

# APPEAL

BY THE

Rev'd Algernon S. Crapsey, S.T.D.

TO THE

COURT OF REVIEW

OF THE

PROTESTANT EPISCOPAL CHURCH

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## Prefatory Statement.

The Rev. Algernon Sidney Crapsey, S. T. D., is, and has been since the year 1879, rector of the Protestant Episcopal Church of St. Andrew at the City of Rochester, in the Diocese of Western New York. He was ordained a presbyter in 1873. St. Andrew's includes 342 families and 614 communicants. \* In 1904 Dr. Crapsey established a third and evening service, in part devotional, but especially and chiefly intended for preaching, such service to be in addition to the regular morning service and the regular evening or vesper service held earlier in the afternoon. In 1904 and 1905 he preached at such second evening service a series of sermons, some of which touched upon the Virgin Birth and Resurrection of Our Lord. There were criticisms upon their orthodoxy which came to the attention of the Rt. Rev. William D. Walker, D. D., Bishop of Western New York; and he appointed a Committee of Investigation under sect. III of the Ordinances of the Ecclesiastical Court, adopted pursuant to Canon 2 of Title III of the canons of that diocese. Such sect. III provided that:

“ Whenever from public rumor, or otherwise, the Bishop shall determine that there is probable cause to believe that a minister of this diocese has been guilty of an offense for which he is liable to be tried, and that the interests of the church require an investigation, it shall be his duty to appoint \* \* \* five persons \* \* \* to make such investigation”; that such committee should, “ if in their opinion there is sufficient

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\* Report of the Diocese of Western New York (p. 131 and the table of statistics) received in evidence at page 120 of the Record.

“ground therefor, make \* \* \* presentment of the minister for trial”; but that “if in their opinion there is no cause for such presentment, they shall certify to the Bishop accordingly.”

Such Committee's labors continued from July 19, 1905, to November 11, 1905, when it reported to the Bishop that there was no sufficient ground for presentment.\* Nevertheless, the Standing Committee of the diocese submitted a presentment against Dr. Crapsey which was approved by the Bishop on March 3, 1906, being the first Thursday in Lent; and Dr. Crapsey was called upon to answer it at a session of the Diocesan Court to be held at the village of Batavia on April 17th, 1906, the Tuesday next after Easter. His assistant, Mr. Alexander, had left St. Andrew's the preceding January.† So that he was required, single-handed, to meet all Lenten duties of his parish, and, while so engaged, to prepare his defense to grave and far-reaching charges. When the trial was called, Dr. Crapsey's counsel asked for a few weeks to make fit preparation; but the Court allowed only eight days. Upon the adjourned day, April 24th, 1906, the counsel pointed out that all the members of the Court had been appointed by the prosecutors, the Standing Committee or the Bishop, and asked an adjournment of three weeks until after the meeting of the Diocesan Council on May 15th, 1906, at which a new court would or could be appointed. This, they said, would avoid a trial before a court entirely named by one side of the controversy. They also claimed that, to force a trial before a court so named by the prosecution, was contrary to the course of the common law which the canon of Western New York required should, as far as practicable, be followed on the trial. This application was denied.

There were two charges, and two only, made in the presentment. The first was of a violation of sub-

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\* Record, pp. 116, 119,

† Record, p. 66.



section (b) of section I of Canon 23, which provides that:

“A bishop, priest or deacon of this Church  
“shall be liable to presentment and trial for  
“the following offenses, viz.:

“(b) Holding and teaching publicly or  
“privately and advisedly any doctrine  
“contrary to that held by this Church.”

Canon 23 was adopted at the General Convention of 1904, and took effect on January 1, 1905.

Under this charge there were two specifications. The first was that:

“At divers times during the years 1904 and  
“1905 the said presbyter did openly, *ad-  
“visedly*, 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  
“languages, words and terms”—there being  
“then quoted fifteen passages—it being *intended* by said language, words and terms to  
“express the presbyter’s disbelief in and to  
“impugn and to deny \* \* \*

“(1) The doctrine that our Lord Jesus  
“Christ is God, the Saviour of the  
“world \* \* \*;

“(2) The doctrine that our Lord Jesus  
“Christ was conceived by the Holy  
“Ghost \* \* \*;

“(3) The doctrine of the Virgin birth of  
“our Lord Jesus Christ \* \* \*;

“(4) The doctrine of the resurrection of  
our blessed Lord and Saviour \* \* \*;

“(5) The doctrine of the Blessed Trinity.”

The second specification under the first charge was that Dr. Crapsey did on or about December 31, 1905, openly, publicly and privately declare and teach doctrines contrary to those held by the Church,

“ by the delivery of a sermon \* \* \* in  
 “ the course of which, among others, he made  
 “ in substance the following distinct state-  
 “ ments:

- “ (1) Jesus was born of parents belong-  
 ing 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  
 predicated a miraculous birth of  
 Jesus was to be regarded as one of  
 the greatest misfortunes that had  
 ever befallen mankind.”

And that by such language Dr. Crapsey “*intended*” to express his disbelief in and to impugn and deny the doctrines:

- (1) “That our Lord Jesus Christ is God, the  
 Saviour of the world;”
- (2) That He “was conceived by the Holy Ghost;”
- (3) Of the “Virgin birth;” and
- (4) Of “the Blessed Trinity.”

The word “advisedly” used in the canonical definition of the offense was not used in this specification, the pleader, perhaps, considering the assertion of *intention* as an equivalent.

The second charge was of the violation of subdivision (f) of Sect. I of Canon 23, which provides that

“ A bishop, priest or deacon \* \* \* shall  
 “ be liable to presentment and trial for \* \* \*

“ (f) Any act which involves a viola-  
 “ tion of his ordination vows.”

Under the second charge there were two specifications. The first was that by his utterances and conduct set forth in the first charge and its specifications—that is to say, by his *advisedly* and *intentionally* impugning and denying doctrines of the Church, Dr. Crapsey did “violate and break” his ordination vows;

- (1) Of belief that the Holy Scriptures are the word of God and contain all things necessary to salvation, and that he would “conform to the doctrine, discipline and worship” of the church.
- (2) That he would give faithful diligence always so to minister doctrine, sacraments and discipline “as the Lord hath commanded and as this Church hath received the same” and teach the people committed to his charge “to keep and observe the same.”
- (3) That he would “be ready with all faithful diligence to banish and drive away from the Church all erroneous and strange doctrines contrary to God’s word.”

The second specification under the second charge was that—

- “Upon many occasions during the years 1904 and 1905 the said presbyter did publicly use the liturgy of the Church \* \* \* and did minister to many people the sacraments of the Church, and \* \* \* that by his conduct in so doing taken in connection with his public utterances” quoted under the first charge he broke his further ordination vows—
- (4) To be “diligent to frame and fashion himself and his family according to the doctrine of Christ,” and to make himself and them, as much as in him lay “wholesome examples and patterns to the flock of Christ.”

- (5) To "maintain and set forward \* \* \* quietness, fear and love among all Christian people."

Dr. Crapsey fully and formally answered the presentment. He quoted in his answer his further ordination vows that he was—

"determined out of the said Scriptures to instruct the people committed to" his "charge and to teach nothing, as necessary to eternal salvation, but that which" *he* "should be persuaded may be concluded and proved by the Scriptures;"

and that he would be

"diligent in prayers and in reading the Holy Scriptures, and in such studies as help to the knowledge of the same."

The answer admitted that he had delivered at St. Andrew's Church lectures containing the passages quoted under the first specification of the first charge, but denied the correctness of the quotations under the second specification from his sermon of December 31, 1905.

The preaching of that sermon was the only fact alleged to have happened after the report of the Investigation Committee against prosecution and before the Standing Committee made this presentment. The only proof that such sermon contained the criticised statements was the evidence of Rev. Mr. Alexander. Dr. Crapsey's counsel claimed that it was an unfit thing for the Diocesan Court to base any finding of guilt upon Mr. Alexander's testimony. He was Dr. Crapsey's assistant, and from the chancel heard the sermon of Sunday evening, December 31, 1905. He made a written memorandum on his return home which he preserved. When he was asked whether he did not make the memorandum "with the thought that you (he) might testify to it against" his pastor and chief he first declined to answer, and then being pressed he said, he was not in court "to prove a case for"

Dr. Crapsey, "or for anybody, or especially to be used by the defense"; and being further pressed, he said, "I have no recollection of having made the statement for that purpose," and that that was the only answer he could give. He disapproved, so he said, Dr. Crapsey's sermons printed in the book "Religion and Politics;" but he admitted that after he had heard them, instead of resigning he had asked that his salary as curate be increased. This was refused. He was asked whether, when the Investigation Committee was considering Dr. Crapsey's sermons, and there was doubt whether he might not be prosecuted, he did not ask of vestrymen of St. Andrew's Church their support for the rectorship, if Dr. Crapsey were removed; and he first replied, "I wouldn't answer such a question." Then, being pressed with 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. Andrew's Church to have the position from which Dr. Crapsey might be removed?"

he answered, "No, I wouldn't say so," and, being further pressed, he said, "Of course, those matters I don't think necessary to discuss."\* And in his testimony there is much else of the same kind. Dr. Crapsey in January, 1906, requested and received Mr. Alexander's resignation. It was solely by a witness making such an exhibition of his own imperfect sense of honor that the alleged statements of the sermon of December 31, 1905, were sought to be proved.

There attended the trial witnesses to prove that in the understanding of the Church Dr. Crapsey's statements of doctrine were not unorthodox but within the fair liberty the Church allowed her clergy. From among them were called:

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\* Mr. Alexander's testimony, at page 64 of the Record.

- Rev. Dr. Joseph A. Leighton, Professor of Theology and Chaplain at Hobart College.
- Rev. Dr. John P. Peters, Rector of St. Michael's Church, New York, formerly Professor of Old Testament Literature and Languages in the Protestant Episcopal Divinity School in Philadelphia, and a well known author on theological subjects.
- Rev. Dr. Elwood Worcester, Rector of Immanuel's Church, Boston, Mass.
- Rev. Frank H. Nelson, Rector of Christ Church, Cincinnati, Ohio.
- Rev. Dr. Charles H. Babcock, lately Rector of Christ Church, Providence, R. I.
- Rev. J. Howard Melish, Rector of Holy Trinity Church, Brooklyn, N. Y.
- Rev. Alexis Stein, Rector of Christ Church, Fitchburg, Mass.
- Rev. John W. Sutor, Rector of the Church of the Epiphany, Worcester, Mass.
- Rev. Mr. Hoffman, Rector of Christ Church, Hornellsville, N. Y.
- Rev. Wilfred L. Hoopes, of Cambridge, Mass.

The Court having refused the testimony of these clergymen, Dr. Crapsey called no other witnesses.

The decision was rendered by four members of the Court. The Rev. Dr. Dunham dissented. He declared that Dr. Crapsey had constantly affirmed his acceptance of all the articles of the Christian faith as contained in the Apostles' Creed, and that his error consisted "rather in presuming to define what God has not been pleased to reveal" and in interpreting the doctrines of the incarnation and resurrection "in a manner not generally received by the Church, rather than in a denial and rejection of their truth and authority."

The points and findings of the majority decision were these, and these only:

- (1) That Dr. Crapsey was a presbyter and rector of St. Andrew's Church.
- (2) That he had in 1905 "published and caused to be sold and circulated in book form under

the title 'Religion and Politics,' a series of sermons theretofore delivered by him in his official capacity as rector of St. Andrew's."

- (3) That such book contained the fifteen passages quoted in the presentment.
- (4) That in his sermon of December 31, 1905, he had used the language imputed to him by the presentment.

No other facts were found. The presentment had not charged, and the Diocesan Court did not decide, that Dr. Crapsey was insincere in his preaching or his book, or that it did not represent conscientious study, or that he did not believe that his spiritual interpretation of the articles of its creeds as to the Incarnation of our Lord and His Resurrection were true and permitted by the Church, or that the Bishop or anyone else had remonstrated with him or sought to convince him of error. The presentment did charge, but the Diocesan Court refused to decide, that he had *advisedly* or intentionally impugned any doctrine of the Church. The decision in effect exonerated Dr. Crapsey from doing any such thing *advisedly* or intentionally.

The conclusions of the Diocesan Court from such four facts, and from them only, were that Dr. Crapsey was guilty of the charges set forth in the presentment but only "to the extent now here" stated:

[Charge I. *Specifications 1 and 2.*]

- (a) "That by his *writings* contained in said book " 'Religion and Politics,' " he "impugns, " *if he does not* express disbelief in and denial " of the doctrines set forth in paragraphs " numbered 1 and 5," that is to say, the " doctrine that "Our Lord Jesus Christ is " God, the Saviour of the world," and the doctrine " of the Blessed Trinity."
- (b) "That in the said *writings contained in the* " *book* \* \* \* said respondent expresses " his disbelief in *and* impugns and denies



"the doctrines \* \* \* numbered 2, 3  
 "and 4," that is to say, "the doctrine that  
 "Our Lord Jesus Christ was conceived by  
 "the Holy Ghost," "the doctrine of the  
 "Virgin Birth of Our Lord Jesus Christ"  
 "and "the doctrine of the Resurrection  
 "of Our Blessed Lord and Saviour."

- (c) That by the quoted language contained in the sermon of December 31, 1905, Dr. Crapsey "impugns *if he does not* assert his "disbelief in and denial *of* the doctrines " \* \* \* 1 and 4," that is to say, the doctrine that "Our Lord Jesus Christ is "God the Saviour of the world," and "the "doctrine of His Resurrection."
- (d) That "by the use of the language from said "sermon " \* \* \* "the accused expresses "his disbelief in and impugns and denies "the doctrines \* \* \* 2 and 3," that is to say, the doctrines of the Conception by the Holy Ghost and of the Virgin Birth.

There was neither finding nor conclusion that Dr. Crapsey had *advisedly* impugned or denied any doctrine of the Church or that he had *intended* so to do. He was, by the decision, exonerated from the charge of the presentment that he had done so.

The following was the conclusion with respect to

*Charge II, Specification 1.*

- (e) "That the accused did, by his said *utterances* "contained in said *book and sermons* \* \* \* "violate and break" his ordination vows
- (1) of belief that the Holy Scriptures were the word of God and contained all things necessary to salvation, and to conform to the doctrine, discipline and worship of the Church;
- (2) To "minister the doctrine, sacraments



“ and discipline of Christ as the  
 “ Lord hath commanded and as  
 “ this Church hath received the  
 “ same according to the Command-  
 “ ments of God; ” and

- (3) “ To banish and drive away from the  
 “ Church all erroneous and strange  
 “ doctrines contrary to God’s  
 “ word.”

It will be noticed that Charge I was sustained solely on the ground of the publication in 1905 of the book “ Religion and Politics,” and not on the ground of the preaching of the sermons. The Diocesan Court perceived that, as the canon for violation of which the charge was brought, was not in force until January 1, 1905, and as it did not appear that any of the sermons to which there was objection had been preached after that date, the charge could not be sustained upon the sermons. The court seemed, however, to forget that Charge I was not for *publishing a book* but solely for heretical teaching “ *by the delivery of the sermons.*” Dr. Crapsey’s counsel suppose that the decision upon Charge I is entirely void as a decision of something not charged—of something not, therefore, within the jurisdiction of the court.

Charge II is sustained upon Dr. Crapsey’s “ *utterances* contained in said book and sermons.” No “ *utterance* ” was proved in 1905 after the canon alleged to be violated was in force except the sermon of December 31, 1905, unless the publication of the book be deemed an “ *utterance.*”

Specification 2 of Charge II—that which charged Dr. Crapsey with violation of his vows to fitly frame and fashion himself and his family and to maintain and set forward quietness, peace and love among all Christian people, was unanimously rejected by the Diocesan Court. Upon the summing up, the counsel for the prosecution themselves paid weighty tribute to his character, which, Mr. Locke

said, \* "so far as his daily life is concerned, is of the highest."

The canon law of Western New York † required the Court in its decision to state the "sentence which in their opinion ought to be pronounced," and that the sentence when pronounced by the Bishop should be one "not exceeding in severity that specified by the opinion of the Court."

The decision, in obedience or supposed obedience to this canon, prescribed, as punishment for the offense thus adjudged against him, that Dr. Crapsey be

"suspended from exercising the functions of  
"a minister of this Church, until such time  
"as he shall satisfy the ecclesiastical author-  
"ity 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."

The sentence remits, therefore, to another tribunal, the determination whether in the future Dr. Crapsey shall be orthodox. Such other tribunal must be satisfied not only as to his sermons, publication and other teaching, but as to the state of his conscience and intellect. It is to be so satisfied not only as to the doctrines of the Virgin Birth and Resurrection, with which this case is concerned, but with all the doctrines of the two great creeds of the Church.

The identification of the "ecclesiastical authority" to which Dr. Crapsey is bidden to submit proof of his belief and teaching, is left in some doubt at least. Title Seventh, ‡ sect. III of the Constitu-

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\* Proceedings at Batavia, including Addresses of Counsel, privately printed, page 129.

† Ordinances, Sects. XVIII and XXII.

‡ This section seems, according to a note to this canon as printed in the Proceedings of the 68th Annual Council of the Western Diocese of New York, to have been taken over from resolutions and canons of the National Church, adopted in 1787, 1789, 1795, 1803, 1808, 1834 and 1840."

tion of the Diocese of Western New York provides that

The Standing Committee shall be the  
 “ Ecclesiastical Authority in all cases pro-  
 “ vided for by the General Constitution and  
 “ Canons of the Church and shall exercise all  
 “ other powers confided in them thereby or by  
 “ the Council of the Diocese.”

The national constitution and canons of the Church do not state—but they seem to imply \*—that, unless otherwise provided by the canons of the diocese, the Bishop is the ecclesiastical authority, except that, when there is no bishop, or upon his requirement, or when the bishop is disabled, the Standing Committee may be such authority.

The Standing Committee having found the presentment it would seem that Dr. Crapsey's sentence may be to suffer suspension until he shall satisfy his prosecutors that upon all doctrines of the creeds he is orthodox in both belief and teaching. No canon, national or diocesan, seems to give to the Standing Committee of Western New York any jurisdiction over doctrinal matters. If the bishop be and act as the ecclesiastical authority, then such doctrinal authority is sought by the decision to be vested in him. But neither the constitution nor canons, national or diocesan, give the Bishop of Western New York any such jurisdiction.

The national canons provide † that,

“ Whenever the penalty of suspension shall  
 “ be inflicted \* \* \* the sentence shall  
 “ specify on what terms or conditions, *and at*  
 “ *what time*, the penalty shall cease.”

The canons of Western New York provide ‡

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\* Const., Art. IV ; Canons: No. 12, Sect. V ; No. 15, Sect. V, Subdiv. vi ; No. 49, Sect. III.

† No. 35, Sect. I.

‡ Ordinances, Sect. XIX, made part of the canons under Title Third, Canon Two, Sect. I.

that an ecclesiastical trial

“ shall be conducted according to the principles of the Common Law as administered in this State.”

Dr. Crapsey has by appeal from the judgment against him brought it before the Court of Review for the Second Department, which includes all the five dioceses of New York and two dioceses of New Jersey.

## Court of Review for the Second Department, October 19, 1906.

### PRESENT:

The Right Reverend John Scarborough,  
D. D., Bishop of New Jersey.

The Reverend William R. Huntington, D. D.,  
Rector of Grace Church, New York City.

The Reverend Alfred B. Baker, D. D., Rector  
of Trinity Church, Princeton, New Jersey.

The Very Reverend John Robert Moses  
M. A., Dean of the Cathedral of the Incarn-  
ation at Garden City, Long Island.

The Honorable Charles Andrews, lately Chief  
Judge of the Court of Appeals of the State  
of New York.

The Honorable Frederic Adams, Judge of the  
Circuit Court, of New Jersey.

The Honorable James Parker, of Perth Am-  
boy, New Jersey.

### MR. SHEPARD'S ARGUMENT.

#### MAY IT PLEASE THE COURT:

The cause which you are now to hear calls for the first act of justice to be done by any Court of Review of our Church. To no one of the courts first established in 1904 for the nine districts into which the Dioceses and Missionary Districts were then divided, has an appeal yet been brought, so far as we have learned, save only this one. Apart from its own questions, our cause gains, therefore, significance and dignity. Upon Dr. Crapsey's appeal will be exhibited first and most

conspicuously the standard and method and the measure of impartiality in judicial administration under the national auspices of the American Church.

It will, I am sure, be a satisfaction and, perhaps, a relief to the Court to know at the outset that neither in the presentment nor in the decision of the Diocesan Court from which Dr. Crapsey appeals, is there any imputation upon his honesty or sincerity. The tributes paid at Batavia by the prosecution to Dr. Crapsey's personal character would of themselves have negatived such an accusation had it been made. But no such accusation was made. Whatever Dr. Crapsey preached or published—whether it were right or wrong, orthodox or heterodox—there was and is no suggestion that it did not speak his own honest mind and conscience. Indeed, the very ground of the accusation against him is that he did speak out and did publish. If his opinions were heterodox and had been expressed only in conversation with his friends, this cause would not have arisen. It is often said, and with a force well nigh overwhelming and which, for one, I thoroughly concede, that it is an unfit thing that a priest of this Church or any minister of Christ's gospel, by using the prayers or creeds or formularies of the Church, should affirm, or seem to the people to whom he ministers to affirm, something that he does not himself believe. But that question, I thank God, is not in this case. If Dr. Crapsey has done wrong, you are bound by the terms of the record before you to assume and find that it was done honestly and sincerely.

It certainly was done openly, explicitly and courageously. There has been neither conceal-

ment nor evasion on his part nor any such thing. There was nothing even in the presentment which could be construed to the contrary of Dr. Crapsey's sincerity except only the vague second specification of the second charge, where it was said of him that he violated his ordination vow to frame and fashion himself according to the doctrine of Christ and to be a wholesome example and patron to the flock of Christ. But the Diocesan Court by an unanimous vote acquitted Dr. Crapsey of that charge; and it was hardly worthy the character of the Standing Committee ever to have made it. And from so much of the decision of the Diocesan Court the prosecution has taken no appeal. So that, without the possibility of dispute, the cause before you is free from so painful a question as one of sincerity or honesty.

It will further, I am sure, relieve the Court to know at the outset, that, although the presentment accused Dr. Crapsey of "advisedly" and "intentionally" denying or impugning the doctrines of the Church, the Diocesan Court, as I shall later and in more detail point out to you, unanimously exonerated Dr. Crapsey from any intention to impugn or deny any doctrine of the Church and from having done so advisedly. That he did in fact by his sermons and book impugn and deny such doctrines was decided by the court. But that, of course—and this I shall later and fully argue—is an utterly different thing from such denial or impugnement made intentionally and advisedly. The cause, Right Reverend President, comes, therefore, before you and your associates relieved of personal imputations upon Dr. Crapsey.

And may I ask you, at the threshold of my argument to lay aside, if you have formed it, any no-

tion that we shall ask in Dr. Crapsey's behalf for a present determination that the doctrines of the Virgin Birth and Resurrection of Our Lord were truly and strictly understood by him, or that in the sermons now under criticism, those doctrines were preached strictly as this Church hath received the same. If the reversal of the judgment of the Diocesan Court required that such a ruling be made before the meeting of the next General Convention Dr. Crapsey would not have taken this appeal. I suppose that, under the national canons of the Church, this present Court will not and may not determine any matter of doctrine, faith or worship until the General Convention of the Church shall put into practical operation the ultimate Court of Appeals for which its Constitution provides. Our appeal for an immediate reversal is concerned, however, with the manner in which the Diocesan Court administered the justice of our Church, and also with the profound and far-reaching question of Discipline for Heresy. If you cannot, for these things, grant an immediate reversal, then, and only then, we submit that it is your bounden duty to hold the cause until a General Convention shall enable you to determine the questions of doctrine involved in the presentment.

These matters of the procedure below and of Discipline are all within your undoubted and present jurisdiction. Upon the question of Discipline I dare hardly believe that I can add anything useful to the noble appeals made here and in the court below by my associate, Mr. Perkins, for a sound and Christian liberty of thought and speech in our Church. Fortunately for this Court the full text of his first address is in the account of the proceedings before the court below, printed by



one of the loyal and generous churchmen who stand by Dr. Crapsey's side in this ordeal; and copies of it will be at the service of the Court. But, though reluctantly, I have to perform—and in my own way—the duty assigned me. And I hope that what, before I close, I shall say upon the right and wise discipline of the truly catholic church of Christ will help, or at least not hinder, the strength of my associate's argument.

The canon requires\* that the counsel on both sides shall be communicants of the Church; and in that requirement there is implied a limitation upon the duty the counsel for the defense owe their client, a limitation which does not hold in a civil court. Here as there, upon matters of the personal conduct of our client or of procedure, we speak for him and not for ourselves. Our duty is different when we speak upon matters of belief and doctrine, or upon matters of fundamental policy involving the permanent welfare of the Church. Then we may not, as I conceive our duty, argue for anything in which we do not ourselves truly believe. When we speak upon those matters we speak under the vows which we ourselves took in baptism and confirmation. What we say may be wrong, but by it we must speak our own conscience. Upon those matters our duty is no different from that of Mr. O'Brian, the Church Advocate. At the meeting of the Court in September he spoke of himself as "of Counsel for the Church"; but upon these matters I suppose that he is no more "of counsel for the Church" than are Mr. Perkins and

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\* National Canon 29, as adopted by the General Convention of October, 1904, Sect. XVII. All references to the Constitution and Canons, unless otherwise mentioned, are to those instruments as adopted by that Convention.

myself. We are all, for the time, officers of this Court, all of us alike bound by really sacred obligations not, in the argument of matters of belief or doctrine or which fundamentally involve the Church's future, to go one scintilla beyond our own sincere convictions as to what is due the truth and the welfare of God's Kingdom ruling in and through this Church of our loyal devotion.

We cheerfully concede a like obligation upon the members of this Court. We can neither ask nor expect them to forego or suspend any of their convictions upon matters of belief or doctrine, unless by possibility the hearing of this cause shall bring them further light. We can and do ask, however, and respectfully assume, that we shall have from the Court, open minds, and not foregone conclusions, as to whether such convictions apply at all, or, if at all, then how much, to this specific case of church discipline here to be decided. According to the canon \* you sit here to administer "justice." If it be true, as we have been told, that in causes of this kind diocesan courts have deemed it their duty to carry out plans predetermined for them by ecclesiastical authorities, we rejoice that nothing of that kind is admissible in this Court; that we are truly before an impartial tribunal, ready hospitably to hear and learn of the specific case before it and its issues, and, if there be, as there may well be, preconceived notions of the merits, then utterly to surrender those notions for the time. Your judgment will thus proceed upon what is openly, in the face of the whole Church and all people, brought before it by the record and the arguments of the counsel. The membership in the Court of these distin-

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\* No. 29, Sect. XVIII.

guished jurists trained to administer civil justice, the presentation of this cause by lawyers from the civil courts, as well for the Bishop and the Standing Committee of Western New York as for Dr. Crapsey, implies this; the canons and very title of the tribunal implies it; the sacred and exalted rank of the president of the Court, the sacred and important rank of his clerical associates requires it.

Dr. Crapsey is here, we rejoice to believe, in the protection of a true court of justice.

### *JURISDICTION OF THIS COURT.*

The Court may, under the canon, \*

“ reverse or affirm in whole or in part the  
“ decision of the trial court, or, if in its opinion,  
“ *justice* shall so require, it may grant a  
“ new trial.”

No power is given to modify the judgment below, like that given, for instance, in express terms to the Court of Appeals of New York and to the Appellate Divisions of its Supreme Court.† If, therefore, a new trial be not ordered, the judgment will be reversed, or it will stand as it now is, or some portion of it will stand as such portion now is, the rest being reversed.

If the Diocesan Court exceeded its jurisdiction or erred upon any material matter of right or procedure, then, of course, this Court *must* reverse. But if the judgment below survive such difficulties, then upon your reasons for an appellate judgment

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\* No. 29, sect. XVIII.

