THE CIVIL LAW AND THE CHURCH

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PREFACE

In the summer of 1908, while I was living in Albany, New York, I was asked for an opinion as to the powers of church trustees under specified conditions. In my studies for the purpose of preparing an opinion on the question submitted, I experienced some difficulty in discovering judicial decisions in which the question had been considered. One result of my researches was the conviction that there ought to be a book in which might be collected the principal judicial decisions affecting church problems. I thought that in such a book the reader should be able to find under a convenient arrangement most of the cases which present judicial declarations on religious questions, without being obliged to examine legal digests and reports covering general topics. This book is the product of my consideration of that subject. I have here sought to gather in one volume the principal judicial decisions rendered by the courts of Great Britain, Canada, and the United States, including Federal and State Courts, in which have been considered questions relating to distinctively religious matters, and also questions affecting local religious societies. The book embodies the result of a study of the decisions which are now scattered through a large number of reports of cases and digests, and which are here placed in a form convenient for immediate reference. It is not a text-book in the ordinary sense, but is instead a digest or cyclopedia. Many delicate and important questions have been considered by the courts, and I assume that the reader would prefer the language of the court rather than a statement of the decision from my own point of view. The reader would probably prefer to know what the court said, rather than what I think the court said; so the work is not an attempted interpretation of judicial decisions, but a statement of the decisions as actually rendered.

The topics are arranged in cyclopedic form, with a subordinate alphabetical classification. This arrangement has been carried as far as seemed practicable in a book of this kind, but in addition to this classification I have prepared an index in which I have sought to present in detail numerous items which could not readily be classified in the cyclopedic arrangement. So far as I am aware, no attempt has heretofore been made to collect and present in this form the decisions covering this important field of judicial inquiry.

Denominational Articles

In preparing this work I found so many decisions relating to particular denominations that I concluded to arrange these in separate groups under the names of the respective denominations. Each topic of this class is believed to present the principal judicial decisions relating to the particular denomination, so far especially as the questions involved are distinctive and peculiar to that denomination; but it should be observed that not all denominational cases are presented in this book. At the outset of my studies I thought a comprehensive list of such cases might be practicable, and I collected the cases for this purpose, but so many of them were found to be of merely local interest, presenting nothing new, that I concluded to omit decisions involving only factional controversies and in which the rule declared was only a repetition of well-established legal principles.

Local Statutes

I have in this book attempted to present a view of decisions relating to the application of the civil law to the solution of general questions affecting the church. It has seemed impracticable to consider in detail decisions which relate only to particular local statutes; and, accordingly, I have for the most part omitted cases merely construing statutes of that class, assuming that a student interested in such a statute

will examine the decisions of the particular state or country in which the statute was enacted, for a judicial interpretation of it. My examination of judicial decisions to be included in this book closed on the first of July, 1915.

Personal

For the last fifteen years I have been unable to use my own eyes in this kind of work, and consequently have been and am now dependent on readers, stenographers, librarians, and others in collecting materials supposed to be needed in pursuing my literary studies, and also in all other work involving the use of eyesight. It has been my custom to listen to the reading of books and other forms of literature bearing on the topic under consideration, and dictate to a stenographer the matter intended to be used, including extracts, original notes, and general discussions. The value of the service I have received from those who have aided me in my work cannot be measured. It has made possible the accomplishment of results which might not otherwise have been reached. When in 1908 this book was conceived, I was engaged in preparing an annotated edition of the Messages of the Governors of New York, which edition was published the next year. I began my studies for the present volume early in the autumn of 1909, and spent the winter of 1909-10 searching for materials, using for this purpose the rich resources of the New York State library at Albany, and I was assisted in my researches by Mr. Frederick D. Colson, then law librarian of the State Library, who not only gave me the freedom of the library, but afforded me special facilities for pursuing my studies by enabling me to occupy a corner of the library where books might be examined, and read aloud to me without disturbing other persons using the library. Here I compiled a large number of notes bearing on my plan. In this preparation I was assisted by my reader and stenographer, Miss Marguerite Elizabeth Griffin, of Albany, New York, who had rendered

similar service during the preceding nine years. I take this opportunity to express my appreciation of her efficiency, not only in this service but also in the preparation of previous publications.

In the spring of 1910 I changed my residence from Albany to Buffalo, and afterward with some interruptions, I continued my study in the Law Library of the Eighth Judicial District, at Buffalo, New York. The librarian, Mr. George D. Crofts, extended to me numerous courtesies while I was using the library. The assistant librarian, Miss Katherine L. Cuthbert, rendered valuable service by her aid in searching for judicial decisions. I take this occasion to express my acknowledgments to Mr. Crofts and to Miss Cuthbert for their assistance in the performance of my task.

Beginning in 1913, my study has been carried forward without serious interruptions. Many parts of the work have been considerably expanded beyond the original plan, requiring new notes and the examination of additional authorities. In this work I have been assisted by my present reader and stenographer, Miss Elsie Kramer of Buffalo, New York, and I hereby express my cordial appreciation of the faithfulness and accuracy applied by her in working out her part in the preparation of this volume.

Buffalo, New York, March 1, 1916. C. Z. L.

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Agent, When Liable. A person assuming to act as the agent of this society (First Freewill Society, Lowell), bor-

rowed money, giving a note purporting to be the note of the society, but which it had no power to execute. It was held that the agent was liable for money had and received. Jefts v York, 12 Cush. (Mass.) 196.

Architect, for Plans. An action by an architect to recover compensation for plans prepared for the erection of a church edifice, without any formal resolution by the vestry adopting such plans, was sustained on the ground that the members of the vestry had informally authorized the rector to provide plans, and the architect had accordingly made an agreement with him therefor. Cann v Rector, Etc., Church of the Holy Redeemer, St. Louis, 121 Mo. App. 201.

Building Committee. Stanton v Camp. 4 Barb. (N. Y.) 274, involved the validity of a contract for the erection of a church edifice made by a building committee of the society in the name of the society (Presbyterian, Sacketts Harbor). It was held that an action could not be maintained against the members of the committee personally.

A firm made a written proposition to the building committee of this society (Baptist, Simmons Creek), to erect a house of worship at a price stated. The names of the building committee did not appear in the proposition. The proposition was accepted by two members of the building committee. The contractors proceeded with the work and received from the pastor money to apply on the contract. It was held that the contract was with the building committee as such, and not with the members as individuals, and therefore a personal action could not be sustained against the members of the building committee who accepted the proposition to build the church. The committee were the agents of the church. Johnson v Welsh, 42 W. Va. 18.

An action was brought against the members of a church building committee as individuals to recover a balance due on a contract for repairs and additions to the church edifice. The contract was signed by the committee, with the addition of the words "Building Committee of the M. E. Church at Thomaston." It was held that the contract was personal

and could be enforced against the members of the committee. Copeland v Hewett, 96 Me. 525.

In Chambers v Calhoun, 18 Pa. St. 13, an action on a subscription to aid in the erection of a church edifice was sustained. The subscriber was a member of the building committee to whom the subscripton was made payable, and the action was brought by the other members of the committee, who were held entitled to maintain the action, even though the church edifice had been erected, and the committee was out of office.

A member of a building committee who receives and uses materials in the erection of a church building, will be personally liable therefor, if he agreed to pay the debt as one of the committee, without limiting the extent of his obligation. Cruse v Jones, 3 Lea (Tenn.) 66.

In an action against the deacons and trustees of the society (Old School Presbyterian Church) on a contract made by a building committee for work and labor in the erection of a church, it appeared that the contract bound the building committee, but that there was no evidence that the deacons and trustees had appointed the committee, or had assumed any personal liability on the contract. It was not sufficient to establish the liability of the deacons and trustees to show that they were the agents of the society. Devoss v Gray, 22 Ohio 159.

A question having arisen as to the action of a building committee, the court held that it was competent for the society by vote to ratify and approve the action of the committee. Norwegian Evangelical Lutheran Bethlehem Congregation v United States Fidelity and Guaranty Company, 81 Minn. 32.

Compromise, When Effectual. When a church and society are an existing organized association, acting in a collective quasi corporate character, an agreement of compromise of a suit by a majority of the members is binding upon the minority. Horton v Baptist Church and Society of Chester, 34 Vt. 309.

Corporation Against Majority of Members. While it is an apparent anomaly for a corporation in its artificial capacity to sue a majority of the individuals composing it in their natural capacity, it was held in Maryland that such a state of things may properly occur with regard to a particular religious corporation, and perhaps as to many others, especially where the action was begun by direction of a majority of a quorum fixed by the charter, though such majority was not a majority of all the trustees. For an interesting case involving this question see African Methodist Bethel Church, Baltimore v Carmack, 2 Md. Ch. 143.

Corporation, Recovering Property. The trustees were held entitled to maintain an action to recover property, even as against a majority of members of the society. First Methodist Episcopal Church, Attica v Filkins, 3 T. & C. (N. Y.) 279.

Corporation, Against Trustees. In African Methodist Bethel Church, Baltimore v Carmack, 2 Md. Ch. 143, it was held that the trustees and not the congregation constituted the corporation; also that an action could be maintained in the name of the church against a majority of the trustees in their individual capacity.

Damages Against Railroad Company for Disturbing Religious Services. In First Baptist Church in Schenectady v Troy & Schenectady R. R. Co., 5 Barb. (N. Y.) 79, the church corporation was held entitled to recover damages for the disturbance of its religious services on the Sabbath by ringing of bells, blowing off steam, and other noises of the railroad. The damages were assessed at six cents. See First Baptist Church in Schenectady v The Utica & Schenectady Railroad Company, 6 Barb. (N. Y.) 313, for a similar action by the same society against another railroad company for a similar disturbance of divine worship. In the latter case it was held that damages could not be recovered for an alleged depreciation in the church property for the reason that such damages were too remote; and it was also held that an individual member of the congregation could not main-

tain a private action for damages for disturbing him while attending religious service.

Debts. The property of the society was held liable for the payment of debts contracted by it in the erection of buildings or otherwise, and creditors might take proceedings for the sale of the property, and the application of the proceeds for the payment of such debts. Linn v Carson, 32 Gratt. (Va.) 170.

In Beckwith v McBride & Co., 70 Ga. 642, it was held that a person supplying materials for certain repairs in the church edifice which had been ordered by individual members of the vestry, could not maintain an action against the trustee of the property. He was not a party to the contract, and it was also held that the vestry as such was not liable for the reason that it had not acted in the matter as a body, although individual members had assumed to make the contract.

Ejectment. The society made a contract of settlement with a pastor, by which he was to receive a stated salary and the use of the parsonage. Three years later, on account of differences arising in the church, the pastor and a part of the congregation withdrew, and worshiped first in a hall and then in a meetinghouse, becoming a flourishing church without any connection with the old society. The remaining members employed a new pastor, and continued to occupy the original church property. The old society brought an action of ejectment against the former pastor, to recover possession of the parsonage. The court held that the facts did not show conclusively that there had been a secession from the original society, but that all the facts should be submitted to the jury. First Baptist Church and Congregation v Rouse, 21 Conn. 160.

A conveyance to the trustees was held to be a conveyance to the society, and sufficient to give the corporation the right to maintain ejectment. Van Deuzen v Presby. Cong. 3 Keyes (N. Y.) 550.

Trustees of an unincorporated religious society cannot

maintain ejectment to recover possession of church property conveyed to certain grantees as trustees of an unincorporated society. Bundy v Birdsall, 29 Barb. (N. Y.) 31.

Elections. In People ex rel Fleming v Hart, 13 N. Y. Supp. 903, 36 St. Rep. 874, the court sustained an action involving the validity of the election of church wardens and vestrymen of St. Stephen's Protestant Episcopal Church of New York, a part of whom had been ousted from office, and a special election was ordered to fill the vacancies caused by such ouster, and a referee was appointed to supervise such election.

Forcible Entry and Detainer. On a division in the church resulting in the withdrawal of a portion of the members and the pastor, a majority placed the building in charge of the petitioner, who put new locks on the doors and retained the keys. On the following Sunday a large party of the dissentient members removed the locks and maintained devotional exercises. The petitioner brought an action for forcible entry and detainer. It was held under the New York Code of Civil Procedure that he was the agent of the majority who were entitled to the possession of the church, and could maintain the action. Central Park Baptist Church v Patterson, 9 Misc. (N. Y.) 452.

Trustees of the society sought to maintain a proceeding for forcible entry and detainer in their individual names, but it was held that the title of the real property being in the corporation, the proceeding must be in its name and not in the name of the trustees. People ex rel Fulton v Fulton, 11 N. Y. 94.

People v Runkle, 9 John. (N. Y.) 147, sustained the right of the trustees to maintain a proceeding for forcible entry and detainer against a minister and several members of the church who had broken open the building for the purpose of holding religious services therein

Juror. A member of the Lutheran Church was held not disqualified as a juror in an action in which another Lutheran church was a party. Barton v Erickson, 14 Neb. 164.

Mechanic's Lien. Property was conveyed under special trust that it should be always secure to the Eastern Methodist Society in Lynn, "and such ministers of the Methodist Episcopal Church as may from time to time be stationed among them to preach and expound the word of God, to administer the ordinances and discipline of the church, and to hold their private religious meetings unmolested according to the rules and regulations which are or may hereafter be adopted by the General Conference of the Methodist Episcopal Church in the United States of America." The original trustees were held to be the legal owners of the estate, holding it for the church. All improvements on the property attached to the freehold, and became the property of the original surviving trustee. The church edifice having been destroyed by fire was rebuilt. A mechanic's lien was filed against the property making the church society the respondent, but without joining the original surviving trustee. The proceedings were deemed defective, and the lien could not be enforced. Peabody v Eastern Methodist Society, Lynn, 5 Allen (Mass.) 540.

Land was conveyed to trustees of a religious society on condition that said lot was never to be sold or to be used in any other way only for the use of a church. Trustees erected a building on the property which was used as a school and also as a house of worship. A mechanic's lien was filed on the property, and proceedings were instituted for the foreclosure of the lien and the sale of the property. Judgment was obtained, and the property sold by the sheriff to the judgment creditor. The grantor in the deed brought an action to set aside the sale on the mechanic's lien on the ground that such a lien could not be obtained on property held in perpetuity for the purpose indicated in the deed, and that the action of the church trustees in permitting such lien and sale of the property was a violation of the trust, and that the purchaser obtained no title as against the original grantor. It was held that the sale of the property under a mechanic's lien necessarily defeated the object of the char-

ity, and that the trustees receiving the deed had no power to create any incumbrance which would have this effect. They could neither alienate the property voluntarily, nor subject it to a lien which might ripen into a judgment and sale, but they were required to hold the property for the perpetual purpose of the trust. Grissom v Hill, 17 Ark. 483.

In this case the rule was laid down that in Arkansas a church building was not subject to a mechanic's lien. Eureka Stone Company v First Christian Church, 86 Ark, 212.

In an action to foreclose a mechanic's lien for labor and materials furnished in making repairs to a church edifice, it appeared that the congregation appointed a building committee to take charge of the improvements. This committee contracted with the plaintiff. The work was performed and materials furnished, and a mechanic's lien was filed in the proper office. The trustees defended on the ground that neither the congregation nor the trustees should be liable for the indebtedness created by the improvements, which were to be paid for by voluntary contributions. It was held that the contractor was entitled to enforce his lien. Gortemiller v Rosengarn, 103 Ind. 414.

In an action to foreclose a mechanic's lien on the church edifice owned by an unincorporated society, it was held that the action could not be maintained against an unincorporated society, but that the members of the church, as joint promissors or partners, were liable for the debt. Thurmond v Cedar Spring Baptist Church, 110 Ga. 816.

A church edifice was held to be a building within the mechanic's lien law, and therefore subject to be sold in proceedings for foreclosure of such a lien. Harrisburg Lumber Company v Washburn, 29 Ore. 150.

In Beam v First Methodist Episcopal Church, 3 Pa. L. J. Rep. 343, it was held that a mechanic's lien on a church edifice could not be enforced against an adjoining graveyard used by the society.

Minister's Salary. A minister brought an action against

the society for an alleged balance of a year's salary. The salary was fixed in connection with his settlement as pastor. The pastoral relation had at least in form been dissolved by the action of the association, but the severance was on the ex parte application of the local church without the minister's consent. Whether such a dissolution of the pastoral relation was regular under the law of the church was held to be a proper question for the jury. Gibbs v Gilead Ecclesiastical Society, 38 Conn. 153.

In an action by a minister for his salary after he had been dismissed, it was held that the parish could not give evidence of previous immorality on his part not stated in the vote of dismissal. Whitmore v Fourth Congregational Society, 2 Gray (Mass.) 306.

The elders and deacons called a minister as pastor of the church. The call was not accepted, but the minister occupied the pulpit and performed service as pastor for one year. In an action against the elders and deacons for his salary, it was held that not having accepted the call, he was not the regular pastor, and was therefore not entitled to the emoluments of the office, and the elders and deacons were not liable. Neill v Spencer, 5 Ill. App. 461.

The pastor was employed by the congregation in December, 1886, and entered on his duties in January, 1887, and continued to serve the church until October 15, 1889, when the congregation voted that his relation to the church should be terminated. The doors of the church were locked against him, and payment of his salary was refused. An action was brought to recover salary claimed to be due for a part of the year, the pastor alleging that his employment was for life, and not for any definite time. Under the law of the church the pastor must have been a member of the recognized Evangelical Lutheran Synod in the United States. The pastor claimed that his discharge was illegal. The defendants asserted that the pastor was not qualified, for the reason that he was not a member of a recognized Evangelical Lutheran Synod of the country, and that his continu-

ance as pastor was in violation of the law of the church. He had a provisory relation to the synod acquired in 1886, but in 1889 his relations to the synod were terminated. His application for membership was rejected. He thereupon ceased to be a member of the synod, and at the same time ceased to have the needed qualifications to entitle him to appointment as pastor. The pastor was not entitled to recover the salary claimed. Helbig v Rosenberg, 86 Ia. 159.

A person employed as pastor was to receive a stated salary and the use of the parsonage. The pastor agreed to perform the service for such amount as could be raised by subscriptions, which were to be collected by the society, and he performed the service for six years. He then brought an action to recover the balance due. It was held that the society was bound to use due diligence in collecting the subscriptions, and that the pastor was entitled to recover the balance due, after deducting all amounts received by him. Myers v Baptist Society of Jamaica, 38 Vt. 614.

In Landers v Frank Street Church, Rochester, 97 N. Y. 119, also 114 N. Y. 626, it was held that the minister could not maintain an action against the society for a deficiency in his salary, it appearing that by the rules of the Methodist Episcopal Church the minister's salary is fixed by the Quarterly Conference, and that no contract relation exists between the minister and the corporation as to his salary. See also Baldwin v First M. E. Church, 79 Wash. 578.

The constitution of Massachusetts has not authorized any teacher to recover by action at law any money assessed pursuant to the third article of the Declaration of Rights but a public Protestant teacher of some legally incorporated society. Therefore, a public teacher chosen by a voluntary association of Universalists was held not to be within the purview of this constitutional provision. Barnes v First Parish, Falmouth, 6 Mass. 401.

The pastor brought an action against the trustees of the society to recover his salary for four years. It was held that he was entitled to recover and that he was not prevented by

the provision in the Methodist Discipline providing that effective men who have not been able to obtain their allowance from the people among whom they have labored may present a claim to the Conference to be paid out of the money at the disposal of the Conference, and such claims may be paid, or any part thereof, as the Conference may determine. In no case, however, shall the church or Conference be holden accountable for any deficiency, as in case of debt. The court said the effect of the provision in the Discipline was to permit a minister to present a claim for deficiency to the Conference, and to receive it as a favor, but not as a right. Such a deficiency did not constitute a debt against the church at large, but it might be used as the basis of an action against the local society.

The minister who brought this action was also a mechanic, and the court held that he was entitled to enforce a lien against the church for services in that capacity. Jones v Trustees of Mt. Zion Church, 30 La. Ann. 711.

Even if, as in some churches (in this case the Evangelical Association), no contract was made for the payment of the pastor's salary, but he is dependent on voluntary contributions for his compensation, this right to compensation is a property right in the office of pastor which a court of equity will recognize and protect. Schweiker v Husser, 146 Ill. 399.

A public teacher of religion not ordained over a particular parish or place, but only indefinitely over a large district of country, including, or which may include, a number of parishes or places, cannot maintain an action to recover moneys assessed for the support of public worship. Washburn v Parish, West Springfield, 1 Mass. 32.

Where money for the minister's salary had been raised by subscriptions, and was available for that purpose, the church was held liable, although the call and the agreement for the pastor's service did not conform to the provisions of the statute. Pendleton v Waterloo Bap. Ch. 49 Hun. (N. Y.) 596.

When a town has settled a minister an action will lie for his salary against the town, notwithstanding there may be several unincorporated religious societies or associations within the town, the members of which may be exempted by law from contributing to the support of such minister. Cochran v Camden, 15 Mass. 296.

The pastor has no property right in his salary as against the church. That is a matter of voluntary contribution by the membership, except so far as individuals may bind themselves therefor. The pastor is not an employee of the church. Pecuniary considerations are not controlling in such relations. Travers v Abbey, 104 Tenn. 665.

The society, by ex parte proceedings, dissolved its relations with the pastor and prevented him from occupying the meeting house and pulpit. Nevertheless, he preached at private houses to such as chose to hear him. In an action by the pastor for his salary it was held that his dismission by an ex parte council was invalid, and that he was entitled to recover his salary. Thompson v Cath. Con. Soc. 5 Pick. (Mass.) 469.

The parish and the minister made an agreement by which the salary was to be regulated according to the price of the necessaries of life, increasing the salary if the prices rose, and diminishing it if the prices were reduced. The salary was to be fixed by the parish committee. This committee having determined the salary, it was held that such determination was conclusive, and the minister could not, in an action to recover additional salary, show that the committee had been mistaken in estimating the prices of necessaries. The committee having acted fairly and honestly, its determination was conclusive. Burr v Sandwich, 9 Mass. 277.

In Reformed Dutch Church of Albany v Bradford, 8 Cowan (N. Y.) 457, it was held that the minister was not entitled to his salary for the time during which he was under suspension for misconduct as determined by the church judicatories.

The presbytery having jurisdiction of this church dis-

solved the pastoral relation between the minister and the congregation, but without any action on the part of the congregation. It was held that the effect of the dissolution was to suspend the right of the minister to render pastoral services, and the liability of the congregation to the minister for compensation pending a final determination of the question as to the regularity of the action of the presbytery. In such a case the fact that the action of the presbytery was thereafter decreed to be illegal does not affect the status of the parties during the period of litigation, and if the minister seeks and secures other employment during such period, and never offers to resume the pastoral relation, he cannot maintain an action against the congregation for his salary during the period from the dissolution of the pastoral relation to the date of the decree declaring such dissolution invalid. Wallace v Snodgrass, 34 Pa. Super. Ct. 551.

The Presbytery of Oklahoma appointed the minister or stated supply, and he was accepted by the church. It was held that in the absence of any legal contract the church became obligated to pay him a fair and just compensation for his services. If it could obtain aid from the Home Mission Board, this was its right, and after applying the amount paid by such board, if there was still a balance due to make a fair and just compensation, it was bound and obligated to pay such balance. In this case it was held that there was no express contract between the minister and the local society. Myers v First Presbyterian Church, Perry, 11 Okla. 544.

In Riffe v Proctor, 99 Mo. App. 601, it was held that the members of the local society were not individually liable for the pastor's salary.

Minister, Statute of Limitations. The six-year statute of limitations applies to an account of a minister for services performed for a church. Gray v Good, 44 Ind. App. C. Rep. 476.

Partition. In Leblanc v Lemaire, 105 La. 539, it was held that a minority of the members of the society could not

maintain an action for the partition of the church property, consisting of a burial ground and a church site with buildings thereon. While they may have certain property rights in the church holdings, they are not considered such ones in indivision as give them a standing in court to procure against the will of the majority a partition of that which, by common understanding, is intended to remain intact for the purpose of religious worship.

Personal Judgment, When Not Proper. An action was commenced by a member of the society, which was not incorporated, against his associates to recover a personal judgment. It was held that he could not recover, and that his only remedy was in equity against the church property. German Roman Catholic Church v Kaus, 6 Ohio. Dec. 1028.

Promissory Note. An action was brought against several persons to recover the amount of a promissory note given by the pastor for money borrowed, to be used in the erection of a church edifice. The defendants were called a building committee, but they were not parties to the note. The committee did not handle any funds, and their only authority was advisory. The pastor had charge of the building of the church, raised the money, and supervised the erection of the building. It was held that there was no evidence of liability on the part of the so-called building committee, and the plaintiff was not entitled to recover against them on the note. Freeport Bank v Egan, 146 Pa. 106.

In Brockway v Allen, 17 Wend. (N. Y.) 40, the court sustained the validity ot a promissory note given by trustees of the society for a preexisting debt for materials furnished. They acted as the agents of the corporation.

A promissory note was given for material and labor furnished in the erection of a church. The note was signed by the senior warden and by the junior warden. In an action against the church it was held that the note had been ratified by the vestry, and that the church was therefore liable thereon. Donnelly v St. John's Protestant Episcopal Church, 26 La. Ann. 738.

In Cattron v First Universalist Society, Manchester, 46 Iowa 106, it was held that an action could not be maintained on a promissory note given by the president and secretary of the board of trustees without any authority from the board.

Quieting Title. It was held that the corporation was at least a de facto corporation and that its trustees could maintain an action involving the property interests, until their powers were questioned in an action by the attorney general. Therefore the society was held entitled to maintain an action to quiet title and protect the property. First Baptist Church of San Jose v Branhan, 90 Cal. 22.

The society, acting on permission granted by school trustees, erected a house of worship and established a cemetery on school lands, but encroached on other lands which had been included in the school lot by mistake, and which had subsequently been conveyed to a third person by the original grantor. In an action by the church to quiet the title, it was held that the society could not hold the lands by adverse possession, partly because sufficient time had not elapsed since the original occupancy and partly because the occupancy was by mistake. Such an occupancy could not ripen into adverse possession. Davis v Owen, 107 Va. 283.

Rector, Deposition, When No Action for Damages. The society having become reduced in numbers, a minister was sent to it as a missionary. After about a year's service he resigned this position and was elected rector by the vestry. The rector was charged before a church tribunal and convicted of conduct unbecoming a clergyman, and was degraded and debarred from the ministry and the bishop imposed sentence accordingly. The rector brought an action against a member of his congregation and the bishop for damages. At the trial it was held that there was no evidence to sustain the rector's claim that the defendants had conspired to injure his character as a Christian minister. Irvine v Elliott, 206 Pa. St. 152.

Reforming Deed. The proprietor of land set it apart for

the use and benefit of the Methodist Protestant Church of the town of Jefferson as a site for the erection of a house of public worship, intending to give the same to the church for that purpose, and accordingly executed a deed to a third person, who subsequently conveyed the title to the society. A house of worship was erected on the land. The transfer was valid, but the title was defective by reason of a mistake in the description. It was held that the society could maintain an action to reform the deed, and correct the deed, and correct the mistake. Trustees of Methodist Episcopal Protestant Church v Adams, 4 Ore. 76.

Replevin for Seal. The rector, church wardens, etc., of an incorporated church cannot maintain replevin for the corporate seal against the treasurer of the church, where a rule of the church declares that the treasurer shall safely keep the corporation seal. Rector, etc., v Blackhurst, 11 N. Y. Supp. 669.

Shakers. An action may be maintained by deacons of a Shaker Society for trespass on property. Anderson v Brock, 3 Me. 243.

Specific Performance. The court decreed the specific performance of a contract for the sale of the church property, which contract had been submitted to the supreme court and approved, with an order authorizing the sale and directing the disposition of the proceeds by the corporation. Bowen v Irish Presbyterian Congregation, New York, 6 Bosw. (N. Y.) 245.

Title, Action To Compel Conveyance. A subscriber to a fund for the erection of a church edifice donated two lots in payment of his subscription, and the society erected its meeting house on the land. No deed was made, but the society canceled the subscription, and the subscriber indicated the donation on the map of a tract including these lots and others. The society was held entitled to maintain action to compel the conveyance of the land. Enos v Chestnut, 88 Ill. 590.

Trespass. Trustees de facto may maintain an action for trespass on property. Green v Cady, 9 Wend. (N. Y.) 414.

After thirty years of uninterrupted possession of property (Cherokee Chapel, Fort Smith, Ark.) the society was presumed to have obtained the title thereto. It was further held that the trustees might bring an action for trespass on the property, for digging and removing coal therefrom. Penny v Central Coal and Coke Company, 138 Fed. 769.

Where the fee of the church property is in one society, but another society has a right to use the same for religious purposes, the second society cannot maintain an action of trespass; such a right of action is possessed only by the owner of the fee, or by some person or society entitled to the exclusive possession. Religious Congregational Society, Bakersfield v Baker, 15 Vt. 119.

A minister of a parish, who, by virtue of his settlement, had a freehold estate in a ministerial land, was entitled to maintain an action of trespass thereon. The action was personal and, therefore, did not abate by a dissolution of the parochial relation. Cargill v Sewall, 19 Me. 288.

Trustees. Persons who furnished pews and other furniture for the church brought an action against the trustees and recovered judgment for the amount of the debt. This did not create a lien on the property, but was a claim against the trustees, and was valid as to them. The trustees merely hold the legal title to the real estate conveyed, devised, or dedicated for the use and benefit of the religious congregation, at whose instance they have been appointed, and they have no power of their own volition, and in their capacity as trustees, either to alien or encumber such real estate. Globe Furniture Company v Trustees, Jerusalem Baptist Church, 103 Va. 559.

A building contract was signed by the president of the society, which was not incorporated. It was held that the society was not a necessary or proper party in an action against the trustees on the contract. Such a contract, executed by the authority of the trustees, will be treated as their contract and may be enforced in an action against

them. Lunsford & Withrow Company v Wren, 64 W. Va. 458.

If the temporalities are managed by trustees elected under the statute, the ruling elders and members of the session have no standing to maintain an action in their own name or the name of the corporation against trustees alleged to have been suspended by the session as communicants, and therefore not entitled to act as trustees. Westminster Pres. Church v Findley, 44 Misc. (N. Y.) 173.

Several members of the society brought an action against other members described as trustees for an accounting of certain funds belonging to the society, and for an injunction restraining the trustees from continuing the use of instrumental music (an organ), which was alleged to have been introduced by them contrary to the custom of the church. It was held that the plaintiffs had no standing to maintain an action and that the action was not properly brought against the defendants describing them as trustees but that the action should have been brought against the corporation. Tartar v Gibbs, 24 Md. 323.

Trustees, De Facto. The trustees of a religious corporation and officers appointed by them whose elections and appointments were in conformity with the formalities prescribed by the statute, and who have in fact acted and are acting as such, are at least officers de facto, upon whom alone a valid service of process can be made. Berrian v Methodist Society, New York, 4 Abb. Pr. (N. Y.) 424.

Trustees, Illinois Rule. In Illinois actions by or against religious societies must be in the name of the trustees instead of the society as such. Ada St. Methodist Episcopal Church v Garnsey, 66 Ill. 132.

Trustees, New York Rule. Trustees of religious societies cannot sue as such except by their corporate name or title. Bundy v Birdsall, 29 Barb. (N. Y.) 31.

Trustees, Restraining Unauthorized Acts. This society was incorporated in 1788 by special act. The charter was amended in 1837 by providing that the church belonging to

the German Religious Society of Roman Catholics, called the Holy Trinity Church, in the city of Philadelphia, shall be continued as a German Roman Catholic church, and conducted according to the provisions of the act incorporating the said church, so long as the same should be required, by at least twenty regular contributing members, qualified to vote at the elections held under the said act of incorporation.

The board of trustees was regularly elected in due course according to the charter in 1850, and on the 29th of November, 1850, executed a deed of all the corporate property owned by the society to the three pastors of the church, in trust for various purposes, including renting of pews and interments in the burial ground. All receipts and income to be applied to the support of the pastors of the church, and to the expenses of the church and to the liquidation of the existing debt. A school maintained by the society, as authorized by the original charter, was to be free by the provision of this deed.

Several members of the church objected to this transfer of the title from the corporation to the pastors, and applied for an injunction restraining its consummation and any further exercise of authority by the trustees or pastors, and also the appointment of a trustee by the court to take charge of the property. The plaintiffs alleged mismanagement by the board of trustees. The court held that the deed from the board of trustees to the pastors was in excess of the authority vested in the board by the charter, and the deed was, therefore, invalid. The court also held that the plaintiffs, as members of the church, could maintain an action to set aside the conveyance by the trustees, and restrain further operations by the pastors pending the determination of the issues. Langolf v Seiberlitch, 2 Parsons Equity Cases, (Pa.) 64.

Trustees, Right to Sue. In an action brought by trustees in their own names, for the use of the corporation of which they are officers, the court may render judgment for the cor-

poration. Leftwig and Barton, for the Meth. Ep. Ch. v Thornton, 18 Ia. 56.

An action on a contract was brought by the trustees of the society. The defendant objected that the action should have been brought in the name of the society itself, but this claim was overruled, and the action was held good in form. It was also held that the action was properly brought by the successors of the trustees who made the contract. Skinner v Richardson, Boynton & Co., 76 Wis. 464.

Trustees' Title to Office. Trustees must show title to office in actions relating to church property. Antones et al v Eslava's Heirs, 9 Port. (Ala.) 527.

Unincorporated Associations. An unincorporated association is not a person, and has not the power to sue or to be sued. But in the case of religious and eleemosynary associations, the members and managing committee who incur the liability, assent to it, or subsequently ratify it, become personally liable. Burton v Grand Rapids School Furniture Company, 10 Tex. Civ. Rep. 270.

Unincorporated Society. The trustees de facto of an unincorporated society may maintain an action for trespass on the society's property. Green v Cady, 9 Wend. (N. Y.) 414.

AFRICAN METHODIST EPISCOPAL CHURCH

Organization, 21
Amending charter, 21
Dismissing pastor, 21
Municipal ordinance against meetings, 21

Organization. In 1816 the African Methodist Episcopal Church separated from the white Methodists and promulgated their Book of Doctrine and Discipline. The doctrine and discipline of this church is fashioned in a great measure after that of the white Methodist Episcopal Church in England and America; in which the election and ordaining of the priesthood by the General or Annual Conferences, the ordination of them by laying on of hands by a bishop and elders, and the fixing of their appointments by the bishop, are cardinal points, the last of them a distinctive one. It is the rock on which the church is founded, and on which it has prospered. Remove the church from it, and it ceases to be Methodistic. Commonwealth ex rel Miller v Cornish, 13 Pa. St. 288.

Amending Charter. Meeting cannot amend charter without previous notice that amendment would be proposed. Re African Methodist Episcopal Union Church, 28 Pa. Super. Ct. 193.

Dismissing Pastor. By its charter the right to dismiss a pastor is vested in the incorporators. African Methodist Episcopal Church v Clark, 25 La. Ann. 282.

Municipal Ordinance Against Meetings. Action to prevent city from interfering with assemblies of colored persons for religious worship. City ordinance prohibiting such assemblage sustained. African Methodist Episcopal Church v New Orleans, 15 La. Ann. 441.

AMERICAN HOME MISSIONARY SOCIETY

Bequest, sustained, 22.

Bequest, Sustained. This was an association of persons for charitable and religious purposes, but was not incorporated at the death of the testator, who resided in Connecticut. The New York law was held to apply in this case. The law of the domicile of the legatee governs the validity of the bequest. A voluntary association for charitable purposes cannot take a legacy, and the defect is not cured by its subsequent incorporation. Mapes v Home Missionary Society, 33 Hun. (N. Y.) 360.

ARBITRATION

Church rule, 23.

Church Rule. An arbitration and award are none the less binding because made pursuant to the regulations of a church to which the parties belong. In this case the arbitration was according to the regulation contained in the Discipline of the Methodist Episcopal Church, South, and the persons interested were members of that denomination. Payne v Crawford, 97 Ala. 604.

ARTICLES OF RELIGION

Description, 24.

Description. In Bishop v Stone, 1 Hagg. Con. Re. (Eng.) 424, considering the complaint against a clergyman for preaching doctrines contrary or repugnant to the articles of religion, it is said that "these articles are not the work of a dark age; they are the production of men eminent for their erudition and attachment to the purity of true religion. They were framed by the chief luminaries of the reformed church, with great care, in convocation, as containing the fundamental truths deducible, in their judgment, from Scripture, and the Legislature has adopted and established them as the doctrines of our church, down to the present time." The purpose for which these articles were designed is stated to be, the avoiding the diversities of opinions, and the establishing of consent touching true religion. The defendant was deemed to have violated the articles by preaching doctrines contrary thereto, and a sentence of deprivation was pronounced against him.

ASSOCIATE REFORMED CHURCH

History and form of government, 25
Described, 26.
Synod, power, 27.
Union of Associate and Associate Reformed Churches, 27.
Union with Presbyterian Church, 28
Missions, bequests sustained, 29

History and Form of Government. The Associate Reformed Church in this country originated in the union of two bodies of Scotch Presbyterians, known as the Associate and the Reform Presbyterian Churches. This union was accomplished in 1782.

In 1856 negotiations were entered into for a union of the Associate and the Associate Reformed Churches. These negotiations were conducted by the general synods of the churches, and at length in 1858, resulted in a union of these two bodies, and the formation of a general assembly embracing the particular synods and presbyteries of the Associate and Associate Reformed Churches. This union was an act of the general synods of the two bodies exclusively.

This is a Presbyterian Church adhering to a government by presbyters or ministers of equal grade, and ruling elders chosen by the congregations. This government is administered through church sessions or congregational judicatories, through presbyteries consisting of the ministers of a certain district, together with a ruling elder from each congregation, and through particular and general synods which are constituted from the presbyteries.

The Synod of New York has occupied the position and relations of a particular synod in the Associate Reformed Church, at least since 1855, in which year it united with other particular synods of the same communion, known as

the Synods of the West, and a body was constituted out of the union styled the General Synod of the Associate Reformed Church.

The organization of these particular synods, including the Synod of New York, consists of a moderator, or presiding officer, and a clerk. The moderator is chosen by each annual synod to preside during that synod, and it is also his duty to open the session of the next ensuing synod, and to conduct its proceedings until it has itself become organized by the choice of its own moderator. The book of discipline and church government of the Associate Reformed Church expressly required that every stated meeting of a synod shall be opened with a sermon and prayer by the moderator of the last assembly, and that he shall preside until another moderator shall be chosen. This is the only and recognized mode of procedure in these assemblies; unless the last moderator is absent, when the oldest minister present is to take his place. People v Farrington, 22 How. Pr. (N. Y.) 294.

Described. In 1837 there were in New York nineteen societies, or congregations, duly incorporated under the law of that State and professing the same articles of faith, the same church discipline, and governed by one and the same synod, or church judicatory, called "the Associate Reformed Synod of New York," and forming a distinct body of Christians, under the general denomination of the Associate Reformed Church. And their established form of government is Presbyterian, having sessions, presbyteries, and synods. In the year 1801 they had thirty congregations, with settled ministers, divided into seven presbyteries, namely: The Presbytery of Washington and of New York, in the State of New York; the first and second of Pennsylvania; the first and second of Carolinas and Georgia, and one of Kentucky; and those presbyteries met and formed a synod, called "The Associate Reformed Synod." In 1802, this Associate Reformed Synod was divided into four particular synods, and a General Synod was at the same time formed, to hold its first meeting at Greencastle, on the last

Wednesday of May, 1801. This General Synod met annually, and the church continued under this organization until 1822. In that year the General Synod formed a union with the general assembly of the Presbyterian Church. The Associate Reformed Church has existed in this country for many years, as a separate or distinct branch of the Christian Church. In the year 1796 it was composed of several presbyteries, and one synod called "the Associate Reformed Synod," which consisted of those presbyteries met together for mutual assistance, and for managing the affairs of the church under its care. This form of government by presbyteries and one synod, continued until 1802, during all which time this associate synod was the supreme head of the church, as to its government and order. In 1802 the synod, by the assent of the presbyteries, resolved to divide itself into four particular synods, and to form a general synod, which held its first meeting at Greencastle, in Pennsylvania, on the last Wednesday of May, 1804. This general synod was composed of delegates from the several presbyteries, with powers expressly defined in their constitution. In 1822 by the articles of union between the Associate Reformed Church and the Presbyterian Church, the Associate Reformed Church was merged in the Presbyterian Church. This attempted union was invalid. Trustees Associate Reformed Church v Trustees Theological Seminary, 4 N. J. Eq. 77.

Synod, Power. In Trustees Associate Reformed Church v Trustees Theological Seminary, 4 N. J. Eq. 77, it was held that the General Synod of the Associate Reformed Church had, by the constitution of the said church, no authority to do any act, or make any regulation which interferes with the established order of the church; therefore that the act of union between the General Synod of the Associate Reformed Church, and the General Assembly of the Presbyterian Church, adopted on the 21st day of May, 1822, is invalid.

Union of Associate and Associate Reformed Churches. The

subject of union between the Associate and Associate Reformed Churches had been agitated, contemplated, and discussed by the members, sessions, presbyteries, and synods of the respective churches for a period of more than fifteen years; the subject having engaged no small share of the attention of Associate Synods since 1841, when a committee on the subject was first appointed by the synod. In 1856, by the action of the Associate Synod, the basis of union was sent down in overture to the presbyteries and sessions to report thereon at the next meeting of the synod. In 1857 the Presbytery of Iowa, through which the sessions within its jurisdiction made their returns or reports to the synod, reported unanimously in favor of the adoption of the basis of union without proposing any amendment. McBride v Porter, 17 Ia. 204. See United Presbyterian Church.

Union with Presbyterian Church. The Associate Reformed Church of Newburgh, New York, was incorporated under the New York religious corporations act of 1813. At the time of the decision in this case there were seventeen other Associate Reformed Churches in the State of New York, incorporated under the same act, associated with the complainants, professing the same articles of faith, the same church discipline, and governed by one and the same synod, or church judicatory, called the Associate Reformed Synod of New York, forming a distinct body of Christians, under the general denomination of the Associate Reformed Church. Their established form of government was presbyterial, having sessions, presbyteries, and synods. The denomination had congregations and presbyteries in different parts of the country, which presbyteries met and formed a synod called the Associate Reformed Synod. A theological school was established in New York in 1802. The same year the Associate Reformed Synod was divided into four particular synods, and a General Synod was at the same time formed. This General Synod met first in 1804, and the church continued under this organization until 1822. During all this time the library of the theological seminary and the church

funds were in the custody of this General Synod, who by the consent of the church exercises general superintendence over their property and funds. In 1822 the General Synod formed a union with the General Assembly of the Presbyterian Church under articles of agreement which permitted the presbyteries of the Associate Church, at their election, to continue a separate organization, or amalgamate with the General Assembly of the Presbyterian Church, and which provided for the consolidation of the theological seminary in New York and the theological seminary at Princeton, New Jersey. Following this consolidation, the library and funds of the theological seminary in New York were transferred to the seminary at Princeton. Several congregations of the Associate Reformed Church declined to amalgamate with the Presbyterian Assembly, and continued their independent existence under the name of the Associate Reformed Synod of New York. In this case it was held, among other things, that "the General Synod had no authority to do any act, or make any regulation which should interfere with the established order of the church." It was the obvious intention of those who formed the union, that the Associate Reformed Church should be merged in the Presbyterian Church to all intents and purposes. It was held that the union was invalid, and that the Associate Reformed Church still had the same rights and interests in the books and funds that they had before the adoption of the articles of union. Associate Reformed Church v Trustees, Theological Seminary, Princeton, 4 N. J. Eq. 77.

Missions, Bequests Sustained. In Dickson v Montgomery, 1 Swan (Tenn.) 348, bequests were sustained for home and foreign missions and for the education of ministers under the direction of the Associate Reformed Synod of the South.

BAPTIST CHURCH

Articles of faith may be altered, 30.
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Articles of Faith May Be Altered. The First Church of Dayton, Ohio, was established in 1824, under a form of faith professed by those who called themselves Particular Baptists. In July, 1827, the articles of faith were abrogated. In November of the same year trustees, who had been elected in September, took title to land as trustees of the society. Under the statute, the trustees became a corporation, and the title to the land became vested in the trustees as a corporation. A house of worship was erected with contributions from members of the society and others. In March, 1829, Mr. Keyser, one of the trustees, was excluded from the society on charges, and another trustee was elected in his place.

On the 31st of the same month, all former creeds and symbols were abolished by the society, and a new covenant introduced by which the New Testament was declared the only rule of faith and practice. Keyser and another trustee brought an action alleging that by the change of the articles of faith the society had ceased to be the First Baptist

Church, and that all the rights, etc., belonged to the original First Church, which they alleged consisted of themselves and their associates. It was held that a religious society does not necessarily lose its property by ceasing to entertain certain opinions. A Baptist Church is in itself wholly separate and independent, and at liberty to form its own creed and looking to others for counsel and social intercourse only. The majority had the right to establish and alter, at pleasure, their articles of faith, and an alteration of such articles, or even an apparent abandonment of doctrines formerly entertained, did not affect their right to control the property, especially, as in this case, where the property was not acquired under any trust imposing specific articles of faith. Keyser v Stansifer, 6 Ohio 363.

Baptist Association. The society at Mt. Tabor, Indiana, having become divided into two factions, a controversy arose as to the title to church property. The local society had, on its organization, adopted articles of faith, and subsequently adopted certain so-called rules of decorum regulating procedure in various details. This local society was connected with another Baptist organization known as the association, and described as the Association and Council of the Regular Baptist Churches, which is described as an annual meeting composed of messengers carrying a letter from each church belonging to the association, which letter generally gives some expression of the continued adherence of the church to their articles of faith, and a detailed account of the condition of the church. On this letter messengers are admitted or refused membership in the association.

This society was a member of the Danville Association, composed of twenty-two churches. A council organized on the request of the minority decided that the majority faction had departed from the faith of the church. The majority did not appear before this council. Afterward another council was called in the same manner, with the same attendance and result. Subsequently both factions sent

letters and messengers to the next meeting of the Danville Association. The letter from the minority was received, and its messenger seated. The letter from the majority was refused, and its messengers were not admitted, on the ground that the majority had departed from the articles of faith. The court held that while the action of the councils and association was only advisory, the decision of the association based on letters from each faction was entitled to great weight, and might safely be followed by the court. Smith et al v Pedigo et al, 145 Ind. 361.

Windham v Ulmer, 59 So. (Miss.) 810.

Congregation, Powers. The congregation, by a large majority, adopted a resolution requesting the pastor to resign, and notice was given to the pastor accordingly, who thereafter entered the church on several occasions, with force and violence, and continued to exercise, or attempted to exercise, the functions of pastor of the church in violation of the resolution. The congregation is the sole legislative and judicial body of the Baptist Church. Those who connect themselves with it voluntarily assume the risk of the propriety and justice of congregational action, just as those who become Presbyterians or Episcopalians subject themselves in church affairs to the authority of synods and councils. The court sustained the resolution excluding the pastor from office, and enjoined him from further use of the church in an official capacity. Morris Street Baptist Church v Dart, 67 S. C. 338.

Creed. The faith of the Baptist denomination is Calvinistic, and it is briefly stated as follows: "the belief in original sin or total depravity, predestination, particular redemption, effectual calling and perseverance of the saints." Park v Chaplin, 96 Ia. 55.

English Toleration. "The Baptists are persons the Legislature have thought proper so far to countenance as a denomination of Christians as to extend the toleration to them, standing on the same footing as Quakers, another species of dissenters." A charity for the benefit of a Baptist

minister was sustained in Attorney-General v Cock, 2 Ves. Sen. (Eng.) 273.

Government. The government of Baptist churches is purely congregational, wherein the majority vote of the church controls. It has its associations and conventions, voluntarily formed for certain purposes, but these are not impowered, and did not assume to exercise authority over the actions of the churches. Councils are constituted for purposes purely advisory to aid by their advice and counsel, perhaps in bringing about settlements and reconciliations when dissensions arise, but their decisions are not binding on the churches. The association and conventions have the right to determine their own membership, and this is all they assumed in this instance to do. They are shown not to have any power, under the organization of the church, to bind the actions or conscience of the churches and their members. None of these bodies, therefore, fall within the class of church judicatories such as are provided in the organization of the churches of some of the denominations to finally and authoritatively settle such disputes, and the decisions of which on questions of theology and ecclesiastical government are received as binding by the civil courts. Jarrell v Sproles, 20 Tex. Civ. App. 387.

There is no federal head to Baptist organizations. Each church society manages absolutely its affairs, temporal, spiritual, and doctrinal. It is an unqualified democracy in which the majority is supreme. And this majority consists, not of the actual membership of the local body, but the majority that may chance to be present at any of the regular or stated meetings of the church. McRoberts v Moudy, 19 Mo. App. 26. Windley v McCluney, 161 N. C. 318.

The Baptist Church does not as a religious sect, or denomination, possess a constitution or creed, like the Presbyterian, Methodist, and many other churches. Its form of church government is congregational, and therefore purely democratic. Each church is a distinct organization, independent of all others. There are no intermediate judicato-

ries, or judicatory of final revisory power, in Baptist government. Consequently, the right of appeal does not exist. Every Baptist church is, therefore, a law unto itself in matters ecclesiastical. While what are known as Baptist Associations, both district and State, exist, they possess neither appellate jurisdiction nor revisory power, but may advise the churches, without in any way binding the latter to accept such advice. In the Baptist church the majority of the congregation is ordinarily entitled to rule, and it is but doing justice to the sect to say that the majority rarely abuses its power. To this fact and the simplicity of its government much of the evangelistic success of the Baptist Church is manifestly due. Poynter v Phelps, 129 Ky. 381.

Majority May Control Property. The seizure of the church edifice by a minority of the congregation against the wishes of the majority was condemned, and the majority was put in possession of the property. Bates v Houston, 66 Ga. 198.

A small minority of the society met and elected trustees who claimed the right to the church property. It was held that the majority who adhered to the faith and practice of the Baptist Church was entitled to the custody and control of the property. Turpin v Bagby, 138 Mo. 7.

The withdrawal by one part of a church congregation from the original body of it, and the uniting with another church or denomination is a relinquishment of all rights in the church abandoned. The mere assemblage in a church where a congregational form of government prevails of a majority of a congregation forcibly and illegally excluded by a minority from a church edifice in which as part of the congregation they had been rightfully worshiping, in another place, the majority thus excluded maintaining still the old church organization, the same trustees and the same deacons, is not such a relinquishment; and the majority thus excluded may assert, through the civil courts, their rights to the church property. Bouldin v Alexander, 15 Wall. (U. S.) 131.

Differences arose in this society over the selection of a

pastor and some association questions. One of the members who made charges against the pastor was tried and expelled from membership by the local church. The court declined to consider the question of regularity of the expulsion. The conveyance of the church property was to the parties appellant, who had claimed title to it under the original deed. A small fraction, six or eight persons out of about two hundred and thirty members, assumed the possession and control of the property, but it was held that they were not entitled to it as against the majority. Iglehart v Rowe, 20 Ky. L. Re. 821, 47 S. W. 575.

Minority, Right to Control Property. The society purchased land and erected thereon a house of worship in 1852, and adopted articles of faith as published in the minutes of the Des Moines Baptist Association in 1848. In 1885 the pastor of the church and some of the members adopted the principle of "sanctification by a second experience," and certain members who opposed this principle were expelled from the church. The excluded members, and others sympathizing with them, called the pastor and sought to obtain possession of the church property, which was refused. The differences on the question of sanctification were, by agreement between the parties, submitted to a council of Baptist ministers, which decided that said doctrine was not in harmony with the teachings of the Baptist denomination. It was held that the adherents of said doctrine of sanctification, though constituting a majority of the whole number of members of said church, could not divert the use of its property to the promulgation of doctrines different from the faith for the advancement of which the church was organized, and that a court of equity would interfere to protect the minority in having the trust property applied in accord with the original intent. The decision of the council was binding on the majority. Mt. Zion Baptist Church v Whitmore, 83 Ia. 138.

A faction in this society repudiated the name "Baptist" and adopted in its stead "The Church of God"; repudiated

the name "Mt. Helm" and adopted instead the name "Tabernacle of Christ," thus changing the designation of the church from Mt. Helm Baptist Church to the "Church of God, Tabernacle of Christ." They expressly repudiated all creeds and denominations as man-made devices. This faction elected new trustees, and directed them to procure possession of the church property. It was held that this faction, though constituting a majority of the society, had no right to the property, and that the minority which retained the name and faith of the original society, was entitled to the possession and control of such property. Mt. Helm Baptist Church v Jones, 79 Miss. 488.

Missions. Property owned by the Maine Baptist Missionary Convention, a corporation organized for the promulgation and diffusion of Christian knowledge and intelligence through their agency as an institution of domestic missions, was held exempt from taxation. Maine Baptist Missionary Convention v Portland, 65 Me. 92.

Testatrix bequeathed the residue of her estate to the Evangelical Baptist Benevolent and Missionary Society for the benefit of poor churches of the city of Boston and vicinity. The society was chartered in 1857 for the purpose of securing the constant maintenance in Boston of evangelical preaching for the young and destitute, with free seats; for the employment of colporteurs and missionary laborers in Boston and elsewhere; for the purpose of providing suitable central apartments to other and kindred benevolent and missionary societies, and for the general purpose of ministering to the spiritual wants of the needy and destitute. The bequest was held to be a public charity and was valid. McAlister v Burgess, 161 Mass. 269.

Officers. The only officers of a Baptist church are the pastor and the deacons. A Baptist church is distinct from and independent of all others, having no ecclesiastical connection with any, though maintaining a friendly intercourse with all. The government is administered by the body of the members, where no one enjoys a preeminence, but all enjoy

an equality of rights. Calvary Baptist Church v Dart, 68 S. C. 221.

Pastor, How Settled. In New England, according to Dr. Wayland, the company of Baptist worshipers is divided into two organizations, the church and the society, and these two organizations have coordinate jurisdiction in the settlement of a minister. Leicester v Fitchburg, 7 Allen (Mass.) 90.

Property, Control of. Land was conveyed, for a nominal consideration, to persons described as trustees of the German Baptist church to be erected thereon, which church should be known and designated as the Wallhonding Union Church, and the same to be held by said trustees and their successors in office so long as said premises should be occupied as a place of religious worship for said church. It was held that the language of the deed did not justify a claim that the parties intended a union of persons of different religious beliefs, conferring on them the right to the use of the church. The trustees of the German Baptist Church therefore had the right to exclude others from the use of the church edifice. Miller v Milligan, 6 Ohio, Dec. 1000.

It seems that under the form of government applicable to Baptist churches, the control of the church property is lodged in the congregation and trustees of the church, and not in the deacons. Drew v Hogan, 26 App. D. C. 55.

Texas General Convention. This convention, composed of many local churches, was incorporated under the laws of Texas. The constitution declared that "the object of this convention shall be missionary and educational, the promotion of harmony of feeling and concert of action among Baptists and a system of operative measures for the promotion of the interests of the Redeemer's kingdom." A board of missions was established. About 1894 a controversy arose concerning the work and officers of the board. The controversy relating to the administration of the affairs of the convention was carried into that body at its meeting in 1897. The plaintiff, who was the editor of the leading

Baptist periodical in Texas, had made some criticisms on the administration. At the meeting in 1897 his right to a seat was challenged on the ground of personal unfitness. The challenge was sustained by the convention and the plaintiff was excluded from membership. The challenge was published in the minutes, and in a newspaper published by one of the defendants. It was held that the publication of charges of dishonorable conduct and moral unfitness was libelous per se. Cranfill v Hayden, 97 Texas 544.

BELLS

Chime, bequest sustained, 39.
Fixture, 39.
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Nuisance, 40.

Chime, Bequest Sustained. Testator bequeathed to the wardens and vestrymen of this society money to be used for the purchase of a chime of bells for the benefit of the church. The society was incorporated. The corporation was held entitled to take by will, and the bequest was sustained. Eastman's Estate, 60 Cal. 308.

Fixture. A bell had been used in the belfry of an old church building of a religious society. A new building was erected and the old one sold, the bell being reserved. A tower was erected on the new building for the bell, and a temporary framework was also erected on the lot, upon which the bell was placed and used for church purposes, with the intention on the part of the authorities of the society to place it permanently in the tower. It remained in the temporary frame for nearly a year, and was then removed to the place designed for it. It was held that it never ceased to be a fixture, and that it was not subject to a levy of an execution as personal property. Congregational Society, Dubuque v. Fleming, 11 Ia. 533.

Injunction against Ringing. In Soltau v. De Held, 9 Eng. L. and Eq. 104, it was held that the ringing of church bells might in some instances be a private and also a public nuisance, and an injunction was granted on the application of a nearby resident against the ringing of church bells, so far as they occasioned an annoyance to the plaintiff and his family. The evidence showed that bells were rung five times each day, five days in the week, six times on Saturday, and

oftener on Sunday, at first beginning as early as five A. M. and being rung from five to ten minutes each time.

Where it is clear that the striking of a clock, and the ringing of a chime of bells from a church tower interferes with the physical comfort of ordinary persons living adjacent thereto, an injunction will lie to restrain the striking of the clock during the night and the ringing of the chimes except as a summons to religious worship. Leete v Pilgrim Congregational Society, 14 Mo. App. 590.

It appeared that the bells of a church were hung at such a level in their proximity to surrounding buildings as to cause such an annoyance as amounted to a serious injury to the persons residing in the neighborhood. An injunction was granted restraining the ringing of the bells. Harrison v St. Mark's Church, 12 Phila. (Pa.) 259.

Nuisance. A person living near a church in which a bell was rung for ordinary church services and purposes was by the ringing of the bell thrown into convulsions while suffering from sunstroke, and his recovery was thereby retarded. It was held that the custodian of the church, whose duty was to ring the bell, was not liable as for maintaining a nuisance. Rogers v Elliott, 146 Mass. 349.

BIBLE

Inspiration, 41
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Not a sectarian book, 41
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Inspiration. See Gudmundson v. Thingvalla Lutheran Church, 150 N. W. (N. D.) 750, for an interesting discussion of the doctrine of the inspiration of the Bible, especially as applied by Lutherans.

New Testament. Used in administering oaths. Rex v. Bosworth, 2 Str. (Eng.) 1113.

Not a Sectarian Book. In Hackett v. Brooksville Graded School District, 27 Ky. L. 1021, considering the question whether the King James version of the Bible, or any version, could be considered a sectarian book, the court said:

"There is perhaps no book that is so widely used and so highly respected as the Bible. No other that has been translated into as many tongues. No other that has had such marked influence upon the habits and life of the world. It is not the least of its marvelous attributes that it is so catholic that every seeming phase of belief finds comfort in its comprehensive precepts. Many translations of it, and of parts of it, have been made from time to time since two or three centuries before the beginning of the Christian era. And since the discovery of the art of printing and the manufacture of paper in the sixteenth century a great many editions of it have been printed.

"The result has been that while many editions of the several translations have been made, those based upon the

revision compiled under the reign of King James I, 1607-1611, and very generally used by Protestants, and the one compiled at Douay some time previous, and which was later adopted by the Roman Catholic Church, as the only authentic version, are the most commonly used in this country.

"That the Bible, or any particular edition, has been adopted by one or more denominations as authentic, or by them asserted to be inspired, cannot make it a sectarian book. The book itself, to be sectarian, must show that it teaches the peculiar dogmas of a sect as such, and not alone that it is so comprehensive as to include them by the partial interpretation of its adherents. It is not the authorship, nor mechanical composition of the book, nor the use of it, but its contents that give it its character. The history of a religion including its teachings and claim of authority, as, for example, the writings of Confucius or Mohammed, might be profitably studied. Why may not also the wisdom of Solomon and the life of Christ? If the same things were in any other book than the Bible, it would not be doubted that it was within the discretion of the school boards and teachers whether it was expedient to include them in the common school course of study without violating the impartiality of the law concerning religious beliefs."

Old Testament. Used in administering oaths to Jews. Rex v Bosworth, 2 Str. (Eng.) 1113.

Protestant Translations. For more than three centuries it has been the boast and exultation of the Protestants, and a complaint and grievance of the Roman Catholics that the various translations of the Bible, especially of the New Testament, into the vernacular of different peoples, have been the chief controversial weapon of the former, and the principal cause of the undoing of the latter. For the making of such translations, Wycliffe, Luther, Tyndale, and others have been commended and glorified by one party, and denounced and anathematized by the other. Books containing such translations have been committed to the flames as

heretical, and their translators, printers, publishers, and distributors persecuted, imprisoned, tortured, and put to death for participating in their production and distribution. State v Scheve, 65 Neb. 853.

Schools, Use in. The directors of the public school permitted the reading of the Protestant, or King James, version of the Bible in the school, and also the singing of Protestant hymns. The plaintiffs, Roman Catholics, protested against the King James version, insisting that the only correct version was that known as the Douay version. The reading of the Bible in the school was without note or comment, and was not intended for the purpose of imparting religious instruction. It appeared that a convenient room was set apart for the use of Roman Catholic children during the opening exercises, and that they were not compelled to attend such opening exercises where the Bible was read, and the hymns being sung.

One objection made by plaintiffs to the use of the Bible in the schools under defendants' control is that they use the Protestant, or King James version, which plaintiffs believe to be sectarian in character, and which has been so declared by the highest ecclesiastical court of the church to which the plaintiffs belong; and by the same tribunal has been declared an incorrect translation of the original writings through which the Deity has made himself known to men; also that the said Protestant Bible is incomplete, many portions of the true Bible having been omitted or excluded therefrom; and that the Douay version is the only correct one. The school directors maintained that the King James version was more nearly correct than the Douay version. The court said: "We have not been able to find authority or preference given by our law to any particular version of the Scriptures of truth, and must therefore conclude that all versions stand equal before the law. If the school directors have power to authorize the use of one version in the public schools, they had power to authorize the use of the other." The Bible is not sectarian in a legal sense.

The principle on which schools were established was not a regard for the children as individuals, but as a part of an organized community. The schools are a means adopted by the state to work out a higher civilization and freedom. They have not been founded for private benefit, but for the public weal. They are the outgrowth of state policy for the encouragement of virtue and the prevention of vice and immorality, and are based upon public conviction of what is necessary for public safety.

Education comprehends all that series of instruction and discipline which is intended to enlighten the understanding, correct the temper, and form manners and habits of youth, and fit them for usefulness in their future stations.

The morality which the state deems it important to cultivate must be the morality which is regarded necessary for the support of the laws and institutions of the state; this must be the morality on which they are based, and this is the morality of the Bible. It would seem to follow, therefore, that the source of that morality is not excluded, but that the Bible may be used for moral culture of the pupils in the public schools. Hart v School District, Throopsville, 2 Lancaster Law Re. (Pa.) 347.

The use in the public schools for fifteen minutes at the close of each day's session, as a supplemental textbook, or reading, of a book entitled "Readings from the Bible," which is largely made up of extracts from the Bible, emphasizing the moral precepts of the Ten Commandments, where the teacher is forbidden to make any comment upon the matter therein contained, and is required to excuse from that part of the session any pupil upon application of his parent or guardian, is not a violation of the Michigan constitution, article 4, s. 41, prohibiting the Legislature from diminishing or enlarging the civil or political rights, privileges and capacities of any person on account of his opinion or belief concerning matters of religion. Peiffer v Board of Education, Detroit, 118 Mich. 560.

The school committee in charge of the public schools in

Ellsworth, Maine, made an order directing that the English Protestant version of the Bible should be used in all the public schools of that town, and that all the scholars in the schools who were of sufficient capacity to read therein, should be required to read that version in schools. The plaintiff's daughter refused to read the Bible, as required, and was expelled from school. The father brought an action for damages, but it was held that he could not maintain an action. Donahoe v Richards, 38 Me. 376.

In Curran v White, 22 Pa. Co. Ct. Re. 201, it was held that mandamus was not the proper remedy to prevent the reading of the Bible in public schools. Incidentally, the court cited authorities to show that the reading of the Bible in schools, either the King James or the Douay version, was not in contravention of any constitutional provision.

The constitution of Ohio does not enjoin or require religious instruction, or the reading of religious books, in the public schools. Cincinnati Board of Education v Minor, 23 Ohio St. 211.

The Wisconsin constitution prohibits sectarian instruction in public schools. In State ex rel Weiss v Edgerton District School, 76 Wis. 177, 7 L. R. A. 330, it was held that the reading of the Bible in schools is a violation of this provision. It was also held that the reading of the Bible in public schools made the schools a place of worship, as prohibited by the constitution, it appearing that no one should be compelled to attend a place of worship against his will; also that such reading of the Bible made the school a religious seminary within the constitutional provision prohibiting public aid to such a seminary.

The Iliad may be read in the schools without inculcating a belief in the Olympic divinities, and the Koran may be read without teaching the Moslem faith. Why may not the Bible also be read without indoctrinating children in the creed or dogma of any sect? Its contents are largely historical and moral; its language is unequaled in purity and elegance; its style has never been surpassed. Among the

classics of our literature it stands preeminent. The fact that the King James translation may be used to inculcate sectarian doctrines affords no presumption that it will be so used. The law does not forbid the use of the Bible in either version in the public schools; it is not proscribed either by the constitution or the statutes, and the courts have no right to declare its use to be unlawful because it is possible or probable that those who are privileged to use it will misuse the privilege by attempting to propagate their own peculiar theological or ecclesiastical views or opinions. State v Scheve, 65 Neb. 853.

Whether it is prudent or politic to permit Bible reading in the public schools is a question for the school authorities to determine; but whether the practice of Bible reading has taken the form of sectarian instruction in a particular case is a question for the courts to determine upon evidence. It cannot be presumed that the law has been violated; the alleged violation must in every instance be established by competent proof. If the use of the Bible in schools is an irritant element, the question whether its legitimate use shall be continued or discontinued is an administrative and not a judicial question; it belongs to the school authorities, not to the courts. State v Scheve, 65 Neb. 853.

Versions, King James and Douay Compared. It has been suggested that the English Bible is, in a special and limited sense, a sectarian book. To be sure, there are, according to the Catholic claim, vital points of difference with respect to faith and morals between it and the Douay version. In a Pennsylvania case, cited by counsel for respondents, the author of the opinion says that he noted over fifty points of difference between the two versions—some of them important and others trivial. These differences constitute the basis of some of the peculiarities of faith and practice that distinguish Catholicism from Protestantism and make the adherents of each a distinct Christian sect. State v Scheve, 65 Neb. 853.

BISHOP

First Protestant Episcopal in America, 47.
Legacy to establish in America, 47.
Office not a corporation, 47.
Witness, meaning of canon, 48.

First Protestant Episcopal in America. There was no bishop of the Protestant Episcopal Church in America until after the Revolution, Bishop Seabury of Connecticut, consecrated in 1784, being the first American bishop. Bartlett v Hipkins, 76 Md. 5.

Legacy to Establish in America. An English legacy for the purpose of establishing a bishop in America, a bishop not having yet been appointed, was sustained, but the chancellor said the money must remain in court until the appointment of a bishop. Attorney General v Bishop of Chester, 1 Bro. C. Cases (Eng.) 444. The case does not show the date of the will, nor the date of testator's death.

Office Not a Corporation. The office of bishop in the Roman Catholic Church is not a corporation, and there is no perpetual succession if property is conveyed to him in trust; such trust on his decease vests in the court and not in a successor nominated by the bishop. Dwenger v Geary, 113 Ind. 106.

The law of Ireland does not recognize the corporate character of a Roman Catholic Archbishop of Cashel or of a Roman Catholic Bishop of Waterford and Lismore, and a bequest to them and to their successors was, therefore, held void, but the bequest was sustained to the extent that the bishops might, under the direction of the court, administer the trust during their joint lives. Attorney General v Power, 1 Ball & B. Rep. (Ir.) 145.

Witness, Meaning of Canon. A bishop in the Protestant Episcopal Church is a competent witness to prove the meaning of the words "parish" and "rector" as understood by the canons of the church. Bird v St. Mark's Church, Waterloo, 62 Ia. 567.

BLASPHEMY

Described, 49.
Historical sketch, 50

Described. In a case under the Massachusetts act of 1782, which prohibited any person from wilfully blaspheming the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, the court said that "in general, blasphemy may be described as consisting in speaking evil of the Deity with an impious purpose to derogate from the Divine Majesty, and to alienate the minds of others from the love and reverence of God. It is purposely using words concerning God calculated and designed to impair and destroy the reverence, respect, and confidence due to him as the intelligent creator, governor, and judge of the world. It embraces the idea of detraction, when used toward the Supreme Being; as 'calumny' usually carries the same idea when applied to an individual."

The court also said that the statute did not prohibit the fullest inquiry and the freest discussion, for all honest and fair purposes, one of which is the discovery of truth. It admits the freest inquiry, when the general purpose is the discovery of truth, to whatever result such inquiries may lead. It does not prevent the simple and sincere avowal of a disbelief in the existence and attributes of a supreme, intelligent being, upon suitable and proper occasions. The statute prohibiting blasphemy was not repugnant to the constitutional provision guaranteeing religious toleration. Commonwealth v. Kneeland, 20 Pick. (Mass.) 206.

The free, equal, and undisturbed, enjoyment of religious opinion, whatever it may be, and free and decent discussion on any religious subject is granted and secured, but to revile,

with malicious and blasphemous contempt, the religion professed by almost the whole community, is an abuse of that right, and it was held that the use of indecent language concerning Jesus Christ was blasphemy and punishable by the common law. People v Ruggles, 8 John. (N. Y.) 290.

Writing against Christianity by discourses on the miracles of our Saviour. Rex v Woolston, 2 Str. (Eng.) 834.

Historical Sketch. For a history of the crime of blasphemy see State v Chandler, 2 Harr. (Del.) 553.

Congregation, powers, 51.
Majority, control of property, 52.

