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THE ARGUMENT
OF
THE BISHOP OF NEW JERSEY:

IN REPLY TO

THE PAPER,

READ BEFORE

THE COURT OF BISHOPS,

IN SESSION, AT BURLINGTON,

ON MONDAY, 11 OCTOBER, 1852,

BY

THE BISHOPS OF VIRGINIA, OHIO, AND MAINE;

IN

ANSWER TO THE REPRESENTATION FROM THE DIOCESE OF NEW JERSEY,

READ, BEFORE THE COURT,

BY THE REV. SAMUEL L. SOUTHARD.

NEWARK, N. J.:

PRINTED AT THE DAILY ADVERTISER OFFICE.

1852.

THE COMMITTEE
OF
THE DIOCESE OF NEW JERSEY;

TO APPEAR BEFORE

THE COURT OF BISHOPS:

The Rev. SAMUEL L. SOUTHARD,

The Rev. HARRY FINCH,

*The Rev. JAMES A. WILLIAMS,

The Rev. CHARLES W. RANKIN,

The Hon. JACOB W. MILLER,

*The Hon. DANIEL B. RYALL.

The Hon. E. B. D. OGDEN.

* Were not present.

ARGUMENT.

The Bishop of Ohio, on behalf of the Presenting Bishops, having concluded the reading of their answer, which occupied an hour and a half, at half-past 12, on Monday, the Committee of the Diocese of New Jersey, by letter, asked leave to reply. This being refused by the Court, the Bishop, as its next friend and only representative, and at the written request of the Committee, claimed the right "to defend the rights of the Committee and of the Diocese, and to answer" the Paper which had been just read. The claim being granted, the Court took a recess, until 3 o'clock. The Bishop of New Jersey then replied, as follows:

BISHOPS,—The Paper of the Presenting Bishops, in answer to the representation from the Convention of the Diocese of New Jersey, read by the Chairman of its Committee, is, mainly, in two parts:

An attempt to depreciate the moral weight of the Convention;

A legal argument, to exclude its action.

I. It was my purpose and desire to keep myself, throughout this case, distinct from the Convention of my Diocese. As I have said before, I am in no way responsible for their present action. In my original contemplation of the case, the proceeding to trial followed the canonical completion of the Presentment. The interposition of the Diocese was not at my instance; and never with more than my assent. But the Convention had a right to act. They have acted. Their action has been represented here. And, now, that leave has been refused to the Committee of the Convention, to reply to the Paper of the Presenting Bishops—of which I do not make the least complaint—I am bound, by the most sacred duty, as its next friend, to stand by the Convention; and vindicate it from the depreciating and abusive language, which the three Bishops have seen fit to employ towards it, and its Committee. I should be guilty, if I did not, of a blacker crime than I am yet accused of: *the treachery of silence*, when the absent is condemned unjustly.* The Bishops, who hear me, are all Diocesan Bishops. Each one of them has a Diocesan

* "Qui rodit absentem, qui non defendit, amicum,
Hic niger est: hunc tu, Romane, caveto."—*Horatius*.

Convention, of which he is the honored head; and with which he is connected by the most sacred and endearing relations. And I put it to every one of them, to suppose himself in my case; and say, if he would hold his peace, for worlds, when language, such as is used in that Paper, was applied to his Convention. A Convention, let it be observed—I *had* supposed it too familiar to need suggestion, here—is not a mere aggregate of individual men; however high their intelligence, however great their influence, however unquestioned their integrity. It is no “mixed multitude;” no mere unorganized and irresponsible assemblage. It is the sacred council of the Diocese. It sits, in its due orders. Its deliberations are under the most solemn sanctions. Its actions are controlled by the most awful responsibilities. And this it is, a Diocese of the Church, well nigh the very earliest Diocese of the Church—the Diocese of New Jersey—which is here disparaged and assailed. I might justly complain of it, as a wrong done. I might reasonably insist on it, as a wrong to be retrieved. I might honestly denounce it, as a wrong not to be endured. But I now content myself, with representing to this Court, what they cannot fail to have perceived and felt, the utter want of logical connection and conclusiveness, which attempts to detract from the weight of the Diocesan action of New Jersey, by a personal criticism—I may rather say, a scandalous attack—on the composition of its Convention, and the members of its Investigating Committee. Who would not feel that logic and decency were alike disregarded, had an attempt been made, to detract from the weight of the Presentment, by a rude discussion of the character, personal, official or theological, of the Presenting Bishops? And why should it not hold, as well, and be as readily allowed? The most that can be claimed for the three Bishops, in this relation—and that I never have conceded—is, that they are co-ordinate with the Convention. As presenting bodies, they would come into the Court, if both could come indifferently, with equal rights, and with the same immunities. Both decency and logic must be outraged, when either should be personally assailed.

