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ART. I.—*Notes, explanatory and practical, on the Gospels: designed for Sunday School Teachers and Bible Classes.* By Albert Barnes. *In two volumes. Fourth edition—each edition contains two thousand.* New York and Boston, 1834, 12mo.

THOUGH we hardly have a right to notice, as a new work, one which has been so long in circulation, and with which so many of our readers are familiar, we feel ourselves called upon as Christian critics, to say what we think of Mr. Barnes's expositions. This we shall do as plainly and as kindly as we can. As our object is simply to characterize a book, which is likely to exert a very durable and extensive influence, we shall confine ourselves entirely to an enumeration of the points in which we think it worthy either of praise or censure. We have only to premise that our conclusions have been mostly drawn from the notes on Matthew and John, especially the former, though we have so far compared the rest as to remain convinced, that the first part of the work is a sample of the whole. Throughout our strictures, we shall endeavour to be pointed and specific, referring when we can, to individual examples, both of defect and merit, though it be at the risk of seeming sometimes hypercritical, a reproach which can scarcely

*Samuel H. Wainwright*ART. II.—*The Doctrine of Appeals and Complaints.* By a
Member of the Synod of Philadelphia.

A QUESTION has lately arisen in our ecclesiastical courts, in regard to the interpretation of those sections in the Book of Discipline, which relate to Appeals and Complaints.

And as it is a question of a practical character and bearing, its final settlement is highly desirable, in order that those subjects of vital importance, which are likely to come before the judicatories from time to time, may not be disposed of on preliminary points of order.

The object of this article is to present such a view of this litigated question, as, in the judgment of the writer, most accords with the spirit and letter of our ecclesiastical constitution.

The division of the powers of judicatories into *legislative* and *judicial*, is not of recent origin. It is naturally suggested by the constitution of the church itself, and is formally adopted by Dr. Hill, in his "View of the Constitution of the Church of Scotland," p. 229. The same distinction is recognized in the following extract from the Life of Dr. M'Knight, the commentator on the epistles: "In relation to the business which usually occupies the General Assembly, either in its *judicative* or in its *legislative* capacity, Dr. M'Knight always formed a clear, sound, and decisive judgment." p. 6.

This distinction is so reasonable in itself, and so necessary to the efficient transaction of the two-fold business of judicatories, viz. to make laws,* and try offenders, that it

* It is a fundamental article of Presbyterianism, as stated in the "*Preliminary Principles*," "That all church power, whether exercised by the body in general, or, in the way of representation, by delegated authority, is only ministerial and declarative: *that is to say*, that the holy scriptures are the only rule of faith and manners; that no church judicatory ought to pretend to make laws, to bind the conscience, in virtue of their own authority; and that all their decisions should be founded upon the revealed will of God." See "Form of Government," chap. I, sec. 7.

In strictness of speech, therefore, all laws made by the judicatories of the Presbyterian church are merely *declaratory*; declaratory of what, in the opinion of the judicatory, is most consonant to the spirit of the Gospel, relative to soundness of faith and ecclesiastical order. This can not always be expressed; but it is ever to be understood, in making a law or a rule in the Presbyterian church, that the word of God, sometimes in its letter, and always in its spirit, is the paramount law. "Let all things be done decently and in order." Here is a paramount law. In carrying it into practice, however, many subordinate rules or laws may be necessary, in the formation of which, human prudence, guided by the temper and spirit of the Gospel, must be consulted and decide.

should never be lost sight of, in the construction of that instrument which declares and defines those powers. This instrument is a bond of union. It is, like the constitutions of all other societies, a mutual dereliction of rights and privileges, with the view to secure a common advantage. This common advantage is guarantied by the pledge of fidelity which each member gives to all the rest, and on the ground of which, the mutual dereliction is made. When an individual promises subjection to his brethren in the Lord, it is with his eye upon the pledge, that subjection shall not be exacted contrary to the provisions of the constitution which he is required to adopt. All, therefore, have a common interest in maintaining that constitution, and a common right to require its observance by all others whom it binds. A misconstruction of this document in a given case, may secure a temporary advantage to those who are guilty of it, but in another case, with altered circumstances, the same construction would militate against their interest, and be destructive of their rights. Unless, then, a dominant party are willing, and wicked enough, so to construe the constitution as always, to subserve their purposes, and thus be guilty of obvious and wilful inconsistency in their contradictory interpretations, there can be no object in departing from its plain and intelligible import. Divested of all improper motives, and of every sinister design, let us aim at the true meaning of those sections of the book, now under consideration.

The position we will endeavour to maintain is, that Appeals and Complaints can not constitutionally be entertained in our church judicatories, except in *judicial* cases.

The synod of Philadelphia, at its late meeting in Gettysburg, made two decisions on this subject. The first was in regard to complaints, and the second related to protests, complaints, and appeals. The decision in both cases was, that they could not lie except in judicial cases. In the opinion of the writer, the first of these decisions was *correct*, and the second *incorrect*, so far as it related to protests. There is undoubtedly a distinction to be observed between protests, and the two other remedies included in this decision. "The Repertory," however, in the article entitled "New Ecclesiastical Law," does not recognize this distinction, but places them all on the same foundation. This will be noticed hereafter. But it may be proper to remark in this connexion, that so far from protests being confined to

judicial cases, they can not effect the reversal of a decision in such cases at all, and if not applicable to legislative cases, they are of little use. The book declares that "no judicial decision, however, of a judicatory, shall be reversed, unless it be regularly brought up by appeal or complaint." Chap. VII, sec. i, § 4. A protest, therefore, could not secure the reversal of a decision in a judicial case. All that the "Repertory" has said on the subject of protests, as applicable to legislative cases, I freely concede; and although it bears directly on the decision of the synod, yet does not relate to the question in hand at this time; and can not affect the argument on the doctrine of Appeals and Complaints.

