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THE UNREASONABLENESS OF UNBELIEF.

When John Locke wrote *the Reasonableness of Christianity*, and John Toland, his *Christianity not Mysterious*, they were both rationalists, though Toland went a step beyond Locke, altogether discarding revelation as an unnecessary crutch with which he had seen his predecessor hobbling before him. We know that Christianity is indeed mysterious, that the gospel of Christ is a hidden mystery unless it be revealed to the minds of men. We know that no amount of observation and speculation of human reason, no process of induction or deduction, from whatever analogies or premises, can establish one single article of the Christian faith. It was one of the fundamental errors in mediaeval scholasticism when the schoolmen endeavored to demonstrate the reasonableness of Christian dogmas before the tribunal of the human understanding. Anselm's "*Credo, ut intelligam*" was, in principle, as truly, though not in the same degree, unsound as Abaelard's "*Intelligo, ut credam.*" The "father of scholasticism" deceived himself and his friend Boso when he endeavored to *prove that God was made man by necessity*, and to prove it in such a way *as to satisfy by reason alone both Jews and Gentiles.*[1])

1) "*Cum enim sic probes Deum fieri hominem ex necessitate, ut... non solum Judaeis, sed etiam Paganis sola ratione satisfacias.*" Anselmi *Cur Deus homo*, Lib. II, cap. 22.

THE EVIDENCE IN CHURCH DISCIPLINE.

Among the rights and duties of the church, of every local congregation, not the least important are those of a judicatory, a spiritual court with power to sit in judgment over its members. Being rights and duties of the church, no congregation is excluded from these rights and no congregation is exempt from these duties,[3] and every member of each congregation should have an eye to their faithful performance, and should be fairly familiar with the rules and principles according to which church trials should be properly conducted.

In every church trial, as in every court trial everywhere, those who are to adjudicate a case have to deal with two distinct kinds of questions, questions of fact and questions of law. Where the questions of fact are not sufficiently answered, we cannot judge, because we do not know what case we have before us, or whether we have a case before us at all. Where we are in doubt or ignorance as to the questions of law, we cannot properly judge, because we have not in hand the norm according to which the facts are to be judged. The questions of law in a church trial must be answered from the Word of God. The church

1) Hebr. 4, 15. 2) 2 Cor. 5, 20.
3) Matt. 18, 15—18. 1 Cor. 5, 3—5. 11—13.

is not commissioned to administer the laws of the municipality or state as laid down in the statute books, or to investigate and punish crimes committed against such laws. The judicial business of the church is the administration of the law of God, and church discipline has to deal with manifest sins committed against such divine law. On the other hand, the questions of fact in a church trial as in every other court trial, above all, the question whether a certain act laid to the charge of the accused has been actually committed as charged and committed by the person so accused, must be settled by the evidence in the case where the charge is denied.

The evidence in church trials may be circumstantial, or in writing, or the oral testimony of witnesses.

Circumstantial evidence, in order to establish the truth of an allegation, must be conclusive as to the point or points at issue in a way to exclude a reasonable doubt. When a woman is found pregnant, this circumstance establishes the fact that she has had carnal intercourse, and if she be found in the said state a year after the departure of her husband to a foreign country and before his return, extra-connubial intercourse is to be assumed without further evidence. But these circumstances alone do not substantiate a charge of adultery against the woman; for she may have been the victim of rape committed upon her person against her will. When a man known to have been insane when last seen alive is found dead in his room with a discharged pistol in his clenched hand and a ball in his brain corresponding with the calibre of the pistol, these circumstances, together with the well-known suicidal propensities of the insane, establish beyond a reasonable doubt a case of suicide without moral responsibility. But the occurrence of several incorrections in a treasurer's books, such as omissions of entries or faulty addition, does not suffice to stamp him a thief, even though all the errors had been to his profit, as all these inaccuracies may have been committed uninten-

