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PRESENTMENT.

DIOCESE OF WESTERN NEW YORK.

In the Matter of the Presentment of the REVEREND ALGERNON SIDNEY CRAPSEY, for Trial Upon Certain Charges.

To the Reverend Algernon Sidney Crapsey, a presbyter of the Protestant Episcopal Church in the United States of America, in the Diocese of Western New York, Greeting: Whereas, The Standing Committee of the Diocese of Western New York has presented to me, the bishop of the said diocese, a presentment concerning certain charges against you, the Reverend Algernon Sidney Crapsey, and the said presentment having been duly considered by me as such bishop, and having been duly approved by me, and my allowance thereof having been duly endorsed on said presentment, and a trial having been ordered on said charges before the Ecclesiastical Court of the Diocese of Western New York, now

You are hereby commanded and required to appear personally before the Ecclesiastical Court of the Diocese of Western New York, appointed to be held at the parish house of St. James' Church, in the village of Batavia, Genesee County, Diocese of Western New York, on the seventeenth day of April, 1906, at 11 o'clock in the forenoon of that day, to then and there attend the trial of yourself, the Reverend Algernon Sidney Crapsey, a presbyter of the Protestant Episcopal Church in the United States of America in the Diocese of Western New York, on the several charges made by the said standing committee, as the same are set forth in said presentment.

In witness whereof, I, William D. Walker, Bishop of the Diocese of Western New York, have hereunto set my hand and seal, at the city of Rochester, N. Y., in the Diocese of Western New York, on the third day of March, 1906.

WILLIAM D. WALKER,

Bishop of the Diocese of Western New York.

Whereas, the Standing Committee of the Protestant

Episcopal Church in the United States of America in the Diocese of Western New York has presented to me, the bishop of said diocese, a presentment in due form, preferring certain charges against the Rev. Algernon Sidney Crapsey, a presbyter of said diocese, and the said presentment having been duly considered by me, and I having approved the same and in writing indorsed my allowance thereof thereon, now I, William D. Walker, Bishop of the Diocese of Western New York, do hereby direct the Court of the Diocese of Western New York to meet and convene at the parish house of St. James' Church, in the village of Batavia, Genesee County, Diocese of Western New York, state of New York, on the seventeenth day of April, 1906, to hear, try, and determine the said several charges, preferred against the said Algernon Sidney Crapsey by the said standing committee of the said diocese, as the same are set forth in the said presentment.

In witness whereof I have hereunto set my hand at the city of Rochester, N. Y., in the Diocese of Western New York, this third day of March, 1906.

WILLIAM D. WALKER,
Bishop of the Diocese of Western New York.

Diocese of Western New York. In the matter of the presentment of Reverend Algernon Sidney Crapsey, for trial upon certain charges.

I, William D. Walker, Bishop of the Diocese of Western New York, do hereby approve of the within presentment, and allow the same to be brought before the Ecclesiastical Court of the Diocese of Western New York for the trial of the Reverend Algernon Sidney Crapsey, a presbyter of said diocese, on the several charges set forth in the said presentment.

In witness whereof I have hereunto set my hand this third day of March in the year of our Lord, 1906.

WILLIAM D. WALKER,
Bishop of the Diocese of Western New York.

Diocese of Western New York. In the matter of the presentment of the Reverend Algernon Sidney Crapsey for trial upon certain charges.

Presentment:

To the Rt. Rev. William David Walker, LL. D., Bishop of Western New York,

We, the undersigned, as the Standing Committee of the Diocese of Western New York, do hereby accuse the Reverend A. S. Crapsey, a minister of the Protestant Episcopal Church in the United States of America, of misconduct as a presbyter of the church, and do charge him with violation of the constitution of the church, the general canons of the church, the canons of said diocese, and with violations of his ordination vows as such presbyter, in a manner and in the particulars hereinafter set forth.

In support of said charges we do respectfully represent and show the following facts:

(1) That St. Andrew's Church, in the city of Rochester and the state of New York, is and was at all of the times hereinafter mentioned an organized parish church of the Diocese of Western New York.

(2) That the said Reverend Algernon Sidney Crapsey is now and was at all of the times hereinafter mentioned a presbyter of the Protestant Episcopal Church in the United States of America and a rector of the said St. Andrew's Church in the city of Rochester.

(3) That all of the statements hereinafter quoted or referred to were made and uttered, and that all of the sermons hereinafter quoted or referred to were delivered, by the said Reverend Algernon Sidney Crapsey in his official capacity as a presbyter of the church and rector of the said St. Andrew's Church.

(4) That during the year 1904 and 1905 the said Reverend Algernon Sidney Crapsey delivered a series of sermons which he thereafter caused to be published in book form under the title of "Religion and Politics"; and that said book was published, sold, and circulated with the permission, consent, and authorization of the said presbyter.

And, in particular, we do hereby make and present the

following specific charges against the said Algernon Sidney Crapsey as a presbyter of the church, to wit:

CHARGE NO. 1.—That the said Reverend Algernon Sidney Crapsey has violated Canon Twenty-three of the General Canons of the church and, in particular, Sub-section of Section 1 thereof.

SPECIFICATION NO. 1.—That at divers times during the year 1904 and 1905 the said presbyter did openly, advisedly, publicly and privately utter, avow, declare and teach doctrines contrary to those held and received by the Protestant Episcopal Church in the United States of America, by the delivery of the sermons thereafter published in said book, "Religion and Politics," and among other statements in said sermons in particular by the use therein of the following language, words and terms, said language being set out in said book at the pages hereinafter indicated.

(1) "Seventy-three years after the death of Julius Caesar, fifteen years after the death of Octavianus Caesar, called Augustus, in the reign of Tiberius Caesar, Jesus of Nazareth, the son of Joseph, a carpenter of upper Galilee, laid aside the tools of His trade and went down to the crossing of the Jordan near Jericho; attracted by the preaching of a new and strange preacher, who was stirring up the people by his vigorous denunciations of the evils of his day, calling the people to repentance, and proclaiming the immediate coming of the Kingdom of God." (Page 31.)

(2) "The history of Jesus is the product of historic causes. He was born in due time to meet a great opportunity. When Jesus left Nazareth to enter public life human society was ready for the greatest revolution in its history, and Jesus was the man created for the purpose of inaugurating the movement that was to change the base of human life, making love instead of fear the motive of human action; resting all government upon persuasion and consent, rather than upon force; and so creating a new ideal for human endeavor." (Pages 32-33.)

(3) "It may be difficult for us to think of Jesus as in this critical and hostile attitude toward the state. We have thought of Him so long as a mythological being; we have talked of Him so long as a metaphysical abstraction, and have placed Him for centuries out of the reach of human

vicissitudes, at the right hand of the Majesty on high, that we cannot view Him in His historical relations without a shock to our reverence. Yet this historical Jesus is the real Jesus, the man of God who founded the religion called Christian, and from whose life and teaching the institution called the church had its origin." (Pages 49-50.)

(4) "If Jesus was a man, such as His history shows Him to be, and lived at the time when history says He did, then He must have seen all of these iniquities, and, having seen, He could not help condemning; and this condemnation led Him to conceive of a society in which none of these evils should have a place, a society in which rulers should not lord it over the people." (Pages 50-51.)

(5) "At the beginning of His ministry Jesus was all aglow with enthusiasm. He expected that the Kingdom of God which He preached would be accepted by His own people with joyful acclaim. He judged others by Himself. To Him the Kingdom of God was the simplest thing in the world. It was to love the Lord His God with all His heart and soul and mind and strength, and to love His neighbor as Himself. To Him righteousness was the supreme good, and pure love the supreme motive of life. Let absolute righteousness be the end for which man lives, and pure love the motive of all his actions, and the Kingdom of God is here; for the Kingdom of God is righteousness and holiness, perfect justice and burning love.

"There is nothing more pathetic in human history than the sublime confidence with which the Prophet of Galilee set forth these ideal truths to the men of His generation. To Him they were axioms—the self-evident truths of the moral life. Their rejection by the leaders of His people filled Him with astonishment, indignation, and anger." (Page 65-66.)

(6) "So great a catastrophe did this seem to Jesus that He expected it to be followed at once by an equally great catastrophe in nature. The rejection of the Kingdom of God by His people was to Jesus the end of the world." (Page 67.)

(7) "He has made the little hill tribe of Judah the master people of the world; because of Jesus the folk-lore of the Hebrew has become the sacred history of the Western world, and the heroes of Israel the heroes of mankind. Jesus to-day

has the leadership of man, and human evolution must follow the lines laid down by the life of the Man of Nazareth." (Page 82.)

(8) "Jesus did not succeed because He was born of a virgin or because He was reported to have risen bodily from the dead. These legends concerning Him are the result, not the cause, of the marvelous success of the man. These stories were told of Him only because the simple folk could in no other way adequately express their conception of the greatness of Jesus. Only a virgin-born could be as pure as Jesus. Only a Son of God could be as great as Jesus. Only a life more powerful than death could have the strength of Jesus. The creeds of Christendom are of value, not as historical statements, for the primitive and mediæval Christian had no historical sense." (Page 83.)

(9) "Jesus was wise enough to see that physical force can only decide physical questions. He knew as well as Bonaparte that God is always on the side of the strongest battalions and the more skillful commander." (Pages 87-88.)

(10) "Christianity, depraved by a corrupt priesthood, weakened by secession after secession of Nestorian, Euty-chian, and other heretics; worn out by endless contentions; worshiping trinities, angels, saints and martyrs, had no power to withstand the enthusiasts who rushed out of the Arabian desert with their stern, monotheistic creed." (Pages 135-136.)

(11) "It is the constant temptation of the King-made bishop to attune his message to the Kingly ear. When the King is to be rebuked, you must not ask that task of the courtier prelate, but must call in some rough, rude man of the people, some man like Elijah the Tishbite, or John the Baptist, or Jesus of Nazareth." (Page 230.)

(12) "The religion of miracle which the primitive imagination created held full possession of the world down to the beginning of the scientific era; which era may be roughly dated from the publication by Copernicus of *De Orbium Cœlestium Revolutionibus* in 1530, which affirmed the fact of the revolution of the earth on its axis and its annual journey around the sun. From that day to this the religion of the reason has been in conflict with the religion of the fancy, and

truth has been contending with imagination. Slowly, but surely, scientific reason has reconstructed the universe. It has driven the vast horde of ancient gods and demons into the limbo of things impossible. It has made the primitive miracle incredible, because the ancient miracle and the modern conception of law cannot co-exist in the same mind." (Page 286.)

(13) "But in spite of their rejection of all miracles in the so-called pagan world, in the mediæval church, and in modern times, the great Protestant national churches and denominations base all their teachings upon the miracle. They claim that their religion is the one exception in the religious history of the world. All other religions are the products of historical causes. The ancient religions sprang from man's imaginative interpretation of nature. They contain elements of eternal truths, but in their conception of their relation of the gods to the natural world everyone knows that they were in error. But, when we come to our own religion we affirm what we deny in regard to the religions of ancient and mediæval times, and we base our belief in our miraculous religion upon our possession of a miraculous book." (Pages 287-288.)

(14) "In the light of scientific research, the Founder of Christianity no longer stands apart from the common destiny of man in life and death, but He is in all things physical like as we are, born as we are born, dying as we die, and both in life and death in the keeping of that same Divine Power, that heavenly Fatherhood, which delivers us from the womb and carries us down to the grave. When we come to know Jesus in His historical relations, we see that miracle is not a help; It is a hindrance to an intelligent comprehension of His person, His character, and His mission. We are not alarmed, we are relieved, when scientific history proves to us that the fact of His miraculous birth was unknown to Himself, unknown to His mother, and unknown to the whole Christian community of the first generation." (Pages 288-289.)

(15) "And as for you, O ye unprivileged classes, who have been put off with words about trinities and unities, about incarnations and personalities, the worn-out terminology of the Greek dialectic; and have been told that to say these

things is true religion—know this, that pure religion and undefiled before God and the Father is this: "To visit the fatherless and the widow in their affliction, and keep himself unspotted from the world.'" (Page 325.)

It being intended by said language, words and terms to express the presbyter's disbelief in and to impugn and to deny the following doctrines, to wit:

(1) The doctrine that our Lord Jesus Christ is God, the Saviour of the world, as contained and enunciated in the Apostles' Creed and the Nicene Creed, as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

(2) The doctrine that our Lord Jesus Christ was conceived by the Holy Ghost, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

(3) The doctrine of the virgin birth of our Lord Jesus Christ, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

(4) The doctrine of the resurrection of our blessed Lord and Saviour, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

(5) The doctrine of the blessed Trinity, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

SPECIFICATION No. 2—That on or about the thirty-first day of December, 1905, the said presbyter did openly, publicly and privately utter, avow, declare and teach doctrines contrary to those held and received by the Protestant Episcopal Church in the United States of America, by the delivery of a sermon on said date, in the course of which, among others, he made in substance the following distinct statements:

(1) "Jesus was born of parents belonging to the middle class."

(2) "He was born of a simple father and mother."

(3) "He was the son of a carpenter."

(4) "The fact that the early Christians predicted a miraculous birth of Jesus was to be regarded as one of the greatest misfortunes that had ever befallen mankind."

It being intended by the said language, words and terms to express the presbyter's disbelief in and to impugn and deny the following doctrines, to wit:

(1) The doctrine that our Lord Jesus Christ is God, the Saviour of the world, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

(2) The doctrine that our Lord Jesus Christ was conceived by the Holy Ghost, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

(3) The doctrine of the virgin birth of our Lord Jesus Christ, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer in the Protestant Episcopal Church in the United States of America.

(4) The doctrine of the blessed Trinity, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

CHARGE NO. TWO.

That the said Reverend Algernon Sidney Crapsey has violated Canon Twenty-three of the General Canons of the church and, in particular, subdivision (f) of section one thereof.

SPECIFICATION No. 1.—We repeat and reiterate entire charge one and specifications one and two thereof as fully to all intents and purposes as if the same were here fully repeated and set forth, and we do further charge that at

the time and in the manner therein specified the said presbyter did by his said utterances and conduct violate and break the following declaration made by him at the time of his ordination, to wit:

(1.) "I do believe the Holy Scriptures of the Old and New Testament to be the word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to the Doctrine, Discipline, and Worship of the Protestant Episcopal Church in the United States of America."

And also did by his said utterances and conduct violate and break the following ordination vows taken by him, to wit:

(2.) "Will you then give your faithful diligence always so to minister the Doctrine and Sacraments, and the Discipline of Christ as the Lord hath commanded and as this Church hath received the same, according to the Commandments of God, so that you may teach the people committed to your Cure and Charge with all diligence to keep and observe the same?"

Answer: "I will so do by the help of the Lord."

(3.) "Will you be ready with all faithful diligence, to banish and drive away from the Church all erroneous and strange doctrines contrary to God's Word; and to use both public and private monitions and exhortations, as well to the sick as to the whole within your Cures, as need shall require and occasion shall be given?"

Answer: "I will, the Lord being my helper."

SPECIFICATION No. 2.—We allege that upon many occasions during the year 1904 and 1905 the said presbyter did publicly use the liturgy of the church, as set forth in the Book of Common Prayer, and did minister to many people the sacraments of the church, and we charge that by his conduct in so doing, taken in connection with his public utterances, above quoted, he violated and broke the following ordination vows taken by him, to wit:

(4.) "Will you be diligent to frame and fashion your own selves and your families according to the Doctrine of Christ, and to make both yourselves and them, as much as in you lieth, wholesome examples and patterns to the flock of Christ?"

Answer: "I will apply myself thereto, the Lord being my helper."

(5.) "Will you maintain and set forward, as much as lieth in you, quietness, peace, and love among all Christian people, and especially among them that are or shall be committed to your care?"

Answer: "I will do so, the Lord being my helper."

Wherefore, we, the Standing Committee of the Diocese of Western New York, this date in a formal meeting assembled, do hereby respectfully adopt and make this presentment against the said Reverend Algernon Sidney Crapsey, and do pray that he may forthwith be brought to trial thereon.

Dated at the city of Buffalo, in the Diocese of Western New York, this twenty-third day of February, in the year of our Lord 1906.

J. A. REGESTER,
WALTER NORTH,
CHARLES H. SMITH,
ANDREW J. GRAHAM,
HENRY REED HOPKINS,
SELDEN S. BROWN,
HENRY B. HATHAWAY,

Standing Committee of the Diocese of Western New York.

Diocese of Western New York.

I, the undersigned, as Secretary of the Standing Committee of the Diocese of Western New York, do hereby certify that the foregoing presentment was duly adopted at a formal meeting of the standing committee, duly called and held at St. Paul's parish house, in the city of Buffalo, on the 23d day of February, 1906; and further that the names signed in the foregoing presentment are those of a majority of the whole standing committee of said diocese.

Dated at Buffalo, N. Y., this 23d day of February, 1906.

WALTER NORTH,

Secretary of the Standing Committee of the Diocese of Western New York.

Diocese of Western New York. In the matter of the presentment of Reverend Algernon Sidney Crapsey, for trial upon certain charges.

I, Selden S. Brown, Chancellor of the Diocese of Western New York, do hereby certify that the foregoing is a true copy of the presentment in the above entitled proceeding, and of the indorsement thereon of the allowance thereof by William D. Walker, Bishop of the Diocese of Western New York, delivered to me by said bishop on the third day of March, 1906; and I further certify that a copy of the citation and order, respectively annexed to said copy of presentment, are true copies of the original citation and order in said proceeding, delivered to me by said bishop on said third day of March, 1906.

In witness whereof I have hereunto set my hand this 3d day of March, 1906.

SELDEN S. BROWN;
Chancellor of the Diocese of Western New York.

THE TRIAL.

DIOCESE OF WESTERN NEW YORK.

In the Matter of the Presentment of the REVEREND ALGERNON SIDNEY CRAPSEY, for Trial Upon Certain Charges.

Pursuant to order the Ecclesiastical Court of the Diocese of Western New York met in St. James Parish House, Batavia, N. Y., Tuesday, April 17, 1906, for the trial of the Rev. Algernon Sidney Crapsey, D. D., Rector of St. Andrew's Church, Rochester, N. Y., upon the presentment made by the standing committee of the diocese. Previous to the session the members of the Court attended a celebration of the Holy Communion at ten o'clock in St. James Church, and later chose the Rev. Walter C. Roberts of Corning, President, the Rev. Charles H. Boynton, Ph. D., of Geneseo, Clerk; the following: the Rev. Francis S. Dunham, Ph. D., of Albion, the Rev. G. Sherman Burrows of North Tonawanda, and the Rev. John Mills Gilbert of Phelps, being associates.

By appointment of the Bishop, Judge Safford E. North, of Batavia, sat as assessor to the Court.

President Roberts opened the Court at 11 o'clock A. M. with an invocation of the Holy Trinity and a prayer for direction.

The presenters in the action were represented by their counsel, Mr. John Lord O'Brian, and by a sub-committee consisting of Rev. Walter North, L. H. D., Rev. Andrew J. Graham, and Henry R. Hopkins, M. D.; and the respondent by Hon. James Breck Perkins as counsel.

By MR. O'BRIAN: May it please the Court, I move the trial of the Rev. Dr. Crapsey upon the presentment as made by the standing committee.

By the PRESIDENT: The trial will proceed.

By MR. O'BRIAN: I desire to announce as my associate counsel Hon. John H. Stiness, Mr. Franklin D. Locke, and the Rev. Francis J. Hall, D. D.

By MR. PERKINS: I desire to state that the Hon. Edward M. Shepard will be associated with me as counsel for the defense.

I would like to ask the pleasure of the Court as to the filing of our answer to the presentment. We are ready and willing to file the answer now, or, if preferred will defer it until after an application for adjournment is made.

By MR. O'BRIAN: We would like to have the answer filed immediately in order that the prosecution may be informed as to the line of defense.

The Court directed the answer to be filed, which was as follows:

DIOCESE OF WESTERN NEW YORK.

In the Matter of the Presentment of the REVEREND ALGERNON SIDNEY CRAPSEY, for Trial Upon Certain Charges.

"The answer of the Reverend Algernon Sidney Crapsey to the presentment made against him, dated February 23rd, 1906, by J. A. Register and others, respectfully shows:

"That he is a presbyter of the Protestant Episcopal Church and Rector of St. Andrew's Church, a parish church in the Diocese of Western New York and has been such for twenty-seven years, and that he has during all that period used the liturgy of the church and ministered to the people the sacraments thereof. That he admits the publication by him of the book known as 'Religion and Politics,' as in the presentment stated; and he admits that the passages quoted from the book and set forth in the presentment are contained in said book; and he admits that the lectures contained in said book were delivered at St. Andrew's Church; but he refers herewith to all the other statements contained in said book for further explanation of the views advanced by him; and begs leave to present to this Court such portions thereof as he may be allowed.

"And the said respondent further says that he was ordained as a presbyter of the Protestant Episcopal Church on or about the 1st day of September, 1873, by Horatio Potter, Bishop of the Diocese of New York, in said church; and at said ordination he answered in the affirmative to all the questions contained in the Ordinal in the Book of Common Prayer. That among the questions so contained are the following:

"'Are you persuaded that the Holy Scriptures contain all Doctrine required as necessary for eternal salvation through faith in Jesus Christ? And are you determined out of the said

Scriptures to instruct the people committed to your charge, and to teach nothing, as necessary to eternal salvation, but that which you shall be persuaded may be concluded and proved by the Scripture?"

"Will you be ready, with all faithful diligence, to banish and drive away from the Church all erroneous and strange doctrines contrary to God's Word; and to use both public and private monitions and exhortations, as well to the sick as to the whole, within your Cures, as need shall require, and occasion shall be given?"

"Will you be diligent in Prayers, and in reading the Holy Scriptures, and in such studies as help to the knowledge of the same, laying aside the study of the world and the flesh?"

"To all of which he answered in the affirmative.

"And the said respondent further answering specification two of the said presentment denies the same.

"And the said respondent further answering charge one and charge two of the said presentment denies the same and each and every part thereof; except so far as he has admitted the statements contained in specification one of charge one as hereinbefore answered unto.

"And this respondent further answering says that he has taught or declared nothing in the passages referred to in said specification, or elsewhere, except what is contained in the Holy Scriptures, and except what he is persuaded may be concluded and proved by the Holy Scriptures.

"And this respondent further answering says that in the year 1905 the Right Reverend William D. Walker, Bishop of the Diocese of Western New York, upon the advice of the standing committee of said diocese, appointed five persons to investigate charges made against this respondent, and to ascertain and report whether he had been guilty of any offence for which he was liable to be tried. That the five persons so appointed thereupon proceeded to investigate the matter thus referred to them and examined this respondent and the said book known as 'Religion and Politics' and the contents thereof, and that thereafter and on or about October 1st, 1905, the said persons so appointed duly certified in writing to the said bishop that in their opinion there was no cause for a presentment against this

respondent, and that he had not been guilty of any offence for which he was liable to be tried.

"And this respondent further says that he is advised that, by reason of the appointment of the said persons by the said bishop, and the investigation made by them and the report made by them thereon, and its acceptance by the said bishop, the standing committee of this diocese had no further jurisdiction to make a presentment against this respondent, and this proceeding cannot be sustained and is contrary to the ordinances and canons of the Diocese of Western New York and of the Protestant Episcopal Church in the United States of America.

"And this respondent further answering respectfully objects and protests that the presentment herein made against him by J. A. Register and others of the Standing Committee of the Diocese of Western New York, and dated the 23rd day of February, in the year of our Lord one thousand nine hundred and six, involves questions of doctrine, faith and worship; that the court of appeals provided by Article IX of the Constitution of the Protestant Episcopal Church in the United States of America, has not yet been established by the general convention of such church; and that the Court of the Diocese of Western New York cannot lawfully or properly entertain or consider the charges made in the said presentment, for the reason that they involve questions of doctrine, faith and worship.

"WHEREFORE, he prays that the said presentment and the said charges against him may be dismissed.

(Signed) ALGERNON S. CRAPSEY.

JAMES BRECK PERKINS,

EDWARD M. SHEPARD,

of Counsel."

By MR. PERKINS: If it please the Court, I desire now to make application for an adjournment of this case until some time about the middle of June.

It will be almost impossible for me to attend to this matter before the middle of June. As my engagement in Washington is regarded as proper reason for an adjournment by the courts in this State, it would seem strange if an ecclesiastical court should decline to abide by such a rule.

In addition to this, Mr. Edward M. Shepard of New York

is to appear in this case for Dr. Crapsey. He cannot attend at present. It may be said that Dr. Crapsey does not require the services of two counsel, but this is not a case which involves merely the question whether Dr. Crapsey shall remain a clergyman in the Episcopal Church. If that were all, it is most unlikely that Mr. Shepard would have appeared in the matter. He appears in name for Dr. Crapsey, but in reality for the thousands and hundreds of thousands of earnest churchmen who are awaiting with anxiety the decision which this Court will make.

He appears for those who think it is not Dr. Crapsey who is on trial, but the church we call and would fain believe to be the Catholic Church. He appears for those who desire their church shall be catholic in truth as well as in name; that it shall not be narrowed into a sect, but shall broaden into a body whose activity shall ever become larger and whose usefulness shall ever become greater. You are not passing upon Dr. Crapsey's application, but upon the application of those great bodies of Christian men and women who fear that harm may be done the church they love, who ask to be heard and to whose application I am sure this Court will not turn a deaf ear. You are passing upon the application of thousands of sincere churchmen, of earnest thinkers who feel that if there is no room for Dr. Crapsey in the Episcopal Church there is no room for them.

There is another suggestion which I may properly make. The application for an adjournment is not made entirely, or perhaps chiefly, on the ground of the convenience of counsel. You may say that Dr. Crapsey need have no counsel, but surely for the preparation for a trial which must be to him the most important event of his life time, this Court, any court, would allow ample time to the respondent himself. There is no apparent reason why this trial should now be pressed with unwonted haste. If such a procedure is adopted, it will surely be said that it savors not of prosecution, but persecution.

In a trial which may have such far-reaching effect, all must desire that there should be no suspicion cast upon the fairness of the decision, that no one shall have cause to allege that abundant time was not given for the study of the questions which are submitted. The statements made by Dr. Crapsey

were published long ago, they have been long ago brought to the attention of the church. The committee which was appointed to investigate them by the bishop, after much deliberation, reported that this prosecution should not be brought. Surely Dr. Crapsey is not responsible for this. Had the opinion of the committee appointed by the bishop been other than it was both Dr. Crapsey and myself would last autumn have been ready to attend to the matter.

It has been long delayed, and now is brought at a time when Dr. Crapsey's counsel is engaged in public duties and when Dr. Crapsey is engaged in the far more important duties which he owes to his people, his church and his God.

The holy season has just closed which this church specially sets apart for frequent service, for constant prayer, for spiritual communion. It is a season when any faithful clergyman of the church should in a special degree give his time to the needs of his flock, to the services of his church, to prayer and ministration. This presentment was served on Dr. Crapsey at the beginning of Lent. Was he to devote five weeks of Lent to prepare for this case, or was he to devote them to the faithful performance of the work required of him at this holy season? He has done the latter. Will this Court now say that within forty-eight hours from Easter, he should be forced to proceed upon this trial, himself unprepared, his counsel absent?

Is a clergyman, in the season of Lent, to neglect the interests of the church, and of his flock, that he may prepare to guard interests of his own? Will this Court say that Dr. Crapsey should have spent the forty days of Lent, not in laboring for the parish of St. Andrew's, but in preparing to meet charges made against him? The gentlemen whom I see here taking note of every word that falls, are ready to convey to the great community watching us, what rule in such a case the church lays down.

In this connection I would like the permission of the Court to read a petition made by sundry clergymen and laymen of the diocese and addressed to the bishop requesting an adjournment until after the diocesan council to be held May 15th. My first knowledge of this was obtained when I saw it in the public press, and I need hardly add, therefore, that I disclaim all personal responsibility for it, but I have reason to believe, how-

ever, that had time been allowed the number of signers might have been materially increased.

By the PRESIDENT: Counsel may read the petition.

"REVEREND FATHER IN GOD:—

"The trial of Rev. Algernon S. Crapsey having been duly set for April 17 next, we, the undersigned, respectively submit to you our request that the trial of the presentment against Dr. Crapsey be postponed or adjourned until after the meeting of the annual council of the diocese in May, and we urge this request without regard to any opinion, for or against the accused, upon the merits of the presentment.

"Following are the reasons for this request:

"The good of the church requires its officers to see that there be no just grounds for criticism of the fairness of the trial of the accused or of any proceedings affecting the trial. The canons of this diocese clearly provide that the members of the court shall be elected by the diocesan council and plainly contemplate a trial by a court, the majority of which shall have been so elected. One member of the existing court, Rev. Francis C. Dunham, has been appointed by the standing committee on nomination of the bishop, since the election of the court by the council, to fill the vacancy created by the resignation of Rev. W. F. Faber, D. D. In the pending case, the accused has challenged two other members of the court, thus creating vacancies which must be filled by appointment by the standing committee on nomination by the bishop. Thus the majority of the members of the court will have been appointed by the standing committee and not elected by the council. But the standing committee is the accuser of Dr. Crapsey.

"If the court so constituted should render judgment against the accused, the bishop of the diocese in the exercise of the power of review conferred upon him by the canon might set aside the decision of the court and either dismiss the presentment or grant the accused a new trial. But the bishop would be in a position of reviewing the judgment of a court a majority of whose members he had nominated.

"If the judgment be rendered by a court constituted by the accusers of Dr. Crapsey; if that judgment be reviewed by the officer who has nominated a majority of the members of the

court, it will be impossible to disarm criticism of the fairness and justice of the result. And such criticism will surely follow to the lasting injury of the church.

"We therefore most earnestly beg your favorable consideration of our petition and ask that you transmit it to the Court with your approval.

"Dated, April 9, 1906.

"REV. EDWARD M. DUFF, Rector of St. Thomas's Church, Buffalo.

"REV. EDWIN S. HOFFMAN, D. D., Rector of Christ Church, Hornellsville.

"REV. CAMERON J. DAVIS, Rector of Trinity Church, Buffalo.

"REV. GEORGE B. RICHARDS, Rector of Church of the Ascension, Buffalo.

"REV. R. R. M. CONVERSE, D. D., Rector of St. Luke's Church, Rochester.

"REV. LANGDON C. STEWARDSON, D. D., President of Hobart College, Geneva.

"REV. JOSEPH A. LEIGHTON, PH. D., Chaplain of Hobart College, Geneva.

"REV. MURRAY BARTLETT, Rector of St. Paul's Church, Rochester.

"HON. NATHANIEL FOOTE, Justice Supreme Court, Rochester.

"HON. WILLIAM J. TULLY, State senator, Corning.

"HON. GEORGE A. CARNAHAN, former mayor of Rochester.

"GEORGE GORHAM, Lawyer, Buffalo.

"WILLIAM E. FOSTER, Editor *Buffalo Commercial*.

"RUFUS A. SIBLEY, delegate to the General Convention from the Diocese of Western New York.

"V. MOREAU SMITH, Treasurer of the Diocese of Western New York."

By MR. O'BRIAN: I most earnestly object to this application for an adjournment being favorably considered. In opposing the request, I desire to be reasonable; and I have no intention of criticising the action of the defence in making the request. It is our desire to have this trial conducted temperately, and with the greatest possible degree of fairness. We do not desire any

action taken which would cause the motives of this Court to be impugned; and we do not wish the impression to go abroad that any coercion has been used in our insisting upon an immediate trial. The standing committee has nothing to gain from any such action; but we believe at the same time that the questions here involved have been looked at too much from the standpoint of one individual, and too little from the standpoint of the church at large, and that they should be disposed of without delay. They are questions which concern, as Mr. Perkins has said, many thousands of churchmen: and it is but just to these men that the questions should be answered at once. Much has been said of justice to the defence: what answer is the church to make to the thousands of anxious souls who have been confused and pained by this situation and who are asking what is the teaching of the church?

The issues here raised have been much misunderstood: and in consequence great injustice has been done to the standing committee of this diocese. I blame myself for the situation in which they find themselves placed before the public; because, influenced by an old ideal of professional ethics, I refused to discuss this case in the public press and asked that the members of the standing committee submit to the same iron rule of silence to which I myself conformed. As a result, one side of this case has been thoroughly tried out in the newspapers all over the country, and some very good men held up to unjust criticism. They have been criticised, not by Dr. Crapsey or his counsel, but by many strangers who have failed to understand the situation. The members of this committee are men who were elected by the council of this diocese. Many of them have served for many years on that important committee. Some of them I have known all my life and I know that they are all animated solely by a sense of duty in this matter. They have performed simply what seemed to them their manifest duty in finding this presentment, and in instituting this inquiry. And in passing I call your attention to the fact that they were unanimous in making this presentment. Now after all this agitation in the press, they find their motives impugned, their characters traduced, their dignity and silence misinterpreted as weakness and arrogance. For all this I blame myself: but, if the position of any man is to be considered, surely

these men have the right to ask that an immediate trial be had of this matter.

It is true that the issues are of great importance but still they are simple ones. I differ from Mr. Perkins and believe that it will not require a great deal of time to dispose of this case. The church is not here on trial: its doctrines are not here at issue. The only questions before this Court are: what are the teachings of the defendant, and do those teachings conform to the doctrines of Christ "as this church hath received the same." Dr. Crapsey could tell us in a few minutes here this morning what his position is and what his teachings are. So far as the convenience of counsel is concerned, surely this case is of as much importance as any merely temporal matter. If Mr. Perkins felt that the duties at Washington hindered him in his work in this case I think he should have refused to act as counsel: and as for his contention that he has not had sufficient time for preparation, while the prosecution has been getting its case ready for a year, I think this is not a fair statement, as I myself came into the case not more than two months ago, and several weeks prior to my doing so, I read in the public press that Mr. Perkins and Mr. Shepard had been retained.

Upon its merits this request is a most extraordinary one instead of an ordinary one, as it has been characterized by Mr. Perkins. Here is a case regularly presented and properly brought on for trial. The defendant has exercised his right to challenge certain members of the Court; the vacancies have been regularly filled; and now on the trial day you are asked to adjourn this case to a date beyond the life of this Court, that is, until after the meeting of the next diocesan council. Consider the technical objections to such a course. Can any court adjourn a case beyond its own life? Suppose at the next council a new court and a new standing committee are elected, the present ones going out of existence, what will become of this case? Would the presentment and the case still stand? Would it be regularly before the new court? If so, would the new standing committee be regarded as the presentors? These points raise very serious questions and questions upon which there are no precedents. And although I dislike to mention it here, the item of expense to the diocese should also be considered. Great preparation has been made for the trial of this case on this date; and a great deal

of work has been done in connection with it, which in the event of such a postponement would probably all have to be done over again. We are here and ready this morning; Prof. Hall has come on from Chicago; Judge Stiness has come from Providence; and I ask the Court to consider the difficulty and the expense in arranging these details over again. It should be remembered also that if a new court and a new standing committee should be elected by the next council, any three presbyters can make a new presentment and thus start this proceeding over again. With the Court regularly constituted, and the procedure all regular and in accordance with the laws of the church, it would be an ugly as well as a most remarkable precedent to throw this whole case over upon such a request as has been presented. It is scarcely right to demand that a whole judicial system be abolished, merely because, before it is tested, some one fancies that the defendant may not receive fair treatment. Let not pique or wounded sensibilities offset the justice and equity of the laws of the church.

Furthermore, it seems to me that the true object of this request is to try this case out in the next diocesan council, a mixed body of clergymen and laymen, in the hope of their disposing of it. I submit that this would be an improper and hazardous course, for such important questions of church law as are here raised should be disposed of by men chosen for that purpose, and should not be submitted to the accidental decision of a mere majority vote in such a mixed body. Besides it would be difficult now to try in such a way the important questions here involved because of the increasing difficulty of finding men who would be open-minded and who would weigh the evidence without prejudice. To delay the trial of this case is to accentuate what has been made a public scandal, to increase an unfounded and unreasonable panic which now exists in some quarters. We are apt to forget that the complaint here is after all one of false teaching. If false teaching is still going on it should be stopped; the church should not stand supine and delay its declaration of truth. In our opinion it is the duty of this Court to make the necessary inquiry at once and to make the truth clear to the whole church;—the responsibility is not ours but yours.

And this petition here presented to you, although it is not addressed to you, is wholly specious, despite the evident sin-

cerity of its signers. It shows a lack of logic in their minds; for in its last analysis its request rests upon a presumption of bias, a suspicion of interference, of dishonesty. This reflection applies not only to the members of the standing committee, but to the bishop of the diocese who made the appointments to fill the vacancies of the Court and to the members of the Court themselves. If it were my affair I should call the petition impertinent. It is but right to assume that no member of this Court will permit himself to be swayed from the path of justice. This is a court of justice, and all we seek is the truth. We are the ones who will be held responsible by the public opinion and we accept the responsibility, believing that our course in the end cannot but disarm criticism. We should not refuse to face this situation. This Court cannot make or unmake truth: the truth is strong enough to stand alone; and if the doctrines of the church are wrong the Master will right them. Fear and weakness will never aid in discovering truth and our church is not a coward church, but stands for a faith fearless and unafraid. The duty of this Court lies not only to the defendant, but to the many children of the church who now confused are crying to know what is truth and what is the faith of the church.

On behalf of the standing committee, I therefore earnestly ask that this trial now proceed. If it shall be found that the defendant has not preached doctrines contrary to those held by the church, none will be more glad than the members of the standing committee. Their part in this matter is a painful one but in justice to the church at large, I hope that this Court will not be guided by the request for adjournment, and that the trial will go on without delay.

By THE PRESIDENT. The Court will take this application under consideration and report after the noon recess.

Recess until 2 P. M.

AFTERNOON SESSION:

By THE PRESIDENT: By a vote of four to one, the Rev. Dr. Dunham dissenting, the Court denies the application for an adjournment and directs the trial to proceed.

By MR. PERKINS: I must say that we are entirely unprepared for such a decision. We have been telling no

fairy tales. The defense is unable to go on with the trial at this time, and if this ruling is adhered to the case must go by default.

By MR. O'BRIAN: We desire to take no unreasonable advantage of the defense, and do not wish the matter to go by default. We submit, however, that the trial was set for this day and that counsel for the defense should have been ready. The prosecution is here and prepared to proceed and any lengthy delay would cause great inconvenience.

By THE PRESIDENT: The Court is willing to entertain a motion for adjournment to a fitting but not distant day.

By MR. O'BRIAN: Would a week be agreeable to Mr. Perkins?

By MR. PERKINS: Every day is of value under present conditions, and if the prosecution will consent to an adjournment to Wednesday, April 25th, we will try to be ready.

By MR. O'BRIAN: That is satisfactory.

By Mr. PERKINS: If it be possible I would like the place to be changed to one more easy of access and with more suitable surroundings than Batavia, say Rochester or Buffalo.

By MR. O'BRIAN: If any change were made, Buffalo would be the more fitting place as being the See City of the diocese, but any change whatever would seem to me unwise.

I desire to reserve the right to make additional answer or motion as to the answer already submitted.

By MR. PERKINS: I, also reserve the right to make further answer or motion as to the jurisdiction or composition of the Court.

By THE PRESIDENT: This Court is now adjourned to Wednesday, April 25th, at 11 o'clock A. M., in this place.

PROCEEDINGS OF APRIL 25, 1906. 11 A. M.

The Court met at the Rectory of St. James Church and adjourned to the Court House, at Batavia, N. Y., at which place the trial was held.

Appearances:—

Dr. Francis E. Hall, Ecclesiastical Counsel; John Lord

O'Brian, Esq., Hon. J. H. Stiness and Franklin D. Locke, Esq., of counsel for the Prosecution.

Dr. Elwood Worcester, Dr. Samuel McComb, Ecclesiastical Counsel; Hon. James Breck Perkins and Edward M. Shepard, Esq., of counsel for Respondent.

By MR. NORTH: Before the Court proceeds, I have this suggestion to make—the stenographer will take it:

It is stipulated that Richard W. Walsh, one of the official stenographers of the Supreme Court for the Eighth Judicial District, be and he is hereby designated as the stenographer of this Court, and the minutes of the proceedings taken by him shall constitute the minutes and records for this trial. Is that satisfactory?

By MR. PERKINS: I see no objection to that.

By MR. O'BRIAN: It is entirely agreeable to me.

By MR. NORTH: This in addition is added as a suggestion for the consideration of the counsel: In view of the inconvenience of recalling the witnesses, it is further stipulated that the provision of the canon requiring all evidence to be signed by the persons giving the same be and the same hereby is waived. Is that agreeable Mr. Perkins?

By MR. PERKINS: I think so.

By MR. NORTH: What do you say to that, Mr. O'Brian?

By MR. O'BRIAN: I am agreeable.

By MR. PERKINS: Are you ready?

By MR. O'BRIAN: Yes.

By MR. PERKINS: I wish first to express my thanks to the Court for having designated this place for the trial. It has seemed to us that it was evidently impossible that the public should attend the hearings to which by law they have the right, when the trial commenced, and I had proposed to make a request that the place of the trial might be changed to some proper place. It gives me great pleasure to find that the Court has already anticipated our desire and made the change which we should have requested.

I wish further to make this suggestion with reference to the minutes of the proceedings. At the last hearing, as the Court

will remember, I made an application for an adjournment and presented the grounds of it to the Court. I do not know how far the stenographer took the minutes of that application, or the grounds of it, and I desire, if necessary, to request that the minutes for the day's hearing, showing the application made in behalf of the defendant for an adjournment, should appear on the minutes of the trial, and also the grounds upon which it was made, and I will state, in case the stenographer did not take what I said, because that often is not taken by the official stenographer, that a memorandum which I had prepared, stating the grounds upon which I should make the application, was published in one of the newspapers—I think perhaps more than one. While I spoke more fully to the Court, yet the printed statement contains the grounds upon which it was made, and I would ask that the Court allow me to furnish the statement to the stenographer, that it may be made a part of the minutes.

By MR. NORTH: I will advise the Court to direct that counsel may file a statement of what was said the other day on his application, and the same be deemed as part of the records of the proceedings.

By MR. O'BRIAN: May I have the privilege of filing the substance of what I said in reply? I have no notes of what I said.

By PRESIDENT ROBERTS: Certainly.

By MR. PERKINS: The statement which I will file will not be all that I said, but the statement furnished to the newspapers, which contains the grounds sufficiently to present any legal questions that may arise.

I shall now, if the Court pleases, in conformity with the permission granted by the Court at the last hearing, file an additional plea as to the composition or jurisdiction of the Court. I wish to say in filing this, what I trust it is unnecessary for me to say, that no one has a higher regard individually for each member of this Court than I have myself, and that feeling I know is shared by my associate, Mr. Shepard, and by the client I represent; but this proceeding involves not only a question of interest and of importance to the church at large, but it involves to the client for whom I appear as counsel appears for a client, personal, professional, and pecuniary rights, you might say. I doubt

Introduced

not it will be claimed that it is within the power of the Court to remove him from the ecclesiastical organization to which he belongs, and from that removal would, of course, follow the result of the loss of the position in the church which he holds, and therefore, that I may save to him any such rights, I file the following additional plea, which I will read to the Court and will then file with the stenographer, that it may appear on the official minutes.

Counsel reads plea as follows :

“DIOCESE OF WESTERN NEW YORK.

In the Matter of the Presentment of the REVEREND ALGERNON SIDNEY CRAPSEY, for Trial Upon Certain Charges.

“The said Algernon Sidney Crapsey, further answering and appearing in the said proceeding, alleges, that this Court should not proceed further in the matter aforesaid, and he objects to the constitution of the said Court for the reasons hereinafter alleged.

“This respondent says that the presentment herein was made by J. A. Register, and others, composing the Standing Committee of the Diocese of Western New York, and that said standing committee did thereby charge him with violating the constitution and canons of the church, and his ordination vows, and did accuse him of using language contrary to the doctrines of the church.

“And this respondent further says that the said presentment has been approved by the Right Reverend William D. Walker, Bishop of the Diocese of Western New York, and the said standing committee and the said bishop have presented the said charge against him and have determined him to be and do believe him to be guilty of the matters therein alleged.

“And this respondent further says that the majority of this Court, as constituted, has been appointed by the said bishop and the said standing committee and the remaining members of the said Court were elected from a list prepared by the said standing committee and submitted to the Council of the Diocese of Western New York.

“And this respondent further says that the Diocesan Council of the Diocese of Western New York will be held on the third Tuesday of May (being the 15th day of May, 1906) and

that at such council the members thereof can select such standing committee and ecclesiastical court as they see fit, so as to represent the true opinion and wish of the diocese as to this prosecution.

"And this respondent further says that the canons of this church direct that any such trial shall be conducted according to the principles of the common law as administered in this state, and that it is contrary to the principles of the common law that the guilt of any person against whom a presentment is made should be passed upon by a court, the majority whereof are designated by the prosecutor or by any person who believes the charges so made to be just. And by reason thereof this respondent insists that any trial of the said presentment before this Court is contrary to the rules of law and is unjust, and the same should not be proceeded with.

"He therefore respectfully asks that the said Court will decline to proceed further with the trial of this case.

"ALGERNON SIDNEY CRAPSEY,

"JAMES BRECK PERKINS,

"EDWARD M. SHEPARD,

"Of Counsel."

By MR. PERKINS: That plea I file, and I take it, Mr. O'Brian, it would be necessary that a ruling should be made thereupon.

By MR. O'BRIAN: Have you a copy of it?

By MR. PERKINS: Yes.

By the PRESIDENT: Has the prosecution any objection to offer to that paper?

By MR. O'BRIAN: Are you going to speak on your motion any further?

By MR. PERKINS: No, we reserved the right to file the plea. I suppose that that plea, which is a plea as to the jurisdiction, requires a decision now.

By MR. O'BRIAN: If you are not going to present any further argument, we will say something.

By MR. PERKINS: I don't think I will.

By MR. O'BRIAN: Will the Court grant me a minute? I would like to say something.

Standing committee - 1883

May it please the Court, I, of course, have no objection to the filing of this answer in order to preserve the rights of the defendant, but I have very decided objections to the granting of the prayer of the petition. It seems to me that the request made by Mr. Perkins shows the same fundamental lack of logic which the sum total of his argument did on the last occasion of the meeting of the court. The approving by the bishop of the presentment in this case, was a purely formal act; it did not necessarily mean that the bishop believed the defendant to be guilty; it merely had the effect of deciding that upon the face of the presentment there was cause for complaint, and when the answer states that the standing committee has determined Dr. Crapsey to be guilty, and has determined him to be and do believe him to be guilty of the matters alleged in the presentment, that again shows, I think, a fundamental misunderstanding of the position of the standing committee. The standing committee and the bishop together constitute something which is analogous to our grand jury: they merely decide that upon the face of the complaint there is ground for complaint, they do not pass upon the question of guilt or innocence; they do not pass upon the evidence; they have no witnesses before them; they know nothing of the defense; they know nothing of the excuses. To say therefore that this Court is not properly constituted, because the standing committee and the bishop have gone through a formal duty imposed upon them, is to me a manifest absurdity.

I have no objection to the filing of the answer, because it raises, of course, merely technical grounds. It certainly would be an ugly precedent that if a court regularly constituted in accordance with the laws of the church, a case regularly brought on before that court, in which the defendant exercises his privilege of challenge, all the steps legally taken, the case come on for trial, the Court is asked to decide that it is not a court, that it has no jurisdiction in the matter, for the reason that originally, long before this presentment was made, it was elected by the council from ~~list~~ named by the standing committee. Now, I emphatically object to the value of the argument which discredits the constitution of this Court. We have here a judicial system which came into existence in the year 1883, a provision for an ecclesiastical court. We have had courts ever since that

one particular man who thought he could not receive a fair trial. I wish to be perfectly fair, I do not wish to characterize the defense of Dr. Crapsey in any manner unfriendly, or to foreclose by implication of expression one right that he may have. I am simply talking about the logical outcome of the situation presented by this answer, and I insist that it a fundamental lack of logic which underlies this whole defect, and it rests ultimately on the presumption of bias, on the presumption that instead of doing their duty conscientiously, the bishop and standing committee have not done so, and upon the presumption that the men appointed to this Court may be unfair. That is the logic of the situation, couch it in as friendly and amicable terms as we desire. This Court is asked to decide that it is not a court, simply for the reason that all of the laws of the church have been carefully complied with, and for further reason that the defendant or his counsel thinks that possibly if this case were delayed and abandoned by this Court, why, a different sort of trial might come up again.

In addition to what I am now saying, all the difficulties which I presented last time as to what would become of this case, come up here again, if this case were thrown over by the council. I went into that last time; I don't think I am called upon to do it again. I say it is based upon a fundamental misunderstanding and misconception—not intentional—of the jurisprudence of the church, and I say that this Court has no right to subvert that whole system and practically abolish itself simply upon the fancied insinuation of partiality and bias, and I respectfully request the Court that the request be denied.

By THE PRESIDENT: The question of filing the paper will be decided by our counsel later.

By MR. NORTH: Mr. Perkins has said the paper would be filed. I understand, however, that he asks for a decision, it being a jurisdictional question.

By MR. PERKINS: The question raised by the answer is a jurisdictional question which, of course, at some time the Court must pass upon. The time when the Court makes its decision, I suppose is for the Court to say; but of course it is a question that must be met at some time because it is not a question on the merits, but it is a plea as to the jurisdiction.

Jurisdiction

time. Now, one man is charged with an offense, which I for one hope that he may be acquitted of, if the testimony proves that he is innocent, because I have no personal bias in the matter. One man is charged with an offense, and at once we are asked to subvert the whole system, to abolish the court, to hold up the whole matter, although every law of the church and every rule laid down by that law has been complied with.

Let me ask, my friend, what will happen at the meeting of the next council? That seems to me to put the answer in the dilemma where it belongs. It states here that there will be a meeting of the council on the 15th day of May, and that at such council the members thereof can select such standing committee and ecclesiastical court as they shall see fit, so as to represent the true opinion and wish of the diocese as to this proceeding. Passing over the implication in that, let me ask this question: Suppose that at the council of the diocese, by some miscarriage of justice, this same court should be elected and the same standing committee should be elected. If there is any force in this answer at all, there is a situation which my friends will have to confront. Suppose on the other hand the members of the present Court should decline to serve, and a new court should be elected, and suppose immediately after it were elected any three priests of the diocese should present this defendant, which they have the right to do, to the bishop, upon the same statement of facts; assuming, which perhaps I have no right to assume, that the bishop would again approve of the form of the presentment, in presenting the same facts to him. Suppose one member of that new court should become seriously ill or remove from the diocese, and his place were to be filled by his being named by the bishop, and the appointment being, so to speak, certified by the new standing committee; and then suppose that the defendant should challenge two other members of the court, where would we be then? If the contention of the defendant be just, what would his position be under those circumstances? He would find himself exactly in the same position which we find ourselves today, and we would be obliged to wait for a new council of the court or for a chance of a fair lot of men being elected, or we should be obliged to entirely remodel a system of jurisprudence, carefully worked out years ago by impartial men, men learned in the law, simply for the sake of meeting a whim of

By MR. NORTH: My advice to the Court at this time is, although a question of jurisdiction should be disposed of on the threshold of the trial ordinarily, that the disposition of this question now be made to overrule the objection at present, with the understanding that the final disposition of it is reserved as part of the entire case. It is quite apparent that if the Court should conclude the objection good that the accused cannot complain, even though the final disposition of it shall be reserved to a later day. The Court will not dispose of it otherwise.

By MR. O'BRIAN: May I add one word, for the purpose of making my position clear on the record? I call the Court's attention to the 14th Ordinance for this Ecclesiastical Court which I will read:

"The court may adjourn from time to time as may be necessary, but always to some place within this diocese; and the trial shall be conducted according to the principles of the common law as administered in this state; and the law of this state relating to evidence shall govern the court except as in these ordinances is otherwise provided."

I call the attention of the Court to the fact that that presumes the existence of a court. The court is not necessarily, although I do not argue the point at length, constituted according to the common law; the court is created by canon law, the conduct of the trial is conducted according to common law, which is an entirely different proposition and entirely distinct. I just add that for the purpose of making my position clear.

By MR. NORTH: The counsel is obviously right in that.

By MR. O'BRIAN: I ask the privilege of adding to my argument, for the purpose of making the record clear, the point contained in Ordinance 14, that the court is presumed to be in existence, that it is the trial that is to be conducted according to common law.

By THE PRESIDENT: The stenographer is directed to make his minutes according to the record given by the counsel.

By MR. PERKINS: In this case I will be governed by the suggestions of the Court and its legal advisor. I wish to preserve to my client any rights he may have, and if to do that it is necessary or proper to except to any adverse rulings, that I wish to do.

In the state courts, of course, where any question is pre-

sented, if the ruling of the court is adverse, the party is deemed to acquiesce in the ruling unless he notifies the court of his exception. I think if there is no objection I will ask the stenographer to now note an exception to the denial of the application for an adjournment made at the first hearing and to the overruling of the plea now interposed. Of course, if the Court should, in its final decision, as was suggested, adopt the plea, then an exception amounts to nothing because we have the benefit of the ruling.

By MR. NORTH: Those are technical questions that are being raised, and the members of the Court are constantly asking my opinion. I am free to say that I believe the more orderly way to conduct this trial will be for the counsel to note exceptions as you would in the trial of any action. If you do not except you will not be entitled to the benefit of the ruling, if you do except your rights will be preserved, by the exception.

By MR. PERKINS: The stenographer will note the exceptions that I have made to the two rulings.