I wish it to be distinctly understood in the outset, that the argument on which we are about to enter, is based upon the CONSTITUTION of our church. My object will be, if possible, to ascertain what is the obvious meaning of that instrument, in reference to the point before us. Here the argument must stand or fall. The question is not one of previous practice, but of the construction of written articles adopted by the church, and of acknowledged obligation on all her judicatories. "To the law and to the testimony, if they speak not according to this word, it is because there is no light in them."

Before proceeding farther, it may be proper to explain what I mean by the judicial and legislative powers of judicatories. For particular reasons, I will quote, on this subject, the language of Dr. Hill, before mentioned. 1. "*The judicial power of the church*," says he, "appears in the infliction or removal of those *censures* which belong to a spiritual society. This power is not entrusted by the constitution of our church, to the minister of a parish; for while he performs various offices in his personal capacity, it is only when he sits in the kirk-session as moderator, or acts by their authority, that he exercises the *judicial power* of *rebuking*, of *suspending*, or *excluding from the privileges* of the church, and of *absolving from censure*." "The strict observance of a known established mode of trial, is peculiarly necessary in the *judicial proceedings* of the church, where *sentences* that *affect the character* and comfort of the *parties*, and that *deprive a minister* of his usefulness and his freehold, are pronounced by large popular assemblies, the members of which, not being conversant in legal discussion, are in danger of deciding from some strong present impres-

sion." pp. 229, 231-2. I have taken the liberty of italicising those words which the reader is particularly requested to notice, as designating the nature and character of a judicial case.

2. *Legislative power.* "We apply that term," says Dr. Hill, "to the power of making *standing laws* concerning matters of general importance." Under this head he also states that "every judicatory is occasionally called to enforce the laws of the church, by making such *special enactments*, in conformity to those general laws, as are suggested by the *circumstances of the district under its jurisdiction*; and church courts, like all others, have a right, within certain limits, to regulate the *forms* of their own proceedings." p. 233. But he does not confine the legislative power to such cases, but extends it to the making of standing laws of general importance. I have italicised such words in the above extract, as mark the character of *legislative proceedings*.

It is evident that there is between the two kinds of business, judicial and legislative, a wide and important difference, one which is easily comprehended, and which should never be disregarded. Words are signs of ideas; and if the peculiar phraseology of the above quotations from Dr. Hill, clearly designates, the difference between legislative and judicial proceedings, we must be guided by similar language, in determining what remedies are applicable to each of those kinds of business. Now, it cannot have escaped the observation of the attentive reader of the sections on appeals and complaints, that their phraseology is peculiar, and just such as any competent man would use, in drawing up these forms of remedies, with the avowed intention of confining them exclusively to judicial cases. I see not what other language could be appropriately employed to accomplish such a design. Nor is it a word here and there in these sections, on which we rely in this argument, but it is the uniform strain of language of peculiar import, running through the whole of both of them: language which cannot be applied to legislative proceedings without manifest violence and impropriety. This will appear, however, as we proceed.

The "Repertory" relies with strong confidence on the second paragraph of chapter VII. of the Book of Discipline. "Every kind of decision which is formed in any church judicatory, except the highest, is subject to the review of a

superior judicatory, and may be carried before it in one or the other of the four following ways. 1. General review and control. 2. Reference. 3. Appeal; and 4. Complaint."

My first remark on this paragraph is, that *protests* are not named as one of the four ways in which a decision may be brought up to a superior judicatory: yet the "Repertory," p. 94, says, "'Every ecclesiastical business that is transacted' in such a body, may be brought before a higher court by *appeal* or *complaint*, and of course by a *protest*, which commonly accompanies a complaint." If the business be of a judicial character, the protest may be accompanied by a complaint, and then the case is brought up, not by the protest, but by the complaint. If it be legislative business, it is brought up by review, not by protest, although the protest may serve to direct the attention of the reviewing court, to the matter protested against. The object of a protest, like that of a dissent, is not to bring up a case for trial or reversal, but to exculpate the protestants from all participation in the guilt of what they deem to be an erroneous and sinful judgment or decision. This is farther evident from the fact, that protests are admitted against the decisions of the highest judicatory, from which they cannot be carried up to another. But even in such a case, the object of a protest is fully answered, as it is left to speak for itself, and to declare, that in the opinion of the protestants, the decision of the judicatory is improper.

My second remark is, that the "Repertory" has fallen into a strange grammatical error, in the interpretation of the above paragraph of the Book of Discipline, and one too which entirely alters the sense of it.

The paragraph says that every kind of decision may be carried before a superior judicatory "*in one or the other of the four following ways, &c.*" The "Repertory" interprets this to mean that *every* kind of decision may be carried up in *either one* of the four ways mentioned. "Words cannot be more express," says the "Repertory," p. 90, 91. "'Every kind of decision' (the most comprehensive language possible) that can be formed by an ecclesiastical judicatory, may be regularly opposed by appeal, complaint, &c." Again; after quoting a similar paragraph from Dr. Hill, the "Repertory," p. 94, says, "'Every ecclesiastical business that is transacted,' in such a body, may be brought before a higher court by appeal or complaint, and of course by a protest, &c." Now the force of the dis-

junctive in this paragraph, destroys the interpretation which the "Repertory" gives; and so far from making these four remedies specified, of common application to every kind of decision, it distributes them, and prepares the way, as it was designed to do, for the subsequent detail of them, pointing out the particular kinds of decision to which they are severally applicable and appropriate.

The proposition stated in the paragraph is a correct one. Every kind of decision may be carried up in *one* or *the other* of the different ways named. But surely this does not mean that they may be *all* carried up by *one* of the ways *only*, at the option of the person dissatisfied; nor that *all* these ways are equally applicable to *any one* kind of decision. Let us illustrate this. All the members of the present Congress belong to *one* or *the other* of the two houses of which it is composed. This is a correct proposition. But does it mean that they *all* belong to *either* house in which they may choose to act? Does it mean that those who are members of the Senate, are also members of the house of Representatives? certainly not. Again: Every professorial chair in the Theological Seminary at Princeton, is filled by *one* or *the other* of the Faculty connected with that Institution. Does this mean that each chair is filled by all the professors, or that one professor fills all the chairs? certainly not. It is perhaps needless to multiply examples to show the true import of the phrase "*one or the other.*" Those already given are sufficient to prove, that when this phrase occurs in the paragraph under consideration, it does not mean, as the "Repertory" supposes, that every kind of decision may be carried up to a superior court, in *either* of the four ways specified. We must look at the details of these four remedies, as set forth in the subsequent sections of the seventh chapter of the Book of Discipline, in order to determine the appropriate method of carrying up any given case.