Congregation, Powers. The several church organizations formed by the followers of Alexander Campbell—and they are numerous—at the time of their organization were, and now are, purely congregational in their government; that is, there is no general conference, synod, presbytery, or other similar body which exercises supervision over said church congregations, but each organization in matters of practice, in church government and otherwise, is sovereign, and the congregations so organized have no creed except the Bible, the view of the followers of the said Alexander Campbell being that where the Bible speaks of the congregation its several members are authorized to speak, but where it is silent, the congregation and the members thereof should also remain silent. In 1849 there sprang up among the members of said religious sect different views upon subjects of practice to be adopted by the congregations with reference to matters upon which the Bible was silent, one view being that in matters upon which the Bible is silent such silence should be construed as a positive prohibition; the other view being that if the Bible is silent upon a given subject pertaining to church government, then the congregation may formulate a rule in that particular for the government of the congregation. The division along the lines above suggested seems to have grown as the church membership increased, and in 1889 there was a wide difference of view between the several congregations, and between the members of the same congregation, relative to many practices in the church, such as to the propriety of having instrumental music in the church during church services; the employment by the congregation of ministers of the gospel for a fixed time and

for a fixed salary; the organization of missionary societies and Sunday schools as separate organizations outside the regular church congregations; the raising of funds for the support of the gospel by holding church fairs and festivals, and perhaps in other matters of a similar character. The division resulted in the formation of two parties in the church: those entertaining the liberal views were called Progressives, and those entertaining the more Conservative view were called Antis. The liberal party had usually taken the name of the Christian Church, while the conservative party used the name of the Church of Christ. Christian Church of Sand Creek v Church of Christ, Sand Creek, 219 Ill. 503.

Majority, Control of Property. There was a division in this society, one party taking the name of Christian Church, and the other party taking the name of the Church of Christ. The two parties met as one congregation prior to 1904, and communed together as one congregation in apparent harmony. There were, however, some differences of opinion among members of the congregation with reference to the powers exercised by the officers of the church, and especially in 1903, whether the church building should be used for a singing school. The officers refused to permit the building to be used for that purpose. It was then discovered that the incorporation of the society was defective by reason of failure to comply with certain legal requirements. Each party then hastened to form a corporation. The minority was incorporated as the Christian Church, and the majority as the Church of Christ. The majority were in possession of the property, and refused its use to the minority. The question in this case involved the right of possession of the property. It was held that it was not within the province of the court to "pronounce judgment upon the doctrines taught by Alexander Campbell, and believed and practiced by his followers, or to determine which faction of the Sand Creek Congregation, in their practices in their church congregation, from an ecclesiastical standpoint is correct, as the

courts have no concern with the question whether a religious congregation is progressive or conservative."

The original deed of the property was to the trustees of the Christian Church, but a large part of the business of the church was done under the name of the Church of Christ. It appeared that the Sand Creek Congregation, from the inception of its organization to the time of the division in 1904, as a congregation, was opposed to any innovations in the practices of the church; that is, the congregation only acted in matters of practice in accordance with what they believed to be the positive commands of God as found in the Old and New Testaments, and the party known as the Church of Christ have since 1904 maintained that position, and appear to have maintained from the beginning, and now maintain, the tenets and doctrines which were taught in the Sand Creek Congregation at its organization, and which have been maintained and taught in that congregation all through its history. The party known as the Christian Church had, since their separation, taught and practiced what were known and characterized as the innovations. The court held that the majority were the successors to the original founders of the congregation, and as such were owners of the property and entitled to its possession. The minority, having seceded from the congregation, and effected a new organization, teaching and practicing the innovations objected to by the majority, must be deemed to have abandoned the property. It was further held that the societies organized by the followers of Alexander Campbell were congregational and independent, and, therefore, that the Sand Creek congregation was not bound by the action of other congregations in adopting innovations in faith and practice; also that the majority party having been incorporated under the name of the Church of Christ, immediately became entitled to the property of the Sand Creek church, and their right was not affected by the incorporation of the minority party under the name of the Christian Church. Christian Church of Sand Creek v Church of Christ, Sand Creek, 219 Ill. 503.

CAMP MEETINGS

By-laws, 54.
Easement, 54.
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Ocean Grove Association, 54.
Sunday admission fee, 55.
Taxation of property, 55.
Temperance, 56.
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By-Laws. A camp meeting association was authorized to make by-laws and to purchase, hold, and convey real property for its purposes. In Winnepesaukee v Gordon, 67 N. H. 98, it was held that property conveyed by the association subject to rules and regulations which might afterward be adopted by it was bound by reasonable alterations or amendments or by additional rules and regulations subsequently adopted by the association.

Easement. Testator by his will gave the use of 20 acres of land to the Methodist Episcopal Church for camp meeting purposes. It was held that the title to the land passed to the testator's heirs subject to a perpetual easement to be enjoyed by the church for camp meeting. Saxton v Mitchell, 78 Pa. St. 479.

Municipal Ordinance. When a camp meeting is located within the limits of a city or village it is subject to the ordinances of such city or village, and a person duly licensed by such village to sell articles of food or drink within the limits of the corporation is not required to take out a permit from the managers of such meetings to sell such articles. Ex Parte McNair, 13 Neb. 195.

Ocean Grove Association. The Ocean Grove Camp Meeting Association of Ocean Grove, New Jersey, was incorporated in 1870 by an act of the Legislature of that State. Its

grounds are contiguous to the city of Asbury Park. In 1896 the New Jersey Legislature passed an act which, among other things, prohibited the granting of a new license to sell intoxicating liquors within one mile in any direction from the outside limits or boundaries of the lands of the camp meeting association. In 1906 the excise commissioners of Asbury Park granted a hotel license, the business of which was to be carried on within one mile from the limits of the Ocean Grove Camp Meeting Grounds. The license was held invalid under the act of 1896, and that act was held not unconstitutional or local on the ground that it was special legislation. Sexton v B'd. Excise Com'rs., Asbury Park, 76 N. J. L. 102.

Sunday Admission Fee. A compulsory admission fee to a camp meeting on Sunday was held to constitute worldly business under the statute of Pennsylvania. Commonwealth v Weidner, 4 Pa. Co. Ct. 437.

Taxation of Property. In New Hampshire the real and personal estate of a camp meeting association was exempted from taxation by the act of 1874, but this exemption was held not to apply to a stock of groceries and food supplies owned by the association and exposed for sale on the association ground. Alton Bay Camp Meeting Association v Alton, 69 N. H. 311.

Part of camp meeting grounds were used for stabling horses for hire, and let for victualing purposes, and for the use of cottagers. In Foxcroft v Piscataquis Valley Camp Meeting Association, 86 Me. 78, it was held that the part so used was liable to taxation.

Sixteen acres of land used for religious camp meetings, owned by a corporation organized under the statute for the formation of corporations not for pecuniary profit, and not under that relating to religious societies, is not exempt from taxation under the statute (revised statutes, chap. 120, sec. 2) which exempts certain church property. People ex rel Breymeyer v Watseka Camp Meeting Association, 160 Ill. 576.

Temperance. It was held in State v Norris, 59 N. H. 536, that whether a State temperance camp meeting was a place of religious worship under the New Hampshire statute was a question of fact for the jury. It appeared that the exercises were opened each session by reading the Scriptures and prayer. That there were lectures, addresses on temperance, with singing of temperance and religious hymns. The question arose on a complaint against a person for selling beer, cigars, and other goods within two miles of the place of meeting.

Title to Property. Where each of two parties claimed to be entitled to the possession of camp meeting property, and to hold and use it for the benefit of the Methodist Church of Warren County, one party claiming under an appointment by a Quarterly Conference of the church, and the other under a grant from the superior court, it was held that the matter could not be determined on the application for an injunction, but that the parties would be left to their remedy by quo warranto. Harris v Pounds, 64 Ga. 121.

Traffic, Limitation. Sec. 59 of the Illinois Criminal Code, making it a penal offense for any one, without permission of those in charge of a camp meeting, to establish any tent, booth, or place for vending provisions or refreshments within one mile of such meeting, with a proviso that any one who has his regular place of business within such limits shall not be required to suspend his business, is not invalid, as being in restraint of trade, or creating a monopoly, or making discriminations, but is a valid law tending to prevent disturbance and disorderly conduct. The act is a mere police regulation, and one within the legislative power.

The proviso in the act that whoever has his regular place of business within such limits is not hereby required to suspend his business, was not intended to be limited to those who might have a business within the prescribed limits at the time the act was passed but applies equally to all who may, in good faith, establish a place of business therein at

any time when no camp meeting is in progress or being carried on.

The court does not hold that a person on the eve of a meeting to be held will have the right to establish a booth for the sale of provisions for a short period, or during a session of a meeting, and claim protection under the proviso. To avail of the law he must have established a regular permanent business. When that has been done he will not be required to suspend during the time a meeting is held. The act does not confer power on those in charge of camp meetings to license the sale of provisions and refreshments. The fact that it confers on such authorities the right to consent or refuse consent cannot be held to authorize them to license. Meyers v Baker, 120 Ill. 567.

The Pennsylvania act of 1822 prohibited the sale of articles of traffic, spirituous liquors, wine, porter, beer, cider, or any other fermented, mixed or strong drinks within three miles of a camp meeting. It was held that the prohibition was not directed against all articles of traffic, but only against liquors described in the statute, and therefore that a seizure and the sale of other articles of traffic kept by a huckster within the prohibited distance of a camp meeting was illegal. Kramer v Marks, 64 Pa. St. 151.

In Commonwealth v Bearse, 132 Mass. 542, the court sustained as constitutional the Massachusetts act of 1867, chap. 59, which prohibited establishing and maintaining a building for vending provisions and refreshments within one mile of the place of holding a camp meeting for religious purposes during the time the meeting was held, without the consent of the authorities or persons in charge of such meeting.

See the article on spiritualists for a special case under a Massachusetts statute.

CEMETERY

Access to lot, 58.
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Access to Lot. The purchaser of a lot in a church cemetery acquires thereby a right of access to the lot, and the church authorities cannot obstruct an avenue as laid down on the cemetery map, which leads to the lot or is convenient for the purpose of access thereto. Such an avenue becomes a servitude, which cannot be disturbed. Burke v Wall, 29 La. Ann. 38.

Adverse Possession. In 1833 land was conveyed to the trustees of this society intended for a burial ground, but the purpose was not stated in the deed. While the deed was defective in not containing a statement of its purpose, it was held that uninterrupted occupancy of it for twenty years created a title by adverse possession. At the time of the action, the property had, in fact, been occupied sixty years.

In 1840 the trustees of the St. John's Society conveyed the

land to the Archbishop of Baltimore. The Maryland act of 1832 authorized the trustees of the Roman Catholic Church to convey it to the archbishop. The conveyance in 1840, based on this statute, was held to be a ratification of the original conveyance to the trustees. A subsequent conveyance by the archbishop was held to transfer a good title to the burial lot. Gump v Sibley, 79 Md. 165.

Churchyard. The right of burial when confined to a churchyard, as distinguished from a separate independent cemetery, although conveyed with the common formula "heirs and assigns forever," must stand upon the same footing as the right of public worship in a particular pew of the consecrated edifice. It is an easement in, and not a title to, the freehold, and must be understood as granted and taken, subject (with compensation, of course) to such changes as the altered circumstances of the congregation or the neighborhood may render necessary. The selection of a place of burial in the ground forming the site of a church is always made with reference to its religious associations, and with an eye to their continuance.

The sale of a church vault gives a mere right of interment in the particular plot of ground, so long as that and the contiguous ground continues to be occupied as a churchyard. Richards v The Northwest Protestant Dutch Church, 32 Barb. (N. Y.) 42. See also Schoonmaker v the Reformed Church of Kingston, 5 How. P. (N. Y.) 265; same rule as to town cemeteries, Page v Symmonds, 63 N. H. 17; see also Windt v. German Reformed Church, 4 Sandf. Ch. Rep. (N. Y.) 502.

Disinterment, State Control. An interment having been made in the defendant's cemetery at Cypress Hills, friends of the deceased proposed to disinter the remains for burial in another cemetery. The application was refused by the society upon the ground that such disinterment was forbidden by the Jewish law. The question of disinterring remains in the Jewish cemetery must, in the absence of a positive rule of the society, be determined by the court. In this case

a judgment was rendered directing the removal of the remains. Cohen v Congregation Shearith Israel, 114 App. Div. (N. Y.) 117.

Ecclesiastical Jurisdiction. The interment of the dead is a matter which, within limits, may be with entire propriety brought within ecclesiastical jurisdiction. Such ecclesiastical jurisdiction cannot restrict the police power of the State, but it may prescribe rules for the government of a cemetery, where those in interest place the cemetery under its authority. In exercising jurisdiction over burial places the ecclesiastical authorities do not, unless they transcend their jurisdiction, usurp police powers, nor determine questions affecting property rights. A religious organization in assuming control of a cemetery does not assume jurisdiction of secular matters, and, therefore, does not wander outside of its domain into the domain of the civil law. It does not exceed its jurisdiction in assuming to establish rules for the interment of the dead, unless those rules contravene some rule or principle of jurisprudence. A religious denomination may, when solicited by the parties in interest, assume jurisdiction over cemeteries and prescribe rules for their government, but cannot establish any rules that contravene any principle of law. After such rules are established the persons acquiring the use of burial lots or the right of burial therein take the same, subject to such rules. Dwenger v Geary, 113 Ind. 106.

Free Burial Ground. A religious society purchased land and dedicated it for the purposes of a free burial ground for the uses of the church under its discipline. There was no formal assignment of burial lots, but it seems to have been a custom for families to appropriate certain lots for their own use for burial purposes. The trustees had no power to restrict or control the burials in particular parts of the cemetery. It was in every sense a free burial ground. Antrim v Malsbury, 43 N. J. Eq. 288.

Legislature, Power to Direct Sale. The owners of a lot in a cemetery, whatever the form of the deed, acquire only a

right of burial, and the Legislature has power to prohibit further interments and authorize the sale of the cemetery, provision being made for the removal of remains, and compensation to lot owners. Went v. Methodist Protestant Church, 80 Hun (N. Y.) 266.

Lot Owner's Right. A religious society purchased land for a cemetery and issued to lot holders certificates authorizing the use of the lots for burial purposes. These certificates did not vest any title in the lot holders, but amounted only to a license to make interments so long as the property was used for burial purposes. On a sale of the property by the society under legal authority the lot holders had a right to remove the remains of persons interred in their lots, and also to remove any monuments and other fixtures. Partridge v. First Independent Church, 39 Md. 637.

In the Reformed Presbyterian Church of the City of New York, 7 How. Pr. (N. Y.) 476, it was held that a deed of a burial lot in a cemetery owned by the corporation conveyed only the right of burial, and could not prevent a sale of the property, provision being made for the removal of remains disinterred.

Richards v. Northwest Protestant Dutch Church, 32 Barb. (N. Y.) 43, involved the right of burial in a churchyard used in connection with a church edifice. It was held that a lot owner acquired merely the right of interment, which could not prevent the sale of the property by the corporation, and removing the remains to another cemetery, under such conditions as the court might direct.

When a cemetery association or church sells particular lots in a cemetery the purchaser becomes the owner of the soil, and manifestly his right to its possession protects interments made by him from disturbance. It is also true, as a general proposition, that where ground has been dedicated to the public for use as a cemetery, the owner cannot afterward resume possession, or remove the bodies interred therein, although he has received no consideration for its use, and the interments were made merely by his consent.

Ex Parte McCall, Little v Presbyterian Church, Florence, 68 S. C. 489.

One who buys a privilege of burying his dead kinsmen or friends in a cemetery acquires no general right of property. He acquires only the right to bury the dead, for he may not use the ground for any other purpose than such as is connected with the right of sepulture. Beyond this his title does not extend. He does not acquire, in the strict sense, an ownership of the ground; all that he does acquire is a right to use the ground as a burial place. Dwenger v Geary, 113 Ind. 106.

Where the title to the land used by a religious corporation for cemetery purposes remains in the corporation, and no deed is made of any lot for the purpose of interments, the sepulture of friends or relatives in such burying ground confers no title or right upon the survivors. If the survivors have any interest in the cemetery, or control over its use and disposal, it can only be as corporators in the society owning the ground. The only protection afforded to the remains of the dead interred in a cemetery of this description is by the public laws prohibiting their removal, except on prescribed terms, and in a still stronger public opinion. Where vaults or burying lots have been conveyed by religious corporations rights of property are conferred upon the purchasers. The payment of fees and charges to the corporation or its officers, upon interments, gives no title to the land occupied by the body interred. It confers the privilege of sepulture for such body in the mode used and permitted by the corporation; and the right to have the same remain undisturbed so long as the cemetery shall continue to be used as such, and so long also, if its use continues, as may be required for the entire decomposition of remains; and also the right, in case the cemetery shall be sold for secular purposes, to have such remains removed and properly deposited in a new place of sepulture. Windt v German Reformed Church, 4 Sandf. Ch. (N. Y.) 502.

The certificate to purchasers of lots in the burying ground

of the church was "to have and to hold the said lots for the use and purpose, and subject to the conditions and regulations mentioned in the deed of trust to the trustees of said church." This was not evidence of a grant of any interest in the soil. The certificate was the grant of a license or privilege to make interments in the lots described exclusive of others, so long as the ground should remain the burying ground of the church. Whenever, by lawful authority, the ground should cease to be a burying ground, the lot-owner's right and property ceased. When it became necessary to vacate the ground for burial, all the lot-owner could claim, was to have notice and an opportunity of removing the bodies and monuments, or, his failure to do so they could be removed by others. Kincaid's appeal, 66 Pa. St. 420.

A deed of a burial lot is a grant of the use of the lot as a place of burial in subordination to the right of the corporation in the soil or freehold, and the trustees have a right, upon complying with the provisions of the statute, to sell the property and remove the remains of the dead, if the court shall deem it proper. Re Reformed Presbyterian Church, 7 How. Pr. (N. Y.) 476.

Mechanic's Lien. In Beatty v. First Methodist Episcopal Church, Lancaster, Pa., 3 Pa. L. J. Rep. 343, it was held that a mechanic's lien filed against a church edifice could not be enforced against the graveyard attached to the church and used by the society.

Municipal Ordinance. The city of New York under the act of 1813 (2 R. L. 145, s. 26) had power to enact the by-law of 1823 prohibiting interments in a certain part of the city under prescribed penalties. Interments were afterward made in the proscribed district, including Trinity Church, by persons having a right of interment under grants of land for cemetery purposes. The by-law was valid as to these interments, and the act under which it was passed was not void as impairing the obligation of a contract. The by-law was valid as a police regulation. Coates v. New York, 7 Cow. (N. Y.) 585.

Park, Taking for. In Matter of Board of Street Opening, 133 N. Y. 329, it was held that a cemetery owned by Trinity Church, but in which interments had been discontinued since 1839, might be taken by city authorities for park purposes. Condemnation proceedings were sustained.

Roman Catholic, Religious Test. A cemetery established on land conveyed to the bishop to be used as a cemetery for the burial of Catholics, and which had been consecrated for that purpose by the church authorities, could not be used as a place of burial of a person who was not a Catholic, and who, according to the rules and regulations of the church, was not entitled to burial in such cemetery. Dwenger v Geary, 113 Ind. 106.

A person received from the authorities in control of a Catholic cemetery a certificate or paper acknowledging the receipt of a specified sum, being the amount of purchase money of a plot of ground, describing it. No deed was given, and it was held that no title or interest passed by virtue of the receipt. The receipt did not amount to a contract of sale. Under the rules of the church, the burial of non-Catholics or Freemasons in the cemetery was forbidden. The cemetery was consecrated ground. An applicant for permission to bury in such cemetery is bound by the rules and regulations of the church, and is presumed to make his application with reference thereto. The person who paid the money and took the receipt was a Freemason, and upon his decease the cemetery authorities refused to permit him to be buried in the lot. It was held that the cemetery authorities would not be compelled by mandamus to open the grave and permit the burial. People ex rel Coppers v Trustees, St. Patrick's Cathedral, N. Y., 21 Hun. (N. Y.) 184.

Sale, Application of Proceeds, Reinterment. The congregation acquired land in the city of Reading, which was used as a burying ground, in which the members, by virtue of their membership, had the right to and did bury their dead. An act passed in 1869 authorized the removal and reinterment of the bodies, the sale of the property, and after pay-

ing certain expenses, the proceeds were to be devoted to the erection of a new church edifice. The act was declared valid and constitutional. Where real estate has been dedicated in the hands of the grantee to certain purposes, with an expressed restriction upon alienation, it is within the power of the Legislature to authorize a conversion of the realty into money, and an application of the latter to the original purposes of the grant. Ritter v. Brusman, 2 Woodw. Dec. (Pa.) 248.

Suicide. See Roman Catholic Church, subtitle Cemeteries.

Title, Lease or Fee. Where a religious corporation has received a fee of the ground on which the church stands and of the graveyard adjoining, subject only to the keeping the whole to pious uses, such religious corporation can grant any length of lease, or a fee of portion of the ground for vaults. The grantees will thereby get a fee, and the property cannot be sold while they object to it. Matter of Brick Presby. Ch., 3 Edw. Ch. (N. Y.) 155. See also Brick Presbyterian Church v. New York, 5 Cow. (N. Y.) 538, sustaining a by-law of the city of New York prohibiting further interments in the cemetery owned by this church.

Title of Grantee of Lot. Where vaults or burying lots have been conveyed by religious corporations, rights of property are conferred upon the grantees. The right is like that to any other real estate, and is as perfect without sepulture as it is where the grantee has used it for that purpose. Windt v. German Reformed Church, 4 Sandf. Ch. (N. Y.) 502.

Tomb, English Rule. In Bardin v. Calcott, 1 Hagg. Consist. Rep. (Eng.) 369, proceedings were sustained against a person for erecting tombs in a churchyard without authority. The regulations of the Protestant Episcopal Church on the subject of tombs and tombstones are here fully considered.

Tomb Owner's Right. Owners of tombs in the church building of a religious society have no title in the land, but only an interest in the structures and in their proper use, and cannot prevent a sale of the land and building by the society, nor the removal of the remains from the tombs, when such

removal is in other respects conducted according to law; as, for instance, when the legislature has directed it in the exercise of its powers in relation to public health; and the tomb of one who devised real estate to the society in trust for keeping said tomb in good and decent repair is held by the same usufructuary right and subject to the same liability to removal. Sohier v Trinity Church, 109 Mass. 1.

Tombstone, Title. A tombstone in a churchyard belongs to the person who erected it or to the heirs of the deceased, in whose memory it is set up, and trespass may be maintained for removing or injuring it, although the title of the land is in the parson. Spooner v Brewster, 10 Moores Rep. (Eng.) 494.

CHAPEL

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Defined. Webster and Worcester define a chapel to be a place of worship connected with a church or with some establishment, public or private, or attached to a church, or subservient to it; or, second, a place of worship not connected with a church. Bouvier, in his Law Dictionary, says: "Chapels are places of worship. They may be either private chapels, such as are built and maintained by a private person for his own use and at his own expense; or free chapels, exempt from all ordinary jurisdiction; or chapels of ease, which are built by the mother church for the ease and convenience of the parishioners, and remain under its jurisdiction and control. There is no question that a chapel is a place of worship." Vanzant's Estate, 6 Pa. Co. Ct. 625.

CHARITABLE USE

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Defined. A public or charitable trust is for the benefit of an uncertain class of persons, who are described in gen-

eral language, and partake of a quasi public character, as, for example, the poor of a certain district in trust of a benevolent nature, or the children of a certain town in trust for educational purposes. It is also a distinctive feature of a charitable trust that it may be unlimited in its duration, and is not subject to nor controlled by the statutes which prohibit perpetuities. A bequest was sustained, the seminary being simply an instrumentality for carrying out the far-reaching aim of the testator, namely, the promotion of religion by spreading abroad a knowledge of the truths of Christianity. Field v Drew Theological Seminary, 41 Fed. 371, (Ct. C. D. Del.)

Charitable uses, like all other uses, comprise a trust as well as a use. To constitute a valid use, there must be in all cases, first, a trustee legally competent to take and hold property; and, secondly, the use for some purpose clearly defined. Grimes Executors v Harmon and others, 35 Ind. 198.

Described. In law, religious and charitable uses mean legal acts done for the promotion of piety among men, or for the purpose of relieving their sufferings, enlightening their ignorance, and bettering their condition; such acts courts of equity uphold and effectuate according to the intention of the donor. Miller v Porter, 53 Pa. St. 292.

History. See Jackson v Phillips, 14 Allen (Mass.) 539, for a history and exposition of the statute of 43 Elizabeth c. 4 showing also the growth and expansion of the system in modern times.

Benevolent Institutions. Testator devised the residue of his estate "to the different institutions of charity and beneficence, constituted and established at Philadelphia for the relief of the unfortunate and of those who live under the infliction of infirmities, and of every sort of privations, without any distinction of sect or religion," and excepted from these different institutions of charity and beneficence all those which are directed, conducted, and administered by ecclesiastics, whatever may be the sect to which they belong.

Omitting references to nonreligious societies, it was held that societies of a religious character, whose benefits were exclusively confined to a particular sect, were not excluded, the true construction of the will being that all should participate, be their sect or religion what it might. The mere fact that a clergyman is one of the managers of a society does not exclude such society from the benefits of the will. Re Blenon's Estate, Brightly N. P. (Pa.) 338.

Bread and Education. Testator gave to two churches $1,000, the interest to be used for ten years in supplying bread to the poor of the congregation of which testator was a member. He also gave to these churches $5,000, the interest to be used for the education of young students in the ministry of the congregation of which he was a member to be expended under the direction of the vestry of these two churches. These bequests were sustained, the court holding that while the English statute of charitable uses (43 Elizabeth c. 4) had not been extended to Pennsylvania, the principles of it as applied by chancery in England obtained in that State by force of its common law. Whitman v Lex, 17 Serg. and R. (Pa.) 93.

British Corporation, how Affected by American Revolution. The capacity of private individuals, British subjects, or of corporations, created by the Crown in this country, or in Great Britain, to hold lands or other property in this country, was not affected by the Revolution.

The property of British corporations in this country is protected by the sixth article of the Treaty of Peace of 1783, in the same manner as those of native persons; and their title, thus protected, is confirmed by the ninth article of the Treaty of 1794, so that it could not be forfeited by an intermediate legislative act, or other proceeding, for the defect of alienage.

The act of the Legislature of Vermont of the 30th of October, 1794, granting the land in that State belonging to the Society for Propagating the Gospel in Foreign Parts to the respective towns in which the lands lie, is void, and con-

veys no title under it. Society for the Propagation of the Gospel in Foreign Parts v Town of New Haven, 8 Wheat. (U. S.) 464.

Chapel. Testatrix authorized her executor to pay a specified amount for the erection of a chapel to be built and controlled by the trustees of a designated church, and to be called by her name. The bequest was sustained as a valid charitable use. Vanzant's Estate, 6 Pa. Co. Ct. 625.

A devise of the "chapel lot, to be retained and used when the growth of the village population will justify the building of a church and more pretentious village chapel," and a bequest of a sum of money for the purpose ultimately of erecting upon the chapel lot a chapel to be used by the inhabitants of the village for religious meetings and a Sunday school, are good public charitable gifts. Bartlett, Petitioner, 163 Mass. 509.

Churchyard, Repair of Vault. Testatrix bequeathed a fund to be used in keeping in good repair and condition forever the monument of her mother in a church; also the vault in which she was interred, and an ornamental window, which she directed her trustees to place in the church in memory of her mother, and to apply any surplus of such dividends toward keeping in repair and ornamenting the chancel of said church. The gift for the repair of the vault was held void, for the reason that the vault was not within the church, but was in the churchyard. The gifts for the memorial window and for the repair of the monument were held valid for the reason that they were a part of the church structure. Hoare v Osborne, L. R. 1 Eq. (Eng.) 585, 35 L. J. Ch. 345.

Common Law. Though the English statute of charitable uses (43 Eliz. c. 4) was not adopted by the colony or State of Pennsylvania, the principles of the common law relative to such uses, which were restored in England by that statute, were adopted as well as the principles of equity in the administration of such trusts. The following were held to be good charitable uses: an annual subscription to the stock of a religious society which is applied to the printing and dis-

semination of books and writings approved by such society; a gift to a religious society for the relief of the poor members thereof; a gift to a treasurer of a society, organized for the civilization and improvement of certain Indian tribes for the benefit of such Indians; a gift to a religious society for the relief of the poor thereof and toward enlarging and improving its meeting house; a gift to a town for a fire engine and hose; and a devise or bequest to a society with whose constitution and purposes the testator is familiar, for the purposes of such society, such purposes being proper objects of charitable uses. Magill v Brown, Fed. Cas. No. 8,952, U. S. Cir. Ct. Pa. (Brightly N. P. 347).

Diversion. Courts of equity will exert their powers to prevent a misuse or an abuse of charitable trusts, and especially trusts of a religious nature, by trustees or by a majority of a society having possession of the trust property, but in all cases the trust and abuse of it must be clearly established in accordance with the rules by which courts are governed in administering justice. If the alleged abuse is a departure from the tenets of the founders of a charity, their particular tenets must be stated, that it may appear from what tenets the alleged wrongdoers have departed. In like manner, it must be stated in what the alleged departure consists. There must be a real and substantial departure from the purposes of the trust, such a one as amounts to a perversion of it, to authorize the exercise of equitable jurisdiction in granting relief. Happy v Morton, 33 Ill. 398.

Donor's Opinions. In ecclesiastical charities the religious opinions of the founder are of paramount importance; in educational charities his religious opinions are only of value where some directions are given as to the religious instruction to be given; but in eleemosynary charities the founder's religious opinions are wholly to be disregarded. Attorney-General v Calvert, 23 Beav. (Eng.) 258.

In construing a bequest of money to a town with a direction that the income be used for the purpose of supporting the Christian religion in the Congregational society, so called

in said town, the interest thereof to be paid quarter-yearly to the minister of the Congregational persuasion, who shall be regularly ordained and statedly preaching in said society, it is said it would be difficult to establish the religious opinion of the donor, especially where the denomination to which he belonged has no creed or admitted confession of faith, and where there are no written articles of belief, to which it is agreed he assented, nor any published and avowed statement of his opinions in existence. As to what constitutes a minister of the Congregational persuasion, see also the articles on Congregational Church. Attorney-General ex rel Abbot v Dublin, 38 N. H. 459.

Foreign Country. Testatrix, a resident of Massachusetts, directed her executors as trustees to expend a specified sum for the purchase of a lot and the erection thereon of a chapel in her native place in Ireland to be used for purposes of public worship under the auspices of the Roman Catholic Church. The charity was sustained, it being held that the fact that the charity would be administered in a foreign country did not of itself render the gift void, and there was nothing to show that it would not be a good public charity by the law of Ireland. Teele v Derry, 168 Mass. 341.

Georgia. In Georgia, a court of equity has jurisdiction to enforce the provisions of a trust independent of the statute of 43 Elizabeth. Beall v Surviving Executors of Fox, 4 Ga. 404.

Hospitality Not a Charitable Use. Testator included the following provision in his will:

"Inasmuch as my house has been open during my lifetime (as well as for generations back in the lifetime of my ancestors of the same name) for the reception and entertainment of ministers and others traveling in the service of truth, so it shall continue to be a place for the reception and entertainment of such forever, and in conformity with the preamble of this my last will and testament and in the discretion of my trustees. And my will further is, that my west front room chamber shall be kept in constant readiness

to lodge such persons as shall cross over or visit this island in the course of their labors in the gospel of Christ, and others who are not ministers, but who are traveling to meetings or otherwise in the service of truth, and that the said room be kept furnished with two good bedsteads, two beds, two bolsters, and two pair of pillows and other necessary furniture."

This was held to be a bequest for hospitality and not for a charitable use, and could not be sustained. Kelly v Nichols, 18 R. I. 62.

Illinois. The statute of 43 Elizabeth is in force in Illinois. Welch v Caldwell, 226 Illinois 488.

Incorporated Society. A bequest to an incorporated society for pious or charitable uses is valid. Banks v Phelan, 4 Barb. (N. Y.) 80.

Indefinite. A residuary devise to charitable and pious uses generally is not void, but the Crown may appoint. So also if the charitable object be uncertain. Attorney General v Herrick, Amb. (Eng.) 712.

Testator gave the residue of his estate to the people called Methodists, who worshiped at that place, such residue to be applied as directed by the trustees named in the will, and the officiating ministers of the congregation. The provision did not constitute a charitable use, and the trustees were held entitled to recover the land subject to such disposition of the proceeds as the court of chancery might direct. Doe v Copestake, 6 East (Eng.) 328.

A bequest of a sum of money to be divided equally between Indian missions and domestic missions in the United States, without naming any trustee or any direct beneficiary, was held to be too indefinite, but the trust was not void, and could be supported and executed under the act of 1893, chap. 701, as amended in 1901, chap. 291, which in case of an indefinite trustee, vested the property in the supreme court and devolved on that court the duty of executing the trust by the appointment of a proper trustee. In this case the court suggested that the Domestic and Foreign Missionary

Society of the Protestant Episcopal Church might properly be designated as the trustee, for the reason that it was the only society performing general missionary service in the United States under the auspices of the Protestant Episcopal Church, of which the testatrix was a lifelong and active member. Bowman v Domestic and Foreign Missionary Society, 182 N. Y. 494.

A gift to a religious society for the benefit of the "poor, helpless, and dependent members and orphan children of said church" was sufficiently definite. The poor members could be readily identified, and the words "orphan children" were intended to include children baptized into the church, whose parents are dead. The provision in the will that the distribution should be made by the church was construed to mean the trustees of the church, and not by the society as a body. Banner v Rolf, 43 Tex. Civ. App. 88.

Charitable bequests, where no legal interest is vested, and which are too vague to be claimed by those for whom the beneficial interest was intended, cannot be established by a court of equity, exercising its ordinary jurisdiction, independent of the statute of 43 Elizabeth. Trustees, Philadelphia Baptist Association v Hart's Exe. 4 Wheat. (U. S.) 1.

"In the case of a will making a charitable bequest, it is immaterial how vague, indefinite or uncertain the objects of the testator's bounty may be, provided there is a discretionary power vested in some one over its application to those objects." Domestic and Foreign Missionary Society's Appeal, 30 Pa. St. 425.

Limitation, Cy Pres. Courts of equity in the exercise of their ordinary jurisdiction cannot devote any portion of a fund dedicated to charitable uses to any object not contemplated by the donor; when property is given to a class of objects in general terms, and also directed to be applied to one of them in special terms, if its application to that one becomes unlawful or impracticable, the doctrine of cy pres authorizes the court to devote it to one or more of those embraced in the general intent most analogous to the one

especially named; the general intent may not be expressed in explicit terms if the devise or dedication in the light of the circumstances authorize the court to infer that such was the donor's wish in that event. The same rules apply when the charity is the result of contributions by a large number of people. U. S. v Church, 8 Utah 310.

Maine. The statute of 43 Elizabeth c. 4 is considered to be in force in Maine. Preachers Aid Society v Rich, 45 Me. 552.

Massachusetts. The English doctrine of charitable uses is in force in Massachusetts, and a trust to a religious society for the support of the preaching of the gospel is a public and charitable trust, and is valid, although in perpetuity, and is equally valid, although the society may be a voluntary body and not incorporated. Congregational Unitarian Society v Hale, 29 A. D. (N. Y.) 396.

Masses. The celebration of masses for a particular intent is not of itself a charitable object, even when the masses must be celebrated in public and so become an important part of public worship. A provision in a will was, therefore, held void as creating a perpetuity which required masses for the repose of the soul of the testator and members of his family forever, for the reason that no one could definitely find when the testator and all his family shall have ceased to need the benefit of the masses. In this case it was found that the parish priest could not perform the obligation imposed on him in relation to masses without neglecting his other official duties, and for this reason the performance of the obligation was impossible. A condition which is impossible without violation of duty is treated as simply impossible; and if a condition subsequent be impossible, the condition fails and the gift remains discharged from it. Brannigan v Murphy, 1 Ir. Rep. 418.

A bequest of a sum of money to trustees for the benefit of a church on the testator's farm, with instructions to hold a service there yearly for his soul is a clearly defined charitable use, although the church had not been and could not be incorporated. Seda v Huble, 75 Ia. 429.

New York. The statute of Elizabeth on this subject was never in force in New York. Dutch Church in Garden St. v Mott, 7 Paige Ch. (N. Y.) 77.

The system of charitable uses, as recognized in England prior to the Revolution, has no existence in this State. Holmes v Mead, 52 N. Y. 332.

It seems that the law as to charitable uses as it existed in England at the time of the American Revolution is not in force in New York, and its courts have only such jurisdiction over trusts for charitable and religious purposes as are exercised by the court of Chancery in England independently of the prerogatives of the Crown and the Statute. Owen v Missionary Society, 14 N. Y. 384.

The English rule as to charitable uses is in force in New York. Williams v Williams, 8 N. Y. 525.

Orphan Asylum. A bequest for the establishment of an orphan asylum and a hospital for sick and infirm persons is a bequest to a charitable use. This charity was eleemosynary in character. The propagation of religious doctrines was not the primary object of the foundation, and consideration of the religious faith of a testator should be excluded in putting a legal construction on his will. Attorney General ex rel Bailey v Moore's Executors, 18 N. J. Eq. 256.

Religious Reading. Testator bequeathed the residue of his estate to two persons with directions that it be used "in the purchase and distribution of such religious books or reading as they shall deem best, and as fast as the funds shall come into their hands." The bequest was sustained, the court holding that the word "religious" as descriptive of books and reading, meant such books or reading which tend to promote the religion taught by the Christian dispensation, unless the meaning is so limited by associate words or circumstances as to show that the testator had reference to some other mode of worship. Simpson v Welcome, 72 Me. 496.

Religious Services. The maintenance of religious services in accordance with the views of any denomination of Chris-

tians is a public charity within the meaning of the statute of charitable uses of Connecticut. Mack Appeal, 71 Conn. 122.

Religious Trust. A gift of a sum of money to be expended by two daughters and a granddaughter of the testator "to be applied by them in their best judgment, as my bequest for charitable and religious purposes, say for the promotion of the Christian religion, without prejudice or regard to sect, and for and toward the relief of the poor," was declared to be too vague and indefinite to be executed and therefore void. Dulany v Middleton Ex'rs. 72 Md. 67.

A testator gave the residue of his estate "to the cause of Christ, for the benefit and promotion of true evangelical piety and religion," and the executor was required to sell the property and pay the proceeds to specified trustees, "to be by them sacredly appropriated to the cause of religion as above stated, to be distributed in such divisions and to such societies and religious charitable purposes as they may think fit and proper." In Going v Emery, 16 Pick. (Mass.) 107, it was held that the trust was valid, that the donees were particularly designated, the trust was clear, its general objects sufficiently indicated to bind the consciences of the trustees, and that these objects were sufficiently certain and definite to be carried into effect by the proper judicial tribunal.

A bequest for the promotion of religious and charitable uses and enterprises is valid, even though there be no trustee appointed to carry the same into effect; and in such a case, the heir at law or the executor, as the case may be, becomes the trustee, or one will be appointed by a court of equity. A residuary bequest for such charitable uses as might be designated by a majority of the pastors composing the Middlesex Union Association was held to be sufficiently definite, and an appointment made by such pastors was deemed to be a substantial compliance with the terms of the bequest. Brown v Kelsey, 2 Cush. (Mass.) 243.

A conveyance of property for the support and propagation

of religion is a charitable use, and this includes gifts for the erection, maintenance and repair of church edifices, for the promotion of worship, and the support of the ministry. The rules governing the establishment and administration of charitable trusts are different from those applicable to private trusts, in giving effect to the intention of the donor, and in establishing the charity. If the gift is made for a public charitable purpose, it is immaterial that the trustee is uncertain or incapable of taking, or that the objects of the charity are uncertain and indefinite. Courts look with special favor on such trusts. Where the title to a certain lot was vested in the bishop of a diocese for the use of the church in a certain division, and the title to other lots was vested in him for the benefit of a parish in his diocese, upon the incorporation of such diocese and parish the title was not divested from the bishop and vested in them. The trust did not attach to the person of the bishop, but to his office, and passed to his successor in office, and the property could not be mortgaged without consent of the trustee. Beckwith v Rector, etc., St. Philip's Parish, 69 Ga. 564.

A trust for the support of religion is a charitable use; and where all sects of the Christian religion stand upon an equal footing there can be no question with respect to a superstitious use. Attorney General v Jolly, 1 Rich. Eq. (S. C.) 99.

A will directing the executor to invest the residue of the estate as he may deem best, as a fund, the annual interest of which shall be applied for the benefit of the Sabbath school library of the First Baptist Church in Shelburne, or the Baptist Home Missionary Society, whichever may be deemed most suitable, is a good charitable bequest. Fairbanks v Lamson, 99 Mass. 533.

"Under a constitution which extends the same protection to every religion and to every form and sect of religion, which establishes none and gives no preference to any, there is no possible standard by which the validity of a use as pious can be determined; there are no possible means by

which judges can be enabled to discriminate between such uses as tend to promote the best interests of society by spreading the knowledge and inculcating the practice of true religion, and those which can have no other effect than to foster the growth of pernicious errors, to give a dangerous permanence to the reveries of fanaticism or encourage and perpetuate the observances of a corrupt and degrading superstition." Andrew v New York Bible and Prayer Book Society, 4 Sandf. (N. Y.) 181.

Testator gave all the residue of his estate to the Evangelical Lutheran Seminary, with a provision for the use of a portion thereof for the purpose of erecting a house of worship for the Evangelical Lutheran Society in Stamford, applying the remainder of the income to the support of the pastor, and the maintenance of the society. One of the conditions of the gift was that the service in the church should be in the German language. Another condition was that a memorial tablet should be placed at the main entrance of the church. It was held a charitable use, and was sustained. Mack Appeal, 71 Conn. 122.

Roman Catholic, Clergymen. Where a bequest of personal estate was made to executors in trust to apply same for such charitable purposes as the Roman Catholic Archbishop of Dublin should direct, it was held that the Archbishop might receive the fund for the purpose of applying it in part for the maintenance of Roman Catholic officiating clergymen of his diocese, "directing them as a matter of religious and moral duty, but not of legal obligation, to say masses for the testator's soul." Blount v Viditz, 1 Ir. R. 42 (1895).

Sermons and Music. In Turner v Ogden, 1 Cox. Rep. (Eng.) 316 it was held that a bequest for preaching a sermon on Ascension Day, for keeping the chimes of the church in repair, and for a payment to be made to the singers in the gallery of the church are all bequests to charitable uses.

Shakers. For an interesting discussion of the effect of contributing property to a Shaker society and for the forma-

tion of a community or church for the benefit of the members in carrying forward charitable and religious work, see Gass and Bonta v Wilhite, 2 Dana (Ky.) 170.

South Carolina. The statute of Elizabeth in relation to charitable uses has never been adopted in South Carolina. Attorney General v Jolly, 1 Rich. Eq. (S. C.) 99.

Sunday School, Diversion. A bequest in trust to aid in the encouragement of Sunday schools by a society organized for that purpose, was sustained in Carter v Green, 3 Kay and J. (Eng.) 591. The charity could not be defeated by the fact that the trustees might use the fund for another purpose. The bequest was valid, unless by the rules of the organization the society was required to use the fund for a purpose not sanctioned by law. A mere possibility of another use could not defeat the testator's intention.

Unincorporated Society. A devise to an unincorporated society is valid, and if made to the vestrymen of a church the devise is not invalid because indefinite, and the rule against perpetuities is not violated by a devise to the vestrymen and to their successors with power to sell, exchange or dispose of the property. Biscoe v Thweatt, 74 Ark. 545.

Societies or bodies of men unincorporated have ever been considered at common law as incapable of receiving gifts or legacies, to be applied to charitable uses, and it has been the invariable policy of our State (Vermont) to consider them capable. Burr Ex'rs. v Smith, 7 Vt. 241.

A gift of land for such purposes to an unincorporated religious society is valid in Illinois. Alden v St. Peter's Parish, Sycamore, 158 Ill. 631.

Bequests for charitable purposes to unincorporated societies are sustained where the object is competent, and is designated or may be clearly ascertained. Where the description of the legatee is uncertain, evidence is admissible to identify the legatee intended. Hornbeck v American Bible Society, 2 Sandf. Ch. (N. Y.) 133.

A grant of land by a town for a cemetery is not void because made to an unincorporated society. The grant was

validated by the subsequent incorporation. Chatham v Brainerd, 11 Conn. 60.

Unitarian. A legacy to the minister or ministers of a specified Unitarian chapel "to be applied in such manner as he or they shall think fit toward the support of the Unitarians" was sustained in Re Barnett, 29 L. J. Ch. (Eng.) 871.

Vault and Tomb, Repairs. A grant of lands in trust perpetually to repair, and, if need be, rebuild a vault and tomb standing on the land, and permit the same to be used as a family vault, for the donor and her family, is not a charitable use within the statute of 9 Geo. 2, C. 36. Doe v Pitcher, 6 Taunt. R. (Eng.) 363.

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Alteration or Diversion, Invalid. The charity must be accepted upon the terms proposed. It cannot be altered by any agreement between the heirs of the donor and the trustees or donees. But it may be carried into effect according to the intention of the donor, and in like manner the mode of its execution will be pursued when indicated, unless the one or the other becomes impracticable, and then only may it be altered cy pres. Gilman v Hamilton, 16 Ill. 225.

A charity given for a particular purpose cannot be altered or diverted to any other. It must be accepted and retained upon the same terms upon which it was given, and no concurrence among the donees can operate to transfer or apply it to other purposes. McRoberts v Moudy, 19 Mo. App. 26.

A charity given for a particular purpose cannot be altered or diverted to any other. Venable v Coffman, 2 W. Va. 310.

Beneficiaries, Present or Future. A charity may be created not only for the benefit of those who are in existence, or who may qualify themselves to become objects of the bounty. Attorney General ex rel Independent or Congregational Church of Wappetaw v Clergy Society, 8 Rich. Eq. (S. C.) 190.

This case appears again in 10 Rich. Eq. (S. C.) 604, where the court held that a "corporation for religious or eleemosynary purposes may, without violation of the constitution, apply for, and obtain an amendment to their charter authorizing them to apply their surplus funds to other purposes than those for which the charity was originally established."

Defined. A charity, in the legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of any indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself if it is so described as to show that it is charitable in its nature. Jackson v Phillips, 14 Allen (Mass.) 539 sustaining a legacy to trustees to be used in caring for fugitive slaves; see also Crerar v Williams, 145 Ill. 625.

A purely public charity may be defined as one which discharges, in whole or in part, a duty which the commonwealth owes to its indigent and helpless citizens. Commonwealth v Thomas, 26 Ky. Law Rep. 1128.

History. For a review of decisions relative to charities and charitable uses, see the chancellors' opinion in McCartee v Orphan Asylum Society, 9 Cowen (N. Y.) 437.

Discretion of Trustees. A bequest of the residue of personal estate for such religious and charitable institutions and

purposes within the kingdom of England as in the opinion of the testator's trustees should be deemed fit and proper, is a good charitable bequest. Baker v Sutton, 1 Keen (Eng.) 224.

Dissenters. In Attorney-General v Wilson, 16 Sim. (Eng.) 210, construing two deeds by Lady Hewley, one in 1704 and the other in 1707, by which she conveyed certain property in trust "for such poor and godly preachers for the time being of Christ's Holy Gospel, and of such poor and godly widows for the time being of such preachers, as the trustees for the time being shall think fit; and for promoting the preaching of Christ's Holy Gospel in such manner and in such poor places as the trustees for the time being should think fit; for educating such young men designed for the ministry of Christ's Holy Gospel as the trustees for the time being should think fit; and for relieving such godly persons in distress, being fit objects of her own and the trustees charity, as the trustees for the time being should think fit"; the court said that Lady Hewley, being an English subject and the property being located in England, where her own church relations were established, the charity must be limited to English nonconformists. The term "godly preachers of Christ's Holy Gospel," or "godly preachers," meant those persons who answered the description of orthodox English dissenters at that time, and who resided in England; and this description was held to include those who, at the time of Lady Hewley's death or thereafter, were or should be "orthodox English dissenting ministers of Baptist churches, of Congregational or Independent churches, and of Presbyterian churches in England, which are not in connection with, or under the jurisdiction of the Kirk of Scotland, or the Secession Church." The term "godly widows" was held to mean widows of dissenting ministers above described, and the phrase, "the preaching of Christ's Holy Gospel," meant preaching by such ministers, and "the ministry of Christ's Holy Gospel" meant the ministry exercised by such orthodox English dissenting ministers; that the words

"godly members" included members of the church above mentioned, and that inmates of the hospital established by the deed must be poor members of such churches.

Bequests were made for the benefit of poor dissenting ministers living in any county. It was in proof that there were three distinct societies of dissenters, and that collections were made for the poor ministers of each. It was held that the bequests were good, and that they were intended for all the ministry in general, and it was ordered that the money be paid to all the treasurers of the three denominations. Waller v Childs, Ambl. (Eng.) 524.

Donor's Intention. "The necessary public benefit is sought in the character of the purpose according to the intention of the donor. If that intention be the performance of acts which tend to benefit the public, the court never proceeds to inquire whether the result must be a benefit which it is certain would not otherwise accrue to it." A gift for the support of a minister tends to the advancement of religion because it contributes to the support of its minister; and the court, in such a case, does not inquire into the quantum of his former stipend, or the necessity for its increase. "By analogy, a gift to a clergyman because he publicly performs Divine service ought to be deemed charitable, whether the donee was or was not previously subject to a moral, or even to a legal, obligation to perform it." Attorney-General v Hall, 2 Irish R. 291, 309 (1896).

The court will not decree the execution of a trust of a charity in a manner different from that intended, except so far as they see that the intention cannot be executed literally, but another mode may be adopted consistent with his general intention, so as to execute it, though not in mode, in substance. If the mode becomes by subsequent circumstances impossible, the general object is not to be defeated, if it can be attained. Attorney-General v Boultbee, 2 Ves. (Eng.) Jr. 380.

Foreign Corporation. In University v Tucker, 31 W. Va. 621, it was held that foreign corporations may take bequests

of charity under a will made in this State, when and to the extent authorized by their charters.

Identifying Beneficiary. Testatrix bequeathed a fund to any institution in Philadelphia that will give shelter to homeless people at night, irrespective of creed, color or condition. The Philadelphia Society for Organizing Charity was the only claimant of the fund. This society was organized in 1878, and about five years afterward Wayfarers' Lodges were created, and shelter has been provided, and is still furnished, and will continue to be given by the society to homeless people at night in the manner specified in the will. This society was held entitled to the bequest. Croxall's Estate, 162 Pa. St. 579.

Indefinite. Testator directed the executor to hold the residue of his estate in trust for the education of freedmen, the income to be paid by him to the proper officers of the freedmen's association, or disposed of as he pleases. There was no society existing under the name given in the will, and the court rejected evidence offered to show that the society intended was that organized by the Methodist Episcopal Church in Cincinnati. The bequest was, therefore, void for uncertainty. The term "freedmen" was said to include that class of persons who were emancipated during the late Civil War and their descendants. Fairfield v Lawson, 50 Conn. 501.

Where a testator, by his will, directs the trustees and guardians of his child to pay over annually a certain portion of the income of his estate to the trustees of the Hillsborough School, to be by them applied towards feeding, clothing, and educating the poor children of Caroline county, which attends the poor or charity school established at Hillsborough, in the said county, it was held that the bequest was void for uncertainty as to the persons who were to take under it. Dashiell v Attorney General, 6 Har. & J. (Md.) 1.

Irving Society. In Attorney General v Lawes, 8 Hare (Eng.) 32, a bequest of a sum to be paid annually to a bank

for the "sole use and benefit of any of the ministers and members of the churches now forming upon the Apostolic doctrines brought forward by the late Edward Irving, who may be persecuted, aggrieved, or in poverty, for preaching or upholding those doctrines, or half the sum may be appropriated for the benefit of the church founded by the late Edward Irving in Newman Street," was sustained as a valid charity. If there should afterward be no persons for whose benefit the fund could be applied, the charity would not fail for that reason, but the court would administer as nearly as practicable, according to the donor's intention.

Parliamentary Restriction. In Attorney-General v Guise, 2 Vern. (Eng.) 266, it was held that a charity for the purpose of propagating in Scotland the doctrines of the Church of England could not be fully executed because of a recent act of Parliament, but the legacy did not fall into the residuary estate, and the purpose of the charity might be executed so far as practicable in view of the act of Parliament.

Poor. A bequest to the town of Skowhegan, Maine, for the worthy and unfortunate poor, and to save them from pauperism, to be funded, and one half of the income of the sum to be expended by the women's aid society formed for that purpose, was sustained in Dascomb v Marston, 80 Me. 223.

A gift to the poor of the town or parish, or church, is a public charity to be applied by the ministers and deacons according to the intentions of the donor. Attorney-General v Old South Society in Boston, 13 Allen (Mass.) 474.

Principles Universal. The principles of the law of charities are not confined to a particular people or nation, but prevail in all civilized countries pervaded by the spirit of Christianity. They are found imbedded in the civil law of Rome, in the laws of European nations, especially in the laws of that nation from which our institutions are derived. A leading and prominent principle prevailing in them all is that property devoted to a charitable and worthy object, promotive of the public good, shall be applied to the pur-

poses of its dedication, and protected from spoliation and from diversion to other objects. Though devoted to a particular use, it is considered as given to the public, and is, therefore, taken under the guardianship of the laws. If it cannot be applied to the particular use for which it was intended, either because the objects to be subserved have failed or because they have become unlawful and repugnant to the public policy of the state, it will be applied to some object of kindred character so as to fulfill in substance if not in manner and form the purpose of its consecration. The Late Corporation of the Church of Jesus Christ of Latter Day Saints v United States, 136 U. S. 1.

Religious Exercises and Self-Denial. A voluntary association of women for the purpose of working out their own salvation by religious exercises and self-denial has none of the requisites of a charitable institution, whether the word "charitable" is used in its popular sense or in its legal sense. Admitting that religious purposes are charitable, that can only be true as to religions services tending directly or indirectly toward the instruction or the edification of the public; an annuity to an individual so long as he spent his time in retirement and constant devotion, would not be charitable, nor would a gift to ten persons, so long as they lived together in retirement and performed acts of devotion be charitable. Cocks v Manners, 12 L. R. Eq. (Eng.) 574.

Religious Instruction. A bequest to a widow for life, then to the church of which she might be a member at her death, for such uses as the Conference might determine, "especially for the support of Sunday schools, for the purchase of Bibles, and religious tracts, and the distribution of the same among the destitute, and for the support of missionaries," was sustained in Attorney-General v Jolly, 1 Rich. Eq. (S. C.) 99.

A conveyance of land "in trust for the uses of a Sabbath School and for the diffusion of Christian principles as taught and practiced by Christian Evangelical denominations, with power to erect, repair, and renew from time to

time all buildings necessary to carry out the object and purposes of the trust" constitutes a public charity. Morville v Fowle, 144 Mass. 109.

Trustees to Account. Trustees of a charity may be required by the court of chancery to account for income which has been misapplied, for any length of time, without regard to the statute of limitations; but an application of such income, made in good faith and continued for many years, will not be lightly disturbed, especially after the lapse of a considerable time. Attorney General v Old South Society in Boston, 13 Allen (Mass.) 474.

Uncertainty, Free Churches. Testator devised his real estate and directed that it be sold and the proceeds "laid out in building convenient places of worship free for the use of all Christians who acknowledge the Divinity of Christ and the necessity of spiritual regeneration." It was held that the devise was void for uncertainty, the court observing that the will was silent as to the place where the churches were to be erected, and that there was no ownership conferred on any religious congregation nor any trustees for it. "It seems impossible for a court to hold that a charity for religion is sufficiently specific, in which no part of the Christian world has any property, legal or equitable; which no one has a right to manage or preserve, and in which the court would, perhaps, be daily called on to regulate the uses of the buildings, which the various sects would endeavor to concentrate, each one in itself." White v Attorney General, 44 Am. Dec. 92.

Unincorporated Society. A bequest was made in 1790 by a resident of Virginia to the "Baptist Association that for ordinary meets at Philadelphia annually," "for the education of youths of the Baptist denomination who shall appear promising for the ministry, always giving a preference to the descendants of my father's family." The testator died in 1795. At that time the Baptist Society in Philadelphia was unincorporated, but became incorporated in 1797. It was held that the description of the association was suffi-

ciently definite, but not being incorporated, it was incapable of taking the trust, nor could the bequest be taken by the individuals composing the society. They could not execute the trust which was to the association and not to the individuals. It was, therefore, held that at the death of the testator there were no persons in existence capable of taking this bequest. The corporation subsequently formed could not take it, and the bequest became a part of the testator's residuary estate. Trustees, Philadelphia Baptist Association v Hart's Executors, 4 Wheat. (U. S.) 1.

CHRISTIAN CHURCH

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Organization. This is a body of religious people calling themselves Disciples of Christ, or Christians, known in the aggregate as the Christian Church, and existing in independent local churches, and having no ecclesiastical tribunal superior to the local church; said local churches being congregational in form of government.

These churches have no formulated creed or articles of faith, but claim to be guided in their faith and practice by the Bible, and it is and always has been a fundamental principle with them, that nothing more or less than faith in Jesus Christ as the Son of God and the Saviour of man, and obedience to his commands, is to be required to constitute persons Christians, and to entitle them to membership and good standing in said Christian churches.

They hold to immersion exclusively as Christian baptism, and they teach that baptism, when preceded by faith in Christ, repentance from sin, and a public confession of such faith, is for the remission of sins, but they have never required uniformity in opinions as to this purpose or design of baptism, and it has been their custom and usage from the beginning, and held by them to be in accord with their fundamental principles above stated, to regard and treat as Christians persons from other Christian denominations

who have been immersed upon profession of their faith in Christ, and to receive such persons into membership and full fellowship in their churches, whether or not they believe that baptism is for the remission of sins.

It is also a part of their fundamental principles that missionary societies, conventions, and similar voluntary organizations for Christian work, as well as the use of instrumental music in connection with their worship in the churches, are regarded as expedients concerning which no rule, pro or con, can be made, but regarding which each local church or congregation, and each individual, is allowed liberty in opinion and practice; and they have generally, since the beginning of the denomination, had their general societies and conventions for missionary work, and each of such voluntary organizations being allowed, and having free access to and use of their respective church houses or places of worship in which to hold their meetings and transact their business. Peace v First Christian Church, McGregor, 20 Tex. Civ. App. 85.

Form of Government. The government of a local society, according to the doctrine and usage of the denomination, is vested in the elders and deacons; the former administering spiritual affairs, such as teaching and employing preachers, while the deacons manage the finances and attend generally to the material needs of the church. The elders and deacons are selected and ordained by other elders of the church, and cannot otherwise be appointed. Prickett v Wells, 117 Mo. Re. 502.

Changing Doctrine. Up to 1892, when the pastor died, the general accepted doctrines of that denomination were taught; the Sunday school, in which were used the International Sunday School leaves, prepared for the purpose of elucidating the Scriptures, flourished; an organ was played in the praise service; financial help was received from the Ladies' Aid Society; baskets were passed by the elders in taking up collections; the sacrament was administered after services, and the church had self-government. All this

conformed with the practices of the Christian Church. Its creed was the New Testament. Upon the advent of a new pastor all was changed. The International Sunday School leaves and the organ were denounced as instruments of the devil. The Sunday school was abandoned as not authorized by the Scriptures, though the youth were sometimes taught from the Bible. The organ was relegated to the woodhouse. Receiving contributions from outsiders was condemned, and voluntary offering made only by depositing the gifts on a stand before the altar. The rule of the elders was proclaimed. Its belief in the use of the organ, in the Sunday school, the rule of the elders, and the methods of giving were made tests of fealty. In December, 1894, for the purpose of settling misunderstandings as to belief, all persons willing to take the New Testament as a guide of faith were invited to take the front seats. Subsequently three persons who refused to accept the new teaching were expelled without trial of specific charges. The persons making and favoring the innovations were not entitled to the possession of the church property, the court observing that the property must be held in sacred trust for the promulgation of the doctrines of the New Testament according to the generally accepted interpretation of the Church of Christ. Christian Church v Carpenter, 108 Ia. 647.

Church of Christ. Land was conveyed by deed to three persons as trustees for the Christian Church. It was held that a court of equity should enforce the trust in favor of the Church of Christ, it appearing that the Church of Christ was legally incorporated, and that the persons named as trustees in the deed were in fact the trustees of the Church of Christ, and there was no proof that there was any legally organized or unorganized religious society or church having the name "The Christian Church" at the time the deed was made, nor one thereafter legally organized. Church of Christ v Christian Church, Hammond, 193 Ill. 144.

Division, Effect on Property Rights. The society purchased land on which a house of worship was erected. Some time

about 1885 the denomination in Texas became divided into two factions, known as the Progressive and the Firm Foundation factions, differing on the question relating to baptism with some other minor differences.

In September, 1897, there was a separation in the local church, a large majority adhering to the so-called Firm Foundation Faction. The minority obtained a charter, and brought an action to recover the property which was held by the majority faction, under the claim that it was the true Christian Church at that place. It was held that the plaintiffs represented the original society and the doctrines of the Christian Church at the time the property was acquired, and still adhered to the faith and practice of that denomination; that the doctrines of the faction known as the Firm Foundation Faction constituted a wide departure from the original articles of faith, and that the plaintiffs, members of the Progressive Faction, who still adhered to the doctrines of the original society, were entitled to the possession of the church property. Peace v First Christian Church, McGregor, 20 Tex. Civ. App. 85.

Incorporation, Effect. The society was organized in 1863, and continued in its unincorporated condition until 1873, when a majority voted to incorporate. It was, accordingly, incorporated under the laws of Missouri. Prior to the incorporation the treasurer had deposited church funds in a savings institution. After the incorporation the church brought an action to recover the amount of the deposit. The persons composing a minority of the congregation at the time of the vote for incorporation, and who had declined to sign the petition for the charter, joined in a defense by the bank claiming that they, such minority, constituted the real church and were entitled to the property. It was held that the incorporation was regular, and that all the members of the congregation, including the minority, were bound by it. That the new corporation succeeded to all the rights of the former unincorporated society, including the ownership of the certificate of deposit, of the funds in the hands

of the savings institution, and accordingly that the church was entitled to recover the deposit. North St. Louis Christian Church v McGowan, 62 Mo. 279.

Officers Constitute Corporation. The trustees, deacons, and church wardens were held to constitute a corporation for the purpose of taking and holding in succession all real and personal estate given to their church. Bean v Christian Church, South Danbury, 61 N. H. 260.

Unincorporated Society. In 1824, a society was formed conformable to the rules and usages of the denomination called Christians. The society was not organized in the manner required by the statute but the associates agreed to maintain religious worship. The society was received in fellowship with other societies of the same denomination, and maintained religious worship. It was held that while the society was not organized as required by the statute, it became an unincorporated religious society, under the rules of the denomination, and as such became entitled to take and hold real estate, and that it might maintain an action of trespass on its property. Christian Society, Plymouth v Macomber, 5 Metc. (Mass.) 155.

CHRISTIANITY

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Christian Defined. The term "Christians," as used in its general sense, means those who believe in the divinity of Christ. Attorney General v Drummond, 3 Dr. & War. (Eng.) 162.

The term "Christian" embraces and includes both Roman Catholic and Protestant alike; and to be of the Catholic or Protestant religion, a person must first be of the Christian religion. The grand subdivisions among Christians are:

1. The Greek, or Eastern Church.

2. The Roman Catholics, who acknowledge the authority of the Pope.

3. The Protestant, or reformed churches or sects, who reject the authority of the Pope (Robbins, Religions of all Nations).

A Roman Catholic is a Christian who admits the authority of the Pope; a Protestant is a Christian who denies that authority.

Since the days of Luther, Romanists and Protestants have constituted, and still constitute, the two great divisions of Christianity in western Europe and America. The court quoted from the Encyclopedia of Religious Knowledge, the statement that "the term 'Christian,' when used in its more

strict, scriptural, and theological sense, denotes one who really believes the gospel, imbibes the spirit, is influenced by the grace and obedient to the will of Christ"; and this it calls the sacred and proper use of the word. It mentions another use of the word which it calls the political or conventional use, which denotes one who assents to the doctrines of the religion of Christ, and who, being born of Christian parents, or in a Christian country, does not profess any other religion, or belong to any other of the divisions of men, such as Jews, Mohammedans, deists, pagans, and atheists; or, as is said in another part of the article, Christians may be considered as nominal and real.

The court observed that the term "Christian" was ordinarily used in the above defined political and conventional sense in constitutions, statutes, and legal documents, in other words as nominal Christians. The idea that any man, however good, can properly be called a Christian, who does not believe or assent to the truths and doctrines of Christianity, and first and foremost of all, to the doctrine that Jesus was the Christ, the true Messiah, the Christ of God, is simply preposterous. All Christians believe in Jesus Christ as the true Messiah, and the Saviour of man; in other words, that Jesus Christ was just what he claimed to be—the "Christ of God." Hale v Everett, 53 N. H. 1.

Blasphemy. Writing against Christianity is blasphemy at common law. Rex v Woolston, 2 Str. (Eng.) 834.

England. Christianity came in here (England) by external spiritual force, and discipline, was introduced as a custom, and is part of the law. Lord Hale's MSS., cited in Rex v Bosworth, 2 Str. (Eng.) 1113.

Law of the Land. The declaration that Christianity is part of the law of the land is a summary description of an existing and ever-obvious condition of our institutions. We are a Christian people in so far as we have entered into the spirit of Christian institutions, and become imbued with the sentiments and principles of Christianity; and we cannot be imbued with them and yet prevent them from enter-

ing into and influencing more or less, all our social institutions, customs, and relations, as well as all our individual modes of thinking and acting. Mohney v Clark, 26 Pa. 342.

Massachusetts. The people of Massachusetts, in the frame of their government, adopted Christianity as the basis of organized society. This religion was found to rest on the basis of immortal truth; and to contain a system of morals adapted to man in all possible ranks and conditions, situations and circumstances. The manner of its constitutional establishment was liberal, and consistent with the rights of conscience on religious subjects. The constitution provided for the public teaching of the precepts and maxims of the religion of Protestant Christians to all the people, and it was made the right and duty of all corporate religious societies to elect and support a public Protestant teacher of piety, religion, and morality. Barnes v First Parish, Falmouth, 6 Mass. 401.

Nation. Our nation and the States composing it are Christian in policy to the extent of embracing and adopting the moral tenets of Christianity as furnishing a sound basis upon which the moral obligations of the citizen to society and the State may be established. District of Columbia v Robinson, 30 App. D. C. 283.

New York. Christianity is, in a qualified sense, a part of the common law of New York, not to the extent that would authorize a compulsory conformity in faith and practice to the creed and formula or worship of any sect or denomination, or even in those matters of doctrine and worship common to all denominations styling themselves Christian, but to the extent that entitles the Christian religion and its ordinances to respect and protection, as the acknowledged religion of the people. "Christianity is not the legal religion of the State as established by law. If it were, it would be a civil or political institution, which it is not; but this is not inconsistent with the idea that it is in effect, and ever has been, the religion of the people." Lindenmuller v People, 33 Barb. (N. Y.) 548.

Ohio. Christianity is a part of the common law of England, but under the constitution of Ohio neither Christianity nor any other system of religion is a part of the law of the State. The statement that all religions are tolerated in Ohio is not strictly accurate. Much less accurate is it to say that one religion is a part of the law, and all others only tolerated. There is no union of church and state, nor has the government ever been vested with authority to enforce any religious observance simply because it is religious. The power to make the law rests in the legislative control over things temporal and not over things spiritual. No power over things merely spiritual has ever been delegated to the government. Bloom v Richards, 2 Ohio St. 387.

Pennsylvania. Christianity is and always has been a part of the common law of Pennsylvania; Christianity without the spiritual artillery of European countries; for this Christianity was one of the considerations of the royal charter and the very basis of its great founder, William Penn; not Christianity founded on any particular religious tenets; not Christianity with an established church, and tithes, and spiritual courts, but Christianity with liberty of conscience to all men. Updegraph v Commonwealth, 11 S. and R. (Pa.) 394.

Christianity, as it is inculcated in the Scriptures, is a part of our common law. It has at all times been so understood and believed not only by divines, but also by our statesmen and people. It has been so declared by our highest judicial tribunals. Commonwealth v Sigman, 2 Clark (Pa.) 36.

Scope of Influence. Christianity, though an essential element of the conservatism, and a great moral power in the State, should yet only work by love, and inscribe the laws of liberty and light on the heart; and the civil government has no just or lawful power over the conscience, or faith or forms of worship or church creeds or discipline as long as their fruits neither unhinge civil supremacy, demoralize society, nor disturb its peace or security.

The political government is founded on the civil constitution; the ecclesiastical on the Bible; but the Bible and the constitution harmonize in aim and in spirit; and religion and politics should go hand in hand together, each equally free, and neither presuming to control the other in its legitimate sphere. This is the true, and only true, illustration of the modern maxim that church and state should be kept separate. It is the vital principle of both civil and religious liberty, and its universal prevalence would secure liberty, purify religion, and promote the welfare of mankind. Gartin v Penick, 5 Bush. (Ky.) 110.

CHRISTIAN MISSIONARY SOCIETY

This society was unincorporated, but was commonly known as the Kentucky Christian Missionary Convention. This body regularly and annually met, and provided means and plans to carry on Christian missionary work. A bequest to the society was sustained in Chambers v Higgins, 49 S. W. (Ky.) 436.

CHRISTIAN SCIENCE

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Described. Christian Science entirely excludes drugs and all material methods of treatment, and relies solely upon prayer as a means for the relief or cure of the sick. State v Marble, 72 Ohio 21: It was held in this case that the giving of Christian Science treatment for a fee for the cure of disease was practicing medicine within the meaning of the Ohio statute, and that the statute making it a misdemeanor to give such treatment for a fee was not an interference with the rights of conscience and worship, secured by the bill of rights; see also People v Cole, 163 A. D. (N. Y.) 292.

Expulsion of Members. In Holcombe v Leavitt, 124 N. Y. S. 980, an injunction was granted against the expulsion of certain members of the society who had proposed by-laws for its government, and who, if arbitrarily expelled, would be deprived of property rights.

Healer, Knowledge Required. One who holds himself out as a Christian Science healer, and is employed to treat disease according to the methods adopted by such practitioners, is only required to possess the knowledge, and to exercise the care and skill of the ordinary Christian Scientist. Spead v Tomlinson, 73 N. H. 46.

Medical Attendance, Religious Belief. See State v Chenoweth, 163 Ind. 94 for authorities on the effect of religious

belief as a defense by parents for alleged neglect to provide medical attendance for sick children, as required by law.

Missouri Constitution. In Re St. Louis Inst. of Christian Science, 27 Mo. App. 633, the court denied an application for a charter on the ground that it would be a violation of the provision of the constitution of Missouri, which declared that no religious corporation can be established in this State, except such as may be created under a general law for the purpose only of holding the title to such real estate as may be prescribed by law for church edifices; that the proposed institution was intended to propagate a religious belief, and that it would, therefore, become a religious corporation within the terms of its intended charter; also that the proposed charter would erect a business corporation for pecuniary profits contrary to certain statutory provisions.