By MR. SHEPARD: May it please the Court, my associate, Mr. Perkins, and I have discussed somewhat the question of proceeding in case the plea which we have now filed is overruled, as it is for the time being. And we feel it to be our duty to renew the presentation to the Court of the importance not only to Dr. Crapsey, the defendant, but also to the church itself, that there should be ample time for preparation. The present situation is,—and if I repeat what may have been said to the Court before, the Court will indulge me, because I unfortunately was not here,—the present situation is, that a charge is filed against Dr. Crapsey, on the ground, among other things, of doctrinal errors or faults, as well as of personal misconduct, in violation of his ordination vows. The question, therefore, concerns him, his career, and his entire future; but it likewise concerns the church. The question is whether the doctrine that is laid down in this presentment is or is not the doctrine of this church; and a great question it is. Such questions have been mooted in councils and courts. Questions of this character, as the legal advisor of the Court, and as perhaps the Court itself knows, have been in England, again and again, under consideration by the Privy Council or by the Court of Arches, or by other civil tribunals; and invariably, so far as my own study has gone, when questions of the gravity of the questions which are presented here

are presented to any court, when the court realizes that what it does is to determine the line of conduct for clergy and the church, is to mark out lines of the church for the future, the presentation has taken place upon the amplest consideration. There never has been a case, of this character, certainly none that is reported, where the trial proceeded upon so brief a notice as the trial that is here, none. Dr. Crapsey received his notice at the beginning of Lent; he was engaged in the conduct of his duty as a parish priest of a great parish, whose affairs it was his duty to conduct and he did conduct during Lent. The trial was fixed for the third day after the termination of Lent. The questions to be tried are what I have said them to be. The counsel themselves, who are to aid and advise Dr. Crapsey, whether they be clergy or lawyers, should at any rate have what is a reasonable opportunity to master the learning and the authorities which it is their duty to put before the Court, without which the members of this Court would not be willing to reach their judgment. I can say from my own efforts, and beginning with some knowledge too on this subject, that it has been an absolute impossibility for me to get ready. No fitting or adequate preparation could be made. We owe a duty to you, to bring whatever light we may have, and it is impossible that we should perform this duty—certainly we cannot perform our duty to Dr. Crapsey,—unless there be reasonable opportunity to study, and then to present, this case. The six weeks of Lent were not a reasonable or adequate opportunity. The one week which has elapsed since has not been a reasonable or ordinary length of time to permit us to get ready. Where the questions before a civil court are questions of law of a magnitude comparable to this (and I am subject to correction by the legal advisor of this Court), I think it is invariable that a time far beyond what is allowed here, is taken, and necessarily taken, for the preparation. When councils of the church have reached their conclusions, they have done it sometimes after years, never less than months, of thorough consideration. When the courts have considered these questions, they have taken like lengths of time. And here, what is the situation? The members of this Court will for the moment cease to be members of this Court, when the council meets three weeks from now—four weeks from the time this case was first called here. What is the haste? The things of which Dr. Crapsey is accused were known,

so the presentment shows, as far back as 1904. I have here the charges made by the bishop of the diocese a year ago; they were then clearly known by him and clearly considered by him. Now, at this time, the presentment—the filing of the presentment and making of it, having been delayed to this time, what is there unreasonable in our request that we should have four, five, or six weeks' delay. It is an objection that the members of this Court, if they are to sit after the 15th day of May, will sit with their jurisdiction revived and re-established by the expression of the will of this diocese, and will not sit here adjudging a case which was not in the mind of the diocesan convention when the Court itself was constituted? If our application is granted there will be an opportunity perhaps to reconstitute this court, at any rate, to put into being a court that will represent, not the present prosecutors, not the bishop, who is essentially here in the position of a prosecutor, the bishop and standing committee, but will represent independently the will of the Diocese of Western New York. We submit, with the utmost respect to this Court, that in our view, apart from the jurisdictional and technical questions which are raised by the plea, it would be error against which we must respectfully protest, to direct that this trial should proceed without such time afforded the defendant, and those who are defending the defendant, as has always been allowed by ecclesiastical and civil courts in corresponding cases. We ask that we may have not less than four weeks from today, to prepare our case for trial.

By MR. O'BRIAN: It is a very unpleasant position in which I find myself, if not a painful one. It is not pleasant to be placed in a position even technically of forcing a matter and of using coercion, but I desire to preserve here the same atmosphere of sanity which I think governed the argument by the defendant's counsel the last time; but I must in the line of my duty object to a further delay of this case, apart from the feeling of deprecation which I have for any vacillating attitude upon a question once disposed of. When this matter was adjourned last time, it was with the understanding on my part that we were to go on today. When Mr. Shepard wrote to me, asking for delay on the ground of his personal engagements, it placed me in a very embarrassing position, and if this were a civil matter—we have heard something of the likeness of this to a civil matter—the case would be entirely different; there would be no question of this

magnitude involved; there would be no question of the welfare of the entire church involved; there would be courts practically constantly in session, and where a matter might come up at any time to which counsel chose to adjourn it, but here we have an entirely different situation, I do not feel that I can weary the Court with all the considerations which I placed before it last time, but it is my duty to succinctly state a few of them. In the first place, so far as the counsel are concerned, my associate counsel, Prof. Hall and Judge Stiness, have stayed here ever since, prepared to go on with this case today. They cannot be here later. So that it seems to me, on the ground of convenience of counsel, while I do not like to put it that way, the situation is that it is our convenience which should now be considered and not that of the other side. I trust that the Court, whatever the community thinks of the attitude of the so-called prosecution,—in reality the complainant in this case—I trust that the Court at least will be impressed by the fact that we think in the handling of this matter we have been acting merely in obedience to a duty imposed; and I beg that the Court will not mistake our earnestness in asking for a hearing in this matter and attribute it to arrogance, because that is farthest from our thoughts. And while, as I said a few moments ago, I have no desire to characterize the answer of the defendant, or in any way to discuss his defense at this time, it is but fair to us that the Court take into consideration the facts set up in those answers, the fact that the answers endeavor to bring in very wide issues, and that they also set up matters which are entirely technical under my contention. I call attention to that, not for the purpose of characterizing the answer, but for the purpose of showing that from our standpoint this case may be a long case—it may be prolonged by all of these technical objections; and I think, with due respect to Mr. Shepard—whose earnestness in this matter has impressed us all—I think I should say that the difference between his argument and mine lies partly in the point of view, partly in deciding what it is which is to come before this Court. It is true that the decision of this Court will have a weighty bearing; it is not true, I trust, that this Court is going to sit in review upon the decrees of the ecumenical councils. It seems to me—and I do not wish in any way to minimize the position of Mr. Shepard—it seems to me the issue is very clearly defined in the presentment, which states, in the language of the pre-

sensors: It would appear that the defendant had reached doctrines contrary to those held by the church." It does not seem to me that it should take years to find out whether that is the case; and with all respect and reverence for the opinions of Dr. Crapsey, which he has arrived at I am sure by most earnest intellectual development, I would like to say this: That it does not seem to me necessary when the defendant had preached this so-called doctrine for a period of two years; it does not seem to me right or fitting that two or three months should be given the defendants in which to find a justification for that position. Now, this is in all fairness. Let me repeat, I have no desire to foreclose the defendant in any way, or to appear to be attempting to foreclose his line of defense. That is quite apart from the matter. I am giving you my point of view, the point of view of the complainants.

Mr. Shepard calls your attention to the fact that this situation was known a year ago, and asks why this presentment was delayed. In reply I would ask why, when it is made, should not the defendant be ready to meet it if it was known to him and his counsel over a year ago? In the matter of time I desire that this case shall receive careful attention. I have other things to do, strange as it may seem, and I have had a period of about eight weeks to find out what little I know on this subject. The defendant is himself certainly a learned man. His counsel are able counsel. Long before I was connected with the case I was apprized through the press of their connection with it. They certainly have had more time than I in which to take charge of it, and I ask the Court, just as Mr. Shepard does, to consider the matter of the church's position; and it seems to me that the temper in which we all must approach this question, and every single question in this case, whether technical or upon the merits is this: What is it which we should do that will make for a living and a fearless faith? Is it that we should delay and dilly-dally with a situation which is on its face unpleasant? Is it for fear of criticism we should be weak and put the church in a cowardly position by haggling along over this matter and disputing over it? And now let me correct a statement which Mr. Shepard has made with regard to the progress of these matters in courts heretofore. The Privy Council and the so-called decisions of the Privy Council in church matters, we will endeavor to take care of as they come up in this case; but certainly in the two American cases of greatest prominence there

was no period of years and months allowed, nor was the court years and months in making up its mind what to do. I desire that the case shall receive careful deliberation; that it shall be handled in an atmosphere of entire sanity, devoid of bias; for, as I have had occasion to say before, we are all here simply to seek the truth; but I say that this is a momentous question to thousands in the church—the position raised by this presentment. Perhaps this presentment has raised a false question. Perhaps it has raised an unjustifiable doubt in people's minds. I say if that is the case it should be disposed of and the thousands of people in the church who are in doubt as to the church's position should be apprised of what that position is, and of whether or not Dr. Crapsey is unjustly accused. The trial, gentlemen, is not a trial on the merits of false doctrine. The trial is a question of whether this doctrine corresponds to the doctrine of the church, and I insist that that being the question it is not necessary to consume months and years of preparation; and I think that if Dr. Crapsey has taken this position intelligently, he could have told in twenty minutes after that presentment was served upon him what his position is; and that is the only question I can see in this case. And I therefore, earnestly ask, repeating my request in the interest of fairness to the whole church that this case shall go on.

By MR. SHEPARD: May I say a word in reply? Dr. Crapsey no doubt could tell in twenty minutes what his position is. His position is sufficiently stated in the answer to the presentment that is here. The question is, is his position right? How long were the clerical members of this Court engaged in their education upon doctrine? What does my friend mean by reviewing decrees of ecumenical councils? What are the decrees? What is it the church has said when it has expressed itself authoritatively? Can that be stated in twenty minutes? Can that be learned in four weeks, or three weeks, or learned in a time from the beginning of Lent until the end of Lent so that it may be adequately presented? My friend speaks as if it were a question of delay for years and months, rather than a delay of three weeks. It is a question whether this Court should delay the hearing of this case for three or four weeks, four or five weeks, and then adjudge it. The request is not for months or years. And that the record may be complete may I ask my friend who referred to the letter I wrote him to help me perhaps with an

admission that the letter was received on Saturday last, so that on Saturday last there was clearly presented to the counsel on the other side, acting for the prosecution, the statement that this application would be made and made not on grounds of personal convenience. Personal convenience was a matter quite outside. I should not venture to ask my friend in a matter so serious as this for an adjournment on that ground; and I shall ask to have spread upon the record the precise text of the request which we addressed to Mr. O'Brian and Mr. Locke, when we asked for the adjournment, if the stenographer will kindly take it. This was a letter delivered to Mr. O'Brian on Saturday last and will meet the statement made here that I asked this adjournment on the ground of personal convenience.

By MR. O'BRIAN: I will be very glad to retract that statement if I have misconstrued your position.

By MR. SHEPARD: If you will concede that the grounds on which we sought an adjournment were all stated to counsel on Saturday last, then it will be quite unnecessary for me to read this.

By MR. O'BRIAN: I also received a petition addressed to the Court. Was that sent to the Court?

By MR. SHEPARD: Yes.

By MR. O'BRIAN: I ask you if you ever heard of a counsel in a civil case presenting a petition to the court asking for an adjournment when the other counsel was not present?

By MR. SHEPARD: Nothing of that kind has been done. I sent it in advance in order that the Court might have it before it, sending it to you at the same time. I thought that should be done in deference to the Court.

By MR. O'BRIAN: You misunderstand me. I do not wish to characterize your action in sending that to the Court; that is a matter for the Court; but I do not wish to say this, that I consider it not entirely in accord with the way we do business in the civil courts, for such a communication to be sent by you to the Court.

By MR. PERKINS: A copy was furnished you.

By MR. O'BRIAN: I do not wish to criticize your position. All that I desire or wish is to be perfectly fair about it.

but if you are bringing in this matter of your letter to me, which I apparently have misconstrued, I frankly say so; for I have no intention of insinuating that this was put on the question of personal convenience. Have you a copy of your letter to Mr. Locke?

By MR. SHEPARD: I think in my letter to Mr. Locke I may have mentioned the matter of convenience additionally.

By MR. O'BRIAN: That may have misled me.

By MR. SHEPARD: Won't you state here that the grounds were not stated to be personal convenience?

By MR. O'BRIAN: I will state that Mr. Shepard is entirely right; that I was astonished to receive a letter last Saturday addressed to the Court at the same time, because it placed me in a position of not being able to write the members of the Court, as with some of us it is a matter of the ethics and propriety of addressing letters to the court even when the other side is aware of the fact.

By MR. SHEPARD: This is done every day in civil cases.

By MR. O'BRIAN: I never heard of it in my life.

By THE PRESIDENT: I wish to say that this communication was considered by the Court and they declined to accept the offer to adjourn—the desire to adjourn.

By MR. SHEPARD: Will the Court permit the communication to be placed upon the record? I will hand this to the stenographer if I may.

By THE PRESIDENT: Yes.

By MR. SHEPARD: The communication reads as follows:
"John Lord O'Brian, Esq., 700 Ellicott Square, Buffalo N. Y.

DEAR SIR:—

"Mr. Perkins, of Rochester, and myself have been in conference today with reference to the Crapsey trial; and as the result of this conference there are two matters upon which I beg to address you. In the first place it is absolutely impossible for us to be ready next Wednesday fitly to proceed with this trial; and a formal communication to that effect will be addressed to the members of the standing committee and the members of the Court. I assume that your judgment and that of your associate, Mr. Locke, will be weighty with the Court in this matter. At any rate your assent to an adjournment would probably procure one. Apart

from the technique of the trial, it is obvious that it involves two or three large questions which ought to be dealt with in a way to make the result, whatever the result shall be, honorable and useful to the church. Mr. Perkins has been industrious in the case to the limit of his ability, and so have I, and so has Dr. Crapsey; and we shall be so from now until Wednesday. You will perhaps permit me to say frankly that I do not think it would be creditable to the church or to the Court that a trial of this importance of a man occupying Dr. Crapsey's position, with the idea of excluding him from the church, should take place unless with a reasonable opportunity for preparation. I earnestly hope that upon consideration you will agree to the fairness of this view and will aid us to an adjournment for a suitable time.

"In our answer we have referred to the report made by the special committee appointed by the bishop; and we shall desire to put in evidence the letter or letters from the bishop to the committee and from the committee to the bishop, including, of course, especially the report of the committee. The originals of the communications are, we assume, with the bishop. We prefer not to summon the bishop as a witness and will not do so if we may have these letters with an admission of their genuineness. Of course this would not bind you in any way to the competence or effect of the letters.

"May I presume upon your goodness sufficiently to ask you to address your answer to this letter in duplicate, one copy to be sent to Mr. Perkins at Rochester and the other addressed to me at Lake George, N. Y., where I shall be on Sunday and Monday.

Yours truly,

(Signed) EDWARD M. SHEPARD."

By MR. O'BRIAN: With my reply, please, Mr. Shepard.

By MR. SHEPARD: Yes, with your reply, and the letters. We respectfully except to the ruling of the Court on the motion to adjourn.

The Court thereupon denied the defendant's motion for adjournment.

By THE PRESIDENT: I ought to say that one member of the Court dissented from this agreement.

By MR. SHEPARD: Just one more statement I wish to make, Mr. O'Brian. I desire to state to the Court that the Rev.

Ellwood Worcester of Boston, and the Rev. Samuel McComb are associated with us as ecclesiastical counsel in behalf of the defense, and at the proper time we shall ask the Court to allow them to be heard.

By MR. O'BRIAN: Certainly. Before proceeding with the case I would like to ask the instructions of the Court whether it is in accord with the opinion of the learned assessor that the presentment should be read to the defendant, and the defendant requested to plead guilty or not guilty.

By MR. NORTH: I am unfamiliar with the ecclesiastical procedure, but it strikes me as wholly unnecessary. It strikes me that it would be quite out of keeping. He has appeared and pleaded by his written answer.

By MR. PERKINS: I think you will find that the canon provides where the respondent interposes no plea whatever then the Court can direct a plea. In this case we have entered our plea.

By MR. O'BRIAN: The accused may orally plead guilty or not guilty to the charges in the presentment or any of them, and put in such special plea in answer to the charges or any of them, as he may desire. If he appears in person and neglects or refuses to plead, the Court shall put in a plea of not guilty and proceed with the trial. I simply ask the instructions of the Court as to the matter.

By MR. NORTH: I think he has sufficiently pleaded the issue as raised by the papers in the case.

By THE PRESIDENT: I shall advise that the issue is sufficiently raised by the papers in the case.

By MR. SHEPARD: I ask that the stenographer mark these letters in evidence.

By MR. O'BRIAN: If the Court, please, I offer in evidence a book, of which I read the title page: "Religion and Politics, by Algernon Sidney Crapsey, New York, Thomas Whittaker, 2 and 3 Bible House."

By MR. PERKINS: Now, if the Court please, I object to that. I don't of course object to offering any portions of the book which are set out in the presentment. The presentment has charged the defendant with making certain utterances which are set out in the presentment, and which are alleged to be contrary

to the doctrines accepted by this church. We have admitted that, and of course that issue we must meet. We are alleged to have made those statements, and we admit that we made those statements. Now, the counsel offers an entire volume purporting to be published by this defendant containing I don't know how many pages, though I have a copy here—over 300 pages of discussion, partly historical, partly theological. We are brought here to meet the issues presented, not to meet all that may be contained in 320 printed pages. If this is spread before the Court counsel can claim that what is charged against the defendant is harmless, is in accordance with the doctrine of the church; yet here we find on some other page a statement of manifest error and for that reason the Court ought to pass upon it. The case is analogous to this, if the Court please: A man in civil courts is accused of a crime, an indictment is found by a grand jury in which they say that this man, on such a day, committed an assault; he pleads to that and comes into court. Then the counsel for the District Attorney would do an analogous thing if he said, "I wish to present to this court the entire record of the life of this man. We will take him from from a boy to manhood, and we will show you all that he has done." Now, he offers here to show what we have done in this case. What we are accused of doing is what we have said. They say we will present to the Court all that this man has said: we will put in a volume of 320 pages which the Court will read and scrutinize, which the counsel can complain of and which he can use to assist any argument that he sees fit to make; if he has not selected a proper passage he can take some other passage. It seems to me, if the Court please, that the analogy that I make is a perfectly accurate one. A man is charged in a civil court with having done a specific misdeed. He is indicted for it. He is brought before the court for it, and that issue he must meet. The District Attorney offers to show the record of his life. Imagine the court saying, "Why, yes, put it in": of course he is not indicted for the larceny he committed when he was eighteen, for the burglary he committed when he was twenty, he is only indicted for the assault he committed when he was thirty-one, but there should be presented to the court and jury the entire history of his life. Such is not the issue he has to meet. In this case, the issue is perfectly analogous. We are brought into court charged with saying some things we should not have said, with certain

specific statements contrary to the accepted doctrine of the Protestant Episcopal Church; we say that issue we are ready to meet; we are ready to meet the issue which is presented to this Court, not to try all we have done and all we have said. This book is the only published book of the defendant, bearing on such questions. He has written other books on different questions, but so far as his theological record is concerned before this Court, this book contains the record of all the things that he has said. It seems to me that the proposition that there shall be thrown at us here for the consideration of the Court, for us to meet, for counsel to discuss, for us to examine into, not fifteen paragraphs taken from this book, but 320 pages of published statement, is an extraordinary one.

By MR. O'BRIAN: I am equally surprised at Mr. Perkins's remarks. I didn't know there was anything so dangerous in this book.

By MR. PERKINS: I don't know what there is in it. That is the point. The defendant has a right to know what is dangerous. I don't know what there is in that book. I will say frankly that I regret that I have not read every word in that book, although I have read some of it with much pleasure and much profit. I have read all that is in the presentment with care, but I have not had the opportunity to read every word that is therein contained. The counsel may quite as properly say in a civil case, we are going to show the defendant's whole life; we will see what there is to it, and we may stumble onto something. Certainly my friend won't claim for one second that there is any rule of the law that will allow that.

By MR. O'BRIAN: I certainly don't claim it exactly the way you put it, I suppose. In all fairness, I have not given the matter a great deal of study. I suppose in all fairness it would be fair to take the sermons in which these paragraphs occur and permit the Court to see the text in fairness to Dr. Crapsey. On the other side I think this book is very decidedly admissible. The defendant isn't here charged with anything of which he was not apprised in the presentment. The presentment charges that he delivered a series of sermons and that he printed them in the book, and that the book was circulated with his authority and consent, and that the book among other statements, contained the following statements.

Now, I think Mr. Perkins's analogy of putting a man's whole life in evidence is hardly an analogy. We are not putting Dr. Crapsey's whole life in evidence. We are merely putting the whole conversation in evidence. Mr. Perkins will recall the rule of the civil courts that the witness is asked to state the conversation, not what points in the conversation impressed him. If he does that the court rules it out. He is asked to present the whole conversation. I respectfully submit this book is admissible. It is charged in the presentment that it was published, that sermons were delivered and published in the book, and that among other statements the book sets forth certain statements in particular; and I insist that the whole sermon is competent as well as the paragraph which is chosen in the presentment.

By MR. PERKINS: Will my friend allow me to ask one question which perhaps is a suggestion to the legal advisor as much as the Court itself? Does my friend claim that if he had brought an action for libel in which he had set out in his complaint that the defendant, the *Buffalo Express*, on a certain date had published the following false and libelous statement, to wit, that so and so had been guilty of such an offense, that he would be allowed to put in evidence the entire records of the *Buffalo Express* for that day or for that year, or any other articles in which they may have discussed the question?

By MR. O'BRIAN: I shall be very glad to answer that question. I will answer part of it later in the case. The first thing I would do would be to put the *Buffalo Express* in evidence in which the libelous statement is contained, and I would put the whole statement in evidence. If I did not put it in evidence, the court would non-suit. I am offering here a paragraph from a certain sermon and I offer the sermon in evidence. I don't wish to appear over-anxious about this. I didn't know there was anything so explosive in this book.

By MR. PERKINS: Neither did I. I want the case tried according to the rules of common law.

By MR. O'BRIAN: So do I.

By MR. SHEPARD: You have identified fifteen explosions in the presentment.

By MR. O'BRIAN: I submit I have the right to put the whole conversation in evidence. There cannot be any fair trial

otherwise of a statement of fact. Referring to Mr. Perkins's recital of the publication in the *Buffalo Express*, I would not be permitted to put three lines of the article in evidence, the court would require me to put the whole article in evidence in which the statement is contained.

By MR. PERKINS: Not the whole newspaper, though.

By MR. O'BRIAN: All of that particular article, and I submit that his question has betrayed him into a dilemma.

By THE PRESIDENT: The ruling of the Court will be decided after the recess on this point.

By MR. O'BRIAN: May I say just one word farther on the subject? In the matter of ruling upon these questions, I desire, as Mr. Perkins does, that they shall be accurately ruled upon from a strictly legal standpoint; at the same time I call the Court's attention to the fact that if there is any erroneous ruling in this case, the defendant has the right of appeal, and if there is any doubt as to any hairsplitting point of evidence, I think the complainants should have at least as much benefit of the doubt as the defendant, because they have no appeal, and he has.

By MR. PERKINS: You, as much as we do, desire the case shall be tried right so that no new trial may be necessary.

By MR. O'BRIAN: Certainly. I certainly hope we may never have another.

By MR. SHEPARD: We all join in that.

By MR. O'BRIAN: I will now offer in evidence the Book of Common Prayer, reading the title page, "The Book of Common Prayer And Administration of the Sacraments and other Rites and Ceremonies of the Church, according to the use of the Protestant Episcopal Church in the United States of America, together with the Psalter or Psalms of David. New York, E. & J. B. Young & Co., 17 and 19 West Eighteenth St." This is a copy which bears the original signature of Samuel Hart as custodian of the standard Book of Common Prayer. There is no objection to that, of course, I only wish to suggest this question as we go along. Of course, the Book of Common Prayer is before the Court without any necessity of its being proven, and if it is necessary to be proved, why, of course, we should consent without question. Our own view

has been that the Book of Common Prayer was before the Court; that in the argument before the Court as a part of the record upon which the Court acts other publications bearing upon church doctrine might properly be regarded as before the Court, and it wasn't necessary to furnish technical proof of them. I make this suggestion not in any way as objecting to the evidence but only as suggesting that possibly it is unnecessary. With that statement of our position I have nothing further to say.

By MR. NORTH: I have been asked by the Court to make a suggestion. Gentlemen, I suggest that for all purposes of this proceeding the Prayer Book and all contained in it pertinent to this proceeding shall be deemed as before the Court, and the Court will take judicial notice of the Prayer Book and all of its contents.

By MR. SHEPARD: I suppose all matters of church history too?

By MR. NORTH: Yes.

By MR. O'BRIAN: I don't know unto what that may lead us.

By MR. NORTH: We are not up to that question yet.

By MR. O'BRIAN: I don't wish to appear as conceding it.

By MR. PERKINS: I only wish to suggest in fairness to counsel at this point, that I am sure that neither side desires any technical objection should be raised to the fullest investigation of the questions before the Court by the Court, but certain rules of proof may be required. To take the illustration just made by my associate, a record, we will say, of church history as to certain action taken; it may be the record of a council; it may be a statement of some dignitary of the church. The strict legal proof of that may, of course, often be exceedingly difficult if not impossible; yet on the other hand the record is contained in the books of which we all know and which we all read, from which we gain information. The presumption we have acted upon is, that as to all such recognized publications, they could be used before the Court without any strict necessity of proof, and it was in view of that that I made the suggestion in reference to the Book of Common Prayer that we regard that as being before the Court.

By MR. NORTH: I shall expect counsel on both sides to admit the genuineness of any publication, to the end that the court may pass upon its competency unhampered by any question as to whether it was printed or certified.

By MR. O'BRIAN: I shall be very glad to do that. Of course, my conception of this case is radically different from Mr. Perkins's and I don't think there will be a necessity for so many historical references as perhaps he does. That is something that will come up later.

By MR. PERKINS: We are trying the doctrines of the church.

By MR. O'BRIAN: Not exactly.

By MR. PERKINS: You allege we violated the doctrines of the church.

By MR. O'BRIAN: As the church has received the same. For the sake of formal proof I desire to offer several works. One is the Journal of the Protestant Episcopal Church of the Convention of 1789, which adopted the Book of Common Prayer. I assume there is no objection to this. Next is the Constitution of the Protestant Episcopal Church in 1789. Of course, the Court takes judicial cognizance not only of the existing constitution but of all preceding ones as unamended.

I offer the documentary proof, so that that point may not have to come up.

By MR. PERKINS: For what purpose do you offer the Constitution of 1789?

By MR. O'BRIAN: Showing the polity and organization of the church at that time, and the requirements for its ministers at that time.

By MR. PERKINS: I would only suggest to the counsel that if there is any specific thing in that to which it is proper our attention should be called, I would be very glad that you do so as you go along.

By MR. O'BRIAN: I am offering this not for the sake of basing any particular argument upon it, but for the sake of making my record perfect. I offered the journal of the proceedings of the convention a moment ago for the purpose of showing the adoption of the Book of Common Prayer, and the Constitution of 1789, and also for the purpose of showing the church

as constituted by its first general convention. Then the Constitution of the church in 1872 and '73, that being the time at which Dr. Crapsey became a priest of the church, and the Constitution of the church as it is to-day, I expect the Court will notice.

The general canons of the church, as set forth in the Journal for 1904, the Constitution of the Diocese of Western New York in 1879, when I think Dr. Crapsey entered the diocese, and the Constitution of the diocese as it stands to-day. The canons of the diocese, at the time that Dr. Crapsey became a member of the diocese, the canons as they exist today, including the ordinances of the ecclesiastical court, and also the Constitution of the General Convention of the Protestant Episcopal Church in 1801, at the time of the discussion of the modification of the Book of Common Prayer, and the adoption of the Thirty-nine Articles by the American Church. If it is agreeable to the Court, I will be glad to present my oral evidence this afternoon.

Recess until 2:30 P. M.

AFTERNOON SESSION:

By MR. NORTH: At the request of the Court, I am about to indicate my view with reference to the book. I am going to say now that it does not occur to me that the question is of very great importance in this case, and yet I am very desirous to advise the Court rightly and in accordance with the law. I am going in a measure to reserve my decision but I will say now, Mr. O'Brian, frankly, that it occurs to me that the book is not competent as evidence. It is true, as you suggest in the argument, that you did set forth in the accusation that the book as published contained among other things these words or sentences which it is alleged are wrong for a minister to speak. It was proper, of course, for you to allege in your complaint the manner of publication. You have set forth that it came out in the form of a book or in the form of a sermon. It was proper so to have pleaded. It is admitted that it came out in the form of a publication. It strikes me that the book, taken as a whole, is not competent as evidence, and yet I reiterate the statement that I am going to reserve this for further advice in the future, and would be very glad to hear counsel on the question if you deem it sufficiently important. I think you should be limited in your

proofs to the precise things which you have claimed are unorthodox, to use my own expression.

By MR. O'BRIAN: I would be very glad to have the Court take it under further consideration. I won't be able to say anything on that this afternoon anyway. I would like to say just one word further. That even if the book were not as a whole—The point, I confess, is somewhat new to me, I had not anticipated that I would be in a position of defending Dr. Crapsey.

By MR. PERKINS: You are confined to trying the case according to the rules of law.

By MR. O'BRIAN: Just what I am doing. I would respectfully submit that if the book, as a whole, were not competent evidence, at any rate the sermons in which those particular extracts are contained, would be competent evidence, because the presentment alleges certain sermons were delivered in which the certain statements were made. If I had alleged that in certain issues of a Batavia paper certain statements were made on the trial, I think the court would let me, if it didn't order me to, put in evidence each of those separate papers as a whole—not the particular paragraph that I set out in my complaint for libel, but the whole of the article, that being fair to the defendant as well as to the plaintiff. I don't know as it is a matter of very great moment. I don't know that there is anything of very great importance in the question as you have suggested that; but at the same time I do submit that if the book, as a whole, is not admissible as evidence or as corroborative proof, at any rate the sermons in which those particular statements appeared—those particular sermons are evidence. I should be very glad to have further decision on the matter delayed.

By MR. NORTH: I have not read the book, neither have I examined it; I have glanced over the accusation, the presentment; and whether I should conclude to advise the Court that the whole of a given sermon in which one of these statements is contained may be competent as evidence is a question which will be disposed of when it arises.

By MR. O'BRIAN: Of course, as I understand it, it is admitted that these particular sermons were delivered as particular sermons.

By MR. NORTH: There is no doubt but you made a

prima facie case; that is, you got your evidence in by the pleadings themselves. The publication is alleged, and the publication is admitted, and so far as these things that it is claimed are unorthodox are concerned, they are in evidence by the pleadings themselves, beyond any question.

By MR. O'BRIAN: Yes, but it is a question also whether there may not be corroborative proof further as to the statements in those particular sermons, but that is a matter that I am very glad to let go for the present.

By MR. NORTH: Quite likely, Mr. O'Brian. My own idea is that quite likely counsel on either side will be permitted to read extracts for the purpose of discussion or explanation, but we will pass on those questions when they are raised.

By MR. O'BRIAN: I have not thought a great deal about it, for the reason I did not anticipate an objection from Dr. Crapsey; but I assume that is all we should want to do anyway, to read extracts. I certainly do not intend to read the whole book to the Court.

By MR. PERKINS: I must criticize the counsel's inadvertent statement that he frequently uses, that the objections are made by Dr. Crapsey. All objections are made by Dr. Crapsey's counsel.

By MR. O'BRIAN: I assumed the Court would know that I would like to call a witness, if the Court please. I believe the canon prescribes he must subscribe to some form of statement.

By MR. NORTH: Gentlemen of counsel, what do you say to this? If you have the canon before you, turn to page 184 of the book of the Diocese of Western New York, where the procedure is prescribed. "Each witness examined on trial or upon commission shall sign a declaration which shall be read aloud to him before he testifies, and which shall be in the following form." This seems to suppose that we have a writing to present to each witness to sign before he presents his evidence. Have you prepared this writing?

By MR. O'BRIAN: I suggest it be done. I suppose it's a preliminary in the ecclesiastical court, just as the taking of the oath is in the civil court. Perhaps we ought to be regular.

By MR. NORTH: I think that it would be sufficient to say to the witness in the language of the rule, changing it a little, "Do you solemnly promise and declare that the evidence you are about to give shall be the truth, the whole truth, and nothing but the truth?"

By MR. PERKINS: As far as the defendant is concerned, we are entirely willing to stipulate that the oath or affirmation be presented in that form, and that the witness need not sign a written statement. That will save time and trouble.

By MR. O'BRIAN: Very well, if the stenographer will enter a stipulation to that effect on the minutes, it will be thoroughly satisfactory.

IT IS STIPULATED that each witness before giving testimony shall be asked to assent to the following: Section 15. (Ordinances for Ecclesiastical Court). "You do solemnly promise and declare that the evidence you are about to give shall be the truth, the whole truth, and nothing but the truth?"

FREDERICK JAMES KERR ALEXANDER, a witness called on behalf of the prosecution, subscribed to the above oath, mentioned in the above stipulation, and testified as follows:—

DIRECT EXAMINATION.

By MR. O'BRIAN:—

Q. You are how old?

A. 34 years.

Q. You reside where?

A. Rochester.

Q. Were you formerly connected with St. Andrew's Church in Rochester?

A. Yes, sir.

Q. When did you become connected with that church?

A. I formally began there, you might say, the first of July, 1904.

Q. You were a regular ordained priest of the church?

A. Yes, sir.

Q. By whom were you ordained to priesthood?

A. By Bishop Brewster, of Connecticut.

Q. What was your position in St. Andrew's Church?

A. I came there as assistant, or curate.

Q. Were you called by the vestry of that church?

A. Yes, sir.

Q. You remained how long in that capacity?

A. I remained until January, 1906, January 20th.

Q. Were you present in the church on or about the 31st of December, 1905, in the evening?

A. Yes, I was present.

Q. Where did you sit?

A. Well—you mean during the services?

Q. During the services.

A. During the services I sat where I usually do, in the chancel of the church.

Q. Dr. Crapsey preached the sermon on that evening, did he?

A. Yes, sir.

Q. Kindly state what Dr. Crapsey said on that occasion?

By MR. PERKINS: Of course, I assume that you intend to confine yourself to the statements that are set out in the declaration.

By MR. O'BRIAN: I presume so. I cannot very well lead my own witness.

By MR. O'BRIAN:—

Q. You may state, Mr. Alexander?

A. Well, it is impossible to state the whole sermon, or anything like the whole sermon.

Q. State what you recall?

A. In the introduction Dr. Crapsey spoke of the importance of the middle class, and then he went into what I might call the birth and parentage of Jesus, in which he made, I would say, four positive, distinct and unequivocal statements.

Q. What were those statements?

A. The first statement that I remember is, he said, Jesus was born of parents belonging to the middle class. The second statement, He was born of a simple father and mother; He was the son of a carpenter. He was born right. Then in the latter part of his sermon he criticized the position or attitude the church had taken on what he would call the first birth. He said the church paid all her attention practically to the second birth, rather than the first birth. And then I should say the climax came when he said the fact that the early Christians predicated the miraculous

birth of Jesus must be regarded as one of the greatest misfortunes that had ever befallen mankind. I should call that the climax of his discourse.

By MR. O'BRIAN: Never mind that. You may ask, Mr. Perkins.

CROSS EXAMINATION..

By MR. PERKINS:—

Q. How long were you connected with St. Andrew's parish?

A. As I said to Mr. O'Brian, I came there the first of July, 1904, and left the 20th of January, 1906.

Q. You were there about a year and a half?

A. About that, I suppose.

Q. During all of that time, Dr. Crapsey was the rector of the church?

A. I think he was, yes.

Q. Don't you know whether he was or not?

A. I presume so; he acted as the rector.

Q. Your answer is, that you presume he was rector?

A. Yes, he was rector.

Q. You presume he was rector? Answer as you see fit.

A. I said he was rector. I don't see that there is much to that question.

Q. I don't say there is anything in it. I ask for your answer. You can answer in any form you see fit.

A. Of course, he was rector. Yes, he was the rector.

Q. You heard him preach quite often, I suppose?

A. Frequently, yes.

Q. In reference to this sermon on the 31st of December, had you at other times heard him preach upon similar questions?

A. Well, I should have to consider for some time before I would answer that question.

Q. Consider it and refresh your recollection, if you desire.

A. I would say yes; I heard something that I would call on the same line, in Lecture 12 of the book.

Q. You made no written memorandum of the remarks on the 31st of December, did you?

A. I did.

Q. You did make a written memorandum?

A. Yes.

Q. When did you make that memorandum?

A. I made it after I returned home.

Q. And in that memorandum you jotted down these words to which you have now testified?

A. These definite statements I did.

Q. You made a memorandum immediately after you returned home?

A. Yes, sir.

Q. How did you happen to make that memorandum?

A. Well, it was a matter that I intended to speak to Dr. Crapsey about; it pained me very much to hear the statements, especially at Christmas time, when I think that the church teaches some other doctrine.

Q. Was it necessary for you to make a written memorandum of what Dr. Crapsey said to talk to Dr. Crapsey? Didn't you think that Dr. Crapsey himself would know what he had said?

A. Sometimes people forget.

Q. Would you think that Dr. Crapsey was the sort of man that would be apt to forget in twenty-four hours?

A. I think everybody forgets, don't you?

Q. They undoubtedly do.

A. Yes, I think so.

Q. But I don't think a clergyman needs to have his assistant take down in writing what he has said, for him to remember, if you want to know what my opinion is.

A. All right.

Q. You have kept this memorandum from that time to this, haven't you?

A. Yes, sir.

Q. Before this time didn't you know that charges had been made against Dr. Crapsey?

A. No, I did not.

Q. You had not seen it in the papers?

A. There had no charges been made against Dr. Crapsey before this time.

Q. Before December 31st, 1905?

A. No, no charges, not as I understand charges. If you mean a presentment—

Q. Don't you know that a year ago five presbyters of this church were appointed to investigate the charges against Dr. Crapsey?

A. Yes, they were appointed to investigate, but they didn't make any charges.

Q. They reported that no charges should be made, didn't they?

By MR. O'BRIAN: I object to that question.

By MR. NORTH: Some members of the Court didn't understand whether the witness said 1904 or 1905.

By MR. PERKINS: 1905.

A. There was a disagreement.

Objected to.

By MR. PERKINS: I am cross-examining the witness.

By MR. O'BRIAN: This witness cannot testify to what this committee reported.

By MR. PERKINS: I don't claim this witness can.

Q. You did know of the investigation that had been made by these presbyters, didn't you?

A. That was known to everybody, yes. That was a well-known fact.

Q. You knew that there was a possibility that further proceedings would be taken against Dr. Crapsey, didn't you?

A. I had no special information in regard to that.

Q. Did you preserve that memorandum from that time to this?

A. I believe it has been preserved, yes.

Q. You preserved it, didn't you?

A. It remained up among my other papers.

Q. Did you ever talk to Dr. Crapsey in reference to his erroneous views?

A. I did, yes.

Q. When, immediately after that?

A. The last time I saw Dr. Crapsey I had a long conversation with him.

Q. When was that?

A. Shortly before he left for Boston.

Q. When was that?

A. I should say it was after the first Sunday in January.

Q. The first Sunday in January?

A. Yes, sir.

Q. How long after this sermon did you speak to Dr. Crapsey?

A. How long would that be?

Q. I'm sure I don't know.

A. The first Sunday came on the 7th, I think Dr. Crapsey left on the 10th for Boston. He left somewhere about the 10th. I should say 9th or 10th for Boston.

Q. Then you allowed a week to pass after making that memorandum before you reproved Dr. Crapsey?

By MR. O'BRIAN: I object to the form of the question.

A. I was away; I was away at Coudersport. I left immediately after this Sunday for Coudersport, Pa., and I also went to Harrisburg. That was the first opportunity I had to see Dr. Crapsey after my return.

Q. Did you mean to say that when you took down this evidence, you had no thought that at some time you might not state to others than Dr. Crapsey what he had uttered? Did you not think of that?

A. I am not prepared to go into that, I have not—

Q. You are not prepared to go into it, but what I ask you is to go into it, and I have a perfect right to ask you.

A. I decline to answer any such question.

Q. You decline to state?

A. Unless the Court shall say that I shall go into it. I am not here to prove a case for you, or for anybody, or especially to be used by the defense, if that is your object; I don't wish to make—

Q. In other words, you don't propose to furnish any evidence that would be of benefit to the defense, that is your position, is it?

A. I am willing to give you whatever information I have.

Q. I thought you said you were not willing, you would furnish no evidence that would benefit the defense?

A. I didn't mean that.

Q. Perhaps! I will ask you again, to say what you do mean. As I understand, you say here before the Court that

you are unwilling to answer, or that you refuse to answer whether when you made this memorandum, you made it with the thought that you might testify to it against Dr. Crapsey; that you refuse to answer?

A. I have no recollection of having made the statement for that purpose.

Q. What do you mean by making the statement?

A. The written statement, you refer to.

Q. You have no recollection?

A. No, no recollection.

Q. That is all the answer you can give here, is it?

A. I think so.

Q. You have no recollection whether that was the purpose in your mind, or whether it was not the purpose in your mind, is that the answer?

A. That is my answer.

Q. Let us go on a little further with your relations with St. Andrew's Church. How long did you remain connected with that church after these statements were made by Dr. Crapsey?

A. I resigned as soon as possible after that.

Q. Did you?

A. Yes, sir.

Q. When did you make your application to the vestry of that church to raise your salary as assistant? Let us have that date.

A. Oh, that was a long while—

Q. Tell us when it was.

A. I couldn't state positively.

Q. We want that date.

A. I haven't any memorandum here to give any specific date. I will leave that to the defense.

Q. Will you?

A. Yes.

Q. Will you state that it was not subsequent to this sermon, that you applied to have your salary raised?

A. I beg your pardon.

Q. Will you testify that it was not subsequent to these utterances of Dr. Crapsey that you applied to the vestry to raise your salary?

A. I certainly do state that.

By MR. O'BRIAN: I don't see exactly the relevancy of this cross-examination.

By MR. PERKINS: The relevancy is just this: this witness has testified to certain statements of Dr. Crapsey which he put down.

By MR. NORTH: I consider the evidence competent and I shall so advise the Court.

Q. You did make an application at some time for an increase in your stipend, did you not?

A. Yes, I think so.

Q. That was refused, was it not?

A. No, they said they were unable, owing to finances, to increase my salary.

Q. They refused to increase it, didn't they, whatever the reason was?

A. Well, I suppose—

Q. Did they increase it, or didn't they?

A. They didn't increase it.

Q. We will call it a refusal then, with your permission? Now, when was that application made, give us your recollection of the date.

A. I sent the letter to the vestry, they perhaps can produce it for you.

Q. You have an exact recollection as to statements, have you no recollection as to dates?

A. I know it was in the autumn. Yes, it was in the autumn; I couldn't give you the exact date.

Q. The autumn of what year?

A. 1905.

Q. The autumn of 1905? That was after it was known of all men, laity as well as clergy, that Dr. Crapsey had published a book which contained some statements that some objected to, wasn't it?

A. I presume so.

Q. Did you ever read any portion of that book? Or did you hear any part of it delivered?

A. Did I read any—how is that?

Q. Did you read any part of this book published by Dr. Crapsey, "Religion and Politics?"

A. Some parts of it.

Q. And some parts you heard delivered, didn't you?

A. Yes.

Q. When were those sermons delivered?

A. Do you mean what time of the day?

Q. No, what time of the year or month, what month of the year?

A. I think Dr. Crapsey began to deliver them some time in October or November.

Q. Of what year?

A. 1904.

Q. Then they were delivered from time to time until the spring of 1905?

A. They were delivered consecutively for thirteen Sundays.

Q. This investigation of the committee appointed by the bishop began in the early summer of 1905, did it not, or in the summer of 1905?

A. Some time about that time.

Q. I understand you to say that you took a memorandum on the 31st of December of these statements of Dr. Crapsey because they pained you, and you wished to call them to his attention, is that correct?

A. As I said, I intended to speak to him about it.

Q. You said more than that, you said you disapproved of the statements, did you not?

A. I don't have any recollection of saying so, perhaps the stenographer could tell us.

Q. If you did not disapprove of them, why would you talk to him about them, what was your object in talking to him?

A. I certainly did not agree with Dr. Crapsey's position.

Q. And did you not agree with Dr. Crapsey's position when he first advanced it, a year prior to that time?

A. No, I did not agree with him.

By MR. O'BRIAN: I object to that; there is no evidence that this statement was made a year before.

By MR. PERKINS: The book shows it was published in the summer of 1905.

By MR. O'BRIAN: Do I understand this statement is contained in this book?

By MR. PERKINS: As I understand your charge, they are very close one to the other; they are very similar.

Q. Subsequent to the publication of this book by Dr. Crapsey, subsequent to the utterance of these views, which I understand you to say you disapprove of, you asked to retain your position in that church at a higher rate of salary, did you?

A. I am not positive of the time the book did come out, and I am not very positive of the date I sent my letter to the vestry. The book came out in the autumn, and my letter went in,—I couldn't say, I wouldn't know which came first.

Q. Give us your recollection, Mr. Alexander.

A. Of course, I don't wish to make any emphatic statement of the recollection I am not certain of. They both happened in the autumn, the book came out in the autumn and my letter was written in the autumn.

Q. The sermons which were contained in the book were delivered before the autumn, were they not?

A. Yes.

Q. Those, I understand you to say, you listened to?

A. Some of them.

Q. What I want to know is, whether at the time you made this application for an increase in salary, Dr. Crapsey had uttered any of those views of which you disapproved?

A. I think his later utterances were very specific and certain in the book. I always gave, I might say, the defendant the benefit of the doubt; I had always hoped that Dr. Crapsey would come back to his old position, and I saw that—I saw there was no further question—

Q. What we would particularly like to know is the state of your mind with reference to Dr. Crapsey's sermons at the time you asked to stay at his church if you could receive an increase of salary; that is the point to which I am directing my question.

A. At that time I couldn't tell which way Dr. Crapsey would go.

Q. You were willing to stay there if you received an increase of salary, were you, whichever way he went?

A. Not indefinitely, no. I wouldn't say I would have remained indefinitely.

Q. You were willing to listen to heretical statements if it was remembered in the wages?

A. I don't know as I was willing; I might be obliged to.

Q. You were willing to stay if they gave you more pay, and you asked for more pay?

A. For the time being; I thought I should have more pay. I believe it was promised in Dr. Crapsey's letter, before I came to St. Andrews. I can produce those letters. If they had raised my salary, they should have raised it the first day of July, when my time expired.

Q. At various times in the autumn and winter you spoke to members of the vestry and said that if Dr. Crapsey was removed you would like to have his position as rector of St. Andrews?

A. I wouldn't say so.

Q. Will you state if you didn't.

A. Will you please state that again?

Q. I ask you whether last autumn or winter you did not speak to vestrymen of the church of St. Andrews, stating the possibility that Dr. Crapsey might be removed, and asking if you could not have their support as rector of that church, if he were removed?

A. I wouldn't put it that way.

Q. Tell us what way you would put it, then? Give us your memory?

A. Of course, I was called by the vestry, and I felt that occasionally I might speak perhaps to some of the vestry as to whether I should resign, or whether I should remain. That was the only question in my mind. It was a question whether I should remain or resign, that was the way I felt.

Q. Is that all you have to say?

A. That is all.

Q. Now, I will have to ask you that question again, and certainly, Mr. Alexander, as a truthful and intelligent witness you can answer a plain question. Did you or did you not, to any vestryman of St. Andrews Church, state, if Dr. Crapsey were removed you would like to have their support for the position as rector of the church, did you or didn't you?

A. I wouldn't answer such a question; I stated all I can say in regard to that. I was called by the vestry, and it was a matter I wished to consult with the vestry about, whether I should remain or resign.

Q. And you are willing in the presence of this Court and

of this audience to deny that you made such statements and requests to the vestry of St. Andrews Church?

A. The way I will put it, Dr. Crapsey frequently spoke of resigning, and on several occasions asked me to remain; and one day he sent for me and requested me to take charge of the parish. On several occasions Dr. Crapsey spoke of resigning, and on several occasions he asked me if I would be willing to carry on the work.

Q. That is interesting but it does not answer the question. Are you willing to testify that at the very time you took down those minutes of what Dr. Crapsey said, at the very time you knew, and all men knew, that these proceedings were pending, you did not apply to the vestry of St. Andrews Church to have the position from which Dr. Crapsey might be removed?

A. No, I wouldn't say so.

Q. You wouldn't say you did or you wouldn't say you didn't.

A. I wouldn't put it that way at all.

Q. You are willing to deny that you did that?

A. I wouldn't put it that way.

Q. That is all the explanation you have to make.

A. I spoke to some of the vestry as to whether I should resign or whether I should remain. Of course, those matters I don't think necessary to discuss; you can call the vestry if you wish.

Q. I should think quite possibly you would not. Then the information you give us is that those matters you don't think necessary to discuss. That is your answer, is it?

A. I have stated sufficient, I think, in answer to your question.

Q. I think you have. Well, finally Dr. Crapsey sent you a letter telling you to resign, didn't he?

A. I have that letter. I am glad to say I have that letter, and I have also some other letters of Dr. Crapsey and I will be willing to file them with the court.

Q. I will not ask you to file them; but I will ask you to answer my question whether Dr. Crapsey wrote you a letter in January, 1906, asking you to resign your position. Did you get such a letter as that?

A. I received a letter from Dr. Crapsey, after several

conversations in which he said if the finances of the church remained as they were, it would be necessary for me to resign, and it would be necessary to make other changes in the church, and I did receive a letter from Dr. Crapsey in which he seemed to say it would be necessary for me to resign.

Q. Now, won't you get a little further, and instead of saying he seemed to say, won't you be willing to state to the Court that you received a letter from Dr. Crapsey a little after the middle of January, 1906, in which he asked you to resign your position, and that you then resigned?

A. I saw Dr. Crapsey and Dr. Crapsey begged of me not to resign.

Q. I think I must ask that the witness be instructed to answer.

A. I saw Dr. Crapsey, and Dr. Crapsey begged of me not to resign until I had another position.

By MR. PERKINS: I think I must ask the Court to instruct the witness that he should answer a question. My questions are perfectly fair. I have a right to ask a perfectly fair question whether he received a letter asking him to resign. That is a fair question and this witness ought to know enough to answer it.

By MR. NORTH: The witness may well bear in mind that the other side is represented by very able counsel. I think he should now answer at this time the questions, and answer them more directly.

Q. I will ask you once more whether you did or not receive a letter from Dr. Crapsey in January, 1906, asking you to resign your position?

A. I received a letter, and I shall have to refer to the letter again to understand the exact meaning of the letter. I have it, and I will be willing to refer to it and to answer your question.

Q. If you have it, perhaps you will give it to us?

A. Well, I will, after I get to the hotel.

Q. And until you get to the hotel you are not able to tell us whether Dr. Crapsey asked you to resign or not?

A. Well, you might interpret the letter both ways. I couldn't understand the reason why Dr. Crapsey wrote the letter.

By MR. NORTH: I think in view of the fact that the witness offers to produce the letter, that it has gone far enough.

THE WITNESS: I will also produce some other letters that Dr. Crapsey wrote.

Q. If you will allow me, Mr. Alexander, you will produce those letters in answer to questions put you by the counsel for the plaintiff. You will produce in answer—let me instruct you as to your duties as a witness—in answer to my questions you will produce such evidence and make such answers as we ask you for. At any rate, again I ask you this question: You did receive it, didn't you, at some time?

A. I certainly did, yes.

Q. And when was that?

A. After my last interview with Dr. Crapsey.

Q. Tell us when that was?

A. On the 11th of January.

Q. And you resigned on the 11th?

A. On the 11th, yes.

Q. You resigned on the 11th?

A. I sent my letter to the vestry.

Q. How long before that did you receive this letter from Dr. Crapsey to which you have made reference? On what day did you receive that?

A. I think he sent it on a Saturday.

Q. Well, what day of the month? How long before the 11th? Was the 11th on Monday?

A. No, I think the 11th must have been on Wednesday or Thursday.

Q. And you had received this letter from him the Saturday prior to that?

A. I had already decided to resign.

Q. Well, we know that; but I am just asking you for dates as to when you did resign?

A. I sent in my formal resignation on the 11th, I think, of January.

Q. And you had received this letter from Dr. Crapsey on the Saturday prior to that?

A. I received his letter after I had already decided to resign.

Q. Yes, but you had received his letter before you sent in your formal resignation, hadn't you?

A. You might put it that way.

Q. I think we will put it that way, if that is the truth. I think we may safely do it.

A. Yes, I think you can.

Q. Now, when did you reach the decision to resign.

A. I decided to resign on the 1st of January.

Q. On the 1st of January?

A. Yes.

Q. At that time you had not had the conversation with Dr. Crapsey in reference to those notes?

A. No.

Q. If you were going to resign on the 1st of January, did it seem to you necessary, that you, about to leave the church, should take minutes of what had been said by the clergyman of the church, that you might reason with him?

A. You can view it so.

Q. Well, how do you view it? I know how I view it. You view it so here, do you?

A. You can look at it either way.

Q. Well, at any rate, the fact is that you went home to your room on the night of the 31st of December and put down in black and white for future reference statements made by Dr. Crapsey, and within twelve hours decided that you would leave the church?

A. I decided the next day,— I certainly did decide the next day, and I refused to conduct any services, as far as I could, for Dr. Crapsey. I refused to conduct the celebration the next day, and Dr. Crapsey knows I was absent on that particular day.

Q. You kept this statement for future use, did you not?

A. I wouldn't be very positive about it. I kept it.

Q. Perhaps after this history you can tell us now whether on that night of the 31st of December, you made those statements for future use as evidence to be given by you in court against the rector of the church where you were assistant. Can you tell us that now?

A. No, I don't think I had that in view. We didn't know there was going to be a trial, or anything of that sort.

Q. Did you take them then to furnish persons, that a charge might be brought and it might be tried?

A. I made memos of the statement; I can't say as to what use I intended to put them.

Q. When did you first show these statements to any member of the standing committee?

A. I never did show them to the standing committee.

Q. To whom did you ever show them?

A. I have no recollection of having shown them to any member of the standing committee.

Q. Where do you suppose the standing committee got these words they put into the presentment?

By MR. O'BRIAN: If the Court please, I am desirous that the whole truth should come out here and that Mr. Perkins should have the widest possible scope.

By MR. NORTH: Do you object to this question?

By MR. O'BRIAN: I certainly do.

By MR. NORTH: I advise that the objection be sustained.

By MR. PERKINS: If it is necessary to show that the witness is biased, I think I have gone as far as it is necessary.

Q. Just one question more on another point: When was it that you refused to go on with the services?

A. On the first day of the year.

Q. On the 1st day of January?

A. Yes, sir.

Q. Did you draw your pay as assistant to a date later than that; if so, to what date?

A. I was paid on the 24th. The 20th—I beg your pardon, the 20th. I was in charge of the parish while Dr. Crapsey was in Boston, and I was willing to resign at any time, but I couldn't resign before the 20th.

Q. I thought you told me a moment ago you resigned on the 11th.

A. The vestry didn't meet to accept my resignation. The vestry didn't meet until sometime after I had left there. I don't know really when they did meet. I received a letter some three or four weeks after I left there saying that they had accepted my resignation, but not until that time.

Q. When was it you actually left?

A. I actually left on the 20th.

RE-DIRECT EXAMINATION.

By MR. O'BRIAN:—

Q. Mr. Alexander, I understood you to say that you did have a talk with Dr. Crapsey after the delivery of that sermon and prior to your resignation?

A. I did, yes.

Q. And you sent in your resignation after you had that talk?

A. I did, yes.

By MR. O'BRIAN: If the Court please, I presume I may have stamped by the stenographer the various exhibits that I read this morning. I didn't have them stamped at the time.

By MR. PERKINS: Certainly yes; there is no question about those.