1. The first of the four ways mentioned, is "General Review and Control." According to the "Repertory," every kind of decision may be carried up in this mode. The "Repertory" does not, indeed, make any distinction between carrying a decision up, and seeking its reversal; but what could be the object of the one, if it were not to secure the other? Why should an individual require a superior judicatory to review a decision, if he did not seek its reversal? Yet the 4th, paragraph of the first section of the 7th, chapter, declares that "*no judicial decision* of a judicatory

shall be reversed, unless it be *regularly* brought up by *appeal* or *complaint*." The "regular" method, then, of bringing up a "*judicial* decision" is by "appeal or complaint." And the method by Review and Control is not the proper one in such a case. From the phrase "*judicial* decision" in the above extract, it appears that the constitution recognizes a difference between *judicial* decisions, and *legislative* enactments. And from the extract itself, it appears that judicial decisions have assigned to them, appropriate methods of being carried up for confirmation or reversal. Therefore it cannot be correct, that *every kind* of business may be carried up for ultimate decision, in *either* of the four ways mentioned. Judicial business may indeed be carried up by Review and Control, for the correction of some irregular or unconstitutional proceeding connected with it. But even then, the superior judicatory cannot reverse the decision, but remand the whole matter back again to the lower judicatory for correction, or stay all further proceedings in the case, as circumstances may require. See chap. VII. sec. i. § 6. For what kind of decision, then, does it appear that this remedy seems to have been specially provided? Not for judicial decisions, for every irregularity connected with such decisions may be corrected by appeal or complaint: this is evident from the decision which the superior judicatory may make; which "may be either to confirm or reverse, in whole, or in part, the decision of the inferior judicatory: or to remit the cause for the purpose of amending the record, should it appear to be incorrect or defective; or for a new trial." Ch. VII. sec. iii. § 10.

The remedy by Review and Control, seems then, to have been chiefly designed for decisions, other than judicial. This manifestly appears from the phraseology of the section on this subject. "In reviewing the records of an inferior judicatory, it is proper to examine, **FIRST**, whether the proceedings have been constitutional and regular: **SECONDLY**, whether they have been wise, equitable, and for the edification of the church: **THIRDLY**, whether they have been correctly recorded." § 2. This covers the whole ground of legislative proceedings. And the remedy is as follows: "In cases of this kind, (disreputable and injurious,) the inferior judicatory may be required to review and correct its proceedings." § 3. "Judicatories may sometimes entirely neglect to perform their duty; by which neglect, heretical opinions, or corrupt practices, may be allowed to gain ground; or

offenders of a very gross character may be suffered to escape; or some circumstances in their proceedings of very great irregularity, may not be distinctly recorded by them. In any of which cases, their records will by no means exhibit to the superior judicatory, a full view of their proceedings. If, therefore, the superior judicatory be well advised, by *common fame*, that such neglects or irregularities have occurred on the part of the inferior judicatory, it is incumbent on them to take cognizance of the same; and to examine, deliberate and judge in the whole matter, as completely as if it had been recorded, and thus brought up by the review of the records." § 5.

The "offenders" named in the above extract, are evidently those against whom the Presbytery have neglected to commence process, not such as have been regularly tried and acquitted; for the proceedings in such a case would be recorded, whereas the extract has reference to what is not recorded, and to cases where the Presbytery "entirely neglects to perform its duty" of commencing process, whereby "offenders of a very gross character may be suffered to escape."

The first section, in stating the remedy by Review and Control, proceeds thus:—"When any important delinquency, or grossly unconstitutional proceedings appear in the records of any judicatory, or are charged against them by *common fame*, the first step to be taken by the judicatory next above, is to cite the judicatory alleged to have offended, to appear at a specified time and place, and to show what it has done, or failed to do, in the case in question: after which, the judicatory thus issuing the citation, shall remit the whole matter to the delinquent judicatory, with directions to take it up, and dispose of it in a constitutional manner, or stay all further proceedings in the case, as circumstances require." § 6. Here, then, is an ample remedy for every wrongful legislative act of a lower judicatory. Here we have detailed to us the manner in which every such decision may be subjected to the action of a higher judicatory, and regularly corrected. Why, then, abandon this constitutional mode of redress, about which there is no difference of opinion, and resort, in a legislative case, to those modes, which, we think we can show, were never designed for, nor in their nature suited to, such a case?

Besides, if judicial decisions do not require another, and a peculiar remedy, why has the Book of Discipline, with so much particularity, prescribed other and wholly different

modes of redress? Why were four different ways of carrying up a decision prescribed, in "*one or the other*, and not in *either*, of which any decision may be corrected? This peculiar phraseology, "*one or the other*," certainly indicates that there are *appropriate* remedies for *particular* kinds of decision. This is the doctrine for which we contend. But let us proceed.

2. The second method of carrying up a case is by *Reference*. According to the "*Repertory*," *any kind* of decision may be carried up in this way. But "a reference is a JUDICIAL representation, made by an inferior judicatory to a superior, of a case *not yet decided*, &c." Sec. ii. § 1. The book, perhaps improperly, enumerates this among the four ways in which a DECISION may be carried up, whereas it relates to cases "*NOT YET DECIDED*."

This mode, however, evidently contemplates a judicial, and not a legislative case. It is a "*judicial* representation of a case, &c." A reference, moreover, is "either for mere advice or ultimate *trial*." In the latter case, it "submits the whole *cause* to the final judgment of the superior judicatory." § 3, 4. "In cases of reference, also, the judicatory referring ought to have *all the testimony*, and other documents, duly prepared, produced, and in perfect readiness." § 9.

