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I.—LITERARY.

THE OXFORD MOVEMENT IN THE SOUTHERN PRESBYTERIAN CHURCH.

The Oxford Movement in the Church of England began about 1833. It was a reaction against liberalism in politics, latitudinarianism in theology, and the government of the Church by the State. It was, at the same time, a return to Mediaeval theology and worship. The doctrines of Apostolical Succession, and the Real Presence—a doctrine not to be distinguished from the Roman Catholic doctrine of transubstantiation—were revived. And along with this return to Mediaeval theology, Mediaeval architecture was restored; temples for a stately service were prepared; not teaching halls. Communion tables were replaced by *altars*. And the whole paraphernalia of worship was changed; so that, except for the English tongue and the mustaches of the priests, the visitor could hardly have told whether the worship were that of the English Church or that of her who sitteth on "the seven hills."

It must be admitted that there was some good in the movement. The Erastian theory as to the proper relation of Church and State is wrong. The kingdom of God should not be subordinate to any "world-power." No state should control the Church. And certainly such latitudinarianism in doctrine as that of Bishop Coleuso and others called for a protest. But the return to Mediaeval theology and Mediaeval worship was all wrong.

We have no good ground for doubting the sincerity of many of the apostles of the movement. Unfortunately, more than

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CASES WITHOUT PROCESS.

It is very manifest that the provision of our Book of Discipline touching "Cases without Process" was intended to save the church from prolonged litigation. It is equally manifest that the most perplexing and exciting and unsatisfactory litigation has arisen from cases that had origin under this provision. There are two or three explanations that may be given of this fact. One is, that the number of these cases is probably very large. The wise pastor will always prefer to settle a matter of discipline by applying this provision whenever applicable; and so, after all, the number of instances in which its enforcement has led to confused and unsatisfactory results, may be small in proportion to the whole. Again, the Provision in question is very brief and concise. It is not certain that its language is so free from ambiguity as to admit of only one construction. Furthermore, the provision is comparatively a new one, being one of the distinguishing features of our Revised Book of Discipline, and therefore, giving rise to practice in our courts of a kind to which we have not been accustomed. And beyond all these considerations the Provision looks so simple, so easy of enforcement, that office-bearers may be put off their guard and may give themselves and the higher courts great trouble by not managing these cases with sufficient caution or giving to them that fulness of record which is essential to mutual understanding, not only between the court and the party before it, but also between this court and the higher tribunal before which the record must go.

These considerations would seem to make the discussion of this Provision necessary and timely. The writer of the present article would not be understood as furnishing it to the MAGAZINE, and so to the church, in any spirit of positiveness. It is his desire, rather, to submit certain views as those of one who is entirely open to conviction and would gladly welcome the coming of any light upon a feature of our jurisprudence which, if properly administered, may be of great service to the church, but which, if rashly or unwarily employed, may thus defeat the end it was designed to subserve.

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Chapter XII of our "Rules of Discipline" treating of "Cases without Process" contains provisions for four different classes of these cases. The first has reference to "any person" who "shall come forward and make his offence known to the court," the second, to the "communicating member" who "shall confess before the church session an unregenerate heart, and there is no evidence of other offence," the third, to "a minister of the gospel, against whom there are no charges," who "is fully satisfied in his own conscience that God has not called him to the ministry," or who may have "satisfactory evidence of his inability to serve the church with acceptance;" and the last, to "a member or officer" who "shall renounce the communion of this church" by joining some other church. It is the design of this article, and is required by its limits, that the reader's attention should be invited to only the first of these cases. Fully quoted, it reads as follows:

"Par. 234.—I. When any person shall come forward and make his offence known to the court a full statement of the facts shall be recorded and judgment rendered without process." This is all.

