tithing of anise and cummin of equal importance with justice and mercy, are sure in the end to cling to the anise, and let the mercy go.

As so many of our brethren have taken exception to the remarks in our last number, we deem this extended exposition of our views on the matter of subscription, due to them no less than to ourselves. We are confident there is no real disagreement between us on this subject. It is a misunderstanding, as we hope and believe, due to the absence of all explanation or limitation of a passing remark, which, although true in itself, and true in the sense intended, was capable of an application wide of the truth.

ART. VI.—*The Revised Book of Discipline.*

THE General Assembly of 1857 appointed Drs. Thornwell, James Hoge, R. J. Breckinridge, E. P. Swift, A. T. McGill, and Charles Hodge, with Judges Sharswood, Allen, and Leavitt, a Committee to revise the Book of Discipline. That Committee met at the call of the chairman in Philadelphia, on the first Thursday of August last. All the members were present, except Messrs. Leavitt and Allen, who, to the great regret of their associates, were unable to attend. The Committee in a good degree represented the different phases of thought and theory which prevail in our church. Their cordial agreement in any doubtful point may, therefore, afford ground to anticipate a like agreement in the church. The plan of conducting the revision, proposed by the chairman and adopted by the Committee, was to read over the present Book, chapter by chapter, and section by section, and discuss each point until an agreement was arrived at. In the great majority of cases the decisions were unanimous. In some the form adopted was a compromise; and in a few the majority had to decide. This was necessarily a slow process. It took a good while for the Committee to understand each other; still more to produce

mutual conviction. Fundamental principles, underlying these questions of detail, were constantly brought into view, and it was in reference to these principles the greatest diversity of opinion and difficulty of adjustment were experienced. "We may be allowed to say, that we never passed a pleasanter week under similar circumstances. Courtesy, mutual deference, kind feeling, sincere desire to meet each other's views, and to arrive at a conclusion satisfactory to all parties, marked the discussion from beginning to end. "We believe the Committee separated with increased respect, confidence, and fraternal affection, so that the meeting was at least edifying to themselves, even should their labours prove unprofitable to the church. The severest part of the work fell to the lot of the chairman, the Rev. Dr. Thornwell. He had not only to preside, but to take the initiative, to keep the records, and to reduce to writing the amendments agreed upon. This was a laborious task, and we are sure that every member of the Committee feels under no small obligation to him, for the courtesy, skill, and diligence, with which he discharged the irksome duties of his position. The Committee have a common responsibility for the report adopted. All agreed to it. There was no formal dissent, or minority report as to any point. This, however, does not render it improper for any member to have his preferences. A man may vote against the adoption "of his own recommendations, if he has new or clearer light. We propose in the following pages to indicate, at least, the more important changes proposed, and, as far as we understand them, the reasons for them. In so doing, however, we speak only for ourselves; we do not pretend to speak for the Committee.

The Committee proceeded on the assumption that the Assembly intended that they should revise the old Book and not make a now one. They therefore made as few alterations as possible, and endeavoured to retain, as far as consistent with higher objects, the language with which our church courts have become familiar. The objects aimed at were, first, condensation. The old Book contains a good many sections which are merely hortatory, and in many instances rules are repeated, or principles amplified, where the whole that is important appeared to admit of being stated in better order, and in fewer words.

Secondly, perspicuity of arrangement, and precision of statement. Thirdly, where experience had shown that the modes prescribed in the present book, are cumbrous or unintelligible, simpler and plainer rules have been suggested. Fourthly, in a few cases where the principles hitherto recognized seemed at variance with justice or expediency, not only new modes of proceeding, but new principles have been introduced. These changes are not novelties, so far as the suggestion of them is concerned. The appointment of the Committee is a proof that serious objections were felt to the present Book, and numerous suggestions as to the alterations which are desirable, have for years, under one form or another, been presented to the church. We presume, therefore, that little surprise will be felt at the changes proposed by the Committee.

CHAPTER I.

This chapter has been reduced from seven sections to three, and from forty-three lines, to twenty-three. The design of the chapter is to state, first, The nature of discipline; secondly, Its grounds; and thirdly, Its subjects. The word *discipline* is used in different senses. It sometimes has the general sense of training, whether of the mind, heart, or life. In this sense, it includes all instructions, exhortations, admonitions, and directions. Sometimes it means a mode of government, as when we speak of the Methodist discipline. Sometimes the word is taken in the restricted sense of punishment; and a Book of Discipline, when distinguished, as it is with us, from " the Form of Government," is a book which gives direction for the administration of discipline in the restricted sense of the term. It concerns, not teaching, but the administration of justice, and exercise of authority. It is therefore defined to be, " the exercise of that authority, and the application of that system of laws which the Lord Jesus Christ hath appointed in his church. Its ends are the rebuke of offences, the removal of scandal, the vindication of the honour of Christ, the promotion of the purity and general edification of the church, and the spiritual good of offenders themselves." It appears from this, that discipline, as here used, includes the ideas of oversight and punishment.

The second point which this chapter is designed to settle, is

the grounds of discipline, or the occasions which call for its exercise. What are these things which the church is authorized and bound to visit with ecclesiastical censures? In other words, what is an offence, in the ecclesiastical sense of that word? The answer given to this question in the second section of this chapter is, 1. That an offence is something "in the faith or practice of a professed believer contrary to the word of God." An offence, therefore, is something contrary to the word of God. This is a very important provision; no man and no church has the right to alter the terms of Christian communion; or to prescribe any new conditions on which we may maintain our church and standing unquestioned. We may think many things—drinking wine, for example—to be wrong, because inexpedient, but unless drinking wine is forbidden in the word of God, it cannot be made an ecclesiastical offence, or ground of discipline. We may reason with a man, or exhort him, or admonish him, who, as we think, is acting in a way which injures the cause of Christ; but unless the thing done be forbidden in the word of God, we have no right to arraign him before a church court, or to interfere with his full enjoyment of church privileges. The reason of this is plain. His acting in a way which we regard as inexpedient, may be compatible with his being a true Christian. His views of expediency may differ from ours. His views may be right, and ours wrong. He has as good a right to his opinion as we have to ours. Expediency can never be made the ground of determining the terms of church communion; because expediency depends on circumstances, and is a matter on which men may honestly differ. Uniformity and security depend on our adhering to the rule, that nothing shall be regarded as an offence but what the word of God forbids. If we abandon this principle, we shall be at the mercy of every new theory and every form of fanaticism which for the time gains ascendency. Matters of dress, modes of living, meats and drinks, fasts and festivals, and a thousand other things about which God has left us free, will be made terms of communion, or grounds of church discipline.