This language cannot be applied, without manifest violence, to legislative enactments. *Individuals* are *tried*, and that only by *judicial* process. And "*testimony*" is required only in a judicial "*cause*."

3. We come now to examine the third way of carrying up a decision, namely, *Appeals*. I respectfully ask the candid reader's attention to the peculiar phraseology of this section; and also to the striking contrast it bears to that of the section on Review and Control. The "*Repertory*" contends that every kind of decision may be carried up by appeal. "Whenever a judicatory has decided any question which came before it by a vote," says the "*Repertory*," "whether the question were legislative, declarative, executive, or strictly judicial—in any and every such case, both theory and practice allow of appeal, complaint and protest, &c." p. 90. But what says the book? "An appeal is the removal of a *cause* already decided, from an inferior to a superior judicatory, by a *party aggrieved*." § 1. What is here meant by "a party," is explained by its use and connexion in the subsequent paragraphs. "All *persons* who

have submitted to a regular *trial* in an inferior, may appeal to a higher judicatory." § 2. "Any irregularity in the proceedings of the inferior judicatory; a refusal of *reasonable indulgence to a party on trial*; declining to receive important *testimony*; hurrying to a decision before the *testimony is fully taken*; a manifestation of *prejudice* in the case, and mistake or *injustice* in the decision—are all proper grounds of appeal." § 3. Strange language, this, to be used in reference to legislative enactments.

"Appeals may be, either from a part of the proceedings of a judicatory, or from a defective sentence." § 4.

"In taking up an appeal, after ascertaining that the appellant, on his part, has conducted it regularly, the *first* step shall be to read the *sentence* appealed from: *Secondly*, to read the reasons, &c.: *Thirdly*, to read the whole record of the proceedings of the inferior judicatory in the case, including all the *testimony*, and the reasons of their decision: *Fourthly*, to hear the *original parties*, &c." § 8.

"After all the *parties* shall have been fully heard, &c.—the *original parties*, and all the members of the inferior judicatory, shall withdraw; when the clerk shall call the roll, &c." § 9. Here, it will be perceived that a distinction is made between "*the original parties*," and the "*members of the inferior judicatory*." In a legislative case, when all the members of the inferior judicatory, including those who voted against, as well as those who voted for the measure, shall have withdrawn, who are the remaining "*original parties*?" There will be, there can be none. Does not this clearly show that legislative cases, whose very nature admits of no *original parties*, are not contemplated nor regarded by this section? Let us suppose a case. A synod regularly divides a presbytery, which according to the constitution, all admit they may do. One or more individuals appeal to the General Assembly from this decision. In this case, which is a legislative one, who are the "*persons that have submitted to a regular trial*?" and who only can appeal, according to paragraph 2. Where is "the refusal of reasonable *indulgence to a party on trial*?" Where is there "a hurrying to a decision before the *testimony is fully taken*?" Where is there room for possible "*prejudice* (prejudgment) in the case?" Where has a "sentence" been pronounced?

Now, suppose the Assembly take up the case. How will they proceed? "The first step *shall be* to read the *sentence* appealed from." From this order there can be no depar-

ture. The language is imperative. But no *sentence* has been pronounced. Suppose the Assembly, however, regard the *decision* of Synod as a *sentence*. On whom has it been pronounced? Where is the "*person* who has submitted to a *regular trial*?" Will the Assembly regard the appellants as the *persons* thus *regularly tried*? Be it so.

The next step is, to read the record of the inferior judicatory, "including all the *testimony*, &c." No testimony was either given to, or heard by, the Synod. No "*person*" was tried. Then the Assembly must act without the testimony, and in direct violation of this third requirement in conducting appeals.

The next step is, "to hear the *original parties*." Who are they? The reader cannot be at a loss to determine, from the section now under consideration, who alone can be "original parties." But who are these parties in the case supposed? Perhaps the next step to be taken, as required by the book, will throw some light on this point. That step is, "to hear any of the members of the inferior judicatory, in explanation of the grounds of *their decision*, or of *their dissent* from it." The members of the inferior judicatory, including all who voted in the case, whether for or against the measure appealed from, are here mentioned as entirely distinct from the "original parties." Now, it is clear that none who had a right to vote, and who actually did vote on the question, can be heard until the original parties have enjoyed that privilege. But besides these, who remain to constitute the original parties?" Not those who constituted the Presbytery which was divided, for they all had the right of voting, and may have actually voted in the case, either for or against the division. Who then, we ask again, are the original parties? Until these be ascertained, how can the Assembly proceed? The Synod cannot be one of the original parties, for surely a party cannot be the judge in his own case; yet here the Synod is the body performing the act appealed from. Appeals are never taken from the judgment of a party in his own case, yet here the appeal is from the decision of the Synod.

But if the Synod be one of the original parties, who is the other against whom the decision has been made? Not the Presbytery divided, for a majority of them may have voted for the division. Not those who voted against the division, whether members of the divided Presbytery or not, for they are a part of the inferior judicatory, and are not permitted

to be heard in the superior judicatory, until the original parties shall have been first heard.

Now, my respected reader, is it not perfectly manifest, that appeal is not the way in which "*any and every* decision" may be carried up to a higher judicatory? What one step can the Assembly regularly and constitutionally take, in this supposed case, in issuing the appeal? Who does not perceive the constitutional difficulties that would oppose their progress, at every stage of the investigation? Will the Assembly disregard these difficulties, and break through the barriers which the constitution has erected around inferior judicatories, to protect their rights, and to defend them from the encroachments of usurped authority? Let the Assembly put what construction on the language and meaning of the section on appeals they may, still the letter and spirit of it remain to speak for themselves. And if an arbitrary, legislating construction of written articles and specific powers, be indulged and acted upon, where is the security, where is the guaranty on which inferior judicatories may repose with confidence, for the protection and maintenance of their rights? These inferior judicatories must be guided in their proceedings, by the letter and obvious import of the book; and if the highest judicatory be not bound by the same obligation, they are placed at the absolute and arbitrary disposal of the Assembly; and the existence and exercise of their privileges are made dependent upon its unsettled and ever varying opinions. For when once you sever the cable, and start the ship from her moorings, she is at the mercy, and under the control of every wind that may chance to blow, and of every wave that may be agitated and driven before the storm.

