial of the Bishop of New Jersey, but of ensuring a regular presentment, if necessary, by a Canonical Presenting Power, and of securing, as far as so defective a Canon will allow, a trial, if a trial be necessary, full, fair, and unembarrassed by questions such as now arise, affecting the validity of this Court and of this Presentment; and ten of the Bishops being absent from the Court, as it now exists, I give my opinion IN FAVOUR OF THE ORDER, and vote affirmatively. WILLIAM H. DE LANCEY,

Bishop of the Diocese of Western New York.

OPINION OF THE BISHOP OF MARYLAND.

IN view of inextricable difficulties in the position of the Court, owing to informalities and irregularities in its call and constitution;

Of grave doubts concerning the existence of any sufficient Presentment, and the possibility of determining which of the two documents in possession of the members of the Court, sent to them as Presentments, ought to be regarded as such, if there be any;

Of the fact that the matters contained in the Presentment now before this Court had, with the exception of the few additions and alterations, (by which this Presentment has been made to differ from the other, with which it is otherwise identical,) been already investigated by the Convention of the Diocese of New Jersey, before the making of the said Presentment;

Of the additional fact that the Convention of the Diocese of New Jersey, having made such investigation, has declared its Bishop to be, in its opinion, fully exculpated from the charges preferred in the Presentment now before the Court, and has averred its renewed and strengthened confidence in the integrity of its Bishop; and, furthermore, having claimed thus to have fulfilled the duty of making a full, searching, and honest inquiry into any allegation against its Bishop, when brought before it upon definite charges, faithfully and in the fear of God, has presented to this Court a representation of its said doings, and the grounds thereof, urging upon the Court the consideration of the question whether it will proceed further upon the charges laid before it;

And of the additional fact that a Special Convention of the Diocese of New Jersey has been called, to take cognizance of alleged new matters in the Presentment now before this Court:

In the belief that this Court, as an assembly of Bishops in the Church of God, met together, by virtue of their office, for the discharge of the duty of administering discipline in its large and full sense, is bound to recognise and respect the position, claims, and rights of a Diocese in the said Church; and, in the present instance, cannot refuse to hear and comply with the request of such a Diocese, that it be not interfered with in its inchoate exercise of discipline within its borders:

The undersigned is of opinion that the Orders offered by the Bishop of Indiana ought to be passed.

WILLIAM ROLLINSON WHITTINGHAM,
Bishop of Maryland.

OPINION OF THE BISHOP OF DELAWARE.

THE undersigned dissents from the judgment of the Court, dismissing the Presentment before it.

The main reason urged upon this Court for such dismissal, and recognised by the majority of its members as valid and conclusive, is the action of the Diocese of New Jersey in relation to the subject-matter before us. In my entire dissent from this judgment, I am decided by the following considerations:

We are assembled as a Court of Bishops of the Protestant Episcopal Church, for the discharge of a certain duty—a duty of the most solemn responsibility and grave importance—the trial of an accused brother, upon certain charges of a serious nature, set forth in the Presentment.

This duty we are bound, I conceive, to enter upon and faithfully perform, unless we are convinced that the case is beyond our jurisdiction, or that the Presentment is so defective that we cannot proceed under it.

It is true, as alleged, that the Canon (III. of 1844) under which we are assembled, does not imperatively require the attendance of every Bishop of this Church on the present occasion, neither does

it impose any penalty upon those who may, without sufficient reasons, absent themselves. But it must be borne in mind that the persons to whom the Church delegates this trust, are already under the still higher and more solemn obligation of their consecration vow, wherein they pledged themselves, before God and the Church, "diligently to exercise such discipline as, by the authority of God's Word, and by the order of this Church, is committed to them." No penalty or injunction could make the obligation more imperative than an engagement so explicit in its terms, and assumed with so much solemnity.

To this duty we are bound to address ourselves with all good fidelity. We are to take into consideration the law under which we are convened, with the purpose to ascertain its fair interpretation, and carry out faithfully its provisions. To evade, or attempt to evade this duty, however onerous, unpleasant, or responsible, would be unbecoming our office, and discreditable to our Church.

Does then the law, fairly interpreted, require us to proceed to the trial of this case, or does the action of the Diocese of New Jersey relieve us of this obligation? The meaning of this Canon, like that of any other law, is to be gathered in the first place from itself. The language of a law is the first and most obvious index of its meaning, and, where it is clear and explicit, is conclusive. To this are to be added the history of the law in question, as it appears on public records, and, when they exist, declaratory laws and judicial construction.

1. The language of the law is, in the first place, our informant as to the meaning of the legislative body. A court cannot go to individual members of that legislature to know with what intention they severally concurred in the act. The impressions of a member of the committee of either House, by whom the Canon was framed or reported, are no more a proper subject of inquiry, than the impressions of any other member of that legislature. The only proper rule of interpretation in this case, is to suppose that the General Convention meant what they said. They could express intelligibly their intentions, and we must presume they *have* done so. And on the other hand, we must suppose that what they did not say, they did not mean, unless necessary to carry out their intentions. A committee, or member of a committee, might have had one view in reporting a Canon, and a majority of the legislature might have enacted it with an altogether different view. If the General Convention of 1844, who passed the present law, in-

tended to give to the Diocese a priority of right in the institution of proceedings against their Bishop, and further intended that its decision not to institute such proceedings should be a bar to any presentment by three Bishops; or if they meant to confine the right of three Bishops to present, to the case of Bishops without Dioceses, or of Missionary Bishops, or to cases when the charge was heresy, reserving all consideration of accusations of immorality to the Convention of the Diocese, they could have said any or all of these things. They were entirely competent to express such intentions, and might have inserted any such exceptions or limitations in explicit and precise terms. It would be, I conceive, a most unprecedented and unwarrantable assumption, for a court to undertake to amend a law by such interpolations, relying upon the chance recollections or impressions of any individual who was concerned in passing or framing the law in question. Now the plain, easy, obvious interpretation of the Canon, gives an equal and co-ordinate right, either to the Convention of the Diocese of an accused Bishop, or to three Bishops, to institute proceedings for a trial; the only difference being that, in the one case, there are assigned certain precise limitations; while, in the other, the right is left perfectly unlimited.

Had the language of the Canon been at all dubious or obscure, it would be incumbent on the Court to resort to the other appropriate modes for the ascertainment of its true sense, viz., its history, declaratory laws, or judicial construction. But while it does not, to my mind, at all lie open to the charge of obscurity, the other sources of legitimate information, so far as they are accessible to us, are altogether confirmatory of its obvious interpretation.

2. Declaratory laws there are none; but we have additional confirmation of the view above taken of its meaning, in the history of our legislation on this subject, and in judicial construction.

The interpretation which takes away, in the circumstances of the present case, the right of presentment from the three Bishops, is pressed upon us by a member of the present Court, on the ground that, as Chairman of the Committee who reported the present Canon to the House of Clerical and Lay Deputies in 1844, he was entitled to speak with more than ordinary decision as to its meaning.

But that part of the Canon upon which the argument for dismissing this case is grounded, did not originate in 1844, or with that committee. It was enacted in 1841, and the provision of 1841 respecting presentments was reinserted in the Canon of 1844, with-

out variation, so far as the concurrent right of presentment is concerned.

Neither does judicial construction furnish any more tenable ground for the argument in favour of dismissing the Presentment.

The Canon has been once before acted upon; and, although thus subjected but once to judicial examination, yet as it is to be hoped and expected that trials of Bishops will not be of very frequent occurrence, the fact that the Canon has been already brought to the searching ordeal of such an examination, ought not to be without weight.

On the trial of the Bishop of New York there was, as in the present case, a presentment by three Bishops, on charges of alleged immorality. The objections urged against our now proceeding existed, if not to the same extent, yet certainly to such a degree that, if valid, we might suppose that the Court would then have noticed them.

The point before us was not raised by the Counsel of the accused Bishop, and there was therefore no decision upon it; but the fact that the Diocese had taken no steps to bring their Bishop to trial was referred to in argument, and in the opinions of members of the Court. (See Opinion of the Bishop of Western New York, page 305 of printed Report of Trial of Bishop Onderdonk.) After the adjournment of that Court, it is a fact notorious, that its procedure and sentence were assailed in various journals and other publications, and that, among the objections made against it, was the allegation that the Diocese of the accused Bishop was the proper party to institute such prosecution, and that it had neither taken nor been disposed to take any such step. In the General Convention of 1847, and again in that of 1850, there was proposed for adoption, a canon for the trial of a Bishop, containing the very limitation which is now to be affixed, by the sentence of this Court, to Canon III. of 1844. The proposed canon confined the presentment by brother Bishops to the single case of heresy. The introduction of such a proposed law is a plain concession that the law of 1844 contained no such limitation. But the attention of the Church was thus particularly called to the question. The legislature were invoked to determine precisely the very point before us, and to say that, thenceforth, to the Diocesan Convention alone should be confided the prosecution of a Bishop upon charges of immorality. But the legislature declined to take any such action. The proposed canon was postponed from one Convention to another. The Canon of 1844

was left on our Statute Book unrepealed, in spite of all its alleged defects and imperfections. It is still the law of the Church, and we, as a judicial tribunal, are bound to execute it in good faith. We are here, not in a legislative, but a judicial capacity. We are not to make law, but to administer it. And the law, upon whose construction we are now to decide, stands before us settled, so far as there is any judicial action or legislative history to guide us, in direct opposition to the sense that is now attempted to be put upon it.

