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*THE TEACHINGS OF JESUS AND MODERN SOCIAL PROBLEMS.

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The subject assigned to me is "The Teachings of Jesus as They Bear upon the Solution of Modern Social Problems." For the sake of clearness it may be well for me to define or illustrate what is meant by the expression "modern social problems." We mean such problems as those which arise from the constant conflict between capital and labor; the problems which are created by extreme wealth, extreme poverty, and ignorance; the problems of marriage, divorce, the social evil, and child life; the problems which follow in the train of the terrible liquor traffic; and the problems that flow out of race prejudice and culminate in cruel war. These problems are not new, but they are more acute, more menacing, and more insistent in the complex civilization of the twentieth century than ever before in the history of the world.

Many human solutions have been proposed ranging through the whole gamut from extreme Individualism to extreme So-

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MAY A GENERAL ASSEMBLY GRANT A RE-HEARING OF A CASE DECIDED BY A PREVIOUS ASSEMBLY?

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There is confusion in many minds in regard to the judicial functions of the General Assembly of a Presbyterian Church, considered as a court of last resort. It shall be the purpose of this paper to clear away, if possible, some of this confusion. Seeking only to ascertain and to state the truth, I propose to give the facts on both sides of the question, and will then give the conclusions to which I have been led by a dispassionate study of the law and the judicial history of American Presbyterianism, as found in the Digests of Baird, Moore and Alexander.

All courts, civil and ecclesiastical, are charged with the duty of adhering, in every decision, to the requirements of law and the principles of justice. But it has often happened that judicial decisions have been founded in error; and the sense of justice which prevails in the human breast has long ago brought about the assertion of the principle that no judicial verdict should be regarded unassailable unless it is right. Well do we know that judges may err, since "to err is human." Hence it has been laid down as an *a priori* and necessary assumption in the practice of our civil courts, that every court has the right to correct its own errors. This principle has the sanction of the highest courts in every civilized country. We all remember how, not many years ago, the Supreme Court of the French Republic re-opened the Dreyfus case, and allowed the proofs of the gigantic conspiracy through which an innocent man had been humiliated by unmerited punishment to be brought forward. There was a thrill of joy and pride throughout all Christendom when Dreyfus, the despised Jew, was

reinstated in the rights of which a partisan tribunal had, on perjured testimony, deprived him.

It is often said that "the interpretation of the law is the law." In a famous paper Dr. B. M. Palmer once alluded to this principle, not to endorse it, but to show that, even if it were conceded, it could not justly be pressed to the condemnation of the Southern Presbyterian Church, so as to deprive it of its *ratio essendi*, because of the alleged inconsistency of certain war-time deliverances. The Supreme Court of Virginia, in a decision which repudiated the interpretation of law which had voided certain bequests for religious purposes, took occasion to correct the mistaken idea that court decisions interpreting the law shall be considered equivalent to law. In the case of *Prot. Episc. Soc. vs. Churchman's Reps.* (see 80th Va. Reports), the court quotes with approval as follows:

"In Brown's Legal Maxims, at p. 24, Lord Dunmore, C. J., . . . is quoted as saying that a large part of that legal opinion which has passed current for law, comes under the description of 'law taken for granted;' and that when in the pursuit of truth we are obliged to investigate the grounds of the law, it is plain, and has often been proved by recent experience, that the mere statement and re-statement of a doctrine . . . cannot make it law, unless it can be traced to some competent authority, and if it be irreconcilable to some clear legal principle."

Applying this principle to its own decision in *Gallego vs. Attorney General*, in which it had adopted views expressed by Chief Justice Marshall, the Court says further:

"That the reasoning of Chief Justice Marshall on the authorities and lights before him, was entitled to the highest respect, no one will question; but in the light of subsequent and thorough examination it has been established beyond controversy, that the authorities relied on by that great judge, and his conclusions drawn therefrom, were founded in error."

Here we note the assertion of a principle which, as we shall see, has been endorsed by the highest courts of American Presbyterianism—that no decision “founded in error” should be allowed to stand.