But further on the supposed case. It will be admitted by all that what is legislative business in the lower judicatory, cannot be converted into judicial business by an appeal, or by any other method of carrying it up to a higher body. That is, the mere fact of carrying up a case, or the particular mode of doing it, does not alter it from a legislative to a judicial one. What then was the character of the supposed case in the lower judicatory? not judicial. None will contend that it was. It was the regular division of a Presbytery. But it may be said that the case retains its character in the superior judicatory, notwithstanding the appeal. But this is impossible. Look at the 39th of the "General rules for judicatories." "Whenever a judicato-

ry is about to sit in a *judicial capacity*, it shall be the duty of the moderator, solemnly to announce from the chair, that the body is about to pass to the consideration of the business assigned for *trial*, and to enjoin on the members to recollect and regard, their high character, as *judges* of a *court* of Jesus Christ," &c. Permit me here to ask whether this rule does not obviously recognize a distinction between the *judicial* and *legislative* capacity, in which a judicatory may act? Is not the rule itself founded on this distinction, and rendered unintelligible, without it? But to proceed.—This rule is invariably read, or the substance of it announced by the moderator, whenever appeals or complaints are about to be taken up. What does this prove, but that whenever a matter is carried up by appeal or complaint, it is understood as a matter of course, to be judicial business? Now, whatever stress may be laid by the "Repertory" on the *practice* of our judicatories, it all tends to confirm the correctness of the view of this subject which we have here taken. It will not be denied that a superior judicatory *invariably* resolves itself into a *judicial court*, whenever appeals or complaints are to be entertained; and that the business thus brought up, is *always* regarded by the court as judicial business. This we apprehend is perfectly evident. But in the supposed case, the synod did not sit in a *judicial capacity* in order to divide the Presbytery. This is never done, nor would it be proper so to do. How, then, does this business become *judicial* in the superior judicatory, while it is acknowledged to have been legislative in the one below? Here is a difficulty, and it is one that proves beyond a doubt, to the writer's mind at least, that whenever legislative business is carried up by appeal or complaint, it is a departure from the established principles of our constitution; and I may add too, notwithstanding the statements of the "Repertory" on this subject, from the established *usage* of our church under that constitution. But this we shall notice presently.

Let us look further at the *practice* of the church. It will not be controverted that appeals and complaints to a superior judicatory, are *invariably* put into the hands of the "*judicial committee*," for the purpose of digesting and arranging all the papers, and prescribing the whole order of the proceedings. But what is the origin, and where lies the expediency of such a committee? The 40th of the "General Rules for Judicatories," says, "In all *process* be-

fore a judicatory, where there is an *accuser*, or *prosecutor*, it is expedient, that there be a committee of the judicatory appointed, who shall be called the *Judicial Committee*, whose duty it shall be to digest and arrange all the papers," &c. It thus appears that this committee is appointed expressly for cases of *process*, "where there is an *accuser* or *prosecutor*." Hence it obtains the name of "*Judicial Committee*." The words "*process*," "*accuser*" and "*prosecutor*," seem to have been designedly used in order to remove all doubt, as to what *kind* of business, the action of this committee was applicable and proper. But in legislative cases there is no "*process*," no "*accuser*," no "*prosecutor*." With what propriety, then, may *legislative* business be referred to the *Judicial Committee*?

To whom does the constitution give the privilege of appeal? is a question of great moment in this discussion, as we presume it settles definitely the point in hand. Who may enter an appeal is stated in the book of discipline, both positively and negatively, in order to avoid the possibility of misapprehension. 1. Positively—"All persons who have submitted to a regular trial, in an inferior, may appeal to a higher judicatory." Chap. VII. Sec. iii. § 2. 2. Negatively—"An appeal shall in no case be entered, except by one of the original parties," § 17. These two paragraphs mutually explain each other: for what is meant by "*original parties*," in the latter, is determined by the former, when it says "*persons who have submitted to a regular trial, &c. may appeal*." Original parties, then, are the accuser and the person tried. But this is a judicial case, and consequently appeals can be entered only in such cases.

Before dismissing the section on appeal, let us notice the decision which this remedy contemplates. "The decision may be," says the book, "*either* to confirm or reverse, in whole, or in part, the decision of the inferior judicatory; or to remit the *cause*, for the purpose of amending the record, should it appear to be incorrect or defective; or for a new trial." § 10. The first remark on this paragraph is, that it serves to explain the phraseology of that on which the "*Repertory*" so confidently relies, namely the second of chapter VII., where it is said that "*every kind of decision, &c. may be carried before a superior judicatory in one or the other of the four following ways*," &c. Any instrument is the best interpreter of its own language. To ascertain the sense in which any word or phrase is em-

ployed in a treatise, in one place, we must refer to its use and connexion in another. Here we have, in the same book, the phrase "one or the other," and the word "either." Now, does it appear from their use, that they are synonymous? The "Repertory" evidently regards them as such, and upon this error its chief argument is founded. In the paragraph relating to the decision of an appeal, it is stated that the same case will admit of any one of the several decisions there specified, according to the judgment of the superior judicatory; and this is in virtue of the word "*either*," which makes all these decisions equally applicable and appropriate to the same case. And were this the word used in the second paragraph of chapter 7, instead of the phrase "*one or the other*," the argument of the "Repertory" would have weight.

The second remark is, that the nature of the decision in cases of appeal, show that the business thus brought up, must be judicial and not legislative. It is either to confirm or reverse, &c. or to remit the *cause*, for amendment of the record, &c. or for a new *trial*. The decision, then, in any appeal, may be to remit the "*cause*" for a "*new trial*." Now, does not this prove beyond a doubt, that only such cases can admit of appeal, as have in fact admitted of *trial* in the inferior judicatory? With what propriety can the expression "*new trial*," be applied to a case where there has been no previous trial? Can a case be tried the *second* time, that never was tried at all? It will certainly not be questioned, that the word "*trial*," applies to judicial cases only.

