

# THE BIBLE IN COURT

OR

## TRUTH vs. ERROR

### A BRIEF FOR THE PLAINTIFF

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## INTRODUCTION

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My attention was first called to some legal aspects of the Bible by an address given on the illegality of the trial of Christ, a number of years ago, by Professor J. C. Knowlton, acting Dean of the Law Department of the University of Michigan. This caused me to wonder how the legal rules of evidence and construction would apply to the whole Bible. It occurred to me that, inasmuch as the Book was said to be the Law of God, such rules of evidence and construction ought to apply to it the same as to any constitution, statute, or legal instrument; that the severe tests to which the said rules have been put from time immemorial, and the universal favor with which they have met among the best minds the world has produced, ought to afford a safe standard by which to test the veracity of the Scriptures as an ancient document. I then decided to put this venerable instrument to such test, to the best of my ability. I accordingly prepared what might be called a *brief* on the subject. About that time, my friend, Mr. S. H. Meyers, assistant to the pastor of the First Presby-

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terian Church of Flint, Michigan, the Rev. H. D. Borley, invited me to make a series of addresses before the men's class of the church, and I decided to accept his invitation, and expound the brief I had prepared. A moot court was accordingly convened with the Hon. Mark W. Stevens, Circuit Judge, presiding, and Mr. Black, a prominent attorney, consented to take the other side, in a friendly way, to bring out the facts in the case. A bill in chancery was filed, under our methods of procedure, enjoining Mr. Meyers from teaching the Apostles' Creed, upon the grounds that he was teaching a false religion contrary to public policy, and the terms of the lease upon which he depended to supply him with a suitable room to teach in. An answer to the bill was filed, denying that the Apostles' Creed was false and its teaching against public policy, and alleging that it was true and conducive to the public good. This raised every question desired in order to give the matter a fair test. All the legal points that could be thought of were raised and passed upon by the circuit judge, who sustained our contention throughout. Many of the leading business and professional men of the city were present, and expressed their pleasure over the proceedings.

From this moot court trial came the title "The Bible in Court." We afterwards enlarged upon this brief and delivered the addresses before the men's class of Calvary Presbyterian Church, Detroit, Mich., who requested their publication. They were recently given before the men's class of the First Presbyterian Church of Ashtabula, Ohio, and the request to have them published was repeated there. We hope that they may be read and passed along to help "the other fellow."

STEPHEN D. WILLIAMS.

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## THE BIBLE IN COURT

### DIVISION I.

#### THE AUTHENTICITY OF THE SCRIPTURAL RECORD

For the purpose of this discussion, let us assume that we have the original manuscripts which compose the Scriptures, bound in one volume, in a court of law, and that the question of the veracity of the document has been raised, in a trial in which it is involved. We will assume that objection has been raised to its admission as evidence, and that opposing counsel must present their arguments to the court in favor of or against such admission. Probably the objector would insist that the whole document would be irrelevant, incompetent and immaterial for the reason that no living witnesses were to be had who could be introduced for the purpose of examination and cross-examination, under oath, touching the question or questions involved in the suit. Such objection would be likely to be sustained unless counsel could find some rule or authority which would permit its admission. Thus the point would become of vital importance.

Undoubtedly the court would ask for authorities on the question raised, and counsel for those who would sustain the veracity of the document could do nothing better than cite as his authority Professor Simon Greenleaf, of the Harvard Law School, whose treatise on the "Testimony of the Evangelists" bears directly on that subject. Among the legal profession, Professor Greenleaf is regarded as one of the greatest authorities who has ever written on the law of evidence, in any land where the English jurisprudence is in vogue, and his volumes may be found in every well selected law library, whether public or private.

Reading from the authority cited, counsel would quote as follows:

"That the books of the Old Testament, as we now have them, are genuine; that they existed in the time of our Savior, and were commonly received and referred to among the Jews as the sacred books of their religion; and that the text of the four Evangelists has been handed down to us in the state in which it was originally written, that is, without having been materially corrupted or falsified, either by heretics or Christians, are facts which we are entitled to assume as true until the contrary is shown.

"The genuineness of these writings really admits of as little doubt, and is susceptible of

as ready proof, as that of any ancient writings whatever. The rule of municipal law on this subject is familiar, and applies with equal force to all ancient writings, whether documentary or otherwise; and as it comes first in order, in the prosecution of these inquiries, it may for the sake of mere convenience be designated as our first rule.