Pennsylvania Constitution. Considering an application for a charter by the First Church of Christ Scientist, it was held in Pennsylvania that if the purpose of the proposed corporation were only to inculcate a creed or to promulgate a form of worship, no question could arise, because under the constitution of Pennsylvania private belief is beyond public control, and there can be no interference with the right of conscience. The maintenance of health and the cure of disease occupies a large space in the faith of the society. The students of the book have patients who are to be treated according to the method taught. The treatment extends to the most serious and fatal of diseases—rheumatism, scrofula, cancer, smallpox, and consumption. The patients, young and old, are to be treated for a compensation to be paid to those who work the beneficent results. The court said that what was proposed was more than a church, since there is besides to be established a system for the treatment of disease, to be carried into effect by persons trained for the purpose, who may receive compensation for their services. The Pennsylvania statute of 1877 prohibited persons from practicing medicine who had not received a regular

diploma from a chartered medical school. To grant this charter would be to sanction a system of dealing with disease totally at variance with any contemplated by the act of 1877, and different from any taught in a chartered medical school. The court declined to grant the charter. Application of First Church of Christ Scientist, 6 Pa. Dist. 745.

A similar situation was presented by the application of First Church of Christ Scientist, 205 Pa. 543, where the status of Christian Science was again considered on an application for a charter for the establishment of a place for the support of public worship, and to preach the gospel according to the doctrines of Christ Jesus, as found in the Bible and the Christian Science textbook, Science and Health, with Key to the Scriptures: by Mary Baker G. Eddy. It appeared that the method to be pursued by these healers in curing the sick is simply and solely by inaudible prayer, whether in the presence of the sick or at a distance, being immaterial. That to qualify for the practice of healing disease according to this method nothing was necessary except the study of the system taught in Mrs. Eddy's book, no knowledge of anatomy, physiology, pathology or hygiene being required, the fundamental principle of the teaching of Mrs. Eddy being that what is termed disease has no real existence; that sickness, sin, and death are unknown to truth, and should not be recognized by man as a reality. The charter was refused.

Sunday School Treasurer. In First Church of Christ Scientist in Buffalo, N. Y. v Schreck, 70 Misc. (N. Y.) 645; 127 N. Y. Supp. 174, it was held that the treasurer of a Sunday school connected with a corporation was responsible to the corporation for funds collected for the church organ.

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Defined. The Church consists of an indefinite number of persons, of one or both sexes, who have made a public pro-

fession of religion; and who are associated together by a covenant of church fellowship, for the purpose of celebrating the sacraments, and watching over the spiritual welfare of each other. Baptist Church, Hartford v Witherell, 3 Paige Ch. (N. Y.) 296.

"The church, in the ordinary acceptation of the word, is a voluntary association of its members, united together by covenant or agreement, for the purpose of maintaining the public worship of God, observing the ordinances of his house, the promotion of the spirituality of its membership, and the spirit of divine truth among others as they understand and teach it. It is purely voluntary, and is not a corporation nor a quasi corporation." Hundley v Collins, 131 Ala. 234; see also Re Douglass's Estate, 143 N. W. (Neb.) 299.

The word "church" is understood to mean a number of Christian persons, agreeing in their faith, usually assembling together at one place, for purposes of worship, submitting to its ordinances, and receiving its sacraments. This is entirely distinct from the meaning of the word "church" as applied to a corporation. In the former sense of the word, many persons are usually members of the church—and most commonly a large majority, who neither are, nor can be members of the corporation—married women, infants, and slaves. When persons are incorporated by the name of church this can be regarded only as a name of designation—or at most, as indicated when property is given to them, the trusts upon which it is given. Wilson v Presbyterian Church, John's Island, 2 Rich. Eq. (S. C.) 192. See also St. Andrews Church, v Schaunessy, 63 Neb. 792.

It is a matter of common observation that the terms "church" and "society" are popularly used to express the same thing, namely, a religious body organized to sustain public worship. Greenland Church and Congregational Society v Hatch, 48 N. H. 393.

The term "church" imports an organization for religious purposes, and property given to it by name, in the absence

of all declarations of trust or use, must, by necessary implication, be intended to be given to promote the purposes for which a church is instituted; the most prominent of which is the public worship of God. Baker v Fales, 16 Mass. 488.

Any society claiming to be a church, and engaged in the lawful promotion or defense of religion, is a legal church. And, there being no law requiring in its formation or continued existence any connection with any other society, civil or ecclesiastical, incorporated or unincorporated, it may be formed and it may exist without any such connection. Holt v Downs, 58 N. H. 170.

The identity of a religious community described as a church consists in the identity of its doctrines, creeds, confessions, formularies and tests. General Assembly, Free Church of Scotland v Overtoun (1904), Law Rep. App. Cases, (Eng.) 515.

Defined, Universal and Particular. A universal church consists of those persons, in every nation, together with their children, who make profession of the holy religion of Christ, and of submission to his laws; and as this immense multitude cannot meet together in one place to hold communion or to worship God, it is reasonable, and warranted by Scripture example, that they should be divided into many particular churches. A particular church consists of a number of professing Christians, with their offspring, voluntarily associated together for divine worship and godly living agreeably to the Holy Scriptures and submitting to a certain form of government. First Presby. Church, Louisville v Wilson, 14 Bush. (Ky.) 252.

Authority over Members. Churches have authority to deal with their members for immoral or scandalous conduct; and for that purpose, to hear complaints, to take evidence, and to decide, and upon conviction, to administer proper punishment by way of rebuke, censure, suspension, and excommunication. To this jurisdiction, every member, by entering into the church covenant, submits and is bound by his consent.

The proceedings of the church are quasi judicial and therefore those who complain, or give testimony, or act and vote, or pronounce the result, orally or in writing, acting in good faith, and within the scope of the authority conferred by this limited jurisdiction, and not falsely or colorably, making such proceedings a pretense for covering an intended scandal, are protected by law. Farnsworth v Storrs, 5 Cush. (Mass.) 412.

Church Purpose. A lot was conveyed to the society by deed containing a condition that the property should be used for the purpose of erecting thereon a parsonage "or Church purpose." A parsonage was not erected, but the lot was used for hitching teams during service in the church, which was situated on an adjoining lot. This use was held to be a church purpose within the condition in the deed. Bailey v Wells, 82 Ia. 131.

Church, Separate from Society. "A church, separate from the society with which it is connected, has not the rights and privileges of a corporation. It is, however, a body having a distinct existence and character, in our ecclesiastical history and usages, and as such is recognized by the law." Anderson v Brock, 3 Me. 243.

Classification. The Episcopal Church is monarchical, the Presbyterian aristocratical, and the Congregational democratical. Presbyterians and Congregationalists were distinct sects and formed separate religious societies at the time the constitution was made. All the Protestant churches set out together, but they parted on the road. They fell out by the way. And yet, if we coolly and impartially examine the points on which they differed and separated, they will be found few in number and trifling in amount. Muzzy v Wilkins, Smith's N. H. Rep. 1.

Congregational, Defined. A church is understood among those whose polity is congregational or independent, to be a body of persons associated together for the purpose of maintaining Christian worship and ordinances. A religious body is a body of persons associated together for the purpose of

maintaining religious worship only, omitting the sacraments. A church and society are often united in maintaining worship, and in such cases the society commonly owns the property and makes the pecuniary contract with the minister. Churches are not corporated bodies, and commonly have no occasion for the exercise of corporate powers. By the Massachusetts statutes their officers have sufficient corporated powers to enable them to hold any property that may be given to their church. Silsby v Barlow, 16 Gray (Mass.) 329.

Consecration. If a church is repaired without being totally destroyed or pulled down, some parts being left undisturbed, it does not need to be reconsecrated; and this rule probably applied even if the church should be entirely rebuilt on the former foundations, especially if the repairs or reconstruction be ordered by the church authorities. Parker v Leach 12 Jur. N. S. (Eng.) 911.

Creed and Polity. The organization of a denominational body or church involves the adoption of a religious creed and an ecclesiastical polity. Adherence to a particular body requires, therefore, adherence to both the creed and the polity. To abandon or repudiate either, is to abandon or secede from the body whose authority is thus disregarded. Krecker v Shirey, 163 Pa. 534.

Discipline, Subordinate to State Law. In the matter of the petition of the Third Methodist Episcopal Church in the City of Brooklyn, 67 Hun. (N. Y.) 86, an order dissolving the corporation was sustained, although not made in accordance with the obligation of the Discipline of the Methodist Episcopal Church. "No church Discipline can supersede the law of the State."

So far as the canons of the church (Roman Catholic) are in conflict with the law of the land, they must yield to the latter; but when they do not so conflict they must prevail. Ryan v Dunzilla, 86 Atl. (Pa.) 1089.

Division. Property (communion plate) was given to this society for the use of the church, without any parochial

condition, limitation, or trust. The deacons of the society were a corporation for the purpose of taking and holding property, and they received the property in question for the use of the church. The church was the beneficiary. By a division of the church two congregations were formed, each claiming to be the original. The defendant's party withdrew from the parish in 1876 and afterward had connection with it. The plaintiff's party adhered to the parish and claimed to be the true church. The plaintiff's party was held to represent the original church, and was, therefore, entitled to the possession of the property in dispute. Holt v Downs, 58 N. H. 170.

Doctrinal Controversy. One of the great facts standing out in the history of the Christian Church is that in its long life many controversies as to doctrine and ceremonial have arisen, and there have been many divisions. While the apostles were yet alive a serious question arose concerning the necessity of continuing as a part of the Christian system a certain Jewish rite. It was a question so grave that it was carried for settlement to the church at Jerusalem, and was there considered by the apostles and elders, and discussed and disposed of in the presence of the congregation. A decision was rendered which was transmitted, for the purpose of quieting the controversy, to all of the churches, to which it was deemed necessary to send it (Acts 15). In the succeeding centuries numerous controversies arose over matters of doctrine and discipline which were settled by church councils. By means of these councils serious divisions were prevented until the great Reformation of the sixteenth century, with the exception of the division between the Eastern and the Western churches, which occurred A. D. 1054, as a result of controversies which had proceeded from time to time during several centuries.

Numerous efforts have been made in comparatively recent years by various branches of the Protestant division of the church for union among themselves. Landrith v Hudgins, 121 Tenn. 556.

Elements. An incorporated church is composed of two distinct elements, namely, the church proper, as distinguished from the entity created by the act of incorporation; the corporation itself, which has relation only to the temporalities of the institution. The purpose of the incorporation of a church is to acquire and care for the property thereof. Christian Church, Huntsville v Sommer, 149 Ala. 145, also Dismukes v State, 58 So. (Ala.) 195.

Expulsion of Members. A church is composed of those who have united together for ecclesiastical relation and purposes, and for spiritual improvement. This body is a voluntary association, having power to adopt its own rules for admission and discipline, and administer them in its own way, independent of any control by the courts, while free from an intention to injure its members or those belonging to it.

A resolution passed by the church as above defined for the purpose of excluding a member from the church and the spiritual privileges enjoyed by him is effectual for the purpose intended, while if passed by the corporation for the purpose of depriving him of the privileges secured to corporators by the Statute it is a mere nullity. People ex rel Dilcher v German United Evang. Church, 53 N. Y. 103.

Extinct, What Constitutes. The facts which constitute extinction are plainly defined in sec. 16 of the New York Religious Corporations Law, namely, "If it has failed for two consecutive years next prior thereto to maintain religious services according to the discipline, customs, and usages of such governing body, or has had less than thirteen resident attending members paying annual pew rent, or making annual contribution toward its support." The failure to maintain religious services therein mentioned does not mean an enforced failure due to the mandate of the presbytery itself. It implies, rather, the inability to carry on the ordinary services by reason of diminished income and attendance and similar causes. Westminster Church v Presbytery of New York, 211 N. Y. 214.

House of Worship. Christianity is held to be a part of

the common law, and Sir Edward Coke designates a building intended for the celebration of its rites as the "mansion house of God." In this he had the authority of the Saviour, who designated the temple as "His Father's house." Beam v First Methodist Episcopal Church, Lancaster, Pa., 3 Pa. L. J. Rep. 343.

Incorporation, Effect. When a church has been incorporated the regulations and customs of the communion to which it belongs regarding the disposition of secular business will be respected by the courts as far as possible; and if the mode of government in force in the denomination at large is not by congregations, but by superior clerical personages, assemblies, synods, councils, or consistories, the authority of these will not be displaced if it can be upheld consistently with the laws of the sovereignty. Klix v St. Stanislaus Church, 137 Mo. App. 347.

Independence. The State having prescribed no law for the action of any church, leaves each church or denomination to the guidance of its own law, and looks to that as the standard by which all internal disputes are to be tried. Winebrenner v Colder, 7 Wright (Pa.) 244.

Lecture Room. The Sunday school room and lecture room of a modern church are as essentially used for religious purposes as the body of the church building itself. It is used for the midweek evening lectures and other services, when the attendance is not large. The expense of lighting and heating the main church building is thus avoided. But the services upon such occasions are as truly religious in their character as the sermon upon the Sabbath. The character of the use of the room is not changed by its occasional use for social gatherings incident to the church, for societies for benevolent objects, and for fairs held by the ladies to raise funds for missionary work. All these occasional uses are germane to the regular purpose of the room. Craig v First Presbyterian Church, 88 Pa. St. 42.

Legislative Power. It is a matter deducible from history, as well as from the current religious literature of the times,

that every church and every principal ecclesiastical denomination claiming to be founded upon Christian principles, or composed of persons calling themselves Christians, has within itself some quasi legislative or supreme power having control over matters of doctrine as well as discipline, and having some jurisdiction at least over what pertains to the faith as well as the practices of its members. White Lick Quart. Meet. etc., v White Lick Quart. Meet. etc. 89 Ind. 136.

Liquor Tax Law. A two-story building the upper story of which was used for religious worship by a Jewish congregation and the lower story for its Sunday school and also by several Jewish charitable societies, which paid rent for the use of the building, was held to be a church under the Liquor Tax Law. Matter of McCusker, 47 App. Div. (N. Y.) 113.

In matter of Finley, 58 Misc. (N. Y.) 639, it was held that where the parlor floor of a building erected for a dwelling house is used for the services of a church and Sunday school, while the pastor or minister in charge lives with his family on the second floor, keeping house with the usual accommodations and conveniences for that purpose, and the third floor is occupied by a woman who more or less looks after the work to be done on the premises, with her children, such building is not used exclusively as a church within the meaning of the Liquor Tax Law. It appeared that the building was erected for a dwelling house and its structure was not changed after it was purchased by a religious society for church purposes.

Majority, Power. A majority of a church congregation may direct and control in church matters consistently with the particular and general laws of the organism or denomination to which it belongs. Henry v Deitrich, 84 Pa. St. 286; see also Stogner v Laird, 145 S. W. (Tex.) 644.

On a schism or division in a church or religious society, the members of the minority faction having been expelled by the majority, and both factions afterward assembling at

the church for worship at the same time, if the officers and members of the minority attempt to conduct religious services, they are mere intruders, and the majority may lawfully remonstrate against it, and may use such means, not amounting to needless force, as may be necessary to prevent it. Morris v State, 84 Ala. 457.

Merger. You cannot by union put one church into another having a different creed and doctrine, without forfeiting the property held in trust to such members of the body as remain faithful to the original creed and doctrine. Boyles v Roberts, 222 Mo. 613.

Minister, Liability for Libel. A decision was agreed on in a church meeting and ordered to be promulgated by reading it before the church and congregation. The pastor of the church and minister of the congregation was acting within the scope of his authority in reading a paper, which, it was proved, had been adopted in a separate meeting of the church, and directed thus to be read. One great purpose of an act of church discipline is that it may have a salutary influence upon the whole religious body, of which the offender is a member, and the reading of such a paper by the pastor was within the scope of his authority. Farnsworth v Storrs, 5 Cush. (Mass.) 412.

Organic Law. A church, like every other organized body of citizens, must be consolidated by an organic law; and under and according to the constitution of the United States the organic law of the Presbyterian Church is a fundamental compact voluntarily made between all the members of the unincorporated association for the guidance and protection of each constituent church member, and necessarily inviolable by any delegated power of the aggregate church. It defines the sphere of the General Assembly as the organized representative of all the members of the Presbyterian Church, as a Christian nationality, subordinate to the political sovereignty of the civil nation, which is as supreme over members of the church as over any other citizens.

The Presbyterian Church is certainly as much bound as

Congress by the federal constitution, and all its members are subordinate to that and the State constitutions, which are supreme over all citizens in every condition. Gartin v Penick, 5 Bush. (Ky.) 110.

Property, Beneficiaries. When property is conveyed to a particular church, without reference to its connection with any other body, the majority of the church are the beneficiaries who remain under the organization then existing. Harper v Straws, 14 B. Mon. (Ky.) 48.

Relation to Congregation. The church and congregation for some purposes, form one religious society, associated under one pastor and minister for religious improvement. The church constitutes a select body, set apart for special purposes by covenant, and at the same time forms part of the congregation. Other members of the congregation may, upon suitable application, become members of the church, and all have a common interest in the general religious welfare of each other. In many congregations proposals for admission to the church and actual admissions take place before the congregation; and in all societies, the ordinance of baptism is public. Farnsworth v Storrs, 5 Cush. (Mass.) 412.

Rules and Regulations, Effect. The rules and regulations of a church are, so far as church matters are concerned, a part of the law governing the members of such church. A person who voluntarily joins a church, and tacitly, at least, agrees to be bound by all the rules and regulations of such church, cannot afterward be allowed wholly to ignore and disregard such rules and regulations. As to all matters pertaining to the church, he is clearly bound by the rules and regulations of the church, unless the same are clearly illegal. Venable v Ebenezer Bapt. Ch. 25 Kan. 177.

Service. "The church is the place proper for the celebration of divine service, and at common law the church is open to all parishioners. The exercise of the functions of a minister or preacher of the Holy Word of God contemplates the presence of a congregation at the services celebrated by

him." Attorney General v Hall, 2 Irish Re. 291, 309 (1896).

Sewing Circle. In First Baptist Church in Franklindale v Pryor, 23 Hun (N. Y.) 271, the society was held entitled to recover a fund raised by a sewing circle connected with the church. The circle had a treasurer who received the money. The court said the money was obviously paid for the use of the church which could adopt and ratify the action of the sewing circle in raising the money. Such a fund became the property of the church.

Temporalities Defined. These are understood to be the revenues, lands, and tenements, to be managed according to the character and the by-laws; in other words, secular possessions with which a church may be endowed. St. Patricks v Abst, 76 Ill. 252.

Territorial Limitation. When a parish or religious society is, by its constitution, limited to any place, the church of such society, by whatever terms designated, is equally limited, being necessarily associated and indissolubly connected with such religious society, and incapable of subsisting independently of it. Stebbins v Jennings, 10 Pick. (Mass.) 171.

Union. There must be identity of doctrine and faith before a majority of a church organization can take the church property into another church. Boyles v Roberts, 222 Mo. 613.

Virginia, cannot be Incorporated. Churches in Virginia are not incorporated, and under the policy of the law of that State cannot be. The property they are permitted to hold, and its use, is fixed by statute. Church trustees are creatures of statute, and their powers are limited by the law that authorizes their appointment. Globe Furniture Company v Trustees, Jerusalem Baptist Church, 103 Va. 559.

Who Constitute. In whatever aspect a church, for some purposes, may be considered, it appears to be clear from the constitution and laws of the land and from judicial decisions, that the body of communicants gathered into

church order, according to established usages, in any town, parish, precinct, or religious society, established according to law, and actually connected and associated therewith for religious purposes, for the time being, is to be regarded as the church of such society, as to all questions of property depending upon that relation. Stebbins v Jennings, 10 Pick. (Mass.) 171.

CHURCH EDIFICE

Defined, 119.
Not subject to execution, 119.
When may be closed, 119.

Defined. A church edifice is understood to be a building in which people assemble for the worship of God, and for the administration of such offices and services as pertain to that worship. Re St. Louis Inst. of Christian Science, 27 Mo. App. 633.

Not Subject to Execution. A meetinghouse is not liable to be taken in execution for the debts of such society. Bigelow v Congregational Society, Middletown, 11 Vt. 283.

When May Be Closed. If the church is held by the association as its absolute property, without any trust whatever, it may be closed by a legal vote of the association, passed by a majority of the members present at a legal meeting called for the purpose, notwithstanding the fact that a minority of the members present desire to use the church, and vote against closing it. But if a trust for the members of the society attaches to the property in the hands of the society, the latter cannot close the church against the wishes of a minority of the society who desire to continue to worship there in accordance with the terms of the trust. Canadian Religious Association v Parmenter, 180 Mass. 415.

CHURCH OF ENGLAND

Clergyman, regular defined, 120.
Clergyman, neglect of duty, 120.
Communion, 120.
Established Church, 121.
Evil Liver, 122.
Maryland, 122.
Minister cannot refuse to bury child of a dissenter, 122.
Not a corporation, 122.
Quaker not bound to accept office of churchwarden, 123.
Sacrament, who may take, 123.

Clergyman, Regular Defined. A regular clergyman means a person who can officiate without being guilty of irregularity. A clergyman of the Church of England, who had been inhibited by the Bishop of London from performing divine service in that diocese was held incompetent to perform divine service in a chapel under lease, requiring such service to be performed by a regular clergyman of the Church of England. Foundling Hospital v Garrett, 47 L. T. (Eng.) 230.

Clergyman, Neglect of Duty. A clergyman may be prosecuted by any one for neglect of clerical duty. Argar v Holdsworth, 2 Lee (Eng.) 224.

Communion. In a suit under the church discipline act, against the respondent, for having on the 4th of October, 1874, repelled from the holy communion without lawful cause the appellant, a parishioner, who had presented himself after due notice, the respondent answered that he did so for and on account of the writing and publishing by the appellant of certain letters addressed to the respondent, and of his causing to be printed and published a certain volume of selections from the Old and New Testaments, and for no other cause or reason whatever. It appeared that one

of the letters protested against the irreligious tendency of a sermon, not produced, which had been preached by the respondent, and that another of the letters, a private and solicited communication, explained that the construction which he, the appellant, placed upon certain parts of the Bible not being the same as the construction which, in his opinion, was generally placed thereon, he omitted such parts from the said volume and from his family reading. It further appeared that the appellant had published a book of family prayers, compiled entirely from the Liturgy of the Church of England, and that he had stated that he valued the Book of Common Prayer as "only second to the Bible itself." It further appeared that the appellant was of irreproachable moral character.

It was held that no lawful cause of expulsion had been shown; that the appellant was not "an open and notorious evil liver" within the meaning of the rubric; neither was he a "Common and Notorious depraver of the Book of Common Prayer" within the meaning of the 27th Canon. Jenkins v Cook, L. R. 1 Probate Div. (Eng.) 80.

Established Church. "In a country in which an Established Church exists the law recognizes the essential doctrines of that church as being true; and when, according to those doctrines, a benefit, either spiritual or temporal, results to the general body of the faithful, from the offering up of prayers, or the celebration of religious services, such spiritual or temporal benefit would be recognized by the law as such a public benefit as would bring within a statute a trust to promote the service of prayers of the Established Church, even if such prayers and such services were capable of being offered up in private. But the case of a religion, the exercise of which is lawful, but which is not established by law, such as the Roman Catholic religion, differs from that last mentioned in this, that its doctrines, although capable of being recognized by the law as those which the members of that particular faith believe to be true, cannot be recognized, as can the doctrines of an Established Church, as being in

fact true; and therefore, the argument that the services of such a religion, offered up otherwise than in public, are a benefit to the public, lacks one of the essential elements which is present in the case of a similar trust as to an established religion; and, therefore, the conclusion that there may be, in such a trust, a public benefit recognizable by the law, fails." Attorney General v Hall, 2 Irish R. 291, 309 (1896).

Evil Liver. A man who marries his deceased wife's sister is not an "evil liver" within the meaning of the rubric prefixed to the service of the holy communion in the Book of Common Prayer, so as to justify his repulsion from the holy communion. Banister v Thompson, 24 T. L. R. (Eng.) 841, construing the deceased wife's sister marriage act of 1907.

Maryland. By the Maryland act of 1702, chap. 1, the Church of England, with its rites, ceremonies, and sacraments, was declared to be the established church of the province; and provision was made for the support of ministers. The Bishop of London had ecclesiastical jurisdiction in Maryland. The establishment was terminated by the State constitution adopted at the Revolution. Bartlett v Hipkins, 76 Md. 5.

Minister Cannot Refuse to Bury Child of a Dissenter. A minister of the Established Church cannot refuse to bury a child of a dissenter. Kemp v Wickes, 3 Phill. (Eng.) 276.

Not a Corporation. At common law the Church of England, in its aggregate description, is not deemed a corporation. It is indeed one of the great estates of the realm; but is not more on that account a corporation, than the nobility in their collective capacity. The phrase, "the Church of England," so familiar in our laws and judicial treatises, is nothing more than a compendious expression for the religious establishment of the realm, considered in the aggregate under the superintendance of its spiritual head. In this sense the Church of England is said to have peculiar rights and privileges, not as a corporation, but as an ecclesiastical institution under the patronage of the

state. Town of Pawlet v Clark and others, 9 Cranch (U. S.) 291.

Quaker Not Bound to Accept Office of Churchwarden. The court declined to compel a Quaker to accept the office of churchwarden to which he had been elected. Adey v Theobald, 1 Curteis (Eng.) 373.

Sacrament, Who May Take. By the discipline of this church "no person can, at the same time, be a regular communicant in separate parishes under the care of different independent rectors. The canons of the church particularly direct that the sacrament shall not be administered by the rector of one parish to the parishioners of another, without the license of the rector of the latter parish, except to travelers, to persons in danger of death, or in cases of necessity." To be regular, the parishioners should communicate at least thrice in every year. The only legal evidence that the parishioner is a communicant is his receiving the sacrament in the parish church, by and with the consent of the priest, and the rector cannot take notice of the receipt of the communion in other parishes. Groesbeeck v Dunscomb, 41 How. Pr. (N. Y.) 302; See also clergyman.

CHURCH OF GOD AT HARRISBURG

History and form of government, 124.

History and Form of Government. In the year 1825 a congregation of worshipers was formed in Harrisburg, calling itself the Church of God at Harrisburg, and professing to have no other creed than the Bible, with an independent church government. This denomination continued to flourish, and spread over the State, forming many congregations, having no connection with each other until the year 1830, when a confederation took place, for the mere purpose of cooperation; by which an eldership was formed which was soon after known as the East Pennsylvania Eldership; another was established in the western part of the State about the same time. This East Pennsylvania Eldership adopted a constitution about the year 1832, but its nature or character cannot be precisely ascertained, as no copy thereof was presented to the court. The constitution given in evidence, which was an amendment of the former, was adopted in October, 1852. By the year 1845 the denomination had extended over many of the Western States, when it was resolved to establish a general eldership, which was to be composed of delegates from all the elderships, who were to meet once in three years. A constitution for its government was adopted, and this general eldership was invested with a degree of control over all the churches; among other things, with the licensing of preachers, and certain appellate powers from the inferior elderships. The locating and removal of pastors, and arranging the limits and boundaries of congregations, was vested in the local elderships, which acted through its committees; it also seems to have been invested with power to suspend,

and probably to expel, a clergyman for cause, as also the lay members or elders and deacons of the congregations. On the 21st of April, 1857, the East Pennsylvania Eldership was incorporated by an Act of Assembly, but no special or particular powers were conferred by the charter in regard to the government of the church. It is provided in the constitution of the general eldership that no person shall be an accredited minister in the Church of God without a regular license, and all the preachers in good standing shall have their licenses renewed annually by the eldership of which they are members. The constitution of the East Pennsylvania Eldership provides for ministers making an annual report, which if approved, their licenses shall be renewed. The same instrument gives a committee all the power of the eldership, except to expel or change preachers without cause. It may try, and suspend a preacher, change appointments or remove him, provided it is done through the application of a preacher, or a church acting by its elders. The stationing committee is authorized to locate the ministers by the vote of a majority, in which case the committee are to take it back and report another; and all persons asking for an appointment as pastor are required to take the one allotted to them under penalty of not receiving one for a year. Winebrenner v Colder, 7 Wright (Pa.) 244. John Winebrenner was the founder of the sect, and he wrote a history and exposition of the doctrine and order of the church.

CHURCH WARDENS

Account, spiritual court cannot settle, 126.
Business powers limited, 126.
Ecclesiastical powers, 126.
Moral guardians, 126.

Account, Spiritual Court Cannot Settle. A spiritual court has no jurisdiction to settle churchwarden's account. Adams v Rusch, 2 Str. (Eng.) 1133.

Business Powers Limited. A churchwarden has no authority to pledge credit of his co-churchwardens for repairs to the church. If he orders such repairs without the knowledge of the other churchwardens, he is liable individually. Northwaite v Bennett, 2 Crompt. & Meesons Rep. (Eng.) 316.

Ecclesiastical Powers. The Legislature has no power to authorize the wardens to interfere in matters of mere church discipline and doctrine. It could not constitutionally declare what shall constitute a curate in the catholic acceptation of the word, without interfering in matters of religious faith and worship, and taking the first step toward a church establishment by law. Wardens of the Church of St. Louis v Blanc, 8 Rob. (La.) 52.

Moral Guardians. Churchwardens are, to a certain degree, the guardians of the moral character and public decency of their respective parishes. Griffiths v Reed, 1 Hagg. Ecc. Re. (Eng.) 79.

CIVIL COURTS

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Church arbitration conclusive, 128.
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Charitable Use. It is not the province of the court to determine whether ecclesiastical duties enjoined under a charitable foundation are properly performed. That is a matter of which the ecclesiastical authorities will take cognizance. But in settling a scheme for the regulation of such a charity, the court must, at least, take care that the person by whom the ecclesiastical duties ought to be performed is in such a situation that he may perform them. Attorney General v Smithies, 1 Keen, (Eng.) 289.

Church Arbitration Conclusive. A minister and his parish submitted a controversy to an ecclesiastical counsel. The issue involved charges of immorality against the minister. These charges were not sustained by the counsel. Afterward the minister brought an action against the parish for a portion of his salary and the parish sought by a bill of discovery to reopen and reexamine the issues submitted to the ecclesiastical counsel, but it was held that the award of the counsel was conclusive and could not be made the subject of an inquiry in the civil courts. Proprietors v Pierpont, 48 Mass. 496.

Church Judicatories, when Action Final. When it appears that the whole controversy had once been submitted by the parties to the ecclesiastical tribunal which the church itself has organized for that purpose, the civil courts are justified in refusing to proceed any further. The decision of the church judicatory should then be treated as a bar to the action and a good defense in law. A priest or minister of any church, by assuming that relation, necessarily subjects his conduct in that capacity to the laws and customs of the ecclesiastical body from which he derives his office, and in whose name he exercises his functions; and when he submits questions concerning his rights, duties, and obligations as such priest or minister to the proper church judicatory, and they have been heard and decided

according to the prescribed forms, such decision is binding upon him and will be respected by civil courts. He can always insist, of course, that his civil or property rights as an individual or citizen shall be determined according to the law of the land, but his relations, rights, and obligations arising from his position as a member of some religious body may be determined according to the laws and procedure enacted by that body for such purpose. Baxter v McDonnell, 155 N. Y. 83.

Where a local church organization is a member of a general organization, having rules for the government and conduct of all its adherents, congregations, and officers, the judgments of the general organization, through its governing authority, so long as they relate exclusively to church affairs and church cases, are binding upon such local organizations, and will not be reexamined by the courts. Bonacum v Harrington, 65 Neb. 831.

In all ecclesiastical matters the courts are bound by the decision of the ecclesiastical tribunal. Trinity Methodist Episcopal Church, Norwich v Harris, 73 Conn. 216.

Courts will not review judgments or acts of the governing authorities of a religious organization with reference to its internal affairs, for the purpose of ascertaining their regularity or accordance with the discipline and usages of such organization. It can make no difference whether the governing authority of a religious denomination is confided to one man or to a synod or conference, nor whether the mode of procedure permitted to such person is in accord with the ordinary course of investigations or trials among laymen. Each religious organization must determine its own polity and be the judge of its own laws. Bonacum v Harrington, 65 Neb. 831.

It is well-settled law that the civil courts have and will exercise no jurisdiction to review the action of ecclesiastical bodies in matters relating purely to the faith and discipline of the church. But the members of these bodies have the same right as those of other voluntary associations of per-

sons formed for charitable and benevolent purposes, to seek the aid of civil courts to prevent a diversion of its property from the uses and trusts to which it was devoted, and to secure to the members the enjoyment of the rights of membership in respect to the use of the property. It, therefore, sometimes becomes necessary for the civil courts, for the purpose of determining property rights of members, to pass upon questions which are ecclesiastical in their nature. Fulbright v Higgenbotham, 133 Mo. 668. See Marie M. E. Church of Chicago v Trinity M. E. Church of Chicago, 253 Ill. 21.

The civil courts will not review or revise the proceedings or judgment of church tribunals, constituted by the organic laws of the church organization, where they involve solely questions of church discipline or infractions of the laws and ordinances enacted by its ruling body for the government of its officers and members. But where a church tribunal of original jurisdiction proceeds to try and discipline or expel a member of the society, and the member proceeded against claims that the presiding judge is disqualified from acting on account of a challenge interposed before the commencement of the trial, and where such challenge has been disregarded and an appeal has been taken by the accused to an appellate church tribunal, the civil courts have jurisdiction to enjoin the enforcement of a sentence pronounced against the accused until the appellate ecclesiastical tribunal has disposed of the appeal. Bonacum v Murphy, 71 Neb. 463. But see a contrary view on a rehearing of this case reported in 72 Neb. 487, where the injunction was denied and the former decision reversed but without affecting the rule stated in the early part of the foregoing note. This rule was reaffirmed on the rehearing.

Courts of this State will not review the process or proceedings of church tribunals for the purpose of deciding whether they are regular or within their ecclesiastical jurisdiction, nor will they attempt to decide upon the membership or spiritual status of persons belonging or

claiming to belong to religious societies. Bonacum v Murphy, 71 Neb. 487.

Whenever the questions of discipline or of faith, or ecclesiastical rule, custom, or law, have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them. Pounder v Ashe, 44 Nebr. Re. 672, followed in Powers v Bundy, 45 Neb. 208.

The utter impolicy of the civil courts attempting to interfere in determining matters which have been passed upon in church tribunals, arising out of ecclesiastical concerns, is apparent. It would involve them in difficulties and contentions, and impose upon them duties which are not in harmony with their proper functions. Before a court could give an enlightened judgment it would necessarily have to explore the whole range of the doctrine and discipline of the given church, and survey the vast field of the Divine Word. In matters of litigation where the title to property comes in contest, the rule would be different, as it is the imperative duty of the courts to adjudicate upon the civil rights of all parties. Happily, in this country, there is a total disconnection between the church and state, and neither will interfere with the other when acting within their appropriate spheres. State of Missouri ex rel Watson v Farris et al, 45 Mo. 183. The rule as to civil rights stated in the foregoing note was applied in the same case to the election of trustees of Lindenwood Female College, by whose charter the trustees were to be chosen by the St. Louis Presbytery. This presbytery having been dissolved for violation of a decree of the General Assembly, prohibiting the enrollment of ministers who joined in the movement represented by the so-called "Declaration and Testimony," prepared in opposition to the deliverances of the General Assembly on certain political questions. It was held in this case that trustees elected by such dissolved presbytery acquired no title to the office, and that the trustees chosen by a body composed of

members of the presbytery who adhered to the General Assembly, were entitled to the office.

"Where rules and regulations are made by the proper church functionaries, and such rules are authorized by the laws of the order, they will be enforced by the courts when not in conflict with some law bearing upon the subject contained in the rules." Alexander v Bowers, 79 S. W. (Tex.) 342.

A civil court will not review the proceedings and findings of an ecclesiastical tribunal. Irvine v Elliott, 206 Pa. St. 152; see also Windham v Ulmer, 59 So. (Miss.) 810 (Baptist Church).

The civil courts will not enter into the consideration of church doctrine or church discipline, nor will they inquire into the regularity of the proceedings of the church judicatories having cognizance of such matters. To assume such jurisdiction would not only be an attempt by the civil courts to deal with matters of which they have no special knowledge, but it would be inconsistent with complete religious liberty, untrammeled by State authority. On this principle the action of church authorities in the deposition of pastors, and the expulsion of members, is final. Where, however, a church controversy necessarily involves rights growing out of a contract recognized by the civil law, or the right to the possession of property, civil tribunals cannot avoid adjudicating these rights, under the law of the land, having in view nevertheless the implied obligations imputed to those parties to the controversy who have voluntarily submitted themselves to the authority of the church by connecting themselves with it. Morris Street Baptist Church v Dart, 67 S. Car. 338.

"Whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law, have been decided by the highest church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final and as binding on them in their application to the case before them." Trustees of Trinity M. E. Chu. v Harris, 73 Conn. 216.

Civil Courts exercise no ecclesiastical jurisdiction. It accepts what the highest ecclesiastical authority in each church promulgates as the faith and practice of that church. But the property rights of all churches are within the protection of the court. Mt. Helm Baptist Church v. Jones, 79 Miss. 488.

This court (chancery) does not sit as an ecclesiastical tribunal, or determine equality in the distribution of the alms or aids of the church or of its members. It has no jurisdiction over such matters. It will not review in any manner the action of the authorities of the church, in respect to subjects within the exclusive jurisdiction of the church or its appointed agencies. Stewart v Lee, 5 Del. Ch. 573.

Church Judicatories, Limits of Judicial Review. Civil courts will not revise the decisions of churches or religious associations upon ecclesiastical matters, but they will interfere with such associations when rights of property or civil rights are involved. And when controversies of which the civil courts have jurisdiction arise in such bodies the courts will inquire as to the purpose for which they were instituted, and the rule by which they are governed, and so far as practicable, they will be given effect. Park v Chaplin, 96 Ia. 55.

In the principal (Connitt) case the court expressed the opinion that in all cases of doubt, when there is not clearly absence of jurisdiction, the decisions of Church judicatories as to their own jurisdiction in ecclesiastical matters should receive great weight. Connitt v Ref. Protestant Dutch Church, 54 N. Y. 551.

The Civil Courts cannot review the decisions of ecclesiastical judicatories in matters properly within their province under the constitution and laws or regulations of the church. When property rights are involved in the decisions of the church judicatories, such decisions may be reviewed by the civil courts, when properly brought before them. Landis v Campbell, 79 Mo. 433.

While the civil tribunal cannot disturb the action of

church courts upon matters purely religious, still civil tribunals, as a matter of right and justice, based upon principle and authority can interfere, and rejudge the judgments of spiritual courts where property belonging to church organizations and dedicated for religious purposes had been taken from its members by the mere arbitrary will of those constituting the judicatures of such organizations without regard to any of the regulations or constitutional restraint by which, according to the principles and objects of such organizations, it was intended that such property rights should be protected; that those having control of church property under a particular church organization have no power to transfer this property to a different sect or denomination, or divert it from the purposes for which it was dedicated, when in violation of the fundamental law upon which the organization is based. Kinkead v McKee, 9 Bush (Ky.) 535.

Where no right of property or civil right is invaded all matters of a religious or ecclesiastical nature are left entirely to the jurisdiction of the ecclesiastical judicatories, and the courts will not interfere with the decisions of the church tribunal. All questions of faith, doctrines, and discipline belong exclusively to the church and its spiritual officers, and the courts will neither review their determination on the facts nor their decision on the question of jurisdiction. Waller v Howell, 20 Misc. Re. (N. Y.) 237.

The ecclesiastical judicatories having had jurisdiction in the case, the civil courts will not inquire whether they have proceeded according to the laws and usages of their church, nor whether they have decided the matter correctly. It is the settled law of this country, repeatedly announced by the most learned judges and highest courts, that in such cases the civil courts must take the decisions of the ecclesiastical courts as final and binding upon the parties. Connitt v Ref. Protestant Dutch Church, 54 N. Y. 551.

While the courts of this State have no ecclesiastical jurisdiction whatever, yet they are charged with the duty, and

clothed with the jurisdiction of protecting property rights of religious societies, corporations, and churches, as well as that of individuals, and thereby of necessity, they may be compelled to decide a question of ecclesiastical law when that law becomes a fact upon which property rights depend. Smith et al v Pedigo et al 145 Ind. 361.

"It is not the province of temporal courts to assume ecclesiastical jurisdiction. The decisions of proper church tribunals must be accepted as conclusive, and are not subject to review." Applying this rule, it was held in Anracher v Yerger, 90 Iowa 558, that the appointment of a place for the meeting in 1891 of the General Conference of the Evangelical Association of North America in accordance with the action taken by the General Conference of 1887, referring the question of the place to the board of publication, was merely an ecclesiastical matter which involved no property or civil rights, and over which the highest judicatory of the church has supreme control.

The civil courts have jurisdiction only in case of a perversion of trust; on matters of form and discipline, the decision of the supreme authority of the church is binding on the courts. Griggs v Middaugh, 10 Ohio Dec. 643.

It is the settled law of this country that the judgments of the judicial tribunals of church organizations upon matters of faith and discipline, and the general polity and tenets of the church are binding upon the civil courts. Civil courts will not interfere in these controversies, even in cases where rights of property are involved, except in the case of a clear and palpable violation of trust. The question here involved is one of ownership of property. These proceedings are instituted to recover possession and control of that property. In this class of cases the conclusive effect of church authority, acting within the scope of its powers, is fully recognized by all the cases, and it is as well settled that civil courts will not review the decisions of ecclesiastical judicatories upon the merits; but the proposition that the judgments of church judicatories as to their own powers

or jurisdiction, or the lawfulness of their methods, are conclusive, is not sustained by reason or the weight of authority. Bear v Heasley, 98 Mich. 279.

Civil courts in adjudicating upon civil and property rights in those classes of church contentions to which this case belongs are bound by the adjudications of the ecclesiastical court as to which of the contending factions in the church is the true representative of the church and which faction is outside of and beyond the pale of the church, and that the civil courts will decree the title of church property to belong to the faction in the church which the ecclesiastical courts have held to be the true representative of the church. Presbyterian Church v Cumberland Church, 245 Ill. 74.

Courts of law will not interpose to control the proceedings of ecclesiastical bodies in spiritual matters which do not affect the civil rights of individuals, nor will they interfere with the action of the constituted authorities of religious societies in matters purely discretionary. Jennings v Scarborough, 56 N. J. Law, 401.

The rule of action which should govern the civil courts, founded in the broad and sound view of the relations of church and state, under our system of laws, and supported by a preponderating weight of judicial authority, is that whenever the questions of discipline or of faith or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final and as binding on them. Watson v Jones, 13 Wall. 679-726, cited in Brundage v Deardorf, 92 Fed. 214, aff'g 55 Fed. 839.

If the sentence of an ecclesiastical court in a suit for administration turns upon the question of which of the parties is next of kin to the intestate, such sentence is conclusive upon that question in a subsequent suit in the court of chancery between the same parties for distribution. Barrs v Jackson, 1 Phillips Ch. (Eng.) 582, citing for a similar state of facts, Bouchier v Taylor, 4 B. P. C. (Eng.) 708.

It belongs not to the civil power to enter into or review the proceedings of a spiritual court. The judgments of religious associations bearing upon their own members are not examinable here. In this country no ecclesiastical body has any power to enforce its decisions by temporal sanctions. Such decisions are in this sense advisory—they are addressed to the conscience of those who have voluntarily subjected themselves to their spiritual sway, and, except when civil rights are dependent upon them, can have no influence beyond the tribunal from which they emanate. Where a civil right depends upon an ecclesiastical matter, it is the civil court, and not the ecclesiastical, which is to decide. The civil tribunal tries the civil rights, and no more, taking the ecclesiastical decisions out of which the right arises as it finds them. Every competent tribunal must of necessity regulate its own formulas. Harmon v Dreher, 1 Speer's Eq. (S. C.) 87.

That civil courts will not undertake to exercise any ecclesiastical authority, or to review proceedings of church courts upon questions which involve matters of discipline or the application or enforcement of their own laws, is well settled in this country. Clark v Brown, 108 S. W. (Texas) 421.

Civil courts will not set aside the decrees and orders of ecclesiastical courts, involving the construction of their own articles of faith or discipline. Fuchs v Meisel, 102 Mich. 357.

In New York the legal or temporal tribunals do not profess to have any jurisdiction whatever over the church as such, except so far as necessary to protect the civil rights of others and to preserve the public peace. All questions relating to faith and practice of the church and its members belong to the church judicatories to which they have voluntarily subjected themselves. It must be a plain and palpable abuse of power which will induce a court to interfere as to any dispute growing out of religious or sectarian controversies. A civil judge should not assume the responsibility of deciding upon the correctness of the religious

tenets of others, either in matters of faith or otherwise. Baptist Church, Hartford v Witherell, 3 Paige Ch. (N. Y.) 296.

Civil tribunals will interfere in matters connected with disputes or contests arising out of things ecclesiastical, only, however, in so far as it is necessary to ascertain if the governing body has exceeded its power, or, in other words, has acted within the scope of its authority. Batterson v Thompson, 8 Phila. (Pa.) 251.

Differences of opinion as to local church management arose in the society, resulting in the formation of two parties, one of which adhered to the pastor in office who had been chosen to this position, and put in possession of the property. A question as to the local situation was presented to the presbytery, from which it appeared that the presbytery recommended that the pastoral relation be suspended, and that, in view of the differences in the local society, his longer continuance in the office of pastor was unwise. He was reelected to the office of pastor, as a stated supply for two years, but it was claimed that this meeting was irregular and void, for the reason that several persons were denied the privilege of voting. The pastor's party protested against the action of the presbytery in recommending the discontinuance of his service, and they withdrew from the presbytery. The presbytery thereupon declared that this withdrawal amounted to a secession of this party, and that the remaining members constituted the true local church. The civil courts declined to entertain jurisdiction to determine this question on the ground that the ecclesiastical body having jurisdiction must be presumed to have decided correctly, and the question could not be reviewed by civil tribunals. Gaff v Greer, 88 Ind. 122.

Civil Rights Only. Civil courts in this country have no ecclesiastical jurisdiction. They cannot revise nor question ordinary acts of church discipline, and can only interfere in church controversies where civil rights or the rights of property are involved. Where a civil right depends upon some

matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right, and nothing more, taking the ecclesiastical decisions, out of which the civil right has arisen, as it finds them, and accepting those decisions as matters adjudicated by another jurisdiction. The civil courts act upon the theory that the ecclesiastical courts are the best judges of merely ecclesiastical questions, and of all matters which concern the doctrines and discipline of the respective religious denominations to which they belong. White Lick Quart. Meeting, etc., v White Lick Quart. Meet. etc., 89 Ind. 136. See also Lamb v Cain, 129 Ind. 486.

While the courts will decide nothing affecting the ecclesiastical rights of a church, yet its civil rights to property are subjects for their examination, to be determined in conformity to the laws of the land, and the principles of equity. Ferraria v Vasconcellos, 23 Ill. 456, 31 Ill. 1.

Prickett v Wells, 117 Mo. 502 involved several questions arising from a division of the society, resulting in a claim of title and possession of two parties. The court asserted the general rule that civil courts will not interfere with the affairs of a religious society where only questions of discipline are involved, and which did not include rights of property.

Over the church as such, legal tribunals do not have, or profess to have, any jurisdiction whatever, except to protect the civil rights of others, and to preserve the public peace. All questions relating to the faith and practice of the church and its members belong to the church judicatures to which they have voluntarily subjected themselves, but the civil courts will interfere with churches and religious associations and determine upon questions of faith and practice of a church when rights of property and civil rights are involved. Grimes Executors v Harmon, and others 35 Ind. 198.

The only concern of courts with the differences of creed or belief within or between religious organizations is when some property or contract rights are involved and demand

protection. Marien v Evangelical Creed Congregation, Milwaukee, 132 Wis. 650.

The civil courts will interfere with churches and religious associations when rights of property or civil rights are involved. But they will not revise the decisions of such associations upon ecclesiastical matters, merely to ascertain their jurisdiction. Chase v Cheney, 58 Ill. 509.

The only ground upon which the supreme court can exercise any jurisdiction, to restrain the bishop from prosecuting a sentence of an ecclesiastical tribunal against a clergyman, by pronouncing judgment of displacement from the ministry, is that the threatened action of the defendant may affect the civil rights of the plaintiff, for the protection of which he has a proper recourse to the civil courts, namely, exemption from taxation, and the performance of certain civil duties. Conceding that this is sufficient ground for the action of the court, the only cognizance which it will take of the case is to inquire whether there is a want of jurisdiction in the defendant to do the act which is sought to be restrained. The court will not review the exercise of any discretion on the part of the bishop, nor inquire whether his judgment, or that of the subordinate ecclesiastical tribunal, is justified by the truth of the case. It will only inquire whether the bishop has the power to act; not whether he is acting rightly. Walker v Wainright, 16 Barb. (N. Y.) 486.

The right of civil courts to interfere in ecclesiastical matters is considerably limited. The general rule is that such right exists only where there are conflicting claims to church property, or funds or the use of them, where civil rights are involved. Rector St. James Church v Huntington, 82 Hun (N. Y.) 31.

The civil courts will not revise the decisions of churches or religious associations upon ecclesiastical matters, but they will interfere with such associations when rights of property or civil rights are involved. Bird v St. Mark's Church, Waterloo, 62 Ia. 567.

See Westminster Presbyterian Church of W. 23rd St. v Findley, 44 Misc. (N. Y.) 173, for a statement of the rule that civil courts will not interfere in ecclesiastical matters unless there are conflicting claims to church property or funds, or the use of them, or where civil rights are involved.

"Courts of justice in this State (Louisiana) sit to enforce civil obligations only, and never attempt to exercise jurisdiction over those of a spiritual character." African Methodist Episcopal Church v Clark, 25 La. Ann. 282.

Secular courts are powerless to pass upon questions of difference between contending factions of a church congregation, except in so far as property rights are involved. Christian Church of Sand Creek v Church of Christ of Sand Creek, 219 Ill. 503.

Religious societies are regarded by the civil authority as other voluntary associations, the individual members and separate bodies of which will be held to be bound by the laws, usages, customs, and principles which are accepted among them, upon the assumption that in becoming parts of such organisms they assented to be bound by those laws, usages, and customs, as so many stipulations of a contract between them. It is only by so regarding the association of individuals or bodies for religious purposes that the civil authority in this country can interfere at all, and then it can interfere only so far as may be necessary to decide upon and protect rights of property dependent upon the contract between the parties. And when that contract has been construed by the parties the courts will, as in other cases, follow their own construction. First Presbyterian Church, Louisville, v Wilson, 14 Bush. (Ky.) 252.

The judicial power is reluctant to interfere in matters of religious or ecclesiastical arrangement, and will do so only when rights of property or civil rights are involved. Burke v Rector, etc., Trinity Church, 63 Misc. (N. Y.) 43, sustaining the action of the vestry of Trinity Church, New York, in closing St. John's Chapel.

Consolidation of Churches. In Trustees of Trinity M. E.

Church v Harris, 73 Conn. 216, it was held that the action of Bishop Walden consolidating three Methodist Episcopal churches in Norwich, Conn., under a new name was a matter of ecclesiastical law and practice and the bishop's decision was binding on the civil courts of Connecticut.

Constitution of Church. A church constitution generally acquiesced in by the official bodies and members as the supreme law of the church for many years, during which no legal steps were taken to determine its validity, will not be declared void by a court, even upon clear proof of irregularity in its adoption, except when justice, morality, or public policy requires it. All questions of doctrine, practice, and jurisdiction within a church must be determined by the church judicature, and the secular courts of this State have no authority to adjudicate upon them. The decision of the highest legislative and judicial body of a church that an old confession of faith and constitution had been superseded by a new one is conclusive upon the civil courts. Kuns v Robertson, 154 Ill. 394.

"I cannot recognize any constitution, laws, ordinances, or sentences of any ecclesiastical tribunal, or of any voluntary society as having any efficacy or power over the civil rights, immunities, or contracts of individuals." Smith v Nelson, 18 Vt. 511.

Acquiescence in and use of the constitution of a church for more than fifty years is conclusive on the civil courts as to its validity. Philomath College v Wyatt, 27 Or. 390.

Creed. It is not within the province of any department of the government to settle differences in creeds, and the courts ought not to arrogate to themselves the power to restrain or control the free exercise of any, so long as this shall be harmless. It is not for them to determine what ought or ought not to be an essential element of religious faith. State of Iowa v Amana Society, 132 Ia. 304.

Criterion. Before civil authority the question is, not which party has the authority, but which is right according to the law by which the body has hitherto consented to be

governed. The majority may direct and control consistently with the particular and general laws of the organization, but not in violation of them. Sutter v Ref. Dutch Ch. 6 Wright (Pa.) 503.

Cumberland Presbyterian Church. The General Assembly of the Cumberland Presbyterian Church had power, upon the approval of two thirds of the presbyteries represented in it, to change the Confession of Faith. An action having been taken whereby it was declared that the change made in the Confession of Faith of the mother church (Presbyterian Church of United States) removed all obstacles to reunion and union of the two bodies, that decision is final upon the civil courts. The General Assembly of the Cumberland Church had authority to determine from the provisions of the constitution whether it had the power to enter into the union with the Presbyterian Church, and having decided that it had such authority, and having acted upon that decision, the civil courts have no power to review that action. The General Assembly, the highest court of the church to which the decision of these questions is committed, decided that all practical differences between the articles of faith of the two churches had been eliminated, and there existed no reason why the union should not be effected. That court had exclusive jurisdiction of the question, and having decided it, there is no ground for action by this court. The court stated the same rule as to the admission of Negroes to participate in certain proceedings in courts of the Presbyterian Church, which practice was not permitted by the Cumberland Church. This question could not be reviewed by the civil courts. Brown v Clark, 102 Texas 323.

Fussell v Hail, 233 Ill. 73, was an action brought to restrain the General Assembly of the Cumberland Presbyterian Church from consummating a proposed union with the Presbyterian Church according to negotiations initiated in 1903, and apparently ratified in 1905. The object of the bill is to have a court of chancery, by its process, assume

control of the action of an ecclesiastical tribunal, declare the extent of its jurisdiction, examine the regularity of its proceedings, and revise its judgments. The civil courts deal only with civil or property rights. They have no jurisdiction of religious or ecclesiastical controversies. Religious freedom cannot be maintained if the civil courts may interfere in matters of church organization, creed, and discipline, construe the constitution, canons or rules of the church, and regulate and revise its trials and the proceedings of its governing bodies. The civil courts afford no remedy for any abuse of ecclesiastical authority which does not follow a civil or property right. Church tribunals ought to perform their functions honestly, impartially, and justly, with due regard to their constitutional powers, sound morals, and the rights of all who are interested; but if tyranny, fraud, oppression, or corruption prevail, no civil remedy exists for such abuse, except where it trenches upon some property or civil right. The ordinary courts have no cognizance of the rules of a religious organization or other voluntary association, and cannot consider whether they have been rightly or wrongly applied. See also the article on the Cumberland Presbyterian Church.

Diversion of Church Funds. In Gable v Miller, 10 Paige Ch. (N. Y.) 627 it was held that the court of chancery had jurisdiction to prevent a diversion of the temporalities of a church from the purposes for which they were given by the donors, and to require them to be appropriated to the support of that form of worship and to the teaching of those doctrines for which they were originally intended.

Diversion of Property. When an ecclesiastical organization acquires property by deed or will, or other instrument, and the instrument in express terms, provides that the property shall be devoted to the teaching, support, and spread of some specific form of doctrine or belief, the civil courts have authority to interfere in the affairs of the organization for the purpose of preventing a diversion of the property from the use to which it was, by the instrument, devoted.

But where property is acquired by an ecclesiastical organization, and there is nothing in the instrument under which the title passes to the organization, or to trustees in its behalf, which imposes a limitation upon the uses to which the property shall be devoted, it is to be presumed that it was the intention of the donor that the property was to be devoted to religious purposes, in such manner and in such way as the governing body of the organization, whatever it may be, shall, under its constitution and rules, determine; and so long as any existing religious organization can be asserted to be that organization, or its regular legitimate successor, it is entitled to the use of the property.

In case of a schism in such an organization no inquiry will be had into the existing religious opinions of those who comprise the legal and regular organization; the proper inquiry is, Which of the two factions constitute the church? and those who adhere to the acknowledged organization are entitled to the use of the property, whether adhering or not to the doctrines originally professed. Mack v Kime, 129 Ga. 1.

Doctrine. In all matters of faith and doctrine churches are left to speak for themselves. When rights of property are in question civil courts will inquire whether the organic rules and forms of proceeding prescribed by the ecclesiastical body have been followed, and if followed, whether they are in conflict with the law of the land. A priest in the Roman Catholic Church, who receives no stated salary, but derives an income from pew rents, Sunday collections, subscriptions, and offerings has a property, in these sources of income. His profession is his property, and the priest was not only deprived of his right of property as pastor of that particular church, but he was also prohibited from exercising any pastoral functions as a means of support elsewhere. O'Hara v Stack, 90 Pa. St. 477; but see this case on appeal in 98 Pa. 213, where the foregoing decision is explained.

In People v Steel, 2 Barb. (N. Y.) 397, the head note contains the statement that courts can only inquire into the

tenets promulgated in a particular church, in connection with a right of property, or a trust to be administered. They have no power to determine as to the scriptural truth of those tenets.

The courts of this country have no power to determine for religious bodies ecclesiastical or doctrinal questions, and they have never evinced a disposition to invade that domain, and will only inquire into such questions when property rights become involved and are the subject of litigation, and then only so far as to determine those rights. Peace v First Christian Church, McGregor, 20 Tex. Civ. App. 85.

Civil courts will deal with questions of church doctrine and beliefs only in so far as it becomes necessary so to do to determine civil rights. Where a dispute arises as to which of two bodies represents a particular church in trust for which property has been granted, a question of ecclesiastical identity arises, and those who claim that the trust has been violated must show that their opponents have so far departed from the fundamental principles of the church in question as to be in effect no longer members thereof. Itter v Howe, 23 Ont. App. Rep. 256.

It would be an unseemly thing for the secular courts to assume to themselves the right to decide in the first instance whether a certain doctrine or tenet of faith possessed and practiced by one religious organization was contrary to the organic and fundamental doctrines and creed of another religious organization. Wehmer v Fokenga, 57 Neb. 510.

If church property is intended to be used to promote the teaching of particular religious doctrines and an attempt is made to divert such property to the support of different doctrines, civil courts should interpose for the purpose of carrying such trusts into execution according to the intention of the donors; and in case of a clear violation of such a trust the courts are bound to interfere on the application of a minority against a majority of the congregation. Miller

v Gable, 2 Den. (N. Y.) 492. Apparently reversing 10 Paige (N. Y.) 627, but see note in Denio p. 570.

It is not within the province of courts to determine which of two factions is right from a biblical or theological point of view, nor which conforms to the faith originally adopted by the church, except when that is in explicit terms made a condition of the donation. First Baptist Church, Paris v Fort, 93 Tex. 215.

While adherence to the doctrines adopted by the congregations (Lutheran) may be considered a condition of becoming or remaining a member, it is not so with any new matter of doctrine that may arise, or with any honest interpretation of the statements of former doctrines. A civil court could not determine that by adopting any particular opinion of such new doctrine, or such interpretation a member, ipso facto, ceases to be a member of the congregation so as to lose his rights in the corporation. Trustees, East Norway Lake Norwegian Evangelical Lutheran Church and others v Halvorson, 42 Minn. 503.

Questions of dogmatical theology are not within the jurisdiction of civil courts, but courts may determine whether a complaint exists as to a change of religious belief by the minister. The truth and importance of the question are within the jurisdiction recognized by the uniform and immemorial usage of congregational churches. Courts have no means of determining points of doctrine. Burr v Sandwich, 9 Mass. 277.

It is not the province of courts of justice to decide, or to inquire what system of religious faith is most consistent, or what religious doctrines are true, or what are false, in any case, and it seldom becomes necessary for courts to discuss, or to examine the creeds, or confessions or systems of faith of the different religious sects in determining questions of law, except in cases where they are called upon to see that a trust or charity is administered according to the intention of the original founders. Hale v Everett, 53 N. H. 1.

Civil courts never assume the abstract truth or falsity of any religious doctrine. The most they can do is, when rights of property are dependent on adherence to, or teaching of a particular religious doctrine, to examine what, as a fact, the doctrine is, and whether, as a fact, the particular person adheres to or teaches it. When the contract provides, or by implication contemplates, that what is according to or consistent with the particular doctrine shall be determined by some religious judicatory, the determination of such judicatory, duly made, when the matter is properly brought before it, is conclusive on the civil courts. Trustees, East Norway Lake Norwegian Evangelical Lutheran Church, and others v Halvorson, 42 Minn. 503.

Differences of opinion having arisen on doctrinal questions and as to church government, the majority expelled the minority. This action was sustained, and it was held that there was no right of appeal to civil courts. Bennett v Morgan, 112 Ky. 512.

Dowie's Successor. In Lewis v Voliva, 154 Ill. App. 48, the court declined to consider the question as to who was the rightful successor to John Alexander Dowie as the leader of the Christian Catholic Apostolic Church of Zion founded by him. Two persons claimed the leadership by virtue of an alleged appointment by Mr. Dowie as his successor. The court said that if there was an organized body of persons who constituted the church, it must be left for that body to determine this question in accordance with its laws and usages, free from interference by the courts. The court held that there was no property question involved in the case.

Ecclesiastical Questions. It would be quite unseemly as well as detrimental to the best interests and harmony of religious societies if courts should interfere with their internal affairs when no property rights are involved, simply because the regularity of their proceedings may be open to question by some disaffected party. People ex rel Blomquist v Nappa, 80 Mich. 484.

Civil tribunals cannot revise or question ordinary acts of

church discipline or excision, but may decide conflicting claims of the parties to the church property, and the use of it. Shannon v Frost, 42 Ky. 253.

As to the rule that civil courts will not interfere in ecclesiastical matters, see Rodgers v Burnett, 108 Tenn. 173 following Nance v Bushby, 91 Tenn. 305.

See Chase v Cheney, 58 Ill. 509 for a discussion of the principles applied by civil courts in considering questions relating to ecclesiastical affairs. The case reiterates the doctrines frequently cited in these notes. See this case also page 304 for a collection of authorities relating to the jurisdiction of civil courts in ecclesiastical matters.

Elections. Courts of law will interpose to control the proceedings of ecclesiastical bodies when a right to property is involved, but in no other instances. A court of law will inquire into the regularity of the election of trustees of a religious corporation, to whom the property of the corporation is committed, and will determine the qualifications of the voters who are allowed to vote at such an election. It will also, when the right to property is in issue, institute an inquiry into the doctrines and opinions of a religious society as facts upon which the ownership of property may depend. But with respect to spiritual matters, and the administration of the spiritual and temporal affairs of the church, not affecting the civil rights of individuals or the property of the corporation, the ecclesiastical courts and governing bodies of the religious society have exclusive jurisdiction, and their decisions are final. A court of law will not interfere with the rules of a voluntary religious society adopted for the regulation of its own affairs, unless to protect some civil right which is infringed by their operation. Livingston v Trinity Church, Trenton, 45 N. J. Law 230.

In Michigan it was held that a court could not inquire into the regularity of an election of a deacon in the Dutch Reformed Church of Holland. Attorney General ex rel Ter Vree v Geerlings, 55 Mich. 562.

Expulsion of Members. Considering a question relating to

the expulsion of a member of the Baptist Church at Moss Point, Mississippi, the court said this society was a pure democracy. Its determination of questions of doctrine and discipline is exclusive and final. There is no appeal to any superior ecclesiastical court, and over things spiritual or ecclesiastical, the civil courts, ordinarily, may not take jurisdiction. The civil government must be free from all ecclesiastical interference, and the Church of Jesus Christ, except in property rights, is not to be controlled by State authority. Dees v Moss Point Baptist Church, 17 So. Rep. 1. (Miss.).

Courts cannot and will not supervise or review the action of any religious society as to whether in excluding members they acted wrongfully or justly. Iglehart v Rowe, 20 Ky. L. Rep. 821.

"We cannot decide who ought to be members of the church, nor whether the excommunicated members have been justly or unjustly, regularly or irregularly cut off from the body of the church. We must take the fact of expulsion as conclusive proof that the persons expelled are not now members of the repudiating church; for, whether right or wrong, the act of excommunication must, as to the fact of membership, be law to this court. Having once associated themselves with many others, as an organized band of professing Christians, they thereby voluntarily subjected themselves to the disciplinary and even expulsive power of that body. The voice of the majority has prevailed against them. They by that fiat of their membership ceased to be members of that association, and with the loss of their membership they have lost all the privileges and legal rights to which, as members, they were ever entitled. Their only remedy is, therefore, in their own bosoms, in a consciousness of their own moral rectitude, and in the consolations of that religious faith and those Christian graces which, under all temporal trials, will ever sustain the faithful Christian and adorn the pathway of his earthly pilgrimages." Bethany Cong. Ch. v Morse. 151 Iowa 521. Cited Hendryx v People's

United Church, 42 Wash. 336 and Shannon v Frost, 3 B. Mon. (Ky.) 253.

People v Erste Ulaszkoweer Kranken Unterstutzungs Verein, 56 Misc. (N. Y.) 304, 57 Misc. 62, considers the power of civil courts to review and revise the action of religious societies, asserting the general rule of noninterference, but an exception was applied in this case because the society was also a benevolent or benefit society, with special provisions for the welfare of its members; therefore the court assumed jurisdiction to determine the validity of the expulsion of a member.

If it appears that there is a fraudulent scheme to expel members so as to obtain control of the property of the organization and divert it from its original channel, the law will not permit the fraud to be consummated. Notwithstanding the rule of the organization to permit an expulsion in proper cases, there is an implied obligation or contract that the members will be fairly treated, and that good faith will be maintained between them. Courts will not assume to decide purely ecclesiastical questions, and substitute their views for the views of the ecclesiastical authorities or judicatories. If members are expelled for a fraudulent purpose to carry out a fraudulent scheme, the expulsion is a void act, and of no force or effect whatever. Hendryx v People's United Church, Spokane, 42 Wash. 336.

Friends, Form of Government. In Field v Field, 9 Wend. (N. Y.) 394, the court took cognizance of the form of government adopted by the Society of Friends, especially as to the method of organizing and conducting business meetings, and considered the effect of a division of the Society in 1828. See the article on Friends.

Heresy. The law knows no heresy, and is committed to the support of no dogma. Everyone has the legal right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality or property, and which does not infringe the personal rights of others, which may seem to

him right and proper, without any interference from the courts. The law recognizes the right of the people to organize voluntary religious associations, to assist in the dissemination of any and all religious doctrines, with the exceptions above named, and to create tribunals for the decision of controverted questions of faith, and for ecclesiastical government of all the individual members, congregations, and officers within the general association. Lamb v Cain, 129 Ind. 486.

The civil tribunal possesses no authority whatever to determine ecclesiastical matters on a question of heresy, or as to what is orthodox or unorthodox in matters of belief. Wilson v Presbyterian Church, John's Island, 2 Rich. Eq. (S. C.) 192.

Judicial Notice. "The canons, rubrics, or rules of this or any other church among us, are not laws; they are merely regulations for the conduct of its ministers and members, dependent for their force upon vows of the one and the consciences of the other, so far as they are within the limits of the rightful powers of such bodies. We know nothing of them judicially." The court cannot take judicial notice of the meaning of the terms "institution" and "induction" as applied in the Protestant Episcopal Church, nor of any rights or disabilities which might result from their observance or neglect. Youngs v Ransom, 31 Barb. (N. Y.) 49.

The court will not take judicial notice of the civil rights and powers of a Roman Catholic Church. Baxter v McDonnell, 155 N. Y. 83.

Jurisdiction, True Rule. The true ground why civil courts do not interfere with the decrees of ecclesiastical courts, where no property rights are involved, is not because such decrees are final and conclusive, but because they have no jurisdiction whatever in such matters, and cannot take cognizance of them at all, whether they have been adjudicated or not by those tribunals. This principle forms the foundation of religious liberty in republican governments. The

civil authorities have no power to pass or enforce laws abridging the freedom of the citizen in this regard, and hence, in matters purely religious or ecclesiastical, the civil courts have no jurisdiction. A deposed minister or an excommunicated member of a church cannot appeal to the civil courts for redress. They can look alone to their own judicatories for relief, and must abide the judgment of their highest courts as final and conclusive. But when property rights are concerned, the ecclesiastical courts have no power whatever to pass on them so as to bind the civil courts. If they expel a member from his church, and he feels himself aggrieved in his rights of property by the expulsion, he may resort to the civil courts, and they will not consider themselves precluded by the judgment of expulsion, but will examine into the case to see if it has been regularly made upon due notice, and if they find it to be duly made, they will let it stand, otherwise they will disregard it, and give the proper relief. Watson v Garvin, 54 Mo. 353; see also Dismukes v State, 58 So. 195.

Jurisdiction. This suit originated from a controversy between two factions of this church over the church property, and involved the right of one faction to enjoin the other faction from using the property until the latter should conform to the laws, usages and customs, faith and doctrine of the church. The court held that it had no jurisdiction of this question, and could not compel one faction to cease worshiping in the church because of an abandonment of the faith, laws, usages, and customs of the church. Smith v Charles, 24 So. 968.

A house of worship had been erected by the local society as a memorial to Bishops Bowman and Kemper. A movement to change the location of the church from Radnor to Merion, take down the church edifice, and use its materials in the erection of a new building at the latter place was resisted by certain members of the church. The destruction of the memorial building was held to involve a question of good faith and not simply a question of ecclesiastical polity.

The matter was, therefore, within the jurisdiction of a court of equity. Cushman v Church of the Good Shepherd, 162 Pa. St. 280.

Members, Status. The right to a share in the government of a corporation is a civil right which the law will protect, and the courts will therefore determine who are members of the corporation. And where, as is usually the case with local church organizations, all the adult members of the religious body, the congregation, and no others, are members of the corporation, so that when one becomes a member of the religious body he becomes a member of the corporation, and when he ceases to be a member of the religious body he ceases to be a member of the corporation and has no further rights in it and in the property owned by it, the court, to determine on the civil right claimed—that to be a member of the corporation—must determine on membership in the religious body, the congregation. It must determine this by the rules which the congregation has adopted for its membership. If the rules make adherence to particular doctrines a condition of membership, then, so long as those rules continue, the repudiation of such doctrines would seem to determine a member's right to remain in the congregation. Trustees, East Norway Lake Norwegian Evangelical Lutheran Church and others v Halvorson, 43 Minn. 503.

