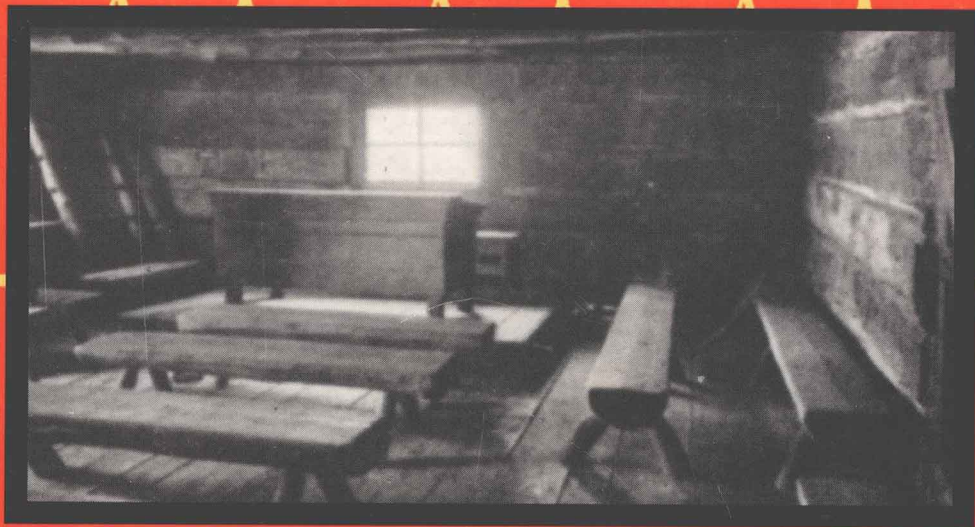


ON TRIAL

VOLUME ONE



**American History Through
Court Proceedings and Hearings**

**Edited by
Robert Marcus
and Anthony Marcus**

BRANDYWINE PRESS

On Trial:

American History Through Court Proceedings and Hearings

Volume I

Edited by

Robert D. Marcus and Anthony Marcus

BRANDYWINE PRESS • St. James, New York

Cover design by Jill Gussow

The cover picture is of a courtroom in Decatur, Illinois,
where Abraham Lincoln practiced law.

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ISBN: 1-881089-24-X

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Printed in the United States of America

To

Abigail, Benjamin, Elizabeth, and Zora

Preface

Both historians and the general public have long shared a fascination with judicial proceedings. Newspapers give extensive coverage to trials, both those that command national attention and the many that appeal to local interest. Fictional trials are a steady theme of television and film. Legislative hearings and similar quasi-judicial public investigations have periodically fixed public attention on a wide variety of phenomena, among them the Ku Klux Klan; the insurance, armaments, and tobacco industries; Brooklyn's Murder Incorporated; Communists in government; the assassination of John F. Kennedy; the Watergate affair; and sexual harassment. Historians study these trials and hearings not only to gain an understanding of the case or issue under examination, but also to deepen understanding of the society in which they occurred. As the distinguished historian Natalie Zemon Davis writes, "a remarkable dispute can sometimes uncover motivations and values that are lost in the welter of the everyday."

On Trial is the first anthology based on edited transcripts of American trials and hearings for use in American history survey classrooms. Selections are of appropriate length for student assignment and for insight into the cases and their circumstances without weighing the reader down in technicalities of legal procedure. This volume presents through unusually rich and engaging historical material many of the standard subjects taught in the first half of American history surveys. Students will encounter the seventeenth-century colonies through the antinomian crisis and Salem witchcraft trials; through the trial of John Peter Zenger, the struggle for political rights; in the Rhode Island paper money case of *Trevett v. Wheeden*, issues leading to the Constitution; in the *Dartmouth* case, the developing law of corporate property; in the arson trial of Stephen Merritt Clark, questions of juvenile punishment that survive today; in *Worcester v. Georgia*, the development of American Indian law; in the sensational murder case of Richard P. Robinson, Jacksonian concerns over urban vice; in the *Amistad* case, the national impact of slavery and abolitionism; in the libel suit against William Wilbur for defaming a tavern owner, an age of re-

form; in the trial of Margaret Douglass for teaching colored children to read, the effect of slavery and racism on both whites and blacks in the South; in the trial of John Brown, the crisis of the 1850s; in the case against the commander of Andersonville Prison, an early instance of a prosecution for war crimes; and through one of the South Carolina Ku Klux Klan trials, the era of Reconstruction.