*"Every document, apparently ancient, coming from the proper repository or custody, and bearing on its face no evident marks of forgery, the law presumes to be genuine, and devolves on the opposing party the burden of proving it to be otherwise.*

"An ancient document offered in evidence in our courts, is said to come from the proper repository, when it is found in the place where, and under the care of persons with whom, such writings might naturally and reasonably be expected to be found; for it is this custody which gives authenticity to documents found within it. If they come from such a place, and bear no evident marks of forgery, the law presumes that they are genuine, and they are permitted to be read in evidence, unless the opposing party is able successfully to impeach them. The burden of showing them to be false and unworthy of credit is devolved on the party who makes the objection. The presumption of law is the judgment of charity. It presumes that every man is innocent until he is proved guilty; that everything has been done fairly and legally until it has been proved to

have been otherwise, and that every document found in its proper repository, and not bearing marks of forgery, is genuine. Now this is precisely the case with the Sacred Writings. They have been used in the church from time immemorial, and are thus found in the place where alone they ought to be looked for. They come to us, and challenge our reception of them as genuine writings, precisely as Domesday Book, the Ancient Statutes of Wales, or any other of the ancient documents which have recently been published under the British Record Commission, are received. They are found in familiar use in all the churches of Christendom, as the sacred books to which all denominations of Christians refer, as the standard of their faith. There is no pretense that they were engraven on plates of gold and discovered in a cave, nor that they were brought from heaven by angels; but they are received as the plain narratives and writings of the men whose names they respectively bear, made public at the time they were written; and although there are some slight discrepancies among the copies subsequently made, there is no evidence that the originals were anywhere corrupted. If it should be objected that the originals are lost, and that copies alone are now produced, the principles of the municipal law here also afford a satisfactory answer. For the multiplication of copies was a public fact, in the faithfulness of which all the Christian community had an interest; and it is a rule of law that

*"In matters of public and general interest, all persons must be presumed to be conversant, on the principle that individuals are presumed to be conversant with their own affairs."*

"Therefore it is that, in such matters, the prevailing current of assertion is resorted to as evidence, for it is to this that every member of the community is supposed to be privy. The persons, moreover, who multiplied these copies may be regarded, in some manner, as the agents of the Christian public, for whose use and benefit the copies were made; and on the ground of the credit due to such agents, and of the public nature of the facts themselves, the copies thus made are entitled to an extraordinary degree of confidence, and, as in the case of official registers and other public books, it is not necessary that they should be confirmed and sanctioned by the ordinary tests of truth. If any ancient document concerning our public rights were lost, copies which have been so universally received and acted upon as the Four Gospels have been, would have been received as authority in all the courts of continental Europe, upon much weaker evidence of its genuineness; for the integrity of the sacred text has been preserved by the jealousy of opposing sects, beyond any moral possibility of corruption; while that of the Roman Civil Law has been preserved by tacit consent, without the interest of any opposing school, to watch over and preserve it from alteration.

(X) "The copies of the Holy Scriptures having thus been in familiar use in the churches from the time when the text was committed to writing; having been watched with vigilance by so many sects, opposed to each other in doctrine, yet all appealing to these Scriptures for the correctness of their faith; and having in all ages, down to this day, been respected as the authoritative source of all ecclesiastical power and government, and submitted to, and acted under in regard to so many claims of right, on the one hand, and so many obligations of duty on the other; it is quite erroneous to suppose that the Christian is bound to offer any further proof of their genuineness or authenticity. It is for the objector to show them spurious; for on him, by the plainest rules of law, lies the burden of proof. If it were the case of a claim to a franchise, and a copy of an ancient deed or charter were produced in support of the title, under parallel circumstances on which to presume its genuineness, no lawyer, it is believed, would venture to deny either its admissibility in evidence or the satisfactory character of the proof. In a recent case in the House of Lords, precisely such a document, being an old manuscript copy purporting to have been extracted from ancient journals of the House, which were lost, and to have been made by an officer whose duties were to prepare lists of the peers, was held admissible in a claim of peerage."