2. Among us, as Presbyterians, nothing can be regarded as an offence which is not contrary to the Westminster Confession

of Faith or Catechisms. No man has a right to interpret the Scriptures as a rule of discipline for others than himself. He may think that the Scriptures condemn certain forms of opinion, or certain modes of conduct, but he has no right to make his private judgment the rule of faith and practice to others. We have agreed among ourselves to take the Westminster Confession of Faith and Catechisms as a faithful exposition of the system of doctrines and rule of duty taught in the Bible, and by that recognized exposition, and not by our own private judgment, we are bound to act in the administration of discipline. One man may think that the Bible forbids slave-holding, or the use of intoxicating liquors. Another, with equal honesty, may regard these opinions as not only contrary to Scripture, but subversive of their authority, by putting another rule in their place. The abolitionist, or the ultra-temperance man, cannot make his opinions the rule of discipline; nor can his opponent. We have agreed to abide by our own standards in the administration of discipline. Outside of that rule, so far as our church standing is concerned, we may think and act as we please. Every man, therefore, in joining the Presbyterian church, knows beforehand what he has to expect, and by what standard of faith and practice he is to be judged.

3. But although nothing is an offence which is not contrary to the Scriptures, it does not follow that everything contrary to the Scriptures is an offence. The words *offence* and *discipline* are relative terms. An offence is anything which is a proper ground of discipline. If, therefore, you take the word discipline in its wide sense, every sin is an offence; but in the restricted meaning of the word discipline, nothing is an offence, which is not incompatible with the terms of Christian or ministerial communion as laid down in our standards. An offence bears to ecclesiastical law, the same relation that a crime does to the civil law. It is something for which a man may be legally prosecuted, and if convicted, punished. Hence in our Book, both in its present, and in its revised form, it is said nothing is to be regarded as an offence "which does not involve those evils which discipline is intended to prevent." A church member may be admonished, or rebuked on account of his want of proper zeal, or for lukewarmness, or for his covetous-

ness, pride, despondency, and the like, but he cannot, on these grounds, be arraigned before a church court, unless they are of such a character as to prove that he is not a Christian. These, in their ordinary form, are not the evils which discipline, in the restricted sense of the word, is designed to prevent. The end of discipline is to secure conformity on the part of members and ministers to the terms of Christian and ministerial communion. And as our church does not pretend to demand perfection of Christian character and conduct as a condition of church-fellowship, nor perfect knowledge or entire freedom from error, as a condition for ministerial fellowship, so every shortcoming from the standard of perfection in either case, is not to be regarded as an offence. Nothing is an offence, but what, if persisted in, would justify either suspension from the privileges of the church, or from the office of the ministry. The importance of this distinction between a sin and an offence, will be at once perceived. No minister or church member would ever be safe from prosecution, and no judicatory could ever know whether they were called upon to prosecute or not, if every sin were an offence, or a just ground of judicial process. Minor evils are to be corrected by admonition, instruction, and the ministry of the word. It is only these evils in the faith or practice of a church member which bring disgrace or scandal on the church, as tolerating what the Bible declares to be incompatible with the Christian character, which can be a ground of process. Such is not only the theory but the practice of the church. We never hear of any professing Christian being arraigned and put on trial, unless for some immorality, or some such denial of the truth, or such neglect of his duty as a professor of the religion of the Lord Jesus, as affords good ground for calling the sanctity of that profession into question.

Thirdly. Such being the nature and grounds of discipline, who are its subjects? To this question the natural answer is, church members. But who are church members ? Some say only communicants. This answer is founded on the assumption that the church is, as it is defined by Independents, a body of believers united by covenant for the purpose of worship and mutual watch and care. Those only, therefore, who have entered into this covenant are members of the church,

Charles Hodge, "The Revised Book of Discipline," *BRPR* 30.4 (Oct. 1858): 692-721.

and consequently the proper subjects of discipline. Others say that the visible church consists of all those who profess the true religion together with their children. Therefore, all baptized children, as well as those who make a personal profession of religion, are the subjects of discipline.

Others again say, that although baptized children, so long as they are, in the church sense of the term, minors, are members of the church, and therefore under its watch and care, yet when they become adults, unless they personally profess faith in Christ, they forfeit their church standing, and are not the subjects of discipline in the strict sense of that word.

According to this last mentioned theory, the visible church consists of those only on whose conversion the church has pronounced in charity a favourable judgment, in receiving them to the Lord's table, together with their infant children. According to the other view, we are bound to regard and treat as members of the church all baptized persons, who have not renounced their baptismal vows, are free from scandal, and acknowledge themselves to be amenable to the authority of the church.

In our present Book, the question, Who are the subjects of discipline, is answered in these words: "All baptized persons are members of the church, are under its care, and subject to its government and discipline; and when they have arrived at the years of discretion, they are bound to perform all the duties of church members." This is founded on the last of the views of the nature of the visible church mentioned above. In the revised Book the answer proposed is: "All baptized persons, being members of the church, are under its government and training, and when they have arrived at years of discretion, they are bound to perform all the duties of members. Only those, however, who have made a profession of faith in Christ, are proper subjects of judicial prosecution." This answer does not seem to differ in principle from the old one. It admits that, all baptized persons are members of the church, and, therefore, subject to its government and training. But it makes a distinction between baptized and professing members; declaring the latter alone to be the subject of judicial process. This section bears on its face evidence of being a compromise,

and, as is apt to be the case with compromises, it does not hang well together. We voted for it, however, and share the responsibility of recommending its adoption, although we prefer the old form. The fact that we never knew of any baptized person, not a communicant, being made the subject of judicial process, reconciled us to the adoption of the rule as it is reported. So long as it is admitted that all baptized persons are under the government of the church, the principle involved in the case is saved.

CHAPTER II.

The object of this chapter is to classify offences. In the present Book they are distinguished as private and public; here the discrimination is carried further. They are distinguished, 1. As personal, when committed against one or more individuals; such as acts of defamation, or defrauding. 2. As general, when they have no such relation to individuals, as drunkenness. 3. As private, when known only to a few persons. 4. Public, when they are notorious. These distinctions are important, as they become the grounds of different modes of proceeding.