We would like to thank the many people who helped us with this book, especially Jill Gussow, who designed the cover, Tom West and David Burner, who edited the manuscript, and Charles A. Peach, who produced the books.

Robert D. Marcus
Anthony Marcus

On Trial:
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Proceedings and Hearings

Table of Contents

1. Dissenting Puritan:
The Trial of Mrs. Anne Hutchinson, 1637 **1**
2. Salem Witchcraft: The Trial of Bridget Bishop, 1692 **13**
3. Freedom of the Press:
The Trial of John Peter Zenger for Libel, 1735 **22**
4. Toward the Constitution: The Action of John Trevett against
John Wheeden for Refusing Paper Money, 1786 **45**
5. Protecting Incorporation:
Dartmouth College v. Woodward, 1819 **53**
6. Juvenile Justice:
The Trial of Stephen Merrill Clark for Arson, 1821 **68**
7. Indian Removal:
Samuel A. Worcester v. The State of Georgia, 1832 **87**
8. Murder in the City: The Trial of Richard P. Robinson for
the Murder of Helen Jewett, 1836 **99**
9. The Trade in Human Beings:
The United States v. The Amistad, 1841 **115**
10. Demon Rum: The Trial of William Wilbar against
B. W. Williams and Others for Libel, 1845 **133**
11. The Color Line: The Trial of Mrs. Margaret Douglass for
Teaching Colored Children to Read, 1853 **151**
12. "His Truth Is Marching On": The Trial of John Brown for
Treason and Insurrection, 1859 **161**
13. "This Terrible War": The Trial of Captain Henry Wirz for
Conspiracy and Murder, 1865 **179**
14. Reconstruction in the South:
The Lynching of Jim Williams, 1871 **200**

1

Dissenting Puritan

The Trial of Mrs. Anne Hutchinson

1637

Religious freedom, as the Puritans who began arriving in Massachusetts Bay in large numbers in the 1630s understood it, did not include toleration of dissent. They had crossed an ocean for the freedom to practice their religion, which in their minds included the freedom to suppress error. When the remarkable Anne Hutchinson challenged essential doctrines of their faith, they single-mindedly pressed her either to recant her dissenting opinions or to be excommunicated and expelled from the colony.

Woman religious activists such as Anne Hutchinson (1591–1643) were rare but not unknown in premodern Christianity, and the battles within the Church of England that led to the Puritan movement increased their number in seventeenth-century England. At an early age, this daughter of a dissenting Anglican clergyman became learned in religion and the practice of herbal medicine. Married in 1612 to the merchant William Hutchinson, with whom she had thirteen children, she as well as her husband fell under the spell of John Cotton's intensely spiritual Puritanism. Cotton, forbidden to preach in England, migrated in 1633 to Massachusetts and the next year the Hutchinsons followed. Their wealth and piety quickly made them influential members of the new community, and Anne's medical skills gave her particular stature among the women of Boston. Soon she was holding devotional meetings in her home—a common practice. But these sessions drew up to sixty people, were led by a woman, and seemed to be questioning the religion that the Massachusetts ministers—other than John Cotton and John Wheelwright—were preaching.