There is not, therefore, the shadow of a doubt on my mind that the law, as it stands, gives a concurrent right of presentment to the Diocese, and to three Bishops of this Church. It is equally certain that the one of these two parties first exercising that right, excludes the other. A conflict between two presenting parties is inadmissible. When one consummates action, the other is rendered powerless. But the Diocese of New Jersey have declined to exercise this right. They have declared that in their opinion no ground existed for a presentment. The three Bishops have acted and made a presentment in due form. They have availed themselves of the single right, accorded by the Canon, of instituting a prosecution. To contend that the refusal of a Diocese to present, after such inquiry as has been made, is a bar to the procedure of the three Bishops, is equivalent to taking the ground that not only may the Diocese present, but that, not presenting, it may prohibit Bishops of the Church from doing so. What law, or clause, or word, or syllable, gives to a Diocese this veto upon the action of Bishops? Surely for such an authority there ought to be some plain and positive enactment. But none such is to be found. Diocesan rights, under the Constitution, have nothing to do with this question, for the Constitution itself declares (Article VI.) that "The mode of trying Bishops shall be provided by the General Convention. The Court appointed for that purpose shall be composed of Bishops only." It would be just as reasonable to claim that the Diocese has the exclusive right of trying, as of presenting its Bishop, and the alleged independent rights would seem to be as much violated in the one case as in the other.

It is worthy of note, that while the right of presentment by a Diocese is limited by certain conditions, the right confided to three Bishops is unconditional and unlimited. The Church evidently intended to intrust her Bishops with a large discretion in such cases. Very obvious reasons occur why there should be checks upon the action of a popular body, in a matter of so much delicacy and

importance, which are not necessary in the case of the individual action of those who are clothed with the high and solemn responsibilities of the Episcopal office. The object of the Church must be supposed to be the just administration of her godly discipline. The presentment of a Bishop was not meant to be so easy a thing that it could be effected lightly and without due consideration; neither has it been purposely made hard and difficult, so as to exempt her highest officers from due accountability. The one course would have exposed her peace to be causelessly disturbed; the other would have been a mere mockery of justice. To permit the innocent to be vexatiously harassed on light grounds, or to screen the guilty, would have been alike unbecoming the Church of Christ. "He that justifieth the wicked, and he that condemneth the just, even they both are abomination to the Lord."

We are bound to presume the great object of the Church in her legislation on this subject to have been substantial, even-handed justice, and this object it is our solemn and bounden duty to effect, in the fear of God, and mindful of our own accountability at the judgment-seat of Christ.

For the due exercise of that large discretion confided by the Church to any three of her Bishops, they are responsible, not to us, but to their Lord and Master. Whether they have acted in the premises wisely or unwisely, is not the point for us to determine. We are not convened to try them, but the case which they have taken the responsibility of bringing before us. Neither ought we to be governed by considerations, which have been urged, of the great evils growing out of the trial of a Bishop, especially where the verdict is not unanimous. Such evils may be exceedingly great, but they are not sufficient warrant for declining the duty devolved upon us. The Church has not left to us the question of the expediency of such trials.

That point she has herself determined, and we are here to execute her provisions. She has intrusted to certain parties the capacity to institute such a proceeding, but no such capacity has been intrusted to us as a convened Court. And when called upon, in conformity with the rules which she has laid down, to try an accused brother, it is not for us to refuse because, in our private opinions, a trial may not be desirable or expedient.

Grave as may be the evils resulting from a protracted and warmly contested trial, the allowance of impunity to guilt would be an unspeakably greater evil. Upon the abstract question, there-

fore, I must be allowed to express my unqualified dissent from the judgment of the Court.

The peculiar circumstances of this case, which have been presented to us in the memorial of the Committee of the Diocese of New Jersey, or from other authentic sources, and the arguments drawn therefrom, do not in the least change my view of the subject. How much of consideration was due to the action of the Diocese, was a question rather for the Presenting Bishops to decide, than for this Court.

But that action is presented to us as the ground for a stay of proceedings in the case before us. The result to which the investigating Committee have arrived, cannot be received by this Court as the acquittal of the Bishop of the Diocese, for that Committee was no competent tribunal to try their Bishop, and could neither acquit nor condemn him. While we are bound to treat with respect the action of a Diocesan Convention, we cannot, with proper regard to our rights and duties as a Court, permit them to arrest our proceedings, and interfere with our regular administration of justice.

In estimating the moral weight to be attached to the exculpatory report of the Committee, my mind cannot but be influenced in some degree by these considerations. The Diocese declined any action until after the three Presenting Bishops had taken up the matter.

It was under the constraint of a pending presentment that the Convention of New Jersey appointed this Committee of investigation. Priority of action is claimed by the Diocese, because the report of this Committee was previous to the date of the Presentment before the Court. But this claim is technical rather than real. In reviewing the history, it is important to notice the fact, that incipient proceedings of the three Bishops, the result of which was this presentment, anticipated the Diocesan action. That Diocesan action, I am convinced, on account of the reasons above alleged, is no legal bar. And in considering how far it is indicative of a readiness on the part of the Diocese to investigate the charges against their Diocesan, the fact that a presentment had been previously made, is of no small moment. The whole aspect of the case discovers no willingness on the part of the Diocesan Convention to entertain this question. Their action seems, as it were, extorted by the apprehension of an approaching trial, and looks very much like an attempt to take the case out of the hands of the proper tribunal. They express, in advance, their conviction that the charges are without foundation, and thus prejudge the case. At the time

of the investigation, many of the most material witnesses for the prosecution refused to attend and testify, on the ground that another tribunal had cognizance of the charges. Under these circumstances, the result of the *ex parte* examination of the Committee does not, I must frankly confess, appear to me a satisfactory disposition of the charges. But whatever weight the labours of the Committee and the action of the Diocese may be entitled to, is, as I have said before, for the Presenting Bishops, and not for this Court, to consider. Upon the view now taken of this question, it is quite immaterial whether the Diocesan Convention of July, 1852, did or did not consist of the two-thirds of each order, required by the Canon to make a presentment. They did not present, and therefore the number of which the body consisted is unimportant. But in reviewing the course of action of the Diocese of New Jersey from 1849 to the present time, it does not strike me as furnishing to the Church a satisfactory answer to the accusations preferred against their Bishop.

Neither does it consist with either justice or kindness to the Bishop of New Jersey, now to arrest these proceedings, and adjourn this Court. The Committee of the Convention of May, 1852, which reported the resolutions touching the investigation, declares that it "is conscious of the grievous wrong and evil consequences of keeping such charges hanging over their Bishop and the Diocese."

This is the language of friendship and truth. But, in dismissing this presentment and declining to try this case, is not this Court responsible for the same "grievous wrong and evil consequences?" Do not we leave these heavy charges still hanging over the Bishop and the Diocese?

The Bishop stands before the world and the Church accused, and we give him no opportunity of meeting these accusations, and dispersing the cloud that has gathered around him. Such a course appears to me the opposite of kindness to an accused brother, most undesirable for himself, for his Diocese and for the whole Church. While, therefore, to be exonerated from the burden and responsibility of this trial, (a duty to which I came with great reluctance,) will be to me individually an unspeakable relief, I have felt constrained to record my vote against the motion to dismiss the Presentment, and must dissent from the judgment of the Court granting that motion.

ALFRED LEE,
Bishop of the Prot. Ep. Church in Delaware.

OPINION OF THE ASSISTANT BISHOP OF VIRGINIA.

The Assistant Bishop of Virginia dissents from the Orders of the Court founded on the resolutions of the Bishop of Indiana.

The third Canon of 1844 appoints and recognises a Court, and but one, for the trial of a Bishop, consisting of his peers, to be convened by notification by the presiding Bishop, and authorizing him to designate the time and place of meeting. The same Canon provides that a Bishop may be presented by the Convention of his own Diocese, and by any three Bishops; thus appointing two ways, by either of which a presentment may be laid before the presiding Bishop, and through him reach the canonical tribunal. The Diocesan Convention and the three Bishops are, therefore, co-ordinate bodies for the purpose of presenting a Bishop. Where bodies have concurrent jurisdiction, the one which first commences action obtains exclusive control in the case, and has a right to consummate its proceeding without any interference by the other co-ordinate power, the action of which, under these circumstances, would be irregular and inadmissible.

From the documents in possession of this Court, it appears that, before any inquiry was instituted by the Diocese of New Jersey in reference to the rumours affecting the character of their Bishop, the Bishops of Virginia, Ohio and Maine had not only taken the initiatory steps to a Presentment of the Bishop of New Jersey, but that a former Presentment made by them was actually in the hands of the presiding Bishop, and notice had been issued by him to the Bishops of this Church to meet at Camden on the 24th of last June, to investigate and decide on the charges contained in that Presentment. It further appears that the three Bishops named, before taking any decisive action themselves, did, in a letter addressed to the Bishop of New Jersey, recommend and urge that the Convention of his Diocese should thoroughly examine the rumours alluded to, and thus relieve the Bishops of Virginia, Ohio, and Maine from the painful proceeding which, they represented, would otherwise be incumbent on them. On the propriety of that communication it is unnecessary to decide. To whatever exceptions it may be deemed liable, it certainly afforded to the Diocese of New Jersey an opportunity so to take cognizance of the case as, pending their proceedings, to preclude any action of the co-ordinate body, and to

satisfy the minds of all interested in the result. It is much to be regretted that this course did not comport with their views of right. The special Convention, called in consequence of the letter from the three Bishops, repelled their suggestion; declared its confidence in the integrity of their Diocesan; and, having expressed a readiness to investigate any charges made by responsible persons, adjourned. The three Bishops now set themselves to the inquiry from which the Diocese had abstained, satisfied themselves that a Presentment was necessary, prepared one in due form, and placed it in the hands of the presiding Bishop, who, as already recited, called a Court to meet in Camden, on the 24th of June last, for the trial. From these facts it appears, not only that the three Bishops took cognizance of the case prior to any inquiry on the part of the Diocese, but that the Presentment by them was made only after they had invoked the action of the Diocese, but without success. Why any posterior, and therefore unauthorized, diocesan action in this case should prevent this Court from proceeding to trial, as requested by the presenting Bishops, I cannot perceive.