By MR. O'BRIAN: There are several other witnesses which I have, and expect to produce in this matter; but it will be impossible for me to get them this afternoon. I endeavored to do so. I did not anticipate that we should make such rapid progress this morning, and I cannot produce these witnesses until tomorrow morning. I offered in evidence this morning the Book of Common Prayer, I would like the privilege of calling particular attention to certain portions of that Book of Common Prayer, although the whole of it is now in evidence. If the Court will permit me I would like to take up the short remainder of the session with simply stating to the Court the particular pages to which I refer.

By THE PRESIDENT: Proceed.

By MR. O'BRIAN: We call attention to the statement of the Ratification of the Book of Common Prayer, to the Preface, to the Table of Proper Lessons for Sundays and Holy Days, and the other days of the year. Then on page 6 I call attention to the rubrics.

By MR. PERKINS: You don't mean the "Table of Proper Lessons for Sundays and Holy Days," but the general table of lessons.

By MR. O'BRIAN: I mean the whole table of lessons. Then at the bottom of page 6, the rubric: "Then shall follow a Portion of the Psalms as they are appointed, or one of the

Selections of Psalms; the Gloria Patri to which I also invite the Court's attention. Now, on page 7 of the Prayer Book to the Te Deum:

"The holy Church throughout all the world doth acknowledge thee.

The Father: of an infinite Majesty;

Thine adorable, true: and only Son;

Also the Holy Ghost: the Comforter.

Thou art the King of Glory: O Christ.

Thou art the everlasting Son: of the Father.

When thou tookest upon thee to deliver man:

Thou didst humble thyself to be born of a virgin.

When Thou hadst overcome the sharpness of death: thou didst open the Kingdom of Heaven to all believers.

Thou sittest at the right hand of God: in the glory of the Father.

We believe that Thou shalt come: to be our Judge.

We therefore pray thee, help thy servants: whom thou hast redeemed with thy precious blood."

Then the rubric on page 11, preceding the Apostles' Creed. The Apostles' Creed itself. The rubric on page 12, reading: "Or this," preceding the Nicene Creed, and the Nicene Creed itself. On page 14 a Prayer for the Clergy and People, and particularly the closing clause thereof: "Grant this, O Lord, for the honour of our Advocate and Mediator, Jesus Christ. Amen."

On page 21, the rubric preceding the *Gloria in excelsis*, and the *Gloria in excelsis* itself.

On page 27, the rubric preceding the Collect for Peace, and also the Collect for Peace itself, and in particular the closing clause thereof, "though the merits of Jesus Christ our Saviour. Amen."

Page 30, the Litany. The first eight supplications. And also in the Litany on page 31: "By the mystery of thy holy Incarnation; by thy holy Nativity and Circumcision; by thy Baptism, Fasting, and Temptation, *Good Lord deliver us*. By thine Agony and Bloody Sweat; by thy Cross and Passion; by thy precious Death and Burial; by thy glorious Resurrection and Ascension; and by the Coming of the Holy Ghost."

On page 33, "*Son of God, we beseech thee to hear us*.

O Lamb of God, who takest away the sins of the world; *Grant us thy peace.* O Lamb of God, who takest away the sins of the world; *Have mercy upon us.*" And the following: "O Christ, hear us. Lord have mercy upon us."

On page 35, the supplications beginning, "From our enemies, defend us, O Christ," down to the end, "As we do put our trust in thee."

On page 37, *A prayer to be used at the Meetings of Convention.* "Almighty and everlasting God, who by thy Holy Spirit didst preside in the Council of the blessed Apostles" etc., down to the end of that prayer.

By MR. NORTH: So far as the stenographer is concerned he may say "*A Prayer to be used at the Meetings of Convention.*"

By MR. O'BRIAN: He may take it that way, yes.

On page 40, the *Prayer for those who are to be admitted into the Holy Orders*, and particularly to the closing sentence.

"The collect on page 52, for the First Sunday in Advent, and also the rubric following that: "This Collect is to be repeated every day, with the other Collects in Advent, unto Christmas-day."

The collect on page 56 for the Third Sunday in Advent.

On page 58, the title of the day, "The Nativity of our Lord, or the birthday of Christ, commonly called Christmas Day," and the *Collect*. And I call attention also to the *Epistle* and *Gospel*, without reading them.

On page 60, the rubric for the alternative service for the Holy Communion on Christmas Day, the *Collect*, *Epistle* and *Gospel*, which I will not stop to read.

On page 66, the rubric: "*If there be any more days before the Sunday after Christmas-day, the Collect, Epistle and Gospel for Christmas-day shall serve for them.*" The *Collect* and the *Epistle* and *Gospel* for the Sunday after Christmas-day."

Page 96, the *Collect* for the Sunday next before Easter.

On page 118 the *Collects* for Good Friday.

The *Collect* on page 123, *Easter Even* and the *Epistle* and *Gospel* for that day.

On pages 125 and 126, the rubric, the anthems, the *Collect*, the *Epistle* and *Gospel* for *Easter Day*; and also on pages 127 and 128, the rubric, the alternative *Collect*, *Epistle* and *Gospel*

for the same. On page 128 and following, the *Collect, Epistle, and Gospel for Monday in Easter-week.*

On pages 130, 131 and following, the *Collect, Epistle, and Gospel for Tuesday in Easter-week.*

On pages 133, 134, the *Collect for the First Sunday after Easter, and the Gospel.*

On pages 141, 142, the *Collect for the Sunday after Ascension-day, and the rubric following the Gospel for Ascension-day.*

On page 143, the *Collect, Epistle, and Gospel for Whitsunday.*

On page 148, the *Collect for Trinity Sunday.*

On page 190, the *Collect, Epistle and Gospel, for the Feast of St. Thomas the Apostle.*

On page 194, the title, the *Collect, Epistle, and Gospel*—the title being, "*The Presentation of Christ in the Temple, commonly called The Purification of St. Mary, the Virgin.*"

On pages 197 and 198, the *Collect, Epistle, and Gospel for The Annunciation of the blessed Virgin Mary.*"

Pages 210 and 211, the *Collect and Gospel for the Transfiguration of Christ.*

On page 217, the *Collect for St. Simon and St. Jude, Apostles.*

On page 219, the *Collect for All Saints' Day.*

On page 224, the rubric at the bottom of the page, calling attention to the fact that the Nicene Creed is embodied in the Communion Service of the church.

On page 229, the Exhortation.

On page 231, the rubric and the General Confession, and the extracts from Scripture which follow that rubric.

On page 232, the rubric.

Then the Proper Prefaces, on page 233, and the various rubrics.

On page 237, the several rubrics and the several statements in the Communion Service, beginning, "The Body of our Lord," etc.

On page 238, the rubric for the *Gloria in excelsis*, and the *Gloria in Excelsis* itself

On page 240, the *Collect.*

On page 247, in the Baptismal Service, the rubric at the bottom of the page, and the following questions.

On page 249, the rubric: "*Then the minister shall say,*" etc. down to the end of that statement.

Page 254, the Service for the Private Baptism of Children, the rubric, and the same questions to which I have just referred in the other service.

On page 261, Baptism of those of Riper Years, and the questions on pages 261 and 262, and the rubric on page 261, being the same questions to which I have already referred.

On pages 266 and 267, the Catechism.

On page 273, the title for The Order of Confirmation, and both rubrics on that page, and the preface: "To the end that Confirmation may be ministered," etc.

On page 274, the rubric, "*Then shall the Bishop say,*" etc. The rubric following, "*And everyone shall audibly answer, I do.*"

On pages 284 and 285, the rubric in the Service for the Visitation of the Sick, and the following rubric: "*The sick person shall answer, All this I steadfastly believe.*"

On page 294, the rubrics and the prefatory sentence in the Order for the Burial of the Dead, and the sentence beginning, "I am the resurrection and the life."

On page 296, the rubric for the Lesson in the Burial Service.

Page 296, the Lesson—calling the attention of the Court to the fact that the Lesson in the Order for the Burial of the Dead is taken from the first Epistle of St. Paul to the Corinthians, beginning the 15th chapter, 20th verse, "Now is Christ risen from the dead," etc.

On page 302, the rubric, and the prayer to be used at the Burial of the Dead at Sea.

On page 315, in the order for the Visitation of Prisoners, the rubrics at the bottom of the page.

On pages 316 and 317, the second rubric and the prayer used, and in particular the rubric and prayer: *Adding this*: "O Savior of the world, who by Thy Cross," etc.

I neglected to call attention to the fact, which I would like to do, that this last rubric and these last prayers are in the order for Visitation of Prisoners, but in particular under the

order and title, "*A form of Prayer for Persons under sentence of death.*"

On page 509, the title of the Ordinal and the Preface.

On page 514, the title: "The Form and Manner of Ordering Priests," and the various rubrics which precede that service.

On pages 516, 517, and 518, "*Then the Bishop shall say unto them as followeth,*" etc.; then all the ordination vows taken by the priest, with the questions and answers, and of course the final prayers of that service—all of the final prayers.

On page 521, the rubric and the prayer: "*That done, the Bishop shall pray in this wise, and say, Almighty God and heavenly Father,*" etc.

On page 522, the rubric: "*When this Prayer is done*"—this is in the Order for the Ordering of Priests; "*When this is done, the Nicene Creed shall be said,*" etc. And the closing prayer of the Ordinal. That is all. I thank the Court for its forbearance.

By MR. SHEPARD: The Thirty-nine Articles?

By MR. O'BRIAN: You may offer those. I don't offer those.

Adjourned to April 26th, 1906, 10 A. M.

THURSDAY SESSION, APRIL 26, 1906.

Proceedings of April 26th, 1906, 10 A. M. Appearances same as before.

By MR. SHEPARD: Those papers which were referred to yesterday, the correspondence, have you produced them?

By MR. O'BRIAN: Yes.

By MR. SHEPARD: Will you let me take those?

By MR. O'BRIAN: Very glad to.

By MR. PERKINS: Do you want to offer them?

By MR. O'BRIAN: I don't care.

By MR. ALEXANDER: I prefer to have that letter filed, there was so much talk about it yesterday.

By MR. O'BRIAN: I file it with the stenographer for record, the letter written Mr. Alexander on the 5th day of January, 1906, by Dr. Crapsey.

Received and marked "*Exhibit A.*"

By MR. O'BRIAN: In addition to the passages of the Prayer Book to which I called attention yesterday, there is one other passage that I very strangely overlooked in going through so hastily yesterday. Yesterday was St. Mark's Day, and I should like to offer the *Collect*, the *Epistle*, and the *Gospel*. With the grace of the Court I will read it.

(Mr. O'Brian reads *Gospel*.)

And the *Epistle*, which is taken from the fourth chapter of the Epistle of Paul to the Ephesians, beginning with the seventh verse, and the *Gospel* which is taken from the fifteenth chapter of the Gospel according to St. John, beginning with the first verse.

I would also offer the lessons appointed for the Advent season and Christmas-day, and for the season of Eastertide.

I asked you last time about the declaration made about Dr. Crapsey at the time he was ordained to the priesthood. The answer admits he took all the vows in the Ordinance. There is one vow, so-called, to which the priests are required by the constitution of the church to subscribe.

By MR. PERKINS: That is set out in the presentment.

By MR. O'BRIAN: Yes. I presume the presumption of law would cover it. I would like to make it clear.

By MR. PERKINS: If you have correctly set out the form as it was in 1872, of course, we admit it.

By MR. O'BRIAN: I offer the Constitution in evidence. If you will simply admit that he took the oath required at that time, that is all I desire.

By MR. PERKINS: Certainly.

By MR. O'BRIAN: I should like to call a witness, the Rev. Francis Woodward.

FRANCIS WOODWARD, being called on behalf of the prosecution after having subscribed to the stipulated oath, testified as follows:—

DIRECT EXAMINATION.

By MR. O'BRIAN:—

Q. Mr. Woodward, you reside where?

A. In Rochester.

Q. And your occupation?

A. Clergyman.

Q. Of what parish are you rector?

A. St. James.

Q. How long have you been there?

A. I have been there over five years.

Q. Are you acquainted with Dr. Crapsey, the defendant?

A. Slightly.

Q. Did you have a conversation with Dr. Crapsey during the month of February, 1905?

A. I did.

Q. Where did that take place?

A. In his study.

Q. You may state the substance of that conversation?

By MR. PERKINS: To that I object. There is no such conversation alleged in the presentment, and I desire to call the attention of the Court this morning to the question that arises in reference to this evidence, and may arise if any further effort should be made to prove the contents of the book not set out in the presentment. We have here the decision of the highest court upon the precise point in the famous case against Dr. Williams, one of the authors of "Essays and Reviews," which went from an ecclesiastical court to the Dean of the Arches, and was appealed to the Privy Council and finally decided by a court consisting of the Lord Chancellor, and the law Lords, the Archbishop of Canterbury and the Archbishop of York. There the precise question was presented. The presentment set out certain statements made by Dr. Williams which it was charged were contrary to the accepted doctrines of the Episcopal Church. On the trial they sought to prove other statements—they were in that case written statements,—made by Dr. Williams. It was held—and I should be glad to have the case examined by the assessor of the Court—that the complainants could prove nothing except that which they had alleged.

"These prosecutions are in the nature of criminal proceedings, and it is necessary that there should be precision and distinctness in the accusation. The articles of charge must distinctly state the opinions which the church has advisedly maintained, and set forth the passages in which those opinions are stated; and further, the articles must specify the doctrines of the church which such opinions or teaching of

the church are alleged to contravene, and the particular articles of religion or portions of the formularies which contain such doctrines. The accuser is, for the purpose of the charge, confined to the passages which are included and set out in the articles as the matter of the accusation; but it is competent to the accused party to explain, from the rest of his work, the sense or meaning of any passage or word that is challenged by the accuser."

In other words, it was held in that famous case in which the prosecutor was the Bishop of Salisbury, the defendant being Dr. Williams; and it was decided by the highest court not only of England, but the highest court in this church—of the church in which we are a part, composed as it is there, alike of the highest officers of the law, and the highest officers of the church—in the decision sat the law lords, the Lord Chancellor, and the two Archbishops of the church; it was there held, as I have said, that no evidence could be introduced against any member of the church accused of having uttered sentiments contrary to the doctrines of the church, except those which were alleged. Now, here the presentment has set out certain statements contained in a book published by Dr. Crapsey, and we admit them. It has also set out certain statements alleged to have been made by him in a sermon delivered on the 31st of December, and as to that, evidence has been given and was received yesterday. Now, the prosecution calls another witness to testify as to a conversation had between him and Dr. Crapsey at another time. It is evident to the Court that if this can be allowed the prosecution can call any man who at any time has talked with Dr. Crapsey on any doctrinal question, and give that evidence. There is no limit. We are bound by the presentment or there is no bound. This Court is to pass upon the things of which we are accused, or it is to pass upon anything that any man may testify that Dr. Crapsey at any time has said. A mere reference to the principles of the law by which this Court, like all courts, is bound, would be sufficient to show, as it seems to me, that the evidence must be excluded; but we are certainly fortunate in having, in an action of this character brought upon a similar charge against another clergyman of the church to which we belong, the

ruling of the highest court, that such evidence cannot be received.

By MR. O'BRIAN: I will ask the witness just one question for the purpose of making the object more clear for calling him.

Q. I show the witness, not for the purpose of putting it in evidence, a copy of the *Rochester Democrat and Chronicle* of Monday, February 20th, 1905, containing what purports to be a report of this sermon delivered by Dr. Crapsey and ask the witness whether he saw that article,—whether you saw that prior to your conversation with Dr. Crapsey?

A. I did.

Q. And whether your conversation with Dr. Crapsey dealt with that subject?

A. Directly.

By MR. NORTH: And dealt with what subject, with the article, the fact that the article had been printed, what it contained?

By MR. O'BRIAN: Yes.

By MR. NORTH: Ask the witness that.

By MR. O'BRIAN:—

Q. The conversation dealt with what had been printed in the paper?

A. Directly. That was the cause that led up to the conversation.

Q. Have you ever read the presentment in this case, Mr. Woodward?

A. Part of it; I can't say that I have read all of it; I think the greater part of it.

Q. And did that conversation which you had with Dr. Crapsey in substance, deal with what I am about to read you from page 17 of the presentment:—"In the light of scientific research, the Founder of Christianity no longer stands apart from the common destiny of man in life and death, but He is in all things physical like as we are, born as we are born, dying as we die, and both in life and death in the keeping of that same divine power, that heavenly fatherhood, which delivered us from the womb and carries us down to the grave. When we come to know Jesus in His historical relations, we see that miracle is not a help, it is a hindrance

to an intelligent comprehension of His person, His character, and His mission. We are not alarmed, we are relieved when scientific history proves to us that the fact of His miraculous birth was unknown to Himself, unknown to His mother, and unknown to the whole Christian community of the first generation." Did your conversation deal with that in substance?

A. Dealt directly on the subject that is mentioned twice in that presentment, upon the birth and His relation to His mother.

By MR. O'BRIAN: If the Court please, I submit that for many reasons this evidence is competent; it is not offered for the purpose of convicting Dr. Crapsey of a crime in this conversation. If it were, the law which has just been read would apply, although I have not read that case, and don't know the facts in it. Of course, the Privy Council of the Church of England, I desire to say right here, is not the highest court of this church, but that is a matter we will take up later. I insist that the law here is analogous to the law of libel, to which Mr. Perkins fortuitously adverted yesterday. What is the law of libel? The *gravamen* of the charge in this case is, that certain statements were made with reference to certain doctrines, in derogation of those doctrines; that these statements were made, and that they were intended to convey a certain idea. Now, any evidence is admissible which will tend to prove, not for the purpose of convicting Dr. Crapsey of that offense, but for the purpose of explaining the intent and making clear the use and meaning; and I will read from an English authority, standard authority on this subject of slander and libel, with the Court's permission.

Odgers "*Slander and Libel*," 4th Ed. 1905, pp. 326-328 (citing many English cases.)

"Any words written or spoken by the defendant of the plaintiff, either before or after those sued on, or even after the commencement of the action are admissible to show—"

By MR. NORTH: The rule is perfectly familiar, and if that is the purpose it makes no difference.

By MR. PERKINS: This is to prove malice on the part of the defendant?

By MR. O'BRIAN: To prove intent.

"Whenever the words are ambiguous or the intention of the writer equivocal, subsequent libels or slanders are admissible in evidence, to explain the meaning of the first or to prove the innuendos, even though such subsequent publications be after action brought." (Odgers 124.)

The decision of the highest court of this state, the rule in slander is taken in the opinion of *Enos vs. Enos*, 135 N. Y., 609.

"The rule in slander is that other slanderous statements than those set forth in the complaint, are admissible if they support the charge in the complaint.

"In an action for slander the plaintiff is entitled to prove as bearing upon the question of malice, other slanderous statements than those set forth in the complaint made by the defendant, imputing the same charge as that embodied in the words set forth.

"It is not necessary that such other statements shall be in the same words or substantially the same as those set forth; it is sufficient if there is a repetition of the same calumny. The form in which the repetition is clothed would seem to be immaterial. It seems, however, that such repetitions are admissible only to show degree of malice of the defendant in speaking the words charged in the complaint; that they do not furnish independent cause of action, and that no recovery can be based solely thereon."

And the very old rule, in this state, 19 Wendell: "Subsequent conversations showing *quo animo* the words were spoken, are evidence."

I think that clearly covers the point at issue in this case.

The law as stated by Mr. Perkins, does not seem to me to cover it; he is proceeding upon the theory that you cannot charge and convict a man for statements that he is not charged with in the indictment, and we entirely agree with him, and that it is a well settled rule; but that does not exclude evidence which tends to show the mind in which the statements are made. We have laid here a charge of a statement having been made, and that by that statement a certain innuendo was meant; that by these statements, for instance, it was meant to deny that Christ was God. I submit that any evidence of this kind, which is not too remote

in point of time, is competent. Furthermore, if the contention of Mr. Perkins in all of its breadth were correct, a conviction could never be produced for any purpose, simply for the reason that the man was not charged with it in his indictment. He is confusing the production of evidence to support a charge with the offense with which the man is charged. Entirely on another point this evidence is admissible; if it should tend to show that Dr. Crapsey was in the habit—I say if—if it should tend to show that Dr. Crapsey was in the habit of referring to our Saviour, Christ, as the son of Joseph, or if he was in the habit of referring to him as having been born of human parents, then it is admissible entirely on another point in the presentment, the testimony that was offered by Mr. Alexander, as showing a well settled intention. I admit the law as laid down by Mr. Perkins to be the law, that you cannot bring a man up charged in an indictment or a presentment with one offense, and then proceed to convict him on another; we all agree on that. That is not our intention, I respectfully submit, and it seems to me these two cases in this state, under whose law we are trying this case, are absolutely conclusive upon this point.

For the purpose of making my position clear, I offer to show by this witness what was said by Dr. Crapsey on that occasion. I offer to show—this* is not to bind Mr. Perkins in any way,—a reaffirmation of that statement, a clear explanation of the exact words contained in it, and I submit upon all the accepted rules of evidence that statement is competent.

By MR. PERKINS: Just a word in reply. Some of us regret that the church should have jurisdiction even of questions of heresy. We are devoutly thankful that before the clergymen of the church it is not necessary to bring questions of libel and slander. The authorities which my friend has relied upon are entirely—there is no one knows this better than my astute friend on the other side—in an action brought against a man charged with having defamed his neighbor. The person defamed wants to get the money of the defamer; having been called improper names, he seeks to mulet the other man and get his money. The question which the jury must pass upon is, first, did the man make the statement; secondly, was it made inadvertently, or was it made wantonly and maliciously;

in such a case this evidence is received, as was suggested by the assessor; no rule is more familiar. But this case is brought that a man may be removed from the ecclesiastical organization of which he is a member, and the rule has been laid down, as I said before, in a similar case. Imagine if I might suggest to the Assessor, if an action were brought, we will say for slander, and evidence was objected to and counsel should say that in an action for assault and battery such evidence was received. Courts upon each distinct class of litigation have laid down the rules which govern them, and the courts have laid down the rules which govern evidence to be received in the action now brought before this Court.

My friend's illustration was, I think, a trifle unhappy, because he said, to illustrate the value which his evidence might have, "suppose we could show that Dr. Crapsey had been in the habit of referring to Christ as the son of Joseph." I will inform my friend that he will find repeated references of that kind in the Holy Scriptures. But that does not bear on the question of this evidence. We admit he wrote the statement, the fifteen statements, and we admit that he made it in those precise words. It is not necessary to prove it; it is admitted by the answer of the defendant. Now, the counsel, not satisfied with the passages that he has selected, apparently not content to have our admission before this Court, that the Court may pass upon the statement which we have made, and say wherein, if at all, it offends or does not offend, seeks to give an entire conversation, of which the object cannot be to prove that we said these things, because we admit we said them, but to show we said other things, which presumably we claim were the words that were not uttered.

By THE PRESIDENT: The ruling of the Court will be made by the assessor.

By MR. O'BRIAN: May I be heard a little further on this question?

It seems to me the only rule which is applicable is the rule in libel and slander; that is the only form of action that I can readily think of, and I have thought of it for some time, which corresponds to this. Where you charge a defendant with having uttered certain words, and having intended by those words to make certain assertions, certain denials, in

other words, to put it somewhat crassly, this slandering the doctrines of the church, for instance, the doctrine of the miraculous conception, as Dr. Crapsey calls it, of Christ, we submit that not only is it competent under the rule, but it is the only fair rule that can be applied. Mr. Perkins will recall the old common law action of slander of title, which was not a case of backyard quarrel between neighbors. We are not offering this for the purpose of establishing the admitted fact, we are offering it for the purpose of establishing a clear explanation of the intention. What is the general rule apart from slander and libel and what my friend calls heresy? This is taken from Greenleaf's 15th Edition:

"Ordinary collateral facts, or those which are incapable of offering any reasonable presumption, or inference as to the principal fact in dispute, may not be offered in evidence. The reason is that such evidence tends to draw away the minds of the jurors from the point in issue and to excite prejudice and to mislead them, and moreover, the divers parties having had no notice of such a course of evidence, are not prepared to rebut it. In some cases, however, evidence has been received of facts which happened before or after the principal transaction and which have no direct or apparent connection with it. These cases will be found to have been cases in which the knowledge or intent of the party was a material fact, on which the evidence strongly collateral and foreign to the main subject, had a direct bearing, and was therefore admitted. And so, in actions for defamation, evidence of language either spoken or written by the defendant at other times is admissible, under the general issue, in proof of the spirit and intention of the party in uttering the words or publishing the libel charged; and this, whether the language thus proved be in itself actionable or not.

"Evidence is also admissible whenever there is a question whether the act was accidental or intentional, to show that the act was one of a series of similar occurrences, in each of which the person doing the act was concerned."

And I read from Justice Stephens's "Digest of Evidence":

"When there is a question whether a person said or did something, the fact that he did or said something of the same sort on a different occasion may be proved, if it shows the existence on the occasion in question of any intention,

knowledge, good or bad faith, malice, or other state of mind, or of any state of body or bodily feeling the existence of which is in issue, or is deemed to be relevant to the issue, but such acts or words may not be proved merely in order to show that the person so acting or speaking was likely on the occasion in question to act in a similar manner."

And the familiar rule, "It is relevant to put in evidence any circumstance which tends to make the proposition at issue either more or less probable."

And my friend has spoken of the rule in criminal cases. The rule is laid down in this case—in the old *Dimmick* case, which has never been questioned:

"In cases where it is necessary to show the motive or fraudulent intent, it is proper to admit evidence that the defendant had done other similar acts, although such proof might show that he was guilty of other crimes."

On the subject of intent, I believe this evidence is absolutely competent. Further, it is absolutely competent on another ground entirely, as intending to corroborate the statements made by Dr. Alexander, relating to the same subject matter, and I ask that the court give this very careful consideration.

By MR. NORTH: Gentlemen, I am going to say that while counsel were engaged in discussing this question, the members of the Court have conferred together, and the presiding member of the Court said to me a few minutes ago, that while they did not desire to influence my judgment, and would leave the question to me, it was their judgment and they desired I should know it, that this evidence be excluded. I realize that the whole question is a very fine one. I appreciate the force of Mr. O'Brian's argument up to a certain point, namely, that this evidence tends to support the charge. I realize that the accused could not be convicted under any circumstance for the statement that he made to this witness, because no such statement is charged in the presentment. The evidence, if competent at all, would be competent on precisely the theory suggested by Mr. O'Brian. But the other side of the question, gentlemen, is this: The defendant in this case does not deny that he said and published that which he is charged with having said and published; he stands in the open on this question.

By MR. O'BRIAN: He denies the intent, that is the point.

By MR. NORTH: Does he deny he intended to publish it?

By MR. O'BRIAN: He admits the publication of those words, but denies that they meant what we say they do mean; that is the point.

By MR. PERKINS: That is the precise question for the court to pass upon. We deny that we have violated the doctrine of the church. We deny that the effect of those words was to violate the doctrine of the church.

By MR. O'BRIAN: He admits he said them; that is not a point upon which the prosecution needs any corroboration at all.

By MR. NORTH: He denies that the effect of these words was to violate the doctrine of the church, as I view it, but admits he said these very things. By taking the analogy of the slander or libel case, it will be quite competent to have shown that subsequent to the alleged slander or libel that he said something similar, which conveyed the same meaning, as tending to support the charge or accusation, but I am quite content to leave the ruling on this with the persons who constitute the Court. They have said to me it was their inclination to exclude this evidence, and I have been merely asked to announce their decision.

By MR. O'BRIAN: I presume I have an exception.

By MR. NORTH: Yes, sir.

By MR. O'BRIAN: I subpoenaed Mr. Cash, the former organist of Dr. Crapsey's church, and I would like the stenographer to note that he was subpoenaed to come. I shall offer proof that he was subpoenaed.

By MR. PERKINS: Is he the man who has some position in Dr. Crapsey's church?

By MR. O'BRIAN: Yes.

By MR. PERKINS: It is stipulated that they subpoenaed him, and Dr. Crapsey spoke to him, as he informs me, and requested him to come, and offered to pay his expenses if he would come.

By MR. NORTH: It is enough, Mr. O'Brian, if it is stipulated that you subpoenaed him.

It is stipulated that Mr. Cash has been subpoenaed.

By MR. O'BRIAN: There is one other witness who I am creditably informed cannot be here today. I am not sure that I shall use him if he does come. He sent me word that he would be here tomorrow morning. His evidence will be simply a corroboration of this sermon of the 31st; there will be no new element injected, simply corroboration of this sermon of December 31st. I do not want the Court to wait his appearance, but I should like the privilege of calling him if he does come tomorrow.

By MR. PERKINS: I will state for the information of the counsel, we will give no evidence on that question.

By MR. O'BRIAN: I think very likely we shall not call him then.

Then, if the Court please, we rest.

JOSEPH A. LEIGHTON, being called on behalf of the respondent, after taking the stipulated oath, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. Where do you live?

A. I live in Geneva, N. Y.

Q. You are a clergyman of the Protestant Episcopal Church?

A. I am.

Q. How long have you been?

A. I have been a priest since the 25th of January, 1898.

Q. What position do you now hold?

A. I am Professor of Theology and Chaplain of Hobart College.

Q. Have been since how long?

A. Since the autumn of 1897.

Q. You have had occasion to examine doctrines of the church and the works that treat upon them?

A. Yes.

By MR. PERKINS: I will state to the Court, so that the object of the first question that I shall ask Prof. Leighton may be understood, that we understand the ruling of the Court to be, as was suggested by the assessor, that any authorities

in printed form might be referred to, that there is no necessity of technically putting them in evidence, but to them we may refer in the course of the argument, and they will be regarded as before the Court for the purpose of examination and study.

By MR. NORTH: In order that there may be no misunderstanding, I will tell you what was the precise scope and effect of the ruling. Lawyers are all aware that before books can be referred to in evidence, their genuineness or authenticity must be established by rules laid down by our statutes. I said that no such rules need be invoked in this trial, that the authenticity of the book might be accepted, but the admissibility of the evidence would be passed upon as the evidence arose on the trial.

By MR. PERKINS: It seems to me, if the Court please, there is no necessity or need of these being technically put in evidence; it is, of course, for the Court to pass upon the statements made by Dr. Crapsey, which are alleged to be contrary to the doctrine of the church. That question must, of course, be determined, and the legal question determined by an examination of the authorities that bear upon the question, and we suppose that in presenting the matter of authorities, any statements of persons of recognized standing in the church can be referred to. They are not perhaps strictly in evidence, but we can say that Dr. So and So takes this and that view, which is to be considered by the Court as to whether or not it correctly states the doctrines of the church within the limits allowed by the church, and with this statement I merely wish to ask a few questions of Prof. Leighton on this branch, as to who are the persons who have written these books, because I shall certainly concede that we could not with propriety, in such a discussion as this, refer to some book by a member of some other religious denomination, that the Court would doubtless say in this matter, that they must be guided by the views of those who are members of this church, and could not be guided by those who hold other religious views.

By MR. NORTH: In other words, you desire to do, as we do in the courts, prove these to be works of standard and recognized authorities, is that it?

By MR. PERKINS: Yes, and the standard and recognized authorities of the Protestant Episcopal Church, I think

must be members and clergymen of that church, and not clergymen of some other denomination, and so I will ask Prof. Leighton.

Q. You know the work *Encyclopædia Biblica*, by Cheney?

A. I do.

Q. That is edited by the Rev. T. K. Cheney? Will you state who he is?

A. He is Professor of Biblical Exegesis at Oxford, and Canon of Rochester. He is a priest of the church, I have met him and conversed with him and know him to be such.

Q. J. Southern Black, I believe, is not a clergyman of the church?

A. I believe not; he is a member, I believe, but not a clergyman.

Q. I now call your attention to a publication which I hold in my hand, entitled "A Word on the Virgin Birth," stated to be by the Rev. W. S. Parker, M. A., rector of Barford, and ask you if Mr. Parker is a clergyman of the Church of England?

A. Yes, I believe he is.

By MR. LOCKE:—

Q. You say you believe he is, do you know?

A. I know he is.

By MR. PERKINS:

Q. I next call your attention to a book published by one Paul Lobstein, entitled, "The Virgin Birth of Christ," and I call your attention first to the introduction of that book written by the Rev. W. D. Morrison, and I ask you if the Rev. W. D. Morrison is a minister of the Church of England?

A. Yes, and chaplain of his Majesty's prisons in London, and distinguished as a criminologist.

Q. I call your attention to a letter written on this subject by the Dean of Westminster to the Archbishop of Canterbury; you know that?

A. Yes, I have read the letter.

Q. It perhaps is unnecessary to ask you whether the Dean of Westminster is a clergyman of the Church of England?

A. I know him to be, he is a graduate of Oxford University.

Q. I next call your attention to a work on the Incarnation written by Dr. Briggs. You know the work?

A. I know the work, I know the author.

Q. You know the author. He is a minister?

A. He is a minister in the Protestant Episcopal Church.

Q. Where does he live?

A. He lives in New York.

Q. Living in New York?

A. Yes.

Q. I next call your attention to an article contained in a periodical or magazine, called "Contentio Veritatis," the article being entitled "The Person of Christ," written by the Rev. W. R. Inge, I think. I ask you who he is?

A. I might say that it is not a magazine; "Contentio Veritatis" is a theological paper, to which Mr. Inge is a contributor. Mr. Inge is a priest of the Church of England, one of the most distinguished graduates of Cambridge and lecturer on Theology and Arts, University of Oxford.

Q. What position does he hold?

A. Lecturer on Theology at Oxford, and Fellow at Oxford College.

Q. Then I call your attention to a book written by the Rev. S. D. McConnell, the title of that being "Christ." You know that book?

A. I know the book; I know McConnell personally to be a clergyman of the Protestant Episcopal Church.

Q. Who is Dr. McConnell?

A. He was formerly rector of St. Stephen's Church, Philadelphia, and afterwards rector of Holy Trinity Church, Brooklyn, and later on of All Souls Church, and he is now retired from active work.

Q. I next call your attention to two books, one called I think, "The Bible in Modern Life," and one called, I think, "Godly Union and Concord," by Dr. Henson. I ask you who he is.

A. Dr. Henson is a distinguished Oxford graduate, a priest of the Church of England and Canon of Westminster Abbey, and rector of St. Margaret's Church, Westminster.

Q. I next call your attention to a work called, "Studies on Theological Definition," written by Mr. or Dr. Palmer. I ask you who he is?

A. Frederick Palmer is a priest of the Protestant Episcopal Church, having a charge at Andover, Massachusetts.

Q. And all of these gentlemen, as I understand, are now priests in recognized standing of the Protestant Episcopal Church in America or of the Church of England?

A. Yes.

By MR. O'BRIAN: I don't want to be captious—I doubt whether this witness is competent to testify to that, unless he knows them personally. I doubt whether the gentleman can testify as to each of these gentlemen being a man in good standing in the Church of England.

By MR. PERKINS: I may not be regarded in good standing by some of those who brought this prosecution. I think he could say that the Dean of Westminster was a priest of the Church of England.

By MR. O'BRIAN: I think so. I doubt whether the gentleman can testify as to each of these gentlemen being a man in good standing in the church.

By MR. PERKINS: The question is, whether he is a recognized member of the Church of England, against whom the Church of England has never taken proceedings.

By MR. O'BRIAN: That has nothing to do with the case.

By MR. PERKINS: That has nothing to do with the doctrines of the Church of England? Then we are mistaken. That the Protestant Episcopal Church of America has broken away from that of England, is a novel theological proposition; I supposed it was in close affinity.

Q. I will ask you what perhaps is hardly necessary, but we shall make reference in the argument to works of his, though I am confident that every member of the Court knows all that Prof. Leighton can tell us—tell us who was Frederick Temple, and what was his position in the Church of England?

A. His last position was that of Archbishop of Canterbury.

Q. Just give us the position he held prior to that?

A. He was formerly head master of one of the great English schools.

Q. Rugby?

A. Yes.

Q. And after that Bishop of Exeter?

A. Yes, sir.

Q. And after that Bishop of London?

A. Yes, sir.

Q. And after that Archbishop of Canterbury?

A. Yes.

Q. One of the authors of the book known as "Essays and Reviews?"

A. Yes.

By MR. PERKINS: There are many more books to which we will refer, but it is unnecessary to go through with the identification of all the books that bear on the doctrines of the Protestant Episcopal Church, and so I will ask the witness some other questions.

Q. You have read the specifications of the presentment against Dr. Crapsey?

A. Not fully.

Q. Then I think I will have to ask you to read them before I ask the question.

By MR. PERKINS: I beg the Court's pardon, I supposed that the witness had read it in full.

(Witness reads presentment.)

Q. You have now read, I suppose, the extracts that are contained in the presentment?

A. I have.

Q. I now ask you whether in your opinion there is anything in the statements contained in the specifications which is contrary to the doctrine of Christ, as the Lord hath commanded, and as this church hath received the same?

By MR. O'BRIAN: If the Court please, I object to this question. I don't think this witness is impersonating the Ecumenical Council, or that he is impersonating the Protestant Episcopal Church in the United States of America. It is true, undoubtedly, that he is a young man learned in the law of the church, and in his theology. He has no more right to characterize or interpret the doctrines of the Protestant Episcopal Church than a man who never heard of them, for the reason that the Protestant Episcopal Church in America is an organization; it has a constitution, it has its by-laws in the Form of Baptism, the Order of Baptism, and the Order of Confirmation. The question is based upon a fundamental misunderstanding of the position of the Protestant Episcopal Church in America. It is not a Luth-

eran body; its doctrines are not determined by the consensus of opinion. If every single clergyman—to put this in a very crude simile—if every single clergyman in good standing, as my friend says, in the Protestant Episcopal Church of America, or in the Church of England, should come here and testify that there was nothing in this presentment which contradicted the doctrine of the Episcopal Church, it would have absolutely no weight. The church speaks as a church. The church has laid down what is its doctrine, and what is not its doctrine, and the Book of Common Prayer is the embodiment of the mind of the church on that subject. For any individual, or any set of individuals who are not acting in a convention of that church to decide what the law of that church is, is a manifest absurdity. For any man to attempt to qualify as an expert upon a perfectly clear, straightforward statement of doctrine is an equal absurdity. The Apostles' and Nicene Creed apparently contain comparatively simple statements of fact: "and in Jesus Christ His only son, our Lord, who was conceived by the Holy Ghost, born of the Virgin Mary, suffered under Pontius Pilate, was crucified, dead and buried; He descended into hell, the third day he arose again from the dead." For any man, whether a clergyman or layman, to attempt to decide offhand whether certain words conform to that doctrine, is, as I say in all fairness, an impertinence, because no man can speak of what the doctrines of the church are; they are straightforwardly laid down in the most unequivocal language; and the creeds as originally written, or if not originally written—the creeds as we have them were written in the most accurate and exact of all languages, and were expressly formed to exclude erroneous conceptions of doctrine. Now I say that no man can qualify as an expert—which this gentleman, by the way, has not done. No member of the church can arise and overthrow the polity of the church. No man can interpret the doctrine of that church in a manner which is contrary to its express statements of fact. It is a question of law for the Court here whether these questions conform to the doctrines of the church. It is not a question of fact for witnesses to testify to, nor is it a question of fact, or a question of law upon which the Court will require the services of a witness. If we are going to go into this question on this subject, on this line, every single statement written by an American clergyman or by a

clergyman of the Church of England, no matter what his standing, no matter what his reputation, is just as competent as the testimony which is intended to be offered in this case. It is on the face of matters, I say, a manifest absurdity. If the Court has any doubt as to that position, I should respectfully request that we be given more time in which to present it, for it is a most astonishing proposition to me, for any man, whatever his position, whether he be Chaplain of Hobart College, or the Archbishop of Canterbury, to arise and state whether or not a flat statement of fact is in accord with the law of the church. The law of the church, may it please the Court, speaks for itself, and cannot receive the interpretation of divers individuals. It would subvert the whole theory of church organization; it would destroy the very conception of corporate existence, if one man or one hundred men or a thousand men should arise and say that reads to be the law, but that is not the law. It is a question of law for the Court, upon which testimony of witnesses is not necessary, and upon which, on every principle, such testimony is incompetent.

By MR. PERKINS: If the Court please, it is charged that Dr. Crapsey has violated his obligations as a clergyman, in that he has advanced statements which are contrary to the doctrine of Christ as the Lord hath commanded and as this church has received the same. What is the church. What is the church of which we are members, if the argument of the counsel for the prosecution is correct. Who are the church? The church is composed of the clergy and the laity, members in regular standing of the Protestant Episcopal Church. We are the church. Let us suppose everybody—every layman and every clergyman held to some doctrine which my friend thinks would be contrary to a statement given in the Prayer Book, for instance; we would have as a result, that all the church would be heretical, except the members of the Standing Committee.

By MR. O'BRIAN: And his counsel.

By MR. PERKINS: And his counsel—I am not quite sure that even the counsel would be exempt.

The opinion of the church, the doctrines of the church, are those things which are accepted by those of recognized standing within the church.

What has been considered in these heresy trials, the few, I am glad to say, which have been brought before the authorities having

jurisdiction of them? If the statement of my friend on the other side is right there was nothing to prove, for instance, in the prosecution against Dr. Williams for publishing essays and reviews, except to put in the Prayer Book, to put in the Thirty-nine Articles and ask: "Are these statements in accord with the Prayer Book and the Thirty-nine Articles?" If that had been the law of the church, there would have been no question except a condemnation; but there were considered, there were presented to the court, innumerable books, articles and opinions. A book is the statement of an opinion. A man writes a book, he prepares an article, that constitutes his opinion. Jeremy Taylor wrote books, they were his opinions as to the doctrine of the church. Hooker wrote books, they were his opinions of the doctrine of the church, as those of any book written on questions of theology must be; yet all of those were considered, that it might be learned from them whether the views advanced by Dr. Williams, for instance, were within what we might call the liberty of the church. Men differ; all did not agree with him; some held one view, some held another view. It was not for the court to say that he was right, that he was in every proposition he advanced right. That was not the question they passed on, but was he within the liberties of the doctrines of the church as they have been adopted. Now, then my friend says we have nothing to look at but the Prayer Book. Even if we look there my friend might find himself involved. The Prayer Book, for instance, contains the articles of religion. My friend does not claim that the clergyman of the Church in America are bound by the Thirty-nine Articles. It has been stated that the clergymen of the Church of England subscribe to the Thirty-nine Articles, and do not accept them, but the clergy of the Protestant Episcopal Church of America do not subscribe to them. My friend spoke, for instance, of the creeds. Let us see what position we hold. Suppose a man should publish a book in which he should say: "I believe that after death this world ends, our physical frame fitted for this world comes to its end when its usefulness has passed; the immortal part of it, as we are taught and as we believe, survives to eternal life, a higher life." My friend would say, you cannot allow anybody to come into court and say that this is the doctrine, I might say of all the church, as this is the day of the greatest majority of faithful church people; because he would say, I have the Prayer Book,

and it says, 'the Resurrection of the body.'" I have the dictionary, which shows what the body is; it is the earthly form in which we are draped; therefore if all the church should offer to give the interpretation which is received by the church as to that phrase, whatever may have been the meaning attached to it when it first became a part of the creed many centuries ago, my friend would say: "There can be no such evidence, there stands the recorded word, that must be adjudged to be the doctrine of the church and such evidence cannot be received." The question is an important question, it goes to the essence of the case. We desire by the opinion of persons of recognized standing in the church to show what is their view in reference to the statements uttered by us, not to show that those gentlemen are necessarily right. It isn't necessary to say that they are right or that they are wrong, but to show that within the range of doctrines accepted by the church—it has a broad range, and to that it owes its greatness and power—such statements must be received.

By JUDGE STINESS: May it please the Court, after serving for nearly thirty years upon the bench, I have lost, if I ever had, the art of the advocate. I am not here to present the case in any such phase to the Court, or in the question now under discussion; but my associate has requested me to say something to the Court, in order to call their attention to the precise question which is here at issue, and which is the controlling question in the trial of this case. The respondent is before this Court upon a certain presentment making certain charges, and the Court is here to determine upon that presentment whether, in the first place he uttered the words which are set forth in the presentment, but fortunately those are admitted, and therefore there is no question for the Court to pass upon there. The question of fact is established. The next thing that the Court has to determine under the charges in the presentment is, whether those statements, admitted to have been made by the respondent, amount to a violation of the doctrine of Christ, as this church hath received the same. My brother upon the other side has correctly given the qualifying words, it is not a question whether this doctrine is true or not true, it is a question whether the utterances are in accordance with the doctrine of this church as it hath received the same. It seems to me, may it please the Court, that it would be an insult to the intelligence of the gentlemen of the Court to say that a denial

of the Apostles' Creed, or any article in the Apostles' Creed, is not a denial of the faith of this church as the church hath received the same. As my associate in opening stated, it is the very first condition of membership of the church, in baptism: "Do you believe all the Articles of the Christian Faith as contained in the Apostles' Creed?" It is a condition for confirmation; it is a condition that runs all the way through membership of the church. It is a condition that runs all the way through with every officer of the church, bishop, priest, or deacon. The counsel for the defense very adroitly undertakes to draw the attention of the Court away from the real point at issue—the two points on which this case stands: first, the utterance of the words, and secondly, their conflict with the doctrine of this church. But it seems to me that I should insult the intelligence of this Court if I were even to argue the question whether the Apostles' Creed is not the fundamental standard of doctrine of the church, a denial of any branch of which completes the charge that is made in this presentment. It is too obvious a question for argument; it stands right out on the face of things; and therefore, it seems to me that the only question here for this Court to determine is, are the words admitted to have been used by the defendant words which do in themselves deny an article of the Apostles' Creed. That, too, seems to be too obvious for argument, for when he says "born as we are born," he denies conception as stated in the creed. It denies the affirmation, "born of the Virgin Mary." Now, as has already been suggested, this church has an organization, and it has its rules, as every organization has. The Presbyterian Church is an organization, and it has the right to say, no one shall be an officer of this church unless he conforms to its doctrines as it has received them. The Unitarian body has the right to say the same thing, and if a court of a Unitarian body, or council, or whatever tribunal they may have, should find that a clergymen of that denomination was preaching not unity but the trinity, would they not say at once: "You are outside of the pale of the doctrine of this church; you are doing that which this church is not established to do?" Every organization would hold a person simply to its standard, and that is the only question, the only line which this Court can follow. What is the standard of doctrine of this church? Clearly the Apostles' Creed. What is the utterance of the defendant with reference

to certain articles in that creed? Then the case is closed. If this Court should go into the question of determining what is the doctrine, the proper doctrine in such a case as this, then the question has already been settled by a previous court in the McQueary case. Now you would come to this dilemma if this were to be the accepted rule. There they did not determine what was the doctrine, but determined exactly as the point is raised in this case, that the doctrine charged against the defendant and the utterances made by him were in conflict with the doctrine of the church as set forth in the Apostles' Creed. If we could have courts determining what the doctrine is, as seems to be implied here, then it might be determined one way in the Diocese of Ohio, another way in the Diocese of Western New York, and still another way in other dioceses. What is the law of the church, and where is its unity? Where are its requirements? It would be chaos instead of organization; it would be anarchy instead of order; it would be a destruction rather than an establishment of the faith. Therefore it seems to me that the course which the Court has to pursue is very plain, its duty very clear—simply to consider the charge made; and the determination by the Court, assuming that the Court knows what the doctrine of this church is, is to set that doctrine forth as it has received the same; as it has published it in the Prayer Book; as it has required it in every step, indeed in every daily service, of the church. That not the doctrine of the church! That not the test of whether a man's statements are permissible! If a man violates that doctrine which is set forth and required to be repeated every day in the whole year, and some estimable gentleman comes here and says: "Why, I know of clergymen in England who state something different from this; and there are several clergymen in America who have said different from this," is that the law by which this Court is to be governed? I beg the pardon really of the Court for having taken so much time to refer to it, it all seems to me so plain, so clear, so conclusive, as to the duty of the Court, that the Court cannot possibly be misled even by the eloquent words of the counsel on the other side.

By MR. PERKINS: Just a word in reply. I can assure my distinguished friend that in thirty years of service on the bench he has not forgotten the art of the advocate. And further, the question here, which my friend with the skill of the advo-

cate avoids, I think—the question which this Court has to pass upon—is not whether a man can be a member in good standing of the Protestant Episcopal Church who denies the creeds of the church. Certainly he cannot. The respondent says his creed with as firm a faith as my friend, the counsel on the other side says his creed, and I wish to take the liberty for a moment of making one or two suggestions. He says, “I believe in the Holy Catholic Church.” The meaning of that is clear, the historical meaning is known to every boy who ever studied church history. When it was adopted, it meant what its words said in the 6th century; when it was finally ratified in the 8th and 9th century, it meant just those words, the church which was then the universal church of northern Christianity, of European Christianity. The men who prepared the creed, the council which adopted the creed, and the faithful men who repeated the creed, when they said that they believed in the holy Catholic Church, believed in that organization of which at that time the chief see was at Rome. Every man knows that, and yet my friend on the other side no more believes that, when he says his creed, he no more believes or gives to those words that interpretation than I do.

By JUDGE STINESS: I cannot allow the gentleman to put those words into my mouth.

By MR. PERKINS: I apologize, then.

By JUDGE STINESS: If there is anything I do believe, it is in the Holy Catholic Church, which is the reason why the standard of faith should be followed.

By MR. PERKINS: He believes in it as we all believe in it, and he gives to it the interpretation we all do. We believe the creed, everybody believes the creed. We have the right, the church has the right, the faithful have the right, and they exercise the right, and for all time they will exercise the right, to give to the creeds of the church that interpretation, based on Scripture based on knowledge and conception of the eternal verities, which they do give to them. That is the interpretation we give to such a clause as that. We believe it, and we give to it the interpretation which in this present day, in the present condition of the church and the present condition of faith, good reverend and devout people attach to the Holy Catholic Church. It means the body of those who on this earth are united in the common ser-

vice of Christ—who believe in Christ in the common service of the church. It is not the literal meaning of the creed, it is the interpretation given to the creed as illustrated a moment ago. "The resurrection of the body!" every man who knows the English language knows what that means; and it can mean, taken literally, but one thing. That is as plain as that two and two make four. The literal meaning is not the meaning which any one of us when, as recognized members of the Protestant Episcopal Church, we each Sunday declare it to be our faith, attaches to it. We give to it the interpretation which is consistent with the traditions and discipline of the church. Now, furthermore, my friend on the other side—while he talked much of this being an established organization of such a nature that what hath been once written must for all time remain verbally, literally, itally true—yet left out what must be held by all members within its folds to be the most formal declarations of faith adopted by the councils of the English Church, the Thirty-nine Articles. Of course, their status we all know, but I am pleased to say that while there may be things that some people question in the Thirty-nine Articles yet there is a vast amount of valuable statement in the articles of the church. What do the Thirty-nine Articles say as to the doctrine of the Church? They say: "Holy Scripture containeth all things necessary to salvation; so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man." Would my friend on the other side say that if anything could not be proved by Holy Scripture, a man was bound, contrary to the expressed articles and the creed of the church to which we belong to accept it? Certainly he would not. By these questions we seek the very point in the case. We admit the publication. You say that in that publication we deny the doctrine that our Lord Jesus Christ was God and Saviour of the World, the doctrine of the Virgin birth, as the same is contained and set forth in the Book of Common Prayer, and also the doctrine of the resurrection. That we deny, and the object of our evidence is this: that those learned in the law of the church, members of the church of recognized standing, whom no man has declared to be heretics or unfaithful members of it, should testify that what we have said does not deny those doctrines. We admit the publication, we deny the innuendo. We say we published these things, but we say in them we proclaim no disbelief in the creed. We

assert that we say our creed as truthfully and conscientiously, and I hope as acceptably before God, as any other members of the Protestant Episcopal Church; and to sustain that the evidence is offered which is here produced.

By JUDGE STINESS: Just one word. The illustration which my brother has used in the article of the creed, "I believe in the Holy Catholic Church," seems to me to furnish a very good test for the Court to apply to any question which is here presented. Men may believe in the Holy Catholic Church as an organized body. They may believe in it as composed of several bodies, not united formally, but in sympathy and teaching the same doctrine. A man may hold one or the other of those views and still be within the pale of the church, because there is some room for interpretation or difference of belief as to how far the term, "Holy Catholic Church" extends; and if that were the question here, it would be quite different; his argument might be quite plausible; but the question here is, whether a man who says I don't believe in a certain article of the creed is within the doctrine of this church, and that is a question which it seems to me is too plain to argue. Here you have the words uttered. Do those words amount to a violation of the vow of the priest, that he will teach no strange doctrines, and will teach the doctrine as the church hath received the same? If that is the test, then you have only to compare the words with the creed, and say whether there is a difference between them, whether it amounts to a denial of the creed. Now the offer to introduce testimony here of experts, or of those who have read certain books, does not amount to an establishment of their opinions as the faith of the church. It amounts simply to this, that certain views have been tolerated in the church, but I beg to call the attention of the Court to the fact that the toleration of error does not establish it as accepted truth.

By MR. O'BRIAN: If the Court please, I don't wish to take up the time of the Court in speaking on this matter, but as Mr. Perkins has said, it is the most important question in the case. It is the "Athanasius contra mundum;" it is the question of the incarnation. The figure of the belief in the Holy Catholic Church and the illustration of the resurrection of the body, while I do not grant its force even in that, are unfortunate. The facts which are here, are the fundamental facts of the Catholic Faith. Mr. Perkins has very ably presented his argument, but again it

rests, it seems to me, on a lack of logic. He says, who are the church? The laity and the clergy are the church. Yes, but as individuals, never! Why do we have a creed, what is the object of it? Does Mr. Perkins mean to say that if a man were charged with violating the constitution of the United States in some particular he would be permitted to come into court and show that this man and that man, and this citizen and that citizen had a different idea of the meaning of that constitution; that instead of meaning what it said it did, it meant something exactly to the contrary? Is that the administration of the law? Is that justice to the children of the church? As my friend Mr. Locke observes, you might as well take a man in theft, and have him come into court and swear experts to testify that what he did was not a crime in the law, that it was something else, because somebody else thought it was something else. I am sorry, as I say, to take up so much time, but I trust the court will look at this question with a level look, look at it squarely in the face, in justice to the whole church as well as to Dr. Crapsey. The matter raised as to the Privy Council's decisions, I will be very glad to take up later with Mr. Perkins and Mr. Shepard; suffice it to say, that they do not necessarily control here. The Privy Council, gentlemen, is not an ecclesiastical court. It is a court of the realm, which takes up ecclesiastical matters; and let me call Mr. Perkins's attention to the ordinal of the English Prayer Book, where the clergymen vow to teach the doctrine of the church as this church and this realm hath received the same. On the subject of that court, my friend Dr. Hall can speak with more competency than I. If strange doctrine has been tolerated in England, if it has been tolerated in America, it is due to a woeful lack of sympathy. Is the church so cowardly that it is afraid to tread out error, that it is afraid to exclude strange doctrines? In addressing the Court, I know that they are aware of the conditions which brought the creeds into existence, and they will recall that it was with somewhat of reluctance that the church laid down its faith in the creeds: that every article that it placed in the creeds of the four great undisputed councils, it put in there for the purpose of excluding a certain idea, or excluding a certain doctrine; and that the doctrine of the incarnation was put in there for the purpose of excluding false doctrine. And the statement that Christ rose on the third day, was put in there to throw

out of the church agnosticism, and the adoptionists, and the other reactionaries, who followed the first knowledge and the early faith of the church. What is the church? The church is the church catholic. It does not limit the interpretation of its faith. Its faith is the growth of expansion, but not my friends, a growth of denial of straightforward statements of fact, and Bishop Doane was right, when he he said: "There are certain facts which cannot be interpreted. They are facts that speak for themselves." And when a man says that he believes that Christ was conceived by the Holy Ghost, born of the Virgin Mary, and that on the third day he rose again from the dead, no matter what mental reservation he has, he has professed a belief in a statement of stern and unequivocal fact.

