To My of Bishops
Hodge, Delivered and
answer to the argument
presented by the committee
of the convention of the
diocese of New Jersey, to
the Court of Bishops, in
session at Burlington upon
the trial of Bishop Hodge.

Richard S. Field Esq
Princeton
N. Jersey

REPLY

OF

BISHOPS MEADE, M'ILVAINE, AND BURGESS

TO THE

ARGUMENT PRESENTED BY THE COMMITTEE OF THE
CONVENTION OF THE DIOCESE OF
NEW JERSEY,

TO

THE COURT OF BISHOPS,

IN SESSION AT BURLINGTON

FOR THE

TRIAL OF BISHOP DOANE.

PHILADELPHIA:
PRINTED BY T. K. AND P. G. COLLINS.
1852.

REPLY.

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 on 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 endeavor 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 interests 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 honor 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 thoughts, 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 should 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 of 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 objection 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 powers*," 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 that he would object to the trial's 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 a 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 last 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 prayers 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 honor so much depend; 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 anything as the trial of a Bishop, except it be before one single tribunal, and that the very one now assembled? Does this church acknowledge anything 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 examination 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 those 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 perhaps nowhere 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.*"

* See Journal of the Sixty-ninth Annual Convention of New Jersey, p. 22.

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 the whole land, the church under whose authority and law you are here 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 honor of the gospel are now dependent not only on your decision of the present question, but, if it be not carried on, 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 so incapable of proof as that Committee declares, then, so 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 desire 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 the 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 beheld 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.

Against the introduction of this influence, we have hitherto opposed our sternest remonstrances.

They 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 rumor, 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. 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 rumors 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 that "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 rumors *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 was 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 XXXVII. Canon of 1838 makes it the duty of the Bishop, if a minister "*be accused by public rumor of crimes and offences,*" "to see that *inquiry* be instituted as to the truth of such public rumor." The analogy should *compel* a Convention, whose Bishop is "accused by public rumor," to

"inquire as to the truth of such public rumor." 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 for 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, and under the circumstances detailed in the Tenth 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 by him, 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 anx-

ious 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 Eleventh, Eighteenth, and Nineteenth 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, or 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 rumors* nor *newspaper publications.* Responsible names were answerable for the truth of the charges; yet the Convention dissolved under the 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 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, they addressed him their letter of the 22d 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 grossly 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 in 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; and 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 of the Diocese.

Now, those 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 seem 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, declares 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: that 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.

The 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 further, 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 Bishop stood behind them; and the affidavit of Michael Hayes gave the sanction of 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.*

That was a pledge not to investigate any of those 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. The Convention formally replied, that the interests of the church require no such proceeding. This was a declaration that it would not investigate.

The three Presenting Bishops awaited 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 created "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 results.

The Convention reiterated 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 embraces the former alternative, and tries 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 desire 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 papers, 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: but 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* their 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 by 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 dependents 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 right 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.

I. 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 the three Bishops, and

proudly rest on the elevated characters they ascribe to the Committee and to the Convention, as the guarantee of the fulness and fairness of the investigation.

When we turn to the records 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 those 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; removable 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 grossest charges against the Bishop.

Consequently, *half* the clergy in 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 those twenty-eight, only nineteen voted in favor of the resolution.

How this analysis of the vote upon the resolution can be reconciled with the averments of the Committee, "that 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," 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 matters 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 or 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, even 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 the pursuing of 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 rumor 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 Third 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 logical sequence, it has no existence.

It is futile to invoke 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 (§ 1) 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 these 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 favor.

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 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 exists.

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 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 this 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 shall be present.

There were thirty-seven or thirty-eight elergymen 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 the presentment.

The second section declares that, upon a presentment made in *either* of the modes pointed out in § 1 of this Canon, *the course of proceeding shall be as follows:—*

Now we have a presentment in one of those modes, formally speci-

fying 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 forever 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 stringent 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, 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 were 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, untried and unacquitted, to be numbered among its chief pastors.

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 full, fair, and impartial trial; and pray God to give the respondent a good deliverance.

WILLIAM MEADE, D. D.,
Bishop of the P. E. C. in Virginia.

CHARLES R. M'ILVAINE, D. D.,
Bishop of the P. E. C. in Ohio.

GEORGE BURGESS, D. D.,
Bishop of the P. E. C. in Maine.