† Code of Civil Proc., Secs. 1317, 1337.

of reversal or affirmance in whole or in part or an order for a new trial, there is no technical restriction—there is indeed no restriction whatever—except in the implied demands of justice and the law of the Church and in the canonical prohibition to “determine any question of doctrine, faith or worship” until after the establishment of the ultimate Court of Appeal.\* If, therefore, any ruling of the Diocesan Court—as, for instance, upon the application for delay until the cause could be heard by a court not altogether appointed by the prosecutors—were to seem unreasonable or unfair or inconsistent with the high and scrupulous rule of justice which the Church should enforce, this Court may, if it see fit, reverse for that reason. Nor is this Court limited, as appellate courts frequently are, by any requirement to accept findings of fact made by the court below. This Court would doubtless have been absolutely free to deal with the finding of the Diocesan Court, if it had made one, as it did not, that Dr. Crapsey had “*advisedly*” or intentionally held or taught a doctrine contrary to that held by this Church. While on the one hand the Court is by its very nature and the plain purpose of the canons limited to what justice permits, on the other hand, if the court below acted within its jurisdiction and its procedure were right, this Court may, with the sole exception of determination of any matter of doctrine, faith or worship until there shall be a Court of Appeals, reach its conclusion upon any reasons of canon law or wise policy or right or fairness or discretion which counsel may establish before it.

So it is clear—and this, may it please the Court, is a matter of the first consequence, to which I

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\* Canon 29, Section V.

shall again recur—that, even if the accused presbyter were, under the canon,\* liable to presentment and trial for holding and teaching publicly or privately and *advisedly* and *intentionally* any heterodox doctrine, nevertheless it was a matter for the exercise of sound judgment of the Diocesan Court, a judgment to be reviewed in this Court, whether it would pronounce the presbyter guilty and authorize his punishment accordingly. There is no mandate that a presbyter *shall be* adjudged guilty for any and every teaching of unorthodox doctrine, even if it be done advisedly and intentionally. Whether his particular teaching of that character ought to produce his conviction and punishment is itself—after the fact is found—a grave question, requiring broad and far-seeing wisdom and sound discretion for its answer. If the Diocesan Court did not answer the question with such wisdom and sound discretion, then it is for this Court to apply the wisdom and sound discretion which ought to have been applied below. The doctrines held by our Church are manifold, some greater, some less. There are variations in the form or interpretation of perhaps every one of the hundred beliefs or doctrines which the Church holds. Whether to take what perhaps is an extreme illustration—error in the least of these and a preaching even advisedly of that error ought to suffice for an adjudication of guilt—the fact being found—must be matter for sound discretion. Otherwise the situation might be intolerable. Every breach of a canon is not to be the subject of a judgment any more than every violation of the law of the State is to be the subject of a criminal prosecution and conviction. The Church must have and exer-

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\* No 23, Sect. 1, Subdiv. (b).

cise some measure of indulgence and patience; and in this respect, when a presentment is made, the Court must, for the Church and as her representative, declare the limits of that measure. And this duty of pronouncing upon the fit measure of indulgence and patience belongs no less to this Court of Review than it did to the Diocesan Court. The whole question of Discipline, therefore, and the wise policy with respect to it required by the welfare and the sacred purposes of the Church are, since the canons of the American Church prescribe no hard and fast rule, fully within the power and duty of this Court to determine.

The exception that the Court may not "until after the establishment of an ultimate Court of Appeal \* \* \* determine any question of doctrine, faith or worship," obviously leaves open to the Court every consideration of the discipline or sound policy of the Church which is consistent with predication of the orthodoxy of the doctrines which the Diocesan Court declared or assumed. So much, I take it, is in no wise open to argument. But has the Court jurisdiction to even hear matters of doctrine, as, for instance, to entertain discussion of the question whether belief in the spiritual resurrection of the spiritual body of Our Lord satisfy the Church's doctrinal requirement. I submit that the canons clearly confer such jurisdiction. While the prohibition is clear that the Court shall not, until the establishment of an ultimate Court of Appeals as permitted by the Constitution, "*determine* any question of doctrine, faith or worship," there are several plain provisions of the canons which require this Court to *entertain and hear* an appeal, even upon such a question.

In the first place, and conclusively, I submit, is

the present actual canonical grant\* of an absolute present right to a respondent, without waiting for the actual establishment of the Court of Appeals, to appeal to the Court of Review "from a decision " which sustains in whole or in part a charge of *any* " canonical offense." A charge of preaching false doctrine, which can be dealt with only by predicating true doctrine, may thus lawfully be brought before a Court of Review. Obviously, therefore, the Court must at least *entertain* an appeal dependent upon a doctrinal definition. This is also and separately put beyond doubt by the express provision of the same section that, in case of acquittal in the Diocesan Court, an appeal may, upon the request of the bishops, be taken to the Court of Review, " provided, however, that such appeal shall be on the question of the Church's doctrine, faith or worship."† Here is an express right of appeal to the Court of Review upon doctrine. And this right is no less, although the Court of Review cannot "determine" the doctrinal question until there shall be an ultimate Court of Appeals.

Consider also the provision in case of affirmance of a conviction by this Court. If the charge were one of immorality, the appellant could not, pending the appeal from the Diocesan Court, exercise any ministerial functions.‡ But in other cases, including one like the present, an appeal not only suspends sentence, but leaves the accused in possession of all his priestly powers and subject to all his priestly duties. Then, if this Court affirm, and if no question of doctrine, faith or worship be involved in the decision, the Court must remit the

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\* Canon 29, Sect. VI.

† Canon 29, Sect. VI.

‡ Canon 29, Sect. 7.



record to the Bishop or Standing Committee of the diocese from which the appeal came. ‡ If, however, the decision do involve such a question, then the canonical requirement is express that

“the record *shall be retained* by the President until the time for taking an appeal to the Court of Appeals shall have expired, and, if no appeal shall then have been taken as provided in the canon creating such court, he shall remit the record as in other cases.”

Here is a positive mandate to this Court, if its decision depend upon any matter of doctrine, to retain its record until a future time perfectly identified whenever that time shall come. The fact that it may not come at all, because no General Convention may adopt a canon creating the Court of Appeals, is ignored. None the less the President of this Court must, where the decision involves doctrine, retain the record until the expiration, whenever, if ever, that may be, of the time for appeal to the Court of Appeals. There is no power, in such cases, to remit the record for enforcement at all until the expiration of that time. The future failure of the General Convention to adopt such a canon will mean that the inability of the intermediate Court of Review meantime to render any operative judgment in a case which it shall have heard argued, and which involves a question of doctrine, faith or worship—that is to say, in a case of heresy—is deemed less objectionable by the General Convention than the present organization of an ultimate Court of Appeals.

I submit it to be clear, therefore, that the canons mean that the Court of Review must entertain an appeal in a case, like this, which involves doctrinal

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‡ Canon 29, Sect. XIX.



questions, a case indeed where the very validity of the judgment below absolutely depends upon an affirmation by the Diocesan Court of doctrine, and where there can be no affirmance in this Court without the affirmation or assumption of doctrine. The canons further mean that this Court shall hear argument even upon the doctrinal questions, and consider them, but that it cannot *deliver* any determination of such a question until the General Convention shall act. If it be said that a minister, guilty of immorality, might, by raising or affecting to raise a doctrinal question, indefinitely postpone his deserved deposition, the answer is that, if the Court of Review should ignore the doctrinal question and affirm, then, upon the assumption either of the truth or of the falsity of the doctrine, there would be no delay of the effective determination upon appeal. And a second and quite sufficient answer is that, in cases of crime or immorality, an appeal from a conviction by the Diocesan Court does not stay its practical operation; for, by the canon,\* as I have said, the convicted defendant is actually suspended from the ministry during his appeal. It seems clearly to follow, that, if we are right, the Court can make and deliver a final and effective decision only if it do not imply affirmation or denial that the Church holds any specific matter of doctrine, faith or worship. If, therefore, in the present case, this Court could, as we suppose to be clearly impossible, sustain Dr. Crapsey's conviction, although the Standing Committee and the Diocesan Court were wrong in their views of what was doctrine of the Church—then and only then could it deliver a final determination.

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\* Canon 29, Sect. VII.

The situation which the canons thus create is, I suppose, anomalous—but not as anomalous and absurd as would be the situation if a Court of the superior dignity of this were limited to merely personal matters and matters of lesser discipline and shut out from the far more important questions of doctrine, faith and worship, while the Diocesan Court of inferior dignity held jurisdiction of those greater questions,—if the court of each of the seven dioceses of New York and New Jersey could determine doctrine, when this Court could not.

Upon the primary question of the jurisdiction of the Court we submit, therefore, that

1. The Court should entertain Dr. Crapsey's appeal upon all questions raised by the presentment against him, his answer and pleas, and the interlocutory rulings of the Diocesan Court and its final decision.
2. The Court should hear argument upon all such questions.
3. The Court should decide all the questions which are before it which may be ruled without assuming or denying any proposition of doctrine, faith or worship; and if a decision of such questions, excluding matters of doctrine, faith and worship, suffice for a decision of the cause, then the Court should make and deliver such decision. This would be the case if any of the more technical points presented by Dr. Crapsey's counsel, and to be discussed further on, were sustained. So would it be the case if the Court should rule with us upon the really great question of the sound policy of the Church as to Discipline. In any such case there could be a

reversal without any ruling or assumption in doctrinal matters.

4. But if the decision require—as obviously any affirmance of the conviction would require—determination that the propositions of doctrine and faith upon which the presentment and the judgment below were based, are sound, then the decision must be withheld until such time as the General Convention shall permit it by the creation of the ultimate Court of Appeals, to which appeal can be taken to secure uniformity of doctrine and interpretation throughout the whole American Church.

#### *CRITICISMS UPON PROCEDURE OF THE DIOCESAN COURT.*

It is with sincere regret that, in a cause which in its broad aspects is concerned with the sacred purposes and scope of our Church, I must thus first and at length deal with these more technical matters of jurisdiction and procedure. It would be refreshing to me and perhaps less tedious to you if I could leave them for things deeper and less arid. But my duty forbids me to forget that this is a Court which must fitly, and even nicely, consider its own powers. Nor can I forget, Rt. Rev. President, that, before proceeding to greater questions, you and your clerical and legal brethren will necessarily insist upon knowing whether the court below acted according to its powers and the elementary rules of justice. I must, therefore, delay my discussion of the Discipline of a truly catholic Christian church and the limits of her indulgence in doctrinal interpretation. Apart from questions of Discipline and Doctrine

can this judgment of the Diocesan Court be sustained? Truly I believe not.

A case of ecclesiastical discipline, it is well settled, is *quasi*-criminal or a case of strict right. If it go against the accused he loses his office and with it his income and livelihood, as well as the dignity and duties and the right of the office and its right in the ecclesiastical property.\* The presumptions and intendments are in favor of the accused. We rightly, therefore, hold this prosecution and the court below strictly to the case made by the presentment. Nothing else can have been rightly adjudged. This was ruled by the English Privy Council with the concurrence of the Archbishops of Canterbury and York and the Bishop of London on the prosecution of Dr. Williams, one of the authors of the book "Essays and Reviews." The Court there said: †

"These prosecutions are in the nature of  
"criminal proceedings, and it is necessary  
"that there should be precision and distinct-  
"ness in the accusation."

So, in the case as to the Real Presence, the last heresy cause adjudged by the Privy Council, it was held, the Archbishop of York and the Bishop of London concurring, that, in case like this against a presbyter, it is the duty of the Court, as these proceedings are highly penal, to construe in his favor every reasonable doubt. ‡

The counsel for the prosecution upon the trial at Batavia admitted this, Mr. O'Brian himself saying: §

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\* *Jennings v. Scarborough*, 27 Vroom, 401.

† *Williams v. Bishop of Salisbury*, 2 Moore P. C. (N. S.) at page 423.

‡ *Sheppard v. Bennett*, L. R., 4 Priv. Council App., at p. 438.

§ Record, page 81.

"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 on another; we all agree on that."

And the Diocesan Court having asked its assessor to rule for it, he sustained the proposition.\* So also that court in its final decision refused to permit amendment of the presentment.†

And no power has been given this Court to permit such an amendment.

In the next place, the Court will remember that, under the canons of Western New York, the Diocesan Court, upon convicting the defendant, was required to prescribe the maximum punishment, and that to such maximum the Bishop would be confined. This was as true and integral a part of the judgment as the finding of heretical teaching. Testimony bearing upon the measure of penalty was strictly admissible. In a criminal court of New York or New Jersey, the jury answer merely the question, "Guilty or not guilty;" but they do not prescribe punishment. That is for the judge to determine after verdict; and he then hears anything fitly bearing upon the measure of the penalty. The Diocesan Court, however, being both jury and judge, and being bound, by a single act or order, as the result of the trial, to adjudge innocence or guilt, and, if guilt, the maximum fit punishment, it was obviously bound to receive whatever might be helpful to a correct conclusion upon either one of the two parts of its judgment.

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\* Record, pages 84, 85.

† Record, page 133.

And so, with equal clearness, the Diocesan Court was bound to fit, and must in this Court be conclusively presumed to have fitted, the maximum punishment it prescribed to the offense then adjudged. If there had been three offenses, the punishment presumably would be more than if there had been two; if only one offense, it would presumably be less than if there were two. Dr. Crapsey was convicted of three separate offenses separately charged; but upon these three together a single punishment was prescribed adequate to both of them together. If either conviction were erroneous then the maximum limit of punishment was erroneous, and the entire judgment must of necessity be reversed.

With these preliminary considerations, I now beg the attention of the Court to specific errors of procedure in the court below.

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NOTE.—Here follows a discussion of the errors in procedure of the Court, among them being the claim of Dr. Crapsey's counsel that he had been "convicted of an offence with which he had not been charged and for which he had not been tried"; that although the canon under which he was tried had made the preaching of unorthodox doctrine not an offence unless it were done advisedly, that is to say, with intention to impugn the doctrines of the Church, and although the presentment had, in accordance with the canon, charged that his preaching had been done advisedly, nevertheless the Court had declined to find that he had done it advisedly.

EIGHTH: THE TESTIMONY OF MANY DISTINGUISHED CLERGYMEN TO THE UNDERSTANDING AND PRACTICE OF THE CHURCH WAS ERRONEOUSLY REJECTED BY THE DIOCESAN COURT.

It was certainly an incident to impress a pious and wise churchman praying for a benign and universal spread of our Church that so many distinguished rectors doing great and living work should have come to Batavia to stand by Dr. Crapsey and to testify their opinion that, as they understood and had known the Church, it had permitted the method and liberty of interpretation which he had used. With them, or perhaps going beyond them, and clearly in the open, were the many times greater numbers who had signed the recent Declaration by English and American clergy and laity.

A court anxious for light might well have listened to the testimony of these witnesses. They might fitly have done this even, if, strictly speaking, they considered the testimony inadmissible. But it was strictly admissible. It bore clearly upon the accusation that Dr. Crapsey had *intended* to impugn orthodox doctrine or had done so *advisedly*. Upon the question whether his sermons were innocently mistaken, that is to say, upon the question of *intention*, it was clearly admissible.

Moreover, the Judicial Committee of the Privy Council, the highest ecclesiastical tribunal for our brethren of the English communion, had ruled that such opinion testimony was admissible in a case like this, although it would not be in cases affecting property. In the prosecution of the Rev. Charles Voysey in 1870 and 1871 for heresy,\* the

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\* Noble vs. Voysey, L. R., 3 Priv. C. Appeals, p. 357, at pp. 385, 386.



Judicial Committee (including the Archbishop of Canterbury and the Dean of the Arches) expressly so ruled. The Lord Chancellor speaking for the whole court, said :

“ But it is to be observed, that in inquiries  
 “ of the nature now before us, this Committee  
 “ is not compelled, as in cases affecting the  
 “ right of property, to affix a definite mean-  
 “ ing to any given Article of Religion the  
 “ construction of which is fairly open to  
 “ doubt even should the Committee itself be  
 “ of opinion (on argument) that a particular  
 “ construction was supported by the greater  
 “ weight of reasoning. Thus, Lord Stowell,  
 “ in the case of *“ Her Majesty’s Procurator vs,*  
 “ *Stone* (1 Hag. Cons. Rep., 429), thus ex-  
 “ presses himself :

“ ‘ I think myself bound at the same time  
 “ ‘ to declare that it is not the duty nor  
 “ ‘ inclination of this Court to be minute and  
 “ ‘ rigid in applying proceedings of this na-  
 “ ‘ ture, and that if any Article is really a  
 “ ‘ subject of dubious interpretation it would  
 “ ‘ be highly improper that this Court should  
 “ ‘ fix on one meaning, and prosecute all those  
 “ ‘ who hold a contrary opinion regarding its  
 “ ‘ interpretation. It is a very different thing  
 “ ‘ where the authority of the Articles is  
 “ ‘ totally eluded, and the party deliberately  
 “ ‘ declares the intention of teaching doctrines  
 “ ‘ contrary to them.’

“ We have thought it right to refer to the  
 “ canons of construction thus judicially ex-  
 “ pressed, because on the one hand they allow  
 “ to the party accused a fair and reasonable  
 “ latitude of opinion with reference to his  
 “ conformity to the Articles and Formularies  
 “ of the Church, and on the other they afford  
 “ no sanction whatever to the contention of  
 “ Mr. Voysey, that unless there be found in  
 “ the publication complained of a contradic-



“tion, *totidem verbis*, of some passage in the  
 “Articles, he is at liberty to hold, or rather  
 “to publish, opinions repugnant to or incon-  
 “sistent with their clear construction.

“As regards those Articles of Religion as  
 “to the construction of which a reasonable  
 “doubt exists, the question may arise how  
 “far opinions of a similar character to those  
 “charged to be heretical, have been held  
 “by eminent Divines without challenge or  
 “molestation, because the proof of their  
 “having been so held may tend to show the  
 “*bona fides* of the doubt. In this respect also  
 “we have ample guidance from authority;  
 “and it will be found that, where the Article  
 “in question is subject to reasonable doubt,  
 “and eminent Divines have held opinions  
 “similar to those impugned in the case  
 “before the Court, that circumstance alone  
 “has been held to be of great weight in in-  
 “ducing the Court to allow a similar latitude  
 “of construction to the party accused, without  
 “itself deciding upon the construction of the  
 “Articles.”

How can it be said—if Dr. Crapsey's intention  
 advisedly to impugn orthodox doctrine be of any  
 moment in this cause—that the opinions and ex-  
 pressions of other, many, unimpeached and dis-  
 tinguished clergy was irrelevant to the issue pre-  
 sented by the presentment and answer.

There was a further and all sufficient reason for  
 the admission of the testimony. The Court will  
 observe the relevance and competence of the tes-  
 timony to the maximum measure of punishment  
 which, if Dr. Crapsey were found guilty of heresy,  
 it would be the duty of the Diocesan Court to pre-  
 scribe. That Dr. Crapsey's errors, if he erred, were  
 committed through his sharing with a great and  
 representative body of professional brethren of

the highest and unimpeached standing views of the comprehensive liberty which the Church allowed him, was surely a fact which a court in prescribing punishment would be bound to consider.

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I am glad to have now closed my criticism upon the procedure of the Diocesan Court and the more technical features of its judgment. It is indeed a field dry and uninspiring except to students of the canons and to lawyers. But with these questions this Court of Review has to deal before it can go to the larger and deeper questions raised by the prosecution. Our adversaries say there are no such questions; that if it appear that public utterances or writings of Dr. Crapsey appear inconsistent with any orthodox doctrines as heretofore generally understood by the Church, the case is then at an end. They would sweep away these greater questions as to the policy of the Church and its comprehensive liberty, and make the case one technical and narrow. Very well, then; we have met them on their own ground. The judgment they have obtained can stand only if it be regular and correct. In cases like this every presumption is with the accused; the prosecution is held to a rigorous demonstration of the precise case it presents. And, if I am right in what I have said, the Court does not need to go further. If, however, I am wrong, and this judgment can survive the faults we have pointed out, the Court must deal with the really great question of

*THE POLICY OF THE CHURCH CONCERNING  
DISCIPLINE FOR HERESY.*

Upon this question this Court of Review is plainly competent to pass. Rather, indeed, it is bound to pass upon it, if the narrower matters I have already presented are not decisive. The national canons have not, as I showed at the outset, restricted the considerations to which this Court may give weight. "The Court" it is prescribed by sect. xviii of canon 29, "may reverse or affirm, in whole or in part, the decision of the Trial Court, or, if in its opinion, justice shall so require, it may grant a new trial."

Indeed, before this Court can fitly affirm the judgment below, it must affirm the wisdom of the judgment and its conformity with the true and sound policy of the Church. It must itself hold that, within such policy, the thing done by Dr. Crapsey is an offense for which he may be dismissed. Not only must the Court so declare, but it must itself determine that sincere error in preaching constitutes a violation of ordination vows. For I must remind the Court, and beg that this be not forgotten, that in neither the presentment nor the testimony nor the judgment is there a suggestion of his insincerity. That what he preached and wrote stood for his own honest conviction is not disputed, or that to him, whether rightly or wrongly, the doctrine he uttered was the doctrine truly signified by the Apostles and Nicene Creeds. So, I must again remind the Court, the diocesan judgment exonerated Dr. Crapsey from any intention to deny or impugn sound doctrine. If, therefore, this Court is to uphold the judgment it must say, not only that it was an offense, but that it was an offense requiring extreme discipline, for Dr. Crap-

sey to preach what he did, being honestly convinced, after the study to which he was bound by his ordination vows, that it was sound doctrine consistent with the creeds of the Church. That this is a condition precedent to an affirmance is, I take it, clear beyond any argument.

This, as I have shown, is a *quasi*-criminal proceeding so far as the rules governing it are concerned. But a true criminal prosecution in our country and England rests upon a definition of the offense to be found in a penal code or in common law built up by rulings of judges. Not only does the law for the civil courts, as does our canon for ecclesiastical courts, authorize a prosecution or prescribe limits of punishment for the offense ; but the law, either an express statute or the common law, defines the offense for the civil courts. Not only does it prescribe prosecution and penalty for larceny or forgery, but it defines what is larceny, what is forgery.

You have no such chart for your guidance so far as concerns violation of ordination vows. It is for you yourselves to define what constitutes such violation. The canon under which this presentment was drawn declares that a priest "shall be liable " to presentment and trial for the following offenses, viz. : \* \* \* (b) Holding and teaching " publicly or privately and advisedly, any doctrine contrary to that held by this Church. " \* \* \* (f) Any act which involves a violation of his Ordination Vows." The canon does thus clearly define as an offense the intentional holding and teaching of any heresy ; but as to what constitutes a violation of the ordination vow the canon gives the Court no instruction.

What, however, is of still more moment is the

liberty allowed to the Court, or perhaps the duty assigned it, to decide whether the offense, if there be one, is one for which the true welfare of the Church requires a conviction and punishment. In the present case this liberty and duty of the Court is put beyond doubt by the inclusion in the judgment, in pursuant of the canonical requirement of Western New York,\* of the extreme permissible measure of the punishment. This Court must, I respectfully insist, say for itself whether what Dr. Crapsey has done, even if it be an offense within the canon, ought, in the best interests and for the true and abiding welfare of the Church, to be the subject of an adjudged penalty. No canon requires conviction, even where the presentment may be technically sustained ; none make necessary either conviction or punishment, though there be offense, unless in the judgment of the Court such true and abiding welfare of the Church require. Even if questions of faith or doctrine be for the present shut out from the determination of the Court—all questions of discipline are fully left to it, and all questions of church morals and policy related to it, except as they may be expressly ruled by the canons.

As to the manner in which accusations of heresy should be considered, we have a weighty authority in the famous *Voysey* case † in the English Church, decided in 1871, and from which I have already quoted.

And I make no apology for citing to you the justice and policy of the English Church regarding prosecutions for heresy. The American and English Churches are one in divine origin, one

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\* Ordinance for the Ecclesiastical Court, sect. XVIII.

† *Noble v. Voysey*, L. R., 3 Privy Counsel Appeals, 357.

in liturgy, one in doctrine, one in tradition; they are identical in presenting to our modern times the universal and apostolic church purged of errors but in unbroken descent from the ministrations on earth of its sacred Head. No sane man will say that these churches have been without spot or blemish. But surely they have come more nearly than any other very large body of Christians to the pure and exalted ideal of Christ's flock on earth. Four-fifths and more of our Communion own the final appellate jurisdiction in matters ecclesiastical of the Judicial Committee of the British Privy Council. The Privy Council includes, always, the two Archbishops and the Bishop of London, and it may include other bishops. Under the Church Discipline Act and the Public Worship Act \* the Archbishops and Bishop of London, and such other bishops as may be members of the Privy Council, must sit in ecclesiastical causes. The Privy Council, in 1832 under an Act of Parliament took over the jurisdiction of the High Court of Delegates in causes ecclesiastical and of admiralty. And the members of that Court had been named by the Crown. In the Court below Dr. Hall with much learning criticised the power of the Privy Council in the Church. But it is idle to deal with the history and merits of such jurisdiction, the intention or the carelessness of those who drew the Acts of Parliament under which it became settled. As Americans and as churchmen we may perhaps criticise the union in the same bodies of men of civil and ecclesiastical powers; and rulings of the Privy Council do not, of course, bind this Court. But they are helpful as expressions of the body of men who, for four-fifths of our communion, do finally decide these questions, of the men whose

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\* 3 and 4 Vict., c. 86 and 39; and 40 Vict., c. 39, 14.

utterances are accepted by the fathers in God, and substantially the entire bodies of the English Church and her sisters or children in Scotland, Ireland and the Colonies. And, we know, spite of whispered criticisms and murmurs, that the bishops and clergy of the English Church support and will support the rulings of their chief tribunal. If the teaching of those Churches have any advisory weight with our smaller body of brethren organized, as it were, but yesterday, we are bound to look to the conduct of their tribunals, and chief among them the Privy Council. Dr. Hall found fault with the presence there of the Lord Chancellor and law lords. But our American Church has deliberately followed the precedent. When in 1904 its supreme legislative authority, the General Convention, established this Court of Review, it required that three of its members should be laymen and two of them civil lawyers. Most fitly, therefore, may we cite here the rulings made for the English Church whether they were expressed by judicial decrees or were shown in almost equally clear effect by omissions to prosecute, and thus by practically tolerating, what was supposed by some to be heretical.

I return, therefore, to the Voysey case, decided by the Privy Council in 1871. During the thirty-five years since elapsed there has, with one exception to which I shall refer, been no heresy prosecution in that branch of our Church—certainly none, of which I have learned, has reached the Privy Council, the highest ecclesiastical court. The Rev. Mr. Voysey, it was found,\* had advisedly

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\* Opinion of the Lord Chancellor, concurred in by the Abp. of Canterbury and all other members of the court, L. R., 3 Priv. C. App., page 405.



controverted "the Articles of Religion with reference to original sin, the sacrifice and suffering of Christ, the Son of God, both God and man, to reconcile His Father to man, the Incarnation and Godhead of the Son, His return to judge the world," and "the doctrine of the Trinity;" and he had also advisedly denied to Holy Scriptures "their legitimate authority even on points essential both to faith and duty." The Court pointed out the impossibility that any society whatever of worshippers can be held together without some fundamental points of agreement or can together worship a Being in whom they have no common faith. While the Court convicted Mr. Voysey for thus advisedly denying so many and most fundamental doctrines of the Church, it nevertheless—and this was a generation ago—thus unanimously laid down the wholesome liberality which should be practiced in heresy cases. The Lord Chancellor said, with the approval of all the Court, including the Archbishop of Canterbury :\*

" We have not been unmindful of the latitude wisely allowed by the Articles of Religion to the Clergy, so as to embrace all who hold one common faith. The mysterious nature of many of the subjects associated with the cardinal points of this faith must, of necessity, occasion great diversity of opinion, and it has not been attempted by the Articles to close all discussion, or to guard against varied interpretations of the Scriptures with reference even to cardinal articles of Faith, so that these articles are themselves plainly admitted, in some sense or other, according to a reasonable construction, or according even to a doubtful, but not delusive, construction. Neither have

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\* L. R., Privy Council Appeals, 404.



“ we omitted to value the previous deci-  
 “ sions of the Ecclesiastical Courts, and espec-  
 “ ially the judgments of this tribunal, by  
 “ which interpretations of the Articles of Re-  
 “ ligion, which by *ANY reasonable allowance for*  
 “ the variety of human opinion can be recon-  
 “ ciled with their language, have been held to  
 “ be consistent with a due obedience to the  
 “ Laws Ecclesiastical, even though the inter-  
 “ pretation in question might not be that  
 “ which the Tribunal itself would have as-  
 “ signed to the Article.”