Concerning the credit which should be given to Matthew, Mark, Luke and John, Greenleaf goes on to say:

"Proceeding further, to inquire whether the facts related by the Four Evangelists are proved to be competent and satisfactory evidence, we are led, first, to consider on which side lies the burden of establishing the credibility of the witnesses. On this point the municipal law furnishes a rule which is of constant application in all trials by jury, and is indeed the dictate of that charity which thinketh no evil:

*"In the absence of circumstances which generate suspicion, every witness is presumed credible, until the contrary is shown, the burden of impeaching his credibility lying on the objector.*

"This rule serves to show the injustice with which the writers of the gospels have ever been treated by infidels; an injustice acquiesced in even by Christians; in requiring the Christian affirmatively, and by positive evidence, aliunde to establish the credibility of his witnesses above all others, before their testimony is entitled to be considered, and in permitting the testimony of a single profane writer, alone and uncorroborated, to outweigh that of any single Christian. This is not the course in courts of chancery, where the testimony of a single witness is never permitted to outweigh the oath of even the defendant himself, inter-

ested as he is in the case; but, on the contrary, if the plaintiff, after requiring the oath of his adversary, cannot overthrow it by something more than the oath of one witness, however credible, it must stand as evidence against him. But the Christian writer seems, by the usual course of the argument, to have been deprived of the common presumption of charity in his favor; and reversing the ordinary rule in administering justice in human tribunals, his testimony is unjustly presumed to be false, until it is proved to be true. This treatment, moreover, has been applied to them all in a body; and without due regard to the fact, that, being independent historians, writing at different periods, they are entitled to the support of each other; they have been treated, in the argument, almost as if the New Testament were the entire production, at once, of a body of men, conspiring by joint fabrication, to impose a false religion upon the world. It is time that this injustice should cease; that the testimony of the evangelists should be admitted to be true, until it can be disproved by those who would impugn it; that the silence of one sacred writer on any point should no more detract from his own veracity or that of other historians, than the like circumstances is permitted to do among profane writers; and that the Four Evangelists should be admitted in corroboration of each other, as readily as Josephus and Tacitus, or Polibi<sup>us</sup> and Livy."

To make a case parallel with the one cited, in the matter of the English peerage, we could, in all probability, if the case were one of sufficient importance to warrant the effort, secure the ancient Sinaitic manuscript, now in the custody of the church authorities of St. Petersburg, Russia, discovered by Dr. Tischendorf, an expert authority on ancient documents, in 1844, in a convent on Mt. Sinai. It contains the entire New Testament, as we now have it, together with the Septuagint Version of the Old Testament. This expert witness, and others like Wescott and Hort, testify that the date of this manuscript cannot be later than 350 A. D. Suppose that this venerable document should be brought into court, could there be any question about its admissibility as evidence under the rule mentioned? Certainly not. A careful comparison of the manuscript with any of the copies of our Bible, in use in any of our churches, of whatever denomination, discloses the fact that these recent copies of the Scriptures have been made with a fidelity so striking as to challenge the admiration of friend and critic alike. If the Sinaitic manuscript were copied from the preceding one or ones with as much fidelity to truth and accuracy as the present ones have been copied from



it and its contemporaries, it is practically a perfect copy of the original manuscripts written by the apostles themselves. The presumption is that it was so copied, and the burden of proof lies with the critic to show that it was not.

The Vatican manuscript is even older than the Sinaitic. Dr. Roberts, the expert, testifies that the letters used in its making bear a striking resemblance to some of the Greek rolls found at Herculaneum. All other features which it presents testify to its great age. Herculaneum was destroyed in A. D. 79.

Says a noted authority:

"We have, then, two Bibles which have come down to us from the days of Eusebius, who died A. D. 340. He and they were contemporaries. It cannot be said that he never read or saw them. They are over fifteen hundred years old. They date back at least to within about two and one-half centuries of the death of John. The style of their letters dates back to a period previous to this event. That is, we have copies of the Bible which were in existence as near the time of Christ as we are to the time of the landing of the Pilgrims. The authority of the books contained in these copies rests on the ground of the consensus of the church of the first three centuries. It cannot be shaken by the tread of criticism." (Blake.)

Thus this venerable Sinaitic manuscript, being found in a convent on Mount Sinai, where it had been kept from time immemorial, was contained in a proper receptacle. It was in the hands of monks and nuns, and was thus in proper custody. It bore upon its face no evident marks of forgery, and, therefore, as a matter of law, it must be accepted as genuine. The burden of proof rests upon those who attack its authenticity to prove that it is not genuine, and that must be done by a preponderance of evidence.

We are assuming at this time, that the point is raised, to the effect that the same rule of evidence would establish the authenticity of other documents for which divine inspiration or origin is claimed, such as the Book of Mormon, and others. To this, it is replied, that each claim must stand upon its own foundation, and unless it meets the requirements, it must fail.