With this Provision, it may be interesting and also instructive, to compare the corresponding Provision found in Book of Discipline of the Presbyterian Church, North:

"If a person commits an offence in the presence of a judicatory, or comes forward as his own accuser and makes known his offence, the judicatory may proceed to judgment without process, giving the offender an opportunity to be heard; and in the case first named, he may demand a delay of at least two days before judgment. The record must show the nature of the offence as well as the judgment and the reasons therefor, and appeal may be taken from the judgment as in other cases." [Discipline, Chapter VII, Par. 47].

It may serve to throw light upon the subject if, at this juncture, free quotation should be made from the collected writings of Dr. Thornwell, to exhibit the conception of the spirit and scope of this Provision entertained by that eminent advocate and expounder of the Revision of our Book of Church Order. In Vol. IV, p. 308, he says:

"To this general head may be referred the omission to provide for the case in which a party confesses his guilt. The idea of hearing argument, examining witnesses, and proceeding through all the formalities of a trial, when the very point

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to be proved is admitted, is simply absurd. There are those who are so impregnated with the maxims of the Common Law that they can scent nothing but tyranny in the doctrine of Christ and his apostles, that men should confess their sins, and that christian men should confess them to one another. Proof is necessary only when the facts are denied, and the new Book has recognized a man as a competent witness in his own case, when his testimony is against himself. If he says that he has been drunk, or has lied, or cheated, or committed fornication, the new Book says that you may deal with him as guilty of these crimes. This strikes us as the verdict of common sense, though we heard it gravely maintained in the last Assembly that a man's confession of his crime was no satisfactory evidence of his guilt, unless two other persons had seen him commit it, or circumstances strongly corroborated his assertion.

To the same class belongs the case in which an offence is committed in the presence of the court. Trial is unnecessary when the judges are already in possession of the facts. If the formalities of process should be resorted to, these very judges are the men that must appear as witnesses; and we should be brought back by a circuit to the very point from which we set out. There is certainly no need of trial; there may be need of delay. That is a matter to be determined by the wisdom of the judicatory. The new Book does not require that the judgment shall be instantly rendered; all that it dispenses with is the idle ceremony of appearing to investigate what is perfectly notorious. If the court finds itself in a condition not to pass an impartial and deliberate judgment, it may postpone the matter until its passions have subsided and reason resumes her supremacy. Some cases may be imagined in which the judgment ought to be rendered on the spot—in which the language of indignation is the language of justice, and the only language in which a fitting testimony is uttered against the sin. Other cases might require delay. There is a defect in the provision of the new Book as it was originally adopted, in not giving to the offender the opportunity, if he desires it, of being heard in his defence. This defect was remedied in the late meeting of the Committee at Indianapolis, and the section as reported to the General Assembly gives, both to those who confess, and to those whose sin is in the presence of the court, the privilege of a fair hearing in ex-

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planation or extenuation of their conduct. They are at liberty to speak for themselves."

To the same purport, only somewhat stronger in language, we find (on pp. 368-369) :

The next subject to which we shall advert is the chapter in the new Book entitled, 'Of cases without process." It provides, in the first place, for that class of cases in which the necessity of a trial is superseded by the circumstances under which the offence was committed, or by the confession of the offender. The question of guilt is a settled one and the only point that is left to the court is the kind and the degree of censure. The objection lies, as we understand the matter, not against the dispensing with process, but against the *extempore* nature of the judgment. It is apprehended that, under the first specification, justice may be sacrificed to passion and a sudden resentment take the place of cool deliberation. We have already said that there are instances in which the language of spontaneous indignation is the only language in which the rebuke can be adequately couched. The punishment should follow on the heels of the offence. The moral condemnation involved in an involuntary burst of honest indignation would be more powerful than a thousand lectures. Every society has the power of promptly visiting certain kinds of offences. There are outrages upon order and decency which bring down an instantaneous sentence of expulsion. It is a mistake to confound generous indignation with blind passion ; such honest indignation is the natural sense of justice, and is one of the holiest emotions of our nature. The character of our courts and the rights of defence and appeal are a security against abuse. Under the old Book, punishment may follow promptly upon conviction as under the new. There is no provision for an interval of time between the finding of a party guilty and the pronouncing of the sentence. It is much more likely that in the process of long trial passion should be excited unfavorable to the administration of justice, than when the mind, without vexations and disturbing associations, is brought face to face with guilt.