4. We now leave the subject of appeal, and pass to the consideration of the last of the four ways in which a decision may be carried before a superior judicatory, namely, *Complaint*. On this point we apprehend that but little need be said. We contend that a complaint can lie against a judicial decision only. I am aware that some make a distinction between the *nature* of appeals and that of complaints; whereas the book makes a distinction in point of *privilege* only. So nearly allied is a complaint to an appeal, that the one can lie only where the other might. This, I am happy to find, the "Repertory" concedes, by making them both equally applicable to every kind of decision. It is certainly true, that in all cases where a party may appeal, the minority of the judicatory may complain. But suppose it be the correct doctrine, that appeals can lie against judicial decisions only, does it follow that complaints are sub-

ject to the same restriction? This is the question immediately before us. For if complaints are applicable to judicial cases only, it will hardly be contended that appeals are capable of a more extended application. We find a satisfactory answer to this question in the section on complaints. "*Another* method by which a *cause* which has been decided by an inferior judicatory, may be carried before a superior, is by complaint." Chap. VII. Sec. iv. § 1. The word "*cause*" as used in the book of discipline, is invariably applied to a judicial case only. This will appear evident to any one who will take the trouble to observe the connexion in which it is used in every instance where it occurs. The book states that "an appeal is the removal of a *cause* already decided, from an inferior to a superior judicatory." A complaint is "*another* method by which a *cause* which has been decided, &c. may be carried before a superior judicatory." The word "*another*," refers to appeal, and not to either of the other two ways mentioned, of bringing up a decision. It cannot refer to the method by review and control, for *any* decision cannot be reversed by this method, as we have already seen; it is expressly declared, in treating of that method, that "no *judicial* decision shall be reversed, unless it be regularly brought up by appeal or complaint." Whereas, "if a complaint appear to be well founded, it may have the effect"—"of *reversing* the judgment." It cannot refer to "Reference," for this is the method of bringing up "a case *not yet decided*." It must refer, therefore, to the method by appeal alone. And if so, the word "*cause*" must be understood in the same sense, in which it is used in the section on appeal; namely, as designating a judicial case.

In the section on complaints, the cases are stated in which this remedy is proper and advisable: and the reader will perceive that the phraseology is similar to that used in the section on appeals, and applicable to judicial cases only. The cases "are such as the following, viz. The *judgment* of an inferior judicatory may be favourable to the *only party* who has been *placed at their bar*; or the *judgment* in question may do no wrong to any individual; or the *party* who is aggrieved by it may decline the trouble of conducting an *appeal*. In any of these cases no appeal is to be expected. And yet the *judgment* may appear to some of the members of the judicatory to be contrary to the constitution of the church, &c. In this case the minority have not only a

right to record—their dissent from this *judgment*, or their protest against it, but have also a right to complain, &c.” § 3. It will be perceived that the book here confines complaints to cases where a “*judgment*” has been rendered. No other kind of decision is mentioned or alluded to. Complaint is, moreover, here confined to cases where “a *party* has been placed at the *bar*.” And the expressions “*judgment*,”—“*party at the bar*,” surely are not applicable to legislative cases. Will any contend that they are? The cases, then, in which complaint is admissible, as appears from the book, are briefly these: either where the judgment is favourable to the accused party, who of course will not then appeal, or where the party aggrieved by the judgment, whether he be the accuser or the accused, declines the trouble of conducting an appeal, and yet the judgment in both cases, appears to the minority of the judicatory, improper and injurious. In either of these cases the minority, or any one of them, may complain. Now is it not manifest, that in any and all these cases, an appeal might lie, if the party against whom the judgment is rendered, chose to prosecute it before a superior judicatory?

The intimate connexion of complaints with appeals, and their common applicability to the same kind of decision, further appears from the frequent reference to appeals which is made in the section on complaints. For example: A *complaint* may lie where the original parties decline, for any reasons, to prosecute an *appeal*. “Notice of a complaint shall always be given before the rising of the judicatory, or within ten days thereafter, *as in the case of an appeal*.” § 4. “In cases of complaint, however, *as in those of appeal*, the reversal of a judgment of an inferior judicatory, is not necessarily connected with censure on that judicatory.” § 6. Again: after stating the only “cases in which a complaint is proper,” the book says, “in any of these cases no *appeal* is to be expected.” They are not to be expected on account of the reasons there mentioned; but is not this saying that the cases stated admit of appeal? It is not said that no appeal is *admissible*, but none is to be *expected*. The only cases, then, in which complaints may lie, are such as admit of appeal.

The statements of Dr. Hill, before referred to, whom the “Repertory” quotes with approbation, confirm the view here taken of the doctrine of complaints. “This complaint,” says Dr. Hill, “brings the whole proceedings under review,

and sists (places) the members who concurred in the judgment, the complainers, and all parties, at the bar of the superior court." p. 226. The doctor here speaks of a "*judgment*" as the subject of complaint; and makes a distinction between "all the parties" and "the complainers." Now in a legislative case, who are "the parties," as distinct from those members of the judicatory, who either concurred, or refused to concur in the decision? It would be difficult to find them. A complaint, it thus appears, can only lie in cases where there are "parties," as distinct from "the complainers," and "the members who concurred in the judgment."

Dr. Hill proceeds thus—"It was, in my remembrance, a matter of doubt, whether, if there was no appeal by a party, a complaint from the minority of a court could have the effect of reversing the judgment of the majority." p. 226. This, so far as the authority is concerned, strengthens the position we have taken, that complaints are proper only where appeals might constitutionally lie. The doubt was, not whether a complaint could be admitted, but whether it could effect a reversal of the judgment complained against. And it clearly shows that if no appeal could lie in the case, neither could a complaint: for the doubt was, whether an appeal was not essential to the reversal of the judgment. The appeal, moreover, must be entered by "a party," which shows that a complaint respects a judicial case.