On a question relating to membership in the corporation, it was held that while the statute indicated who might become members of the corporation, it did not determine the qualifications of church members. Parties interested in the controversy must first exhaust their remedies in the church judicatories before civil courts would consider the questions involved. Buettner v Frazer, 100 Mich. 179.

Where differences of opinion arose in a local society on doctrinal questions and church government, and the majority expelled the minority, this action was held to be final and conclusive, and was binding on the courts. Bennett v Morgan, 112 Ky. 512.

The civil court will not decide who ought to be members of a church, nor whether the persons have been regularly or irregularly excommunicated. The fact of excommunication must be taken as conclusive proof that the persons excluded are not members, but courts may inquire whether the resolution of expulsion was the act of the church or of persons who were not the church, and who consequently had no right to excommunicate others. Bouldin v Alexander, 15 Wall. (U. S.) 131.

Minister. Powers v Bundy, 45 Neb. 208 involved rival claims of two ministers each claiming to be the regular pastor of the church, but it was held that the title of the claimants was an ecclesiastical matter to be determined by the proper church tribunals and that the civil courts could not interfere.

A minister was appointed to this local society according to the rules of the denomination. Subsequently charges were preferred against him, and a trial was had before a tribunal constituted according to the law of the denomination. The charges were sustained and the decision was confirmed by the Annual Conference, and the minister was thereupon discharged from the ministry and expelled from the church. It was held that the action of the church tribunal was binding on the civil courts, and that they had no power to review and revise such decision, and a perpetual injunction was granted restraining the minister and others in the local church from continuing to occupy the church property. Pounder v Ashe, 44 Neb. 672.

In Christ Church v Phillips, 5 Del. Ch. 429, the court declined to consider the question of the status of the rector of a Protestant Episcopal church. The relation of a rector to the church is to be determined by the ecclesiastical authority of the diocese.

Considering the status of a minister of the Methodist Church of Canada, the court, in Ash v Methodist Church, 27 Ont. App. Re. (Can.) 602 said that the "question whether a minister is acceptable or inefficient is peculiarly one for

the judgment of the Conference, and by the Discipline that body is made the sole judge on the subject."

Courts have no power to control the action of religious society in the employment or payment of a minister. Burrel v Associate Reformed Church, Seneca, 44 Barb. (N. Y.) 282.

"Courts of law do not interfere with the discipline of the church, or the punishment of ministers, by sentences of the ecclesiastical authorities." Reformed Protestant Dutch Church of Albany v Bradford, 8 Cow. (N. Y.) 509.

Noninterference. In the absence of a valid legal contract the courts are prohibited to compel the payment of a minister's salary or contributions for the support of the ministry or the church. In accordance with the principles of our institutions and the organic law, the courts refrain from interfering when the office or functions are purely ecclesiastical or spiritual, disconnected from any fixed emoluments, salary, or other temporalities. In such case there is no legal temporal right of which the civil courts can take jurisdiction. State ex rel McNeill v Bibb St. Ch. 84 Ala. 23.

Officers, Powers. When church officers undertake to make fundamental alterations in the organization and its plan of operation, such as affects the entire membership and their status, the civil courts should for themselves ascertain the authority of such officers when this is called in question by the proper parties and in proper proceedings. Especially will this be done when the authority challenged affects the integrity of the organization and dissolves the relationship theretofore existing among the members and the subordinate bodies of the church. Such an inquiry does not imply that civil courts will restrain or interfere with what a church tribunal may have done in excess of its authority. This might be considered as taking cognizance of an ecclesiastical matter; but they may declare the legal effect of such action upon the property rights of the members, and award the common property to that faction, which has rebelled against the wrongful authority sought to be exercised over them. Clark v Brown, 108 S. W. 421, 451 (Texas).

Courts of equity can only interfere with the action of such officers as have been placed by the corporation itself in the control of its affairs, unless either in excess of their discretion or in aggrieved cases of misconduct amounting to actual or constructive fraud. Cicotte v Anciaux, 53 Mich. 227.

Property Rights, Three Classes. Courts are in no way concerned with the transactions of ecclesiastical bodies except in so far as tangible rights of persons or property are affected. Questions relating to these are divided by the court into three classes; the first is where property, by the express terms of the grant, is devoted to the teaching, support, or spread of some specific form of religious doctrine or belief; the second, where it is held by, or in trust for, an independent congregation; and the third, where it is held by, or in trust for, a congregation or other association subordinate to some general church organization. Horsman v Allen, 129 Cal. 131.

The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies have been divided into three classes, namely, first, cases where the property which is the subject of controversy has been by deed or will, of the donor, or other instrument by which the property is held, by the express terms of the instrument, devoted to the teaching, support or spread of some specific form of religious doctrine or belief; second, to property held by a religious congregation which by the nature of its organization is strictly independent of other ecclesiastical associations, and so far as church government is concerned owes no fealty or obligation to any higher authority; third, to cases of property held by a religious congregation or ecclesiastical body, which is a subordinate member of some general church organization in which there are superior ecclesiastical tribunals, with general ultimate powers of control, more or less complete, in some supreme judicatory over the whole membership of that general organization. Lamb v Cain, 129 Ind. 486.

Property Rights. The personal and property rights of

churches and their members are civil, and of them the courts of the State have exclusive jurisdiction. Ecclesiastical courts have no jurisdiction to decide the rights of property and enforce its protection. Bridges v Wilson, 11 Heisk. (Tenn.) 458.

Protestant Episcopal Vestry. Considering a question relating to the appropriation of the funds of a Protestant Episcopal church in South Carolina, the court in Vestry and Wardens of Episcopal Church of Christ Church Parish v Barksdale, 1 Strobhart's Eq. Re. (S. C.) 199, said: "This court has no authority to interfere with or control the discretion of the vestry and wardens unless they transgress the limits of their charter. However unwisely they may exercise the power, they are responsible only to their constituents."

Quakers, Who Are Overseers. The question, Who are the overseers of a monthly meeting of Quakers? within the meaning of Massachusetts statute of 1822, chap. 92, is to be determined according to the discipline of that people, expounded by the general usages of those persons of most experience and judgment who have acted under it and acknowledged its authority. It was held that the decision of a Yearly Meeting as to the status of subordinate officers was conclusive on the court. Earle v Wood, 8 Cush. (Mass.) 431.

Religious Questions. When rights of property or civil rights as contradistinguished from ecclesiastical rights are involved, and such rights depend upon the religious faith or orthodoxy of citizens, or the rules, discipline, and practice of churches, or religious denominations, the courts of this State may hear evidence and determine judicially all such questions so far as they affect the rights of persons or religious denominations to property or civil rights. Grimes Executors v Harmon and others, 35 Ind. 198.

Courts have nothing immediately to do with religious societies so far as relates to their spiritual concerns, church government, discipline, faith, doctrines or modes of worship. These are matters which are to be left to the regulation of

their own peculiar tribunals and the ecclesiastical judicatories of each church. But courts have power to inquire into tenets openly and publicly expressed in reference to the place in which they are promulgated. Where a religious society is formed, a place of worship provided, and either by the will of the founder, the deed of trust through which the title is held, or by the charter of incorporation, a particular doctrine is to be preached in the place, and the latter is to be devoted to such particular doctrine and service, in such a case it is not in the power of the trustees of the congregation to depart from what is thus declared to be the object of the foundation or original formation of the institution, and teach new doctrines, and set up a new mode of worship there. At least this cannot be done without the consent of all the members of the church or congregation, because it would be an infraction of the will of the founder, be contrary to the spirit of the deed, or act of incorporation, and a perversion of the original object and design of its institution. Upon the complaint of any party aggrieved it may be made the duty of this court to inquire into the doctrines taught, with a view to ascertain whether there is such a departure, and to restrain and bring them back to the original principles of faith and doctrine if they will continue to worship in that place. Bowden v McLeod, 1 Edw. Ch. (N. Y.) 588.

The civil courts have no power, under the constitutions by which they exist, in this country, to intermeddle with religious matters purely as such, or to assume to settle for contending parties in churches any question of doctrine, discipline, or organization. These are things wholly apart and aside from the paths to which civil courts are accustomed, and the fields in which they are wont to work. But when church organizations buy and take title to property, then they enter the domain wherein civil courts control. In case any questions arise between contending parties or individuals as to such property, the title, right of possession, or use, that question must be decided by the civil court. It

must be decided like any other question, according to the contract on which the right is based. In order to ascertain the terms of that contract, and its true construction, it may become necessary to decide ecclesiastical or theological questions. If such question has not previously been decided by any tribunal within the church organization, the civil court will decide it according to the best lights attainable. If it has been already decided by any tribunal of the church appropriate for its decision under the contract, before the controversy arose on which the subsequent litigation was based, the civil court will give that decision very great, if not controlling, weight. To give weight to a rule laid down, or an interpretation rendered, by one of the parties to the controversy, after the controversy had arisen, would be abhorrent to every sense of right; it would be tantamount to making one party a judge in his own case against the other. The civil court in deciding a property right should honor the deliverances of the ecclesiastical court with the greatest attention and respect, but should not follow it unquestioningly in every case. If the civil court can see clearly and satisfactorily that the ecclesiastical court was in error, then it should say so and adjudge accordingly. It can do no less in view of its obligation to do justice between the parties. It cannot, in discharging its duty to decide on questions of property, hand over its conscience to the keeping of any church organization. The civil court cannot rightly evade the labor of investigating the questions that arise in such controversies, no matter how difficult or unfamiliar the questions may be, nor can it escape the responsibility no matter how embarrassing. It is proper that the civil court should act with diffidence, it is true, on such questions, yielding all respect due to the opinions of experts, as upon any subject on which expert evidence is required, but when it clearly appears that the ecclesiastical tribunal is wrong it should not be followed. If the civil court looks wholly to the ecclesiastical courts for the settlement of the principle, or, as the case may be, the facts on which the

right of property turns, then the former court abdicates its functions in favor of the latter. The civil court cannot invade the sacred inclosure of the church and assume to direct her teachings or the administration of her rites and ceremonies, or to hinder the imposition of her censures; but where property rights are involved the church, as to these, stands on the same plane with all other persons, natural and corporate, no higher, no lower. The law is over all. Landrith v Hudgins, 121 Tenn. 556.

While it may be true, that the religious belief of the grantor should not be inquired into for the purpose of ascertaining the nature and extent of the trust (Attorney General v Pearson, 7 Sim. (Eng. 708), yet it is clear, that the circumstances surrounding the making and accepting of the conveyance, may be inquired into for the purpose of ascertaining the object of the trust. First Constitutional Presbyterian Church v Congregational Society, 23 Iowa 567.

A question having arisen as to the right to control church property, it was held that while as a general proposition no man could be called in question for his religious belief, yet such an inquiry was constitutional in a case involving the title of church property depending on the belief, faith and doctrines of the society. The question in this case was not one of conscience, but of property, and therefore was a proper subject of judicial investigation. Kisor v Stancifer, Wright N. P. (Ohio) 323.

Courts deal with tangible rights, not with spiritual conceptions, unless they are incidental and necessarily involved in the determination of legal rights. Holm v Holm, 81 Wis. 374.

In Trustees of the Organ Meeting House, v Seaford, 1 Dev. Eq. (N. C.) 453, it was held that a court of equity would not, upon a dispute respecting the title to church property, decide a religious controversy between its members.

The Wisconsin Supreme Court has repeatedly disclaimed all right to determine mere questions of faith, doctrine, or

schism not necessarily involved in the enforcement of ascertained trusts or the determination of legal rights; and has also disclaimed any right to all interference with mere church discipline in the absence of any invasion of the legal rights of persons or property. Hellstern v Katzer, 103 Wis. 391.

Resulting Trust, Beneficiary. Courts of law will not enter into the examination or discussion of purely theological questions in order to ascertain the proper beneficiary of a resulting trust; but if the trust was created for the benefit of those adhering to a particular denomination, courts of law will accept and follow the determination of the proper ecclesiastical tribunals as to who are adhering and in subordination to that denomination. First Constitutional Presby. Church v Con. So. 23 Ia. 567.

Salary, Payment Cannot Be Enforced. A tariff prescribed by a bishop of the Roman Catholic Church may be binding on the conscience of those immediately affected by it, but resort cannot be had to courts of justice to enforce compliance. Discussing this question, the court said: "It appears from the eighth decree of the first provincial council, held in Baltimore in the year 1829, that the right reverend members of that body doubted whether the payment of the salary could be coerced in temporal courts; since they enjoined upon each bishop of the different dioceses of the United States to interdict every church to retain the whole or a part of the usual salary of the curate. The courts of justice of a State, in which the people recognized no power of taxing them, in any branch of the government, but that in which they are represented, cannot easily be persuaded to acknowledge the power of fixing sums to be drawn from the pockets of suitors by the mandate of the pope, or of any bishop appointed by him." Church of St. Francis, Pointe Coupee v Martin, 4 Rob. (La.) 62.

Schism. A court of equity will not attempt to enforce the particular faith or doctrines of either party, though their existence and nature may incidentally be involved in an

inquiry relative to the rights of the society. Rottman v Bartling, 22 Nebr. 375.

Separation. Civil courts in determining the question of legitimate succession, in cases where a separation has taken place in a voluntary religious society, will adopt its rules, and will enforce its policy in the spirit and to the effect for which it was designed. Harrison v Hoyle, 24 Ohio 254.

Temporalities. As regards the purely ecclesiastical or spiritual feature of the church, civil courts have steadily asserted their utter want of jurisdiction to hear and determine any controversy pertaining thereto. On the other hand, the civil courts have, without hesitation, exercised their jurisdiction to protect the temporalities of the church. Christian Church, Huntsville v Sommer, 43 So. (Ala.) 8.

Trusts. "A court of equity, under its general power and duty to see that trusts are not perverted, and upon the application of proper parties, and upon proper issues, may be obliged to inquire into the fact whether doctrines specially designated in a trust have been professed and promulgated, or forms of worship specially prescribed have been adopted or rejected. Not to decide whether such doctrines are sound, but whether the trustee has conscientiously done that without which he has no good right to hold the property, or to use it as he has done." Attorney General v Proprietors of Meeting House in Federal Street, 3 Gray (Mass.) 58.

"The jurisdiction of civil courts to adjudge any ecclesiastical matter must result as a mere incident to the determination of some property right. Thus, where property has been conveyed to some religious use, and that use is express and specific, and has been indicated by the donor and is set out in the conveyance, a trust arises, and a court of equity will, upon application of the beneficiaries, as it would in case of any other sort of valid trust, prevent any diversion of such property to any other than the purposes of the founders of the trust. In the case of a definite trust for the maintenance of a particular faith or form of worship, the court will even go so far as to prevent the diversion of the property by the

action of a majority of the beneficiaries; and, if there be a minority who adhere to the original principles, such minority will be held to comprise the exclusive beneficiaries, and entitled to the control and enjoyment of the property without interference by the unfaithful majority." Nance v Bushby, 91 Tenn. 303.

It is not the province of the courts of equity to determine mere questions of faith, doctrine, or schism not necessarily involved in the enforcement of ascertained trusts. Courts deal with tangible rights, not with spiritual conceptions, unless they are incidentally and necessarily involved in the determination of legal rights. Such trusts, when valid and so ascertained, must, of course, be enforced; but to call for equitable interference there must be such a real and substantial departure from the designated faith or doctrine as will be in contravention of such trust. Fadness v Braunborg, 73 Wis. 257.

The court has no right to institute an inquiry into the doctrines or mode of worship of any religious society, except such inquiry shall become absolutely necessary for the protection of trust property. If property is given to a particular denomination of Christians adhering to certain doctrines and forms of worship, and an attempt is made to pervert the property to any use, religious or otherwise, different from that to which the donor devoted it, it is the duty of the court to restore the property, and to protect it in its original use. To do this it frequently becomes necessary for the court to inquire into the peculiar tenets and doctrines of different societies claiming the property under the same trust. It is not the province of the court, in pursuing such an inquiry, to decide which doctrines are correct, but which society maintains the doctrines, to support and promulgate which the donor dedicated the property. German Evangelical Lutheran Church, Newark v Maschop, 10 N. J. Eq. 57.

When property is devoted to a specific doctrine the civil courts will, when necessary to protect the trust to which

the property has been devoted, inquire into the religious faith and practice of the parties claiming its use, and will see that it shall not be diverted from that trust. Bates v Houston, 66 Ga. 198.

Civil courts have power to consider questions relating to the alleged perversion of trusts by ecclesiastical bodies, and may inquire whether an ecclesiastical body has, in its action, transcended its powers or jurisdiction as a legislative, judicial, or executive body. Civil courts may look into and determine the question whether there has been, by the action of such a body, a substantial and evident departure in essential matters of faith, since such action would affect the title to the property held by the church for its uses. But such departure must be from essential faith, and must be obvious, and not reasonably open to controversy.

The general rule is that the doctrinal decisions and judicial constructions of a church constitution and legislation under it, of the highest judicatory of a church, are binding upon the civil courts, and the latter having no power to review or reverse them. Griggs v Middaugh, 10 Ohio Dec. 643.

United Brethren in Christ. In Bear v Heasley, 98 Mich. 279, considering the powers of the General Conference, the courts say that the General Conference is the highest judicatory of the church, and is intrusted with the general supervision of its affairs, both temporal and spiritual. In all matters, therefore, in which it has jurisdiction its judgments are binding upon the church, its clergy, and its members, and will not be reviewed by the civil courts.

The action of the highest ecclesiastical body of a religious sect, in adopting the report of a committee appointed to determine the validity of a constitutional amendment, and to submit it to a vote of its members, the amendment being adopted by the adoption of the report, is legislative, and not an adjudication binding on civil courts, within the rule concerning the binding effect of decisions by church tribunals on questions of faith or of ecclesiastical law or custom. The

action, then, of General Conference of 1889 of the church of the United Brethren in Christ in adopting the report of the committee of seven, to the effect that the revised confession of faith and constitution proposed by the General Conference of 1885 had been adopted and carried at the election in November, 1888, and should be so recognized upon the proclamation by the board of bishops, was purely legislative and open to review in the civil courts. Philomath College v Wyatt, 27 Or. 390.

Worship and Doctrine. Civil courts have no jurisdiction to determine mere ecclesiastical questions. The Maryland court, therefore, declined to entertain jurisdiction and determine questions relating to the alleged violation by a Lutheran congregation of provisions in its articles of incorporation, requiring the worship and service to be in the German language, and also requiring ministers to hold to the Augsburg Confession and the Symbolical Books of 1580. The determination of these questions was exclusively within the jurisdiction of the proper authorities of the denomination. Shaeffer v Klee, 100 Md. 264; see also Ecclesiastical Courts.

COMMUNITY SOCIETIES

Amana Society, 167.
Harmony Society, organization, 168.
Jehovah Presbytery of Zion, Preparation, Iowa, 170.
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Amana Society. This is a religious organization. The preamble to the constitution, which is the foundation of all the articles of incorporation, recites the emigration of the Community of True Inspiration from Germany to this country in 1843, for the sake of civil and religious liberty; its settlement at Ebenezer, near Buffalo, New York, and removal therefrom to Iowa County, according to the known will of God. The constitution provided, among other things, that agriculture and raising of cattle and other domestic animals, in connection with some manufacturing and trades, shall, under the blessing of God, form the means of sustenance of this society. The expenses of the society were to be paid from the income, and the surplus applied to the improvement of the common estate of the society, meeting-houses and schoolhouses, printing establishments, the care of aged members, the establishment of a business and safety fund, and to benevolent purposes in general.

Members of the society were entitled not only to support and care, but an annual sum for maintenance for themselves and their families, and the members relinquished to the society all claims for wages, and any interest in the property. No dividends were declared, and no money was given to any member, save to meet the bare necessities of the most economical existence. No compensation was made for work.

In 1906 the society consisted of about 1,750 members, and it owned about 26,225 acres of land in Iowa and Johnson Counties, of the estimated value of $40 an acre. There were seven villages and numerous buildings devoted to manufacture, besides a large number of dwelling houses. The society owned stock estimated to be worth $70,000, and its annual income was about $80,000.

In a proceeding against the society, charging it with wrongful exercise of corporate powers, it was held that the corporation was a religious corporation, although carrying on various operations of a secular character, and that its members had a right to establish and maintain the community of property, and that the corporation could not be dissolved on the application of the attorney-general. State of Iowa v Amana Society, 132 Ia. 304.

Harmony Society, Organization. The society was organized by articles of association made between several persons in 1821, and by other articles in 1827. According to the latter articles, the society was formed "on the basis of Christian fellowship, and the principles of which being faithfully derived from the Sacred Scriptures, include the government of the patriarchal age, united to the community of property, adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercise of those affections, and to the practice of those virtues which are essential to the happiness of man in time and throughout eternity." The associates conveyed to the leader, George Rapp, and others, all their property as a free gift or donation, for the benefit and use of the association or community. The associates agreed to obey the laws of the society. It was further agreed that any associate who might desire to withdraw should be at liberty to do so, but should not claim compensation for services. Rapp and others, constituting the leaders, agreed to supply the associates with the necessaries of life, including clothing, meat, drink, lodging, etc., for themselves and their families, con-

tinuing during life, in sickness as well as in health, and including medical attendance. But if any person should not be able to comply with the regulations of the society, he might withdraw, and would be entitled to receive the value of the property turned over to the association by him without interest.

By an earlier agreement, 1805, the signers transferred to George Rapp and his associates, all the property owned by the associates as a free gift, or donation, for the benefit of the community in Harmony, Pennsylvania, renouncing all their interest in the property, and making it subject to the jurisdiction of the superintendent of the community to the same extent as if they had never owned it. Withdrawals were permitted, but without the right to claim property given to the society. In each of these articles Rapp and other leaders adopted the signers of the documents as members of the society, with the privilege of being present at all religious meetings. The agreement of 1805 contained substantially the same provisions as the agreement of 1827. A similar agreement was made in 1821.

The court said the association was not a partnership, and that the agreements were valid and not repugnant to any principle of modern law. In this action, brought by a personal representative of one of the associates, against Rapp and others for an accounting, it was alleged that because the subscriber might, under the terms of the articles, withdraw the contributions made by him, his personal representatives had the same right. The right to withdraw was not transmissible; and even if it were transmissible, the subscriber's release on joining the association would be a bar to any claim by his heirs or next of kin. Schriber v Rapp, 5 Watts (Pa.) 351.

The society was composed at first of Germans, who emigrated to the United States in 1805, under the leadership of George Rapp. The members were associated and combined by the common belief that the government of the patriarchal age, united to the community of property, adopted

in the days of the apostles, would conduce to promote their temporal and eternal happiness. The founders of the society surrendered all their property to the association for the common benefit. The society was settled originally in Pennsylvania, was removed in 1814 and 1815 to Indiana, and again in 1825 to Economy, in Pennsylvania.

The organic law of the society in regard to their property is contained in two sections of the articles of association, adopted in 1827 by the associates, of whom the plaintiff was one. They are as follows:

"All the property of the society, real, personal, and mixed in law or equity, and howsoever contributed and acquired, shall be deemed, now and forever, joint and indivisible stock; each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money, or labor, and the same rule shall apply to all future contributions, whatever they may be.

"Should any individual withdraw from the society, or depart this life, neither he, in the one case, nor his representatives, in the latter, shall be entitled to demand an account of said contributions, whether in land, goods, money, or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and, if any, what allowance shall be made to such member, or his representative, as a donation."

Baker et al v Nachtrieb, 19 How. (U. S.) 126, plaintiff settled with the community and withdrew receiving a donation, which was authorized by the plan of government. He sought by this suit to recover a share of the property, but it was held that his previous settlement, not having been impeached, was conclusive, and that he could not recover.

For other cases involving various aspects of the Harmony Society see Schwartz v Duss, 93 Fed. 529, 187 U. S. 8, Speidel v Henrici, 120 U. S. 377.

Jehovah Presbytery of Zion, Preparation, Iowa. This so-

ciety, which embodies the community idea, is noted in the article on Mormons.

Oneida Community. This community was formed at Oneida, New York, in the year 1848. Plaintiff at the age of four years became a provisional member of the community, and on reaching his majority he formally assented to its articles of covenant and remained a member until 1880, when he left the service of the community and engaged in other business. The administrative counsel of the community construed his conduct as a withdrawal and adopted a resolution accordingly, which was confirmed by the community at a family meeting. In 1884 the plaintiff began an action against the community and a new corporation formed therefrom to procure a judgment, declaring that he was still a member of the community, and entitled to share in its property, and also for an accounting and a division of the property among the members. It was held that he could not maintain the action. On signing the articles the property of each subscriber immediately became an inseparable part of the community's capital, and while no one was compelled to toil, yet labor was enjoined as a religious duty, and the earnings of all were mingled in the common treasury. Every member was at liberty to withdraw at any time upon his own motion, but he could not take with him or demand as a right any share of the joint property; all must be left intact for the use and enjoyment of those who remained loyal to the purposes of the organization. An account was kept of the property contributed by a member upon his admission, and if he withdrew, it was the practice to refund it or its equivalent in value without interest or increase. This was not regarded as a liability, and the time and manner of refunding rested in the discretion of the community, through the voice of its members, but the education, subsistence, clothing, and other necessaries of life furnished them and their children were to be received as just equivalents for all their labor and services, and no claim for wages was to be made

by any withdrawing member. There was a mutual stipulation that no member or his heirs, executors, administrators, or assigns would ever bring any action, either at law or in equity, or other process or proceeding for wages or other compensation for services, nor for the recovery of any property contributed at any time, or make any claim or demand therefor of any kind or nature whatsoever. Burt v Oneida Community, 137 N. Y. 346.

Order of St. Benedict. This order was founded by St. Benedict in Italy about the year A. D. 525. A civil corporation known as the order of St. Benedict of New Jersey was chartered in that State. Augustin Wirth became a member of the order at the monastery of St. Vincent in Pennsylvania in 1852. In 1887 Wirth transferred his stability from the abbey of St. Benedict in Kansas to the abbey of St. Mary in Newark, New Jersey, and therefore to the order of St. Benedict of New Jersey. Wirth died at Springfield, Minnesota, December 19, 1901. It was held that he was a member of the New Jersey order at the time of his death. This action was brought by the New Jersey corporation to recover certain property held by Wirth at the time of his death, and which it was claimed belonged to the corporation by virtue of the vow of poverty taken by Wirth when he became a member of the corporation. Under this vow Wirth could not hold any property as his own; he was entitled only to a decent support as a member of the corporation, and by becoming a member of it he agreed to give it everything which he then had, and everything which he might thereafter acquire. During his later years Wirth wrote and published several books under contracts for royalty or otherwise, and performed other services for which he received compensation, and he was allowed by the order to expend the sums received for his books for charitable purposes as the agent of the order. At the time of his death there was money on hand and also copyrights and other property. It was held that all the property acquired by him and money not disposed of at his death belonged to the order of St.

Benedict of New Jersey, and not to his administrator, nor to his heirs or next of kin, and that an action could be maintained by the order to recover this property. The court also held that the contract included in the vow of poverty was not void as alleged on the ground of public policy but was a valid contract. By it all that he acquired during his lifetime became the property of the order. When he died everything that he left belonged to the order, and though the title to it stood in his name that fact did not make it the property of his heirs. Order of St. Benedict of New Jersey v Steinhauser, 179 Fed. (Minn.) 137. See same case in 34 S. Ct. (U. S. Sup.) 932.

The judgment in this case was reversed by the Circuit Court of Appeals (Steinhauser v Order of St. Benedict, 194 Fed. 289, March, 1912) and it was there held that the canon law is of no intrinsic authority outside the jurisdiction of its origin or countries observing that system of law, except as it is sanctioned by statute or immemorial usage; that in this country it is the inherent and natural right of every person to acquire and hold property in his own right and this right must be maintained by the state; that the legal title to a possession of the property in controversy was in Wirth at the time of his death, and under the statute of Minnesota would descend to his legal heirs, and that the order of St. Benedict was not entitled to such property.

Various questions relating to Father Wirth's membership in the order, the rights of his administrator and of the publishers of his books, including also the rights of the order itself were considered in Benziger v Steinhauser, 154 Fed. 151, where the character of the order is again described.

Separatists. In 1817 members of an association called Separatists emigrated from Württemberg, in Germany, to the United States. In Germany they had been persecuted on account of their religion. In that country they sought to establish themselves by purchasing land, but they found that the laws would not allow them this privilege. Disheartened by persecution and injustice, they came to this

country in pursuit of civil and religious liberty. They arrived in Philadelphia in a destitute condition, and were aided by the Quakers in Philadelphia and London, and enabled to travel to Ohio, where they settled. A large majority of the society consisted of women and children. While the society was in Philadelphia they purchased, in the name of the chief member of the society, 5,500 acres of land in Zoar, Ohio. They found the property practically a wilderness. They were economical and industrious. In April, 1819, the society prepared articles of association, signed by 53 males and 104 females. Among other things the articles provided for a community of property. The members renounced all individual ownership of property. The business was to be conducted by three trustees elected annually, and members who might leave the society were to receive no compensation for labor or property, except by a vote of the majority. Amended articles of association were formed in 1824. The articles contained numerous details relative to the ownership of the property, and the administration of the society's affairs. In 1832 the society was incorporated by the law of Ohio.

At first there was a division of the property, each family selecting as many acres as it could reasonably improve, but it was abandoned before the first articles of association were adopted. "It appears that by great industry, economy, and good management and energy, the settlement at Zoar has prospered more than any part of the surrounding country. It surpasses probably all other neighborhoods in the State in the neatness and productiveness of its agriculture, in the mechanic arts, and in manufacturing by machinery. The value of the property is now (1852) estimated to be more than a million of dollars. This is a most extraordinary advance by the labor of that community, about two thirds of which consists of females."

An action was commenced by heirs of one of the original proprietors for a partition of the property, but it was held that all individual rights of property became merged in the

title of the association. There was no descent of property in the ordinary sense upon the death of a member of the community. If members separate themselves from the society, their interest in the property ceases, and new members that may be admitted under the articles enjoy the advantages common to all. The action for partition could not be maintained. Goesele v Bimeler, 14 How. (U. S.) 589.

For a later case involving the same subject, and with the same result, see Gasely v Separatists Society of Zoar, 13 Ohio St. 144.

Shakers. See the separate article on this topic below.

CONFESSION OF FAITH

Defined, 176.

Defined. A confession of faith is simply the construction which a particular religious organization gives to the Holy Book. Boyles v Roberts, 222 Mo. 613.

CONGREGATION

Public, defined, 177.
Defined, 177.
Government, 178.

Public, Defined. What is necessary to constitute a congregation has not been very strictly defined, but it has been commonly considered that "where two or three are gathered together" there is the sufficient number to constitute a congregation. Barnes v Shore, 1 Robertson's Eccles. Rep. (Eng.) 382.

Followed in Freeland v Neale, 1 Robt. Eccles. (Eng.) 648, where proceedings were taken against a clergyman for publicly reading prayers, preaching, and administering the sacrament of the Lord's Supper in an unconsecrated building called Sackville College Chapel, without a license of, and contrary to the inhibition of the bishop of the diocese. It was claimed in defense that the reading of prayers in the college chapel, was not a public reading, for the reason that the members of the college constituted a private family or household. But it also appeared that strangers were sometimes present at chapel service. The court said it was impossible to say that the assemblage was a private family, and under the circumstances the reading of prayers was a public reading and contrary to the rules.

Defined. "The congregation, before the sale of pews, consists of those who have in fact united together, and by mutual agreement under seal, or by any less formal mode, by the subscription of papers or otherwise, have agreed to form a religious society, and have contributed, or bound themselves to contribute, toward the cost of buildings and the support of public worship." "Where pews have been sold or have been assigned and set apart, to be held in

severalty, this is conclusive evidence that such pewholders are members of the congregation." Attorney General v Proprietors of Federal Street Meeting House in Boston, 3 Gray (Mass.) 1, 44.

Government. An independent congregation may be governed by the majority of its own membership, but a congregation connected with any given denomination must submit to the system of discipline peculiar to the body with which it is connected. Krecker v Shirey, 163 Pa. 534.

CONGREGATIONAL CHURCH

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Definition. "The term 'Congregationalist,' as used to designate a religious sect, is not unknown in England; but in England, Congregationalists and Independents are now and always have been one and the same denomination; and the two terms are there used indifferently, to signify the same sect and the same system of ecclesiastical polity." "At the time of the first emigration to New England the colonists were Congregational and independent in their opinions." As early as 1640 the churches in New England were denominated Congregational, and were not known as Independent. Congregationalists and Independents were in their origin the same religious sect; they sprung in the commencement from the same principle, to wit, that each church and congregation were independent of all others. It was upon this fundamental principle of church polity and discipline that Congregationalists separated from Presbyterians and Episcopalians, and formed themselves into a new and distinct denomination, and not on account of any difference in matters of faith and doctrine, for in doctrine they agreed substantially with the other Protestants. "They held that the Scriptures were the only standard and test of

religious truth; that no church was bound by any general creed or confession of faith, which might be set forth as an exposition of the doctrines taught in the Scriptures; that it was the right and duty of each church, and of each individual to resort directly to the Scriptures as the source of Divine truth; that each church was at liberty to settle its own articles of belief, provided they were founded on the Scriptures, and acknowledged Christ as head and Master." "Each church had the right to choose and change its own standard of religious character and doctrine, for membership and fellowship." "The system of fellowships and associations among churches and ministers appears to have been unknown for some years after the first settlement of New England, but began to come into use as early as 1631." "The ministers united in associations; they assembled in councils, and synods, and recommended with all the authority of united opinion in a body of men who then had the real control in matters civil as well as religious, rules of discipline and articles of faith." From the opinion of Judge Perley in Attorney General ex rel Abbot v Dublin, 38 N. H. 459.

"A Congregational church is a voluntary association of Christians united for discipline and worship, connected with, and forming a part of some religious society, having a legal existence." Anderson v Brock, 3 Me. 243.

Described. The church is composed of those persons, being members of such parish or religious society, who unite themselves together for the purpose of celebrating the Lord's Supper. They may avail themselves of their union and association, for other purposes of mutual support and edification in piety and morality, or otherwise, according to such terms of church covenant as they may think it expedient to adopt. But such other purposes are not essential to their existence and character as a church. The body of communicants gathered into church order, according to the established usage in any town, parish, precinct, or religious society established according to law, and actually connected

and associated therewith, for religious purposes for the time being, is to be considered as the church of such society as to all questions of property depending upon that relation. Stebbins v Jennings, 10 Pick. (Mass.) 172.

A parish and church are bodies with different powers. A regularly gathered Congregational church is composed of a number of persons, associated by a covenant or agreement of church fellowship, principally for the purpose of celebrating the rites of the Supper and of baptism. They elect deacons; and the minister of the parish is also admitted a member. The deacons are made a corporation, to hold property for the use of the church, and they are accountable to the members. The members of a church are generally inhabitants of the parish; but this inhabitancy is not a necessary qualification for a church member. This body has no power to contract with or to settle a minister, that power residing wholly in the parish, of which the members of the church, who are inhabitants, are a part. The parish, when the ministerial office is vacant, from an ancient and respectable usage, wait until the church have made choice of a minister, and have requested the concurrence of the parish. If the parish concur, then a contract of settlement is made wholly between the parish and the minister, and is obligatory only on them. The proceedings of the church, so far as they relate to the settlement, are only a nomination of a minister to the parish, which may be concurred in or rejected. This view of the subject must be confined to parishes created by the general laws of the land, and not extended to parishes incorporated specially with different powers. Burr v First Parish in Sandwich, 9 Mass. Re. 276.

The character, powers, and duties of churches gathered within the various Congregational parishes and religious societies in this commonwealth have been definitely known and understood from the earliest period of its existence. Indeed, the main object of the first settlers of the country, in their emigration hither, was to manage their religious

affairs in their own way. The earliest thing they established was a congregation and Congregational church. The legal character of the Church was well understood. It was a body of persons, members of a Congregational or other religious society, established for the promotion and support of public worship, which body was set apart from the rest of the society, for peculiar religious observances, for the celebration of the Lord's Supper, and for mutual edification. They were usually formed and regulated by a covenant, or articles of agreement, which each separate church formed for itself, sometimes with the advice of other churches, by which they mutually stipulated to assist each other, by advice and counsel, in pursuing a Christian course of life, to submit to proper censure and discipline for any deviation therefrom, and, generally, to promote the essential growth and welfare of each other. They might consist of all or only a portion of the adult members of the congregation with which they were connected. The earliest statutes of the colony recognize the churches, not as corporations, or even as quasi corporations, but each as an aggregate body of Christians in each religious society, collected together and united by covenant and by usage and recognized by law; and these statutes provide that their rights and usages shall be respected, and that they shall be encouraged in the exercise and maintenance of the same. Charters and General Laws of the Colony and Province of Massachusetts Bay, 100. Weld v May, 9 Cush. (Mass.) 181; see also North Carolina Christian Conference v Allen, 156 N. C. 524.

"A Congregational church is, by the institution of Christ, a part of the militant visible church, consisting of a company of saints by calling, united into one body by a holy covenant, for the public worship of God and the mutual edification one of another, in the fellowship of the Lord Jesus." Cambridge Platform quoted in Holt v Downs, 58 N. H. 170, where it was further said that what the Congregationalists established in Massachusetts was, not the reign of the parish over the church, but the reign of the church over the

parish and every other civil institution. "We cannot but take judicial notice of the historical fact that American Congregationalism has always been a vehement and uncompromising protest against a union of a church and a secular body, not revocable at the pleasure of the church."

Organization, General Principles. The fundamental idea of Congregational polity under which the churches of New England were gathered, was that the particular estates of visible saints who under Christ, their head, are statedly joined together for ordinary communion with one another in all the ordinances of Christ, are particular churches, having right to choose their own officers, and discipline, admonish, and excommunicate scandalous and offending members. Gibbs v Gilead Ecclesiastical Society, 38 Conn. 153.

Advisory Councils. The system of advisory councils is an integral and vital part of the polity of the Congregational Church, and in this case is expressly recognized by the constitution of the local church. Arthur v Norfield Congregational Church, 73 Conn. 718.

Deacons, Status. In Boutell v Cowdin, 9 Mass. 254, it was held that the deacons of the society did not constitute a corporation for the purpose of receiving and managing a fund for the support of a minister, and that a promissory note given to the deacons in aid of a fund for the support of a minister of a parish was void as without consideration.

Home Missionary Society. The testatrix made a bequest to the Home Missionary Society of America. There was no society bearing the name mentioned in the will. The question in this case involved the identity of the society intended as the object of her bounty. The legacy was claimed by the Congregational Home Missionary Society. This society was organized in New York in 1871, under the name of the American Home Missionary Society. Originally, this association, then unincorporated, beginning in 1826, had been composed of representatives or members of four church bodies, namely, the Congregational, Dutch Reformed, Presbyterian, and Associate Reformed; but in 1837 the Presby-

terian Church divided into two branches, known as Old and New Schools, and only the New-School branch continued the connection with the mission work carried on by the American Home Missionary Society. The local Presbyterian church to which the testatrix belonged for many years made contributions to the American Home Missionary Society.

A will giving a legacy to the American Home Missionary Society was made in 1892, and another in 1896, but it did not appear that the testatrix knew that in 1893 the name of the society had been changed. The court held that the Congregational Home Missionary Society, being the corporate successor of the society named in the will, was entitled to the legacy. Congregational Home Missionary Society v Van Arsdale, 58 N. J. Eq. 293.

Minister, Mode of Settlement. From the ancient and immemorial usage of Congregational churches, before the parish settle a minister he preaches with them as a candidate for the settlement, with the intent of declaring his religious faith, that his hearers may judge whether they approve his theological tenets. And if he is afterward settled, it is understood that the greater part of the parish and the minister agree in their religious sentiments and opinions. Burr v Sandwich, 9 Mass. 276.

Minister, Contract of Settlement. In a contract by which a minister is settled over a Congregational parish, it seems that a stipulation that the contract shall be binding on the parish until the minister shall be dismissed by a mutual ecclesiastical council, which shall be called for that purpose by a majority of the church belonging to the parish, is not illegal; but if it be illegal and void, still the parish cannot dissolve the contract at their own pleasure, without some misconduct on the part of the minister. Peckham v North Parish, Haverhill, 16 Pick. (Mass.) 274.

An action to recover the income of the parish fund will be found reported under same title in 19 Pick. (Mass.) 559. It was held that the plaintiff was not entitled to recover.

Missions. Testatrix gave certain funds to be used for carrying on women's work in foreign lands and to women's work in home lands "not Tank Home." The bequest for work in home lands was held payable to the Women's Home Missionary Union of the Congregational Churches of Michigan. The bequest for foreign lands was held payable to the Women's Board of Missions of the Interior. Both societies were organized under the auspices of the Congregational Church.

There was also a bequest for Protestant Missionary Work among poor colored people of the South. This bequest was held payable to the American Missionary Association. Gilchrist v Corliss, 155 Mich. 126.

Platform. Congregationalists have their code, called the Platform of Church Discipline, agreed upon at Cambridge in 1648, and afterward ratified in 1680. They have also their confession of faith, in substance agreeing with the Presbyterian and the Episcopal, and differing little from the Romish. Among Congregationalists each church is independent if it chooses to be so. Each chooses and expels its members and its officers, and the sentence is final. Each Congregational church acknowledged no superior on earth. Muzzy v Wilkins, Smith's N. H. Rep. 1.

Republican Government. The distinguishing feature of the churches of the Congregational denomination is that each is a complete and independent republic, and adopts its own laws, its own constructions of the Scripture doctrine, its own church polity; and in none of these respects is it subject to any control by any other or more comprehensive organization. Cape v Plymouth Congregational Church, 130 Wis. 174.

Saybrook Platform. In order to establish a more energetic government the General Assembly provided for the calling of a synod at Saybrook. The synod met pursuant to the act, and adopted a confession of faith, heads of government, and articles of discipline, together constituting the platform, and the object and purpose, it thus appears, was to

confederate the churches into a permanent establishment, and provide for a good and regular issue in cases of difficulty or ecclesiastical discipline, the regular introduction of candidates into the ministry, and the promotion of order and harmony among the ministers and churches. This was not simply a constitution, but an instrument for the confederation of the churches under standing authoritative councils, for the perfection of discipline, the easing of difficulties, the preservation of the faith, and the rendering of assistance on all occasions ecclesiastical. Gibbs v Gilead Ecclesiastical Society, 38 Conn. 153.

CONSCIENCE

Right inalienable, 187.
Rule, 187.

Right Inalienable. The rights of conscience are inalienable. Mere civil or political rights could be surrendered to the government, or to society in order to secure the protection of other rights; but the rights of conscience could not be thus surrendered; nor could society or government have any claim or right to assume to take them away, or to interfere or intermeddle with them, except so far as to protect society against any acts or administrations of one sect or persuasion, which might tend to disturb the public peace or affect the rights of others. But when the rights of conscience come in question, the right of worshiping God either privately or publicly; the right of making profession of any religion, privately or publicly, the entertaining of any religious sentiments and the proper expression, maintenance and vindication of them whether in private or in public; the right of belonging to any persuasion, which word, in the sense in which it is here used, means a creed or belief, or a sect or party adhering to a creed or system of opinions, the belonging to any sect or denomination entertaining and professing and in a proper way striving to maintain and to teach both privately and publicly any religious creed or belief whatsoever, these rights are all held to be unalienable, are secured and guaranteed by the constitution. Hale v Everett, 53 N. H. 1.

Rule. In this land of liberty, civil and religious, conscience is subject to no human law; its rights are not to be invaded, or even questioned, so long as its dictates are obeyed, consistently with the harmony, good order, and

peace of the community. With us modes of faith and worship must always be numerous and variant; and it is not the province of either branch of the government to control or restrain them when they appear sincere and harmless. Waite v Merrill, et al, 4 Me. 90.

CONSTITUTION

Defined, effect, 189.

Defined, Effect. The constitution is the contract of association in churches and all unincorporated societies. It is binding upon all portions of the church, as well as all judicatories thereof. It is the supreme law of the church and must be adhered to by every part thereof. Boyles v Roberts, 222 Mo. 613.

CUMBERLAND PRESBYTERIAN CHURCH

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History. The Cumberland Presbyterian Church was organized in Dickson County, Tennessee, February 4, 1810. It was the outgrowth of the great revival of 1800, one of the most powerful revivals that this country has ever witnessed. The founders of the church were Finis Ewing, Samuel King, and Samuel McAdow. They were ministers in what is now commonly known as the Northern Presbyterian Church, but they rejected the doctrine of election and reprobation as taught in the Westminster Confession of Faith. These three ministers, on the date above referred to, met in a log cabin, and organized an independent presbytery, calling it the Cumberland Presbytery, and this was the beginning of the Cumberland Presbyterian Church. In three years the church had become sufficiently large to form three presbyteries, and these presbyteries in 1813 met and constituted a synod. This synod, in a paper called the "Brief Statement," set forth the points wherein the Cumberland Presbyterian dissented from the Westminster Confession. They were as follows: "1. That there are no eternal reprobates. 2. That Christ died not for a part only, but for all mankind. 3. That all infants dying in infancy are saved through Christ and the sanctification of the Spirit. 4. That the spirit of God operates on the world, or as coextensively as Christ has

made atonement, in such a manner as to leave all men inexcusable."

In 1814 the synod revised the Westminster Confession of Faith in the particulars above referred to. Subsequently the General Assembly of the Cumberland Presbyterian Church was formed; and in 1829 this judicature made such changes in the form of government as were demanded by the formation of this church court.

The Cumberland Presbyterian Church grew in numbers and in influence, especially in the State in which it was organized, and adjacent States, but its territory was not limited to these. In 1906 it contained 17 synods, 114 presbyteries, and a total membership of nearly 200,000.

In 1903 committees were appointed by this denomination and by the regular Presbyterians to consider the question of a union of the two denominations. This plan of union was consummated by the adoption of the report on union by the General Assembly held in Decatur, Ill., in May, 1906. This General Assembly thereupon adjourned to meet thereafter only as a component part of the General Assembly of the Northern Presbyterian Church. This plan of union had previously been adopted by a vote of the presbyteries, 60 voting in favor, and 51 against.

The dissenting members of the Decatur Assembly protested against the action of the majority and declared themselves to be the true General Assembly of the Cumberland Presbyterian Church. Mack v Kime, 129 Ga. 1. See also Pres. Ch. v Cumberland Ch., 245 Ill. 74., Landrith v Hudgins, 121 Tenn. 556, Boyles v Roberts, 222 Mo. 636, Fussell v Hail, 233 Ill. 73, Brown v Clark, 102 Tex. 323.

Courts. The constitution of the church creates certain church courts. It declares that the government of the church is to be exercised in some certain and definite form, and by various courts, in regular gradation. These courts are denominated church sessions, presbyteries, synods, and the General Assembly. The jurisdiction of each of these courts is defined in the constitution. The church session

has jurisdiction of a single church. The presbytery has jurisdiction over the church sessions within a prescribed district. The synod has jurisdiction over three or more presbyteries. And the General Assembly has jurisdiction over such matters as concern the whole church. Every court is declared to have the right to resolve questions of doctrine and discipline seriously and reasonably proposed. And although each court exercises exclusive and original jurisdiction over all matters especially belonging to it, the lower courts are subject to the review and control of the higher courts in regular gradation. The General Assembly has jurisdiction to review and decide all references and complaints regularly brought before it from the inferior courts, and to decide all questions respecting doctrine and discipline, and to receive under its jurisdiction other ecclesiastical bodies whose organization is conformed to the doctrine and order of this church. Mack v Kime, 129 Ga. 1.

General Assembly. The General Assembly is the highest court of the church and represents, in one body, all the particular churches thereof, and constitutes the bond of union, peace, correspondence, and mutual confidence among all its churches and courts. It must meet at least every two years. It consists of commissioners from several presbyteries according to a ratio specified in the constitution. Each presbytery is entitled to be represented by one minister and one ruling elder. Landrith v Hudgins, 121 Tenn. 556.

General Assembly, Powers. Certain members of this society brought an action against certain other members claiming to be adherents of the Northern Presbyterian Church in consequence of the action of the Decatur Assembly in adopting the proposed plan of union. The court held that on the question as to whether there should be a reunion of the Cumberland Presbyterian Church and the Northern Presbyterian Church it was for the determination of the General Assembly whether these two organizations were in accord with each other as to doctrine and order. The question was

decided by the General Assembly which was the only tribunal having jurisdiction, and the civil court would not attempt to revise the conclusions and findings of the General Assembly. The General Assembly determined that there was no substantial difference between the doctrines and teachings of the Cumberland Presbyterian and the Northern Presbyterian Church, and therefore the General Assembly might, according to its sound judgment, determine the further question whether it was expedient for the two denominations to form a union. The reunion of the two churches was valid, and those members of the local church who adhered to the new organization were entitled to the possession and control of the church property. Mack v Kime, 129 Ga. 1.

Name, Doctrines, Etc., How Changed. The only way under section 60 of its constitution by which the General Assembly of the Cumberland Presbyterian Church would change the name of that organization, or change its doctrines or faith, was by proper amendments offered as to their own confession of faith and organic law. It has no inherent power to wipe out the name "Cumberland Presbyterian Church," until by a two-thirds vote of the Assembly it has asked its presbyteries, by way of a proposed amendment, whether or not they will so permit. At all events, the people of the church were entitled to have the whole question submitted to the presbyteries. We do not think that the General Assembly had power to determine this question without a submission to the presbytery. There is nothing in any part of the constitution of the church which confers this power upon the Assembly, and by section 25 that body is denied all powers not expressly conferred. Boyles v Roberts, 222 Mo. 613.

Presbytery. A presbytery consists of all the ordained ministers and one ruling elder from each church within a certain district. Landrith v Hudgins, 121 Tenn. 556.

Session. The session is the governing agency of the congregation. The session, so far as composed of elders, is

created by the voice of the people who compose the congregation; and by the combined voice of the presbytery, the session, and the people, the minister is attached to the congregation. Thus the session, composed of the leaders and the minister, is created by the joint action of the individual congregation, and the presbytery. The congregation is represented in the presbytery by an elder whom the session elects to that body. So far as it may be thought necessary, upon any subject, to obtain the voice or know the will of the congregation, this is accomplished by the session bringing the matter before the congregation, and in some proper form obtaining the sense of that body. The church session consists of the minister in charge and two or more ruling elders of a particular church. Landrith v Hudgins, 121 Tenn. 556.

Synod. The synod consists of all the ordained ministers and one ruling elder from each church in a district comprising at least three presbyteries. Landrith v Hudgins, 121 Tenn. 556.

Unincorporated Society, Liability. A note was given by individuals who were, in fact, trustees of the society, and gave the note in behalf of the society; but the society was unincorporated, and was therefore not liable on the instrument. Phœnix Insurance Company v Burkett, 72 Mo. App. 1.

Union with Presbyterian Church. In 1903 negotiations were instituted between the Cumberland Presbyterian Church and the regular Presbyterian Church for the reunion and union of the two bodies under the name and style of the Presbyterian Church in the United States of America. The plan of union was prepared by a joint committee of the two denominations, and was submitted to the presbyteries thereof, and was approved by a majority of such presbyteries, taking effect in 1906. By this plan the Cumberland Presbyterian Church accepted the revised confession of faith adopted by the Presbyterian Church in 1903, and the General Assembly of each denomination adopted appropriate

resolutions in 1906 declaring the result of the vote and that the union of the two denominations had become effective. A large minority of the Cumberland General Assembly of 1906 protested against the union, and in several States litigation arose concerning the effect of the alleged union on the title to church property. In the following States the validity of the reunion and union was sustained, namely: Georgia, Mack v Kime, 129 Ga. 1; Texas, Brown v Clark, 102 Tex. 323; Kentucky, Wallace v Hughes, 131 Ky. 445; California, Permanent Committee of Missions v Pacific Synod, 157 Cal. 105; Indiana, Ramsey v Hicks, 44 Ind. App. 490; Illinois, Presby. Ch. of Lincoln v Cumb. Pres. Ch., 245 Ill. 74, Pleasant Grove Congregation v Riley, 248 Ill. 604; Arkansas, Sanders v Baggerly, 131 S. W. 49; Hayes v Manning, 172 S. W. (Mo.) 897, and Alabama, Harris v Crosby, 55 So. 231; also Morgan v Gabard, 58 So. (Ala.) 902; Oklahoma, First Pres. Ch. Wagoner v Cumberland Pres. Ch., Wagoner, 126 P. 197. In the following States the union was declared invalid: Missouri, Boyles v Roberts, 222 Mo. 613; Tennessee, Landrith v Hudgins, 121 Tenn. 556. The opinions in the foregoing cases include much historical matter and also interesting discussions of Presbyterian forms of government, confessions of faith, and doctrinal standards, and the relations between civil judicial tribunals and church judicatories in determining various ecclesiastical questions. The eleven cases above cited present a comprehensive study and review of numerous problems affecting the Presbyterian family of churches. In Fussell v Hail, 233 Ill. 73 the court considered the union of the two churches, but declined to entertain jurisdiction of the action on the ground that it involved only an ecclesiastical question which was not subject to the supervision of civil courts.

The union was sustained in Barkley v Hayes, 208 F. 319 (Mo.), August, 1913. It was there held that the united church became vested with all property rights of each constituent; see also Sharp v Bonham, 213 F. (Tenn.) 660. Helm v Zarecor, 213 Fed. (Tenn.) 648.

DEACONS

Baptist Church, 196.
Ecclesiastical officer, 196.

Baptist Church. Deacons of a Baptist Church are ex officio trustees, and have charge and control of its property, records, etc. Fulbright v Higginbotham, 133 Mo. 668.

Ecclesiastical Officer. The office of deacon "is an office not created or expressly authorized by State law, but is one created by an unincorporated ecclesiastical body, and filled by election by a body which possesses no corporate powers or functions. Over the office, and over the election to it, the courts of the State have no authority whatever; they are controlled exclusively by an unincorporated membership in an organization whose unincorporated tribunals decide for themselves, and decide finally upon the election." Attorney-General ex rel. Ter Vree v Geerlings, 55 Mich. 562.

DENOMINATION

Defined, 197.

Defined. Persuasion refers to the opinion, conviction or belief which occasions the separation. Sect means the party persuaded, or who, entertaining opinions different from the rest, are cut off, or separated from the main body. Denomination is the next step in the process. It signifies the name the sect acquires when actually separated, and which is generally descriptive of the principal points in difference. Muzzy v Wilkins, Smith's N. H. Rep. 1.

DISCIPLES OF CHRIST

Government, 198.
Meeting, powers of minority, 198.

Government. Every Disciples congregation is practically independent; other congregations of the same denomination may advise, but there is no superior tribunal of appeal. Alexander Campbell, the Disciples' greatest preacher, if not their founder, is quoted as saying, "It (the church) knows nothing of superior or inferior church judicatories, and acknowledges no laws, no canons or government, other than that of the Monarch of the Universe and its laws." Long v Harvey, 177 Pa. St. 473.

Meeting, Powers of Minority. This society was organized in 1832 and was not incorporated. A report was made to the Pennsylvania conference in 1889 showing that there were only 15 members in good standing, the remaining members having been excluded without notice or hearing. In 1890 a movement was initiated for the purpose of a hearing, by an appropriate tribunal, to adjust differences existing in the society. The result was an attempted meeting of the congregation in June, 1890, but the majority prevented the meeting, and refused to permit it to be held in the church. It was held in front of the church by a minority which elected certain officers who assumed to transact other business. Representatives of this minority brought an action against the majority to obtain possession of the church property. Representatives of four other congregations appeared and assumed to take part in the meeting of June, 1890, and that meeting proceeded to depose certain trustees and officers of the society who had been chosen by the majority. This proceeding by outsiders was irregular, and had no binding effect on the society, nor on the officers chosen by it. Long v Harvey, 177 Pa. St. 473.

DISSENTERS

England, 199.

England. The dissenting church in England is not a free church in the sense in which we apply the term in this country, and it was much less free in Lord Eldon's time than now. Laws then existed upon the statute book hampering the free exercise of religious belief and worship in many most oppressive forms, and though Protestant Dissenters were less burdened than Catholics and Jews, there did not exist that full, entire, and practical freedom for all forms of religious belief and practice which lies at the foundation of our political principles. And it is quite obvious, from an examination of the series of cases growing out of the organization of the Free Church of Scotland, found in Shaw's Reports of Cases in the Court of Sessions, that it was only under the pressure of Lord Eldon's ruling, established in the House of Lords, to which final appeal lay in such cases, that the doctrine was established in the Court of Sessions after no little struggle and resistance. Watson v Jones, 13 Wall. (U. S.) 679.

In 1765 the Protestant dissenters in Great Britain were distinguished by the several denominations of Presbyterians, Independents, and Baptists. Waller v Childs, 2 Ambl. (Eng.) 524.

DISTURBING RELIGIOUS MEETING

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Assembly, What Constitutes. In its true sense a religious meeting is an assemblage of people met for the purpose of performing acts of adoration to the Supreme Being, or to

perform religious services in recognition of God as an object of worship, love, and obedience; it matters not the faith with respect to the Deity entertained by the persons so assembled. The law affords equal protection to the religious views, rites, and forms of worship of all denominations, all classes, and all sects, and does not undertake to state of what they shall consist, or how such services shall be conducted. Therefore, as to whether or not a congregation of persons constitutes a religious meeting assembled for religious worship is necessarily largely a question of fact to be determined by the jury from the evidence and under proper instructions from the court. Cline v State, 130 Pac. 510 (Okl.).

Camp Ground, Traffic. The defendant sold ginger bread on a camp ground near a congregation engaged in religious service in violation of a statute which prohibited such a sale within one mile of a worshiping assembly. A conviction was sustained on appeal. West v State, 28 Tenn. 66.

Christmas Festival. Section 4853 of the Tennessee Code is intended to protect assemblies met for religious worship. A meeting held for the enjoyment of a Christmas festival, though it was especially intended for Sunday school scholars and their teachers and friends, does not change its character, nor make it an assembly for religious worship. Layne v State, 72 Tenn. 199.

Christmas Tree Celebration. The Christmas tree service which was intended to celebrate the birth, life, death, and resurrection of Christ, and in commemoration of the beginning of the Christian era, was held to be a religious service, and one who disturbed it by improper conduct was held liable to punishment therefor. Stafford v State, 154 Ala. 71; see also Cline v State, 130 Pac. (Okl.) 510.

Church Trial. Church authorities, convened for the trial of a member of the society, are entitled to the protection of the law against the disturbance of religious meetings, and a person who disturbs such a trial is liable to punishment therefor. Hollingsworth v State, 5 Sneed. (Tenn.) 518.

Common Law. This is an offense at common law, People v Degey, 2 Wheeler Cr. C. (N. Y.) 135, and is indictable. People v Crowley, 23 Hun. (N. Y.) 412.

Conduct. In State v Jasper, 15 N. C. 323 it was held that laughing and talking, and indecent actions and grimaces, during the performance of divine service, was a misdemeanor, and indictable.

Damages Not Recoverable. A person alleged to be disturbed in a religious service by noises, talking or singing or other demonstrations, has no cause of action for damages against the persons causing the disturbance. The law provides a summary remedy for disturbing religious meetings. Owen v Henman, 1 Watts & S (Pa.) 548.

A private action cannot be maintained by an attendant upon divine worship. He does not receive special or particular damage. If one can, every one may maintain a suit. First Baptist Church of Schenectady v The Utica & Schenectady Railroad Company, 6 Barb. (N. Y.) 313. Citing Owen v Henman, 1 Watts. & S. (Pa.) 548.

Decorum Required. "It must be understood that people who go into a church, whether for the purpose of attending divine service, or of being present at a vestry, must keep themselves under restraint, and not depart from that decorum which should always be preserved within consecrated walls." Provocation is no defense to a charge of disturbing a meeting. North v Dickson, 1 Hagg. Eccles. Rep. (Eng.) 310.

Defined. To constitute the offense there must be a congregation assembled for religious worship, and that congregation, so assembled, must be disturbed, that is, agitated, aroused from a state of repose, molested, interrupted, hindered, perplexed, disquieted, or turned aside or diverted from the object for which they are assembled; and the act which causes the disturbance must be willfully done. Richardson v State, 5 Texas Ct. of App. 470.

To constitute a disturbance there must be not only an actual interruption or disturbance of an assemblage of

people met for religious worship, by noise, profane discourse, rude or indecent behavior, or by some other act or acts of like character, at or near the place of worship, but such interruption or disturbance must be willfully made by the person or persons accused. The intent is of the very essence of the offense, and to be willful, it must be something more than mischievous, it must be in its character vicious and immoral. Brown v State, 46 Ala. 175.

The substance of the offence consists in the indulgence of improper conduct, and attracting the attention of any part of the assembly thereby; and when these facts concur the offense is complete. Holt v State, 1 Baxter, (Tenn.) 192.

Described. It is an offense which tends to subvert those principles of morality which are the foundation of all good government, of all social order, and of all confidences between man and man; for the strongest sanction of those principles has, in all ages and countries, and under all forms of government and of religious worship, been found in religious faith; in that relation which subsists between man and his Maker, the duties of which relation are in a particular manner the subject of all religious instruction. U. S. v Lee, 4 Cranch (U. S.) 446.

Dispersion of Congregation. After the benediction and before the people had left the house, the defendant assaulted the minister and used toward him rude and insulting language. It was held that it was for the jury to determine as a mixed question of law and fact, whether the congregation should be deemed dispersed at the time of the occurrence. State v Snyder, 14 Ind. 429.

After the church was dismissed, and the pastor and part of the congregation on their way home, the defendant, with others, engaged in a broil, and defendant, by cursing and swearing, disturbed those then on the ground; defendant behaved in an orderly manner so long as the pastor was present on the ground. The defendant's conduct was held to constitute a disturbance of worship, the court observing

that the purpose, spirit, and letter of the law are to protect the religious assembly from disturbance before and after services, as well as during the actual service, and so long as any portion of the congregation remains upon the ground. Dawson v State, 7 Tex. Ct. of App. 59.

To constitute an interruption or disturbance of an assemblage of people met for religious worship, it is not necessary that the interruption or disturbance should be made during the progress of the religious services; if made after the conclusion of the services and the dismissal of the congregation, but while a portion of the people still remain in the house, and before a reasonable time has elapsed for their dispersion, the offense is complete. Kinney v State, 38 Ala. 224.

An offense is established where it appears that the disturbance occurred even after the services were closed, and while the congregation were passing out of the house. Love v State, 35 Tex. Cr. Re. 27.

Where a congregation assembled for divine worship had, after the morning service adjourned for dinner to be served on the church grounds, with the intention of returning after the meal to the church house for an afternoon service, the congregation had not, in contemplation of the statute, dispersed while partaking of their dinner, but were still assembled for the purpose of divine worship. A person who discharged a pistol in or near the place where the congregation was assembled for dinner was held properly convicted under the statute against disturbing religious meeting. Folds v State, 123 Ga. 167.

The congregation, which had been holding religious services, in the forenoon, took a recess until the afternoon service, and during this interval partook of a basket dinner just outside the church building. While the congregation was thus engaged, the defendant used language calculated to disturb the worshipers. He was held liable under the Alabama Statute, which the court said was not limited to disturbances during the actual progress of religious serv-

ices, but the congregation was entitled to be protected against disturbance during the intermission. Ellis v State, 65 So. (Ala.) 412, 10 Ala. App. 252.

Evidence. Talking and beating on a tin can constitutes a disturbance under the Texas statute. Cantrell v State, 29 S. W. (Tex.) 42.

A camp meeting was disturbed at night. A conviction was sustained on evidence that the defendant was arrested at two o'clock in the morning, having in his possession a pistol, and that he was in company with one of the parties causing the disturbance; no explanation being given of his being out at that hour in such company, and there were other circumstances indicating his participation in the disturbance. Ball v State, 67 Miss. 358.

To constitute the statutory offense of disturbing religious worship, the act or discourse charged must have been intentional, and its natural tendency must have been to disturb the assemblage, to derange its quiet and order. It is not necessary that the assemblage should have been actually engaged in worship at the moment of the discourse, or of the conduct complained of. The statute applies to assemblages when in the act of gathering together and until there has been a dispersion of the persons met for worship and they cease to be an assemblage or congregation. Leave to speak given a member of the assemblage and the religious organization by the conductor of the services cannot justify or excuse a violent, passionate, and insulting discourse and deliberately made, and which by its violence offends the order and decorum essential to Christian worship; nor is it any excuse or justification that the defendant while making such discourse was not called to order. Lancaster v State, 53 Ala. 398.

A charge of loud and vociferous talking and quarreling in a religious meeting was held sufficient to sustain an indictment under the Texas statute. Bush v State, 5 Tex. Ct. App. 64.

The cracking and eating of nuts during religious services

and thereby disturbing members of the congregation, may constitute a disturbance of religious worship. Hunt v State, 3 Tex. Ct. App. 116.

The defense showed that the persons charged with making the disturbance were members of the congregation assembled for religious worship. That during the service appellants were guilty of repeated acts of misbehavior, and that in the closing prayer, after the conclusion of the sermon, one of them groaned aloud, which caused the minister to be disturbed, according to his testimony. It further appeared, and presumably from evidence, that during prayer appellants were laughing and talking together to such an extent as to distract the attention of persons in the congregation, and cause them to turn their thoughts from worship to ascertain the cause of the disturbance. A conviction was sustained on appeal. Friedlander v State, 7 Tex. Ct. App. 204.

"If the persons without the house had separated themselves from those within, who were engaged in religious worship, and no longer participated in the purposes for which the congregation had met, but had wholly disconnected themselves from the assemblage, with no intention of again participating in the purposes of the meeting and were engaged in the discussion of other matters," then the disturbance of one or more of such persons would not come within the prohibition of the Alabama statute. Adair v State, 134 Ala. 183.

The conduct alleged as a disturbance must in fact have disturbed the meeting, and conduct of a person, however reprehensible and indecent, which does not in fact disturb the assembly of people met for religious worship, and though committed at or near the place of worship, is insufficient to authorize a conviction under the statute. Cox v State, 136 Ala. 94.

In a trial for disturbing religious worship evidence that defendant, together with others, disturbed the congregation by talking and laughing is admissible as when he and the

others conversed among themselves; the act of one was the act of all.

On a prosecution for disturbing religious worship, evidence that, after the preaching was over, defendant in answer to a remark that the preacher would bust him, stated that if the preacher fooled with him he would shoot him, is admissible to show that his talking during the preaching was maliciously done.

Where defendant knows that the remark addressed to him referred to a probable prosecution for disturbing the preaching his answer is admissible as a tacit admission that he was connected with the disturbance.

On a prosecution for disturbing public worship, testimony that the preacher ceased preaching and spoke to the defendant and the others participating in the disturbance about their talking, is not admissible as hearsay. McAdoo v State 35 S. W. (Tex. Ct. of Crim. App.) 966.

The disturbance consisted of various acts by the defendant intended to exhibit not only his dissent from the faith and practices of those conducting the meeting, but also to show his contempt therefor. This was done by deriding and making sport of the same, stating to a person engaged in prayer "to pray louder; peradventure your God is asleep, or has gone on a journey." Chisholm v State, 24 S. W. 646 (Tex. Crim. App.)

The African Congregational Church in Paris, Texas, being the owner of the church edifice, permitted the use of it by Methodist and Baptist congregations in the same town on days agreed upon. One Sunday, when the Baptists were occupying the church, the sexton of the African Society entered the church while service was in progress, and the minister was preaching, and called out a member of the society, and the two outside the door had an altercation which disturbed members of the congregation, and a minister sitting in the pulpit went out to ascertain the cause of the disturbance. The sexton was arrested for disturbing a meeting, and claimed in defense that on that day the

Methodists were entitled to the use of the church. His conduct was held to be a disturbance of the meeting and he was convicted. Dorn v State, 4 Tex. App. 67.

A prima facie case was deemed made where it appeared that two witnesses testified that the defendant entered the church with a large stick, remaining within but a short time, and afterward was heard by them talking out of doors, occasionally using profane language in the tone of voice loud enough to be heard over the church, and that they were disturbed, but did not notice that it particularly disturbed the remainder of the congregation. McElroy v State, 25 Tex. 507.

Extent. The congregation need not all be disturbed. A noise audible in all parts of the house, and which disturbs a considerable part of the congregation, constitutes a disturbance within the statute. Clark v State, 78 S. W. (Tex.) 1078.

Extent, One Person. The disturbance of one person only while a member of a congregation engaged in religious worship is a violation of the statute. State v Wright, 41 Ark. 410, Walker v State, 146 S. W. 862.

It is a violation of the Texas statute against the disturbance of religious worship if but one worshiper be disturbed by the loud talking or abusive language, and it is not error for the court to so instruct the jury. McVea v State, 35 Tex. Crim. 1.

Every individual worshiper in the congregation, as well as the entire congregation, is protected by the statute from rude and profane disturbance during the solemn moments of public worship. It was therefore held that profane language addressed to one person in the congregation was sufficient to constitute the offense. Cockreham v State, 7 Hump. (Tenn.) 11.

Father Removing Child. A father has no right to enter a church, and during divine service take away by force and violence his minor child, in such manner as to disturb the congregation. In this case the child was a daughter about

fifteen years of age, and was participating in the service when her father entered and took her by the arm and told her to come home. Commonwealth v Sigman, 2 Clark (Pa.) 36.

Fighting. A conviction was deemed made out for disturbing religious worship on proof that the defendant willfully and intentionally engaged in a fight, without lawful excuse, or necessity, at or near a place at which people were engaged in worship, even though he did not bring on the difficulty, nor strike the first blow. Goulding v State, 82 Ala. 48.

The defendant was engaged in a fight with another person, some thirty-five yards from the place where the religious service was being held. Somebody notified the congregation that there was a fight. It was held that the defendant's act of fighting did not disturb the congregation, which could not have known of the fight except for the notice by a third person. State v Kirby, 108 N. C. 772.

Grantor Preventing Occupancy of Property. A person who held a deed of the land on which a meeting house had been erected, claiming title thereto, locked the door and prevented services from being held. This was not a disturbance of religious worship. Davis v State, 16 South. (Miss.) 377.

Intention. The defendant cannot prove a secret intention not to disturb the assemblage, although he may rebut the presumption of guilty intent by proof of a lawful excuse. Williams v State, 83 Ala. 68.