tionally and without his knowledge. That a stolen article has been found in a servant's trunk is not, in itself, conclusive evidence of that servant's guilt when, f. ex., other inmates of the house, such as fellow-servants or children of the family, can be shown to have had access to the trunk. Thus Benjamin, Joseph's youngest brother, was not a thief, though the silver cup was found in his sack.[1] Yet, while circumstantial evidence must be received and weighed with utmost care and caution, it must not be ruled out of the church as inadmissible. It was by a manner of circumstantial evidence that the disciples of John were led by Christ himself to know that he was the promised Messiah,[2] and Nicodemus was not rebuked for judging Jesus to be a teacher come from God because of the miracles he wrought.[3] And when the Savior says, *By this shall all men know that ye are my disciples, if ye have love one to another*,[4] we are admonished to establish our discipleship in the eyes of all men by circumstantial evidence. Even so will Christ on his judgment throne prove the righteousness of his judgment by this kind of evidence, by the works of the righteous and the works of the wicked.[5]

Evidence in writing, judiciously used, may be of great value in ascertaining the facts of a case of church discipline. Such writings may be either public, as the minutes of a congregation or board, the official records of a church, registers of baptism, marriage, etc., the official correspondence of officers, testimonials and certificates, written contracts, and similar documents, executed in the name of the congregation. Or they may be of a private character, as letters of the parties to a cause, written contracts or other agreements in writing, account books, statements published through the press, letters of witnesses, etc. All these writings, both public and private, have this in common that

1) Gen. 44, 1 ff.
2) Matt. 11, 4 f.
3) John 3, 2. Cf. Mark 16, 20.
4) John 13, 35.
5) Matt. 25, 34—45.

they are written, and this must never be forgotten when they are to be used and admitted as evidence. There must be no doubt as to their authenticity and credibility, and where such doubt exists, it must either be removed, or the whole instrument must be rejected. For what is doubtful in itself cannot establish a certainty; the effect cannot be greater than the cause. Being written evidence, the written words must stand for what they are worth. If they are clear, they must be taken in the sense they clearly express, and what they clearly say must either prevail, or fall to the ground before better evidence. It will not do to change the plain sense of written words by oral testimony and then claim credence as for written evidence. But written evidence may be refuted by other written testimony, or by preponderant parol testimony. And where the written words are ambiguous or otherwise obscure, they may be interpreted by evidence *aliunde;* but such interpretation must not be allowed to contradict the context, and what is proved by such interpretation must be looked upon as proved by the written words in conjunction with the evidence *aliunde*, so that weakening the latter weakens the conjoint evidence. All this holds even where the writer himself is heard as the interpreter of his words.

The written evidence most frequently claiming consideration in cases of church discipline is that of the congregational minutes containing a record of what was transacted in a certain meeting of the congregation. Records of this kind ought to be very valuable, being written during or shortly after the transactions recorded, and by a person appointed for that purpose by the congregation, then submitted to the congregation for correction, and finally approved as a correct statement of facts still fresh in the memory of those who transacted what is thus recorded for future reference. Experience has shown that these records are often very far from what they might be and should be. Some contain too much, others, too little. It is not an easy

thing to write contemporaneous history. It may require considerable acumen and ripe theological judgment to record the proceedings of a meeting which had a difficult case to deal with. It is, therefore, often expedient to appoint a special secretary, say a neighboring minister, for a meeting in which matters of peculiar importance are to be transacted, and every member should pay particular attention when the minutes of such a meeting are submitted for correction and approval. If corrections prove necessary, they should be executed at once, and the corrected form should be read in full before the adoption of the minutes, so that the entire congregation may know in what form the minutes are finally adopted. For by their adoption the minutes, which were until then the work of the secretary, become the record of the congregation, and while, before submitting it to the congregation, the secretary was free, with or without the assistance of others, to change his work in order to bring it as near to perfection as possible, after its adoption by the congregation the record must stand as adopted. Changes in the adopted protocols can only be made by order of the congregation, as, f. ex., when the congregation resolves that a certain passage shall be stricken from the record-book.