The doctor goes on to say, that "the doubt has been completely removed"—"and it is now understood to be a part of the law of the church, that upon a complaint from the minority of an inferior court, the court of review may dispose of the sentence complained of, in the same manner as if it had been brought before them, by the appeal of a party." p. 227. From which we gather that a "*sentence*" is the decision which admits of complaint; and that this remedy can be resorted to, only where the cause might "have been brought up by the *appeal of a party*." So much for Dr. Hill. We apprehend he does not favour the doctrine which the "*Repertory*" quotes him as teaching on this subject.

The practice of our church courts, under their prescribed rules, is not adverse to the doctrine for which we contend. All admit that in cases of complaint, as well as of appeal, the superior court regards the business thus brought up, as judicial business, and so refers it, with the papers connected

with it, to the "*judicial committee*" for arrangement. And when the case is taken up, the superior judicatory resolves itself into a *judicial court*, and this fact is announced to the members by the moderator, agreeably to the rule on that subject. The *practice* of our judicatories thus shows, not only that appeals and complaints relate to the same kind of decision, but that the cases in which they are proper and admissible, are *judicial* and not *legislative* cases.

Those who suppose that although appeals cannot apply except to judicial cases, yet complaints may, have been led into this error, I am persuaded, by overlooking the *true* distinction between appeals and complaints: a distinction which relates only to the *privilege* of prosecuting them before a superior judicatory. Hence it is sometimes said that any one of a minority may complain. This is true; but does it follow that he may complain of *any kind* of decision? This is quite a different point: and by the foregoing remarks, we apprehend, is determined negatively. They are both modes of prosecuting a judicial case; but with this difference: "original parties" only can prosecute an appeal. But it was foreseen that cases might arise, such as are described in sec. iv. § 3, where no appeal would be entered, and yet the decision be improper and injurious. What was to be done? The judgment is wholly erroneous and injurious to the cause of religion. But how can it be remedied? The "original parties" decline prosecuting an appeal. None others can do it. Here was the difficulty which gave rise to the remedy by complaint; a method by which any one of the minority may seek a reversal of the decision. It is at once perceived that the difficulty does not relate at all to the question whether it be a legislative or a judicial case. It is plainly a *judicial* one. But to the *privilege* of prosecuting it before a superior judicatory.

We might here advert, with great propriety, to the consequences that will inevitably follow the adoption and general prevalence of the doctrine on this subject, contended for by the "Repertory," but we have perhaps already dwelt longer on this subject than was expedient. We may, however, observe, that its obvious effect will be to deter inferior judicatories from deciding any thing of importance, where they are likely to be arraigned on appeal and complaint. Not that they are afraid of doing their duty—far from it; but in cases where laws of local application are to be enacted, or measures relating to the interests of their own

district, are to be adopted, they will be unwilling to be deprived of their vote in a superior judicatory, (as they will by appeal or complaint) whose members may be wholly unacquainted with the peculiar circumstances, and local wants or difficulties of the district embraced by the inferior judicatory. They will be unwilling to be thrown out of the house, by one or more of a small minority, on such cases. In order, therefore, to retain the right of voting, they will be induced to *refer* almost every case; and thus load the superior judicatories with more business than they can properly dispose of in three months. In legislative cases, where laws are to be enacted to bind inferior judicatories, or measures adopted to affect them, they, in justice, ought to participate in the deliberations, and vote on the final question. Agreeably to the doctrine of the "Repertory," one judicatory may prescribe laws and adopt measures, binding on another, without that other being permitted to give any vote in the case. Are judicatories to be bound by laws, in the enactment of which they can have no voice, and by measures, against which they are not permitted to vote? Shall one judicatory take out of the hands of another, by appeal or complaint, or by any other method, *every kind* of business, yea, all their business (for there is no end to the privilege of appeals and complaints, claimed by the "Repertory") and transact it for them, and that too without their concurrence, and in direct opposition to their known and declared will? According to this principle, the General Assembly, composed of delegates from all parts of the land, and entirely ignorant of the local circumstances of particular judicatories, may unite and divide churches and presbyteries; unsettle pastors and dissolve congregations; dismiss members from, or force them upon, presbyteries; and do every other thing which presbyteries and synods may of right do; not only without the consent of the inferior judicatories immediately concerned, but in direct opposition to their expressed opinion and will; provided any one member chooses to carry up the matter by appeal or complaint.

But this is not all; not only are the judicatories immediately concerned, deprived of a voice in the Assembly in such cases, but, by the Constitution, are debarred the privilege of dissenting or protesting. For "none can join in a protest against a decision of any judicatory, excepting those who had a right to vote in said decision." Chap. VIII. § 8.

And only those can enter a dissent, who have the right of protesting. See § 1, 2. The "Repertory" greatly (and justly, if it were true) laments the loss of the protesting privilege, in the lower judicatories, where it nevertheless contends that *nothing* can be finally settled; and yet at the same time advocates a theory, which may effectually exclude a minority from the privilege both of voting and protesting in the higher judicatories, where *every* question, according to the "Repertory," may be finally settled. Agreeably to this doctrine, *every* act of business which a Presbytery or Synod may perform during a whole session, may be carried up to the next General Assembly by appeal and complaint, and there reversed, undone, and ultimately decided, without one member of those inferior judicatories being permitted either to vote, dissent from, or protest against that reversal. May we not apply the language of the "Repertory" to its own doctrine, which it applies to that against which it contends? "Can this be considered as just or reasonable? Can it be regarded as a proper use of the constitutional principle, which secures to every member of our respective judicatories the privilege of regular opposition to what he deems unwise or mischievous measures?" p. 95. We now speak not of cases of judicial process, but of the enactment of laws, and the adoption of "*measures.*"

Let it not be said that the above cases are too strongly stated, and that they are not fair specimens of the consequences of the principle against which we contend. Nothing can be stronger nor more sweeping, than the assertion of the "Repertory." "We have been in the constant habit," says the "Repertory," "of attending on the judicatories of the church, in all their grades, for more than forty years; and we never knew or heard of an individual who doubted the right of appeal, complaint, and protest, in all sorts of cases. Wherever there was a *vote* taken—a decision adopted, let the subject be what it might—not only was there liberty for all to vote in the negative who chose to do so, but if they thought the decision a matter of sufficient importance, they were also at liberty to protest, and complain to a higher judicatory." pp. 91, 92. Again: "Whenever a judicatory has decided any question which came before it by a vote, whether the question were legislative, declarative, executive or strictly judicial—in any and every such case, both theory and practice allow of appeal, complaint and protest,

at the pleasure of the party wishing to offer either," p. 90. This language includes every possible case, and certainly covers those mentioned above. Such, then, may be the effects of the principle adopted and advocated by the "Repertory."