CHAPTER III.

In the present Book, chapter ii. and iii. are devoted, the one to private, the other to public offences. In the revised Book, the different classes of offences having been briefly stated in the second chapter, the third is devoted to determining the parties in cases of process, and specifying their responsibilities and duties.

1. In the case of a personal offence, the injured party is bound to take the steps prescribed in Matt, xviii. 15, 16, before bringing the matter into court. In the case of private offences the same course is to be pursued.

2. General offences may be brought before a church court, either by an accuser, or by common fame. An effort was made to have this latter provision stricken out. It was urged that in no other church, and never in any state court, is a man arraigned unless charged with a specific offence, by some responsible accuser. He must be presented by some person or

persons who will undertake to establish the charge. The Committee, however, thought that such is the indisposition on the part of even good men to assume the invidious office of accuser, that many offences, bringing scandal on the church, would be allowed to pass without censure, if our courts were required to wait until a prosecutor should voluntarily present himself.

3. Charges are not to be taken up on the ground of common fame, if there is hope, in any other way, of removing scandal and of bringing the party concerned to repentance.

4. Defines what common fame is. It is not any and every vague rumour. It must be specific, serious, notorious, and generally believed.

5. A person against whom an evil report is circulating, may demand a judicial investigation, should the church-court not see fit of its own motion to institute process.

6. In cases of prosecution on the ground of common fame, the judicatory *may* appoint some one to represent common fame, and to conduct the prosecution. Such prosecutor must be a member of the church, and subject to the same court with the accused. The appointment of a prosecutor is thus left optional with the court. It seems to us that it should be obligatory wherever it can be done; because in case of appeal, some one must appear before the higher court to sustain the charge.

7. The only parties to a trial are the accuser and the accused, and in appellate courts, they appear as appellant and appellee. This is a very important section. It simplifies greatly the whole process of trial. The lower court does not appear before the higher, in cases of appeal, as an accused party called upon to defend its decision. If a man is charged before the session with any offence, the session decides in favour of the accuser or the accused. If either party be dissatisfied, he appeals to the Presbytery, and they, *i.e*. the accuser and the accused, plead their cause there, and the Presbytery decides. If still not satisfied, they plead it before the Synod, and then before the Assembly. The parties are the same from first to last. We are done, it is to be hoped, for ever with the puzzle about "original parties." This matter, however, will be brought up in a subsequent chapter.

8. The eighth section directs that great caution should be exercised in entertaining charges presented by malignant, disreputable, or interested parties.

CHAPTER IV.

This chapter relates to actual process. The corresponding chapter of the present Book contains twenty-three sections, "which are here reduced to fifteen. This chapter directs, 1. "What is to be done at the first meeting of the judicatory, which has determined to institute process against an accused person. The trial may proceed at once by consent of parties. If either party is not prepared, copies of the charges shall be given to the accused, together "with the list of the witnesses *then known*, (not, as before, all the witnesses,) and citations are to be issued to all concerned, to appear at the next meeting of the judicatory to have the case heard and decided. Ten days are to intervene between the date of the citation and the day of trial. At the second meeting the accused is to plead in writing to the charges; and if he fail to do so, at the third meeting they shall be taken as confessed, provided he has been duly cited. This seems to be a new provision. It does not contemplate a case of contumacy, or refusing to answer a citation, for which a different provision is made in a subsequent section. We are not sure that we understand this clause, but presume the intention was to provide for the case in which an accused party should refuse or fail, when arraigned, to answer the charges against him. If he fail to plead not guilty, it is to be assumed that he acknowledges himself guilty. In which case there is no need of a trial. In the case of contumacy, the trial is to proceed.

2. Citations to be issued by the moderator or clerk in the name of the court.

3. Charges to be specific as to time and place, so as to give the accused the opportunity to prove an *alibi.*

4. If the accused refuse to appear after a second citation and due warning, he is to be suspended from the communion of the church, and the case proceeded with as though he were present. The court may appoint some one to represent the accused, which representative, if a member of the court, shall

not sit in judgment on the case. The representative of the accused party need not be a member of the court.

5. The time between the second citation and the trial is left to the discretion of the court; but should be sufficient to allow of the citation being served and answered.

6. Judicatories to be careful that their citations are duly served.

7. Trials to be fair; the witnesses to be examined in the presence of the accused, and he to have the privilege of cross-examination. This, of course, supposes that he has answered the citation, and put himself on trial.

8. If found guilty the accused may be admonished, rebuked, or suspended from church privileges.

9. The judgment to be recorded; parties to be allowed, at their own expense, copies of the whole proceedings; if the case be carried up to a higher court, an authenticated copy of all the proceedings is to be sent up with it.

10. The publication of the judgment left to the discretion of the judicatory.

11. In extreme cases excommunication may be resorted to.

12. A church session may debar an accused person access to the Lord's table, until his case is decided. If an accused person evades citation, he may be suspended from church privileges.

13. No professional counsel shall appear and plead before a church court. But an accused person may be represented by any communicating member of the church, who is subject to the court before which he appears. A man cannot, however, be a judge in a case in which he is an advocate.

14. Questions of order arising during a trial, are to be decided by the moderator; if an appeal be taken from his decision, the appeal is to be decided without debate. His decisions are to be recorded, if either party demand it.

15. The record in judicial cases shall contain the charges, the specifications, the sentence of the court, the testimony, and all the circumstances which influenced the judgment. And nothing not contained in the record shall be taken into consideration, in reviewing the proceedings in a higher court.

CHAPTER V.

This chapter relates to process against a minister. As the general principles which regulate the trial of a minister are the same with those prescribed for the conduct of the trial of a private member of the church, its contents are therefore substantially the same as those of chapter iv. Very little change is proposed in the revised Book. The first four sections are the same in both Books. They prescribe great caution in entertaining charges against a minister; require that he must be tried by the Presbytery to which he belongs; if the offence charged was committed without the bounds of that Presbytery, the testimony may be taken by the Presbytery within whose bounds the offence is said to have been committed. If the offence is known only to a distant Presbytery, that body is to send notice to the Presbytery to which the offender belongs, who are then to proceed as above directed. Section 5 requires that process shall not be commenced against a minister (unless the scandal be notorious,) except charges are presented by one or more persons. To this is added in the new Book, "Nevertheless, each church court has the inherent power, to demand and receive satisfactory explanations from its members concorning any matters of evil report."