But the Presenting Bishops proceed further, and in more detail. They venture to discuss the character and personal relations of the members of the Investigating Committee. They venture to assail the characters and personal relations of seven men,* who, in intelligence,

* The Committee of Investigation appointed by the Convention were the Hon. Daniel B. Ryall, John H. Wakefield, Esq., James Potter, Esq., John L. McKnight, Esq., Charles M. Harker, Esq., Henry McFarlane, Esq., and Thomas H. Whitney, Esq.

integrity, and every qualification for the duty assigned them, have no superiors in New Jersey. The Hon. Mr. Ryall † they have assailed in the rudest manner: accusing him of an official falsehood; and setting him aside as unreliable, as a member of the Committee of Investigation, "because" he was a Trustee of Burlington College, and has had children educated there, and at St. Mary's Hall: a man of the most fearless integrity; in the foremost rank of the Bar of New Jersey; and honored with some of her highest offices, and most sacred trusts. And, James Potter, a name well known from Georgia to New Jersey, as synonymous with purity and honor and benevolence, must be denounced, as quite disqualified for hearing testimony, and giving a just verdict on it; because, in his generous sympathy with a great Christian work, he has advanced his money, to take up judgments which were matured in other hands; and so become "a judgment creditor," not of me, but of Burlington College. To speak of Mr. Harker, and of Mr. Whitney, in New Jersey, as honorable men, were a superfluous absurdity. And so, of all the rest. New Jersey knows and honors them; and will indignantly repel the unjust and unjustifiable—and, in its lowest view, the indecent and illogical—assaults of the Presenting Bishops.

II. I pass to the legal argument; so labored, and so little to the point. It lives upon analogies. It has no other hold upon this case. No other life. Now, analogies are good, for illustration. May be taken in, to help out an unuttered thought. May be permitted to indicate the meaning of an obscure provision. But they are not arguments. They cannot supply defective statutes. They must not constrain a dis-obliging canon. And, again, analogies, like doubts, must be charitably construed. They may mitigate, but must not exasperate the sentence of the law. They are like the Court, of counsel, always for the defendant. But, after all, there are no analogies, there can be no analogies, between this Court, and any Court, whatever called, of civil or of criminal jurisdiction. Where is the other Court, whose Judges hold, from JESUS CHRIST? Where is the other Court, whose Judges administer judgment, only as an incident, occasional to their great work, as rulers? Where is the other Court, in which the legislative

† Mr. Ryall was *not* Chairman of the Committee to examine Mr. Germain's accounts, and is liable to no charge of being cognizant of and not disclosing the loan of the Episcopal Fund. The Committee were the Rev. Mr. Williams and Mr. Ryall; and they reported, as had been customary, that the accounts were "in conformity with the vouchers furnished." Nor did the Committee of which Mr. Ryall was Chairman in 1850 report, "*contrary to the truth*, that the Fund was secured." Mr. Ryall and Mr. Duer reported that they had examined the securities; and that, in their judgment, they were "satisfactory and safe."

and the executive combine with the judicial ? It is an element of our republican institutions, that these three must not be united in one person. You dare not throw yourselves on this construction of your office. It would be treason to your trust. You would be traitors to your LORD. You stand alone. There can be no analogies, to reach your case. They are deceptive, all. They must be dangerous. They may become destructive. On your office, you cannot follow them. On your sacred orders, you dare not.