The adopted records of a congregation being the declarations of the body which adopted them, evidence produced from such records must be presumed to stand until refuted by better evidence. Thus where a certain statement was recorded as occurring in a certain letter, the original letter referred to was produced to prove that it did not contain such statement. The evidence to disprove a statement placed on record may even appear in the same or in some other record of the congregation. Thus, where a former member was recorded as having been excommunicated according to Matt. 18, the records of the same congregation found in the same minute-book showed conclusively that the member had *not* been excommunicated according to Matt. 18.

Of written instruments pertaining to secular affairs, such as deeds, mortgages, contracts, congregations have refused to take cognizance on the plea that it was not the business of the church to look into such matters. But circumstances may make it necessary that a congregation should also investigate deeds and contracts to secure the evidence required in a case of church discipline. It is true, the proper authority to determine the boundary lines of a farm or to admit a will to probate is not the church but the state and the state's judiciary; and in this sense Christ said to a certain Jew, "Man, who made me a judge or a divider over you?" But when a brother would lodge complaint as against a brother for dishonest dealings, not for the purpose of having a contract enforced or a fence removed, but that the brother may be led to repent of his sin and amend, the proper tribunal is not the state's court of law or chancery, but the Christian congregation, and when the brother thus arraigned denies the charge and sets up a defense by producing his deed or contract to show that his dealings were strictly honest, he must not be refused what he may rightfully demand, the hearing and weighing of the evidence whereby he may establish the facts in the case.

The third kind of evidence mentioned above is parol evidence, the oral testimony of witnesses. A witness is a person who testifies to what he knows by his own observation. The apostles were witnesses to the resurrection of Christ, testifying as they *who did eat and drink with him after he rose from the dead*,[1] and Christ, the *faithful and true witness*,[2] says of himself, *We speak that we do know, and testify that we have seen;*[3] and John the Baptist says of him, *What he hath seen and heard, that he testifieth;*[4] and St. John the apostle says, *We have seen it, and bear witness.*[5] What a man knows from others only,

1) Acts 10, 41. 2) Rev. 3, 14. 3) John 3, 11.
4) John 3, 32. 5) 1 John 1, 2.

though from most reliable witnesses, he cannot himself assert as a witness to the fact. A wife cannot testify as a witness to her husband's adultery committed in New York while she was in Chicago, even though her husband confessed to her; she can only testify as a witness to the confession. But that a witness has not seen or heard or otherwise observed everything does not say that he has observed nothing and cannot, therefore, be recognized as a witness to what he did observe. In a case of theft, two witnesses may have seen the thief entering the house by the front door without a bundle, and two other witnesses may have seen him leaving the house by the rear door with a bundle. Here the conjoint testimony of all the witnesses may be conclusive, each witness testifying to what he has seen, and that only. But in all cases the testimony of a witness can go only as far as his own observation has gone, and where that ended his availability as a witness must end. What he may have concluded from what he had seen or heard is not evidence. It is for the court to make the conclusions, if they may or must be made. Conclusions may be based upon the evidence, but must not be in any way confounded with the evidence.

Even the person upon whom an offense was committed is not always in position to observe the unlawful act. Slander is generally committed in the absence of the injured party and comes to his knowledge by the testimony of others. But if the person injured, or the person who prefers the charge, has himself witnessed the offense charged, he may also testify as a witness to the facts he witnessed. This is clear from the words of Christ, *Take with thee one or two more, that in the mouth of two or three witnesses every word may be established.*[1]) Here he against whom a brother has trespassed and who is eventually to "tell it unto the church," is evidently counted as one of the "two or

1) Matt. 18, 16.

three witnesses,'' having taken but ''one or two more'' to be with him. Even in the secular courts, the old common law rule that no party to the suit should be competent to testify has ''been buried beyond resurrection in a statutory grave.''[1] Of course, the accused party, being likewise in position to know by his own observation whether he committed or did not commit the offense laid to his charge, cannot consistently be denied the right of testifying as a witness in his own behalf while his case is being investigated.