About the same time—a little later, in 1872—  
 was decided the case\* against the Rev. Mr. Ben-  
 nett, a Ritualistic clergyman, for affirming the  
 doctrine of the Real Presence in the Eucharist.  
 The supposed heresy was here the reverse of that  
 which is charged here. Dr. Crapsey interprets  
 spiritually formulas which it is claimed against  
 him bear, according to their plain import, only a  
 literal and physical meaning. The Rev. Mr. Ben-  
 nett was charged with interpreting literally and  
 physically the emphatic words of Our Lord with  
 respect to His Body and Blood, where our twenty-  
 eighth Article of Religion requires their interpre-  
 tation “after an heavenly and spiritual manner.”  
 The Court declared that Mr. Bennett’s language  
 had been “rash and ill-judged” and “perilously  
 near a violation of law.” But, after saying that—

“ The Church of England has wisely left a  
 “ certain latitude of opinion in matters of be-  
 “ lief, and has not insisted on a rigorous con-  
 “ formity of thought which might reduce her  
 “ communion to a narrow compass,”

the Court (the Archbishop of York and Bishop

\* Sheppard v. Bennett, L. R. 4 P. C. App., at pp. 404, 415  
 418.

of London being present) held that, "if his words can be construed so as not to be plainly repugnant" to the Church's formulas, it would acquit; that the question indeed was—

"Whether the language of the Respondent  
 "was so plainly repugnant to the Articles and  
 "Formularies as to call for judicial condem-  
 "nation; and, as these proceedings are highly  
 "penal, to construe in his favor every reason-  
 "able doubt."

These were, I believe, the last utterances of the highest English Court in heresy cases. If this Court be of the same mind the judgment against Dr. Crapsey must be reversed. For, even if the doctrines set forth in the presentment and the diocesan judgment be fully assumed by this Court, it is quite impossible for any intelligent man to say that, in teaching the generation of the mind and soul of Our Lord by the Holy Ghost and the Resurrection of His spiritual body, Dr. Crapsey, however much in error, did not admit "in some sense or other," and according, at least, to a construction "doubtful but not delusive" the doctrines of the Conception by the Holy Ghost and the Resurrection. Surely no intelligent man can deny that Dr. Crapsey's interpretations of this doctrine can, by *some* "reasonable allowance for the variety of human opinion," be reconciled with the language of the Articles of Religion.

For a prosecution of this character, the test, according to this decision, is not what the Court or the Church generally understands by the doctrines, but how a sincere man, following *any* "reasonable or even doubtful" (if not delusive) construction, and with the utmost "reasonable

allowance for the variety of human opinion " might understand them. Since the Voysey and Bennett judgments in 1871 and 1872, English churchmen have been freer than ever before to express views of doctrine which would before have been heterodoxy. I believe that Dr. Crapsey's widest departure from usual or accepted view has been far over-passed again and again and many times by clergymen of the Church of England of high rank and unimpeached standing against whom no presentment has been made.

And shortly before the Voysey case there were in the English Church two other and famous cases whose history is full of admonitory wisdom for us. I refer, of course, to the proceedings growing out of the famous book " Essays and Reviews," and to the case of Bishop Colenso. Both illustrate the practical wisdom of our English brothers, which, while not encouraging heresy, has preserved to the Church the vast advantage of the living energy and spontaneity of the faculties of its clergy.

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 charged here. He found himself driven by his study and convictions to deny the authenticity of very substantial parts of the Holy Writ. The Metropolitan of South Africa deposed him under the judgment of a so-called ecclesiastical court. The Bishop, however, declined to be deposed, and took his appeal to higher authorities in England. The Privy Council decided that the Metropolitan had utterly exceeded his jurisdiction and set aside the judgment and the deposition. Then a distinguished board of trustees or commit-

tee, 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 right; and the English court decided that they must pay him. In spite of his resounding challenge, no prosecution for heresy was ever brought against him by any competent authority of the Church of England. He remained a Bishop of the English Church in Natal, discharging, and with amazing energy, the duties of his sacred office until his death twenty-four years after his original but futile prosecution for heresy.

And to-day how many bishops of the English Church would reverse the decision for comprehensive liberty which, by the omission to prosecute in any competent tribunal, was made in the case of the Bishop of Natal? You could count them upon the fingers of one hand. Spite of fault-finding here and there of which one may hear in private gatherings, the decision commands to-day the general and deliberate assent of the English Church.

About the same time there appeared the book called "Essays and Reviews." The first article in it was written by Dr. Temple, then headmaster of the famous Rugby School. He dealt with Holy Scripture and doctrines of the Church in a manner which, for that time, seemed to many, perhaps to most, 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 revelation 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 fundamental question of Discipline here involved. 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 principle 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 exer-

“cise 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 further 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 for Dr. Williams' deposition was brought in the Court of Arches, from which it was carried to the Judicial Committee of the Privy Council. There was 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 greater 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

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\* Williams v. Bishop of Salisbury, 2 Moore P. C. (N. S.)



the Church of England—they found that to hold Dr. Temple's doctrines was within the comprehensive liberty belonging even to a bishop. 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; and a dramatic scene it was as the bishops in procession were on their way to the ceremony when there was tendered 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 upon him by friends to moderate 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 the suspicion; he was afterwards, as you will remember, translated to the Bishopric of London; and finally, and without any significant dissent, he was raised to the Archbishopric of Canterbury, the highest ecclesiastical station in England.

Since the decade of the Colenso, Williams, Temple and Voysey cases, a decade so memorable for the English Church, the absence of heresy prosecutions within it has plainly represented a practical decision reached as really and effectively, and doubtless as deliberately, as if it had been spoken



by an archbishop writing the opinions of the Privy Council. A clergyman who in fundamentals is a Christian, and who is sincere and diligent, is not driven from that church for error or mistake upon other and lesser doctrines of the Church, however generally and strongly held or for mistakes in their interpretation. Evils and difficulties no doubt there are in such toleration; error may for a while be spread; burdens of argument are cast upon the orthodox or better enlightened. But these evils are, many times over, made up by retaining the characteristics, and promoting the career, of a truly catholic Christian church in the only way possible where a single head or pope is not recognized to be infallible and to include in his person the supreme executive, disciplinary and doctrinal powers of the Church. Our Anglican and American communion having definitely rejected the pope and all infallibility except the Scriptures themselves, prefer the energy of a Living Church growing in larger, deeper, surer knowledge of God's truth.

Does the English Church regret—has it reason to regret—have we American Christians and Churchmen reason to regret—that this has practically been its truly statesmanlike course for nearly a half century? At work in a densely populated country—an old country—has the English Church, in any half century of its life, done so much, such genuine or such fruitful work? Has there been another half century of its life of more piety in its membership, of more or better or wiser energy in its ministers, of more unforced loyalty from the public sentiment of that kingdom? And still more—has the true faith been ever more deeply and precious and spontaneously held? If the English Church ever knew a better half century,

certainly it was not in the Eighteenth Century when its churchmanship was relatively narrow and uneducated and, oh, so unfruitful, and when the Wesleyan separation was not only permitted but provoked. Certainly it was not in the early years of the Nineteenth Century before Dr. Pusey and Dr. Keble shocked, but wakened into life, a sleeping church and Coleridge made his splendid and effective defense of orthodox Christianity. Surely the last generation of English churchmanship affords no proof that the absence of heresy prosecutions means evils or dangers to the Church.

Indeed, Rt. Rev. President, clergy and gentlemen of the Court, I believe myself to be here and truly pleading the cause of the catholic church, the only catholic church possible unless we go to Canossa and thence to Rome, there to abide. We rightly and rejoicingly see in the Anglican or Episcopal communion the faculties and destiny of universality. To our sacred hospitality there come the feet of those weary of spiritual confusion, of barren and jejune forms or formlessness, those weary of sects in which intellectual acuteness checks the profound and religious emotions of man and the revelation of truth through those emotions, those who would cherish the saintly and spiritual wealth of the Christian ages, those who would reform wrongs and abuses, but who refuse to destroy or surrender the continuity of Christ's Church from the very inspiration of the Pentecostal outpouring. A hopeful vision of the future was recently and eloquently set forth by the Bishop of Long Island at the bi-centenary of one of the oldest parishes in America.\* May it, if God please, be more than a vision; and may the eyes

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\* At Oyster Bay on September 8, 1906.

of those of us gathered here see, before we go hence, some part of its realization.

Is not all of this most strictly relevant to the question I am now arguing, whether the Church will let dwell and work for Christ within her borders a clergyman who, without imputation of insincerity or lack of diligence in study, confesses his true belief in the credal statements that Our Lord was conceived by the Holy Ghost and born of the Virgin Mary, and that He rose from the dead, but interprets those statements as referring to His spiritual personality rather than to the physical tenement into which Omnipotence had, for our salvation, poured the Sonship "begotten before all worlds." If these interpretations, or any of them, be error, as is said by our adversaries—nevertheless is it an error so intolerable and unendurable to the Discipline of the Church, that though the interpretations be sincerely reached and held by Dr. Crapsey, he must be dismissed after his thirty-seven years of benign and fruitful priesthood? This—as I rightly, I think, ask you to remember—is the far-reaching question of discipline now before you.

In the troubled and wonderful years when the forms of our Prayer-Book and Articles of Religion were first settled or approved in the Sixteenth Century, one truth was very clear to those to whom the providence of God entrusted the work. I mean this, that the more numerous the fixed doctrines of the Church not susceptible of any latitude of interpretation, the further must the Church be from the catholicity which it was intended should belong to the English Church. *The more the doctrines the smaller the membership.* That is, of necessity, a fundamental rule of church life. If a church

were to have ninety-nine doctrines, all fundamental and none else permissible, it might well be that the flock would not be a score. The number of conscientious minds which would see the truth in just that way and none other would be few indeed. For God, while making us men of one blood, has seen good to fit us with a well-nigh infinite diversity of faculties and opinions. The smaller the number of fundamental doctrines, the wider the scope of honest interpretation, the greater the number of upright souls who can pray and praise and work together in one tabernacle. Perhaps the supreme example of this is the Roman Catholic Church—to-day and ever since that Church became Roman, by far the most numerous of any Christian communion, indeed, to-day almost as numerous as all other Christian denominations put together, including the Eastern and Greek Churches. In matters of faith there is but one definite rule for the faithful,—to believe what he, whom they hold to be God's inspired Vicar on earth, has, from St. Peter's chair, said to be truth. Be the doctrines more or less, they are summed up in that one doctrine under which the heavy laden masses of men are relieved of all responsibility. Clergymen may argue and study, but, upon matters of needful doctrine, only to the boundary of what the Pope has spoken. It would be unseemly for me to here condemn the membership of that great Church for their surrender of spiritual liberty and spontaneity thus enforced within her communion. Her saints and martyrs—her fruitful and noble works—the vast extent to which to-day her ancient and powerful shoulders sustain modern civilization—these warn us, as brethren before God, to be chary in condemnation of the consciences of other men.

But that rule is not ours. The profound and decisive distinction, which, whether better more or better less, was established by the Reformation for those of our communion is that the belief of each Christian must be his own, and must be derived from the Holy Scriptures. No worshipper in our Church may simply apply the rule that a submission of his will may stand in place of the reason of his belief. *Voluntas stet pro ratione* is a rule of faith consistent with a great church,—certainly with a numerous one. But it is not ours. So, therefore, since the belief in any and every affirmation of our creeds and articles must be the individual's own belief—mind and heart and *sua sponte*—we have difficulties and room for disintegrations from which the Roman Catholic Church seems to those of us without its pale to be free. God knows that we have for our own compensation glories with which we would not willingly part.

To return, therefore, to my argument. *The more the doctrines the smaller the number of honest and thinking men within the fold.* This rule of inverse proportion must hold of any church without one head recognized as supreme and incapable of error. The rule is absolute and inexorable for a church which, like ours, inherits the doctrine\* that whatever may not be proved by Holy Scripture is not to be required to be an article of faith of any one, or the noble command to every one of its ministers which at the Reformation was put into its Ordinal that he should instruct his people out of the Scriptures, but teach nothing as necessary to eternal salvation except what he himself should be persuaded might be concluded and proved by them, and that he

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\* Articles of Religion, No. VI.

would banish and drive away from the Church all doctrines contrary to God's word.

The catholicity of our American church can only be in this, that, while the Church requires of her children and ministers an agreement to a few and truly great fundamentals, she permits, or at least does not punish, a vast diversity of views and interpretations, and that, where those great fundamentals are held, she tolerates honest error, assured that, if the heart of her child or minister be right and his fundamental beliefs Christian, her teaching, if sound, will conquer him; or, if her teaching itself need correction, God will correct it through free and diligent discussion.

Is not this our catholicity? If you who speak for the Church cannot or will not abide it, then the Church must forego her claims and career of universality. She must be a sect,—a sect only—a sect beautiful in liturgy and ceremonial and doctrine and precious in history—but only a sect—only a sect. And if the statistics to which I shall refer, statistics of our present and past, be the measure of the future, then one of the lesser sects of our American land. Truly Dr. Crapsey's defenders stand for the different career of a catholic and truly living church. We will not give up this sure expectation unless this American church of our love and hope shall, by its highest authority, make so narrow, so shortsighted, so truly heart-breaking a decision.

What, then, Rt. Rev. President and Gentlemen of the Court, are the recognized fundamentals of our Christian faith as distinguished from the great body of orthodox beliefs which has been added to them? When one believes in God, when he believes His incarnation in Christ and Christ's sacri-

fice for our salvation, when he believes in Christ's Resurrection and in the Resurrection of the Dead to Immortality, and in the abiding and sanctifying presence of the Holy Spirit; when he believes these, shall we—can we—deny his Christianity? With these beliefs and no more might he not be usefully and piously industrious within our communion? The church has indeed other, many other, beliefs; the horizon of her orthodoxy is more extensive. But are not these the fundametal essentials for clergy and laity alike? Does not our Catechism tell us that the beliefs which we "chiefly" learn from the articles of the Apostles Creed are: First, the belief in God the Father who hath made us and all the world; secondly, the belief in God the Son and His redemption of mankind; and, thirdly, the belief in God the Holy Ghost who sanctifieth all the people of God? When in baptism a declaration is made of belief in "all the Articles of the Christian Faith as contained in the Apostles Creed," is it not, after all, this general result which is meant rather than a special and distinct affirmation of each of the statements as a substantive and essential or fundamental doctrine of and by itself, interpreted in one fixed way and in none other? Already the Church—and now with no dissent—has de-literalized some, at least, of the credal statements. Every one knows that the meaning of several of them is for no one to-day what it was for nearly every one when a thousand years ago and more the Apostles Creed came to its present form. This is true of the words "Maker of Heaven and Earth," the words "He descended into Hell," the words "He ascended unto Heaven." Take the words, "the Resurrection of the Body." Did they not for fifteen hundred years and more



mean, for all or nearly all who said the creeds, the literal resurrection of the body in its perfect physical identity—the reassemblage of all its particles? What was once the orthodox interpretation is no longer so. This was conceded in effect by the Rev. Dr. Francis E. Hall, in his address at Batavia, as ecclesiastical counsel for the prosecution.\* So that with respect to that article the prosecution has to admit that the deeper and far more real truth has come in our day to supplant the literal and inferior interpretation which, as a symbol, had a partial truth of its own. It is true also of the affirmation of the session “on the right hand of God the Father Almighty.” For us these words are figurative of a spiritual truth. But 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 mediæval pictures of the Holy Family, representing the Almighty as a venerable old man with long and flowing hair, with piercing and majestic eyes, all wonderful to the last degree, and with the divine figure of the Saviour at the right hand. This represented the literal belief of great masses of the people of the day. It was the settled orthodox interpretation. The Roman Council of Trent upon defending in 1551 the doctrine of the Real Presence sought to meet the objection from the conceded belief “that Our Saviour Himself always sitteth at the right

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\* Dr. Hall said: “The ancients” and, of course he was speaking of early Christians who said the creeds, “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.”—*Fuller Report of Proceedings at Batavia*, p. 179.



hand of the Father in Heaven, *according* to the natural mode of existing.\* Is it not indeed the "orthodox" belief to-day? Does not our fourth Article of Religion say that Christ "took again his body, with *flesh, bones*, and all things appertaining to the perfection of Man's nature, *wherewith* he ascended into Heaven and there sitteth, until he returns to judge all Men?"

And yet the Church to-day sees in this and other once "orthodox" interpretations inferior and anthropomorphic views of God and His Son necessary to those for whom the glass through which they saw was darker far and more clouded than the glass through which we see. The true affirmations of the creeds are not indeed in the letter of physical detail, but in their underlying and dynamic essentials. They have a spiritual verity which, as the light shines more and more, becomes freer from that necessity to rest upon physical conceptions which belonged to those who saw in a dimmer light. This, and this only, can be the abidingly orthodox rule of interpretation.

Dr. Crapsey believes in the Apostles' and Nicene Creeds, and in all their articles. This is his solemn declaration here as it was at Batavia and when he was ordained. He holds this spiritual view to be the interpretation and meaning of their affirmations concerning the Conception by the Holy Ghost and the Resurrection on the third day. I shall not argue that he is right. You will not—at least for the present you will not—rule on the doctrine. But, assuming Dr. Crapsey to have been in error, then upon the question which you have present power to rule, I have to point out that his error was not on any vital and fundamental matter; that it was an error

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\* Schaff's Creeds of Christendom, vol. 2, pp. 126, 127.

into which an honest son of the Church might fall. With this question you have to deal, not that you are to rule on doctrine, but that you are to determine whether Dr. Crapsey's error require ecclesiastical discipline; and it is only for this that, in the absence of theological counsel, I refer to authorities which go far to excuse his error.

I am permitted by the Rev. Dr. Henry S. Nash, Professor of New Testament Interpretation in the Cambridge Divinity School, to submit a copy of a letter which he has written me on the subject,\* and which I beg you to treat as a part of this argument. Prof. Nash believes in the Virgin Birth as it was interpreted by the Diocesan Court and as, perhaps, it is to-day understood by most Christians. He differs with Dr. Crapsey, therefore, and with a large body of clergy and students of the English and American churches, living and dead. Among them was Coleridge, the philosophical and eloquent champion of the Anglican Church, to whom as much as to any man it owed the firm hold it got upon highly educated Englishmen in the last century. He considered "the doctrine of the Triune God as the very ground and foundation of the Gospel faith;" but he held that the gospel of the Infancy, "instead of supporting the doctrine of the Trinity and the Filial God-head of the Incarnate Word \* \* \* if not altogether irreconcilable with this faith, doth yet weaken and bedim its evidence." But with Dr. Nash as with Coleridge, "it is enough to know that the Son of God *became flesh*, *σὰρξ ἐγένετο γεγόμενος ἐκ γυναικός*, and more than this \* \* \* was unknown to the Apostles, or, if known, not taught by them as appertaining to a saving faith in

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\* Printed at the end of this Argument at page 117.

“Christ.” \* For many, perhaps for most of us, the doctrine of the Incarnation is helped, in so far as that it is made more vivid, by belief in the miraculous birth of the body of Jesus, and by retaining the lovely recitals of His childhood as genuine and not interpolated portions of the gospels.

But obviously the greater miracle, even if not the only one, was the pouring into a human body living and breathing, susceptible of trial in all

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\* Samuel Taylor Coleridge's Notes on English Divines, edited by the Rev. Derwent Coleridge, M. A., London, 1853, at page 73. I here give the full text of this remarkable passage written in October, 1831:

“Therefore, having now overpassed six-sevenths of the ordinary period allotted to human life—resting my whole and sole hope of salvation and immortality on the divinity of Christ, and the redemption by His Cross and passion, and holding the doctrine of the Triune God as the very ground and foundation of the gospel faith—I feel myself enforced by conscience to declare and avow that, in my deliberate judgment, the *Christopædia* prefixed to the third gospel and, concorporated with the first, but, according to my belief, in its present form the latest of the four, was unknown to, or not recognized by, the Apostles Paul and John; and that instead of supporting the doctrine of the Trinity and the Filial Godhead of the Incarnate Word, as set forth by John I. 1, and by Paul, it, if not altogether irreconcilable with this faith, doth yet greatly weaken and bedim its evidence; and that by the too palpable contradictions between the narrative in the first Gospel and that in the third, it has been a fruitful magazine of doubts respecting the historic character of the Gospels themselves. I have read most of the criticisms on this text and my impression is that no learned Jew can be expected to receive the common interpretation as the true primary sense of the words. The severely literal Aquila renders the Hebrew word *veanus*. But were it asked of me: ‘Do you then believe our Lord to have been the son of Joseph and Mary?’ I reply: ‘It is a point of religion with me to have no belief one way or the other. I am in this way like St. Paul, more than content not to know Christ himself *κατὰ σάρκα*. It is enough for me to know that the Son of God *became flesh*, αὐτὸς ἐγένετο ἡ γυναικὸς ἐκ γυναικὸς, (John I. 14; Gal. 4, 4), and more than this, it appears to me, was unknown to the Apostles, or if known, not taught by them as appertaining to a saving faith in Christ.’ ”

things as we are tried, of the very Godhead. This has been recently and with clear and striking eloquence set forth in a recent periodical. Whether the Saviour's body of flesh came or did not come into being under a special and miraculous intervention of divine power, it is clear that the all-essential thing to the precious and fundamental doctrine of Christianity is that the body of Our Saviour, being the body of a man, was the tenement of a soul and spirit, both God and man. Apart from the disputed introductions to the gospels of St. Matthew and St. Luke there is not in the New Testament any reference to the Virgin Birth—certainly none that is plain and clear. Dr. Nash reminds us that neither in the preachings of St. Paul, St. Peter and others in the Acts, nor in the Epistles of St. Paul, St. John and St. Peter nor elsewhere in the New Testament is this doctrine preached as if it were a fundamental necessity or a necessity at all, or even referred to. With much reason he regards the absence from the writings of John, in view of his intimacy in the family of Our Lord, to have been specially significant. Nor are there any words of our Saviour recorded in which He enforced the doctrine as necessary, or in any way referred to it. Prof. Nash does not, as he doubtless would had he intended to deal fully with the questions, refer to the history of the Apostles Creed, and the undisputed fact that the original symbol in use about 200 A. D., did not contain the affirmations of the miraculous conception, showing that, at that early time, no stress was laid upon the doctrine as fundamental.\*

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\* Lumby on the Creeds, at pages 21-22, 109-118, table at pages 182-185.  
 Schaff " " " table, at page 52, vol. II.  
 McGiffert on the Apostles' Creed, pages 7, 84.

I do not now, by way of defense pause to recapitulate the reasons and authorities which afford, or seem to afford, such support to Dr. Crapsey's views of this doctrine as to demonstrate that, for him to hold and preach that view was entirely consistent with his sincere belief in the Nicene and Apostles' Creeds.\* Since you cannot now rule on doctrine, I shall for the moment, assume that they and he were wrong. If the judgment can survive the faults of procedure of the Diocesan Court, and if after taking up the ques-

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\* The seeming or supposed inconsistencies with the more literal interpretation of this doctrine, of the genealogical descent given by Matthew (1, 16) as through Joseph, of the express references (John, 1, 45 ; Luke 4, 22) to Him as the "Son of Joseph," of the repeated references to Him as the "Son of Man," and the other scriptural arguments relied on, as well as the development of these affirmations in tradition and the creeds, the argument against the authenticity of the accounts of the birth and childhood now found incorporated in the gospels of Matthew and Luke, and the other and various arguments either supporting Dr. Crapsey's view or reconciling it with orthodoxy or excusing it as a permissible interpretation will be found in the following publications among others :

The Value of the Bible, by Rev. H. H. Henson, Canon of Westminster and Rector of St. Margaret's, Westminster, and especially his Letters to the Bishop of London, prefixed to the volume. London. 1901.

The Virgin Birth of Christ, by Paul Lobstein, and especially the introduction to the English translation by Rev. W. D. Morrison. LL. D. New York and London, 1903.

Monograph of Rev. W. S. Parker, M. A., Rector of Barford, on "Some words on the Virgin Birth."

Truth and Falsehood in Religion, by Rev. W. R. Inge, D. D., Chaplain to the Bishop of Lichfield. New York, 1906.

Encyclopaedia Biblica, edited by Rev. T. K. Cheney, Professor of Biblical Exegesis at Oxford and Canon of Rochester Cathedral.

McGiffert's Apostles' Creed, its Origin, its Purpose and its Historical Interpretations,

Monograph on the Obligation of the Creeds, by the Rev. Dr. William Sanday, Professor and Canon of Christ Church, Oxford, published in the Independent Review of October, 1903, and reprinted in the "Churchman" of January 27, and February 3, 1906.

tion of Discipline, you rule that adversely to Dr Crapsey, so that, in order to decide the cause, you must rule on doctrine, you will, I trust, have doctrinal questions argued before you by theologians, not by lawyers.

The only immediate determination of this cause is, then, concerned, if you decide the procedure below to have been correct, with the question of Discipline, and not with any question of Doctrine, except only, of course, that you will have to ascertain the relative importance of doctrines in order correctly to determine the question of Discipline. Is it an offense for which a presbyter should be dismissed from the Church that he exercises an honest freedom of opinion upon a doctrine which, while it is here deemed to be true, neither Christ nor any of the Apostles enforced as a necessity of salvation? If Dr. Crapsey believe as others—many others—in the Church do believe—and among them many in high authority and never under prosecution—that the creeds teach the divine and direct generation of the soul or spirit of Christ, if he believe, as he may with authority, that the title “Virgin Mary” refers to the purity and exaltation of her life and especially to this being her first child—nevertheless the question upon these and all the other details of doctrine, is not whether Dr. Crapsey be right in his conclusion. The real question is whether his understanding and interpretation of the credal statement in an exclusively spiritual manner is of itself such a heresy as requires the extreme discipline and punishment of the Church. Can and will a church truly destined to a glorious career of catholicity thus discipline and dismiss a minister bountiful in good works for the church and with

an unblemished career of nearly forty years in its service, for the sole reason that he does not hold or preach something never preached or mentioned by the Divine Founder of Christianity Himself or preached by any of His Apostles ?

I must here deal for a moment with the charge that Dr. Crapsey, reciting for his congregation and for himself the Apostles' Creed and the Nicene Creed and the prayers in which the divine pater-nity of Christ is recited, is speaking a falsehood, saying what he does not believe and making his people to say what he teaches them to be untrue. If there were anything to this charge it would, indeed, be serious. It was the gravamen of the second specification of the second charge in the presentment of which the Diocesan Court unanimously acquitted Dr. Crapsey. There is and can be no such question in this case before this Court, for no appeal was taken from that acquittal.

I beg you to remember that, on his honor and his conscience, Dr. Crapsey affirms his belief in these as in all the other articles of the creeds, and likewise his honest belief that the spiritual verity which he assigns to those items is, for them, an all sufficient and necessary significance.

I need hardly deal with the accusation against Dr. Crapsey so far as it concerns the doctrine of the Resurrection of our Lord. Doubtless had Dr. Crapsey's heresy been limited to this—if he had not dealt with the Virgin Birth,—the presentment would never have been made. For the intellectual and moral difficulties in the interpretation of that item of our faith so that it should mean that the physical body of our Lord rose and ascended into Heaven and sits on the right hand of God, are so great that they are not and cannot be held by many,



very many, among the most pious of the faithful. Upon this question I shall, however, out of a lawyer's abundant caution, read, as part of my argument here what was, on this point, said by the Rev. Dr. Elwood Worcester upon the hearing at Batavia. After telling the Diocesan Court that he had heard Dr. Crapsey "again and again both in private conversation and in his public discourse express his firm belief in the reality of Christ's Resurrection" he said :

"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, 'that 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 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,

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\* John 20, 19, 26.

† Mark 16, 12.

‡ Luke 24, 16-32, 37. John 20, 14; 21, 4. Matthew 28, 17.



“ and yet I think it important to bring them for-  
 “ ward 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 ac-  
 “ cording to the Scriptures, and 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 ques-  
 “ tioned, which even Baur spared \* \* \* The  
 “ date usually assigned to the writing of this Epis-  
 “ tle 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 what-  
 “ ever 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 appear-  
 “ ance 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 con-  
 “ version, 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 unquestionable 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 ines-  
 “ timable 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 ap-  
 “ peared; and also the measured, guarded, parsi-  
 “ monious terms in which he relates these appear-  
 “ ances. \* \* \* You will observe Paul’s death-  
 “ like silence as to all the material features  
 “ afterwards introduced into the gospel narra-  
 “ tives, 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 expe-  
 "riences of others. Moreover, we know per-  
 "fectly what his idea of resurrection is. We  
 "know that he says here: 'Flesh and blood can-  
 "not inherit the kingdom of God; neither doth  
 "corruption inherit incorruption.' We know that  
 "St. Paul exhausted the very resources of lan-  
 "guage in establishing a series of antitheses be-  
 "tween 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 wit-  
 "ness 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, sub-  
 "stantiated and vouched for by the best evidence  
 "that we have for the Resurrection in the New  
 "Testament."