6. Section sixth is unchanged. It directs that if any one knows a minister to be guilty of a private fault, he is to warn him in private; and if the fault be persisted in, he is to advise with some other member of the Presbytery.

7. In section seventh, instead of saying that the accuser shall be censured should he fail to establish the charges made against a minister, it is proposed to say, "if he fail to show probable cause of the charges."

8. At the first meeting, unless by consent of parties, nothing shall be done but read the charges, issue citations, &c., as directed in the case of a trial before a session.

9. This section corresponds with the tenth of the present book, the ninth being omitted. It is considerably modified in the revised form. The section as proposed, directs that when the trial is entered upon, the charges shall be read to the accused, and he be called to say whether he is guilty or not.

If he confess, the Presbytery shall deal with him according to their discretion; if he plead and take issue, the trial shall proceed. If found guilty, the Presbytery shall award what ecclesiastical censure they see fit.

10. If a minister, accused of atrocious crimes, refuse to obey a second citation, he shall be suspended; if he refuse to answer a third citation, he shall be deposed, and suspended or excommunicated from the church.

11. Relates to heresy and schism, and is the same as section thirteen of the present book.

12. Is the same as section fifteen of the present form, and directs that if the offence charged is not serious, the Presbytery shall endeavour to correct the evil.

13. If a minister be deposed for scandalous conduct, he is not to be restored until public sentiment demands his restoration.

14. When a minister is deposed, his congregation shall be declared vacant; if he is suspended, it is discretionary with the Presbytery so to declare it or not.

CHAPTER VI.

This is a new chapter, and provides for cases in which the necessity of a trial is precluded. Section 1. directs that if the offence be committed in open court, or if the accused party confess, the judicatory may pass judgment without process. This seems to be a dictate of common sense. The end of a trial is to ascertain the facts of the case; if these be confessed, or if they are patent to all concerned, there can be no use in a trial. We presume our courts have felt at liberty to act on this principle, when occasion calls for it. We have known it to be done in several instances. It is well, however, to have it distinctly recognized in our book of discipline. 2. Should an appeal be taken from such summary judgment, some communicating member of the church shall be appointed, subject to the jurisdiction of the same court with the appellant, to defend the sentence, and shall be the appellee in the case. 3. If a communicating member of the church shall declare that he is persuaded, he has no right to come to the

Lord's table, and desire to withdraw from the communion of the church, his name shall be struck from the roll, provided he has committed no offence. This provision we trust will find general favour. No man should be coerced to violate his conscience; nor should he be visited with ecclesiastical censure simply for believing that he is not prepared to come to the Lord's table. The church is so far a voluntary society, that no one can be either made to join it, or required to remain in it, against his will. The principle involved in this rule is constantly acted on. Hundreds of cases are occurring from year to year, of members silently withdrawing from the communion of the church. They move away, are soon lost sight of, and their names are dropped from the rolls.

CHAPTER VII.

Relates to witnesses. The first three sections concern their competency and credibility. According to the revised Book, nothing is to be considered a sufficient ground for the exclusion of a witness as incompetent, except the denial of the existence of God, or of a future state of reward and punishment. In the present Book, several other grounds are admitted, such as near relationship to one or other of the parties, want of any of the senses essential to the knowledge of the fact to which he is called to testify, weakness of understanding, infamy of character, being under church censure for falsehood, and "various other considerations which cannot be specified in detail." All these specifications, and others of a like kind, are transferred, in the new form, to the head of credibility. They serve properly to affect more or less the weight due to a man's testimony; but do not render him incompetent to testify. For the same reason, the parties themselves are to be admitted as witnesses. This is a principle recently introduced into the jurisprudence of England, and of several of the States in this country. It seems to be eminently wise. No one can be so competent to testify to the facts in a contested matter, as those who were parties to the transaction. That they are personally interested may affect their credibility, but affords no sufficient reason why they should not be allowed to tell their own story.

Charles Hodge, "The Revised Book of Discipline," *BRPR* 30.4 (Oct. 1858): 692-721.

4. A husband or wife shall not be compelled to bear testimony against each other, in any judicatory. This rule is not founded on the assumption that the husband is not a competent witness against the wife, or the wife against the husband, but upon a regard to the sacredness of the conjugal relation. It is better that a guilty party should escape conviction, than that the harmony of the marriage relation should be endangered. Some think the rule should be carried further, so as not to allow a husband or wife to testify the one against the other. To this, however, it may be objected, that in some cases an injured wife would have no protection, if not allowed to testify to the violence or ill-conduct of her husband.

5. The testimony of more than one witness is necessary to establish any charge, unless similar acts can be proved against the accused, or unless confirmatory circumstances are established. 6. No witness to be present while others are examined, unless he has already given his testimony. 7. This section relates to the order in which the examination is to be conducted, and is unchanged. 8. Prescribes the form of the oath to be administered to witnesses. The following provision is added: "If, however, at any time, a witness shall present himself before a judicatory, who, for conscientious reasons, prefers to swear or affirm in any other manner, he shall be allowed to do so." 9. Questions to witnesses to be recorded if either party demand it. 10 and 11. Testimony taken in one judicatory, when duly authenticated, to be valid in any other judicatory. 12. Testimony, when necessary, may be taken by commission. 13. Parties shall be heard after the testimony is taken, 14. A member of the judicatory may be a witness, and judge in the same case. 15. A member of the church refusing to bear testimony, when duly cited, is liable to censure for contumacy. 16. The testimony to be signed by the witnesses. 17. If new testimony, deemed important, be offered in an appellate court, the case shall be remitted to the lower judicatory for a new trial, or, with consent of parties, the appellate court may take the testimony, and decide the case. This provision is in lieu of the whole of the ninth chapter, including seven sections of the present Book.

CHAPTER VIII.