In 86th Va. Reports, in the Guthrie case, we have a decision which is of special interest to Southern Presbyterians, because it confirmed a bequest to our Executive Committee of Foreign Missions. In that decision (p. 147), referring to a certain contention of the attorneys for the Guthrie heirs, the court says, “This is a suicidal argument, . . . and . . . is pushed to the unreasonable extent of claiming that, inasmuch as long years have elapsed, during which that decision was uniformly acquiesced in, the people in the meantime having adopted a new constitution, therefore that doctrine should be regarded as having been engrafted upon the fundamental law of the State. This is truly a novel position. It suggests a curious mode of embalming error. It will be a dark day for the old commonwealth”—the court here speaks with a fine scorn—“when it shall become the accepted doctrine that to remodel her organic law is to perpetuate all the previous errors of her courts.”

Proceeding, the learned judge quotes (p. 151) from Parsons on Partnership as follows: “‘A precedent, it must be borne in mind, is nothing but an experiment. If the proposition justifies itself, the principle stands, but if subsequent investigation shows that the principle is unsound, it is set aside and replaced by the true principle . . . In strictness the decision of a judge is not law for succeeding cases; it is only evidence of the law. It is the testimony of a witness who is presumed to be learned and capable, explaining what the law is on the point in question. It decides the particular case, but does not of necessity decide similar cases that follow. The succeeding judge may reject the testimony of his predecessor as erroneous; he may find that the law was not in fact what his predecessor had declared it to be; he may, therefore, overrule the prior decision.’” Citing a case in

which the Supreme Court of the United States had reversed its previous decision, our learned judge adds, "And this court (*i. e.*, the Supreme Court of Virginia), in *Gallego vs. Attorney General*, having not only adopted but aggravated that error, should, in like manner, have corrected itself."

Observe here, that Justice Richardson speaks of the Supreme Court of Va. as identical under all changes of administration from its beginning, and distinctly affirms the duty of a court to correct its own errors.

Hence the practice of civil courts of last resort is to vacate any judgment, and to re-open any case and grant re-hearings, when sufficient reasons are shown for so doing. One general principle under which a judgment should be vacated (*i. e.*, annulled), and the reasons therefor, may be found stated in a decision of the Supreme Court of Alabama. Chief Justice Brickell is reported in 70th Ala. Reports, p. 401, as saying—

"When a court has rendered a judgment or decree void on its face, either from a want of jurisdiction of its subject matter, or of the parties, a due regard to its own dignity, the protection of its officers, the prevention of the abuse of its process, and the preservation of the sanctity of the judgments it may lawfully render, demand that it should, on a proper application from a party having rights and interests immediately involved, at any time subsequent to its rendition, vacate such judgment or decree."

No statute of limitation can be pleaded, or excuse set up that it is a mere matter of appeal from one session of the court to another, when a petitioner shows that the court has usurped jurisdiction over matters or parties beyond its domain.

In addition to this universal rule, the Supreme Courts of our various States and the Supreme Court of the United States, all have rules specifying contingencies in which cases supposed to have been finally adjudicated may be re-opened, and new hearings granted. A time is usually specified within which a petition for re-hearing may be filed. The Virginia Code

of 1873 provided that certain cases in which the rights of non-resident defendants were involved might be, on application, re-heard within one year or five years. Cases in which interlocutory decrees had been handed down might be re-opened at any time after the rendition of the decree. In one instance 18 years elapsed before the re-opening of a case, and in another 25 years. From the American Encyclopedia of Law and Practice, I gather the following as being the usual grounds on which cases decided by courts of last resort may be re-opened: (a) error on face of judgment; (b) material facts overlooked by the court; (c) newly discovered evidence; (d) improper exclusion of evidence, whereby a petitioner has been prejudiced, and adverse party has procured an inequitable decree; (e) error of law or misapprehension of facts; (f) a decision based upon points not raised in court below; (g) conflict with statute; (h) overlooking admissions of prevailing party; (i) where decision is in conflict with a case previously decided by highest court; (j) when a defendant has been deprived of valid defense by surprise, accident, fraud or mistake; (k) where judges are divided.