May I now, coming from this glimpse of doctrine  
 to which Dr. Worcester has thus clearly and nobly  
 introduced us, return to my own domain. I do not  
 now argue doctrine or express any dissent of my  
 own from the view of doctrine held by the Stand-  
 ing Committee or the Diocesan Court. For my  
 argument it is relevant only to the degree or  
 character of Dr. Crapsey's error, that is to say, to  
 the great question of Discipline.

And may I now for a few moments deal with Dr.  
 Crapsey's ordination vows. It is true that he sol-

emly promised that he would give his faithful diligence so to administer the doctrine of Christ "as the Lord hath commanded and this Church hath received the same, according to the Commandments of God." Even if this promise be separated from the other ordination promises what does it mean? Is not the promise, in the first place, one of faithful diligence? Is it not, in the next place, that to minister the doctrine *as the Lord hath commanded*, and in the next place, to administer the doctrine as this Church hath received the same, that is to say, *as this Church hath received the same from her Divine Founder?* And, finally, is it not a promise to minister the doctrine according to the Commandments of God? I affirm to this Court that, unless by a perversion little less than monstrous of a plain meaning, it is a promise of the candidate for the priesthood to exercise his conscience and intelligence. It is a promise to look to the Almighty, to His Commandments and to His gift to the Church for the doctrine which he is to preach. In the succeeding ordination promise, the undertaking is to banish and drive away from the Church all erroneous and strange doctrines contrary to God's word. Here again God's word is set up under the express mandate of the Church to be the measure and only test of the error and strangeness of doctrines.

But the promises thus quoted are only two out of several promises which were made by Dr. Crapsey at his ordination. Before taking these vows upon his lips he listened to that perfect and beautiful address of the Bishop in which the candidates were reminded that they could not "by any other means compass the doing of so weighty a work pertaining to the salvation of man but with doctrine and ex-

hortations *taken out of the Holy Scriptures* and with a life agreeable to the same," and in which their Father in God admonished them to be "studious \* \* \* in reading and learning the Scriptures," that they should "draw all their cares and studies" in the way of their sacred office, "praying for the heavenly assistance of the Holy Ghost, that by daily reading and *weighing* (I ask the Court to remember this admonition) the scriptures" they might "wax riper and stronger" in their ministry. After this solemn warning that the priest, instead of being content with his belief as he then held it, was by diligent study to go on to "riper and stronger," that is to say to a fuller, better and more solidly grounded faith, came the vows of the candidate. He declared his belief that the Holy Scriptures contain all Doctrines required as necessary for eternal salvation, and that he was "determined out of the said Scriptures to "instruct the people" but "to teach nothing as "necessary to eternal salvation but that which" he should "be persuaded may be concluded and "proved by the Scriptures." Then he vowed to be diligent "in reading the Holy Scriptures and in such studies as help to the knowledge of the same."

Now I submit that it is open to no doubt whatever that the whole service of the ordination including the vows taken by the candidate is to be read and construed together; that, when so read, they mean that the young priest believes that the Scriptures contain all sound doctrines; that the recitals of the Creeds of the Church rightly include the doctrine; that he should not be content with the knowledge and understanding of the Scriptures and Creeds and interpretation

which he then had, but that he should diligently and faithfully study God's word and whatever else would "help to the knowledge of the same" in order that he might thereafter better know than he then knew the length and breadth of God's truth. Of course in so commanding the priest to study, the Church took the risk that his conscience and intelligence, imperfectly working, might lead him into error. But if the priest did his work honestly it was the Church's will that that risk should be run rather than it should be served by those who were slothful or ignorant or unthinkingly and superficially submissive to authority, and therefore not helpful to the great body of the laity. Our Church deliberately and after one of the most marvelous struggles in the history of man, thus rejected the theory and plan of the Roman Ordinal. May I quote from the very powerful address made at Batavia by my associate, Mr. Perkins.

"The Ordinal" he said, "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 the two  
 " churches are certainly interesting and important.  
 " I have taken the pains to provide myself with a  
 " statement of what is in the ordinal of the Roman  
 " Catholic Church that I 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 seces-  
 " sion, and the organization of the Protestant  
 " Church. Here is what Pius IV says is the ordi-  
 " nal or rule to which each priest in that Church  
 " subscribes, and we certainly think there is no  
 " principle more familiar to any lawyer than that  
 " when a change is made in a law it must be pre-  
 " sumed 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 mean-  
 " 'ing 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 Pro-  
 " testant 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 they assert that which is the basis  
 " and essence and foundation of Protestant belief,  
 " and that is the right and 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 that which 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 presby-  
 “ ters are bound. Its faith rests upon that con-  
 “ scientious 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—  
 “ that they could themselves abide with more  
 “ comfort 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 ques-  
 “ tions that arise in this case by the prin-  
 “ ciples which govern the Church of which  
 “ we are members, and which appeal to the in-  
 “ telligence and belief alike of the clergy and  
 “ laity of the church.”

I am aware that before a postulant is admitted to the diaconate or a deacon to the priesthood, he is subject to examination quite apart from the service of the ordinal, and that the Bishop or those acting for him may require proof of belief in literal interpretations where Dr. Crapsey and those who agree with him are content with spiritual interpretations. Whether that were so or not, when Dr. Crapsey was examined before his ordination does not appear, and I do not know. But if it were so I should ask the Court to observe—and it seems to me that the Church must realize—the difference between tests which it may apply to the opinions of one seeking

admission and tests which may be applied upon a heresy trial to the opinions of one who, while in other respects faithfully performing the duties of the priesthood, has diligently and honestly pursued the study of doctrine in accordance with his solemn vow. The Church surely, having commanded the priest to study and to exercise his faculties, will not punish him for a result to which his God-given guidance and God-inspired conscience has led him. If, indeed, he has thus been carried out of the Christian faith, if, however honestly, he has surrendered up its great fundamentals or any one of them that is integral and necessary to any real Christian faith, then the Church may justly ask him to resign his office or, if he will not, then may justly dismiss him. But there is here no such question.

Gentlemen of the Court, you cannot deny human nature. You cannot make all men, or all pious Christians, look alike or act alike or see alike, or, to the letter, believe alike. This is the ordinance of God. The Church will, at its peril, forget it. You cannot forget if you are to deal aright with this great question of Discipline for Heresy, a question so vital for the Church, so significant to its inner life and holy purpose.

You cannot wisely forget that our communion holds two great bodies of men working on different lines, but none the less to one end, and with equal loyalty to the cause of Christ and His historic Church. If we were to lose either of them, the schism would be disastrous beyond words to express. Truly, it would be a rending of Christ's garment. The divine wisdom of the Apostles prevented the disaster during the Pauline and

Petrine divisions. The wisdom of the Fathers in the days of Henry VIII and Edward VI and Elizabeth again prevented the disaster. Again, two or three generations ago, it was prevented by sacred statesmanship when indignation hotly flamed out against the eloquent and saintly men of the Tractarian movement in England or against the later movement commonly called Ritualistic, of which in our country the loved and trusted leader was Dr. DeKoven, truly the bishop of a great diocese of hearts and souls though the mitre was churlishly kept from his head. Nor is this wide and deep affection confined to-day to the Church in America. Our English brethren suffer under it or rejoice over it no less than we do. It appears in the Roman Church. It is so integral a necessity of the human nature with which God has dowered us that it is found even among the small body of Unitarians. Nor is there a single important faith between these extremes which is not held by men thus divided. For some there can be no truly living and catholic Church of Christ unless its Discipline permit a comprehensive and honest liberty upon matters not fundamental. For others, her creeds and formularies are as fixed and rigorous upon the lesser or non-vital doctrines, and upon their interpretation, as upon the fundamental belief in God or in the Incarnation to accomplish the triumph of faith over sin or in the Resurrection to Immortality. For some the Church of Christ, or at least the part of it included in the Anglican and allied communions, is bound to a future career of ennobling growth and of sacred change from lower to higher, from narrower to wider, always carrying the fundamentals of its

faith nearer and nearer to the ideal of a triumph over the whole earth. For others the Church has received and infallibly teaches a body of many doctrines, some more, some indeed less, important, but all once and forever and with unchangeable form and interpretation adopted by our spiritual forefathers and received by the Church of to-day, and all to be held by the faithful without study or inquiry which may induce or suggest change or doubt. For some the faith is a living force bound to grow and develop under God's hand and through His manifold revelations with the developing mind and conscience of man until Heaven shall swallow up Earth. For others the faith is a jewel once delivered to the saints, its shining and crystalline perfection to be esoterically preserved without the changes or risks of growth. For them the belief in the miraculous generation of the earthly body of Our Lord is essential to their belief in the Incarnation; as is the belief that it was in that earthly body with all its identity that He rose and ascended to Heaven. For the first those beliefs have held great truths imperfectly or figuratively expressed as in God's wisdom was for a time necessary for minds not yet equal to a fuller and better light. They, and Dr. Crapsey among them, fix their eyes, and perhaps too exclusively, upon Christ's peremptory sayings, that "that which is born of the flesh is flesh, and that which is born of the Spirit is spirit,"\* and that "they that would worship God must worship him in spirit and in truth."† They find their bounden duty in the

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\* John 3, 6.

† John 4, 24.

divine warnings that the ministers of God are to be "ministers of the new testament, not of the letter but of the spirit, for the letter killeth but the spirit giveth life,"\* that we must "walk by faith not by sight;"† that "flesh and blood cannot inherit the kingdom of heaven;"‡ that it is foolish, as St. Paul declares, to believe that "the body which is sown is the body which is to be;"§ "that we should serve in newness of spirit and not in the oldness of the letter;"¶ that although the Holy One was put to death in the flesh, He was quickened by the Spirit and "went and preached unto the spirits in prison;"§§ that the resurrection of the dead is the sowing of the natural body in weakness and the raising of the spiritual body in power.¶

I believe that any man, however high or sacred his calling, who should drive out of the Church or stifle sincerely pious men of either of these forms and habits of faith, would be guilty of an unwitting treason to her true purposes and her true career. Whether it were the Evangelical shocked to prosecuting anger against the Ritualist or Latitudinarian, or the saint rigorous in high devotion to all the mysteries and the literal dogmas of the faith, but intolerant that his brother, for whom their spiritual verity is their all-sufficient significance, should kneel with him within or without the chancel rail—equally would both make impossible a living and catholic Church.

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\* 2 Cor. 3, 6.

† 2 Cor. 3, 7.

‡ 1 Cor. 15, 50.

§ 1 Cor. 15, 36.

¶ Romans 7, 6.

§§ 1 Peter 3, 18, 19.

¶¶ 1 Cor. 15, 42, 43.

I do not praise or even defend every saying of Dr. Crapsey which is quoted in this indictment. Some things he said perhaps harshly or crudely. I wish, for instance, that when he wished to say, and to say upon certain scriptural warrant, that the Lord compels those who appeal to physical force to abide by physical force, he had not, through the ellipsis of his expression, shocked us by the phrase that Jesus "knew as well as Bonaparte that God is always on the side of the strongest battalions and the more skillful commander." Such criticisms can be made upon every crowded man who speaks or writes much. But whether well said or ill said, whether doctrinally correct or incorrect, everything quoted against him from his thoughtful and noble book fits his life and his long and sacred service in this, that it is an affirmation plainly intended, whether skillfully or not, to express and exalt the spiritual side and meaning of the undoubted and fundamental truths of our precious faith.

I have heard it said, since this controversy arose, and in the language of the street or of men after dinner, that all there is of this case is this, that Dr. Crapsey should "stick by the rules of the Club" to which he belongs or "get out." My friend, Mr. O'Brian, seemed at Batavia to think this a sufficient view; for he was much concerned with the text of the stipulations and rules adopted at Philadelphia more than a century ago when the American Church was organized, excluding, though, he was careful to do so, the "Thirty-nine Articles"—the only complete formulary of belief now in force which was adopted by the Anglican Communion and our own.\*

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\* Record, p. 74.

Dr. Worcester well said below that this view of the Church, if to us it seemed unworthy and absurd, was to pious and catholicly minded men who sympathize with the prosecution, nothing less than abhorrent and detestable. They and we and you, Rt. Rev. President and your associates, are, I know, agreed upon this at least, that this precious and holy Church of Christ is no mere creature of literal by-laws, no mere membership of formal stipulations humanly devised, but is His divine and living society now in part on earth, and in part, and presently to be altogether, in Heaven. We might well suppose that none of her ministers or members should be cut off unless by overpassing the sacred and spiritual limits prescribed by the Head of the Church Himself. But, at the least, her formularies and canons, when invoked against one sincerely and piously in her service, must be construed, not literally but broadly, with reference to the whole purpose of her being and her future career.

Nor is it of moment that Dr. Crapsey, in his more spiritual interpretation of the doctrine of Christ's birth, is in a minority of the faithful sons of the Church. To be in a minority is far—very far—from proof that one is right. It has been wittily and truly said that some men would rather be different than to be right. But of all bodies of men, this organization of the Christian Church on earth is the least likely—or should be—to invoke the voice of the majority of the time as making a conclusive presumption. Not one of its truths but was first and long, and by very few, preached to deaf ears and unsympathizing minds and had its way to make through the blood of the



martyrs. Least, almost, of all can this American Church of ours lay stress upon majorities and minorities. Is it not a grief to every member of this Court that her own progress in numbers and her hold upon the masses of people have not yet been greater as compared with the progress of the country and the hold upon masses achieved by other religious bodies? Should we not rejoice if our communicants were more, far more, than one out of every hundred of the population; if the communicants of the Baptist churches were not six to our one, of the Methodists eight to our one, of the Presbyterians and Lutherans each two or three to our one; if even the so-called "Disciples of Christ" did not outnumber us? Should we not rejoice if, in number, we were first instead of seventh among the Christian denominations; if in the number of organizations, of the number of ministers and the number of church edifices we were first instead of seventh; if in seats for worshippers we were first instead of eighth? Would we not that our highest statistical rank in the faculties and incidents of Christian usefulness in this American land were in something else than the money value of our church property? \* Yes, indeed, we shall judge truth and right by something higher than majorities.

Surely the Bishop of Fond-du-lac is not right in his doctrine that the Church is to fail; that as soon as a predetermined number of the faithful—and he implies that the number is to be very small—are

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\* The religious statistics of the United States appear in the Federal Census for 1890. The census exhibit for 1900 is not yet published; but it is not, I suppose, likely to materially alter the proportions between the Protestant Episcopal and other denominations. The figures given in the Census for 1890 were as follows:

gathered into the fold, the Church's career will have been fully run and its rigorous orthodoxy, while visited with earthly defeat, rewarded with an heavenly and exclusive glory.\* Does not his narrow pessimism come near to the Millerite and Adventist delusions? His test of final and supreme success for the Church will be its inability to secure another convert. Is it surprising that, in the intelligent and populous diocese over which a bishop with this ideal presides, and where

\* His letter to the Living Church of April 15th, 1906, in which after pronouncing his not very Christian "anathema" upon those who, because of their doctrinal differences with him he declared to be "false priests or bishops" and "depravers of the Faith," he said:

"The Church of Christ will never conquer the world. It never was intended to do this. It will be persecuted, and, at last, the world will reject the Church just as it did Christ. It is doing it now. \* \* \* But the Church, unconquered, will perform her heavenly office and gather into union with Christ those who will be members of the Kingdom of Glory. When the *predetermined number necessary* for the formation of that kingdom has been secured, Christ will come and usher in that blessed reign of eternal righteousness."

Denominations.	Ministers.	No. of Organizations.	Church Edifices.
Total.....	111,086	165,177	142,521
Baptists..... (13 bodies)	25,646	42,909	37,761
Catholics..... (7 bodies)	9,196	10,276	8,816
Congregationalists.....	5,058	4,868	4,736
Disciples of Christ.....	3,773	7,246	5,324
Lutherans..... (16 bodies)	4,591	8,595	6,701
Methodists..... (17 bodies)	30,000	51,489	46,138
Presbyterians..... (12 bodies)	10,448	13,476	12,469
Protestant Episcopal... (2 bodies)	4,224	5,102	5,103

his ministrations have been long and sincere the proportion of communicants of our Church to population is one of the smaller rather than of the larger of our dioceses?\* Is this indeed the fit ideal of our Church's career? Is it not an ideal nearer the will of the Master which is found in the Latin words used by Archbishop Benson when, as Bishop of Truro, he wrote his brethren in behalf of the new Cathedral of St. Mary to be built on the sandstone cliffs of Cornwall :†

*“Bishops are to know that this authority in  
“jurisdiction in the Church is mainly committed  
“to them for none other cause than that by their  
“ministry and assiduity the greatest possible num-  
“ber of men may be joined unto Christ, and they  
“that be Christ's already may grow and be built*

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\* Whittaker's Almanac for 1906, pp. 337, 339, 117, 334.

† Quoted by Archbishop Davidson in his sermon in Quebec Cathedral on August 28, 1904, which is printed in his recent volume “The Christian Opportunity.”

Approx. Seating Capacity.	Value Church Property.	Communicants or Members.
43,564,836	\$679,630,139	20,612,806
11,568,019	82,328,123	3,712,468
3,374,907	118,371,366	6,257,871
1,553,080	43,335,437	512,771
1,609,452	12,206,038	641,051
2,205,635	35,060,354	1,231,072
12,863,178	132,140,179	4,589,284
4,038,650	94,860,097	1,278,332
1,360,877	82,835,418	540,509

*" up in Him, and if any fall away they may be  
 " led back to the Shepherd, the Lord Christ, and  
 " be renewed by healthful repentance."*

Little wonder is it that under a great man holding that conception of the episcopal office, the Colenso schism in South Africa was healed and a fraternal relation begun with the Russian Church and the Established Church made to be in England a religious force such perhaps as it had never been.

Is not this, Rt. Rev. President, the temper and polity to be held by the ranks of our Church from those in your high station to the humblest worshipper? Is it not in this temper and polity that there must be found the true standard of Discipline for the organized and mighty host of Christian people holding and carrying the faith into the lives of men and the life of the world?

Let me, before I sit down, return for a moment to Dr. Crapsey, my dear friend, whom, indeed though he be not out of life's middle years, with his active energy and genius unquenched, I must call my venerated friend. To him, I suppose, if this judgment should stand, there would be something poignant in his severance from the associations of his life. To leave his long-time and fruitful work among the plain people of his parish, so dear to him and to whom he is so dear, no longer to pray with them or speak to them; all this would be hard, but for him nothing in comparison with his loyalty to the truth of Christ and the Church as it has been given time to see it. It was a pathetically fatuous suggestion of the Diocesan Court that within thirty days after he should learn what was the opinion of a majority of them, Dr. Crapsey should reverse—and acquaint the Bishop or Stand-

ing Committee that he had done so—not only his preaching, but also his inner belief, which, whatever its expression to men, he holds to the Almighty God who sees and knows, spite of declarations to bishops or lesser men. No one of that majority of the court below had had an experience in ministry for the Church nearly as long or as ample as his, or had done for the Church precious work in amount one-tenth as much as his, or had exercised a diligence or energy in sacred study and scholarship in any way comparable with his. Otherwise their decision would at least not have contained that unworthy suggestion of theirs of an insincere and untruthful submission.

Dr. Crapsey has made clear how he reads and interprets and believes the affirmations of the creeds as to the Birth and Resurrection of our Lord, and that the spiritual verity he assigns them is for him their true and all-sufficient and momentous import. If the Discipline of the Church must for this dismiss him, notwithstanding his firm and sound belief upon the great and essential fundamentals of its faith, he and his will be sorrowful. But, Rt. Rev. President and Gentlemen of the Court, not only he and his, but a great company of clergy and laity over the breadth of the land. You know very well that the American Churchmen who, last Epiphany, signed the declaration which had been already made by seventeen hundred English clergy were but a small part of those in sympathy with their opinion—whether right or wrong—that the real and spiritual foundations of the faith and creeds of the Church would, for Christian men, be strengthened, not weakened by study and discussion carried on “with entire candour, reverence for God and His truth and loyalty to the Church of Christ.”

If it were true, or could be true, that there was no place, no useful opportunity for sacred work, in this American Church of our love and hope, for a man appearing to us here as does Dr. Crapsey, then of course, it would be sorrowfully demonstrable that there is no place for a great body of clergy and a vast body of laity. Although I am but a layman—and one of the least of this body—I do not hesitate to say to you, for you or some of you know already, that in pious and faithful and energetic devotion to the Church, to the many sacred causes which find their best centres and inspiration in her cathedrals and churches and chapels, and in wide and great success in all their labors for her, and in eager and indomitable promise of still greater achievement for her future, no body of men is of more importance to the Church. Even they, though they were thrice as useful, must, of course, yield to the necessity, if any such there be in this cause, that the Church shall not abandon any fundamental truth. But their sincere and profoundly anxious feeling and opinion ought to be respectfully and fraternally regarded. They see, as you see, that, if Dr. Crapsey must go, he will not go alone. For many—very many—whether in the clergy or the laity must then ask themselves and themselves answer the question, Is there here a place for me—an honest man? For the laity, no less than the clergy what you adjudge will be a momentous answer to the question at what line, when practised within the Church, conscientious thought and speech become dishonest. Among the laity—as I, a layman, may tell you—and among those most devoutly strenuous for the Church—and far more rapidly than you perhaps, imagine—and long, very long, before Dr. Crap-

sey opened his mouth upon them—had spread the belief that the true meaning of these items of the Creed was not physical and literal, but spiritual. They know—they have learned it from orthodox bishops and learned doctors as well as out of their own study and thought—they know that—without heresy trials and often without controversy—silently and surely, as God has enlightened and exalted man's mind—physical and literal interpretations of other credal affirmations have given way to deeper and truer and more spiritual understanding of them; they know that this was so with the Descent into Hell, the Ascent into Heaven, the Session at the right hand of God, and the Resurrection of the Body. They know also that through wars and blood and tears innumerable, this change in current orthodox understanding had for us come to the affirmations in the Holy Communion, "This is My Body," "This is My Blood."

The prosecution now asks you to approve as a disciplinary rule of our Church that, if a clergyman believe that the credal statements as to the Conception of Christ and His Resurrection in like manner mean spiritual reality and not physical phenomena, the clergyman speaks and acts a lie whenever he recites the Creed. If you shall approve this rule, then, of necessity, you approve the rule for the laity. You might not, perhaps, advise excommunication of a layman as you might depose a priest for his solemn recital of the Creed before God's people, while in his heart, and at other times on his tongue, is a belief which you say makes falsehood of the recital. But that does not signify. Common honesty and self-respect are for laymen as well as for the clergy. Would it be fit for me,



at morning service and at evensong to pronounce these sacred words, knowing that, in the settled mind and judgment of the Church, I was pronouncing a sacrilegious lie? If ecclesiastical authorities would permit it, would I myself permit it? Never, if I were an honest and reverent man. So with adult candidates for Baptism and for the parents and god-parents of children to be baptized, and with everyone, young or old, who comes to the Bishop for Confirmation. Every one of them must, to the question, "Dost thou believe all the Articles of the Christian Faith as contained in the Apostles Creed," answer "I do," or affirm a like answer before made by him or for him. Would the Church tolerate this?

Rt. Rev. Bishop, if such be your judgment and that of the Church, we have, indeed, reached an epoch in the religious history of our land. It will not signify that our English brethren have thrust this obstacle out of their way. It will not signify that some of those who were once loyal Churchmen in the United States may still find comfort in congregations of the Anglican communion, when they cross the ocean or the Canadian line, since there it is not now or ever likely to be an offense to interpret spiritual things spiritually. Neither God nor His truth will fail. Even if our American Church surrender its apostolic career and become forever a sect, tabernacles will be raised up for those who with honesty in their hearts and devout honesty upon their lips would bring to Him who is a spirit, their worship in "spirit and in truth."

Whatever your judgment is to be, whether for a catholic or a sectarian future of our Church, we may all pray that this shall be its last trial for

heresy. For was there ever a heresy judgment useful to establish truth or to suppress error? I will not say that no heresy judgment has been right and even useful. But how difficult to recall the practical usefulness of such a judgment. In the dioceses where patience and forbearance, and not presentments, have made the rule, has there been less or poorer religious life or less progress of the Church than in those where these contentions have swallowed up the vital energy requisite for creative and instructive work? You may read in the sketch of Dr. Pusey by the Rev. Dr. Edward Hatch,\* that, after he was suspended from the ministry for real or supposed heresy in his sermon before Oxford University on *The Holy Eucharist a Comfort to the Penitent*, "the immediate effect of his suspension was " the sale of 18,000 copies of the condemned sermons, that its permanent effect was to make Pusey " for the next quarter of a century the most influential person in the Church of England." You may also read that, after all idea of disciplining him was abandoned and his opinions subjected to free and wholesome and drastic discussion within the Church, neither opinion being given the fatuous and futile aid of ecclesiastical prosecution, the importance of his doctrinal interpretations before long began to decline so that it is written of him that he " survived the system which had borne his name," that " his followers went beyond him or away from him," and that his adherents ceased to exercise " an appreciable influence upon the intellectual life of England."

If time permitted, a hundred illustrations could be given of this profound lesson in the sacred statesmanship of the Church which was com-

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\*Encycl. Britt., article on Edward Bouverie Pusey.

manded by her Master to be as "wise as serpents" as well as "innocent as doves."\*

Was not the true and wise Discipline of the Church, the one most consistent with her best ideals and her best and most successful practice, the one most full of promise for her future and beneficent progress, years ago put before conventions of the Church by James De Koven when he was speaking, as some of us thought in behalf of heresy at the other extreme from that of which Dr. Crapsey is accused? I should thank God to read his very words at the forefront of your judgment. With them I leave you this cause. He said of our Church,† that it

"is meant to be, not a Church for to-day,  
 "but a Church forever—the American Catholic  
 "Church. \* \* \* Why may not this Church  
 "of ours give peace to the divided branches  
 "of Christ's Church. \* \* \* We live in  
 "troubled times \* \* \*. It does seem to  
 "me the day is not now to legislate on nice  
 "points of doctrine, or to prescribe exactly  
 "the measure of a genuflection or the angle  
 "of inclination which can express an orthodox  
 "devotion. The answer to all this panic and  
 "all this outcry is one and only one: It is  
 "work—work for the cause of Christ; work  
 "for the souls of men; a fuller, deeper, more  
 "noble sense of the obligation of the Church,  
 "developing its powers and sending it forth  
 "to mould and form this nation of ours, and  
 "to give new life and vigor to every effort it  
 "makes for the salvation of men. \* \* \*  
 "And I call you, brethren, in a time like this,  
 "not to narrow hearted legislation, but to  
 "broad, catholic, tolerant charity, and to

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\* Matthew, 10, 16.

† Sketch of Dr. De Koven in "Some American Churchmen"  
 at pp.

“ work, as men never worked before, for the  
“ souls of those for whom the Saviour died.”

We ask you, therefore, Rt. Rev. President and gentlemen of this Court of Review, to reverse the judgment of the Diocesan Court. We ask you to reverse, because the judgment was rendered without jurisdiction and against the law of the Church and the law of the land; because the procedure of the Court was not lawful and not fair; and because the judgment of the Court in its form and purport was unlawful.

If, however, we are wrong and you cannot reverse for those reasons, we ask you to reverse the judgment because the judgment was rendered in violation of the sound policy of this Church with respect to Discipline for Heresy.

And if for this you cannot reverse, then we ask you to consider the questions of doctrine presented by the prosecution and to hold your determination of them until the American Church shall constitute its final Court of Appeals.

## I.

LETTER OF THE REV. DR. HENRY S. NASH, PROFESSOR OF NEW TESTAMENT INTERPRETATION IN THE EPISCOPAL THEOLOGICAL SCHOOL AT CAMBRIDGE, MASS.

CAMBRIDGE, SEPT. 29.

DEAR MR. SHEPARD :

I trust that I may be pardoned for going over some ground already familiar to you. I am taking the liberty of putting the case as if I were writing for the Junior class at the Theological School. In this way, I think, I can best put the New Testament as a whole in its bearings on the matter in hand.

