THE

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I.

INSPIRATION.

THE word Inspiration, as applied to the Holy Scriptures, has gradually acquired a specific technical meaning, independent of its etymology. At first this word, in the sense of God-breathed, was used to express the entire agency of God in producing that divine element which distinguishes Scripture from all other writings. It was used in a sense comprehensive of supernatural revelation, while the immense range of providential and gracious divine activities concerned in the genesis of the Word of God in human language was practically overlooked. But Christian scholars have come to see that this divine element, which penetrates and glorifies Scripture at every point, has entered and become incorporated with it in very various ways, natural, supernatural, and gracious, through long courses of providential leading, as well as by direct suggestion, through the spontaneous action of the souls of the sacred writers, as well as by controlling influence from without. It is important that distinguishable ideas should be connoted by distinct terms, and that the terms themselves should be fixed in a definite sense. Thus we have come to distinguish sharply between Revelation, which is the frequent, and Inspiration, which is the constant attribute of all the thoughts and statements of Scripture, and between the problem of the genesis of Scripture on the one hand, which includes historic processes and the concurrence of natural and supernatural forces, and must account for all the phenomena of Scripture; and the mere fact of Inspiration

III.

THE BOOK OF DISCIPLINE IN A REVISED FORM, AS PROPOSED BY THE ASSEMBLY'S REVISION COMMITTEE.

IT is a remarkable fact that the General Assembly has never, since its first organization in 1788–9, proposed to change either the Confession of Faith or Catechism, except in a single well-known clause in the law of marriage; and that amendment was rejected by the Presbyteries (Conf., ch. xxiv., sect. 4). The three subordinate standards were revised in 1805–6 and in 1821. No Assembly has proposed to disturb the fundamental principles of our books of government, discipline, or worship. But some of our most experienced brethren have thought that these minor standards should be revised anew, in the minuter details that are left by the Lord to the discretion of the Church. As early as 1857, an able committee was appointed by the Old School Assembly to inquire whether "any changes in the Discipline are expedient, and if so, what?" The work of revision begun then has been pursued as diligently as possible, under the circumstances, through the last twenty-four years. More than twenty of our most trusted counsellors have, first and last, labored on the work. It is now in the hands of twelve brethren—pillars in the Church. They have held frequent meetings in New York, Pittsburg, and Chicago. During the last year they were together at one meeting eight days; at another, five days. At the first of these meetings ten, at the second nine of the twelve members were present. They gave a whole day to debate on a single point, and a half a day on others. They agreed to the report now before the Church, with only one dissenting voice. The diligence and fidelity of these brethren will be universally approved.

The Revision will, of course, be most respectfully treated in these pages. And yet a certain freedom of criticism is encouraged by the Committee. The chairman, Dr. Craven, frankly told the Assembly that the Committee are "unanimously of opinion that the work is not in a condition yet to be sent down to the Presbyteries. This is a tentative work. We think this matter should be discussed by the Assembly and by the Church and in the newspapers, in order that this Committee should be guided in their future report and in their adjustments with the form of government." After having invited discussion all around, we regret that the Committee have not helped the inquiry by making public the principles and ends which have governed the changes; even although we might hesitate to ask them to point out those features of the Revision whereof they stand in doubt. The writer, in common with his brethren, labors under all the disadvantages of unavoidable ignorance in regard to the views of the Committee. But in order that the Church may be in possession of the grounds on which this Revision is to be supported, and the objections which are thought to lie against certain of its features, the writer of these pages has cheerfully consented to submit his criticisms to one or more of the Committee, in ample time to admit of a response in this Number of the REVIEW.

IMPROVEMENTS.

It is pleasant to open these observations with the improvements made by the Revision on the old book. In general it must be said, that certain redundancies are pruned off, ambiguities removed, omissions supplied, processes of administration and discipline simplified. The enumeration of the sections in a continuous series facilitates reference and indexing. For the most part, the definitions are accurate and the language well chosen.

Coming down to particulars, we are happy to see that the unseemly old accuser, "common fame," is summarily dismissed. The well-known puzzle in regard to who are original parties is solved (Secs. 9, 10). When several charges are tried at the same time, a judgment on each charge must be separately rendered (15). If an accused party cannot be found, the citation may be left at his last known place of

residence, defeating any attempt to evade process (19). If the accused cannot be present for trial, he may be represented by counsel (20). A court engaged in judicial proceedings may, under certain restrictions, sit with closed doors (31). A minister deposed must not be restored except by the judicatory inflicting the censure, or with its advice and consent (42). Adequate provisions are made to meet the cases of members neglecting to take letters of dismission on removing from the bounds of the congregation, or abandoning the communion of the Church; and for the case of ministers renouncing its jurisdiction (49, 50, 51). Parties to a trial are competent witnesses (54). By the omission of the words "common fame," in the chapter of "Review and Control," gross irregularities of the inferior judicatory may be brought to the notice of the superior, in any mode whatever, whereby the latter may be "well advised" (76, 77). The names of baptized children should be included in the certificate dismissing parents from one church to another (115). These new rules are admirable; and if they stood on their own merits, would, in all probability, be approved by the Church.

AMBIGUITIES AND OMISSIONS.

A few of the amendments are of a doubtful interpretation. Thus: "All children born within the pale of the visible Church are members of the Church and are to be baptized," etc. We are left in doubt here in regard both to the position under the covenant, and to the baptismal rights of children born to parents before they became communicants. Can it be said that such children "are born within the pale of the Church," except on the basis of the fictitious half-way covenant? Every part of the true doctrine of infant baptism ought to be clearly stated (5). No formal definitions are given of offences, whether they be public or private, according as they are more or less notorious; or whether they be personal or ecclesiastical, according as they are injurious to individuals or hostile to the peace and purity of the Church. The introduction of the proper definitions would clear up still further some of the rules of judicial procedure. A ruling elder or private member on trial for immorality may be debarred *ad interim* from the Lord's table, and the elder may be restrained also

from the exercise of his office (32, 45). The omission of a similar rule in the case of a minister should by all means be supplied. Provision is made for erasing from the roll, under proper limitations, the name of a communicant who is fully persuaded that he ought not to come to the Lord's table. If this rule is intended to apply, more broadly, to persons who insist on being discharged finally from all connection with the Church, it ought to be so stated; if not so intended, that fact ought to be made clear (48).

In the review of the records and in the trial of complaints, the members of the inferior judicatory are not allowed to vote in the case (73, 90). It often happens that persons are members of the superior judicatory, who, though under the jurisdiction of the inferior, were not sitting members therein when the action complained of was taken. May or may not these persons vote in the case? This chronic disputation in all our superior courts ought to be settled. A complaint may be "made by one or more persons within the jurisdiction of the judicatory complained of." Does this privilege extend to the communicants in all the churches under the care of that judicatory, or only to the minority of the judicatory itself? (85).

JURISPRUDENCE—SECULAR AND SPIRITUAL.

By the revision the Book of Discipline is, in a marked degree, assimilated to the codes of practice in the secular courts. We get a hint of this in the avowal that the continuous enumeration throughout of the sections follows the plan now pursued in the publication of the civil statutes. That is in itself a convenience, but other forensic features in the new Discipline are less desirable. For example, in paring down the redundancies of the old book, so as to come to the naked forms and rules of the secular courts, it may be doubted whether the revision does not cut too near the quick. Our judicatories are composed largely of brethren, who are helped by occasional explanations and cautions and repetitions and proofs from Scripture. Something also is due to the familiarity of the Church with certain forms of expression.

Next, the old rule excluding professional counsel from our courts is now set aside, and any counsel in full communion with the Church may be admitted (26). The appearance of

leading lawyers, with their special pleadings and technicalities, their demurrers and exceptions, may entertain our sessions with the disputations of a county court, and clothe our Presbyteries with the dignity of a circuit court; but it is questionable whether these learned gentlemen would help rather than perplex our judicatories, and secure rather than defeat the ends of discipline. The old rule has worked well, and ought to be retained.

Again, in the process of appeal, before the trial proper begins, the judicatory may determine, after hearing the parties, whether the appeal shall be entertained (98). If the questions to be raised here relate to the mere forms, such as previous notices, etc., the rule should say that and cure an ambiguity. But it may be construed by astute counsel to authorize a motion to dismiss the case on grounds involving other points in practice. It should be guarded against that construction. Our plain people, sitting as a court of conscience, might find it difficult to sustain or overrule the motion, without going into intricate questions of legal procedure leading to unprofitable debates *in limine*.

Lastly, the forensic resemblances here noted are made still more obvious by the establishment of a judicial commission, in some sort an Advisory Court of Errors and Appeals, sitting side by side with the General Assembly (chap. xi.)

But it should be said that the family likeness between the civil and spiritual judicature is largely modified by the revision in several particulars. For example, the word court is carefully suppressed. That banished name is used three times on one page in chap. iv. of the old Book of Discipline. In the General Rules, the members of the judicatory, when about to sit in a judicial capacity, are solemnly "enjoined to recollect and regard their high character as judges of a court of Jesus Christ" (Rules, 40). Now, a body of Presbyters, sitting as judges in "a court of Jesus Christ," is a court as really as any tribunal on earth. Our revisers use, with a certain profuseness, the terms prosecution, prosecutor, accusations, charges, specifications, parties, complainant, respondent, appellant, appellee, counsel, witnesses, oath or affirmation, judicatory, inferior, superior, and appellate, trial, new trial, judgment, and sentence. The revisers propose to establish a new tribunal to

be called a judicial commission. They provide also that all prosecutions initiated by a judicatory shall run in the name of the PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA (printed thus in small capitals). The revisers are among our most distinguished ecclesiastics and jurists, habitually using words with great precision. In their hands, words are things. After putting into the code all these elements of a sufficient jurisprudence, why do they studiously avoid the use of the word court—the very word which best defines the thing?