Interruption by Expelled Member. It was held to be a disturbance for an expelled member to interrupt the service by calling attention to his recent expulsion and protesting against it, and persisting in this interruption against the remonstrance of the minister and others. State v Ramsay, 78 N. C. 448.

Intoxicating Liquor. In Burden v State, 8 Ga. App. 118, it was held that persons who go to churches must not carry liquor or have liquor either on their insides or on their outsides.

The Georgia Penal Code, section 438, forbids any person from carrying to a church, or other place where the people have assembled for divine worship, any liquor or intoxicating drink. But by section 441, it is not unlawful to use intoxicating liquors at such places in case of accident or misfortune, nor are practicing physicians prohibited from carrying and using such liquor as they might deem necessary in their regular practice. The defendant attended a church service with his wife, and left his buggy between one hundred and two hundred yards from the church, and left in the buggy some whisky in a bottle, which he said he carried on the advice of a physician on account of the illness of his wife so as to have the medicine ready in case of a sudden attack. The court overruled the defense, saying among other things that the prohibition contained in the statute was imperative, and forbids its introduction not only into a religious service, but also to a place in such immediate proximity to the church building as to make it readily accessible to those who may desire to use it. Bice v State, 109 Ga. 117.

The Pennsylvania act of 1822, forbidding the sale of any kind of articles of traffic, spirituous liquors, wine, porter, beer, or any fermented, mixed or strong drink, within three miles of any place of religious worship during meetings for that purpose, was held to apply to the sale of such articles as would have a tendency to produce intoxication and consequent disturbance; the sale of articles of food that could have no tendency to intoxicate is not within the prohibition. Fetter v Wilt, 46 Pa. St. 457.

Intoxication. Defendant, while under the influence of liquor, went into a church after the services had begun, talked loud enough to attract attention, used profane language, and said he could pray as well as the preacher, and would do it. His conviction was sustained, the court on appeal holding that the trial court properly refused a request to charge that the jury must find defendant not guilty "if they believe from the evidence that what he said and did

was said and done heedlessly or recklessly, that is, carelessly, without thinking of the probable consequence." Johnson v State, 92 Ala. 82.

Meeting Prevented. A person who took possession of the doorstep of a church and by threats and violence prevented the congregation from holding a service as intended, in consequence of which they dispersed without entering the building and engaging in worship, was held guilty of disturbing a religious meeting under the Georgia statute. Tanner v State, 126 Ga. 77.

Persons entered the church, locked the door, and prevented worshipers from assembling. Preventing a meeting from assembling is not a disturbance within the meaning of the Pennsylvania statute. There could be no disturbance unless the worshipers had assembled. Commonwealth v Underkoffer, 11 Pa. Co. Ct. 589.

Motive. To constitute the statutory offense of disturbing religious worship the act must be willfully or intentionally done; it is not sufficient that it was done recklessly or carelessly. Harrison v State, 37 Ala. (N. S.) 154.

Patrolman's Unreasonable Interference. An unlawful or unreasonable interference by a patrol in the service of a religious meeting constitutes a disturbance thereof. Bell v Graham, 1 Nott & McC. (S. C.) 168.

Preaching by Rival. A preacher who occupied the pulpit and preached to the congregation, instead of permitting a rival to preach the sermon, was held not guilty of disturbing the meeting. The church was divided into two factions, each of which claimed the right to conduct the service. The preacher who first obtained possession of the pulpit and preached the sermon did not thereby commit any offense. Divine worship was not prevented, but was actually carried on. Woodall v State, 4 Ga. App. 783.

Protest against Minister. The defendants were held indictable for attending a religious meeting for the purpose of protesting against the preaching of a certain minister whose authority to act they disputed. In consequence of this pro-

test there was a disturbance of the meeting, and the minister was forced to withdraw from the church. Commonwealth v Dupuy, Brightly N. P. (Pa.) 44.

Removal of Disturber. A person disturbing a religious meeting and interrupting its order and decorum, may be removed therefrom by the application of force sufficient for that purpose. The disturbance need not be willful. Where in a Roman Catholic meeting a person rose in his place and demanded of the priest an explanation of a part of his sermon, and on being rebuked and ordered to leave the room refused, it was held that the priest, as presiding officer of the meeting, had authority to remove the disturber by the application of needed force, and for that purpose might call to his aid other members of the congregation, and that a priest, who had attempted to remove a person so disturbing the meeting, was not liable to an action for assault. Wall v Lee, 34 N. Y. 141.

Vestrymen have authority to preserve order at public services, and to remove, or cause the removal of a person disturbing such services. Beckett v Lawrence, 7 Abb. Pr. N. S. (N. Y.) 403.

Every congregation of worshiping Christians must necessarily have authority to preserve order and decorum during the time of religious worship. If any man were to force himself into the church during divine service, and by noise and violence disturb the congregation, the officers of the church might request him to be quiet, or to go out, and if he would not, to put him out by force, taking care to do him as little injury as possible. If he should commit acts of violence, and a breach of the peace, the officers of the church or members, or both, might resort to any means of defense which they might reasonably deem necessary to defeat the assailant's purposes and rid the house of such nuisance. In this case it was held that a father had no right to enter a church, and during divine service take away by force and violence his minor child, in such manner and under such circumstances as to disturb the congregation. The members

of the congregation have their rights; the house is theirs, and is dedicated to the worship of Almighty God. Commonwealth v Sigman, 2 Clark (Pa.) 36. See note on Father Removing Child.

Riot. In State v Jones, 77 S. C. 385, it was held that engaging in a riot forty feet from a congregation in religious worship was so certain to disturb the congregation as that it must be held to have been within the contemplation and intention of all participants.

Salvation Army. One who enters a religious service conducted by the Salvation Army and, keeping his hat on and a cigar in his mouth, persists in conducting himself in an offensive manner, and so diverts attention from the services then in progress, violates the statute against the disturbance of religious meetings and is liable to punishment therefor. Hull v State, 120 Ind. 153.

Scope of Statute. The statute is applicable, not only to disturbances which are made while the religious services are progressing but at a camp meeting, and after the religious services are closed for the day, and the congregation has retired to rest. In this case the defendant was charged with going about on the camp ground, among the tents, blowing a horn after the worshipers had retired for the night. A conviction was sustained. Commonwealth v Jennings, 3 Gratt. (Va.) 624.

Singing. The defendant's alleged offense consisted in his singing which was described to be so peculiar as to excite mirth in one portion of the congregation and indignation in the other, his voice being heard at the end of each verse after all the other singers had ceased. To the expostulations against his method of singing he replied that he would worship his God, and that as a part of his worship it was his duty to sing. Defendant was a devout member of the church and a man of most exemplary deportment. The prosecution admitted that he did not intend to disturb the meeting. A conviction was reversed on appeal, the court observing that the defendant might be a proper subject for discipline by

his church, but not for discipline by the court. State v Linkhaw, 69 N. C. 215.

Singing by Choir. Singing by a church choir according to the usual custom and in a quiet and orderly manner, though contrary to the announcement of the pastor of a Methodist Protestant congregation that there would be no singing at that service, did not constitute a disturbance of a religious meeting. Commonwealth v McDole, 2 Pa. Dist. R. 370.

Statutes, Constitutional. A statute prohibiting certain kinds of business within a specified distance from the place where religious services are being held is constitutional, and is in aid of the provision of the constitution securing liberty of religious worship. State v Cate, 58 N. H. 240.

Summary Conviction. Under the New York act of 1813 as amended in 1824 relative to the disturbance of religious meetings, it was held that a justice of the peace might order an offender into the custody of a constable without warrant and proceed to a summary conviction for the offense, it appearing that the offense was committed in the presence of the justice of the peace. Farrell v Warren, 3 Wend. (N. Y.) 254.

Sunday School. A person who willfully disturbs a Sunday school is indictable at common law, and the North Carolina statutes are amply sufficient to cover such a case. State v Branner, 149 N. C. 559.

A Sunday school, where the Bible and the precepts of religion are taught, is a place of public worship within the statute prohibiting the disturbance of religious meetings. Martin v State, 6 Baxter (Tenn.) 234; see the article on Religious Worship, sub title, Sunday School.

DOCTRINE

Civil courts no jurisdiction, 215.
How ascertained, 215.
Predestination, 215.

Civil Courts No Jurisdiction. What is theologically true in religion it is agreed on all hands that the courts are not competent to decide; nor have they power to determine what is really and intrinsically substantial and essential in matters of doctrine. Attorney-General ex rel Abbott v Dublin, 38 N. H. 459.

How Ascertained. "Where a trust is created by deed for the use of a congregation of Christians designating such congregation by the name of a sect or denomination, without any other specifications of the religious worship intended, the intent of the donors or founders in that respect may be implied from their own religious tenets, from the prior and contemporary usages and doctrines of the sect or denomination to which such congregation belongs. In ascertaining the early and contemporary usage and doctrines of such sect resort may be had to history, and to standard works of theology of an era prior to the existence of the dispute of controversy." Kniskern v Lutheran Church, 1 Sandf. Ch. (N. Y.) 439.

Predestination. The doctrines of absolute predestination and of limited predestination are both taught in substance in churches of good standing in the associations of the Primitive Baptist Church in Kentucky, and as there is no unanimity upon the subject in the teachings of those recognized as learned in the doctrine of the church, the teaching of either of these doctrines is not a departure from the faith as understood in 1845, at the time church property was conveyed for the purposes of a church of that denomination. Bennett v Morgan, 112 Ky. 512.

DOWIEISM

Leadership, question of succession, 216.
Religious belief as excuse for parental neglect, 216.

Leadership, Question of Succession. This question was considered in Lewis v Voliva, 154 Ill. App. 48, where it was held that the civil courts would not decide the question of leadership, but that the question must be left to the church to be determined according to its laws and usages, no property right being involved in the controversy.

Religious Belief as Excuse for Parental Neglect. See State v Chenoweth, 163 Ind. 94 for a case where the defendant charged with manslaughter on account of the death of his infant child eight months old excused his neglect to provide medical aid for the child on the ground that he believed in divine healing without the aid of medicine, according to the views maintained by John Alexander Dowie. The case contains a review of authorities bearing on the question whether religious belief is a valid excuse under such circumstances. The court directed a verdict of acquittal for failure of evidence.

DUNKERS

Deed, license, trust, 217.

Deed, License, Trust. In 1787 land was conveyed to nine persons as trustees of the local society known as German Baptists, commonly called Dunkers, for the exclusive use forever of the German Baptist Society. The deed did not express that it was for a church, and it was held void under the 34th article of the Maryland Declaration of Rights.

In 1808 the same grantor, for the purpose of correcting defects in the original deed, made a new deed in which it was declared that the land was intended as a burial ground for members of the German Baptist Society, commonly called Dunkers, and such other persons as the trustees might permit to be buried therein, and any house of worship to be erected on the land was to be used by the society and others.

No house having been built on the lot, an agreement was made by the German Baptist Society in 1849 with the trustees of the congregation of the Disciples of Christ, by which the latter agreed to erect on the lot a house of worship, to surround the land with a brick wall, and also erect a vault on the premises. The building was to be used exclusively by the second society as a place of worship, or such society might, at its option, permit the building to be used by other persons. The building was erected and used. The present action was brought by the trustees under the original deed to recover possession of the property, on the alleged invalidity of the license under which the second society procured its right to erect the house of worship and take possession of the property. It was held that the license was valid, and that the action to set it aside could not be maintained.

Whatever remedy the grantors of the license may have had by way of forfeiture of the property must have been resorted to in a court of law and not in a court of equity. Grove v Trustees of the Congregation of the Disciples of Jesus Christ, 33 Md. 451.

ECCLESIASTICAL COUNCIL

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Described, 219.
Minister, change of religious tenets, 219.

Defined. An ecclesiastical council is a judicial tribunal whose province it is, upon the proper presentation of charges, to try them on evidence admissible before such a tribunal. They have no power to dissolve a contract, or to absolve either party from its obligation. Sheldon v Congregational Parish, Easton, 24 Pick. (Mass.) 281.

Described. An ecclesiastical council is a tribunal well known in the history of our commonwealth, and recognized and regarded in judicial decisions. It is one frequently resorted to in the settlement of clergymen, in reconciling and healing differences and divisions in churches, and in adjusting and terminating controversies between pastors and their churches and parishes. But notwithstanding the frequency of their occurrence, it is not easy accurately to define their powers or to ascertain the precise force and effect of their adjudications. It is frequently called an advisory court. Its determination or result is often called advice, and is usually, if not uniformly, given in the form of counsel to the parties. And the benefits so often derived from the action of these tribunals depend more upon the respectability of the members and their collective and individual moral influence than upon any legal effect which can be given to their decisions. Stearns v Bedford, 21 Pick. (Mass.) 125; see also Avery v Tyringham, 3 Mass. Re. 182 and Burr v First Parish in Sandwich, 9 Mass. 276.

Minister, Change of Religious Tenets. If after a minister is settled he adopts a new system of divinity, the parish re-

taining their former religious belief, so that the minister would not have been settled on his present system, the parish has good cause to complain. By the change in the opinions of their minister they are obliged to hear doctrines which they disapprove, and which they do not believe. This makes a proper case for the advice of an ecclesiastical council. Burr v First Parish in Sandwich, 9 Mass. Re. 276.

ECCLESIASTICAL COURTS

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Arbitrary Proceedings. Where a presbytery was considering the appeal of a minister from a sentence of suspension an attempt was made to exclude two members of the presbytery from acting by adopting a resolution declaring that they were incapacitated by reason of affinity and partiality, the charge of affinity applying, however, to only one of them, while both were charged with partiality. They were both included in one resolution, which prevented either from voting. By the casting vote of the moderator they were declared excluded. The method of excluding these two

members of the presbytery was declared to be wholly unwarrantable and as vitiating the subsequent proceedings of the presbytery based on the action of the majority obtained by this illegal exclusion. Smith v Nelson, 18 Vt. 511.

Denominational Rules. Under the canon of the Protestant Episcopal Church relative to the investigation of charges against a rector, it was held that no commission need be issued by the bishop. The bishop is required to appoint three persons to examine the case and make a presentment, but the method of making the appointment was left to his discretion. The court on presentment and due notice, had power to take cognizance of the case. The presentment should not be tested by the strict rules of criminal pleading. The court, in this instance, was not authorized by the statute, but was the creature of the law of the church, and must be governed and judged by the canons of the church. Chase v Cheney, 58 Ill. 509.

Ecclesiastical Question, Defined. An ecclesiastical matter is one that concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws, rules, and regulations for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership by the legally constituted authorities of the church. All of these matters are within the province of church courts, and their decisions upon them should be respected by civil tribunals. Clark v Brown, 108 S. W. 421. (Tex.)

England, Description. In England the ecclesiastical law and the ecclesiastical courts are established by legitimate authority and become a part of the law of the land. By the common law the king is the head of the church, which means that all ecclesiastical power and authority is established by him and not by a law. No canons can be made except by his consent. Ecclesiastical courts and ecclesiastical law are adopted as part of the common law. Their proceedings are according to the forms of the civil law, and the king may pardon all offenses within the jurisdiction of the spir-

itual courts. The courts of common law have and exercise a superintendence over their proceedings, and may keep them within their jurisdiction, and control them by mandamus, prohibition, etc. The sentences of these courts are there entitled to the same consideration as the sentences of any other inferior tribunal. Their decisions are final and conclusive on all subjects within their jurisdiction, but they may be controlled and examined into by the courts of law. Smith v Nelson, 18 Vt. 511.

England, Jurisdiction. In England such courts have jurisdiction of offenses of brawling, independent of statute conferring jurisdiction on temporal courts. Taylor v Morley, 1 Curteis (Eng.) 380.

Friends. In Hendrickson v Shotwell, 1 N. J. Eq. 577, the following observations are quoted from Barclay's treatise on church government: "Whether the Church of Christ have power, in any cases that are matters of conscience, to give a positive sentence and decision which may be obligatory upon believers, I answer affirmatively, she hath. All principles and articles of faith which are held doctrinal are, in respect to those that believe them, matters of conscience. Now, if any one or more so engaged with us should arise to teach any other doctrine or doctrines contrary to these which were the ground of our being one, who can deny but the body had power in such a case to declare this is not according to the truth we profess, and, therefore, we pronounce such doctrines to be wrong, with which we cannot have unity, nor yet any more spiritual fellowship with those that hold them."

Judges, Should Be Impartial. Where in a proceeding before a presbytery a minister remarks that some members of the presbytery were unfit to sit in any court, and the minister was rebuked and suspended by the presbytery by the votes of four of the persons included in his criticism, it was said that a sentence of suspension pronounced under such circumstances was improper and could not be sustained. Smith v Nelson, 18 Vt. 511.

Judgment, Effect. The decision of an ecclesiastical court upon an ecclesiastical matter as to its own jurisdiction is conclusive upon the civil courts. Comitt v Ref. Protestant Dutch Church, 54 N. Y. 551, citing Chase v Cheney, 58 Ill. 509, where it is said that the civil courts will interfere with churches or religious associations when the rights of property or civil rights are involved, but they will not revise the decisions of such associations upon ecclesiastical matters merely to ascertain their jurisdiction; see also Marie M. E. Church of Chicago v Trinity M. E. Church of Chicago, 253 Ill. 21.

Wherever religious associations have been organized in society for the expression and dissemination of religious doctrine, and have created for their direction in matters of doctrine, church government and discipline, tribunals within the association, the final and controlling effect of the ecclesiastical polity thus formed upon the individual members and congregations and officers within the general association will not be questioned but will be given effect in the civil courts. And all who unite themselves to such a body do so with the implied consent to submit to the system of ecclesiastical control, and are bound by it, and it would be vain consent, and would lead to the total subversion of such religious bodies, if anyone aggrieved by one of their decisions should appeal to the secular courts, and could thus have that voluntary control, which they had themselves agreed to, reversed and destroyed. It is of the essence of these religious unions, and it is their right thus to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance in matters of doctrine and discipline, and this control goes to the extent of controlling the terms upon which the pastoral relation shall be formed, and the salary accompanying it shall be demanded. First Presbyterian Church of Perry v Myers, 5 Okl. 809.

The weight of authority is to the effect that if a religious organization has, under its form of government, a tribunal

constituted with jurisdiction to decide differences between its members as to creed, teaching, or doctrine, the civil courts will not undertake to review or revise the judgment of the church tribunal in reference to such matters. If the matter relates to creed, doctrine, or teaching, the judgment of the constituted church tribunal is absolutely conclusive upon the civil courts, whether in the opinion of the judges of such courts the decision appears to be right or wrong. Where a right of property turns upon such a decision the civil courts will allow the property to go in that direction in which the decision of the church tribunal carries it.

The constituted tribunal of the religious organization has jurisdiction to determine all ecclesiastical questions which are submitted to it under the law and usages of the society. It has also the authority to determine for itself whether it has jurisdiction in a given case. The highest church court of a religious society is like the highest civil court. It has submitted to it not only questions growing out of controversies, but it has of necessity, imposed upon it the duty and responsibility of determining what are within the limits of its jurisdiction. The judgment of the ecclesiastical tribunal is final and conclusive if within its jurisdiction; in other cases the civil courts will inquire into the scope, character, and effect of the powers vested in the church tribunal. Mack v Kime, 129 Ga. 1.

There cannot, in this country, be attributed to the decisions of a synod or the decisions of any ecclesiastical judicatory either infallibility or freedom from error, nor can they claim rightfully unlimited obedience; and when it is attempted to give to their adjudications the same effect as is given to the sentence of ecclesiastical courts in England, or the superior courts of common law, the attempt must be unavailing.

The proceedings of an ecclesiastical court in England and Scotland may be inquired into collaterally, and when they proceed illegally, even those who pronounced their decrees are not exempt from responding for any damages which an

individual may sustain in consequence of their illegal acts. Likewise in this country the proceedings of any self-constituted ecclesiastical tribunal, not recognized as a part of our jurisprudence, may be examined, disregarded, and declared void whenever the subject comes before our courts of law, whether directly or collaterally. The proceedings of the synod, or of any other ecclesiastical tribunal in this country as a court of the last resort, are not to be held conclusive and absolute when they come in question in courts of law. Smith v Nelson, 18 Vt. 511.

"Where rules and regulations are made by the proper church functionaries, and such rules are authorized by the laws of the order, they will be enforced by the courts when not in conflict with some law bearing upon the subject contained in the rules." Alexander v Bowers, 79 S. W. 342. (Tex.)

The decisions of ecclesiastical courts, like those of every other judicial tribunal, are final, as they are the best judges of what constitutes an offense against the Word of God, and the discipline of the church. A party thinking himself aggrieved by the decision of a lower church tribunal should appeal to a higher. Skilton v Webster, Brightly N. P. (Pa.) 203.

Where a minister and his parish submit a controversy between them to an ecclesiastical council the decision of such council, if not impeached for good cause, is a justification of the party conforming to it, though it does not operate as a judgment. Hollis Street Meetinghouse v Pierpont, 7 Metc. (Mass.) 495.

Upon questions arising under the discipline, as upon those arising under the articles of faith, the decisions of the ecclesiastical courts are ordinarily final, and they will be respected and enforced by the courts of law. But if such decisions plainly violate the law they profess to administer, or are in conflict with the laws of the land, they will not be followed. Krecker v Shirey, 163 Pa. 534.

Judgment, How Enforced. Ecclesiastical courts could only

inflict spiritual censures or pass judgment on the moral aspects of the question, for if they should determine and adjudge the right to possession in favor of one part as against the other, they are utterly powerless to enforce their judgments. Deaderick v Lampson, 11 Heisk. (Tenn.) 523.

Judgment, When Binding on Civil Courts. Whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of the church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. Committee of Missions v Pacific Synod, 157 Cal. 105.

Judgment, When Conclusive. Where the subject-matter of the judgment or determination of the ecclesiastical court attempted to be brought under review by a civil court is of ecclesiastical cognizance, the judgment of the ecclesiastical court is conclusive, and no civil court has jurisdiction or power to revise it or to question its correctness. Satterlee v U. S. 20 App. D. C. 393.

Jurisdiction, General Rule. The decisions of ecclesiastical courts, like every other judicial tribunal, are final, as they are the best judges of what constitutes an offense against the Word of God and the discipline of the church. Any other than those courts must be incompetent judges of matters of faith, discipline, and doctrine; and civil courts, if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt, which would do anything but improve either religion or good morals. Ch. v Seibert, 3 Pa. St. 282.

Jurisdiction, When Exclusive. Ecclesiastical courts have exclusive jurisdiction in matters of church government, church organization, religious tenets, and the laws of religious judicatories; with these the civil courts must not and cannot interfere, but must leave them to the free, uncontrolled jurisdiction of the tribunals established by the church, for they are matters of religious faith and con-

science, and are subjects for determination by a jurisdiction ordained and inspired by a power above a creator of political institution. Bridges v Wilson, 11 Heisk. (Tenn.) 458.

Legislature, Jurisdiction. In October, 1771, the General Court of Virginia entertained jurisdiction to hear charges of improper conduct presented against a rector of the parish forming a part of the Established Church. Godwin v Lunan, Jeff. (Va.) 96.

Mandamus. When the organic law of the church or ecclesiastical organization to which it belongs has provided rules and regulations for the settlement of disputes between a minister and his congregation, or the church trustees who have control of the building and property, the courts will not interfere by mandamus until there has been a final decision by the proper church authorities. State ex rel McNeill v Bibb St. Church, 84 Ala. 23.

Members, Trial. A member by joining a church agrees that the church shall be the exclusive judge of his right to continue. For the purpose of trying a member on charges of having violated the rules of the church, or the laws of God, the church is the tribunal created by the organic law. The member has consented that for all spiritual offenses he will abide the judgment of the highest tribunal organized under the constitution of the church, but he has not consented to submit to usurpation. The inquiry whether or not the tribunal has been organized in conformity with the constitution of the church is not ecclesiastical. Where a member of a church was tried on charges, and appealed from the judgment to an appellate tribunal provided by the law of the church, it was held that he was entitled to have such appellate tribunal constituted as required by the law of the organization, and it appearing that the tribunal was not so constituted, but was apparently constructed with a view of defeating instead of promoting justice, the appellant was entitled to an injunction restraining such illegal tribunal from proceeding in the matter. The civil court has jurisdiction to determine whether an ecclesiastical tribunal is

constituted as required by the law of the denomination. Hatfield v DeLong, 156 Ind. 207.

Object and Purpose. The object and purpose of a proceeding of the ecclesiastical court, in cases of crime or immorality, are quite different from that of proceeding and conviction for crime in the temporal courts. Sentences of the ecclesiastical courts in criminal prosecutions consist of spiritual admonition, suspension, or total deposition from office. All the proceedings of these tribunals in criminal causes are professedly *pro salute animæ;* and there is not power to fine or imprisonment. Satterlee v U. S. 20 App. D. C. 393.

Pewholder's Right. In Jacob v Dallow, 2 Salk. (Eng.) 551, it was held that a person who had a prescriptive right to a pew, being disturbed in his right, might sue in a spiritual court to have his possession quieted.

Power Limited. Church judicatories cannot usurp legislative powers. The creation of church judicatories and their investment with authority is one of the functions of the sovereign power. Bear v Heasley, 98 Mich. 279.

Such a court has no jurisdiction to settle a churchwarden's account. Adams v Rusch, 2 Str. (Eng.) 1133.

As a general principle, ecclesiastical judicatories cannot interfere with the temporal concerns of the congregation or society with which the church or the members thereof are concerned. Baptist Church, Hartford v Witherhell, 3 Paige Ch. (N. Y.) 296.

An ecclesiastical court cannot entertain a suit as to the allotment of seats in a place of divine worship unless such place is a legally consecrated building. Battiscombe v Eve, 9 Jur. N. S. (Eng.) 210.

Power, Necessity of Limitation. The doctrine that courts of the church may exercise coordinate jurisdiction with the superior courts of justice is one of the great engines by which the power of the papacy was upheld and its spiritual despotism extended over Europe. The spiritual courts unite the legislative, judicial, and executive functions—the uncon-

trolled exercise of such a power would invest them with an authority the most irresistible and appalling, and consequently can never be tolerated in a free country. Smith v Nelson, 18 Vt. 511.

Scotland. The Kirk is the established church of Scotland —the jurisdiction of their judicatories was conceded or confirmed by act of Scottish Parliament at an early day, and was confirmed by the act of Union. If a person disobeyed their order, the aid of a civil court, the Lords of Sessions, might be obtained to put him to the horn. The decisions of these church courts, like the decisions in common law reports, form a body of ecclesiastical law which would be recognized in the other courts. These judicatories derive their authority through the acts of the civil Legislature; and in this respect they stand in the same foundation as the Church of England. It was claimed for them that their General Assembly was a superior coordinate ecclesiastical court—that they had a right to judge absolutely and without control, and exclusively, on all subjects which they held to be within their jurisdiction. Their claim, however, was rejected and entirely repudiated both in England and by the courts of Scotland. Smith v Nelson, 18 Vt. 511.

Secret Investigations. "While Anglo-Saxon notions of fair play may lead us to look with disfavor upon secret investigations, and summary determinations by one person, we must not forget that contentious methods of investigation are largely English, and that the Roman system, from which the Roman Church has derived its procedure, has always been and still is to a large degree inquisitorial. However much we may think that open and public proceedings and hearings upon due notice ought to be had in every investigation of every sort or charge or issue, we must remember that it is not our province to impose our views as to such matters upon religious denominations." Bonacum v Harrington, 65 Neb. 831.

State Not Bound by Decisions. The decisions of ecclesiastical courts do not bind the state. Such courts have power

over the consciences of those who admit their authority; and their decisions must be taken as conclusive evidence as to the conscientious convictions of their subjects. But temporal courts could not be bound by the construction given by ecclesiastical courts to the meaning of a term used in the civil constitution. Hart v School District, Throopsville, 2 Lancaster Law Rev. (Pa.) 347.

Vermont. In this State there is no religious establishment, no ecclesiastical law or courts, established by any authority. All their laws are wanting in this essential requisite, to give them any authority, that they are not prescribed by the supreme power in the State, and though they may form constitutions, enact canons, laws or ordinances, establish courts, or make any decisions, decrees or judgments, yet they can have only a voluntary obedience, cannot affect any civil rights, immunities, or contracts, or alter or dissolve any relations or obligations arising from contracts. Smith v Nelson, 18 Vt. 511; see also Civil Courts.

ECCLESIASTICAL LAW

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Origin. The origin of the canon or ecclesiastical law is said to be coeval with the establishment of Christianity, under the apostles and their immediate successors, who are supposed to have framed certain ordinances or canons for the government of the church and its members. These rules or ordinances are called, in the history of the primitive church, the apostolical canons; and though the fact of their being the work of the apostles does not admit of positive proof, yet there is no doubt that they belong to a very early period of ecclesiastical history. They grew and accumulated from the exigencies of the church organization, and became binding upon its members, and, in fact, constituted the basis of the modern ecclesiastical law. Satterlee v U. S., 20 App. D. C. 393.

Subordinate to Civil Law. Ecclesiastical law is not a part of the law of this State, nor are equitable rights to be determined by it; on the contrary, when a court of equity exercises its powers it does so only upon equitable principles, irrespective of ecclesiastical or any other law. Cohen v Congregation Shearith Israel, 114 A. D. (N. Y.) 117.

ELECTIONS

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Adjournment. In March, 1900, the session attempted to postpone the annual election of elders from the regular time in April until after the meeting of the General Assembly, which had under consideration a question relating to the pastor of the church. The meeting of this session was held at the residence of one of its members, but not on the required notice. The pastor was not present, and one of the elders acted as the moderator pro tem. The law of the church required the pastor to preside at all meetings, except in certain specified cases, of which this was not one. The meeting was held irregular, and its action ineffective. Notwithstanding this attempted action by the session, regular annual meetings were held in 1900, 1901, and 1902. The

officers elected at these meetings were declared to be the regular officers of the society. Dayton v Carter, 206 Pa. St. 491.

In Stoughton v Reynolds, 2 Strange (Eng.) 1045, it appeared that the vicar had the right to nominate one churchwarden and the congregation or parish had the right to chose another. At an election where the choice was to be made the vicar, against the protest of members of the congregation present, adjourned the meeting. Such members thereupon continued the meeting and elected a churchwarden. It was held that he was entitled to the office, and that the right to adjourn the meeting was in the parish.

Burden of Proof. The burden of proof is on the persons claiming to have been elected trustees. African Baptist Church v White, 24 Ky. Law Rep. 646.

By-Laws. Where the charter vested in the congregation power to make by-laws, a by-law was held valid authorizing the president of the corporation to appoint inspectors of election. A by-law was also held valid which provided that a ticket should contain nothing but the names of candidates. Commonwealth v Woelper, 3 Ser. & R. (Pa.) 29.

A by-law of the society restricted the right to vote to persons who had been members of the church twelve months preceding the election. A subsequent by-law prohibited persons from voting who were in arrears two years on pew rent. This by-law was sustained in Commonwealth v Cain, 5 Ser. and R. (Pa.) 510.

Certificate Cannot Be Modified. At an election of trustees of the society known as the Church of the Puritans the inspectors declared, at the close of the election, that certain candidates had received a specified number of votes, being a majority of the votes received. Afterward the inspectors made a certificate in which they reviewed and revised the result of the election, declaring that certain votes assumed to have been cast for the successful candidates were illegal. This attempted review by the inspectors was without authority, and the persons receiving the highest number of votes

were held to have been legally elected. Votes received and counted cannot afterward be rejected as invalid. Hartt v Harvey, 32 Barb. (N. Y.) 55.

Hand Vote. In Wardens, Christ Church v Pope, 8 Gray (Mass.) 140, an election of officers was sustained though elected by hand vote instead of by a written vote, as prescribed by a previous rule adopted by the congregation at an annual meeting. Such a meeting could not bind its successors as to the method of conducting an election. The officers so chosen were declared regularly elected. A resolution to increase the number of vestrymen could not affect the existing organization until the new officers were elected.

Illegal Votes. The reception of illegal votes at the election of officers of a religious society does not invalidate the election if it does not affect the result. Wardens, Christ Church v Pope, 8 Gray (Mass.) 140.

Mandamus, Requiring Notice. The rector may be required by mandamus to give notice of an election of vestrymen. People ex rel Fleming v Hart, 36 St. Rep. (N. Y.) 874, 13 N. Y. Supp. 903.

Meeting, Justice May Call. In the absence of a provision in the charter for calling meetings for the election of trustees such a meeting may be called by a justice of the peace on the application of five members of the society. Ladd v Clements, 4 Cush. (Mass.) 476.

Method, Congregation May Regulate. In 1724, at a meeting of the congregation, a rule was adopted that thereafter the churchwardens and vestry be always chosen by a written vote. This meeting had no power over the election of officers at a succeeding meeting, and the rule adopted relative to the method of voting could not bind the congregation at a subsequent election. · Persons assembled at any meeting had full power to regulate the method of conducting elections, and were not bound by the action of a previous meeting. Therefore an election at a subsequent meeting by hand vote, instead of written ballot, was held valid, and the per-

sons declared elected were entitled to the office. Wardens, Christ Church v Pope, 8 Gray (Mass.) 140.

Nominations. It had long been the custom in this society for the consistory to nominate candidates for deacons and elders, and for the minister to announce the nominations from the pulpit a specified time before Easter Monday, when the election occurred. The complainant was elected as elder at a regular meeting but without such nomination. Having been refused induction into office, and having applied for a writ of mandamus to compel such induction, it was held that the custom of the society and consistory as to nominations was valid and binding on all members, and that therefore the election of the complainant was irregular. Miller v Eschbach, 43 Md. 1.

Notice. Where the charter makes the minister president of the vestry and requires notice of an election to be given by the president, such notice is necessary to constitute a valid election. Smith v Erb, 4 Gill. (Md.) 437.

Where the law of the church required the election of vestrymen to be held on Easter Monday, and notice thereof to be given at regular divine service on the preceding Sunday, and an election was not held on that day, but on the 30th of July following, pursuant to a notice given at an irregular church service on the preceding Sabbath by a rector who had been superseded, but who intruded into the church for the purpose of holding service, the election held on the 30th of July was held to be irregular and invalid. Dahl v Palache, 68 Cal. 248.

Place. The election must be held at the usual place of meeting. American Primitive Society v Pilling, 4 Zab. (N. J.) 653.

Presiding Officers. In People ex rel Smith v Peck, 11 Wend. (N. Y.) 604, a Baptist minister was held not to be an elder within the meaning of the statute requiring two elders to preside at a church election.

This case involved the validity of a church election, it appearing that there were two sets of presiding officers, two

polls, and the alleged election of two sets of trustees. At one of the elections a minister of the church was one of the presiding officers. At the other election two elders presided, as required by the statute. It was held that the alleged election at which the minister acted as one of the presiding officers was irregular and illegal, because he was not an elder within the meaning of the statute. The other election, presided over by two elders, was sustained.

Under the New York religious corporations act of 1813 it was held that two persons chosen by the members of the congregation present should preside at an election. Concord Society, Strykersville v Stanton, 38 Hun. N. Y., 1.

See People v La Coste, 37 N. Y. 192, involving the validity of the election of churchwardens and vestrymen holding, among other things, that the rector is both the presiding and returning officer, and that his certificate of election is presumptively valid.

Referee. The court has power to appoint a referee to supervise a special election ordered on granting a writ of mandamus directing the rector to join with the trustees in giving notice of a special election to fill vacancies. People ex rel Fleming v Hart, 36 St. Rep. 874, 21 N. Y. Supp. 673.

Regularity, Qualifications of Voters. The case involved the question of the regularity of the election of trustees, each party claiming to have been lawfully elected. Two elections for trustees were held on the 9th of June, 1851, one in the schoolhouse near the church, the other in the open yard. The respondents were elected at the poll in the schoolhouse, the relators at the other poll. The act of incorporation is silent as to the mode of conducting charter elections. It fixed the date of the election but did not direct who should conduct it. No by-law on this subject was adopted. It was held that the only legal election on Monday after Whitsunday was that which was held by officers duly chosen on the previous Thursday to conduct the election, and the trustees elected at an unauthorized and irregular poll could not hold

the office, even if they were chosen by a majority of the voters.

The court said the chief question in the case involved the right of members of this Roman Catholic Church to vote at a preliminary election of presiding officers, such right to vote being determined by the contributions of members. Under the act of incorporation the right to vote depended on the fact that a member had either contributed to the erection of the church or had annually thereafter contributed not less than 10s. for the current expenses. The contributions must have been annually or yearly, and the requirement of the act was not satisfied by payment on the day of election for the purpose of qualifying the person as a voter. Hence election officers were justified in refusing to receive the votes of such persons. The trustees chosen at a meeting held by the election officers regularly elected by legal voters were declared to be the lawful trustees of the society. Juker v Commonwealth ex rel Fisher, 20 Pa. St. 484.

Rescinding Vote. A board consisting of the vicar (presiding), two churchwardens, and four overseers of the poor met for the purpose of electing a master of a charity school. A candidate was chosen by a vote of four to three, the vicar giving the casting vote in his favor. Subsequently a question arose as to the candidate's ability to accept the office, and by a vote of five to two his election was rescinded and the meeting adjourned. It was held in Attorney-General v Matthew, 3 Russ. (Eng.) 500, that so long as the board was in session it had power to rescind the action, provided it acted in good faith, and for the welfare of the charity.

Silence, Effect. A majority of the legal voters who choose to vote always constitutes an election. When a majority expressly dissent but do not vote, the election by the minority is good. It is no objection to an election that illegal votes were received unless the illegal votes changed the majority. The mere fact of their existence never avoids an election. First Parish, Sudbury, v Stearns, 21 Pick. (Mass.) 148.

Validity, Notice. The society was incorporated by legislative act in 1797. The charter provided for the election of four elders and four trustees, who were to compose the vestry. The minister was to be president of the vestry, and he was required to give notice of elections. A controversy arose in the society resulting in the election, in 1843, of two sets of elders and trustees, each claiming to be regular, one set claiming to represent the original society and its minister duly chosen, while it was claimed that the other set represented a party which had in effect usurped the power and jurisdiction of the congregation, and that these elders and trustees were not regularly elected. It was held that even if the election of 1843, at which certain elders and trustees were chosen was invalid, subsequent elections, held on due notice, could not be questioned, and the court could not declare them invalid. It was held that both elections in 1843 could not be valid, because one of them was held without a notice of the election given by the pastor as required by the charter; consequently, persons claiming to have been elected without such notice could not lawfully take the offices. Whatever might be the situation as to the validity of the election, it was held that mandamus was not the proper remedy, for the reason that a legal remedy existed by which the persons entitled to the management of the corporation could obtain possession of its property. Smith v Erb, 4 Gill. (Md.) 437.

Validity, Other Meeting at Same Time. An election of trustees was held on the 6th of January, 1913, under a notice regular in form, but with this notice an additional notice was given that a class meeting would be held in connection with the corporate meeting. The election notice contained no reference to a class meeting. The election at such a meeting was sustained, the court observing that even if both meetings were called for the same hour and at the same place, this would not affect the regularity of the corporate meeting unless the rights of some persons entitled to attend and participate therein were affected. This did

not appear to be the case. People ex rel Wilson v African W. M. E. Church, 156 A. D. (N. Y.) 386.

Voter, Right Cannot Be Reconsidered. A person voted at a church election without challenge and received a majority of the votes cast for the office of churchwarden, and the result was declared accordingly. It was held that the presiding officer could not afterward reconsider the matter, declare the person not qualified as a voter, and therefore not entitled to the office. A mandamus was granted requiring the rector to recognize as a churchwarden the person so elected. Re Williams, 57 Misc. (N. Y.) 327.

EVANGELICAL ASSOCIATION

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Minister, power of appointment, 247.
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History and Form of Government. This association was organized about the year 1800, and is a voluntary unincorporated religious denomination. Its doctrine, discipline, and church government are similar to those of the Methodist Episcopal Church. "Its ecclesiastical organization consists of the society or congregation divided into classes. Each congregation holds its Quarterly Conference, which is the local governing body of each church, and it meets four times each year. The General Association is divided into what are known as 'Annual Conferences,' of which there are twenty-five in number, each of which holds a session annually, and its membership consists of all fully ordained ministers who have been in the itineracy. These Annual Conferences are under the control of what is known as the General Conference, which meets once in four years. The Annual Conferences are subordinate to, and are established or abolished, reorganized or their boundaries changed by the General Conference. The Annual Conferences are presided over by a bishop, if one is present. In the absence of a bishop the members of the Conference are required to elect a president, and the president and the presiding elders of the Conference assign the preachers to their respective charges. Members of the General Conference are elected

from the Annual Conferences on a prescribed ratio. The General Conference elects the bishops for a term of four years. The law or constitution of the church is contained in a book called the Discipline, in which the powers of the different official bodies of the church are prescribed." By the Discipline, the time and place of holding the General Conference was to be determined by the bishops with the consent of the majority of the General Conference, or if there is no bishop present, the General Conference may, by vote, fix such time and place; or if no action is taken at the General Conference, then the oldest Annual Conference was authorized to fix the time and place of the meeting of the next General Conference, and was required to notify other Annual Conferences accordingly. At the General Conference held in Buffalo, in 1887, a resolution was adopted fixing the time of the meeting of the General Conference in 1891, and there being no invitation for the next General Conference, authorized the Board of Publication of the church to fix the place. The Board of Publication was composed of the bishops of the church and eight other persons selected from eight districts, into which the general association is divided. In 1890 this board fixed the place of the meeting of the next General Conference at Indianapolis, Indiana. In February, 1891, the East Pennsylvania Annual Conference, claiming to be the oldest Annual Conference, adopted a resolution fixing the place of meeting of the next General Conference at Philadelphia. This action resulted in a division of the denomination, and in October, 1891, the time fixed by the previous General Conference for the next General Conference, two General Conferences were held, one at Philadelphia and one at Indianapolis. Prior to these General Conferences, and apparently prior to the action of the Board of Publication in designating Indianapolis as the place of meeting of the General Conference of 1891, a church court had been held by which all the bishops were deposed from office. The Indianapolis General Conference reversed the action of this church court and held that the judgment of

suspension was void, and reelected two of the bishops for the next four years. The Philadelphia Conference ratified the suspension and elected three bishops, including Bishop Dubs, who had been suspended. Eighteen Annual Conferences sent delegates to the Indianapolis General Conference; the other Conferences were divided, some of them sending delegates to this Conference, and others to the Philadelphia Conference.

In 1890 the Des Moines Annual Conference was divided on a question involving a status of the bishops. In 1892 the majority party in that Conference brought an action to restrain the preachers representing the seceding party from attempting to occupy the pulpits of certain church buildings as ministers of the Evangelical Association, because the plaintiffs were invested with that right, being the regularly appointed preachers in charge. It was held that the action of the General Conference of 1887 in referring to the Board of Publication the question of designating the place for the next General Conference was a valid exercise of power; that the Indianapolis Conference was the lawful high church court of the association, and was authorized by the constitution of the church to review and declare void the proceedings which resulted in the alleged suspension of the bishops, and to elect others for the Constitutional period and that the Annual Conferences over which they presided were the lawful Conferences of the association. It was held in substance also that the plaintiffs, composing a majority of the Des Moines Conference, were in fact the seceding party, and irregular, and that the minority of that Conference, presided over by a bishop whose suspension was declared illegal, constituted the regular Conference. Anracher v Yerger, 90 Ia. 558; see also Krecker v Shirey, 163 Pa. 534.

Organization. The Evangelical Association of North America is a religious denomination organized about 1800, under the connectional or associated form of church government, founded upon that of the Methodist Episcopal Church,

and having a system of graded executive, legislative and judicial ecclesiastical bodies and officers, and a code of rules known as the Discipline. The territory covered by said denomination is divided into Annual Conference districts, in each of which is held a yearly meeting of the preachers of the denomination located in such district. For certain purposes of local administration each Annual Conference exercises jurisdiction over all its own members and over the congregations within its limits. By the General Conference, held every four years, bishops are elected for a term of four years. It is the special duty of a bishop to preside over the Annual Conference, and, with the aid of the presiding elders thereof, to appoint at the Conference session the preachers to their respective pastoral charges for the ensuing year, the same being the only recognized method of appointing ministers in use in said denomination since its origin. Neither the lay members of the several congregations nor the trustees thereof, according to the Discipline of said denomination, have any voice or vote in the selection of their pastors, nor any power to reject a pastor who has been appointed in the manner aforesaid.

Under the Discipline a presiding elder is required to superintend the spiritual and temporal affairs of the denomination within his district, to enforce all disciplinary provisions, to hold services, and otherwise to officiate in the various houses of worship in his district, and once in every three months to call and preside over a quarterly Conference held in the house of worship of each pastoral charge. In this denomination a pastor's appointment over any particular charge lasts for one year only, though he may be reappointed at an Annual Conference, but not more than three times in succession. Every pastor who is a married man is entitled to occupy the parsonage belonging to his congregation. Fuchs v Meisel, 102 Mich. 357.

Description. This association was an unincorporated society, composed of about 30,000 members, residing at different places in several States and in Canada, who hold to

a defined system of faith, who are united in Quarterly, Annual and General Conferences, and who are governed by a certain prescribed Discipline, and by rules of order adopted from time to time by the legislative power of the association. Its organization is as complete and minute as that of any existing religious society in the country. And it is strictly and exclusively a religious association, existing only for religious purposes. Bequests to this association were sustained in Evangelical Association's Appeal, 35 Pa. St. 316.

Division of Property, Effect. This corporation was organized to support the faith of, and to be connected with, the German Evangelical Synod of North America, especially with the division known as the Wisconsin District. The corporation took title to its property charged with a lawful trust, and they could not divert the property to inconsistent uses against the protest of any member. There was also an Evangelical Lutheran Synod of Wisconsin, distinct and separate from, but holding views somewhat similar to the Evangelicals. Dissensions arose in the society regarding faith and doctrine. Persons in control of the society changed its name to the Evangelical Lutheran Creed congregation, used books in the Sunday schools not authorized by the Evangelicals, and dissolved the relations existing between the society and the Wisconsin District, and declared that the congregation shall be and remain Evangelical Lutheran, and that the property in case of schism or division shall be enjoyed only by those who adhere to the constitution as so amended. It also appeared that the society was employing a pastor who had departed from the Evangelical faith. The plaintiffs sought to obtain possession and control of the property on the ground of its diversion by the managers of the corporation. It was held that the plaintiff's claim had been sufficiently established. Marien v Evangelical Creed Congregation, Milwaukee, 132 Wis. 650.

Expulsion of Member Terminates Office. Differences having arisen in the local society, one party seceded from the church

and joined an association known as the United Evangelical Church. They were subsequently expelled from the church and were cut off from all church rights and privileges by the regular ecclesiastical authorities of the Evangelical Association of North America. They brought an action to secure control of the church property, but it appeared that their offices as trustees had become vacant before the bill was filed. By their secession from the church they were no longer entitled to the control of the church property. The church property was bought under the condition that it should be subject to the rules of the Evangelical Association of North America. The plaintiffs had no standing in court and were not entitled to the relief demanded. Garrett v Nace, 5 Pa. Sup. Ct. 475, Nace Appeal, 11 Leg. Rec. (Pa.) 41.

General Conference, Place of Meeting. The Conference of 1887 appointed the usual Board of Publication, composed of the bishops and eight other persons, who were respectively selected from the eight general districts, with power to select the place of meeting of the next General Conference. The Board named Indianapolis as the place of meeting of the General Conference of 1891. After the Board of Publication had designated Indianapolis as the place of meeting of the next General Conference, the East Pennsylvania Annual Conference met at Allentown, and declared illegal the action of the General Conference of 1887 in delegating to the Board of Publication power to designate the place of meeting of the next General Conference. This Annual Conference then designated Philadelphia as the place of meeting of the next General Conference. This action by the oldest Annual Conference was nugatory, for the reason that the place of meeting had already been fixed by the body charged with that duty by the General Conference.

Eighteen Annual Conferences sent delegations to the Indianapolis General Conference, and two sent delegations to the Philadelphia Conference. The remaining five sent delegates to each Conference. The Indianapolis General

Conference had a quorum of legal representatives of the Annual Conferences. The Philadelphia Conference had less than a quorum.

The court held that (those) members of the denomination who adhered to the Indianapolis General Conference constituted the Evangelical Association. The alleged Conference which met in Philadelphia was unauthorized, its assumption of ecclesiastical authority was an act of rebellion against the organization with which its members had been connected, and whose name it adopted. It was further held that property which prior to 1891 belonged to the Evangelical Association, now belonged to, and must be controlled by those who still constitute that organization. The Annual Conference which did not adhere to the Indianapolis General Conference, but assumed to act under authority of the Philadelphia Conference, had no valid standing in the denomination, and had no authority to appoint ministers to particular local churches. Krecker v Shirey, 163 Pa. 534, see also Dubs v Esher, 6 Ohio Cir. Ct. 312 Schweiker v Husser, 146 Ill. 399.

Minister, Power of Appointment. The East Pennsylvania Annual Conference, which refused to adhere to the General Conference at Indianapolis in 1891, appointed a minister to this church. The court held that his appointment was irregular. Members of this Annual Conference who adhered to the Indianapolis Conference met and appointed a minister. This action was afterward ratified by the Indianapolis General Conference. The court held that this ratification validated the appointment made by the provisional Annual Conference, and therefore that the minister appointed by that provisional Conference was entitled to the office as pastor of the Immanuel Church, and was the only pastor that church was authorized to receive. Krecker v Shirey, 163 Pa. 534.

Secession, When Seceders Cannot Control Property. The Salem's Aid Society was an unincorporated religious association, and an independent society with absolute power over

its property. The society had power under its constitution to dispose of its funds according to its own judgment. After the election of officers of the society in 1891 certain disaffected members withdrew, and formed a new society. They brought an action against the original society to obtain possession of the funds then on hand. The court held that the original society was entitled to the possession and control of the funds. Manning v Shoemaker, 7 Pa. Super. Ct. 375.

EVANGELICAL LUTHERAN

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Historical Sketch. The Evangelical Lutheran Church in the United States is a descendant of the Lutheran Church of the sixteenth century—the first church of the Reformation. It takes its name of Lutheran from the great founder and apostle of Protestantism, and seems to have been called "Evangelical" to distinguish it from the Reformed or Calvinistic Lutherans. In the United States there are several families of this Lutheran Church—the Dutch Lutherans, the Swedish Lutherans, and the German Lutherans. The organic or fundamental creed of these various branches of the Lutheran Church is the Augsburg Confession. Wehmer v Fokenga, 57 Neb. 510.

Division of Society, Effect on Property Rights. This church, which at one time was attached to the Holston Synod, was afterward divided into two factions, one of which withdrew itself from the Holston Synod and attached itself to the Missouri Synod. It was held that by such withdrawal this faction forfeited its interest in church property which had been conveyed to it to be held and occupied so long as the society continued subordinate to the Holston Synod. Rodgers v Burnett, 108 Tenn. 173.

FREE BAPTIST CHURCH

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Creed. The Free Baptist faith is based upon the doctrines of Arminius, and is stated to be: "1. Conditional election and reprobation in opposition to absolute predestination. 2. Universal redemption, or that the atonement was made by Christ for all mankind, though none but believers can be partakers of the benefit. 3. That man in order to exercise true faith must be regenerated, and renewed by the operation of the Holy Spirit, which is the gift of God. 4. That the grace which confers this is not irresistible. 5. That men may relapse from a state of grace, and die in their sins." Park v Chaplin, 96 Ia. 55.

Property, When Transfer to Regular Baptist Church Invalid. The society was incorporated as a Freewill Baptist Church, but soon afterward the articles of incorporation were amended by changing the name to the Free Baptist Church. It was at that time connected with the quarterly meeting of that denomination. A resolution was adopted by the congregation to join the regular Baptist denomination, and steps were taken for such union. About the time of its incorporation the society had received a conveyance of land on which to erect a house of worship for the diffusion of the gospel, according to the faith and practice of the Freewill Baptist denomination. It was said by the court that the religious belief and the articles of faith of the Baptist Church or denomination were radically different from those of the Free Baptist Church, and each had a separate and distinct organization, and was governed by its own officers, laws, and rules. It was held that the property was acquired for the benefit of the Free Baptist Church,

and that such property could not be transferred to the Baptist denomination against the protest of members of the local society. Such members who still adhered to the Free Baptist faith had a right to protect the property and obtain an injunction against its transfer. The religious society as such could dissolve its relations with the Free Baptist denomination and join the Baptist, but the society could not take with it the property acquired by a civil corporation directly connected with the Free Baptist Church. Park v Chaplin, 96 Ia. 55.

FREE CHURCH OF SCOTLAND

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Organization. The Free Church of Scotland was formed in the year 1843 by what is called "the disruption," or, in other words, the secession from the Established Church of Scotland of a large body of the ministers of the Established Church, who renounced entirely the pecuniary benefits of their connection with the establishment in amendments of a protest which they had made against the interference by the civil courts with rights which they considered to be the rights of the church. It was the feature of the Free Church (prior to the Union) which distinguished it from all other Presbyterian churches in Scotland, that it was the only Presbyterian Church not connected with the state which professed to hold the establishment principle. General Assembly of Free Church of Scotland v Overtoun (1904), Law Reports, Appeal Cases (Eng.) 515.

Diversion of Property. In 1900 acts of assembly were passed by the majority of the Free Church, and unanimously by the United Presbyterian Church, for union, under the name of the United Free Church, and the Free Church property was conveyed to the new trustees for behoof of the new church. The respondents contended that the Free Church had full power to change its doctrine as long as its identity was preserved. The appellants, a very small minority of the Free Church, objected to the union, maintaining that the Free Church had no power to change its original doctrines, or to unite with a body which did not confess those doctrines, and they complained of a breach of trust, inasmuch as the property of the Free Church was no longer

used for behoof of that church. They brought this action in the name of the General Assembly of the Free Church, asking, substantially, that they, as representing the Free Church, be declared entitled to the property.

It was held that the establishment principle and the Westminster Confession were distinctive tenets of the Free Church; that the Free Church had no power, where property was concerned, to alter or vary the doctrine of the church; that there was no true union, as the United Free Church had not preserved its identity with the Free Church, not having the same distinctive tenets; and that the appellants were entitled to hold for behoof of the Free Church, the property held by the Free Church before the Union in 1900. General Assembly, Free Church of Scotland v Overtoun, Law Rep. App. (1903) cas. (Eng.) 515.

Minority's Right. The owner of land made a contract with certain persons, members of the Presbyterian Church, in connection with the Free Church of Scotland, for the sale and conveyance of a piece of land for a site of a burial ground, and a church in connection with the Free Church of Scotland—in case a congregation of that church would be assembled together; the parties entered upon the land and erected a church in which such a congregation did assemble for divine worship. Several years afterward the great body of the congregation ceased to be in connection with the Free Church, and they, in concert with the vendor, sought to hold possession of the church and land to the exclusion of such of the members as still adhered to the Free Church. It was held that so long as any one remained to claim the site and church on behalf of the Free Church the right of the latter body continued, notwithstanding the change of opinion in the body of the members. No other denomination had a right to take possession of the church and insist on holding and using it; and an injunction was granted restraining such attempted possession and use, as against the minority who still adhered to the Free Church of Scotland. Attorney-General v Christie, 13 Grant's Ch. (Can.) 495.

Union Did Not Affect Freedom of Private Opinion. This organization was formed in 1900 by a union composed of a great majority of the ministers and elders of the Free Church of Scotland with the ministers and elders of the United Presbyterian Church of Scotland. The act of union left ministers and laymen free to hold opinions as regards the establishment principle, and the predestination doctrine in the Westminster Confession as they pleased. General Assembly, Free Church of Scotland v Overtoun (1904), Law Rep. App. Cas. (Eng.) 515.

FRIENDS

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History. The distinctive doctrines of Quakerism were first taught in England shortly after the middle of the seventeenth century. The earliest meetings of this sect of Christians were no doubt for the purpose of worship only, and it was not until the year 1682 that the Society of Friends was fully organized for the purpose of discipline or church government. In that year a form of ecclesiastical government was matured and adopted. The system then adopted, which has been continued ever since, embraced four grades of church judicatories, called meetings, namely, the Preparative, the Monthly, the Quarterly, and the Yearly. These were connected and subordinated in the order named—the preparative to the monthly, the monthly to the quarterly, the quarterly to the yearly. The London Yearly Meeting, the only yearly meeting at that time established, was invested with paramount and final jurisdiction over all the subordinate meetings of the society. The jurisdiction of the Yearly Meeting was both appellate and advisory. Appeals from the decisions of the Quarterly Meetings were

entertained by the Yearly Meeting. Each Quarterly Meeting was invested with like jurisdiction over all the Monthly Meetings within its prescribed territorial limits, and each Monthly Meeting with like jurisdiction over Preparative Meetings within its territory.

Under this system a Preparative Meeting cannot be "set up" or "laid down" within the bounds of a Monthly Meeting without the consent of the Monthly; a Monthly Meeting without the consent of the Quarterly Meeting to which it is accountable, or a quarterly without the consent of the Yearly Meeting. All meetings for worship are promiscuous, being composed of members of the society without regard to sex, and open to all persons who may desire admission. In the scheme of Quaker government no superior judicatory has been organized for the exercise of discipline over its Yearly Meetings. Harrison v Hoyle, 24 Ohio 254.

Three Groups. Those known by the general name of Friends, and residing upon the American continent, are divided into three principal groups of Yearly Meetings. The first of these groups comprises all of the Yearly Meetings, which are in correspondence and in regular fraternal relations with the London Yearly Meeting, and to which we have already referred. Of this group the New England, formerly known as the Rhode Island, Yearly Meeting is the oldest American Yearly Meeting. The second embraces those Yearly Meetings which have their origin in a division of the society of Friends, commencing in the year 1827, in which Elias Hicks, a minister of the society, bore a prominent part. Those constituting these meetings are known in common parlance by the distinguishing name of Hicksite Quakers. The third is composed of a class of Yearly Meetings which, in the matter of their immediate organizations, are of a still more recent date. Those uniting with this class of Yearly Meetings, as between themselves and others claiming to be Quakers, prefer to be known as orthodox Friends.

These Yearly Meetings base their claims to regularity in their organizations upon their avowed adherence to the

ancient principles of Quakerism, and upon the orthodoxy of their sentiments as Quakers on the general subject of religion. The position of the Philadelphia Yearly Meeting is somewhat anomalous. It is next to the oldest, and, in some respects, has been, and perhaps continues to be, one of the most influential Yearly Meetings on this continent, and on terms of courtesy and friendship with many other Yearly Meetings; yet, owing to some internal difficulties and disagreements as to what relations it ought to sustain to certain other bodies claiming to be Yearly Meetings, it has ceased to have regular correspondence with any other Yearly Meeting. We, consequently, find it difficult, if not impracticable, to classify it with any one of the groups of Yearly Meetings to which we have referred. White Lick Quart. Meet. of Friends v White Lick Quart. etc., 89 Ind. 136.

Described. The society consists of a series of what are termed meetings—the word being used not only to designate assemblies of the people for worship, but also the jurisdiction and authority of these bodies. The lowest of these in order, which are called Particular Meetings, are local assemblies for the purpose of worship only. Sometimes several of these exist in a single town. They are similar to what some other sects call congregations. Next in order are Preparative Meetings. These consist of the members of one or more particular meetings. They assemble for worship, and also for the transaction of business to a limited extent. They usually include more than one Particular Meeting. Next above these are Monthly Meetings. They consist of as many Preparative Meetings as may be convenient and assemble monthly. From among the members of each Preparative Meeting belonging to them, they annually elect two or more males and two or more females as overseers. These overseers superintend the discipline and manage the funds and business of the Monthly Meetings; and the members which belong to each preparative meeting superintend its discipline and manage its funds and business.

By the Massachusetts act of 1822 corporate powers were conferred upon these bodies, and they have ever since been intrusted with corporate powers to take and hold property in succession. The Monthly Meeting is subordinate to a Quarterly Meeting, which is composed of as many Monthly Meetings as may be thought fit to constitute the same; and each of the Monthly Meetings elects delegates to it. It meets quarterly. Over all these meetings is a Yearly Meeting, which includes within its jurisdiction all the meetings of the denomination of Friends in New England, except those in Vermont. It meets annually, in the sixth month, in Rhode Island, and each Quarterly Meeting elects delegates to it. Dexter v Gardner, 7 Allen (Mass.) 243.

Besides the delegates and representatives, the members of the society generally are entitled to attend all the meetings and to participate to a greater or less extent in their proceedings. The greater part of the merely disciplinary and administrative business of the society is transacted at the Monthly Meetings, but their proceedings may be reviewed by the Quarterly Meetings and appeals may be still further taken to the Yearly Meetings. Each Yearly Meeting has a final and controlling jurisdiction in all matters of faith, religious duty, administration, and discipline within its territorial limits, and is regarded as a coordinate supreme judicatory with other Yearly Meetings, all constituting the ecclesiastical system known as the Society of Friends.

This general plan of organization is adhered to by all classes of English-speaking people claiming to be Friends, but more generally known as Quakers. Instead of general conventions, general conferences, or other general assemblages of some kind, as is provided for in most other religious organizations, the society of Friends has adopted a system of correspondence and fraternal communication between its Yearly Meetings in unity and general accord with each other, which is carried on by means of epistles, liberating certificates, visits, interchanges of ministers, and general letters of recommendation. By this system of intercom-

munication each Yearly Meeting receives information from time to time as to the general condition of all the other Yearly Meetings with which it is in correspondence, and is afforded an opportunity of consulting such other Yearly Meetings in all affairs of serious difficulty or of grave importance.

In matters of correspondence, and of an advisory character merely, the Yearly Meeting of England, which assembles at London, and which was organized and established more than two hundred years ago, has usually had accorded to it that kind of precedence which is quite frequently, if not usually, conceded to the oldest member of a family, and correspondence with, and consequent recognition by, that Yearly Meeting has been regarded by most, if not all, the Yearly Meetings on this continent, as a matter of considerable, if not of very great importance.

In the peculiar phraseology of the Society of Friends, a meeting is said to have been "set up" when it has been organized according to the usages of the society, and to have been "laid down" when it has been formally dissolved.

A new Yearly Meeting is set up by some contiguous or convenient Yearly Meeting, but only with the consent of all the Yearly Meetings with which such contiguous or convenient Yearly Meeting is in unity and fellowship.

When a new Yearly Meeting is set up it acquires jurisdiction over all subordinate meetings already established within its territory. Quarterly Meetings are set up by the proper Yearly Meeting; Monthly Meetings are set up by the Quarterly Meetings, and the Preparative Meetings are set up by the Monthly Meetings.

The clerk of the meeting is in a qualified but, nevertheless, in a general sense, its presiding officer, as well as the recorder of its proceedings, and during his term in office he stands at the head of the organization which constitutes the meeting. The meeting itself is frequently contradistinguished from others by a reference to him as its clerk. When, therefore, a clerk has been regularly appointed the

meeting is fully organized and ready to proceed with its business. White Lick Quart. Meet. of Friends v White Lick Quart. Meet. of Friends, 89 Ind. 163.

Business, How Transacted. One of the peculiar and distinguishing characteristics of this people consists in their mode of transacting business and arriving at conclusions, in which, rejecting totally the principle that a majority as such is to rule or decide, or govern, they arrive at a unity of resolution and action, in a mode peculiar to themselves, and entirely different from that common to all civil or political, and to most ecclesiastical bodies. They look and wait for a union of mind; and the result is produced not by a vote or count of numbers, but by a yielding up of opinions, a deference for the judgment of each other, and an acquiescence or submission to the measure proposed. Where a division of sentiment occurs the matter is postponed for further consideration, or withdrawn, or dismissed entirely; or, after sometimes temperate discussion and sometimes silent deliberation, those who support, or those who oppose a measure, acquiesce in the sense of the meeting as collected and minuted by the clerk; and they believe the "spirit of truth" when the meeting is "rightly gathered" will be transfused through their minds, and they will be guided and influenced by a wisdom and judgment better than their own, and that their clerk will be led to act under the overshadowing of that power, which is not at his command, which will enable him to make proper decisions.

Quoting from Clarkson's Portraiture of Quakerism, the court said: "When a subject is brought before them it is canvassed to the exclusion of all extraneous matter, until some conclusion results; the clerk of the meeting then draws up a minute, containing, as nearly as he can collect, the substance of this conclusion; this minute is then read aloud to the auditory, and either stands or undergoes an alteration, as appears by the silence or discussion upon it, to be the sense of the meeting; when fully agreed upon it stands ready to be recorded."

The constitution of this society neither recognizes nor makes provision for a vote or a decision on the principle of numbers in any instance or predicament. Hendrickson v Shotwell, 1 N. J. Eq. 577; see also Hendrickson v Decow, 1 Saxton (N. J.) 577.

Creed. Although the Society of Friends have seldom made use of the word trinity, yet they believe in the existence of the Father, the Son, or Word, and the Holy Spirit; that the Son was God, and became flesh; that there is one Lord Jesus Christ, by whom all things were made, who was glorified with the Father before the world began, who is God over all, blessed for ever, that there is one Holy Spirit, the promise of the Father and the Son, the leader, and sanctifier, and comforter of his people, and that these three are one, the Father, the Word and the Spirit. They also believe in the doctrine of the atonement; that the divine and human nature of Jesus Christ were united; that thus united, he suffered, and that through his sufferings, death, and resurrection he atoned for the sins of men. They also believe that the Scriptures were given by inspiration, and when rightly interpreted are unerring guides. They believe that the Spirit still operates upon the souls of men, and when it does really and truly so operate it furnishes the primary rule of faith. Hendrickson v Decow, 1 Sax. (N. J.) 577.

Ohio Yearly Meeting. In 1832 land in Jefferson County, Ohio, was conveyed to trustees for the use of the Ohio Yearly Meeting of the Society of Friends. The property was intended for a boarding school and suitable buildings were soon afterward erected, and a school was maintained there.

The Ohio Yearly Meeting was unincorporated, but exercised supervision over affairs relating to the Society of Friends in Ohio. In 1854 a division occurred in the Ohio Yearly Meeting, resulting in the organization of two societies under the same name, each claiming to be the Ohio Yearly Meeting entitled to the trust property described in said conveyance.

The Ohio Yearly Meeting was established in the regular order of the Society of Friends in 1812. The territory placed under its care had formerly been within the jurisdiction of the Baltimore Yearly Meeting.

The division in the Ohio Yearly Meeting of 1854 was apparently the result of a division which had previously occurred in New England Yearly Meeting. Out of this dissension there were formed in 1845 two New England Yearly Meetings. There were two parties in the Ohio Yearly Meeting respectively sympathizing with the larger and small party in the New England division. The controversy in 1854 grew out of the election of a clerk, resulting in the declaration of election of two clerks by opposing factions. After this division each party met in a separate meeting. One of those meetings was known as the Binn's Meeting, and the other as the Hoyle Meeting. The Binn's party maintained the history, traditions, and customs of the Yearly Meeting of the Society of Friends, while the Hoyle party was, so far as practicable, excluded from association with the other party.

The court held that the Binn's party was entitled to be considered the true Yearly Meeting, and that the Hoyle party had not conformed to the rules of the society in attempting the election of a clerk and assistant in the manner pointed out in the opinion. It appeared that nearly all other Yearly Meetings of Friends in this country recognized the validity of the Binn's election and the status of the Binn's party. This was deemed of great weight by the court in determining the question as between the Binn's and the Hoyle factions. The Binn's party was held entitled to the property conveyed to the Ohio Yearly Meeting in 1832. Harrison v Hoyle, 24 Ohio 254.

Philadelphia Yearly Meeting. In the latter part of the seventeenth century, and at a very early period in the progress of the settlement of New Jersey and Pennsylvania, the number and condition of the followers of George Fox, or the people called Quakers, rendered it desirable they should

be brought under a common head, according to the form of ecclesiastical government adopted in England, and already existing in some of the more ancient colonies. In the year 1681 or 1685 (the precise time seems to be controverted) a Yearly Meeting was established, comprehending the provinces of New Jersey and Pennsylvania, and the members of that religious society and their already organized meetings and judicatories of inferior grades. This body was not a mere incidental, casual, disconnected assemblage, convening without previous arrangement, ceasing to exist when its members separated, and formed anew when individuals came together again at some subsequent time. It was a regularly organized and established body, holding stated sessions, corresponding with other bodies of the same religious denomination, consulting together for the welfare of a portion of their church and its members, the ultimate arbiter of all differences, and the common head and governor of all belonging to the Society of Friends, within its jurisdiction, which extended over the territories just mentioned, while they were called provinces, and since they assumed the name and rank of States. The meetings of this body were held annually, as its name imports, and as long and steady usage has wrought into a part of its essential structure. The time and place, however, when and where only the body can constitutionally assemble and act, must when fixed, so remain, until "the voice of the body," "in a Yearly Meeting capacity," which alone has the power and right "to govern its own proceedings," shall resolve on and enact a change. From the year 1685, for nearly a century and a half, this body held its periodical sessions; for years, alternately at Burlington and Philadelphia, and finally in the latter city alone; and there, successively, at their houses on Pine Street, on Keyes' Alley, and on Arch Street; in the year 1826, at the prescribed time and place, a meeting was held. After the transaction of its business it adjourned, according to the ancient and wonted form, "to meet in the next year at the usual time." This body, thus convened and

thus adjourned, was, without dispute, the Philadelphia Yearly Meeting of Friends. Hendrickson v Decow, 1 Sax. (N. J.) 577.

This was declared to be a body politic or corporate by prescription, and its right of taking and enjoying property could not be impaired by inquiry into the separate capacity of its component members. Magill v Brown, Fed. Cas. No. 952 (U. S. Cir. Ct., Pa.) Brightly N. P. 347.

Preparative Meeting, Only One Regular. For some time prior to 1827 there was a preparative meeting at Chesterfield, New Jersey. In December, 1827, there was a separation among the members of this meeting, and two meetings were formed, each calling itself the Chesterfield Preparative Meeting. One of the meetings elected a treasurer of certain school funds, and the other continued the former treasurer in office. Each of these Preparative Meetings was connected with one of two Yearly Meetings in Philadelphia. But while there were two meetings claiming to be the true Yearly Meeting, it was conceded that by the law of the society there could be only one true Yearly Meeting in Philadelphia.

It was held that there could be only one Preparative Meeting at Chesterfield, which must be connected with one Yearly Meeting in Philadelphia. It was also held that the separation in 1827, by which the Philadelphia Yearly Meeting was divided, a minority organizing another Yearly Meeting, did not have the effect to change the status of the original society, which was continued by the election of officers, and the transaction of general business; and this Yearly Meeting was held to be the true Yearly Meeting. The Chesterfield Preparative Meeting, which continued in office the former treasurer, was held to be the regular Preparative Meeting, duly connected with the Philadelphia Yearly Meeting, and that this treasurer was entitled to recover the amount due on a mortgage given to him for the loan of money belonging to the school fund. Hendrickson v Shotwell, 1 N. J. Eq. 577.