John Winthrop and the other magistrates and ministers sought to build a holy community, a "city on a hill," in which moral people would live and labor according to the teaching of the Bible while awaiting the salvation that only the Holy Spirit could provide. God would choose who was saved and who not. But the Massachusetts Puritans believed that God had made a covenant with them as a community that at least assured them that He would choose from among those who followed the law and the prophets: that right living was at least a sign though not a means of preparation for God's election to grace. They did not

SUGGESTIONS FOR FURTHER READING: Emery Battis, *Saints and Sectaries: Anne Hutchinson and the Antinomian Controversy in the Massachusetts Bay Colony*, Chapel Hill: University of North Carolina Press, 1962.

2 Dissenting Puritan

preach a gospel of works—many good people would perish. But neither did they think that God would visit outright sinners as more worthy than the righteous. Puritans walked a narrow line between human responsibility for living up to the word of God and God's terrible freedom to choose in ways that no man—and certainly no woman—could understand.

New England Puritanism in the 1630s was by no means a rigid orthodoxy. Controversy was common and expected. But there were boundaries, and Anne Hutchinson crossed those the ministers and magistrates considered most essential to defend. Puritanism was a faith or spirit-centered religion. To accuse anyone of preaching that salvation might come of the laws and the commandments—an accusation that Anne Hutchinson had made against the Puritan leaders—was both offensive and disruptive of authority. And to claim that the saved had access to direct revelation was an unspeakable heresy as well. Such a belief, generally called antinomianism—the rejection of laws—raised fears of a breakdown of social order and had led to warfare in sixteenth-century Germany. Anne Hutchinson's assertion of religious knowledge “by an immediate revelation” radically separated religious insight from the existing social order. It was tantamount to suggesting that breakers of laws and commandments might be among the saved. Who would believe that someone who violated the commandment to honor father and mother—which Puritans understood also to include honoring rightly constituted religious and secular leaders—could presume to be in possession of truth? No wonder even Anne Hutchinson's champion, John Cotton, abandoned her at that point in her dramatic testimony.

The defendant and her supporters were banished from the colony by the magistrates and excommunicated by the Church of Boston. They fled to Narragansett Bay, where Roger Williams, also banished from Massachusetts, had already established an English settlement. When Mr. Hutchinson died in 1642, Anne and her six youngest children moved to what is now the Bronx near New York City. There she and all but one of her children died in an Indian raid.

The Examination of Mrs. Anne Hutchinson

at the Court at Newtown, Massachusetts, November 1637.

Mr. Winthrop, governor. Mrs. Hutchinson, you are called here as one of those that have troubled the peace of the commonwealth and the churches here; you are known to be a woman that hath had a great share in the promoting and divulging of those opinions that are causes of this trouble, and to be nearly joined not only in affinity and affection with some of those the court had taken notice of and passed censure upon, but you have spoken divers things as we have been informed very prejudicial to the honour of the churches and ministers thereof, and you have maintained a meeting and an assembly in your house that hath been condemned by the general assembly as a thing not tolerable nor comely in the sight of God nor fitting for your sex, and notwithstanding that was cried down you have continued

the same, therefore we have thought good to send for you to understand how things are, that if you be in an erroneous way we may reduce you that so you may become a profitable member here among us, otherwise if you be obstinate in your course that then the court may take such course that you may trouble us no further, therefore I would intreat you to express whether you do not hold and assent in practice to those opinions and factions that have been handled in court already, that is to say, whether you do not justify Mr. Wheelwright's sermon and the petition.

Mrs. Hutchinson. I am called here to answer before you but I hear no things laid to my charge.

Gov. I have told you some already and more I can tell you. (*Mrs. H.*) Name one Sir.

Gov. Have I not named some already?

Mrs. H. What have I said or done?

Gov. Why for your doings, this you did harbour and countenance those that are parties in this faction that you have heard of. (*Mrs. H.*) That's matter of conscience, Sir.

Gov. Your conscience you must keep or it must be kept for you.

Mrs. H. Must not I then entertain the saints because I must keep my conscience.