We regret also the introduction of an element of weakness into the prerogatives of these courts. The auxiliary verb "may" is allowed too often to usurp the place rightfully belonging to its distant relative, "shall." Thus: If a church member be under trial, and the Session judge that "the edification of the Church *demands* it," they *may* debar him *ad interim* from the Lord's table (32). In the case of a ruling elder accused of an offence which infers censure, "if the Presbytery judge that the edification of the Church *demands* it," they *may* require the accused, etc. (45). A member of a church *refusing* to obey a citation to testify, or having appeared, *refusing* to testify, *may* be censured for contumacy (67). If a judicatory *omit* to send up its records to the superior for review, the latter *may* require them to be produced (71). If at any time a superior judicatory be well advised of certain serious *neglects*, *omissions*, or *irregularities* on the part of an inferior, it *may* require the records to be produced, and *may* proceed to judgment, or it *may* cite the lower judicatory, etc. (77). The *italics* are ours, and they point out the incongruity between the urgency of the cases described, and the use of the permissive *may* for the mandatory *shall*. In the rule last cited (77), the word "shall" is surely entitled to a place in some one of the three alternative clauses. To these signs of a paralyzed jurisprudence, the revision adds another. Thus: If a minister be deposed without excommunication, his church, if he be a pastor, shall be declared vacant. If a pastor be suspended only, the Presbytery *may*, with the consent of the people of his charge, declare the pulpit vacant (43). This rule belongs perhaps to the class of ambiguities noticed above. But on the face it appears to be

a case in which a Presbytery, after having by judicial process suspended a minister from office, is required to consult the people in regard to the extent or effect of the censure.

Under the correction of our honored brethren, we submit that after our judicatories have lost their claim to be called courts of Jesus Christ, and *may* is set in the place of *shall*, and the judicatories are required to divide their functions of discipline with the people, it can no longer be said that Presbyterianism is a strong man armed that keepeth his palace.

THE TRIAL OF A RULING ELDER.

In presenting the report of the Committee to the Assembly, the chairman, Dr. E. H. Craven, called attention to the five principal changes made in the Book of Discipline. By the first of these, the Presbytery becomes the court of original jurisdiction in the case of a Ruling Elder accused of an offence inferring censure.

The grounds on which the Committee support this amendment have not been made public. It cannot be upheld by the maxim, that every man should be tried by his peers; the obvious fact being that the minister and ruling elders sitting in session, are as really the peers of an elder, as the same office-bearers sitting in Presbytery. It will probably be urged that in many Sessions there is but a single elder, and he may be charged with an offence; or the accused may be unpopular; or he may be the commanding figure in the congregation, by reason of wealth, or force of character, or kinship; or party spirit may prevail in both the Session and local church. Such things do, no doubt, occur; but they do not require the proposed change of original jurisdiction. First, they are exceptional cases; too infrequent to justify a departure from our established jurisprudence. Next, by parity of reasoning, it might be urged that original jurisdiction in relation to ministers should, for abundant caution, pertain to the Synod. Again, our Discipline, as it stands, provides ample remedies for all exceptional cases. There is (1), in the Presbytery, a large and unchallenged power "of visiting particular churches for the purpose of redressing the evils that may have arisen in them." (2). Under the well-known process of Reference, the testimony in the cause might be taken by the Session and referred,

with all the papers and circumstances, to the Presbytery "for advice or for ultimate trial and decision." (3). With a slight extension of rule 17 of the Revision, the Presbytery might be authorized in extreme cases to institute and issue process. (4). These remedies failing, there remains to the party that is cast in the Session, the right of appeal and complaint to Presbytery, thence to the Synod, and thence to the Assembly. In every one of these appellate courts, the parties and the cause and the testimony are the same. A full hearing everywhere is secured to all concerned. And from every appellate tribunal prejudice and passion, prevailing in any lower court, are eliminated by the exclusion of that court from the right to sit and vote with the judges, and by the noteworthy rule that in every trial the judgment passes by a majority. A fairer system of jurisprudence cannot be imagined; three appeals, and every one of the three decided by the majority of a new court; provided, always, the old doctrine of appeal and complaint be upheld.

These things being so, there is no reason for the introduction into our system of the proposed measure. Then, also, it is objectionable. First, it is an anomaly; next, it casts new burthens on the Presbyteries. This is the anomaly: The position of the minister and of the ruling elder differs, *inter alia*, in that the minister holds his membership in the church through the Presbytery; the elder holds his membership through the local congregation. It is now proposed to continue the general care and watch of the Session over the elder, in common with the other communicants; but, if he be accused of a serious offence, he shall be separated from them and remitted to the original jurisdiction of the Presbytery of which he is not a permanent member. The introduction of the anomaly ought not to be resorted to, for the purpose of giving emphasis to the parity of the elder with the minister in the power of rule. Every strict Presbyterian will seek diligently to magnify the office of the Ruling Elder. This is one of our first necessities. But it should always be sought by giving fuller effect to our established principles; never by bringing confusion into our administration.

The burthens which this novelty will impose on our already overloaded Presbyteries ought to be estimated. The Presby-

tery of Lackawanna reports 70 ministers and 83 churches. The Presbytery of New York reports 130 ministers and 37 churches. To the care of all these churches, and the judicial supervision of all these ministers, the revision proposes to add original jurisdiction over two or three hundred ruling elders in each of these Presbyteries. Still further, there are in the Rocky Mountains and on the north-west coast eight or ten small Presbyteries, the territorial limits of which are to be measured, not by miles, but by leagues, if not indeed by degrees of longitude and latitude. If our three Presbyteries in Texas divide the State equally between them, each has "a range" nearly as wide as the States of New York and Pennsylvania taken together. The number of ruling elders in these ten or twelve struggling Presbyteries is not large; yet, the fair trial of even a few persons, with the delays and inconveniences attending long journeys through heat and cold and tedious judicial proceedings, would involve an expenditure of time, money, and strength, which our brethren could not spare. The result would be, unavoidably, the defeat of discipline. Again, our statistics do not show the number of ruling elders in the church. According to the tables of the Southern Presbyterian Church, the average number in each congregation is about three. That average would give to us 15,000 elders, to be added to the 5,000 ministers now under the original jurisdiction of our Presbyteries. When these judicatories vote on the adoption of the revision, we shall see whether they are resolved not only to introduce a broad anomaly into our system, but also to take spontaneously upon themselves these intolerable burthens.

CASES WITHOUT PROCESS.

The introduction of a new chapter "of cases without process" is the second of the five changes emphasized by the Committee. Several of the provisions seem to be judicious; others need further consideration. If a person commit an obvious offence in open court, judgment without process may be entered after a delay of at least two days, the offender having been heard. We suggest a longer delay. A man should not be hastily condemned for a hasty word, and a brother gained is perhaps a brother saved (47).

We have already pointed out the ambiguity in the section relating to a member who insists on absenting himself permanently from the Lord's table (48). The proceeding being intended to terminate wholly his connection with the church, the following considerations should be weighed: First, a church is not a voluntary society, inviting men to come and go at pleasure. Next, the vow of church membership is to God, although administered by the church, but no church court is competent to release anybody from his solemn covenant obligation to God. Again, nothing ought to be done by a judicatory sitting in the name of Christ, which in effect "dismisses a church member back to the world," or allows him to apostatize, or encourages him to carry about within him an impenitent heart, or which opens the way for him, by withdrawing from the church, to escape censure, when he enters upon an evil life, or engages in unlawful business, or pursues a lawful business unlawfully. In disposing of his case, he should be gained if possible. That failing, he should be treated as an offender. Both he and the church should be told that the erasure of his name from the roll is an act of discipline, an indefinite suspension, because the fear of the Lord is not in him. The section should be so amended as to make all this clear.

The merits of the proposition authorizing an honorable dismission from the ministry became familiar to the Church when it was discussed in 1872–73. An overture to that effect was rejected by the Presbyteries. If the mind of the Church has been changed, the section in the revision regulating the proceeding is, we judge, sufficient (52).

LIMITATION ON COMPLAINTS.

The third change, to which the revisers call attention, limits complaints to matters not judicial. In the doctrine of appeals and complaints, the revision departs very widely from the old book. In regard to the matter: According to the old book, as interpreted judicially by the Assembly (O. S.) in the Metcalf decision, appeals are limited to judicial cases. The revision follows that rule. But, under the old book and the settled practice of all our courts, a complaint will lie against any decision in the court below, including the procedure and

final judgment in judicial cases. Indeed, it is not unusual for parties to carry up such cases both by appeal and complaint, and this practice was sanctioned, judicially, by the Assembly of 1834. But the revision reverses that usage, and, in set terms, bars a complaint against a judicial decision.

As to the parties: Under the rule in both books, the original parties may appeal. But the old book allows a complaint to be brought in the same case not only by the members of the inferior court, but by "any other person or persons." The revision restricts the right to "one or more persons within the jurisdiction of the judicatory complained of"—whatever the words, "within the jurisdiction," may mean.

As to the effect: Under the old code the effect of a complaint, as well as of an appeal, may be to reverse the decision of the lower court in a judicial case. Under the new code, such reversal can follow an appeal only—never a complaint, for that is barred. By the old rule, the effect of appeal, as well as complaint, may be to draw down censure upon such members of the inferior judicatory as "may appear to have acted irregularly or corruptly." By the revision, such offenders are relieved from that liability in the trial of an appeal.

As to the judges: The old rule excludes the members of the inferior court, whose action is reviewed by either appeal or complaint, from sitting as judges in the trial above. The revision excludes them in the trial of the complaint, but, in an appeal, allows them to "sit, deliberate, and vote" (90, 97).

This analysis and comparison show how thorough—may we not say, how radical—are the changes proposed for our jurisprudence; one of the bulwarks of our Presbyterianism. What consequences will follow them if reduced to practice, it is not for us to conjecture; but we may easily discover those that lie on the surface.

First, these innovations are likely to defeat the ends of discipline. The revision makes no provision for cases like these: An appellant may fail to give the proper notice, or to appear within two days, or he may die, or his courage may give way, or he may lose confidence in himself, or in the courts, or in his case. And yet the cause may involve the most precious doctrines of the Gospel, or the fundamental principles of our

constitution, or the honor of Christ in the moral purity of His people. Everything is at stake on this one man; if he be insufficient, the truth falls in the street.

Now, our time-honored system of complaints allows any other persons to go with the appellant into the superior court; to make his grounds of appeal their grounds of complaint; to stand by him, if he stands to his post; and to take his place, if he falters or fails. Dr. R. J. Breckinridge remarked that the humblest man in the lowest court has been known to represent in the highest, a great principle by mere complaint. Just at this vital point the revision comes forward and renders such a service to the Lord impossible by barring the complaint in judicial cases. Is that the mind of the Church?