As the parties to the case are not, because of their interest in the event, incompetent to testify, so other witnesses in some way interested in the case are not, on that account, barred from the right or exempt from the duty of testifying. A husband may be called upon or permitted to give evidence for or against his wife, a wife, for or against her husband, a child, for or against a parent, a parent, for or against a child. But a minister is not free or bound to divulge what has come to his knowledge in his capacity of a confessor or spiritual adviser in matters of conscience. For what was confessed to him was confessed to God. Besides, what a person knows by a confession he does not know as a witness, by his own observation. Even the confession of the accused, made before the congregation, while it is, in most cases, conclusive as far as it goes as to the guilt of the person who has made the confession, does not, by itself and unsustained by other evidence, prove the guilt of an accomplice who denies his complicity. For no one can confess for another against the other's will, and while the confession of the offender, though made by himself alone, generally makes further evidence unnecessary as far as he admits the charge lying against himself, inasmuch as what is conceded need not be proved, yet his confession, as far as it implicates others who deny the charge, is but

1) Rapalje, Law of Witnesses, § 26.

the testimony of one witness and insufficient where "in the mouth of two or three witnesses every word shall be established."

This was the rule laid down in the law of Israel. In Deuteronomy we read: *At the mouth of two witnesses, or three witnesses, shall he that is worthy of death be put to death; but at the mouth of one witness he shall not be put to death.*[1] And that this was not prescribed for capital cases only appears from the general rule saying, *One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth: at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established.*[2] The same rule is laid down for the church by Christ himself, and especially for the administration of church discipline, where, treating *ex professo* of the exercise of this duty, he says, *But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established.*[3] St. Paul, too, in his instructions to Timothy, says, *Against an elder receive not an accusation, but before two or three witnesses.*[4] And that this rule should hold not only for the trial of an officer in the church, is evident from his words written in contemplation of strict discipline to be exercised upon offenders in the church of Corinth, when he says, *In the mouth of two or three witnesses shall every word be established.*[5] The constant wording of this rule clearly marks it as a reassertion of the principle set forth in the Old Testament statute, enjoining its observance also by the New Testament church in the administration of church discipline. The rule is plain, and easy of application. Ῥῆμα is the charge in court. If the charge be admitted and the accused stand confessed, the church will say, "Out of thine own mouth will I judge thee."[6] If the charge be denied, it must be established, or it will fall to the ground. And to

1) Deut. 17, 6. 2) Deut. 19, 15. 3) Matt. 18, 16.
4) 1 Tim. 5, 19. 5) 2 Cor. 13, 1. 6) Luke 19, 22.

sustain the charge, the testimony of one witness only shall not be sufficient; the testimony of at least two witnesses shall be required, and where a third witness can be had, he too shall be called to testify. And unless the charge be established by at least two witnesses, where witnesses are required at all, it shall be set aside as groundless, and the accused shall be acquitted and the case dismissed.

Simple, however, and easy of application as this rule certainly is, it has often been neglected or misapplied. The oral statements of a witness and a letter written by him and produced in evidence by another person is not the testimony of two witnesses, but of one witness only. The testimony of three persons stating that they suspected a certain man of a certain act is not the testimony of three witnesses, nor even the testimony of one witness, to the act. In a case where five witnesses were ready to testify to a fact, it was found that not one of them was a witness to the fact, but that all of them had their knowledge from the same informant, who was himself no witness in any sense. A man had been excommunicated on the testimony of two members of the congregation because of certain utterances which he denied and refused to recant. The witnesses agreed in their statements as to the nature of the offense at issue; but when, on closer investigation, they were asked where and under what circumstances the offense had been committed, the one declared that it was in a conversation between him and the accused in the rear of the church, no third person being present, while the other witness declared that the accused had made the offensive statement as he walked with him alone on the road half a mile away from the church. This was looked upon by some as aggravating the case, since, if the statements of the witnesses were true, the accused had even repeated the offense. Yet the accused had to be acquitted and the excommunication rescinded as, in fact, nothing had been proved and nothing could be proved, there being, according to the statements of both