The second specification under which the cases are likely to be most numerous is too self-evident to need vindication. Trial is a mockery where guilt is admitted."

Now upon the basis of this setting forth of the law and the almost authoritative exposition of it by Dr. Thornwell, the

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writer, with no little hesitation, ventures into the comparatively new field of discussion and would try to make some suggestions with the hope that they be of practical value to his younger brethren in pastoral work.

1. In the mind of the writer it is at least extremely doubtful whether the law of the Southern Church clearly covers *both* the cases contemplated by the Book of the Northern Church and by Dr. Thornwell. The only descriptive phrase used by our Book is, "When any person comes forward and makes his offence known to the court." By many persons in any court, especially in so large a body as a Synod or Assembly, this language would be construed as covering only the case of one admitting guilt, having no reference to the man who used objectionable words, or committed a certain deed in the presence of the court. It may be surmised that when Dr. Thornwell wrote he had in view the fuller wording of the revision as it appears in the Book of the Northern Church, in which the two cases are sharply distinguished and each clearly set forth. In view of this lack of the clearest authority, the prudent pastor will be wary of proceeding upon our constitutional provision to influence a court to enter summary judgment upon an offender for offence committed in its presence. And beyond all this, it will be found safest in matters of this kind to make haste slowly. If the provision of our Book was meant to cover such a case, it strangely omits even to require that a man may be heard in his own defence. Either he is to have the privilege or he is not. If he is not, the law, as Dr. Thornwell says, is defective indeed; and if he is, and may afterward appeal to every higher court, even to the Assembly, the formal arraignment and indictment would require but little additional time and trouble, and save much trouble in the end. In saying this it is not intended to deny that a provision clearly covering such a case *ought* not to be in our Book, nor even that an extreme instance might not arise in which it would be proper for the court to act upon the provision; but only to deny that the Book clearly gives such authority—and to suggest that in practical pastoral experience, in ninety-nine cases out of a hundred, even where the offence is committed in the presence of the court, the formal method of procedure will be found a fuller guarantee of the rights of the offender, and, in the end, the least entangling, the safest, and the best.

2. Next, restricting attention to the one case which our

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Book does not seem to cover, we encounter, if not an ambiguity, at least an easy possibility of being misunderstood. And just here, it may be feared, is the secret of our troubles in Appelate Courts when they are called to deal with these "cases without process." Such cases invariably come to such courts loaded down with irregularities and can be considered by them only by consenting to brush away the provisions of the Constitution as "technicalities." The truth in nearly every case will be found to be that there has been confusion at the very incipiency of the whole matter. And on this point to-wit: When the law says, "When any person shall come forward and make known his offence to the court," does it mean that the person, to come within the provision, must know a certain thing, and make it known as *in his own conception*, "an offence," something contrary to the word of God as interpreted by the standards of the church, and therefore rendering the party guilty? Or, does it mean, that he may not necessarily do this, but may only make known the thing, and the court be left to declare the thing an offence, and to pronounce judgment accordingly? A failure to construe the law aright just at this point, and to have said construction a matter of mutual understanding between the offender and the court, will inevitably give rise to complications which no subsequent action of any higher court may be able to adjust; and if, even after having entered up "judgment without process," the court of original jurisdiction shall find that there is not a common understanding between itself and the person with regard to this matter, then the very best thing to do, best for the man, for the court, and especially for all higher courts, would be to reconsider the whole procedure and either come to a mutual understanding, or institute process in regular form, or drop the case entirely.