Courts even reserve the right to grant leave to file petitions after the expiration of the statutory time, if sufficient reasons for failure to file such petitions be shown. Where a re-hearing is granted, generally the whole case is open. The petitioner alone can be heard in opposition to the original judgment. This, I take it, on the principle that the court is able to defend itself, and does not need counsel. Allowance of re-hearing in cases mentioned is not regarded altogether as a matter of discretion, and the decision to re-hear is itself reviewable.

Ecclesiastical courts are not bound to observe all the forms and imitate all the procedures of civil courts; but they are bound to obey the same moral principles which are invoked to make the decisions of civil courts inviolable. Ecclesiastical law differs from civil in two particulars: it can only refer to spiritual censures, and it is based solely upon scripture.

It accepts the ordinary rules of evidence that are observed in civil courts, for instance, not because these rules obtain there, but because they are based on the moral law. Every text of scripture inculcating the duty of man to man, is a statute governing the conduct of an ecclesiastical court towards its litigants. Its judges are not mere magistrates empowered to decide questions of guilt or innocence, etc., but they are brethren of those who are brought into their custody, and are charged above all things with the duty of restoring the guilty to Christian peace and purity, as well as with that of protecting the rights of the innocent. Their spirit must be not only that of strict justice, but of charity. They must consider themselves, lest they also be tempted. Therefore, whatever care is exercised by a civil court to preserve the sanctity of its judgments, and to protect its officers from censure or impeachment, should be exercised with double diligence by ecclesiastical courts. Their decrees should be invulnerable on any grounds of complaint as to irregularity, injustice, or even uncharity.

So much for the *a priori* argument. Now, does our law recognize, and have our Assemblies exercised, the right to reopen cases judicially decided in our court of last resort? The Digests and the Book of Church Order justify this answer: the general principle that in certain cases a new trial should be granted, even by the General Assembly, is clearly enunciated by our organic law, and still more clearly vindicated by a number of luminous decisions of Assemblies.

The general rule for re-hearings is found in Par. 218 of our Rules of Discipline, which is as follows:

"If after a trial before any court, new testimony be discovered, which is supposed to be highly important to the exculpation of the accused, it is proper for him to ask, and for the court to grant, a new trial."

"Any court" means *any*, even the highest. If a case should come before a General Assembly on reference, and so be tried on its merits by that tribunal, this law plainly allows a new

trial when new testimony is alleged to have been discovered. And as will be shown, even a case which has been decided on appeal, may be re-opened and remanded to the lower court, for the same reason. This, because the church is under obligations to prevent the perpetuation of an injustice. Note the charitable spirit of the law. It intimates that the exculpation of the accused, if the facts should warrant, is an end to be desired. The church suffers even greater wrong from the infliction of unmerited punishment upon the innocent, than from any failure of its courts to censure the guilty. By no means must we suffer a trial before a church court to become an inquisition. The rights of the accused are to be jealously guarded.

Now, if our law concedes the general principle that a decision of the highest court of the church is not to be regarded as final, when facts are alleged which would have changed its verdict, this concession carries with it the concession of other grounds on which a judgment may be vacated. If the court erred in assuming jurisdiction over a litigant, or in censuring one who was not present, he should have the right to ask that the judgment against him be vacated.

Yet it must be admitted that the letter of our law gives no authority for re-hearings merely on memorial and error shown. There is a reason for this defect. Our Rules of Discipline are comprised within the limits of less than seventy small pages. Every direction we have as to offences, mode of procedure, rules of evidence, jurisdiction, appeals, etc., is packed in this small compass. Our fathers were careful to lay down only a few general principles, leaving our courts to construe these meager statutes in such wise as would best conserve the ends of discipline. This being the case, it may well be argued that if a General Assembly may, when new evidence has been discovered, vacate its judgment and order a new trial, it may, on the same principle, when advised of error as to jurisdiction or as to other irregularities which are alleged to have vitiated its judgment, grant a re-hearing. Civil courts find themselves,

in cases not a few, confronted with new conditions, and compelled to set new precedents and enunciate new principles. Where statutes are defective, it has been from of old the recognized duty of the courts to blaze out a new path for the administration of justice. They do not hesitate, when necessary, to set new precedents, which is, as we have seen, to inaugurate new legal experiments. Were it not so, we would to-day in our civil courts be following the precedents set by English courts in the days of the Georges.