Next, under the old system, any person or persons may complain, whether or not they be members of the judicatory complained of. Now, if its members be unanimous in their judgment, say in a case of heresy, no complaint will go up from them, and perhaps none from any person within their jurisdiction. But some manly man from some other part of the church, zealous for the Lord and the truth, may be moved to come in with his complaint; for the church is one. He may rally others with him to an earnest contention for the faith, or he may prevent an innocent and persecuted man from fighting single handed, and saying, "In my first answer no man stood by me," nor in my second, nor my third. And this outside complainant may save the cause of truth or of innocence. But the revision shuts the door, that is now open, to any complaint that does not come from within the jurisdiction of the lower court. Is the Church ready for that also?

We now come upon the change which the revision makes in the rule of censure on the lower judicatory, in judicial proceedings. By the old book, in the trial of a complaint or of an appeal, if it appear that the members have acted irregularly or corruptly, they shall be censured as the case may require. The revision lays aside the censure in the trial of an appeal, but retains it in the trial of a complaint. The wisdom of the rule itself has been called in question. As Dr. Thornwell puts it:

"The appellant appears not only to represent the merits of his case, but to expose the demerits of the court that refused him justice. He is at once a suitor and a pros-

ecutor. Both issues are tried at the same time, and so blended that they constitute but one apparent case. To try at the same time and in the same breath the question of individual right and the integrity of the judge is an outrage upon common sense, and yet this is what the old book does."

It would be difficult to answer this argument. And it is reinforced by two considerations. First, the usage is nearly obsolete. Only one case of the kind is reported in Moore's Digest. Can our readers recall other instances of its application in any of our courts? Next, the irregularity and corruption here contemplated, may be corrected under the provisions in the chapter of Review and Control. But the revision does not raise the question whether the rule should be repealed altogether; but whether being stricken out from one chapter it shall hold its place in another. Now, we ask why corruption in the lower court should be censured when detected in the trial of a complaint, but passed over in silence when detected in the trial of an appeal? We go further, and maintain that if a lower court is to be censured under only one of the two forms of procedure, it should be under an appeal. A case of false doctrine or scandalous sin is carried to the superior judicatory by an appeal, rarely, if ever, by complaint. A minister is teaching heresy; say, he denies the Lord that bought us all. Or he is guilty of habitual drunkenness. He is acquitted by the Presbytery, to the astonishment of everybody. The verdict goes to the Synod by appeal; it cannot go thither by complaint (85, 92). The Synod in trying the case ascertains not only that the accused is guilty as charged, but that the Presbytery "acted irregularly and corruptly" in his acquittal; thus becoming in some sense a partaker of his sins, and adding thereto another of its own,—judicial corruption. Imagine the surprise of the Synod on finding that according to the new book, if the case were there by complaint, they might inflict on the spot the deserved censure; but since the case is there by appeal, and in point of fact it is not allowed to be there by complaint, such an instant censure on the delinquent, would be a kind of usurpation. It is safe to say that the Church may now agree to abandon this usage of censure altogether, but it will never agree to put that obvious incongruity into its discipline.

EXCLUSION OF JUDGES.

The fourth change proposed by the Committee allows the members of the courts below to sit as judges in the trial of an appeal, but not in the trial of a complaint (90, 97).

The general question whether an appellate court should consist entirely of new judges or of all the members of the inferior court, has divided the opinions of the wisest jurists. In some of our States the court of last resort is made up in one way, and in some in the other. We need not attempt to compose that debate. For, first, the differences between the spiritual and the secular courts are so various and of such a nature, as to mislead us in attempting to reason from the one to the other. The civil courts are for the administration of justice only. The spiritual are courts of the religious conscience; they aim at edification; they are witness-bearing assemblies. In their hands discipline is a means of grace, and they endeavor to foster the religious affections.

Next, our revisers, instead of settling the general principle of jurisprudence involved, simply propose, in trying a complaint, to exclude the members of the lower judicatory, and to admit them in the trial of an appeal. The rational grounds of this double usage have not been disclosed. But we may conjecture that these reasons rise out of the fact that, by the rule of censure according to the revision, the lower court is made a party in the trial of a complaint, but not in the trial of an appeal. In the appeal, the judgment above is reviewed; in the complaint, the judgment and the judges are to be judged.

Now, setting the mind on the trial of the appeal only, it is to be noted that the new code overlooks one of the distinctive features of our polity—the denial to all parties in a judicial case of the right of challenge. In our secular courts, the right of challenge for cause in making up a jury is unlimited, and even the judge may be required, for good cause shown, to give place to another. But there is no such usage in our church courts. If the right of challenge were allowed, they would be broken up, and they cannot be reconstructed by calling in other men. Hence, no matter how notorious may be the disqualifications of any or all of the members of a Ses-

sion or Presbytery, they must hold their place and the trial must go on. This usage at the first blush does violence to our notion of a fair trial. We demand to know what equivalent or compensation is offered to our people for the loss of this Anglo-Saxon birthright. The answer is fourfold. First, the defeated party may carry his case by appeal from the Session up to three, and, from the Presbytery, up to two appellate judicatories in succession; secondly, the appeal carries with it in every instance the records, pleadings, testimony, parties, and issues all complete; thirdly, no member of the lower court, before which the cause has been tried, is allowed to sit as a judge of the same in the superior judicatory; fourthly, the judgment in every trial passes by the majority. The effect of these processes is to exclude from the final judgment every trace of local or personal prejudice. The partial judges will be almost certainly either shut out of the court or relegated to the minority. It will strike the average Presbyterian as rather hard on a party to a judicial case, that, by the revision, he is first abridged of the right of challenge, then deprived of the help of his friends by way of complaint, then liable to be tried at the last by judges who may have already sat upon his case two or three times. It is plain that the exclusion of these judges does not depend altogether upon their liability to censure under the old rule, but very largely upon another and a fundamental principle of our jurisprudence—the denial of the right of challenge. We may apply to the compensation the words of the old barons of England, when they were urged to yield a great principle of good government: "*Nolumus leges Angliæ mutari.*"

THE JUDICIAL COMMISSION.

The last of these five changes provides for the establishment of a new and permanent tribunal called the Judicial Commission. It is devised in order to relieve the General Assembly of the burden of judicial business. Its functions are thus described:

"102. All Appeals and References of judicial cases from the lower judicatories to the General Assembly, and all Complaints from the Synods coming into the hands of the Stated Clerk, shall, with the accompanying papers, be transferred by him to a Judicial Commission, which shall hear and determine the same, in accordance with the provisions of the Form of Government and the Book of Discipline."

This feature of the revision was left in an awkward position by the last Assembly. On May 25, the revision was, after consideration, sent back to the Committee, with instructions to complete their work and report to the next Assembly. Three days later, Dr. R. M. Patterson, from another Committee, proposed two amendments to the Form of Government. These amendments were adopted by the Assembly and ordered to be transmitted to the Presbyteries for their approval. One of them provides that the decisions of the Synod on appeals, complaints, and references shall be final, except those that affect the doctrine and constitution of the Church. These last cases, regularly brought up, are to be "received and issued by the General Assembly." So far as the Assembly has power in the premises, it has unceremoniously set aside the proposed Commission; having recommended to the Presbyteries another plan for the disposal of judicial cases. The newspapers say that the Presbytery of New York—the most powerful of all in the number of its ministers (130) and of its communicants (18,647)—has unanimously approved this overture. It is to be considered very shortly by the other Presbyteries, and, for that reason, it is proper at this time to institute a minute comparison between the plan proposed by the revisers and that adopted by the Assembly.

What is a judicial commission? For the present, it is needful only to reply, that its judgment ought never to be accepted as final. It may "hear and determine," but its proceedings must in every instance be reviewed by the judicatory. This principle is absolute and universal. First, the church is not competent, either in originally ordaining, or in subsequently revising its constitution to erect a judicatory, which is neither congregational, presbyterian, nor synodical. (Form of Gov't, viii. 1). Nor, secondly, can a church court delegate to a committee the responsibilities and powers which Christ has put into its own hands. Thirdly, the church cannot escape the charge of oppression, if it subjects the people of God to the judicial supervision of such a tribunal. Indeed the church might as well attempt to establish a permanent Committee on Bills and Overtures, with final ministerial functions, as to clothe a commission with final judicial powers.

The principle here asserted is not overlooked, when the Assembly appoints a special committee to hear and determine a judicial case at the bar; because that is always done with the consent of the parties, and the finding is always submitted to the Assembly. Nor is it overlooked by the commissions annually appointed by the Scotch Assemblies *ad interim*. These are composed of all the members of the Assembly, sitting, substantially, as a committee of the whole, entering provisional decisions, and reporting all their proceedings to the next Assembly. The Commission of the Free Church met October 27, 1880, to consider the case of Prof. Robertson Smith. Out of about 700 members of the Assembly, 472 were present. The Commission examined the subject, and heard Prof. Smith in a speech of an hour and three-quarters. The documents were ordered to be sent up to the Assembly; and Prof. Smith was directed not to teach his theological class in the meantime. The vote stood 270 against 202. A few commissions were appointed seventy or eighty years ago, in our Church, with power to conclude the business referred to them; notably the Commission of the Kentucky Synod, in the Cumberland matter; but the principle and the practice under it are no longer recognized.

The revisers had before them the difficult task of reserving to the Assembly the whole of its proper jurisdiction, and at the same time giving to the Commission the efficiency and dignity essential to its usefulness. We quote in full the section in which this problem is considered:

"106. The Commission shall preserve a complete record of its proceedings and action. If it find, in the proceedings of the inferior judicatory, such error as renders it impossible to reach a just judgment, it shall remand the case for a new trial. It shall prepare, and report to the General Assembly, a formal finding of the facts, which shall be final in all cases. On this finding of facts, the Commission shall enter judgment, in accordance with the Form of Government and the Book of Discipline, which shall also be reported to the General Assembly: Provided, however, that the General Assembly, if it shall not approve the judgment, may, in its discretion, recommit to the Commission, or proceed to such final judgment as the case may require."

This section was evidently prepared under the supervision of the eminent jurists among the revisers; and it is expressed in terms borrowed from the civil jurisprudence. We have thought it proper, therefore, to take the advice upon it of a lawyer in full practice, a thorough Presbyterian, having also a competent knowledge of our polity. We desired him to an-

swer this question: Does this article encroach on the proper jurisdiction of the General Assembly? Here is his written opinion:

"It will be observed, in section 106, that the Commission has two functions: First, to find the facts of the case; secondly, upon these facts to enter a judgment. The Assembly has a revisory power, but it extends only to the judgment. The finding of the facts is expressly declared to be final. The Assembly cannot disturb such finding. In other words, the Commission is to be the sole judge of the evidence, and to declare what are the facts established by it. Behind this finding the Assembly cannot go. It is confined to the single province of reviewing the law of the case as applicable to these facts. If this is not the proper construction of the article, it is difficult to say what it does mean. 'The formal finding of the facts' is certainly declared to be 'final in all cases.' The judgment of the Commission which follows the finding is declared to be subject to revision. The word 'final' must apply to the Assembly; it cannot, without involving an absurdity, be applied to the Commission. The provision is quite analogous to a special verdict in a law court, which is found by the jury as sole judges of the fact, and upon which the court enters judgment according to the law of the case."