Mr. Perkins in referring to the books says: "What is a book? It is a statement of opinion. I will offer it as showing the opinion of a distinguished man." And there is the weakness of it all, "a statement of opinion." If I were to write a book, there might be some man foolish enough to think I represented opinion, and therefore the faith of the church would be undone. He is confusing, when he says that the creeds are to be interchangeable, and asks that we say the creeds are to be interchangeable. Gentlemen, the content of the catholic faith is unchangeable, and these facts are urged as essential facts. He is confusing what the Lutheran Church calls the Christian conscience of the church, by which they mean the vote of the majority of its members, with the old statement of the faith, "*semper et ubique et ab omnibus.*" The content of the faith is the same always. And to come here, or come anywhere, and with all honest intention and earnestness to argue that the statement that Christ rose again on the third day means that He did not rise again, turns the faith of the church into a mocking delusion. I am aware of the importance of this question in this case, and I feel it very keenly; and I can think of Athanasius and his struggle, and I think of the Adoptionist Marcion, and I think of them in sympathy. Perhaps they lived their lives as correctly as they saw it. They did not live their lives in accordance with the doctrine of the Holy Catholic Church as this church at present hath received the same; and I remember Athanasius hunted like a dog for those long years in exile, and saying: "They have taken away

our churches, they have taken away our people, they have taken away our children; but thanks be to God, they have not taken away the faith that is ours and ours always." This question raised by this witness involves all of this, and I trust that in disposing of it, the court will consider with sympathy the position of Dr. Crapsey and his counsellor; but I trust the Court will not be misled by that sympathy into overruling what seems to be the plain rule of justice. I trust they will look at this question with a strong-hearted wisdom, and remember that the church is not a cowardly church, that, as I have said several times, its faith is a faith fearless, which fears the opinion of no man, and is not concerned with the opinion of any man; and that when we are asked with such eloquent words and with such insistence to admit the opinion of a man, or a thousand men, which will contradict the fundamental statement of law and justice, we will not turn the profession of faith into a lying profession, the church into a cowardly church and its creeds into a mockery. I beg the Court will earnestly consider. I beg that they will consider the point that the doctrine of the church is fixed by the church, and not by any man.

By MR. SHEPARD: Will the Court indulge me for just a moment; I think our distinguished adversary, Judge Stiness, rather hit this question right in the center, when he dealt with the Holy Catholic Church. We assert in the creed that we believe in the Holy Catholic Church, and Judge Stiness tells us today—and I was amused to hear it on the other side,—that there are two interpretations, either one of which a man might hold, not one interpretation, but two interpretations of that item of the creed, either one of which a man might rightly hold. Nor did he deny that either one which is now held is an entirely different one from the one that was for many centuries held by the great majority of the Christian Church and by those who framed it at the time it was framed. He knows very well that it meant the church of which the Pope was head. That is what it meant to those who framed it. He tells us that we are not to believe that, that we may either believe that it is the Holy Catholic Church, meaning the aggregation of a number of bodies more or less resembling one another, or we may believe that the Holy Catholic Church is simply the Church of England or the Protestant Episcopal Church.

By JUDGE STINESS: What I said was, that we might believe this without contradicting the creed.

By MR. SHEPARD: That is the whole point, to distinguish between one item of the creed and the other. There is one item of the creed, at any rate, of which he concedes that there are two interpretations, and upon which he takes the liberty to put his own interpretation. And so we have the question here: Is one part of the creed more sacred than another? Is the item in the creed of the virgin birth more sacred than the item of the Holy Catholic Church, and if there is to be a distinction between the merits of items of the creeds, who is to determine? Judge Stiness determines that for himself. The case is gone as far as their side is concerned the moment that he concedes, as he has to concede, that there is a liberty of interpretation of any item of the creed. We believe the creed as much as Judge Stiness. Dr Crapsey believes the creed, Mr. Perkins says, every item of the creed. Dr. Crapsey gives to the items of the creed the significance which he finds in Holy Scripture, and in doing that he obeys his oath taken at the time of his ordination. My friend Mr. O'Brian quotes Athanasius. When was the creed of Athanasius part of the creed of the Protestant Episcopal Church in the United States? Am I wrong or am I right in my understanding that when this church, was established, this Protestant Episcopal Church in the United States, that was a question much mooted,—

By MR. O'BRIAN: I did not quote the Athanasian creed.

By MR. SHEPARD: No, but you quoted Athanasius, and what is Athanasius but the Athanasian creed. (Laughter.)

By MR. O'BRIAN: I think the Athanasian creed is dated from about the eighth century, and he never wrote it, let me inform you.

By MR. SHEPARD: My friend, unfortunately, is compelled to make that distinction; as if the Athanasian doctrine, or Athanasius himself, when he is quoted, as Mr. O'Brian quoted him, is not always understood to mean the system of doctrinal anathemas which the English Church itself declined to enforce! And my friend meant, until a more learned associate pointed it out to him, he meant, what the average man means when he refers to the doctrine of Athanasius; he means the doctrine of Athanasius, as it appears in the Athanasian creed.

He said the Privy Council is not an ecclesiastical court. What is an ecclesiastical court? I put that to the counsel, as well as to this learned Court. Is it or isn't it a court which deals with ecclesiastical questions. When you have in England a court of last resort in ecclesiastical questions, you have an ecclesiastical court. When you find that the uniform ruling of the court of last resort upon ecclesiastical questions in the Church of England is against almost every contention that is made on the other side, we have a ruling which is entitled to the respect of this Court, not conclusive, but entitled to the very utmost respect. Now, to conclude what I have to say, the other side indulges in the old fallacy called begging the question. They choose to say that the question here is whether the Apostles' Creed may be rejected. There is no such question in the case. The presentment is drawn with skill, to give to the public at large the idea that there is some such question. There is no such question, none whatever, nor can it be possibly driven into the case. The question is this: Whether if a clergyman, after he has taken his ordination vow, having pursuant to his ordination vow, devoted himself to the study of Holy Scripture, and having studied Holy Scripture, and having been persuaded and driven to the conclusion upon his own conscience that such and such is the meaning of such and such an article of the Apostles' Creed, it then becomes his duty as a preacher—it becomes his right—to preach it and whether his preaching of it is within the comprehensive liberty of the church. Is that so, or is that not so? That is the question. And a further question is, is the only interpretation of one item in the Apostles' Creed, the only interpretation of the creed which a Christian in the Protestant Episcopal Church may hold? Now, we plant ourselves on that creed as much as they do, and we ask you to determine whether or not we may, with reference to two or three items of the Apostles' Creed, do what Judge Stiness says every Christian in our church may do with the item of the Holy Catholic Church.

By MR. O'BRIAN: It is a question of personal privilege. As I said before, I am not a theologian, and of the Athanasian creed I am quite ignorant; but I know enough to know that Athanasius never was the author of the Athanasian creed. I trust the counsel will do me the justice to correct his remarks in that particular.

Recess until 2.30 P. M.

[105]

AFTERNOON SESSION, 2.30 P. M.

By MR. NORTH: Gentlemen, the Court requests me to announce this decision on the question before it, and I am in entire harmony with their opinion. I have asked the stenographer to furnish me with the precise question which was asked this witness, which is as follows:

"I now ask you whether, in your opinion, there is anything in the statements contained in the specifications which is contrary to the doctrine of Christ, as the Lord hath commanded and as this church has received the same?"

Now gentlemen, we very much desire to do entire justice to the defendant in this case. We believe that this evidence is clearly incompetent for any purpose, and that it would necessarily be so held in any court of the State of New York, or in any court where common law rules of evidence apply.

In my judgment this witness was asked to substitute his opinion for the judgment of the Court. He is not called upon to give expert evidence, according to the common identification of that term.

These five men who sit here have been asked to decide certain questions, and this witness is merely asked to decide these questions for them. That is my view.

Suppose, for instance, that this witness were permitted to answer this question; in the ordinary course of procedure it would be competent to call a reasonable number, say six or even twelve witnesses, to whom the same question might be propounded; and, of course, in the interests of justice, it would be then necessary that the other side be permitted to call an equal number of witnesses to give their opinion on the same subject. How much would this tribunal be benefited by that course of procedure? Not at all, in my judgment, and yet I am not a theologian. I am in a humble way a lawyer, and so far as I am concerned, in passing on this question I am trying to judge it by what I deem to be the true and well settled rules of evidence prevailing in all enlightened jurisprudence.

This witness, and I repeat it again, because it is the gist of the whole discussion, is merely asked to substitute his opinion for the judgment of the Court, and I do not believe the evidence is competent. I think by analogy with the ordinary courts of law, that he is being asked to testify to what is purely a law question. I

do not think it is any more competent for this man to answer this question than it would be for me in the trial of a law suit in this room to give my opinion as to whether the statute of limitations had run against a claim, or whether a claim was void under the statute of frauds, or whether a plaintiff was guilty of contributory negligence in an action for personal injuries. I believe this witness is being asked purely and simply a law question. I think if we permitted this question to be answered we would find that we had been traversing the illimitable fields of human speculation and that in the end we would come back to the same point with no token to reward our toil; therefore I think this evidence must be excluded.

The direction of the Court, which I am now giving, is that the objection be sustained.

By MR. PERKINS: The Court will note an exception.

I now propose to ask certain additional questions. I will say frankly to my friend on the other side that I think the reasons stated by the Court will cover the other questions which I shall ask, but I desire to ask them, that the rulings may appear upon the record; and I shall make no argument. If any of them, in the opinion of the Court and the assessor, present any question which would lead them to modify the opinion already expressed, they may say so.

Q. I ask the witness, according to the understanding and practice of the Protestant Episcopal Church are the passages from the sermons and book of Dr. Crapsey within the doctrine and faith as the same have been received by such church?

Objected to. Objection sustained. Respondent excepts.

Q. According to the understanding and practice of the Protestant Episcopal Church are the passages last referred to within the doctrine and faith as the same are held by such church?

Objected to. Same ruling.

By MR. PERKINS: An exception, of course, is noted to all these.

By MR. O'BRIAN: Yes.

By MR. PERKINS: According to the understanding and practice of the Protestant Episcopal Church, is a presbyter at liberty to preach the things said or written by Dr. Crapsey, as

proved on this trial, if he be convinced that they are taught by the Holy Scriptures?

Objected to. Same ruling, and exception.

Q. Is he at liberty—is a presbyter at liberty to preach the things written and said by Dr. Crapsey, if he believes that they are within the meaning, properly construed, of the Apostles' Creed and the Nicene Creed?

Objected to. Objection sustained. Respondent excepts.

By MR. PERKINS: If the exceptions are noted, there is nothing further from this witness.

I call Mr. Wilfred Hoopes.

WILFRED LAWRENCE HOOPES, being called on behalf of the respondent, the stipulated oath being administered, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. Where do you live?

A. I live in Cambridge.

Q. Cambridge, Mass.?

A. Yes.

Q. Are you a clergyman of the Protestant Episcopal Church?

A. I am.

Q. When did you become a clergyman?

A. I was ordained to the diaconate in 1904, and to the priesthood in 1905.

Q. Where are you now? What position are you now holding?

A. I am not engaged at present in parish work, I have no official parochial position.

Q. What work are you doing?

A. I am engaged in study, and I act as supply whenever I have an opportunity, and am prepared to take a parish if one is offered to me.

Q. Have you had occasion to give study to questions as to the doctrines of the Protestant Episcopal Church?

A. I have.

Q. Let me call your attention as to whether you gave the correct date—when did you say you were ordained? You said 1904.

A. I mean 1894.

Q. I thought you must have misspoken yourself.

A. 1894, to the diaconate; and to the priesthood in 1895.

Q. I will then, with the court's permission, repeat to the witness, without occupying the time in reading them, the same questions that were put to the last witness.

By MR. O'BRIAN: I will stipulate that the same questions may be regarded as having been asked this witness, objected to, the objection sustained, and the several exceptions given to Mr. Perkins.

Q. I will ask before putting these questions, one further question suggested by my associate—I ask the witness whether you know in general the understanding and practice of the Protestant Episcopal Church in this country?

A. I do.

Q. Have you had occasion to study it?

A. Yes, I have.

By MR. NORTH: That is to be treated as having been asked before these other questions?

By MR. SHEPARD: Yes, and also as having been put to Mr. Leighton. It may be deemed as having been put to Prof. Leighton and answered.

By MR. PERKINS: I do not understand the counsel on the other side to raise any objections to any of these witnesses, that they are not qualified. Of course, if such an objection was made, I might enter more particularly into the examination.

By MR. O'BRIAN: I haven't deemed it necessary to raise such a point.

By MR. PERKINS: I will call Mr. Stein.

By MR. O'BRIAN: We will stipulate the names of the witnesses.

By MR. PERKINS: If you will allow me, I will ask the witnesses as to their position in the church; it will occupy but a few moments. I think that will present the case more satisfactorily than a mere statement of the names.

ALEXIS W. STEIN, being called on behalf of the respondent, the stipulated oath being put to him, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. Where do you live?

A. Fitchburg, Mass.

Q. You are a clergyman of the Protestant Episcopal Church?

A. I am.

Q. When were you admitted to priesthood?

A. I was admitted to the diaconate in 1893, and priesthood in 1896 or 1897.

Q. What position do you now hold in the church?

A. Rector of Christ's Church, Fitchburg.

Q. And how many years have you been there?

A. Two.

Q. You have been recently chosen to what position?

A. I have been elected Chaplain of Columbia University.

Q. That is the position you are about to assume, I take it?

A. Yes, sir.

By MR. PERKINS: There is no question but what he is qualified?

By MR. O'BRIAN: No.

By MR. PERKINS: I ask as to this witness that the same questions be regarded as asked, with the same rulings and exceptions.

By MR. NORTH: It is so ordered.

By MR. PERKINS: I will call Mr. Sutor.

JOHN WALLACE SUTOR, being called on behalf of the respondent, the stipulated oath being administered to him, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. You are a clergyman of the Protestant Episcopal Church?

A. I am.

Q. When were you ordained?

A. 1886.

Q. You have since then been acting as a clergyman?

A. Yes, in charge of a parish.

Q. What position do you now hold?

A. Rector of the Church of the Epiphany, Winchester, Mass.

Q. How many years have you been there?

A. Twenty.

By MR. PERKINS: Then I ask that the same questions be regarded as asked and excluded as to the others.

By MR. O'BRIAN: Certainly.

EDWIN S. HOFFMAN, being called on behalf of the respondent, the stipulated oath being administered to him, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. You are a clergyman of the Protestant Episcopal Church?

A. I am.

Q. When were you ordained?

A. 1888.

Q. Have you since then been in the service as a clergyman?

A. Yes, sir.

Q. What position do you now hold?

A. I am Rector of Christ's Church, Hornellsville, this diocese.

Q. Have been for how long?

A. Sixteen years.

By MR. PERKINS: Same questions may be regarded as asked this witness and excluded?

By MR. O'BRIAN: Yes.

GEORGE CLARK COX, being called on behalf of the respondent, the stipulated oath being administered, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. Where do you live?

A. Cincinnati.

Q. Are you a clergyman of the Protestant Episcopal Church?

A. I am.

Q. How long have you been?

A. I was ordained to the diaconate in 1888 and priesthood in 1890.

Q. Since that time you have been acting as clergyman of the church?

A. I have.

Q. What position do you now hold?

A. Rector of Calvary Church, Cincinnati.

Q. How long have you held that position?

A. Nearly nine years.

By MR. PERKINS: I ask that the same questions be regarded as asked and excluded by this witness.

I will now call Dr. Peters.

DR. JOHN P. PETERS, being called on behalf of the respondent, the stipulated oath being administered, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. Are you a clergyman of the Protestant Episcopal Church?

A. I am.

Q. When were you admitted to the priesthood?

A. Ordained deacon in 1876, priest in December 1877.

Q. What position and charges have you held since that?

A. I was for three years tutor in the Faculty of Yale College; then for two years in charge of St. John's American Church, Dresden; assistant after that in St. Michael's Episcopal Church in New York; Professor, from 1884 to 1891, of Old Testament Literature and Languages in the Protestant Episcopal Divinity School in Philadelphia; Professor of Hebrew in the University of Pennsylvania in 1885 to 1893; since 1893 I have been Rector of St. Michael's Episcopal Church in New York.

Q. You have, Dr. Peters, published, I think, quite a number of works in reference to the doctrines of the church and church history?

A. I have published in Biblical work "The Scriptures, Hebrew and Christian," then a work of more general character, and that—I can't give you the exact title—is The Old Testa-

ment and the New Scholarship; that is approximately the title. My last work was a Hebrew story.

Q. You have been engaged in theological study and theological work, and work in the ancient languages which are specially connected with the early church history the most of your life, haven't you?

A. I have.

Q. And practically all of your life as a clergyman, and I suppose some years before that?

A. Yes, sir.

By MR. PERKINS: I think my friends would consider he is competent to express an opinion, if an opinion were allowed.

Then the same questions may be regarded as having been asked.

JOHN HOWARD MELISH, being called on behalf of the respondent, the stipulated oath being administered, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. Where do you live?

A. Brooklyn.

Q. Are you a clergyman of the Protestant Episcopal Church?

A. I am.

Q. How long have you been?

A. Since 1898.

Q. You became a priest in 1898?

A. 1899 a priest, and deacon in 1898.

Q. What position in the church do you now hold?

A. Rector of Holy Trinity Church, Brooklyn.

By MR. PERKINS: I ask that the same questions may be regarded as asked and excluded.

By MR. O'BRIAN: Certainly.

DR. CHARLES HENRY BABCOCK, being called on behalf of the respondent, the stipulated oath being administered, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. Where do you live, Dr. Babcock?

A. I reside in New York City.

Q. You are a clergyman of the Church?

A. I am.

Q. Have been how long?

A. Ordained in 1873.

Q. What positions have you held in the church since that time?

A. I was minister of the Green Foundation of Trinity Church, Boston; Rector of Trinity, Columbus, and of Christ Church in Providence.

Q. What position are you now holding?

A. I have no parochial charge.

Q. What work are you doing?

A. I am engaged in study and in writing, matters of theology and church history.

Q. You are engaged then in study in reference to church doctrine and church history?

A. I am.

Q. And have been for some years?

A. For some years.

By MR. PERKINS: I ask that the same questions be regarded as asked and the same rulings made.

By MR. O'BRIAN: Yes.

FRANK H. NELSON, called on behalf of the respondent, the stipulated oath being administered, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. Where do you live?

A. Cincinnati, Ohio.

Q. Are you a clergyman of the Protestant Episcopal Church?

A. I am.

Q. And have been how long?

A. Since 1894.

Q. What positions have you held in the church since that time?

A. Assistant minister, St. George's Church, New York; assistant minister, Christ Church, Cincinnati; and Rector of Christ Church.

Q. That is the position which you now hold?

A. Yes, sir.

Q. How long have you held that?

A. For the last six years.

Q. For six years?

A. Yes.

By MR. PERKINS: The same questions may be considered asked and excluded?

By MR. O'BRIAN: Yes.

ELWOOD WORCESTER, called as a witness by the respondent, the stipulated oath being administered, testified as follows:—

DIRECT EXAMINATION.

By MR. PERKINS:—

Q. Where do you live?

A. In Boston.

Q. Are you a clergyman of the Protestant Episcopal Church?

A. I am.

Q. How long have you been?

A. I was ordained to the diaconate in 1890, to the priesthood in 1891.

Q. What positions have you held in the church since that time?

A. I was assistant minister at St. Ann's Church, Brooklyn; I was next, for about six years, Professor of the History of Philosophy and Experimental Psychology in Lehigh University. I had charge of St. John's, Dresden, for one year; I was Rector of St. Stephen's Church, Philadelphia, for about eight years. I am at present the Rector of Emanuel Church, Boston.

Q. You went there from St. Stephen's Church?

A. I did.

Q. You, I think, are connected with some church publication, are you not?

A. I have written a little for the church press; I have a little paper of my own.

Q. You publish a church paper?

A. Yes, sir.

By MR. PERKINS: The same questions may be regarded as asked?

By MR. O'BRIAN: Yes.

By MR. PERKINS: We might, if the Court please, continue this list very much longer, but we will here waive the further calling of witnesses upon this question.

By MR. SHEPARD: May it please the Court, there are one or two matters of detail which we should submit to the Court before we close our case. Perhaps the other side will admit that on the 19th of July, 1905, there was appointed by the Bishop of Western New York a committee of five, in accordance with the canon, to make investigation regarding rumors concerning certain teachings of the Rev. Dr. Crapsey; that on the 11th of November, 1905, a report was made by the investigating committee to the bishop, that according to their opinion the evidence was not sufficient to justify the presentment.

By MR. O'BRIAN: I object to the admission of this statement and to the placing of it upon the record. While I do not desire to be captious in the matter, I am obliged to do this, for the reason that the appointment of an investigating committee and any report made by that committee is entirely immaterial, and has no bearing whatever on this case, and has no place in it. I call the Court's attention to the ordinances—the ordinances which provide the ways in which a presentment may be found. The ordinances specify that there are four different ways. The presentment may be made, first, by a majority in number of the vestry of the church of which the gentleman is rector. The second way is that any three presbyters may find a presentment and present it to the bishop. The third way is that it may be made by the standing committee of the diocese. The fourth way is that it may be made by an investigating committee of five, who have been appointed by the bishop to make investigations. It will be observed that the bishop has no power on his own motion to present a man to himself. The way in which that is worked out is by means of an investigating committee. It is no bar to any other way, that the standing committee of the diocese had considered presenting Dr. Crapsey and have decided not to do so. That would be no bar to the bishop afterwards appointing an

investigating committee and making investigation. The fourth way, in other words, is merely a method provided by which the bishop himself may take the initiative. The way he has to do it is by appointing the committee. Such a committee is not appointed for the purpose of determining the guilt or innocence of the accused, nor do they so report. They simply report whether in their judgment there is any evidence. Their report is of no more binding force in this proceeding than the opinion of any one else. Their report is a finding, not of fact, but of opinion, and is therefore not binding upon any other body. The fact that a committee is appointed or is not appointed, has nothing whatever to do with the right of the standing committee or of an officer to find a presentment. You will observe that the proceeding is somewhat analogous to that of the grand jury in this state, they may present a matter to a second grand jury, with the permission of the court. That is fixed by our statute. At common law, as I understand it, there was no such restriction; the same matter might be presented to a dozen grand juries in succession, and there was no bar. Furthermore, this Court cannot take judicial cognizance of any action taken by the bishop or by any investigating committee; it is bound to take notice only of the proceedings here taken in this matter. The fact that the vestry may have considered making a presentment and did not do so, has absolutely no connection with the procedure with which we are concerned. Furthermore, the obvious intent of referring to this fact is to indicate that in some way the action being taken by the bishop, or the so-called investigating committee—the committee of investigation, I should say—is a bar. It cannot be a bar; this Court cannot know anything about that proceeding officially. The determination of that committee is not in any sense *res adjudicata*. That cannot be raised of course, and that fact needs no further comment. The point is set up in the answer, although the answer unintentionally misstates the fact as to the findings of that committee. The point is set out in the answer that there was a committee appointed, and that by that appointment a report—

By MR. SHEPARD: Is it worth while to discuss that question, which would be perhaps more suitable in summing up? It is simply to have the fact in the record, that we may consider it.

By MR. O'BRIAN: I disagree with you. I do not propose to go into it in the summing up. I would like to dispose of it now. I do not propose to have it go in the record if I can help it; it has no place there.

The point is raised in the answer, that that virtually ousted the standing committee of jurisdiction, and put it in the present position of overruling the bishop of the diocese, who is the one to pass on the sufficiency of the presentment, who is the one authorized and directed to approve or disapprove in part or in whole. If the standing committee were without jurisdiction in this matter, why the bishop should have disapproved that part of the presentment; and if this Court here were to decide that was a bar, they would take unto themselves a power which they are not given in the ordinances or in the polity of the church; they would overrule the bishop; they would take into their hands the power of passing upon whether the presentment was properly found. While, as I say, I do not wish to be captious, I insist on this point being disposed of at this time. I ask that this matter be absolutely excluded from the record, for the reason that it is immaterial. The fact is incompetent, it has no relation whatever to the proceeding here pending.

By MR. SHEPARD: Our answer sets up this: my friend perhaps is not altogether wrong, in saying that this is in the nature more or less of a plea in bar, I suppose, as all pleas are, except perhaps a plea of jurisdiction, pleas that the Court will consider. I suppose it is better that the testimony be taken and then the Court pass upon it. If the plea be good, the defense be good, something in the nature of *res adjudicata*, then the testimony ought to be in; if the defense be bad, it will do no harm to have it in. It seems to me more convenient in every way, if the Court will so hold until it finally makes its decision.

By MR. NORTH: I will tell you my idea about this: Mr. Shepard has expressed my view of it precisely. I am not a student of canonical law. Clearly this question is not *res adjudicata*, or you would not be trying it out here again, but not having studied this question, I don't know; and I am not prepared to decide whether this evidence is competent or not, and not knowing, my suggestion is it be received and be disposed of as part of the whole case. I think that is the proper thing to do.

By MR. SHEPARD: I take it, Mr. O'Brian, I gave the dates correctly?

By MR. O'BRIAN: I simply wanted to make my position clear on the record.

By MR. SHEPARD: The testimony is received then?

By MR. NORTH: Yes.

By MR. SHEPARD: In the next place, we desire to offer the letter of the Right Rev. the Bishop, addressed to Dr. Crapsey, of a date immediately preceding, or the same date as the appointment of this committee, I think the 9th day of July, 1905.

By MR. O'BRIAN: I shall object to that, because it has no connection whatever with the matter in hand.

By MR. SHEPARD: It was the formal letter notifying him.

By MR. O'BRIAN: It is not a part of the formal proceeding; there is no provision of canonical law which requires the bishop to notify him. It was a personal letter, and I object to its coming in.

By MR. NORTH: My disposition is to dispose of it precisely as I did of the last one; provisionally it shall be treated as of the record and appear in the record; your objection therefore is overruled.

By MR. SHEPARD: We are desirous of shortening the labors of the Court by not calling witnesses, and I ask my friend to admit that the sermons of Dr. Crapsey, from which these extracts which are in the presentment were taken, were delivered at evening services, there having been held at each service at which these sermons were delivered a morning service and afternoon service. Is there any objection to that?

By MR. O'BRIAN: I confess I do not quite see the object of it.

By MR. SHEPARD: Even if it were nothing more than palliation, you might let it in.

By MR. O'BRIAN: I don't want to let it in without knowing it.

By MR. SHEPARD: I have stated what it is.

By MR. NORTH: You want it stipulated that these sermons were delivered at evening meetings?

By MR. SHEPARD: Evenings, not the regular services of the church; that the morning and afternoon regular services had been held in each case on that day.

By MR. O'BRIAN: Do you claim a man need not be orthodox after six o'clock at night?

By MR. SHEPARD: He must be orthodox every day in the week.

By MR. NORTH: You state in open court that such is the fact?

By MR. SHEPARD: Yes.

By MR. NORTH: I don't see any reason why you should not stipulate that.

By MR. O'BRIAN: I don't know anything about it; I don't know what the services were.

By MR. SHEPARD: I will state the fact, then if it isn't right, you can correct it afterwards.

I thought I had here the record of the proceedings of the Diocesan Convention. I see—if I may take that—the portion relating to St. Andrew's Church, Rochester. It may be taken into the record as part of the proceedings.

By MR. NORTH: So that we will have no mistake, Mr. Shepard, we ought to know just what you refer to.

By MR. SHEPARD: I think it is page 131, the entry there under the head "Rochester," and also under the head of St. Andrew's Church. That we will offer; and then the portion of the table. The portion, page 131, under the head of Parochial Reports for 1905, St. Andrew's Church, is to be treated as in evidence.

By MR. O'BRIAN: No objection to that.

By MR. SHEPARD: Then the table of statistics at the end of this book; the statistics as to St. Andrew's Church, Rochester, will also be considered in evidence.

By MR. NORTH: The members of the Court desire this question to be asked; whether these discourses were delivered as part of the regular evening services, after Evening Prayer, or at separate services.

By MR. SHEPARD: The regular Evening Prayer was not said at the evening service at which these were delivered, but there was a short service before—

By MR. PERKINS: As I understand, the regular Evening Prayer was said about half past four o'clock, and later in the evening they met and had a short prayer, and then the sermon was delivered immediately after the prayer.

I think we rest.

By MR. O'BRIAN: It is understood by the counsel here, I have the right to read extracts from the book, "Religion and Politics," in summing up, or has that question been decided?

By MR. NORTH: It has not been invoked, that I know of.

By MR. O'BRIAN: Is the book in evidence?

By MR. PERKINS: No, it is not.

By MR. O'BRIAN: I understood the question was reserved as to the sermons.

By MR. PERKINS: Counsel offered the book in evidence, and it was excluded; the Court then said, with reference to some suggestion of counsel that he might desire certain portions, that that question would be disposed of when it arose, as I understood the ruling of the court; and there has been no further offer made in that direction. I will say, it seems to me in view of the ruling made by the Court this morning and the argument that was made, it is manifest that the ruling which excluded the evidence offered must exclude any evidence of any statements made by Dr. Crapsey, either in writing or orally, except those set out in the presentment.

By MR. O'BRIAN: The only question is the question I raised last night, as to the particular sermon in which these statements occurred. I understood no ruling had been made on that.

By MR. NORTH: None has been made, none has been invoked.

By MR. O'BRIAN: I supposed that was still under consideration; I should like the Court to take that under consideration until tomorrow morning and rule upon it.

By MR. SHEPARD: What is that offer?

By MR. O'BRIAN: I offer the particular sermons in the book in which appear the extracts which are stated in the presentment; not the whole book, but the particular sermons, upon the theory that it would be more fair to have the whole utterance on each occasion go in.

By MR. PERKINS: That would be very closely equivalent to offering the whole book, because I think extracts are made from each of them.

By MR. O'BRIAN: Oh, no, I think there are four or five sermons. As I read the answer, the book is offered, especially proffered, then when I offer it you object to it.

By MR. PERKINS: The defendant reserves the right the Court has given us, to take any passages out of it we see fit.

By MR. NORTH: The Court itself, and not the legal advisor of the Court, is disposing of this question now. The answer seems to proffer the book, but he refers herewith to all the other statements contained in said book for further explanation of the views advanced by him, and begs leave to present to this Court such portions thereof as he may be advised. I am requested by the members of the Court to say that in their opinion the defendant shall feel at liberty, as he may see fit, to quote from this book, to refer to the context as far as it may tend to explain the charges, that he may be at liberty to do so, and that the plaintiff shall have the same right. The Court will expect the counsel on both sides to limit themselves to the thorough interpretation of this rule.

By MR. PERKINS: The Court will allow us an exception, as far as it applies.

By MR. NORTH: I thought the ruling was in your favor.

By MR. PERKINS: Then an exception will do no harm.
Adjourned to Friday, April 27th, 1906, 10 A. M.

EXHIBITS.

Letter of Bishop Walker.

367 Elmwood Ave.,
Buffalo, July 7th.

My dear Mr. Atkinson:

Your favor came to hand today, on my return from a visitation.

I have not been in a condition to call the Board of Trustees together, because I had not received all the information I personally need before action is taken. Some of it reached me today, but not all of it.

I desire to add that it will be necessary for me to meet the vestry of St. Andrew's Church next week.

Yours sincerely,
(Signed) WILLIAM D. WALKER.

Letter of Rev. Dr. Crapsey.

St. Andrew's Rectory, Rochester, N. Y.

June 17th, 1905.

My dear Bishop:

On Saturday last Mr. Alfred Bailey, clerk of my vestry, handed me a call for a meeting of the vestry of my church, expressed as follows: "The Bishop wants to meet vestry at Mr. Atkinson's office at four P. M. this afternoon. (Signed) J. L. H." This notice was written on the back of the business card of Joseph Lee Humphrey, Attorney and Counsellor at Law. This call was left at the business office of Mr. Bailey on Thursday last. At that time the rector of St. Andrew's Church was in the city and in the full discharge of his duties, and yet no notice was given him of this proposed meeting, nor did he know that such a call had been made.

I do not know at whose instance Mr. Humphrey issued this call; but as it says that the bishop wants to meet the vestry, I can only infer that he acted under your direction. However that may be, this call was made in violation of the statute law of the State of New York which provides that a meeting of a vestry can be held only on the call of the rector and in his presence.

I am at a loss to account for this course of action, since if the bishop had any official communication to make to the official body of a church, the proper person to whom such communication should be made would seem to be the head of that body, which in the case of a vestry is the rector of the parish. To pass over a rector and to call his vestry without his knowledge or consent is virtually to depose him from his office, and this cannot be done without due process of law. To have a meeting of the members of an official body, and of such members only, even if that meeting be called informal and semi-official, for the purpose of discussing any question which might rightly come before that body, would, it seems to me, be considered by all fair-minded persons as in all essentials a meeting of that body and subject to all the laws governing its action.

And if the meeting were convened for the purpose of discussing the action, the character, or the interests, of any given person, that person being a member of such official body; and if, moreover, this meeting be kept a secret from this person, all of whose most sacred rights and interests are involved, then such a meeting would not only be illegal, but also unfair and unjust.

Some members of the vestry were told yesterday that they were to hold themselves in readiness to receive a call from the bishop during the coming week. But, upon consultation, they concluded that such a meeting at this time could lead to no good results, and they wished me to inform you of their unwillingness to attend. I was not able to see all the members of the vestry yesterday, but I wish to say that my opinion coincides with the opinion of those of the members of the vestry whom I see; and that a meeting at present of the vestry with the bishop is not desirable, and cannot be held except at the call and in the presence of the rector; and, as he sees no reason for, but many reasons against, such a meeting will not and cannot be held.

Very respectfully,

(Signed) ALGERNON S. CRAPSEY.

Letter of Bishop Walker.

July 19th. 1905.

My dear Dr. Crapsey:—

In view of your recent letter I feel constrained to appoint the "Committee of Investigation" provided for by the canon.

And so today I make such appointment of five clergymen, canonically resident in the Diocese of Western New York.

This is to me one of the most *painful* duties of my *whole* life. I have shrunk from it and prayed to God that you might avert it, with my whole heart.

But now your own honor, and that of the church in which you have been a priest so many years, demand it.

I must, in closing, say to you that it is a stupendous responsibility that you have assumed in disturbing the peace of God's church and in teaching as truth what is contrary to its doctrine, which doctrine you pledged yourself to proclaim on your ordination day while life lasts.

With a heart that is sorrowing and sick, I am

Your friend and bishop,

(Signed) WILLIAM D. WALKER.

Letter of Mr. Shepard.

20th April, 1906.

John Lord O'Brian, Esq., 700 Ellicott Square, Buffalo, N. Y.
My dear Sir:—

Crapsey Trial

I enclose seven copies of a communication from Mr. Perkins and myself addressed to the standing committee with respect to an adjournment; and shall be obliged if you will let your office have the address of each member of the committee, and mail the notices, which are in envelopes properly stamped. I enclose a separate copy for your own use, and am sending Mr. Locke a copy.

Yours very truly,

(Signed) EDWARD M. SHEPARD.

Enclosures.

Letter of Mr. O'Brian.

40 Hodge Avenue,
Sunday, 20th April, 1906.

My dear Sir:—

Your letters reached me late yesterday afternoon, and I at once forwarded by mail your enclosures in accordance with your request.

I note what you say in regard to a further adjournment, but am frank to say that it will be impossible for me to comply with your request. The reasons for the position of the standing committee upon this matter were fully gone into by me at the last hearing and when the adjournment was allowed it was with the understanding that the trial would proceed on Wednesday next. I regret that I cannot here repeat those reasons at length so that you might more clearly understand our attitude.

I have telephoned Bishop Walker for the report of the investigating committee and copies of all or any correspondence with that committee, and he will give me these tomorrow so that I can and will produce them in his stead. You need have no fear of my embarrassing you with any technical objections to the genuineness or identity of such proof in case it is admitted. My desire is to have the trial free from all technical or petty objections.

Sincerely regretting that I cannot comply with both of your requests, I beg to remain,

Very truly yours,

(Signed) JOHN LORD O'BRIAN.

Edward M. Shepard, Esq.

Letter of Mr. Shepard.

20th April, 1906.

Franklin D. Locke, Esq., 28 Erie Street, Buffalo, N. Y.

Dear Mr. Locke:—

I am, as perhaps you know, counsel, with Mr. Perkins, for the Rev. Dr. Crapsey, and I enclose you a copy of a letter by Mr. Perkins and myself addressed to your clients, the members of the standing committee, and to the members of the court. I am communicating at the same time with Mr. O'Brian.

I venture somewhat outside of the record to make an appeal to yourself on the question of time.

The presentation of this defense ought to be fit and adequate. It ought to be this for the sake of the church as much as for the sake of Dr. Crapsey. It has been absolutely impossible, with such aid as I have been able to get from Dr. Crapsey, since I was retained early in Lent, to make any adequate or any really substantial preparation. I assumed, as a matter of course, that the dignity and importance of the affair would lead to an adjournment of at least three or four weeks after Lent, and was astonished that there should be opposition to this course. If this were a cause in a civil court, where obviously considerable study and investigation were necessary, there would be no doubt that the motion for an adjournment would be granted.

I assume that, upon this matter, the conclusion of yourself and Mr. O'Brian will determine the opinion of the standing committee and the court; and with a good deal of confidence I make this direct appeal to yourself and Mr. O'Brian for an order, which, I am sure, you must both feel is in the interest of fairness. It is almost impossible for me now to give this matter suitable time.

Faithfully yours,

(Signed) EDWARD M. SHEPARD.

DIocese OF WESTERN NEW YORK.

*In the Matter of the Presentment of the REVEREND ALGER-
NON SIDNEY CRAPSEY, for Trial Upon Certain Charges.*

TO THE MEMBERS OF THE ECCLESIASTICAL COURT
OF THE DIOCESE OF WESTERN NEW YORK AND
TO THE MEMBERS OF THE STANDING COMMIT-
TEE OF THE DIOCESE OF WESTERN NEW YORK.

We, the undersigned, are counsel for the Rev. Dr. Crapsey, in this matter, and beg respectfully to renew the application which was made in his behalf at Batavia for an adjournment of this trial in order that a reasonably complete and fit preparation of his defense may be made by Dr. Crapsey and by ourselves in his behalf. We respectfully submit and of our own knowledge affirm that the time thus far allowed him and us is, having due and reasonable regard to the importance and far-reaching extent of the questions raised by the presentment, utterly inadequate. Dr. Crapsey during the entire period of Lent was overwhelmingly engaged with the special necessities of his sacred work as the rector of an important and active parish and with other and special obligations upon him of his sacred charge. The presentment was delivered to him on the eve of the commencement of Lent. The trial was then fixed for the third day after the conclusion of Lent.

Mr. Perkins, of his counsel, during this time was occupied with his duties as a member of Congress; and both Mr. Perkins and Mr. Shepard, Dr. Crapsey's other counsel, found it impossible to lay aside other and peremptory engagements already made in order to give adequate time to the preparation of this case. Especially were they unable to do so by reason of Dr. Crapsey's own Lenten engagements.

It is simply impossible for us to be ready to submit our defense next Wednesday. We need for it not less than a month further.

We assume that the members of the Standing Committee desire that, whatever shall be the result of this trial, it shall be fair, not only to their side which fixed the time of the trial, but to the respondent. We not only renew our request to the court for a proper allowance of time, but we appeal to the mem-

bers of the Standing Committee and their counsel to accede to our request for a reasonable adjournment.

Very respectfully,

(Signed) JAMES B. PERKINS.

(Signed) EDWARD M. SHEPARD.

Of counsel for the

Rev. Dr. Algernon Sidney Crapsey.

Mr. Shepard submitted at the time of summing up the following:—

Among the other grounds upon which the defendant moves and asks for his acquittal, is the ground that the two charges here presented against him are each for a violation of Canon 23 of the General Canons of the Church, the first charge being for violation of sub-section (b) of Section 1 thereof, and the second charge in particular being for violation of sub-division (f) of Section 1 thereof; that the specifications, other than specification 2, of charge 1, set forth that the offenses specified were committed at divers times during the years 1904 and 1905, or upon many occasions during the years 1904 and 1905; that such Canon 23 of the General Canons of the Church was not in force until the first day of January, 1905; that further with respect to the supposed offense charged to have taken place on the 31st day of December, 1905, there is no proof of the same, except only that to be found in the testimony of the witness Alexander; and that under the circumstances disclosed upon the cross-examination of such witness, it is clear that his testimony is entitled to no belief.

FRIDAY APRIL 27, 1906.

Appearances same as before:

By MR. LOCKE:

If the Court please, I think I may be permitted at the outset to congratulate this Court upon the orderly way in which this investigation has been conducted. I think the counsel at both tables fully concur in the belief that every ruling, every decision, which the Court has made, has been wise and fair and judicial. The counsel last evening said that he would be glad to have me proceed with the argument in this case, because it had not been opened upon

the part of the prosecution, and he seemed to be ignorant of the attitude of the prosecution, and I will take up not more than five minutes in explaining that attitude as I understand it.

I am no theologian; I speak wholly from the standpoint of the occupant of the pew. Our position is that the Apostles' Creed is a part of the faith and doctrine of the Protestant Episcopal Church as it hath been received; that every clergyman of that church is bound to accept every concrete statement in that creed, and that it is intolerable to think a clergyman, no matter how lovely he may be in his life, no matter how many friends he may have surrounding him, shall lead me in my asseverance, or join with me in the asseverance that he believes these concrete statements in the morning, and in the afternoon to firmly deny his belief in them, and publish his denial of those statements and circulate it. It is admitted here that the respondent does not believe, but denies some of those concrete statements; I would say then that this church is no church for him, he should go to the Unitarian Church or go to the Synagogue; those are the two places where he can find a home, where his faith is acceptable, and where he can do good work. We do not challenge his belief, we do not challenge his right to believe whatever he thinks, but we do challenge his right to occupy his official position so long as he makes those denials. That is practically our case. There can be no question about the presentment, there can be no question about any issue of fact, because there is no defence interposed; there is an admission of his disbelief, there is an admission of his declarations time and again, and there is his published book of that belief; and we say he should go. That is the attitude of the prosecution. How else can the church be administered? How can it be sustained, unless the faith be kept by those who are in authority in the church?

I want to say this; everything that I hear about this respondent, so far as his daily life is concerned, so far as his lovely nature is concerned, is of the highest. That magnifies his offence. The counsel here is held to a higher rule of conduct than the pettifogger, he is a man

of standing at the bar, he must hold himself higher than the ordinary pettifogger, who practices possibly in some courts where he may practice at times. In the same way, everything that adds to the influence of this respondent magnifies his offence. Having explained the attitude of the prosecution, I wait to hear from my friend.

By MR. PERKINS: May it please the Court, I desire first, with the permission of the Court, to read a statement which may be regarded as part of my argument, or as an argument or a statement in person by Dr. Crapsey. He has desired that I should do this, and it is at his request that I do it. It is true that what it contains can, of course, only be regarded as an argument by the Court. He was not called by us; indeed, under the rulings made by the Court, these questions could not be discussed by him or by theologians, but must be for you to decide; nothing he could have said would be competent. I shall, therefore, submit this with the remark that I think, whatever disposition may be made of this case, you will surely feel, as all men who read it will feel, that this is a statement submitted by a God-fearing, a God-loving man. The statement is as follows:

"I am not charged with the violation of any of the great moral duties which every man owes to his fellow-men. The accusation is, that in the exercise of my office as a preacher of truth and of righteousness, I have spoken words which it is unlawful for me to utter. These words are found in certain sermon-lectures.

"They were not delivered with any controversial object in view. I had changed the order of my evening worship to the afternoon, and my church was closed at night. I felt troubled about this and thought I would take advantage of the fact that the full Evening Prayer was said in the afternoon, to try the experiment of a preaching service. My whole intention was simply to exert my powers to the utmost for the instruction and edification of my people. In casting about for a subject which would engage their attention and be of use to them in the regulation of their thought and life, I chanced upon the Pastoral Letter of the House of Bishops of 1904. The very first page of that letter gave me a most interesting theme with which to open my preaching

services. I intended that these preachings should be not simply exhortations, but should contain in them an element of instruction. And reading in the Pastoral Letter of the visitation of His Grace, the Archbishop of Canterbury, I determined to deliver a course of sermon-lectures upon 'The Relation of the Religious to the Political Life of the World.'

"It is said that in so speaking I have violated a contract which I made thirty-three years ago with the Protestant Episcopal Church in the United States of America.

"I am far from saying that the church had no right to place any limit whatever upon the kind of truth which I should utter in my official capacity as her minister.

"Those limitations are expressed in certain answers which I made at the time that I received my authority to preach. The first of these limitations was that I should base my teaching upon the Holy Scriptures and teach nothing as necessary to eternal salvation but that which I should be persuaded may be concluded and proved by the Scriptures. This was the primary promise which I made at the time of my ordination, and all other promises must be interpreted by that. Certain other promises were made which may be thought to modify and limit this promise to study and interpret the Word of God. One promise, however, which does not limit, but which gives wider scope to this liberty, is that I would be diligent in the reading of the Holy Scriptures and in such studies as help to the knowledge of the same, laying aside the study of the world and the flesh. A promise however, which may be considered as a limitation of these two larger promises is that which I made to minister the doctrine of Christ as the Lord hath commanded, and as this Church hath received the same.

"Now I claim, in the presence of this Court, that from the day that I assumed the authority to preach the Word of God, I have been diligent in the study of the Holy Scriptures, and have based all my teaching upon them. They have been the source of whatever doctrine I have delivered to the people. These books have been my daily companions. I have been diligent, as far as my pastoral office would permit, in their study, using such helps as lead to the proper

understanding of the same." My whole mode of thinking is, I believe, fashioned by my constant contact with the Word of God.

"If my people come to me and say to me: 'What shall I do to be saved?' I answer them not in my own words but in the words of the Master. On so weighty a subject I would not presume to be other than a disciple, in the strictest sense, of Him whom I acknowledge to be my Lord and Master in the spiritual life, and I desire that my people should listen to His very words and act upon them. Three times the Lord was directly challenged by this question of salvation: 'What shall I do to inherit eternal life?' His answer in two cases was: 'Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength, and with all thy mind, and thy neighbor as thyself.' And the Lord replied at another time to one who knew the law of life: 'Thou hast answered right: this do and thou shalt live.'

"When the young man came and knelt at his feet and said: 'Good Master, what shall I do to inherit eternal life?' He said to him: 'Why callest thou me good; there is none good but God; but keep the commandments.' And when the young man asked: 'Which are they then?' the Lord spake of honoring the father and mother, doing no murder, committing no adultery; and the young man answered, 'All these have I kept from my youth up.' Then the Lord said: 'Go and sell all that thou hast and give to the poor, and come and follow me.' And I ever teach my people that to love God and man, to follow Jesus instead of the world, is the way of salvation.

"The charges that are preferred against me relate not at all to the Gospel of Christ, but I am accused of denying certain articles of the creed.

"A formal creed was necessary to the church only when the church became a great political institution, receiving into itself multitudes of people whom it had to discipline, and the creed was formed for the purpose of presenting a simple outline for the catechetical instructions of candidates for baptism. The creed, of and by itself, is not a presentment of the Word of God to the people; it is simply an assertion of certain facts about God. If we had the creed

only and no further knowledge, we could know nothing at all of the Gospel of Christ. It tells us nothing whatever of the nature of God, whether He is good or bad. It does not tell us anything at all of the moral nature of Christ, and what He did or what He said, and, therefore, to understand the creed, we have to go back of it and interpret it; we have to read it in the light of its origin; we have to read it in the light of the thought of the men with whom it originated; and we have to interpret it and re-interpret it in the light and meaning of the changing thought of the world. Thus, while the creed may be useful for the purpose of presenting in a concrete form great fundamental ideas of the Christian scheme, it can by no means be taken baldly and alone as the one essential of Christian fellowship.

"Believe me, I say from my heart, day by day and hour by hour: 'I believe in God the Father Almighty, Maker of heaven and earth: And in Jesus Christ, his only Son, our Lord: Who was conceived by the Holy Ghost, Born of the Virgin Mary: Suffered under Pontius Pilate, Was crucified, dead and buried: He descended into hell; The third day he rose again from the dead: He ascended into heaven, And sitteth on the right hand of God the Father Almighty: From thence he shall come to judge the quick and the dead. I believe in the Holy Ghost: the Holy Catholic Church: The Communion of Saints: The Forgiveness of Sins: The Resurrection of the body: And the Life everlasting. Amen.'

"And now, if it be charged against me that I do not give to the creed the same interpretation that some other men have given it, I claim that I do give to it that interpretation that is most consonant with the whole tone, temper, and teaching of the Holy Scriptures, and also most in accord with the ways of God as I have learned those ways of His from my study of their manifestation in His outward works and in my own inward nature.

"It has been asserted that I have denied the incarnation of Jesus Christ, our Lord. Nay, I have not denied; I have asserted the incarnation. If the Word was made flesh and dwelt among us in Jesus Christ our Lord, then that flesh was human flesh and human blood, and the flesh in which the Word dwelt had its origin in the seed of man's flesh

from which it is generated by a process so marvellous that it is an everlasting and constant miracle, and therefore, instead of denying, I assert positively the incarnation of the Word of God in Jesus Christ, my Lord.

"It has been also asserted by my accusers that I deny the doctrine of the Holy Trinity. There are not three Gods, but there is one; and the Trinity is the unfolding of the one, not the addition of the three to make one. I see in Jesus the very substance of God the Father. He is of the same substance, not of like substance. I see in Him a perfect union with the Father. I have in the Holy Ghost proceeding from the Father and coming to me the very substance of the Father Himself. I care not by what words these great spiritual facts are described, nor am I compelled by my ordination vows, or any other vows, to think in the terms of the Greek philosophy or in the terms of the Schoolmen. I have the right to think, and my generation has the right to think, in terms most apt to make these great truths real to our souls. To me God is not a definition; He is a living Being, and no definition can confine or fully describe His nature or my relation to Him. I know Him because He is in me and I in Him. My relation to Him is immediate and living. It is heart against heart, my heart in the heart of God.

"When I believe in Jesus, I believe in this manifestation of the human life and of divine revelation. I see in Jesus that which I should do; and I also see in Jesus that which I should admire, and love, and worship. I see in Him the perfection of man's nature, and I also see in Him the fulness of the Godhead bodily. My belief in Jesus is not a formal belief, expressed in definition; it is a living faith in Him as my guide in life, as the master of my spiritual thought, as my Elder Brother, as one who has made me doubly assured of that of which I already had some knowledge, namely, that I have a Father in Heaven.

"Jesus manifests the Father in me. He has brought me to the Father. He has taught me in all my trials and tribulations, in all my hours of joy and sorrow, to kneel down with the full assurance of faith, to 'Our Father who art in Heaven.' So that in Jesus, the human and the divine be-

come one. He is in the Father and the Father is in Him, and whosoever hath seen Him hath seen the Father, because for all the purposes of revelation to the human spirit, Jesus is all sufficient as the revelation of God to man. And so when I say I believe in Jesus, this is my faith.

"When I say, the third day He rose again from the dead, I do not necessarily mean that the body of Jesus, in which He lived His life here on the earth, was suddenly and by some magical process, dematerialized, so that it could come out of its grave and go through closed doors, and appear and disappear; but I do mean that Jesus manifested His spiritual body to the spiritual apprehension of His disciples; and that apprehension was so keen and powerful that they saw the body of Jesus, they saw that Jesus whom they loved, they heard His voice, they knew He was not dead, they knew He was alive again forevermore; He broke for them the bonds of death and hell; He made His presence a power, and in the strength of His resurrection they went forth to conquer the world.

"And we believe in the persistence of personality, and especially in the persistence of the personality of Christ. We believe that Jesus, the great person, has gathered to Himself all that men have ever felt and thought concerning their God. As an article of our faith, we believe that He is the virgin-born. We believe that His personality embodies for us all that is pure, all that is holy, all that we must aspire after; and we believe that the full person of Christ is with us to-day, not simply in the sacraments of His church, where His body is broken and blood poured out, but in and of us, as it is written: Christ shall dwell in our hearts by faith, that we, being rooted and grounded in love, may apprehend with all saints, and know the love of God, which passeth knowledge. "

Now, if the Court please, I will proceed to perform the duty that rests on me as one of those representing Dr. Crapsey in this case. We have been furnished with little information certainly as to the doctrines of the church, in the exceedingly brief statement that was made by my friend Mr. Locke. I do not know that we should be surprised in my friend Locke, for whom I have the highest regard, but

who, I regret to say, is himself religiously in error. Why a gentleman of another church should come here to instruct us in the doctrine of our church, I do not know; his knowledge of our church is apparently indicated by the fullness with which he has presented its doctrines.

I wish to say at the beginning, that I trust I may not be too long, and yet I do feel very greatly the responsibility that is cast upon me; I trust that I shall not tax the indulgence of the Court, if perhaps I weary them longer than I should. I wish first to make some casual comments—they will be casual—in reference to the articles which are presented against us. While there are broader questions here, and all of us feel that the disposition of this case is more important to the church than we believe it can be to any one man who is personally interested or whose relations may be affected by the decision; yet after all the Court has its duty to pass upon specific articles that are brought before you, wherein it is stated that Dr. Crapsey has given voice to statements that he as a minister of the church should not have uttered.

The book that is here, of some three hundred and odd pages, has doubtless been searched through with care and diligence, and extracts taken therefrom, some of which are found almost at the beginning and some almost at the end; and for many months these have been before the public; so we must therefore feel confident that all the heresies that diligence and zeal could find have been produced before this Court. I will not read in full all of those statements; they are before the Court.

The first charged as heresy is in substance this: It says that "Jesus of Nazareth, the son of Joseph, a carpenter of Galilee, went down to the Jordan." Where was the heresy in that statement? In the 1st of St. John, Verse 45, we find that Philip says: "We have found him of whom the prophets did write, Jesus of Nazareth, the son of Joseph." As to this statement in the presentment we do not require to be persuaded that it is proved by the Scripture, it contains the very wording of the Holy Scriptures.