It has, indeed, been urged that the failure of the Court to meet as notified, on the 24th of June last, put an end to the proceedings on the Presentment which had been made, and that, between that date and the making a new Presentment in July last, an interval occurred, when the possession of the case by the three Bishops ceased; that an application for the action of the other co-ordinate body was then afforded; that the Diocese availed itself of this opportunity, and appointed a Committee to investigate the charges contained in the Presentment; that this Committee notified the Bishop of the Diocese, the complainants, and the reputed witnesses, of the time and place for the inquiry, examined under oath those who appeared, and reported the testimony taken, to the Convention; that the Convention, thereon, with great unanimity, reaffirmed their confidence in the integrity of their Bishop; and having now, in consideration of their action in the case, appealed to the Court to proceed no further, their petition ought to be granted.

But it is to be observed that the only effect of the failure of the Bishops to meet, as notified, on the 24th of June, was to incapacitate them for meeting as a Court to try this case without a new notification from the presiding Bishop. Their failure to meet did not put an end to the Presentment made. That Presentment was still in the hands of the presiding Bishop, who was competent, and whose duty it was, to issue new notices for the Bishops to

assemble and proceed to trial. That Presentment might, indeed, be abandoned by the Presenters, or it might be amended by them, or superseded by a new one, provided due notice of such amendment or substitution were given to the Bishop presented. They chose the course last named. A new Presentment, from which the first, so far as it went, did not materially differ, but containing some three or four charges not in the first, was forwarded by them, and received by the presiding Bishop as a substitute for the first; and this, with Canonical notice of time and place for the trial, was sent to the persons concerned. Now, as the first Presentment continued until displaced by the reception of its substitute, there was no cessation in the proceedings commenced by the presenting Bishops; no interval of action on their part, and of course no opportunity for the co-ordinate body to enter on canonical action. Thus the presenting Bishops, having prior possession of the case, and not having intermitted their hold, they ought not to be interfered with until the proceedings on their Presentment are consummated.

But it may further be observed that if there had been the intermission of action on the part of the three Bishops, which is alleged, or even if there had been no action at all on their part anterior to the date of the new Presentment, still there was nothing in the nature of the proceedings of the Diocese of New Jersey to preclude those Bishops from the right to present. Had that Convention made a Presentment of their Bishop, this indeed, but nothing short of this, would have barred like action by the co-ordinate body. But this that Convention has not done. On the contrary, after an inquiry, the Convention pronounced the charges against their Bishop to be without foundation, declined making a Presentment themselves, and now ask that their negative conclusion may be regarded as depriving the three Bishops of their right to present. That is, the abstaining of one of the bodies canonically competent to present, disqualifies the other from presenting. To this I do not subscribe. It effectually reverses the provision of the Canon, and frustrates its obvious intention; for, on this construction, instead of having two bodies, either of which may present a Bishop, which was evidently designed, we should have two bodies, either of which, by simply refusing to act, may prevent the other from presenting.

Again, I regard the Orders as transcending the powers of this Court. It is an attempt to delegate functions which it has no

right to surrender, and to transfer them to a body incapable of receiving and exercising them. There is but *one* Court for the *trial* of a Bishop; whereas, these Orders recognise another tribunal for this purpose, affirm its decisions as far as it has proceeded, and refers to it, for adjudication, other matters on which it has not yet passed. This, in my view, is a relinquishment of power, which this Court has no right to part with. It is, moreover, a transfer of such power to a body which is in no sense a Court, but a local legislature; known in no other capacity by the General or Diocesan Constitution and Canons; and, if a Bishop may be tried only by his peers, then by its very composition, disqualified for any judicial action in his trial. A Diocesan Convention may *present*, but it cannot *try* its Bishop. Now, as I understand these Orders, the first sanctions, the second authorizes, that judicial action in this case which pertains exclusively to this Court, *i. e.*, to decide finally on the truth or falsehood of the offences charged in the Presentment.

With regard to the inquiry made, and reported by the Committee of the Convention of the Diocese of New Jersey, in consideration of which this Court is solicited to proceed no further on the business for which it has been convened, I would remark that, whilst I am far from suspecting the sincerity of the Diocese, or the honesty of the investigation conducted by the Committee, and highly appreciating the zeal and affection manifested for their Bishop, yet I cannot avoid the conviction, that the circumstances in which the Committee were placed, rendered it impossible for them to prosecute the inquiry so as to answer the ends of investigation. The existence of the Presentment by the three Bishops was, at this time, well known. The call of an Ecclesiastical Court to try the charges contained in that Presentment, was also notorious. It might, therefore, have been reasonably expected that those witnesses, on whom the presenting Bishops relied to prove the charges preferred, would decline appearing before any body other than the tribunal called to try, and the only one competent to give judgment in the case. And, from the Report of the Committee, such precisely has proved to be the fact. The witnesses who did appear were, with scarce an exception, those whose testimony favoured the accused. Others declined attending: some of them assigning, as the reason of their absence, that they did not recognise the authority of the Committee, and declaring that any evidence which they could furnish would be given to the tribunal by which

the Presentment was to be investigated. Among those who took this ground will be found the Hon. Horace Binney. His language, in declining to appear before the Committee, is as follows:— "Reserving myself altogether as to my future answer, if I shall be called to give evidence before the tribunal to which the Presentment has been made, my answer to the Committee, since appointed for the investigation of the charges against Bishop Doane, is, that I do not deem it my duty to attend at the meeting of which I have received notice." If one so eminent for legal knowledge and ability, and so long and thoroughly conversant with the constitution, canons and proceedings of the Church, held and acted on this opinion, it is not surprising to find others adopting and governing themselves by the same views. Whether they were wrong or not, by these views they were determined, and thus the Committee, without any fault on their part, were placed in a position which rendered a full investigation impracticable, and, as the result of their inquiry, they have been compelled to make a Report which is palpably *ex parte*. I cannot, therefore, see in that Report, and the Resolutions of the Convention founded on it, any reason for abstaining to investigate the charges set forth in the Presentment. Nor can I perceive how the peace of the Church can, under such circumstances, be promoted by summarily dismissing the Presentment. On the contrary, my clear and decided conviction is, that the interests of religion, and very certainly the interests of the Respondent in this case, require that the charges which have been formally advanced and persisted in by the Presenters, should be carefully examined and fairly disposed of by this Court. Such, I understand, from the repeated statements of the Respondent, is, so far as he is personally concerned, (and, apart from the action of his Convention, still would be) his own conviction. And as I can perceive no canonical impediment to this, the only course which will furnish him a full opportunity, under circumstances most favourable, for answering the charges made, and vindicating his character to the satisfaction of his Brethren and the joy of the whole Church, I therefore cannot concur in the decision of the Court, "not now to proceed to any further action in the premises."

J. Johns.

OPINION OF THE BISHOP OF MASSACHUSETTS.

I EMBRACE the present opportunity of putting on record the reasons which govern me in dissenting from the judgment of the Court, dismissing the Presentment.

In examining the Canon relating to the trial of a Bishop, I find a concurrent right in the matter of Presentment granted to two parties, the one of these being the Convention of the Bishop's Diocese, and the other being any three Bishops of our Church. When action is taken by either one of these parties, the other, according to an established rule of law, the justice of which is obvious, is thereby precluded from action.

In the proposition before the Court, it is claimed that the Convention of the Diocese of New Jersey, by deciding, previously to the date of the present Presentment, that no Presentment ought to be made, has superseded the action of the three Presenting Bishops, and that therefore the Presentment before us should be dismissed. Such a course I cannot regard as allowable, in the face of the plain language of the Canon; the Diocesan Convention of New Jersey having anticipated the Presentment by the three Bishops, not by *acting,* but by *declining to act.* But it is obvious that such an interpretation of the Canon as allows a party refusing to act, to oust a party subsequently acting, reduces the number of parties authorized to present a Bishop from two to one, and thus defeats the clear intention of the provisions of the Canon. In this view of the subject, I cannot give my assent to the proposed Order. The Presenting Bishops have acted according to the letter and spirit of the law, and the Court is bound to proceed with the trial.

Such being my view of the law, I am further impelled, in voting in the negative, by considerations of kindness and good-will towards the accused Bishop himself. The dismissal of the Presentment before us, on the ground of the investigation which has been had by the Convention of New Jersey, is calculated, as I believe, to inflict upon him a deep injury. It is on record, that several persons who were summoned by the Committee of the Convention refused, on the ground of the incompetency of the tribunal, to attend. It is also known that there was no cross-examination of the witnesses who did attend. Under these circumstances, the whole transaction wears an *ex parte* character. The Court now assembled are in a

condition to make a full and impartial investigation of the charges against the accused. That they should separate, therefore, without such an investigation, is an event which, for his own sake, is to be deplored, inasmuch as he is thereby deprived of the present favourable opportunity of disproving the allegations of the Presentment.

I am also constrained to vote against this Order, by a regard to the just expectations of the Church of God. The charges against the accused have been widely known. They have been brought before us according to the due forms of law. There are, in my view, no just impediments to hinder our trying them, and thus proving their truth or falsehood. If we refuse to proceed, I cannot but feel that we are chargeable, thereby, with a neglect of the most solemn obligations of duty.

MANTON EASTBURN.

OPINION OF THE BISHOP OF NEW HAMPSHIRE.

I AM led to look at this case in the light of certain facts and general principles, which I humbly think have not received sufficient attention, when Church judicature has been the subject of discussion and legislation.

This, clearly, is a Court of a very peculiar constitution, and of peculiar functions. The Bishops of the Church, by virtue of their Holy Office, bear potentially a judicial character—being charged with the conservation and exercise of that discipline which the Lord has appointed for the comforting and strengthening of the weak, the alarming and reclaiming of the disobedient, the maintaining of salutary order, the securing of harmony and due subordination, and the healthy advancement of the honour and the general interests of religion. Canons do not give them that power, but only institute a way in which its functions may be exercised.