"The power thus given to the Commission is very large and very indefinite. It is very large: In the case of one charged with immorality, it will, in almost every instance, be practically exclusive. Thus: the Commission may report that 'A. B. is charged with drunkenness. We find that the said A. B. was intoxicated at such and such a place, on the following days; viz, January 25, etc. Upon these facts we adjudge that he be suspended,' etc. The sole question for the Assembly will be what censure shall be inflicted on the offender. His guilt is concluded. The power is also indefinite. Thus, A. B. is charged with heresy, in this that he has denied, in repeated conversations, discourses, etc., the doctrine of effectual calling. The Commission ascertains that the testimony is conflicting. Will they simply find, as a fact, that A. B. said such and such a thing, on such a day; which is or is not, in their opinion, a denial of the above doctrine? or will they cut short the discussion, and find the ultimate fact, viz, that A. B. did or did not

deny that doctrine? Facts are at last, in judicial controversies, those things that are established by evidence. But it is exceedingly hard to decide where the line is to be drawn between what is evidence and what is fact; and the boundary will be found movable and depending for its place upon the disposition in the Commission to regard the maxim: '*Est boni judicis ampliare jurisdictionem.*'"

Thus far our adviser. He does not say in so many words that the section encroaches on the proper jurisdiction of the Assembly; but his reasoning establishes that conclusion. And it is, clearly, fatal to the plan of the Commission in its present form.

The plan should, we submit, be so amended as to reserve to the Assembly, untouched, the jurisdiction with which the Lord has clothed that venerable court. And yet, even if adjusted, it may well be doubted whether it would sufficiently relieve the Assembly of the pressure of its judicial business. For on the motion to approve the judgment of the Commission, the Assembly may be required to consider and settle at least three questions. First, shall the finding be approved? Next, if not approved, shall the case be recommitted, or will the Assembly proceed to final judgment? If the latter course is determined on, the third question arises, what shall that judgment be? All these questions are substantial and debatable; and nobody can tell to what extent this discussion would be protracted. The approval of the Assembly must be sought in every case in order to save the principle of jurisdiction; but it cannot be sought in any, except by opening the way for throwing back upon the Assembly most onerous and perplexing judicial business. The relief which is professedly sought, is actually defeated by this plan.

Very strict attention is due to the proposal for transferring to the Commission, with other judicial cases, those also which affect the doctrine and fundamental principles of our government.

Relatively to this matter, we should take into account the position of the General Assembly in our system. First, it is the judicatory in which the whole Church meets, and there is no power above its power, save that of its Great Head. Next, the most precious deposit which the Lord has intrusted

to the keeping of the Church and the protection of its courts, are the doctrine and constitution of His visible Church. Further, one of the highest functions of the Church is witness-bearing. Herein it seeks to perpetuate a large part of Christ's mission on earth: "For this end," said He, "was I born, and for this cause came I into the world, that I might bear witness unto the truth." This great duty is discharged by the Church through the testimonies embodied in its standards. Its judicatories enforce these testimonies by exacting from its office-bearers a vow adopting and approving the same, and, when they forget their vows, by the process of discipline; and discipline, rightly administered, is the most solemn and imposing of all the forms of witness-bearing. Further still, to the Assembly belongs "the power of deciding all controversies regarding doctrine and discipline"; and the best way to decide these controversies is to issue, through all its stages, an appeal of which they are the subject-matter.

The revisers propose to remove the entire process of investigation from the bar of the Assembly to the chamber of the Commission; that tribunal to find the facts; that finding to be final; and then enter the judgment before consulting the Assembly. Now, our contention is that the courts of the Lord's house ought always to conduct at their own bar the trial of an appeal in a case of heresy from beginning to end. They ought to see all the parties face to face—the accusers, the accused, and the members of the inferior judicatory, so that they may judge of the animus. Above all, the appellate judges should find all the facts for themselves on the testimony duly authenticated, and on the arguments at bar of the parties, and of the representatives of the lower judicatories. Nor should their minds be disturbed by a verdict found for them by a Commission; and they ought, without consultation with any other tribunal of flesh and blood, to proceed to final judgment.

Let us compare the moral weight which would attend the judgment of the Assembly and the judgment of the Commission. Never are the proceedings of the Assembly more imposing and solemn than in the trial of a minister charged with heresy. The tribunal is the whole Church, in the persons of

five or six hundred Presbyters, gathered from their wide dispersion. They sit upon their consciences as judges in the court of Jesus Christ. The record from below is read in the open; the testimony is presented disclosing all the facts; the parties are fully heard; the lower court withdraws; the judges consult together; the judgment is formed, recorded, and published to the world.

Turn now to the Commission. It is composed of eighteen men. They may or may not come from more than nine of our thirty-eight Synods. They may or they may not sit in private. The quorum is ten. The judgment passes by a majority. It may be determined by six votes. Now, imagine a supreme issue—vital not to Presbyterianism only, but to catholic Christianity itself—coming down from the bar of the august Assembly and creeping humbly (we beg everybody's pardon) into the docket of the decemviri or the octo-decemviri.

One experiences a sense of relief in turning from these technicalities and intricate details to the overtures now before the Presbyteries. They clothe the Synods with power to issue finally all judicial cases and references regularly brought up which do not affect the doctrine or constitution of the Church, reserving the latter to the jurisdiction of the General Assembly. The plan is expressed in a few plain words; it is simple and intelligible in all its provisions; it is easily executed; a very few changes in our constitutional rules effect the objects sought; no violence is done to our usages or traditions; no new tribunal is set to do the work which the Lord has intrusted to His courts; it affords to the private member two appeals and to the minister one, in every cause; additional dignity and importance are given to the Synods now ready to perish for the want of something to do worthy of their position; it saves to the Assembly its sole and undivided responsibility in the final hearing and decision of causes which involve the integrity of the faith and order which the Lord has put into its keeping; and it requires that high court to find for itself all the facts, and to apply to the facts so found the law and testimony of God's Word, without being advised or embarrassed by the procedure of another tribunal, which can show no warrant in Scripture for the use of judicial power.

THE RIGHT OF PROTEST.

To the five changes, regarded as of chief importance by the committee, we must add a sixth: the suppression of the right of Protest. The entire chapter in our old book of "Dissents and Protests" is summarily blotted out. The liberty of dissent with or without reasons is secured, but even that is allowed in judicial cases only (25).

The right of protest has a history coeval with the founding of Presbyterianism on this continent. Our first Presbytery was formed in 1705; our first Synod in 1717. In the Synod of 1721, the fifth year of its existence, President Dickinson, with five other members, entered "their protestation" against a certain act of the judicatory, with the reasons in writing. At the next Synod, 1722, "the brethren protestants" brought in the celebrated "four articles" concerning church government, prepared by President Dickinson. They were cordially approved by Synod, whereupon the protest was withdrawn, and this minute was adopted: "The Synod was so universally pleased with the above said composure of the difference, that they unanimously joined together in a thanksgiving prayer and joyful singing of the 133d Psalm" (Records Presby. Church, pp. 68, 72). The four articles contain, as Dr. Charles Hodge remarks, "the whole system of Presbyterianism." The right of protest, asserted within sixteen years after the formation of our first Presbytery, enabled our fathers to deposit these principles in the very foundations of the Church.

The right of protest being established, there remained to be defined the liberty of speech belonging to it. May a protest contain among its reasons, obnoxious sentiments, without drawing down censure upon its authors? This point was settled in 1758. In the course of the unhappy controversy, which terminated in the schism of 1741, the New Brunswick party entered a protest, which gave great offence to the majority in the Synod. The majority entered a counter protest, setting forth, at length and emphatically, the delinquencies of the New Brunswick party. This is one: "2. Their protesting against the Synod's act, in relation to the examination of candidates, together with their proceeding to license and ordain men to

the ministry of the Gospel, in opposition to and contempt of said act of Synod" (Records, etc., p. 158). Upon the basis of the several charges made by the majority, the schism took place. On the face of the above allegation it would seem that the "protesting brethren" were condemned, first, for protesting against the act of Synod; next for the overt act of disobedience. It was not made clear whether the right of protest being acknowledged, it was considered an offence to avow obnoxious sentiments in the body of the paper; an offence equivalent to an act of open disobedience to established authority. But both points were happily settled at the reunion of the two Synods in 1758. By the third article in the terms of reunion it was provided that any member, "for the exoneration of his conscience before God has a right to protest against an act or procedure of our highest judicature, because there is no further appeal for redress; and no member is liable to prosecution on the account of his protesting" (Records, etc., p. 286). This covenant settled, on immovable foundations, the right of protest, and the large liberty of speech in assigning the reasons thereof, without which, the right itself amounts to nothing. All possible abuses of this liberty may be corrected by the answer of the majority; by the exclusion of an offensive protest from the records; and by the power given to the church court to protect itself from contempt.

By far the most valuable doctrinal and historical documents preserved in the records of our judicatures, are the protests and answers which have marked the critical periods of our Church life. We may refer to the minutes of our highest judicature for 1720, 1741, 1831–37, 1861, O. S.; 1868, O. S., and 1877. Without discussing the merits of these documents, considered as expositions of the faith and polity of the Church, it will be agreed that they were prepared by our great men, in their generation, after their best style of thought and expression; that they contain the pith of high debate, the result of various and sufficient learning, the outflow of immovable convictions and of a fervid zeal for what they believed to be the honor of the Lord and the welfare of His Church.