Next come the second third and fourth, of which I have only this to say, that they contain simple statements as to

the part played by Christ in the world's history: "His influence upon human society, His recreation of new ideals of life." It is said, for instance, that He condemned the society which He found because of its iniquities; that the movement He inaugurated was to change the base of human life, making love instead of fear the motive of human action. Surely it is not heresy to say that the doctrine which Christ taught was the gospel of love.

We then come to the fifth statement, in which Dr. Crapsey says, "He expected that the kingdom of God which He preached would be accepted by His own people with joyful acclaim. He judged others by Himself. To Him the kingdom of God was the simplest thing in the world. It was to love the Lord His God with all His heart and soul and mind and strength, and to love His neighbor as Himself. To Him righteousness was the supreme good, and pure love the supreme motive of life. Let absolute righteousness be the end for which man lives, and pure love the motive of all his actions, and the Kingdom of God is here; and those things were rejected by the people whom He taught." Is this not a correct statement of Christ's teaching? Isn't it the very essence of the truth and the strength of Christ's teaching? Why the standing committee should have selected a statement by a Christian clergyman, that Christ's righteousness was the supreme good and pure love was the supreme motive of life—why that should be picked out as erroneous or dangerous doctrine to teach the people to whom he was ministering fills me with surprise. It may be thought by some that soundness on doctrinal questions is the supreme good of life, but such was not the opinion of Christ, such was not the statement He made in His teachings to man.

In the sixth sub-division it is said that Jesus expected the rejection of His doctrine to be followed at once by great catastrophes in nature. In the 24th of Matthew, in the 13th of Mark, I think in every one of the gospels are the words of Christ in which such statements were made by Him. I cannot understand why this paragraph, containing the very statements that Christ made, and reported I think in all the gospels, certainly in two, why this should be picked out as

heretical. It must have been thought that there was some lurking heresy in the statement that Christ expected results, which the other side may suggest did not in all respects follow, an implication that He, while He was in the flesh, was mistaken in His expectation. It certainly is not for me, nor have I the capacity to wrangle in reference to the precise definition of theological terms; but I think that even I know enough of theology to be sure that if that statement were passed upon by the rules of the schoolmen, it would be found to be in accord with the strictest tenets of theology. Just for one moment I will diverge to what perhaps I might leave to my clerical associate; but there are some questions of theology so familiar that even the layman can understand them. It is the doctrine of our Church, that Christ was both God and man. He was very God and He was very man: that is the faith which is proclaimed by the creed of the church. Is it heretical to attribute to Him the qualities of man? Is that heresy? The result would be to take from Christ's life its sublimity. For instance, in all the gospels we are told that He prayed that this cup might pass from Him, and yet He submitted Himself to His Father's will. If it is sound theology that He at that time was not man, not subject to man's infirmities, but possessed of the omniscience of the Almighty, the sublimity of Christ's example to man passes away. If He had foreknowledge that what was coming to Him was but a trifle, a thing of no importance; that a brief punishment would be followed by a glorious resurrection, He would not have sorrowed greatly, He would not have prayed that the cup might pass from Him; and yet there is no part of the duty of a Christian clergyman more valuable and more impressive than that they teach their flocks the manner in which Christ met the ignominious and terrible death that was threatening Him. It was sublime, because He being man met what to us who are mortal men seems the most terrible of terrors. If He were not, the thing becomes a trifle in which certainly mortal man could find no lesson nor inspiration. I will take the liberty, with great deference, to suggest to my theological friends on the other side that if they would make themselves familiar with the learning that even laymen have acquired, they would not

claim any heresy here; and if they will refer to Gore's "Lectures on the Incarnation," and to the Eutychian controversy, they will be satisfied that there is no heresy in any of these statements.

Now, we come to the seventh. "He has made the little hill tribe of Judah the master people of the world; because of Jesus the folklore of the Hebrew has become the sacred history of the western world, and the heroes of Israel the heroes of mankind." Where is the heresy there? "The heroes of Israel are the heroes of the world." Is it heretical to say that? Some of these selections fill the layman that reads them with wonder and surprise as to why they were picked out in order to base upon them a charge that this man should be removed from the Christian ministry. What is the balance of the seventh presentment, which we are told by the prosecutors contains manifest heresy? "Jesus today has the leadership of man, and human evolution must follow the lines laid down by the life of the Man of Nazareth." We are brought in before this Court upon a prosecution that says that a statement in two paragraphs, one saying, "The heroes of Israel have become the heroes of the world," and the other saying that "Jesus has today the leadership of man, and human evolution must follow the lines laid down by the life of the Man of Nazareth," is heresy. I should have supposed that this was the very essence of Christianity and Christian belief. Do we not believe today that Jesus has the leadership of man? Do we not believe that the evolution of man follows the lines laid down by Jesus of Nazareth? It is the very essence of the truth of Christianity, that the evolution of man has followed the lines laid down by the Man of Nazareth. I think perhaps the prosecutors think it is heresy to speak of the Man of Nazareth. Surely, if they assume that attitude, the study of the New Testament has gone for naught; they must tell us that the innumerable passages in the testament amount to nothing, where Christ is said to be from Nazareth, where he is called the Son of Man, where He is called the Man of Sorrows—those phrases are all of them so familiar that they need no reference. There have been moments when we might suspect—when we are almost driven to suppose, that when this presentment was framed some passages of Holy Writ had passed out of the minds of the members of the standing committee.

We come to our eighth heretical statement. I should say as to the eighth and one or two others, that I purposely pass by all statements as to the manner of Christ's birth, because those I intend to leave exclusively to Dr. Worcester, but I wish to call your attention to the substance of the eighth. It contains a statement of what Christianity is based upon. Now, I say that statement is essentially and for all time true; it states the cause of the success of Christ, it states the cause of the growth of Christianity, it states the reasons why Christianity has spread over the world. It is not for me to question the truth of any statement contained in any creed as to the way in which Christ came into the world, but I say that such things are not the reasons of the growth and the permanency and continuance of Christianity. They are not, I say, and every man knows it. If there was nothing to Christianity except that a certain man, a divine man, had appeared on earth, had performed certain miraculous acts, had himself come into the world in a miraculous way, does anyone think that there would be any Christian Court here today, or any Christianity in the world. It has spread over the world because of Christ's life and Christ's teaching. It is the example such as was never set by any other person; it is the teaching such as no other man ever taught—which account for Christianity's growth. What would you gentlemen preach if all you had to tell the faithful was, that at a certain time a divine being appeared, and from time to time worked certain miraculous cures; that he was brought into the world in a miraculous way, was subject to condign and unjust punishment, and rose again into heaven? How long would the world listen to this teaching, and how long would the people come that they might be instructed as to those statements and those alone? They come; they are instructed; they adopt Christianity because it furnishes in the teachings of the Master a rule of life which nowhere else can be found, because it exhibits to the world a life of love which no other person in this world has ever offered to man, because it furnishes the example of a life such as no other person has ever lived. Therefore it is that we are today here as Christian men, because to us has been brought home—because on our minds has been impressed—the importance to all history and all civilization and all development, of those rules which Christ laid down to be followed by men.

Now, I come to the ninth, and some of those presentments

excite a certain amount of intellectual curiosity, if nothing else. Is it heresy to say, "Jesus was wise enough to see that physical force can only decide physical questions, He knew as well as Bonaparte that God is always on the side of the strongest battalion, and the most skillful commander?" Heresy to say that physical force can only decide physical questions! Heresy to say that no moral result has ever been accomplished in this world, that no evolution of society has ever been worked out, except by the working of moral laws! Heresy to say that no leader and no manifestation of physical force and physical violence can ever bring about moral results! It is not only the teaching of the church; it is the teaching of history; it is the teaching of civilization. Are we told by priests learned in the law of the church that moral results do not follow moral causes? Dr. Crapsey says that the world has been changed by Christianity, that cannons have not blown Christianity into the hearts of men, but the morals of Christianity have reached the hearts of men. To be told that this is heresy is certainly surprising.

Coming to the tenth presentment, I must for one moment depart from the rules that I had laid down for myself and which I should follow if I were not led off into the maze of theological discussion for which I am so unfitted. But really even the layman is sometimes surprised by the exhibitions of theological inaccuracy on the part of those who brought this presentment. We are said to have committed heresy in attributing, in giving as the cause of the failure, of the decay and decline of the Eastern Church or of certain branches of the Eastern church, wherein Christianity finally failed and went out, this reason: "Weakened by secession of Nestorian, Eutychian, and other heretics, worn out by endless contentions, worshipping trinities, angels, saints, and martyrs, they had no power to withstand the enthusiasts who rushed out of the Arabian desert with their stern monotheistic creed."

I think I must indulge myself just a moment in theological discussion, for the benefit of the theologians who drew this presentment. I will illustrate by a collect read by my friend on the other side, which I fear has not been read carefully by those whom he represents. Whether there is any heresy—I don't know whether any of the standing committee think it is heresy—in saying a church may be brought to naught by worshipping angels.

saints and martyrs, I do not know; but I think I may state with confidence that in the Protestant Episcopal Church the worship of angels, saints and martyrs is not part of our creed. I have read this article through a good many times to find out where the heresy was, and what could have been in the minds of the men that presented it. It charges that we have, among other things, denied the doctrine of the blessed trinity, and I see nothing in any of these passages where such a thing is suggested even, except where we say, "worn out by endless contentions, worshipping trinities, angels, saints, and martyrs." Heresy, heresy to say that you ought not to worship the Trinity! I have been brought up in what I think is sound theology, to believe that the Church to which we belong was a monotheistic church. Are we a polytheistic church? Do we belong not to monotheism but to polytheism? If so, I will confess that the most of us have sadly mistaken the belief to which we are attached. We worship one God, manifested in three persons. It was one of the mistakes, it was one of the heresies of the Eastern church that in their subtlety they reached the point where they worshipped three individualities instead of one God, as my friends on the other side would know, if they had taken the pains they might have taken to read some of the vast amount of literature on this subject.

Let us take the collects of the church. I will read this, not for the instruction of the Court who know it well, but for the instruction of our friends on the other side. The presentment says we have denied the doctrine of the Trinity, and the only passage is the one which I have just read, where we have said it was wrong to worship trinities. The collect for Trinity Sunday runs: "Almighty and Everlasting God, who has given unto us thy servants grace, by the confession of a true faith, to acknowledge the glory of the eternal Trinity, and in the power of the Divine Majesty to worship the Unity"—there is the doctrine of the church which I commend to my friends. On Trinity Sunday we acknowledge the glory of the Trinity and we worship the Unity. I regret my theological friends should have gone so far astray as to think it was heresy to assert what the collect, which each Trinity Sunday of their lives they read, asserts to be the true faith of a monotheistic church.

Now, we come to the eleventh statement. Where is the heresy there? We are told that it is heresy, for which a man must be

cast out from the Protestant Episcopal Church, to say, "It is the constant temptation of the king-made bishop, to attune his message to the kingly ear. When the king is to be rebuked you must not ask that task of the courtier prelate, but must call in some rough, rude man of the people, some man like Elijah the Tishbite, or John the Baptist, or Jesus of Nazareth." Surely it is not heresy to say that Christ was not a courtier prelate.

I shall refer very briefly, because these are to a large extent in the hands of Dr. Worcester, to the statements in the twelfth, thirteenth and fourteenth, which in a general way allege that the progress of the world is going along the lines of scientific development. Nobody can deny that; it is a thing known to every man, whether he is in the church or out of the church; and any man whether in the church or out of the church who is ignorant of that, will be left to one side in the stream of the world. There have been times in all the centuries of the past when some part of those who confessed the name of Christ have sought to put themselves against the stream of common progress, the stream of human progress. They have been left to one side by the progress which governs the development of civilization.

Just one word about the last charge of heresy. We have claimed, and we believe, that under the agreement which we took at the ordination we were bound to study the Scriptures. How far this binds, what is the meaning of that clause, will doubtless be much discussed, but it is surprising to find that apparently in the judgment of the standing committee it is heresy even to quote the Scriptures. Here is the fifteenth article: "And as for you, O ye unprivileged classes, who have been put off with words about trinities and unities, and about incarnations and personalities, the worn-out terminology of the Greek dialect; and have been told that to say these things is true religion—know this, that true religion and undefiled before God and the Father is this: 'To Visit the fatherless and the widow in their affliction, and to keep himself unspotted from the world.'" If that is heresy, if to state that is considered as heresy, then we will be condemned.

I wish to say one word about the second specification. I shall say it with great brevity, I shall say it in all Christian kindness, I shall say it with very great regret, but I shall say it. There is contained in the second specification a statement of certain words alleged to have been uttered by Dr. Crapsey in a sermon.

Evidence has been given here, a witness has been called here who testified before this court that Dr. Crapsey said these words. The statement of what he said, as given by the witness, is not, in all respects accurate, but that is unimportant; given even in the form he gives it, there is nothing which changes the question here or needs reply. But I do regret that before this Court, on this solemn occasion, any one of those who are commissioned to especially set an example of high living to me, so presented himself that even the bystanders in this court room and the reporters of the newspapers have held him up to public scorn. It will be a sad day for the influence of the church in this community, if a man with the standards of life of Dr. Crapsey must be thrown out, and a man with the standards of life of Mr. Alexander shall stay in.

Now, if the Court please, I will proceed farther in my argument; and I desire as representing, I think, not only my own thought, but those of many other laymen, to say a word or two as to how the questions that arise here impress us: because the charge made against Dr. Crapsey, as I understand it, is that he has questioned or denied in some way—thrown doubt upon—certain miracles, certain acts that are called miraculous, as being contrary to the ordinary course of nature's laws. And, of course, it is claimed on the other side—it must be claimed—that if a man does that, he does it to the manifest detriment and harm of Christianity. If Dr. Crapsey or any one else should make erroneous statements on ten thousand questions, and it has not shown wherein his statement would be of detriment to the cause of Christianity whose minister he is, he would not be brought before this Court for censure or expulsion. He can only be brought here because any error in these respects must necessarily go to the essence of Christianity itself, must pervert the minds of those to whom Christianity is taught, must check the development and the growth and the effect of Christianity upon the world. In other words, it must be that there are certain things of such vital consequence to the very essence of religion that unless they are true, religion fails; that if Dr. Crapsey is right in what it is claimed he has asserted, the result would be that the very basis of religion would go from under him. It must be held, in other words, that the religion—the Christian religion which we adopt, the faith in God which we hold—is based necessarily and for all time upon ad-

hering to the belief in certain events which were contrary to the course of nature. Certainly, it is not for me to say whether those miraculous statements are right or wrong. I dare say they may be right; I have no knowledge to pass on such questions, nor do I desire to; but I take the liberty to make, with all due deference and all humility, certain suggestions that weigh upon my mind, as they do, I think, on the minds of countless devout men; to say that such conceptions of religion seem to us necessarily to place a limitation upon the wisdom and the power of God whom we regard as Almighty. It seems to me, with all respect, that the position of many sincere men on this question in its essence, though certainly not in its intent, is impious. If we believe in a higher power that regulates the world and frames its destiny, surely it is beyond our ken to decide in what manner He will work out His great design. The Almighty could send His son to this earth in such a manner as He saw fit; it was not necessary for Him to work miracles to prove Christ's divinity. The Son of Man could come among us in such a way as to God seemed best. To say that a being of infinite wisdom and infinite strength must declare Himself by miracle, and only thus could He be known to man, seems to me a narrow conception of divinity. The results of God's work are known to men, the manner of His working is known only to Himself. It was for man's enlightenment and the uplifting of man's character that the example of Christ's life and conduct was furnished to us. Shall we bind the Almighty by saying that only by one prescribed route could He work out His purpose, that Christ's character and teachings are lost to the world unless He was born in a certain way, unless His life was marked by certain superhuman or supernatural acts? The devout man accepts the results of the teachings of the Almighty, and sets no bound upon the manner in which He may have carried out His purpose. Does a man think that the Almighty saw fit to suspend His own laws in certain cases? We find no fault, if he agrees with us in respecting the law of love and Christian conduct which God has furnished the world. But can we not piously believe that the Almighty might, in other ways, have brought about the great result; that He could send Christ into the world without any violation of natural law, if so it seemed best to His wisdom? It is not the violation of natural law that proves to the devout man the existence of the Almighty. It is the working through

countless ages of those laws which the Almighty in infinite wisdom has ordained, that proves there is a power above us which we adore. It is not any casual case of interference or overruling of God's laws; it is not the fact that some man here may have been miraculously healed, or some man there miraculously aided, that proves God to us and the truth of Christianity. The fact that by the slow, steady, and unceasing working of God's laws we are what we are; that the universe has been made, that we have been created, that our intelligence and our feeling of moral responsibility has been evolved: that I do respectfully submit, is the one great miracle; it is that which furnishes to all devout men the final proof of the truth of God's law and of Christianity; and I say with great respect for those who hold to the contrary, that for any one to say that a man cannot join in the worship of God, cannot believe in the divinity of Christ and the truth of Christianity, because he fails to accept or feel convinced of the truth of any statement of miraculous event, is certainly lamentable. It is the miracle of Christ's teachings that compels our belief in Christianity.

To pass to more strict matters of our defense, to which I shall in the future attempt to keep myself; the important charge against Dr. Crapsey is that he has violated the obligation which he took upon himself when he became a priest of the church, and I shall ask you to consider what it was that he agreed to do. This Court, like any other court having to pass upon an instrument—and this is an instrument, an agreement that Dr. Crapsey took upon himself, which is taken upon himself by every priest of the church—must, I say, interpret it together; the obligation assumed must be considered as a whole. The very first agreement is: "Are you persuaded that the Holy Scriptures contain all Doctrine required as necessary for eternal salvation through faith in Jesus Christ? And are you determined, out of the said Scriptures to instruct the people committed to your charge; and to teach nothing, as necessary to eternal salvation, but that which you shall be persuaded may be concluded and proved by the Scriptures?" Is that solemn agreement a mere form of words? Does a clergyman of our church when he enters the holy ministry take upon himself by solemn oath a promise which means nothing, a thing which he swears to do and then is bound to violate? Does the church impose upon its clergymen that they shall solemnly

agree to do a certain thing and then be false to their ordination vow? That is the result of the argument on the other side. When a man swears—takes his oath before the Bishop and in the presence of Almighty God—that he will study the Scriptures, that he will teach nothing except what he is persuaded may be concluded by the Scriptures, there is imposed upon him an obligation, if he be persuaded that a thing is necessarily proved by the Scriptures, to teach it. I do not believe that the Protestant Episcopal Church will ask a conscientious, sincere, and God-fearing man not to do the thing which he has taken an oath to do.

All the clauses must be considered together, it is one agreement; it is the same as if these promises were all printed together, and at the end of them the man said, "I do agree and promise." The church certainly in its wisdom has not adopted a system by which a man will in one word—in one paragraph—swear to do one thing, and in another paragraph take his oath to do a different thing; he does not in one paragraph agree to follow a certain course, to bind himself to do a certain thing, and in another section promise to do a thing contrary to that; certainly no such construction as that could or should be given to the ordinal of a church. It would be contrary to the very essence of the truth which we profess. The presbyter promises to teach the people to whom he is to minister the doctrine as the Lord hath commanded—the Lord hath commanded in the Holy Scriptures, I do not know of anywhere else except in the Scriptures—the Lord hath commanded and the Church hath received the same.

He is asked: "Will you be ready with all faithful diligence, to banish and drive away from the Church all erroneous and strange doctrine, contrary to God's Word?" Contrary to anything else, contrary to any book, to any prayer, to the Thirty-Nine Articles, to the declaration of any council? No. "To drive away all erroneous and strange doctrine contrary to God's Word—that and that alone. The strange doctrines that are contrary to the word of God, are the doctrines that our faithful priest must drive away, those and those alone.

The presentment going on further contains this clause, to which I will for a moment call the attention of the Court, because it says—Specification 2—"We allege that.....said presbyter did publicly use the liturgy of the church..... and broke the following ordination vows: 'Will you

be diligent to frame and fashion your own selves, and your families, according to the Doctrine of Christ; and to make both yourselves and them, as much as in you lieth, wholesome examples and patterns to the flock of Christ?" "Will you maintain and set forward, as much as in you lieth quietness, peace, and love, among all Christian people, and especially among them that are or shall be committed to your charge?" "I confess that I am filled with amazement that there should be charged against Dr. Crapsey a violation of that part of his ordination vow. It is known to his flock; it is known to the city in which he lives; it is known to all men that know him at all, that he and his family have furnished, *have been*, wholesome examples and patterns to the flock of Christ. It is known by all who know him at all—by this Court, by the city in which he lives that insofar as was in his power, that in so much as lieth in him, he has kept his agreement that he would maintain and set forth quietness and peace and love among all Christian people, and especially among them that were committed to his care. If there has been any breach of the peace and love that should be found among Christian people, it is not due to Dr. Crapsey, but to those who have instigated the prosecution against him.

As bearing upon this question of the church Ordinal, it may be of profit if we consider a little further the important question of its interpretation. The Ordinal was adopted when the Anglican Church separated itself from the Roman Catholic Church. It was adopted and has remained substantially in the same form as it was at the time of that separation, and the differences in the ordinals of those two churches are certainly interesting and important. I have taken the pains to provide myself with a statement of what is the Ordinal of the Roman Catholic Church, that we may know what is the requirement of that church. The adoption of our ordinance was a part of that great protestant movement out of which the church to which we belong was formed. A priest in the Roman Catholic Church submitted himself wholly and entirely to the decisions of that church. But it was the revolt of the great mass of the people against the beliefs, against the rules and the procedure and the practices of the Roman Catholic Church, that led to the protestant secession, and the organization of the Protestant church. Here is what Pius IV says is the ordinal or rule to which each priest in that church subscribes, and we cer-

tainly think there is no principle more familiar to any lawyer than that when a change is made in a law, it must be presumed that those who made the change had some purpose in doing it. When a statute reads in a certain way, and another statute is passed which establishes a new provision, the courts will always in construing it, consider the reason for inserting the new provision, holding that there must have been some reason for the change, or they would have let the old law stand as it was. What does Pius IV say? And certainly he could well be with the prosecution in this case, for he says: "I most firmly admit and embrace the apostolical traditions, and all other observances and constitutions of the same church. I also admit the sacred Scripture according to that sense which Holy Mother Church, to whom it appertains to judge concerning the true meaning and interpretation of the sacred Scripture, hath holden, and still doth hold." Does the form of the Ordinal of the church of which we are members agree with that form? Manifestly not. We do not ask the presbyter who enters the Protestant Episcopal Church to admit the sacred Scripture according to that sense which Holy Mother Church, to whom it appertains to judge concerning the true meaning and interpretation of the Scriptures, hath holden and still doth hold. Instead of that we assert that which is the basis and essence and foundation of Protestant belief; and that is the right and the duty of the exercise of the individual conscience and the individual examination of Holy Writ. The priest, instead of saying: "I will accept the sacred Scriptures according to that sense which Holy Mother Church hath given," takes his oath that he will teach nothing except what he is persuaded may be concluded and proved by the Scriptures, and that he will be diligent in the study of the same.

After all is said and done, our Church is—though as I know, some who are interested in this prosecution regret that it is—a Protestant church. It is Protestant by its name; it is protestant in belief, in the teaching of its articles, and in the Ordinal by which its presbyters are bound. Its faith rests upon that conscientious study by the individual of the Holy Scriptures upon which all Protestantism rests.

There are many who will doubtless find that their intellectual beliefs and the tenets that they wish to be held, are more consistent with, and that they could themselves abide with more com-

fort and more satisfaction in, the principles and the doctrines of that great church of which we are not members. But I apprehend that this Court will dispose of the questions that arise in this case by the principles which govern the church of which we are members, and which appeal to the intelligence and belief alike of the clergy and laity of that church.

To revert to one other suggestion that comes to my mind this moment. The faith of any one man is of small importance to any except the man himself, even to him a small thing compared with the infinite life that may lie before him; but the case before this Court, involving the consideration of church policy and church interpretation, is a great question, and therefore it is that I purpose without unnecessary elaboration to point out some considerations that should come to the Court's mind in reaching the interpretation that it should give to the rules of the church. I have adverted to what acted upon the minds of the men who took the Church of England out of the Church of Rome; I now wish to call your attention to another matter which bears upon the necessity of the church meeting new propositions. It is perhaps a trifle out of the course of my argument, but I may as well say it now. There were here yesterday a large number—a considerable number of clergymen of prominence in our church, men of recognized standing. We all know, if it had been necessary, there could have been called, instead of a few, hundreds. We all know that every one of those clergymen, who we may say safely are not in sympathy with the effort to put Dr. Crapsey out of the church, represents large bodies of men, who accept their teaching, and adopt their beliefs; and I ask you to take into consideration how all these will be affected by your decision. It is manifest that the disposition of this case is of infinitely more importance than the question whether any man remains or does not remain a presbyter of the church, because the result may influence the relations to the church, possibly even the connection with the church, of great bodies of men.

To turn back again to our historical parallel. The Church of England held the people of England. If the Church of England at the time of the Reformation had not adapted itself to new phases of belief, to the new element of intellectual and religious unrest, to the change which was then coming, the Church of England would have lost the people of England. The Roman

Catholic Church in Germany lost a great body, certainly a very large and important body of churchmen. Where force and restriction were attempted, did they hold the people? Does the Church hold the people of France this day? Turn to the Revolution, turn to the universal feeling against the church in that land today, turn even to the unfairness and injustice with which the church has been treated, and tell me whether the church of France, when it failed to meet new conditions, failed also to lose the people in France. Our church will continue to grow so long as she acts along the wise traditions of the past, and is broadened with the broadening of science and with the development of civilization. The church must define her position, so that the church which we call catholic and hope will remain catholic, shall be so broad that if Bishop Walker, for instance, and Dr. Crapsey do not agree upon all points, there is room for both; one has as good a right in the church as the other, the one is protected within the liberties of the church as well as the other. We seek to put out no man who is united to Christian work, is doing the work of the Master; but we say if this church is to grow greater and greater, it must be broad enough to hold all those who in sufficient conformity, though differing in some acceptance of detail, in sufficient conformity so far as the great truths of the Christian religion are concerned, work together for the upbuilding of the Christian religion.

Let me say a word or two upon another question, which might properly perhaps have come earlier. In the reference I have just made, to the manner in which the Church of England has kept her hold upon the people, I want to note what at least is one of the explanations, by no means the only one, but one of the explanations of that most fortunate result. It has been an element of strength in our Church that a broad latitude of the interpretation of belief has been allowed; it has been, thank God, not a sect, but a church. It has followed along no narrow lines of dogmatic theology, but along the broad lines of Christian faith. Let us look back a little and take the history of our mother church, the history of the English Church of which we are a part. About two centuries ago, there was a large body of men in England, faithful as well as devout and earnest in the Lord's work. Doubtless they deviated in many ways from the tenets and rubrics of the Church, they did many things in bad taste, they

did many things and said many things with poor judgment; but they reached vast bodies of men, and their earnestness in the cause of Christ no man ever questioned. If that great question was before the English Church today, with the wisdom which the English Church in this century has shown, not one of those men would have been allowed to escape from the fold of the church of which we today are members. I will not say that they were pushed out, though I would not be very far wrong historically if I said that. I can surely say with profound regret, in which we all share, that they were allowed to go out. That certainly was a great misfortune for the power and influence and expansion of the church of which we are members. In all the history of our Church since the days of Edward the Sixth, I do not think any such mistake of policy, of church government, has been made, as that which allowed that great body of people who now compose the Methodist Church to escape from the fold where they should be today.

What was the history of the church after that fatal mistake? We all know, and we regret as faithful churchmen, that the last half of the eighteenth century was one of the least important, one of the least valuable chapters or eras in the history of the Church of England. Doubtless, there were many worthy priests in those days doubtless they did much good; but still it was a period of intellectual and ecclesiastical drowsiness. There were many worthy priests, and there were also many priests who were regular in their ceremonials, rigid in their doctrines, and who were of exceedingly little use in the world.

And so we come to the beginning of the last century. A new movement began—the various movements to which I need not refer brought on unrest, brought debate, brought to some worthy men distress, but they brought life into the church. Let us see for a moment how they were received. It was an era really in the intellectual life of our church, the publication of the famous book of “Essays and Reviews.” When Sir James Fitzjames Stephen was defending Dr. Williams, who was prosecuted for heresy because of the article which he published in it, he said, with the license which is allowable perhaps in the advocate: “The volume of essays and reviews was met with a howl of ignorant dismay.” It certainly disturbed many very worthy men. There is contained in that book of essays an article written by Dr. Temple, who after-

wards became Archbishop of Canterbury; and in it I do confidently assert there are one hundred propositions that to many persons would seem greater departures from the doctrine of the church of which we are members than any you would find in "Religion and Politics," if you read it from end to end.

There was a great disturbance, and an endeavor was made to put Dr. Williams out; the case to which we have several times referred went through all the courts, and the contention there was the contention here. There is much that is interesting in the parallels that may be drawn between that famous case and this case, less famous, though yet of importance in the history of our church. They said that Dr. Williams in his essay had advanced views which were not in conformity with the doctrines of the Church of England. Furthermore many very worthy men said what very worthy men do to-day—the Bishop of Salisbury, if I remember right, said that Dr. Williams was a good man and a learned man; yet he could not hold the beliefs which he did and be an honest clergyman, and therefore he should retire from the church. The Bishop said: "He is a worthy man, he is a good man, he is a learned man, he has a right to his views;" but he said what many other worthy men at that time said: "He cannot hold and advocate those views and remain, if he is an honest man, a clergyman of the Church of England," because he had advanced views which were contrary to the doctrines of the Church of England. And so they said, as my friend Locke suggested in opening, to Dr. Crapsey: "You are a good man, you are a worthy man, but there is no room for you here; show your honesty and worthiness by leaving our church, and go to some other church that will receive you into its bosom."

Dr. Williams made his answer, and in 330 printed pages of Mr. Stephen's argument, with infinite learning, is presented the same proposition, certainly at more length, as in this case. He said that as he read the ordination vow, which he was accused of breaking, he promised to be diligent in such studies as would help him to the knowledge of the Holy Scriptures, and his beliefs were the result of those studies. The court in that case did not follow the suggestion of my learned friend on the other side, that all you have to do is to take the Prayer Book and the dictionary; to read from the Prayer Book, and if you do not understand the words go to Webster's Dictionary, and then you know the doctrines of the

church. It said, on the other hand, that it had been the policy, the fixed policy, of the Church of England to leave its ministers the widest liberty. Of course, there are bounds to that liberty. If a man should deny his belief in God, if a man should deny his belief in Christ, if a man should say he did not regard Christ's teaching to be of value, or necessary to salvation; manifestly he could not preach the church's doctrine, of which the fundamental idea is to bring man to follow Christ's teaching, and imitate his example. But it was held in that case that the doctrines of the English Church allowed the widest liberty of thought and of interpretation, in reference to the tenets and beliefs of the church. Sir James Fitzjames Stephen said the question for the court there was: "Has a clergyman of the Church of England the right to use his mind?" That was the question presented in that famous case, and it was decided in the affirmative. Sir James, among the innumerable quotations he made from the fathers of the church, took this from Jeremy Taylor—and I trust that Jeremy Taylor will be regarded as a person whose views are entitled to weight in our church, even by those on the other side—Jeremy Taylor says: "Therefore a wise man considers this would not willingly be subscribed to by others, and therefore, also, if he be a just man he will not impose upon others; for it is best every man should be left in that liberty from which no man can justly take him unless he can secure him from error. So that here also there is a necessity to conserve the liberty of prophesying and interpreting the Scripture; a necessity derived from the consideration of the difficulty of Scripture in questions contraverted, and the uncertainty of any internal medium of interpretation." If it please the Court, I know of no reason why a presbyter of the Protestant Episcopal Church should not govern his conduct by the authority of Jeremy Taylor.

Let us consider for a moment another case, which I shall discuss very briefly. It was about fifty years ago—I think very nearly that, and it shows how fast the world changes—that Bishop Colenso published his views, in which he said among other things that the first chapter of Genesis as to the creation of the world could not be accepted literally, but must be interpreted by the progress of human science; he declared that that which science had demonstrated so that it was believed by intelligent men, the church must adopt. We all know that there was great

consternation. A great many most worthy men said: "If we give up that part of the Scripture, all is gone; who shall draw the line? The truth has failed, the church must decay." They endeavored to depose Bishop Colenso, and if I remember right, one ecclesiastical court did claim to depose him; but his case went to the final courts, and it was held that in nothing had he gone beyond the liberties of a clergyman of the church. I refer to that case chiefly to illustrate that worthy men fifty years ago said and believed that if the things preached and taught by Bishop Colenso should be accepted there was an end to the faith; that the sincere, earnest, devout men of that day looked forward to the destruction of the foundation of the faith to which they held, if such things should be accepted. Fifty years have passed, and there is not one person in this court room that does not believe, that has not accepted, the teachings of science in reference to the creation of the world. Has the cause of religion been hurt; has the progress of Christianity been retarded; has the faith of the church been lessened because men in the church have adopted that which science teaches and which they first stood out against? On the contrary, we know and every one knows that the Church of England today is doing a larger work, has a greater hold upon the minds of the people, has a greater influence upon the conduct and conscience of the people than it had fifty years ago. The doctrine of Christianity was in no danger. The apprehension we all feel when there is any suggestion of change in beliefs, in accepted intellectual formulas which are dear to us, which are precious to us, is often strong; but history shows if the attempted change is wrong you need no heresy trials to check it, it will come to naught, if the truth be not in it. The church is founded upon truth, adopts the truth and grows with and through truth. As Dr. Henson says in one of the books to which we refer—and surely if there are to be prosecutions for heresy for deviations from exact formula and wording, my friends on the other side will find a thousand of them in Dr. Henson where they can find a dozen in the humble so-called offender whom I represent—as Dr. Henson says, a man of accepted and honorable standing in the church to which we belong: "We do violence to the distinctive principles of Christian religion when we admit to our minds the timorous and irrational supposition that as Christians we can have any separate interest from that of

honest and reverent seekers after truth. Christ, the Truth Incarnate, commissions all genuine scientific investigation."

I add one citation more from a man whose name stands as high in the admiration of the great body of the laymen, and I think I might add, of the clergymen of the Protestant Episcopal Church, as any man that has ever been commissioned by that church; and that man is Phillips Brooks, chosen to be a bishop of the church of which we are members: "Any dangers," said Phillips Brooks, "which the church might have to encounter by making conscience and free inquiry her guides, even with the possibility of error, are alive and hopeful in comparison with the dead and hopeless dangers of a church which under the strong power of authority commits itself to a half developed and half recorded and half understood past."

If it please the Court, I will say but a word more; I have already said more than I should, and occupied much more time than I hoped I would. I have perhaps before—out of order—referred to a proposition to which I must add a word in closing, leaving many questions to be discussed in more detail by those far better fitted than I am to deal with them.

There is before you—as I think I said in the statement which I made on the application for an adjournment a little while ago—there is before us a great question. It is not the trial of Dr. Crapsey, but the trial of the church of which we are members—its future, its faith, which we hope and believe, is of infinite importance to the world. I have suggested the possibilities which rise before us, as to the rules of interpretation of the creeds of the church. My friend on the other side said several times, and doubtless will say again in his final presentation, that when it comes to the creed there must be, there can be, no interpretation; there must be a literal acceptance. What is the use of saying such a thing as that in this day and generation? There is not a person in our church who believes the Apostles' creed, as it was believed by the men who framed it. The senior counsel for the prosecution admitted that as to one clause of the creed he could give it one meaning that might be well, he could give it another meaning that might be well; and neither of these was a literal interpretation of that clause. Where is the rule that says that to one clause of the creed we will give an interpretation consistent with our intellectual beliefs, but as to some other clause there can be no possible variation of honest belief without incurring the charge

of heresy for which a man must be expelled from the church. We believe Dr. Crapsey, as he said in his solemn declaration this morning, says the creed of the church with as sincere conviction as any man that sits in this Court. He gives to it the interpretation of each clause which the intelligence of man and the teachings of the Scripture allow him to give, and there is not a man in all this world who says his creed that does not do precisely that thing.

"He sitteth at the right hand of God the Father Almighty." It would be impious to suggest that a literal interpretation should be given to that clause, it would be asking too much of us living in the present age; and yet the wise, the devout men, when this creed was formed in the early centuries, when clause after clause was put together, did literally believe it. They believed there was a place under the earth where the departed spirits are gathered together. When they said, "He ascended into Heaven," they believed He mounted to the empyrean above the earth. They had the faith which enabled them to give a literal interpretation to many things which we cannot give now.

"The Catholic Church!" We do not believe when we say the Catholic Church, what the men in the eighth century and ninth century believed when they said, "I believe in the Catholic Church." The meaning we give to the words is not the meaning they gave to them.

We should be logical in what we do. Certainly it is not right that some one man should be driven from the fold of the church, when it appears by the literature we have produced, by the witnesses we call, by the knowledge of all men, that there are countless others who give as broad a latitude of interpretation to clauses of the creed as it can be claimed that Dr. Crapsey has ever given. If he goes out of the church, if it is insisted that as a clergyman, as an honest man, he has no right to stay within the pale of the church; the same law of honesty rests on every clergyman of this church, who holds the same latitude of belief; not perhaps in reference to this question, but in reference to any other formula of the creed; the same obligation rests upon him; the same duty rests upon the church, if he does not fulfill the obligation of honor that my friend on the other side urges to compel him to do what he does not willingly. What results, what evil will follow for the church, I need not say. I alluded a while ago

to the decay of certain branches of the Eastern church, which finally came to dissolution, were driven out, and their places filled by men of another faith. Why did that occur, why did Christianity, which spread over the West fail, cease to be a factor and a power, and at last go out of existence in certain sections of the East? It was because the authorities of the church, instead of being devoted to the spread and the teaching of Christ's doctrine, became a mere collection of wrangling priests and refining sophists, that church ceased to be of use in the work; it went out of existence; and the world was no worse for the loss of it.

In concluding, one more word I wish to say, though it need hardly be said, I do not desire to make any eulogy, to utter any eulogium upon the work, upon the character of the man I represent; he does not desire, and he does not need it. What his work has been, what his life has been, is known to all members of this Court, is known to all of those among whom he has worked. He has by his life and teachings followed, so far as it is in man's power, the teachings of the great Master whom we all acknowledge and adore. We have the statement of the Master Himself as to those whom He would see fit to admit into His kingdom. They are, as I remember, those who had given meat to the hungry and drink to the thirsty, those who had received the stranger and ministered to them in distress. Those our Lord Himself said should be received into His kingdom. I find nothing in reference to their views on doubtful questions of dogmatic theology. So we may in all humility feel that a man like Dr. Crapsey would be entitled to be received into the kingdom above by the very rule Christ himself laid down.

It will be for this Court to say whether a man who in all humility we may believe would not be unfit to sit in the Kingdom of Christ in Heaven shall be cast out of the Church of Christ on earth.

Recess until 2 P. M.

AFTERNOON SESSION, APRIL 27, 1906.

ADDRESS OF DR. ELWOOD WORCESTER.

Gentlemen: I address you not merely as judges, at present unhappily engaged in a heresy trial, but also as fellow clergymen; and I will speak with such simplicity and candor as it is in my power to do.

There is one point in regard to Dr. Crapsey's book which I think has not been brought out in this trial, and that is, it is not a book in the ordinary sense of the word. As clergymen, you know very well the difference between preparing a sermon for your own people and preparing a work for publication. Now, Dr. Crapsey was honest enough, having preached these sermons to his congregation, to print them exactly as they were at first delivered, and therefore, I maintain that some indulgence is to be granted, at least to the style and the phraseology of such a work as this.

I shall not attempt to cover all the indictments that are found in the presentment, especially as that was done so ably this morning by Mr. Perkins, but I think we all perceive that those indictments have a very different and unequal value and gravity. Some of them indeed seem to be so frivolous, that one can hardly believe they were seriously intended, or that they could really have been brought forward in proof of heresy, except by persons who themselves were tritheists, or deniers of Jesus Christ's humanity, a heresy which has always been regarded by the church as at least equal to the denial of His divinity.

I pass therefore to the only two points that seem to be of much gravity or of capital importance in this case, that is to say, the mode of our Saviour's birth, and the mode of His resurrection; and I hardly think I need to remind you, gentlemen, that there is a fundamental distinction to be drawn between belief in the incarnation of the Son of God, between belief in the divinity of Christ and belief in the doctrine that is called the virgin birth. The former doctrine is, and has always been, regarded as one of the fundamental truths of the Christian religion. The second doctrine is an explanation of the manner or the mode of the incarnation by which it came into effect. The article in the Apostles' Creed, as I think I may confidently state, "He was conceived by the Holy Ghost and born of the Virgin Mary," stands as an expression of the Church's faith in the *humanity* of Christ. I am willing to admit however, and I do now admit that the psychological motive which lies behind that doctrine is the desire to express the divinity, the unique Sonship and the perfect sinlessness of Christ. But that these great truths may be held without the explanation of a virgin birth, a birth without the participation of an earthly father, may be seen in the New Testament itself.

The introduction to the Gospel according to St. Mark reads: "The beginning of the gospel of Jesus Christ, the Son of God." In that Gospel there is not one allusion to the manner of Christ's birth into this world. St. Paul, who, perhaps, of all the Apostles was the one most entitled to regard himself as the witness of the divinity of Christ, in none of his Epistles alludes to the fact that Christ was born of a virgin; on the contrary St. Paul uses in regard to Christ's origin a very different expression, which I shall soon show points in another direction. He regards Jesus as the Son of David, "made of the seed of David, according to the flesh." "Jesus Christ of the seed of David." If, however, there is any writing in the New Testament where we might suppose that we should find this doctrine specifically stated, if it is necessary to complete belief in the divinity of Christ and the incarnation of the Son of God, it certainly would be in the Gospel according to St. John, who of all New Testament writers held the highest view of the divine personality and nature of Jesus. Strange to say, St. John in his Gospel alludes to the origin of Christ in only two places, once where he represents Philip as saying: "We have found him of whom Moses, in the law, and the prophets, did write, Jesus of Nazareth, the Son of Joseph," which John allows to pass without comment; and in another place where the Jews say: "Is not this Jesus, the son of Joseph, whose father and mother we know?" And to this also John utters no protest.

Now, gentlemen, I would like to bear my personal witness to what I conceive to be the most important point in this whole trial. I have known Dr. Crapsey personally for more than twenty-seven years. During that period I suppose I have heard him preach hundreds of times. I think I may say that I have read almost everything that he has written, and I solemnly affirm here from my heart that I have never heard him use an expression that seemed in any sense to deny or impugn the divinity of Christ; but on the contrary I have heard him preach that doctrine many times with a power that has led hundreds, I may safely say thousands, of other persons to believe in that divinity.

By MR. O'BRIAN: I trust that in the summing up the counsel will confine themselves as much as possible to the facts in evidence; I have no desire to restrict the inferences the counsel may draw.

PRESIDENT ROBERTS: I think this interruption is not allowable—I am not sure on that point.

By MR. O'BRIAN: In a court of law, I think I have the right to except.

PRESIDENT ROBERTS: It is not allowable, the Assessor says.

DR. WORCESTER, resuming:

I am aware of the feebleness of my words; but I regard this as a solemn moment in my life, and I should not like to think either now or at my last hour that I had not done what I could to prolong the ministry of such a man and to save him to the church. Grant, and for my part I am perfectly willing to grant, that there are things in that book which had better have been left unsaid, things that have wounded me, as I have no doubt they have wounded you. Yet I maintain that neither in "Religion and Politics," nor anywhere else has Dr. Crapsey ever impugned a doctrine that may be called fundamental, or that is necessary to the integrity of the Christian religion "as this Church hath received the same." For a truth which was never revealed by the Lord Jesus, which St. Paul never mentioned, and which formed no part of the teachings of the Apostles, but so far as we are aware was never alluded to by them, cannot be regarded as necessary to the salvation that is in Christ Jesus, or as forming an article by which the church stands or falls.

For us the final court of appeals is the Scripture itself. That is the position, and the only position which the Episcopal Church has ever taken. She says in the most straightforward manner that no doctrine which cannot be concluded directly from the Scripture may be proposed to believers as an article of faith, or be thought to be necessary to salvation. Behind the creeds of the church stand the express statements of the New Testament, on which the creeds are founded and from which they derive their authority. Now I want to state with perfect frankness, and I know that my word would be corroborated by other men who are in this room, that what deters many today from accepting that theory of Christ's origin, which is usually known as His miraculous conception and birth, is not that they are skeptical men, not that they desire to deny the miraculous, not, as has been said, that they conceive anything to be too great, too glorious or too wonderful for the Lord Jesus, but because after patient and long study they do not consider that this tradition has a sufficient

weight of New Testament authority to sustain it.* It is true we read this statement of Christ's birth in the two exquisite introductory chapters of the Gospel of St. Matthew and St. Luke's Gospel, chapters that I love and admire as much I think as anyone could, words that have charmed away half of the grief of the world, that have inspired more than half of the best art of the world. But apart from the fact that these narratives contradict each other in so many particulars, that they contain allusions to astrology, to dreams and to physical appearances of angels which thinking men of to-day regard as poetical; that is not the only tradition in regard to the birth of Christ which is contained in these very Gospels. Alongside of the birth narratives of St. Matthew and St. Luke stand the genealogies of Christ, which were prepared with the greatest care by their authors, in order to prove the important point that the Lord was descended from David through Joseph. I do not suppose there is a scholar of repute today who will deny that the purpose of these genealogies of Joseph was to show according to prophecy that the Messiah descended from the royal line of David; and this is the tradition which has imbedded itself most deeply in the pages of the New Testament. This is the title which was freely accorded the Saviour during His lifetime. Whenever Jesus is hailed as the "Son of David," and how often he is so hailed! it is on account of His known descent through Joseph. When St. Paul, as he does in several places, alludes to Him as born of the seed of David, he has that in his mind, and the Lord Himself claimed this descent in His celebrated discussion with the Pharisees, where He openly assumed Himself to be the son of David. Moreover to mention a minor point, that which was only probable a few years ago in the year 1892 became much more certain, when in the Convent of St. Catherine on Mt. Sinai the ancient Syriac Palimpsest was discovered by Mrs. Lewis and Mrs. Gibson. This version is generally admitted to have been made from a Greek text more ancient than any which we at present possess. This version of the Gospel of St. Matthew simply read: "And Jacob begat Joseph, and Joseph, to whom was espoused Mary the Virgin, begat Jesus, who is called the Christ." In that version the Angel says to Joseph: "She shall bear to thee a

(*) "Not on any such grounds (as contrary to experience or reason) do I suspend myself on this (the virgin birth) but because I doubt the evidence."

Samuel Taylor Coleridge in notes on a sermon by Dr. Donne, p. 81 Harpers Ed.

son," and later it is stated: "And she bore to him a Son." It would seem, therefore, that in the pages of the authentic Gospels of the canonical Scriptures, there are two well defined traditions in regard to the origin of our Blessed Lord. But I submit, where two divergent traditions are contained in the same Scriptures, it is open to the believer to accept that which seems to him more probable, without shame or condemnation. And on such a subject the canonical Scriptures will always outweigh the traditions of later ages. No doctrine ought to be regarded by the church as "erroneous or strange," which is contained in the New Testament. Nor ought a man to be accused of breaking his ordination vows for reverently and painstakingly studying the Word of God and for teaching his people what he finds there written.

At the end of this discussion I would like to remind you of what I said at the beginning, that the question here is by no means the fundamental question of the incarnation or of the divinity of our Lord and Saviour Jesus Christ: it is merely a discussion of the mode by which the incarnation took place; and on this point let me tell you, as you know well yourselves, that learned and devout men have differed and will differ. Men who are guided to their conclusions largely by historical evidence will for the most part take the one side; men who are influenced chiefly by theological considerations will take the other; but so long as both are actuated by motives of faith and piety, I claim that neither ought to be condemned or to be disciplined by the church.

I shall speak next for a few minutes on the subject of the resurrection of our Lord Jesus Christ, and I approach this subject with much confidence because I have heard Dr. Crapsey again and again, both in private conversation and in his public discourses, express his firm belief in the reality of Christ's resurrection. The only denial he has been accused of making is the denial of a certain form of physical or material resurrection, in which he is, I think I may say, at one with the majority of thoughtful and believing scholars at the present time. Bishop Westcott, for example, in a letter that was published in the *Hibbert Journal* last year, said that God caused the body of Jesus mysteriously to disappear, "through the action of God it passed away." Even those persons who believe in a physical resurrection of flesh and bones are obliged immediately to dematerialize and to spiritualize their conception of the Saviour's risen body. For a body that is

impassible, a body that is invisible at will, a body that is described as being able to pass through closed doors, that appears now in one form, and—according to St. Mark's Gospel—now in another form, that is seen only by believers, a body that is not recognized even by those who knew him well,—cannot be regarded as a physical or a material body, in the sense in which we understand matter.

Now, gentlemen, will you permit me to point out to you our first and our best witness of the truth of the resurrection of Jesus Christ? I am aware that these matters are familiar to you, and yet I think it important to bring them forward at the present time. The first, the most important witness to the resurrection of our Lord, of course is St. Paul. Paul gloried in calling himself the witness of the resurrection of the Lord, and yet he was a witness in a sense which even he at that time did not realize. For in the battle that will be waged and that is now waged about the reality of the resurrection of Christ, St. Paul is and will always remain our chief and unshaken witness. I think I might say with perfect truth that if all other evidence for the resurrection of Christ were placed in one scale, and the single passage of the 15th Chapter of 1st Corinthians were placed in the other, St. Paul's evidence would outweigh all the others. I would like to show you, if you will permit me, what that evidence is. St. Paul says at the beginning of the 15th Chapter of 1st Corinthians, "I delivered unto you first of all that which I also received, how that Christ died for our sins according to the Scriptures; and that he was buried, and that he rose again the third day according to the Scriptures; and that he was seen of Cephas, then of the twelve; after that, he was seen of above five hundred brethren at once; of whom the greater part remain unto this present, but some are fallen asleep. After that he was seen of James; then of all the Apostles. And last of all he was seen of me also, as of one born out of due time."

Remember that this is one of the Epistles of St. Paul that has never been seriously questioned, which even Baur spared and of which in recent times Schmiedel says: "On what slight grounds has its authenticity ever been called into question!" The date usually assigned to the writing of this Epistle is about the year 55. So, at the outset here is evidence of Christ's resurrection antedating by decades all written gospels. The Epistle, as I said, is

authentic. There is no doubt whatever that in this passage St. Paul was at the utmost pains to gather together all the evidence in regard to the resurrection of Christ which he regarded as genuine, and to relate the appearances of the risen Christ in the order in which he believed them to have occurred. At the beginning of his statement St. Paul says, "I delivered unto you first of all"—What did that mean? What could it mean except that St. Paul delivered this most important truth to the Corinthians when he made his first visit to them three or four years earlier. That would carry us back to the year 52. But St. Paul goes further than this, and says: "I delivered unto you first of all *that which I also received.*" Now, the most probable interpretation that has ever been put on these words is that this was part of the original tradition of the Christian religion which St. Paul received three years after his conversion, on his return from Arabia, when he went up to Jerusalem to confer with the older apostles. And if we place St. Paul's conversion, as we are disposed to do, not later than the year 37 or 38, we see that here we can carry the evidence of Christ's resurrection almost to within the decade in which it occurred. So that instead of a mere oral tradition flying about the world for a generation, we have here a written and unquestionably authentic evidence of the resurrection of Christ dating not more than ten or twelve years from the event. Am I not right then in saying that this passage is of such inestimable value to the church that God seems to have raised up St. Paul to give this witness to the resurrection of His Son? Therefore, we are disposed, and rightly disposed, to attach the utmost consequence to St. Paul's recitation of Christ's resurrection. In that statement you will observe the manner, the painstaking order, in which he relates the revelations to all of those persons to whom he believed Christ had appeared; and also the measured, guarded, parsimonious terms in which he relates these appearances. He appeared (*ophite*), He was seen of Cephas, then of twelve, etc., etc., and last of all He appeared to me also. You will observe Paul's death-like silence as to all the material features afterwards introduced into the Gospel narratives, the absence of any allusion to physical contact—touching, eating, and drinking—and the complete co-ordination of his own vision of the risen Lord with the resurrection experiences of others. Moreover, we know perfectly what his version of the resurrection is. We know that he says

here: "Flesh and blood cannot inherit the kingdom of God; neither doth corruption inherit incorruption." We know that St. Paul exhausted the very resources of language in establishing a series of antitheses between the body that is buried in the ground and the body that is raised hereafter. But how could St. Paul have regarded himself as a witness to the resurrection of Christ, if he himself held views diametrically opposed to the fact that Jesus rose in a physical body? Or, in other words, how did St. Paul arrive at his amazingly original conception of man's resurrection in which he differs equally from Greek speculation and from contemporary Jewish thought, except by long brooding on the resurrection of Jesus in the form in which he learned to know it from the earliest disciples? It is possible, gentlemen, that this form of faith, which is also Dr. Crapsey's, may appear to you to be defective; but at all events recognize the fact that it is faith, that it is living faith in the risen and living Lord, substantiated and vouched for by the best evidence that we have for the resurrection in the New Testament.

I offer these arguments to you with humility, sincerity, and with a desire to do what I believe my Master would have me do for my brother. I will never accept, and I know that no clergyman in this room would accept, the definition of the Christian Church which was offered to us yesterday by Mr. O'Brian; as if it were a political club or a voluntary society of persons who met together in Philadelphia in the year 1785, and who by the simple means of adopting a constitution and passing by-laws closed all the great questions of religious truth forever. If that were so, our faith and our office would be equally despicable to the world. The only satisfaction I felt in listening to that pitiful definition of the Christian Church was the perception that if it was intolerable to me, it was more intolerable to my catholic brethren whom I see before me, and I honor them for that sentiment.

The glory of the Protestant Episcopal Church is that it is, that it always has been a true catholic church. But that which distinguishes the Catholic Church from other short-lived dogmatic bodies is that the Catholic Church has established itself fairly and squarely on the great fundamental truths of the Christian religion; that is to say, on the Fatherhood of God, on the divine Sonship of Jesus Christ, and on the various manifestations of the Spirit of God; without committing herself to any

particular philosophical explanation of those mysteries, while the dogmatic Protestant churches have so bound themselves. The only interpretation of the creed that is authoritative, as far as our church is concerned, is that which is contained in the Catechism. There, as you remember, you made answer:

"Q. What dost thou chiefly learn in these Articles of thy Belief?

"A. First, I learn to believe in God the Father, who hath made me, and all the world.

"Secondly, in God the Son, who hath redeemed me, and all mankind.

"Thirdly, in God the Holy Ghost who sanctifieth me, and all the people of God."