But suppose you could, suppose you dare. What are they ? Nothing. Absolutely, nothing. Not a shadow, even. The attempted analogy, so largely labored, and so "long drawn out," is between the relative functions of a Grand Jury, and of an Attorney General, proceeding by information, in bringing on a criminal prosecution, in the civil Courts ; and the relative functions of a Diocesan Convention, and of three Bishops, in making a Presentment, to be tried by this Court. What is a Grand Jury ? And what is an Attorney General ? Merely creatures of the Crown, or of the State ; for one specific end : the detection, exposure and punishment of crime. That is their beginning, their middle, and their end. They have no other use. No other life. How does this compare with a Diocesan Convention, with the Bishops of God's Church, whose "*strange act*" is "judgment ?" Who "live, and move, and have their being," for ends, and aims, of a perpetual necessity, and a perpetual charity ? What is a Grand Jury, in its constituency ? Four and twenty men gathered from the County, to be present at a certain session, of a certain Court, of stated, permanent continuance : to hear complaints, which come before them ; to institute enquiries, and make complaints upon their own responsibility ; to act according to their oath ; to discharge their consciences in regard to every man, and every thing, that comes within their cognizance ; and then, to scatter to the winds : never, by any supposable possibility, to come together, all of them, as one Grand Jury. And, how does this compare with a Diocesan Convention ; of wide and various functions ; stately assembling, and re-assembling, forever, for their discharge ; the Reverend Clergy, in their official right, throughout a life, which does not drop with death, but lives on, by succession, "until the end of the world ;" the honored Laity, often, through life-long periods, of devoted service in this, *their* ministry : in all, one, constant, never-ceasing, never changing, spiritual Body ; a member of His living and life-giving Body, Who is "the same, yesterday, and to-day, and forever." And then to compare the Attorney General, acting by information ; on

leave of the Court, and with its permission, with the three Bishops under this Canon: who, if they act, at all, have acted before the Court assembles; act, without leave from it, and with no regard to its permission; and are as independent, in their function, as the Court can be in its. Apply, to the case of a Diocesan Convention and any three Bishops, the analogy attempted to be drawn, from the relative functions of the Grand Jury, and the Attorney General proceeding by information; and see, to what it leads! In the latter case, it is admitted, that either may proceed, indifferently; or that both may. You have, then, two permanent bodies, in the Church of JESUS CHRIST, exposed to a perpetual conflict. You have a wedge forced in between them, which must drive them all the world apart. In the assault already made by three Bishops, on the Convention of a Diocese, you have the dimmest shadow, of what must ensue. And should these views be realized, you might have a Bishop, thrown in, between these two conflicting bodies, each, with equal power to make presentment; to be forever bandied, from the one side to the other, as party rancour, or personal interest, or individual caprice may dictate. The conclusion is absurd; and, so, impossible.

But the presenting Bishops urge the Court, as by a stern necessity to progress, in the case. It cannot be arrested. You must not stop to hear. You must not, even, stop, to think. There is a Presentment made. The trial, therefore, must proceed, at once. Does it not say, this Canon "of the trial of a Bishop," even in the 2d section thereof, "upon a Presentment made," "the course of proceeding *shall be* as follows?" Doubtless, it does. But all it means is, if you do proceed, and when you do proceed, you shall proceed *thus*; and in no other way. It does not command you to proceed, at once; upon the instant that Presentment may be made: without inquiry, and without consideration. Was ever a court for the trial of offences heard of upon earth* that had no prerogative of interposition? That could not quash an indictment? That could not dismiss an accusation? That could, in no way, and on no consideration, stay proceedings, even for a moment? And, can a Court of CHRIST'S Church be defective, in a power, so obviously inherent in the very nature of a Court? Can a Court of Bishops, with their powers and rights, above all Canons, and beyond them, be without it? A Court of Bishops, most especially, from which, there is provided no appeal, whatever? And this