The view of Dr. Thornwell as to the question thus sprung seems to be clearly set forth in the quotations already given. He regards the provision as covering the case of a man whom Dr. Thornwell represents as "confessing his guilt." Over and over again, he who knew so well the force of words, spoke of the act as confessing, and as confessing sin. He gives as specific instances a man who "says that he has been drunk, or has lied, or cheated, or committed fornication," all of these being things which from the very nature of the case the man must himself know to be "offences," and must intend to make

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known to the court as such. "Trial is a mockery where *guilt is admitted*" (Italics the writer's). If this interpretation of the law is correct, the man who comes forward and makes known his offence to the court is he who makes known certain "principles or practices," as things understood by him to be wrong, contrary to the Word of God, and contrary to the law of the church; a man who by this act intends to represent himself at one with the court in the view that it is righteous for the court to enter "judgment without process." And if this be true, then—

3. A "case without process," as contemplated by our Book, is a case without an issue. The very appearance of an issue in a proceeding of this kind should be a warning to the court to beware of hasty action. As Dr. Thornwell says, the man appears as a "witness against himself," if he falls within this provision; or, "as his own accuser," as the Book of the Church North has it. The court proceeds upon the known fact that it is unnatural for a sane man to condemn himself unless his witness were true; upon the power of Divine grace to bring repentance to the heart and honest confession to the lips; and thus accepting the man's self-condemnation she records the judgment of "guilty" as coinciding with that of the man's own awakened conscience. For the reason that the court and the man are not at issue and from the very nature of such a case, after such a confession, cannot be at issue, the man voluntarily relinquishes all the valuable safeguards of formal trial, and the court makes no arraignment, requires no plea of "guilty" or "not guilty," and dispenses with the idle task of hearing further proof. It is manifest that all this follows from the fact that there is no issue to be joined. Had the man declared that he, e. g. held the view but stood ready to prove that it was not heresy according to the word and the standards, *there* must be an issue and a trial. Or had he denied that a book (one which may at that moment have been before the court with the man's name upon it)—had he denied the seemingly notorious fact that it was written by himself—there, again, would be an issue, and must be a trial. In either case the issue exists, and it must be recognized; must be formally joined, and the church must take the burden of proof. The whole trial must be directed toward that issue. For, the issue involved is the heart and soul of every judicial proceeding, and it would seem that nothing less than its utter absence could justify a judicial determination "without process."

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4. From this view-point the writer would look forward and spring a question which he confesses himself unable to answer. It is this: "How can a 'Case without Process' (because without issue) be made a Case of Appeal in such a way as to transfer the merits of the case to a higher court for adjudication?" The Book of our Northern Brethren explicitly provides that it may be done. The paragraph quoted above would seem to show that the Appeal would lie in both the instances contemplated in their law. Our Book, very laconic upon the whole subject, makes no express provision for Appeal in such a case, as does that of our neighbor. The utter absence of any hint as to any process in any superior court in an affair of that kind would seem to be an intentional exclusion of any, as if the law never contemplated that the merits of such a matter could ever rise above the court in which it had its beginning, and in that shape, its end. One may ask questions if one may not answer them; and these additional difficulties arise and increase the perplexity. If there has been no trial, and the Book says, "Those who have not submitted to regular trial are not entitled to appeal," how can one appear before a Superior Court with an issue to be tried, to all practical purposes, in the attitude of a man arraigned for an offence which this appearance represents him as having denied, the fact being that he has never been arraigned before the court of first jurisdiction and has never entered any plea of denial whatever? And when one reads that the grounds of appeal are: "Any irregularity in the proceedings of the inferior court; 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 cause, and mistake or injustice in the judgment," if the paragraph just before the one giving these grounds declares that there must have been a trial; if the very terms in which all the grounds except the last are related show that a trial is contemplated; and if the last itself may be more naturally interpreted a "mistake or injustice in the judgment" which is the outcome of an issue joined and a trial had; how can we escape the conclusion that a "case without process" is non-appealable for the simple reason that there has been no issue to appeal, no trial to have any irregularities, no testimony but in the shape of a confession, no time nor occasion for prejudice, and no material mistake nor injustice in

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the judgment of "guilty" upon which the parties were agreed from the start—nothing to be passed upon by the court but the gradation of punishment suitable to the acknowledged offence. And if it were desired by one who had thus submitted his case to go to a superior court, not against the judgment, but against the censure affixed to a confessed offence, must not his remedy be a complaint touching that point alone? And if his dissatisfaction with the censure should cause him to show regret of his confession, even then would it not be wiser for the court to reconsider its action and take counsel as to the propriety of putting him upon his trial?