Will you also pardon me for seeming to trespass on your own proper ground? I do so because the New Testament, viewed in its growth and in entirety, strongly supports a point which you made—if my memory serves me—in the course of our conversation. At the outset I remind myself that the question of doctrine cannot come up. The correctness of the position taken by the lower court upon the Church's teaching is not brought in question. But it is possible that a given view of the Church's doctrine may be true in all details and yet be in error regarding the perspective of the whole. The emphasis which, as a result, falls on some particular point may be out of proportion. And the consequence may be that a question which, taken by itself, is purely one of doctrine, may, in practice, shade off into a question of procedure. It is conceivable that excessive emphasis on some one aspect of the Church's teaching may lead to a miscarriage of justice. I have in mind the division of opinion in the lower court. Mr. Dunham, in the minority, opened his mind to Dr. Crapsey's

noble confession of faith, and, refusing to stand upon the technicalities of the presentment, considered nothing but the heart and soul of the man as the Trial itself defined him. What I shall try to show is that the New Testament sustains the minority.

It is of the first importance to keep in mind the nature of the Church as we conceive her, lest unclear thinking may confuse our position with that of the Roman Catholic Church. Such confusion is more or less common. And the zeal becoming to Churchmen in defense of a Creed which has proved itself invaluable as a means to clearness of mind, steadiness of aim and depth of devotion, may easily swing them into a position inconsistent with the Church's own holdings. The Roman Catholic Church consciously and deliberately puts Tradition on a level with Holy Scripture. Our own Communion has quite as consciously and deliberately abandoned that position. Both in the Articles and in the Ordinal, the Supremacy of the Written Word of God as the guide of Christian consciousness and conscience is emphatically affirmed.

The saving supremacy of God's word is the necessary premise if we are to come to any understanding. Starting with that premise the conclusion which I endeavor to draw is based upon the Historical view of God's word. By that is meant the knowledge of it as it is in itself, distinct from the interpretation which was afterward put upon it. Our premise forces us to control the interpretation by God's Word and not to control the Word by the interpretation.

The historical view of the New Testament Scriptures enables us to study them in their growth, to view them as an organism of truth and thus to distinguish between the fundamental and the secondary. All the truths of Scripture are not on the same level. God's Word has its own emphasis and lack of emphasis. Our contention is that reverence for the Divine Revelation, taken in its entirety, compels us to give close attention to the perspective of saving truth, to weigh its silence

and estimate its emphasis, when we are handling a question pregnant with vital consequences for the Church in all time.

It is now practically agreed that the Gospel according to St. Mark is the earliest among the canonical Gospels. The relation between the Gospels involves a number of questions which are far from being settled. But it seems reasonably certain that, in reading St. Mark, we are carrying our minds back into the earlier feeling and emphasis of the Apostolic Church. The second Gospel is the primitive type. In its proportion and perspective it represents the mind of the Church during the first thirty or forty years after our Lord's Ascension. It becomes highly significant, therefore, when we find the Gospel in total silence regarding the birth of the Saviour. It is true that the argument for silence, here as in other places, must be held with bit and bridle lest it fall upon us. If we were contending against the truth of the Virgin Birth, the silence of St. Mark would prove altogether too much ; for it would prove that the Apostolic Church knew nothing and cared nothing about Her Lord's life before His public ministry. And that is unbelievable. But we are not contending against the fact of the Virgin Birth. Personally I accept it. Our contention is that the Apostolic Church, during the first thirty or forty years after the Ascension, put no emphasis on the Virgin Birth.

The weight of the argument built on the second Gospel gains in strength when we remember that, according to the tradition of the ancient Church, St. Mark drew upon the preaching and the memory of St. Peter. There is no sufficient reason for invalidating that tradition. We have then the striking fact that the Apostle who, by our Lord's choice and ordinance, was the head of the Apostolic band, and who, under the guidance of the Risen Christ, led the Church in the heroic early years, so preached Christ and so published the story of the Saving Life that his follower and interpreter, St. Mark, passed by the Virgin Birth when he set his hand to the telling of the Gospel Story.



The evidence taken from St. Mark is immensely strengthened when we pass to the fourth Gospel. Here again unsettled questions meet us. But I am personally confident that the Church's tradition regarding its authorship is substantially correct. Whatever may be the final conclusion concerning the process by which the text of the Gospel came into its present shape, I am confident that the Apostle John will be accepted as the creative mind in and behind the cast of thought called "Johannine." I believe, therefore, that the silence of the primitive Gospel regarding the Virgin Birth is seconded by St. John. This, the latest Gospel, was published towards the end of the First Century. It is to be noted that St. John differs widely from St. Peter both in work and in genius. He has outlived the fall of the Holy City. All the other Apostles have died before him. His life goes deep into the great debate of the Church with the heresy of the First Century. The essence of that heresy, known as Gnosticism, was the denial of our Lord's humanity as being inconsistent with the Incarnation, the declaration that the Heavenly Christ came down from above at the time of our Lord's baptism, and temporarily and loosely connected himself with the terrestrial Jesus. In opposition to this heresy, one is forced to think, the Apostle John must have found a motive which necessarily impels him to enter into the question of the Saviour's birth. But he adds his silence to that of St. Peter. It has been urged that the fact of the Virgin Birth underlies certain passages in the fourth Gospel such as "I am from above" (8, 23). Conceding that this may be so, it may again be repeated that we are not arguing against the fact of the Virgin Birth. Our whole concern is with the question of New Testament perspective and emphasis. Concede, for the sake of argument, that the assumption of the Virgin Birth underlies the Johannine report of our Lord's Words. The concession does but strengthen the main contention. The latest Gospel confirms the inference

drawn from the earliest. The Virgin Birth is not in any sense emphasized.

This is not all. The fourth Gospel is not only the latest Gospel. It is the most mature and the deepest-minded. St. John, under the pressure of heresy and the inspiration of God, marked out the path, in which the Church was to walk, by fusing the great controlling and organizing conception of the Logos with the Person of the Saviour. He who lay on the breast of Jesus, who knew Him as no other Apostle knew him, shaped the thought of the Incarnation which the Catholic Church adopted as her Creed and platform. Yet no word is said concerning the Virgin Birth.

The Gospel according to St. Mark and the Gospel according to St. John taken together—what do they prove? Unless we are to convert the Holy Scriptures into a dictionary of quotations, unless we refuse to believe that God's word is to be interpreted according to the proportion of faith, then it irresistibly follows that the two supreme men amongst the personal followers of the Saviour put no considerable emphasis on the truth of the Virgin Birth.

But the full evidence is not yet in. St. Paul joins his forces to St. Peter and St. John. When we consider the number of his letters, the field of time over which they are spread, the variety of occasions and needs which brought them to light and the wide and deep experience of the Apostle himself, his complete silence regarding the Virgin Birth is, perhaps, more significant than the silence of St. Mark. But that is immaterial. The essential point is that St. Paul was the most fertile and many-sided mind of the Apostolic Age. He touched all the speculative and practical questions which vitally concerned the Catholic Church. And he touched them all with creative power. Yet not once does he speak of the Virgin Birth. In two passages (Rom. 1, 3; 2 Tim. 2, 8) he refers to our Lord's descent from David. His words have been, as I believe, pressed beyond their limits when taken as evidence against the Virgin Birth. I

would not so use the argument for silence. But most assuredly, they are fairly taken when, in their simple reference to the Davidic descent of our Saviour, they join with the Apostle's total silence elsewhere to say that he, like St. Peter and St. John, put no emphasis on the fact of the Virgin Birth. It is hard to conceive how the argument could be made stronger.

Now St. Peter and St. John were the main theological forces of the Apostolic Age. They wrought out for the Church the doctrine of the Incarnation as the only saving thought regarding the relation of God and man. The fact that they left unsaid what they did, when the fact is viewed in the light of what they say, cannot but have great weight. If they had been men of little faith or narrow faith, men of short experience or of contracted experience, their silence might be discredited. But while their silence cannot disprove the fact of the Virgin Birth, it does most conclusively prove that the deepest thought of the age which was inspired to give us our New Testament, did not look upon the Virgin Birth as a matter of life and death.

The Gospel of the Infancy, as we find it in the Gospels according to St. Matthew and St. Luke, gives the Virgin Birth its position within the New Testament Canon. Taken together with St. Ignatius of Antioch they give strong evidence in favor of a conclusion that belief in the Virgin Birth was part and parcel of Catholic Christian consciousness as early as the year 90. The marked difference between the two forms of the story in Mark and Luke attests the wide spread of the belief. Ignatius (died about 110) speaks of it in the tone of a man who had never doubted, who had never known anything else. St. Matthew, St. Luke and St. Ignatius join forces to prove that, at a fairly early period, the belief occupied a wide area of feeling and faith.

But this does not run counter to our contention. In two of our Gospels, and those the earliest and the latest, the doctrine does not appear. In St.

Paul's correspondence, wide and varied, touching all the vital issues of the Church's life in his time, it plays no conscious part. One has only to compare the Virgin Birth with the Resurrection of our Lord to see how slight is the emphasis put by the New Testament as a whole upon the former. The latter is the heart of the Christian Scriptures. The belief in it pervades and controls the Apostolic consciousness. We find it everywhere in plain sight. Where it is not in plain sight, it is close to the surface, coloring old phraseology, and creating new uses of established religious terms. The contrast with the Virgin Birth could hardly be more striking.

If we recall the position taken at the outset, here is a fact of primary importance for those who clearly conceive the controlling principles and ideals of our Church. The parallel between our age and the First Century is strong. Then the Church went forth into a world made one by Greek thought and Roman power. Now she is girding herself for the conquest of a vaster world made one by the arms and the trade of modern nations and the growing devotion to truth which is the noblest feature of our time. The Word of God is the Church's light, shining in dark places. If it is understood in its own sense, it must be taken in its perspective. It was nearly half a century in forming. The books that compose it belong by origin and authorship to a wide sweep of space. By its intrinsic nature it is a book of life, not a body of academic teaching nor a system of definitions, but a book of life quickening both the conscience and the reason by its touch. Its silence and its reserves are as significant as its expression and its emphasis. This silence and this reserve should carry the weight of the divine Word, when the Church is dealing with those who find difficulty in accepting the fact of the Virgin Birth while they accept with complete assent the aim and purpose of the doctrine of the Virgin Birth put forward as corollary of the Incarnation.

The difficulties for this class of minds have been materially increased by the recent discovery

of the Sinaitic Syriac and the form in which it puts the genealogy of our Lord. The Roman Church can appoint a Commission on Bible-Study and, by the use of Tradition, settle all serious questions before Bible-Study really begins. But in the Church of our obedience no such position is possible. She does not care for a Cadmeian victory won by a method which in effect undoes her belief in the sovereignty of Holy Scripture. Reverent Scholarship is the child of the Living Church, not an alien forced upon her reluctant mind by an imperious world. The Church cannot deny to such Scholarship the right of patient inquiry without gainsaying herself. She rejects the testimony of Holy Scripture, and exalts the creed above the Word of God, if she pays no heed to the voice of the New Testament pleading for emphasis where emphasis is needed and for kindly dealing with doubt upon points where the Scriptures themselves have put no emphasis.

In the light of the New Testament, the action of the majority of the lower Court in practically refusing to take cognizance of Dr. Crapsey's confession amounts to a miscarriage of justice. The Court magnified the letter of our Canon Law till it overshadowed the genius of the Church which the Court was serving.

HENRY S. NASH.

## II.

### STATEMENT OF THE REV. ALGERNON S. CRAPSEY, READ BEFORE THE DIOCESAN COURT AND THE COURT OF REVIEW.

"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 Mas-



ter. 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 shall 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 whence 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 also been 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 see 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 is Jesus, the human and the divine become 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.'"



## **The Case of the Diocese of Western New York as presented to the Court of Review by Mr. John Lord O'Brian, Church Advocate.**

Opening his case in reply to the argument made by Mr. Perkins and that made by Mr. Shepard, the Church Advocate, before taking up his own brief, replied to the criticisms made by Appellant's counsel upon the manner in which the proceedings had been originally instituted, the Diocesan Court chosen, etc. With a view to refuting the facts as stated by opposing counsel, he gave a brief history of the case, the following being a synopsis of his remarks:

During the winter of 1904-1905, Dr. Crapsey preached a series of sermons which, during the summer of 1905, he published in book form. In April, 1905, the Standing Committee of the Diocese received a formal protest signed by ten Presbyters, complaining in particular of one alleged sermon and demanding that an investigation be had of the conduct of the defendant. The Standing Committee referred the communication to the Bishop, and later advised that he appoint a Committee of Investigation unless the alleged utterances should be explained or retracted on or before June 1, 1905. Counsel for the Appellant was therefore in error in suggesting that the Bishop acted entirely on his own motion in appointing this Committee.

At the Diocesan Council held in May, 1905, an Ecclesiastical Court of five Presbyters was elected, Dr. Crapsey being present. After waiting until July 17, 1905, the Bishop named an Investigating Committee

of five Presbyters. It is but fair to assume that in the meantime he had labored with the defendant. In the following October Rev. W. F. Faber, one of the members of the Court elected by the Council, removed from the Diocese and resigned from the Court. Rev. F. S. Dunham was thereupon selected by the Bishop to fill the vacancy and the nomination was confirmed by the Standing Committee October 31, 1905. The Committee of Investigation made its report to the Bishop November 11, 1905. The committee of five were unanimous in condemning Dr. Crapsey's position. Two of its members reported in favor of presenting the defendant for trial; three reported that in their opinion the language used in the defendant's book was so ambiguous and equivocal that in their opinion his statements were "not sufficiently positive to stand as evidence in an Ecclesiastical or Civil Court." They declined therefore to recommend presentment. The Bishop received this report and took no action upon it; counsel are in error in stating that the Bishop approved the report.

On December 31, 1905, Dr. Crapsey preached the sermon specified in Charge 1, Specification 2 of the Presentment, in which his language relating to the Virgin Birth was clear and unequivocal. This fact was brought to the attention of the Standing Committee, and, feeling that this sermon cleared away all doubt as to the real position of the defendant and that this was a situation in which it was their duty to require an authoritative explanation, the Committee on February 23, 1906, made a Presentment to the Bishop. This Presentment was signed by every member of the Standing Committee except one, who was at that time lying at the point of death. It should be noted that the Bishop in formally approving this Presentment, as required by the Canon, did not pass



upon the guilt or innocence of the accused. His approval meant simply that the facts set forth made out a *prima facie* case for investigation. Nor did the Standing Committee in any true sense pass upon his guilt or innocence. They had held no trial; but, acting as a sort of Grand Jury, had simply set forth the particular facts which seemed to require explanation. It should be noted also that under the Canons of the Diocese any three Presbyters could have made this Presentment, and in view of the original protest made by the ten Presbyters prior to the delivery of the sermon of December 31, it is but right to assume that three Presbyters would have been found to make this Presentment in case the Standing Committee had failed to perform a manifest duty.

On March 3, 1906, a copy of the Presentment was delivered to Dr. Crapsey, together with a citation from the Bishop, directing him to appear for trial on April 17 before the Ecclesiastical Court at Batavia. Two weeks prior to the day of trial, the defendant, availing himself of the two challenges given him by the Canons, peremptorily challenged Rev. Charles W. Hayes, the oldest member of the Court, and Rev. C. Morton Sills. To fill these vacancies, the Bishop, in accordance with the Canons, selected and nominated to the Standing Committee Rev. G. S. Burroughs and Rev. Nathan N. Stanton: the Standing Committee confirmed the nominations. On the day before the trial the defendant, further availing himself of the right given him under the Canons to challenge one of the two men so named, peremptorily challenged Rev. N. W. Stanton. The Bishop thereupon chose Rev. J. Mills Gilbert to fill the vacancy, and the nomination was confirmed by the Standing Committee. It must be observed that it was the Bishop who made the selection to fill the vacancies; as he was in no way connected with the prosecution,

it is inaccurate for counsel to reiterate that the Judges were all chosen by "the prosecutors." Furthermore, had not the defendant challenged two of the men elected by the Council, four elected Judges would have sat on the trial with the Rev. Dr. Dunham as the fifth member.

The Trial Court as thus constituted met at Batavia April 17, 1905, and upon the case being moved for trial, defendant's counsel moved for an adjournment, first for an adjournment until after the middle of June, and later for an adjournment of five weeks, or until after the next Diocesan Council should have convened. After hearing at length both defendant's counsel and the counsel for the complainants, the Court denied this motion. The Court then gave defendant's counsel eight days further time in which to prepare. On the 25th day of April the Court proceeded to hear the case. The defendant's counsel renewed their motion for further delay, but the application was denied. A perusal of the record shows that these various applications were properly denied.

The defendant received more than fair treatment in both the lower Court and this Court. You have here permitted him to present here in his defense a statement of his views, although it was never offered in evidence in the lower Court and it is not a part of the record on the Appeal. We made no objection to the reading of it by defendant's counsel in his summing up at Batavia, and if it throws any real light upon the issues here involved, we shall be glad that it is before you; for we desire that the defendant shall have every opportunity to protect his rights and to explain his course of conduct.

The following matter sets forth in condensed form the main points covered by the brief of the Church Advocate. The discussion of the more technical and finer legal points, the citations of authorities, etc., are omitted from this summary. The Roman numerals correspond with the various grounds of appeal so numbered in appellant's notice of appeal.

#### JURISDICTION OF THE COURT OF REVIEW.

The function of the Court of Review is not to determine questions of policy or expediency, but to administer the law of the Church. (General Canon 29, Section 5 and 18.) At present the powers of this Court are practically limited to passing upon technical errors of trial or procedure. (General Canon 29, Section 5.) The Court should not reverse the decision of the Trial Court upon any merely technical error, but it should reverse if substantial injustice has been done the Appellant by any serious misruling, or error in the decision of the Trial Court. That is to say, this Court should not reverse unless convinced that correcting the error would have materially altered the decision of the Trial Court.

The embryonic provisions of the General Canons relating to practice in the future, (Gen. Canon 29, Sec's. 19, 20), when the ultimate Court of Appeal shall have been established, have no bearing upon the status of this appeal. There is now no canon in existence giving the defendant a right of appeal to such a Court. There is now no ultimate Court of Appeal in existence and, aside from probability, it is possible that there never may be such a Court. The provision of Article IX of the Constitution is permissive not mandatory. \* \* \*

## I.

## THE CONSTITUTION OF THE DIOCESAN COURT.

THE COURT OF REVIEW HAS NO POWER TO PASS UPON THE LEGALITY OF THE DIOCESAN CANONS WHICH PRESCRIBE THE WAY IN WHICH A DIOCESAN COURT SHALL BE CHOSEN.

Its jurisdiction is limited to the reviewing of decisions when they have been made by Trial Courts. (Gen. Canon 29, 5 and 18.) No General Canon, Constitutional Provision, or Statute of the church is pointed out as conflicting with the Canons of the Diocese of Western New York. No canon has conferred upon the Court of Review the power to make or unmake the Courts or the laws of the Diocese of Western New York.

## A. The Trial Court was not illegally organized.

(1) It was organized in strict accordance with the provisions of the Canons of the Diocese. (Title III, Canon 1, Sections I-VI, W. N. Y.) The right of challenge which the defendant twice exercised was given him by these Canons and the vacancies thus made were filled in accordance with the Canons of the Diocese.

(2) The power of this Diocese to create such a Court dates from the creation of the Diocese, and was originally conferred upon the Church in this State by the Constitution of 1789. Such power has never been restricted and the present Court was organized in accordance with the present Constitution. (Constitution 1905, Article IX).

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## B. The Court was not unfairly organized.

(1) The sermons preached by the defendant and afterwards published, and of which complaint is made

in the Presentment, were preached from about November, 1904, down to late in February, 1905. (Case p. 61, p. 78.) In the following April, 1905, a protest of ten clergymen, bearing date April 19, was submitted to the Standing Committee. This protest asked that an investigation be had of the utterances of the defendant and in particular of one of the above-mentioned sermons. The Standing Committee reported these facts to the Council of the Diocese which met May 18, 1905, and informed the Council that the Standing Committee had advised the Bishop to appoint a Committee of Investigation. (Vid. Appendix II, Council of Proceedings, 1905, W. N. Y., pps. 69-70.) The matter was known to be under advisement prior to and during the meeting of that Council and when the Trial Court was elected.

(2) The appellant was present as a member of that Council (May, 1905) when a new Diocesan Court was elected by the Council. The Journal of Council Proceedings (1905, p. 24) shows that on the first ballot to elect only four clergymen, (Rev. C. W. Hayes, Rev. W. C. Roberts, Rev. C. H. Boynton and Rev. W. F. Faber), received a majority. A motion was then put and carried which declared Rev. C. M. Sills, afterwards challenged by the defense, unanimously elected as a member of that Court. The Court thus represented accurately the mind of the Diocese as expressed in its Council.

(3) There is nothing in the record to show that at the time when the Standing Committee made the nominations to the Council, as they were required to do by the Canon, (W. N. Y. Title III, Canon I, Section II), they had any intention of themselves presenting Dr. Crapsey for trial, or any idea that he would be presented for trial. In fact, the reverse is true; from the Council Proceedings above quoted, it appears that

instead of proceeding against him, they had referred the matter to the Bishop. It is clear, therefore, that there was no bias or prejudice displayed by the Standing Committee and it was not their intention at that time to take any part in any proceedings against the defendant.

It should be observed that the appellant nowhere directly charges bias on the part of the Standing Committee or the Bishop. His arguments are all directed against the system of choosing the Court, and the system is criticized simply because it might permit the influence of prejudice—not because the existence of prejudice has been proven. It should be noted also that the defendant's counsel, by challenging two of the elected members of the Court, created the condition to which they now object. The only anomalous feature of the Diocesan Canons is their giving the defendant the right to challenge peremptorily two of the judges. The privilege of thus challenging a *judge* is unknown in modern civil or criminal jurisprudence.

(5) It was the action of the appellant's attorneys in challenging two members of the Court which made it necessary under the Diocesan Canons for the Bishop to nominate two new members to sit on the trial. If the appellant's attorneys had not made these challenges, a majority of the Court would have been men elected by the Council of the Diocese.

(6) There is no evidence in the record or anywhere else to show that the Standing Committee refused to appoint any person nominated by the Bishop, and the presumption is, therefore, that they simply endorsed his nominations. (Vid. Title III C. I. Section 3. W. N. Y.). He, not they, really made the appointments, and appellant's counsel are in error when they reiterate that all of the judges were named by the Standing Committee.

(7) It should be noted that the Bishop was in no

way connected with the prosecution either theoretically or actually and that he had no part in the bringing of these charges. Counsel for the appellant are not justified in asking the misleading question, "Why was not this man labored with?" There is no evidence in the record on this point; the presumption is that, conscientiously fulfilling his Episcopal office, the Bishop did labor patiently and faithfully to avoid the necessity for this trial and to persuade the unfortunate defendant of his error.

The presumption is that everything was honestly, conscientiously and properly done, and there is in the record no evidence to refute this presumption.

(8) The whole argument of unfairness, i. e., that only the elected members could be impartial, is demolished by the fact that the only judge who dissented in favor of the defendant was the Rev. Dr. Dunham, who was not elected by the Council but nominated by the Bishop and appointed by the Standing Committee.

C. Finally, the whole of this line of argument in behalf of the appellant fails to take into consideration the theory of the "Supremacy of the Spirituality" which underlies the entire polity of the Church,—the ideal which holds that the standards of the Church are righteous and that they are supreme. This is the presumption that the sworn priests of the Church are conscientious men and that they faithfully and honestly discharge all duties imposed upon them by the Church. \* \* \*

*Furthermore, the arguments of appellant fail to take into consideration that this whole Ecclesiastical system had its origin not in the Common Law with its jury system and challenges, but in the ancient Civil Law in which the supremacy of the Courts and their impartiality were presumed. [Citing authorities.]*

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## II.

THE TRIAL COURT DID NOT ERR IN REFUSING A LONG ADJOURNMENT AND PROCEEDING TO HEAR THE CASE.

(1) The defendant and his Counsel had ample time for preparation. The Church having ordered him to prepare for trial he was bound to devote himself to that task unless determined not to prepare at all. He was given all of the time to which he was entitled under the laws of the Diocese. The minimum time allowed him by the Canons was five weeks. Ecc. Ord., W. N. Y., Sec. VI.) In issuing a citation the Bishop gave him six and one-half weeks, and the Court at its first session gave an additional week, making seven and one-half weeks in all. The Court of Review cannot find the time inadequate, in the first place, because the law thus defined what was adequate time; and in the second place, because, aside from the law, the defendant actually had ample time.

(2) It was the duty of the Trial Court to look at the case not from the standpoint of any one individual, but from the standpoint of the Church at large and justice to the waiting thousands within the Church who had been confused and amazed at the reported teachings of the defendant. The issues had been misunderstood and exploited by the press. The excitement and controversy could not be prolonged without injustice and danger to the Church at large. The doctrines of the Church were not on trial and the defendant should have been able to explain frankly and readily his position upon matters which he had voiced more than a year previous.

There were serious technical objections to the Court adjourning the case beyond its own life,—the possibility of changes in the Court, or Standing Committee, and the consequent confusion as to procedure. The

preparation of the prosecution had to be considered as well as the ugly precedent of overthrowing a judicial system not because of partiality shown, but because of the fancied possibility that partiality might be shown. (Vid. Argument of Counsel for Standing Committee, Case pps. 20-24.) A reasonable time was granted. Under the circumstances the only defense possible was explanation, and no explanation or defense was offered or attempted. The events of the trial proved the wisdom of the Trial Court in proceeding with the case.

### III.

THE COURT DECIDED PROPERLY IN DECLINING TO POSTPONE THE HEARING UNTIL AFTER THE NEXT DIOCESAN COUNCIL SHOULD BE HELD,

(1) The appellant in his notice of appeal having gone outside the record, in stating that the Council did actually meet thereafter, it becomes necessary to state that when the Council met in May, 1906, after the decision of the Trial Court had been made public, that Council re-elected the Standing Committee of eight by a very large majority; only ten nominations being made and the old Committee being elected by an average vote of about seventy-five as against twenty-five votes cast for the two new nominees. So thoroughly did that Council approve the decision of the Trial Court that it made no change in the canons for Ecclesiastical Courts; it declined to exert its privilege of electing a new Court and it re-elected Rev. Dr. Dunham, the dissenting Judge, at the request and upon the nomination of the Standing Committee.

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Furthermore, there was no certainty that the Council would not have re-elected the same Court in case the Trial Court had granted this adjournment.

## IV.

THE TRIAL COURT HAD THE RIGHT TO PASS UPON ALL THE QUESTIONS INVOLVED IN THE CASE.

(I) From the earliest times Diocesan Courts have had jurisdiction over this class of cases (citing authorities).

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The Church in the State of New York has had power and jurisdiction over these cases ever since 1789 and this Diocese has had that power ever since its creation. (Constitution 1789, Sec. 6, Constitution 1905, Article IX.) The power has never been abridged or limited. Counsel for appellant do not and cannot point out any statute limiting this power. No general Canon could limit this power of the Diocese, because the power has been conferred directly by the Constitution.

(3) The power of the church to remedy false teaching is an inherent power, anciently exercised by the Bishops themselves without the assistance of Courts. The fact that a limitation has been placed upon the powers of the Court of Review in dealing with questions of doctrine has nothing whatever to do with the jurisdiction of this Diocesan Court. This limitation undoubtedly was placed upon the Court of Review because there were laymen on that Court, and it is the intention of the Canon to prevent that Court from deciding these questions until an ultimate Court of Appeal, which shall consist solely of clergy, shall be provided for by the Church. The present Diocesan Court acquires jurisdiction under Article IX of the Constitution. Sections 19 and 20 of General Canon 29, relating to future practice cannot limit or affect a power already conferred by the Constitution of the Church.

## V.

THE TRIAL COURT RULED CORRECTLY IN EXCLUDING OPINION EVIDENCE WHICH PRACTICALLY DEALT WITH THE GUILT OR INNOCENCE OF THE DEFENDANT.

The Church is an organization and speaks as an organization. In her services of Baptism, Confirmation and Ordination, she has prescribed her conditions of membership and they do not permit of dispute or alteration by individuals. The only function of an expert witness is to explain facts which are in their nature so technical that they are unintelligible to a Court or jury. It was a presumption of law that the clerical Judges knew the law of the Church. The opinions which might have been offered in this case would have dealt simply with the justification of the defendant in disobeying and disregarding the laws of the Church. The English courts refuse to admit testimony to show what is the doctrine of the Church. They do, however, sometimes admit testimony to show what liberty is allowed in maintaining certain doctrine; their reason for doing this is found in the wording of the English Ordinal which reads differently from our own. It requires the priest to minister the doctrine and discipline of the Church "as this Church and *Realm* hath received the same." The question in the English courts, therefore, is not only what the law of the Church requires, but also what the practice of the *Realm* is in enforcing those requirements.