Affirmation. In Rex v Mayor of Lincoln, 5 Mod. (Eng.) 400, a Quaker was admitted to the freedom of the City of Lincoln on his affirmation.

In Ex Parte Gumbleton, 2 Atk. (Eng.) 70 Lord Chancellor Hardwicke held that under the act of 7 and 8 W. 3, a Quaker could not by affirmation without oath present articles of the peace against her husband, and it was suggested that the woman, "as she goes in danger of her life," might overcome her scruples and take the required oath.

A Quaker's testimony on his affirmation is admissible in an action on debt on statute, 2 Geo. 2, c. 24, against bribery. Atcheson v Everitt, 1 Cowper (Eng.) 382.

Quakers may serve as grand jurors and the affirmation administered to them is equivalent to the oath to be administered to other persons. Commonwealth v Smith, 9 Mass. 107.

Division of Society, Effect, Presiding Officer. Members of a Society of Friends formed an association known as the "Purchase Preparative Meeting," to whom belonged a school fund of about $800 in cash, raised by contribution, and 150 acres of land devised by an individual. In 1828 a separation took place in the Society of Friends, at their Yearly Meeting in the city of New York, about 250 persons out of an assemblage of 1,200 withdrawing from the Friends Meeting house in the city of New York, and organizing a separate Yearly Meeting; the section withdrawing was called the Orthodox, and those remaining the Hicksites. Under the rules of the society the clerk of the meeting is its presiding officer, and the meeting is not deemed organized until he is in his place. At a meeting held in 1828 the Hicksites were a large majority, and they refused to permit the clerk to preside, for the reason that he had joined the Orthodox party; thereupon the clerk and several members withdrew and held a meeting in another place. At this meeting the Orthodox Friends were directed to separate from the Hicksites. On the withdrawal of the clerk, as above pointed out, the Hicksites elected another clerk and afterward held

regular meetings. The Hicksites retained possession of the meetinghouses and schoolhouses, and control the schools and support them. It seems that by one of the rules of the Society of Friends questions at a meeting are not decided by vote, but by the clerk, who gathers as best he may the opinions of the members present and decides it according to his judgment. The court sustained the validity of the meeting held by the excluded clerk, notwithstanding a majority of the persons present at the opening of the meeting remained, and elected another clerk. The regular clerk could not be excluded from his office, nor prevented from exercising his functions by the action of the meeting. He was its legal head under the rules of the society, and authorized to act as its presiding officer. The plaintiff as treasurer of the Purchase Preparative Meeting in 1817, having loaned to the defendant a part of the fund on his promissory note, was held entitled to recover notwithstanding a subsequent division of the society. The plaintiff represented the original society, and the title to the fund was not affected by the secession of a portion of its members. Field v Field, 9 Wend. (N. Y.) 394.

Exemption from Military Duty. A Quaker who claims an exemption from duty in the militia must prove that he is a member of a society of that denomination, and that he frequently and usually attends with such society for religious worship. Commonwealth v Fletcher, 12 Mass. 441.

Meetings. The meetings in the Society of Friends are of two kinds—for worship and for discipline, as they are sometimes called; or, in other words, for business. Every meeting for discipline is in truth a meeting for worship, since he cordially and faithfully performs any ecclesiastical duty; does thereby pay an act of adoration to the Almighty. The meetings for business are four in number, marked and distinguished by peculiar and characteristic differences—preparative, monthly, quarterly and yearly.

Office, When not Bound to Accept. The court declined to compel a Quaker to accept the office of churchwarden to

which he had been elected in the Established Church. Adey v Theobald, 1 Curteis (Eng.) 373.

Title, Not Forfeited by Removal of Building. Property conveyed to the society for its use so long as it was needed for meeting purposes, with a provision that it should revert when no longer needed for such purposes, was not forfeited by the removal of the buildings erected by the society on the lot. Such a removal did not constitute a forfeiture. Carter v Branson et el, 79 Ind. 14.

Unincorporated, May Take by Will. In Magill v Brown, Fed. Cas. 8, 952 (U. S. Cir. Ct., Pa.) (Brightly N. P. 347) Judge Baldwin, considering the provisions of a will making numerous bequests to Societies of Friends for charitable purposes, said: "It is not conceivable that the Quaker settlers of this province should have introduced those laws of the mother country, which would incapacitate them as individuals, or a religious society, from taking, holding, or enjoying property as a matter of right without a charter; or expose to a forfeiture to the proprietor, or mesne landlord, lands conveyed to them for the purposes of sepulture, religious worship, or charity, and above all, that William Penn should have adopted the statutes of Henry VIII declaring the celebration of divine service according to the rites of the Catholic Church to be superstitious, and a conveyance for its use illegal and void; and the statutes of mortmain which make the enjoyment of property by a religious body dependent on the pleasure and permission of the lord of the fee, while at the same time he excludes the Statute of 43 Elizabeth, and the mild and beneficent principles of the common law which that statute has been held to have restored." The history of the Society of Quakers presents no instance of an incorporation. The societies of Friends, though never formally incorporated, are capable under the constitution and laws of Pennsylvania, of taking property by devise or bequest for the purposes of their organization. But in Green v Dennis, 6 Conn. 293, a devise to an unincorporated Quaker society was rejected.

FRIENDSHIP LIBERAL LEAGUE

Description, 268.

Description. Testator gave a legacy to the league but did not specify the use to which it was to be applied. The league was organized for the purpose of uniting socially for the improvement of their intellectual and moral condition by the dissemination of scientific truths by means of literature, music, lectures, and debates. It did not claim to be a Christian organization, but it represented nevertheless the belief of its members about religion, and their practices as to the observance of the Sabbath and similar subjects. It was an organization that had about it no element of personal or corporate gain. It had no capital stock and no stockholders. Its meetings were usually held on Sunday. It was held that money given to this league was given for religious use within the act of 1855. Knight's Estate, 159 Pa. 500.

GERMAN EVANGELICAL LUTHERAN CHURCH

Diversion of property, 269.

Diversion of Property. Property was conveyed to the society in trust to be held as an Evangelical Lutheran Church forever, in which the doctrine of the Augsburg Confession and Luther's Smaller Catechism shall be taught and adhered to. Provision was also made for conducting the service in the German and also in the English language. The local society enacted a constitution providing for the election of seniors and wardens, and that the pastor must be a regular clergyman connected with some Evangelical Lutheran Synod in the United States of America.

About 1853 the pastor, as alleged, began a systematic effort to lead the congregation to adopt practices in church worship which are not approved or practiced by those churches which are connected with the Evangelical Lutheran Ministerium of the State of New York and adjacent parts, among which practices was the use of lighted candles during the services in the church in the daytime, the use of the wafer at the sacrament of the Lord's Supper, auricular confession, and the use of the sign of the cross, and such Romish practices as are disapproved by the Evangelical branch of said denomination.

The trustees gave the pastor notice of the termination of his pastoral relations after three months. The trustees attempted to get possession of the property. They demanded the key of the sexton, who refused to deliver it. Proceedings were commenced against the pastor and some of the trustees and members adhering to his interests, to restrain them from taking possession of the property or from exercising

any functions therein. It was held that plaintiffs were entitled to the possession of the property, and the pastor's adherents were not entitled to continue in possession thereof. German Evangelical Lutheran Church, Newark v Maschop, 10 N. J. Eq. 57.

GERMAN EVANGELICAL SYNOD OF NORTH AMERICA

Property, separation, injunction, 271.

Property, Separation, Injunction. A local society was organized, but the papers were defective. Trustees, were chosen, a corporate organization was maintained, the right to be a corporation asserted, and the corporate franchise accordingly used down to the commencement of this action. The corporation was under the jurisdiction of the German Evangelical Synod of North America, and was presided over by ministers of that denomination. Land was conveyed to trustees of the local society, on which the church edifice was erected and dedicated, as property of a society of the German Evangelical Synod of North America, and used in harmony therewith until some time in 1896. Owing to the difficulty attending the employment of a minister, the society employed one who was a member of the Lutheran Church, a sect materially different in its religious belief and distinct from that of the Wayne Society. This employment was for one year; at the end of that time a majority again employed the same minister. The minority protested on the ground that they desired and were entitled to have a minister in harmony with the views of the German Evangelical Synod of North America. The majority controlled the possession of the church, and refused its use by a minister of the denomination to which the society belonged. It was held that the property could not be diverted to uses not contemplated in the original acquisition, and this diversion could not become effective even with the sanction of a majority. On the application of a minority, who adhered to the

original society, an injunction was granted prohibiting the majority from diverting the property from the use to which it had been devoted at the time of its acquisition, and the erection and dedication of the church edifice. Franke v Mann, 106 Wis. 118.

GERMAN REFORMED CHURCH

Description, 273.
Dissolving relation to Classis, effect, 273.
Joint title, division, effect, 274.
Judicatories, 274.

Description. The German Reformed Church, founded in 1563, was a distinct ecclesiastical organization, not merely having adopted the Heidelberg Catechism as the confession of its faith, but having a written constitution, a settled form of government by ecclesiastical judicatories, four in number, in regular gradation, from the lowest to the highest, having cognizance of ecclesiastical matters though their power, of course, was wholly spiritual. First, the Consistory, the primary governing body of each church or congregation, composed of the minister or ministers of that church, together with the elders and deacons as the representatives of the people; second, the Classis, consisting of all the ministers and delegated elders of the congregations within a certain designated territorial district; third, a Synod, consisting of the ministers and lay delegates of the several classes embraced within its prescribed geographical limits; and, fourth, the General Synod, the highest judicatory of the church, and the court of last resort, composed of ministerial and lay delegates elected by all the classes respectively, according to a prescribed ratio of representation. Roshi's App. 69 Pa. 462.

Dissolving Relation to Classis, Effect. According to the head note in Miller v Gable, 10 Paige (N. Y.) 627, where the trustees of a German Reformed Church which was in ecclesiastical connection with, and subject to, the church judicatories of the Dutch Reformed Church in the United States, attempted to dissolve the connection of such church

with the classes to which it belonged, and employed German Lutheran pastors, without the consent of a large portion of the church and congregation, or of the classes with which the church was connected, and refused to permit the stated supplies provided by the classes to occupy the pulpit. Held, that such conduct of the trustees and their adherents was a diversion of the funds and property of the church from the purposes for which they were contributed by the original donors. See this case on appeal 2 Denio (N. Y.) 492, 570.

Held also, that those members of the church and congregation who adhered to the original doctrines of the church, and who had continued their ecclesiastical connection with the church judicatories to which they were subordinate when the property of the church was acquired, and who had also kept up a proper corporate organization, by the regular election of the proper church officers, as trustees of the corporation, from time to time, were entitled to the temporalities of the church and to its books and papers.

Joint Title, Division, Effect. The German Reformed Society and the Lutheran Society occupied land together for many years, using the same church building. The original tract of land thus occupied contained about eight acres. After a long period of joint occupancy the German Reformed Society concluded to erect a separate house of worship, and for that purpose took possession of about three quarters of an acre at one end of the eight-acre tract, sufficiently distant from the other house of worship, so that neither congregation interfered with the service of the other. In St. Pauls Ref. Ch. v Hower, 191 Pa. St. 306, it was held that although those who erected a new church could not without the consent of the other party take lawful possession of a portion of the land, the Lutherans objecting were estopped from claiming title to the new building, which had been occupied about ten years without objection.

Judicatories. The Judicatories consist of three heads; the Consistory, the Classis, and the Synod. And by the sixth article of the Discipline it is provided that when any person

may think himself aggrieved by the decision of a lower judicatory, he has a right to appeal to a higher; and whatever is concluded in such judicatory by a majority of votes, is valid and binding, unless it can be shown to be contrary to the Word of God and the constitution of the church. Church v Seibert, 3 Pa. 282.

GERMAN SOCIETY

Washington, D. C., 276.

Washington, D. C. About the year 1832 a large number of Germans found themselves domiciled in the city of Washington, which then contained no church where the services were performed in their own tongue. The bond of nationality proved stronger than devotion to religious forms, and they all, from time to time, assembled in common worship conducted in the German language by some of their members; and the testimony disclosed the rather remarkable fact that this company of foreigners, composed of Jews, Roman Catholics, Lutherans, and Calvinists, for a considerable time continued in harmony to attend the same religious exercises. Ebbinghaus v Killian, 1 Mackey (Dis. of C.) 247.

GOSPEL

Defined, 277.

Defined. "Gospel, according to the common and more general acceptation of the term, is synonymous with Christianity or the Christian religion." Attorney-General v Wallace, 7 B. Mon. (Ky.) 611.

GREEK CHURCH

Comparison with other Catholic Churches, 278.
Diversion of property, 278.
Priest, appointment and removal, 279.

Comparison with Other Catholic Churches. The United Greek Church is an organization separate and distinct from the Orthodox Greek Catholic Russian Church, and its doctrines, tenets, rules, etc., are the same as the Roman Catholic Church, except in some matters of discipline, although acknowledging the pope as the ecclesiastical head of the church, and acknowledging the authority of the bishops appointed by him. The Orthodox Greek Catholic Russian Church differs in many respects in its faith, doctrines, tenets, rules, etc., from the United Greek Catholic Church, and acknowledges as its spiritual or ecclesiastical head, the Synod of Russia, consisting of bishops appointed by the Czar of Russia. These two separate and distinct churches have existed and had these marked differences in their beliefs and government for a long period of time. Greek Catholic Church v Orthodox Greek Church, 195 Pa. St. 425.

Diversion of Property. In 1889 a deed of land was made on which a church had been erected, and was then being used by a society with a regular pastor, worshiping according to the forms of the United Greek Catholic Church. It was held that the trust contained in the deed of the church property was created for the Greek Catholic Church at Wilkes-Barre, as it was then being conducted. A new pastor, who came to his position in 1892, taught new doctrines and forms, and required of the congregation and trustees that they renounce their belief in the doctrines and dogmas of

the United Greek Catholic Church. A portion of the congregation, led by the pastor, attempted to transfer the society and its property to the Orthodox Greek Catholic Russian Church. An injunction was granted preventing such transfer. Greek Catholic Church v Orthodox Greek Church, 195 Pa. St. 425.

Priest, Appointment and Removal. In Papalion v Manusas, 113 Ill. App. 316, it was held that the board of trustees had power to appoint and dismiss a priest, and that the power was not vested in the congregation. There was no evidence of any law of the denomination prescribing any other method of appointment or removal. There was no evidence to show that either in this country or in Europe a priest had ever been elected by the vote of the church or congregation, or that there was any law of the church providing for such election.

GUARDIAN

Removal on change of religious faith, 280.
Ward's religious education, 281.

Removal on Change of Religious Faith. Testator, who died in 1896, by his will appointed his sister guardian of his infant daughter, eleven years of age. In 1900 the guardian became a Roman Catholic. Under the circumstances, the court considered this change of religious faith a sufficient ground for the removal of the guardian. The ward, who had been brought up a Protestant, objected to remaining longer under her aunt's charge. The court observed that the father's religion is prima facie the infant's religion, and the guardian's duty is to see that the ward is brought up in that religion, and is protected against disturbing influences by persons holding the tenets of a different faith. The court also said that in considering questions of guardianship, it has regard, before all things, to the infant's welfare; and expressly declared that there was no imputation against the guardian who had changed her religion from conscientious motives.

"One of the first and most sacred duties of the parents is to imbue the mind of the child with some religious belief, and this is done, not merely by precept and instruction, but by the unconscious influence of everyday life and conduct. The child is entitled to this care, and the opportunity of resorting to the guardian for assistance and instruction in the doubts and difficulties that assail the youthful mind, and they usually become more marked and urgent as she develops from girlhood to womanhood. But if the guardian changes her religion, she deprives the ward of this protection and refuge." "I accept the guardian's assurance that

she has not attempted, and will not attempt in any way to influence the ward; but this means that the subject of religion is excluded from their conversation, and that the ward is deprived of all the protection and assistance in religious matters which she is entitled to expect from her guardian. Further than this, the disturbing influence arising from the sight of the guardian worshiping in a different church, and consulting the priests of another faith, may well be prejudicial to the ward's peace of mind and secure confidence in her own religious belief." F. v F. (1), 1 L. R. Ch. (Eng.) 688 (1902).

In State ex rel Baker v Bird, 253 Mo. 569, it was held that under the Missouri Revised Statutes of 1909 a guardian could not be removed merely because he was of a different religious faith than that of his ward or his ward's parents.

Ward's Religious Education. Such education should be according to the religious preference of the parents, if any have been expressed, and such preference should be considered by the court in appointing a guardian. Re Jacquet, 40 Misc. (N. Y.) 575, 82 N. Y. S. 986. Citing Matter of Scanlan, 57 L. J. Ch. (Eng.) 718, in which the court refers with approval to an authority holding that the guardian was to have sacred regard to the religion of the father, whatever that religion may have been.

In Matter of Mancini, 89 Misc. (N. Y.) 83, a Catholic girl, an orphan, fourteen years of age, requested the appointment of a Protestant in whose family she had lived for five years. The Surrogate recognized the claim of her family that she be educated in the Catholic faith, and directed the appointment of the proposed Protestant guardian, on condition that he place her in a Catholic residential educational institution.

INDEPENDENTS

Definition, 282.

Definition. Independents are so called for maintaining, in opposition to Episcopalians and Presbyterians, that each congregation is a complete church, and is in no respect subject to the control of others. The Independents are a sect of modern date. The hierarchy established by Queen Elizabeth, the vestments worn by the clergy in the celebration of divine worship, the Book of Common Prayer, the sign of the cross used in baptism, etc., were considered by many persons as too nearly resembling popery, and a purer worship and more perfect reform were demanded. These persons were called Puritans. They divided from the church, or, rather, the church cast them out. Brown first, Robinson afterward, molded a certain portion of this mass into the sect now known in England by the name of Independents. From thence sprung Congregationalists in this country. Born in the Old World and in this, Presbyterians, Independents, or Congregationalists form distinct religious societies or churches. Muzzy v Wilkins, Smith's N. H. Rep. 1.

INJUNCTION

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Baptism, Use of Stream for. The trustees sought an injunction restraining the maintenance of a mill dam, alleging that the back flow of the water covered a place in the creek which had been given to the church and used by it for baptismal purposes, and that such use was interrupted and prevented by the dam. The trustees claimed a right under a deed of certain land including the creek which assumed to reserve the right to use the creek for baptismal purposes without conveying any express title. It was held that the church acquired no right by prescription or otherwise to a perpetual use of the water of the spring or creek for baptismal purposes, and the injunction was denied. Stewart v White, 128 Ala. 202.

Cemetery, Obstructing Access to Lot. An injunction was granted restraining the church authorities from obstructing an avenue in a cemetery in which a lot had been sold by

them to the plaintiff, and on which he had erected a family tomb. The plaintiff had a right of access to the tomb which could not be obstructed by the society. Burke v Wall, 29 La. Ann. 38.

Cemetery, Removal of Bodies. A church which has permitted its members and others to bury their dead on its lot for twenty years has thereby dedicated such part of its lot to that purpose, but in a proper case it will not be enjoined from selling the lot and removing the bodies to another place. Ex Parte McCall, Little v Presbyterian Church, Florence, 68 S. C. 489.

Diversion of Property. In 1856 the Little Schuylkill Navigation Railroad and Coal Company conveyed to the First Baptist Church of Tamaqua land for the use of public worship, according to the usages and ceremonies of the Baptists only, with a condition of forfeiture if used for any other purposes. Afterward the land and improvements were transferred by the members of the Baptist Church to the Salem Church. In 1894 the Schuylkill Company, under its right to reenter for condition broken, granted and conveyed the land to the respondents, and secured possession of the property. They thereupon applied for an injunction, and a mandatory injunction was granted. It was alleged that the complainants, claiming to be pastor and officers of the Salem Church, had withdrawn therefrom many years before, and were not members of the society; that the Salem Church was not a member of the Evangelical Association, but was and had been for years an independent organization. Without disposing of the questions directly on account of the form of the remedy sought, the court on appeal dissolved the mandatory injunction and dismissed the proceedings. Fredericks v Huber, 180 Pa. 572.

In Mt. Zion's Baptist Church v Whitmore, 83 Iowa 138 it was held that a majority of a church had no power to divert the church property to the propagation of doctrines contrary to Baptist articles of faith and church covenant, and an injunction was held proper to prevent the majority

from effecting such a diversion. See also Morgan v Gabard, 58 So. (Ala.) 902.

Ecclesiastical Bodies. A minister was regularly appointed by the bishop as pastor of this church. The presiding elder removed this minister, assigning him to another church and appointing another minister in his place. The pastor and a board of stewards, who, it was alleged, had been ignored by the presiding elder, began a proceeding against a new board of stewards to procure an injunction restraining the new stewards from preventing the use of the church by the pastor and former stewards. The injunction was denied, the court holding among other things that the questions involved were ecclesiastical only, and that the civil courts had no jurisdiction in the matter. Travers v Abbey, 104 Tenn. 665.

The principle may now be regarded as too well established to admit of controversy, that in the case of a religious congregation or an ecclesiastical body, which is itself but a subordinate member of some general church organization, having a supreme ecclesiastical judicatory over the entire membership of the organization, the civil tribunals must accept the decisions of such church judicatory as final and conclusive upon all questions of faith, discipline, or ecclesiastical rule, and the party aggrieved cannot invoke the aid of the civil courts to have such proceedings reversed. High on Injunctions, sec. 233. State ex rel Soares v Hebrew Cong. 31 La. Ann. 205.

Expulsion of Members. In Holcombe v Leavitte, 124 N. Y. S. 980 an injunction was granted against the expulsion of certain members of the society who had proposed by-laws for its government, and who, if arbitrarily expelled, would be deprived of property rights.

In Waller v Howell, 20 Misc. (N. Y.) 236, the court declined to interfere by injunction to prevent the rector from striking the names of the plaintiffs from the parish register, on the ground that the question involved was purely ecclesiastical and beyond the jurisdiction of Civil Courts.

The complainant claimed that he had unlawfully been put on probation in the society and was threatened with expulsion contrary to the rules of the denomination, and he asked for an injunction. This was denied on the ground that the church would not take such extreme action without giving him an opportunity to be heard, especially after his complaint had been made, and that if such action should be taken, he would have a complete remedy by mandamus. Hammel v German Congregation, 1 Wkly. Notes Cas. (Pa.) 411. See also Members and Mandamus.

Lease. Land was conveyed to the officers and members of the church for the purpose of keeping and maintaining a place of worship. The action of the officers in leasing a small portion of the lot for erecting a store, the rent to be paid to the officers for the benefit of the society, was held not to be a violation of the trust and an injunction restraining such lease was refused. Hayes v Franklin, 141 N. C. 599.

Members, Interfering with Property. Persons who had been members of this society, but had withdrawn therefrom and worshiped in other buildings, forcibly entered the church edifice, changed the locks, and interfered and threatened the disturbance of the rights of the society to the uninterrupted use and control of its house of worship. An injunction was granted to prevent the defendants, former members, from interfering with the possession and use of the church property. Christian Church, Huntsville v Sommer, 149 Ala. 145.

Members, Interfering with Trustees. The trustees were held to be the managing agents of the corporation and entitled to an injunction restraining certain members of the society from interfering with the possession and management of the property by the trustees. Baptist Congregation v Scannel, 3 Grant's Cas. (Pa.) 48.

In Richter v Kabat, 114 Mich. 575, it was held that injunction was the proper remedy to secure to the officers of a church the peaceable possession of its property as against

members of the parish who have assumed to exclude them therefrom without right.

Minister, Dissolving Relations. A vestry de facto was held competent to act in considering the relations of the rector to the society. This vestry had power to elect a rector, but the charter and by-laws did not confer on the vestry the power to dismiss a rector without giving him an opportunity to be heard. An injunction was, accordingly, granted restraining the vestry from further action until the pastoral relations had been regularly severed in accordance with the constitution of the church. Batterson v Thompson, 8 Phila. (Pa.) 251.

Minister's Occupancy of Church. The pastor was dismissed by the action of a majority of the congregation. He and other defendants took possession of the church property and he preached and made appointments to preach with a view to the occupancy of the church without the consent of the majority. An injunction was granted restraining the minister and his associates from occupying the church without the consent of the majority. The majority represented the church and had a right to select the pastor. Hatchett et al v Mt. Pleasant Baptist Church et al, 46 Ark. 291.

The trustees applied for an injunction restraining the defendant, a minister, from intruding into the church and occupying its pulpit without authority and contrary to the wishes of a majority of a congregation. It was alleged that he had declared his intention to occupy the church as a minister for the next three years unless prevented by physical force. It appeared that he had not been employed as a minister and was not a member of the church. The court on appeal granted an injunction, saying among other things that where property is held by trustees for the exclusive use of a particular organization, that body has the right to enjoy it, according to the usages of the church. Even the trustees, much less others, have no power to pervert it to other uses, except in the usual mode of transferring such property, and any attempt to do so may be restrained. Such a body has

the right to use it for the purpose of worship, according to the rules for the government of the church. And they have the right to have such worship performed in the manner and by persons designated by the rules and tenets of the church. Other persons cannot lawfully intrude upon such rights. Persons not selected in the mode prescribed by the regulations for the church government have no right to force themselves into the church and officiate or conduct the religious exercises, and any one doing so acts in violation of law. A congregation of religious persons cannot be forced to accept the ministrations of a clergyman not chosen according to the usages of their church, and when a person attempts to force himself upon them they may maintain a bill to restrain such acts. Trustees of the First Congregational Church v Stewart, 43 Ill. 81.

In Isham v Trustees of the First Presbyterian Church of Dunkirk, 63 How. Pr. (N. Y.) 465, it was held that the trustees of the society could not lawfully permit the use of the church edifice by a clergyman who had adopted and advocated religious views at variance with those held by the denomination, but those who adhered to the original faith were entitled to an injunction restraining such use of the church edifice.

This society was a free and independent church, and had not declared any particular articles of faith. It was not under the jurisdiction of any synod, but it was united with other Lutheran churches in their existing ecclesiastical policy. In 1867 a division arose among the Lutheran churches and a new body was formed, called the General Council, to which some of the synods united themselves, and others divided. In an action by members of the church against the pastor and other officers of the society, to restrain the pastor from officiating as such, and the officers from permitting the use of the pulpit by any minister who did not preach the doctrines indorsed by the General Council, it was held that the action could not be maintained for the reason that the society was independent, and could elect

its own pastor, and that he was only bound to teach the faith and doctrines generally accepted by Lutherans, without reference to any synod or council. Threnfeldt's Appeal, 101 Pa. St. 186.

A Baptist congregation by resolution requested the pastor's resignation, but instead of resigning he continued to occupy the pulpit, sometimes using force and violence, and to exercise the functions of a pastor. In an action by the society to enjoin the pastor from further use of the pulpit and church the resolution of the congregation was sustained, and an injunction against the pastor was granted. Morris Street Baptist Church v Dart, 67 S. C. 338.

Differences having arisen between the pastor and council or governing body of the church the pastor was suspended for six months. Notwithstanding this suspension, he occupied the pulpit under protest, and preached, apparently sowing seeds of dissension in the congregation and creating opposition to the council as the governing body of the society.

In a proceeding by the council against the minister to restrain him from further occupancy of the pulpit, or church, an injunction was granted prohibiting him from exercising ministerial functions. German Evangelical Congregation v Pressler, 17 La. Ann. 127.

The corporation includes all the members of a society, and not the trustees only. Trustees are officers of the society, and do not hold the property in trust in the same sense that a private trustee holds the property for his beneficiary. In May, 1859, the pastor and the person acting as schoolmaster, chorister, and sexton were excluded from their position by action of the trustees and a majority of the members of the society, contrary to the rules of the Lutheran Church, which vested in the synod (in this case, Buffalo) and the ministry the sole power of removal of the pastor and schoolmaster; and at the same time the trustees and congregation renounced the ecclesiastical government of the Buffalo Synod. In Gram v Prussia Emigrated Evan-

gelical Lutheran German Society, 36 N. Y. 161, it was held that the pastor and schoolmaster were not entitled to an injunction restraining the trustees and society from employing another pastor, and schoolmaster, and that the property acquired by the local church for general purposes was not impressed with any trust.

An injunction cannot be maintained by session of an independent Presbyterian church to restrain the occupancy of the pulpit by a pastor who has been employed by the congregation. Trustees, Independent Presbyterian Church and Society of Buffalo Grove and Polo v Proctor, 66 Ill. 11.

Minister, Restraining Call. The court of chancery dissolved an injunction restraining the churchwardens and vestrymen from extending a call to a minister without first having the salary ascertained and fixed by a majority of persons entitled to elect churchwardens and vestrymen or trustees of the said church at a meeting of such persons to be called for that purpose. It was held that the vestry had the right to make the call which would include an agreement as to salary. Humbert v St. Stephen's Church, N. Y. 1 Edw. Ch. (N. Y.) 308.

Pews, Rearranging. Plaintiff sought an injunction restraining the society from reconstructing the pews so as to permit members of the same family to sit together, it appearing that prior to this action the separation of the sexes had been observed, the males occupying the ground floor and the females occupying the gallery. Plaintiff insisted that to permit the sexes to sit together would be immodest, unchaste, unlawful, contrary to the discipline and rules of the congregation, and in violation of his rights as a pew owner. It was held that under the statutes governing religious societies the trustees had power to make the proposed alterations without any vote of the congregation, but it appeared that a meeting of the congregation was had in which the action of the trustees was authorized and approved. The injunction was denied. Solomon v Cong. B'nai Jesurun, 49 How. Pr. (N. Y.) 263.

Priest, Restraining Exercise of Functions. In Bonacum v Harrington, 65 Neb. 831, on the application of the bishop, an injunction was granted against the defendant, a priest, restraining him from exercising the powers and faculties of parish priest in or upon the property of said parish of Orleans in contravention of the orders of the bishop exercising therein the functions of which he had been deprived by the bishop, or excluding such person as the bishop shall appoint regularly as priest of said parish from the church property, or interfering with him in the exercise of his office.

Removal of Building. The society being weak, and indebted for nearly the value of its property, voted to sell the meetinghouse and lot to the creditor, on condition that he move the building to another town and establish it there for the use of the Baptist denomination. The society had power to dispose of its property in this manner, and an application for an injunction against such removal was denied. Eggleston v Doolittle, 33 Conn. 396.

Restraining Increase of Salary. The parent church was located at New Dorp and chapels were established at Castleton and Giffords. A resolution was adopted in the absence of members of the chapels increasing the salary of the pastor at each place. In an action by a member of the parent church to restrain the corporation from carrying this resolution into effect, it was held that members of the chapels having been permitted to vote at the general meeting of the church for a long time, and no property rights being involved, a court of equity would not interfere to prevent the consummation of the purpose expressed in the resolution. Davie v Heal, 86 A. D. (N. Y.) 517, affirmed in 180 N. Y. 545.

Sale of Property. Land was conveyed to trustees, with directions to build thereon, at their discretion, a house of worship for the use of the Methodist Episcopal Church, South, with a provision that ministers of that denomination should be permitted to preach in the church, and that the church might be appropriated for such other purposes as would best further the cause of Christ and the interest of

said church in the community. The building was erected accordingly, and used for thirty years, when it became unfit for further use. The society having determined to sell the building and lot, an injunction was sought restraining such sale on the ground that by abandoning the property it had reverted to the grantor. The court held this view erroneous, and authorized the sale of the property. Hard v Wiley, 87 Va. 125.

Use of Building. Land was conveyed to the society for the purpose of erecting thereon a house of worship for use by the society according to the discipline of the denomination. The basement was made for a prayer-room, but the trustees leased it to a teacher of a common day school and authorized him to change the internal arrangement of the basement for the convenience of the school. An injunction was granted on the application of members of the society restraining the trustees from making such use of the basement. Perry v McEwen, 22 Ind. 440.

JEWS

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Bequest Sustained. In Bronson v Strouse, 57 Conn. 147, the court sustained a bequest for the benefit of some poor, deserving Jewish family residing in the city of New Haven. The trustees had power to determine what Jewish families were within the condition prescribed.

Consolidation Disapproved. In Chevra Bnai Israel Anshe Yanove und Motal v Chevra Bikur Cholim Anshe Rodof Sholem, 24 Misc. (N. Y.) 189, it was held that the plaintiff could not consolidate with the defendant without legislative authority, or the approval of the supreme court.

An attempted consolidation of the Congregation Beth Tephila Israel and the congregation Anshi Emith, the former to receive all the property of the latter, and also its members, was held ineffectual for the reason that it did not conform to the Religious Corporations Law of 1895, chap. 723, sec. 12, nor to the Membership Corporations Law of 1895, chap. 559 sec. 7. The contract of consolidation contained provisions beyond the powers of either congregation, and it was held that any dissatisfied member might maintain an action to set aside the agreement. Davis v Cong. Beth Tephila Israel, 40 A. D. (N. Y.) 424.

Consolidation, When May Be Set Aside. An unauthorized consolidation of corporations may be set aside at the suit of either corporation. Chevra Medrash Anschei Makaver v Makower Chevra Aucchi Poland, 66 N. Y. Supp. 355.

Dismissal of Teacher. A person who had been employed by the society as its teacher, preacher, and hasson, after beginning his services, established a mercantile business in

the same town. It was alleged that he transacted worldly business at the store on the Jewish Sabbath. The contract was from December 1, 1859, to August 1, 1860. Charges of improper conduct were made against the teacher, growing out of the business established and conducted by him, and he was dismissed by a vote of the congregation April 18, 1860. In an action by him against the society to recover the agreed compensation up to August 1, 1860, the court said the congregation were justified in dismissing him; he was therefore not entitled to compensation after the termination of his service after his dismissal. Congregation of the Children of Israel v Peres, 2 Coldw. (Tenn.) 620.

LIBEL

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Excommunication. Plaintiff brought an action against the pastor and two other members of the church session, alleging a libelous publication by them consisting of a judgment rendered by the session excommunicating the plaintiff, charging him with making false and malicious statements concerning the pastor. The trial of the plaintiff by the session was held without notice to him. It was held that the ecclesiastical tribunal had jurisdiction; its action could not be reviewed by civil courts. The action of the session in declaring the excommunication, in making the record thereof, and its announcement by the pastor, including the transmission of a copy of it to the plaintiff, did not constitute a publication of a libel. Landis v Campbell, 79 Mo. 433.

Privileged Communications, Church Discipline. Words spoken or written, in the regular course of church discipline, to or of members of the church have, as among the members themselves, very properly been held to be privileged communications, and not actionable unless express malice be shown in the speaker or publisher. But the protection of the rule should not be extended to a member of the church when on such occasion he implicates the character of a stranger to the rules of the church, who is not amenable to its authority, and who has no opportunity to repel an opprobrious accusation before the tribunal which is to try it. An accusation made by a member of a church, in the regular course of church discipline, against a person not a member, cannot, as to him, be considered as a privileged communication. Coombs v Rose, 8 Blackf. (Ind.) 155.

Words written or spoken in the regular course of church discipline, or before a tribunal of a religious society, to, or of members of the church or society, are, as among the members themselves, privileged communications, and are not actionable without express malice. Lucas v Case, 9 Bush. (Ky.) 297.

LUTHERANS

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History. For many centuries there have been two organized associations of churches, commencing in Germany and extending throughout the United States, one known as the German Evangelicals, or as the Evangelical Church, and the other as the Evangelical Lutherans, and there exists the Evangelical Lutheran Synod of Wisconsin, distinct and separate from the Wisconsin District of the German Evangelical Synod of North America, and in some respects in conflict therewith.

The Lutheran Church, or synod, adopts certain writings in and shortly after the time of Martin Luther, as conclusive expression of the creed and inerrant interpretation of the Scriptures, and rejects certain other writings which are adopted by what was called the German Reformed Church as correct interpretation of the Scriptures. The Evangelical Church recognizes equally said symbolical books of the Lutherans and of the Reformed Church, but accords to

neither conclusiveness as to the doctrines therein promulgated, or as to the interpretation of the Scriptures, but approves them as the work of human minds subject to what may be deemed either by the individual or by the church authorities the true meaning of the Scriptures themselves. The Lutherans prescribe certain books as necessary to be used in Sunday schools, confessions of faith, and the like, while the Evangelicals approve and use other books and writings. The name "Lutheran" is a distinguishing characteristic of the churches adhering to the former creed, and, according to the allegations of the complaint, they yield almost inspirational authority to the writings of Dr. Luther. Marien v Evangelical Creed Congregation, Milwaukee, 132 Wis. 650.

Organization. Church government in regard to general bodies has three distinctions: First, episcopal; as in Sweden, Norway and Denmark. Second, territorial, which prevails wherever the civil government is Protestant and interferes with ecclesiastical affairs; in this system there are two precedents in the consistorium, or synod; the first is bounded by the civil power, from the legal profession, with rank equal to a bishop; the second is a clergyman. Third, the third system is the collegiate, and prevails in countries not under Protestant rule, and where the civil government does not interfere with ecclesiastical matters; it prevails here in the United States. Harmon v Dreher, 1 Speer's Eq. (S. C.) 87.

Alaska, Property, Effect of Cession from Russia to United States. The society was not incorporated. The society was in existence long before the transfer of Alaska from Russia to the United States in 1867, and the society, before such transfer, became the owner in fee of land in Sitka by a grant from Russia. Upon the transfer of the territory from Russia to the United States the commissioners of the two governments appointed to effect the transfer issued to the said congregation a certificate of title in fee simple to said lot. The church building on the lot fell into decay and was

removed. Afterward the defendants entered on the lot and began the erection of a building adversely to the title claim by the congregation, and the society, through its trustees, sought a perpetual injunction against the erecting of this building.

It was held that the congregation, even if not incorporated, could maintain an action through its trustees or persons appointed for such purpose. The church property must be held to be "private individual property" falling within the exceptions of the treaty of 1867, by which Russia transferred Alaska to the United States, and this view is sustained by the protocol, inventories, and map. The title to the Lutheran Church lot never vested in the United States, but the congregation held the absolute and indefeasible title in fee simple of said lot of ground as granted to it by Russia. No title thereto could be obtained except through said congregation, and a failure to use and occupy the lot for church purposes, did not divest the congregation of its title. It was held that the lot was not open to possession and occupancy as public lands of the United States. "Our government, therefore, is bound upon its national honor to maintain in good faith these stipulations of the treaty by sustaining the fee simple titles set forth in the protocol, including that of the congregation of the Lutheran Church, and by protecting the holders of such titles in the enjoyment of the property so granted." The court sustained an application of the congregation for an injunction restraining the defendants from erecting any structures on the lot, or exercising any possessory rights thereto. Callsen v Hope, 75 Fed. Rep. (U. S.) 758.

Associations. German Evangelical Lutheran Churches are congregational in their polity. There are several different national associations or synods of such churches, but their powers over any particular local church are advisory, and similar to those of associations and conferences of congregational churches. German Evangelical Lutheran churches of the General Council, and of the Missouri Synod, alike,

hold to the canonical books of the Old and New Testament as the Word of God, the unaltered Augsburg Confession as the standard of faith and theology, and the Symbolical Books, so called, including the Apology of the Augsburg Confession, the Smalcald Articles, the Catechisms of Luther, and the Formula of Concord, as true and orthodox expositions of that faith. It is a well-settled rule of the Lutheran denomination that a pastor cannot be dismissed except by his own consent, or for persistent unchristian life, or upon the ground that he willingly teaches false doctrine. Duessel v Proch, 78 Conn. 343.

Close Communion. The congregations in the Iowa Synod practice what is called "close communion," that is, these congregations do not permit members of other Christian churches to commune with them, while the congregations subject to the general synod admit all Christians to their communion table. Wehmer v Fokenga, 57 Neb. 510.

Confession of Sins, Should It Be Public or Private? This society was originally connected with the Buffalo Synod, but in 1890 a majority of the congregation voted to withdraw from that synod and join the Ohio synod, and this change was made; thereupon several members withdrew from the society. Each party admitted that confession of sins is necessary as a condition precedent to the reception of the sacrament of the Lord's Supper. The matter in dispute was the manner in which such confession should be made. The majority held that private confession was not compulsory, but did not prohibit its use by those of the congregation who preferred that method. This was in accord with the teachings of the Synod of Ohio. The minority adhered to the rule that private confession was necessary, in accord with the teachings of the Synod of Buffalo.

The minority then withdrew from the society, and brought this action to enjoin the majority from using the church and schoolhouse, and to exclude them from any participation in the affairs of the society. The court dismissed the action holding that the question in dispute was ecclesiastical and

not within the jurisdiction of Civil Tribunals. Schradi v Dornfeld, 52 Minn. 465.

Congregation, Powers. According to the usages of Lutheran churches or congregations, each congregation is or may be supreme. There are synods and conferences, but a congregation may or may not unite therewith, and yet be a true Lutheran congregation to all intents and purposes. Nor is a congregation bound to unite with a synod in the same State; so that although there may be a synod in one State, a Lutheran congregation may join a synod in another State. It is regarded as doubtful whether any formal action by the congregation is required in the first instance in order to join any synod. Notwithstanding a congregation may have joined a synod, it remains supreme so far as the right to manage and control its property is concerned. The synod has the power of visitation and expulsion if the congregation does not believe and practice the faith and doctrine of the synod. Dressen, et al v Brameier, et al 56 Ia. 756.

Dissolving Connection with Synod, Effect. The connection of this society with the Evangelical Lutheran Synod of Ohio was voluntary, and a dissolution of the connection was no violation of the condition upon which the church property was holden by the congregation. Heckman v Mees, 16 Ohio 583; see also Gudmundson v Thingvalla Lutheran Church, 150 N. W. (N. D.) 750.

German Language in Service. The society was incorporated in 1866, and its charter was amended in 1873. According to the articles of incorporation, the purpose of the organization was to provide for holding public religious worship in a Christian-like manner, in accordance with the pure Lutheran doctrine, the preaching of the Word of God, and the proper administration of the Holy Sacraments, and in conformity with the fundamental doctrines of the unaltered Augsburg Confession, and assure to themselves and to their children the Lutheran catechism in the German language. The worship was always to be conducted in conformity with the established custom of the Evangelical

Lutheran Church, and the worship and service were to be always in the German language, so long as one member shall desire it.

It was provided that ministers must be members in good faith in an Evangelical Lutheran synod, and who, besides the Word of God, hold as a rule of their faith, the unaltered Augsburg Confession, and the Symbolical Books of the year 1580. The society received at different times conveyances of land for general church purposes. It was held that under the Maryland statute only the trustees selected by the society became the actual corporation, and that the corporation had no power or authority to interfere with forms of worship, articles of faith, or any other matter relating strictly to spiritual concerns.

Referring to the allegation that the use of the German language in worship had been discontinued, the court said that there was no evidence as to what the denomination had required concerning the language to be used in worship. The court had no power to interfere as to spiritual matters. Such matters were exclusively within the jurisdiction of the denomination. There was no allegation that the general church had made any decision or rule relating to the use of the German language, or the effect of discontinuing it, or the effect of noncompliance with the regulations concerning the Augsburg Confession and the Symbolical Books. The civil court, therefore, had no jurisdiction. It was held that the court could not grant the relief sought, namely, that the trustees be restrained from holding services such as are objected to, and the ministers who have, and are yet officiating from conducting such services. Shaeffer v Klee, 100 Md. 264.

Icelandic Church. See Gudmundson v Thingvalla Lutheran Church, 150 N. W. (N. D.) 750, for a statement of the historical connection between the parent church in Iceland and churches in North Dakota, derived from the mother church, with a discussion of the question of the inspiration of the Bible as applied in a local church and by the synod

of which the local society was a member, including evidence of theological experts as to the belief of Lutherans and various forms of inspiration.

Independent Congregation, Status. In a controversy between two factions of the society concerning the dismissal of the pastor and the employment of another, and the right to such property, it was held that there was no church tribunal with jurisdiction to determine the questions in controversy, or any matters of faith or church organization, and that this local society or congregation had never affiliated itself with any of the national associations or synods. Land was conveyed to trustees described as trustees of the local society. Thereafter, by means of church contributions and money derived from other sources, a church edifice was erected on the lot. In 1902 the church adopted an independent constitution. This constitution vested in the whole congregation the right to call a pastor. The call was not to be for a definite period, nor was it to be terminated at the will of the congregation so long as the preacher should teach as prescribed in the constitution. The article regarding the call of a pastor was abrogated in 1904. After the commencement of this action a meeting of the society was held and several votes previously taken formally ratified. The local society was congregational in polity, and acted by a majority relative to the call of a pastor, and it was not bound to affiliate with the Missouri synod or any other. The constitution did not require the unanimous action of the congregation. A majority was sufficient to express its purpose. The pastor who had been excluded from the church was held not entitled to the relief sought by way of an injunction. He was represented by a minority only. The majority was held entitled to hold the property and administer the trust. Duessel v Proch, 78 Conn. 343.

Minister, How Employed. By the law which governs the Lutheran church it is allowable for a congregation to call a pastor who is not a member of any synod, but who expects to be admitted to membership therein. His employment by

the congregation must, however, be first approved by the general president of the synod, and from that time until final action taken by the synod he is regarded as a provisory member, or one taken on trial. It is not permissible for the congregation to employ or retain a pastor who is not, and cannot become a member of the synod. Helbig v Rosenberg, 86 Ia. 159.

New York City. "There were a few Lutherans among the first emigrants from Holland to this province, and there is no doubt but that they were driven from Holland by the persecution of the Arminians, and those holding kindred tenets, which had been denounced by the Synod of Dort in 1618-19. They were relieved from persecution here, but were not permitted to worship together in public until after the province became a British colony. At that era (1664) they had became so numerous that they sent to Germany for a pastor, and one arrived here in 1669. About the year 1671 they erected a log church at the southwest corner of Broadway and Rector Street (New York) which was known as Trinity Church. The ground on which it stood was granted to them by the government in 1674." A substantial stone edifice was afterward, between 1725 and 1740, erected on the same lot, contributions therefor having been made by citizens of New York, Lutherans and others, and by Lutherans in various places in Europe. During the earlier years of this church its service was in the Low Dutch or Holland language. There was little migration from Holland after the end of the seventeenth century, and at the time of the erection of the stone church the number of Germans had increased to such an extent that the service was in the German language part of the time.

About 1750 a large number of Germans detached themselves from the Trinity Church and established a new church known as Christ Church, at the corner of Frankfort and William Streets, in which the service was conducted in the German language exclusively until the Revolution. Trinity Church was burned during the Revolution, and at the

close of the war both churches were destitute of a pastor. In 1784 the two churches were united under the name of the United German Lutheran Churches of New York. A part of the time the service had been in English in Christ Church, and also in the reunited church. Prior to the war of 1812, most of the congregation, who desired to have English preaching, left the old church, and established a new one, called Zion Church, where the English service alone was performed; and on this event the English service in the old church was discontinued. In 1805 the site of Trinity church was sold to Episcopalians. Zion Church was destroyed by fire in 1814, and the congregation was broken up.

About 1821 another new church movement was initiated and a church known as St. Matthew's Church was established, composed in part of members of the original and the United Churches. In 1826 St. Matthew's Church and lot was sold for the payment of its debts. The sale was to a member of St. Matthew's Church, who sold the property to the corporation of the United Churches. Under this deed the church was to be used as an English Lutheran Church. Subsequently a new church known as St. James was organized, constituted of the congregation of St. Matthew's Church, which latter church ceased to exist. Subsequently the congregation of the United Churches removed from Christ Church to St. Matthew's Church in Walker Street. The service was part of the time in English, and part of the time in German. But the English service was discontinued in 1839.

There was no trust contained in any conveyance or agreement that any part of the service in either church should be in the English language. By the agreement to unite the two churches, Trinity and Christ Church, the property of both societies was vested in the corporation called the United Churches, and the terms of the agreement indicate the union of two German societies without any provision as to service in English. A new trust could not be impressed upon Trinity Church adverse to the trust established by its

founders. It was held that persons claiming to be the corporators under the union agreement, and to be representatives of the original Trinity Church, could not maintain an action against the United Corporation to compel that body to found and erect a new church in place of Trinity Church which had been destroyed. Cammeyer v United German Lutheran Churches, New York, 2 Sandf. Ch. (N. Y.) 208.

Russian Toleration. Notwithstanding the existence of an established church—the Greco-Russian—in Russia, the settled policy of that government for a long period of years has been to foster and protect among its people religious associations and organizations of every known shade of belief or doctrine; and within the limits of the empire, from the Arctic Ocean to the Chinese border and from the North Pacific to the Baltic Sea, may be found congregations whose members are believers of every known religious doctrine and form of worship, from the faith of Islam and Mohammed to the Catholic creeds and high-sounding liturgies of the Greek and Roman churches; all enjoying the protection, if not the patronage, of the crown. Among these the membership of the Lutheran denomination ranks next in numbers to that of the established church, and the population of the Baltic provinces and Finland are almost entirely Lutheran. The reasons for this policy are not far to seek, as it is one which must inevitably bind to the autocrat adherents of all the different denominations thus fostered and protected by the sovereign head of the empire. Following its long-established policy on religious matters, Russia desired to protect the congregation of the Lutheran Church, with others to whom title to lands in Alaska had been given, in the enjoyment of the property so granted, and the United States acceded to that desire. Callsen et al v Hope et al, 76 Fed. (U. S.) 758.

Secession. It was held that the society was entitled to maintain ejectment against a portion of the congregation who seceded, formed a separate organization, and took

possession of the church property. Fernstler v Seibert, 114 Pa. 196.

Synod. A general synod of Lutheran Churches in the United States was organized in 1820. Kniskern v Lutheran Ch., 1 Sandf. Ch. (N. Y.) 439. The synod does not assume any authority to define doctrine for the congregation. But the meetings of the synod are only advisory so far as the congregations are concerned. "Questions of doctrine and conscience cannot be determined by a plurality of votes, but only according to the Word of God, and the symbolical books of our church." The synod, and the congregations sending delegates to it, are merely religious bodies in the organization, control, and government of which, as such, the civil tribunals have nothing to do. It is for the synod to determine when and for what cause it will sever its connection with any congregation; and for the congregation, considered merely as a religious association, to determine when it will expel a member. Trustees, East Norway Lake Norwegian Evangelical Lutheran Church and others v Halvorson, 42 Minn. 503.

MANDAMUS

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Expulsion of member, 308.
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Member, restoration, 309.
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Cemetery, Burial. In People v St. Patrick's Cathedral, 21 Hun (N. Y.) 184, a Freemason was held not eligible to burial in a Roman Catholic cemetery under its rules, and a writ of mandamus to compel the cemetery officers to permit such burial was refused.

Expulsion of Member. In Saltman v Nesson, 201 Mass. 534, it was held that the remedy to test the validity and regularity of the expulsion of a member of a religious corporation is by mandamus, and not by a suit in equity. See also Members and Injunction.

Joint Use of Property. For the purpose of erecting a new church edifice on land owned by this society subscriptions were made and paid by persons some of whom were members of other denominations, and some not adherents of any church. The subscriptions were made on condition that when the building was not used by the Methodist Protestant Church it should be free for the use of other religious denominations in the vicinity. The Methodist Protestant Church having refused to permit the Christian Church to use the building, the latter society applied for a mandamus to compel the Methodist Protestant society to open the house for the use of the other society. It was held that a writ of mandate was not the proper remedy, but that an

action in equity should have been brought on the contract contained in the subscription. State ex rel Poyser v Trustees of Salem Church, 114 Ind. 389.

Member, Restoration. A member of the church was excluded, as he claimed, without lawful authority. The act of excommunication was by the consistory which, it was alleged, did not possess the power of excommunication. The excluded member applied for a writ of mandamus to compel the church officers to reinstate him. A writ of mandamus was denied, it being held that even if the attempted exclusion was invalid, the member's remedy was by appeal to the proper church tribunal. Church v Seibert, 3 Pa. St. 282.

In State ex rel Soares v Hebrew Cong., 31 La. Ann. 205, it was held that mandamus would not lie to compel the restoration to membership of a person expelled from a religious society, it appearing that such expulsion was by the decree of the legally constituted church judicatory, on account of an alleged violation of some one or more of the laws of the society. The civil courts will not revise the ordinary acts of church discipline or the administration of church government.

The relator, who had been, as he claimed, irregularly expelled from the society and congregation, applied for a writ of mandamus to compel his restoration. The expulsion was admitted, but it appeared that the society had no property; that the relator had acted in hostility to the interests of the society, had given grounds for regular removal and that his restoration would destroy the society. It also appeared that if restored, he might be immediately again expelled. The court declined to exercise its discretion in favor of the relator, and therefore refused the writ. People ex rel Meister v Anshei Chesed Hebrew Congregation, Bay City, 37 Mich. 542.

In People ex rel Dilcher v German United Evan. Church, 53 N. Y. 103, a writ of mandamus was refused to the plaintiffs who alleged that they were wrongfully excluded from

office and membership in the church. The courts said it could not be readily determined from the papers whether the exclusion was by the corporation or by the church as a religious society. If it were by the corporation, such exclusion was a nullity; but if it were by the society, its action was not subject to review by the civil courts.

A person who had been expelled from the society applied for a writ of mandamus to compel her reinstatement and restoration, but the writ was denied on the ground that the expulsion was presumably by the society and not by the corporation; that it was an ecclesiastical matter, and that the person was not entitled to the writ unless some civil or property right was affected by the expulsion. Sale v First Regular Baptist Church, 62 Iowa 26.

A writ of mandamus was held to be a proper remedy to restore a person to membership in a religious society from which she had been unlawfully deposed. All questions relating to the status of the applicant could be determined on the hearing under the writ. Hughes v North Clinton Baptist Church, East Orange, 67 Atl. 66 (Sup. Ct. N. J.).

A writ will not issue to compel the restoration of a church member after expulsion. Hundley v Collins, 131 Ala. 234.

Civil courts will not consider questions relating to the right of membership in an incorporated religious association, where no civil or property right is involved. Mandamus will not lie to compel the association to restore the applicant to membership. State ex rel v Cummins, 171 Ind. 112.

This writ cannot be granted to restore the persons expelled from membership in a religious society, and the court will not inquire whether such expulsion was regular and justified by the facts. The court will not revise the action of an ecclesiastical tribunal in such cases. State ex rel Soares v Hebrew Cong. 31 La. Ann. 205.

Minister, Reinstatement. If ecclesiastical tribunals have been provided for the trial of ecclesiastical questions, civil

courts, in the exercise of their discretion, will not grant a writ of mandamus to restore a rejected minister to his office and functions, before a final decision has been had by the church authorities. State ex rel McNeill v Bibb St. Ch., 84 Ala. 23.

Where the minister of an endowed dissenting meeting-house had been expelled by a majority of the congregation the court refused a mandamus to restore him applied for to enable him to justify his conduct, it appearing that he had not complied with all the requisites necessary to give him a prima facie title. Rex v Jotham, 3 T. Rep. (Eng.) 577.

The power of the civil courts to restore by mandamus a party who has been wrongfully removed from an ecclesiastical or spiritual office, is well established when the temporal rights, stipends, or emoluments are connected with or annexed to such office, which belong to the incumbent. But the courts are powerless to interfere where there are no fixed emoluments, stipends, or temporal rights connected with the office, where it is purely ecclesiastical. State ex rel McNeill v Bibb Street Church, 84 Ala. 23.

A minister who had been excluded by the society from the ministerial office, functions, and privileges sought a writ of mandamus to compel his restoration, but it was denied, it not appearing that there were any fees or emoluments attached to the office. Union Church v Sanders, 1 Houston (Del.) 100.

Mandamus will not lie to compel the reinstatement of a minister who has been suspended from his office on the ground that he had no proper notice of trial, where it appears that he had actual notice of the time and place of trial; and was present with his counsel and participated therein. Dempsey v North Michigan Conference, Wesleyan Methodist Connection of America, 98 Mich. 444.

Special Election. At an election held by a Protestant Episcopal society the rector presiding declared ten persons elected as churchwardens and vestrymen. Subsequently seven of these persons were ousted from office, it appearing

that the rector had received enough illegal votes to change the result. A mandamus was granted directing the rector to join in a special election for the purpose of filling the vacancy caused by the ouster; and a referee was appointed to supervise the special election. People ex rel Fleming v Hart, 36 St. Rep. (N. Y.) 874, 21 N. Y. Supp. 673.

Trustees, Title. It was held that mandamus was the proper remedy under the Maryland statute to determine the title to the office of trustee of a church. Clayton v Carey, 4 Md. 26.

Vestry. Mandamus is not a proper remedy to restore a rightful vestry to the possession of church property wrongfully withheld. Smith v Erb, 4 Gill. (Md.) 437.

Vestry, Duty to Attend Meeting. In People ex rel Kenney v Winans, 29 St. Rep. (N. Y.) 651, a writ of mandamus was granted on the application of the rector to compel certain vestrymen to attend a meeting of the vestry.

MASSES

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See Also Prayers for the Dead.

Defined. The mass, according to Webster's International Dictionary, is "the sacrifice in the sacrament of the eucharist, or the consecration and oblation of the host." It is a public service, a public act of worship, by which, according to the tenets of the Roman Catholic Church, the priest who celebrates it "helps the living and obtains rest for the dead." Coleman v O'Leary, 114 Ky. 388.

Described. The saying of mass is a ceremonial celebrated by the priest in open church, where all who choose may be present and participate therein. It is a solemn and impressive ritual, from which many draw spiritual solace, guidance, and instruction. It is religious in its form and in its teaching, and clearly comes within that class of trusts or uses denominated in law as charitable. And, while the effect of these services upon the members of the church is impressive and beneficial, the money expended for the celebrations thereof is of benefit to the clergy, and is upheld and maintained for this reason, as one of the cherished objects of religious uses. Webster v Sughrow, 69 N. H. 380.

Not a Superstitious Use. Saying masses for the souls of the dead is a ceremony universally observed in the Roman Catholic Church, and a bequest for that purpose cannot be said to be for superstitious uses, it being one of the articles of the Roman Catholic faith which has been adopted by millions of people through the civilized world as a part of their religious belief. Hagenmeyer v Hanselman, 2 Dem. (N. Y.) 87.

MEETINGS

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By-Laws. A by-law made by one meeting of the society to govern the proceedings of future meetings is inoperative beyond the pleasure of the society acting by a majority vote at any regular meeting. The power of the society derived from its charter and the laws under which it was organized, to enact by-laws is continuous, residing in all regular meetings of the society so long as it exists. Any meeting could by a majority vote modify or repeal the laws of a previous meeting, and no meeting could bind a subsequent one by irrepealable acts or rules of procedure. The power to enact is a power to repeal; and a by-law requiring a two-thirds vote of members present to alter or amend the laws of the society, may itself be altered, amended, or repealed by the same power which enacted it. A majority may act in such a case. Richardson v Union Congregational Society, 58 N. H. 187.

Chairman. The election of a moderator of a parish meeting will be valid, though the meeting was called to order, and the votes were received and declared, by a private parishioner who assumed that authority to himself. Jones v Cary, 6 Me. 448.

Majority. At a church meeting, either regular or special, called with proper notice, the vote of the majority is binding upon the congregation. There is a distinction between a corporate act to be done by a definite number of persons, and one to be performed by an indefinite number; in the

first case no act can be done unless a majority of the whole body are present; in the second, a majority of those who appear may act. Craig v First Presbyterian Church, 88 Pa. St. 42.

A majority of an unincorporated religious society may direct and control the disposition of real estate belonging to it, notice of the meeting at which such action is taken having been given to the members of the society. Where it appeared that the business meetings of the society were invariably held in the evening and were called by announcement to the children at the school connected with the society, and by the ringing of a bell, and it was shown that the usual notice was given of the meeting in question; that in addition thereto, a written notification was carried round to most of the members, and that none of those resisting the action taken claimed that they did not know that the meeting was being held, it was held that the notice was sufficient. Hubbard v German Catholic Congregation, 34 Ia. 31.

Notice. Notice of a meeting of the members of a church to vote upon conveying the church property is sufficient if it is given in accordance with the church rules. Jones v Sacramento Avenue Methodist Episcopal Church, 198 Ill. 626.

The society had not adopted any by-law or vote by which meetings were to be called. No assessors were appointed as authorized by the statute, and the directors did not appoint any meetings. In the absence of assessors, or committee authorized to call meetings of the society, the statute authorized a justice of the peace to call a meeting. A meeting called by the clerk on the application of four members of the society was held to be irregular under the statute, and a vote at a subsequent meeting, also irregularly called, confirming the action of the previous meeting, was void. Wiggin v First Freewill Baptist Church, Lowell, 8 Metc. (Mass.) 301.

Quorum. "The rule of the common law seems to be that where a body is composed of an indefinite number of per-

sons a quorum, for the purposes of elections and voting upon other questions, which require the sanction of the members, consists of those who assemble at any meeting regularly called and warned, although such number may be a minority of the whole, in which case a majority of those who assemble may elect, unless there is a different rule established by statute or valid by-law." 34 Cyc. 1127, note. Quoted in Barton v Fitzpatrick, 65 S. (Ala.) 390.

Silence on Taking Vote, Effect. Where a society is composed of an indefinite number of persons, a majority of those who appear at a regular meeting constitute a body to transact business. The presumption is that all the members present who observe silence when a question is put concur with the majority of those who actually vote, that is, if the question be put audibly and explicitly. Worrell v First Presby. Ch. 23 N. J. Eq. 96, citing Angell and Ames, secs. 497, 499.

MEMBERS

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Admission, Effect of By-Laws. The charter of the society regulated the admission of members. This provision was subsequently repealed, and the society was authorized to make by-laws relative to the admission of members. By-laws were adopted applicable alike to existing as well as future members. It was held that a person who was a member of the society under the provisions of their charter ceased to

be a member by failing to comply with the conditions of the by-laws. Taylor v Edson, 4 Cush. (Mass.) 522.

A by-law provided that new members could be added only by a vote of the congregation, and another by-law required a notice of a special meeting to state the object of it. Persons elected at a special meeting without an announcement of such intended action contained in the notice of the meeting were not regular members and had not been duly elected. Gray v Christian Society, 137 Mass. 329.

Baptist, Powers of Congregation. The exclusive power to admit and exclude members lies in the local congregations, and associations have no power to reverse or review the action of the local churches as to its members, nor to reinstate a member who has been excluded by any local church. Iglehart v Rowe, 20 Ky. Law Rep. 821.

Dismissal. A minister assumed to dismiss members of the church without a hearing or trial. It was held that the action of the minister was nugatory. Burke v Roper, 79 Ala. 138.

Dues, Effect of Nonpayment. Where the by-laws of a membership corporation provided that the nonpayment of dues shall render the delinquent member liable to expulsion, he retains his membership until corporate action is taken. Davis v Cong. Beth Tephila Israel, 40 A. D. (N. Y.) 424.

Equality. Each member of a church organization, or of any other voluntary association, is the equal of every other member, and has the absolute right, which the courts will protect, to have the property controlled and administered according to its organic plan, and to participate in its affairs in harmony therewith. Clark v Brown, 108 S. W. 421 (Texas).

Excommunication, Effect. Civil courts cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church. We must take the fact of expulsion as conclusive proof that the persons expelled are not now members of the repudiating church; for,

whether right or wrong, the act of excommunication must, as to the fact of membership, be law to the court. Shannon v Frost, 42 Ky. 253.

Excommunicated members, whose names have been, by the valid action of the church, expunged from the roll of members, cannot stand for and represent members. They are not of the same class. Nance v Bushby, 91 Tenn. 303. In this case it was alleged that members were excommunicated without notice or any opportunity to be heard. The court asserted the rule that "no man's civil or property rights or privileges shall be affected or adjudicated without an opportunity to be fully and fairly heard."

Expulsion. A member cannot be expelled by the consistory without the consent of the congregation. The power of the consistory is limited to the exclusion of a member from the communion of the Lord's Supper, and the power of excommunication is vested in the congregation. Church v Seibert, 3 Pa. St. 282.

Several persons about 1874 organized this society, and made preparations to build a church edifice. The plaintiff, one of the incorporators, had general charge of the erection of the building, and in addition to his original subscription, advanced about $1,400 to complete the building, also giving his time and services to the enterprise. For many years thereafter he was one of the most influential and devoted members of the society. "Without previous notice, with no hint of any charges to be that day made against him, he was on Sunday, April 3, 1892, hastily, unjustly, and ruthlessly excommunicated, under the leadership of his pastor, by a pitiful vote of nine members out of a total of about fifty, and this was done in pursuance of a preconcerted, secret caucus agreement of the pastor and a few members, entered into the night previous thereto." The court said that every person uniting with a Baptist church impliedly or expressly covenants obedience to its laws, and by that covenant this appellant is bound. The court characterized the expulsion as a petty, unfair, and unjust exhibition of religious tyranny.

The plaintiff, after fifteen years from the erection of the church, and after his expulsion, brought an action to establish a claim against the society for the amount advanced by him in the erection of the building. The court held, among other things, that his right of action was barred by the statute of limitations. He was therefore not entitled to recover the amount due him. Dees v Moss Point Baptist Church, 17 So. Rep. (Miss.) 1.

The trustees expelled a member of the church without notice to him. It was held that no property rights were involved in the expulsion, and therefore the civil courts could not interfere. An injunction was refused. Pinke v Bornhold, 8 Ont. L. Re. 575.

A Roman Catholic was married by a Protestant minister. He was thereupon ipso facto excommunicated, and ceased to be a Catholic. Barry v Order of Catholic Knights, Wis. 119 Wis. 362.

If an incorporated religious society at a regular meeting called for the purpose of revising the membership of the society votes under and in accordance with an article of its Constitution, that certain persons whose names are crossed off from the list of members have worked against the interests of the society, that they are for that reason expelled, and if the persons thus dealt with had proper notice and opportunity to be heard, the action of the society is final and cannot be revised by showing in another tribunal that these members had not in fact worked against the interests of the society. Canadian Religious Association v Parmenter, 180 Mass. 415.

The law of New York does not allow a governing body arbitrarily to expel members of an incorporated church where property rights are involved. Holcombe v Leavitt, 124 N. Y. S. 980.

A person was expelled from a church because he voted the Democratic ticket. In State v Rogers, 128 N. C. 576, it was held that such expulsion was not an offense under the statute prohibiting the oppression of any qualified voter because of

the vote such voter may or may not have cast in any election. While he may have felt mortified or humiliated in being excluded from the fellowship of his associates in the exercise of the rites of that body of Christian believers, holding the same creed and acknowledging the same ecclesiastical authority, and to that extent injured and oppressed, yet he suffered no loss of property or gain; nor was he in any way restrained of his liberty or otherwise controlled in the exercise of his personal conduct. See also Injunction and Mandamus.

Expulsion, Damages. The plaintiff brought an action against the trustees of the church for damages resulting from an alleged unlawful expulsion from the society. By the act of organizing under the statute the church becomes a civil corporation. Usually, there is a religious society connected with the church. The church has its members who are supposed to hold certain beliefs and subscribe some covenant with each other, if such is the usage of the denomination to which the church is attached. The church is not incorporated, and has nothing whatever to do with the temporalities. It does not control the property or the trusees; it can receive anybody into the society, and can expel anybody from it. On the other hand, the corporation has nothing to do with the church except as it provides for the church wants. It cannot alter the church faith or covenant, it cannot receive members, it cannot expel members, it cannot prevent the church receiving or expelling whomsoever that body shall see fit to receive or expel. It was held that the action could not be maintained. The corporation was sued for a tort, which it neither committed, nor had the power to prevent. Whatever was done to the injury of the plaintiff was done by the religious society over which, in this respect, the corporation had no control. Harbison v First Presbyterian Society, 46 Conn. 529. See also Hardin v Baptist Church, 51 Mich. 137.

Expulsion, Evidence Required. While the civil courts will studiously give full effect to the judgment of an ecclesiastical

court when matters ecclesiastical only are involved, when civil rights as to property are involved the civil courts will insist that an accusation be made, that notice be given, and an opportunity to produce witnesses and defend be afforded, before they will give effect to an expulsion or suspension of the kind here attempted. West Koshkonong Cong. v Otteson, 80 Wis. 62, citing Hoffman's Ecclesiastical Law, 276, 277. In the above case one faction assumed to declare another faction suspended or expelled, without notice, without hearing, and without evidence. Such action was held to have no effect on the rights of the members included in the resolution of expulsion.

A by-law of a religious society provided that if a person should fail regularly to attend public worship for one year, or during the same period should fail to contribute regularly for the support of the church, his name might be dropped from the list of members. It was held that his name could not be dropped, except by a vote of the congregation. Gray v Christian Society, 137 Mass. 329.

Expulsion, Notice. For a note on the right to expel without notice a member of a benefit or benevolent society see Ryan v Cudahy, 157 Ill. 108.

The society received a conveyance of land on which it erected a valuable church. A controversy arose between two factions in the church, involving the title and possession of the church property. The complainants claimed to be the only adherents of the original society, and that the defendants were seceders therefrom. Various acts were attributed to defendants, showing an abandonment of the faith and order of the original Primitive Baptist Society; that they had assumed control of the church property and the right to exercise spiritual authority over all members of the society. They had also assumed and exercised the right to expel certain members, including the complainants without notice or hearing. It was held that the church had the power to determine for itself whether notice or an opportunity to be heard should be given to the expelled members.

"They have as a judicature adjudged that they had jurisdiction and that the usage and law of the church did not demand other trial or notice than such as attended the public action of the church. The law of the church provides for no appeal to a higher tribunal." The complainants, having been regularly excommunicated, had no standing in the court to assert any title to the property conveyed to the society. Nance v Bushby, 91 Tenn. 303.

Expulsion, Rules, Notice. A church organization may make rules by which the admission and expulsion of its members are to be regulated, and the members must conform to these rules. If, however, it has no rules on the subject, those of the common law prevail, and before a member can be expelled notice must be given him to answer the charge made against him, and an opportunity offered to make his defense, and an order of expulsion without such notice and opportunity is void. Jones v State, 28 Neb. 495.

General Duties. Every person entering into the church impliedly at least, if not expressly, covenants to conform to the rules of the church, and to submit to its authority and discipline. Lucas v Case, 9 Bush (Ky.), 297. See also Mack v Kime, 129 Ga. 17.