* I do not here take in the *lower* court of Justice Rhadamanthus: "*Castigat, auditque.*"

most sovereign power, and, this most sacred right, be lost to such a Court, by mere omission ; in a Canon, which *gives* them no authority; whatever, and claims but to direct them? An omission, merely, construed, as a limitation? And, that of a prerogative ; which justice consecrates, and mercy claims? It cannot be. It cannot be.

But, we are driven upon "the letter," upon "the letter!" But the letter is of service, only to supply the *meaning* of the law. "Qui hæret in litera, hæret in cortice." "The letter killeth, but the spirit giveth life." Take an example, from the letter. The Canon "of the Trial of a Bishop" reads, as follows: "The trial of a Bishop shall be on a Presentment, in writing," &c. "Said Presentment may be made by the Convention of the Diocese, to which the accused Bishop belongs;" proceeding, then, to affix certain limitations. "And it may *also* be made, by any three Bishops of this Church." Stick to the letter; and this means—for, if any words, in English, are accumulative, "*and*," "*also*," are the words—that, when a Bishop has been presented, by the Convention of his Diocese, and tried, he may be presented for the same offences, "by any three Bishops of this Church;" and tried, *again*. This will be admitted, on all hands, to be absurd. No man, in a free country, can be held to such injustice. Yet, it is "the letter" of the Canon. "The letter," therefore, cannot be adhered to. The spirit must be sought, from it. There *is* discretion, then, to leave "the letter" of the Canon ; and get *out of the bark*. This Court has that discretion. The question is, is this a case to exercise it? And, of that, again, this Court must judge. It may decide, whether it shall proceed, at once, to trial ; or, whether it shall stay proceedings, and inquire. Nay ; and it *must* inquire. It may not refuse to entertain a question, so important in its bearings, on this case, and on all cases. As Diocesan Bishops, you must not refuse to consider the solemn representations of a Diocese. As Bishops of the Church of God you must not hurry on ; and leave behind you a claim, so pregnant with the most disastrous issues. You cannot do it ; and you dare not. I do not mean, from any fear of men ; from any consideration of personal consequences. But, on your responsibilities, as Christians. But, on your oaths, as Bishops.

You have discretion, then, as Bishops, *before* the Canon, and *outside* of it : and I must add, *from above* it. That discretion, you are to exercise, in ascertaining *the spirit* of the Canon. *What is the spirit of the Canon?* The spirit of the Canon is, that the subject-matter of the charges, the whole question, of presentment, or no-

presentment, is to be investigated, by one of two tribunals; the Diocesan Convention, or three Bishops. The investigation by either, according to the terms of the Canon, concludes the case; whether that investigation results in dismissing the charges, or in finding a Presentment. It is not necessary, that the Convention should present, in order to produce a bar to the action of three Bishops. If they dismiss the charges, it is as much a bar, as if they find a Presentment. Otherwise, the only object of the Canon must be, to procure presentment. The law is, at least, as much, for the protection of the innocent, as for the punishment of the guilty. If the Canon does not give, to the Convention, the power to dismiss charges, as well as to proceed to trial, and make the one, as final and conclusive, as the other, too much would flow from it; and it would perish, by its own excess. It would compel Presentment, in all cases of inquiry; even where the accused had been the subject of a former trial. This is, of course, absurd.