This is a long chapter, divided into four parts, besides the introduction. It relates to the different methods in which a cause may be carried from a lower to a higher judicatory. The word *cause* in this connection is not to be understood in the limited sense of a case of process, but includes all acts and decisions, or matters proposed for the action or decision of a church judicatory. Our judicatories are not merely courts for the administration of justice. They unite in themselves, as does the Senate of the United States, legislative, executive, and judicial functions. The word legislative is used in two senses. It may mean the power to make "laws to bind the conscience." In this sense our standards deny to the church all legislative authority. This is a Protestant principle, and stands opposed to the Romish assumption of the right to make things to be sins or duties, which the word of God does not forbid or enjoin. Legislative power, in a wider sense, is the power to enact laws or rules for the conduct of affairs. This is expressed in the Westminster Confession, by saying the church has power "to set down rules and directions for the better ordering of the public worship of God, and for the government of his church." Chap. xxxi. § 2. Our whole Book of Discipline is a system of such rules. This form of legislative authority does belong to church judicatories; a power which, under our constitution, is exercised under certain prescribed forms and limitations. This distinction between the legislative, executive, and judicial powers of our church courts is important, because it determines not only our nomenclature to a certain extent, but the modes of redress and revision. A judicial act, according to our system, is not a mere act of a judicatory, for in that case every act of a church court would be judicial. It is an act of a judicatory when sitting as a court of justice. To ordain a licentiate, to divide a congregation, to dismiss a pastor from his charge, are executive, not judicial acts. These remarks are made, because in the subsequent parts of our Book of Discipline the expression "judicial cases" frequently occurs; and it has often been misinterpreted. A judicial case, in the sense of our Book, is a case of process or trial for some offence.

The introduction to this chapter consists at present of two paragraphs which remain unchanged in the revision. The first states the importance of the principle of review and control; and the second says that any and every kind of decision (i. e. "whether legislative, executive, or judicial) may be carried up for the review of a higher judicatory, in one or the other of the four following ways, viz. general review and control, reference, appeal, or complaint. To these paragraphs or sub-sections, it is proposed to add a third, in these words, viz. "When a matter is transferred in any of these ways, from an inferior to a superior judicatory, the inferior judicatory shall, in no case, be considered a party ; nor shall its members lose their right to sit, deliberate, and vote, in the higher courts." This is, perhaps, the most radical change proposed in the new Book. The rule, as it now stands, makes every inferior court a party as the cause goes up. The objections to this mode of proceeding are so serious, and consequently the reasons in favour of the proposed change are so strong, that we trust the amended rule will meet with universal approbation. In the first place, it is a false and derogatory principle that a judge becomes a partisan by the exercise of his prerogative of judgment. This is assumed in our present Book. The lower court is arraigned, as for an offence, before a higher, and is put on its defence. It is turned out of the house, and judgment is passed upon it. This surely is derogatory. A session's deciding that a professing Christian has been guilty of falsehood, or a presbytery's deciding that a minister is a heretic, is no offence, even if the judgment be not borne out by the testimony. It may be an erroneous judgment, but it is not a crime; and, therefore, furnishes no good reason for making the lower court a party in the future conducting of the case. It is of great importance that it should be assumed that judges are upright, and to have the contrary assumption engrafted into our very laws is a great evil. In the second place, there is no reason for the present rule. A man's having tried a cause once is no disqualification for his trying it again. To say that he has prejudged the case, and is not fit to participate in the rehearing, is to say that he is prejudiced, or influenced by corrupt motives, or that he is so opinionated as not to be open to conviction.

These are all gratuitous, and generally false assumptions. Besides, the lower court may be nearly equally divided ; why should the appellant, or complainant, be deprived of the votes of those who agree with him? The Book turns both parts of the lower court out of the house, and treats both as wrong doers. In the third place, this is contrary to the usage of all other courts. In no civil government are the judges of a lower court made parties in an appellate court. They are not arraigned before the higher court, and made to defend themselves for having given a certain judgment. On the contrary, when an appeal is taken, the original litigants carry up the cause, and it is reheard either by a new set of judges, or by the same judges associated with others. Often the appeal is from a single judge to a full bench. Thus the cause has the advantage not only of the learning and skill of other minds, but of being reconsidered by those already familiar with the case. In the fourth place, our present plan is cumbrous and almost impracticable. A session may decide that a certain man was intoxicated on a given occasion. The man appeals to the presbytery. The session and the accused appear at the bar of that court, and plead their cause. The presbytery decides in favour of the session. An appeal is taken to the synod. Then the presbytery, the session, and the accused, are parties before the synod. The synod may confirm the action of the presbytery, and the case be carried before the Assembly. There the parties are the synod, the presbytery, the session, and the accused. They all have a right to be heard; they are all on trial at one and the same time. When the original parties are called for, they are uniformly lost in the crowd. Nobody knows who they are. In the case supposed, who are the original parties? The accused may be one, but who is the other? Is it the session? or common fame? Such is the confusion, complication, and prolixity, attending the present mode of process under the most favourable circumstances. We have supposed a case in which all the inferior courts come to the same conclusion. It often happens otherwise. A session may find a man guilty. The presbytery may reverse that decision. The session appeals to synod. Here the session and the presbytery are the parties. The

accused has nothing to do with the case. The synod may reverse the judgment of the presbytery. Then the presbytery appeals, and the synod and presbytery become the parties before the Assembly. Thus we have court accusing and arraigning court, all the way up, and all about what? Often about the merest trifle—some petty neighbourhood quarrel, in which no general interest of either truth or holiness is involved. This upas tree will be cut up by the roots at one blow, if the church sees fit to adopt this little section of three lines and a half. There is another objection. If we refuse to let the lower court sit and vote in the appellate court, we often change essentially the character of the latter body. A synod may consist of three presbyteries; one may be larger than the other two combined. If an appeal be taken from the large presbytery, it is determined in the synod by a minority of the lawful members of that body. The action of the General Assembly may be, and doubtless often has been, determined by the presence or absence of a particular synod. If one synod is excluded the Assembly votes one way; if another is shut out, the vote is exactly opposite. This is surely unreasonable and unfair. We trust, therefore, that the important change proposed by the addition of this paragraph will be unanimously adopted.

CHAPTER VIII.—SECTION 1.

The first section of this chapter relates to General Review and Control. No change is proposed in any of its provisions. Sub-section 1. directs the annual review of the records of an inferior judicatory, by the one next above. 2. States the objects of that review, viz. to see whether the proceedings have been regular, whether they have been wise and equitable, and whether they have been correctly recorded. 3. The strictures of the superior judicatory may be recorded simply in its own minutes, or also in those of the inferior judicatory, and in cases of serious irregularities, the inferior judicatory may be required to revise and correct its proceedings. 4. No judicial decision can be reversed on mere review of records. 5, 6. If an inferior judicatory neglects its duty, or is guilty of unfaithfulness to the constitution, it may be cited before the higher court to give an account of its doings, and, if found to have acted im-

properly, the matter complained of shall be remitted by the higher to the lower court with directions.