Gov. Say that one brother should commit felony or treason and come to his other brother's house, if he knows him guilty and conceals him he is guilty of the same. It is his conscience to entertain him, but if his conscience comes into act in giving countenance and entertainment to him that hath broken the law he is guilty too. So if you do countenance those that are transgressors of the law you are in the same fact.

Mrs. H. What law do they transgress?

Gov. The law of God and of the state.

Mrs. H. In what particular?

Gov. Why in this among the rest, whereas the Lord doth say honour thy father and thy mother.

Mrs. H. Ey Sir in the Lord. (*Gov.*) This honour you have broke in giving countenance to them.

Mrs. H. In entertaining those did I entertain them against any act (for there is the thing) or what God hath appointed?

Gov. You knew that Mr. Wheelwright did preach this sermon and those that countenance him in this do break a law.

Mrs. H. What law have I broken?

Gov. Why the fifth commandment.

Mrs. H. I deny that for he saith in the Lord.

Gov. You have joined with them in the faction. . . .

Mrs. H. Wherein?

Gov. Why in entertaining them.

Mrs. H. What breach of law is that Sir?

4 Dissenting Puritan

Gov. Why dishonouring of parents.

Mrs. H. But put the case Sir that I do fear the Lord and my parents, may not I entertain them that fear the Lord because my parents will not give me leave?

Gov. If they be the fathers of the commonwealth, and they of another religion, if you entertain them then you dishonour your parents and are justly punishable.

Mrs. H. If I entertain them, as they have dishonoured their parents I do.

Gov. No but you by countenancing them above others put honor upon them.

Mrs. H. I may put honor upon them as the children of God and as they do honor the Lord.

Gov. We do not mean to discourse with those of your sex but only this; you do adhere unto them and do endeavour to set forward this faction and so you do dishonour us.

Mrs. H. I do acknowledge no such thing neither do I think that I ever put any dishonour upon you.

Gov. Why do you keep such a meeting at your house as you do every week upon a set day?

Mrs. H. It is lawful for me so to do, as it is all your practices and can you find a warrant for yourself and condemn me for the same thing? The ground of my taking it up was, when I first came to this land because I did not go to such meetings as those were, it was presently reported that I did not allow of such meetings but held them unlawful and therefore in that regard they said I was proud and did despise all ordinances, upon that a friend came unto me and told me of it and I to prevent such aspersions took it up, but it was in practice before I came therefore I was not the first.

Gov. For this, that you appeal to our practice you need no confutation. If your meeting had answered to the former it had not been offensive, but I will say that there was no meeting of women alone, but your meeting is of another sort for there are sometimes men among you.

Mrs. H. There was never any man with us.

Gov. Well, admit there was no man at your meeting and that you was sorry for it, there is no warrant for your doings, and by what warrant do you continue such a course?

Mrs. H. I conceive there lyes a clear rule in Titus [2.3-5], that the elder women should instruct the younger and then I must have a time wherein I must do it.

Gov. All this I grant you, I grant you a time for it, but what is this to the purpose that you Mrs. Hutchinson must call a company together from their callings to come to be taught of you?

Mrs. H. Will it please you to answer me this and to give me a rule for then I will willingly submit to any truth. If any come to my house to be instructed in the ways of God what rule have I to put them away?

Gov. But suppose that a hundred men come unto you to be instructed will you forebear to instruct them?

Mrs. H. As far as I conceive I cross a rule in it.

Gov. Very well and do you not so here?

Mrs. H. No Sir for my ground is they are men.

Gov. Men and women all is one for that, but suppose that a man should come and say Mrs. Hutchinson I hear that you are a woman that God hath given his grace unto and you have knowledge in the word of God I pray instruct me a little, ought you not to instruct this man?

Mrs. H. I think I may.—Do you think it not lawful for me to teach women and why do you call me to teach the court?

Gov. We do not call you to teach the court but to lay open yourself.

Mrs. H. I desire you that you would then set me down a rule by which I may put them away that come unto me and so have peace in so doing.