That, as Hillel said, is the law, the rest is only commentary.

From this ancient, true, and catholic belief, I believe in my heart Dr. Crapsey has never wandered. His heresies, whatever they may have been, have been minor heresies: but he has never denied, or ceased to glorify his Saviour and his God. He has said things doubtless which we have all regretted, which I have no doubt you have keenly regretted, and he has had his bitter punishment. That he has ever said, in public or private, things which should exclude him from the ministry of the church in which he has labored so long and of which he is such a distinguished member, I absolutely deny. It may seem to you possibly that such a trial as this is a good thing for the Protestant Episcopal Church; but that is not the opinion of the oldest, the wisest, and most experienced men in the Episcopal Church, who have deplored the very thought of this trial.

Now, I have concluded what I have to say; but I am going to ask your permission to tell a little story of something which I saw Dr. Crapsey do a good many years ago, which has nothing to do with this case. It occurred when Dr. Crapsey had been in Rochester but a short time. His salary was very insufficient; and I remember that a few of us, his old friends, contributed one winter and bought him a handsome overcoat. One day I happened to be standing on South St. Paul Street, and I saw my dear rector looking into the window of a store. A poor half-naked wretch came up to him, the weather being cold, and asked him for alms. In reply he took off the coat which we had just given him and with a kind expression put it upon the beggar's

back. Is that a man you would cast out of the Protestant Episcopal Church? God be with you, my brothers. You have yet to appear before the judgment seat of Him who promised Heaven to just such acts.

ADDRESS OF THE REV. FRANCIS J. HALL, D. D.

Mr. President and Gentlemen: It is with no light heart, I can assure the members of the Court and all those present, that I have undertaken to assist in the prosecution of Dr. Crapsey; and it is only from a very grave sense of duty, and in pursuance of the ordination vow which I took when I was ordained for the priesthood, to use "faithful diligence to banish and drive away from the Church all erroneous and strange doctrines contrary to God's Word." It is only in obedience to such a vow that I have felt myself compelled to leave my work in Chicago and come here, to act under conditions which it is evident, from the closing words of the last speaker, are likely to bring much odium upon those who take part.

In the first place, I wish to say that this is not a case of heresy hunting. The matter has been known in the church for some twelve months or more. The gentleman who is on the defense in this trial has published his sermons, and in many ways, common rumor tells us, has indicated his determination to stand by the position that he has taken. It was a case of public scandal; it was a question as to whether the church should permit one of her chosen officers, chosen for the express purpose of officially representing her in her propaganda of a certain faith; whether she should permit him to misrepresent her, and to continue in his official position in her pulpit, and to exercise her authority for the propagation of "erroneous and strange doctrines." The issue is perfectly clear. Even a schoolboy can understand it. Here is a man ordained to the priesthood, who promises in the most solemn manner, in the presence of Almighty God and this church that he will undertake certain duties—these duties being most explicitly defined, carefully defined, that he will teach a certain faith, the doctrine of Christ "as this Church hath received the same;" and he is now accused of violating that vow. He is accused, in the language of the presentment, and in view of the evidence here offered, of impugning certain very primary doctrines of the church; the veritable Godhead of Jesus Christ, the

miraculous conception of our Lord—I am not quoting exactly from the presentment, but you will recognize that I am giving faithfully the substance—His virgin birth, His resurrection from the dead, and, as involved in the first particular, the doctrine of the Blessed Trinity; certainly sufficiently primary doctrines of the creeds and of this church. Under the circumstances, no arguments, no replies should be regarded as relevant in the slightest degree except those which are concerned with rebuttal of the charge; and until the defendant can rebut the proof that he has been guilty of the offenses charged against him in the presentment, there seems, according to the canon law of this church, absolutely no alternative except to declare him guilty of the specifications in the presentment.

A great deal of non-relevant matter has been brought in. Some of it has been shut out by the decision of the Court and has been introduced *pro forma*, with reference to an appeal or probable appeal to a higher court. Under the circumstances, it seems necessary to say something touching these non-relevant arguments; but we have no fear in doing this that the Court will be misled in the slightest degree. It has shown in various ways that it is fully cognizant of the issue before it.

Our reasons then for dealing with these side issues are in the first place, because inasmuch as the counsel of the defense have avowed their desire that their arguments should be entered upon the minutes of the proceedings of this trial, that they may go up before the appellate court, it is only right that what we have to say in regard to them should go likewise. Then also we feel the deepest sympathy with the defendant. We gladly concede to him any liberty that is consistent with the interests of the great church of God, and so we gladly discuss what we can only regret, his explanation of why he has undertaken to violate his ordination vows and to disregard the plain law of this church. Then too we are influenced perhaps by a desire to satisfy those who urge that the letter of the law in this case is unnecessarily harsh—that it sacrifices spiritual interests, equity, justice and truth to the interests of a bald literalism, the letter of the law. We are confident that it does nothing of the kind; we are confident that the vows which the priest pronounces before he undertakes to preach are in the interest of truth, and therefore ultimately in the interest of the loftiest charity, as well as in the interests of loyalty to Him

who purchased the church with His own blood. We are not afraid of these wider issues so called. We are not afraid that it is impossible to show that truth is conserved in this case by carrying out the law of the church; and so we proceed without hesitation to consider some of the matters that have been brought forward.

The first one which I will consider is the due enforcement of law in a court organized explicitly for the purpose of enforcing law. The canonical presupposition upon which the existence of this Court is based, which has brought this trial to pass and made it possible, is that the business of the Court is simply and only to enforce the law of the church. It is no disparagement to the honorable gentlemen of the Court to say that their jurisdiction extends no farther. It is a basic presupposition for all of them also that the canon law of this church makes for truth, and for charity in the long run. If we take another supposition, if we consent to grant that this Court may listen to requests for overriding the law, we have spiritual anarchy. The law may be altered by legislation, it cannot be altered by the courts who sit under its terms. The defendant has an escape. He may submit, or he may abandon this jurisdiction (which his convictions seem to make necessary), if he cannot consistently submit. If he does this, if he either submits or abandons this jurisdiction, in obedience to his convictions, I can assure him on behalf of thousands of churchmen throughout this broad land that he will have their most respectful sympathy.

Personal considerations in every form that have been raised in this trial are purely non-relevant. He has acknowledged himself in his statement read this morning that his honor is not assailed. Nor is his right of personal conviction assailed. That is inalienable; and we all believe, and I am sure every member of this Court is convinced, that it is the right of every man to speak, to act, and to live in accordance with his personal convictions. But that does not mean that he may take advantage of his personal convictions, and use an official status which was given to him on another basis altogether to commit an official body to principles which that body repudiates.

Again, the value of the defendant's work is not at issue. It may be a fair subject for discussion under other circumstances, whether the value of any man's work when based upon error,

based upon a violation of pledges, based on a violation of the most solemn obligations of his vows, can in the long run be of worth. But that is not the question.

It is not a question of personal consequences. You have just listened to a powerful plea for the man. We all feel grieved for his distress. I assured Dr. Crapsey personally when I first met him, the first day of this trial, that it was only a deep sense of necessity that made me overcome my reluctance to act against him under the conditions. We all feel that way, but it is absolutely non-relevant. Does it occur to the defense how odious the responsibility is that has come upon this Court? That they of all men in this room, feel most keenly the burden of pronouncing this man guilty, of perhaps recommending a severe sentence? They all realize that; but I trust that we, every one of us, realize that personal consequences cannot be pleaded in a trial for law-breaking before any court in the land. You will observe that no personality except that of the great Head of the church, no personality is great enough, large enough or important enough, to be considered one second against the interest of the great body of the faithful, the interest of the church of God. If the church of God is sacrificed, charity suffers in every direction.

It is a common report that after the McQueary trial one of the gentlemen who voted for acquittal was asked why he did so; he said, "in the interest of charity." The reply was—and it was a significant one, full of meaning, "charity for whom?" Charity for one law-breaker against the thousands and millions of the faithful, charity that is going to subvert the very foundation of peace and order in the spiritual realm? God forbid!

Another point that has been made a great deal of in this trial is the tolerance of diversity of views—views exceedingly defective—in the church. The principle of tolerance is a very vital principle in the church, and it is practiced to a very great degree. Our Lord has taught us not to quench a smoking flax; and gentle tenderness must always attend the discipline of the church of God, when it is governed in accordance with the mind of the Holy Spirit. But with reference to whom is tolerance justified? The private individual. When however, the utterances of a private individual become official, when they become a matter of public concern, when they affect the question as to whether the truth which has been taught from the beginning shall

be preserved for simple souls who may be misled, then it is no longer a question of quenching the smoking flax. It is a question of keeping alive the flame of faith in thousands of breasts. The principle of tolerance can indeed in some cases be stretched to the clergyman. We can easily imagine the case of a clergyman who falls for the moment, and who feels as if the foundations were going from under him. The church will naturally be patient, and wait, and help him in his fight until he gets into a securer position, one in accordance with her faith. But that is not the case here. I trust I will not be understood invidiously, when I say that we have here a case of defiant propaganda, against the known mind of this portion of the church of God.

The church is not a debating club, as seems to be implied, nor is it any other kind of a club. The church of God is of divine origination; and among its functions is the function of making disciples of all nations, under that faith which Jesus Christ Himself began to teach His disciples, some truths of which He reserved for the Holy Spirit to teach, who was to lead them unto all truth. The church is a divinely appointed propaganda, and therefore the teaching of any other propaganda from its pulpits, such as is inconsistent with that which was appointed, is fatal to its existence. There is a vast difference, in other words, between tolerance and connivance. The church may permit many things by neglecting to take official cognizance of them; but when a matter becomes public scandal, when all men have their attention turned to disorder, the church cannot avoid facing the issue without unfaithfulness to her great Head. There is a most important little volume,—no doubt the last speaker has read it—"Persecution and Tolerance," by the late Bishop Creighton of London. He says somewhere in that volume, that there is necessarily a limit to what the church can tolerate, that there are necessary and fundamental doctrines upon which the church must stand. If the church stands not for what is contained in the phraseology of the Apostles' and Nicene Creed, for what in the world does she stand?

In this connection, there have been frequent allusions to the Privy Council. It has been said with considerable plausibility, although more superficially than solidly, that that court of appeals is the highest court of the church of which this church is a part. I am prepared to take downright issue with that state-

ment. I am prepared to say that the Privy Council consisting as it does wholly of secular persons, in entertaining appeals in spiritual causes as the final court of appeals of the Church of England, is exercising and usurping a right based solely on an Act of Parliament, to which the Church of England has never consented. I am prepared to show that the decisions of the Privy Council are based upon secular precedents, not upon ecclesiastical; that it is governed by national, not by ecclesiastical polity; that its decisions have been inconsistent with each other, although there is one element of consistency in them all; and that every one of them has been based upon political grounds. The decisions which have been issued have been such as, from the parliamentary point of view, seemed to make for the political interests of the realm as distinguished from the truth and the peace of the Church of God. I shall not prove those things formally, but by going into a historical *resumé*.

At the beginning of the reformation, in King Henry the Eighth's reign (who, by the way, did not found the English Church), ecclesiastical appeals in certain cases (which, by the way again, did not include cases of heretical doctrine) had been taken to the court of Rome; and the first thing that was done was to abolish these appeals, and to keep them within the realm of England. The second was to define in a more formal manner than had been done in previous generations, the precise relations between the *Ecclesia Anglicana* and the English crown.

Now, the first act was the so called submission of the clergy. Convocation was asked by Henry to acknowledge him to be "Supreme Head of the Church and Clergy." Such language seemed to the members of Convocation to imply more than was consistent with the spiritual independence of the church. Thereupon Henry explained himself as not intending to claim more than the ancient right of the crown to supervise all persons and things within the realm in their temporal relations. He said: "Concerning this present life only we be called indeed *caput*; and because there is no man above us here, we be indeed *supremum caput*; as to the sacraments and spiritual things, they have no head but Christ." I am reading this from Wakeman's "Introduction to the History of the Church of England," p. 318. The whole history of the supreme courts of appeal is given in Broderick and Freemantle's "Ecclesiastical Judgment," pp. XXIII-LXXX. To

return, Convocation accepted Henry's explanation and acknowledged him to be "supreme head," with the important qualifying phrase, "so far as Christ's law doth allow." Thus was achieved the concordat of Reformation days between the ancient *Ecclesia Anglicana* and the crown; and its terms guaranteed to the church the right to terminate spiritual causes in her own spiritual courts—a right never denied by the crown in theory, even when the right was tampered with in effect, and never abandoned by the church.

This was in 1531. In 1534, was enacted the parliamentary act by which papal appeals were transferred to the crown; and Bishop Stubbs points out (in Appendix No. 1, of the Report on Ecclesiastical Courts in 1883) that cases of heresy were not involved in this transfer, but certain cases testamentary—divorces, tithes, oblations, and the like. The purely spiritual cases were still heard, as they always had been, in the diocesan or provincial courts. But from this day began a very misleading use of term "jurisdiction." As used in the English courts, it refers solely to *coercive* jurisdiction; that is, that jurisdiction which can enlist the arm of the civil law to enforce its decision with physical and temporal penalties. But there never has been made, by any single king of England, the claim to wield the spiritual jurisdiction that is inherent in the bishops and clergy by reason of their ordination.

There followed the establishment of the so-called Court of Delegates, in 1534 (25th Henry, Cap. 19). According to that statute, appeals for lack of justice in the Archbishop's Court might be heard by the King in Chancery, to see that justice was done. That is to say, the king might appoint a commission, which, although so far as the expressed terms of the law were concerned might be lay, was designed to be wholly composed of ecclesiastical persons; and it continued to consist of ecclesiastical persons until the time of James I. Then it came to consist partly of secular persons—a sort of mixed court; and this was an invasion of the spirituality by the crown, in clear violation of the definition of the relation between the church and state, as adopted in the reign of Henry VIII, and in clear violation of the compact which was expressed in the legislation that immediately followed. This court continued until 1833. Its proceedings were interrupted at various times by arbitrary substitutes created by the crown, but it continued in existence none the less until 1833. During its lifetime some 1080 cases were heard by the court, and out of that

number only seven can be found by the closest scrutiny which bore the least relation to the spiritual or the doctrinal; and in no special instance did the court feel empowered to reverse any decision touching doctrine, but every case of that kind was referred back to the proper court.

But in 1833—or rather the legal action took place in 1832—it was undertaken to simplify the courts of appeal. It had been many years since any spiritual case had been tried before the Court of Delegates. The fact that it heard spiritual causes at all had passed out of memory; and its business was all transferred to the Privy Council, being given to the Privy Council as a whole, not to the Judicial Committee at first. The reason why it was given to that body was because the Privy Council consisted of both secular and ecclesiastical persons; and it was thought to be a suitable body, therefore, for any ecclesiastical cases that might occur. Owing, however, to the increase of business that was thus brought on the Privy Council, ecclesiastical causes were, in March, 1833, delegated to a judicial committee, and that judicial committee consists wholly of lay persons, so far as taking part in pronouncing judgment is concerned.

Thus occurred the abortion of a purely secular court, empowered to be the final court of appeals in cases spiritual and cases doctrinal, and the beginning of the scandals that have followed. We know that it was not the intention that it should be so by the framers of the act. We know, for instance, that Bishop Blomfield, who was partially responsible for the matter, expressed himself in the most definite manner against such a supposition; and Davies, in his *Synods and Law Courts*, pp. 48-50, cites his language, and that of Lord Broughton to the same effect. Bishop Stubbs summed up the matter in the document I have already referred to, by saying that the whole transaction was "a series of overlookings," and that the result was deplorable. It was as if the United States Supreme Court should be empowered to hear such doctrinal cases as this, and its decision should be binding upon the Protestant Episcopal Church in the United States of America. The absurdity of it is absolutely clear. The compact between the church and state at the time of the reformation was obviously violated, and that by parliamentary action alone. The church had no power in the matter, but was ground down under the heel of the more powerful member of the partnership. It

was not necessary. Over across the border, the ecclesiastical court of the established Church of Scotland exercises jurisdiction quite independently of the state. It was not necessary that the crown should exercise its supremacy over the English Church in such a manner, as was pointed out by the same Bishop Blomfield, to whom I have just referred. The crown supremacy is limited precisely in the same manner in ecclesiastical causes as in secular—*i. e.*, it ought to be exercised through the appropriate courts.

But to come to another branch of the same subject, the Thirty-nine Articles. We have not submitted the Articles in evidence. They have been used by the defense, however, and it may be necessary, therefore, to refer to them. The national interest paramount was the policy which controlled the reformation. Elizabeth, for instance, sought peace, *i. e.*, national peace, and saw it imperilled by violent conflict between the Puritans and the Romanists; and so the policy of the enforcing conformity to the ritual and usages of the church, accompanied by as wide a toleration of speculative opinions as was considered to be safe, was adopted. That policy has been enforced by the crown ever since. Elizabeth assured her people that she meant not "to molest them for religious opinions provided they did not gainsay the Scriptures, or the creeds, Apostles' and Catholic." The Thirty-nine Articles express that policy. They were vague and general, in everything that was thought safe to make vague and general, especially in relation to speculative opinions, and the differences between evangelical and high sacramental views. They were perfectly clear and definite in the first five of their number, which concerned the faith of the Apostles' and Nicene creeds. They shut out the Anabaptists, who were the sixteenth century prototypes of the radical liberals of today. They were the men who trifled with fundamental dogma; who denied the divinity of our Lord.

But, to come down to the present day, we notice the Beebe case, which occurred only within the last couple of years or so. Bishop Gore of Worcester heard rumors that Beebe was denying the virgin birth and the resurrection of our Lord from the dead. He wrote an admonitory letter, the terms of which so convinced Beebe that his position would be untenable under the bishop, that he resigned his position and was forced out.

The precedents of a state-controlled church in England have absolutely no value in the judicial procedure of a free church in America. We have our own precedents, they ought to be sufficient, and they all make one way. Many of us recall the Cheney trial, and more of us the McQueary trial. These precedents are perfectly clear, perfectly simple and domestic, occurring in our land and within our own sphere. We do not have to have our canon law dictated to us by the British government.

It is said that the church is put on trial in this case. It seems to me that the lawyers of the defense confuse the prosecution with the defense. Dr. Crapsey (I beg pardon for naming him) is the defendant in this trial. The standing committee have presented him, and we are the counsel of the prosecution. We understand the desire for delay expressed by the defense, in view of their professed conviction that the church is on trial. If I were to present the church for trial, I should want until the day of doom to prepare my case. We can understand also the objection raised against the Court, if this Court is sitting for the purpose of trying the church; for it is perfectly obvious that this Court is under the church's jurisdiction and not above it.

A court of appeals is wanted by the defense, a final court of appeals in doctrine. The General Convention has in hand a canon that will perhaps be adopted in its next sessions and become canon law, by which the House of Bishops is constituted that court of appeals. The House of Bishops, observe then, would hear this case, if it came upon appeal. In the official report of the Pastoral Letter, framed and set forth in 1894 by six members of the House of Bishops, of whom Bishop Potter of New York was principal signer other than the presiding bishop, and which was afterwards ordered to be printed in the journal of 1895 as part of the official record of the House of Bishops, the bishops declared to the church at large in 1894, and re-affirmed in 1895, that "Unless our Lord Jesus Christ is firmly held to be God's own true and proper Son, equal to the Father as touching His Godhead, and to be also the true son of the Blessed Virgin, of miraculous conception and birth, taking our very manhood, of her substance, we sinners have no true and adequate Mediator;" etc.

Again: "A creed whose statements could be changed to accord with the shifting current of opinion or sentiment.... would not

be worthy of mankind," etc. The purport of it is perfectly clear. Such is the court of appeal which we would have had.

Coming to this question of fixedness of interpretations, which has filled the defense with such deep concern, and which has inspired their counsel to say many very ingenious things, I refer to this same pastoral of the House of Bishops. It says in one of the passages I was reading: "Fixedness of interpretation is of the essence of the creeds." Why are the creeds fixed in their meaning? First, for the reason just given by our bishops, because they proclaim immutable truths. But also, which is perhaps more relevant to this case, because they are legal documents. Legal documents do not grow. The Constitution of the United States is not a biological entity. My learned friend, Mr. O'Brian, has furnished me with an opinion rendered in the Supreme Court of the United States in the case of *South Carolina vs. United States*, December 4, 1905, Justice Brewer's opinion. "The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now. . . . As said by Mr. Chief Justice Taney, in the *Dred Scott vs. Sandford* (19 Howard, 393, 426): 'It is not only the same in words, but the same in meaning. . . . and as long as it continues to exist in its present form, it speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers, and was voted on and adopted by the people of the United States.' "

Mr. Chief Justice Marshall, in *Gibbons vs. Ogden*. (9 Wheat 1, 188), well declared:

"As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said."

The creed of the church, in its purely legal aspect is like the constitution of the church, which required two conventions to adopt, and could not be altered by this church, if it could be altered at all by only a part of the Catholic Church, except by a similar proceeding, which applies to all the fundamental canon law. The words therefore have a definite legal and fixed meaning. To what extent have they a definite and fixed meaning? To the extent

of their demonstrable grammatical significance. The defense has confused two different things, the meaning of the creed itself and the implications of its doctrine. For instance, we say: "I believe in one Catholic and Apostolic Church." We mean what is demonstrably meant, we mean a certain historical body known as the Catholic Church. If the question be asked, how extensive is that body; if the further question be asked whether the Bishop of Rome is the head of it; if the question be asked as to whether it is invisible (and these are questions which have been asked about it); if, further, it be asked who are members of it: these questions are not answered by the creed. They are indeed very important matters; they have their answers in what we call the common mind of the church; but so far as the legal document known as the Nicene Creed is concerned, all of these matters have nothing to do with the meaning of the document as a legal document. So again, with reference to the resurrection of the body—the resurrection of the dead in the Nicene Creed, and the resurrection of the body (or, in Latin, of the flesh) in the Apostles' Creed. What do they mean? They mean just what they say and only that. That is the legal meaning of the creed. I am speaking from a legal point of view now. I am not speaking on the merits of theological implications, or of the necessity of certain implications which we make from it. The ancients no doubt thought with the science of their day; they were up to date with their science, just as we are up to date with ours. According to the science of their day, they thought that the resurrection of the body involved the gathering of all the particles of matter that belonged to the body in the moment of death at the last day. We do not think so now. But that opinion of the ancients, and our opinion of modern times, neither of them, is contained in the creed, and neither has anything to do with the canonical interpretation* of the language of the creed.

Take again the article, "the right hand of God." What do we mean by that? We mean the demonstrable meaning of it, that and only that. We know that "the right hand of God" is to be taken figuratively, because God has no right hand. But, whatever the phrase, "right hand of God," historically means, that we are bound by. Of course, we know what it means. The gentlemen on the other side of the house know what it means. We know it is an ascription of dignity or association, of return to

the glory which was disguised—not abandoned, but disguised—during His earthly incarnate life. But the meaning of the phrase! If it is obviously figurative, then of course that is its legal meaning.

But take the virgin birth. A bald fact is stated, not as an *obiter dictum*, because in the Apostles' creed it is given as one of the several separate statements. You cannot modify a fact by interpretation. You can only apply it. You can bring out the bearings of a fact; but when the question is one of assertion of the fact itself, it forever remains the same. The question is not whether Dr. Crapsey thinks that the virgin birth has this or that relation to something else. The question is, did the virgin birth occur, or did it not? "Fixedness of interpretation is of the essence of the creeds," because the creeds are legal documents and must be enforced upon the clergy.

A great deal has been made of scriptural evidence. It is alleged that the defendant's views can be harmonized with the teachings of Holy Scripture. It is advanced that the ordination vows put teaching out of the Scriptures in the first and foremost place. It is said in the testament presented this morning by the defendant, that the meaning of the vow which requires conformity to the doctrine of this church must necessarily be limited by the previous vow touching the Scriptures. It is said further that it is limited by the vow that follows, wherein the prospective priest engages diligently to study the Sacred Scripture and to use such means as are suitable for making himself more thoroughly acquainted with them. But all of that is non-relevant. Does the defendant seriously mean to say that some of the vows are not binding, and that he may pick and choose among them which shall bind him. Mr. Perkins has told us that the ordination vows ought to be taken together. I am very glad that he has said that. That is precisely what we have to do. We have to take them together; and in order to take them together the priest of the church must have such convictions and be able to preach such doctrines that he will be able to take them together without qualifying or reducing the sense of any of them.

The same lesson comes to us from the articles. We had a very eloquent presentment yesterday from Mr. Shepard touching the right of private judgment in the interpretation of Script-

ure. Article VI requires that nothing shall be taught as necessary for salvation which cannot be proved out of the Scriptures. Article XX, on the other hand, gives the authority in controversies of faith to the church. If the articles in general are accepted as binding, one article may not be set against another, but all must be taken and interpreted as in mutual harmony. It must be presupposed therefore that what the church teaches in controversies of faith is the doctrine which can and ought to be proved out of Scripture. In short, the Scriptures are to be interpreted, in controversy as to their doctrinal teaching, by the church.

It is true that the church has no right according to Article XX to interpret one scripture so as to contradict another scripture; but in Article VII it is asserted, on the same authority which says so, that the Scriptures are not contrary to each other—i. e. as the church interprets them; and in Article VIII it is asserted that the creeds can be proved by the Scriptures. Thus we are led again by comparing article with article to the presupposition that the teaching of the church and the Scriptures are necessarily in harmony with each other. If all these passages are put side by side, it puts the preacher of the church who is bound by them in this position, that he must hold such convictions that he will be able to accept all of these official statements with the same readiness of mind, with the same conclusive judgment, with the same absence of mental reservation.

The private interpretation of Scripture is ruled out by Scripture itself. "No Scripture is of any private interpretation." And why? Because the holy men who wrote them were moved by that same blessed Spirit that Christ promised to the church to guide it into all truth. They necessarily agree with one another.

Now, to come down to some of the particulars of the presentment. It is not necessary to prove the doctrines involved by the scriptural evidence, although this has been alleged by the defense in this trial. Consider the divinity of our Lord. I venture to say that there is not a member of this Court who is not perfectly familiar with Biblical evidence of this truth, but it will be well to point out one unmistakable inference from the teachings of the Gospels. The defendant says that Christ was recognized to be an ideal man, the King of Saints. But

this King of Saints says some very strange things for a mere man to say. He says: "Learn of me, for I am meek and lowly in heart; and ye shall find rest unto your souls." He tells us further, if we love father or mother, son or daughter, more than Him, that we are not worthy of Him. He tells His listeners that a day will come when He will sit on the throne of judgment, and that all nations will be gathered before Him for judgment. He tells the Jews: "Before Abraham was, I am." He speaks of His knowing the Father even as His Father knows Him. Now, then, suppose any holy man of our times were to say these things, what would we say? We would say either that he was a fanatic or a fool, or that he was not good. It is impossible to call our Blessed Lord a fanatic or a fool. He was the wisest of men. He was good, He was not bad. But He was either the incarnate God, or He came from beneath. The doctrine that He is God is the very centre of our faith. It is not a question, mark you, of any mere apotheosis, or dignity conferred because of His holiness, after death. Use the strongest words you can which will assert the fact that our Lord Jesus Christ possesses as His own proper personal property the very nature of God, and in that respect differs infinitely from ourselves, and you have expressed the truth which is impugned by the defense.

The question of the virgin birth has been argued at some length by the last speaker. The whole case is prejudiced by the difficulty which the defendant feels in regard to the miracles, as exhibited in his book in various passages, viz., that modern science discredits the idea of the miracles. Modern science is very limited in function. It is concerned with merely natural causation. It relies on two fundamental axioms: first, that the same unhindered cause always produces the same effect in nature; second, that when new causes come in, they produce new phenomena. A miracle means nothing more than that a new cause has come in. It is not a violation of nature. If I throw an apple in the air, the fact that I reverse the effects of the law of gravity, does not mean that I violate the laws of nature. Natural science teaches, so far as it teaches anything on the subject, in favor of miracles. I refer to the evolutionary hypothesis. I venture to say that no one can lift himself up by his bootstraps. No one can rise in the scale of being by a cause that

is natural to himself. There must come in some higher being, some higher cause, to produce this new result.

The real difficulty with miracles, if there is any difficulty, is not that they are miracles, not that God has wrought them in an unusual manner; but that they are thought to be irrational, because they are thought to be capricious interruptions in the natural course of history. The virgin birth, for instance, is conceived of as if it were a mere arbitrary happening which had no possible justification for itself; and as if nothing rational could be alleged in favor of it. Is the story of the virgin birth credible, in view of its miraculous nature and the limited historical evidence available? Our reply is this, if this miracle is probably in conflict with every rational view of history that we can form, it is not credible; but its miraculous nature is not what constitutes the difficulty. Its irrational and capricious nature, when viewed as a divine operation, is what is to be alleged against it, and is what makes us pause. If, however, this miracle can be shown to fit in with a rational view of the march of history, the difficulty against believing the testimony wholly disappears.

Are there any conditions in history which we can discover which show that the virgin birth was a rational event? The first condition which we need to bear in mind is, that the conception and birth of Christ represents to us the manner in which a divine being entered human history and took our nature into His own person. We do not here assert that God could not take our nature, that is, that God could not supply His own personality to our nature under the physical conditions of ordinary birth. What we do say is, that so stupendous a step in the Divine plan would in all probability be attended by some sign, some innovation upon ordinary generation. Otherwise we should inevitably be led to think that natural causation alone was present, and therefore that a merely human child was born. We can imagine no more fitting sign than that of a virgin birth, for such a birth clearly suggests and gives evidence of the coming in of a new cause, and therefore of a new result. At the same time, it leaves us free to think that the Child shared in our nature through the substance which He received from His mother.

Then there is another condition that is to be reckoned with. It is conceded by almost every class of thinkers, including the

defendant, that our Lord's human character transcended ordinary human character. It was sinless and faultless. The entail of evil which we all share in was absent from His person. This is not a question of any theological doctrine of original sin. The fact that there is a beast in us, and that we have the evil heredity, is generally acknowledged. We do not find this in Him. His character was a new phenomenon. How did it come about? Was there any more natural way for it to come about than by the virgin birth, which displayed the coming in of a new cause, that stayed the flow of evil, and removed the taint from the nature which He assumed into His own person?

Then, thirdly, there is the remarkable catholic quality of our Lord's human nature. He is called the second Adam, whose manhood constitutes a new beginning of the race; and it is by sharing in His body that we become participators in the new nature, the manhood, which He brought into the world. Now is it not most rational, is it not most fitting, that such a wonderful innovation should come about differently altogether from the ordinary run of human births? It is not a question of saying that it must have been so. The facts show that it was so; and reflection shows that it was a suitable thing to happen; that it was rational; and that the testimony for it is therefore credible.

A great deal has been said about the silence of Holy Scripture, about the absence of the doctrine of the virgin birth from the preaching of the Apostles. There are many clergy in this room who believe in the virgin birth. How many times in the year do they preach on the virgin birth? There are many clergy who believe that it is necessary to accept the virgin birth, but it is not the ordinary subject of preaching.

Something has been said about the manuscript which was discovered on Mt. Sinai a few years ago. That manuscript is very vague, I think my friend will acknowledge. There are many peculiarities in it; it is not backed up by other manuscripts; and, if he will study very carefully an article on the subject which I have seen of late in one of the reviews, he will see that it can be proved in detail that the reading of the manuscript discovered on Mt. Sinai to which he refers is a later variation of that which is contained in the great bulk of manuscripts, in

all the writings of the ancient Fathers, and in those versions of the Scripture which have prevailed in the church.

Coming to the resurrection, Dr. Worcester tells us that the evidence is all summed up in the fifteenth chapter of the 1st Epistle of St. Paul to the Corinthians. He says that the book was written about 55 A. D. This is correct. While I reject his statement that all the evidence is there,—

By DR. WORCESTER: I did not make that statement.

By DR. HALL: Dr. Worcester says that St. Paul is a witness against the physical resurrection, because he maintains that flesh and blood cannot inherit the kingdom of God. Certainly flesh and blood cannot of itself inherit the kingdom of God. This can happen only by God coming in with supernatural power, by some change coming over it. St. Paul meant, *of its own power*; for he says that it (using the singular pronoun) must put on incorruption, that it must put on immortality, and that the event which he said could not occur through the power of flesh and blood would be brought to pass through Jesus Christ our Lord; that is, by a great change in the body, suddenly, at the last trump. Thus, plainly he was not speaking of two bodies when he contrasted the natural with the spiritual body, but of one body at two stages and under two conditions. The words, "natural" and "spiritual" misrepresent the original. Literally, the difference is between the psychical or soul body, and the pneumatical or spirit body—not between a material body and a non-material body.

It is hardly necessary to say much more. We have shown I think what is the real point before the Court. We have proved I believe, that the defendant intended to impugn in several statements of his certain of the fundamental doctrines of this church. We have maintained that that is the only issue before this Court. We have discussed side issues in a measure, but for the reasons that we have given, and in no wise waiving our claim that the real issue is one of the canon law of this church and of law-breaking.

It is reported that one of our great statesmen said: "You can fool some of the people all of the time; you can fool all of the people some of the time; but you cannot fool all of the people all of the time." So it is in matters of this kind. There are some things which are greatly in evidence. We have had a

formidable array of gentlemen of learning who have come here to testify to their private opinions. (Holding up his ear trumpet) My ear is greatly in evidence, but it is not evidence of the soundness of my hearing.

The case is before you in the capacity of a court established by the canon law of this church. Your responsibility is limited to this. Painful feelings are necessarily involved; but your responsibility is strictly limited to the enforcement of the law of the Protestant Episcopal Church in the United States of America in the Diocese of Western New York. The considerations that have been brought in, personal and otherwise, greatly intensify the sense of that responsibility. But we cannot widen it, we cannot change it. You may bring home keenly to yourselves the environment in which you have to render your decision. You may realize that you have around about you not only the friends of the defendant, but the priests of this diocese and the representatives of the so-called liberal thought in the church. Back of them are the serried ranks of the faithful throughout the length and breadth of this broad land, the church militant, an innumerable cloud of witnesses—undoubtedly looking on, and the great Head of the church whose honor is concerned. No doubt, the thought of all of this will make you feel more deeply your responsibility, but it remains simple and clear, the enforcement of the law of this church. You remember that St. Paul, when he came to the eve of his martyrdom, drew the greatest comfort from the ability to say, "I have kept the faith." He did not derive comfort from being liberal. On the contrary, he taught that we are ministers of Christ and stewards of the mysteries of God, and that the thing which a steward is to be held accountable for is faithfulness. He has no right to be liberal with what belongs to His Master, the blessed Lord. Rather the question for the minister of Christ to consider is, when He returns will He find faith on the earth?

And so, in the presence of Almighty God and in the presence of this church, as your brother clergyman (like the last speaker), as one who like each one of you, took the ordination vow which bound him to the doctrine of this church, as one who sympathizes deeply with the defendant but who loves his Master more still, I solemnly adjure you, as a court sitting under

the canon law of this church, to discharge a sacred though painful duty.

ADDRESS OF DR. SAMUEL McCOMB.

May it please the Court: Of all the public duties I have been called upon to discharge in my time, I do not think I have ever approached one with the same sense of responsibility, with the same feeling of the gravity of the issues at stake as is mine on the present occasion. I stand in a somewhat different attitude to this case from that occupied by the other counsel for the defense, and by the counsel for the prosecution. There are some here attracted by the personality of the accused clergyman, and there are others repelled by it; I am outside both of these influences. To me he is simply a voice, a minister of the church who has written certain books and tractates which I have read; and I am therefore freer perhaps to approach this subject from an independent point of view than many others. When I received an invitation to come to speak before you, gentlemen of the Court, I was in the midst of pressing engagements; which, however, I set aside at once. To have done otherwise would have argued lack of respect to this Court, and I sent for a map of the United States to find out where Batavia was. (Laughter). There is another element, gentlemen of the Court, of uniqueness in my appearance here. As some of you may know I was born and bred in a church other than the Episcopal, but one that accepts as sincerely and earnestly as she does the Apostles' and Nicene Creeds. The truths that enter into the essence of Christianity were taught me from my mother's knee; and if I thought for one moment that Dr. Crapsey's ideas or teaching infringed on a single constituent element of the Gospel of Christ, I would be the last man in the world to come here to address you in his defense. But it is because I believe that his teaching, if justly interpreted, is innocent of any such tendency that I venture to lay before you certain facts and arguments that in the heat of debate are too easily forgotten.

Before entering on what I desire to say on this subject, permit me to acknowledge the admirable tone and spirit of the address which we have just heard. Anyone who listened to Dr. Hall must have been convinced that he spoke with

the utmost sincerity and that his action in this matter is guided by very high and noble, if also mistaken, motives. This I think we are all bound to acknowledge. But when we come to the substance of his speech there are some things that demand criticism. In the first place he says that the defendant ought to submit—I presume he means, ought to accept the interpretation which the prosecution puts upon the Apostles' Creed—or else ought to leave the church. But gentlemen, you cannot make the intellect submit in any such external and artificial way. Intellectual submission can be won only through intellectual processes. And if Dr. Crapsey stood up before us this afternoon and said that after listening to Dr. Hall's exhortation dealing largely with such irrelevant matters as the English Privy Council and the times of Henry VIII, he on his part was prepared to submit in order to avoid expulsion from the church, what respect could we have for his judgment or opinions? If he took the other horn of the dilemma which Dr. Hall holds out, that would mean the assertion by him that the Episcopal Church is not catholic, not a church within which men holding different interpretations of the Christian faith can work together; but is a narrow, obscurantist, and intolerant sect. Clearly then, it is Dr. Crapsey's duty to remain in the church until—if it should unhappily come about—he is forced out of it by an adverse decision.

Dr. Hall further tells us that one of the reasons why he is here is because this matter has become a public scandal. But, gentlemen, what makes a scandal depends very much on your geographical position. For example, in Boston from where I come, I have not heard a breath of scandal, except indeed the scandal of returning to the methods of the Middle Ages in dealing with unusual opinions, and the scandal of presenting a charge of heresy on such a flimsy basis. But let that pass. He tells us that the Judicial Committee of the Privy Council in England makes its decisions not on ecclesiastical but on material grounds. Very true; but why? Simply because the Church of England professes not to be a sect but to be a church for the whole nation of England. And, gentlemen, what about the Protestant Episcopal Church of this country? Does she profess to be a sect, or does

she claim to hold the truth in such a catholic spirit that the entire American people may if they like enter in and abide within her borders? The real question, it seems to me, that lies behind the present trial, is: What is the future of the Protestant Episcopal Church of this country going to be? Is she to be national, or is she to be sectarian? If national, then she must base her decisions as the Privy Council bases theirs on national grounds.

Now passing away from that let us come to the gist of the indictment against Dr. Crapsey. He is charged with denying the Apostles' Creed. Counsel on the other side argued yesterday that we had nothing to do with the interpretation. "Here is the creed," we are told, "simple, brief, easy to comprehend. Do you or do you not accept it?"—and there is an end of the matter. Like another Horatio my learned friend (Mr. O'Brian) with drawn sword would confront Dr. Crapsey and challenge him: "Speak, speak, I charge thee, speak!" Does the accused ask: What means the creed, or how am I to understand it? The answer is: Find out the meaning of the words in Funk and Wagnall's Standard Dictionary, and you have the meaning of the creed. Unhappily the matter is not so easy. For the English words are a translation of a Latin text which in turn comes from a Greek original. An English dictionary can carry us only a part of the way.

Now, gentlemen, there are two grounds on which, as we are told, we have nothing to do with a varying interpretation: First, the simplicity of the creed; and secondly, that while a varying interpretation may be permitted in relation to the doctrines, it is quite inadmissible as regards the alleged historical facts in the creed. Let us look for a moment at these two reasons. Viewed externally as a collection of English sentences to be learned off by heart nothing could be simpler. But touch the creed at any point and ask what it really means, and you raise the greatest questions of theology, the profoundest problems that tax the utmost wit of man to solve. It is simple so long as you are content to stay upon the surface; and to some minds there is nothing more obnoxious than the effort to understand religion or to distinguish between its permanent and transitory elements. I have in

my possession at this moment a work by a learned German, consisting of three large volumes of two thousand closely printed pages, with elaborate footnotes and appendices. That work has for its subject the Apostles' Creed.

Passing on to the second reason against varying interpretations of the creed as a whole, namely that the only allowable interpretation is of the doctrines, not of the facts; this idea though plausible is in reality a sophism. Wherein lies the value of a fact? Surely in its rational or spiritual significance. Take any fact out of its relations to the universe, conceive of it, to use Dr. Hall's phrase, as a bare bald fact—what meaning has it? It has no meaning. It has no meaning for the mind of man and no meaning for the mind of God. The worth of a fact lies altogether in the spiritual meaning of which it is the symbol. The virgin birth, for example—what is its real meaning? Is it not that Jesus was "holy, harmless, undefiled and separate from sinners;" that He was the perfect son of God come in our flesh. If a man believes this, does he not believe everything for which the virgin birth stands?

Now what is Dr. Crapsey's relation to the creed taken as a whole? Let me quote to you a few of his printed words. Here is a sentence taken from one of his published sermons and I call the especial attention of the Court to it: "That form of sound words, the Apostles' Creed, to which the heart of Christendom is turning as the simplest and at the same time the most perfect expression of Christian truth." Gentlemen, I put it to you, I ask you to reflect; this man says that the creed as a whole, apart from this or that article, is "the most perfect expression of Christian truth." I want you therefore, to notice that if you condemn him, you condemn a man who under his own name has published the highest possible estimate of this ancient formula.

It is true, on the other hand, that in the extracts from his work quoted in the presentment, there is a refusal to accept the virgin birth as a literal historical fact. In regard to the resurrection of Christ, I am sure the mind of the Court and I hope also the minds of the prosecution have been satisfied, after the careful analysis and splendid discussion of this point by my senior, Dr. Worcester. I am con-

vinced that there can be no longer any doubt in our minds—there is certainly none in mine—that Dr. Crapsey believes with all his heart and soul that Jesus Christ rose again victorious from the grave, that He is seated at the right hand of God, and that into His hands have been committed the reins of universal government. But to return to the question of Dr. Crapsey's relation to the creed as a whole. I want to center your attention on what seems to be a contradiction here. He says that "the Apostles' Creed is the most perfect expression of Christian truth," and yet he is unable to accept the virgin birth as an historic fact. How does he reconcile these two apparently irreconcilable positions? I hold that the reconciliation is this: That for him the creed has two elements, one of which is essential, and the other secondary or non-essential. Only within the last thirty years or so has the history of this creed been fairly well made out by Christian scholarship. And there is one thing about which all modern scholars are agreed, which is, that the creed is a growth, an expansion of a germ, and that that germ is the baptismal formula, the Father, the Son, and the Holy Ghost. What then, I ask, are the elements in the creed that are essential which we must accept if we would confess the creed, and refusing to accept which we ought to leave the church? Modern scholarship and the catechism are in agreement here. The essential articles are these: Firstly, "I believe in God the Father Almighty;" secondly, "And in Jesus Christ, his only Son, our Lord;" thirdly, "And in the Holy Ghost." Gentlemen, if I can prove to you by printed documents that Dr. Crapsey believes these articles, then I maintain you are bound to acquit him on this charge. Does he believe these? That is the point. What proof can I produce that he believes them? Take the first article: "I believe in God the Father Almighty." Well, that he believes in God is unnecessary for me to prove. We may dismiss that matter, because it is not charged in the indictment that he is an atheist. One of the fundamental ideas that runs through all his writings is, not only that there is a God, but that God stands in personal relations with man. The next proposition is: "And in Jesus Christ, his only Son, our Lord." I will call your attention

to a statement bearing on this article; it is very brief. In a sermon published under the name of Dr. Crapsey—

By the PRESIDENT of the COURT: What date?

By DR. McCOMB: It is of recent date. I assume he holds the same views still. I am informed the year is 1899. This is the passage: "Jesus conceived of Himself as being in such close and personal union with God that He could say of Himself: 'I and my Father are one,' and, 'He that hath seen me hath seen the Father;' and it was this consciousness of His absolute union with God which has given the Lord Jesus His place in human history—men have seen in Him a revelation of God to themselves and in coming to Him they believed that they were coming to God."

Gentlemen of the Court: I ask you, can any man holding these opinions, making that statement in public print over his own name, be said to deny the second essential article of the creed: "I believe in Jesus Christ, his only Son our Lord?" The third question is: Does he "believe in the Holy Ghost?" I will put to you a passage bearing on that. It is also very brief. He is speaking of the Spirit when he says: "We must be careful, however, not to speak of Him as common air. He is like ourselves only infinitely greater. He is a living Person who thinks, who lives, and because He is what He is and does these things, He is able to uphold our souls, to guide our thoughts," and so on. These are the statements which this heretic has propounded in public print.

By MR. O'BRIAN: May I ask what date that was?

By DR. McCOMB: It really does not matter because he holds the same views still and is willing to sign them.

By MR. SHEPARD: You will find more of the same kind.

By DR. McCOMB, resuming: I could occupy the Court for hours on the same line. If Dr. Crapsey accepts!—that is the real point here, aside from the legal quibbling on the part of my friend.

By MR. O'BRIAN: I protest against that.

By DR. McCOMB: I withdraw the imputation. If he accepts these views, as he does accept them at this moment—he is here to take oath that he does—you are bound to acquit

him, inasmuch as he believes in the essential elements of the Apostles' Creed.

I now pass on to speak of the origin and purpose of the creed—matters that have a bearing on this trial. I would like to remind you of what you know perfectly well, of course, that the general consensus of modern scholars as to the creed is that it was originally phrased to assert the historic reality of Christ's person. And most are agreed too that it originated in Rome about the middle of the second century. Now we know that at that date and place, a heresy was rampant which threatened the very foundations of Christian faith. This heresy—Docetism, as it was called—denied the reality of Christ's appearance among men.

Let me read to you the creed as it was in existence in the city of Rome about the middle of the second century. You will find certain significant differences between it and our present Apostles' Creed. Here is the old Roman Creed:

"I believe in God the Father Almighty, and in Jesus Christ, His Son, who was born of Mary the Virgin: who was crucified and buried under Pontius Pilate; the third day He rose again from the dead; He ascended into Heaven; sitteth at the right hand of the Father: from whence He is to come again to judge both the living and the dead; and in the Holy Spirit, resurrection of the flesh." That was the original form of the creed. You will notice that there are certain phrases in the creed which were unknown in the second century. As for example—"He descended into hell," "The forgiveness of sins," "The Communion of Saints," and "The life everlasting." Obviously the words in the creed bear no sacred character; they have been altered and added to at different times.

It is said indeed that fixity of interpretation is of the essence of the creed. If it could be possible to have a fixed and infallible interpretation, what a blessing it would be! If we could know what to think in the sphere of religion with absolute certainty, if nothing was left to our intelligence, if some authority superior to ours and of divine insight could say to us: "This is the meaning of each article and there is no other meaning;" it would be one of the greatest blessings that could befall mankind. But, as a matter of fact God has

not willed to do so; rather has He willed to give us reason and intelligence that we might seek to understand what His will is, and to distinguish between what is of the essence and what is a mere accident of the faith.

As a matter of historical fact, whether fixity of interpretation be essential to the creed or not, Christian men of all ages have taken upon themselves to interpret the creed according to their stage of culture and understanding. And I venture to assert that there is not a single Christian believer today, not even Dr. Hall himself, who understands this creed in the way in which it was understood by the great unknown who first framed its outlines. Why do I assert that? Because the intellectual, moral, and spiritual conditions which brought the creed into existence have long since passed away, and have no more significance for the Christian consciousness. But the creed remains. Why? That we may pour into it the new lessons, the new light and knowledge, which have emerged in the providential ordering of history. To use a figure of St. Paul's: It is the earthen vessel which contains the heavenly treasure. The prosecution in this case, has I think confused the two things, the earthen vessel and the spiritual treasure which it contains. I said a moment ago that the interpretations of the creed varied in various ages. Let me illustrate this statement. Take the article, "He descended into hell." Now there was a time when the Prayer Book omitted this article because it was generally understood in a wrong sense; today the article is restored and the church has indicated the sense in which it should be accepted. During the middle ages this article had meanings put upon it which nobody accepts at the present time. There were those who said that Christ went down into Hades in order to break down its doors and lead the patriarchs of the Old Testament up into glory. To others it meant that Christ descended into hell that He might bear the torments of lost men, thereby completing His atoning work. Well, we have passed away from all that. For us it means that whatever experience awaits us beyond the grave has already been shared by Christ, that He had trod the path of death before us. Or take another article: "I believe in the Communion of Saints." That is one of the unsolved riddles of the creed to-

day. Whatever the meaning intended by the original framers may have been, we may be sure it was not the meaning which we now ascribe to the words. Zahn, the German scholar, says—and there is much to be said for this view—that the word “sanctorum” is to be taken in a neuter sense; and that the article expresses the belief of the Christian that he “in the sacraments partakes of the holy things of the other world.” But who thinks of such an idea in reciting the phrase today? Or turn to the article which seems to me to form the basis of the charge against the defendant—the article of the virgin birth: “Born of the Virgin Mary.” First, I call the attention of the Court to the exact way in which the article was placed in the original creed. “Born of Mary the Virgin”—The wording throws light on the motive which, according to modern scholarship, influenced the framer of the old Roman Creed in introducing that phrase. What was the motive? Not, be it noted, to assert the miraculousness of the birth; for that was generally believed in the second century (though not, as I shall show you in a moment, universally believed), but to assert against heretical denials its historical reality. There would be no point in inserting a sentence against a notion which was not widely believed at that time. Hence the creed emphasises the fact that our Lord came into the world in no unreal or phantasmal way but by the process of a genuine birth. He had a mother, and that mother is declared to be the Mary of the Gospel history. One of the points which is now established is that the very order of the words as they stand in the original text is most significant. “Born of Mary the Virgin.” Here the emphasis falls on the word “born,” not on the word “virgin.” It was in the birth as a genuine event of history, not in the virginity of Mary, that the author of the creed was interested: though no doubt this latter point was part of his belief. You may ask me, what proof is there for such a thing. The proof is one of probability, not of demonstration. We know that at the time the creed originated there was a great heretical teacher in Rome, Marcion by name; and it has recently been shown that almost at every point he is contradicted by this expression of the church’s faith. For example, Marcion taught the strange idea that Christ appeared suddenly from Heaven in the fifteenth year

of Tiberius, and after assuming an unreal or phantom body, entered on his ministry. "No," says the creed: "He experienced a real birth—He was born of Mary the Virgin."

I now pass on to ask: What precise value did the early church ascribe to the virgin birth? Now we have heard about there being a double tradition concerning the virgin birth during the New Testament period. The same thing is true of a later time. Justin Martyr, a second century writer, repeatedly refers to the virgin birth, but not once does he regard it as a truth of saving significance, as an element essential to the Gospel. Every time he mentions it he regards it as a valuable apologetic argument in favor of our Lord's Messiahship against the Jews, yet he knows of Christians who did not accept the miraculous birth. Addressing the Jew Trypho and his friends, he says: "For there are some, my friends, of our race (that is, Christians) who admit that Jesus is Christ while holding him to be man of men;" and then he adds, "with whom I do not agree nor would I even though the majority should hold this opinion." Now it is from the literature of the second century that we are to infer the true significance of the article in the creed. What is that significance? This—The virgin birth is a tradition which triumphed over another tradition, but it is not a truth with which are bound up the spiritual and eternal interests of humanity. It has no inner or essential connection with the incarnation.

Gentlemen, we have been told that Dr. Crapsey ought to submit or ought to leave the church. There is a third possibility which my friends on the other side have ignored; and that is to try to answer Dr. Crapsey's argument. I hold that the only true way in which these great problems can ever be solved is not by an ecclesiastical trial, which never settles anything, but by frank and free discussion, by testing theories and doctrines at the bar of reason and history. What is needed is that one who disagrees with Dr. Crapsey's views should come forth and grapple with them, and overthrow them if he can.

There is one other consideration, gentlemen, which should weigh with you in judging this case. Remember that Dr. Crapsey is not a trained theologian accustomed to the

use of scientific and precise language, but a preacher, a rhetorician who often sets forth a truth or aspect of a truth in a one-sided way. You cannot in justice demand from him that logical precision which you should expect from a scientific theological expert. If you judge this man along narrow lines you will practically disfranchise many of the clergy of the Episcopal Church. Some of these have written books, all have preached sermons; and it would be easy to convict them of the most flagrant heresies. I think I could make a great case against Dr. Hall himself—if I had only time enough—and show him to be in conflict with the formulas of the faith. Believe me there is nothing easier than to entangle a man in some one or other of the formularies of the church. I believe this Court will take a higher and nobler view, I am certain that you will judge this man not from the fact of his using here or there a doubtful word, but you will ask yourselves: Is he loyal to the fundamental truths on which the church is built? Does he teach enough positive Christian truth, in spite of his negation, to warrant his retention in the church? You can then say to him: "We may not be able to agree with this or that point of your teaching, we cannot sympathize with your way of putting things; still we believe you to be a true Christian and devoted son of the church and as such you are innocent at this bar.

Gentlemen, this is not the first heresy trial in the history of the world. Seventy-five years ago there was a saintly man tried for heresy before the ecclesiastical authorities of the Church of Scotland. He was condemned and expelled from that church. Yet he lived to write one of the great theological masterpieces of the time. Campbell on the "Nature of the Atonement" is known to all men, and by the curious irony of fortune, the recent work by a distinguished leader of Oxford high churchmen is indebted to this condemned heretic for not a few of his leading thoughts. Another man, a clergyman of the Church of England, was removed from his position about fifty years ago for heresy, and when he died he was carried by the working men of London to his grave amid their tears and grief. His name is one of which the English Church is proud today, Frederick Denison Maurice. And in our own time the most learned man in the English speaking world was

condemned as a heretic by his church, and that church has bitterly regretted the injury she did to William Robertson Smith.

Gentlemen, when a minister is cast out of a church for heretical irregularity a deep pain and regret result to the church, a pain and a regret that will ever grow as the church grows in Christian sympathy and feeling. I therefore submit this case to you with confidence. I ask you to read not only the quotations in the indictment but also the other quotations which I offer you.

You are at the very least bound to give the defendant the benefit of the doubt and to adjudge him not guilty at your bar.

PROCEEDINGS OF APRIL 28th, 1906, 10 A. M.

It is stipulated that the letter now offered by Mr. Shepard may be marked.

Marked "Exhibit No. 7."

By MR. SHEPARD: Mr. President, are you ready?

By THE PRESIDENT: Yes, sir.