The Canon "of the trial of a Bishop" is not creative, but formative and directive. It recognises and guides power; but does not confer it, nor absolutely demand its exercise.

Moreover, the authority of this Court and of each member of it, while administering Canon law, is subject to the demands of the higher law of charity; is bound, itself, to act by it in interpreting Canons, in estimating circumstances, and in admitting and

weighing pertinent evidence; and to see that Canon or special laws are not so put in operation against the members of Christ's Body, as to separate them from the privileges and immunities secured to them through the mercy of God, by that higher law. Men may not claim to be heard in Christian Courts, who do not come there by all the preparatory steps prescribed by a religion in which, under God, the dominion of truth is established by law and order, and by the sympathy of the welfare of all with the welfare of the individual.

To separate the law of righteousness, in dealing with a supposed offender, from the law of kindness—that kindness which tenderly, and trustfully, and hopefully looks upon human infirmity, and seeks anxiously after circumstances of palliation and exculpation, and after explanations of the supposed wrong, before extreme measures are resorted to, would be, not to hold a Court under the religion of Jesus Christ, but to assume a judicial position no where and never authorized by the Gospel.

This element in the constitution and functions of this Court, and indeed of any Court in the Church, appears of more importance, when we take into account another consideration—a consideration which must essentially and fundamentally qualify the authority of this body, regarded as a Court for trying questions of discipline. It is this—the Bishops do not possess the means for ascertaining facts, which the civil law places in the hands of the secular judge. They do not sit here with power as such judges; and this is a Court, only by approximation and partial resemblance. It has not the power to coerce witnesses. This is a consideration of the greatest importance, and renders it certain, beyond all question, that the discipline of the Church cannot be conformed to the strict rules of evidence, which obtain in civil courts.

So long as the Courts of the Church cannot compel testimony, and have no means by which they can oblige those who are in the possession of facts to lay aside considerations of fear and of private feelings, of like or dislike, and state plainly what they know, it is scarcely possible, if it were right, to administer law by the letter, in entire severance from considerations of wisdom and general equity. Laws must be expounded and applied in view of the necessity of cases, and of certain general principles, which must underlie all statutes.

It is, therefore, just, and comes *ex necessitate rei,* that in this inability they regard it as a great duty, in taking counsel for the

purity and peace of the Church, to bring to bear on the general purpose of law, those benign provisions of wisdom and charity, which tend *componere lites* by consulting the bond which makes and consolidates brotherhood.

Hence the Bishops, in Court convened, are not bound in duty to shut off from their minds all knowledge of facts, connected with the history of a proceeding against a Brother. They are bound in conscience to judge according to knowledge, however the knowledge may have been gained. The Canon, I think, implies this. Else why is it required that they be furnished with copies of the Presentment so long in advance of the trial, if, when they meet together, they are to know nothing but that which comes in formally by witnesses? They are bound to act with a tender, and reverent, and equal regard for the rights of other parties than accusers—indeed for the rights of other parties than either accusers or accused. They are bound, if to them it appears necessary for the securing of the common rights and interests of the Church, to do precisely what has been done in the present case—that is, allow audience to a third party, which claims to show that the present crisis has been brought about in the way of outrage on the rights of an independent Diocese.

After a careful examination, I can see nothing in the Canon "of the trial of a Bishop," which shuts out all other methods of disposing of the case, and absolutely requires the convened Bishops to proceed to a trial. There certainly may be cases in which a formal trial would be almost absurd. Suppose the witnesses of an accused Bishop, acting under an impression that the proceeding grew out of prejudice, and was harsh and oppressive, should be of opinion that their Bishop would not have justice done him at any rate, and, acting under that opinion, should decline to appear in Court, and leave his adversaries to have all things their own way; while the accused presents an affidavit to the effect, that circumstances place a defence by testimony wholly out of his power—that he is ready and willing to proceed, if the Court will compel the attendance of his witnesses. This, surely, would not be contumacy. In such a case, would a Court of Christian Bishops proceed against a brother by an *ex parte* trial and condemnation? Probably not. But by the common rules of law, if I do not mistake, he *must be condemned,* because he can offer no evidence to rebut the testimony of his accusers. A plain case—the evidence is all against him. Christian Bishops, however, would probably

find out some more just and equitable way of disposing of the case.

This supposition presents a possible case, and I argue from it, that, in the judicature of the Church, under the present state of things, other matters are to be thought of as well as the letter of Canons, and the rules of civil judicature. The judicature of the Church is liable, at any juncture, to be brought up to the question of no trial or an *ex parte* trial. This is the real state of things, and we cannot but regard it with thoughtfulness.

Indeed, it is remarkable that there is nothing in the Canon which positively requires the several Bishops to be present. They receive from the Presiding Bishop copies of the Presentment, with notice of a time and place when and where they may convene. If at the time and place, out of about thirty Bishops, there shall be found together the number of seven, those seven may proceed to hold a trial. Or, in the exercise of that wise discretion, which they had applied to the question of attendance or non-attendance, and under a constraining regard for the rights and interests of all the parts of the Church, they may decline to entertain the Presentment.

Such, in my view, are some of the great principles which should govern us in disposing of the Presentment now before us. After much consideration—not unaided by prayer—I fully believe that this Court has, under a reasonable construction of the laws of the Church, and on the principles of the Gospel, the whole matter in its power; it may proceed to a trial, or it may dismiss.

What ought we now to do? This is the question.

We have a singularly remarkable case—a Bishop of high distinction in the Church presented for trial, by three of his Brethren, on charges of "crime and immorality," when the Convention of his Diocese, after a careful and (as it was intended) strict investigation, conducted through an examination of such witnesses as could be induced to attend, and listening to reasonable explanations, has solemnly declared, "that its confidence in the integrity of its Bishop is renewed and strengthened," and that, in its opinion, "he is fully exculpated from any charge of crime or immorality made against him," and now pray this Court to forbear further proceedings. Surely such a prayer, not to say reasonable claim, demands our respect. The rights and interests of an independent Diocese should not be set at naught. The peace of a large, and united, and happy Christian community, should not be lightly invaded.

But, it is said, Bishop Doane should crave a trial. At least, he

appears willing to meet it. That remark, however, is not discreet. By an innocent man, a trial, for the purpose of satisfying excited and prejudiced minds, is not to be desired; for though he may be fully acquitted of crime and immorality, yet his infirmities and failings, over which charity would have kindly cast a veil, are blazoned, and he is gratuitously held up to the distrust of the weak and the scoffs of the giddy.

But, it is said, the investigation had by the Convention of the Diocese was *ex parte*. So, of necessity, must, to a great degree, if not quite, be any trial in which there is no power to coerce the attendance of witnesses. All that this Court, or the parties who appear before it, can in any case do, is to invite the attendance of those who are supposed to be acquainted with facts. Compulsion or penalty there cannot be under any existing legislation. At the investigation held under the authority of the Convention of New Jersey, a great number of supposed witnesses refused or neglected to give attendance and testimony, though an opportunity was formally offered them for that purpose. Before this Court they or others may do the same, and there is no remedy. A trial here may unavoidably be equally *ex parte*.

There is another thing which, to my mind, has much weight. Believing that this Court has a question before it, to be disposed of according to its views of what is wise, and just, and equitable, as respects all the parties affected, I do not feel at liberty, in weighing the considerations bearing on a decision, to ignore the history of this Presentment. Have not our Brethren, the Presenters, to whom I desire to accord the most pure conscientiousness and uprightness of intention, erred against the high law of charity, against the peace of the Church, and against the indefinable right of a Brother, under the Gospel, to claim a hearing at the ear of fraternal love, before being placed under the pressure of extreme measures? I cannot but think they have so erred, and that it is a consideration which ought to enter into the deliberations of this body.

The Apostle says, "Let your things be done with charity." And our Lord says, "If thy brother sin against thee, go and tell him his fault between thee and him alone." It may be replied, "A letter was sent." Yes, truly—but our Brethren erred in sending that remarkable paper, under the law of charity. Besides, the command is, "*Go* and tell him his fault." In a kind, and tender, and sympathetic presence and voice, there is a power which the Saviour well knew, and which can hardly be conveyed

in the folds of even a friendly letter. If this had been done, I doubt whether we should have been the occupants of this hall to-day. That charity which, in the Gospel, is the law of laws, prescribes a course founded on the moral and social position of the Church. To the advantages that may thus accrue, an accused party is eminently and sacredly entitled. To him and to the Church they are far more valuable than any secular rules of evidence, which, under strict observance, often determine the acquittal of the notoriously guilty, and the condemnation of the helpless innocent. We cannot, in an Ecclesiastical Court, follow strictly the rules of evidence, and do justice.

I hold, therefore, that the Canon, "Of the trial of a Bishop," is to be construed benignly, as respects the position and the rights of an accused party; and that even though the Convention of New Jersey had not moved in the matter at all, (much more since it has moved,) this Court might lawfully entertain a motion to dismiss, and might lawfully listen to argument on grounds furnished by the history of the Presentment, and by the light of such general principles as must govern Ecclesiastical Courts.

On the Resolutions, I give my voice in the affirmative.

CARLTON CHASE.

OPINION OF THE BISHOP OF PENNSYLVANIA.

THIS Court having ordered that the charges preferred against the Bishop of New Jersey, by three of his brethren, shall not now be tried, on the ground that said charges have been or are to be investigated by the Convention of his Diocese,

The undersigned, Bishop of the Diocese of Pennsylvania, desires to record his dissent, in the terms and for the reasons following:

It is claimed, that to proceed to this trial would involve a violation of the rights of an independent Diocese. Such rights are sacred and ought to be respected. What are they? What are they, more especially, in respect to the Bishops of these Dioceses, and in respect to the case now before us?