Gov. You must shew your rule to receive them.

Mrs. H. I have done it.

Gov. I deny it because I have brought more arguments than you have.

Mrs. H. I say, to me it is a rule.

Gov. Your course is not to be suffered for, besides that we find such a course as this to be greatly prejudicial to the state, besides the occasion that it is to seduce many honest persons that are called to those meetings and your opinions being known to be different from the word of God may seduce many simple souls that resort unto you, besides that the occasion which hath come of late hath come from none but such as have frequented your meetings, so that now they are flown off from magistrates and ministers and this since they have come to you, and besides that it will not well stand with the commonwealth that families should be neglected for so many neighbours and dames and so much time spent, we see no rule of God for this, we see not that any should have authority to set up any other exercises besides what authority hath already set up and so what hurt comes of this you will be guilty of and we for suffering you.

Mrs. H. Sir I do not believe that to be so.

Gov. Well, we see how it is we must therefore put it away from you, or restrain you from maintaining this course.

Mrs. H. If you have a rule for it from God's word you may.

Gov. We are your judges, and not you ours and we must compel you to it.

Mrs. H. If it please you by authority to put it down I will freely let you for I am subject to your authority.

Dep. Gov. I would go a little higher with Mrs. Hutchinson. About three years ago we were all in peace. Mrs. Hutchinson from that time she came hath made a disturbance, and some that came over with her in the ship did inform me what she was as soon as she was landed. I being then in place dealt with the pastor and teacher of Boston and desired them to enquire of her, and then I was satisfied that she held nothing different from us, but within half a year after, she had vented divers of her strange opinions and had made parties in the country, and at length it comes that Mr. Cotton and Mr. Vane were of her judgment, but Mr. Cotton hath cleared himself that he was not of that mind, but now it appears by this woman's meeting that Mrs. Hutchinson hath so forestalled the minds of many by their resort to her meeting that now she hath a potent party in the country. Now if all these

things have endangered us as from that foundation and if she in particular hath disparaged all our ministers in the land that they have preached a covenant of works, and only Mr. Cotton a covenant of grace, why this is not to be suffered, and therefore being driven to the foundation and it being found that Mrs. Hutchinson is she that hath depraved all the ministers and hath been the cause of what is fallen out, why we must take away the foundation and the building will fall.

Mrs. H. I pray Sir prove it that I said they preached nothing but a covenant of works. . . .

Dep. Gov. If they do not preach a covenant of grace clearly, then they preach a covenant of works.

Mrs. H. No Sir, one may preach a covenant of grace more clearly than another, so I said. . . .

D. Gov. When they do preach a covenant of works do they preach truth?

Mrs. H. Yes Sir, but when they preach a covenant of works for salvation, that is not truth.

D. Gov. I do but ask you this, when the ministers do preach a covenant of works do they preach a way of salvation?

Mrs. H. I did not come hither to answer to questions of that sort.

D. Gov. Because you will deny the thing.

Mrs. H. Ey, but that is to be proved first.

D. Gov. I will make it plain that you did say that the ministers did preach a covenant of works.

Mrs. H. I deny that.

D. Gov. And that you said they were not able ministers of the new testament, but Mr. Cotton only.

Mrs. H. If ever I spake that I proved it by God's word.

Court. Very well, very well.

Mrs. H. If one shall come unto me in private, and desire me seriously to tell them what I thought of such an one. I must either speak false or true in my answer. . . .

Govern. This speech was not spoken in a corner but in a public assembly, and though things were spoken in private yet now coming to us, we are to deal with them as public.

[Various ministers testify as to what Mrs. Hutchinson said.]

Dep. Gov. I called these [ministers as] witnesses and you deny them. You see they have proved this and you deny this, but it is clear. You said they preached a covenant of works and that they were not able ministers of the new testament; now there are two other things that you did affirm which were that the scriptures in the letter of them held forth nothing but a covenant of works and likewise that those that were under a covenant of works cannot be saved.