CHAPTER VIII.—SECTION 2.

In this section no change is proposed, except the omission of the sixth paragraph, which becomes unnecessary if the proposed new paragraph is added to the introduction of the chaptor. 1. Defines a reference to be a judicial representation by an inferior judicatory, of a matter not decided, to a superior. 2. States the cases in which references are proper. 3. These references may be either for advice, or for decision. 4. In the former case, the reference suspends the action of the lower judicatory; in the latter, its action is superseded. 5. It is in general desirable that each judicatory should exercise its own judgment, instead of referring cases to a higher court. 6. The higher court may either decide the cases referred, or remit them with or without advice. 7. References as a general rule are to be made to the next superior judicatory. 8. When a case is referred, all the documents requisite for its decision should be sent up with it.

SECTION 3.

It is in this section, relating to appeals, that the Revised Book differs most from the old one. To this the greatest labour was devoted by the Committee; and, if this should be ultimately adopted, it matters comparatively little what becomes of the rest of their recommendations. It is here, and in the following section, on complaints, that the principle that an inferior judicatory can never be made a party in an appellate court comes into play.

In our present Book an appeal is defined to be, "The removal of a case already decided from an inferior to a superior judicatory, by a party aggrieved." In the revised Book it is declared to be, "The removal of a case already decided, from an inferior to a superior judicatory, the peculiar effect of which is to arrest all proceedings under the decision, until the matter is finally decided in the last court." These definitions are essentially different. In the former an appeal is distinguished from a complaint, by its source. It must be made

"by a party aggrieved." In the latter it is correctly distinguished by its effect. Its peculiar effect is " to arrest all proceedings under the decision." The former is really no definition at all, because an aggrieved party, according to our present Book, can complain as well as appeal, or complain and appeal at the same time and for the same thing. And, therefore, so far as this definition goes, there is no difference between the two. Another objection to the present definition is that it confines the right of appeal to "an aggrieved party." This is very well in judicial cases, but in non-judicial cases, others than "parties" in the ordinary sense of that word, have the right of appeal. After stating what an appeal is, the revised Book goes on to specify the cases in which this mode of redress is allowable; that is, in what cases it is allowable to arrest all proceedings under a given decision. Those cases are, "1st. In all judicial cases, by a party to the cause, against whom the decision is made. 2d. In all other cases, when the action or decision of a judicatory has inflicted an injury on any party or persons, he or they may appeal; and when said action or decision, though not inflicting any personal injury or wrong, may nevertheless inflict directly, or by its consequences, great general injury, any minority of the judicatory may appeal." These are very important provisions. A cloud of obscurity rests on the present Book, both as to the cases in which an appeal is allowable, and as to the persons authorized to appeal. From the necessity of the case, from the uniform practice of the Scottish church, and of our own for the first hundred years of its existence in this country, appeals have been allowed in other than judicial cases; i.e., in other than cases of process. But as appeals are most common in cases of trial for an offence, much of the language of the book contemplates such cases, and would seem inapplicable to any others. Hence, of late years, the ground has been assumed, and in one instance received the sanction of the Assembly, contrary, as just stated, to all usage, as well as to the necessities of the church, that an appeal can only be taken where a party has been put on trial. This obscurity is now removed by an express distinction of two classes of cases in which appeals are allowed, the one judicial and the other non-judi-

cial. This distinction is of importance on another ground. These cases differ not only in their nature, but in the mode in which they are to be conducted. In an appeal from a judicial sentence, the whole form and order of a trial must be observed in the prosecution of the appeal. The testimony is to be read, the parties heard, the sentence judicially pronounced. In non-judicial cases, there is no testimony, no accuser and accused, no judicial sentence to be rendered. Hence the importance of distinguishing between cases which are essentially different, a thing which our present book does not do.

The specific nature of an appeal is, that it arrests the operation of the decision appealed from. This determines at once the class of cases in which it is to be allowed, and the persons who have the right to avail themselves of this power. There are certain evils which must be arrested, or they admit of no redress. If a man is sentenced to be hung, it would avail him little to have a superior court decide that he had been illegally condemned, unless the execution of the sentence can be stayed. So in church matters there are many decisions which, if carried into effect, cannot be redressed. It is this class of evils which appeals are designed to meet. There are other evils, in which all that is desirable is to have an erroneous decision pronounced wrong, or censured, so that it may not be drawn into a precedent, or be allowed to pass as of authority. For this class complaints are the appropriate remedy. This being the nature of an appeal, it is clear, that when a man is on trial for an offence, if pronounced guilty, he has the right to arrest the execution of the sentence, until the question of his guilt be decided in the court of last resort. Or if he be pronounced innocent, the accuser, if still satisfied of his guilt, has the right in behalf of the church, to prevent the sentence of acquittal taking full effect, until the matter is finally decided. The right of appeal is, therefore, properly given in judicial cases, to "the party in the cause, against whom the decision is given," and to him alone, whether the accused or the accuser. The party in whose favour the decision is given, has no occasion to appeal; and a member of the judicatory cannot appeal from the decision of a court of which he was a member. He may complain of it, if he regards it as unjust, or as unconstitutional; but he

Charles Hodge, "The Revised Book of Discipline," *BRPR* 30.4 (Oct. 1858): 692-721.