It will not be contended that the independence of a Diocese requires that it should be amenable, in itself or through its Episcopal head, to no jurisdiction but its own. There can be no unity in the

Church, unless the parts of which it consists maintain a mutual dependence and accountability. Hence we find, that in all ages, irregularities in a Diocese—if they touched important matters of faith or morals—could be inquired into and corrected by the intervention of authority not belonging to that Diocese. Even in the African Churches, where the most exalted notions respecting the rights of independent Dioceses prevailed, and in the time of Cyprian, who was the most strenuous champion of Episcopal prerogative in ancient times, it was expressly conceded that, in points involving deeply the purity of the Church, the conduct of any Bishop might be examined into by his brother Bishops.* And we seek in vain for evidence that, in that age or in any primitive age, it was necessary for such Bishops to wait till the Diocese had preferred charges. On the contrary, the complaints of respectable communicants,† or the requisition of the Metropolitan instituting a personal inquiry into alleged disorders,‡ formed ground sufficient for the trial of such Bishop before his peers. Nor do we find that it was expected any where, or at any period, that a Diocese, as such, should become the accuser of its spiritual father.

When we look at the Constitution of our own Church in the United States, we see evidence most clear and striking, that the powers of a Diocese, in respect to the character and conduct of its Diocesan, are limited. Each Bishop, after he has been chosen by a Diocesan Convention, is subjected, before he can be consecrated, to the scrutiny of every other Bishop in our confederacy who has jurisdiction. He is subjected also to the scrutiny of every other Diocese, acting through its constituted representatives. So when he desires to resign. That resignation may be offered; it may be accepted by the Convention of his Diocese; but still it is not consummated till it has received the approval of a majority of his Episcopal brethren.

If he is to be tried for an offence, the VIth Article of our Constitution expressly enjoins, that the Canon or Canons under which such trial takes place shall be passed, not by his own Diocese, but by the General Convention. By that Article, first adopted within the last twelve years, the power which, in this country, a Diocese once had to enact Canons for the trial of its own Bishop—the power which it had to institute such trial, to conduct it to its conclusion in acquittal or conviction, and to defy all future revision—this

* See Cypr. Ep. 67 and 68.—See also Dupin, Hist. Eccles. Writ. Cent. iii. p. 180.

† See Apostol. Canons.

‡ See Bingham, Book II. Chap. xvi.

anomalous power was then taken from Dioceses, and lodged with our National Church, where, in analogy with the practice of other Churches, and the evident proprieties of the case, it rightfully belongs. The language of this Article is, "*The mode of trying Bishops* SHALL BE PROVIDED BY THE GENERAL CONVENTION." From the very nature of the case, as well as in the estimation of the best ecclesiastical lawyers, the jurisdiction thus vested in the General Convention is exclusive. Since the adoption, in 1841, of this Article, no Diocese has power rightfully to legislate, or rightfully to act, in regard to the trial of its Bishop, except so far and in such way as a Canon of the General Convention may permit.

What, then, is the language and spirit of these Canons? The first on this subject—adopted by the General Convention—was the IVth of 1841. It was enacted three years before the case arose in Pennsylvania, to which some reference has been made; so that neither the original framers of this Canon, nor the Convention that enacted it, could have had that case in view. In that Canon, of which the present on the same subject is little more than an enlargement, the power to present a Bishop for trial is given to three Bishops, in the same terms precisely as now. It is also given to the Convention of his Diocese, *but with the limitation* that two-thirds of both orders shall concur. In the Canon as it now stands, (III. of 1844,) this limitation on the action of Dioceses is relaxed; it being now required, not that two-thirds of both orders entitled to seats shall concur, but that two-thirds shall have been present at the session, and that, of those present, not less than two-thirds shall unite in making the presentment. Let it be observed then, that while restrictions are thus imposed on a Diocese when it would move towards presenting a Bishop, no restrictions of a kindred nature have been imposed at any time on three Bishops. Let it be observed further, that the only alteration introduced in this respect into the original Canon, is one *which makes it more easy for a Diocese* to act, not one which makes it more difficult for three Bishops to do so. The terms in which their power to act is described, are perfectly general—"It (a presentment) may also be made by any three Bishops of this Church."

A member of this Court, who was one of the Committee on Canons in the House of Deputies in 1844, when our law on this subject took its present form, states that, in his opinion, the permission to present would not have been continued to three Bishops, but with the understanding that it should be used only in certain

cases. The answer is obvious. The original framers of the Canon in 1841, and its modifiers in 1844, were careful to express clearly and precisely the limitations which, in this respect, they intended to impose on Dioceses. Is it likely that they would have been less careful in respect to limitations which they designed to impose on three Bishops? If it were their purpose—as is now alleged—that the Diocese should always have a prior right to proceed, or that the interposition of three Bishops should be allowed only when the Bishop to be presented was without jurisdiction, or was charged with heresy—is it to be conceived that restrictions and limitations so all-important should find no place in the language they employed? Those restrictions could have been expressed in half the space actually employed in tying up the hands of the Convention of the Diocese. Where power, then, is given in one direction under precise limitation, and in the other is given without any such limitation, expressed or implied, is it not to be concluded that, in the latter case, limitation, in the judgment of the law makers, was unnecessary? Three Bishops can act, under this Canon, only at a fearful sacrifice of time and feeling, and at a hazard, not less fearful, to their reputation and influence. They must expect that their motives will be impeached, and their judgment called in question. They must expect that private sympathy will often take the place which ought to be held, in the hearts of Christians, by an enlightened zeal for the honour and purity of the Church. They must expect that the odium which, in ages of tyranny, became attached to the name and office of prosecutor, will be industriously transferred to their thankless task; and that, if they fail to make good the charges which they have felt bound to prefer, they will stand condemned, not only by their brethren, but in the estimation of the Church and the world. Under such circumstances, it was not to be presumed that Bishops would court the office of presenters; nor is it to be supposed that, in the judgment of those who enacted this Canon, they would require to be subjected—in the exercise of it—to stringent limitations. The danger to be apprehended was, that they would shrink back when duty summoned—not that they would thrust themselves forward uncalled.

It is hardly necessary to add that, in the opinion of the undersigned, this appeal to the recollections of individuals, in respect to the intentions of a legislative body, is entirely fallacious. It can give us nothing but the impressions of one or a few persons, who might have been concerned in introducing or sustaining a measure.

Respecting the motives of others who may have concurred with them, and the animus of the whole body of the two Houses who adopted it, it affords no reliable information. The real intention of a law can be collected only from the language of the Canon, from the *recorded* circumstances under which it was passed, and from the general analogies of law, ecclesiastical, civil, and common. Were it proper or really relevant, testimony could easily be adduced, from one who was present at the time when the idea of giving such power to three Bishops was first conceived in 1841, and the provision was first embodied in language in order to be introduced into Canon IV. of that year. This testimony would show, that the express object of those who acted in the matter, was to provide for a then existing case of supposed immorality, in a Bishop whose Diocese was not at all likely to present him by a two-thirds vote.

But what is the language of the Canon? It says, in substance, that the Bishop of a Diocese *may be presented in two ways;* the effect of the construction contended for, if once established, would be to render it next to impossible that he could be presented in more than one way. The right to perform this painful and most responsible duty, it gives to two parties. To each it gives the power to present; to one only (the Diocese) does it give that power subject to any other limitations than such as may be imposed by private convictions of duty. It gives to both the right to proceed; but to neither does it give the right or power to interpose in order to review or set aside a proceeding which may have been instituted by the other. That power it reserves to the Court which assembles to try the specifications. If one or other of these parties decide summarily not to inquire—or, having inquired in an *ex parte* manner or otherwise, determine not to present—its declining to act cannot divest the other party of its co-ordinate and independent jurisdiction over the same subject. It creates, on the contrary, *the very case contemplated by the Canon when it provided two methods of proceeding;* so that if one party, from motives of delicacy or prudence, shrink from the task of taking an invidious and most disagreeable position, or prove itself unequal to it, there may be another to act: that thus in some way the fame of a Bishop who is evil spoken of may be vindicated, if he be innocent; or the honour and purity of the Church asserted, if he be guilty.

The relation of the parties empowered to present, seems then to be this. They are co-ordinate. The action of neither has binding

effect on the other. Independent presentments may be made by each—as is the case in the English Courts when the Grand Jury find an indictment, and the Attorney General files an information. Or both may decline to present, or one may present and the other decline. It is evident that if charges have been investigated and dismissed by one party, it imposes increased responsibility before the Church and the world on the other party, should they conclude, on inquiry, to make those same charges the ground of presentment. But before *this Court,* neither party can properly appear, except for the one purpose of demanding a trial. Neither can assume, by its action, to override or nullify the independent action of the other; and the attempt to do so ought to be promptly rebuked by the Court as an interference with its own rights and authority, and as destructive to Church discipline in its most important branch.

If, when charges are duly preferred against a Bishop, either by his own Diocese or by three of his Brethren, this Court cannot proceed to investigate such charges, till they have first been scrutinized by another body, which, though authorized by Canon to prefer them, declined or neglected to do so; and if, on such scrutiny being made—the scrutiny (be it observed) of a Court of Inquest whose proceedings are in their very nature *ex parte* and extra-judicial—such charge shall be pronounced frivolous or unfounded, and thereupon this Court shall refuse to put the accused upon his trial, it need hardly be said that it will place itself, by such a course, in a position the most equivocal and undignified. And it seems evident that, were such a course to receive the sanction of the Church, it would ultimately become impossible to bring any Bishop to trial, in whose behalf any three Bishops or the majority of his Convention, might be willing to interpose.