A religious society usually adopts a constitution, by-laws, and form of government. A member, when he enters the organization, voluntarily assumes the duty of obeying the laws of the association. As to all matters purely ecclesiastical, he is bound by the decisions of the tribunal fixed by the organization to which he belongs, as an arbiter to determine the disputed questions relating to matters peculiarly within the province of the organization. Mack v Kime, 129 Ga. 1.

How Constituted. To constitute a member of a church at least two things are essential, namely, the profession of its faith, and a submission to its government. Brooke v Shacklett (Carter v Wolfe), 13 Gratt. (Va.) 300.

To constitute one a member of a church, or an individual society a member of a general synodical organization, at

least two things are essential—a profession of the accepted faith and a submission to its government. Cape v Plymouth Congregational Church, 130 Wis. 174.

Judicial Control. It must be conceded that the courts have no power to revise ordinary acts of church discipline or pass upon controverted rights of membership; but while the courts cannot decide who ought to be members, they may inquire whether any disputed act of the church affecting property rights was the act of the church or of persons having no authority. Gewin v Mt. Pilgrim Baptist Church, 166 Ala. 345.

Law Governing. Membership in a church is an ecclesiastical matter depending upon the law of the church itself. Jackson v Hopkins, 78 A. 4. (Md.)

Letters of Dismission, Effect of. Certificates of church membership and dismission, commonly spoken of as letters of dismission, do not, under the Presbyterian system, ipso facto, terminate the membership of the person receiving them in the particular church granting them. To give them this effect they must have been acted upon and the holder have been received into some other particular church of this denomination. Nor do such certificates, ipso facto, terminate the functions of ruling elders of a Presbyterian Church. First Presbyterian Church, Louisville v Wilson, 14 Bush (Ky.) 252.

Liability for Debts. A judgment was recovered against the second parish of Kittery, Maine. Membership in the parish was held to be voluntary, and the person was at liberty to withdraw in the manner provided by law, but he continued liable for debts incurred on behalf of the parish prior to his withdrawal. The seceding member ceased to be liable for parish debts. The remedy for the judgment creditor was limited to the levy on property of persons who were members of the parish at the time of the rendition of the judgment, or, at most, at the commencement of the action. Fernald v Lewis, 6 Me. 264.

The society having become indebted, a judgment was obtained against it, and occupied property was sold and

applied on the judgment. An effort was then made to sell the property actually occupied for church purposes to satisfy the deficiency judgment. The court refused to permit this sale, but declined to enjoin the collection of the deficiency. Thereupon an action was brought by the original plaintiff against the members of the society as individuals to collect the deficiency on the former judgment. It was held that such members of a religious society were not individually liable for its debts, unless such members had originally and individually authorized the creation of the debts. First National Bank, Plattsmouth v Rector, 59 Neb. 77.

In Bigelow v Congregational Society, Middletown, 11 Vt. 283, it was held to be the duty of the society to appropriate its property for the payment of its debts, and in case of a neglect to do so and the property is wasted, individual members may be liable. A meetinghouse is not liable to be taken in execution for the debts of such society.

Powers. The male members of the church are invested with no visitorial or controlling power over the minister or trustees, or interest in the property of the corporation; nor with any authority, except in the case of selling, or leasing, or amending the articles, when the consent of two thirds is required.

The right of the ministers in charge to the use and enjoyment of the church (which includes all the uses to which it can be applied for religious purposes) is expressly reserved to them; and the economy and management of the fiscal affairs, the receipts and disbursements, are as explicitly assigned to those appointed for that purpose under the discipline of the church. Tarter v Gibbs, 24 Md. 323.

Qualifications, How Determined. Under a Michigan statute relating to the incorporation of religious societies, it was held that the statute indicated who might be members of the corporation, but did not determine the qualifications of church members, or the mode of their admission. Those questions are primarily, at least, of ecclesiastical cognizance, and both parties must first exhaust the remedies

offered by the ecclesiastical body before the courts will consider the questions involved. Buettner v Frazer, 100 Mich. 179.

Relation to Society. The relations of a member to his church are not contractual. No bond of contract, express or implied, connects him with his communion or determines his rights. Church relationship stands upon an altogether higher plane, and church membership is not to be compared to that resulting from connection with mere human associations for profit, pleasure, or culture. The church undertakes to deal only with spiritual interests. Admission to its fold is prescribed alone by the church professing to act only upon the Word of God. Nance v Bushby, 91 Tenn. 303.

When a person becomes a member of a church he becomes so upon the condition of submission to its ecclesiastical jurisdiction, and however much he may be dissatisfied with the exercise of that jurisdiction, he has no right to invoke the supervisory power of a civil court so long as none of his civil rights are invaded. This doctrine inevitably results from that total separation between church and state which exists within the limits of the United States, and is essential to the full enjoyment of the guaranteed rights of American citizenship. White Lick Quart. Meet. of Friends v White Lick Quart. Meet. of Friends, 89 Ind. 136.

One joining an organized society, such as a church having a representative form of government under the supervision and control of judicatories known as church courts, agrees by the act of membership to abide by the rules, orders, and judgments of such courts properly made, and consents that whatever rights and privileges he may possess as a member shall be controlled by such rules, orders, and judgments. Hayes v Manning, 172 S. W. (Mo.) 897 (902).

Rights. Every participant in a voluntary organization has the absolute right, which the courts will protect, to have its property controlled and administered according to its organic plan and to participate in its affairs in harmony therewith. Spiritual and Philosophical Temple v Vincent, 105 N. W. (Sup. Ct. Wis.) 1026, 127 Wis. 93.

Where a society has become incorporated for the purpose of maintaining religious worship, the rights of a member of the corporation are one thing and his rights as a member of the church worshiping in the building owned by the corporation may be quite another thing. His rights in the corporation and as corporator will depend exclusively upon the law creating the corporation. Nance v Bushby, 91 Tenn. 303.

Stated Attendant, Effect of Nonattendance. A person who for more than a year had ceased to be a stated attendant at the church of which he had been a member, and whose name had been dropped from the roll of members, was held not entitled to maintain an action against the society or its trustees to restrain an alleged illegal use of the church property. Smith v Bowers, 57 App. Div. (N. Y.) 252, affirmed 171 N. Y. 669. As to the effect of withdrawal see also Cammeyer v United German Lutheran Churches, 2 Sandf. Ch. (N. Y.) 208.

Status, How Determined. In a case of a religious congregation, what are the doctrines, adherence to which is a condition of membership, must be determined by reference to the rules, constitution, or by-laws of the congregation. Where a congregation in its constitution adopts certain books as the exponents of its faith and doctrine, and there subsequently arise honest differences of opinion as to the interpretation of the statements of doctrine in such books, and the constitution is silent as to such matter of interpretation, and provides no mode for determining the difference, the civil courts will not hold that adherence to either interpretation dissolves, ipso facto, a member's connection with the congregation, so that he ceases to be a member of the corporation it has formed to hold and control its property. Trustees, East Norway Lake Norwegian Evangelical Lutheran Church and others v Halvorson, 42 Minn. 503.

Town Society. The society was incorporated in 1802 by a special act. Up to that time the town acted as one parish, and was called the Congregational society. Certain prop-

erty had been conveyed to the town for the use of this society, and before the above act of incorporation the property was vested in the Congregational society. The corporation was the same society that was known in the town as such, and for whose benefit the land in controversy had been conveyed. The principal effect of the incorporation was to authorize the society to act in a parochial form, which before it had not done, but had acted in its public capacity as a town. Any inhabitant of the town might, on complying with certain prescribed conditions, become a member of the society. The act did not create a new corporation. Parsonsfield v Dalton, 5 Me. 217.

Transfer by Legislature. In Thaxter v Jones, 4 Mass. 570, it was held that the Legislature might, under the Massachusetts statute and bill of rights, set off a member of any religious incorporation to another religious incorporation, whether of the same or of a different denomination.

Withdrawal. Members of a religious society may voluntarily withdraw from it, and enter another more consonant with their views, but when they do so they must be considered as abandoning to the adherents of the original constitution their rights to the property of the society which they leave. Manning v Shoemaker, 7 Pa. Sup. Ct. 375.

Ceasing to attend the religious and secular meetings of a parish, and attending the worship and supporting the ministers of another denomination, for any length of time, will not alone amount to a renunciation of membership in the parish thus left, the only mode of withdrawing, without a change of residence, being by notice in writing under the Maine statute of 1821, Ch. 135. Jones v Cary, 6 Me. 448.

Withdrawal, Effect. To constitute a member of any church, two points at least are essential; a profession of its faith and a submission to its government. Persons who withdraw from a church can no longer be deemed members of it, even if continuing to profess the same faith and doctrines. Den ex dem, Day v Bolton, 12 N. J. L. 206.

MENNONITES

Organization, 329.
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Organization. The several Mennonite congregations of Eastern Pennsylvania, of which the Colebrookdale was one, had been associated in a common Conference called from its place of meeting the Franconia Conference, which was composed of clerical and lay delegates from the several congregations, and its purpose was the general government of the church. In or about the year 1844 a discussion arose in this Conference concerning the customs and usages of the Mennonite Church. One party desired to introduce various innovations into their mode of life and method of religious worship, a departure that was signalized by the leader of the movement, a Rev. John Overholtzer, appearing in the Conference in a coat of a different cut from the customary garb of the Menonnite persuasion. The discussion of these differences between the two parties, known as the Old and New Mennonite Church, gave rise to great dissension in the Conference, and finally culminated in 1847, when the Overholtzer, or New Party, formally withdrew from the Franconia Conference, and organized a new judicatory. The schism extended from the Conference to its component congregations. Landis Appeal, 102 Pa. St. 467.

Majority May Control Property. From 1790 to 1847 the Menonnite society occupied property which was used for religious purposes according to the rules and customs of the sect. About the latter year a schism occurred. The majority and minority continued to occupy the church property alternately without friction for about twenty-nine years. The majority which continued to adhere to the organization, doctrines, and practices of the society proposed

to erect a new house of worship and offered the minority the right to occupy it as before, provided the minority would not introduce musical instruments into the services nor anything else objectionable to the majority. The minority refused the offer and sought an injunction restraining the demolition of the church building and the erection of a new one, and asked that the minority might be declared to be tenants in common of the property with the majority. It was held that the majority had the right to the possession and control of the property and that the minority were only tenants by sufferance and not tenants in common with the majority. Landis Appeal, 102 Pa. St. 467.

METHODIST CHURCH OF CANADA

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Historical Sketch. This church separated from the Methodist Episcopal Church and was erected into a distinct organization in 1828. As early as 1804 the Upper Canada districts were included in the New York Annual Conference, and continued as a part of it, the same as other districts, until 1812, when these districts, and also the Lower Canada districts, were included within the Genesee Conference. In 1816 the Lower Canada districts were embraced within the New York and New England Conferences; in 1820 both Upper and Lower Canada were again included in the Genesee Conference, and in the same year the bishops were authorized, with the concurrence of this Conference, to establish an Annual Conference in Canada; and in 1824 the Canada Conference included the whole of the upper province, and thus it stood in 1828, when erected into an independent establishment. Bascom v Lane, Fed. Cas. 1089, (Cir. Ct. Dis. N. Y.).

Form of Government, Fixing Status of Minister. "The ministers and members of the Methodist Church are incorporated by that name, by an act of the Dominion Parliament, 47 Vict. Ch. 106, and the matters involved in the action are subject to the jurisdiction of an Annual Conference, composed of the ministers within a limited area, and an equal number of laymen, elected thereto as provided by a code of laws called the Discipline of the Church. According to the Discipline, certain defined matters are considered and disposed of in joint session of both ministers and laymen; but matters affecting the character and qualifications of

ministers are inquired into and disposed of in what are called ministerial sessions; that is, meetings composed of ministers only." The Discipline provides a system of appeal. An Annual Conference has power to locate a minister without his consent. A located minister cannot exercise the functions of the ministry, but may if he desires, be considered a local preacher subject to the regulations affecting local preachers. In 1894 the plaintiff was deposed from the ministry and expelled from the membership of the church. The judgment of expulsion was reversed by the Court of Appeals, a tribunal provided by the Discipline. The matter came before the Annual Conference again in 1895, when the plaintiff was located at his own request. From this action of the Annual Conference the plaintiff appealed to the Court of Appeals, which court reversed the action of the Conference on the ground that it was extraneous to any provision of the Discipline. In 1897 he was left without a station at his own request, and a resolution was adopted by the Conference requesting him to ask a location. In 1898 the plaintiff was located, he still refusing to ask a location. The plaintiff appealed to the Court of Appeals from the action of the Conference of 1898 in locating him, and the appeal was dismissed. Considering the foregoing facts, the court in Ash v Methodist Church, 27 Ont. App. Re 602, (Canada) said, "The question whether a minister is acceptable or inefficient is peculiarly one of the judgment of the Conference, and by the Discipline that body is made the sole judge on that subject."

METHODIST EPISCOPAL CHURCH

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Organization. The Methodist Episcopal Church of the United States was established in its government, doctrine,

and discipline by a General Conference of the traveling preachers in the communion in 1784. Down to that time the Methodist societies in America had been governed by John Wesley, the founder of this denomination of Christians, through the agency of his assistants. During this year the entire government was taken into the hands of the traveling preachers with his approbation and assent. They organized it, established its doctrines and discipline, appointed the several authorities, superintendents or bishops, ministers and preachers, to administer its polity and promulgate its doctrines and teaching throughout the land. From that time to this [1851] the source and fountain of its temporal power was the traveling preachers in this connection in General Conference. The lay members of the church have no part or connection with its governmental organization and never had. The traveling preachers comprise the embodiment of its power, ecclesiastical and temporal, and when assembled in General Conference according to the usages and discipline of the church, represent themselves, and have no constituents, and this organization continued till the year 1808, when a modification took place. At a General Conference of that year, composed of all the traveling preachers, it was resolved to have thereafter a delegated Conference, to be composed of one for every five members of each Annual Conference. The ratio of representation has been altered from time to time so that in 1844 the Annual Conferences were represented by one delegate for every twenty-one members. The General Conference of 1808 adopted a form of government or constitution, in which it was declared that the General Conference shall have full power to make rules and regulations for the church under the following limitations and restrictions. (Then followed six restrictive rules, comprising all the limitations upon that body assembled by delegates. For a further consideration of this subject, see the paragraph on Book Concern and power to divide the church.) Bascom v Lane, Fed. Cas. 1089 (Cir. Ct. Dist. N. Y.). Equal lay representation

in the General Conference has been adopted since this decision was rendered.

Anti-Slavery Control. A conveyance of land was made to this society in 1839, containing the recital that "said premises and building being principally purchased and procured by the anti-slavery members of said church, the same are to be wholly under their control and direction, and in no case whatever are any such members of said church as are not believers in and practicers of the doctrines of anti-slavery to take any part or have any power of controlling the use of said premises and building, or in any way disposing of the same, but the same shall be and remain forever under the control and direction of such members of said church as are embraced with the feelings and opinions of the anti-slavery society for the immediate abolition of slavery in the United States; and, further, that in no case is the General Conference of the Methodist Episcopal Church to have any right in said premises and building, or take any control or direction of the same." These provisions, relating to the control of the property, were held to constitute a condition, and the subsequent action of the local society in placing itself under the jurisdiction of the General Conference of the Methodist Episcopal Church, and receiving a minister in the usual method of appointment, was a breach of the condition which entitled the grantor to reenter. Guild v Richards, 16 Gray (Mass.) 309.

Baltimore Conference. By a will bearing date in 1854 the testator devised to the Methodist Episcopal Church in Berryville, in Baltimore Conference, a house and lot, to be used for a parsonage or for other pious purposes. In 1861 the Baltimore Conference severed its connection with the Methodist Episcopal Church, and united with the Methodist Episcopal Church, South. Certain members of the local church attached themselves to the Methodist Episcopal Church, South, and elected trustees, thereupon claiming to be the successors of the trustees of the original Methodist Episcopal Church at Berryville, and therefore entitled to

the property devised. They brought an action against the trustees of the original society to determine the title to the property. In the division of the Methodist Episcopal Church, which occurred in 1844, the Baltimore Conference adhered to the Methodist Episcopal Church, and this church at Berryville remained with that Conference in that church and did not unite in the movement which culminated in the general convention which was held at Louisville, Kentucky, in 1845, which declared the jurisdiction heretofore exercised over the Conference there assembled as entirely dissolved, and established a separate ecclesiastical connection, to be known by the style and title of the Methodist Episcopal Church, South; but the Baltimore Conference decided in 1846 to take no part in the new movement. In 1876 a joint commission was appointed by the Methodist Episcopal Church and the Methodist Episcopal Church, South, to adjust matters of controversy between the two churches. That commission met at Cape May, New Jersey, the same year, and awarded the property in dispute to the Methodist Episcopal Church, South. In 1854 the Methodist Episcopal Church, South, was in existence as such, and well known to the testator. It was held in this case that the property was not devised to the Methodist Episcopal Church, South, but to another and distinct denomination of Christians. The property was devised to the trustees of the local congregation and was not devised to either denomination as such, and neither church in its general capacity had any power to take such a devise. A grant to either General Conference would have been void. The General Conference had no power over this property. The award by the commission was, therefore, a nullity, and was not binding on the local society. It was further held that the trustees of the local society who had attached themselves to the Methodist Episcopal Church, South, had no claim to the property. Boxwell v Affleck, 79 Va. 402.

Land was conveyed to the society in trust that the trustees should build, or cause to be built, thereon a house or place

of worship for the use of the members of the Methodist Episcopal Church in the United States of America, according to the rules and discipline which from time to time may be agreed upon and adopted by the ministers and preachers of the said church, at their General Conferences in the United States of America; and permit such ministers and preachers belonging to said church, as shall from time to time be duly authorized by the General Conference of the ministers and preachers of the said Methodist Episcopal Church, or by the Annual Conference authorized by the said General Conference to preach and expound God's Holy Word therein. It was held that the deed conveyed the property to the uses of the local society, and substantially all the use that could be made of it would be by members of that society. The primary object of the whole transaction must necessarily have been to provide and secure a place of worship according to the Methodist Episcopal Discipline for the local society of that denomination, by and for which contributions were made, and which was expected to attend worship on the premises. The members of the Methodist Episcopal Church at large, not belonging to the local society, can, in a general view, have no other use of the local premises but through the instrumentality of the local society and by means of the subordination of the local use to the laws and authority of the church at large. The local society has no voice in the selection of its ministers. A local society has no right to be represented by delegates, either in the Annual Conference or in the General Conference. They had no voice in making the rules for the government of the church, and none in the appointment or selection of the preacher to whose charge they might be committed. The Baltimore Conference, which included Salem, decided to remain in connection with the Methodist Episcopal Church, but by a provision in the resolutions of the General Conference of 1844 local churches in the border Conferences might for themselves determine whether to continue in connection with the Methodist Episcopal Church or join the Methodist Epis-

copal Church, South. Salem Church was held to be a border society under the General Conference resolution. The society voted on the question of its future relation to the General Church, North or South, and the majority decided to join the Church South. This was held to place the local society under the jurisdiction of the Church South, not only as to its internal organization, but as to its property and all other provisions incident to its relation to the church organization. Brooke v Shacklett (Carter v Wolfe) 13 Gratt. (Va.) 300.

Baltimore Conference, Separation of 1844. This Conference was one of the border Conferences in the plan of separation, and was therefore entitled to determine whether it would remain connected with the Methodist Episcopal Church or join the Methodist Episcopal Church, South. This Conference in 1845 elected to go with the Church North. This determined its ecclesiastical status. A movement for the change of the Baltimore Conference from the Church North to the Church South was initiated at the Annual Conference held at Staunton, Virginia, in 1861, and consummated at the Annual Conference held in Alexandria in 1866. This action did not affect the status of the Conference which had elected to go with the Church North. Venable v Coffman, 2 W. Va. 31.

Bible Society Discontinued. The organization known as the Bible Society of the Methodist Episcopal Church, which had existed for many years previous to 1836, was in that year dissolved upon the recommendation of the General Conference of that church. The General Conference at the same time recommended to the Methodist Episcopal Churches to unite with the American Bible Society in carrying forward its object; and contributions were thenceforward taken up in the Methodist Episcopal churches throughout from year to year in aid of the American Bible Society. Since 1840 members of the Methodist Episcopal Church have been members of the board of managers of the American Bible Society, and held office in said society. There is

another association belonging to the Methodist Church, a part of whose action is devoted to the circulation and distribution of Bibles called the "Methodist Book Concern," and there are other societies besides the American Bible Society that have the same general object. Bliss v American Bible Society, 2 Allen (Mass.) 334.

Bishop's Authority to Consolidate Churches. This society was created by the consolidation of three other Methodist societies in Norwich, known as the East Main Street Methodist Episcopal Church, the Sachem Street Methodist Episcopal Church, and the Central Methodist Episcopal Church. The consolidation was effected by an order made by Bishop Walden at a session of the New England Southern Annual Conference, held in Providence in 1895. This action by the bishop was taken under the authority assumed to be vested in him "to fix the appointments of the preachers" by section 3 of paragraph 170 of the Book of Discipline of the Methodist Episcopal Church as contained in the Discipline of 1892, and in force at the time of the order. In Trinity Methodist Episcopal Church v Harris, 73 Conn. 216, it is said "that other bishops of the church have put the same construction on that part of the Book of Discipline, and that churches have been in the past on many occasions so united; and, so far as appears, the power and authority of a bishop presiding at an Annual Conference to make such consolidation has never been called in question. We understand that this construction of the Book of Discipline is in accordance with the uniform and universal practice of the Methodist Episcopal Church. It agrees with the common understanding of the practice of that church." The action of Bishop Walden was binding on every member of the churches so consolidated. It was held that, according to the rules, usages, and discipline of the Methodist Episcopal Church, Trinity Church was the successor to the grantees named in a deed of land to the Central Methodist Episcopal Church. "The consolidation of the three churches into one was a matter of ecclesiastical law and practice;

and the decision of the ecclesiastical tribunal on that matter is binding on the civil courts."

Book Concern. The Book Concern was established at a very early day, by the traveling preachers in connection with that church, and the profits to be derived therefrom were devoted by them to the relief of their distressed supernumerary and worn-out brethren, their widows and orphans. The foundation of this charity is peculiar and novel. The traveling preachers are both the founders and the beneficiaries. They are the proprietors of the charitable fund, and, according to the constitution under which the endowment was made, also entitled to its proceeds. According to the original constitution of this fund by the founders, who had a right to prescribe the terms and conditions upon which the proceeds or profits should be distributed, and the persons to whom, and which when prescribed furnishes the law of the case for the court, these proceeds and profits have been devoted to the relief of distressed, traveling supernumerary and worn-out preachers in the connection of the Methodist Episcopal Church, their widows and orphans. The sixth restrictive rule provides that the General Conference "shall not appropriate the proceeds of the Book Concern, nor the charter fund, to any purpose other than for the benefit of the traveling supernumerary and worn-out preachers, their wives, widows, and children." The division of the church in 1844, and the erection of the Methodist Episcopal Church, South, in 1845, did not deprive the latter church and its ministers, nor their widows and children of their right to share in the distribution of the proceeds of the Book Concern as provided by the sixth restrictive rule. It is this description of persons to whom it is destined by the adjudication of the court. They are not only within the description, but are also the very persons heretofore in the enjoyment of it, and for whom it was originally intended. Granting that these persons have done no wrongful act, but are still laboring in the church as heretofore, except under a different merely territorial organization, they are covered

by the spirit, if not by the letter of the restrictive article, and it was therefore held that the complainants were entitled to their share of the Book Concern. Bascom v Lane, Fed. Cas. No. 1089. (Cir. Ct. Dist. of N. Y.).

Church Extension Society. A bequest of $10,000 was made to this society, incorporated under the laws of Pennsylvania, "to be used as a part of the Perpetual Loan Fund of said society, and to bear the name of the Durham Loan Fund." In Church Extension of the Methodist Episcopal Church v Smith, 56 Md. 362, this bequest was held void, the court observing that while the legatee was duly incorporated and capable under its charter of taking the bequest for the general purposes of the association, the testatrix had chosen to declare the particular use and purpose to which the fund should be applied. By a rule of the society any person making a donation of $5,000 or more to a loan fund, might designate the name by which said contribution shall be known. The loan fund was set apart to be loaned to necessitous churches of the Methodist Episcopal Church, erected from time to time, within the limits of the United States and its territories, the authorities of the society selecting the beneficiaries. It was held that the legacy was not given to the corporation for its own use, and could not be used for its general purposes. The effect of the will was to constitute the society a trustee charged with the duty of employing the fund only for the use and benefit of necessitous Methodist churches in the United States. Such churches were the real beneficiaries for which the legacy was given, and the court held that such a trust was so indefinite that it could not be enforced. The corporation by failing to appoint an appropriate committee, or by failing to designate churches as beneficiaries of the fund, could practically divert the fund to uses not contemplated by the donor, and no one would have the power to invoke the aid of a court of equity for the enforcement of the trust.

Church Investigations. In Tubbs v Lynch, 4 Harr. (Del.) 521, it was held that a church investigation by a committee

appointed by the pastor to consider various complaints by members of the church had no legal effect in a court of law, and that the committee's report was not binding and final even in the church, but was subject to review and revision by appropriate church tribunals. The action of the church is designed to have a moral and not a legal result; the penalty of not abiding by it is no other than church discipline; and to give it a legal consequence or efficacy would be to compel members of that society to submit their rights to the decision of a church committee, withdrawing them from the legal tribunals of the country. "Members of this church cannot go to law with each other until the matter has first been stirred in the church."

Consolidation. This society was by an order made by Bishop Walden in 1895 declared to be the successor to three Methodist Episcopal churches in Norwich, which were consolidated by him to form the new society. This action by the bishop was held binding on the Civil Courts of Connecticut. Trustees of Trinity M. E. Church v Harris, 73 Conn. 216.

Corporators, Cannot Evict Trustees. A portion of the corporators alleged to constitute a majority took possession of the property and assumed to control it and prescribe and regulate the religious services to be held in the church. Such action by the corporators amounted to an eviction of the trustees who did not consent to such occupancy, and the trustees were held entitled to maintain an action in the name of the corporation to recover possession of the property. First M. E. Church in Attica v Filkins, 3 T. & C. (N. Y.) 279.

Division. In Brooke v Shacklett, 13 Gratt. (Va.) 300, the court, referring to the division resulting from the action of the General Conference of 1844, said: "If this division of the church was lawful, it is obvious that the members of the local societies in the Southern Organization of the church stand in the same relation to the General Conference, the Annual Conference, the bishops, pastors, rules and dis-

cipline of the Methodist Episcopal Church, South, that they occupied before the division, in respect to those of the Methadist Episcopal Church. There has been no change of faith, no change of doctrine, no change of discipline, no change in the mode of administering it; all remain as before. The General Conference of 1844 had power to provide for the division. "The ministers and preachers, in whom resided the supreme power, had, when they assembled in 1784 to frame a government for the church, full power to place it under one or two, or a still greater number of general organizations, if they had believed that the interests of the church would be thereby promoted. And I do not see how it can be said that the General Conferences of 1792, 1796, 1800, 1804, and 1808, composed, as they were, of the body of the ministers and preachers, did not each have the same power. And when they determined at the last mentioned Conference (1808) to meet no longer en masse, but thereafter by a delegation from their own body, the provision, which they adopted, that the General Conference should have full powers to make rules and regulations for the church, under the limitations and restrictions contained in the six restrictive articles just mentioned, amounted in substance to an authority to the delegates in Conference thereafter to exercise all the powers (except those prohibited in said restrictive articles) that could at any time have been exercised by a full Conference of all the ministers and preachers. No further limitation of the powers of the General Conference having been subsequently made, it seems to me that the Conference of 1844 was clothed with the power which it claimed and exercised.

Division of 1844. The separation of the Methodist Episcopal Church into two Methodist Episcopal Churches, the one North, and the other South, of a common boundary line, has been the subject of much discussion, in which the whole community, more or less, felt an interest, and was an event that connected itself with, and formed a part of, the history of the country, of which no well-informed man could be

ignorant, and from its notoriety courts will take judicial notice of it without proof. According to the plan of division, the local societies in Kentucky passed to the Methodist Episcopal Church, South, except those bordering on the Ohio River, which were permitted to determine the question, whether they would go North or South, by a vote of the respective societies. Humphrey v Burnside, 4 Bush (Ky.) 215.

Drew Theological Seminary. Testator made perpetual provision in his will for the education of two young men in this institution for the ministry, one to go in foreign missions and the other to become a member of the Wilmington Conference. Testator's son and son-in-law were given power to appoint young men to receive the instruction, and after the death of each of such relatives the power of appointment was to be vested in the Wilmington Annual Conference. The bequest was sustained. It was not void for uncertainty because the amount was not fixed. The amount needed for this purpose could be ascertained from year to year, and the trustees would always be at liberty to apply to a court of equity for instructions. Field v Drew Theological Seminary, 41 Fed. 371. (Cir. Ct. Del.)

Foreign Missionary Society, Bequest. A bequest to the Foreign Missionary Society of the Methodist Episcopal Church was held to be intended for the Missionary Society of the Methodist Episcopal Church, there being no society bearing the first name, and the latter having charge of the foreign missionary work of the church. Re Bryson's Estate, 7 Pa. Super. Ct. 624.

General Conference, Power to Divide Church. The General Conference, composed of all the traveling preachers, and who established the government, doctrines, and discipline of the church, possessed the power to reconstruct and reorganize the government, ecclesiastical and temporal, into two or more separate and distinct organizations. These traveling preachers represented the sovereign power of the government, and were responsible to no earthly tribunal for

the mode and manner of its exercise. The traveling preachers assembled in General Conference embody, and in themselves, the sovereign power, and we have nowhere seen their consent to any limitation or restriction till all come down, in the history of their administration, to the Conference of 1808. We must have some evidence that they have parted with a portion of their sovereign power that confessedly belonged to them at the first organization since that period; and that they assembled in the subsequent Conference, subject to the disability, before their power can be distinguished from those originally possessed. As it respects the powers of the General Conference since the modifications of 1808, it is the same as previously existed, subject to the six restrictive articles, and neither of them has any connection with or bearing upon the question we have been considering.

The connection of the Annual Upper Canada Conference with the Methodist Episcopal Church was dissolved in 1828, and that body authorized to erect itself into an independent ecclesiastical establishment. As it respects the power of the General Conference of 1844 in the matter of division, no one can pretend but that it proceeded upon the assumption of unquestioned power to erect the church into two separate ecclesiastical establishments. As a result of the action of the General Conference of 1844 authorizing the separation of the Southern Conferences, two distinct ecclesiastical organizations, identically the same, have taken the place of one, the same Discipline, faith and doctrine, and all united in spreading the same gospel and teachings throughout the land. Bascom v Lane, Fed. Cas. 1089, (Cir. Ct. Dist. N. Y.).

Illinois, Preachers' Aid Society. Preachers' Aid Society v England, 106 Ill. 125, sustained a grant of land to a trustee in trust for this society to be used for the benefit of superannuated ministers and their families.

John Street Church, New York. See Wyatt v Benson, 23 Barb. (N. Y.) 327, for a history of movements in 1855 and 1856 for the sale of the John Street Church property, in-

cluding several suits and the submission of various controversies relating to the subject to Bishop Matthew Simpson as arbitrator. The court holds, among other things, that trustees of a religious corporation cannot, on their own motion, and without a vote of the corporation, institute a proceeding for the sale of the church property; that the submission to Bishop Simpson of any question relating to the sale of the property was invalid, for the reason, as stated by Judge Davies, that "it was not competent to submit the question as to whether or not the church should be sold, to any tribunal other than that pointed out by law"; that the court could not without the consent of the corporation direct a sale of its property, and no arbitrator could be given power to say that church property should or should not be sold. The court also said that the question whether certain persons were the legal trustees of a religious corporation could not lawfully be submitted to an arbitrator, for the reason that the law pointed out the only method by which the title to an office could be determined.

Wyatt v Benson, 24 Barb. (N. Y.) 327, considers various questions relating to a movement in 1856 growing out of the organization of the first church, for the sale of the John Street Church property, and the removal of the society to an uptown location. It was held, among other things, that the trustees could not on their own motion institute a proceeding to procure an order for the sale of the church property, and that such a sale could not be directed by the court except with the consent of the corporation.

Maine, Preachers' Aid Society. Preachers' Aid Society v Rich, 45 Me. 552, sustained a bequest to this society, although at the time of making the will the society was not incorporated, but was incorporated after the testator's death. It was held competent to show that the society was the beneficiary intended by the testator, and the railroad bonds constituting the legacy were directed to be delivered to the society.

Methodist Preachers' Aid Society, Baltimore, Maryland. A

devise of land in Pennsylvania to this society was sustained in Thompson v Swoope, 24 Pa. 474.

Ministers, How Appointed. According to the constitution and Discipline of the Methodist Episcopal Church of the United States, its preachers, denominated deacons and elders, are not called by the societies to which they preach, but are appointed to stations, and to travel in circuits by the presiding bishop of the Annual Conference. The power is lodged in him, but from a practical necessity he acts with the advice of his council of presiding elders, assembled at the Annual Conference. The Annual Conference was composed of the deacons and elders and the traveling ministry within the respective Conferences, presided over by a bishop, or superintendent, as originally termed, assigned to hold the Conference by the board of bishops. The General Conference consists of delegates elected by the Annual Conferences from among the traveling preachers, presided over by the bishops in turn, and holding its sessions quadrennially. The Annual Conferences are divided into districts, composed of the circuits and stations within their respective boundaries. Over each district the bishop, at the Annual Conference, appoints an elder to preside, who travels his district four times a year, and presides at the Quarterly Conference in each circuit or station, composed of the traveling and local preachers, exhorters, stewards and class leaders, trustees, and first male superintendent of Sunday schools. A station is a single place of stated service, while a circuit has several. It is to these circuits and stations the traveling preachers are assigned at every Annual Conference. In his circuit or station the preacher in charge arranges or plans the appointments of service during the term of his own appointment. As to the particular building or house in which services shall be statedly held, there is nothing definite in the Discipline, and the authority over it seems to be only inferential, arising out of the power of the preacher in charge to arrange the appointments of service, which must include places as well as times of appointment.

Church polity reserves a large share of control over church property, as will be seen in the chapter in the Discipline on this subject. The Quarterly Conferences must secure the ground on which churches are to be built according to the deed of settlement, and can admit no charter or deed that does not secure the rights of the preachers of the church in the ministration of its services according to the true meaning of the deed of settlement, the form of which is prescribed. Henderson v Hunter, 59 Pa. St. 335.

Minister's Salary. The laws and regulations of the church, enacted by its General Conference, and contained in its "Books of Discipline," are binding upon its churches and its ministers. It is the duty of the bishop to fix the appointment of the preachers, of the church to accept the preacher thus assigned to it, and of the preacher to serve as minister and pastor according to his appointment. It is also provided that the amount necessary to furnish a comfortable support to the preacher should be estimated by a committee appointed by the Quarterly Conference within whose jurisdiction he was stationed, without regard to the pecuniary ability of the society, or the probability whether a greater sum could be raised for the object, and that certain persons called stewards should proceed by such method as they judged best to raise the estimated amount. None of these functionaries are officers of the society, nor are they selected or appointed by it. It is also in the same way provided "that in no case should the church or Conference be holden accountable for any deficiency as in case of debt."

It is apparent that the minister who renders service, does so, not upon an agreed salary, but upon an allowance for the support of himself and family, to be raised by voluntary and not enforced contributions, and those coming not wholly and perhaps not at all from the society or church to which he is appointed. Neither the Discipline of the church nor its principles recognize any contract relation between the minister and the society. Its entire policy is opposed to it. It regards its ministers, not as hirelings, but as pilgrims

and sojourners, and its societies as voluntary contributors to a general fund. From the fact, therefore, that service is rendered and service received, no implication can arise of any promise of compensation. Both parties must, in the absence at least of some valid express agreement, be deemed to have acted under the obligation of duty imposed by the rules to which they had assented. Landers v Frank St. Church, Rochester, 97 N. Y. 119, also 114 N. Y. 626.

Missionary Society. A devise to this society was held void on the ground that at the death of the testator the society had not been incorporated. The devise took effect immediately, and it was not aided by the subsequent incorporation of the society. It was also held that the society was not a foreign missionary society, its object being, as stated in its charter, "to diffuse more generally the blessings of education, civilization and Christianity throughout the United States and elsewhere." Chittenden v Chittenden, 1 Am. L. Reg. (N. Y.) 538.

A devise of land in Pennsylvania to this society was sustained in Thompson v Swoope, 24 Pa. St. 474.

This society was held not a religious corporation within the New York Transfer Tax Law as amended in 1900, and therefore not exempt from the payment of a transfer tax on a legacy. Re Watson 171 N. Y. 256.

Missionary Bequest. A bequest to the "Methodist Episcopal Missionary Society of Maine" was directed to be paid to the "Trustees of the East Maine Conference," it appearing that there was no incorporated missionary society answering the description of the will, and that the East Maine Society was incorporated and was within the territory in which the testatrix resided. Straw v East Maine Conf. M. E. Ch. 67 Me. 493.

Missions. Testator gave the residue of his estate to the Methodist Episcopal Mission at Bombay, India. There was no such mission, but there was a general missionary society of the church carrying on operations in India, with

its headquarters at Lucknow. It appeared that the testator was familiar with the general missionary operations in India and had made liberal contributions in aid of the enterprise. He was deemed to have intended to devise his estate to the General Society, the proceeds to be used in carrying on its work in India, and the devise was therefore sustained. McAllister v McAllister, 46 Vt. 272.

A bequest of the proceeds of a sale of real estate to the General Missionary Society was sustained in Missionary Society Methodist Episcopal Church v Calvert, 32 Gratt. (Va.) 357. The provision in the bequest that the fund should be appropriated to the India mission did not make it void for uncertainty.

Testator gave one half of his residuary estate to the "Missionary Case of the M. E. Church." The word "case" was construed to mean "Cause." The Missionary Society of the Methodist Episcopal Church sought to obtain the fund on the ground that it was the general agency through which missionary operations in the denomination were carried on. The court held that the society, not having been named in the will, was not entitled to the fund, but the bequest did not, for that reason, fail, and the court suggested that further proceedings would be necessary on the equity side to determine the disposition and management of the fund, for the purpose of perpetuating the testator's intention. Missionary Society Methodist Episcopal Church v Chapman, 128 Mass. 265.

New York, 9th Ward, Bequest for Purchase of Coal. A bequest of the residue of an estate to the Methodist Episcopal churches in the ninth ward in the city of New York, according to the number of members, to buy coal for the poor of said churches was sustained. The testator contemplated no trust, but simply made a bequest to the churches, and the same was valid. Bird v Merklee, 144 N. Y. 544.

Ohio Corporation. This church was incorporated under the laws of Ohio with twelve trustees—six ministers and six laymen—one half to be chosen by the General Confer-

ence quadrennially. The corporation was given power to take and hold, manage and convey property and administer trusts for the benefit of the denomination, and the corporation was declared to be subject to the supervision of the General Conference. The testator bequeathed a portion of his estate to the "Methodist Episcopal Church to be used by said denomination for the spread and furtherance of the gospel." It was held that the Ohio corporation was entitled to receive this bequest and that it could not be paid to a local society of the denomination. Re Rouser's Estate, 8 Pa. Sup. Ct. 188.

Oregon Mission. The Oregon act of 1848 confirmed the title to lands, not exceeding 640 acres, then occupied as missionary stations among the Indian tribes of said territory, together with the improvements thereon, in the several religious societies to which said missionary stations respectively belonged. From 1838 to September, 1847, the missionary society of the Methodist Episcopal Church maintained a mission among the Wascopum Indians on the south bank of the Columbia River, at the lower end of the Grand Dalles thereof, at a place since called "The Dalles," in what is now Wasco County, and on July 9, 1875, received a patent from the United States, under section 2447 of the Revised Statutes, for a tract of land containing 643.37 acres, including the ground occupied by the improvements made at such mission.

For some years prior to the passage of the Oregon act of August 14, 1848, there were three religious societies engaged in missionary labors among the Indians in Oregon—the Methodist Episcopal, Presbyterian, and the Roman Catholic. The first missionaries of the former came to Oregon with Weyth in 1834, and established a mission at Wallamet below Salem, which was afterward removed to the latter place. Subsequently their numbers were increased, and they established missions at The Dalles, Nesqually, and Clatsop.

In the Spring of 1838 the Rev. Daniel Lee and Rev.

H. K. W. Perkins, under the direction of the Rev. Jason Lee, the superintendent of the defendant in Oregon, established a mission within the limits of the tract described in the patent here at a place then called Wascopum. In the fall of the same year it was stocked with cattle from the Willamette Valley. The place was favorably situated for trade and intercourse with the Indians and immigrants from the east—the latter usually at this point exchanged their wagons for boats and often bartering their poor oxen for supplies, such as fresh beef and the like.

In 1840 M. H. B. Brewer went to reside there as a farmer for the mission. Perkins and Lee left the mission for the East in 1844, and the Rev. A. F. Waller joined it about the same time. Waller and Brewer remained there until the transfer of the station to Whitman in 1847. In 1844 the Rev. George Cary superseded Jason Lee as superintendent of the Oregon Mission. Apparently the missionary society had become dissatisfied with the secular character and cost of the missionary operations, and sent Gary here to bring about a change in this respect. To this end, soon after his arrival in the territory, the various mission stations, except The Dalles, and all the mission property, consisting mainly of large herds of horses and cattle, were disposed of to members of the mission, so that after 1844 the defendant had no mission among the Indian tribes in Oregon, except at The Dalles. Thereafter the labors of its faithful clerical missionaries, of whom but a few remained in the country, were devoted to the growing white settlement in the Willamette Valley. In the language of one of them, "The finances of the Oregon Mission were thus summarily brought to a close, and the mission was not only relieved of a ponderous load, but assumed a decidedly spiritual character."

In July, 1847, Mr. Gary was succeeded as superintendent of the mission by the Rev. William Roberts. Prior to this, and in the spring of that year, Mr. Gary had disposed of nearly all the live stock of The Dalles mission station, and was negotiating with Dr. Whitman for the transfer of the

station itself. Mr. Roberts in continuation of the policy manifested by his predecessor, followed up these negotiations, until in August an agreement was made for the abandonment or transfer of the station to Whitman, together with the sale of a canoe, some farming utensils, grain, and household furniture for the sum of $600; and between September 1 and 10, 1847, Messrs. Waller and Brewer, the agents of the missionary society, delivered the possession of the premises to Whitman, who took actual possession thereof, and placed his nephew, Perrin B. Whitman, a youth of seventeen years, in charge, while he proceeded to his mission station at Wailatpu.

Dr. Whitman was not a minister, but at the time of the transfer of this station to him it was understood and expected that religious services and instruction would in some way be kept up there for the benefit of the Indians; but there was no legal obligation to that effect, nor did the missionary society, or its agents, have any intention or expectation of returning or occupying the station, if such services and instruction were not furnished, or otherwise. In pursuance of the settled policy of the missionary society, the station was absolutely and unqualifiedly abandoned to Dr. Whitman, without any reservation or right to resume the possession under any circumstances. At the time the missionary society abandoned this station there were about seventy acres under some kind of inclosure, about one half of which had been under cultivation. There were six moderate-sized buildings upon the premises, a dwelling, meeting-house, schoolhouse, and storehouse, barn and workshop, built of logs, except the dwelling, which was a frame filled in with adobe. These buildings were plain and constructed mostly with Indian labor, and did not cost to exceed $4,000, at which valuation they were afterward, on June 16, 1860, paid for by the United States, upon a claim and estimate of the defendant to that effect.

On November 29, 1847, Dr. Whitman and others were murdered at Wailatpu, by the Indians of that station, and

this was followed by what is known as the Cayuse War, in which the people of Oregon, under the provisional government, undertook to chastise the Cayuse Indians for this massacre. By midsummer of 1848 hostilities had ceased and peace was established.

About December 16 Perrin B. Whitman, who had remained in charge of the station at The Dalles, being apprehensive of danger, left for the Willamette Valley, taking with him Mr. Alanson Hinman, whom his uncle had sent there from Wailatpu in October as a farmer and housekeeper. A detachment of volunteers soon after occupied the premises, with the permission of said Whitman, and it remained in the possession of the troops of the provisional government until they were withdrawn from the country as stated. Thereafter the premises remained unoccupied, except occasionally by passing travelers and immigrants, until the spring of 1850, when a military post was established there by the United States, and the premises included in a military reserve.

The court held that the missionary society had not acquired the title to this station on August 14, 1848, under the act of that date. It had abandoned the place voluntarily and without any expectation or intention of returning, and was no more within the purview or operation of the act than if it had never been upon the ground. The grant under that statute applied only to such stations as were occupied on August 14, 1848. The missionary society did not then occupy the premises. Prior to August 14, 1848, there could be no such possession of lands in Oregon, because the legal title was in the United States. Occupancy or actual possession was the only interest anyone then had in the lands in Oregon, and when that was given up or abandoned, the relation of the party to the land was absolutely terminated, and it was open to occupation by the next comer as though the foot of man had never been upon it. The grant by the act of 1848 applied to stations then occupied for missionary purposes.

By an act of Congress passed on the 16th day of June, 1860 the missionary society received from the United States $20,000 in satisfaction of its claim for one half of the premises, and the value of the improvements thereon, whether destroyed by the volunteers under the provisional government, or Indians, or the United States troops, and estimated by it at $4,000.

The court said that the patent obtained by the missionary society in 1875 was wrongfully issued, and the society was not entitled to retain the property, but was required to release and convey it to the persons claiming title to it in this case. Dalles City v Missionary Society M. E. Church, 6 Fed. 356.

Property to Be Held in Trust. Under the terms of the Discipline it is provided that conveyances of real estate for the erection of houses of worship shall be in trust, to be used, kept, maintained, and disposed of as a place of divine worship, etc., subject to the discipline, usage, and ministerial appointments of said church. Trustees of a local society who have advanced money or are responsible for any sums of money on account of building a house of worship or are obliged to pay such sums of money, are authorized either to mortgage or to sell the premises after notice given to the pastor. The local trustees are to hold all the church property. Bushong v Taylor, 82 Mo. 660.

Separation, Church South, Plan Final. It is manifest that the plan of separation was a plan of peace, to end strife; and the relations of the Conferences, churches, stations, and societies along the defined and specified border, being once settled by the choice of those authorized so to act, by adhering to the one side or the other, was final and conclusive, and could never after be changed, or counteracted, under or by virtue of that plan and authority. Now it is contemplated to keep the question open to be shifting from side to side, from time to time, as one side or the other may have a majority. Such a construction would be to defeat the end in view of peace and settlement, increase the dissen-

sions among the people, and make confusion worse confounded. Venable v Coffman, 2 W. Va. 310.

Separation, Church South, Holston Conference. Following the separation in 1844, and the erection of the Methodist Episcopal Church, South, in 1845, the Holston Conference, one of the Border Conferences, described in the plan of separation, adhered to the Church South, and became a part of that organization. The local church in Jonesboro, Tennessee, was in this Conference, and this society continued to be a part of the Church South until 1865, when some of its members, including three trustees, withdrew from the Church South and joined the Methodist Episcopal Church, North. They formed an organization and took possession of the local society's property, claiming it for the Church North. The trustees who remained in the Church South brought an action against the trustees of the Church North to recover the property. It was held that by the action of the Holston Conference, deciding to go with the Church South, the title to the local property passed to that organization. This situation was not affected by the withdrawal from the local society of a large number of its members, including three trustees and their subsequent connection with the Church North. The effect of such withdrawal was to lose all interest as beneficiary of the property. The trustees who were connected with the Church South were held entitled to the possession of the local church property. Reeves v Walker, 8 Baxt. (Tenn.) 277.

Separation, Title to Local Property. Pending a controversy over the title to the church property between representatives of the Methodist Episcopal Church of the United States and the Methodist Episcopal Church, South, the county court appointed trustees of the local society representing the Methodist Episcopal Church of the United States. In an action of ejectment by these trustees against persons claiming the property as representing the Methodist Episcopal Church, South, it was held that the plaintiffs could maintain an action although appointed by the court.

That their appointment was a subject of appeal, but could not be questioned collaterally nor in the pending action. Kreglo v Fulk. 3 W. Va. 74.

Separation, 1844, Home Rule as to Future Relation. By the plan of separation it was agreed that within the territory of any of the Border Conferences a majority of the society, or Conference within which any church property lay, might determine for itself to which body it would become attached. Venable v Coffman, 2 W. Va. 310.

Separation, When Property Cannot Be Transferred to Church South. In 1851 property was conveyed to this society to be used for religious purposes according to the rules and discipline of the Methodist Episcopal Church. In 1866 five of the trustees of the society joined the Methodist Episcopal Church, South, and attempted to transfer the property to that denomination by opening the house of worship to its ministers, and submitting to its Discipline. In 1866 the Quarterly Conference adopted a resolution directing legal proceedings to remove the seceding trustees. This society was within the limits of the Baltimore Conference. There was no evidence that this congregation had ever voted to leave the Church North and attach itself to the Church South. It was held that while any members of the church might leave this society and join the Church South the action of the trustees in attempting to transfer the society to the Southern denomination was invalid, and the local society continued to be a part of the Church North. The seceding trustees were removed by the court, and other trustees were appointed in their place. Venable v Coffman, 2 W. Va. 310.

Tennessee Annual Conference. Testator bequeathed a portion of his estate to the Tennessee Annual Conference, for the benefit of institutions of learning under its superintendence, and to the Missionary Society of the Methodist Episcopal Church, and to be otherwise disposed of as the Tennessee Annual Conference may deem best in their wisdom.

The testator died in 1840. In 1841 the Legislature of

Tennessee passed a private act incorporating certain persons as trustees to receive this bequest. The devise to the Conference was held inoperative and void, for the reason that the devise exhibited only a general indefinite purpose of charity both as to persons and objects. The act of the Legislature of 1841, creating the trustees of the Conference was held unconstitutional and void. Green v Allen, 5 Hump. (Tenn.) 170.

METHODIST EPISCOPAL CHURCH, SOUTH

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Origin, Historical Sketch. In Gibson v Armstrong, 7 B. Mon. (Ky.) 481, the Court of Appeals of Kentucky considered several questions growing out of the division of the Methodist Episcopal Church following the General Conference of 1844, resulting in the erection of the Methodist Episcopal Church, South. The division was one of the consequences of the agitation concerning slavery, which had continued several years, especially in the Northern States. This agitation culminated in the action of the General Conference of 1844, which in effect authorized the separation of the Southern portion of the church, and the organization of a new church in the slaveholding States.

Many resolutions and memorials relative to slavery were presented to the General Conference of 1844, and there was much discussion of questions relating to slavery and its possible effect on the future of the denomination. On the 5th of June fifty-two members of the General Conference, one from Illinois and fifty-one from the slaveholding States, embracing thirteen Annual Conferences, submitted to that

body a statement declaring that "the continued agitation on the subject of slavery and abolition in a portion of the church; the frequent action on that subject in the General Conference; must produce a state of things in the South which renders a continuance of the jurisdiction of this General Conference over these Conferences inconsistent with the success of the ministry in the slaveholding States." This declaration was referred to a committee of nine, which, on the 7th of June, submitted a report, which was adopted, relating to the separation of the Southern part of the church.

The report contained resolutions in effect sanctioning the proposed separation and the erection of a separate organization in the slaveholding States, authorizing societies, stations, and Conferences in the Southern States to determine by vote whether they would remain in the original church or join the new organization, providing for the status of ministers and members in case they should elect to go with the Southern church; and providing also for a division of the property and funds of the Methodist Episcopal Church in case the proposed separation should be effected.

A convention of delegates from the Southern Annual Conferences was held in Louisville, Kentucky, in May, 1845, and adopted a plan which formally constituted such Annual Conferences a "separate ecclesiastical connection," under the name of the Methodist Episcopal Church, South.

Acting on the authority conferred by the General Conference of 1844, the congregation and members of the Methodist Episcopal Church in Maysville, Kentucky, held a meeting for the purpose of determining whether they would go with the Southern church or continue as a part of the original Methodist Episcopal Church. A majority decided to place the Church in connection with the new Southern organization. The minority determined to adhere to the Northern church. In the foregoing case the court was called upon to decide which party in the local church was entitled to possession of the church edifice and other property, and which was to be deemed the true local society.

The court, in its opinion, reviewed the history of the Methodist Episcopal Church, various aspects of the slavery agitation, the action of the General Conference of 1844, and the organization of the new Southern church, and held that a majority of the Maysville church, having decided to place the local society in connection with the new Southern organization, that majority was to be deemed to the true local society, and entitled to possession and control of the church building and property, subject to regulations prescribed or to be prescribed by the new general organization.

The court said, among other things: "The original Methodist Episcopal Church has been authoritatively divided into two Methodist Episcopal Churches, the one north, and the other south of a common boundary line, which, according to the plan of separation, limits the extent and jurisdiction of each; each within its own limits is the lawful successor and representative of the original church, possessing all its jurisdiction, and entitled to its name; neither has any more right to exceed those limits than the other."

Organization. "A convention of delegates from fifteen Southern Conferences assembled in 1845, renounced, by solemn act, their connection with the preexisting organization and jurisdiction of the General Conference as then constituted, and retaining the same faith and doctrine, the same rules and discipline, and the same form of constitution and government, established for themselves a new and independent organization, under the name of 'The Methodist Episcopal Church, South,' and a new General Conference for that church." "The Southern church retaining the same faith, doctrine, and discipline, and assuming the same organization and name as the original church, is not only a Methodist Episcopal Church but is in fact to the South, the Methodist Episcopal Church as truly as the other church is so to the North, and is not the less so by the addition of the word 'South' to designate its locality." Gibson v Armstrong, 7 B. Mon. (Ky.) 481.

Baltimore Conference. This Conference was not repre-

sented in the convention held in Louisville, Kentucky, in May, 1845, which organized the Methodist Episcopal Church, South, and being a border Conference, under the plan of separation agreed upon by the General Conference of the Methodist Episcopal Church in 1844, it had the right to determine for itself its future ecclesiastical relations by electing to continue its connection with the old organization or attach itself to the new. In 1846 the Baltimore Conference adopted a resolution to adhere to the Methodist Episcopal Church of the United States.

In 1861 the Baltimore Conference adopted a resolution based on the anti-slavery action of the General Conference held at Buffalo in 1860, by which resolution the relation of the Annual Conference to the General Church was severed, and the Conference declared itself separate and independent, but still claiming to be an integral part of the Methodist Episcopal Church. In February, 1866, the Baltimore Conference adopted a resolution joining the Methodist Episcopal Church, South.

The minority of the Baltimore Conference of 1861, by which the resolution of separation had been adopted, refused to follow the Conference in its independence, and organized, in 1862, a new Annual Conference, known as the Baltimore Conference; and this Conference was connected with the general denomination, and it sent delegates to the General Conference.

Some time after 1866 the members of Harmony Church, who were present at a meeting, voted unanimously to join the Methodist Episcopal Church, South. Adherents of the Church North were either absent or did not vote. After this action by the Harmony Church trustees were appointed by the court and assumed the control of the church property, admitting to the use thereof the ministers assigned by the Conference of the Methodist Episcopal Church, South, and excluding from such use those assigned by the Conferences of the Methodist Episcopal Church. Hoskinson v Pusey, (White v King) 32 Gratt. (Va.) 428.

Book Concern, Methodist Episcopal Church, Interest in, How Adjusted. Smith v Swormstedt, 16 How. (U. S.) 288, involved questions relating to a division of the property known as the Methodist Book Concern, consequent upon the separation of the Methodist Episcopal Church into two factions, North and South, following the action of the General Conference of 1844. It was held that an action might be maintained for a division of the property, and that such an action might be brought in the name of a few members of the denomination representing the whole.

Bascom v Lane, Fed. Cas. No. 1089 (Cir. Ct. N. Y. Dist.) was an action based on the division of the Methodist Episcopal Church, and the subsequent organization of the Methodist Episcopal Church, South, for a settlement and division authorized by the resolutions of the General Conference of 1844. See note on the division in the article on the Methodist Episcopal Church. It was held that the complainants were entitled to share in the proceeds of the Book Concern.

Border Society. A church edifice was erected on land conveyed to trustees in 1833, within the limits of the territory which afterward became the Baltimore Conference of the Methodist Episcopal Church, South. The conveyance was not for the use of the church at large, but for the use of a particular congregation of that church, in the limited and local sense of the term; that is, for the members as such, of the congregation of the Methodist Episcopal Church, who from their residence at or near the place of worship may be expected to use it for that purpose. The local society, when the deed was made, was a part of the Methodist Episcopal Church. This local society was not a Border society within the meaning of the plan of separation adopted by the General Conference of 1844, and hence had no authority to determine, by a majority of its members, its adherence to the Church South. The property of the church was held to belong to those members who adhered to the Methodist Episcopal Church, and who did not join in the movement

for separation. Hoskinson v Pusey, 32 Gratt. (Va.) 428. (White v King).

Church Edifice, Change of Site, Effect. Land was acquired by a local society as a place for a house of worship, which was erected thereon. Afterward the site was changed, and a new house of worship built in another part of the town. This change was sustained as authorized by the rules and discipline of the denomination, which were included in the original deed. These rules authorized the trustees of the local church to sell its property with the consent of the Quarterly Conference. Kilpatrick v Graves, 51 Miss. 432.

Corvallis College, Oregon. The General Conference had and exercised the power to appoint trustees of this college. In 1870 the Legislature of Oregon made this college the State Agricultural College, but it continued subject to the jurisdiction of the Methodist Episcopal Church, South. The college accepted the statute. In 1885 the Columbia Conference appointed trustees of the college. In 1886 the trustees adopted a resolution directing a conveyance of the college farm to the State, and the conveyance was executed accordingly, but without consideration. Several persons, members of the Methodist Episcopal Church, South, brought an action to set aside the deed. It was held that under the charter the college had no power to make this conveyance. Liggett v Ladd, 17 Or. 89.

Liability for Local Debts. In Methodist Episcopal Church, South, v Clifton, 34 Tex. Civ. App. 248, it was held that the Methodist Episcopal Church, South, was an unincorporated voluntary association, against which no judgment could be rendered unless for the purpose of enforcing some equitable right which plaintiffs had against some property held by that association. The action was to recover the amount of a debt contracted in the erection of Waco Female College, in Texas, under the authority, as claimed, of the Northwest Texas Conference. It was held that the church owned no property directly connected with the enterprise in which the contractors were interested, nor any fund which could

be charged with the debt; that whatever property was owned by the denomination was held for particular charitable uses, which could not be diverted to the payment of the debt in question.

Missions. Testator gave all his property to the Methodist Episcopal Church, South, to be used in carrying on foreign missions. The devise was sustained. The Kentucky statute limited to fifty acres the quantity of land which might be held by any religious society, and specified the purposes for which such land might be acquired and used. The restriction in the statute was intended to prevent a church from taking property for its own use. In this instance the property was given to the church in trust to be used for foreign missions, and was not for the benefit of the local society. It was held that the limitation of the statute did not apply, and that the devise was valid. Kinney v Kinney, 86 Ky. 610.

Property, Division of General Church, Effect. In 1840 land was conveyed to the local society at Mt. Olivet, Kentucky, for church purposes, according to the laws and Discipline of the Methodist Episcopal Church. In 1844 the church was divided, the Southern Conferences assuming the name of the Methodist Episcopal Church, South. This society passed under the jurisdiction of the Southern organization, and after that time its pastors were appointed by the Kentucky Conference of the Church South. Certain persons claiming to be members and trustees of this society, and also claiming to be members of the Methodist Episcopal Church, South, brought an action to secure possession of the church property. The court awarded the title and possession of the property to the congregation composed of members of the Methodist Episcopal Church, South. Humphrey v Burnside, 4 Bush. (Ky.) 215.

Property, Secession, Effect. In 1854 land was conveyed to trustees intended for a parsonage for the use of ministers of this society, which had a church edifice near the land conveyed. The property was occupied several years, but it

apparently was not purchased for the use of the denomination generally, but only for the local society. A division arose in the church during the Civil War, some 65 members withdrawing, including the trustees named in the foregoing deed. They erected a new house of worship and organized a society in connection with the Methodist Episcopal Church of the United States. The remaining members, about 37, adhered to the Church South and kept up their organization and retained control of the old house of worship. The trustees named in the deed of the parsonage property, and who had seceded and joined the Church North, obtained possession of the parsonage property and assumed control of it. The trustees of the old congregation brought an action against the seceding trustees to recover possession of the parsonage property. It was held that the conveyance of the parsonage property under the circumstances amounted to a dedication of it to the local society for the use of its minister. The seceders by their action in withdrawing and organizing a new society forfeited their interest in the parsonage property, and were not entitled to any control of it, nor to a division of the property under the Kentucky statute. McKinney v Griggs, 5 Bush. (Ky.) 401.

Property was conveyed to the local society in 1858, to be used for religious purposes under the general jurisdiction and supervision of the Methodist Episcopal Church, South. In 1865 some members of the local society withdrew and set up for themselves as an integral part of the church organization, known as the African Methodist Episcopal Church of the United States. In 1866 the General Conference of the Methodist Episcopal Church, South, adopted a resolution "that whenever entire churches and congregations shall have voluntarily left us and united with the African Methodist Episcopal Church, the trustees be, and they are hereby advised, to allow them the use of the house of worship heretofore solely occupied by them as before they left our church." The members of this local church who withdrew took possession of the house of worship and used

it until a part of the colored people were excluded for their adherence to the Methodist Episcopal Church, South, from worshiping there. It was held that the seceders had no right to the possession or use of the church property, but that such title and use remained in the members who adhered to the Methodist Episcopal Church, South. Brown v Monroe, 80 Ky. 443.

Property, When Withdrawing Members Cannot Change Title. In September, 1845, the trustees of the Methodist Episcopal Church in Savannah made a deed of certain land to the trustees of the Methodist Episcopal Church, South, under an arrangement by which the latter trustees agreed to erect on the land conveyed a house of worship for the use of the colored members of the Methodist Episcopal Church, South. The trustees, grantees in the deed, erected a house of worship, and called it Andrew Chapel. This occupancy continued without interruption until the capture of Savannah by the Federal forces in 1865. Following the capture of the city several members of Andrew Chapel joined the African Methodist Episcopal Church, and the trustees of the Church South permitted the African Methodists to use the chapel. In December, 1865, the African Methodists applied to the Georgia Conference for a deed of Andrew Chapel, but the Conference replied that it had no power to make the conveyance, for the reason that the title to property used by colored Methodists was vested in trustees for the use of colored members of the Methodist Episcopal Church, South, so that the Georgia Conference has no power to convey the property to any other organization whatever.

The African Methodists continued to occupy the property, and in September, 1868, the trustees of the Church South served on the African Methodists a notice to quit, but they declined to vacate the property unless compelled to do so by law. The trustees of the Church South then began summary proceedings to recover possession of the property. It was held that the title to the property remained in the

trustees of the Methodist Episcopal Church, South, and that the withdrawal of members of that church did not have the effect to change the title. They could not carry the title with them into another organization. Godfrey v Walker, 42 Ga. 562.

Property, Who May Enforce Trust. Land was conveyed to trustees for the use and benefit of the colored members of the Methodist Episcopal Church, South, according to the rules and Discipline of that denomination. In 1865 the Ohio Conference of the African Methodist Episcopal Church, having extended its jurisdiction over that part of Kentucky embracing Danville, the members of this local society unanimously voted to attach themselves to the latter organization, and became subject to its rules and Discipline, receiving the pastors appointed by its authority, and otherwise exercising the functions and powers of a local congregation. Some time afterward two members were expelled from the new society, and thereupon the Quarterly Conference of the Church South, in the district embracing Danville, appointed trustees of the original society. These trustees brought an action in equity to recover possession of the church property. It was held that the deed was for the benefit of colored members of the Methodist Episcopal Church, South, residing in Danville, and that there being no such persons, either members of the Danville church of white people, or in a separate organization in connection with the Church South, it did not appear that there was anyone entitled to have the trust enforced. Newman v Proctor, 73 Ky. 318.

Publishing House, Taxation. This institution, located at Nashville, Tennessee, was incorporated by the Legislature in 1856, for the manufacture of books, tracts, periodicals, etc. The corporation was placed under the management and control of the Methodist Episcopal Church, South, according to its laws and usages adopted from time to time. By the Discipline the object of the corporation was to advance the cause of Christianity by disseminating religious knowl-

edge and useful literary and scientific information in the form of books, tracts, periodicals, etc. By the sixth restrictive rule contained in the Discipline it was provided that the "General Conference shall not appropriate the produce of the publishing house [referring to this corporation] to any purpose other than for the benefit of the traveling supernumerary, superannuated, and worn-out preachers, their wives, widows, and children."

It seems that in 1890 about one fifty-sixth part of the proceeds of the Publishing House was derived from the publication of secular books. All the proceeds, from whatever source derived, were devoted to the objects stated in the Discipline. It was held that the publication of secular books did not deprive the corporation of its religious character, but that it was a religious institution, being organized as an arm or agency of the church, and carrying forward its work, and especially in accumulating funds for the relief of worn-out preachers, their wives, widows, and children, and that the property of the corporation was exempt from taxation. Methodist Episcopal Church, South v Hinton, 92 Tenn. 188.

METHODIST PROTESTANT CHURCH

General Conference, when entitled to property of extinct church, 370.
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General Conference, When Entitled to Property of Extinct Church. By the law of the General Conference, the property of any church which should become extinct should become vested in the General Conference, and a church is considered extinct when there are not sufficient members to fill its offices. The society by a vote of all except two of its members, voted to establish an independent church. It was held that the two members who did not join the independent movement constituted the church, and being too few to fill the offices, the property of the church was forfeited and became vested in the General Conference. Appeal of First Methodist Protestant Church, Scranton, 16 Wkly. Cas. N. (Pa.) 245.

Property, Forfeiture, Free Seats. Woodworth v Payne, 74 N. Y. 196, considers a provision in a deed of land for a church, declaring that seats in the church should always be free, and if such seats were rented or sold, the title to the property should revert to the grantor. The church being in debt, sold the property by order of the court, to its minister, and services were continued as before the sale, the seats being free. It was held that the sale and change of title did not under the circumstances create a forfeiture and the property did not revert to the grantor. This deed was considered again in Southwick v New York Christian Missionary Soc., 151 A. D. 116; affirmed 211 N. Y. 515.

Property, Secession, Effect. In 1860 land was conveyed to trustees for the exclusive use and benefit of the local con-

gregation. In 1871 a part of the local society withdrew therefrom and joined the Methodist Episcopal Church, South. The minority retained the organization of the Methodist Protestant Church, and continued to occupy the property, until 1886, when they were excluded from it, and the doors of the church were locked against them. The minority, who had adhered to the Methodist Protestant Church, were held entitled to the property. Finley v Brent, 87 Va. 103.

Property, Title in Trustees, Effect. Land was conveyed to certain trustees in trust for the members of the Methodist Protestant church of Georgetown, to be holden by them and their successors in office for said church forever, to the proper use and behoof of said church, agreeably to the Methodist Protestant Church Discipline. The Book of Discipline provided for the election of trustees for each church, and made it their duty to hold the property of individual churches in trust for the use and benefit of the members thereof with power, when authorized by two thirds of the male members over twenty-one years of age, to dispose of property so held, but on no other condition. It was held that the legal title did not vest in the church as a corporation. Methodist Protestant Church v Bennett, 39 Conn. 293.

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Call. The term "call" as used in the statutes of New York is derived from the constitution of the Reformed Dutch Church; and when it is made it must necessarily contain an offer of salary and specify the views and wishes of those tendering it for the proposed incumbent's consideration; and if the terms be accepted, the call becomes the contract between the church and him. Upon the making of the contract, the call is complete. Humbert v St. Stephen's Church, N. Y., 1 Edw. Ch. (N. Y.) 308.

A call signed by three elders and one trustee, according to the form provided by the Presbyterian Church, was held to create a claim against the congregation, and the officers signing the call were not individually liable for the salary. It seemed that the call referred exclusively to the spiritual concerns of the congregation. Paddock v Brown, 6 Hill (N. Y.) 530.

Call, Ineffective, Voluntary Contributions, How Disposed of. Where the officers and majority of a congregation adhere in good faith to a pastor who is subsequently declared by a court of equity not to be entitled to the office of pastor, the

officers will not be required to account to the legal pastor for the moneys received by them as voluntary contributions for the support of the pastor to whom they adhered. They must, however, account for the contributions and collections for general purposes of the church corporation, such as missionary, educational funds, etc. Bliem v Schultz, 170 Pa. 563.

Calvinistic Baptist Societies. It is the usage of Calvinistic Baptists to ordain their clergymen to the work of evangelists or ministers of the gospel at large, and not as ministers of any particular churches or congregations, and they preach the gospel and administer the ordinances by virtue of that general authority, and not in consequence of their connection, by church membership, with a particular church. Baptist Church, Hartford v Witherell, 3 Paige, Ch. (N. Y.) 296.

Changing Religious Belief. If the minister adopts a new system of divinity, the parish retaining their former religious belief, so that the minister would not have been settled on this present system, the parish have good cause to complain. By the change in the opinions of their minister they are obliged to hear doctrines which they disapprove and which they do not believe. Such a situation presents a proper case between the minister and the parish for the advice of an ecclesiastical council. Burr v First Parish in Sandwich, 9 Mass. 277.

Contract. As the public laws subsisting at the time and place of the making of a contract, and in force where it is to be performed enter into and form part of it, so the ecclesiastical laws and usages of a particular religious denomination enter into and form part of every contract under which the status of the pastor of a church of that denomination is created. Arthur v Northfield Congregational Church, 73 Conn. 718.

It was held in Charleston v Allen, 6 Vt. 633, that the engagement of a minister was of a temporary and not a permanent character, and he was therefore not the first

settled minister within the meaning of the Vermont charter, and was not entitled to the land set apart for the ministry.

Contract, Dissolution. When a minister ceases to be able to perform his ministerial duties, in consequence of any immorality, or a church censure for such immorality, it may afford a sufficient reason for the parties mutually to dissolve the relation, or for one of them to treat the contract as forfeited and rescinded by the other. But when both parties to the contract are satisfied, and neither desires the relation to be dissolved, it is not for this court, at the instance of others, not parties to the contract, to seek for understandings and implications by which to avoid it, or to inquire whether it would conduce to the satisfaction of others to have a more acceptable minister, or one more closely connected with the denomination to which he belongs. Smith v Nelson, 18 Vt. 511.