We need not, therefore, be surprised to find that the precedents of our ecclesiastical courts, though few in number, are sufficient to indicate the right of a General Assembly to reverse the judicial decision of a former Assembly. The first intimation of such a right is found in a deliverance refusing to reverse a decision of a previous Assembly. The Assembly of 1824 in this refusal used these words:

"This Assembly has no authority to reverse the judicial acts of a former Assembly except in cases of such palpable error as would manifestly tend to interfere with the substantial administration of justice." Case of Lowry, Moore's Digest, p. 689.

This is an unequivocal assertion of the authority of any Assembly to reverse the judicial verdict of a previous Assembly, if there be found in it error of the sort described. The Assembly of 1833 asserted that a judicial decision might be changed after several years, by the court which had rendered it, even when no new testimony was alleged, because the mind of the church might have changed on the question at issue. The Southern Assembly of 1879 cautiously affirmed that it might be competent for one Assembly to reverse the judicial act of a former Assembly. Candor requires the admission that sundry Assemblies have denied, or seemed to deny, this right. The O. S. Assembly of 1855 refused to entertain a complaint against the Presbytery of Flint River and the Synod of Georgia on the ground that the case had already been adjudicated by the Assembly of 1853. The same Assembly (O. S.) in 1858

dismissed a complaint for this reason among others: "Were the Assembly to allow a judicial case, when once adjudicated, to be revived on a simple memorial, it would give rise to endless litigation," etc. But a memorial setting forth valid grounds of complaint against a judicial decision, is not to be regarded as a "simple memorial." Obviously, the Supreme Court of the Church should not hold itself in readiness to reopen any case simply because somebody asks it to do so. There must be some valid reason shown for such request. The Old School Assembly of 1864, in replying to a memorial, affirmed that "it is not competent for this Assembly to revise the proceedings of a previous Assembly in a judicial case." The Northern Assembly of 1900 declared itself incompetent to interpret the meaning of an action of a former Assembly in a case brought before it a second time by the request of the Synod of New York for instructions. The same Assembly in 1895 declined as "manifestly improper" to "take action in criticism of a past Assembly." Several cases are of record in which Assemblies have refused to entertain complaints against inferior courts for carrying out instructions of the Assembly. Our own Assembly in 1911 declared it incompetent for any General Assembly to review a judicial decision of a previous Assembly, or even to question it. Yet the right to criticise, revise or reverse the judicial decisions of former Assemblies has been repeatedly asserted and exercised. The Assembly of 1824 not only asserted the right to reverse the judicial decision of a former Assembly, if justice should require it, but did actually criticise the previous Assembly for its manner of handling a case; and the Southern Assembly of 1912 did very courteously criticise as "unwise" a certain judicial decision of the Assembly of 1910, while protesting that it did not mean to criticise at all! No body of Scotch-Irish men would ever agree to abridge the liberty of *criticism*!

The following cases in which Assemblies have reversed, or revised judgments of previous Assemblies, are given in the Digests:

1. The O. S. Assembly of 1840 having in a judicial decision censured Rev. Mr. Kellar, the Presbytery of Peoria and the Synod of Illinois, and the same facts being involved in a complaint and protest that came up to the Assembly of 1842, the latter Assembly reviewed the case, reversed the former judgment, and removed the censures inflicted by the Assembly of 1840. Baird's Digest, pp. 169-70.

2. The Assembly of 1822 in reconsidering the Craighead case, being advised by Mr. Craighead of serious error in the judgment of the Assembly of 1811 against him, re-opened his case, vacated its former judgment, and authorized him to prosecute his appeal against his Synod. The Judicial Committee, whose report was adopted by the Assembly, reported that the construction put upon the standing rule of the General Assembly by the Assembly of 1811 "was not correct;" and that "moreover, the sentence of the Assembly, being founded in error, ought to be considered null and void," etc. See Baird, pp. 649-55.