This is a question purely of construction. And in determining it, we must be guided by the direct terms and obvious import of the statute itself. Whatever arguments in support of a favourite theory, may be derived from other considerations, they are irrelevant, unless they touch the question of construction. Whatever reasoning may be offered to show that appeals and complaints *ought* to be admissible in legislative cases, it is of no force in ascertaining whether they *are* admissible in such cases, under the statute on that subject.

If the book settles the question in one way, however strong the reasons may be, why it should be otherwise, they have no weight whatever in the present discussion. It is true, as the "Repertory" says, "*Litera scripta manet*," and when we have determined that, *ita lex scripta est*, it is in vain to show that, *aliter lex scripta esse debet*.

As to the *common law* on this subject, to which the "Repertory" refers, that can afford no countenance to the position against which we contend. If that law in reference to this matter, obtained under our present ecclesiastical constitution, it might be appealed to as authority. But it was abrogated by the amendments and additions to the constitution, which were adopted about fifteen years ago. We have now in that instrument, express provisions on the subject of appeals and complaints. And I apprehend that the law on this subject, "whereof the memory of man runneth not to the contrary," has been superseded by that which *now* appears in our book; and has been so modified and restricted by express enactment, as to be no longer obligatory. It is, then, upon the Constitution, in its present, binding form, that I rely in this argument. By this and this only, the question before us must be determined. What does the book speak? If it speak a language at variance with a practice that obtained before it was adopted in its present form, it does not require a moment's reflection to decide by which we must be guided.

Perhaps the chief reason why some still maintain the doctrine advanced by the "Repertory" on this subject, and especially those who were conversant with the proceedings

of judicatories prior to the adoption of the amended Constitution, is, that having been accustomed to the method of carrying up any decision, which obtained at that time, they have not bestowed on these amendments, that careful and critical attention which has since led many to perceive, that these amendments have in fact abrogated the old common law, and introduced a new system of carrying up decisions, by the prescribed forms and provisions of which, we must be now guided. I know of several instances where this has been candidly acknowledged; and the persons making the acknowledgment, have changed their views in relation to this matter, and adopted that which we have endeavoured to present in this article. They have said to me "the *practice* of the church is clearly against you, but the *constitution* is as clearly with you." The *practice* here referred to, was that which obtained before the seventh chapter of the book of discipline formed any part of the constitution of the church. Let me be understood, then, as standing, in this argument, upon the present constitution. By this we must be governed, and not by the practice which it was designed to do away.

And no subsequent departure from the constitution, even of *fifteen* years standing, could have grown up into common law. I make a distinction between common *law* and common *practice*; that which may be common practice, may be in violation of express law, by misconstruing the statute. Hence Dr. Hill, the "Repertory's" own authority, observes: "As the decisions of the General Assembly, which constitute the common law of the church, may give a *false interpretation* of the statute law, so the orders of the General Assembly may infringe the constitutional liberties of the separate judicatories." p. 240. Besides, the "Repertory" has not quoted *one instance* of an appeal or complaint, being entertained by the General Assembly, in legislative cases, since the adoption of the amended constitution. The cases cited are those of protest, and do militate against the late decision of the Synod of Philadelphia, but do not bear out the assertion, that even the common law sanctions either appeal or complaint, in legislative cases, under the present constitution. The common law obtains in the absence of an express statute, on any given subject; not in violation of it. And surely it cannot obtain in violation of the constitution. No practice, unless sanctioned by unanimous consent, which amounts to a voluntary and mutual

dereliction of the rights and privileges guarantied by the constitution, can ever disfranchise even one man, whose rights are thus secured.

The "Repertory" says, "We had heard of this doctrine being broached and advanced with much confidence by an individual, a number of months before the meeting of the Synod. It never occurred to us, however, as possible, that it should receive countenance from gentlemen of experience and reflection." p. 90. The first remark on this paragraph is, that the "individual" here alluded to, and who, it is understood, is the present writer, never did "broach" nor "advance" the doctrine ascribed to him by the "Repertory." In his defence of the Synod of Philadelphia, he said not one word on the subject of "protests," but confined his remarks to *appeals* and *complaints*. And he has now explained his views on this subject, more at length, than time would allow on that occasion.

The second remark on the above extract from the "Repertory" is, that it contains a pretty severe reflection on the majority of the last Assembly, although it was doubtless not so intended. It will be recollected that on the question, whether the appeal in the case then before them should be sustained, the vote stood ninety to eighty-one: thus giving a majority of but nine to sustain the appeal. And the reason given by the minority in the discussion was, that an appeal could not lie except in a judicial case; whereas, the question before them related to the union and division of a Presbytery. That this was the reason is further evident from the fact, that they sustained the complaint by a much larger majority. And this was done, I suppose, by overlooking the *true* distinction between appeals and complaints. Now let it be remembered, that when this question was taken, the Synod of Philadelphia were out of the house, under the operation of the complaint. Had they been permitted to vote, we may learn, from their own late decision, that a *majority* would have voted against the appeal, on the ground that it could not lie, except in a judicial case. And surely the "Repertory" will not say, that those who "countenanced" and voted for this principle, were not "gentlemen of experience and reflection."

Perhaps I have more reason than the "Repertory" had, "for begging pardon of the readers of these remarks, for dwelling so long on a point so exceedingly plain."