But, though the Canon provides two modes, for the Presentment of a Bishop, it does not therefore make them equal, or concurrent, or alternate. The Presenting Bishops, so far as they are consistent with themselves, interpret the Canon rightly, in their letter of the 22d September, 1851. They, there, expressly say, "That, action shall *first* take place in the Diocesan Convention," "*must* have been the expectation of the Church, in the Canon, for the trial of a Bishop." As much as this, and even more, the Diocesan Convention of New Jersey claims, for herself. But, this much serves her present purpose. The Presenting Bishops, it is true, proceed to specify the instances of *laches*, in which, as they interpret the Canon, the Diocese might lose this prior right. Without admitting their resulting claim, at all, the Diocese of New Jersey steadfastly maintains that no such *laches* lie on her. *Not* in May, 1849, when, although charges were not brought, they were not only challenged, but defied; and the Convention, by *one silence*—an expression, in that record, unparalleled, "*an unanimous negative*"—refused to present its Bishop. *Not* in May, 1850, when no whisper of a charge was heard, nor any "abrupt adjournment" had, as is apparent from the record; and as a multitude of witnesses will attest. *Not* in May, 1851, when, again, no whisper of a charge was heard; when the person, named by the Presenting Bishops as intending to bring charges, was known to be there, on the opening day, on which he might have brought them, if he chose; and no one knew either of his intention or of his retirement: when, in fact, the motion to adjourn, as can be proved, originally came from

those who sympathize with him; and, when, as also can be proved, on the suggestion, by a member of the Convention, that there was business to be brought before it, it was publicly declared, that, if he or any other person, would declare the nature of that business, the Convention would hold over, though its necessary doings were transacted. Not in March, 1851, when the Bishop who called the Convention, and who defined the objects of the call, had said expressly, publicly, and solemnly, "*no such special Convention will be called*"—none such, that is, as the three Bishops had seen fit to dictate, to investigate the charges, brought to them, by the four Laymen, and so avoid presentment, at their hands—and was little likely to go on, and stultify himself, by calling it: so that, not only were the charges of the Laymen *not* before the special Convention, for their investigation; but the Bishop's foot was down, that, come what might, there should be no inquiry, by compulsion. No *laches* lay, at this date, March 17, 1851, on the Convention of New Jersey. There was no reason to suppose there would. For that Convention solemnly declared its past, its present, and its future, readiness, to investigate "charges, duly made and presented." On the 30th day of that same March, the Bishops dated their Presentment: when they well knew, that less than eight weeks would bring round the annual meeting of the Diocese: enable the Convention to redeem its pledge; or prove it false and recreant. Unmoved by these proceedings of the Bishops, the Convention did redeem its pledge. It took the charges up, which they had brought: not because *they* had brought them; not because they had been brought in the form of a Presentment; but because they were specific charges, with authentic names: the only terms which they had ever made; or, which they now desired. On the 27th day of May, they appointed a Committee of Investigation, by ballot, upon open nomination. The Committee organized themselves, that night. They notified the complainants, on whose sole authority the Bishops had presented. They did not notify—the Convention refused to instruct them to notify—the three Presenting Bishops; because they deemed too highly of their office, to suppose that they would be complainants, presenters or witnesses, in the case. But, in notifying the first named of the four complainants, they did notify him, who was, in fact, the attorney, in this State, of the Presenting Bishops, and has since become their counsellor; and, in granting all the terms, which he proposed, they yielded all that the Convention had refused to grant, in limitation of its confidence in them, when it rejected his amendment.

They summoned every person named in the Presentment. They summoned every one of a long list of persons, named to them by him, who has been here alluded to. They met, from day to day, with notice given of all adjournments over any day, for ten days. They were always ready to receive him. They were always ready to hear his witnesses. They were always ready for his cross-examination of any witnesses, that chose to come. They examined twenty-one. They examined them under oath or affirmation. They took down their testimony, word by word. Word for word, they reported it to the adjourned Convention ; which assembled on the 14th of July. The Convention adopted their report. They printed, it with the testimony. They sent it to the Presenting Bishops. They sent it to all the Bishops. They sent it to the whole Church. They sent it to the world. And there it stands, fifty-seven solid printed pages of testimony, from the mouth of twenty-one unquestionable witnesses, given upon the peril of their souls. And this is called an *ex parte* investigation ! What is an *ex parte* investigation ? An investigation, where only one side has the opportunity to be present, and confront the witnesses. Was that so in this case ? What hindered the complainants ? What hindered the, now, counsellor of the Presenting Bishops, from being there, except their own mere will ? And is justice to be thwarted and innocence oppressed, because the accusing party, in wilfulness, abstains from the investigation, which is proffered, in self defence and self-acquittal ? Does this constitute an *ex parte* investigation ? In no true sense, can it be called so. The Church does not regard it such. And this Court will not.