3. The New School Assembly of 1864—the same year in which the Old School Assembly denied the right of one Assembly to revise the proceedings of a previous Assembly in a judicial case—did rescind a decision of its predecessor, and dismissed a case which had been decided by that body, declaring that the Assembly of 1863 had acted without due knowledge of the facts in the case. This decision enunciates the principle that an Assembly has the right to reverse the decision of a previous Assembly when shown to be in error. Moore, p. 689.

4. The Northern Assembly of 1884, on memorial and error shown, revoked the action of the previous Assembly in the Woodside case, and remanded the case to the Synod of Indiana for proper adjudication. In this instance, a complaint regularly issued and sustained was reconsidered, and the former action in censuring a Presbytery reversed, because of errors committed by the former Assembly in its ignorance of the facts of the case. Moore, p. 690.

5. In the Backus case, the Northern Assembly of 1900 vacated the judgment of a former Assembly, and remanded the case to the Synod with instructions, on the ground of new testimony. Moore, p. 1090.

6. While there are no precedents in the decisions of our Southern Assembly for a formal re-hearing of a case adjudicated by the Assembly, the right to do so was, in an informal way, exercised in the Assembly's final disposition of the Robinson case. The facts of the case, as far as they were of record, were reconsidered by the Judicial Committee of the Assembly of 1890, the former decisions of the Assembly in the case reviewed, and certain allegations of Mr. Robinson found to be correct. Recognizing that the petitioner, whose appeal had been sustained in 1887, had been placed in an anomalous position by the contradictory findings of the Assemblies of 1887 and 1889, the former restoring him to the ministry, and the latter barring him from the communion from which he had not been debarred up to that time, the Committee reported that the Assembly "ought to relieve the conflict and anomaly by granting the petitioner's request and restoring him to the communion of the Church." This was accordingly done. Thus the same Assembly which in 1890 denied the right of a litigant to appeal from one Assembly to another, and which a year later declared that the final judgment of an Assembly was "an end of the constitutional authority of the higher court to deal with that particular case, unless it be again brought before the higher court for adjudication in one of the ways provided for by our Book of Church Order," did, informally, and for the sake of simple justice, re-open a case on memorial and revise the judgment of a former Assembly. (Alexander's Digest, Rev., pp. 678-9.) This, manifestly on the principle that when a court is advised of error in its judgment, it has the right to amend that judgment. And to do this involves the re-opening of the case. When the law provides no remedy for a manifest wrong, it is the business of the courts to devise one. They must read the spirit of the law—which is jus-

tice—into its letter, on the principle, admitted as a legal maxim from time immemorial, that for every wrong there is a remedy.

Notwithstanding the precedents herein set forth, and the uniform practice of our civil courts, there has been evident caution and indecision apparent in the deliverances of our Assemblies when their judicial decisions have been called in question. For this there are three reasons. One is, the palpable defect of our law in the premises. While conceding the principle that if, through failure to get at the whole facts of a case a court has erred, a new trial may be granted by "any court," it is silent on the question whether a palpable violation of law and justice, such as usurpation of jurisdiction, or clear violation of a statute, or improper admission or exclusion of evidence, should not demand a re-hearing by our court of last resort. Thus the General Assembly is deprived of those safeguards to the sanctity of its judgments which have long ago been provided for themselves by our civil courts. And this defect affords a refuge for all the impatience and intolerance which are apt to crop out in an ecclesiastical trial. We must all admit candidly, that the ecclesiastical temper is not as patient as it ought to be. Christian men and church courts are prone to count themselves infallible, even when they hold devoutly to a creed which admonishes them that synods and councils may err.