has no right to arrest its operation. There are, however, other than judicial cases, in which the evil would be incapable of redress, unless the execution of the decision of the judicatory were arrested. If a pastor, for example, should be dismissed from his congregation against his own will, or the will of the people; if the decision of the presbytery could not be arrested by an appeal, the pastor might be dismissed, the congregation be declared vacant, another minister called and installed, no matter how great the injustice or hardship, before the case could be reviewed in a higher court. So also if the proposition be to divide a congregation. Should the division be effected, two churches constituted, pastors called and settled, neither complaint, nor review and control affords any redress. Here again the right of appeal is secured to the aggrieved party, and to it alone. They only are exposed to injury by the execution of the decision of the judicatory. It would be unreasonable to give to a captious member, to an impracticable minority of a court, the right to prevent, in cases of this kind, the execution of the will of the majority. When, therefore, there are two parties interested in a case, as in the dismissal of a pastor, or division of a church, either party, whose interests would be injuriously affected by the decision, has the right to interpose with an arrest of the proceedings by an appeal. There are, however, cases in which there is, properly speaking, no aggrieved party, where the decision of a court would work irreparable injury if carried out; injury, not to particular individuals, but to the church in general. Should a presbytery, for example, from party, or other corrupt motives, resolve to ordain one, five, or ten men, *sine titulo,* who were unsound in the faith, it is clear that unless such action could be arrested, irreparable injury might be occasioned. Such men in times of conflict might decide the fate of the church. Things very like this have been done. It is for such emergencies the right of appeal is recognized as belonging to "any minority of the judicatory." It is not on every occasion, nor from every decision of a church court, that the minority have the right to appeal. This would be a power too liable to abuse. Any one member may tie the hands of a session or a presbytery for a year, and from one year to another. It is only when the act contemplated, if done,

cannot be undone, or its evil consequences remedied, that the right exists. On account of the liability of this power of a minority to arrest the action of the majority, to be abused, it was strenuously urged in the Committee, that the right of appeal should be confined in all cases to aggrieved parties. We are not sure that this would not have been the wiser course. We were strongly in favour of extending the right, from the idea, that by "aggrieved parties" would be understood parties decided against in a judicial process. As, however, the Book as revised distinctly recognized the right of appeal in non-judicial cases, we are now inclined to think, that the church will coincide with the brethren of the Committee, who were in favour of confining appeals to aggrieved parties. The extreme cases in which the right would be of importance to minorities, are, perhaps, of too rare occurrence to need special provision.

2. The second subsection is altered so as to read, " In cases of judicial process, those who have not submitted to a regular trial, are not entitled to appeal." In the present Book it is in the affirmative form, "All persons who have submitted to an inferior may appeal to a higher judicatory."

3. States the reasons which justify an appeal, and is unchanged. The sub-section numbered four in the present Book is omitted. It only says that the appeal may be taken from a part of the proceedings, or from the definitive sentence; which is a matter of course.

4. Notice of the intention to appeal, and the reasons therefore, are to be given to the judicatory within ten days after its rising. They are to be lodged with the Moderator or *Stated Clerk,* (the latter words are added,) if the judicatory be not in session.

5. Appeals are generally to be from a lower judicatory to the one next above.

6. Notice of the appeal, and the reasons, to be lodged with the clerk of the higher court, before the close of the second day of its sessions, "and the appearance of the appellant and appellee shall be either personal or in writing." This is an additional clause. It is intended to provide for cases in which the personal attendance of parties might be attended with inconvenience. As the ends of justice do not require a personal

attendance, it is enough that the parties signify in "writing their desire that the appeal be duly presented.

7. "In taking up an appeal in judicial cases, after ascertaining that the appellant, on his part, has conducted it regularly, the first step shall be to read all the records in the case from the beginning; the second to hear the parties, first the appellant, then the appellee; thirdly, the roll shall be called, and the final vote taken. In all appeals in cases not judicial, the order of proceeding shall be the same as in cases of complaint, substituting appellant for complainant.

8. The parties denominated appellant and appellee are the accuser and accused who commenced the process. The appellant, whether originally accuser or accused, is the party which makes the appeal; the appellee, whether originally accuser or accused, is the party to whom the decision appealed from has been favourable."

This is a great improvement on the old mode of proceeding. In the first place, a broad distinction is made between judicial and non-judicial appeals, demanded by the essential difference between the cases; the neglect of which is the source of endless embarrassment under the present system. In the second place, the whole process is simplified and shortened. According to the present plan, the higher court after the reading of the record, must hear the original parties, and then the inferior judicatory. Members are appointed to defend the synod before the Assembly, or the presbytery before the synod, or the session before the presbytery. The original parties (if you can find out who they are) and the lower judicatory are on trial at the same time. You have to hear first one and then the other. You have to go over and over the same ground, and the uniform result is confusion and prolixity. On the proposed plan all is simple and comparatively brief. A man is arraigned for some offence before the session. Charges are tabled either by an accuser or on the ground of common fame. In the latter case some one is appointed to conduct the prosecution. These two persons, the accuser and the accused, plead the cause before the session, and the session deliberate and decide. If either party is dissatisfied, he appeals to presbytery. The same men now appear as appellant and appellee before the

presbytery, the session having nothing to do in the matter except as it is represented in the presbytery. If either party be again dissatisfied, the same persons plead their cause before the synod; and if they choose to go farther, they again appear before the Assembly; the accuser and accused, therefore, are the only parties before each successive court. The session is present by the pastor and elder in the presbytery, the presbytery is present in the synod, the synod is represented in the Assembly; and thus the lower judicatory has in every case the opportunity of explaining and vindicating the grounds of its action.

Every one feels and acknowledges that our judicial system is the weak point in our form of government. The difficulties or objections to it are, first, that every insignificant neighbourhood quarrel, may be made to occupy the time and attention, first of the presbytery, then of the synod, and then of the General Assembly. The scandal is thus multiplied and diffused a thousand fold. Secondly, the time required to hear and decide these cases is more than can reasonably be given to them; and more than courts can, in many instances, be induced to sacrifice. A trial may, and often has, taken up ten, twenty, and even fifty days before a presbytery, and when brought to tho synod or Assembly, those bodies in utter despair sometimes refuse on any plausible pretence to take it up, or if forced to go into the matter, have to devote several days to the subject, to the neglect of other important business. Every one remembers the Brown case in Kentucky, the Skinner case in Virginia, tho Scott case in Louisiana, and many others even within the last few years. This expenditure of the time of hundreds of ministers and elders is an enormous evil. Another difficulty is, the inherent unfitness of a numerous body, such as a Synod or General Assembly, for judicial business. Any sensible man would rather be tried by twelve men, than by two hundred. At least the cause of truth and right would have a much better chance in the one case, than in the other. To meet these difficulties, various plans have been proposed. Some would stop all appeals from the session at the presbytery, and these from the presbytery at the synod. Others would have a commission appointed by the appellate