Mrs. H. Prove that I said so. (*Gov.*) Did you say so?

Mrs. H. No Sir it is your conclusion.

D. Gov. What do I do charging of you if you deny what is so fully proved.

Gov. Here are six undeniable ministers who say it is true and yet you deny that you did say that they did preach a covenant of works and that they were not able ministers of the gospel, and it appears plainly that you have spoken it, and whereas you say that it was drawn from you in a way of friendship, you did profess then that it was out of conscience that you spake and said The fear of man is a snare wherefore should I be afraid, I will speak plainly and freely.

Mrs. H. That I absolutely deny, for the first question was thus answered by me to them. They thought that I did conceive there was a difference between them and Mr. Cotton. At the first I was somewhat reserved, then said Mr. Peters I pray answer the question directly as fully and as plainly as you desire we should tell you our minds. Mrs. Hutchinson we come for plain dealing and telling you our hearts. Then I said I would deal as plainly as I could, and whereas they say I said they were under a covenant of works and in the state of the apostles why these two speeches cross one another. I might say they might preach a covenant of works as did the apostles, but to preach a covenant of works and to be under a covenant of works is another business.

Dep. Gov. There have been six witnesses to prove this and yet you deny it.

Mrs. H. I deny that these were the first words that were spoken.

Gov. You make the case worse, for you clearly shew that the ground of your opening your mind was not to satisfy them but to satisfy your own conscience. . . .

Mrs. H. I acknowledge using the words of the apostle to the Corinthians unto him, that they that were ministers of the letter and not the spirit did preach a covenant of works. Upon his saying there was no such scripture, then I fetched the Bible and shewed him this place 2 Cor. iii. 6. He said that was the letter of the law. No said I it is the letter of the gospel.

Gov. You have spoken this more than once then. . . .

The next morning.

Mrs. H. The ministers come in their own cause. Now the Lord hath said that an oath is the end of all controversy; though there be a sufficient number of witnesses yet they are not according to the word, therefore I desire they may speak upon oath.

Gov. Well, it is in the liberty of the court whether they will have an oath or no and it is not in this case as in case of a jury. If they be satisfied they have sufficient matter to proceed. . . .

Mrs. H. After that they have taken an oath, I will make good what I say.

Mr. Eliot. We desire to know of her and her witnesses what they deny and then we shall speak upon oath. I know nothing we have spoken of but we may swear to. . . .

Govern. Shall we not believe so many godly elders in a cause wherein we know the mind of the party without their testimony? . . . The elders do know what an oath is and as it is an ordinance of God so it should be used.

Mrs. H. That is the thing I desire and because the deputy spake of witnesses I have them here present.

Mr. Colborn. We desire that our teacher may be called to hear what is said.—Upon this Mr. Cotton came and sat down by Mrs. Hutchinson.

Mr. Endicot. This would cast some blame upon the ministers.—Well, but whatsoever he will or can say we will believe the ministers.

Dep. Gov. Let her witnesses be called.

Gov. Who be they?

Mrs. H. Mr. Leveret and our teacher and Mr. Coggeshall.

Gov. Mr. Coggeshall was not present.

Mr. Coggeshall. Yes but I was, only I desired to be silent till I should be called.

Gov. Will you Mr. Coggeshall say that she did not say so?

Mr. Coggeshall. Yes I dare say that she did not say all that which they lay against her.

Mr. Peters. How dare you look into the court to say such a word?

Mr. Coggeshall. Mr. Peters takes upon him to forbid me. I shall be silent.

Mr. Stoughton. Ey, but she intended this that they say.

Gov. Well, Mr. Leveret, what were the words? I pray speak.