\* \* \* \* \*

Finally, and apart from all these considerations the contention of the appellant is without force for the reason that the law of the Diocese provides that "the law of this State relating to evidence shall govern the Court." (Ordinances Ecc. Court, W. N. Y. Sec. 14.)

Under the law as administered in New York State, such opinion evidence must be excluded, and this fact is a conclusive answer to appellant's contention.

## VI.

THE TESTIMONY OF REV. MR. ALEXANDER CANNOT BE DISREGARDED, DISPUTED OR DISMISSED BY THIS COURT.

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(3) The evidence of Rev. Mr. Alexander was not impugned directly or indirectly; it was not disputed; no witnesses were produced to deny it or to impeach his veracity. The Trial Court was the best judge of the appearance and behavior of the witnesses and of the inferences which might be drawn from his appearance and testimony. He may have shown an unfortunate acerbity and impatience under what he apparently deemed inquisitorial questioning, but the Trial Court found that the witness spoke the truth. The Court of Review has no power to find otherwise as to the facts. It is respectfully submitted that the findings of the Diocesan Court as to facts, where there is undisputed evidence to support those facts, must be conclusive upon this Court.

(4) The fact that no witnesses were sworn by the prosecution to corroborate the testimony of Mr. Alexander relating to the sermon of December 31, 1905, was the result of the misleading statement made by Counsel for the defense.

(Vid. Case, p. 86, remarks of Counsel.)

(5) As a matter of fact the testimony of Rev. Mr. Alexander was corroborated by all of the evidence taken from the book, which tended directly to support his testimony. The defendant's failure to take the stand to contradict or impugn this testimony should be taken into consideration in weighing its accuracy.

## VII, VIII AND IX.

THE COURT OF REVIEW CANNOT PASS UPON THE POINTS RAISED IN THESE PARAGRAPHS OF APPELLANT'S NOTICE OF APPEAL FOR THE REASON THAT IT CANNOT "DETERMINE ANY QUESTION OF DOCTRINE, FAITH OR WORSHIP."

It should be noted that the defendant was not charged with *saying* in so many words that he disagreed with the Church in doctrine. He was charged with having made statements which in themselves actually did deny and impugn doctrine of the Church.

However, this contention of defendant is without merit. The word "advisedly" as used in Canon 23 is undoubtedly descended from the same usage in the old "Statute of Elizabeth" so-called. (13 Eliz. C. 12, S. 2.) What was meant by the word "advisedly" was considered years ago in the English Court of Arches by Dr. Lushington upon the trial of *Ditcher vs. Denison*, and it was there held that "advisedly" meant not "with an avowed purpose of infringing the law," but simply "deliberately," and the publication of sermons having been proved, it was held not necessary to prove that the defendant had by his language intentionally contravened law or doctrine; i.e., the mere fact of publication showed in itself that the defendant had acted "advisedly."

(Vid. Citation from Opinion sub Title in B. & F. Ecc. Judgments, etc., p. 162.)

See also Opinion of Judicial Committee of the Privy Council—Lord Cranworth writing—in *Keith vs. Burder*. (B. & F. etc. 212, 233, 234, 242.) The determination was the same in this case and answers this contention of appellant's counsel.

\* \* \* \* \*

B. \* \* \* \* \*

The presumption is that in taking several ordination vows a man is able and willing to accept all of them. These vows taken together constitute a contract,—a contract of a permanent character. The controlling vow in the contract is the one providing that the priest will minister the discipline and doctrine, “as this Church hath received the same.” \* \* \* It should be observed that the dissenting Judge in effect found the defendant guilty on this charge; finding that the defendant’s error consisted in defining what God has not been pleased to reveal, “and interpreting those doctrines in a manner not generally received by the Church.” (Case p. 134.) The whole argument on this subject may fairly be epitomized by asking the question whether any man who held the views of defendant could now be ordained to the ministry. The answer to that question disposes of this whole case.

## XI.

THE RECOMMENDATION OF SENTENCE DOES COMPLY WITH THE CONSTITUTIONAL PROVISION (ARTICLE IX) REQUIRING THAT “A SENTENCE OF SUSPENSION SHALL SPECIFY ON WHAT TERMS OR CONDITIONS AND AT WHAT TIME THE SUSPENSION SHALL CEASE.”

To get at the intention of this section it should be noted that it does not require a length of time or a period of time to be fixed. It simply implies that the suspension must terminate at some time and upon some conditions being first fulfilled by the defendant. Common sense shows that the sentence of the Trial Court fixed both the time and conditions. It permits the appellant to fulfill the conditions as early as he desires and provides that the sentence is to cease the moment that he fulfills the conditions.



A. It was competent for the Trial Court to recommend a sentence of suspension for this kind of an offense, viz., the preaching of false doctrine.

In England, suspension is used only in cases of minor offenses and the English authorities must be read with this fact in mind. But neither our Constitution nor our General Canons prescribe any definite form of penalty for any particular offense.

(Vid. Constitution, Article IX; Gen. Can. 23, Secs. 1 & 2.)

Under these provisions a man convicted, for instance, of immorality or of habitual neglect of public worship may be deposed, or suspended, or admonished at the discretion of the Court and Bishop, and the law is the same in case of a man convicted of teaching false doctrine. It is clear, therefore, that the Court had the right to recommend suspension even though the offense was a major one.

B. It was competent for the Trial Court to impose the condition that the defendant must present satisfactory proof to the Bishop ("Ecclesiastical Authority") before his suspension should terminate. [Reviewing many authorities.]

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There is no Canon limiting or defining the kind of conditions which a Trial Court may impose: nor is there any evidence from which this Court may conclude that the sentence was unreasonable. The Bishop at the time of ordaining a presbyter is made judge of the man's competency to minister—why should he not be made judge here?

C. The sentence recommended does specify "a time" within the meaning of the Constitution.

It being competent for the Trial Court to prescribe

terms and conditions, and it being competent for that Court to suspend the defendant for the offense charged, the Court has specified the only time possible for it to specify. Such teaching as the defendant was charged with was a continuing offense—not a single act over and done with. The object of every sentence must be to punish an offense—and also to prevent its repetition. If a man convicted of teaching false doctrine were merely suspended for ten years, such a sentence would not prevent a repetition of the offense. It was, therefore, necessary as well as competent for the Trial Court to require some guaranty as to future conduct. The English cases above cited show the rationale of this kind of penalties.

The case of Bishop Onderdonk throws a flood of light upon this whole question, for the present Constitutional provision on suspension was undoubtedly framed with a view of preventing a recurrence of what happened in that case. \* \* \*

Bishop Onderdonk was suspended indefinitely. There were no terms or conditions specified which he might observe or meet; no period of time specified and no terms given from which a time could be determined or even surmised. In the present case these defects are fully met. The terms and conditions are that the defendant shall present satisfactory proof of conformity; the time when his suspension is to cease is the moment that he shall present such proof. If the appellant had been sentenced to be suspended for three years and then required to present satisfactory proof he would have to stand punishment for three years before he could present his proof. If the appellant's arguments on this point were sound, then a Trial Court, whether it wished to or not, would be obliged to suspend a man for a term of years in addition to requiring him to fulfill certain conditions. This is a *reductio*

ad absurdum. The Trial Court has been more merciful; having the right to require him to present satisfactory proof, it has not required him to stand under a cloud for ten years or twenty years, but has provided that his suspension shall cease at the moment when satisfactory proof shall be furnished. The intent of the Constitutional provision is simply that a maximum time shall be fixed. The Judges have made the maximum a minimum, and have enabled the defendant to lift the sentence at once. They have merged the terms, the conditions and the time all into one phrase. This may have been awkwardly done, but the awkwardness, if any, was due to their merciful attitude; their action was not illegal and the sentence is not void.

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The purely technical objection made by the appellant that the defendant could not be convicted for publishing his book, because he was not charged with so doing is not borne out by the Presentment, the first general Charge of which charged him with having printed the sermons in book form "and that said book was published, sold and circulated with the permission, consent and authorization of the said presbyter." (Case, page 3.) This technical objection of course does not apply to the sermon of December 31, 1905, upon which the defendant was found guilty by the decision. This was preached after the appearance of the book and after the Investigating Committee had made its report.

Prior to 1905 the law of the Church relating to the teaching of false doctrines was the same in substance as it is now, except that it was set out in Canon No. 2

of the old Canons and it is now set out with some verbal changes in Canon No. 23, which went into force January 1, 1905. There was also a slight difference in phraseology relating to punishment. Part of the sermons complained of, and which were set out in the appellant's book, were preached prior to January 1, 1905, and part of them after that date. (Case page 61, page 78.) The book was published late in 1905. The objection above referred to was made by Mr. Shepard at the close of the trial, whereupon Counsel for the Standing Committee, in accordance with the privilege given him by the Ecclesiastical Ordinances (Section 14), moved to amend the Presentment "By inserting at the end of the first paragraph of Charge 1, and at the end of the first paragraph of Charge 2, the words 'and also the same law of the Church as it existed during the year 1904, and as embodied in Canon 2, Title 2 of the Digest of Canons'." The Counsel at that time stated to the Court that the three Counsel for the Standing Committee were satisfied with the legality of the Presentment as it then stood, but inasmuch as no injustice could be done the defendant and he had raised the point they would amend if the Court thought it necessary. Apparently the Court found it unnecessary to consider this amendment, for it based its findings upon the fact of the publication of the book and the delivery of the sermon of December 31, 1905. The defendant had been apprised in the Presentment of both of these charges and cannot plead surprise.

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In conclusion, the attention of the Court is again called to the rule set out at the beginning of this brief, namely, that justice requires an affirmance of this decision unless it has been shown that by serious error

injustice has been done the appellant, and unless the Court is convinced that the correction of such error would have made a material change in the decision of the Trial Court. The defendant was given every right of protection under the Canons; he availed himself of all of the privileges so granted him; the trial was fairly and honestly conducted by men against whom no charge of bias can be made; the Court had jurisdiction of the cause and of the person of the defendant; upon this appeal no claim is made of any save technical errors; and those alleged technical errors do not exist.

The Diocese of Western New York asks that the Decision be affirmed.

All of which is respectfully submitted,

JOHN LORD O'BRIAN,  
Church Advocate,  
Diocese of Western New York.



## Argument of John Lord O'Brian before the Diocesan Court of Western New York.

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 presentors 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 em-

phasized 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 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 therefore 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; whosoever 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 Arch-angels, 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 attributes 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 argu-

ment 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 steadfastly 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 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 heart-sick, which has been reiterated and reiterated throughout this case with a view to obscuring the plain question of honesty—not honesty of intention, but honestly 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 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 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."



## Brief for Appellant.

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### COURT OF REVIEW.

IN THE MATTER OF THE PRESENTMENT  
OF THE  
REVEREND ALGERNON SIDNEY CRAPSEY, S.T.D.,  
FOR TRIAL UPON CERTAIN CHARGES.

In the summer of 1905 the Bishop of the Diocese of Western New York appointed a committee of five clergymen and directed them to investigate a book published by Dr. Crapsey, known as "Religion and Politics." The committee examined the book and also met Dr. Crapsey from time to time. On October first, 1905, they duly certified to the Bishop in writing that there was no cause for presentment against the respondent, and that he had not been guilty of any offense for which he was liable to be tried. This proceeding was taken under § 3 of the ordinance for an ecclesiastical court in the Diocese of Western New York.

Subsequent to this, and on the 23d day of February, 1906, the Standing Committee of the Diocese presented charges against Dr. Crapsey in which they alleged that certain passages contained in the book called "Religion and Politics" were contrary to the doctrines of the Episcopal Church, and that the respondent had violated the vows taken at his ordination in giving utterance to them. This presentment was approved by the Bishop and the matter came on for trial before the Ecclesiastical Court of the Diocese. This court had been selected in May, 1905, as follows: The Standing Committee presented ten names and

from those five were selected to compose the Ecclesiastical Court. (Section 2, Title 3 of Canons of Diocese.) The five thus selected were Charles W. Hayes, Geneva; C. Morton Sills, Geneva; W. C. Roberts, Corning; Charles H. Boynton, Geneseo; Francis S. Dunham, Albion.

At the beginning of the proceeding, the respondent exercised the right given him by the Canon and challenged Mr. Hayes and Mr. Sills. The Bishop then appointed upon the advice of the Standing Committee the Rev. G. Sherman Burrows of Tonawanda and the Rev. John Mills Gilbert of Phelps.

The court as thus created fixed the 17th of April for the trial. At that time the respondent appeared and filed an answer in which he denied the charges made against him, and set out the vows made at his ordination, in which he had promised that he would teach his people nothing except what he was persuaded might be concluded and proved by the Scriptures, and that he would be diligent in his study of the same. He also set out the appointment of the committee by the Bishop to investigate the charges against him, in conformity with the Canons, that they had reported against any presentment and their report had been accepted by the Bishop, and that therefore, this proceeding should not be entertained. He also pleaded the fact that the general convention had not as yet created a court of appeals which should decide questions of doctrine, faith and worship and that therefore, the Ecclesiastical Court for the Diocese of Western New York should not pass upon a question which could not be reviewed by those who could bind the entire church.

The presentment had been served on the respondent on February 23d, at the beginning of Lent, and the day of the trial fixed was Tuesday after Easter. An

application was made that the trial should be adjourned until June. The grounds of the application are fully stated in the argument which will be found at pages 16 to 20, 34 to 36. In addition to this, there was filed a paper signed by many clergymen of Buffalo, Rochester and other places, as well as by many prominent laymen, in which they asked that this matter be adjourned until after the meeting of the Council of the Diocese in May. In their petition, they set out the fact that the court was practically constituted by the Standing Committee which brought the presentment, and the Bishop who had approved it, and that to force the case to trial in this manner would surely be to the lasting injury of the Church.

But any application for an adjournment was denied; the court directed the trial to proceed, Dr. Dunham dissenting. Mr. Shepard was not able to be present at this hearing, and Mr. Perkins, the other counsel for the respondent, was obliged to return to Washington. He thereupon announced that if the trial was to go on at this time, the case might go by default (p. 25). After this announcement the court consented to adjourn the case for one week. On the 20th of April the matter again came before the court. The respondent then filed a further answer, which will be found at p. 28, in which he set out the fact that the members of the court had been selected by the Standing Committee and the Bishop, who had presented the charges against him, and that it was contrary to the law of the land that the guilt of any person against whom a presentment was made, should be passed upon by a court, the majority of which were designated by the prosecutor. He therefore asked that the court should not proceed with the trial of the case. This application was overruled. Mr. Shepard then asked the court for an adjournment, the grounds of

which are more fully stated in his argument at p. 34. This application was also denied.

The case was then tried. Most of the evidence offered by the respondent was excluded, and to the various rulings of the court exceptions were taken. The decision of the court will be found at pp. 130-133, and its form will be discussed in the brief.

## I.

THE DIOCESAN COURT SHOULD NOT HAVE UNDERTAKEN TO PASS UPON A QUESTION OF FAITH AND DOCTRINE AT THIS TIME.

It has been provided by Art. IX of the constitution that a Court of Appeals may be created to review the determinations of any Court of Review on questions of doctrine, faith and worship; and it is provided by Canon 29 that until this court is created, no Court of Review shall determine such questions.

The object of this is manifest. There must be one rule of doctrine established in the church, and that is for the Court of Appeals to determine. Until that court is created, the Courts of Review can not determine such questions, because they might differ among themselves, and there might be thus eight different doctrines laid down by as many Courts of Review, which could not be brought into unity until a Court of Appeal was created.

The reason for applying this rule is infinitely stronger when we come to the local courts of the different dioceses. Courts of Review are not allowed to pass upon such questions until an ultimate court is created, lest there might be eight different rules established, and a man declared a true believer in the first department find himself a heretic in the second. It is infinitely worse if such questions are to be deter-

mined by the local courts established in each diocese. There can be as many rules as there are dioceses; a man might be rejected from the ministry in one, whose orthodoxy would be regarded as perfect in another.

Nor is this an imaginary case. In the Western District of New York it has been decided that Dr. Crapsey cannot be allowed to continue his ministry. In the District of Cincinnati we have Dr. Cox stating similar beliefs, but no one interferes with his right to minister there. In Massachusetts we have Mr. Suter, and various other well known clergymen, who entertain similar views; certainly no one will interfere there, because the chances are that in that district the majority would declare that the decision made by the Ecclesiastical Court of Western New York was as erroneous in theology as it is unfortunate in policy.

The results of leaving each diocese to lay down rules of faith and doctrine for its own use will be that orthodoxy in one district will be heterodoxy in another; men will be driven from the church in one diocese who in another would be gladly welcomed as fellow workers; the position of the church will be lamentable to its members and ludicrous to its enemies.

## II.

THE COURT OF REVIEW SHOULD HOLD THIS CASE UNTIL A COURT OF APPEALS IS CREATED.

§19 of Canon 29 provides that if the decision involve a question of doctrine, faith or worship, the record shall be retained by the president of the Court of Review until the time for taking an appeal to the Court of Appeals shall have expired. That time cannot expire until the next general convention creates a Court of Appeals, as it doubtless will. The canons



thus guard against the evil which I have already suggested, that different decisions as to doctrine and faith might be laid down by diocesan courts. Such questions must be held in abeyance until the Court of Appeals is created which will dispose of them in a manner which shall bind the entire church. Any other proceeding would be unfortunate and unseemly, and apparently has been guarded against by the canons.

The wording of the canon seems to be explicit, and I am unable to see how the court can proceed. It is expressly provided, in §5, that until after the establishment of a Court of Appeals, no Court of Review shall determine any question of doctrine, faith or worship. The subsequent sections provide for the procedure of the court and the affirmance or reversal of the decree below, which, of course, could only be upon questions other than those of doctrine; that would leave the ultimate decision of a question of doctrine, the most important that could be raised, in the hands of an inferior tribunal. Where the question involved only the good conduct of the individual charged, he could have it passed upon by the Court of Review; where it involved the belief of the entire church, it could not be passed upon by the Court of Review, but the decision of some local and unimportant court, in some remote and unenlightened diocese, might assume to decide the faith of the church. To guard against such an evil, the canon says explicitly that where the decision would involve such a question, the record shall be retained until the time for taking an appeal to the Court of Appeals has expired.

It is no answer to this proposition that no Court of Appeals has yet been constituted. Alike the constitution and the canons contemplate such a court, all that is required is for the general convention to appoint its members. Until that time comes, questions of

doctrine cannot be disposed of by diocesan courts, and heresy trials will have to wait their time. No harm will result to the church or the community.

The time is past when strifes over subtle meanings or dogmas excite the interest of the community, or help the growth of the church. If it is to be a great power over this and subsequent generations, it must appeal to humanity, not with the learning of the schoolman but with the teachings of Christ; by those and those only can it retain its hold.

### III.

THE JURISDICTION OF THIS COURT IS BROAD ENOUGH TO REVERSE THE DECISION AND PUT THIS CONTROVERSY TO ETERNAL REST, IF IT DEEMS THIS ADVANTAGEOUS TO THE CHURCH AND TO CHRISTIANITY.

By the 29th Canon, it can not determine any question of doctrine, faith or worship. There is no reason that any such question should be here determined. The question here is whether it is for the interests of the church that a faithful Christian man like Dr. Crapsey should be thrown out of it. If it is for the interest of the church that he should be, then a great number of clergymen whose views are as far removed as his from those of the ecclesiastical court, must also be thrown out, and with them will go a large proportion of the best intellects among the laity of the church, of the men by whose aid alone it can become in the future a great and progressive factor in religion and civilization, instead of a narrow sect daily losing in power.

While the Court of Review may not pass upon a question of doctrine, it has the broadest power given it. By §18, it may reverse or affirm or grant a new

trial if in its opinion justice should so require. In other words, it is to be governed by considerations of what is just, not only to the clergyman accused, but to the laity under his charge, to the church as a whole.

#### IV.

A NEW TRIAL SHOULD BE ORDERED, BECAUSE IT IS CONTRARY TO THE PRINCIPLES OF LAW THAT A MAN'S ACCUSERS SHOULD SELECT HIS JUDGES.

This question was expressly raised by the pleadings. By the provisions of the canon of the Diocese of Western New York, the Standing Committee presented ten names, from which the council selected five, who became the Ecclesiastical Court. Two of these were challenged and the places were filled by the Bishop, acting upon the advice of the Standing Committee. Thus the entire court was created by the Standing Committee which prosecuted the respondent. It was said on the other side that such was the method of appointing a court adopted by the diocese. That does not make it legal.

By the same canon, §14, it is said that a trial shall be conducted according to the principles of common law as administered in this state.

In this proceeding the Standing Committee presented the charge. They declare that the respondent is guilty, they have no right to present the charge unless they do so believe. The Bishop himself also adopted their view. He has the right to refuse to adopt their decision; he did refuse to adopt the decision of the committee which he first appointed, because it was favorable to Dr. Crapsey; he adopted the decision of the second committee, because that was unfavorable, and yet the Bishop, upon the advice of the Standing Committee, appointed two members of the court to fill the vacancies created.

Such a proceeding is contrary to the fundamental principles of law. I make no charge against the Standing Committee, no charge against the gentlemen whom they selected; but all men, standing committees and clergymen, as well as others, are under the influence of their beliefs and convictions; instinctively, necessarily, not wrongfully so far as they are concerned, they select to pass upon questions in which they are interested, men who sympathize with them. It is for this reason that no man can either be his own judge or select his own judge; that is a fundamental principle upon which our conceptions of justice rest.

The fact that the court was so constituted, is one of the reasons that its decision has not changed the conviction of a man in the world and will have no more effect upon the beliefs of others than if its judgment had been so many idle words.

This most unfortunate prosecution, instead of quieting the faith of the church and excluding erroneous belief, which was the only reason that could have justified undertaking it, has brought discussion of the questions involved to thousands who otherwise never would have heard of them; has spread the beliefs held by Dr. Crapsey instead of checking them. If the Standing Committee had left him in peace, his parishioners' chances of entering heaven would not have been lessened by his beliefs, and would have been increased by the example he set them of Christian living.

But this proceeding has been productive of nothing but evil. A wise and judicious court, seeing the inherent defects in this procedure, will reverse the decision. Dr. Crapsey will continue his good work in his parish, and the immense advertisement which the Standing Committee have insisted on giving to his book, will cease. If they think the book contains any

harmful statements, this would be a result which they should welcome as valuable to the peace of the church and the well being of Israel.

# V.

IT WAS MANIFESTLY UNFAIR TO REFUSE A PROPER ADJOURNMENT.

The proceeding was commenced at the beginning of Lent. It was forced to trial immediately after Easter. It may be said that such an improper forcing of the case, which in the eyes of the community turned prosecution into persecution, is only a question of procedure, involving no strict legal right. But in such a proceeding as this, if the decision is to have any weight in the church, it is essential that there should be every appearance of fairness, and of due deliberation. The summary procedure by which heretics were sent to the stake and witches to the gallows, in days now long past, cannot be imitated in this era without great harm to the church.

The argument for adjournment will be found in the record, first application pp. 16-20, and the second application pp. 34-36.

The presentment was served on Dr. Crapsey at the beginning of Lent, and he was required to attend to the trial as soon as Lent closed. It would have been most unseemly if he had neglected the duties specially imposed upon a clergyman during the season of Lent, to give attention to his own personal matters. In the argument made by counsel it was said that it was for the court to decide whether Dr. Crapsey should have spent the forty days of Lent, not in laboring for the parish of St. Andrews, but in preparing to meet the charges made against him. Evidently it was the opinion of the court that he should have done the latter.

I would call attention also to the petition presented by leading clergymen in Buffalo and Rochester, the president of Hobart College, the treasurer of the Diocese, and other prominent laymen, asking the Bishop to grant the delay. It was certainly unfortunate that the court, by its action, should have produced upon the community the impression that undue and unseemly haste was desired.

Questions of this character, affecting the interest and well being of the church, should not be disposed of upon the principles that might prevail in trials for misdemeanors before police courts.

## VI.

THE COURT BELOW ERRED IN REFUSING TO RECEIVE THE EVIDENCE OF CLERGYMEN OF GOOD STANDING IN THE CHURCH AS TO WHETHER DR. CRAPSEY HAD TAUGHT ANYTHING CONTRARY TO THE DOCTRINE OF CHRIST AS THIS CHURCH HATH RECEIVED THE SAME.

The question will be found at p. 91 and other similar questions at pp. 107, 108.

These questions were vitally important. The English courts, in the prosecutions of Williams and others, allowed the opinions of authorities in the church to be received in evidence, as bearing upon the question of what are the doctrines of the church; not to show whether Williams, for example, had taught anything that the court might regard as untrue, but whether he had taught anything that was beyond the limits and liberties of the doctrines of the church. Such evidence was admitted, and by such evidence was the case that grew out of the publication of "Essays and Reviews" decided. Some of the authorities whose opinions were there received were dead. But death is not necessary in order that a man's opinions may be of value to the

court. What this church receives as the true interpretation of the Scriptures can only be shown by the beliefs of those who are members of the church. Necessarily such evidence would be confined to those who would be qualified as experts by reason of their studies of such matters. Surely their evidence is quite as persuasive as to the doctrines of the church, as the opinion of five respectable gentlemen in some remote diocese who may constitute an ecclesiastical court.

The refusal to receive this evidence practically shut off the respondent's entire defense. The question to be determined here was not as to the interpretation to be put upon any particular clause of the creed; there is hardly a clause of the creed which is not received with different meanings by persons who are properly members of this church; upon that fact rests its claim to be called a Catholic Church. The question here was whether there was anything in Dr. Crapsey's teachings that took him outside the liberties of the church of which he is a member. Upon such questions the opinions of recognized authorities in the church are of vital importance, and only by receiving their opinions could there be any trial at all. If the court will be at the trouble of examining the report of the trial of Dr. Williams, and the argument of Mr. James Fitz-James Stephen for the accused, it will see that his argument did not turn upon the question of whether Dr. Williams was right in the interpretations he gave to some passages of Scripture, and those who opposed him were wrong; but he showed from the opinions of the doctors and authorities of our church that Dr. Williams could believe the things which he believed, and teach the things which he had taught, without being cast outside the pale of the church.

The names of the witnesses that we were prepared to call—such men as Mr. Leighton, Professor of



Theology at Hobart College, Mr. Hoopes of Cambridge, Mr. Stein, Chaplain of Columbia University, Mr. Suter, Rector of the Church of the Epiphany of Worcester, Mr. Hoffman, Dr. Coxe of Calvary Church of Cincinnati, Dr. Peters, the eminent student, Mr. Melish, the Rector of the Holy Trinity Church, Brooklyn, Dr. Babcock of New York, Mr. Nelson of Christ's Church, Cincinnati, Mr. Worcester of Emanuel Church, Boston, and very many others whom we might have called, show the character of the men who claim that a clergyman may hold Dr. Crapsey's views and remain within the fold of our church.

## VII.

A NEW TRIAL SHOULD BE ORDERED BECAUSE THE JUDGMENT IS UNCERTAIN AND IRREGULAR.

It provides that the respondent shall 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."

This judgment, I submit, is meaningless and void. Dr. Crapsey is suspended from service as a minister until he can satisfy the ecclesiastical authorities of the diocese of certain facts. What is the ecclesiastical authority of the diocese that has the right to decide on questions of dogma or on the correctness of any man's belief? Where in the canons of the church is any ecclesiastical authority created which must be satisfied as to the beliefs of the clergy of the diocese? It cannot be the Ecclesiastical Court, because that must proceed by trial; it cannot be the council because no such jurisdiction is given; certainly it cannot be the Bishop. The

Bishops of the Episcopal Church hold high and dignified positions, they are possessed of much authority, but they are vested with no power to decide, with infallible wisdom, as to the beliefs of any man. The Roman Catholic Church has adopted the dogma of the infallibility of the Bishop of Rome, but our church has not as yet attributed infallibility to any Bishop, not even to the Bishop of Western New York.