court, to hear and decide all judicial cases. Judge Sharswood, of Philadelphia, proposed, in the public papers, a plan, which would, in a great measure, meet the difficulty, if the church could be induced to adopt it. He suggested that the decision of the lower court should be final as to the facts of the case, as the verdict of a jury. If an appeal be taken, it must be in the nature of a bill of exceptions, as in civil courts. This would carry up for the decision of the appellate court simply the regularity of the proceedings and the justice of the judgment. If the decision of the higher court should be, that any unfairness, or serious error, prejudicial to either party, such as the refusing to receive proper, or admitting improper, testimony, had been committed, the case would be remitted for a new trial. Thus, if a man be found guilty by a session of intemperance; the decision would be final as to the fact that he was thus guilty; but the fairness of the trial or justice of the sentence could be reviewed in the higher court. Or if a minister were found guilty of holding unsound doctrines by his Presbytery, that finding would be final as to the fact he did hold the opinions charged, but whether they are sound or unsound, and whether they merited the sentence pronounced, could be carried up to the higher courts. This, as we understand it, is substantially the Judge's proposal. It would be an immense relief. There would be no new trial, no reading of volumes of testimony, no hearing of parties, but only the specific points presented in the appeal would be discussed before the higher courts, and decided on their merits. This or something equivalent, or the appointment of commissions, we are persuaded, will ultimately be demanded by the general voice of the church. In the mean time we trust that the recommendations of the Committee will be approved and adopted as a great improvement on our present plan.

9. This subsection corresponds with number 10 in the present Book, and is unchanged. 10 in like manner corresponds with 11, and is the same in both books. Numbers 12 and 13, of the present Book are omitted from the new. The former denies to the members of the lower judicatory the right to vote in the higher court on any question connected with the appeal; and the latter states when the lower court

shall, and when it shall not be censured for its decision. Both of these sections are precluded if the lower court be no longer regarded as a party in cases of appeal.

11. Relates to the case of the exhibition of an unchristian spirit on the part of an appellant, and is unchanged. It corresponds with number 14 in the present Book. 12. Corresponds with number 15, and is the same as before. It states that when the sentence appealed from is suspension or excommunication from church privileges, or deposition from office, it shall be considered as in force until the appeal be issued. This is analogous to the usage of the state courts. If a man is found guilty of murder, an appeal suspends the decision of the question as to his legal guilt or innocence, and arrests the execution of the sentence, but the man is detained in prison. So in the cases specified in the above rule. Though the appeal arrests the decision of the question whether the party is to be cut off from the church or not, yet for the honour of religion, he is provisionally debarred from the Lord's table, or from the exercise of his office. There is an ambiguity in this section which ought to be removed. It is said that during the pending of an appeal from a sentence of suspension or excommunication from church privileges, or of deposition from office, the sentence shall be considered as in force until the appeal is issued. But how is it when the sentence is one of suspension from office? As that is not expressly specified, it would seem not to be included in the excepted cases; and yet analogy would lead to the opposite conclusion. If both suspension and excommunication from church privileges are excepted from the ordinary operation of an appeal, why should not suspension as well as deposition from office be excepted ? In a well known case, which occurred a few years ago, this point, as many of our readers will remember, gave rise to no little doubt.

13. This subsection states that it shall always be deemed the duty of the judicatory, whose judgment is appealed from, to send up a full copy of their records, and of the testimony relating to the case, to the appellate court, and that the neglect of this duty shall subject them to censure. 14. In *judicial* cases an appeal shall, in no case, be entered except by one of the original parties. The insertion of the word *judicial* in this

clause is necessary to bring this provision in harmony with other provisions of the Book.

CHAPTER VIII.—SECTION 4.

1. The fourth method by which a decision of a lower court may be carried before a superior is by complaint. 2. Any body has the right to complain of the action of an inferior judicatory. The right is not limited to members of that judicatory, nor to the members of the church. "Any person or persons," it is said, may complain of any act of the inferior court, which in their opinion is irregular or unjust. According to this, a member of another denomination may summon one of our lower courts before a higher, to answer for its acts. This is not unreasonable. It not unfrequently happens that difficulties arise about ecclesiastical limits, or the reception by one church of the dissatisfied members of another denomination, which involve the honour of the body to which the church belongs. In such cases it is well that the acts of an inferior court should be reviewed by a higher court. 3. "The cases in which complaints are proper and advisable, all those cases of grievances, whether judicial or not, in which the party aggrieved has declined to appeal; and cases in which the party complaining is persuaded that the purity of the church, or the interests of truth and righteousness, are injuriously affected by the decision complained of." This short section takes the place of a long paragraph of nineteen lines in the present Book.

4. Notice of a complaint must be given before the rising of the judicatory, or within ten days thereafter.

5. "In taking up a complaint, after ascertaining that the complainant has conducted it regularly, the first step shall be to read all the records in the case; the second to hear the complainant; and then the court shall proceed to consider and decide the case." This is perfectly simple and satisfactory. There is no complication arising from the lower judicatory being made a defendant. Being always represented in the higher court, and a constituent part of it, they have full opportunity of vindicating their decision, or of reconsidering it. It will be remembered, that appeals in nonjudicial cases are to be

conducted in the same way as complaints. In such cases, after reading the records, the appellant and appellee will plead their cause before the judicatory, which then considers and decides the case. There is no formality of a trial, no arraigning of the lower court, no calling of the roll, as in judicial cases, but a simple decision of the point in dispute between the appellant and appellee.

6. " The effect of a complaint, if sustained, may be to reverse the decision complained of, in whole or in part, and to place matters in the same situation in which they were before the decision." The whole of the corresponding section in the present book, except this sentence, is omitted.

7. " In a judicial case, a complaint shall be admitted only where an aggrieved party has declined to appeal, and in such cases an aggrieved party shall not be allowed to complain." This is a now provision. The aggrieved party has his appropriate mode of redress by appeal; if he does not choose to avail himself of it, he cannot adopt another method of carrying the cause any higher. But though he may not choose to trouble himself further in the matter, others may think that substantial wrong has been done, and they have the right to have the case reviewed. This they can effect by a complaint, which, however, must be of some specific wrong ; for according to the above provisions for conducting a complaint, it is not to be laid as an appeal. The complainant can merely present the grounds of his complaint, and the higher court decides whether they are valid or not.

CHAPTERS IX. X. XI.

The first relates to Dissent and Protests; the second to Jurisdiction; and the third to Limitation of Time. In neither of which is any change recommended.

Charles Hodge, "The Revised Book of Discipline," *BRPR* 30.4 (Oct. 1858): 692-721.