Mr. Leveret. To my best remembrance when the elders did send for her, Mr. Peters did with much vehemency and intreaty urge her to tell what difference there was between Mr. Cotton and them, and upon his urging of her she said. The fear of man is a snare, but they that trust upon the Lord shall be safe. And being asked wherein the difference was, she answered that they did not preach a covenant of grace so clearly as Mr. Cotton did, and she gave this reason of it because that as the apostles were for a time without the spirit so until they had received the witness of the spirit they could not preach a covenant of grace so clearly. . . .

Gov. Mr. Cotton, the court desires that you declare what you do remember of the conference which was at that time and is now in question.

Mr. Cotton. I did not think I should be called to bear witness in this cause and therefore did not labour to call to remembrance what was done; but the greatest passage that took impression upon me was to this purpose. The elders spake that they had heard that she had spoken some condemning words of their ministry, and among other things they did first pray her to answer wherein she thought their ministry did differ from mine, how the comparison sprang I am ignorant, but sorry I was that any comparison should be between me and my brethren and uncomfortable it was, she told them to this purpose that they did not hold forth a covenant of grace as I did, but wherein did we differ? why she said that they did not hold forth the seal of the spirit as he doth. Where is the difference there? say they, why saith she speaking to one or other of them, I know not to whom. You preach of the seal of the spirit upon a work and he upon free grace without a work or without respect to a work, he preaches the seal of the spirit upon free grace and you upon a work. I told her I was very sorry that she put comparisons between my

ministry and their's, for she had said more than I could myself, and rather I had that she had put us in fellowship with them and not have made that discrepancy. She said, she found the difference. Upon that there grew some speeches upon the thing and I do remember I instanced to them the story of Thomas Bilney in the book of martyrs how freely the spirit witnessed unto him without any respect unto a work as himself professes. Now upon this other speeches did grow. If you put me in mind of any thing I shall speak it, but this was the sum of the difference, nor did it seem to be so ill taken as it is and our brethren did say also that they would not so easily believe reports as they had done and withal mentioned that they would speak no more of it, some of them did; and afterwards some of them did say they were less satisfied than before. And I must say that I did not find her saying they were under a covenant of works, nor that she said they did preach a covenant of works.

Dep. Gov. They affirm that Mrs. Hutchinson did say they were not able ministers of the new testament.

Mr. Cotton. I do not remember it.

Mrs. H. If you please to give me leave I shall give you the ground of what I know to be true. Being much troubled to see the falseness of the constitution of the church of England, I had like to have turned separatist; whereupon I kept a day of solemn humiliation and pondering of the thing; this scripture was brought unto me—he that denies Jesus Christ to be come in the flesh is antichrist—This I considered of and in considering found that the papists did not deny him to be come in the flesh, nor we did not deny him—who then was antichrist? Was the Turk antichrist only? The Lord knows that I could not open scripture; he must by his propheticall office open it unto me. So after that being unsatisfied in the thing, the Lord was pleased to bring this scripture out of the Hebrews [9.16]. He that denies the testament denies the testator, and in this did open unto me and give me to see that those which did not teach the new covenant had the spirit of antichrist, and upon this he did discover the ministry unto me and ever since. I bless the Lord, he hath let me see which was the clear ministry and which the wrong. Since that time I confess I have been more choice and he hath let me to distinguish between the voice of my beloved and the voice of Moses, the voice of John Baptist and the voice of antichrist, for all those voices are spoken of in scripture. Now if you do condemn me for speaking what in my conscience I know to be truth I must commit myself unto the Lord.

Mr. Nowell. How do you know that that was the spirit?

Mrs. H. How did Abraham know that it was God that bid him offer his son, being a breach of the sixth commandment?

Dep. Gov. By an immediate voice.

Mrs. H. So to me by an immediate revelation.

Dep. Gov. How! an immediate revelation.

Mrs. H. By the voice of his own spirit to my soul. I will give you another scripture, Jer. 46. 27, 28—out of which the Lord shewed me what he would do for me and the rest of his servants.—But after he was pleased to reveal himself to me I did