witnesses, but one witness to each instance in the face of a persistent denial of the charge. In another case, seven women had, in written depositions, preferred a number of heinous charges against the same man, each of them declaring that she had been alone with him when the offenses were committed. Although, also in this case, the accused emphatically denied all the immoral acts charged against him, there were those who held him convicted by the evidence of seven witnesses, while, according to the rule laid down by the Head of the church, the charges fell to the ground, as each of the seven witnesses avowedly stood alone with her testimony to the acts alleged in her depositions. An indignity committed on A at X is not the same act with an indignity committed on B at Y or with the same kind of indignity committed on C at Z, and a person who has witnessed the one and that one only cannot testify to the other which she has not witnessed. Two witnesses, to come under the rule, must, by their own observation, be witnesses to the same act, not only the same in kind, but the same in number. Thus, if the same person had committed theft three times, and one witness had seen the first theft, another, the second theft, and still another, the third theft, each being the only witness present in each instance, the testimony of the three witnesses would be of no avail if the accused denied the charge of theft. He is not, and cannot be, accused of theft *in abstracto*, but the charge must be of theft *in concreto*, the unlawful taking of a certain object at a certain time and place, and his denial is a denial of the certain concrete act or acts, and in the face of such denial the charge can be established only by two or three witnesses testifying to the concrete, particular act which has come under their observation. Where the two or three witnesses to such particular act are wanting, the church must acquit for want of evidence, all the same whether the unsustained charges be few or many, with one witness, and one only, testifying to each, while the accused denies them all.

What, then, is the church to do with the witnesses whose testimony is thus set aside? Or whom of the two should the congregation believe, him whose testimony stands alone, or him whose denial stands alone? Neither. In such cases we simply cannot judge. We must believe neither the unsustained assertion nor the unsustained denial. Neither do we disbelieve the one or the other. We acquit the accused for want of evidence to convict, not because we know him to be innocent, but because we do not know him to be guilty; not because the charge has been refuted, but because it has not been established and sustained. In such cases there are but three who know the truth, the one who asserts, the one who denies, and God who knows the hidden things of men. All others should not presume to know what they cannot know.

The case is the same where there have been two or more witnesses to the fact at issue, but the testimony of one of them only can be obtained. It is not necessary, however, that all the witnesses should appear before the congregation to give their testimony. An absent witness may be examined by order of the congregation, either by two or more members of the church, who may then report to the congregation what they have heard from his lips, or by two or more reliable persons who shall take his depositions in writing and have him, in their presence, affix his signature. The better way is to have the questions to be answered by the witness formulated by the congregation or those who conduct the investigation. Even where a witness can no longer be examined, his testimony may sometimes be introduced, as when a person now deceased has made statements to the facts in a letter the authenticity of which can be proved, or orally before two or more credible witnesses who heard him make the statements at the same time and in the presence of each other. If the deceased had made the same statements twice, once in the presence of one witness, and once in the presence of another witness,

there would be but one witness to each instance, and the unsupported testimony of each would be of no avail. And even the concurrent testimony of two witnesses in the contemporaneous presence of whom the statements were made would not constitute the testimony of two witnesses to the facts concerning which the statements were made, but would amount to the testimony of but one witness to the fact or facts, viz. the testimony of the deceased or absent witness whose statements they credibly report.

The testimony of one witness must be sustained by other evidence not only when he asserts what others have said or done, but also when his evidence concerns words or acts of his own. Here the witness might, perhaps, object, "Do not I know, and better than anybody else, what I have said or done?" But the question is not what he may know, but what he can prove, and his testimony, while it stands alone, can prove nothing. When in the course of an investigation several members of a congregation declared that they had voted against a certain measure, the negative vote of each had to be proved by witnesses who had heard him say *No* when the vote was taken, and it was so proved. That there were others who had not heard them did not invalidate the testimony of those who had. For while many may have failed to see or hear what has actually occurred, it is not likely that several have concurrently seen or heard what has not occurred.