But the Presenting Bishops charge, that whatever the character of the investigation might have been, the adjourned Convention was not of a character to give it any force under the Canon ; and, it goes for nothing : and the Diocese is without claim to stay proceedings. The Canon, as they justly say, requires, that before a Convention can proceed with a Presentment of its Bishop, two thirds of the Clergy entitled to seats must be present ; and two thirds of the parishes canonically in union with the Convention must be represented. They claim, that, to refuse to present, the same constituents are necessary ; and they deny that they were there.

When it had been argued by the Bishop of New Jersey, not only in his reply to the Presenting Bishops, but also in answer to the Bishop of Ohio, who, on the next day, claimed and obtained permission to reply to him that the *converse* application of the limitation of the Canon, could not apply : as the language is strict, " *Said*

presentment may be made;" as limitations are never against merey; and, if analogy be resorted to, *one* man suffices to acquit, before a jury, while *twelve* men must unite, in his conviction: and when the Bishop of New Jersey had shown, that, if the Canon did require it, more than two-thirds of the Clergy entitled to vote were present; and was proceeding with the analysis of the Lay vote: upon an interruption, from one of the Presenting Bishops, that his mere statement could not be accepted; the Court, without dissent, decided, that *the application of the two-thirds principle does not apply to a refusal to present*. This portion of the argument is therefore now omitted.

Now, mark the relation, as to time, of the two proceedings, under discussion. I mean, the Diocesan Investigation and the Presentment by three Bishops, *now* before this Court. Again declaring, that I separate myself from this proceeding of the Diocese, and only stand before you, now, as its next friend, in the assertion of its rights, I wish to clear myself, even in this, from any show of inconsistency. Without the slightest measure of responsibility, for the postponement, by the late Presiding Bishop, of the Court, first called, by him; I had determined and declared, that no advantage should be taken of it. I expected, if there was a trial, to be tried, upon *the first Presentment*. All my arrangements, and all my preparation, had been made, in reference to that. But, when the Presenting Bishops without consulting me; without enabling me to meet or to explain the additional charges, which they make; with just the time, beyond the stated limit of the Canon, that it took the Bishop of Ohio to read their paper, here, this morning—with ninety minutes' notice—come down upon me with a new Presentment, the case is changed. If they have defeated themselves, it is their own look-out. If they have put themselves to inconvenience, I cannot help them out of it. If they had come to me, at first, I would. I would have met them frankly, and given them truthful information. But they adopted evil counsellors. They have fallen into evil hands. I pity; but I cannot help, them. It is their affair, not mine. And, now, I say, that, while their new Presentment is not dated, until July 22d—as it afterwards appeared, on the admission of the Bishop of Ohio, it had not the *third* signature, and, so, was *no* presentment, until August 11—the action of New Jersey, beginning on the 27th of May, and consummated on the 14th of July, is prior action: and, by their own statement of "what *must have been* the expectation of the Church, in her Canon for the trial of a Bishop, viz—That action shall first take place in Diocesan Conventions," excludes them, altogether, from this Court.