A second reason is the fear of endless litigation, alluded to in more than one judicial decision. But it becomes the church to bear in mind that rights may be invaded and precious truth sacrificed, by judicial decisions that are regarded as practically "*ex cathedra* infallible." Courts whose function is to guard spiritual principles and the purity of the church, should be at least as well provided with rules by which errors may be corrected and wrongs remedied, as are our civil courts, which are concerned mainly with the protection of life and property. Suppose a man's good name be unjustly assailed by an ecclesiastical inquisition, sitting as a supreme court of the church: shall we consider this a matter of less importance

than a suit for slander in a civil court? When civil courts of last resort are as careful to consider any allegation of error in a petition for a re-hearing in a suit for "mental anguish" as they would in a suit involving millions of dollars, ought not ecclesiastical courts to be at least as careful? Does not our law as it stands strongly intimate the duty of a court to give an accused person every reasonable opportunity for exculpation? Shall the mere silence of our law as to other grounds than new testimony as calling for re-hearings in "any court" be counted a matter of less weight than precedents reaching back nearly a century. These precedents show that the right of a General Assembly to re-open a case adjudicated by a previous Assembly, and to revise or vacate an erroneous judgment, has not only been asserted repeatedly, but in at least six cases actually exercised. And should we not consider the fewness of these cases a sufficient indication of the fact there is little danger of endless litigation in our church courts, even were that right frankly conceded to our supreme tribunal? Again: shall the fear of encouraging litigiousness operate not only an estoppel of just efforts to protect the rights of the innocent, but also of efforts to prevent the gradual amendment of our constitution by judicial interpretation? Cases are conceivable in which the very *ratio essendi* of a church may be involved in a case brought before a General Assembly. If the principle that "the interpretation of the law is the law" be generally accepted, a partisan court may, if no method of revising or vacating its judgment be devised, nullify the church's distinctive testimony, and destroy that *ratio essendi*.

But perhaps the most prevalent reason for the indisposition to allow re-hearings before our General Assemblies is a confusion of thought as to the character of the Assembly itself. It is viewed rather as a temporary gathering of commissioners than as a permanent tribunal of the church, whose sittings are annual. For this confusion it is easy to account. In court parlance, the word "court" has two well-defined meanings. One is, the judge or bench of judges. The other is, the trib-

unal, of which the judge is the presiding officer and mouth-piece. Taking the word in the former sense, if judges held their office for but one year at a time, there would be a new court every year. Taking it in the latter sense, the court of one year would be the same as that of any former year. Now it so happens that our General Assembly is a representative, legislative and administrative body, and also a bench of judges. Part of the time its members sit in one capacity, and part in *the other*. The antiquated term used to signify the final adjournment of the body—"dissolved,"—has been construed to mean that when the assembly, or gathering of commissioners has been dissolved, "the court" is no more; that the next assembly will be a new court, separate and distinct from "the former court." This doctrine was formally promulgated by the Southern General Assembly of 1911. Let us look into it a moment.

Suppose that by law the tenure of office in the civil courts of last resort were but for one year, and that the court sat but for one brief term; would anybody imagine that each separate term of such a court is to be considered the sitting of a new tribunal? Obviously, as to the personnel of the bench, it would be a new court, but it would be the same tribunal as its predecessors. The dissolution of the session or assembly of our ecclesiastical judges, is not the dissolution or death of the court. Judges, civil or ecclesiastical, may adjourn or die; the court, like the king, lives on. The identity of a civil court lies in the commonwealth of which it is the organ. The identity of a General Assembly of a Presbyterian Church with previous Assemblies of the same church, lies in the church, of which the Assembly is but the legal quorum. The General Assembly is the church, generally assembled. Its name is the same, and its functions are the same. The Assembly's act is the church's act. Nobody questions the assertion that what the church has done wrongly in one Assembly it may undo in another, as far as possible, when we speak of administrative and legislative affairs. It is only when a judicial decision is

attacked that we find the distinction drawn between "the present" and "the former" court.