If the undersigned does not entirely misconceive the spirit and intent of Canon III. of 1844, it gives to a Diocese but one right before this Court in respect to its Bishop, if he be accused of wrong-doing. This is, the right of presenting him for trial. Declining to exercise that right, it is by no means competent for it, in its Diocesan capacity, to interfere for his defence. Still less is it competent for it to set aside the authority of this Court, and undertake to try him for and by itself. In this respect the Committee of the New Jersey Convention seem, in the Representation which they were permitted to read here, seriously to have misapprehended the province of a Diocesan Convention. On page 22 of the printed

copy, they express themselves as follows: "What has been read to you touching the first presentment, applies to all the charges in the new, which are *identical* with those examined; and forms (together with the testimony which was taken, and which we have the honour to supply for your inspection) *our answer to those charges,* whether in the old or in the new; and *the verdict of the Convention of New Jersey,* as regards those things which at that time had been preferred." On the same page, they speak of their "refutation" of the charges; and on page 20, they say, "The Diocese of New Jersey *has pronounced a verdict of acquittal,* and now stands before you to *plead that verdict in all its Canonical force* and moral weight, to present it as the expression of her deep and heartfelt conviction that enough has been done, so far as concerns the charges which have been examined, to meet every claim of law or of truth; and that for you to proceed with a trial, would be unjust to the Bishop, injurious to the Church at large, and degrading to herself."

In the first of these passages, they speak of the Convention, or of its Committee, as if it were their right and duty both to answer the charges as counsel, and to pronounce upon them as judges;—a novel position for any party claiming to be a competent and impartial umpire, and especially for a party not known to the Canon in either of the capacities assumed. In the second passage, they claim distinctly to be a tribunal that has power and authority to *try* the charges, and render in a verdict of acquittal, which ought not only to satisfy the Church at large, but be a bar in this Court to the exercise of the jurisdiction with which we alone have been charged. Such claims, in the estimation of the undersigned, are not only inadmissible under the provisions of the law, but are to be deeply deplored as most unfriendly to the order and unity of the Church.

It has been the anxious desire of the undersigned to discuss the question before the Court as an abstract question of Canon law, which ought to be disposed of on fixed and well-known general principles. If he must refer to the action of the Diocese of New Jersey, he finds himself compelled to say, that the course of its Convention, in 1849, in refusing to entertain a resolution of inquiry into alleged rumours—though it might have been proper under the circumstances—evinced no special readiness to institute such inquiry. When next the subject came before the Convention, in March of the present year, that body, while it alleged that it had "ever been ready to make investigation," yet felt "no hesitation in expressing its decided opinion that the best interests of the Diocese

and of the Church at large required no such proceedings." This declaration was made while the Convention had in its possession specific charges, preferred on the responsibility of five lay communicants; and it indicates, under such circumstances, of course any thing but willingness to enter on a searching inquiry. To contend that the Convention, in this case, was precluded by the terms in which it was called together, from entertaining a motion to inquire, would be causing it to stultify itself; since, in resolving that such inquiry was unnecessary, it in effect resolved, that it had power to make it.

The matter came up again in the Annual Convention of June last, when, the Presenting Bishops having taken the fearful responsibility of doing that which the Convention had omitted to do, it would, in the opinion of the undersigned, have been wiser, more decorous, and more for the peace as well as for the order and authority of the Church, if they had remained passive. They appointed, however, a Committee of *lay members* of the Convention to make an investigation; and this Committee, on which no presbyter or Bishop was allowed to sit, and to the deliberations of which the three presenting Bishops, though they were regarded as the only responsible accusers, were not to be invited—this Committee, composed exclusively of laymen, proceeded to discharge their duty. Their report shows, that neither of the four lay communicants, who preferred charges in the first instance, consented to appear and give their testimony, or unite, in any way, in the inquiry. It also shows that Horace Binney, Michael Hayes, Joseph Deacon, Joseph Deacon's daughter, Rev. Mr. Sherman, Mrs. S. C. Robardet, Mrs. C. Lippincott, William H. Carse and wife, John Black, and others, did not appear, though summoned; and no one can have read the charges without seeing that, among those named, were persons relied upon by the presenters as among the most important witnesses to sustain the charges they preferred. Under such circumstances, the result reached by the Committee can be regarded in no other light, than as the result of an *ex parte* investigation. Those wishing to exonerate the Bishop appeared; those proposing to inculpate him declined, and in several instances distinctly demurred to the jurisdiction of the Committee. Their conclusions come before us, then, impressed with the same character which belongs to the Presentment—that of being partial and one-sided. So far as the presenting Bishops are concerned, we have the result of an *ex parte* inquiry *without* the evidence on which

that result is predicated. So far as the Bishop presented is concerned, we have before us (irregularly, as the undersigned conceives) an *ex parte* result, *with* the evidence on which it is founded. Parties have never been confronted, witnesses have not been cross-examined, issues have not been joined. It is submitted that, under such circumstances, it is preposterous to say that there has been, in the Diocese of New Jersey or elsewhere, any investigation of charges which can be regarded as full and satisfactory; much less any which ought to set aside a presentment duly made, or serve as an estoppel to charges preferred subsequently.

The undersigned cannot conclude, without expressing his sincere desire to find some ground on which the necessity of going into this trial can be averted. The Canon, as it now stands, is harsh in its provisions. It gives to the accused Bishop no right of challenge. It subjects him to be condemned and punished, even to degradation, by the vote of a mere majority of those Bishops who may happen to attend his trial, and it affords him no proper privilege of appealing from the sentence. It is also indefinite and incomplete in other respects. Until our legislation, then, can be amended, it would be a great relief to be excused from a duty so painful as the one to which we are called. The undersigned is by no means certain that sufficient ground for staying these proceedings may not be found. He cannot find it, however, in the direction indicated by these resolutions. Powers are there ascribed to Dioceses, from which, as it seems to him, they are expressly precluded by law; and the exercise of which, under our present Constitution, and in view of the essential nature of every National Church, can only tend to irregularity and insubordination. He feels bound to add, that the attempt which, in this case, has been made—both through the Respondent and through his Diocese—to supersede the regular course of judicial proceedings, and to carry this cause to the bar of the public on *ex parte* representations, before it could be brought regularly before this Court, appears to him to be a precedent fraught with most dangerous consequences, and one, therefore, which ought to be distinctly and sternly rebuked.

In regard to the innocence or guilt of the Respondent, it is a question not now in any sense before this Court. He may—to the mind of the undersigned—be invested with the strongest possible presumption of being guiltless, and of having been unjustly or unwisely arraigned; yet this would not justify a member of the Court in declining to go into his trial, except there are reasons

which, to him, seem capable of being vindicated on such principles of law and equity as have been recognized by the wisdom of ages in Church and State. It is because he has not been able to discover such principles in the Resolutions now in question, that the undersigned finds himself compelled to give his vote in the negative.

A. POTTER.

OPINION OF THE BISHOP OF INDIANA.

THE Resolutions before the Court, originally proposed by the Bishop of Michigan, but which, for considerations of delicacy personal to himself, he was permitted to withdraw, and which, in order to the discussion and settlement of the great principles therein involved, were immediately renewed by myself, are now to be decided by the vote about to be taken. And I proceed to give, and put on record, my reasons for voting in the affirmative.

Assuming, for the sake of argument, what I hope presently to show is not, and can not, be true, that the interpretation of Section 1, of Canon III., of 1844—"of the trial of a Bishop"—which claims for any three Bishops of this Church co-ordinate authority with the Convention of a Diocese, in making a presentment of its Bishop, is the right interpretation; these Resolutions, in my judgment, ought to pass, because, in the case before us, action in the premises had been begun and completed by the Convention of New Jersey, touching the matters complained of, prior to any action on the part of the Presenting Bishops, so far as concerns the presentment before us, called, by the late Presiding Bishop, in his summons convening this Court, a *new* presentment, and which is strictly such. The Convention of New Jersey have exercised their right—a right which I deem clearly conceded to a Diocesan Convention by the letter, to say nothing of the spirit, of the Canon—of priority of action; and such action, the Presenting Bishops themselves being judges, is a bar to any action on the part of any three Bishops. For, in their letter of friendly counsel and advice, addressed to the Bishop of New Jersey, dated September 22d, 1851, and delivered on the 2d of February, 1852, they say, "it must have been the expectation of the Church, in her Canon for the trial of a Bishop, that action shall first take place in Diocesan Conventions," and "it

appears to us, that it is only when a Diocesan Convention refuses to *institute an inquiry,* or neglects to do it for too long a period, or performs the duty unfaithfully, that the Bishops can be reasonably expected to interpose." Now what is the fact? It is plain and undeniable. The Convention of New Jersey, on the 14th day of July, 1852, received and adopted a report from the Committee of Investigation appointed at its annual meeting in May, exonerating the Respondent from all the charges preferred against him, and pronouncing him blameless; whereas, this presentment bears date the 22d of July, 1852, eight days subsequent to this action of the Convention.

It is contended, however, that although this be the naked fact, yet, as the Convention of New Jersey only *made an inquiry,* (which the Presenting Bishops, in their letter just quoted, pronounce to be such a fulfilment of duty in the premises as to preclude the necessity of any action by any Bishops,) and did not make a *presentment,* that therefore, the action of the Convention, in "*instituting an inquiry,*" is of no account, as a bar to further proceedings on the part of the Presenters. An inquiry, made expressly for the purpose of ascertaining whether or no a presentment is demanded, it is insisted, is no part of the action contemplated by the Canon, which speaks of a presentment alone, and restrains the Convention rigidly to that. Now how can a presentment be made, without a previous inquiry as to its necessity, and into the cause or causes requiring it? It is an indispensable preliminary, in the very nature of things. And if such inquiry results, as in the present case, in the clear conviction, from the carefully ascertained blamelessness of the accused Bishop, that a presentment is not demanded, and would be manifestly unjust, is it not an outrage on common sense, to assert and argue, that such inquiry is no part of the action of the Convention authorized by the Canon? Is inculpation the only duty of the Convention? Is not exculpation, if there be just ground for that, equally its duty? The one of necessity involves the other. And the Convention of New Jersey, having, upon sufficient inquiry, found no cause to condemn, surely they are at liberty to say so, nay, bound in justice to say so, and virtually acquit, by pronouncing a presentment in the present instance uncalled for and unjust, without invalidating their claim to have taken prior action in the premises.