Besides suppressing the right of protest, the revision limits dissent, with or without reasons, to judicial cases. This lim-

itation is not expressed in words, but it is clearly gathered from the place assigned to "dissent" in a chapter, and in the midst of articles which relate exclusively to judicial process (chap. iv., sec. 25). This is one of the many places in which the revision takes the form of the code of practice in the law courts of final resort, wherein the judges are allowed to file dissenting opinions. But the analogy overlooks two considerations: first, of all the protests and dissents which have been entered in our judicatures from the beginning, only a few have related to judicial cases. A denial of the right in regard to proceedings not judicial leaves minorities without this redress, where, according to all experience, they need it most. Next, one of the characteristic and essential functions of a spiritual court not belonging to the civil tribunal is plainly set forth in our chapter of dissents and protests: "A protest is a more solemn and formal declaration" (than a dissent) "made by members of a minority, as before mentioned, *bearing their testimony* against what they deem a mischievous or erroneous judgment." We put in italics the phrase which denotes the witness-bearing character of the Church and points to the duty incumbent on every member of a judicatory to bear testimony against whatever is wrong or false in its proceedings, whether judicial or administrative. In this particular we cannot safely square our rules to those of the secular courts. Dr. Thornwell's remark is good: "Cæsar is no model for Christ." We adhere to the doctrine of the fathers of 1721 and 1758.

After the proposal to abridge well-nigh to extinction the right of complaint, our people will find it hard to part with its kindred right of protest. They will not surrender this ancient liberty asserted at the beginning, always freely used, and never before challenged in the run of a century and a quarter. They will not deprive minorities and faithful witness-bearers in the Church courts of this sacred right; nor will they abridge their children of the opportunity to put to record solemn protestation against "mischievous or erroneous judgments" for the "exoneration of their consciences before God."

CHANGES—HOW BEST MADE.

We do not venture to suggest what disposition should be made of this report by the Assembly and the Presbyteries; that must depend upon the final shape in which it may appear. But we may start an inquiry as to the safest mode of amending our standards of government, discipline, and worship. We exclude from our present thoughts the Confession of Faith and Catechism because they rest upon a footing altogether peculiar. The question here relates only to the three minor books above mentioned. Should the general practice be followed whereby specific amendments are approved by the Assembly and sent down one by one to the Presbyteries for adoption, or shall a general revision be attempted like that now before the Church? The latter method could not be more fairly tested than in this example: whether regard be had to the pre-eminence of the Committee in the councils of the Church, or to the unstinted time and patience which they have given to the work in study and consultation, or to the acknowledged improvements which they have made on the old book, or to the weight of argument and personal influence by which the revision will be supported. And yet, there is room for an honest difference of opinion as to the wisdom of many of these changes. Dr. Craven told the Assembly, if he be correctly reported, that there are matters in the revision in which he would have differed, and he presumed that every member of the Committee could say the same thing. According to the report, only one man dissents from the revised book. But Dr. Craven in his remarks said that the Committee "are unanimously of opinion that the work is not in a condition yet to be sent down to the Presbyteries." These diversities are explained by Dr. West in his minority report. He says, "It is confessedly a *compromise book* (sic) from beginning to end." Now compromises always engender inconsistencies; and compromises in a committee of twelve are not likely to be, all of them, acceptable to the thousands of our people.

If the book should be sent down to the Presbyteries, it must be passed upon by as many of the five thousand ministers and by as many of the ruling elders as may be present

in 178 Presbyteries. Let it be supposed that five hundred of our most intelligent men should, upon a full consideration of these 118 sections, distribute them into three classes—approved, disapproved, and doubted. It does not stand to reason that any considerable number of these lists would show an approval of all the sections, or that they would agree in the classification.

Now, by what rule of practical wisdom shall we be guided in our votes in the Presbytery? Shall we adopt the changes for the worse in order to secure the changes for the better and vote aye, or shall we discard the good in order to defeat the bad and vote no? Must we surrender the right of protest for the sake of gaining the rule of demission from the ministry? Shall we sacrifice the old doctrine of complaint to save the judicial commission? The complications are intricate and, practically, innumerable; and he must be an exceptional man in his generation who can give an intelligent vote for or against the revision, taken as a whole.

If we cannot see our way clear through all these perplexities and unwelcome compromises, we can at least see our way out of them all. First, we may abide by the old book, which has carried us alive for the last sixty years, through debates, disputes, controversies, dissensions, tumultuous assemblies, and unhappy schisms. Next, special amendments, as they are needed, may be sent down, one by one, to the Presbyteries. Under this process, the work of amendment will go on slowly; but sound discretion and an agreement of the whole Church should go along with amendments in our discipline; and revision, to be safe, should be slow, careful, and limited to necessary changes.

Every thorough revision, like that now proposed, is liable to exceptions. First, it will render obsolete a mass of decisions that have been pronounced on points of substance and form in the old book. Again, according to the experience of civil courts, in using revised codes of practice, it will raise a multitude of questions as to the meaning of the new rules. Very few of our office-bearers are trained lawyers, and we ought not, except for the best reasons, to require them to forget what they have learned by long experience in our courts, and begin the study of church-law anew. Further, such revision will render

nearly useless the invaluable digests of Drs. Baird and Moore, by the dislocation and rearrangement of matter, and the modification of well-known decisions, precedents, and modes of procedure. An eminent man is of opinion that it will take three generations to get things into shape again, under decisions upon the new rules. The old maxim is worthy, at least, of some consideration: "*Stare decisses et non quieta movere.*"

EDWARD P. HUMPHREY.

AN old friend of Dr. Ed. P. Humphrey, who has been standing with him through a generation, to "ask for the old paths, where is the good way?" being challenged for compromising now with new ways, must begin to explain. For he is one of the "Revisers" reviewed, whom the conductors of this REVIEW have invited to the task, after the Secretary of the Committee declined it, for the present. Doubtless, the able and ready Chairman of our Committee will come to the defence of his work in due time. The work was offered to the last Assembly as no more than a tentative result, soliciting only instruction, guidance, and encouragement from Presbyteries and individuals. "Compromise," the final cause of all convention, union, and reunion, under the sun, is not in itself a reproach, where truth is not bartered or betrayed.

The tone of this eloquent reviewer seems to deprecate a danger of radical innovation, which we think is quite imaginary. While he was penning a lamentation over the loss of a whole chapter on "Protests," for example, the Revisers were busy at Princeton fixing up that chapter, with as much conservation as it should have in our system. It will appear in the revised Form of Government. His admirable strictures on this important subject are not, therefore, out of season altogether, or without value for edifying the Church at large.

The chronic incompleteness of our work will not be censured when its nature is fairly considered, and the onerous addition is weighed, of important overtures referred to us by successive Assemblies; and the busy engagement with other duties, which burden almost every man of the Committee, is allowed. The Old School Committee of Revision, appointed in 1857, did not report at all before 1859; was enlarged with

additional number in 1860, and not discharged until 1864. The Revision Committee of our fathers, before them, that furnished the text of our book, now in use, was appointed in 1816, consisting at first of Drs. Romeyn, Alexander, and Miller, who asked the next Assembly to give them more time. In 1818 they reported progress and asked for the appointment of Dr. Eliphalet Nott to help them. And it was not till 1819 that any formulated work was reported; and then it was

Resolved, "That 1,000 copies of the report, *in its present state of progress*, be printed, and that a number of copies be sent to the several Presbyteries, sufficient to furnish each member with a copy, *with a view to obtain from Presbyteries and individuals such suggestions and alterations as may appear to them expedient;* that the same be transmitted, as soon as possible, to the Rev. Dr. Miller, of Princeton; and the Committee, after *availing themselves of the information thus obtained, review and amend their report*, and submit the same, *complete, to the next Assembly*."

This is the precedent after which we are moving, and we have been sooner, by one year, than our great predecessors, in preparing a draught, to be sent in a similar way, and with a similar object. We want "suggestions," advice, direction, rather than debate, until our whole work is offered as a final report. Nevertheless, being full of debate among ourselves, we should have no objection to discuss with others the salient features of our scheme, while, at the same time, we are not as yet a unit, and our contention must not commit the Committee, if a single member, here and there, should seem to yield a point, or stickle at a point too much.

In beginning our work it was decided that we should stand on the shoulders of the Old School Committee in their text, as reported first in 1859, amended by the enlarged Committee in 1862, and formally adopted, to a considerable extent, by the General Assembly (O. S.) of 1863, of which Dr. Humphrey was a leading member. That Committee consisted, at the first, of Drs. James H. Thornwell, R. J. Breckinridge, James Hoge, Charles Hodge, E. P. Swift, and A. T. McGill, ministers; and William F. Allen, of the Supreme Court in New York State; H. H. Leavitt, United States District Judge for Ohio, and George Sharswood, now Chief Justice of Pennsylvania, and the only surviving Elder. The writer of this, the only minister left, was Secretary of the Committee from first to last, and retains the records of every meeting.

Dr. Thornwell was Chairman at first, Dr. Breckinridge next, after the civil war began, and then, when he ceased to attend our meetings, Dr. Hodge was Chairman till the work was finished. This was done at Pittsburgh, after Drs. Snodgrass, Yeomans, Paxton, Beatty, and the Hon. Scott Lord, of New York, and H. K. Clark, of Detroit, had been added to the Committee.

This minute enumeration and detail may be of use to show the Church how large a variety of wise counsels and potent influences that Old Assembly convoked in furnishing a basis for the present Committee at their choice of a beginning. And it may be a disclosure of much significance to the respected and beloved Reviewer himself, who complains of the reserve in regard to "principles and ends," which have governed us in making changes, and who "labors under all the disadvantages of unavoidable ignorance" in regard to our views. We would remind him how thoroughly he comprehended and squarely confronted some of the same views when our basis was unveiled in 1859 at Indianapolis, and how maturely he deliberated on the amended report in the Assembly of 1863 at Peoria. The writer attests, as no other man living could witness, that the background of discussion has been much the same, after an interval of twenty years, between the old Committee and the new.

It will be remembered that when the grand old postulate of the covenant, which defines the subjects of discipline in the 1st chapter and 6th section of our book, as it still is, had been modified by the Committee of 1859, so as to exonerate "baptized persons" from all juridical process for offences, until they become full communicants, this intrepid conservative, Dr. H., answered the arguments of Dr. Thornwell with so much effect, on behalf of the minority, that the report was "recommitted to the same Committee, with instructions to report to the next Assembly." When it came up in the next Assembly (1860) discussion was locked at the same point; no progress could be made beyond that 1st chapter, and again the report was recommitted, with an addition of six members to the Committee. When it was at length brought to the General Assembly in 1863, the disputed section had been restored in every word as it is in the old book, with a slight addition looking to that general sense of discipline expressed in No. 1

of the present report. And thus it was adopted by the Assembly without dissent.