But not only does the continuing identity of the General Assembly, considered as a permanent tribunal, reside in the church as a whole, but it is visibly embodied in its moderator and its permanent officers, in its executive agencies, and, above all, in its trustees. The latter body is a legal corporation, whose very name implies the continuing identity of the body of which it is the fiduciary agent. It sustains always the same relation to the church and to every succeeding Assembly. Now, consider what must result if we adopt the novel theory that a General Assembly is a temporary court, and that when it is "dissolved" it is dead. First, each General Assembly must either elect its own board of trustees, or else the name of the corporation must be changed. If the General Assembly of our Southern Presbyterian Church has no continuing identity, the present name of its board of trustees is a misnomer, and should be "The Trustees of the Presbyterian Church in the United States." Second, legal steps must be taken to administer upon the property of each successive Assembly, immediately upon its "dissolution," and the trustees must be charged with the duty of this annual administration, which must also be done annually according to civil law as in the case of any other deceased persons. Now, if the Assembly as a legislative body has a continuing identity, such as is admitted in the case of Synods, Presbyteries, sessions and congregations, the same identity must be regarded as attaching to the same body considered as a court.

The proposition thus sought to be established has been in terms affirmed by the Supreme Court of Virginia, in its decision of a case already mentioned. With careful use of pronouns the Court decided incidentally, that the General Assembly of one year is the same official personality as the General Assembly of the same church in any successive year. The decision identifies the General Assembly of 1861, which set up a new ecclesiastical jurisdiction in the seceded States, with

that of 1865 which adopted the present name of our church, and is in these words:

"Upon the breaking out of the late war the Presbyterians within the bounds of the States composing the Confederacy, together with the Presbyteries of Potomac and Winchester, previously belonging to the Synod of Baltimore, determined to separate from 'The Presbyterian Church in the United States of America,' and sent commissioners to an Assembly which met in Augusta, Georgia, on 4th December, 1861, and organized under the name of 'The General Assembly of the Presbyterian Church in the Confederate States of America.' At the end of the war, this body, at its sessions in Macon, Georgia, commencing 14th December, 1865, changed the name of the church which it represented to 'The Presbyterian Church in the United States.'"—86th Va. Rep., p. 133.

Now, note the terms used by the court. Why does he say "*this* body, at *its* sessions"? "This body" refers to the body which had in 1861 organized under the name of "The General Assembly of the Presbyterian Church in the Confederate States of America." Why this identification of the two Assemblies? Obviously, because the court considered them the same official personality. He speaks of the General Assembly of our church in precisely the same way as he speaks of the Supreme Court of Virginia, and for the same reason. He believed it to be the same in its official personality under all changes of administration. As we have seen, when he refers to an error committed by his own court in the persons of judges of a former generation, he said, "This court should have corrected itself." Though the original judges had been long dead, the court had survived, and was still the same that it had been from the beginning of the commonwealth of Virginia. So must we reason in regard to the General Assembly of a Presbyterian Church. And so, for the most part, we do. We speak of "The General Assembly" without meaning to refer to the Assembly of any particular year. And the As-

sembly has "permanent" committees, which are changed annually in their personnel.

From the foregoing facts and decisions I conclude,

First: That any Presbyterian General Assembly has an undeniable right to re-open any case adjudicated by a former General Assembly of the same church, if that decision is found to be in error; and to correct that error, by amending or vacating its judgment, and either re-hearing the case, or remanding it to the inferior court for proper adjudication. The general principle of equity involved is admitted by all our civil courts, and has been often asserted and six times exercised by our General Assemblies.

Second: That our Rules of Discipline should be so amended as to safe-guard this right and also guard against its abuse. To the general rule providing for a new trial before "any court" on the ground of new testimony, rules for re-consideration should be added, providing that even a court of last resort may reconsider a case adjudicated in any former year if certified that the decision is marred by such faults or irregularities as would justify an appeal, if committed by a lower court. Why should our highest court be responsible to nobody and to no law but its own will?

Third: That should the church fail to provide rules for re-opening of cases formally adjudicated by the General Assembly, for vacating judgments found in error, etc., we are left with no safe-guard to preserve the sanctity of any Assembly's judicial decisions; and each succeeding Assembly must do what seems to it good in any case of petition for re-hearing. Such petitions will come up sometime, for the hope of justice dies hard in the human breast.