I could have wished, could I wish so much harm to any living man, that another had been, in my place; and I had perfect freedom to defend these principles. But, you will bear me witness, that, at the opening of this Court, I pledged myself, that I would raise every point and plant myself on every foot of ground, that could be urged or taken, to defend the Bishops, that are, and those that are to be, from any similar position. To me, no harm can, now, be done. I have been twice presented; and exposed to all the obloquy and all the odium, which can attach to such a posture. But, you are yet untouched. And, for your sakes, and for their sakes, who shall come after you, and me, until the world shall end, I am resolved, although the opposite theory prevails, with the Presenting Bishops, to do, what lies in me, to make the trial of a Bishop, hard. This Canon is but new. We have had one trial under it. And, I most solemnly believe, that greater evils have arisen, from that trial, than could have come, if the offences charged upon the Bishop of New York—which I have never for one moment believed—had all been true. And, now, you are pressed, and urged, and threatened, and almost driven, to proceed, with me. When my whole Diocese, with whom I have gone in and out, for twenty years, is with me. When there are only two of the Clergy who openly oppose me; and two or three who fall in, sometimes, on collateral or incidental questions: and all the names of all the Laity, who further this proceeding, could be written on my thumb nail. It is not mine, to press, to urge, to threaten, or to drive. But, as a free, and as an honest man, I must declare to you, you cannot go on, and try these charges. They are not lawfully, before you. The Diocese has put itself, canonically, between its Bishop and this Court. To reach him, you must trample upon it. You must disregard the rights of one Diocese; you must invalidate the rights of all; you must endanger the peace, the harmony, the unity, of the Church. It may not be for me, to give advice. I do it for your sakes; not for my own. I repeat it, you cannot go on, and try the Presentment, now before you. I know, it has been said, “No good will come of this; there will but be another Presentment, another trial: and the end will be the same!” That may be so. I cannot say. It does not touch the right. You cannot go on, now. You must go home, and leave this matter where it is. And I, for my part, have but this to say: let a Presentment come up, square; and I am, here, to meet it.

On the following morning, the Bishop of New Jersey had permission to add a single point; which he had omitted, in his argument.

The Presenting Bishops say, at the conclusion of their Reply, as if it were a clenching question—"We cannot but ask, what would have been thought of the Legislature of Mississippi, had it sent a Committee to New Orleans to remonstrate with the Court of the United States, against subjecting their Governor, Quitman, to a trial; or of the Judges of that Court, had they debated, for days, the propriety of dismissing the prosecution, because of such remonstrance?"—The answer is the simplest, in the world. Governor Quitman was *not* before that Court, as Governor of Mississippi; but as a private citizen. The Legislature of Mississippi had *no* power to bring him, before that Court. The Respondent *is* here, as Bishop of New Jersey. The Convention of his Diocese *have* power, under the Canon, to bring him here, by a Presentment. There is not the slightest agreement in the cases.* Therefore, not the slightest fitness, in the illustration.

Subsequently to this, the Bishop of Ohio, for the Presenting Bishops, claimed and had leave to reply to the Bishop of New Jersey; as, at a later period, the Bishop of Maine also did. The Bishop of New Jersey replied to them, successively. A part of his reply to the Bishop of Ohio is added here; as carrying out, more fully than the preceding argument, two or three points, of some importance. After insisting, at great length, on the necessity of following the "letter," rather than the spirit; as being "the voice of the law; by which alone it speaks"—so as to treat the law very much after the manner of the Sadducees, "*who say there is no resurrection, neither angel, nor spirit*"—the Bishop of Ohio claimed, that the omission to raise the points, now raised, by the Diocese of New Jersey, in the case of the Bishop of New York, was conclusive, against their validity; severely censured the opinion of the Bishop of New Jersey, as to the comparative evils resulting from that trial; and, at great extent, and with much warmth, denounced, as, at once, dangerous to the Church, and unworthy of himself, the declaration of his purpose, to do what rested upon him, to make the trial of a Bishop, hard. To this, the Bishop of New Jersey replied, as follows:

I am aware, that in the Court, by which the Bishop of N. Y. was tried, the principle of the Canon, now in question—the prior, if not exclusive, right of a Diocesan Convention, to make presentment of its Bishop—was never pressed. But, I also know, that it was urged, with utmost earnestness, upon his devoted and distinguished Counsel, my late lamented friend, David B. Ogden, Esq.; and refused, from his entire conviction, that his client would be acquitted, on the merits. And

*Not even the two M.s, of Macedonia, and Monmouth. Much less, the rivers; with the salmon.

moreover, I know, that two of the most influential Presbyters of that Diocese, did represent to the three Presenting Bishops, their own views, as to the Canon, and the views of a large body of the Clergy and Laity; in entire agreement with the interpretation from New Jersey.