The Reviewer cannot be ignorant, therefore, of the "principles and ends" which governed us in compiling the first chapter submitted. Not even the 5th section of the old book, entirely omitted, because it is preaching and not formulating, will escape his approval, after voting for that same omission in the Thornwell book, so far as it was adopted in 1863: "paring down the redundancies of the old book." But among the "ambiguities and omissions" of our new book proposed, attention is called to No. 5, in which a change of "doubtful interpretation" is noticed. In the old book we have it thus: "All baptized persons are members of the Church," etc.; in the form now proposed it is: "All children born within the pale of the visible Church are members of the Church; are to be baptized," etc. The alteration was made simply to avoid a doubtful interpretation of the old form, which seemed, to an acute and able Judge among our members, to signify that children become members of the Church by the rite of baptism, that is, instead of being baptized because they are born members, they become members because they are baptized. In the amended form proposed the Committee were harmonized gladly, and thought all ambiguity was removed and a step also taken in the very line of perspicuity, on "the true doctrine of infant baptism," and that step was just as far as we could go in a rule or formula of discipline. It is the Confession of Faith, the Catechism, and the Directory for Worship, that we resort to in order to find "every part of the true doctrine of infant baptism clearly stated." Here it would be out of place, and rejected as a superfluity. As far as we go, it is in precise accordance with every other symbol of our system.

Instead of our standing on "the basis of the fictitious half-way covenant," in making this change, may we not ask the reviewer if his challenge of ambiguity in our expression, be not itself ambiguous? Why his word "communicants"—a term never used, either in the Bible or the standards, to denote the profession with which one enters the Church? Does he mean that household baptism is to be denied to "parents who are not, one or both, members in full communion, by participating

in the Lord's Supper," even though they profess faith in Christ, by word and act? If so, the Committee have erred in making the change referred to. They have made not only a "doubt," but a wrong, in touching the covenant thus. But does he mean, that our Standards are Scriptural and right, in making *profession of faith in Christ* by word and act with or without a rite, the door, if not the constitution too, of the visible Church on earth, and this profession may be made credible before the seal of the Supper is taken, and even before baptism itself is administered in form? Then the Committee are right and clear, and felicitous also, and historical besides. *Profession*, whether personal or representative, as distinct from rite, and yet looking toward every ordinance of God's appointment, is "the pale of the visible Church." "Not only those that do actually *profess faith* in and obedience to Christ, but also the infants of one or both *believing* parents are to be baptized." Confession of Faith, 28, 4. Profession is always connected in our symbols with Baptism, not the Supper, and always indicated as an antecedent, which is distinct from that seal of the covenant, although all of us concede that it is "*signum initiationis*," not initiation itself, but the sign of it, the badge of it, the recognition and seal of it, as a passport to the other privileges of the Presbyterian Church. We do not say *the whole visible Church*. Persons, whether adults or infants, may be members of the visible Church, by profession of faith in Jesus Christ, who have never been baptized. And here is the point made by the Committee in offering this change, that it is one of true catholicity.

Perhaps no author in our language has expressed it more exactly than Dr. Charles Hodge, in his "Church Polity," as edited by Mr. Durant, p. 246:

> "Baptism is one, but not the only way of professing the true religion. Many confessors and martyrs never were baptized. An orthodox Quaker, if regenerated by the Holy Ghost, is a true Christian, and if he confesses Christ with the mouth, is a member of the visible Church. Baptism does not make a man a member of the Church; it is the public and orderly recognition of his membership."

To the same purport is the following expression of his son, Dr. A. A. Hodge, in his "Commentary on the Confession of Faith," p. 472:

> Since baptism has taken precisely the place of circumcision, it follows that the

Church membership of the children of professors should be recognized now, as it was then, *and* that they should be baptized."

Such quotations might be multiplied from our standard literature and notably Dr. Ashbel Green's "Lectures on the Shorter Catechism," to show that the slight change now proposed is an outcome of principle, thought, and research, instead of being a mere compromise in the Committee. It is not new. It comes from the Westminster divines, and from the Church of Scotland, in the most unambiguous definitions. Stewart of Pardovan, in his "Collections," a book of the highest authority in Presbyterian councils, all the world over, thus expresses it, Book 2, title 3:

"The Directory for Worship says, that children of professing parents are Christians and federally holy before baptism, and therefore are they baptized, for their baptism supposeth them to be church members, and doth not make or constitute them such."

"No formal definitions are given of offences." None are needed beyond what the Committee have given in Nos. 3, 4, 6, 7. Formulas of discipline, like formulas of sermonizing, should distinguish persons, things, and classes, by their own edge, rather than by the number of useless enumerations. Formal definitions of what is self-evident, familiar, and taken for granted, only burden and obscure the intrinsic precision of judicial forms.

We agree with the Reviewer that a minister as well as a ruling elder and private member, may be debarred from the Lord's Table, and restrained from the exercise of office *ad interim*, when on trial for immorality, and this should be distinctly provided for. But not so the omission alleged in the case of a weak or troubled conscience on the part of a full communicant, in No. 48. Obviously "the roll of communicants" is not the roll of baptized members and professed members, though it includes them of course. Erasure is not excommunication. In this case it simply excludes from one ordinance, with their own consent and desire, such as have no recognized fitness to enjoy it, although their "attendance on other means of grace be regular." "Persons who insist on being discharged finally from all connection with the Church," are a class of malcontents and apostates, for whom full process must be the remedy; according to a decision of the Old School Assembly, almost 30 years ago, when our critic was Moderator. We

need not and could not embody the principles affirmed in that decision at St. Louis, and reproduced by the reviewer, in a sentence of the right proportion, merely to prevent an irrelevant and improbable extension of 48 in its application.

A "chronic disputation" on the question whether absentees from a trial in the judicatory below, or "not sitting members," should be allowed to vote on review of the records or trial of complaints, in the judicatory above, would have two sides no longer; if the distinction made by the Committee between complaints and appeals, should be adopted. When the court below becomes a party, as in complaints to the court above, that whole party, whether in attendance at the first trial or not, are presumed to have the spirit of their party, when it is arraigned above; and should in all cases be excluded from a vote. If they were literally "not sitting members," though enrolled at the time, rising from their seats and donning their hats, as we often see when a trial begins, this Committee have provided for them in No. 28. If they were entitled to seats and did not attend the meeting at all, it would be incongruous, if not absurd, to have them sitting on the upper benches to judge their own brethren, with whom they ought to have been identified in the original procedure. If they are strangers who have come into the judicatory complained of after the complaint was made, they cannot be prepared ordinarily to vote intelligently and impartially, when the complaint is tried above.

The next omission or ambiguity noticed is in No. 85. "The jurisdiction of the judicatory complained of," surely and obviously, we think, includes every one who is "under its government and discipline." Else, if the Committee meant "the minority of the judicatory itself" alone, they would have said so.

"JURISPRUDENCE—SECULAR AND SPIRITUAL."

Fault is found with the "forensic features" of this revision; assimilation to "codes of practice in the secular courts," and "cutting too near the quick" with "naked forms and rules." The Reviewer would have us help the brethren with "occasional explanations, cautions, repetitions, and proofs from Scripture." But the revision for which he voted in 1863, as far as it was

adopted by the Assembly, did eliminate whole sections of such helps; and as a matter of fact, the present revision has more Scripture explicitly quoted, than either the old book or the revision proposed at that time (see No. 7). There would be no end to the making of books for discipline, if they ought to be mixed with exhortations, and conservatism itself could never make the pause it covets.

Principles of justice and equity are omnipresent as they are eternal, and secular as they are spiritual. They are the same in Church courts and civil courts. Especially in a Christian country, where it is conceded that jurisprudence, legislation, and constitutional organism itself, rest on a foundation which reformed Christianity has laid. There is indeed a special application to be made in ecclesiastical practice, that should be distinguished in a peculiar nomenclature, to some extent. But we should take care that it be not too professional, for it must be mundane in its contact with the world. It must be made popular as possible. It is with discipline as with rhetoric in the Church. It is not another kind of rhetoric which we take to the pulpit, but the common kind, that a few foot-notes may convert to a sacred use, and an unction from on high may baptize in the presence of the people. The great body of our people and the great majority of our judges in the Presbyterian Church are civilians, more familiar with "forensic features," and secular terminology, by far, than they ever can be made with musty words and scholastic formulas, borrowed from the canon law. Should not the ministers, therefore, who are few, yield to the elders, who are many, the "words that are things," retaining always, and making distinctive always, the sacred specialty of God's ordinance in Church discipline?

The specialty is paternal in all its nature. "Like as a father pitieth his children." Hence, No. 2 in our revision, answering to all other sections, which look to the ends of discipline—"edification"—"the removal of scandal and the spiritual good of offenders." Hence, also, the flexibility, the devotion, the tenderness of interest, the forbearance, and the magnanimity of soul toward the erring which characterize all our Books of Discipline, old and new. Hence, again, that "may," instead of "shall," which the discerning Reviewer has challenged as "a paralyzed jurisprudence," in our present report. Is it not

strange, that in one paragraph he objects to, the naked severity of the inevitable in forensic procedure, to which he thinks we reduce the cautionary process of our fathers, and in the next he deprecates the paternal element, we transfuse through the whole, as a weakness and paralysis of discipline? Strength is with "may," and weakness with "shall." The vigor of self-control, the freedom of intelligent will, the hold of sound expediency belong to the former; and the slavery of function, the bondage of statute, and the hardship of imperative necessity belong to the latter. In "may" we combine the behest of dominating principle with the patience of paternal concern, and hence it is the best auxiliary verb for a constitutional direction of Church discipline.

Our accomplished Reviewer knows well, that from the beginning it has been an axiom of discipline in the Church, that *we must if we can*, and we aver that *may* is the only monosyllable to express it. Paul, a great disciplinarian of the Apostolic age, executed censure sternly and swiftly on Hymenæus and Alexander; yet he only wished he could do it on those who troubled the Galatian churches, and was ready to do it again at Corinth, when the "obedience" of the churches there would be "fulfilled" in sustaining him. Punishment must be inflicted by "many" in uniting moral force. Augustine, who toned the North African churches with this ordinance, copied the great Apostle in the same expedience, and argued from the parable of the tares, that we must forbear to root up the noxious offenders, when it would endanger the wheat, until the ultimate harvest. The Reformers, who studied Paul and Augustine, together, would not venture to punish the alleged bigamy of Philip, Landgrave of Hesse, lest the wrath of that potentate should stifle reform in its cradle. This considerate expediency is expressly advised in our present book, chap. 3, sec. 3. And on the whole, we think the Committee should be approved in the use of "*may*," rather than "*shall*," holding the rod in sight only, when hasty infliction, constrained by mandatory bidding, would do more harm than good. The higher and highest tribunals, representing the whole Church, and concerned in the welfare of every part, are competent, of course, to remedy the abuse or languor of discretion, and send down the adequate imperative. These tribunals are called invariably by

the revisers "Judicatories," and some of us agree with the Reviewer, that "Church Courts" might well be interspersed for a name, by way of some variety, and to retain a designation equally as good and better; in preserving a familiar continuity with the digested precedents of the past, and an easier pronunciation by the people.