The Convention of New Jersey having acted, and acted sufficiently, and to an extent which the strictest justice requires, as its

Committee, in the statement and appeal which they were permitted to read to this Court, represent,—it has done all the Canon requires; and its decision ought to be final, and a bar to any further procedure against the Respondent. It has "performed the duty faithfully," as the document accompanying the Statement and Appeal of the Committee, containing a full detail of the investigation instituted by the Convention, satisfactorily proves. And it stands ready, and pledges itself to investigate the additional specifications of this *new* presentment, and has already begun action in relation thereto, by the calling of a special meeting, to be convened on the 27th inst. Now after this—all this—has been done, by those who had a perfect canonical right to originate and take action in the case, what right, what reasonable plea, is there or can there be, for reviewing this action, and virtually pronouncing it null and void? Does the letter of the Canon, to say nothing of its spirit, give the Presenting Bishops authority to set aside this solemn judgment of the Convention of New Jersey, and say, You have not "performed the duty faithfully;" you have been careless, or partial, or desirous of screening your Bishop? *We* are not satisfied, though you and the diocese you represent are; *we* are informed by *four laymen* that there *is* ground for presentment; we have come from our distant homes, in the South, the West, and the East, into the Diocese of New Jersey, the Diocese of another Bishop, as representatives of the General Church, which we deem to have been scandalized and aggrieved by the alleged misconduct of the Respondent; and we—with the assistance of the *four* irresponsible complainants—have investigated the charges, and "believing him to be guilty," we, notwithstanding your prior action, having co-ordinate authority with you, are determined to proceed to a presentment. The opinions and assertions of these complainants and their coadjutors and abettors, together with what we ourselves have picked up and heard, but have not had proved, weigh far more with us than any representation you, as the constituted authority of the Diocese of New Jersey, have made or can make; and having, by our construction of the letter of the Canon, the power, we will exercise the same, disregard your solemn *official* decision, and proceed to arraign as an offender your chief pastor, whom you have pronounced "blameless?" What right have any three Bishops, thus to go behind the record of the proceedings of the Diocese of New Jersey, and virtually pronounce the Convention dishonest, corrupt, and unworthy of confidence? I hold they have no right. If the

Presenting Bishops have such right, what is there to prevent three other Bishops who, upon the representation of irresponsible individuals, may be dissatisfied with the result of the investigation of the Convention, in whole or in part, from dissenting from its decision, and beginning a procedure against the Respondent, on account of the whole, or the part, to which they may take exception? Or what is to prevent three more; and thus the Respondent be harassed, and his Diocese kept disturbed and agitated, for an indefinite period? There must be an end to such procedure some where and at some time. Charity demands it. Justice demands it. The peace and prosperity of the Church demand it. The claims of our common Christianity demand it. Where is it to be found, and when? I answer, in this Court, and at this time, by the passage of the Resolutions before us.

But there are, in my judgment, stronger reasons still for the passage of these Resolutions, and they relate to the true interpretation of the Canon, or more strictly, of its 1st Section. It is claimed that the letter of this 1st Section gives to any three Bishops co-ordinate authority with the Convention of a Diocese, to present for trial the Bishop of a Diocese, who may be accused of crime, or immorality, or unsoundness in the faith. I hold and maintain, that it does no such thing, that it confers upon them no authority whatever, in such a case. The provision of the Canon, which appears to give such co-ordinate authority, or any authority, to three Bishops, does not relate to a *diocesan Bishop,* but is a provision, and *the only provision* which the Canon makes, to secure the trial of a Bishop charged with serious offences, who has *resigned his diocesan jurisdiction.* The words are—after giving the Convention of a Diocese authority to make a Presentment of its own Bishop accused of specified offences, and stringently regulating the mode of proceeding—the words are: "And it" (a presentment) "may also be made by any three Bishops of this Church;" not, however, of a *diocesan Bishop,* but of a Bishop who has resigned his *diocesan jurisdiction,* or who, as in the case of a Foreign Missionary Bishop, has no diocesan jurisdiction, and no Convention to take cognizance of his conduct. This, I think, is clearly determined, and the provision in question thus restrained in its application, by Section 10th of the Canon, which reads thus, "Any Bishop of this Church not having ecclesiastical jurisdiction, shall be subject to presentment, trial, and sentence, as *herein before provided,* but shall not be included in any other provision of this Canon." Now what is "*herein before pro-*

vided?" Why, a presentment by "any three Bishops of this Church;"—the provision, and the *only provision* in the Canon, in the case of "a Bishop accused of offences not having ecclesiastical jurisdiction." This I hold to be the true interpretation, and the sole meaning and intention of this provision. It is not an alternative provision. The word is *"and,"* not *"or."* It is an independent provision, restrained in its application to a Bishop without ecclesiastical jurisdiction, and having no application whatever to a Diocesan Bishop. No co-ordinate authority is given, nor was any co-ordinate authority, nor any authority whatever, in the case of a Diocesan Bishop, intended to be given. This, as a member of the Committee who prepared and reported the Canon to the House of Clerical and Lay Deputies, (where it originated,) and its Chairman, I profess to know; and my knowledge is confirmed by the recollection of several of my colleagues in the Committee, whom I have recently consulted. And as cotemporary interpretation is resorted to and allowed weight, in questions relating to the true meaning and intention of the Constitution of the United States, and laws dependent thereupon, as I am informed on high legal authority, it ought to have weight, corroborative at least, in determining the true interpretation and meaning of this provision of the Canon. At any rate, it is irresistible in deciding my judgment in the premises.

And to the rebutting assertion, in favour of the interpretation which has heretofore prevailed, and upon which the Presentment before us has been made, viz., that this provision existed in the previous Canon of 1841—"of the trial of a Bishop"—I answer, this is admitted so far as the naming of three Bishops goes. But the phraseology employed is quite different from that of the present Canon, and reads thus:—*"He* may also be presented to the Bishops by any three Bishops;" vague and indefinite phraseology, which might be construed to give authority to any three Bishops of the Church of England or its colonies, equally with those of our own branch of the Church; and at the same time susceptible of the interpretation of an alternative provision, conferring co-ordinate authority on any three Bishops, with the Convention of a Diocese. On this account, as well as on others, the Canon was deemed seriously defective by the Committee on Canons of 1844, and the existing provision substituted:—a provision more definite in its terms—the words *"of this Church,"* being added; and designed, as I have stated, and as is proved by the 10th Section of the Canon, to meet the case of a Bishop not having ecclesiastical jurisdiction—a case known

by the Committee to be about to exist, and which, immediately after the passage of this Canon, and of Canon IV. of 1844—repealed in 1850, and another substituted—did exist, and continues to exist.

Nor, in reply to all this, is it to be taken and pleaded as a precedent, authoritative and binding upon this Court, that the interpretation contended for by the Presenting Bishops, and upon which they have acted, was not denied, nor any objection made thereto in a previous trial under the existing Canon. In that memorable instance, this point was not mooted. The Respondent waived all exceptions, and pleaded without any demur to the Presentment. There was, therefore, no decision, and consequently there is no precedent.

But further, these Resolutions, in my judgment, ought to pass, because they involve a fundamental principle in our ecclesiastical organization, the independence of the several dioceses composing the *Ecclesiastical Union,* which constitutes the Protestant Episcopal Church in these United States. It is a principle which I hold to be inherent in a diocesan organization, sanctioned by the teaching and usage of the Church Catholic, "through the ages all along," and clearly recognised and virtually asserted in the IVth Article of "*the Constitution of our Ecclesiastical Government,*"* which declares that, "Every Bishop of this Church shall confine the exercise of his Episcopal office to his proper diocese, unless requested to ordain, or confirm, or perform any other act of his Episcopal office by any *Church destitute of a Bishop.*"

This principle appears to me, to have been lost sight of in the procedure of the Presenting Bishops in the case before us, both in their preliminary and subsequent action, particularly the former; and the sovereignty and independence of the Diocese of New Jersey thereby seriously invaded. For, upon the interpretation heretofore given to the Canon, that is, to the provision of the 1st Section, no authority is given to any three Bishops of this Church to enter the diocese of another Bishop, and go from place to place, and from house to house, without the consent of the Convention of the Diocese, or its ecclesiastical authority, in search of evidence to convict the Bishop of the Diocese of offences with which he may be charged, whether it be to determine the question of making a presentment against him, or to sustain such presentment when it is made. The IVth Article of the Constitution clearly forbids such a procedure. And in my judgment, it as clearly forbids the present-

* Vide Preamble to the original Constitution adopted in 1785—Bioren's Edition.

ment of a Diocesan Bishop by any three Bishops; for it restricts the performance of any Episcopal act whatever by the Bishop of another diocese, to a *Church destitute of a Bishop*, that is, of a diocese without a Bishop; and then only at the request of such Church or Diocese.

The principle of Diocesan independence which these Resolutions assert, is of the utmost importance to the preservation of the peace of the Church, and its character and position as a reformed Protestant branch of the One, Holy, Catholic and Apostolic Church of Christ our Lord. And its conservation, in opposition to the consolidation and centralization of ecclesiastical power in a General Church, by which is meant our General Convention, now, and for some years past, claimed and attempted to be acted upon, is demanded by every consideration of the true interests of our ecclesiastical organization, and the welfare, the increase, and the perpetuity of our communion in this country. If this growing notion of a consolidated Church, and the centralization of power in the General Convention, is not arrested, it will lead to serious, alarming, and lasting evils.