We meet with puzzling experiences in our ecclesiastical procedures. It is not unknown that a case should be begun and ended while before a session as a "case without process;" the merits of the same case going to Presbytery and Synod as a complaint; and, tried in both, passing to the Assembly as an appeal, and there heard as such. In such a case the minority in the Assembly might first move to dismiss the case and failing in that be excused from attempting to follow the forms of law because of the practical impossibility of ever "untwisting the twist." The only hope of ever getting matters straight would lie in dismissing the case without prejudice, leaving all parties free to begin again, or not, as they might elect. It would not be incumbent upon the Assembly to remand to the session for a "new trial," for there never had been a trial at the start. Nor to command the session to try *ab initio*, for this would in itself work to the prejudice of the party, it being superlatively unwise for a case before a session to be originated in a General Assembly sitting as a Grand Jury and practically ordering a session to draw a true bill. The *prima facie* evidence of guilt would need to be great, or the need of vindication sorely felt by the party, before an Assembly should be called upon to take a step of that kind. And in practical effect it simply could not be taken without in some measure reflecting alike upon the session and upon the member of the church.

One other instance of peculiarities arising out of this kind of cases may be given. A minister "made known" to his Presbytery his views on Theology "which, he states, are not in harmony with the standards of the church." The Presbytery passed upon the case "without process." Then comes the minister's "Appeal *and* Complaint" to the Synod. Then

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"the action of the Synod in remitting the case to the Presbytery for a *new* trial," (Italics by author of this article), whereas there had never been an old trial; then the appeal of the Presbytery to the Assembly. And the Assembly heard the case as *the Presbytery's* Appeal, and right then and there passed upon the issue involving the minister. The Assembly which in the beginning of the finding of its commission said there was no issue to start with (for had it not declared that the case began as "one without process?"), made the Presbytery a party to an issue, and in deciding upon the guilt of the Presbytery, proved to its satisfaction the guilt of the minister. Meanwhile, he, the minister, party-in-chief to the case (if there was a case), carried up the issue on his own responsibility (if there was an issue), and found to his dismay that his Appeal (if it was an appeal) had already been tried by the commission, the Presbytery made a party instead of himself, the Presbytery convicted, but himself the bearer of the penalty.* This does seem perplexing and disheartening; and if one would not have an abundance of "process" let him beware how he first touches one of these "cases without process."

5. And this leads to the "practical application, which if the writer is not mistaken, is found in emphasizing with all earnestness one clause of the little paragraph that our reticent Book gives us on these cases. It is this, "*A full statement of the facts shall be recorded.*" Two things are of first importance; (1) be sure beyond doubt that the case is in every particular a genuine "case without process," and is so understood alike by your member and by the court. Give him here his utmost rights and even condescend over him in so doing, remembering that church discipline is a ministration of love. Make all allowances for what may be his ignorance of our law and tell him plainly that he is under no legal compulsion to "make known" his offence, but must do so, if at all, in the spirit of repentance and of his own accord. (2) It will be wise to record his statement in his own words, that there may be no possibility of misunderstanding; or, for some member of the session to write out the statement for him and let it go upon the record with the signature of the party affixed. The time may come when, before a court of general review and control, this statement will be the pivot upon which all will turn, as in every case of this kind the man has penitently

* Assembly, Minutes, 1895, pp. 430, 431, 432, 434.

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thrown himself into the arms of his brethren, their responsibility becomes the greater, and they should leave no reasonable method unemployed to give him ample satisfaction in knowing that his case is upon the record precisely as he intends to put it there. That record having been read to him and his assent thereunto obtained and spread upon the minutes, the session may confidently expect that this will prove a blessed "Case without Process" in any higher court.

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