By MR. SHEPARD: May it please the Court: As we now approach the end of a trial which to every one of us must have been interesting, it is for me to express what I am sure is in the mind of all on both sides, our very great thanks to the Court for the exceeding courtesy and consideration with which we have been treated during this trial. You, Mr. President, have made the trial, by your manner, patience, and entire willingness and openness to consider what might be said; and so by like attitude have your associates—you have made the trial—as easy surely to those who are here below you at the bar as it is possible for a trial involving so great an issue to be made. I feel here as I have not felt elsewhere the position of the lawyer to be anomalous. Why should there be a lawyer in this cause? Although I am a communicant of this church, and although from my early childhood I have been devoted to its doctrines, its faith, and its worship; nevertheless my training has been in other fields than that of theological or philosophical controversy. The canon of the church, when it deals with these judicial proceedings—I mean the canon of the national church—prescribes that the counsel shall be a communicant. The other

side, although they would enforce upon Dr. Crapsey a literal and rigorous adherence to doctrine and discipline, nevertheless speak here presenting the issue, by a counsel not in sympathy with our church, not of its membership. Greatly as I respect Mr. Locke, I cannot but feel that, after all, the rule of the national church is a wise one, even though not technically enacted in the Diocese of Western New York. It certainly seems sensible that upon the trial of clergymen for any cause, and at least for violation of discipline or tradition, those who would prosecute him and those who would defend him must come into court under that sanction which belongs to a loyal member of the church; one to whom its honor and its growth are dear, to whom the church itself is a cause, and who may therefore rightly, because sympathetically, understand its traditions. What our friends on the other side have done in their violation of an elementary and long tradition of the church simply illustrates how easy it is for those who are wise, and on their side there is great wisdom; those who are experienced, and on the part of the bishop and standing committee there is great experience, even they may err. So it is with a presbyter, preaching, as he may be bound to preach, a hundred and four sermons in the year: even to him it is possible at times to err in expression, and at times inadequately or perhaps incorrectly to state the doctrine of the church, without its being assumed for a moment from that, that he is disloyal to the spirit or the general doctrine and framework of the church. As the assessor of the Court well knows, and as you all well know, the lawyer's duty includes a large liberty, or even duty, to depart from his own view in the presentation of his client's case. He must take his client's view, since in court he speaks for his client, and not for himself; there he presents only his client's belief and doctrine. When, however, a lawyer appears in a court of this character, dealing with things so sacred as those with which you are here concerned, there is a limitation upon that duty of the advocate. I am not here, Mr. President, to speak for any doctrine which I do not believe in my heart. If it were a mere matter of behavior, personal behavior on the part of Dr. Crapsey, if it were merely a question of the manner in which he had per-

formed his duty, I should put his case solely from his standpoint. It would in no sense be my own cause. But if from my lips go any words that deal with the doctrine of this church, they must be words that come from my own conscience and speak my own conviction.

It is not necessary for me—nor would it be suitable—to undertake to instruct you in theology; it would be an impertinence. On the other hand, no one could speak on either side of this case without dealing with the discipline, worship, and doctrine of our church. You preach—every one of you gentlemen have preached again and again—that it is the duty of those who sit under you, themselves to believe and themselves to think. After you have instructed them, their piety and their religious knowledge is to be their own, not yours; and that must be so here. And when I speak, as I must speak here, to some extent of doctrine, I speak of it because I, a layman, ought to know it as well as you who are clergymen. If I understand aright the fundamental tradition of this church, those who are in places of ecclesiastical dignity and whose duty it is to instruct, are to know more of the church and its traditions, its liturgy, its infinite variety of lesser doctrinal questions, than we laymen can by any possibility know. But when it comes to fundamental or essential belief, what makes a man a Christian, there is no difference. Our church affirms again and again that the clergy and the laity are in respect of such belief all one. When at baptism my sponsors took upon themselves a promise as to my belief, it expressly included the Apostles' Creed as set forth in the catechism. When I came to be confirmed, and before the hand of the bishop could be laid upon my head, I affirmed my belief in all essential doctrines of the church; and those doctrines were then and there prescribed and set forth. So, therefore, in this Court, and to you who are trained theologians, I may speak at any rate upon those things even of faith that are elementary and universal, binding alike the clergy and the laity, as an essential condition of their membership in this Church of Christ. To that extent only may I speak, when I deal with matters of doctrine.

Now, Mr. Locke affirms two things: First, the high character of Dr. Crapsey, his honesty, the beauty of his char-

acter, its sacredness even, if I understand Mr. Locke's words aright, even the sacredness of Dr. Crapsey's character. Far from making imputation upon him, he admires him. There is something of veneration toward him on Mr. Locke's part, as there must be on the part of any one who knows him or knows of him. But in spite of that he affirms that Dr. Crapsey denies the Apostles' Creed, and argues that since he denies the Apostles' Creed, no matter what his character is, he must cease to be a clergyman of this Church.

Does Dr. Crapsey deny the Apostles' Creed? He says, upon—I will not say his oath—but upon something here quite as sacred as his oath, his solemn word as a presbyter before this Court, that he does not deny that creed. He says he accepts the creed as really and as truly and as completely as any member of this Court, or as any communicant of this dear church of ours. Is his word to be rejected, if he be the man whom Mr. Locke describes, or if he be the man entitled to that sympathy which Dr. Hall, one of the prosecutors, extends to him? Is not his word entitled to a very great weight? And if he be mistaken, and if it be true that he was mistaken in some of his interpretations of the creed; is there any rule of this church, any canon, any tradition, to punish a presbyter for an honest mistake which he makes in reading or expounding the creed, or rather in expounding items of it which no one claims to be of fundamental essence. Surely not.

I have read this morning an interesting article in a New York paper of last evening, a paper which on its editorial page is hostile to all Christian churches—I mean to their traditional doctrines and effective organization. It sympathizes with those who desire their disintegration; it has an utterly narrow conception of what this wonderful church of ours is. Like our adversaries, it treats our creed as a dead "legal document," with no meaning possible except the most literal meaning, and with no possibility and career of growth in the belief of the faithful and in the unfolding truth of God. If a man be a Christian minister, it argues, let him abandon real thought and rest in one fixed, literal, narrow interpretation of every article—the least as well as the greatest of the creed. In discussing this trial, its editor says in effect that there must be no interpretation of the creed, no intel-

lectual consideration of it whatever on the part of the presbyter or priest of our church. The editor would, if he could, create a situation where it would be impossible for an honest, self-respecting, pious man to be in the church. He would, if he could, disintegrate the church. But the editor does not understand the traditions of the doctrine of our living church.

Now, gentlemen of the Court, may I say a word about your position here, and I say it with infinite respect. You have not sat in civil courts; we here at the bar have not dealt with ecclesiastical questions. We are both of us, so to speak, in new and difficult positions. But the administration of justice, whether in an ecclesiastical court or in a civil court is at bottom the same. The fundamental thing is that the court shall be completely independent. After it comes into being, whoever may have appointed it, the court when it sits, from the time it begins to hear the case until the time when it pronounces its judgment, is itself independent and supreme. The dignity, gentlemen, of your position is equal to its responsibility. Therefore it is that for a gross violation of that fundamental rule, a case litigated in an ecclesiastical court in Ohio, and mentioned by Dr. Hall yesterday, the McQueary case, commanded absolutely no general respect. The decision—I am not speaking of the matter of doctrine, but I mean the decision as an adjudication against the defendant—commanded and was entitled to no respect; and I assume that my friend Mr. O'Brian will hardly venture to set it up as a precedent to influence you. And why? Because there was there a violation of the fundamental rule which should govern every court. It is part of the history of the case—part of it was referred to by Dr. Hall yesterday—that in that case, by a vote of three to two, it was determined to acquit the defendant; and a bishop, not a member of the court, went to one member of the acquitting majority, and communicated his view that the welfare of the church required a different judgment. When that thing was done the decision ceased to be entitled to respect. It ought never to be quoted except for condemnation. Since the bishop is himself on the side of the prosecution as he must be—not that I find fault with that, it is his duty to be—, any prosecution that is conducted must come with his sanction:

he ought rigorously to abstain from any effort to influence the Court except by open argument on the trial. This very presentment you have here bears the bishop's signature as allowing it. Because he is in that attitude it is as unsuitable for him directly or indirectly to affect or attempt to affect the mind of the Court after the trial shall close, as it would be for Dr. Crapsey himself, or as it would be for a member of the standing committee. Because of the great dignity, because of the great power with which you are invested for the present and which will continue until your decision shall be rendered—because to you gentlemen there has here come a duty as sacred as any you assumed to perform when you took your ordination vows—the Court has, each member of it has, the duty of an absolute and impartial independence. For a moment you are no longer presbyters of the Diocese of Western New York; for the moment you are the one Court of this Protestant Episcopal Church, this Holy Catholic Church of ours, in which is invested the power to deal, not only with Dr. Crapsey, but to deal with the measure of comprehensive liberty which the church extends by right and tradition and doctrine to every one of its presbyters. It is for you and for no one else, be he high or low, to consider and determine what is here presented for judgment.

I observe that the canon under which you act provides that your decision and opinion shall include two things, first, a determination upon the question of the guilt of the defendant; and that, in the second place, if your verdict and judgment be in the affirmative, you are to prescribe the limits of the punishment. You do not impose the punishment, but you are to prescribe its limits. Therefore, consideration of the punishment may become part of your duty. So it is that some things are admissible in evidence which bear or might bear on that possible part of your duty, which God forbid you should ever reach.

I observe in the next place that the presentment limits your duty. You have no right of course to convict, except for what is stated to you in the presentment. If you convict, the presentment itself must be sustained. Except within the terms of the presentment there is nothing in this case over which you have jurisdiction. I am sure that as to that the

assessor, and even my friends on the other side, will agree. The Court will observe that the charges against Dr. Crapsey are of violation of Canon '23 of the general canons of the church, and that the violations are alleged to have taken place in the years 1904 and 1905. There was no such canon in 1904. The canon said to have been violated came into operative force on the first day of January, 1905, and I shall ask the assessor to observe—because this is a matter very technical upon which no doubt the Court would require his advice—I ask him to observe that in the presentment no effort has been made to make any separate and specific charge as to anything that was done in the year 1905, when, and when only, this canon for the violation of which we are on trial was in force, except in the allegation that Dr. Crapsey made three or four statements in a sermon delivered on the 31st of December, 1905. They were proved, if they were proved at all, by Mr. Alexander, and not otherwise. If the Court should feel bound to reach the conclusion that it must ignore all the other accusations relating indiscriminately to the years 1904 and 1905, for the reason that there is no evidence of the truth of any of them with respect to the year 1905, when and when only the canon was in force, then the court will be faced with the responsibility to accept or to reject the testimony of Mr. Alexander, which alone tends to support the only thing upon which lawfully there can be any conviction of Dr. Crapsey. Is the Court willing to accept his testimony and to base a judgment of conviction upon it? I think no argument upon this is necessary; nor did my distinguished senior associate, Mr. Perkins, feel it necessary to argue the question. He needed only to state it. No court, civil or ecclesiastical, would willingly convict of any offense—the most venial—upon the uncorroborated testimony of Mr. Alexander, given as we heard him testify here. If, therefore, you shall find the law of this case to be, as we suppose it to be, that there can be no conviction except a violation of the canon since the 1st of January, 1905, is shown, I am confident you will find it your duty to dismiss these charges.

Now, may it please the Court, we have heard much said here about whether Dr. Crapsey or the church were on trial. In truth both are on trial. The defendant of course is on

trial; this needs no comment. But so is the church on trial. Whenever a civil indictment is found and tried, undoubtedly the civilization of the community whose justice is invoked is in a way on trial. Is that civilization, under the pressure of strong official influence or strong popular feeling, equal to the administration of impartial and independent justice? We may be thankful that the courts of our land, with exceptions so few as to be immaterial, have shown themselves to be equal to that strain. And next, the civilization of the community is itself on trial with its standards and ideals of morality, of legal and enforceable morality, if you please, of legal liberty. When we know what rank a country deserves in administration of justice, we know what rank it deserves in civilization.

So here our venerable church is on trial. Is she competent to enforce and maintain independent, rigorous, impartial administration of justice? Can and will she be just under the excitement incident to every appeal to her doctrine? Will she maintain the just liberty of her preachers and priests—their liberty to follow their consciences, and their duty to study, their duty of obedience to their ordination vow to speak only what on study they find to be true? Now this church of ours is not the defendant, but it is none the less being tried. You are to find, to determine, whether or not the church permits to its active useful clergy the liberty Dr. Crapsey has assumed to exist. If your finding be adverse to Dr. Crapsey, it ought to be arguable whether you have helped raise the living and universal church and enlarged its scope of sacred usefulness. If the contrary be the verdict, very certainly it will be argued and believed by a great and growing body that you have helped on that result. No one could have been in this court room during the hours of yesterday, listening as we did to arguments on both sides that reached the very highest standard known in the forensic presentation of litigated cases; and that reached something even higher than that, the standard of the honest and profoundly sincere presentation of a great question, without being deeply impressed with one thing. No one could have thus listened without perceiving one general rough division between brethren in this Holy Catholic Church of ours. This is true whether or

not you count that church as including not only ourselves but also our brethren who look to Rome, or our brethren who look to Moscow, or our brethren who are dissenters in this country or in England. Whether or not we count them with us, there is in truth a holy catholic church to which you belong and I belong, and which for us is better represented by these Anglican and American churches of the Episcopacy than by any other church on God's footstool. Throughout the length and breadth of this church in general, and of our division of it in particular, runs this division between the brethren. The sacred garment of Christ is not rent from the top to the bottom, there is no schism; but there is a difference, a division. It is set forth or appears in the beautiful prefaces to our American Prayer Book and the English Prayer Book, and in the pastoral letters, almost without number issued here and on the other side of the water. These variations and divisions are of the sentiment or intellectual habit, and have been quieted with rare exceptions. They have been quieted, or rather harmoniously used. Oftentimes they have not been reckoned evidences of weakness and schism, but of strong and abounding life. The shepherds of the flock, who have dealt with them from seats of bishops, have generally and wisely found in them the proofs or incidents of that comprehensive and sacred energy which is essential and indispensable to the church. One man brings one kind of gifts, another man another kind of gifts to the service of the church. Here in this trial we see a division which occupies a conspicuous place in the discussions of the church, not only of priests and in ecclesiastical newspapers, but in the minds and hearts of all the laity. It is the division between those who see the usefulness of organization, the necessity of rules, the necessity of discipline. That is one sentiment or intellectual habit, and a perfectly true one. Then on the other side are those who think of the church as a great living growth, something not technical or organized, but dynamic; something that, during God's ages here on earth and God's ages to follow, is to grow in beauty and usefulness never ceasing, and in the extent of its sacred ministry. They see the wisdom and absolute necessity of permitting these diversities. They tell us that the mind of no man is like the mind of another, and therefore that the form and

color of truth are to no man precisely what they are to another. This division is sometimes called the division between the liberal school and the strict school. What are we to do with them? They are as old in the Christian church as St. Peter and St. Paul.

Dr. Hall and those with him in the prosecution speak, as I concede they do, for a large and useful body within the church. But when you have seen here Dr. Worcester and those who speak with Dr. Worcester—or rather those who would have spoken had the Court found itself able to take their testimony—you have seen members of a body within the church which is large and powerful and growing. When I say powerful I don't mean in the official organization of the church—I am not speaking of that, I mean powerful in the hearts of the worshipers of the church. You have seen on the other side of the Atlantic that school of thought in the official control of the church. You have seen their archbishops and a majority of the bishops committed to the wisdom, in administration of the affairs of our church, of using the special gifts and training of both schools.

It was hardly worthy of the distinguished learning of Dr. Hall, in dealing with English precedents favorable to the comprehensive liberty of the church, to criticize the utterances of the Judicial Committee of the English Privy Council. If what he mistakenly supposed to be true were in fact true, that the bishops do not sit in that body, there might have been the beginning of some ground for his criticism; but he is mistaken; the bishops do sit there. On this very judgment in the Williams case, to which my friend, Mr. Perkins, referred, there sat in the Judicial Committee of the Privy Council the Archbishop of Canterbury, the Archbishop of York, and the Bishop of London. If I am correctly informed—though I may be in error, not having exhausted the learning on the subject—it is the rule whenever an ecclesiastical cause is heard by the Judicial Committee of the Privy Council, there are bishops—generally both of the archbishops, the two titular heads of the English Church—who sit in it.

We have not yet established a court representing the whole American church, competent to pass upon matters of doctrine or faith or worship. And in our plea for Dr.

Crapsey, we have presented to you the question, if it shall be of any importance, whether inasmuch as the American church has said that a court of review shall not decide a question of doctrine or faith or worship, a diocesan court like this can pass on such a question. Certainly here there is involved a question of doctrine, whether or not the doctrines of our church permit to an ordained priest the liberty exercised by Dr. Crapsey. The national canons forbid a court of review directly to lay down a doctrine until there shall be a final court of appeals. In the minds of those who prepared the canons there must have been this, that until the church had practically to pass upon some question of doctrine, there need not exist any court competent to deal with such questions. The present national canons were put into existence after the McQueary and Cheney cases; and since such canons created the Court of Review, there has been no ecclesiastical prosecution in our church. I conceive it impossible for any one to read the canon without seeing that it was in the mind of the American church that no court should pass upon a question of doctrine or faith or worship until there should be in existence a final court representing the whole church. Certainly it would be an anomaly if a court of review, representing all the dioceses of New York and New Jersey, were incompetent to pass upon such questions, that it should nevertheless be competent for a court representing only one diocese of the church to pass upon such questions. The will of the church, as I read it, was this: It hoped and prayed and believed that the occasion would not arise for an adjudication upon such a question, but if the question did arise it expected delay until the next general convention, when the church should put into being a central court of review. That delay would be as nothing compared with the welfare of the church. If it were Dr. Crapsey's case, the harm of his going on for one year or two years or until the next convention would meet, performing his duties in St. Andrew's Church, Rochester, would be as nothing compared with the injury to the church from schisms which might arise if a question of doctrine were to be passed upon by any court, until the constitution should permit final and authoritative review by the Court of Appeals speaking for

the whole church. Dr. Crapsey ought not to be liable in this diocese unless he would be liable in every diocese. If the court of review for this department can lay down a rule on this, then this diocesan court ought to be able to lay down rules.

When there was the *auto de fe* in Spain; or ecclesiastical prosecution in England in the days of Queen Mary, and, I am more sorry to say in the days of Edward the Sixth, or prosecution by the Congregationalists, of the Quakers in New England, (prosecutions and persecutions as bad as any of which the Roman Catholic Church or ours was guilty), there was generally or at least often observed this rule: That the defendant, before there could be conviction, must be labored with; his error must be pointed out to him; the mistake of the heresy—if it were heresy, of which he had been guilty—must be pointed out to him and an opportunity offered for explanation or recantation, in order through his refusal of the opportunity to make sure that he was really guilty. If he then insisted, if it appeared that he meant the words in the precise and guilty sense in which they had been understood by the bishop or the standing committee or other presenting authority of the church, then there was a case for judgment. In every ecclesiastical prosecution there ought to come first the effort of the bishop with the accused. That effort ought to be an integral part of the accusation. The accusation should set out that having erred, and his error having been pointed out to him, that he had been remonstrated with. Only if, in spite of the remonstrance, he had persisted in the error, should the prosecution proceed. That was a true foundation, as I understand it, of ecclesiastical prosecutions for heresy, although not of civil prosecutions. That was at a time when they used to burn men who persisted in doctrinal mistakes. But here we have a presentment by ecclesiastical authority against one of the brethren, without a suggestion of that kind from the beginning to the end of it. All that this ecclesiastical indictment says is that in the past Dr. Crapsey had said and written words which were doctrinally unsound. Not that there had been any labor with him, that any argument had put to him his error, pointing out this reason and that reason, and this authority and that authority, which he had ignored. Nothing of that kind from beginning to end. And

you have this anomalous and for our day and in our communion this almost unique situation, that it is proposed to depose a presbyter of this church and drive him out simply for mistakes. For his honesty is not impugned. Nor is there before this Court anything indicating in any way in the slightest degree that any remonstrance had ever been made. If there were no other difficulty with this prosecution, any valid or lawful adjudication against Dr. Crapsey should be impossible.

I now leave these preliminary and perhaps the drier and least interesting parts of Dr. Crapsey's case. May I deal somewhat with the larger question? It is nothing less than the comprehensive liberty of our Church if it is truly to be, as I trust it is and will be, a church truly holy and truly catholic. I speak from a different standpoint from that occupied by Dr. Crapsey and by others who are with me here in his defense. Not only do I believe in the Holy Catholic Church, but I have in many ways a profound sympathy with the sentiment represented by our friends gathered in that imposing array on my right. I share with them the idea of the sacredness of this church in its history and tradition, of its essential and sacred unity and of its sacred career yet to come. Not only is the church holy, but it is catholic.

In some passages of the American Prayer Book when it was prepared, as you know the word "catholic," perhaps for a better understanding by the laity, was changed into the word "universal;" in the communion service, for instance, that change was made. It is—at least it ought to be—the universal church. I speak and conceive of the church as universal of right and duty, and as dedicated in the future to that august career. I conceive that it draws its divine message and sanction from the Almighty through our Saviour; I conceive its message to be nothing less than a message to the whole world; I conceive its intention to be—and I have a faith that, before the world ends, its intention will be realized—that the church shall speak for the whole world and be in truth and in fact universal. I believe that for this continent of ours the Protestant Episcopal Church is the best and most promising organization of the Holy Catholic Church. But we are a long way—oh, such a long way! from the accomplishment of its catholic destiny.

When, Mr. President, I go to my own village where I spend much and the happiest portion of my year, and of whose church I am a vestryman—a little house of worship it is, but one sacred and dear none the less; when I observe in that village how often inadequate is the practical support accorded the clergyman who is there, how inadequate to his needs and his station, how unequal to his gifts, his capacity for usefulness and his sacred office, I realize how much there remains to be done, in order that the rector and the church in every village of our land should, as the representative of a true catholic church, be the center of its best and most exalted and most fruitful life. I see in my dreams, as Dr. DeKoven saw in his, the time coming when in every parish of the land the center of the truest and noblest and most effective life will be in the building there of our church, in its parish house, in its rectory. But how far away in reality we are from this! In the practical life of our country, to the casual and unsympathetic observer, our community is only a sect, one of many. If some good men have their way, we shall be only a dwindling sect, our catholic career surrendered up forever.

I read the other day a letter of the Bishop of Fond du Lac to The Living Church, dealing with this very controversy. In it he utters what to me is heresy, and what surely must be heresy. The church itself, he says, is to utterly fail. As soon as a predetermined number are gathered in its fold—and the implication is that it is to be a very small number—then the heavenly glory is to come; when the small number of its brethren are secure and the church's office is thus performed, the church itself is to meet and yield to defeat. That seemed to be the doctrine of the Bishop of Fond du Lac, a doctrine which I might say in passing is admirably illustrated by the statistics of his diocese. For I see that in spite of the sacred and exalted work and broad work which was there done by Dr. DeKoven (who, if what was right had been done him, would have been the bishop there himself) there is today in the diocese of the Bishop of Fond du Lac almost the smallest proportion of communicants of this church to the total population known in the American church. Not literally the smallest; there are others, a few, smaller; but the

proportion is far less than in this diocese, or in my Diocese of Long Island, or my Diocese of Albany, or, of course in the Diocese of New York. What happens in Fond du Lac must happen in any diocese where the church's sacred work follows ideals so mistaken, the effort being to exclude rather than to include, to make the church small; to bring it, if you please, to decay and defeat, to the verge even of extinction, and to conceive that in so doing one is performing a sacred duty. To me, Mr. President, it is shocking that such a conception of the Holy Catholic Church, the Holy Universal Church, should be held by any right reverend father in God. Fortunate it is that those views are shared by very few who sit on the Episcopal bench. Had it not been for leaders like Bishop Seabury and Bishop Whitbeck, our church would not be where it is. They were able, one liking and the other disliking this or that in the church, nevertheless to compose their difference and wisely to establish the possibility of a truly universal church for our country.

I come down, may it please the Court, to the specific question. Does our church, does its doctrines, does its worship, permit a comprehensive liberty, broad enough to include Dr. Crapsey, and Dr. Worcester and Dr. Leighton and the others who have come here to testify for him; which may include if you please bishops who like Bishop Walker, are rigorous to enforce conformity; and may also include Bishop Potter, and Bishop Doane, and Bishop Burgess, and other bishops who in dioceses including great varieties of doctrine and preaching, have never permitted heresy trials? Is it possible to uphold a comprehensive liberty broad enough to include men thinking and preaching as Dr. Crapsey and his witnesses have, and also to include Dr. Hall and the Bishop of Fond du Lac? Is it possible? Yes, the church has in its practice and career said so, and it has said so again and again, and it has been able to say so by keeping its mind fixed, may it please the Court, upon the fundamentals of belief. When our church was at the Reformation taken from the body of Christian believers, until then practically and officially represented only by the Roman Church—and I regret Dr. Hall's allusion to Henry the Eighth; I don't know who may have said, certainly no one here, that Henry established this

church; it would be well nigh a blasphemous statement indeed for any one to make—when our church separated from the Roman communion, it separated, as Mr. Perkins stated, in that noble passage of his address of yesterday, a passage that might well be preserved in letters of gold for all time to come; it separated upon the question whether the priest and the layman—for the same rule applies to both—shall accept the interpretation of truth from some supreme authority, or search for it themselves in their own conscience and, by the exercise of their own intelligence, in study of Holy Scripture. That was the crucial and all determining difference between the vows of the Roman church and the vows of our church. Through its answer to that question liberty was introduced into our church. In order to make that liberty clearly understood, the name “protestant” was given to the church bodies organized or separated at the Reformation. In devotion to this title of our church, as in other matters, I find myself now and then more or less out of doctrinal sympathy with Dr. Crapsey and perhaps with Mr. Perkins. To me the name “protestant” as a part of the title of our church is not dear and precious. It is hardly a name for all time. But neither is it a vague or meaningless title. It has served a noble even if temporary purpose. It undoubtedly represents and maintains, however, a barrier or division not so useful now as once. But if the word “protestant” mean what it ought to mean, and if the doctrine it has signified depends upon its preservation then it is a valuable and precious word, always to be preserved as a subordinate and special title, if you please, for the church—always holy, always catholic, always *protestant* against spiritual tyranny. The true Holy Catholic Church recognizes the divine ordination of differences between men, their minds and consciences, and holds them all within the love and faith of the Almighty and our Saviour. The Holy Catholic Church, because holy and catholic, ought always to preserve the doctrine that it is a sacred duty and liberty to exercise the faculties we have. I venture to take from a letter of my distinguished friend Seth Low of New York, an illustration which seems to me most significant. He said that one conception of the church was of a crystal, shining, smoothly finished, perfect, nothing more to be done with it or by it or

for it. It might be laid aside and taken out ten years hence, and you would find it as you put it away. That is one conception; it is not the conception of a Holy Catholic Church, living, growing, and immortal.

A clergyman in Virginia, who shares with me some of my High Church notions and none of what he would call my latitudinarian notions, says our church is a club. He sums up this controversy by saying that if a man is in a club he is bound by its by-laws; if he doesn't like the by-laws out he should go. A very easy way, a very taking way, to dispose of the question for a man who does not know the church or conceive what its holy catholicity means. A club indeed! An organization under fixed and rigid by-laws! An organization founded and dependent upon what Dr. Hall calls a strict legal document! The creed of our faith in God Almighty, in the Infinite which is past, in the Infinite now here, in the Infinite to come—such a creed a strict legal document to be construed as you construe a by-law! Gentlemen of the Court, you never will hold that. You never will hold that. It is an intolerable conception. The Holy Catholic Church is no crystal; it is a living body. I adopt for it the very words which Dr. Hall repudiated yesterday. It and its creeds are truly biological, living, growing products. Dr. Hall compared the creed to the constitution of the United States, and that constitution he declared was not a biological product. In this I venture as a lawyer to say that Dr. Hall was in grievous error. Few products of men's wisdom are more truly biological. It would be easy to produce many and unanswerable authorities to its capacity for growth, and to its history and genesis in the living traditions and experience of our race. Our church at any rate is a living church, an organization of a living faith not dead, not crystalline, not a matter of by-laws.

Now, our brethren of Rome style their ecclesiastical body *the Church*; and they say that an interpretation of Scripture or doctrine by the vice-regent of God on the throne of St. Peter is conclusive. That is perfectly intelligible to me. Though I cannot and will not myself adopt so simple and identifiable a standard, I do not reject the sacred brotherhood of those who do. I confess that I can kneel in a church of that faith, and have done it more than once, without thinking

myself disloyal in any way to my own church or its truer and better conception of the method of finding out divine truth. If, however, you would have a true catholic church, there must be one of two conceptions of ultimate theological authority. There may be one voice, one man to speak for all finally and decisively. He is pope. The Roman church has found that even that doctrine does not prevent doubts and differences. One man does not live forever; one pope conceives truth differently from another pope; and there have been hundreds of popes. Rome has therefore, the *ex-cathedra* doctrine. He only speaks conclusively who speaks with responsibility, and from the place of power and at a time when duly called upon to speak. But the result of this is that when the voice seeming to come from St. Peter's chair has not spoken truly, we are not to believe that the voice truly came from that chair. So even the Roman church has tested the infallibility of its head by the truth of the ages.

If there cannot be an infallible pope, then there must be freedom of discussion; and such for our communion is the conception of the Holy Catholic Church. She looks with indulgence even upon the vagaries or exaggerations of her children. She hears her priests err as some of them do every Sunday, somewhere or other in this broad land, through ignorance, through mistake, even if you please through vanity or some other of those doubtful motives which unconsciously affect the best of mortal men. And, of course, as Archbishop Temple once pointed out, you must not stand for liberty of discussion unless you assume that from time to time there will be mistakes and errors.

In mentioning Dr. Temple, a name precious to many, far from precious to some, we recall one of the famous heresy discussions in England. But before proceeding to that may I remind you that there never was a heresy trial resulting in conviction to which in the retrospect, years after, those concerned in the trial looked back with satisfaction—never, whether in our church or in the Roman church. There may have been councils where there have been animated and heated discussions, sometimes going to the very verge of hatred, and where finally, if you please, truth has been established, so that Christians have rejoiced that truth through

the medium of organization has at last spoken. But never has there been a heresy trial resulting in the conviction of a defendant in our branch of the church, and I might say in the Roman church, to which in the retrospect, ten years or twenty years afterward, any one has looked back with satisfaction.

Of course, the removal of a man for immorality, or for leading a life that is unfit for a clergyman, or because he disbelieves in the divinity of our Saviour, or rejects the immortality of the soul or any of the few—very few—fundamentals of our Christian faith is a very different thing. I am speaking of these trials for error, real or supposed, made by clergymen in the understanding or interpretation of these great number of subordinate doctrines which we hold.

Forty or forty-five years ago there were in the English church two famous debates over charges of heresy—the case against Bishop Colenso, and the case of the book called “Essays and Reviews.”

Bishop Colenso said he read his ordination vows as Dr. Crapsey read his. They bound him who took them to study and to think and to reason. Bishop Colenso's heresy, for that day, went far beyond any heresy now charged against Dr. Crapsey. The Bishop found himself driven by his study and convictions to deny the authenticity of a very substantial part of Holy Writ. The Metropolitan of South Africa by a so-called ecclesiastical court deposed him. The bishop however declined to be deposed, and took his appeal to higher authorities in England, and they decided that the Metropolitan had utterly exceeded its jurisdiction and set aside the judgment of deposition. Then a distinguished board of trustees, or committee, of which Mr. Gladstone (then I think Chancellor of the Exchequer) was a member, having an endowment dedicated to the maintenance of the church in South Africa, with certain rights of bishops to receive income therefrom, undertook to withhold the salary of Bishop Colenso, claiming that by paying him his salary they were not promoting Christian doctrine. But Bishop Colenso again asserted his rights, and the English court decided that they must pay him. No prosecution for heresy was ever brought against him by any competent authority of the Church of

England. Dr. Colenso remained a bishop of the English Church in Natal, discharging the duties of his sacred office until his death twenty-four years after his original prosecution for heresy. And today how many bishops of the English Church would reverse that decision for comprehensive liberty which was made in the case of the Bishop of Natal? You could count them upon the fingers of one hand.

About the same time there appeared the famous book called "Essays and Reviews." The first article in it was written by Dr. Temple, then headmaster of the famous Rugby School, from whom I quoted a moment ago. He dealt with scriptures and doctrines of the church in a manner which, for that time, seemed highly heretical. He argued that many of the early doctrinal decisions, although never formally reversed, had been erroneous and were no longer binding. He said:

"This career of dogmatism in the church was in many ways similar to the hasty generalizations of early manhood. * * * It rarely seems to occur to the early controversialists that there are questions which even the church cannot solve, problems which not even revelations has brought within the reach of human faculties. That the decisions were right on the whole—that is, that they always embodied, if they did not always rightly define, the truth—is proved by the permanent vitality of the church as compared with the various heretical bodies that broke from her. But the fact that so vast a number of the early decisions are practically obsolete, and that even *many of the doctrinal statements are plainly unfitted for permanent use*, is a proof that the church was not capable, any more than a man is capable, of extracting at once all the truth and wisdom contained in the teaching of the earlier periods. In fact, the Church of the Fathers claimed to do what not even the Apostles had claimed: namely, not only to teach the truth, but to clothe it in logical statements, and that not merely as opposed to then prevailing heresies (which was justifiable) but for all succeeding time. * * * Those logical statements were necessary: and it belongs to a later epoch to see 'the law within the law,' which absorbs such statements into something higher than themselves. * * *

The mature mind of

our race is beginning to modify and soften the hardness and severity of the principles which its early manhood had elevated into immutable statements of truth."

Dr. Temple also dealt with the other fundamental question here involved, the question of toleration or comprehensive liberty. He said:

"Toleration is the very opposite of dogmatism. It implies, in reality, a confession that there are insoluble problems, upon which even revelation throws but little light. Its tendency is to modify the early dogmatism by substituting the spirit for the letter, and practical religion for precise definitions of truth. * * * When conscience and the Bible appear to differ, the pious Christian immediately concludes that he has not really understood the Bible. * * * The current is all one way; it evidently points to the identification of the Bible with the voice of conscience. * * * It wins from us all the reverence of a supreme authority and yet imposes on us no yoke of subjection. This it does by virtue of the principal of private judgment: which puts conscience between us and the Bible, making conscience the supreme interpreter, whom it may be a duty to enlighten, but whom it can never be a duty to disobey. * * * He is guilty of high treason against the faith, who fears the result of any investigation, whether philosophical, or scientific, or historical * * * If geology proves to us that we must not interpret the first chapters of Genesis literally; if historical investigation shall show us that inspiration, however it may protect the *doctrine*, yet was not empowered to protect the narrative of the inspired writers from occasional inaccuracy; if careful criticism shall prove that there have been occasional interpolations and forgeries in that book, as in many others,—the results should still be welcome. *Even the mistakes of careful and reverent students are more valuable now than truth held in unthinking acquiescence.* * * * Not only in the understanding of religious truth, but in all exercise of the intellectual powers, we have no right to stop short of any limit but that which nature,—that is, the decree of the Creator—has imposed on us."

The English church was especially disturbed at the essay in this volume by the Rev. Dr. Rowland Williams on

"Bunsen's Biblical Researches." The supposed heresy was of the same character as that of Dr. Temple, but more distinctly expressed. A proceeding was brought for Dr. Williams's deposition in the Court of Arches, from which it was carried to the Privy Council and heard before the Judicial Committee. There was there a judgment of acquittal in which the archbishops of Canterbury and York and the Bishop of London concurred, except that as to two articles the archbishops of Canterbury and York dissented. Dr. Williams lived and died in the distinguished station which he held in the English church.

Later on Dr. Temple was nominated for the bishopric of Exeter, and needed confirmation by the cathedral chapter. There was a great struggle over the question whether the ecclesiastics who were to assemble in that chapter house should confirm him in obedience to the royal mandate. The battle raged throughout England, and was watched the world over. There were bishops on the one side and bishops on the other. And beyond a doubt the great majority of the English clergy was hostile to Dr. Temple and disapproved of his appointment. But when those upon whom there was the responsibility of definite and final action considered the ordination vow which Dr. Temple had taken, when they considered the obligations of diligent study and honest speaking laid down by the Church of England, they found that it was within the comprehensive liberty belonging even to a bishop to hold Dr. Temple's doctrines. Although they might be—although they were—erroneous, they were not fundamental. So it was that by a majority of 13 to 6 the cathedral chapter at Exeter confirmed his elevation to the episcopate. There followed the ceremony of consecration at the Church of St. Mary le Bow, Cheapside, London, which included a dramatic scene. When the bishops in procession were on their way to the great ceremony, there came to them a protest from other bishops declaring in effect that Dr. Temple, if he believed what he had published, could not fitly occupy a place of power in the English church. In the first volume of Dr. Temple's "Life" you will find an account of the pressure brought to bear upon him to soften by some statement the heterodoxy of his essay. But although, as his

subsequent career indicated, he was not without the gift of diplomacy. he manfully declined to recant or soften one syllable of what he had written. The protest was rejected, however; and Dr. Temple became Bishop of Exeter, where by many of his clergy he was received as a suspect. He lived down, however, the suspicion and was afterwards, as you will remember, translated to the Bishopric of London, and finally, and without any significant dissent, was raised to the Archbishopric of Canterbury, the highest ecclesiastical station in England. How many English churchmen today, how many American churchmen, think the treatment of the cases of Bishop Colenso, Dr. Williams, and Dr. Temple to have been unwise? Is not much of the affectionate admiration of American churchmen for the older organization of their English brethren based upon the wisdom with which, during the last generation dissent upon questions not fundamental has been practically ignored? Our friend, Dr. Hall, seemed to think that we were quoting these English decisions as if they had the sort of binding force which the decision of a higher court would have if we were arguing before a term of the Supreme Court. Not at all. The conclusions of the English church are not binding in this court. But they have, we submit, an advisory and persuasive force of a high degree. Unless you condemn the rulings in the Colenso and Williams and Temple cases,—unless you would, if you could, reverse the recent history of the English church—it would be unreasonable to say that Dr. Crapsey, whether the manner in which he holds the doctrine of the virgin birth or the resurrection be right or wrong, should be refused permission to carry on his work in St. Andrew's church. In the interpretation of those doctrines he exercised the very liberty which he swore to exercise when he took his ordination vow, a liberty exercised by the distinguished English clergymen to whom I have referred, a liberty which Dr. Temple well said was precious even if it led to error.

There are in substance two accusations against Dr. Crapsey. One is of heretical teaching on the doctrine of the virgin birth, the other of heretical teaching on the doctrine of the resurrection. I shall not myself argue the question whether Dr. Crapsey were right or wrong in his interpreta-

tion of these doctrines. So far as such discussion is pertinent to this case, I must leave Dr. Crapsey's case with what Dr. Worcester and Dr. McComb have said. In my opinion the question in this case is not whether Dr. Crapsey were right or wrong in either of his interpretations, but whether, assuming that he was in error, the error was upon so fundamental a doctrine that without it our form of Christianity perishes. The question is whether, if Dr. Crapsey has been led to his error by the honest study to which he was sworn by his ordination vow, he has, by reading and preaching the error, so seriously transcended the comprehensive liberty of this catholic church as to make it intolerable that he should remain in her service. That is the question for this court to decide, not the question whether Dr. Crapsey were right or wrong in his doctrine.

Although, therefore, I am not to deal with the true scope and meaning of the doctrines of the virgin birth and the resurrection, I may, nevertheless, with respect to the question of the liberty which the church permits, refer to some features of the history of those doctrines. Dr. Hall has told us, with a good deal of accurate learning, that there was a time when the resurrection of the body meant the putting together of the identical physical particles which composed the body at the time of death. Beyond a doubt that was the idea of those who first wrote and said the creeds as we now have them, and of the great body of saints and martyrs and Christian churchmen who for many centuries since have said these creeds. But Dr. Hall tells us, and undoubtedly he is right, that today the meaning of that item of the creed is not what it was then. Those who wrote the creed, those who pronounced the sacred words about the resurrection of the body, were mistaken—so he admits—in their view of the real meaning of the words. They held an imperfect and partially developed meaning. We have come, in the steady working and unfolding of God's revelation of truth, to perceive that the real meaning of the doctrine of the resurrection is purer and deeper and better than that which was once held, that it means the entrance into immortality of the identical person who dies, rising as he does from the agony of disintegration, of physical death. When, therefore, Dr.

Crapsey ascribes to the resurrection of our Lord a spiritual verity,—ignoring or disbelieving, if you please, the reconstitution, the resurrection and the ascension of the physical body—he says little, if any, more than is held by thousands of the believers in our church, and has been held by some of its most shining saints. If he were mistaken in his reading of St. Paul; if he shared the most noble and eloquent exposition made by Dr. Worcester yesterday upon the very first preaching of the resurrection recorded in Holy Writ; if Dr. Crapsey conceived of the resurrection as a divine, profound, spiritual event and experience; if he found neither comfort nor truth in the technical limitation of the doctrine to a miraculous change in a single, weak, feeble body; if in all this he were wrong, still was the error upon so fundamental and necessary a doctrine that without it there could not be the Christianity for which a truly catholic church should stand?

Take also the growth of the expression of the doctrine of the virgin birth in the creeds. I spoke the other day of the Athanasian Creed; and my friends over at the right were amused by their mistaken supposition that I affirmed Athanasius himself to be the author of that creed. Even if I had supposed that, I should have had high authority for the belief. I will refer my friends to the citation of authorities in Lumby on "Creeds" at pp. 188-195. They will find that until lately the Athanasian Creed was supposed to be the work of Athanasius, and was recited to be such by councils of the church; that when it was inserted in the public order of worship, it appeared, as it appears today, as the "Creed of St. Athanasius," meaning the creed written by St. Athanasius. When the English Prayer Book was prepared and revised, it so recited the creed, expressing the then practically unanimous belief of English churchmen. When in 1789 the American church excluded it from the liturgy, it was believed to be of the authorship of Athanasius. But in later years came modern scholarship with its scrutiny of proofs and comparison of documents, and finally its conclusion, although not unanimous, that the creed was not written by Athanasius. This very achievement of modern scholarship is indeed an illustration which we may commend to the prosecution, of

the growth of knowledge with respect to the traditions, rules, doctrines of the church.

It is impossible for a layman, in concluding what are the fundamentals of Christian belief, not to be influenced by the fact, already well stated to the Court on our side, that the catechism when it states what we "chiefly learn" in the articles of belief contained in the creed, makes no reference to the virgin birth or to other subordinate or illustrative items of doctrine. If the real question before this Court truly be, as I suppose it to be, not what doctrines are true or held by the church, but what doctrines are so fundamental as to determine one's membership in, or exclusion from, the catholic church, it is necessary to follow the growth of the Apostles' Creed. Very certainly, as has been observed, neither our Saviour, nor St. Paul, nor any apostle is recorded as preaching the doctrine of the virgin birth or enforcing it as a test of true religion or Christianity. So it is with the earliest years of the church after the death of the last of the Apostles. In the early form of the Roman Symbol from which the Apostles' Creed was built up, there was no reference to the virgin birth or to a number of other articles now appearing in the creed. In the first form of the symbol there appeared substantially the three things which our catechism states to be the substance of the Apostles' Creed. Beyond a doubt and without dispute several of the items of the Apostles' Creed mean for us today something different from what they meant to those who first said the creed. This is the case with the phrase "Maker of heaven and earth," the phrase "He descended into hell," the phrase "He ascended into heaven," the phrase as to the session at the right hand of God the Father, the phrase as to the judgment of the quick and the dead. A distinction is attempted with respect to the affirmation as to the virgin birth; it is said that that affirms a fact and that there can be no interpretation of a fact. If this be true, I am unable to see why the affirmation that the soul and spirit of Jesus were specially and divinely conceived by the Holy Ghost does not perfectly satisfy the affirmation that He was conceived by the Holy Ghost. It is said that the phrase "On the right hand of God the Father Almighty" does not affirm a fact, but is figurative of a spiritual truth. I agree, of course, to that. But

you know very well that the saintly men who heard and said the creed in the early days, believed in a physical right hand of God. You have seen the sacred mediaeval pictures of the Holy Family, representing the Almighty as a venerable old man with long and flowing hair, with piercing and majestic eyes, with a jeweled and shining throne, wonderful to the last degree, and with the divine figure of the Saviour at the right hand. This represented the literal belief of the great masses of the people of the day. It was the conception of what they saw or believed to be up in the blue, an anthropomorphic view of God and His Son. But who today believes that? Who today does not give to that item of the creed a far different meaning from what it once had. Those who first said the creed saw but imperfectly the truth of what they said. It was true then, it is true now. But the truth we now find in it is infinitely richer and larger and better. We more clearly believe and see that God is a spirit.

How, if this vast departure of the church in modern days from its interpretations and realizations of this and other items of the creed is within its comprehensive liberty, within the scope of its growth from lower and darker to higher and clearer things, will you undertake to say that Dr. Crapsey ought to be driven from the church because he assigns to the conception of our Lord by the Holy Ghost a spiritual meaning, a spiritual miracle just as true and vastly more significant than the working of a fleshly miracle? If Dr. Crapsey believed that the title "Virgin Mary" refers to the piety and nobility and exaltation of the mother of Christ, and not to her virginity in a technical and fleshly sense, are you prepared to say that he is false to one of the great fundamentals of the Christian belief, and that the comprehensive liberty of the church is not large enough for him?

May I remind you again that the question of Dr. Crapsey's sincerity, of which there has been so much in public discussions of this case, is not before you. Dr. Crapsey, in his statement read by Mr. Perkins, has said to the Court, and he has said it many a time out of court, that when he pronounces the Apostles' Creed, he pronounces it sincerely and believingly; that he does believe that Christ was born of the Virgin Mary; that He was conceived by the Holy Ghost;

that there was a resurrection of His body. This presentment makes no imputation upon his sincerity. The very gravamen of the offense charged against him is that to the congregation before whom he recited the Apostles' Creed he frankly and courageously gave his understanding of what it meant.

Gentlemen of the Court, I speak here in behalf of a true holy catholic church. If this Protestant Episcopal Church of ours be really the American branch of such a church, then today you can affect its growth and career as can no other men. From now on until the time a few days hence or a few weeks hence when you shall render your judgment, prayers unceasing will arise over our whole land—I might almost say over the earth—that the Almighty will guide you to the wisdom to see in this church of ours a vital reality, a living organization, with faculties fit to consummate the infinite mission of Christ upon earth. And with these prayers mingles a fear. If the contrary thing shall be done, will not Christ's garment be riven? Although there will rise other prayers no doubt just as sincere but to the contrary, they will come from those who would honor the creed in its letter and not its spirit, who would make of the church a thing no doubt precious but small, no doubt sacred but unfruitful, no doubt exalted but without infinite career or growth.

Then last and even least, if Dr. Crapsey will forgive me for saying it—least is Dr. Crapsey. But if his career be relatively a small thing, nevertheless it is something noble and valuable. Is his work of affectionate and untiring beneficence to be driven from our faith and our fold by those who are his associates in the ministry? Is this conceivable, is it conceivable?

Dr. Hall has told us that he sympathizes with Dr. Crapsey. But Dr. Crapsey requires no pity. If he had the vanity of authorship, what could better please him than a prosecution which has made his book to be read perhaps a hundred times more than it would have been if the standing committee had seen fit to follow a different course. If he were vain, what could gratify him more than to be for the moment one of the shining marks of public interest and widespread admiration? But that is not his temper. He loves this church. He would abide in it, and work in it and for it.

So, gentlemen of the Court, God grant you and our church a true deliverance, when you come to adjudge this great and far-reaching question of liberty of thought and conscience permitted to its ministers and to those to whom they minister!

ADDRESS OF JUDGE STINESS.

It may be possible that my learned associate in this case is fearing that because there were four speakers on the side of the defense, and there are but three on this side, it might look as if the weight of the argument were against us; and for that reason he asks me to speak. I do not feel that it is necessary for me to say anything in this case, because he is fully prepared to present the summing up of the case to the Court; and I did not attend this trial with the expectation of taking any active oral part in it. I came here simply as one who might possibly, it was thought, aid the Court. Happily in this church, ecclesiastical trials have been so few that those who have had any experience at all in the ecclesiastical courts are somewhat in demand when such an occasion arises.

We have conducted this case with an entirely different idea from that held by the other side. We have supposed that this was to be tried as any case should be tried before a court. We have not undertaken to give to the Court flights of oratory or eloquence; there have been an abundance of that from the other side, so much so that it has seemed to me that the counsel on the other side were really trying this case to the public rather than to this Court. They have been delightful in the speeches they made, entertaining, and in some matters instructive; but if they have made any argument upon the questions that are here involved, I most respectfully submit that I have to say that I am unable to see it.

What is the question before this Court? A presbyter of the church in this diocese is charged with a certain offense, charged with a violation of his ordination vows. Have you heard that question very much discussed in these fine addresses which the counsel have made? Their addresses reminded me of a little incident that happened once in my practice. A good old Irish woman came in and wanted a war-

ranty deed drawn and the practice in our State being to use the old English form, with all the covenants against easements, etc., and all the warranties against jointures, etc.; and I read, as was my custom, the whole deed over from beginning to end; and when I had closed she put her hands together and said: "Oh, that is beautiful." I have felt that way as to the speeches that have been given here today and yesterday, and I must say that I have failed to see any real connection between those arguments and the point which this Court has to decide.

Now, upon this presentment you are summoned as the judges—the judges—of this case and no other. You are not here to remake the Protestant Episcopal Church of the United States. You are not here to put it upon any other basis than it stands today. You are not here to commend it to the world, as the gentleman has so earnestly pleaded; you are here to perform a judicial duty; and it seems to me that the decision of this Court of Thursday last shows that this Court appreciates its duty and sees what the point is that they have to pass upon. It was then suggested that this Court should go into outside testimony for the purpose of ascertaining what the general mind of the church was, I suppose, or for ascertaining if some people thought—and they were very estimable people—that the utterances that are set forth in this case were lawful. The Court said: "That is not the duty of this Court, that is not what we are here for, and that sort of testimony cannot be admitted." In making that decision, it seems to me that this Court decided this case; because the case that is before you is simply this, that the respondent made certain utterances; and that is a question of fact. There is no question here before the Court, because every fact that has been averred in that presentment stands before this Court without contradiction. All that appears of record, all those statements have been presented; all that comes from oral testimony has been presented, and not contradicted. One of those oral statements was contradicted and denied by the respondent in his written reply, and in his written pleas. Over his signature he denied the truth of that allegation, but he has offered no testimony, nor has in any way come before this Court to state that he did not utter the words

that have been charged against him. This court, therefore, takes the case up to that point, must take it up to that point as established; because proof is offered, and there is no denial or explanation. Let us consider right here one remarkable thing that has come into this case—I say it with hesitation, and yet I must say it—that it has seriously led me to doubt the good faith of this defense: Instead of calling the defendant to the stand to testify as to views of doctrine or any other facts upon which the prosecution could cross-examine him, he writes a statement; and that is introduced into this case and placed upon the record for this Court to read. But may it please the Court, I want you to know one thing, and that is that it is not testimony in any sense of the word; it is not testimony that this Court has the right to look upon or receive as such; and my learned brother upon the left here was so fully persuaded of that fact, he knew so clearly that it was so, that he got it in by way of a part of his argument. That is the only way in which it is before the Court, and it is the only weight that this Court can give it. It is not Dr. Crapsey's statement; it is Mr. Perkins' statement, and it is nothing else, and he so styled it; and it was the only way he could produce it here. Now then it is under those circumstances the Court finds that the first step that it is to take, namely, to decide upon the facts, all made plain for it; because there is no dispute of fact, and the proof of the charges in the Presentment stand unquestioned.

Now, the next question that the Court has to determine after recalling the minds of the Court from the high flights that we have had in the last two days here down to earth and down to duty, plain duty, the next question that comes before the Court in this: Do those statements amount to a violation of the doctrine of this church? Upon that point we have not had any illumination from the counsel on the other side. In the opening Mr. Perkins undertook to give to this Court an analysis of the specifications; and he commented upon them,—taking some sentences here, some phrases there, which we had in, not as so dangerous or bad in themselves standing alone, but as throwing light upon the important changes made in the presentment—that they are not heresies. He took these innocent passages, if we may call them such, that is, those not so bad

as the others, and made the remark: "Well, I don't see any heresy in that," and "where is the heresy in this?" But I would like to ask the Court: Did you hear him read any of those charges that denied one of the articles of the Christian faith, namely, the virgin birth? He skipped that. Did you hear him read the allegation that the defendant denied the fact of the resurrection of Christ? He did not read it. It may have been accidental but it seemed to me to be otherwise; and in his argument he did not come to the vital questions in this case, in order to inform the Court how it was that these statements in the presentment were at all consistent with a denial of the allegations and consistent with the assertions of the creed itself.

Coming then to the question whether these allegations are contrary to the established doctrine of this church—as this church hath received the same,—that doctrine which we all know without proof to be the doctrine of the church; to the creeds of the church when you come to that question I respectfully submit that not one of the counsel upon the other side has given us any light. They have not undertaken, except in one respect to which I will call your attention, to harmonize that statement, or any of these statements of Dr. Crapsey, with the statements of the Holy Scriptures. Take, for instance, the charges—I cannot read them, and I do not need to before this Court:—take any of the charges which set forth that this defendant has denied the virgin birth. He put it in the formula that has been used here in the trial rather than the exact words of the specification itself. One of them was—I think I have already said—one which Mr. Perkins did not refer to at all. Dr. Worcester did—oh, yes, I think Mr. Perkins did—in one respect; let me call your attention of it. In the course of his argument he said: "The son of Joseph"—wasn't he the son of Joseph? Then he took the Scripture, the first chapter of Matthew, and read it—

By MR. PERKINS: I beg your pardon, I did not read from the first chapter of Matthew, I read from St. John.

By JUDGE STINESS: Was it Dr. Worcester then?

By MR. SHEPARD: It was Dr. Worcester.

JUDGE STINESS, resuming: I may have the gentlemen confused, I have to ask the pardon of the gentlemen, as

well as of the Court. Not expecting to be put in this position of making a reply, I took no notes, and am trusting simply to my memory. We will take Dr. Worcester's argument then: In Matthew "The son of Joseph," "And Jacob begat Joseph the husband of Mary, of whom was born Jesus, who is called Christ." Upon that citation he makes the claim that Dr. Crapsey had the right to use the expression in his book, which indicated that Christ was the son of Joseph, of human parentage, and therefore not born of the Virgin Mary, because He was born as we were born. Now, if born as we are born, it could not have been by a special, divine conception; it must have been according to the accepted laws and known laws of nature. Now, because He is there referred to as the son of Joseph, therefore he says he had the right to call Him that. Now, if Dr. Worcester had spent a little more time on this first chapter of Matthew and skipped only one verse, he would have seen the further statement: "Now the birth of Jesus Christ was on this wise: When as his mother Mary was espoused to Joseph, before they came together, she was found with child of the Holy Ghost. Then Joseph her husband being a just man, and not willing to make her a public example, was minded to put her away privily. But while he thought on these things, behold, the angel of the Lord appeared unto him in a dream, saying, Joseph, thou son of David, fear not to take unto thee Mary thy wife: for that which is conceived in her is of the Holy Ghost."