Dr. Crapsey will have to wander about the diocese of Western New York long and wearily before he will find the "ecclesiastical authority" of the diocese which has the right to say that his beliefs conform or do not conform to the Apostles' Creed. This church will be a different church when such authority is vested either in Bishop or Standing Committee. The judgment as it stands imposes upon the appellant an impossible condition. If a man was condemned to state prison until such time as he should satisfy the legal authority of the state that he was a good man, no one would question that such a sentence would be void. A judgment must be precise, it must fix a penalty, it must fix a penalty which can be executed. This court has fixed a penalty which cannot be executed. It requires the appellant to give satisfaction as to the correctness of his beliefs, before a vaguely described tribunal that has no authority to decide as to the correctness of his views. Any court must act for itself and impose its own sentence, it cannot turn the responsibility over to somebody else. The canon requires the court to say what sentence ought to be pronounced. The sentence it has pronounced is meaningless. The Bishop is to pronounce such sentence as he shall deem just, not exceeding in severity that specified by the court. No one can say whether any sentence he might adopt would be more severe than that adopted by the court, because no one can say what the sentence means.

## VIII.

THE COURT ERRED IN FINDING THAT THE ACCUSED HAD VIOLATED PROMISE MADE BY HIM AT HIS ORDINATION.

The obligations assumed by a priest must be considered as a whole, and the 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 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? When a man 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 he will do.

The presentment contains, indeed, the further charge to which I will for the moment call the attention of the Court.

"Specification 2. We allege that he has \* \* \* broken the following ordination vows: 'Will you be diligent to frame and fashion yourselves 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 lieth in you, 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 wholesome examples and patterns to the flock of Christ. It is known by all who know him at all, 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 this unfortunate prosecution against him.

The promises of ordination must be considered together. The church certainly has not adopted a system by which a man will in one paragraph swear to do one thing, and in another paragraph take his oath 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 minister the doctrine, sacraments and discipline as the Lord hath commanded—the Lord has commanded in the Holy Scriptures, certainly nowhere else—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 ordinal was adopted when the Anglican Church separated from the Roman Catholic Church. It remains in substantially the same form as was fixed at the time of the separation, and the difference between the ordinals of the two churches is interesting and important. The adoption of our ordinance was a part of that great Protestant movement in which our church participated. A priest in the Roman Catholic Church submitted himself wholly and entirely to the decision of that Church. But it was the revolt of the great mass of the people against the procedure and the practices of the Roman Catholic Church that led to the Protestant secession. Pius IV. thus states the ordinal, the rule to which each priest in that church subscribes: "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."

Manifestly the ordinal of the church to which we belong does not agree with that formula; the presbyter does not promise to admit the sacred Scripture according to that sense which Holy Mother Church hath holden; but he promises that which is the essence and the foundation of Protestant belief, the exercise of his individual conscience in the examination of Holy Writ.

Instead of saying, "I will accept the sacred Scripture according to the sense which Holy Mother Church hath holden," he promises that he will teach nothing except that which he is persuaded may be concluded and proved by the Scriptures, and that he will be diligent in the study of the same.

No principle is more familiar to lawyers than that where a change is made in a law, it must be presumed that those who made the change had some purpose in making it, otherwise the old law would have stood as it was. The fathers of our church, in declining to adopt an ordinal by which the presbyter agreed to admit the sacred Scripture according to that sense which Holy Mother Church hath holden and still doth hold, and instead of that inserting a promise that he would be diligent in the study of the Scriptures and would teach nothing but what he should be persuaded might be concluded and proved therefrom, surely intended to embody the great principle of individual investigation and religious freedom.

After all is said and done, our Church is—though I know, some 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.

The sixth and twentieth articles of the church declare that no man is required to believe what may not be proved by Holy Scriptures, that the church itself cannot decree against Holy Writ, "nor enforce any thing to be believed for necessity of salvation."

The priest promises to teach what he shall be persuaded may be proved by the Scripture; he then promises to minister the doctrine, sacraments and discipline

of Christ as the Lord hath commanded and as this church hath received the same, and it is the last provision which the Diocesan Court said Dr. Crapsey had violated.

The two promises are perfectly consistent. The priest must teach nothing as necessary to eternal salvation but what he is persuaded may be concluded and proved by Holy Scripture, and he must drive away from the church all doctrine contrary to God's word. He must minister the doctrine, sacraments and discipline of Christ as the Lord hath commanded and as this church hath received the same, and teach the people to keep and observe the same. This manifestly requires him to administer the sacraments and discipline of Christ as the church hath received the same; it in no way conflicts with his promise that he will teach those things as necessary to eternal salvation which he shall be persuaded may be concluded and proved by the Scripture. It makes the rule of the church, as it should be, controlling in reference to the ministration of the doctrine, sacraments and discipline; it leaves the individual to study the Scriptures and decide therefrom the things that are necessary to eternal salvation. The one promise covers the instruction of the people as to the things necessary to eternal salvation; the other promise covers the ministration of the priest.

The Diocesan Court certainly was far astray in the interpretation it gave to the word "minister." If they had consulted the dictionary they would have found it means "to serve officially; to perform a rite of public worship." Its meaning exactly corresponds to the words "keep and observe" which the people are to do.

Whatever else Dr. Crapsey has done, he has not violated his ordination vows, and the interpretation given to them by the Diocesan Court is erroneous.

When the court below finds that the appellant vio-



lated his ordinal vows, because in their judgment the doctrine which he has preached was not that which this church hath received; or, more strictly, did not agree with the literal interpretation which they gave to certain passages contained in the creeds found in the prayer book, they fell into error.

## IX.

DR. CRAPSEY HAS TAUGHT NOTHING FOR WHICH HE SHOULD BE EXPELLED FROM THE CHURCH.

This court can see from the men who were willing to testify in his behalf, the greater number of persons who sympathize with him, and the feeling which this prosecution has excited, that his expulsion from the church would be an unfortunate thing for the church itself. It is the church which is on trial more than Dr. Crapsey. It is to be decided whether in this day and generation it will seek to influence thought and guide conduct by saying that the one important thing is the acceptance of certain dogmatic tenets; or whether it will obtain its influence upon men, by teaching the doctrines which Christ taught, and bidding all follow his example. If the former course is adopted, our church will become less and less important, and in time dwindle away, as many of the Eastern sects and churches at last passed out of existence. If it follows the latter course, it will go along, extending the influence of Christianity with the growth of civilization.

Its tendency should be, as a great Archbishop, Dr. Temple, has said, "to modify the early dogmatism by substituting the spirit for the letter, and practical religion for precise definition of truth."

Therein lies the vast importance of this case. It is not merely its results for Dr. Crapsey himself—they are weighty to him, but the interests of any

one man are of small importance to the world at large—but thousands and hundreds of thousands of earnest churchmen, devoted to the church which they call and would fain believe to be a Catholic church, are awaiting with anxiety the decision which this court shall make. They desire that their church shall be Catholic in truth as well as in name, that it shall not be narrowed into a sect, but shall be a religious power whose activity will ever become larger and whose usefulness will ever become greater.

The question here is not the correctness of Dr. Crapsey's views, but whether a man can hold such views and yet be within the liberties of our church. There are thousands of sincere churchmen and earnest thinkers who feel that if there is no room for Dr. Crapsey in the Episcopal church, then there is no room for them.

It is manifest that the disposition of this case will not merely decide whether any one man shall remain or not remain a presbyter of the church, but it may influence the relations to the church, possibly even the connection with the church, of great bodies of men. And among these men will be found those of active mind, those who are to influence the thought of the day, those who are fitted to be most vigorous in Christian work.

The Committee who brought this prosecution must have felt that an accurate belief as to the precise manner in which Christ entered this world was essential to salvation. Otherwise they would not have disturbed the good work that Dr. Crapsey was doing, have brought distress into his parish and confusion into the church by this prosecution.

It is charged against Dr. Crapsey that he has questioned or denied certain events that are called miraculous, as being contrary to the ordinary course of nature's laws. It must be claimed, therefore, that if a

man does that, he does it to the manifest detriment and harm of Christianity. He can only be brought to trial because any error in these respects must go to the essence of Christianity, must pervert the minds of those to whom Christianity is taught, and check the development of Christianity in 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. It must be held, that the Christian religion which we adopt, the faith in God which we hold, is based necessarily and for all time upon adhering to a belief in the occurrence of certain events, contrary to the course of nature. The court below in substance said, that to deny Christ's miraculous birth was to deny Christ's divinity; surely that is a strange conception.

It is not for me to say whether these miraculous statements are right or wrong, but to many such conceptions of religion seem to place a limitation upon the wisdom and power of the Almighty. The position of many sincere men on these questions, as it seems to me, 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, 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 in order to prove Christ's divinity. 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, 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 have 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 any statement of miraculous event, is certainly lamentable.

It is the miracle of Christ's teachings, and not any miracle connected with his birth, that compels our belief in Christianity.

The miracles connected with Christ's birth and Christ's life do not account for the spread of Christianity; they do not explain its growth, or its permanency. If there was nothing to Christianity except that a certain divine man had come into the world in a miraculous way and performed certain miraculous acts, there would be no Christian church in the world. Christianity has spread over the world because of Christ's life and Christ's teachings; it is the example such as was never set by any other person, the teaching such as no other man ever taught, which account for Christianity's growth. If the clergy had only to tell of the miraculous acts of the founder of Christianity, how long would the people come to be instructed? They come, 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 law 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 led. Therefore it is that we are to-day 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.

It has been an element of strength in our church that a broad latitude of belief has been allowed. It has followed no particular path of theology, but has progressed along the broad lines of Christian faith. We can find valuable lessons in the history of the church in England—evils that have resulted from mistakes which have sometimes been made in the past. progress

that has come as a result of the enlightened policy which has been adopted in a later day.

It is interesting to consider the manner in which the church of England kept her hold upon the people, and to suggest some explanation of that most fortunate result. If our church, at the time of the Reformation, had not adapted itself to new phases of belief, to new elements of intellectual and religious thought, she would have lost her hold upon the people of the land. To a considerable extent this was the fate on the continent of the church from which she separated. In Germany the Roman Catholic Church lost the support of a large and important body of churchmen. Has she fared better in Italy or in France? Turn to the revolution in France, turn to the universal feeling against the church in that land to-day, to the unfairness and injustice with which the church has been treated; it is manifest that the church in France, when it failed to meet new conditions of thought, failed also to keep its hold upon 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 which we call Catholic and hope will remain Catholic, should be so broad that if Bishop Walker and Dr. Crapsey do not agree upon all points, there will be room for both; one has as good a right in the church as the other; one is protected within the liberties of the church as well as the other. We seek to put out no man who is united in Christian work, in doing the work of the Master; but if this church is to grow greater and greater, it must be broad enough to hold all those who, though differing in some acceptance of detail, yet in sufficient conformity so far as the great truths of the Christian religion are concerned, work together for the upbuilding of the Christian religion.

In considering the manner in which the Church of England has kept its hold upon her people, it has been an element of strength to her that a broad latitude of belief has been allowed; it has been, thank God, not a sect, but a church. There have been periods, indeed, when wisdom has been lacking and when grievous harm has resulted. About two centuries ago there was a large body of men in England, faithful and earnest in the Lord's work. Doubtless they deviated in many ways from the tenets of the Church; they did many things with poor judgment, they said many things in bad taste, 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 to-day, with the wisdom which in this century it has shown, not one of those men would have been allowed to escape from the fold of the church of which we to-day 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 to-day.

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 in the history of the Church of England. Doubtless there were many pious 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, but who were of exceedingly little use in the world.

And so we come to the beginning of the last century—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 Fitz-James 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 afterwards became Archbishop of Canterbury, and in it I do confidently assert there are one hundred propositions that to many would seem greater departures from the doctrines of the church of which we are members than any one would find in “Religion and Politics,” if he read it from end to end.

An endeavor was made to put Dr. Williams out; the case 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, 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 cannot hold and advocate them and remain a clergyman of the Church of England, because they are contrary to the doctrines of the Church of England."

Dr. Williams made his answer, and, in 330 printed pages of Mr. Stephen's argument, with infinite learning, is presented the same proposition 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 fixed policy of the Church of England to leave to 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 men 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 Fitz-James 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, 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. Jeremy Taylor says, "Therefore a wise man would not willingly be *prescribed* 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 Court 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 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, and he declared 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—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 sincere and devout men in that day looked forward to the destruction of the foundations 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 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 to-day 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 doctrines of Christianity were in no danger. The apprehension we all feel when there is any suggestion of change in beliefs, in the accepted intellectual formulas, which are dear and precious to us, is often strong, but history shows that 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, 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 investigations."

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."

In reference to the interpretation which Dr. Crapsey puts upon some passages of the creed, it is well put in his own statement submitted to the court which is handed up and which I trust all the members of this court will carefully read. We believe Dr. Crapsey says the creed of the church with as sincere conviction as any man who sits in this court, he gives to each clause the interpretation which his intelligence and the teachings of Scripture compel him to give. There is not a man in the world who does not say his creed in precisely the same manner. No one can say that there can be but one interpretation, one spiritual significance attached to the clauses of the creed, that if two men give to the same clause different interpretations, only one can remain within the pale of our church. There is hardly a clause of the creed to which we attach the meaning that was attached to it once. There is not a person in our church who believes the Apostles' Creed as it was believed by the men who framed it. They

were properly within the church in their day; we are properly within the church in our day. When they said they believed in the Holy Catholic Church, they meant the church which had its seat at Rome; when we use the same words, we give them a different meaning. When they spoke of the resurrection of the body, they meant a physical resurrection in the same flesh and blood with which the body is clothed in this world. Few, if any, believe that now, and yet surely because one believes in a spiritual instead of a physical resurrection, he need not be cast out of the church of Christ. We do not interpret the clause "He descended 'into hell'" as it was interpreted by those who framed it. We do not interpret the clause "He ascended into 'Heaven and sitteth on the right hand of God'" as it was once interpreted. Belief in a material heaven and a material hell, having a definite place in the universe, between which our earth is suspended, has passed away. But we can be as truly Christians, as truly members of our church as those who only a comparatively little while ago attached to the clauses of our creeds different meanings. They believed them literally, and if they did their work as Christians, there was no reason why they should not remain members of our church; we believe them spiritually, and if we do our work as Christians, there is no reason why we should not also remain members of the same church.

It would be a serious misfortune to the church of which we are members if a man like Dr. Crapsey should be thrust out of it. It would be an act of gross injustice to him if he were thrust out, and the thousands who entertain similar views, the hundreds of clergymen who preach with the same freedom of interpretation should be left within.

For almost thirty years Dr. Crapsey has had charge of St. Andrew's parish in Rochester. There he has

done valuable work, the parish has grown, its members are greatly attached to their clergyman, to expel him by violent means would be exceedingly unfortunate.

If his views diverged somewhat from those of other clergymen, certainly there was no poisonous teaching which could have endangered the souls of his flock. Probably few of them followed with any closeness his theological views. He had promised to teach his people nothing, as necessary to salvation, except what he should be persuaded could be proved by Scripture. As he himself says in his statement, when his people came to him and asked what they should do to be saved, he gave them but one answer, and that in the words of the Master, that they should love God and man and follow in Christ's footsteps. Surely in this there was no violation of his ordination vows.

In addition to his work in his own flock, Dr. Crapsey has obtained a hold on the poorer classes in our city, stronger perhaps than that possessed by any other clergyman. His views lead him to sympathize with the poor, and to take a special interest in their lot.

In the State, social questions are now recognized as possessing the first importance; it is to the consideration of them that statesmen give their most careful thought. A similar situation confronts the Church, it must exert its influence upon the countless millions whose lot is lowly, or it will cease to be one of the great factors in the world's growth. Such an influence men like Dr. Crapsey possess, because they seek to improve the lot of their fellows, because they walk in the paths of apostolic charity and poverty. It is safe to say that the millions that can be influenced by such teachings to live according to Christ's example, will take no interest in, and pay no heed to, the discussion of the theological subtleties which disquiet the Standing Committee of the Diocese of Western New York.



The decision in this case is important to Dr. Crapsey, it is more important to the parish of St. Andrews, it is most important to the interests of the Church of Christ. The church is and should remain a great power to impress upon all kinds of men the importance of walking in Christ's footsteps, that thereby their own characters may be elevated, and the happiness of the world may be increased. It should seek inspiration, not among warring Greek doctors of the third and fourth century, disputing over unimportant and metaphysical subtleties, not from wrangling priests or refining sophists, but in the life of Christ, and the things which he taught were necessary to salvation.

Christ said that there should be received into his kingdom those who gave meat to the hungry, and drink to the thirsty, those who ministered to the stranger in his distress. He never suggested that an examination as to a man's views in doubtful questions of dogmatic theology must be made in order to determine whether he might enter the Kingdom. By the law laid down by Christ, we, as members of Christ's Church on earth, ask to be judged.

JAMES BRECK PERKINS,  
For Algernon S. Crapsey.

## Judgment of the Court of Review against Dr. Crapsey.

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COURT OF REVIEW—SECOND JUDICIAL DEPARTMENT.

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IN THE MATTER OF THE APPEAL  
OF  
REV. ALGERNON S. CRAPSEY, S.T.D.

The appeal of the Rev. Algernon S. Crapsey, S.T.D., to the Court of Review of the Second Judicial Department of the Protestant Episcopal Church in the United States of America from the decision of the Ecclesiastical Court of the diocese of Western New York, rendered May 9, 1906, adjudging him guilty of certain canonical offenses as set forth in said decision, came on to be heard by said court at the Diocesan House in Lafayette Place, in the City of New York, on the 4th day of September, A. D. 1906, at 2 o'clock P. M. of that day. All the members of the court were present, viz., Rt. Rev. John Scarborough, D.D., President, Rev. William R. Huntington, D.D., Rev. Alfred B. Baker, D.D., Rev. John Robert Moses, Charles Andrews, Frederic Adams, James Parker.

The appellant appeared in person and by his counsel, Hon. James Breck Perkins and Edward M. Shepard, Esq.; the respondent, the diocese of Western New York, appeared by members of the Standing Committee thereof and by John Lord O'Brian, Esq., Church Advocate. The hearing was continued on October 19 and 20, 1906, at the same place. The argument of counsel having been heard the case was, on the day last mentioned, submitted to the court for decision.

The court having taken the matter under advisement, and impressed with a profound sense of its responsibility in discharging the serious duty cast upon it, met from time to time to consider the appeal. After full consideration of the questions presented it has determined, with the unanimous concurrence of its members, that the judgment of the Trial Court should be affirmed, and it hereby affirms the same. In compliance with the Canon of the General Convention which requires that the decision of a Court of Review shall be in writing, signed by the members uniting therein, and that it "Shall distinctly specify the grounds of the decision," the court states the grounds of its decision as follows, viz.:

First—The Ecclesiastical Court of the diocese of Western New York had jurisdiction to try the accused for the offenses charged in the presentment. The several dioceses have exclusive power to provide modes and institute tribunals for the trial of presbyters for canonical offenses. Article IX. of the Constitution of the Church declares that "Presbyters and Deacons shall be tried by a court instituted by a convention of the Diocese or by the Ecclesiastical authority of the Missionary District in which they are Canonically resident." The canons of the diocese of Western New York (Tit. 3. Canon 1) declare "There shall be an Ecclesiastical Court of the Diocese having jurisdiction to try a priest or deacon thereof for any offense for which a canon of a General Convention provides that a minister of this Church (not being a Bishop) shall be liable for presentment and trial." The teaching publicly and advisedly of doctrine contrary to that held by the Church, or the doing of an act by a presbyter involving a violation of his ordination vows, are enumerated among the canonical offenses specified in Canon 23 of the General Convention. The fact that

no court has been as yet constituted having at this time power to review the decision of a Diocesan Court on questions of faith or doctrine does not affect the power of a court of the diocese to try a presbyter charged with teaching false doctrine. It cannot decline to entertain jurisdiction of the case in which its jurisdiction has been regularly invoked on the ground of expediency or policy. It is bound to proceed to administer the law of the church or of the diocese as the court shall find it to be. The omission of the General Convention to complete the judicial system of the church by establishing an Ultimate Court of Appeal having jurisdiction of questions of doctrine did not take away, nor in any manner abridge the power of Diocesan Courts over the subject. Their original and undoubted jurisdiction remains complete and unimpaired. Canon 29, enacted in 1904, which creates Courts of Review, contains a variety of provisions based upon an assumption that an ultimate Court of Appeal having jurisdiction of questions of doctrine would be established. But these provisions are inoperative and will continue so to be until the contemplated court shall be created. The claim that the Trial Court should have declined to proceed in the trial of the case to await the action of some future General Convention would, if it had been allowed, have postponed the trial indefinitely, for it is impossible to forecast, at what time if ever, the General Convention will exercise the permissory power conferred by Article IX. of the Constitution. The existing situation leaves a presbyter who has been accused and convicted in a Diocesan Court of teaching false doctrine in the same position in which presbyters have always been, viz.: without any opportunity to have the decision reversed by an appellate tribunal for error in respect of doctrine. This may be regretted, but

this consideration neither takes away nor modifies the duties cast upon a trial court, except as it may serve as an admonition for considerate and cautious procedure.

Second—The Trial Court was legally organized in conformity with the canons and ordinances of the diocese of Western New York. The canons provide that the Ecclesiastical Court of the diocese shall be composed of five presbyters elected by the Diocesan Council from a list of ten presbyters chosen and nominated to the Council by the Standing Committee. Five presbyters were so elected at the annual session of the Council May 17, 1905. In case of the resignation of any member of the court the vacancy is to be filled until the next session of the Council "By an appointment to be made by the Standing Committee upon the nomination of the Bishop." An accused person who is to be put upon trial may challenge peremptorily two of the members of the Court and the places of the persons so excluded are to be filled by an appointment by the Standing Committee on the nomination of the Bishop as provided in case of resignation, and the accused may still further challenge one substitute appointed in the place of a person excluded by a previous challenge. Before the presentment was made one of the elected members resigned and another person was appointed to fill the vacancy. The Court as finally constituted consisted of two members elected by the Council; one member appointed to fill a vacancy created by a resignation; and two members substituted in place of persons excluded by challenge of the accused. The fact that a majority of the members of the Court as finally constituted was composed of persons not elected by the Council is immaterial provided the result was occasioned by the exercise of the right of challenge, or by the filling of

vacancies created by resignation. It ought to be assumed, and it is undoubtedly true, that the accused exercised the right of challenge fairly and for adequate reasons, but at the same time the fact that a majority of the Court were not persons elected as such was primarily due to the exercise of the right of challenge and not to the act of the Bishop or of the Standing Committee. It is insisted by the eminent counsel for the accused that the members of the Court were selected by the Standing Committee who were the accusers in the case and that to permit a prosecutor to select the judges to try the presentment was a violation of an elementary principle of justice. The Court is of the opinion that the claim proceeds upon a false premise. The Standing Committee did not select the two permanent members of the Court. In performance of their duty under the canon and before the prosecution was instituted they nominated ten presbyters to the Council held in May, 1905, from which the Council selected five members to constitute the Ecclesiastical Court. Nor did the Standing Committee in any just or reasonable sense select the persons to fill the vacancies created by resignations or challenge. The real right of selection was in the Bishop. The duty of the Standing Committee in approving the nominations of the Bishop was an appointment by the Standing Committee in form only. The Standing Committee had no power to designate any member of the Court. It could approve or reject nominations made by the Bishop, and this was the extent of its power. The Bishop who made the nominations was neither accuser nor prosecutor in the case. In pursuance of his canonical duty he passed upon the sufficiency of the presentment and in nominating members of the Court to fill vacancies he performed a duty expressly enjoined upon him. He was not disqualified

to make such nominations, although he may have entertained an opinion adverse to the accused on the questions in controversy. In the opinion of the Court no substantial right of the accused nor any principle of justice was violated in the Constitution of the Trial Court.

Third—This Court cannot review the decision of the Trial Court adjudging that the statements of the accused were in conflict with the doctrine of the Church and constituted a breach of his ordination vows. Canon 29 gives to a presbyter convicted of a canonical offense by a Diocesan Court the right to appeal to the Court of Review of the Department in which the trial was had in all cases. But if the appeal is from a decision involving a question of doctrine a Court of Review, until an Ultimate Court of Appeal shall have been created, has no power or jurisdiction to decide a question or doctrine or to reverse or affirm the decision of the Trial Court upon that question. This limitation of the jurisdiction and power of a Court of Review is found in the express provision of Canon 29, "That until after the establishment of an Ultimate Court of Appeal as permitted by Article IX. of the Constitution no Court of Review shall determine any question of doctrine, faith or worship." But on such appeal to a Court of Review it is open to the accused to present for review any alleged errors in the Constitution of the Trial Court, the proceedings on the trial, the admission or rejection of evidence, or, in short, any question appearing in the record and raised on a trial and specified in the notice of appeal, the determination of which does not involve the decision of a question of doctrine. It is urged in behalf of the appellant that since the judgment of the Diocesan Court is the determination of a question of doctrine this Court of Review cannot determine it



without itself determining questions of doctrine and so going beyond its jurisdiction. It may be thought, but perhaps does not logically follow, that by a parity of reasoning it appears that this court cannot reverse the judgment. Having thus power neither to affirm or reverse the court would be at a standstill and would dismiss the appeal for want of ability to do anything. In that case the judgment of the Diocesan Court would stand. Attention to what it is that an appellate court does in reversing the judgment of another tribunal will dispel any apparent difficulty. The act of the court below is presumed to be legal. This presumption stands until it is overthrown by demonstration of error. The question that confronts any appellate court is this: What error is there in the record we have power to correct? When jurisdiction fails the court cannot find error because it cannot look for it. Where jurisdiction exists it carries with it the power of review. This court may, therefore, proceed to examine and determine the questions of which it may take cognizance. The finding of the court that the accused in making statements charged and admitted to have been made by him, violated and broke certain declarations made by him at the time of his ordination involved the finding of what was the doctrine of the church on the subjects to which the declarations related. The Constitution in force when the accused was ordained declared: "Nor shall any person be ordained until he shall subscribe to the following declaration: '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 and worship of the Protestant Episcopal Church in the United States.'" And on his ordination he answered affirmatively the question: "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?" It is claimed that other promises and declarations made by him in the ordination service in some way qualify the declaration and promise above quoted, and that if by diligent and devout study of the Holy Scriptures a priest should come to hold conscientious convictions as to what is the doctrine of Christ as revealed in the Scriptures it is within his liberty, and the liberty of the church to teach and declare it, although it does not conform to the natural sense of the language of the Creed. This court is of opinion that this claim is so essentially connected with the definition of doctrine that it is excluded from its consideration by the language of Canon 29.

Fourth—The court is of the opinion that Charge 1 in the presentment, charging the holding and teaching by the accused, publicly and advisedly, doctrines contrary to those held by this Church was not, as is claimed by counsel, solely a charge of such teaching by the "delivery of the sermons" mentioned in the presentment. The charge fairly construed charges two distinct acts as violations of the canon relating to false teaching; first, the delivery of the sermons; and, second, their publication in the year 1905. This contention is only important by reason of the fact that the conviction under Charge 1 was based exclusively on the "publication of the sermons" and it is claimed that although the same statements were contained in the book as in the sermons, nevertheless, as the conviction must be of the specific act charged, and as the charge is based on the delivery of the sermons and

not on the publication of the book, the conviction should be reversed. The introductory allegation in the presentment, states, among other things, that during the year 1904 and 1905 the accused delivered a series of sermons "which he thereafter caused to be published in book form," etc., and that said book "was published, sold, and circulated with the permission, consent, and authorization of the said presbyter." In the specification under the charge it is alleged that the accused did "openly, advisedly, publicly and privately utter, avow, declare, and teach doctrine 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," etc. The answer of the accused and the course of the trial indicate that both the accused and his counsel at the time understood that the publication of the book was an offense charged in the presentment. On the trial the statements in the book were relied upon to support the charge. There was a controversy between counsel whether the book as a whole should be admitted in evidence, or, if not, whether the whole of any sermon in the book which contained the passages set forth in the presentment was admissible. But no suggestion was made that the publication of the book was not an act covered by the charge. The point that the charge does not allege the publication of the book as an offense is not, we think, well taken.