That the testimony of witnesses must be concurrent is clearly implied in the rule that *in the mouth of two or three witnesses every word shall be established.* For in all points in which two witnesses disagree, each witness stands alone. If two witnesses state that they saw a certain child take something out of a schoolfellow's pencilbox, but they did not know whether it was a pencil or a penholder, there is no disagreement, and it would appear that the child had taken something, though the witnesses may have been too far away to have distinguished what it was, while they were

witnesses to the same act. But if one witness said it was a red leadpencil, and the other, it was a blue penholder, which he had seen him take, nothing is proved; for the act testified to by the one witness was certainly not that described by the other. Whether the child took the pencil, or the penholder, or both, or neither, would not appear from the evidence. And thus in all cases, the testimony of two witnesses is the evidence of two witnesses in the biblical sense only when and as far as their testimony is concurrent as to the act to which they testify. When *their witness agrees not together*,[1] it can prove nothing. For this reason, in order to do full justice to a case in which agreement in detail is of consequence, it is advisable to examine the several witnesses in the absence of each other. For though among Christians the presumption should be for the credibility of the witness, yet the susceptibility to suggestion to which all men are more or less subject, and a natural desire to avoid disagreement, especially where agreement is known or felt to be of special significance, are apt to bias the testimony even of such as would not wilfully offend against the commandment, *Thou shalt not bear false witness against thy neighbor*, and due precaution is, therefore, not at all out of place among those who know that *the spirit is willing, but the flesh is weak*.[2]

On the other hand, the fact that a witness does not know everything will not prove that he does not know anything. The man never lived who had full knowledge of everything pertaining to an event of which he was a witness. Hume the historian is said to have lost all confidence in history when he learned how little he really knew and how much he was in error concerning an encounter which had come to pass before his eyes. That a witness does not know one point does not invalidate his testimony as to other points which he does know, and it may require the

1) Mark 14, 56. 59. 2) Matt. 26, 41.

combined testimonies of a score of witnesses to establish the essential facts connected with a case. But here again the unsustained evidence of one witness can substantiate no point of the charge. Care should also be taken to credit as testimony such statements only as a witness makes from his own observation, and to shut out hearsay evidence where the testimony of witnesses is required. But hearsay evidence is sometimes of value to point out witnesses who may be summoned to testify.

A peculiar difficulty arises when the concurrent testimony of two or more witnesses contradicts the concurrent testimony of two or more other witnesses. Here the preponderance of evidence must decide, and in the absence of preponderance, where the evidence *pro* and the evidence *contra* are equally balanced, a *non liquet* must be confessed and the point or points which cannot be established must be dropped. A preponderance of evidence may lie in the greater number of witnesses. That, other things being equal, the testimony of three witnesses should have greater weight than that of two appears from the constant form of the rule that *in the mouth of two* OR THREE *witnesses every word shall be established.* And if the testimony of three witnesses weighs more than that of two, then that of four witnesses should weigh still more and outweigh that of two and even of three. This, however, evidently presupposes that the various testimonies are fairly in equipoise among themselves. The value of evidence everywhere, in court, in historical research, in textual criticism, is not determined simply by the number of witnesses, but by the weight of their testimony. The common reading of the codices ℵ, A, B, and C may outweigh a reading common to a dozen or more of late minuscule manuscripts. The evidence of three disinterested men testifying to a subject on which they had never conferred with each other, and who, giving their evidence promptly and with manifest impartiality, agreed in all the essential details, would be of greater weight than

the testimony of the members of a family of six who had a common interest in the cause and, having repeatedly discussed the matter among themselves, showed a uniform reluctance to come out with the truth where it went against their interest, or to remember what would be damaging to their cause. In many instances, the intrinsic merit of a person's testimony is easily determined. In other cases the weighing of the evidence is a matter of extreme difficulty, especially where the disparity of the numbers of the witnesses on both sides of the question is considerable. And here it should be remembered what we have said in the beginning, that we cannot judge unless we have the facts of the case plainly before us, and that the facts must be established by the evidence. Hence, while a reasonable doubt as to the preponderance of conflicting evidence prevails, judgment must be suspended, and where it is clear that such doubt cannot be removed, it is clear that the action must be dropped. This is not because under such circumstances we could not follow the rule, but because also in such cases we should abide by the rule which says that *in the mouth of two or three witnesses shall every word be* ESTABLISHED. Where there are two or three witnesses, but the testimony of their mouth is of such a nature or so conditioned that it cannot establish whereof we might judge, it is not for us to judge at all. A. G.