The Book of Mormon is a plain illustration of this fact. It was not written by Joseph Smith, nor by any other accredited witness. (See Britannica Encyclopaedia on Mormons.) Smith claims he had a "vision" in which it was revealed to him, that the book was buried in the earth near Manchester, New York. To this

spot, Smith claims he went and had delivered into his charge, by an angel of the Lord, a stone box, containing a volume six inches in thickness, made of thin gold plates 7 by 8 inches in size, and fastened together by three gold rings. He alleged that the plates were covered with small writing in the "reformed Egyptian" tongue, and that a pair of supernatural spectacles accompanied the box, consisting of two crystals set in a silver bow, and called "Urim and Thummim." With these spectacles the mystic writing could be read. These plates bore the signatures of no author or authors, and were anonymous so far as human authorship was concerned. Being almost illiterate, Smith employed as amanuensis a man by the name of Oliver Cowdry, to whom, from behind a curtain, he dictated a translation, which was printed in 1830, by the aid of money furnished by a farmer by the name of Martin Harris, under the title of "*The Book of Mormon*." To this translation was attached the affidavit of Oliver Cowdry, David Whitmer, and Martin Harris, in which they testified that an angel of God had shown them the plates from which the translation had been made. The said plates suddenly and mysteriously disappeared, and the three witnesses

later testified that they had sworn falsely, thus leaving the authenticity of the gold plates to depend solely upon the single statement of Joseph Smith, the associate of confessed perjurers.

It must be obvious, that the Book of Mormon has no standing in law in any court of competent jurisdiction, unless those gold plates can be authenticated. Furthermore, the most that can be said of the Book of Mormon is that it is a copy of the original. But this copy was made by a confessed perjurer, whose confession is a matter of record, and under the legal maxim "*falsus in uno, falsus in omnibus*," it would be unworthy of credence.

So far as the alleged gold plates are concerned, they could not be classed as ancient documents, because there is no testimony as to how long they had been in existence beyond the statement of Joseph Smith, and he declared that their whereabouts had not been disclosed to him until four years before they were presented to him by an angel. This would not make them *ancient*, and they could not have been introduced in evidence as such without other testimony than that, had the matter been tested in court before their mysterious disappearance. There is a wide difference

between a document which purports to deal with ancient matters, and one which is itself ancient. The authenticity of those alleged gold plates depends upon the uncorroborated testimony of Joseph Smith, his associates having confessed that they were perjurers. Taking his statement for it, they were buried in the earth by unknown hands, in a remote spot in the earth. This does not constitute such a "receptacle" as the law contemplates. In fact, they were in no custody at all.

It might be claimed that the alleged gold plates were in the custody of an angel. No one saw such a personage but Joseph Smith, and the question can well be raised as to the qualifications of Joseph Smith to judge who was or who was not an angel. However, if it were true, still it would not make the plates ancient. That alone would not qualify them as ancient documents, and they could not be introduced in evidence as such. Their authenticity must rest upon other grounds than their age.

They must bear upon their face no evident marks of forgery. No one ever saw them to judge them as to that matter but Joseph Smith, and he chose to secrete himself behind a curtain to read them to his amanuensis

whom he induced to perjure himself in order to furnish corroborative evidence to his own statement. The presumption is that his own standing in the community as to truth and veracity was such that corroborative evidence was needed to carry conviction. The difference between him and Jesus Christ, touching that matter, is, that when the latter needed corroborative evidence, He walked on the water, turned water into wine, fed five thousand people with a few loaves and fishes, or raised the dead, instead of professing to read from mysterious plates from behind a screen.

Now, since the originals "mysteriously disappeared," and could not be produced in court, a case for the Mormon faith would have to be based upon the copy of the same, and this was obtained from dictation behind a curtain, to a copyist who acknowledged himself to be a perjurer and faker. The Mormon faith has the disadvantage of not being based upon an "ancient document" nor upon a credible copy of one, and that there is not "an absence of circumstances which generate suspicion" in the origin of the Book of Mormon.

Lastly, the Book of Mormon is further differentiated from the Sinaitic manuscript by the fact that it does not contain the evidence

of presumptive innocence, nor is it sustained by positive evidence aliunde. We place up against the claim of authenticity for that book the testimony of credible witnesses to the effect, that

“In reality it was written in the year 1812 as an historical romance by one Solomon Spaulding, a crackbrained preacher; and the MS. falling into the hands of an unscrupulous compositor, Sidney Rigdon, was copied by him, and subsequently given to Joseph Smith. Armed with this book and with self-assumed divine authority, the latter soon began to attract followers.” (*Encyclopaedia Britannica*.)

It may be stated with the utmost confidence that the Book of Mormon, as an authentic document, would have no legal standing in a court of law, if the issue were properly raised, and, while we have not the time to discuss it here, the same thing may be said of the Koran, the book of Mohammedan faith.