My opinion as to the greater evils, which resulted from that trial than could have come of the offences charged in it, I freely re-assert. It has presented the Protestant Episcopal Church in the United States of America, as a divided Church. It has seemed to permit, if not to authorize, the impression, within the Church and without it, that Bishops may be brought to act, upon inferior motives, with ulterior aims. It has given tongue to the astounding thought, that, even in this Church, at this day, men may be marked, as subjects, if not victims, of a line of action, of which the end was seen, from the beginning.

The Bishop of Ohio misunderstood me, if he thought I said, the present Canon made the trial of a Bishop, hard. I said, it was my purpose to do what lay in me, to make it so. I say so, yet. He does me the great honor to remember a remark of mine, made many years ago. I do not recollect it; but I do not doubt his accuracy. I said, in reference to the proceeding of a Diocese against its Bishop, "What, children try their father!" I accept, at once his memory, and his suggestion. I adopt the figure. It does not hold, all around; but it comes near enough. The members of a Diocese *are* as the children of one father. Now, mark, how carefully the Church restrains these filial hands. She does not say, that any number of the children, gathered, anywhere, at any time, in any way, may institute proceedings, for the trial of their father. She does not trust, so much, the very love of sons and daughters. She requires a due assemblage, in Convention. She requires the presence of two-thirds, of either sex. She requires, that they shall wait one day, and sleep, one night, upon it. She requires, then, that two-thirds, of the two-thirds, of both sexes, shall unite, in the proceeding. Is not this making the trial of a Bishop hard? Is a father trusted, even to the tender mercies of his children? And, will it be believed that "any three Bishops of this Church," unspecified, undefined, uninstructed, uncontrolled, unregulated, were ever meant as an alternative? I never heard, till recently, the explanation of this clause, given in this Court, by the Bishop of Indiana, who was Chairman of the Committee of the House of Clerical and Lay Deputies, by whom the Canon was reported, that it was designed only to meet the case of Bishops, who had resigned their jurisdiction, and of

Missionary Bishops, and of any other Bishops, of this Church, who might, from any cause, have no Conventions, to proceed against them, if offenders. But, I confess, it has made the clause, for the first time, to my mind, even intelligible ; to say nothing about reasonable and just.

The Bishop of Ohio would deem it a great hardship not to be liable, on easy terms, to trial ; would never know how he might stand among his brethren, and in the Church, as to the matter of his morals ; would hardly know how he should stand, with his own self. In what a sad perplexity, upon this theory, the Bishops of the Church of England must have been, for centuries ; where there is no provision for the trial of a Bishop. And yet there cannot be on earth a more exemplary set of men, or better reputed of among their brethren.

And, there is another portion of the Church, from which the very instincts of my being so revolt, that I could do anything short of a denial of the whole substance of the Catholic faith, rather than be a Romanist. And, yet, we must own, that in her generation, the Church of Rome is wise and prudent, and stands well with men. Now, who has ever heard of the trial of a Romish Bishop ? Scarcely, of a Romish Priest. When one of the Clergy of that Church falls into open and notorious sin, he is sent off, in silence and solitude and sorrow : we humbly trust, to make his peace with God. And the Church and the world are spared the scandal of his offences, and the greater scandal of his trial.

[Of the remaining portions of the Bishop of New Jersey's replies, to the Bishops of Ohio and Maine, it is not deemed necessary, now, to write the notes out. They remain in his possession.]