THE TRIAL OF A RULING ELDER.

Who has known a Session to try one of its own members without shifting the issue in some way to the Presbytery above it, however numerous its own bench? Undoubtedly, exceptions are more than examples under the present rule. When the Session is small, consisting of two, or three, or four elders, beside the pastor, can they try each other and raise "a Committee of Prosecution"? In the General Assembly of 1825 it was "*Resolved*, That *the Presbytery is the competent court to try* these two elders, and that it is their duty to cite the offending persons before them, and proceed to issue the case." Even the provision in chap. xiii. 7 of our form; for constraining an unacceptable elder to retire from acting, requires "the advice of Presbytery" to make it effectual. And this provision has been made a dead letter by the rotary system lately appended. The main argument over the Church for that revolution was the facility it would give the people to get rid of unfit and unfaithful elders, without the trouble of trying them. That is, the process of discipline over elders should pass from the bench to the ballot-box, from the governors to the governed, in order to escape the impracticability of trying an elder in the Session. Can there be conceived any other device to lift the betrayed and trodden ordinance of God to legitimate life than what the Committee propose? Our ingenious Reviewer only piles up the vexation when he recites the various methods, which have all failed to secure a beginning hitherto, except in the Presbytery. And, starting in fancy from the Session itself, he seems to exult in the perfection of three distinct appeals, eliminating all prejudice and passion at the ultimate decision. But has not our Church made up her mind, from painful experience, that three appeals are a nuisance, and the ultimate triumph generally a triplicate

scandal? Better by far have two only, beginning process at the Presbytery; and even one only, ending at the Synod, with finding the facts, at least, in trying an elder.

It is not by any means "innovation," as he calls it, to initiate the trial of an elder at the Presbytery. It was from the beginning. In Scotland, 1578, when the Second Book of Discipline was adopted, the Presbytery was called "Elderships," and all elders, teaching and ruling alike, were directly amenable to that tribunal. For centuries there was no trial of an elder in the Session of a particular kirk, unless where the Eldership included a number of kirks under its joint superintendence, making, virtually, our Presbytery above the Session. And there, ministers, doctors, and elders were all peers, watching, exhorting, and trying one another; holding themselves mutually responsible to each other, as well as to the whole kirk, for good behavior in office. "The whole discipline is in their hands." This model came over to the primitive Presbytery of America. We cannot find, in all the records, any account of an elder being subjected to discipline by the Session of a particular church. And more than this, through the whole of the original Synod, beginning in 1717, we have no instance of the kind: of Sessions attempting the censure of elders, unless directed expressly by the Synod itself, for their failure to attend its meetings.

From the proportion of ministers to elders throughout our communion, not more than one to three, and from a fair comparison of moral conduct and good behavior between ministers and elders, we might reasonably expect to hear that three elders for one minister would be tried in our judicatories. But what is the fact? Three times three ministers for one elder, putting it moderately and less than fact, have been on trial in our history; and how can this "anomaly" be accounted for, but in the futility of our present method; made more useless and next to impossible by the virtual consignment of the elder's behavior to the votes of the people? The "ample remedies" mentioned for this default of discipline over elders, so long, so universal, and now so hopeless, viz: "the power of visitation," "reference," "extreme cases," "complaint and appeal," are precisely the same that have been at hand for this dying discipline through six decades of

time, and they never had effect unless where the trial of elders was virtually or actually conducted by the Presbytery. Surely it would give new life and vast utility to that prerogative in the Presbytery of "visiting" particular churches in order to "redress the evils," etc., if the pastoral care, which is in this divine ordinance, should be extended directly over "15,000" elders by 177 Presbyteries, making less than an average of 85 to each. If every elder in the Church should have his turn under trial, what would be the "intolerable burthen" of the process compared with the intolerable badness of no discipline whatever? But we may safely say that not more than one in a hundred would be charged as an offender under the strictest watch of Presbytery. The Churches of the Assembly in Ireland have more elders in proportion to the ministers than we have, and yet, in their latest recension of discipline, they make, emphatically, elders as well as ministers, immediately subject to discipline originating in the Presbytery.

We can see nothing anomalous in placing directly under the same tribunal the minister, who "holds his membership in the Church through the Presbytery," and the elder, who "holds his membership through the local congregation"; for the membership itself is identical in both, as it consists in the enjoyment of the very same ordinances in a particular church. And why should we not make the amenability of both to the Presbytery the same, in directness of subjection? Because one comes in through a higher door, and the other through a lower, to the same communion table, are they to be prevented from both coming in at one door to the ordinance of discipline on the higher plane? The good brother proves too much for himself also when he demonstrates the difficulty of Presbyteries in Texas, the Rocky Mountains, etc., traversing the vast territories of their oversight to try the ruling elder of a particular church, for it would be quite as difficult for them to attend the trial of a minister, and for the elder to attend Presbytery at all, and still more difficult for him to carry up the three successive appeals from the Session, which our critic thinks the fairest bulwark of his rights that can be "imagined."

Neither can we see that a ruling elder who takes only his turn

for actual attendance on the meetings of Presbytery is not a "permanent member" of that judicatory, when the whole rotation of the Session, at this duty, like that of Levites serving in the temple, would not make the absence of any one as long as that of many a minister, who ordinarily or habitually fails to put in an appearance there. The elder is not there continually, because the constitution has ordered it to be so in authorizing the Session to elect their delegate. The minister is not continually there, because he has other engagements of his own choosing, or other affinities he likes better than Church courts. Alike, by office and comparison, the ruling elder is a permanent Presbyter. It is also evident that he is under immediate authority of discipline by the Presbytery when he is enrolled at any particular meeting; to be dealt with summarily, without process at all, for any contempt of the court, or disobedience to its orders, and may be censured by Presbytery for not attending faithfully to his duty when commissioned to represent it in the General Assembly. If, then, he is now necessarily subject to trial by the Presbytery, without process, why should he not be so subject with process?

We have dwelt on this subject perhaps too long for the little space allowed to this writing, because of its great importance to the best welfare of our Church. The intrinsic dignity of the ruling elder's office being a peer of the teaching elder in all the power and right of jurisdiction; the practical loss of discipline as a distinct ordinance of God over fifteen thousand judges of the Presbyterian Church, in the failure of the present method, without the interposition of Presbytery at any rate, to direct even the beginning of process; the rule of our book, as it now is, being overlaid with at least a score of exceptions for one example of its application; and to get rid of that one example, so delicate and difficult in its operation, a patch being put on our constitution warranting the people to take discipline over elders into their own hands, and hide the long ladder of "three appeals" under a threshing-floor of empirical elections—for these reasons, and others which we have not room enough to mention, we do earnestly hope that this alteration proposed by the revisers will be adopted.

"Is that the mind of the Church?" We answer, yes and no; for this mind appears on a see-saw. Alternate Assemblies exhibit a perilous inconstancy on this important subject, and the Committee are doing their best, without partisan bias, to stop the baleful vicissitude by greater precision of the organic law. We propose no radical change, but only to simplify procedure, and make single what has been double too long. A dual process never fails to embarrass adjudication. The case referred to by the learned Reviewer, that of 1834, is good for illustration: "appeal and complaint of the Second Presbytery" of Philadelphia against their Synod; in trying which, the Assembly joined the two together as one case. We can yet see upon the inadequate record itself, a scene of confusion which no wise Assembly, we think, would follow as a precedent. After all their pains to start the two wheels together, they had to separate the barrows at length, before a vote was taken, and run "complaint" to the end first, and then go back for "appeal," to bring it up to decision. And the decision itself reveals a troubled medley of opinions. What purported to be one and the same case came out, 118 yeas and 57 nays, for sustaining Complaint, and 90 yeas and 81 nays for sustaining Appeal—showing by the majority themselves, how awkward the sham of identity must have been, making it a fiction for the sake of convenience. We need not add the unhappy sequel of that decision, and the vigorous protest against it for trampling a constitutional right of the Synod by 39 of the best men in that Assembly.

Dr. Humphrey is kind and candid in pointing to the reader a precedent in the Old School Assembly of 1839, the case of Metcalf, with which the revisers begin their disentanglement. That decision affirms the principle that appeal should be limited to judicial cases. We accept it, and only add the converse, that judicial cases should be limited to appeal. The revisers think that unity and simplicity in the management of judicial causes will greatly improve the administration of justice, in singleness of eye for the court, and definite guidance for all parties in litigation. As the old book has it now in Complaint, by any of the minority, "or by any other per-

son or persons," against any sort of decision, judicial or not judicial, a dozen of issues may go up, wreathing an appeal and tangling each other, cumbering justice, baffling the patience and acuteness of any tribunal, and coming to no result which will satisfy any of the litigants, in or out of the Church.

We would have objectors consider well what the Committee have pondered anxiously and long, that "Review and Control," in making up a column, which rises with appeal, simultaneously, and is composed of the best evidence in all courts, civil and sacred, the documentary evidence of records, secures for appellants a fortress of safety and right, better than the best budget of complaints that any constitution could provide. If an erring judicatory below make no record of a wrong proceeding, or make but a partial one, and imperfect recital of facts and reasons for their judgment, in order to hide the right from a vigilance above them, that vigilance may be "well advised" "by any other person or persons," any "manly man" of our whole communion who scents the iniquity from afar, that "so they wrap it up" below, and will be moved to enter a stigma on that book of minutes, and in their own record concerning it. Not only so, but summon that inferior judicatory to answer at their bar alike for the injustice and the fraud of corrupting records. And it is all the better that Review and Control, just there, be forbidden to reverse the unrighteous judgment below them. For, the infamy of a tampered record "reacheth unto heaven." If the appeal go up to higher tribunals, the story of corruption goes up with renewed testimony of Review at every plane; and wider opportunities over the whole Church, to make the supreme tribunal "well advised" of the rottenness which underlies the inception, and the subterfuges with which intervening courts may have been deceived. Much more certainly will principle and right be vindicated at length by sustaining an appeal from the light which crowns this twin-tower of Review and Control at the summit than from a score of lanterns carried up so often with cross-purposes of complainants.