Minded to put her away privily! Could there be any stronger refutation of the idea that Christ was the son of Joseph, than the fact that it could not be, and her husband was minded therefore to put her away. Born as we are born? It is utterly untenable; it refutes his own citation, refutes his own authority to say that; and we have heard here no other claim to justify the respondent in saying He was born as we are born.

Now, may it please the Court, a man making those statements, however honestly, but making them deliberately, and making them after a time exceeding a year, within which it is to be presumed—although there is no proof of that fact—that there may have been earnest labors to correct the error, has he not denied a fundamental fact set forth in the creed? That is all the issue there is in this case. That is the

charge made, and can a court of the intelligence of this Court say that that does not violate an article of the creed? If it does, then all this Court has to do is to so pronounce in its judgment. Could any case be proven more clearly? It is a direct affirmation on his part; and while he may say: "I use the words, 'Born of the Virgin Mary * * * Conceived by the Holy Ghost, yet he asserts that He was mere man—ignoring the conception, "born as we are born" ignoring the conception of the Holy Ghost, (unless he means in that particular sense that he was conceived by the Holy Ghost in the same way that life is conceived in every human being in the world). Does Dr. Crapsey nod his head and say, then are we what the creed says Christ is? Doesn't the creed then differentiate Christ there from other men in the words: "Conceived by the Holy Ghost, born of the Virgin Mary?" We are not born of virgins, unless we undertake to ascribe to those sentences in the creed a meaning, a name, that would be too shocking to Christendom to speak of her here. Born of the virgin and yet born as we are born! Can this Court reconcile in any possible way those words with the honest affirmation of a fact in the creed such as we are called upon to recite at every service we attend: "I believe in Christ, conceived by the Holy Ghost, and born of the Virgin Mary?" It seems to me that with this plain proposition of law, the plain statement with regard to the facts, a clearer case could not possibly be made. It seems to me that there could not be a plainer easier case for a court to decide. It seems to me that a court must fall far short of its duty, when called upon to decide judicially whether those words so uttered deny a doctrine of this church, as this church hath received the same—I say it would fall far short of its duty—if it did not decide those words do deny a fundamental doctrine of the church.

Now, may it please the Court, that is all there is to this case.

Take the other statement with reference to the resurrection of the body, in the same way. It is the duty of the Court to try the charge that is made, and to decide the question of fact, and the application of the law of this church to those facts. That is what is involved in the trial, and it seems to me your duty is plain. I do not speak with reference to

the defense in this case, leaving that to my associates, but now pass to another point in the defense which has been presented today; and that is, that the Court cannot find the respondent guilty under this presentment, because the act was done in 1904, and the prosecution was made in 1905, presumably under the canons of 1905. Now, my brother upon the other side probably has not read these canons all through—

By MR. SHEPARD: Every one of them, including the one you are about to read—especially the one you are about to read.

JUDGE STINESS, resuming: Canon 55 is this: "These canons shall take effect on the 1st day of January, in the year of our Lord 1905, from and after which date all other canons of this church are hereby repealed, and shall be deemed to be repealed, provided that such repeal shall not affect any case of a violation of any such canons committed before that time; which said case shall be governed by the same law as if no such repeal had taken place."

May it please the Court, the purpose of this last section was to continue the law of the church without a break, upon a new revision of canons, when the old ones were to be set aside and new ones were to take their place. It is a provision commonly found in every case of a revision of statute when a new revision has been made, and is to take the place of existing laws; they tie them together; they bind them together that way so that the law is continuous, and there is no break. Otherwise, a man committing an offense against the law on the last day of December, 1904, in nine cases out of ten could not (unless he was prosecuted immediately) be prosecuted in 1905. It is necessary to have this provision of the law tying them together, and making them practically one law. Could the Presentment be made under the old canon? Clearly not; that is repealed, though the Presentment is made under the same law, that is, what is so aptly the application of the same law under the new canon. That was evidently the view taken of this in the allegation, and I submit it is the tenable, proper and the usual construction. Suppose it was not; then take the canon of this diocese, and

that is what you are settling here; it says: "The court may, in furtherance of justice, and upon such terms as it deems just, allow any amendment of the presentment or of any pleading, proceeding, or paper, and must disregard any error or defect in them which does not impair the substantial rights of the accused."

Whether the Presentment was made under the old canon, or under the new law, is exactly the same; for in the revision the law was not changed. The term used there is identical with the term used in this canon, by which a man may be presented for any act which involves a breach of his ordination vows. The only change that is made in the new canon was that in the old canon, the one existing in 1904, it said: "And on being found guilty he shall be admonished, suspended, or degraded." In the new canon, in place of "degraded" the word "deposed" is used. No difference in it at all. So that under the canons under which you are sitting as a court that objection made by Mr. Shepard certainly can have no possible weight; for under the canons of this diocese you are bound to allow any amendment that may be necessary, if it is deemed to be necessary. The learned assessor will instruct you on that. I think your learned assessor will be very likely to say that inasmuch as the old canon has been repealed, and the law continues the same; the law is now put under Canon 23, therefore that canon is the proper one to present under; for that is the existing law and the old one is defunct. There has been no right impaired. It says any error may be corrected which does not impair the substantial rights of the accused. Now, the charge being exactly the same, the punishment being exactly the same—there could be no difference to the defendant whether the presentment has stated formally whether it was made under one canon or under the other. We contend that it is right as it stands. If the Court comes to the conclusion that the old canon should have been stated, then that allegation must be admitted as an amendment, because this amendment involves no substantial right of the the respondent.

I have said that Mr. Perkins did not refer in his argument, to these important charges, namely, the denials of the creed. When Dr. Worcester came to speak, he referred, as I have already said, to the guarded account in the Gospel of St.

Matthew, calling our Lord the son of Joseph; but otherwise than that he paid no attention to those fundamental and important charges upon which we must rest. He took the pains to inform the Court that he did not agree with Dr. Crapsey in all his statements, and that there were some that he could not justify; and it is therefore fair to presume that Dr. Worcester, making no reference or justification as to these two important charges, included them in that category.

Mr. McComb also addresses the Court as counsel. I understand that he has been connected with this church about six months, and therefore came down to instruct this Court with reference to its law and faith. But he has made hard work of his defense; he did say that the creed, no matter if it does have twelve to fifteen articles in it, is reduced to three. He eliminates—by some process which we do not understand, and which he does not very fully state—he eliminates from the creed everything except: "I believe in God the Father: I believe in God the Son; I believe in God the Holy Ghost." Now, today we have the presentation of the learned gentleman who has so delighted us with his words, and I have respectfully to suggest that even he has not touched the real question in issue. He has appealed to this Court as if it were a body that had the right to shape the faith of this church as it saw fit. He has not argued the question whether the case which is laid before this Court has been proved and established. He has said, "Why, there are certain articles of the creed where private opinion may come in." In fact, the effort of the defense in this case seems to have been all the way along to get to the trial of everything and everybody excepting Dr. Crapsey. They first said the church was on trial, that let Dr. Crapsey out. And then they had the standing committee on trial, and then Mr. Shepard undertook—I was afraid he would at any rate at one time—to put me on trial for some words that I had said.

BY MR. SHEPARD: I will acquit you at once.

JUDGE STINESS, resuming: Then he went on today—he put somebody on trial; who was he?

A VOICE: The Bishop of Fond du Lac.

JUDGE STINESS: The bishop of Fon du Lac on trial! and later on I didn't know but that he was going to try to shift it to Bishop Temple. They have argued the position

of almost everybody but Dr. Crapsey. They have argued almost every question except that Dr. Crapsey did not violate his ordination vow, when he said that Christ was not born of a virgin. He was born as we are born. Now, if any argument has been addressed to this Court upon that point from the other side, which shows that by any possible construction this Court can acquit him upon those charges, I have failed to hear it. A plea has been made to the Court today that they should acquit him upon the ground of liberty; there should be liberty in this church. We understand that there is liberty of opinion, but the church as a teaching church must necessarily have its doctrine. Can it do it if absolute liberty is given to each of its clergymen to teach what he thinks is right? The gentleman referred to a very estimable and distinguished layman of this church, and I would like, by way of illustration of his doctrine, to make a suggestion. He says that every clergyman of this church should have the right to go to whatever extent his scholarship might carry him. Now, suppose that some gentleman was the president, at this time, of a university, and one of his professors in the scientific department should say: "My investigation of science leads me to think that the earth cannot be upheld on nothing, it must rest upon a foundation; and I find that in the old legends of ancient times that it rested upon Atlas, and Atlas rested upon a turtle, and upon what the turtle rested"—we needn't go farther than that; but suppose he began to teach to his scholars, his pupils in the university, that that was what his scholarship, his research led him to believe; that that old fable was true, had something reasonable to it, had some foundation to it. I want to know how long, in the name of liberty that professor would be allowed to remain in that university. Now, is there any difference in applying this doctrine of liberty in the church? There is this difference, that the church has a solemn duty to teach a certain truth, and that it cannot go about in the fields of investigation and preach those things which this church has not received. The Court cannot change those doctrines, that can only be done by the church in its organized condition. But there is the appeal to this Court; and you are appealed to on the ground that you are going to injure this church unless you allow persons to go outside

of that which the laws of this church, the canons of this church have prescribed.

I have noticed that there is a class of churchmen who delight in the phrase, "this church of ours." We are the proprietors of it, as if we could do with it as we saw fit, as if we were the owners of it, and could at will change it. I still believe that this is the Church of God, that this is God's church; it is His work that we are administering, not for the purpose of putting it more favorably before the public, not because of one reason or another, but because it is the Church of God, which hath foundations we have no right to change.

I have only one suggestion more to make upon this line and that is, that the counsel has dwelt upon the right to have different interpretations. That is probably so, as I said the other day, with reference to some things. When a communicant in reciting the creed says, "I believe in the Holy Catholic Church," that is an illustration of broad faith. In the first place, I endeavored to show how inapplicable it was to the article in question here. One might say that this meant the Protestant Episcopal Church, and I have no doubt that a great many people think it means that and nothing more; and another might say that it involves all of those branches of the church that have Apostolic authority; and another person might say that it included all baptized people. Now, there is a vast difference between that situation and the charge made in this case. That in either case would be assumption of the creed, a belief in the creed; but when a person denies an article of the creed, that which says, I believe that Christ was born of the Virgin Mary; and the presbyter says He was not—He was born of Joseph and Mary—not conceived by the Holy Ghost except as all men are conceived in that way; then I say there is a radical difference between those two, and there can be no possible harmonizing of that statement with reference to the creed and the assertion of the creed itself.

I do not desire to touch upon any other points that occur to me at this time. I desire only to call the attention of the Court to the straight line of duty it has to follow, the simple question it has to decide, and to the fact brought out today that the form of the presentment is in no way objectionable,

or if it be, that it can and must be cured by amendment, because such action involves no substantial rights of the defendant. The further matters in the case will be presented more fully and intelligently than I could possibly have presented them without any previous thought upon the matter; and I thank the Court for having permitted me to trespass so long upon their time and patience.

Recess until 2 P. M.

AFTERNOON SESSION, 2 P. M.

By MR. O'BRIAN: May it please the Court: In the matter which was brought up this morning in regard to the form of the presentment, I beg to say that in the judgment of myself—in the judgment of Judge Stiness, Mr. Locke, and myself—the presentment was accurately drawn and fully covered the points in issue, and was considered with special reference to the point raised by Mr. Shepard. The law was the same prior to 1905 that it is now; but if there is any question in the mind of the Court or of the defense as to our position, I desire to enter a formal motion, which I would ask the Court to take under consideration, to the effect that the presentment be amended by inserting at the end of the first paragraph of Charge 1, and at the end of the first paragraph of Charge 2 the following words: "And also the same law of the church as it existed during the year 1904, and as embodied in Canon 2 of Title 2, of the Digest of Canons." I simply make that formal motion in case there is any question in the minds of the Court or of the assessor as to our position.

By MR. PERKINS: I wish at some time to be heard, though only very briefly, on that application.

By MR. O'BRIAN: I think you would better speak now; I would like to get that out of the way.

By MR. PERKINS: I wish to say only a word or two, which must, if addressed in form to the Court, to some extent be addressed to the assessor, because it is thoroughly a legal proposition, and it is a legal proposition that may involve the rights of the defendant. The point suggested this morning was that the offence of which the defendant is charged is, and this is the gist of the charge, that he has

violated Canon 23 of the general canons of the church; then follow all the details wherein he has violated, which really, to some extent, from the standpoint of the essential charge imply that such and such a canon has been violated. It has been held in these cases to which I have referred, the English cases, that a proceeding of this sort is in the nature of a criminal proceeding, a proceeding brought to deprive a man of his legal rights and standing in the organization of which he is a member. So in all criminal proceedings it is urged that a man has violated a certain section of the statute—the statute against burglary or whatever it may be—in that he did at such a time and such a place feloniously enter a house, and did such and such a thing, commit such and such a misdeed; that is the essence of the charge. We have been brought into court on a charge that we have violated Canon 23 of the Canons and Constitution of the Protestant Episcopal Church. That presentment has been made by the standing committee; they have made that and nothing else. They might have, doubtless they might have, made a presentment against Dr. Crapsey for another offense, that he had violated some other law of the church; that they might have done, but they have not done so. A presentment is like an indictment found by a grand jury upon which the prosecution must stand, and it must stand upon nothing else. A grand jury may indict a man for many things; it does indict him on some one thing that it selects, and that indictment can by no possibility be changed because it deprives the defendant of his legal rights. In courts in actions brought merely for money, as the assessor well knows, there is the broadest power of amendment of a pleading in furtherance of justice, where persons are contesting as to property rights or rights of money; but where a man is accused in the civil courts of a crime, a misdemeanor, then there can be no such amendment. A certain crime; on that he can be tried and nothing else. He is accused of having violated a certain statute, committed. Now here this presentment was made by the standing committee; it has been approved by the bishop of the diocese; it comes before you, and upon that of course they must stand. If we have violated that canon in the judgment of the Court, of course, we are subject to the Court's judgment; if

we have not violated it in the judgment of the Court, then we are entitled to the Court's acquittal; and this Court has no possible power to say that the standing committee and the bishop having said that Dr. Crapsey did violate Canon 23, going in force January, 1905, amend that by saying: "Why, to be sure you have not violated that, but you have violated some other statute that was in force at some other time," and then say they are the same. It is not the same; there is a difference. The differences are slight, but slight differences are important when a man is charged with an offense. The statute in force, the canon in force prior to 1904, I state with confidence, because this question was examined with a good deal of care by the counsel on the part of the defendant, is different as to the manner of punishment imposed, in the method of punishment. The differences are slight, but they exist; and without occupying the time of the Court further, I shall ask the learned assessor to examine that question. No man may be indicted for having violated a certain law of the land, in force 1905, and then on a failure to sustain that the Court say: "Well, to be sure you didn't violate that law, but you violated some other law under which you might have been indicted; we will amend the indictment, and convict you under that."

By MR. O'BRIAN: If the Court please, Mr. Perkins has stated the law very clearly on this subject, except that he has overlooked the canon law. The presentment is in a sense analogous to an indictment; it is not necessarily construed according to the rules of common law. The defense has been in error all the way through in reference to the constitution of this Court and the constitution of the pleadings; it is the trial only that is being conducted according to the principles of common law. The defendant is charged here with nothing of which he was not apprised in the presentment. He was charged in the presentment with violating this canon; it was stated in the presentment that the offenses were committed in 1904 and 1905; and while the law is numbered differently in the two canons, yet the points of law which bear on this case are exactly the same. What does the canon of this diocese say on the subject? "The court may, in furtherance of justice, and upon such terms as it deems just, allow any

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amendment of the presentment or of any pleading, proceeding, or paper, and must disregard any error or defect in them which does not impair the substantial rights of the accused. But the presentment shall not be amended after service thereof on the accused, so as to set forth any additional charge or any offense not alleged therein when so served."

In my judgment and in the judgment of both my associate counsel, the objection is purely an academic one; it is not valid, and if it is valid, we should have the right to amend and cover it at this time. I will be very glad to submit the motion and have it determined with the case, as we did with the other motion.

By MR. NORTH: I am entirely willing that the question be submitted and be disposed of in the final disposition of the case. It is not a motion that should be disposed of off hand. It is a question of a good deal of gravity.

By MR. O'BRIAN: It is not as serious as Mr. Perkins thinks it is; because the second specification of the first charge in regard to the sermon delivered on the 31st of December, which is herein undisputed, was committed in the year 1905, and the book in which the sermon appears came out in 1905 after the adoption of this canon; but in order that the point may be covered, I make that motion.

By MR. NORTH: I don't think any ruling is necessary, or any suggestion on the part of the Court. It is quite apparent that you do not think you need the amendment at all, that therefore you do not desire a ruling unless the Court shall be advised that the pleading is defective.

By MR. O'BRIAN: My position, if the Court please, and that of Judge Stiness in this, that if the Court believes that it is defective, we shall want this motion considered. We are simply protecting our rights, that is all.

By MR. NORTH: I understand exactly. The application for leave to amend is part of the record, and Mr. Perkins is advised that his objection will be noted.

ADDRESS OF JOHN LORD O'BRIAN.

I approach with diffidence the performance of a duty which is, to say the least, uncongenial. I am going to sum up briefly,

very briefly indeed, the case of the presenters in the complaint against Dr. Crapsey. It is with a heart sorrowful and cloyed that I approach that unpleasant duty; but if Mr. Shepard were here I would assure him that it is with a courageous heart that I do it.

In its essence the case is a very simple one. In its bearings it is of course unfortunate. It is unfortunate for the defendant, it is no less unhappy for the men who found this presentment and for myself; for all of us there has been a lack of Easter joy in the season through which we have just passed; but our duty is plain and the issue is very clear. It is the old, old issue—as old as time itself—the issue of expediency versus truth; yet in what little I have to say in regard to the defendant personally I wish it understood that I am speaking impartially, with a high respect for his ability, with respect for his having acted in obedience to his conscience and without any intention of impugning his motives or accusing him of being deliberately disingenuous. I am treating him simply as an impersonal factor in a great question.

The attitude of the standing committee in this matter, which has been so often referred to, is easily understood. A situation had presented itself here in which certain utterances had been made which were so clearly divergent from what we will call the traditional attitude of the church that they seemed to call for investigation and explanation; and for the purpose of obtaining that explanation this presentment was found, not for the purpose of driving any man out of the Church of Christ; and I respectfully submit that the result of this trial has justified the position of the standing committee. I for one am glad that the Court granted no further adjournment in this important case. It is perfectly apparent that the case has been thoroughly and carefully presented by the defense. The points of evidence at issue in this matter are at last clear. They were not clear on the return day, because the defendant in his answer denied the delivery of the second sermon specified in the presentment; and I hope the Court in considering our side of this case will remember that we have been met with no ordinary situation of clearness or frankness, and that the burden was put upon us of proving beyond a doubt that all the statements alleged had actually been made. And now that those utterances have been proved, all the argument of the defense is a plea of confession and avoidance, a plea of justification on the ground of toleration.

Mr. Shepard adverted, it seemed to me unfortunately, to the testimony of Dr. Alexander, saying that it was uncorroborated, and demanding with dramatic words whether this Court or any court would convict a man on such testimony. I beg to remind the Court that at the conclusion of Dr. Alexander's testimony I stated in open court that I expected to call two witnesses for the purpose of corroboration, and Mr. Perkins then arose and said in effect that he did not intend to call any witness to deny the statements made by Dr. Alexander; yet Mr. Shepard tells you this morning that that testimony stands uncorroborated. I am not here in the capacity of pleading the case of any witness; I did not manufacture the evidence in this case, I did not create it. It may be that Dr. Alexander was unfortunate in temperament, that he went beyond the bounds of what we lawyers are accustomed to regard as fairness in giving his evidence; but I submit that no man who with an open mind heard that evidence could doubt that the substantial facts testified to by that priest of the church, as he was, were beyond question. And they are not in question. There is nothing in the record offered by the defense to controvert it; there is no insinuation in the record that his testimony is untrue. In the statement written by the defendant, and so cleverly submitted by Mr. Perkins, there was no denial of the delivery of that sermon. The only fact in the case, as your learned assessor will tell you, is that that allegation was proven before the Court.

The defense here has been largely technical, but I have no criticism to pass upon that fact. Nor have I any comment to make upon Dr. Crapsey's not openly avowing that second sermon, and not openly and frankly avowing his position on these mooted questions; I am not the one to pass judgment upon him, nor shall I in any way seek to characterize his actions. The technicalities which have been raised, it seems to me, are slight. I have no comment to make upon the way in which the evidence was presented. Of course, as your assessor will advise you, the statement submitted by Mr. Perkins in his summing up is not before this Court for consideration except as an argument; you cannot consider that as evidence in the case, because the way in which evidence is presented in a case when it is not stipulated is by the witness taking the stand and exposing himself to cross-examination. Nor shall I criticize the action of the two clerical

counsel who read extracts from old sermons of Dr. Crapsey—such action being of course clearly contrary to all rules of evidence, but due entirely to their ignorance of the wicked ways of the law with its fixed rules of evidence. That evidence, if produced on the trial would have been objected to by any lawyer, for the reason that those sermons had been preached so many years ago that they could not possibly have any bearing on the case in hand. But I make no objection, and I did not intend to be captious yesterday when I suggested that the counsel confine themselves to the evidence sworn to in the case; because it has been my desire, weakly as it may have been evidenced, to have the truth known, and to give Dr. Crapsey and his counsel every opportunity of coming into court and presenting any and all evidence that they might have. And my action in that regard has been in accord with the wishes of the much maligned standing committee. They have no bias and no sinister motive, and have asked simply that the truth be placed before this Court.

On the threshold of this case we are met, not with the question of whether or not we are in a heresy trial; we are met with the plain fact that this church owes the world the duty of being singleminded and honest, and of being not ambiguous and doublefaced. Our idea is only this, that the church shall be first pure and then peaceable. If mistakes have been made by the defendant, there has been plenty of time for correction. If a serious mistake has been made, and if it should happen, as I think it should, that this Court should find the defendant guilty, the sentence of this Court can be so adjusted as to do him justice and give him an opportunity of conforming to the position of the church.

Considerable reference has been made by the defense to various decisions of the Privy Council. I asked Dr. Hall yesterday to explain the present status of the Privy Council, and I am sure that we will all agree that he did it with thoroughness. Mr. Shepard was in error in his statement this morning to the effect that the Privy Council committee is made up of clergymen. The clergy sit as assessors and advisors in that secular committee, but not as judges. Perhaps too much was made of the point, on our part; we merely wished to show that the decisions of the Privy Council were not necessarily binding upon the American church. Perhaps we went too far in giving the history of that

body; but when Mr. Shepard first spoke of it, I assumed that he would cite many decisions rendered by that committee, whereas he called attention to only two. Those two cases were the Colenso case and the case of Dr. Williams, and neither one of those cases had any bearing whatever on the subject of the creeds, the Thirty-Nine Articles, the formularies or the ordinal. The committee of the Privy Council decided those cases expressly on the ground that they could not be held to be violations, because they did not violate what was recognized as the law of the church.

There has been a precedent in this country, the case of Mr. MacQueary. He stated on his trial, as the council will remember, that he rejected the virgin birth, that he rejected the bodily resurrection, that he did believe in miracles, that he did believe that Christ was born as a miracle into the world, and that Christ was God—a position far within the lines of the position of Dr. Crapsey. The Court deposed him and I differ with Mr. Shepard in thinking that there has been dissatisfaction in the church ever since because Mr. MacQueary entered the Unitarian persuasion.

The question we have before us here is one of the oldest questions in the history of the Christian church,—the question of the virgin birth and of the bodily resurrection. Dr. Sanday says that the virgin birth was the first difficulty to which speculative minds turned within the first century after Christ; he says that it was this difficulty which lay at the bottom of the Gnostic heresy, and the Valentinian theory, and at the bottom of the Adoptionist theory; and Harnack bears that out when he says that as early as the middle of the second century he finds the Adoptionist theory well defined.

Does this Court hold, or would the counsel have this Court hold that a doctrine which was given form, which was given effect, at as early a date as that, and has been ever since faithfully recognized and reiterated, is of no weight whatever in the theory of the incarnation; that it has no essential part in that theory which is the great theory of Christianity?

Mr. Perkins did me a great service, one of many, when he referred to Bishop Gore, and the Kenotic theory. The Kenotic theory needs no explanation. As we all know, it is a theory still

in the course of development, which has been most interesting and which undoubtedly has an important place in the discussion of theological questions. Bishop Gore, as Mr. Perkins rightly says, is the foremost English-speaking representative of the men who champion the Kenotic theory, he is the spokesman of it; it was his book in the form of the "Bampton Lectures" which aroused all the controversy in England on that subject. Surely Bishop Gore, if the defendant's position is reconcilable with the Kenotic theory, surely Bishop Gore's views on the subject, as a leader of that movement, would be most interesting. And what does he say?—"Considering the position which the virgin birth holds in the creeds, it cannot be denied that the authority of the Christian church is committed to it as a fact beyond recall. To admit that this historical position is really doubtful would be to strike a mortal blow at the authority of the Christian church as a guide to religious truth in any real sense. Such a result is in itself an argument against the truth of any position which would tend to produce it; for it is very difficult to scrutinize narrowly those articles of the Christian faith which have really been believed and taught in the church *semper, ubique, ab omnibus*, without being struck with the conviction that divine providence has been guarding the church in her protection of such definitions or formal declaration of her faith as can really be called catholic, guarding her from asserting anything which can reasonably be called unwarranted or superstitious; and such a conviction does in itself create a presumption against any conclusion which would invalidate any single article of the original creed." I read that from the "Dissertations on Subjects Connected with the Incarnation," pages 67 and 68.

It is an old struggle, this struggle with the subject of the incarnation. We find it in the first, second, third, fourth, and fifth centuries in the forms I have mentioned; we have the same question today in the Ritschlian position, in what is known as the Ritschl School of Theology—the attempt to separate Christology from metaphysics, as the exponents of that school say. And what is the result of that endeavor? Nothing but vagueness, looseness and error in the long run, and Ritschlianism too has broken down and failed in its attempted analysis of the person of our Lord.

The question underlying all of these struggles all through and

it is the question here too, is: Was Christ divine or was He God, *divinitas* or *deitas*? There is the distinction, the distinction which is emphasized all through the specifications of the presentment, and there is the distinction which the defendant and his counsel never have considered. Christ may have been divine in the sense that I am divine, and we may say of Him that He was more divine than any man, and was therefore the safest guide, the Saviour of the world. Is that what the men meant who formed the creeds? Is that what they had in mind? Is that the mind of the church today? No, it is that Christ was God, and that is why the presentment is drawn as it is drawn. Dr. White has written on this: "Is Christ only a manifestation of the divine, or is He absolute essential deity? Is it not possible that we are witnessing an unconscious revival of the Arian heresy? A system of religion which includes in its factors, elements or leading ideas, a Jesus Christ of whatever moral supremacy, who had a human father as well as a human mother, and whose human body did not ascend into heaven, but saw corruption in some unknown grave a system which in private maintains these facts, while in public, in lectures and in books, it throws a luminous haze over them; such a system may possibly sustain or even produce individuals of great ethical beauty; but unquestionably such a system is not the Catholic Church of Christ, nor is its faith the faith that overcometh the world. And these men, who are giving a spiritualized interpretation, they, as another eminent authority has said, have had to make bricks without straw, of which no abiding city can be built. If they have led the doubting into a seeming paradise of rest, it is one unfortunately from which they may any day be expelled by the Angel of Truth, with two-edged sword; and it seems to me both right and expedient that warning of this should be given. . . ."

The creeds have been so often mentioned and so much drawn into this discussion, that it is but fair particularly to call the attention of the Court to their origin. They are not the constitution of the church. Dr. Hall spoke of that yesterday, and said that even if they were the constitution they could be amended by the vote of two general councils, but not by an individual. He did not say they were the constitution of the church. They are the charter of the church. They embrace the content of the church's faith. Each generation takes them and applies

them, but no generation denies their very essence. There is a difference between interpreting a fact and denying a fact; there is a difference between interpreting the virgin birth and denying the virgin birth, a wide difference.

The creeds were formulated as a rule of faith. The creeds were drawn from apostolic tradition as well as from Scripture. Will the defense in quoting all these verses remember that it was the church that wrote the Scripture, that it is the church which has interpreted the Scripture? Much has been made of apparent discrepancies in the Scripture. Bear in mind this, that the Scriptures were written for men who had already received the primary elements of instruction; they were not written as a divine rule of faith. The church has taken its rule of faith from apostolic tradition and from Scripture and has expressed that rule in its creeds, and these creeds she requires her ministers to accept.

And just here let us examine the statement written by the defendant which Mr. Perkins so deftly inserted in his argument or summing up yesterday.

If the defendant by his assertions meant that Christ was God, why did he not say so openly and frankly? He could have expressed this clearly. This statement of his is the very apotheosis of subtlety and indirectness. He is not so weak in expression as not to be able to express his ideas with clearness. Remember too, that the statement of the fact of the virgin birth as it appears in the creed is of the same order of value with the statement of the crucifixion. Will a man arise tomorrow in the church and say there was no crucifixion, that Christ did not suffer death upon the cross: that he did not sacrifice himself; and assert that this fact has nothing to do with the essential position of the church?

In this ingenious statement of fact the defendant says: "I assert positively the incarnation of the word of God in Jesus Christ my Lord," and yet leaves a doubt as to exactly what he means. The defendant says of Christ: "He is the same substance; not of like substance. I see in Him the perfect union with the Father;" and in reply we say it is well known that the Unitarians and certain liberals avow openly that they call Christ of one substance with the Father, and divine because of His manhood, since we are all of divine substance: thus we get the modern form of pantheism, the interpretation that Christ is there-

fore one with the Father because He perfectly exhibits the ideal of manhood. He says in Jesus the human and divine become one. That is a common saying of our Unitarian brethren ; from the point of view of the faith of its ministers that is accurate ; the writers of the Unitarian School use the same text. He says in his statement : "In Him dwelt the fullness of the Godhead bodily," meaning, in Jesus Christ existed that divinity which is in all of us. We have in that statement the position of the Unitarian school. He says : "He is in the Father, and the Father is in Him ; who-soever has seen Him hath seen the Father." He goes on : "For all the purposes of revelation to the human spirit Jesus is all-sufficient as the revelation of God to man ;" and that is a thorough-going imitation of the Ritschlian position. In reality he deprecates the impression produced on the religious consciousness by the term or assertion, the Saviour. And so it would appear here that in this statement, apparently made with an attempt at clearness, the defendant has brought himself within the lines of the Ritschlian school. In this statement there is a descent from the position of the Nicene Creed as to the virgin birth and the resurrection. This statement amounts simply to saying that for faith, that is for religious consciousness, Christ may be termed virgin born, and risen from the dead as a personal living force. They both may be asserted for faith, but the question, gentlemen, is a question of fact. Was Christ really born of a virgin, and did He really rise from the dead in the sense in which those facts are obviously and clearly stated in the creeds ? The defendant still denies these assertions, we respectfully submit. He denies them when he says that Christ was born of a human father, and that He arose from the dead only in a spiritualized sense, a spiritualized appearance "to the spiritualized apprehension of His disciples." That is not the doctrine of the church and never has been the doctrine of the church, and his assertion, "I believe in the Apostles' creed," setting it out, clause by clause in the face of this statement that he does not believe in the facts in it—that assertion is a living lie, honestly intended, earnestly meant, but nevertheless absolutely untrue.

I do not think it is necessary for me to go through this presentment and over this statement of facts, which was partially analyzed by Mr. Perkins yesterday morning ; but I ask you to

consider this one fact: The defendant states that the attributing of a miraculous birth to our Lord was the greatest misfortune that ever happened to Christianity; that our Lord was born of humble parents, and His father was a carpenter. Then I ask you to read the rest of the presentment in the light of these statements, and tell me whether that man believed that Jesus Christ was God. And, when he said that the resurrection and the virgin birth were legends for the simple folk, tell me whether he meant to assert those as primal facts of the church's faith. No. The human mind is not so obtuse as to be misled by any such sophistry as that; and all of these other passages in which no heresy could be found by the defendant's counsel, read them in the light of these statements and there is but one conclusion. The defense tacitly admits that Dr. Crapsey made these statements. The argument of the two theologians yesterday was a justification of the denial of the virgin birth, nothing else.

What is the attitude of this church towards these doctrines, and what does this church require of its ministers? It requires that they shall conform to and use the Book of Common Prayer which was set forth by the convention of 1789, and the counsel for the defense of course misunderstood me when he said that I stated that this church originated in 1789. The Book of Common Prayer was set forth and adopted by that convention, and has been prescribed ever since and ordered to be used by the constituency of the church; and it is therefore to be regarded as setting forth the position of the church. The collects, the epistles, the gospels appointed to be read on the various Sundays of the Christian year and on various holy days, they state what the position of the church is on the fundamental doctrines. I do not state them; no individual states them; the church speaks for itself.

And now let us consider the ordination vows. Which is the controlling clause in the contract expressed by these ordination vows, the contract between the minister and his church? Is it that he shall come into the church and whenever he makes up his mind that the church's teaching is wrong he shall reverse that teaching? No, it is a permanent contract, it is to continue indefinitely. The controlling clause in this contract is the vow that he shall minister the doctrine and discipline "as this church hath received the same." Let us put this whole case in a concrete statement: Suppose in any diocese in this land a man were to

come today and say to the diocesan: "Here are my ideas on some of the subjects connected with your faith; I have set them out in this statement of extracts (referring to the presentment). I do not believe that Christ was born of a virgin; I do not believe that He ever arose from the dead on the third day, but I am willing to come into your church; I am willing to read the service prescribed for the feasts of the Annunciation of the Blessed Virgin, of the Nativity of our Lord, of Easter-Day, and all the other appointed services; I am willing to administer your sacraments I am willing to sing your Te Deum and to recite to the people that these events happened; but of course I do not believe them." Gentlemen, could such a man receive ordination? The answer to that question is the answer to all of the casuistry and sophistry with which we have been deluged in this case. That is all there is of it; if such a man could not be ordained, then your decision should be easily forecasted.

The other day, as I sat here listening to all of the theology, profound and superficial, I fell to thinking of the Communion Service of the church; and there came into my mind a very beautiful passage in "Marius the Epicurean" in which Walter Pater describes a service in the early church, and in his quiet style pictures so beautifully the supreme moment of the celebration of the Eucharist, the spiritual ecstasy created by those phrases "*Sursum Corda * * * Habemus ad Dominum.*" As I listened to the argument here, I could not help translating in my mind that picture and transforming it to apply it to other conditions. I thought of a little country church on Christmas day, in the cold quiet of the winter morning, and I saw a careworn man coming there to receive from his Master consolation. Kneeling in the barren sanctuary in that dim stillness, he heard his priest recite the Communion Service, and he would hear the collect for Christmas morning: "O God, who makest us glad with the yearly remembrance of the birth of thine only Son Jesus Christ; Grant that as we joyfully receive him for our Redeemer, so we may with sure confidence behold him when he shall come to be our Judge, who liveth and reigneth with thee and the Holy Ghost, one God, world without end. *Amen.*" And the other collect: Almighty God, who hast given us thy only begotten Son to take our nature upon him, and as at this time to be born of a pure virgin; Grant that we being regenerate, and

made thy children by adoption and grace, may daily be renewed by thy Holy Spirit; through the same Lord Jesus Christ, who liveth and reigneth with thee and the same spirit ever, one God, world without end. *Amen!*" As he listened there, and the voice of his priest ran on, that child of the church would forget his cheerless surroundings; and as his spirit, transcending mere circumstance would lift itself into the court of the Most High and stand before the King in His beauty, forgetting there his care in that most holy moment of Christian life, with the echo of angel song in his ears, he could hear his priest say: "It is very meet, right, and our bounden duty, that we should at all times, and in all places, give thanks unto thee, O Lord, [Holy Father,] Almighty, Everlasting God. Because thou didst give Jesus Christ, thine only Son, to be born at this time for us; who, by the operation of the Holy Ghost, was made very man, of the substance of the Virgin Mary, his mother; and that without spot of sin, to make us all clean from sin. Therefore with Angels and Archangels, and with all the company of heaven we laud and magnify thy glorious Name....."

I think of that picture and then I think of the defense raised in this case. What a travesty on truth, what a living lie! "Lord, make men like towers;" make men like towers, strong and high, for the help of Thy people!

The theological significance of the virgin birth has been absolutely ignored in this case from the start to the end. It is assumed to be a fact which has no bearing and can have no bearing on Christian doctrine. We are told by theologians who say they do not agree with the defendant, but appreciate his position, that the virgin birth is not necessarily an essential part of the theory of the incarnation, that the bodily resurrection is not an essential part of that theory. Let us look at the history of that subject. We think at once of William Ellery Channing, the foremost Unitarian minister of the last generation, who believed that our Lord was sinless, who believed in His miracles, who believed that He rose from the dead on the third day. Point me to a single Unitarian who holds those ideas today. As Bishop Gore himself says, contrast Channing with Martineau, who took out of the theory of the incarnation, the virgin birth and bodily resurrection as essentials, and what was the result? It faded,

the whole theory of the incarnation faded away. And I am arguing apart from the question, when I make this argument, because it is not for you or for me as individuals to say what is essential or non-essential to the Catholic faith. Consider the person of our Master. Read again these articles in the presentment, and think of God as we know Him with our limited perceptions; think of the attribute which we give Him of truth, or justice of *impeccability*, of perfection and sinlessness; and then look at the man described here, the "rough, rude man of the people, * * * with undying hatred and contempt for the Roman state, * * * for law and for lawgivers;" turn from such a picture and consider what our Lord said of Himself in the Scriptures. Take His own testimony; if He spoke the truth He was God, and if He spoke not the truth, He was either mad or an impostor. Does He ever accuse Himself, He who is so just to others? Does He ever accuse Himself of sin? Does He ever show any sign of doubt or weakness? Does He ever talk about His faith in God? Nay, He speaks always of His knowledge of God. "He asked His disciples, saying, "Whom do men say that I, the Son of Man, am?" And they said: "Some say that thou art John the Baptist, some Elias; and others Jeremias, or one of the prophets. He saith unto them: "But whom say ye that I am?" And Simon Peter answered and said: Thou art the Christ the Son of the living God. And Jesus answered and said unto him, Blessed art thou." Is that the Christ which is here (in the presentment) portrayed and preached by the defendant? There is no answer.

The defendant says, if any man comes to him and asks him for salvation, what is the way to salvation, he answers him in the words of Christ. Does he use the words of Christ in describing this figure which he says is Jesus? I submit that he does not. And all of the defense is based upon the same fundamental weakness, the same fundamental ignoring of the fact that we must have a theology; that we must have a theory as to the person of Christ, we must have a theory as to the person of God; and all of the argument of the defense rests upon the ignoring of that fact, the discarding of a theology. It is certainly a remarkable state of facts, I might say in passing, when the orthodox believers find themselves charged by Mr. Shepard with being the product of modern scholarship, while the gentlemen on the other

side read the most ancient doctrine. That is certainly a new view of the situation of the conservatives and the liberals in the Christian church. They fail to realize that man-made theology may be imperfect; that abandoning the virgin birth and the bodily resurrection may be a serious matter. They assume that each man shall interpret the creed by denying or affirming the facts in it as he chooses, provided he is willing to stand up before the people and recite it: this is the vague sophism which is the weakness of the whole defense; and all of the argument is a plea in avoidance, a plea for toleration. Where is the duty of the church toward the people considered? The duty of the church is to lead men to truth, and when men cry for truth to give them truth. I say that the position of the defendant excludes the theory of a God-guided church, ignores the possibility of the working of the Holy Spirit in the church. After all, in the argument of the defense, what is this cry of tolerance, tolerance, tolerance? It is nothing but the old cry of the sophists; and when Mr. Perkins says the church drove out the sophists and has been stronger ever since, he again argues our exact position.

One gentleman comes in here and tells us that we should abandon the position of the Protestant Episcopal Church, because the men who originally put the creed into words had erred in the order of its phraseology or grammatical construction. What sort of theology is that? Is that what we are living on? Are we reduced in the Catholic faith to such hair-splitting that by the discovery of an error in the form of a sentence we are to abandon the whole theory of the incarnation? Are we not living in a God-guided church, in which there is a fair presumption that the church, as Bishop Gore says, is the heir of the Holy Spirit?

A broad church is a great church, a catholic church, a church which makes allowances for idiosyncrasies of temperament, which appreciates the varying value of the symbol for different men, and allows men great liberty in the conduct of her services, provided they do not deny the fundamental verities. But the broad church is the church which has an irreducible minimum of faith, which is its priceless treasure. Mr. Seth Low with his figure of the crystal, a figure somewhat antiquated, to be sure, is quite apart from this case. Who of us

claims that the Christian church or its inheritance of truth is a crystal? But who of us does not claim that there is an irreducible minimum of the content of the faith, and that this minimum is the underlying stratum of all Christian theory? That is our contention, and that is the contention that discredits the entire position of the defense in this case.

Are we going to listen to this cry of heresy trial, heresy trial, and fail to do our duty; or are we going to look straight in the face, the fact that the Protestant Episcopal Church demands of man obedience, that he shall say that he believes the articles of the faith as contained in the Apostles' Creed? Are we going to remember that the Book of Common Prayer commands that the presbyter in the presence of the dying, "*shall rehearse the Articles of the Faith saying thus: 'Dost thou believe in God the Father Almighty, Maker of heaven and earth? And in Jesus Christ his only begotten Son, our Lord? And that he was conceived by the Holy Ghost, born of the Virgin Mary: that he suffered....and also did rise again the third day;'*" and that, after asking the dying person those questions categorically, then "*the sick person shall answer, 'All this I stedfastly believe.'*" Are we going to forget that? I trust that when the gentlemen of the defense have forgotten the acute phases of this case, they will turn their minds to one great conception, which far be it from me to demonstrate, and think for a little of the greatest conception possible to the human mind, the abstract conception of what is Truth. If they will only ponder upon the essence of Truth, her immutability, her unalterable and eternal standards—Truth, that unvarying, sublime attribute which men of all nations and of all religious beliefs in all ages have given to their God,—they will then see that a man who stands up and says: I believe that Christ "was conceived by the Holy Ghost, born of the Virgin Mary," when he does not believe it, is not telling the truth, whatever his intentions may be; and that private judgments in matters of religion are not necessarily the eternal standards of everlasting truth. If we were to fail to meet this situation, we should be the victims of a timorous theology and the exponents of a cowardly church; we should betray the trust—the trust of all the people of all the church in all the world.

And now let me summarize here very briefly what there is of this case. I submit that the Christ given us by the defendant is not the Lord and Saviour which God gave to the world, that his Jesus is but a meagre figure, and that the gospel as he has it is but a barren gospel. If this man has committed an error and made a mistake in his teaching, he may be given an opportunity to correct it if the Court should see fit to convict him, as I earnestly hope that it will; because to me there is no Dr. Crapsey, and no bishop and no standing committee, and no council; there is purely and simply an abstract question of honesty in the sight of God, honesty in the sight of God's people. Take away the bodily resurrection and what is the use of retaining the ascension? Why retain any theory of mediation or intercession? It all goes. Why should all these be swept away simply because one man in the exercise of his conscience finds that he cannot longer conform to a position which he has sworn to support? If the church is to grow broader, it will never grow broader under the teachings of reactionaries. These men who have cried to us for two days of a narrow church! what are they preaching to us but a narrow church, a church of the radical, a church that does not permit belief in miracles; which denies the miraculous, which denies the possibility of the virgin birth, and denies the possibility of a bodily resurrection? There has always been confusion in the popular mind between liberalism and radicalism, and there always will be; and radicalism is what we have in the argument of the defense. In the church preached by the defendant is there any room for the mood of suspended judgment? Is there any room in such a church for a man to say that perhaps there was a virgin birth or an actual resurrection? No, for the defendant teaches that there was no virgin birth and no bodily resurrection. Where in such a church will you find a place for the great body of the faithful? And in passing I would recall to the mind of the Court an old passage from that quaint old figure, Sir Thomas Browne, of Norwich, where he said: "I bless myself and am thankful I lived not in the days of miracles; that I never saw Christ nor His disciples. I would not have been one of those Israelites that passed the Red Sea, nor one of Christ's patients, on whom He wrought His wonders; for then had my faith been thrust upon me, nor should I enjoy that greater blessing pronounced to all that

believe and saw not." Where in the church of the defendant is there a place for that type of man? Nowhere, nowhere; for his is the church of the radical, the church of the reactionary, not the church of sympathetic liberality or sober conservatism; and when we hear this cry of heresy trial, heresy trial, which makes us heartsick, which has been reiterated and reiterated throughout this case with a view to obscuring the plain question of honesty—not honesty of intention, but honesty judged by the eternal standards—let us not dread that accusation; let us not be afraid. Remember the phrase that Athanasius used, if I may refer to him once more, when he said, speaking of the persecutions of the Christians by the Arians—"Nebicula est, transibit." "It is but a little cloud, it will pass away. So will this pass. It is but a little cloud. It is but the fancy of one individual against the faith. And it should pass away. Truth cannot be two-faced. The church cannot say to a dying man, "Do you believe in the virgin birth, and that Christ rose from the dead on the third day?" and insist upon his saying it, and at the same time have a minister who will preach the gospel in the morning, on the Feast of the Annunciation and in the evening repudiate it and say it is nonsense, that it is all incredible. It is the old simple question of individual interpretation, even by the wisest of men, against a catholic, God-given, God-guided faith.

Mr. Shepard properly said this morning that the church was strong enough to administer its government. We are not weakly to turn aside. And when he said that there would be many who would pray for the conviction of this defendant—if that was the implication—he did some of us a very great injustice....

By MR. PERKINS: I think, if you will let me say, it was just the reverse of that; there were many who would pray for the acquittal of the defendant.

By MR. O'BRIAN: I understood him to say also that there would be many other prayers which would go up from this side, and the implication was there.

By MR. PERKINS: Possibly you are right.

By MR. O'BRIAN: We came here in the performance of a duty, and whatever the result, we go away with a high

heart; all that we ask is justice and a fair consideration of this case. There is not one man associated with the complainants who has in his heart a desire that this man should be convicted; there is not one of us who thinks at all of this man as a factor in the situation. We are all thinking of only the one question, of whether our church is to be a lying church, its profession a mocking profession, its stately ritual a mass of meaningless phrases, its poignant prayers a collection of vague and aimless petitions addressed to a vague deity. I ask the Court to remember these things, and to remember our position in regard to them, to remember that we do not wish our church reduced to this, that we ask for equity, no matter how hard the blow may fall, that we ask that your duty be a duty to the thousands and thousands in the church, and not to any one individual or set of individuals. As I said some days ago, if the church's doctrines are all wrong they will not stand, they will fall. But if the church is to prevail against the gates of hell, it must be the church of truth, not the church of double-faced sophistry and casuistry; and the people of the church look to you to maintain its position as a guide, knowing that we profess a faith fearless and unafraid, that we are strong in heart to meet the emergency of individual opinion, sympathetic with all who seek the truth. And we shall every one of us pray for this Court, not that you shall decide this question one way or the other; but that to you may be given the clearness of vision which is given to those who dwell among the everlasting hills. Whatever the result of this case may be, we put it before you dispassionately, only begging you to remember that the church must be in all things the Church of Truth. Men cannot affect Truth or change its eternal attributes, for, "The truth is great, and shall prevail—When none cares whether it prevail or not."

By MR. NORTH: There is nothing for the Court to do except to hand down their decision when they are ready to render it. Is that your view, gentlemen?

By MR. PERKINS: That is my view.

By MR. O'BRIAN: I wish to thank the Court for the kindness and consideration it has shown us during this trial, in the performance of what has been for us a most sad and painful duty.

By MR. PERKINS: May I also add a word of thanks to the Court for permitting us to present our case in so fair a manner, and for the uniform kindness and courtesy shown us during the trial.

By THE PRESIDENT: As these proceedings began with Holy Communion, they should close with Benediction.

The President then solemnly pronounced the Benediction.

DECISION OF THE COURT.

Ecclesiastical Court, Diocese of Western New York. In the matter of the Rev. Algernon S. Crapsey:

The undersigned members of the Ecclesiastical Court of this diocese render the following report and decision with respect to the presentment made February 13th, 1906, by the standing committee against the Rev. Algernon S. Crapsey, a presbyter of this diocese:

The court duly convened at the parish house of St. James's Church in Batavia, N. Y., on Tuesday, April 17th, 1906, attended by Salford E. North, counsellor at law, who had been duly designated by the bishop to act as assessor to the court. Upon the application of counsel for the accused an adjournment was had until April 25th, 1906. Upon the last mentioned date, all parties consenting thereto, the court convened in the court house in Batavia, where all subsequent proceedings were had. The standing committee was represented by John Lord O'Brian, John H. Stiness and Franklin D. Locke, counsellors at law. The accused appeared in person and by J. Breck Perkins and Edward M. Shepard, his attorneys. The trial continued from day to day until Saturday, April 28th, 1906, when the case was submitted for final decision. The members of the court again convened at the parish house in Batavia, May 9th, 1906, when, after due deliberation, the following decision was made by the members of the court whose names appear signed hereto:

First—St. Andrew's Church, in the city of Rochester, is an organized parish church of the Diocese of Western New York, and the Rev. Algernon S. Crapsey is now, and at all the times hereinafter mentioned was, a presbyter of the Protestant Episcopal Church in the United States of America and the rector of the said St. Andrew's Church.

Second—That during the year 1905 said Rev. Algernon S. Crapsey, referred to in this decision as the respondent, caused to be published in book form, under the title, "Religion and Politics," a series of sermons theretofore delivered by him in his

official capacity as the rector of said St. Andrew's Church, and said book was published and caused to be sold and circulated by the said respondent.

Third—That contained in said book and prepared as a part thereof by the said respondent are the matters and statements set forth in said presentment and therein appearing as quotations from said book, numbered in fifteen separate paragraphs or extracts, all of which said paragraphs and extracts are correct and literal quotations from the said book so prepared and written by the respondent.

Fourth—That on or about December 31st, 1905, the respondent delivered a sermon in the course of which he used and employed in substance the language imputed to him in specification 2 of charge 1 of the presentment.

We make and find the following conclusions with respect to the said matters and things written and published by said respondent, and we here set forth for convenient reference that portion of the presentment referred to and herein denominated "doctrines denied," being part of specification 1, charge 1.

It being intended by said language, words and terms to express the presbyter's disbelief in and to impugn and to deny the following doctrines, to wit:

"1. The doctrine that our Lord Jesus Christ is God, the Saviour of the world, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

"2. The doctrine that our Lord Jesus Christ was conceived by the Holy Ghost, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

"3. The doctrine of the virgin birth of our Lord Jesus Christ, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

"4. The doctrine of the resurrection of our Blessed Lord and Saviour as contained and enunciated in the Apostles' Creed

and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America.

"5. The doctrine of the Blessed Trinity, as contained and enunciated in the Apostles' Creed and the Nicene Creed, and as set forth, indicated, and declared in the Book of Common Prayer of the Protestant Episcopal Church in the United States of America."

We find the respondent guilty of the charges set forth in the presentment to the extent now here stated:

(1) As to the said "doctrines denied—Presentment, charge 1, specification 1,—that by his writings contained in said book, "Religion and Politics," the respondent impugns, if he does not express disbelief in and denial of, the doctrines set forth in paragraphs numbered 1 and 5.

(2) That in the said writings contained in the book, "Religion and Politics," and quoted in the presentment, said respondent expresses his disbelief in, and impugns and denies, the doctrines referred to and set forth in paragraphs numbered 2, 3, and 4 of the matters herein referred to as "doctrines denied." And as to specification 2 of charge 1, that by the language contained in a certain sermon delivered by the said accused on or about December 31st, 1905, from which quotations appear in specification 2, charge 1, the following conclusion is made and found:

(1) That the accused impugns, if he does not assert his disbelief in and denial of, the doctrines set forth in paragraphs 1 and 4 of said specification 2.

(2) That by the use of the language from said sermon in said specification 2 the accused expresses his disbelief in, and impugns and denies, the doctrines set forth in the paragraphs numbered 2 and 3 in said specification 2.

Specification 1, charge 2,—that the accused did, by his said utterances contained in said book and sermons, and quoted as aforesaid in the presentment, violate and break the following declarations made by him at the time of his ordination:

"1. I do believe the Holy Scriptures of the Old and New Testament to be the Word of God, and to contain all things necessary to salvation; and I do solemnly engage to conform to

the doctrine, discipline, and worship of the Protestant Episcopal Church in the United States of America.

"2. Will you then give your faithful diligence always so to minister the Doctrine and Sacraments, and the Discipline of Christ, as the Lord hath commanded, and as this Church hath received the same, according to the Commandments of God, so that you may teach the people committed to your care and charge with all diligence to keep and observe the same?

"Answer: I will so do, by the help of the Lord.

"3. Will you be ready, with all faithful diligence, to banish and drive away from the Church all erroneous and strange doctrines contrary to God's Word; and to use both public and private monitions and exhortations, as well to the sick as to the whole, within your cures, as need shall be given?

"Answer: I will, the Lord being my helper."

The application made by counsel conducting the prosecution for leave to amend the presentment so as to include the year 1904 within the period covered by the allegations is denied.

In accordance with section 18 of the ordinances of the Ecclesiastical Court of this diocese, we state that in our opinion sentence should be pronounced as follows: That the respondent be suspended from exercising the functions of a minister of this Church until such time as he shall satisfy the ecclesiastical authority of the diocese that his belief and teaching conform to the doctrines of the Apostles' Creed and the Nicene Creed as this Church hath received the same. However, we express the earnest hope and desire that the respondent may see his way clear, during the thirty days which, under the canons of the Church, must intervene before sentence can be pronounced, to fully satisfy the ecclesiastical authority of such conformity on his part.

W. C. ROBERTS, President.

C. H. BOYNTON, Clerk.

G. S. BURROWS.

JOHN MILLS GILBERT.

MINORITY REPORT.

The undersigned, a member of the ecclesiastical court referred to in the foregoing decision, makes and files the following separate decision and report:

Whereas, the respondent constantly affirms his acceptance of all the articles of the Christian faith as contained in the Apostles' Creed; and,

Whereas, this creed declares the sacred mysteries of the incarnation of our Lord and Saviour Jesus Christ, and of the most Holy Trinity, and a belief in the resurrection of the body, concerning which eternal verities of the Christian religion the said respondent is called in question, I find from his own statements and the evidence submitted for his defense that his error consists rather in presuming to define what God has not been pleased to reveal, and to interpret those doctrines in a manner not generally received by the Church, rather than in a denial and rejection of their truth and authority.

FRANCIS S. DUNHAM.