The Diocese of New Jersey—and the remarks apply to every other Diocese in our Ecclesiastical Union, and is the deep concern of each and all—this Diocese was originally independent, purely and entirely so. It was optional with it to enter into, or not to enter into, the Ecclesiastical Union which constitutes the Protestant Episcopal Church in these United States. It chose to enter into such Union, reserving to itself certain indefeasible rights, and having such rights as it surrendered, in order to promote and perfect the object of the Union, secured to it by the Constitution of the Union. Among these was the independent control of its own internal affairs, and of all measures and proceedings thereto pertaining; and admitting no interference or control on the part of the General Convention, the representative embodiment of the Union, save in cases specifically provided by canonical enactment, to which its assent had been yielded in the way prescribed by the Constitution of the Union. Now, in the procedure of the Presenting Bishops, there has been, as it appears to me, I do not say an intentional, yet a manifest invasion of this independence, and a departure from the spirit, if not the letter, of the IVth Article of the Constitution, which secures that independence. In entering into the Diocese of New Jersey, without the request or consent of the Convention representing the Diocese, to perform no legitimate Episcopal act, but to seek for evidence supposed to bear against the Bishop of the

Diocese, accused of certain offences, not by the Convention, but by four irresponsible individuals in the Diocese, they have certainly acted in contravention of this Article of the Constitution, and have seriously invaded the rightful independence of a Diocese which has a Bishop. And the Convention of New Jersey have a right to fall back on the independence secured to them by the Constitution, and by the Canon too, in the particular case under consideration, and act in the premises as shall seem to them best and proper, and their action and decision be deemed and taken as final. The only plea of authority for the Presenting Bishops, is the authority of the General Convention, supposed to be conferred in the provision before referred to, in the 1st Section of Canon III. of 1844, which I hold to be, and trust I have shown to be, no authority at all, in the true interpretation and intention of such provision. And as to the plea of the inherent right of Bishops to guard the purity of their fellow Bishops, make themselves, at their discretion, "rulers and judges over their brethren" in the Episcopate, and minister discipline, not as their consecration vow defines it, "so that they forget not mercy," but as they please, and with the utmost rigour, if they so please—this is a dangerous assumption of authority, which no teaching nor usage of the Church Catholic, in its primitive and pure condition, in any way sanctions. Such an assumption, commencing with a pretence of interposing only fraternal counsel and advice, and proceeding soon to a claim of interference and supremacy in discipline, and then of doctrine, was the germinating action, the starting point of the Papal usurpation, the insidious beginning of that colossal, consolidated, ecclesiastical domination which for many centuries enthralled the Christian world, and, if it could, would enthral it again and for ever. It is an assumption fruitful in evil, and ought to be resisted in its first budding forth. The Resolutions before the Court make such resistance, assert the principle of the independence of a Diocese, in opposition to interference of any kind with its own affairs from an extraneous source, though apparently clothed with *quasi* official authority; and for this reason, if for nothing else, for the purpose of opposing a conceit and a claim so antagonistical to the expressed design of our "Ecclesiastical Union," so fraught with mischief in its necessary and readily anticipated consequences, and so directly conflicting with the Constitutional provision, which secures the sovereignty and independence of each and every Diocese composing our Union, the Resolutions are eminently demanded by the circumstances of the case before us, and ought to pass; and under a solemn

conviction of duty and of my responsibility as a Bishop in the Church of God, I give my vote in the affirmative.

GEORGE UPFOLD,
Bishop of Indiana.

OPINION OF THE BISHOP OF MISSISSIPPI.

I AM one of those who are disposed to hold the Clergy to a strict account. And I am of opinion that when once a Bishop has been convicted of wilful impurity or dishonesty, he should be *lastingly* deprived of his high and holy office. Under these solemn convictions I have come nearly two thousand five hundred miles to be present on this occasion. My purpose in coming was twofold —first, to see that a brother Bishop who, up to the present hour, has stood before the world as an honourable, noble-spirited, fearless and indefatigable son of the Church, should not be unjustly condemned; and, secondly, to see that our Dear Mother the Church should be duly avenged on that son, if he had wantonly wronged her.

With these views I took my seat in this Court; and I hoped that, without delay, we would enter upon the painful business which had brought us together. I wished the trial begun and ended, for the sake of all concerned—for the interests of truth and honesty—for a warning to the Clergy of every degree—for the quieting of the public mind—for the peace of the Church—for the purpose of enabling the presenting Bishops, who have, from the best of motives, as I believe, undertaken their painful and ungracious duty, to show their zeal for the purity of their own Order,—but especially for the sake of the accused, in whose behalf I not only prayed, but expected, a safe and honourable deliverance.

But instead of entering at once upon the trial, a new and important turn has been given to our proceedings by the solemn request and claim of the Diocese of New Jersey, that we will forbear all further action, on the ground that that Diocese has already taken all necessary canonical action in the premises, and that she has solemnly pledged herself faithfully and speedily to inquire into any further charges that remain unanswered against her Bishop. Into the particulars of the statements and the

argument made by the Diocese of New Jersey I will not now enter, inasmuch as they are familiar to every member of the Court; but I do not hesitate to say that, coming, as they do, from an independent Diocese—a fully constituted Church of the Lord Jesus Christ, a Diocese hitherto untainted and without reproach—we are bound not only to give them our most respectful attention, but to treat her judgment and action in the premises with full faith and confidence.

Passing by, then, many minor objections that might, and have been raised to the further proceedings of this Court, I will now, in the fear of Him who will one day sit in judgment on me and all mankind, give this my firm, serious and heaven-sought OPINION.

That in view of the manifold and acknowledged defects in the Canon, (III. of 1844,) under the authority of which we are now assembled, a canon indefinite in its language, incomplete in its provisions, and harsh in its general spirit and character, which leaves it doubtful whether the task of presenting a Bishop should begin *within* or *without* his Diocese, which gives to the accused no right of challenge, which makes him liable to the severest punishment, even to degradation, by the vote of a bare majority of such of his brethren as may be able or willing to attend, and which allows him no right of appeal; and which, for these reasons, is, in the opinion of most of this Court, an unsafe rule of action :—

In view of the unfortunate and extra-legal postponement of the trial of the accused, called for under the *first* Presentment, of the consequent virtual abandonment of that Presentment, and of the fact that the *second* Presentment is dated *eight days after* the Report of the Committee appointed by the Convention of New Jersey to investigate the charges against their Bishop, which Report fully exculpates him from all those charges:—

In view of the admitted right of a Diocese, co-equally and concurrently with any three Bishops, to present its own Bishop, and of the consideration that a Diocese should be supposed not only to have the best opportunity of knowing the character and conduct of their Bishop, but to be most keenly alive to his honour as involving their own:—

In view of the judgment of many of this Court, and also of the Presenting Bishops themselves, that "it is only when a Diocesan Convention refuses to institute inquiry, or neglects to do it for too long a period, that other Bishops can be expected to interfere:"—

In view of the prompt action of the Diocese of New Jersey, as

soon as charges were preferred in a formal and definite shape, of their having thereupon made as full and honest an investigation of those charges as the authors of them and their witnesses would allow them to make, and of the express and solemn pledge of the Diocese to go on to the end with the investigation of the three charges subsequently preferred:—

In view of the canonical right of each Diocese to determine for itself the question of Presentment or no Presentment on charges brought against its Bishop, and of the repeatedly expressed confidence of the Diocese of New Jersey in the purity and integrity of its Bishop:—

In view of the repeated and solemn declaration of our accused brother, that he is now ready, and will always hold himself ready, to come to trial before a Court canonically empowered to try him:—

In view of the power of the Presenting Bishops to renew the Presentment, even after the Convention of New Jersey shall have completed its investigation:—

In view of the serious and respectful Appeal and claim of the Diocese of New Jersey, and of the necessity of maintaining at all times just and liberal relations between the several Dioceses and the General Church:—

In view of the many evils that result to the Church from public trials, as well as the lasting injury done to the accused, even though acquitted:—

In view of one and all of these reasons, I deem it unwise and inexpedient to proceed any further with the Presentment before us. And I would recommend that we forbear all further action until the Convention of New Jersey, which is summoned to meet on the 27th inst., shall have completed its investigation of all the charges alleged in both Presentments.

W. M. Green,
Bishop of the Diocese of Mississippi.

OPINION OF THE BISHOP OF FLORIDA.

HAVING taken no part in the discussion pending the passage of Bishop Upfold's Resolutions, it may be expected that I will give my reasons for voting in the affirmative. I shall state them briefly.

It is a settled principle in law, that two indictments, charging an individual with similar offences, cannot be entertained at the same time; and that the indictment bearing priority of date is entitled to precedence. The members of this Court have each in possession two presentments—both emanating from the same source. That the first (in point of date) has been withdrawn, we have no evidence; on the contrary, it is distinctly avowed by one of the Presenters, that it has not been abandoned, but is retained for the purpose of falling back upon, in the event that any plea should be urged against the reception of what is called the *new* presentment. In view of this statement, my opinion is, that it is not competent in this Court to proceed to the trial of the Bishop of New Jersey at this time.

Again, Canon III. of 1844 secures to the Diocese to which an accused Bishop belongs, the right to make presentment, which power conferred involves the authority to make every necessary investigation into the truth of the charges preferred. This right, we are informed, has been exercised by a legitimate tribunal—the Convention of New Jersey. It is with that body to determine for itself the question of presentment or no presentment. In view of the fact, that the Convention of New Jersey has given to the allegations brought against its Bishop a patient, diligent and full examination, and by an almost unanimous vote of both Orders declared, that they "find no fault in this man touching those things whereof he is accused," I give it further, as my opinion, that any action of this Court in the premises is uncalled for and inexpedient. For these reasons, I have voted in the affirmative.

FRANCIS H. RUTLEDGE,
Bishop of Florida.