We do not overlook the suppositions of hardship from barring complaint in judicial cases, put so chimerically by the gifted Reviewer; nor turn a deaf ear to narratives we have heard of unrighteous dealing, alike with records and com-

plaints, by the malversation practiced under the present book. But we try to have a better book; and these are all extreme cases, like the unanimous acquittal of a drunken minister by his Presbytery, without the possibility of correction, except by complaint from a person or persons without. We cannot make a book good, better, or best, for synagogues of Satan, which no device of old book or new could govern. We are not appointed to revise foundations in quicksand. "If the foundations be destroyed, what can the righteous do?" If any such enormity has occurred under the remedies of the old book, that is only a strong reason for this revisal. And if a court of record will make no record which a higher one can search, and understand, and verify beyond dispute, let it be exscinded from our system. But other cases less extreme, and more possible, though rare, and never heard of in our traditions, must be contemplated; such as an appellant who has "the most precious doctrines," "fundamental principles," "honor of Christ," "moral purity of his people," "everything at stake in this one man," and he is insufficient to prosecute his appeal, or may die on the way. But how does "complaint" avail to hold him up, and help him on with his cause, when the contingencies of his failure cannot be foreseen, "before the rising of the judicatory or within ten days thereafter," when the notice of complaint must be given? Would not *the record* of his cause be far better, speaking for him though he were dead, and not lost, or suffering for want of punctuality, courage, etc., in the man himself? Will not that go up when appeal is lapsing, and complaint is behind the time?

Besides, another feature of the revision which is also criticised adversely, comes in here with the utmost advantage; allowing the whole range of our communion to the appellant, in selecting counsel. As at present restricted, he must choose a minister or elder of the judicatory before which he appears; and at every subsequent appeal he must get a new counsel of the same sort, or manage to get his first counsellor elected to the Synod or the Assembly, as the case may be, for the sole purpose of managing his cause. There is in this restriction a serious impediment, alike to the client and the court itself. The party may not find any one able and willing to undertake for him; and if he does, the judicatory loses one of its judges

in deliberation and voting, for the counsel may not vote. This awkward situation is often exemplified in our process. We speak what we know. A minister convicted of heresy goes to the Synod with appeal, and secures a distinguished jurist to manage his cause. Being an elder, this counsel is elected by the Session, at his own request, that he may be enrolled as a member of Synod, to have a constitutional right to appear as counsel for that appellant. As far as known, he took no interest in any business of the Church, except that particular business of the appellant; and in the ultimate decision he could not vote at all. Of course he could not represent his Session in that momentous action for the truth; as another elder could, who was hindered from going by this appointment; and thus both Session and Synod lost a judge by this unreasonable rule as it now exists. How much better for the appellant, for the judicatory, for sure and adequate justice, must be the enlargement which this revision offers; help from any communicant, without the loss of any judge, or a single vote; which, in a small judicatory, may be detrimental to the right, and in the largest, may be a constraint on privilege to the most valuable member. Nor is it necessary for the chosen counsel to be a lawyer. But when he is of that honorable profession, it is well, and often better; in dealing with the clear-cut precision of appeal and record, as the revisers propose it. Taking into view that the vast majority of our ecclesiastical judges, all the elders, and many of the ministers, are, in fact, more familiar with the parlance of civil courts than directions in our Book of Discipline, there would be no more possibility of a Christian lawyer confusing and sophisticating the bench of a Christian judicatory than beguiling common sense in the unchallenged panel of a jury box by chicane of pleading.

But again we are called to look at the "obvious incongruity" of allowing members of the lower judicatory to sit, deliberate, and vote in the higher judicatory on appeal, whilst expressly refusing this privilege on complaint. We feel surprise at such objection from such a source. The revisers know of no sound jurisprudence, all the world over, which will make the court itself a party when there is an issue between two original parties going up to any court of appellate jurisdiction. And our good old book points to the essence of

appeal, in Presbyterianism, when it says that "a greater number of counsellors" are called to sanction or correct the decision of a smaller number. Suppose the decision be made by a Presbytery larger than all the other Presbyteries of a Synod together, shall we exclude the Presbytery appealed from in the council of a minority set over them in judgment, instead of combining the minority with the original judges in seeking more light and renewed deliberation? But, setting aside the old book for its inconsistency in this matter, look at "Reference" as one of the four ways in which a cause is carried up. All concede, old book and new, that in References "the members of the inferior judicatory making it, retain all the privileges of deliberating and voting." What conceivable difference can be stated between reference and appeal in this respect? In case of Reference it may be, in part, "for mere advice." The superior judicatory considers, perhaps, the whole case, and all its principles, in order to give the proper "advice." Then the case will be formally adjudicated below, and come up again by appeal to the same advising tribunal who "sit, deliberate, and vote" as before, and shall we now exclude the inferior from the bench of the superior judicatory, where they had previously united to give the advice which determined the trial below? Surely, reference and appeal are inseparable in blending a lower court with a higher, as we ascend with a cause, until the whole Church is called to "sit in" judgment on the acts of a part." With the other two ways of taking matters to a higher judicatory, review and complaint, it is entirely different; for in both the lower judicatory is necessarily a party, and must not be allowed to "sit, deliberate, and vote" on their own behavior. In "Review and Control" the revision supplies what was left defective in our present book, and had to be interjected by decisions of the General Assembly.—See No. 79. As the records of a court are the court itself, for trial by "Review and Control," so the conduct of a court in matters not judicial by complaint, must, in the nature of the case, make the judicatory itself a party in defence. Thus, whether the formal censure of a church court be obsolete or not, there is rectitude in the difference the revisers have made between Reference and Appeal on the one hand, and Review and Complaint upon the other.

EXCLUSION OF JUDGES.

We confess it is hard to understand what is demanded under this head. If, as it seems, he concedes there must be an exclusion of all "challenge" by parties in church litigation, whose judges are not jurymen, but rulers, appointed by the Head of the Church, and whom we are commanded to "obey," why are we called to make *compensation* to parties for the want of this right to challenge; by taking it for granted that divinely appointed judges, in the first instance, must be set aside in the second by any original party who appeals with his lost cause, and calls his judges "partial"? Is that fair in God's house and Christ's kingdom—"the old barons of England" to the contrary, notwithstanding? We must have something credited to the assemblies of fallible men, who have the presence of a divine headship, and the inhabitation of the Holy Ghost pledged to every "two or three" met together in His name for the exercise of authority and vindication of truth and right. And we are unable to comprehend how the ultimate decision, the "last resort, beyond which there is no appeal," can be "the whole Church," sitting in judgment on "the acts of a part," if integral benches of her judiciary must be excluded, at every step of the gradation, in order to indemnify an obstinate appellant for the privation of "challenge," with which he would unseat the judges who decide against him. See Book of Discipline, 7, 1. If the whole must include every part, the old book is inconsistent with itself in excluding, on appeal, "members of judicatories appealed from"; and we prefer to hold an axiom so fundamental in the consistency of its application.

We have no room in the space allowed us here to discuss "THE JUDICIAL COMMISSION," which the Committee have with care and pains formulated at the bidding of the General Assembly, that this high court might be saved the "awkward" necessity of extemporizing the like every year. We look upon it as a necessary evil, growing out of the fact that the Assembly is too large in number to deliberate calmly and patiently on any case of discipline. This being irremediable, after many devices of reduction have been tried, we must do something to save an ordinance of God from being hurried into a corner,

and draggled there perhaps by two competing forces, a Committee and a Commission. The overture sent down by the last Assembly, and so hastily and unanimously approved by the Presbytery of New York, making the decisions of the Synod final in all cases "which do not affect the doctrine or constitution of the Church," is good; a similar provision, offered by this writer, was unanimously adopted by the Old School Committee of Revision in 1862. We were then expecting to relieve a General Assembly of not more than 300 ministers and elders. But now that we seek to unload a body twice as large, it becomes a serious question, whether this overture of Dr. Patterson be at all an adequate relief. The Constitution of the Church is broad as the Confession, Catechisms, Form of Government, Book of Discipline, and Directory for Worship. Tell us, if any one can, where and when a case of appeal, reference, or complaint ever went up to the Assembly yet, without involving some doctrine, principle, or bearing of "the Constitution." We very much fear that all the subtleties on earth will not save our mammoth, yet venerated and beloved Assembly from intricate confusion, without a wisely constructed Judicial Commission, such as our fathers had for quite 200 years.

"CHANGES—HOW BEST MADE."

We regret that Dr. Humphrey does not go back far enough to see the working of his plan by amendment in piecemeal—"slow, careful, and limited to necessary changes"—how patch after patch might be put on our Constitution in this way, till the whole cloth of its original symmetry may fall into rags. The very first attempt of the kind, about the beginning of the century, the change of a single word, "standing" to "constitutional," by an overture from the Assembly, and approbation of a bare majority of the Presbyterians, blanketed the vital demise in which we inherit a General Assembly, from the Synod of New York and Philadelphia.

"*Resolved*, That the true intent and meaning of the above ratification by the Synod is, that the Form of Government and Discipline, and the Confession of Faith, as now ratified, are to continue to be our Constitution and Confession of Faith, and practice unalterable, unless two-thirds of the Presbyteries under the care of the General Assembly shall propose alterations or amendments, and such alterations or amendments shall be agreed to and enacted by the General Assembly."

Here is the organic law of "changes—how best made" according to the pact of our fathers, for the stability of our Constitution, overborne and hidden from our sight for generations, by the process of changing a word at a time, without taking into view the whole bearing of the change, in such revision as the present, contemplated by the parent Synod. Compare this old resolution as found in the last acts of that body, 1788, Records, p. 546, with our "barrier act," as it now stands, Form of Government, 12, 6, and see the amazing departure, which threatens also the Confession and Catechisms at this moment with facility of change.

But for the fact that the two whole books, Government and Discipline, have been put into our hands for solution together, this great question, which must now be decided, whether faith as well as form may be altered in piecemeal, would not have been met, perhaps ever, in the passive acquiescence with which the original rule for change has been buried and forgotten. The mode of making changes, however, will be submitted anew in our report on the Form of Government. And if that method be approved, it will conserve our practice, precedents, and digest, as well as creed itself, more effectually than sentiment has done it hitherto; distinguishing also the Confession and Catechisms with special precaution and obstruction of change.

ALEXR. T. MCGILL.