Fifth—The application made to the court by the counsel for the accused on April 17, 1906, for an adjournment of the hearing until June following for the convenience of counsel was addressed to the discretion of the Trial Court. An adjournment was granted until the 27th of April, on which day the trial proceeded. There was an interval of more than six weeks between the issuing of the citation and the day

originally appointed for the hearing, and of more than seven weeks between the citation and the day of the actual commencement of the trial. The counsel for the accused were both present and participated in the trial. This court cannot review the discretion of the Trial Court, at least, in the absence of evidence that the discretion was abused, and we find no evidence warranting that conclusion. On the adjourned day, viz.: April 27, 1906, the counsel for the accused made an application for a further adjournment of the trial until after May 15, 1906, when the convention of the diocese of Western New York was to meet, and for the reason, as stated in the notice of appeal: "Which Convention would choose a Standing Committee in lieu of the Standing Committee which had made the said presentment, and the members of the court in lieu of the members then sitting in said court so that the court would not consist of members appointed by the prosecution, except and unless the said Convention should so decide." The court was asked in substance to adjourn the court to a day beyond its own life and to suspend the exercise of the functions with which it was invested by the existing law of the diocese to await contingent and problematical action of a future convention which might be favorable to the accused. We think this motion was properly denied.

Sixth—The credibility of witnesses was a matter for the consideration of the Trial Court. The evidence of the witness whose credibility it questioned on this appeal was taken in support of specification 2 of charge 1 in the presentment relating to alleged statements made by the accused in a sermon delivered by him about December 31, 1905. No evidence was offered by the accused contradicting the evidence of the witness as to the statements to which he testified.

Those statements were substantially a reiteration of some of the statements in the printed sermons. The witness on his cross-examination exhibited evidence of ill-temper and his relations to the accused might subject him to the imputation of prejudice. The counsel for the prosecution after the evidence of the witness was closed, suggested that a witness would be called to corroborate his testimony. The counsel for the accused thereupon stated they would give no evidence on the subject, and the counsel for the prosecution replied, "I think very likely we shall not call him then," and there was no further reference to the subject. The court based the finding on the evidence of the witness in question and there was no error in so doing.

Seventh—A portion of the fifth ground of appeal reads as follows:

"That the said court erred in refusing to receive evidence offered in my behalf to show that according to the doctrine of this Church, and also separately according to the common practice and understanding of its clergy and of the Church, the statements made by me and complained of in the said presentment were within my liberty, duty and right to make."

This ground of appeal brings up for review the refusal of the Diocesan Court to permit the five following questions to be answered. For convenience of reference they are numbered:

1. In your opinion is there 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?

2. According to the understanding and practice of the Protestant Episcopal Church are the passages from the sermons and book of Dr. Crapsey within the doc-

trine and faith as the same have been received by such Church?

3. 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?

4. 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?

5. 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?

These questions were addressed to a number of witnesses, each a clergyman of the Protestant Episcopal Church, three of whom then held or had held a Professorial Chair. It is to be assumed that their learning and experience qualified them to answer competent questions as to Church matters. Question one was put to the first witness called on behalf of the appellant. An objection was made and after full argument was sustained. The court, speaking by its assessor, thus assigned the ground of its ruling: "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. The court went on to declare that this evidence, according to a settled rule of the law of evidence, is inadmissible. One of the learned counsel for the appellant then said: "I now propose to ask certain additional questions. I will say frankly to my friend on the other side that the

reasons stated by the court will cover the other questions I shall ask; but I desire to ask them that the rulings may appear on the record and I shall make no argument. If any of them in the opinion of the court and its Assessor present any question which would lead them to modify the opinion already expressed they may say so." The other questions were then asked of the same witness and met with objections. The objections were sustained without further discussion. Ten other witnesses were sworn in behalf of the appellant and it was stipulated that it should be regarded that the same questions were put to each witness and the same objections and rulings were made as in the case of the first witness. Exceptions were duly taken to each ruling.

Question one is plainly illegal. It asks for the opinion of the witness as to a matter that it was the function of the Diocesan Court to decide, and it is not within the exception as to expert testimony. An ordinance enacted as a part of the Ecclesiastical Law of the diocese of Western New York enacts that the trial of a minister of that diocese shall be conducted according to the principles of the Common Law as administered in that State, and that the law of that State as to the admission of evidence shall govern the court except as otherwise provided. It may be affirmed that such a question has not been held to be sustainable in the State of New York by a court proceeding according to the course of the Common Law and enforcing the established rules of evidence. Question five, read as it stands, is evidently governed by the same rule as is applicable to question one and requires no further attention. It is possible, however, that question five, by reason of its close connection with question four, is to be regarded as elliptical, and that the words "according to the understanding and prac-



nice of the Protestant Episcopal Church" should precede the words "is he at liberty?" If it be read in this way it belongs to the same class with questions two, three, and four, which it resembles in phraseology, and is to be considered with them. It will be found on an examination of these questions that they are within the rule that condemned question one. The witnesses were not asked by these questions to lay before the court the facts with which their learning and experience had made them acquainted. They were not asked to point out the formal and official standards of the Church. They were not asked to say whether these standards have an established and authoritative interpretation and to tell what it is if there be such an interpretation. They were not asked to say whether apart from the formal and official standard there is a doctrinal understanding and practice that is available as a test of teaching, and to tell what it is if there be such an understanding and practice. Each question assumes, without proof, that there is such an understanding and practice, or such an interpretation, understanding, and practice, and then asks the witness whether the teachings of the appellant accord therewith. To answer this question was the function of the Diocesan Court, not the right of a witness. Moreover, the questions call upon a witness to construe the teaching of the appellant. This also was the function of the court. The portion of the fifth ground of appeal above quoted does not accurately state the position of the Diocesan Court. That court did not refuse to allow the appellant to show that according to the doctrine of the Church, and also and separately according to the common practice and understanding of the clergy and of the Church teaching of the appellant was permissible. What the Diocesan Court did was merely to overrule certain ques-

tions that called on each witness to assume the attitude of a judge. The source from which the judgment of the Diocesan Court was to proceed was the conclusions of the court as to the understanding of the Church and as to the teaching of the appellant, not the conclusion of the witness as to that understanding and teaching. In short, questions one, two, three, four, and five were illegal and are illegal for the same reason.

[The doctrines of the Church are set forth in the authorized standards and formularies which the Church has adopted as the expression of its faith and doctrine, and first among such standards are the Apostles' and Nicene Creeds. Some of the questions seem to assume that sincerity of belief is the test by which a presbyter is to be judged in teaching doctrine not in conformity with the doctrine of the Church. But the assertion by a clergyman of the Church of a liberty beyond the bounds of some grave obligation must be supported by something beside rectitude of purpose. It may be admitted that every clergyman is bound in his public teaching to yield to the paramount claim of conscience. But the Church as the guardian of the Christian faith as it has received and declared it, cannot, without betraying its trust, when called upon to act, permit doctrines which it holds essential and fundamental to be impugned by those who minister at her altars, however pure their motives or sincere their convictions. This court is prohibited by canon from determining whether the utterances of the accused were or were not inconsistent with the doctrine of the Church. It simply decides that the evidence which was rejected was incompetent upon the issues involved. The claim that it was admissible as bearing upon the sentence which the Trial Court should recommend was not suggested on the trial,

and it would be manifestly improper to reverse the judgment upon a subordinate ground now mentioned for the first time, and which, by the course of the trial, was naturally regarded as withdrawn from the attention of the court.

Eighth—In order to constitute the offense of holding or teaching false doctrine under canon 23 it is essential that it be charged in the presentment proved on the trial and found by the court that the false doctrine was held and taught by the accused “publicly or privately and advisedly.” An inadvertent or casual statement made by the accused without deliberation will not sustain the charge under this specification in the canon. It is claimed that the decision of the Trial Court contains no finding that the statements of the accused were made “publicly or privately and advisedly,” and further, that the court intentionally omitted to sustain the allegations of this fact made in the presentment. The presentment charges that the statements of the accused were so made. The court in its decision does not expressly find that such statements were made “publicly and advisedly.” The decision, however, contains findings from which this inference is unavoidable. The second finding is: “That during the year 1905 said 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 a rector of St. Andrew’s Church, and said book was published and caused to be sold and circulated by said respondent.” The decision then quotes the passages in the book upon which Charge 1, Specification 1, in the presentment is based. The finding of the court that the accused delivered the sermons contained in the book and thereafter caused them to be published in book

form and to be circulated, carries with it an irresistible inference that the statements were "publicly and advisedly," that is to say, deliberately made, and this inference supplies the place of and is equivalent to an express finding that the statements were made "publicly and advisedly." The court also found that in the sermon of December, 1905, the accused employed in substance the language imputed to him in Specification 3, Charge 1, which is a substantial repetition of the statements found to have been made in the book "Religion and Politics." It is claimed by the counsel for the accused that the inference to which reference has been made cannot be indulged in support of the decision of the Trial Court, for the reason that the court, in its decision, found the accused guilty only "to the extent" stated therein; and that among the specific findings of the court there is no finding that the statements in the book were "publicly and advisedly" made. The court is of opinion that the claim of the counsel for the accused proceeds upon a misapprehension of the meaning and purpose of the qualifying words in the decision above quoted. The court in its decision, before delivering its judgment upon the statements admitted to have been made by the accused, recites the allegations in the presentment as to the import and meaning of their language and as to the intention of the accused. These allegations may be summarized as asserting that the accused by such statements intended to express the "Presbyter's disbelief in and to impugn and deny": (1) The Divinity of our Lord; (2) His conception by the Holy Ghost; (3) His Virgin birth; (4) His resurrection; (5) the Doctrine of the Trinity. The court did not find these charges to their full extent. It found in respect to the first and fifth of these specifications that the accused impugned, but did not find that he

denied the doctrines therein specified. It found that as to specifications two, three, and four the accused both impugned and denied the doctrines stated. The same is true with respect to the charges in the specification relating to the sermon of December, 1905. The court also failed to find one of the specifications in Charge 2 relating to the violation by the accused of his ordination vows. The situation explains the purpose of the insertion in the decision immediately preceding the affirmative findings of guilt of the words "to the extent now here stated." It is not a reasonable supposition that the court intended to exclude a finding that the statements provided were made "publicly and advisedly" which was an irresistible inference from the facts actually found as to the circumstances under which the statements were made and published.

Ninth—Section 18 of the ordinances of the diocese of Western New York provides that the Trial Court, in case they shall find an accused person guilty of the charge contained in the presentment, shall make a decision in writing, signed by them, stating (among other things) the "Sentence which in their opinion ought to be pronounced." The ordinances further provide that the Bishop upon receiving the judgment record of the court shall, after due examination and deliberation, "pronounce such Canonical sentence as he shall deem just not exceeding in severity that specified in the opinion of the court." The Trial Court in its decision stated as follows: "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 a time as he shall satisfy the ecclesiastical authority of the Diocese that his

belief and teaching conform to the doctrine of the Apostles' Creed and the Nicene Creed as this Church has received the same." It is claimed that if the sentence recommended should be imposed the accused would be required, before he could be relieved from the sentence of suspension, to satisfy the Bishop not only of his doctrinal soundness in respect to the articles of the Creed to which the presentment related, and which the decision of the court found he had denied or impugned, but in addition his doctrinal soundness as to the other articles of the Creed not involved in the presentment, trial, or judgment. If this construction which the counsel for the appellant places upon the recommendation of the court be the true one, and the Bishop should be guided by it in imposing sentence, it might very well be said that the penalty imposed would exceed the just limits of a judicial sentence which should correspond with and respond only to the offence of which the accused was charged and of which he was convicted. But in the opinion of the court this broad construction of the language of the court is not required. It is reasonable to construe the proposal of sentence as limiting the satisfaction to the particular doctrines denied and impugned. The accused was not charged with or convicted of denying or impugning the Creeds as a whole, but with denying and impugning certain doctrines in the Creeds. This is the extent of nonconformity alleged against him. It seems natural to suppose that the Diocesan Court in using the words "conform to the doctrine of the Apostles' and Nicene Creeds as this Church has received the same," had in mind the only doctrines that had been the subject of inquiry. The court should not unnecessarily impute to the judgment of another tribunal an irrational meaning, but, according to an established rule of construction should interpret it with



regard to the subject matter. The application of this rule is favorable to the accused and should for that reason be applied in construing the language employed. But the objection made omits to take into consideration the fact that the recommendation of the court as to the sentence is only advisory except as a prescription of a maximum punishment. The court performed the precise duty imposed upon it by the Canon, viz., that it should state in its decision "the sentence which in their judgment ought to be pronounced." Assuming that the sentence proposed contained an improper form or measure of punishment in the respect mentioned, the appellant was not injured thereby and has no ground of complaint because the recommendation bound no one excepting in a direction favorable to the accused. The Bishop, when he should come to impose sentence, would not only be free to disregard any improper element in the proposed sentence, but in the discharge of his episcopal duty would be bound to do so. It would be open to him in imposing sentence to substitute admonition in place of suspension, and to make the termination of the suspension to depend upon the acknowledgment by the accused of his errors as found by the decision of the court and promising conformity to the doctrines of the Church in the matters to which the decision related. The court, in framing its recommendation, having performed its duty under the Canon, its error, if any, bound no one. It was not a ground of appeal, because the correction of the error was the province and duty of the Bishop in pronouncing sentence. Another suggestion arises out of the provision in Canon 39 that after an affirmation of a conviction of a presbyter by a Court of Review, and the remission of the record, "the Bishop of the jurisdiction in which the trial was had shall determine and pronounce sentence of admonition,



suspension, or deposition." The provision of the Canon of the diocese of Western New York limiting the discretion of a Bishop in pronouncing sentence antedated the Canon of the General Convention. The General Convention is supreme as to all matters within its jurisdiction, and Canons enacted within the scope of its legislative powers are the supreme law of the Church. The court deems it necessary to decide whether the provision in Canon 29 supersedes the Diocesan Canon limiting the powers of a Bishop in pronouncing sentence in cases in which a Court of Review has acquired jurisdiction by the appeal of an accused presbyter from a conviction by a Diocesan Court. But it is a sufficient answer to the objection now considered that the matter of the form of the sentence is not reviewable in this court by reason of its advisory character and is not an adjudication in any proper sense upon which error is assignable. Article IX. of the Constitution of the Church declares that "a sentence of suspension shall specify on what terms and conditions and at what time the suspension shall cease." In the opinion of the court this provision does not make it necessary that in all cases a specific date shall be named in the sentence when the suspension shall cease. The specification of time may be satisfied by a measureable and terminable condition within a period of duration, upon the performance of which the suspension will end. In such case the time is specified within the meaning of the Constitutional provision, when it may be fixed by the act of the accused complying with the conditions imposed.

Tenth—The appeal made to the court by the counsel for the accused to reverse the decision of the Trial Court on the ground that sound policy and the best interests of the Church would be promoted thereby, assumes the existence of a power which this court

does not possess. The primary function of a Court of Review when its jurisdiction has been properly invoked is to examine the record of a Trial Court to ascertain whether any material error of which it can take cognizance was committed on the trial. No power is conferred upon the court to determine the policy of the Church on questions of discipline. The policy of the Church in respect to prosecutions for false teaching belongs to the domain of legislation. And the power to declare the policy of the Church upon this subject resides in its legislative body. It is not for an appellate court to pass judgment upon the propriety or expediency of legislation, but to declare the law of the Church as it finds it to be. With the consequences which may result from maintaining the law of the Church it has no right to concern itself. The court has been referred to the provision in Canon 29, authorizing the Court of Review to reverse a judgment and to grant a new trial "if in its opinion justice shall require it." This grant of power is frequently found in laws creating or regulating the power of civil courts. It enables a court to remedy any injustice which appears in the conduct of the trial, and to relieve a party who, for any reason, ought in justice to be permitted to have the case re-heard. But the power has never been extended, so far as we know, and cannot in reason be extended, so as to authorize a court to dispense with the law on the ground that in its opinion the law is impolitic or unjust. It would be usurpation for the court to reverse the decision of the Trial Court on the ground that prosecutions for heresy are injurious to the Church and ought not to be encouraged.

It is directed that the foregoing decision and judgment, together with minutes of the proceedings of the court, certified by the President and Clerk thereof, and constituting the record of this court, be annexed

to the record of the Trial Court on which the appeal was heard, and that said records be remitted to the Bishop of the Diocese of Western New York.

Done at the Diocesan House in the City of New York this 16th day of November, A. D. 1906.

In Witness Whereof the members of this Court of Review have hereunto signed their names on the day and year last stated.

JOHN SCARBOROUGH, President.  
WM. R. HUNTINGTON,  
ALFRED B. BAKER,  
JOHN ALBERT MOSES,  
CHARLES ANDREWS,  
FREDERIC ADAMS,  
JAMES PARKER.



## Dr. Crapsey's Letter of Resignation.

ST. ANDREWS RECTORY,

ROCHESTER, November 26, 1906.

MY DEAR BISHOP:

Under existing conditions I deem it my duty to make a formal and final renunciation of the ministry of the Protestant Episcopal Church, and in consequence I ask that you will, for reasons as to time already given, not earlier than the third, not later than the sixth of December, take order under Canon 31 of the General Canons of the Church to accomplish my deposition from the Priesthood.

I am certain that you will be glad to acknowledge that I am not compelled to this action by anything that reflects upon my moral integrity or calls in question my faithfulness as a pastor. My sole difficulty lies in the fact that a long, careful, conscientious study of the Holy Scriptures has compelled me to come to certain conclusions concerning the pre-natal history of Jesus which are not in physical accord with the letter of the Creeds, and hence have compelled me in order to hold the Creeds to give to certain articles an interpretation that will harmonize them with the truth as I find that truth in the teaching of the Holy Scriptures. But recent judicial decisions have declared that any such harmonizing of the Creed with my own convictions of the truth is not permissible in the Protestant Episcopal Church. In my own case I recognize the right of the constituted authorities of the Church to define the limits of interpretation and in order to hold fast to the

truth must let go of the Creed as now interpreted by the Courts. I am not now and never have been conscious of any insincerity in giving such interpretation to the various articles of the Creed as are demanded by present conditions of thought and the present state of knowledge, any more than I am conscious of insincerity when I say the sun rises and sets, though as a matter of fact the sun does nothing of the kind. If I am to hold the Creed at all I must give to certain, if not all, of its articles a spiritual rather than a literally physical interpretation. When I say of Jesus that He ascended into heaven I do not mean and cannot mean that with His physical body of flesh, blood and bones He floated into space and has for two thousand years been existing, somewhere in the sky, in that very physical body of flesh, blood and bones. Such an existence would seem to me not glorious but horrible and such a conception is to me not only unbelievable, it is unthinkable. What I do mean by this phrase is that Jesus having accomplished His work in the flesh ascended into the higher life of the spirit. Also when I say of Jesus that He was conceived by the Holy Ghost, born of the Virgin Mary, I do not mean that the great and living God in order to get into His world had to violate His wonderful law of human generation, break into the sanctities of marriage and cause a Son of man to be born without a human father. Such a notion is most repugnant to my ideal of a wise and holy God. I was not therefore alarmed, I was relieved when a careful study of the Holy Scriptures convinced me that this notion of the origin of Jesus was without foundation in history. Jesus was not lessened in my worship. He was ennobled by this discovery. When I reached the conclusion as I did

some years ago, that the infancy stories were not historical, I did not cease to believe in Jesus. I believed in Him all the more, and I gave to the words "Conceived by the Holy Ghost, born of the Virgin Mary," an interpretation that harmonized with my knowledge of the facts. He was a Child of the holy seed, sanctified from his mother's womb. A Son of God all the more, in my estimation, because He was the son of Man. Then I saw for the first time into the meaning of those words of John when he said, "The Word was made flesh and dwelt among us and we beheld His glory as the glory of the only begotten of the Father full of grace and truth," and I could understand how in the same chapter Philip could say of this incarnate Word, "We have found Him of whom Moses in the Law and the prophets did write Jesus of Nazareth the Son of Joseph."

Now this conception of Jesus based upon a careful study of Holy Scriptures is of the very warp and woof of my intellectual and spiritual life, and it is not probable that it will ever change. I will carry it with me into that spiritual world where I shall see Jesus face to face. But I am told by judicial decision that this conception is not permissible in the mind of a minister of the Protestant Episcopal Church. I bow to that decision. I cannot change my mind—I therefore leave the Church. I do not blame my judges; they acted according to their light—let not them blame me if I follow my light, which is lightening me to the everlasting day. But whether they blame or not, I cannot do other than I do—I must obey God rather than men.

But while I thus feel that their decision is final for me I am equally certain that it is not final for the Church. I have reason to know that there are



hundreds of clergymen and thousands of laymen in the Protestant Episcopal Church who have reached the same conclusion that I have, and Sir, I beg to say to them in this letter to you, that their position in the Church is just as tenable as it ever was. This judgment affects no person except myself. Let no one be dismayed. Let every man stand in his place—speak his mind boldly and the truth will soon have such a multitude of witnesses that all in the Church must hear. So confident am I of the truth as it is in Jesus that I appeal from those in places of authority in the Church to the Church itself, to the great body of the people, secure in their wise, sane, serene possession of the truth. Again I exhort my brethren of like belief to stay where they are. I am about to carry our case to the high Court of the free intelligence and the enlightened conscience of the world, and if I win it there, I will win it for every Church and every soul in Christendom. If I fail before that Court, it will be because I am wrong in my conception of truth; and then I will be glad to fail, for my contention is not for my conception, but for the eternal truth of God. Let my brethren within the Church abide the issue of this trial. For when the Great Tribunal of Free Thought has decided this contention, the men who administer the Church on earth will conform to this decision. It is to this work of showing that God is in Man and Man is in God that I consecrate the rest of my life.

In asking my dismissal from the Church of my life-long devotion, I do so with the deepest gratitude for the opportunities of worship, of preaching and of service which have been the privileges of my office. To pray before the altar of my Church has been my daily habit. To preach the

gospel of Jesus from the pulpit of my Church has been my weekly delight. But far dearer to my soul than all ministry within the walls of the Church has been the opportunity that has come to me as the glorious privilege of my pastoral office of being of daily service to my people in all the changes and chances of their mortal lives. If I seem to have unduly contended for my ministry let my pardon be that I value my ministry above everything except my integrity and deemed it due to others as well as myself and above all to the Church itself to have an authoritative and deliberate decision.

It is to me more than meat and drink to have the right to be with my people in every critical hour of their lives, to give them in the name of the living God courage to live and courage to die. My conviction that we need no miracle to account for Jesus of Nazareth is confirmed by my daily contact with the lives of the people. In these men and women of my charge who go forth to their work and to their labor until the evening; who bear the world's burden without receiving the world's reward, many of whom endure sufferings unspeakable and privations that are often appalling, who with all their faults, are yet heroic in their patience, whose daily toil is the support of the world; in these men and women, I say, I see not the cursed seed of any Adam but the blood brothers and sisters of Jesus of Nazareth. To leave this daily ministry to such a people is to break my heart. But better a broken heart than a life made false and loathsome by cowardly retraction.

In leaving the organized Church, so far as its ministry is concerned, I feel that I can take with me the best that the Church has given me; the

fasts and the feasts, the vigils and the tears of the Church have become mine by right of possession, and not all the courts and Bishops of the Church could take them away. I shall watch in Advent, be merry at Christmas, fast in Lent, weep on Good Friday, rejoice at Easter, even though the Church's servants shut its doors upon me. Yes, all the more because they have shut its doors upon me, driven from the earthly tabernacle, I shall have to take refuge in that tabernacle not made with hands, which is the tabernacle where God dwells with all his saints and angels.

And if I seem to have lost my hold upon some of the traditional and physical interpretations of the creed, let it not be thought on that account that I have lost my hold on the Gospel of Christ. Nay, rather because I have let go these temporary and unstable interpretations of the creed, I find strength to hold more firmly than ever to the gospel. I believe as never before that to love the Lord my God with all my soul and all my mind and all my strength, and to love my neighbor as myself is not only more than the law and the prophets, but is also more than the creeds and the churches. I see more clearly than ever that the five negative laws of righteousness laid down by Jesus which laws command us not to be angry, not to lust, not to take any oath or vow, not to resist evil, not to hate the stranger though he be an enemy, I see, I say, more clearly than ever that these laws are the hedges of that straight and narrow way that leadeth unto life. To walk in that way has been and will be the constant labor of my soul.

Let no one think for a moment that I do not love the Lord Jesus Christ and would not have served him to the last in this Church, which is to me the historic Church of the great English speaking race,

if only its men in authority had let me. All I asked of them was tolerance. But they have refused to extend tolerance to such as I and I must, with a grief which only my own heart knows, accept my dismissal from the service of the Church. But though cast down, I do not despair. As I have been true to God, so I believe God will be true to me. I believe he has work for me to do and this is His way of calling me to that work. In His Name, therefore, Right Reverend Sir, I beseech you to forgive me my offences and let me go.

Assuring you that I go without the slightest animosity to any that I leave behind, and with love unspeakable to that host of men and women within the Church who have comforted me in my tribulation and most of all, with a gratitude that will never die, to four men who have done for me what men can seldom do for another—to Seth Low and George Foster Peabody, to James Breck Perkins and Edward Morse Shepard—to these men I leave my undying gratitude, and with contrition to the Church for all the faults and failings of my ministry, I remain, Right Reverend and dear Sir,

Your servant in the Lord Jesus Christ,

ALGERNON S. CRAPSEY.

Rt. Rev. WILLIAM DAVID WALKER, S. T. D.,  
*Bishop of Western New York.*



## Statement of Mr. Shepard following the Decision of the Court of Review.

Dr. Crapsey's counsel first learned of his letter to Bishop Walker after its preparation and when he told them that his conclusion to send it was unalterable. I nevertheless pointed out to him that he had, with many others, misapprehended the scope of the decision of the Court of Review. Although the high standing of its members might have given weight to their conclusion, if they had reached one, on the great questions in the case, the fact was that they had absolutely refused to deal with any of those questions. Their judgment included no condemnation whatever of what Dr. Crapsey had done. The prevailing majority of the court at Batavia were relatively inexperienced and young men, unknown to the Church at large, while the Court of Review represented the seven dioceses of New York and New Jersey and included really representative men. Nevertheless the higher court decides that the lower court alone, for this case, pronounce the Church's mind upon spiritual or literal interpretation and announce the limits of its toleration and its policy as to intellectual liberty. For Judge Andrews and Dr. Huntington and their associates it was permitted—so they decided—to deal only with lesser and lower questions of formal procedure—questions such as arise, a thousand of them, every day in civil courts in suits for rent or the price of goods. This anomalous situation, they say, “may be regretted;” and they suggest that the possession by the lower court of so great and absolutely unrestrained a power as they exercised in the Crapsey case, should “serve as an admoni-

tion for considerate and cautious procedure." I wish, indeed, that the admonition had been before the Batavia court.

Upon the rulings of the Court of Review, such as they were, Dr. Crapsey's counsel, who are lawyers, could form an opinion better than he. I told him my belief that the decision was wrong and, if tested, would not stand; that, according to the canons, he was entitled to a stay until the actual establishment of the final court of appeals provided for by the constitution of the Church; that upon two points at least which Mr. Perkins and I had argued, the judgment would be held void by a civil court, precisely as Bishop Scarborough's deposition of the Rev. Mr. Jennings several years ago had been held void by the Supreme Court of New Jersey. But Dr. Crapsey peremptorily rejected the idea of appeal to a civil court. Even though the highest existing court of the Church had found itself powerless to deal with the only questions of real moment, nevertheless the action of his clerical brethren in the lower court had, for the world at large, been sustained, and his personal fortunes should, he said, abide by the decision, right or wrong. The cause of intellectual honesty and free study had been opened to the Church; and he would not hinder it by further personal controversy,

In retiring from a case to which I, like my associate, Mr. Perkins, came solely to serve what we believed to be the true principles and traditions and the noble future of our Church, I profoundly regret that a broader and farther seeing wisdom has not prevailed, and that our ecclesiastical authorities have, for the time, decided that it is to be a sect and one of the lesser sects in the United States.

In my argument before the Court of Review I referred to the low rank in apparent importance



which our American Church holds, in spite of all its sacred and wonderful faculties. In Whittaker's Almanac for 1906 at p. 334 the ratios of its communicants to the total population are given, beginning with 1830. This is doubtless for our encouragement; for in 1830 our communicants were only one out of 416 of the population, in 1890 one out of 123, in 1900 one out of 107. So that, during that memorable seventy years of national growth our body of communicants has only increased from one-fourth of one per cent. to nine-tenths of one per cent. of the entire population. So far as there has been relative increase, we may justly rejoice. That the increase has been no greater would seem to carry with it an admonition that the Church needs no procedure to drive out of it men, whether in the clergy or in the laity, of intellectual force, scholarship, self-sacrifice and a pious zeal for the Church and its work among men.