Covenant, What Constitutes Breach. The society made an agreement with a minister which provided, among other things, that he should not "vary or go off from said establishment without a major part of the church and society." The church was established on the Saybrook platform. In an action by the society against the minister for a breach of covenant the court said that it did not appear that the covenant had been broken. They might, if they saw fit, release him or alter their establishment; but otherwise he was bound by this covenant to continue their minister and to conform to the rules and discipline of said church, as then practiced and established, under certain penalties. This was the extent of his covenant, and it did not appear that he had failed in any point. It was no breach on his part that the church, for whose conduct he had not stipulated, whose proceedings he had no power to direct or negate, passed certain votes, and declared certain claims of the consociated churches in Litchfield County unscriptural. It did not appear that the defendant has ever refused to submit to, or administer discipline in said church, or to perform the other duties of a pastor thereof, according to the rules

established and practiced therein, at the time of his settlement. Ecclesiastical Society of South Farms v Beckwith, Kirby (Conn.) 91.

Defined. A minister is one who having been ordained to the ministry undertakes to perform certain services for another. First Presbyterian Church, Perry v Myers, 5 Okl. 809.

Defined, Congregational. As to what constitutes a minister of the Congregational persuasion, see Attorney General ex rel Abbot v Dublin, 38 N. H. 459, cited in the article on Congregational Church.

The term "Congregational persuasion" in a will means the same as the term "Congregational denomination." Both terms refer to the Congregational polity without reference to creed or doctrines. The meaning of the term "minister of the Congregational persuasion," must be determined by the court as a matter of law and not by the testimony of witnesses. This term did not have at the time of the trial of this case, nor in 1817, any local meaning peculiar to New Hampshire, nor any peculiar and conventional sense in the usage of any religious sect or party. The term as used in this will is "broad enough to include a Unitarian minister, who believes in the Father, Son and Holy Ghost, one in purpose and design, but not the same in substance, equal in power and glory; in the divinity of Jesus Christ in the sense that he is a divine person, but not in his supreme divinity in any sense in which he can understand the terms; in the resurrection of Jesus Christ from the dead; in the atonement in the sense of reconciliation by Jesus Christ, but not in the vicarious atonement; in the personality of the Holy Ghost; in regeneration by the Holy Spirit, but not in a supernatural regeneration; that the Scriptures contain a divine revelation, given by inspiration of God, and a perfect and the only rule of faith and practice, but in no other sense in the full inspiration of the Scriptures; in the future but not in the eternal punishment of the wicked; in the depravity of men, but not in the total depravity of the entire

race; nor in the doctrines of election, predestination, the perseverance of the saints, and justification, as they are set forth in the Assembly's Catechism." Attorney General ex rel Abbot v Dublin, 38 N. H. 459.

Defined, Massachusetts. A teacher of piety, religion, and morality is a minister of the gospel within the meaning of the Massachusetts Declaration of Rights. Baker v Fales, 16 Mass. 488.

Deposed, Cannot Occupy Church. This society was organized under the act of 1813, by the name of "The Trustees of the First Presbyterian Church of Dunkirk, N. Y.," and in the certificate the incorporators declared themselves to be persons belonging to a church in which divine worship is celebrated according to the rites of the Presbyterian Church. At the time of the commencement of this action the society was in possession of church property in Dunkirk, in which religious meetings were held. The pastor, Mr. Adams, was duly installed according to the rites and ceremonies of the Presbyterian Church. In the summer of 1880 he was, by the action of the Buffalo Presbytery, of which body he was a member, deposed from his holy office on a charge of unsoundness in faith and doctrine. But notwithstanding this deposition Mr. Adams claimed the right to officiate as pastor of this church in Dunkirk, and perform all the offices incident to the position. The trustees, defendants, sustained Mr. Adams as pastor of the church. A majority of the members of the congregation concurred in the position taken by the trustees and Mr. Adams.

The plaintiff, who represented the views of the minority, applied for an injunction restraining the trustees from allowing the church to be used by Mr. Adams. It was claimed by the trustees that the action of the presbytery in deposing Mr. Adams was unjust for the reason that he stood loyal to the faith and doctrines of the denomination. The Dunkirk church belonged to the Presbyterian Church, or denomination, as that religious organization is shown to exist in this country, as a separate and distinct ecclesias-

tical body, with faith and doctrine, rules, usages, and discipline well understood and recognized by all its members. The proceedings against Mr. Adams were initiated and conducted in full compliance with the established rules and usages of the presbytery of which he was a member. It was held that his expulsion from the ministry was not the subject of review or criticism in this action, but the court must accept the fact of his deposition, and determine the matter in controversy accordingly. The acts of 1875 and 1876 do not refer to the local society, but to the church or denomination at large. The duties of the trustees relate to the general denomination though administering the property owned by the local society. The Dunkirk society had no local usage or custom different from that of the general denomination. The trustees by attempting to maintain a deposed minister violated the duty imposed on them by the statute, and an injunction was properly granted restraining them from allowing the use of the church edifice by a deposed minister. Isham v Fullager, 14 Abb. N. C. (N. Y.) 363.

Deposed, Status. In Robertson v Bullions, 9 Barb. (N. Y.) 64, affirmed 11 N. Y. 243, it was held that a court of equity might, upon the application of a portion of the corporators in a religious society, restrain the trustees from applying the temporalities of the corporation to the support of a person as minister, who has been deposed from the ministry, by the proper ecclesiastical tribunal, and who is still under sentence of deposition.

Dismissal. In Sheldon v Congregational Parish, Easton, 24 Pick. (Mass.) 281, the court said there were three established causes of forfeiture. First, an essential change of doctrine; second, a willful neglect of duty; and, third, immoral or criminal conduct. The contract is a mutual one. Its obligations are reciprocal and dependent. If the pastor neglects or voluntarily renders himself incompetent to perform his duties to his parishioners, they are absolved from their obligations to him, and thus the contract is terminated. It is not every trifling deviation from duty, every aberration

from strict propriety which will warrant the dismission of a minister. The refusal of a minister to comply with the request of his parish that he would make exchanges with other ministers in the vicinity is not a sufficient ground for a recommendation by an ecclesiastical council that his connection with the parish be dissolved. A clergyman has a right to select his own associates, and to regulate his own intercourse, whether social or professional, without incurring a forfeiture of his office. Whether he shall officiate in his own pulpit wholly himself, or invite others, and whom he shall invite, are matters which he may, within reasonable bounds, regulate by his own discretion.

A minister of the gospel or preacher who is employed for a given time by his congregation is entitled to be retained as the minister of the church unless he loses that right by some fault of his own, and for cause; he may be dismissed by the parish, but he cannot be dismissed arbitrarily, as there is no legal distinction between a contract with a minister and his congregation and any other civil contract for personal service. Congregation of the Children of Israel v Peres, 2 Coldw. (Tenn.) 620.

Dissolving Relation. A pastor was called and accepted the call in the form required by the constitution of the church. It was held that the contract was not terminable at the mere option of either party, but that it was to remain in force until terminated by mutual consent or in some of the modes specified in the constitution and prescribed by the laws of the church. Connit v Reformed Protestant Dutch Church, 54 N. Y. 551.

A dissolution of the pastoral relation by order of the classis was sustained by the General Synod.

A written declaration by certain members of the consistory refusing longer to serve as deacons or elders was not equivalent to a resignation, especially where they were afterward recognized by the pastor and continued to act in their official capacity; therefore a subsequent attempted election or appointment of officers to take their places was invalid

and ineffectual. Connit v Ref. Protestant Dutch Church, 54 N. Y. 551.

Ecclesiastical Council. In a proper case between a minister and his parish for the advice of an ecclesiastical council, if either party offer to the other such a council, to be mutually chosen, and the other, without sufficient cause, refuse to join in the choice, the party offering may choose an ecclesiastical council, and the advice of the council thus chosen, and acting fairly and honestly, will justify either party in adopting their result. Burr v First Parish in Sandwich, 9 Mass. 277.

Education. The training of young men for the Christian ministry includes that education and advancement in learning which form the preliminary preparation and discipline for the sacred office of preaching the gospel. Field v Drew Theological Seminary, 41 Fed. 371 (Ct. C. D. Del.)

Examination and License. Before a student for the ministry can be licensed he must be examined by the classis to which he belongs, and from which his license is to emanate. Every condidate for the ministry is under the immediate direction of the classis, and is to preach where it directs him. He is not permitted to refuse a call from any congregation without first consulting the classis for proper advice. He is to be admitted and ordained to the full ministry after examination by the classis. Before his ordination he is required to subscribe to a formula, promising, among other things, to teach the doctrines of the church, and that, in case he has any difficulties about such doctrines, he will first reveal his difficulties to the consistory, classis or synod, that the same may be there examined, and that he will, on pain of suspension from his sacred office, submit to the judgment of the consistory, classis, or synod, and that either of those bodies can, upon sufficient grounds of suspicion, require of him an explanation of his sentiments respecting the doctrines and faith of the church. No minister relinquishing the service of his own church, or being unattached to any particular congregation, shall be per-

mitted to preach indiscriminately from place to place without the consent and authority of the classis. No minister can be called to or dismissed from a congregation to accept a call elsewhere without the permission of the classis. When a minister, from old age or other infirmities of mind or body, becomes unable to fulfill the duties of the ministry, the classis can declare him *emeritus*, and excuse him from further services, and still require his congregation to furnish him a support. Connit v Ref. Protestant Dutch Church, 54 N. Y. 551.

Exclusion from Church Edifice. In Ackley v Irwin, 71 Misc. (N. Y.) 239 it was held that the vestry had no power to exclude the rector from the possession and control of the church edifice. It was further held that the rector of an incorporated Protestant Episcopal church was a member of the body corporate and could not be removed by a vote of the vestry. Following 69 Misc. (N. Y.) 56, where an injunction was granted pending the trial of the action.

In State ex rel McNeill v Bibb Street Church, 84 Ala. 23, the court refused to grant a writ of mandamus on behalf of a minister regularly appointed to a Methodist Protestant church, and compel the church to receive him as its pastor. There was no civil right involved, but only an ecclesiastical question, for which the denomination furnished adequate tribunals.

This society (Zion's Church, Bay City, Michigan) was organized in 1878, as a branch of the Evangelical Association, and for a time received the pastor and presiding elder appointed by the Michigan Annual Conference.

In 1882 land was conveyed to this society. In 1889 a new house of worship was erected by the society with funds raised by subscription from members of the denomination, preachers, and others. The corner stone was laid according to the ceremonies prescribed by the general denomination and was dedicated by a bishop of that denomination. In 1889 the Michigan Annual Conference appropriated $500 to aid in the erection of a parsonage by the Zion Society at

Bay City. Other funds were raised by subscription, and the parsonage was erected. The Michigan Annual Conference in 1893 appointed, in the regular order, a presiding elder and a pastor to Zion's Church. Such presiding elder and pastor sought to use the church edifice for the purpose of public worship but were excluded therefrom by trustees of the church and their adherents in the congregation, and the pastor was also excluded from the parsonage. Another pastor, not regularly appointed, was permitted to use the parsonage and to occupy the pulpit, and the local church authorities threatened to withdraw the society from the jurisdiction of the Evangelical Association and become independent, and notified the Michigan Annual Conference accordingly.

In an action against the trustees for thus unlawfully excluding the pastor and presiding elder from the right to use the church edifice and parsonage it was held that the local society was a voluntary association, connecting itself with the General Evangelical Association, and was bound by its rules and discipline. The local society had no right to select its own pastor, but was bound to accept the pastor appointed by the bishop and presiding elders. The trustees had no power to exclude the pastor and presiding elder from the church or the pulpit, nor deprive them of collections and means of support provided by the rules of the church, nor could the trustees prevent the pastor from occupying the parsonage. Fuchs v Meisel, 102 Mich. 357.

By the rules and ecclesiastical government of the Evangelical Lutheran Church the right and power to remove or suspend a pastor is vested solely in the synod (in this case Buffalo), and its ministry for cause, and the local churches, their trustees and officers, united thereto, are expressly prohibited from making such removal or suspension. In Gram v Prussia Emigrated Evangelical Lutheran German Society, 36 N. Y. 161, the plaintiff, Gram, pastor of the church, was excluded from the church edifice by the action of the trustees, which was ratified at the same meeting by a vote of a

majority of the members of the society, and the building was closed and the doors locked by the trustees. Thereupon the trustees and a majority of the members of the society renounced the ecclesiastical government of the Synod of Buffalo and refused to permit the plaintiff to occupy the pulpit or to exercise the functions and discharge the duties of pastor of the church. It was held that the pastor was not entitled to an injunction restraining the local society and its trustees from employing another pastor.

A minister who had been appointed to this church was rejected by the society, and he applied for a mandamus to compel the society to rescind its resolution refusing to receive him and to restore him to his office as minister or pastor, with all his rights and emoluments, and to compel the church and trustees to place him in charge of the church edifice and parsonage. The application was denied on the grounds that the church property was vested in and subject to the jurisdiction of the local church; that no salary had been agreed on and that no rents of the church had been directed to be applied to the payment of the pastor's salary so as to vest in him a temporal right of which civil courts could take jurisdiction, and on the additional ground that the questions involved in the pastor's claim had not been decided by any church tribunal. State ex rel McNeill v Bibb St. Church, 84 Ala. 23.

In Brunnenmeyer v Buhre, 32 Ill. 183, it appeared that the pastor had tendered his resignation, but that at a meeting of the church, regularly called, a resolution was adopted requesting him to withdraw his resignation, and it was withdrawn. He thereby continued to be the regular pastor of the church, and he, and those desiring to attend upon his ministrations, had the right to occupy the church edifice for the purpose. The trustees closed the church and prevented its use by the pastor and those affiliating with him. It was held that the trustees had no power to close the church, and an injunction was accordingly granted restraining them from interfering with the regular use of the church.

Land was conveyed to trustees of the First German Society of the Methodist Episcopal Church of Wyandotte, Kansas, in trust to erect on such land a house or place of worship for the use of the members of the Methodist Episcopal Church in the United States of America, according to the rules and discipline which from time to time may be agreed upon and adopted by the ministers and preachers of the said church at their General Conferences in the United States of America, and in further trust that they shall at all times, forever after, permit such ministers of the gospel and preachers belonging to the said church as shall from time to time be duly authorized by the General Conferences of the ministers and preachers of the said Methodist Episcopal Church, or by the Annual Conferences authorized by the General Conference of the ministers and preachers of the said Methodist Episcopal Church, or by the Annual Conference authorized by the said General Conference to preach and expound God's Holy Word therein.

A church edifice was erected accordingly. By such conveyance and the erection of the building a trust was created which a court of equity would enforce. It was held that the trustees could not lawfully exclude a regularly appointed pastor from the right to hold service in the church. A writ was granted compelling the trustees to admit the pastor to their church edifice, and to permit him to occupy and preach in its pulpit, and to refrain from all interference with him in the discharge of his duties therewith connected. Feizel v Trustees of the First German Society of M. E. Church, 9 Kan. 592.

Under the Methodist Episcopal Church system neither the trustees nor a majority of the congregation can lawfully exclude from the local house of worship and pulpit a minister regularly appointed to the charge according to the rules, regulations, and discipline of that denomination.

The society owned and occupied a house of worship which was built on land conveyed to trustees for the use of the members of a Methodist Episcopal Church according to the

rules and discipline prescribed by the General Conference. The trustees, assuming to represent a majority of the members of the congregation, excluded from the church edifice a minister regularly appointed to that charge, and prevented his occupying the house for the purposes of worship. On behalf of the minister a mandatory injunction was granted restraining the trustees from interfering with the use of the house by the minister or the people according to the customs of the denomination. Whitecar v Michenor, 37 N. J. Eq. 6.

In People ex rel Peck v Conley, 42 Hun. (N. Y.) 98, 3 N. Y. S. Rep. 373, it was held that it was the duty of the trustees of the First Methodist Episcopal Church of Cohocton, New York, to receive a minister duly appointed by the bishop according to the laws and usages of the denomination, and to open the meetinghouse to him for the purpose of conducting divine worship therein in conformity to the tenets and discipline of the religious denomination to which he belonged and to which the corporation was attached, and that in refusing to open the meetinghouse the trustees violated their duty, and a writ of mandamus was a proper remedy to put the minister in possession of the pulpit to which he was entitled. The trustees refused to receive a minister appointed by the bishop in the usual manner, claiming that in regard to receiving a preacher the society was independent of the higher church authorities, and that it was optional with the society whether it should receive such minister as the bishop or the presiding elder at the Annual Conference might appoint for them.

It was held in People v Steele, 2 Barb. (N. Y.) 397, that the itinerancy of the priesthood enforced by the power of the episcopacy was the established practice of this denomination, and that the right of the bishops to appoint a preacher for the different churches was well settled; consequently, the refusal of the trustees to receive a preacher appointed by the bishop was an act of insubordination to the ecclesiastical tribunals of the church, and in violation of one of the

injunctions of its Discipline, which refusal authorized the issuing of a peremptory mandamus commanding them to admit the preacher thus appointed into the church.

The president of an Annual Conference has the right during a recess of a Conference to employ and station ministers or to fill a vacancy without the consent of the church. A minister so appointed is entitled to be admitted to the church edifice in order to conduct therein religious services according to the rules and discipline of the denomination, and a writ of mandamus was issued to compel the trustees of the church to open its house of worship for this purpose. Robinson v Cochen, 18 App. Div. (N. Y.) 325.

In Lynd v Menzies, 33 N. J. Law, 162, it was held that the wardens and vestrymen of a Protestant Episcopal Church could not lawfully exclude a rector from the house of worship, and the parochial schoolhouse, but that by virtue of his office he had a right to occupy the property of the church in connection with the performance of his duties as rector. A judgment for damages recovered by him in an action at law against the wardens and vestrymen, was sustained.

Excommunicated, When Society May Not Employ. In Parish of the Immaculate Conception v Murphy, 89 Neb. 524, it appeared that a Roman Catholic priest was excommunicated and a successor was duly appointed as rector of a local society. A large majority of the trustees and congregation desired to continue the services of the excommunicated priest, but it was held that the temporalities of the society must be administered according to the general laws and usages of the Roman Catholic Church, under which the higher authorities had the right to excommunicate the priest and appoint a successor. The court suggested that the friends of the excommunicated priest might, on their own account, employ such priest as their minister and attend his ministrations, but that they could not divert the property from the purpose to which it had been consecrated. It was also held that a minority of the trustees could maintain an action in the name of the corporation to enjoin the majority

from diverting the property to uses not sanctioned by the laws and usages of the church.

Excommunication, Expulsion. The question whether a Roman Catholic priest was regularly excommunicated and expelled was held not to be within the jurisdiction of a court of equity, but was exclusively a question for the church itself, and the judgment of its regularly constituted tribunal was binding on the courts. St. Vincents Parish v Murphy, 83 Neb. 630.

Excommunication. In Mason v Lee, 96 Miss. 186, it was held that a general counsel consisting of representatives from several local churches had no power to excommunicate a minister for heresy of one of them, without proof that the counsel had authority over the particular local church, which was congregational and independent in its organization and form of government.

Exemption from Jury Duty. A person who was a regularly ordained minister of the Methodist Episcopal Church, but not settled over a particular church, but belonged to the local connection and was required to officiate whenever called upon to preach to any church of his denomination situated within a convenient distance of his place of residence, was held to be a settled minister and exempt from jury duty under the Massachusetts act of 1812, chap. 141, sec. 2. Commonwealth v Buzzell, 16 Pick. (Mass.) 153.

First Settled. To constitute a first settled minister in a town, so as to entitle the person to the right, as usually reserved by the Vermont and New Hampshire charters, for the first settled minister, there must be a specific engagement between him and the people that he should remain permanently in the performance of the duties of a minister in said town. Charleston v Allen, 6 Vt. 633.

General Rights. In England, the parson as such has a freehold estate in the glebe, the tithes, and other dues of the parish. By induction he becomes fully invested with these, and with the right to use them and demand them; but in this country there are no such rights or interests into which a

clergyman can be inducted. The property of the church, its revenues, its glebe, its parsonage, if it have any, its church edifice, and the like, belong to the corporation, and the clergyman has no rights or estate in any of them, other than such as are conferred by express contract, except perhaps the control and possession of the church during divine service, as long as the building is retained by the society for that purpose, although even this would rather seem to appertain to the vestry. Youngs v Ransom, 31 Barb. (N. Y.) 49.

Heresy. If a minister adopts and advocates religious views at variance with the articles of faith of the denomination to which he belongs, he forfeits his right to use the church edifice for their dissemination. Isham v Trustees of the First Presbyterian Church of Dunkirk, 63 Howard's Pr. 465.

Intruding into Church. The church edifice occupied by the society was leased from the Warburton Avenue Baptist Society under a contract which authorized the lessor to terminate the lease at any time in case of any disagreement in the congregation or the board of trustees of the lessee, or other cause which in the opinion of the trustees of the lessor might make such termination expedient. There was dissension and dispute between the minister and his congregation. The pulpit was declared vacant by the lessee church and the minister excluded from the church edifice. Afterward the minister, on an occasion when the house was open, entered the pulpit and insisted on occupying it and conducting the service. He was removed by a trustee of the lessor and brought an action for damages. The facts showed that the keys of the church had been surrendered to the lessor and that this society and its trustees were in actual possession of the property. It was held that the removal of the minister was justifiable and that even if, as claimed, the contract between the lessee and the minister had been unlawfully terminated by the church, the minister had no right to enter upon the premises, but must resort to an

action against the society for damages. Conway v Carpenter, 80 Hun. (N. Y.) 429.

A clergyman who is a mere trespasser or intruder in a church, the congregation of which does not accept his religious doctrines or tenets, may be treated as any ordinary trespasser. Rex v Wasyl Kapij, 15 Manitoba Re. 121.

Land Granted for Support. The object of the government in granting a right of land to the first settled minister was to encourage a minister to settle, and preach the gospel among the people of the town, while the lands were uncultivated and the inhabitants few in number and unable to contribute largely for the pecuniary support of a minister. This must, of course, answer the double purpose of encouragement to the minister to settle among them and assist the people to pay him.

The people have no control over this property directly, so as to give a deed that would convey it; yet it produces as much for their benefit as would the same amount of any other property which a minister might receive on settling in town. The people of the town have an important interest also, for the nature of its grant will permit them to exercise it, in selecting a minister whose tastes and manners, talents and piety, are calculated to render him useful among them.

It is not sufficient that a man who is a minister should take up his residence in town and abide there, even during life. It is not sufficient that he should be settled in town, as a man, or as a farmer or mechanic, but he must be settled as a minister. The settlement must be for the life of the minister. There must be ordination and also a contract. Dow v Town of Hinesburgh and Weed, 2 Aikens (Vt.) 18.

Lutheran, How Chosen. This society was incorporated by a special act in 1794, and was composed of all those who "now are, and all those who shall be hereafter, duly admitted or become members" of that society according to the rules, orders, and constitution of the same to be formed.

In February, 1788, the Legislature incorporated fifteen churches in the back part of the State, under the name of

The Ecclesiastical Union of the Several German Protestant Congregations, composed in part of Lutherans, in part of other German Reformed, or Presbyterians.

In 1824 a new synod was organized composed in part of representatives of the original synod of 1788, but it did not appear that St. Peter's was represented in this synod, but became attached to it.

In 1837 the relation between the synod and the pastor of St. Peter's Church was dissolved by the synod and the minister was excluded from further service in this congregation. Dissensions having arisen in St. Peter's Church, an action was instituted by one party against the other, to determine which constituted the true congregation according to the original organization. The exclusion of the minister from the synod was regular, but it had no effect on the congregation of which he still continued to be pastor. Lutheran ministers are not independent, nor are they appointed by the congregation only. Congregations who, in connection with their minister, are not acknowledged by some synod, are not regarded, whatever they may call themselves, either by Lutherans, or others well informed in sectarian distinctions as Lutherans, or as having any status in that denomination. St. Peter's was not independent, but acknowledged synodical authority. This was the fair import of its charter, and the majority had no power to pervert the charter and establish an independent organization. The majority had no power to impose a new contract on the minority. The court said the defendants had not seceded from the synod, for the reason that the synod had not taken the necessary legal steps to establish the relation of the defendants to the church. The bill was dismissed. Harmon v Dreher, 1 Speer Eq. (S. C.) 87.

Marriage Ceremony, Right to Perform. Under the North Carolina statute authorizing a marriage ceremony to be performed by a regular minister of the gospel of every denomination having the "cure of souls," etc., it was suggested by the court that the phrase "cure of souls" did not imply the

necessity that the minister should be the incumbent of a church living, or the pastor of any congregation in particular, but the phrase imports that the person is to be something more than a minister or preacher merely; and that he has faculty, according to the constitution of his church, to celebrate matrimony, and to some extent, at least, has the power to administer the Christian sacraments as acknowledged and held by his church. State v Bray, 35 N. C. 289.

A person ordained a deacon according to the usages of this denomination (Methodist) and commissioned by the bishop of that church to preach, and to administer the ordinances of marriage, baptism, and burial of the dead, is an ordained minister within the Connecticut marriage act. Where a person so ordained and commissioned resided constantly for many years in the town, having charge of the Methodist church therein; preaching to them, at their request, and statedly exercising all the powers and privileges authorized by his commission; and they providing for his support, by voluntary contributions, during which period he owned and considered them as his church, and they owned and considered him as their minister, and local deacon, it was held that such person was settled in the work of the ministry within the meaning of that act. Kibbe v Antram, 4 Conn. 134.

A regularly ordained Baptist minister and a Methodist minister are authorized to perform marriage ceremonies under the Massachusetts statute. Commonwealth v Spooner, 1 Pick. (Mass.) 235.

A minister ordained over an unincorporated religious society composed of members belonging to different towns is not a stated and ordained minister of the gospel within the meaning of the Maine act of 1786, chap. 3, relative to the solemnization of marriages. Ligonia v Buxton, 2 Me. 102.

In Connecticut it was held that a minister could not perform a marriage ceremony unless he was an ordained minister and settled in the work of the ministry in some place

in the State. Roberts v State Treasurer, 2 Root (Conn.) 381.

In earlier years in New England ordination in the Congregational Church was considered to be the mere induction of a person into the office of minister for a certain church, and after the termination of this pastoral relation that the virtue or effect of the ordination ceased also. But in 1679 "the neighboring ministers at Cambridge" passed a vote that one of their persuasion once duly elected and ordained as a minister in any Evangelical church should be acknowledged in all of them as an ordained minister. Under this rule a minister ordained in one church was entitled to become a minister of another church without a new ordination, and finally it was held by the church that the force and effect of the first ordination always continued after the pastoral relation was dissolved.

The Presbyterian Church in New England did not apply the rule of ordination so strictly as the Congregationalists, but held, in substance, that a minister once ordained continued in this relation without a reordination until his ecclesiastical relations were dissolved. A Presbyterian minister in New Hampshire who had been elected as public teacher in a local church, but whose ministerial functions had there been discontinued, but who afterward occasionally performed ministerial duties, although not settled over any particular church, performed a marriage ceremony in the county where he resided. In an action to have the marriage declared void it was held that the minister probably had authority to solemnize the marriage; but if not, the marriage was valid as a civil contract, and was sustained on the ground, among others, that the statute of New Hampshire did not require a solemnization by a minister or a magistrate. Town of Londonderry v Chester, 2 N. H. 268.

Member of Association. The minister in a legal point of view is a voluntary member of the association to which he belongs. The position is not forced upon him; he seeks it. He accepts it, with all its burdens and consequences; with

all the rules, laws, and canons, then subsisting, or to be made by competent authority, and can, at pleasure and with impunity abandon it. If they were merciful and regardful of conscientious scruples, he knew it; if they were arbitrary, illiberal, and attempted to chain the thoughts and conscience, he knew it. They cannot, in any event, endanger his life or liberty; impair any of his personal rights, deprive him of property acquired under the laws, or interfere with the free exercise and enjoyment of religious profession and worship, for these are protected by the constitution and laws. While a member of the association, however, and having a full share in all the benefits resulting therefrom, he should adhere to its discipline, conform to its doctrines and mode of worship, and obey its laws and canons. If reason and conscience will not permit, the connection should be severed. Chase v Cheney, 58 Ill. 509.

Obligation. A minister of the gospel is separated from the world by his public ordination, and carries with him constantly, whether in or out of the pulpit, superior obligations to exhibit in his whole deportment the purity of that religion which he professes to teach. Sheldon v Congregational Parish, Easton, 24 Pick. (Mass.) 281.

Office, Not Public. A minister who was regularly called and settled, was held not liable to taxation under the Pennsylvania act of 1841, providing for a two per cent tax on official salaries in excess of $200. The minister did not hold a public office. Commonwealth v Cuyler, 5 Watts & S. (Pa.) 275.

Office Not a Vested Property Right. A clergyman has no vested property right in his office to exercise the functions of his ministerial office to the end that he may earn and receive a salary for his services. The right to receive the salary is dependent upon the continued performance of his duties as minister; and if he becomes disqualified by suspension or deposition from office for any ecclesiastical offense, the right to receive the salary will cease as the consequence of the judgment against him. The sentence of

the ecclesiastical court, in a proper case, deprives him of his clerical position, and with it all right to future salary and emolument. Satterlee v U. S., 20 App. D. C. 393.

Ordination. It is usual in settling a minister, if he is a novitiate, to ordain him; if he has been ordained, to install him—the condition being previously agreed upon. The solemn ceremonies on such occasions seem to indicate that the minister is wedded to the church and people who have chosen him. Other forms less imposing might, perhaps, suffice; but in some shape the shepherd must contract an obligation to abide by the flock, or he will not be entitled to the reward. Charleston v Allen, 6 Vt. 633.

Parish. The plaintiff, who was ordained according to the usage of the sect to which he belonged, but not as minister of any particular church, settled in the town of Harmony and was received as pastor of a church composed in part of inhabitants of that town and in part of inhabitants of other towns. But this relation did not make him a minister of the town or parish. That relation could not be assumed except by the consent of the town or parish. It was held that he was not the first settled minister of the town of Harmony under the provisions of the statute, and was not entitled to the property set apart to ministers. Bisbee v Evans, 4 Me. 374.

Parish, Incumbent's Title to Property. Under the Massachusetts parish system a donation of land to the use of the ministry and of a parsonage for the same purpose are for ministers in their official capacity, and are held by the minister of the parish or corporation for whose particular benefit the gift or appropriation is made as an estate in fee simple to him and his successors. Brown v Porter, 10 Mass. 93.

The minister of a parish, settled for life or for a term of years is seized of an estate of freehold upon condition in the ministerial land. He is answerable for waste and may maintain trespass. The right of action being vested in him personally, an action commenced by him before may be prose-

cuted to final judgment after the ministerial relation has been dissolved. Cargill v Sewall, 19 Me. 288.

Pastoral Relation. A minister ought to be acquainted with the people of his charge, that from a knowledge of their circumstances, habits, and characters, he may adapt his instructions to their profit. His duty it is to reprove vice, to discountenance folly, and to stem the torrent of corruption wherever it appears; and when, by a life of exemplary piety and diligence, he is borne down by sickness or the infirmities of age, it is fit and desirable that he should have his way smoothed by kind offices, and a competent support, and not be dismissed to poverty and neglect. Whitney v First Ecclesiastical Society, Brooklyn, 5 Conn. 405.

Pastor Defined. A pastor is one who has been installed according to the usage of some Christian denomination in charge of the specific church or body of churches. First Presbyterian Church of Perry v Myers, 5 Okl. 809.

The term "pastor" is correlative to flock and is an expressive metaphor. The flock is composed of all whom it is the minister's duty to instruct and reprove. And these are the inhabitants of the parish; they compose the flock, of which the minister is the pastor. Burr v First Parish in Sandwich, 9 Mass. Re. 276.

Pastors' Opinions. The individual opinions of the pastors placed in authority and charge over the various churches of the denominations respectively should be the proper subject of ecclesiastical control and discipline, to be treated of and regulated by the various authoritative church bodies and jurisdictions to which each respectively belongs. First Presbyterian Church of Perry v Myers, 5 Okl. 809.

Presbyterian Rule. The selection of a pastor is primarily in the congregation, but must be approved by the presbytery and accepted by the minister selected; and its trustees are not vested with any power ex officio to employ ministers or to contract as to salaries. This power may be exercised by them only when authorized by direct vote of the congregation, composed of those who are authorized by the laws of

the church to participate in such meetings. But a stated supply is not a pastor. His selection is made by the presbytery. He may be commissioned as a missionary by the mission board, and his compensation fixed in whole or in part by the board. Stated supplies are under the charge and control of the presbytery in whose jurisdiction they work, and have only such rights and prerogatives as may be expressly conferred on them by the Presbytery. Myers v First Presbyterian Church, 11 Okl. 544.

Priest's Profession His Property. A man's profession is his property. The profession of a priest is his property, and a prohibition of the exercise of that profession by his bishop, without accusation or hearing, is contrary to the law of the land. The right of a priest to the revenues of his church derived from pew rents and voluntary offerings, though uncertain in amount, and there is no specified salary, is a right of property which the law will recognize. O'Hara v Stack, 90 Pa. St. 477; see 98 Pa. 213, where this case is explained.

Protestant. The term "Protestant ministers" means those who profess Trinitarian doctrines. Attorney-General v Drummond, 3 Dr. & War. (Eng.) 162.

Public Duty. In North Carolina it was held that ministers of the gospel residing in an incorporated town are not exempt from performing the duty of patrol, when required to do so by the proper authorities, according to the corporation ordinances. There was no statutory exemption from this service, and the objection that it was inconsistent with the minister's duties to his church was overruled, there being no evidence to show how the police service would interfere with his ministerial duties. Corporation of Elizabeth City v Kenedy, Bush (N. C. Law) 89.

Regularity of Appointment. Two men were appointed as pastors of the same church by rival bodies, each claiming to be the regular Annual Conference of the Evangelical Association. The title to the office was held to depend on the question as to which of the two bodies claiming to be the Annual Conference was in fact the lawful and regular Annual Con-

ference, and the decision of this question was held to depend on the action taken by the General Conference. Schweiker v Husser, 146 Ill. 399.

Relation to Church. A minister has no particular relation to his church (Congregational) but as a member of it, and his right to administer the ordinances he claims from his ordination, which right may remain after his dismission from the church. Burr v First Parish in Sandwich, 9 Mass. Re. 276.

Relation to Society. In the Methodist Episcopal Church the relation between a minister appointed to a particular charge and the society to which he is appointed is not that of master and servant. He was not hired by the local corporation, and having been appointed according to the rules of the general church, there was no contractual relation between him and the local society. While the church could not itself, through its own officers, exercise power over its ministers, it was not without the means of relief from his ministrations when, for sufficient cause, they should become otherwise than religiously fit for or satisfactory to the congregation. Bristor v Burr, 120 N. Y. 427.

Reinstatement, Not Proper Remedy. It is settled that mandamus will not lie to restore a minister to his clerical rights and functions, where he has been wrongfully excluded therefrom by the trustees and congregation of the church, if he has no temporal right in such office, and no fees or emoluments are thereto attached. Mandamus lies for the enforcement of legal rights only, and not for those of a mere spiritual or ecclesiastical nature. Mandamus is a legal remedy for the enforcement of a legal right. Citing Union Chu. etc., v Sanders, 1 Houston (Del.) 100. State ex rel v Cummins, 171 Ind. 112.

Mandamus will not lie to compel the reinstatement of a minister who has been suspended from his office, on the ground that he had no proper notice of trial, where it appears that he had actual notice of the time and place of trial, and was present with his counsel and participated

therein. Dempsey v North Michigan Conference, Wesleyan Methodist Connection of America, 98 Mich. 444.

Removal. The civil courts have no jurisdiction of ecclesiastical controversies involving no property rights. This case involved the removal of the pastor and appointment of his successor under color of ecclesiastical authority. It was held that the church tribunals had exclusive authority. Travers v Abbey, 104 Tenn. 665.

Right to Occupy House of Worship. A vacancy in the pulpit occurring during a recess of an Annual Conference was filled by appointment by the president of the Conference. This appointment was sustained and the minister was held entitled to be admitted to the church edifice for the purpose of conducting religious services. Robinson v Cocheu, 18 App. Div. (N. Y.) 325.

Salary, Actions for. See Actions, Minister's Salary.

Salary, Devise for. A devise in 1684 to the Netherland Dutch Reformed Church in New York (that being the only society of that denomination in New York at that time) for the support and maintenance of the minister of the church was held to be limited to that society only, and could not be used for the payment of the salaries of other branches of the same denomination afterward established. The devise was for the exclusive benefit of the society named in the will. Attorney General ex rel. Marselus v Dutch Reformed Church, New York, 36 N. Y. 452.

Settlement. From the ancient and immemorial usage of Congregational churches, before the parish settle a minister, he preaches with them as a candidate for settlement, with the intent of declaring his religious faith, that his hearers may judge whether they approve his theological tenets; and if he is afterward settled, it is understood that the greater part of the parish and the minister agree in their religious sentiments and opinions. Burr v First Parish in Sandwich, 9 Mass. Re. 276.

Statedly Officiates, Meaning. A "clergyman who statedly officiates" designates one who, either as regularly inducted

pastor or as stated supply, acts by superior ecclesiastical authority. Trustees v Sturgeon, 9 Pa. St. 321.

Support, Duty of Church. That it is the duty of a religious denomination to provide a support for its teachers is a fact that is recognized with a few exceptions all over Christendom. It is said, however, to be especially binding upon the Catholic Church, for the reason that its priests are debarred by its canons, and by their ordination vows, from engaging in any secular employment, and that from this vow not even the bishop can absolve them. The duty of the church to support its priests must have some qualification. The right to support may depend upon the manner in which the priest performs his official duties, and the nature of his walk and conversation in life. If a priest, by reason of his equivocal conduct, becomes unfitted to perform his priestly functions, it is difficult to see by what rule of ecclesiastical or civil law he is entitled to a salary or support. Tuigg v Sheehan, 101 Pa. St. 363.

Taxation, Exemption. A person elected by a Methodist society to be one of their local preachers, and ordained as a deacon of the Methodist Episcopal Church, is a minister of the gospel within the Maine act of 1811, exempting ministers from taxation. It is sufficient if such minister be settled over any religious society, though it be composed of members resident in several towns. It is not necessary that such society be under any legal obligation as such to pay him a fixed salary. Baldwin v McClinch, 1 Me. 102.

In Weaver v Devendorf, 3 Denio (N. Y.) 116, it was held that if a minister owned property worth more than $1,500, an action would not lie by him against the assessors making an assessment to recover damages on the ground that they had refused to give him the benefit of the exemption. The minister having property exceeding the exempted amount, the assessors had jurisdiction to make an assessment, and it would be presumed that they had made the deduction required by law.

A person ordained as a Congregational minister in Con-

necticut, dismissed in regular standing and installed over a town in this State, is within the statute of 1821, chap. 107, sec. 6, exempting settled ministers from taxation. A person was settled as a Congregational minister over a town with leave to dissolve his connection upon giving six months notice. Some of his parish formed themselves into a new unincorporated society, and his church voted to unite themselves with them. The new society gave him a call to settle with them, which he accepted. He then gave notice as above mentioned to the parish, and after the six months expired he preached with the new society as their minister, but without any new ceremony of ordination or installation. Soon after he so began to preach the church was, by an ecclesiastical council, formed into two, without precedence to either, one of which was united with the new society and the other with the parish. It was held that such minister by virtue of the statute of 1811, chap. 6, sec. 4, and statute 1821, chap. 107, sec. 6, was exempted from taxation for the amount of property specified in this last statute. Gridley v. Clark, 2 Pick. (Mass.) 403.

In Vail v Owen, 19 Barb. (N. Y.) 22, it was held that the assessors have jurisdiction even if the minister's property is all exempt and that they are not liable in an action to recover back the tax paid by the minister, overruling Prosser v Secor, 5 Barb. (N. Y.) 607.

A minister in good standing but who by reason of old age and accompanying infirmities, including growing impairment of vision which resulted in total blindness, had for fifteen years withdrawn from the active duties of his profession but during all that period had performed its functions occasionally as opportunity offered. He was not engaged in any secular occupation. It was held that, being a minister and engaged in no other calling, he was entitled to the exemption, notwithstanding he was disqualified for active duty by age and infirmity. People v Peterson, 31 Hun (N. Y.) 421.

The estate of an ordained minister of the gospel not

settled over a corporate society is not exempt from taxation. Kidder v French, Smith N. H. 155.

In Massachusetts an ordained minister not settled in any particular parish is not exempted from taxation under the act of 1811, chap. 6. Ruggles v Kimball, 12 Mass. 337. See also article on Taxation, subtitle Minister.

Tenure. The settlement of a minister over a Congregational church and society, without any limitations as to its continuance or any express stipulations as to the mode of its dissolution, is a contract for life, determinable only in the manner and for the causes established by law. Sheldon v Congregational Parish, Easton, 24 Pick. (Mass.) 281.

A minister settled in a parish for an indefinite term does not hold his office at the will of the parish. Avery v Tyringham, 3 Mass. 161.

Where an ecclesiastical society voted to call the plaintiff, who was then a preacher of the gospel and a candidate for settlement, to settle with them in the work of the gospel ministry, and to pay the sum of sixty-five pounds annually as a salary, and the sum of three hundred pounds as a settlement, payable in three annual installments, the plaintiff accepted the call, and agreed to settle with such society on the terms proposed, and in February, 1756, he was duly ordained and set apart to the work of the gospel ministry as pastor of such society and of the church therein; it was held that the pastoral office, with which the plaintiff thus became vested, was an office not determinable at the will of either party but for the life of the incumbent. Whitney v First Ecclesiastical Society, Brooklyn, 5 Conn. 405.

In Arthur v Norfield Congregational Church, 73 Conn. 718, it was held that the original contract between the parties constituted a settlement for the term of the minister's life, subject to the provision for terminating the pastoral relation on three months notice, and also to any right which the church might have of terminating it for cause, in conformity to the rules and usages of the Congregational denomination of Christians. A subsequent arrangement by

which the pastor was employed for one year was deemed a modification of the original settlement.

Terminating Relation. Considering a church, gathered in a religious society in the sense in which it is used, and in which alone it can be used, in this relation, it seems to follow conclusively that when a minister ceases to be the teacher of piety, religion, and morality in such society he ceases to be the pastor of such church. Stebbins v Jennings, 10 Pick. (Mass.) 171.

MISSIONS

Mission defined, 403.
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Legatee not capable of taking bequest, 404.
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Mission Defined. "The word 'mission' is well understood in common language. For more than forty years the different American churches have been engaged in establishing and maintaining missions in various parts of the heathen world. Hardly a religious denomination exists which is not employed in one or more of such benevolent enterprises. The purpose is to civilize, Christianize, and educate the natives of those countries where the missions are established. This is accomplished by preaching, by oral instruction, and by schools." "The whole machinery of the work at a selected spot in a foreign land is called a mission. It is, in fine, a Christian school." A legacy to a mission is sufficiently definite. Domestic and Foreign Missionary Society's Appeal, 30 Pa. St. 425.

Missionary Defined. The word "missionary," whether as a noun or adjective, embraces not only the conception of a religious, charitable, or educational work or worker, but also of such a work done through philanthropic motives, for the welfare of others too poor, too unappreciative, or too indifferent to do it themselves, and by persons supported or means furnished in part at least by some agency of which those for whom the work is done do not form a sustaining part. The derivation of the word implies a sending, and so it is that in both technical and common speech the idea of a sending forth, and sending forth to the service of others, the

doing of a work for others, is associated with its meaning. Bulkeley v Worthington Ecclesiastical Society, 78 Conn. 526.

Bequest, Uncertain. A bequest "to the propagation of the gospel in foreign lands" was held void for uncertainty. Carpenter v Miller, 3 W. Va. 174.

A bequest of a fund to be applied to foreign missions and to the poor saints, to be disposed of as the executor may think the proper objects according to the Scriptures, the greater part, however, to be applied to missionary purposes, with a further residuary provision for home missions, was held too indefinite and therefore void. A bequest for religious charity must be to some definite purpose, and to some body or association or persons having a legal existence, and with capacity to take. Or it must be to some such body on which the Legislature shall, within a reasonable time, confer a capacity to take. The kind of foreign missionaries or home missions is not specified, and the poor saints are not defined. The provision in the will lacked definiteness of description, and was therefore held incapable of execution. Bridges v Pleasants, 4 Iredell's Eq. (N. C.) 26.

Legatee Not Capable of Taking Bequest. A bequest to the Diocesan Missionary Societies of Maryland and Virginia was held void as to Maryland for the reason that there was at the time no incorporated missionary society capable of taking the bequest, but it was held valid as to Virginia, there being in that State an incorporated missionary society. Brown v Thompkins, 49 Md. 423.

Taxation of Bequest, Exemption. Certain property in England was conveyed to trustees in trust to apply the income for the purpose of promoting and supporting missions to heathen nations, of maintaining and educating children of ministers and of missionaries, maintaining and supporting certain establishments for single persons and widows belonging to the Moravian brotherhood. It was held that the income so applied came within the exemption in favor of charitable purposes in the income tax act of 1842, sec. 61.

Income Tax Commissioners v Pemsel, 61 L. J. Q. B. (N. S.) 265.

Testator's Intention. A devise of a portion of the estate to "the missionary society of Foreign Missions" was held not void for uncertainty. There was no such society, but the court held that it was competent to show by extrinsic evidence that another society answered to the description of the society named, and that the devise was intended for the benefit of the American Board of Commissioners for Foreign Missions. Brewster v McCall's Ex'rs., 15 Conn. 274.

A bequest to the Foreign Missionary Society of the Methodist Episcopal Church was held to be intended for the Missionary Society of the Methodist Episcopal Church, there being no society bearing the first name, and the latter having charge of the foreign missionary work of the church. Re Bryson's Estate, 7 Pa. Super. Ct. 624.

MORMONS

Church, disincorporation, effect, 406.
Creed, judicial notice, 406.
Incorporation, 407.
Independence, Missouri; Church of Latter Day Saints, 409.
Jehovah Presbytery of Zion; Preparation, Iowa, 411.
Marriage, divorce, 411.
Marriage, 412.
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Church, Disincorporation, Effect. In U. S. v Church, 8 Utah 310, it was said that the personal property of the disincorporated Mormon Church was devoted by the donors to general church purposes, one of which was the propagation and encouragement of the practice of polygamy, others of which were legal, such as the relief of the poor and the building and repair of houses of worship. When the church was disincorporated its real estate was escheated to the United States, but no disposition was made of its personal property, which was left without an owner; held that such property should be vested in a trustee to be used for church purposes which were legal, such as the relief of the poor and the building and repair of houses of worship: Zane, C. J. dissenting on the ground that the church having ceased the encouragement of polygamy, the property should be vested in the first presidency of the church, who were designated by the church generally to hold property for the church, to be used for church purposes which they selected as the relief of the poor and the building and repair of houses of worship.

Creed, Judicial Notice. Courts will take judicial notice of matters of history, of the contents of the Bible, of the fact that there are various religious sects, of the creed and general doctrine of each sect, and hence will take notice of the creed and general doctrine of the Mormon Church, and of

the principle of celestial marriage peculiar to the Mormon sect. Hilton v Roylance, 25 Utah 129.

Incorporation. The Church of Latter Day Saints was incorporated in 1851, under an act of Assembly of the provisional government which they set up in Utah under the name of the State of Deseret. The preliminary act of Congress erecting the Territory of Utah was passed in 1850, but the territorial government was not organized until after the passage of the church charter. The territorial Legislature adopted a resolution October 4, 1851, confirming the church charter. The charter was also reenacted by the territorial act passed in 1855, included in a revision of the statutes.

In 1862 Congress passed an act prohibiting polygamy in the territories and disapproving and annulling the Deseret charter and also the confirmatory acts passed by the Utah territorial legislature. Additional prohibitory legislation concerning polygamy was enacted by Congress in 1882 and 1887. Proceedings were instituted on behalf of the United States for the dissolution of the Mormon Church corporation, and sequestration of its property except that situated in Salt Lake City used exclusively for public worship. By the act of Congress passed in 1887 the charter was dissolved, and the acts creating and confirming the corporation were repealed.

It was held that Congress had power to repeal the Mormon Church charter; that the corporation existed under a so-called ordinance of the State of Deseret. This ordinance had no validity except in the voluntary acquiescence of the people of Utah then residing there. Deseret, or Utah, had ceased to belong to the Mexican government by the treaty of Guadalupe Hidalgo, and in 1851 it belonged to the United States, and no government without authority from the United States, express or implied, had any legal right to exist there. The Assembly of Deseret had no power to make any valid law. Congress had already (1850) passed the law for organizing the Territory of Utah into a government, and no other government was lawful within the bounds of

that Territory. But the charter even if invalid under the Deseret ordinance, became a legal corporation by the territorial confirmatory acts of 1851 and 1855. The charter was repealed and the corporation dissolved by the act of Congress of 1887.

The court also held that upon the dissolution of the corporation, which was organized for religious and charitable purposes, its personal property became subject to disposal by the sovereign power, while its real estate escheated or reverted to the original grantor or donor, except as subject to a charitable use. In this case it was said that the grantor of all or the principal part of the real estate of the Mormon Church, was really the United States, from whom the property was derived by the church, or its trustees, through the operation of the townsite act. By the act of 1862 property so acquired by the Mormon Church was declared forfeited to the United States, saving existing vested rights.

It was held that under the circumstances the real property held by the Mormon Church was forfeited to the United States, and any trust estate created by the corporation in the hands of the trustees, devolved to the United States the same as if the property had been held by the corporation itself. The trustee became trustee for the United States instead of trustee for the corporation. The property of the corporation was held for religious and charitable purposes, especially for the inculcation and spread of the doctrines and usages of the Mormon Church, one of the distinguishing features of which is the practice of polygamy. The system of common law and equity prevailing generally in the United States was said to have been in force in Utah by operation of every territorial statute. The law of charities was also in force in Utah. The proceeds of the property were to be devoted to common schools in the Territory. The right of the government to sequestrate the property and place it in the hands of a receiver, subject to final disposition according to the rights of all parties, was declared as a fundamental principle of government in relation to corporations and

property in territories. The Late Corporation of the Church of Jesus Christ of Latter Day Saints v United States, 136 U. S. 1; see also 140 U. S. 665.

Independence, Missouri; Church of Latter Day Saints. The property in question was originally acquired by an agent of this church, for the purpose of erecting thereon a temple, designed to be the New Jerusalem of this religious order, from which the eyes and yearning desires of this people, through sixty years of exile and wandering, have never been turned nor diverted. To them it has been as the New Jerusalem to the Israelite and as Mecca to the Moslem. For sixty-two years it has been known to this sect, and the people of Western Missouri as the "Temple Lot" on which in the fullness of time, and the fulfillment of the prophecy, was to be erected a splendid temple for the gathering of the believers for religious worship and exaltation.

Edward Partridge bought this land with funds contributed by the members of the church, and held the title in recognition of the trust. Its acquisition by him was in fulfillment of the revealed will of God, as accepted by him, as a member of the church, in the Book of Doctrine and Covenants. He was a bishop of the Central Church, then at Kirtland, Ohio. As such he looked after its temporalities. The stress of this religious sect's environments rendered it expedient that they should seek asylum in the then remote West, where, as they supposed, unvexed by those who despitefully used them, they might tabernacle in peace. Bishop Partridge received $3,000 raised by contribution, and went to Independence, Missouri, to acquire lands for the temple and a settlement of the people of his religion, and until his death in 1841 he and his church recognized the lot as church property. Joseph Smith, the founder and head of the church, its recognized prophet and seer, himself came to Missouri, and in 1832 held religious services on this site and solemnly dedicated it as the spot where the temple was to rise and shine.

Bishop Partridge participated in this ceremony, and on

the eve of the expulsion of himself and the people of his church from the State by military force at the command of the governor in 1839, made a deed embracing this property to the minor children of Oliver Cowdery, his coworker in the church, and companion in misfortune, in which he recited the fact "that there was money paid in my hands by Oliver Cowdery, an elder in the church of the Latter Day Saints, formerly of Kirtland, Ohio, for the purpose of entering lands in the State of Missouri, in the name and for the benefit of said church." This deed was assailed on various grounds, including the allegation that it was never delivered. It was recorded, and the delivery was presumed to have been made at the time of recording or prior thereto. It seems that the Cowdery children, trustees of the property in the Partridge deed, died during their minority. The deed was deemed valid. It included the Temple Lot.

In an action involving the title to the Temple Lot brought by the Reorganized Church of Latter Day Saints of Jesus Christ against the Church of Christ, to declare a trust as to certain real estate in favor of the complainant, the defendant claimed title to the property partly under a deed from some of the heirs of Bishop Partridge, and partly by adverse possession. It was held that the claim of the defendants was not well founded because the deed was invalid, not having been properly executed, and being also without consideration, and also because the claim of adverse possession was not sufficiently established. The complainant, the Reorganized Church of Latter Day Saints, was held entitled to judgment declaring its right to the property, and removing a cloud on the title constituted by the claim of the defendants. The court said that if the church, while located at Nauvoo, had asserted the right of control over Temple Lot in Independence up to 1845, its claim would have been recognized by the ecclesiastical body and by courts of chancery as the beneficiary of the trust in the Partridge deed. The court suggested that the Salt Lake Church was using its influence in behalf of the defendants

(respondents) in this suit. Reorganized Church of Jesus Christ of Latter Day Saints v Church of Christ, 60 Fed. Rep. 937.

Jehovah Presbytery of Zion; Preparation, Iowa. This society was founded by Charles B. Thompson, who with certain followers established a colony at Preparation about 1855 on land which was then vacant but which was taken up by the settlers. Thompson established schools of faith and works, and claimed to receive revelations. The settlers were required to transfer their property to Thompson, "chief steward of the House of Jehovah," and chief teacher of the Order of Elias the prophet, in Jehovah's Presbytery of Zion. Members of the society were not only required to transfer their property to Thompson but to agree to work for him and under his direction two years, receiving therefor their board, lodging, and clothing, without other remuneration. This was done to fulfill an alleged law of sacrifice which had been specially revealed to Thompson. In 1858 a difficulty arose between Thompson and other members of the society growing out of his refusal to divide the property and settle with the members, and Thompson left the community. Thompson afterward transferred to relatives and another person property which had been obtained by transfer from other members of that society. Plaintiff brought an action to recover the property transferred by him, and it appeared that such transfer was without consideration, other than the promises made by Thompson. The court decided that Thompson was trustee for the members of the society and held all the property received by him as teacher, leader, and agent of the society, in trust for the use and benefit of the members of the society, and decreed the cancellation of conveyances by Thompson as above mentioned. Also that the estate should be closed, a receiver appointed, and a distribution made according to the rights and equities of the members of the society. Scott v Thompson, 21 Ia. 599.

Marriage, Divorce. Under a tenet of the Mormon Church

a man and woman might be sealed so that they would be husband and wife after death (that is, in eternity). Two persons went through this ceremony, not in the performance of a marriage contract but according to the tenet only. The ceremony was performed when the woman was supposed to be in her last illness. Upon her unexpected recovery the parties agreed to dissolve the supposed marital relation between them, and they thereafter lived separate and apart. Afterward a formal divorce signed by the parties was executed in the manner prescribed by the Mormon Church, and the marriage was deemed dissolved. Thereafter the wife married again, according to the Mormon forms. The husband did not remarry. After the death of the husband the wife married to him as above described brought an action for dower in his estate. It was held that the marriage ceremony performed in this case made the parties husband and wife for time as well as for eternity. The so-called church divorce was null and void. The power to dissolve a marriage contract was not possessed by the church, but was a function of the State. The wife was held entitled to dower. Hilton v Roylance, 25 Utah 129.

Marriage. The sealing ordinance of the Mormon Church, founded on the Revelation on the Eternity of the Marriage Covenant, contained in the Book of Doctrines and Covenants of the Mormon Church, section 132, as indicated by the doctrine in relation thereto, contained in such book, and as interpreted and practiced by the Mormon people so far as the history, records, and journals of such church show, is a marriage ceremony contemplating marriage for time and eternity, and not for either time or eternity alone. The sealing ceremony of the Mormon Church, whereby the contracting parties agree and are declared by a duly authorized church official to be married for time and eternity, creates a valid common law marriage between parties believing and in good faith participating therein; the part of such ceremony referring to eternity being mere surplusage. Hilton v Roylance, 25 Utah 129.

Name and Succession. The identity, unity, and sameness from 1830 to 1844 of the Mormon Church are too clear for doubt. Now and then, by this and that person, it was called "The Church of Christ," "Church of Latter Day Saints." The terms were employed interchangeably. The temple built at Kirtland, Ohio, the central rendezvous between 1830 and 1835, was inscribed on the portal with the words "The Church of Jesus Christ of Latter Day Saints." This was the public authoritative recognition of the name by which they chose to be known.

If human testimony is to place any matter forever at rest, this church was one in doctrine, government, and purpose from 1830 to June 1844, when Joseph Smith, its founder, was killed. It had the same federal head, governing bodies, and faith. During this period there was no schism, no secession, no parting of the ways in any matter fundamental or affecting its oneness. The only authorized and recognized books of doctrine and laws for the government of the church from 1830 to 1846 were the Bible, the Book of Mormon, and the Book of Doctrine and Covenants. The Book of Doctrine and Covenants, which consisted principally of claimed divine revelations to Joseph Smith, was the edition published at Kirtland, Ohio, in 1835 and at Nauvoo in 1845.

Joseph Smith was killed at Carthage, Illinois, in June, 1844. He was the president and the inspiring spirit of the church. His violent death struck with dismay the hearts of his followers, and out of the confusion incident thereto were born disorder, schism, and ambition for leadership. Disintegration set in, and the church split in factions, which, under the lead of different heirs, scattered to different parts of the country. Among the "Quorum of Twelve," representing the apostles, was one Brigham Young, a man of intellectual power, shrewd and aggressive, if not audacious. He seized the fallen reins of the presidency, and led the greater portion of Mormons out to what was known as the Salt Lake or Utah church.

The Book of Doctrines and Covenants, page 411, containing a revelation to Joseph Smith January 19, 1841, gave unto "my servant Joseph, to be a presiding elder over all my church, to be a translator, and a revelator, a seer and prophet. I give unto him for councilors, my servant Sidney Rigdon, and my servant William Law, that these may constitute a quorum and first presidency, to receive the oracles for the whole church. I give unto you my servant Brigham Young, to be a president over the Twelve, traveling council." So that Brigham Young was but president over the Twelve, a traveling council. The Book clearly taught that the succession should descend lineally, and go to the first-born. Joseph Smith, so taught, had, before his taking off, publicly ordained his son, Joseph, the present head of the complainant church, his successor, and he was so anointed.

Brigham Young's assumption of this office (under the claim of something like a transfiguration) was itself a departure from the law of the church. The Book of Mormon itself inveighed against the sin of polygamy. Brigham Young taught that these denunciations of the book were leveled at the Indians—the Lamanites. Conformably to the Book of Mormon, the Book of Doctrine and Covenants expressly declared "that we believe that one man should have but one wife, and one woman but one husband." This declaration of the church on this subject reappeared in the Book of Doctrine and Covenants, editions of 1846 and 1856. Its first appearance as a dogma of the church was in the Utah church in 1852. This doctrine was based upon an alleged revelation to Joseph Smith in 1843. No such revelation was ever made public during Smith's life.

A considerable number of the officers and members of the church at Nauvoo did not ally themselves with any of the factions, and wherever they were they held on to the faith, refused to follow Brigham Young to Utah, and ever repudiated the doctrine of polygamy, which was the great rock of offense on which the church split after the death of Joseph Smith. In 1852 the scattered fragments of the

church, the remnants of those who held to the fortunes of the present Joseph Smith, son of the so-called martyr, gathered together sufficiently for a nucleus of organization. They took the name of the "Reorganized Church of Jesus Christ of Latter Day Saints," and avowed their allegiance to the teachings of the ancient church; and their epitome of faith adopted, while containing differences in phraseology, in its essentials is but a reproduction of that of the church as it existed from 1830 to 1844. To-day (1894) they are 25,000 in number.

Concerning the claim that the complainant, the Reorganized Church of the Latter Day Saints, had a new Bible, the court said: "The basis for this is that Joseph Smith, the founder of the church, was, as early as 1830, engaged in the translation of the Bible, which he is alleged to have completed about 1833 or 1834." The evidence shows that this manuscript was kept by his wife, and delivered to the present Joseph Smith, her son, and was published by a committee of the church. It is not claimed by Joseph Smith that this translation is a substitute for the King James translation, nor has it been made to appear that it inculcates any new religious tenet different from that of the ancient church. Reorganized Church of Jesus Christ of Latter Day Saints v Church of Christ, 60 Fed. Rep. 937 (W. D. Mo. Cir. Ct.)

MORTGAGE

Condition broken, right to foreclose, 416.
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Priority as between mortgage and mechanic's lien, 417.
Validity; Archbishop having no title to the land, 417.
Validity, executing without authority, 417.
Validity, extent of trustees' authority, 418
Validity, legitimate debt, 418.
Validity, meeting of trustees; purchase money, 418.
Validity, trustees afterward ousted from office, 418.
Validity, trustees no power to mortgage property, 419.

Condition Broken, Right to Foreclose. The society gave a mortgage to the Board of Church Erection Fund, General Assembly Presbyterian Church, to secure a loan, containing a condition that if the house of worship or the mortgaged premises should be alienated or abandoned as a house of worship by the local society, except for the building or purchase of a better house of worship, the amount should immediately become due and payable. It was held that the church had violated the condition by permitting the property to be sold on an execution against it, the purchaser having obtained possession of the property, and the mortgagee was entitled to foreclose the mortgage. The condition in the mortgage was not void as against public policy. Board of Church Erection Fund, General Assembly Presbyterian Church, United States of America v First Presbyterian Church, Seattle, 19 Wash. 455.

Court Order. In Manning v Moscow Presbyterian Society, 27 Barb. (N. Y.) 52, it was held that a religious corporation might mortgage its property without an order of the court.

Leave of Court. A religious society purchasing real property may give a mortgage to secure the purchase price with-

out leave of the court. South Baptist Society v Clapp, 18 Barb. (N. Y.) 35.

Priority as Between Mortgage and Mechanic's Lien. A mechanic's lien on a church building was foreclosed, and the decree directed the sale of the building without the land. This was held error. There was a prior mortgage on the land. It was held that the mortgagor had the first claim on the land, and a lien on the building, subject to a mechanic's claim; and that the mechanic's lien attached to the land subject to the mortgage lien. Separate appraisals of the land and building were directed, and the proceeds of the sale of the entire property were ordered divided between the mortgagee and the mechanic so far as needed to pay their respective claims, according to the ratable value of the two parts of the property. North Presbyterian Church, Chicago v Jevne, et al 32 Ill. 214.

Validity; Archbishop Having No Title to the Land. Testatrix gave land to the church, and the Archbishop of Louisiana assumed authority over the land, and directed the execution of a mortgage thereon by a subordinate officer. The mortgage was held void. It was said that the property could be hypothecated only by the owner, or by some one authorized to act for the owner. There was no evidence that the archbishop had authority to hypothecate the property. The archbishop did not own the property, and he derived no title by the will. Levasseur v Martin, 11 La. Ann. 684.

Validity, Executing without Authority. Land was conveyed to the bishop of the diocese, in trust for, and for the use of, the wardens, vestry, and congregation of St. Paul's Parish. Afterward five vestrymen gave a promissory note for money borrowed, and also for security executed a mortgage on the part of the land conveyed to the bishop. An action to foreclose the mortgage was brought against the bishop, churchwardens, and others, and also to enforce an equitable lien on all the real property conveyed to the bishop for the amount of the note.

The mortgage was held void, and an action could not be

maintained thereon. The society was not incorporated; the vestrymen had no authority to execute the mortgage, nor to incumber the property without the consent of the bishop, which consent had not been given. Hill Estate Company v Whittlesey, 21 Wash. 142.

Validity, Extent of Trustees' Authority. A meeting of the society which was unincorporated was held sufficient under circumstances showing that notice was given in the usual manner. A mortgage executed by a majority of the trustees to secure a loan authorized by a committee was held to be a valid obligation against the society. Hubbard v German Catholic Congregation, 34 Ia. 31.

Validity, Legitimate Debt. The society received a conveyance of land on which it erected a house of worship. The deed contained a provision that the society should not alienate, dispose of, or otherwise incumber the property. The society gave a mortgage on the property to secure a legitimate debt. This mortgage was held valid. Magie v German Evangelical Dutch Church, 13 N. J. Eq. 77.

Validity, Meeting of Trustees; Purchase Money. A mortgage given by a New York religious corporation was executed by all of the trustees except one, who had resigned, but there was no order or resolution of the board directing the execution. The referee found that in executing the mortgage the trustees acted as a board of trustees of the plaintiff, and that though all who signed it were not present at the same time, yet that a majority of the trustees were present part of the time when it was executed. The mortgage was held to be as binding as if a formal resolution had been previously passed. It was also held that a religious corporation may make a purchase money mortgage without an order of the court authorizing it. South Baptist Society, Albany v Clapp, 18 Barb. (N. Y.) 35. See also note above, Leave of Court.

Validity, Trustees Afterward Ousted from Office. Lovett v German Reformed Church, 12 Barb. (N. Y.) 67, involved the validity of a mortgage made by trustees who were afterward

ousted from office by the reversal of a decree establishing their original right to the office. The mortgage was declared to be a valid lien.

Validity, Trustees no Power to Mortgage Property. The society gave a mortgage on its property to secure a preexisting debt. The mortgage was foreclosed and the property sold. The church had elected trustees to manage its property, but the title to the property was not vested in such trustees. The trustees could not buy or sell church property nor could they mortgage the same. An agreement between the purchaser of the property at the foreclosure sale and the church trustees, by which the property was to be conveyed to the church, though unauthorized, was deemed to have been ratified by the congregation. But the contract lacked mutuality, and it was held that an action by the trustees to enforce performance of the contract could not be maintained. Calvary Baptist Church v Dart, 68 S. C. 221.

MORTMAIN

Defined, 420.
Delaware, 420.
Grenada, 420.
Pennsylvania, 420.
South Carolina, 420.

Defined. The term "mortmain" is applied to denote the possession of lands or tenements by any corporation, sole or aggregate, ecclesiastical or temporal. These purchases having been chiefly made by religious houses, in consequence of which lands became perpetually inherent in one dead hand, this has occasioned the general appellation of mortmain to be applied to such alienations. Bouvier's Law Dictionary.

Delaware. The provisions of the Delaware statute relating to mortmain do not render invalid a legacy to certain religious corporations to be paid from proceeds of the sale of land to be sold by the executor under a power conferred by the will. American Tract Society v Purdy Executors, 3 Houst. (Del.) 625.

Grenada. The English statute of mortmain is wholly political. It grew out of local circumstances, and was meant to have merely a local operation. The thing to be prevented was a mischief existing in England, and it was by the quality and extent of the mischief as it there existed that the propriety of legislative interference upon the subject was to be determined. It was not extended to any other part of the British dominions, and was, therefore, not in force in the island of Grenada. Attorney General v Stewart, 2 Merv. (Eng.) 143.

Pennsylvania. British statutes of mortmain are not in force in Pennsylvania. Domestic and Foreign Missionary Society's Appeal, 30 Pa. St. 425, 434.

South Carolina. British statutes of mortmain are not in force here. American Bible Society v Noble, 11 Rich. Eq. (S. C.) 156, 175.

MUNICIPAL ORDINANCES

Parades, 421.
Preaching on Boston Common, 421.

Parades. An ordinance adopted by the authorities of the city of Wellington, Kansas, providing that "it shall be unlawful for any person or persons, society, association or organization, under whatsoever name, to parade any public street, avenue, or alley, shouting, singing or beating drums or tambourines, or playing any other musical instruments or doing any other act or acts designed, intended or calculated to attract or call together an unusual crowd or congregation of people upon any of the said streets, avenues or alleys, without having first obtained in writing the consent of the mayor of said city, authorizing such parade," was declared to be illegal and void. It was unreasonable and did not fix conditions uniformly and impartially and contravened a common right. Anderson v Wellington, 40 Kan. 173.

Preaching on Boston Common. An ordinance of the city of Boston, enacted under authority of the statute prohibiting the delivery of a sermon on the Common without the permission of a specified committee was sustained in Commonwealth v Davis, 140 Mass. 485.

MUSIC

Bequest for, when invalid, 422.
Country choirs, 422.
Instrumental, 422.
Organist, 422.

Bequest for, When Invalid. Gift for organ gallery and organ therein declared invalid under statute of mortmain. Adnam v Cole, 6 Beav. (Eng.) 353.

Country Choirs. Usually church music is gratuitous in small country villages or hamlets. The choir is made up of amateurs, often but little instructed in the science of melody; and this part of church service is, in such places, rather the observance of religious duty than the exercise of professional art and cultivated taste. The vocalist, and those who aid with instruments, do not expect or desire pecuniary recompense. The mere fact that one sings in the choir, or plays on an instrument as an accompaniment, on occasions of church serevice on Sabbath days, raises no implication of pecuniary liability, against the corporate body. These services are presumed to be gratuitous.

Bockes, J., in Van Buren v Reformed Church of Ganse-voort, N. Y., 62 Barb. (N. Y.) 495. It was held in this case that an action to recover compensation for services as an organist could not be maintained without proof of an actual employment.

Instrumental. Singing is recognized as a part of divine worship, among almost all denominations of Christians. Whether it should or should not be accompanied with instrumental music must be determined by those who administer the discipline of the church to which they belong. Tarter v Gibbs, 24 Md. 323.

Organist. In Walnut Street Pres. Ch. 3 Brewst. (Pa.) 277.

the court refused to authorize an amendment to a church charter which proposed to vest in the trustees the power to appoint an organist, subject to the approval of the session, on the ground that, according to the rules of the Presbyterian Church, questions relating to worship are within the exclusive jurisdiction of the session, and that this function could not properly be vested in the trustees.

NEW THOUGHT CHURCH

Described, 424.

Described. The plaintiff was organized by the name of the "New Thought Church." It sought to enjoin the defendant from conducting services under the name of "New Thought Church Services." It claimed to teach a form of religion based upon what is termed "New Thought," but it was conceded that it could not successfully claim a monopoly of the words "New Thought" or of the word "Church," but it claimed the right to monopolize the combination of those words. "The plaintiff apparently has founded a new system of religion based on a new creed." It surely is not in a position to successfully claim a monopoly of teaching this form of religious faith by means of organizations known by the generic names of churches. The injunction was denied. New Thought Church v Chapin, 159 A. D. (N. Y.) 723.

NORWEGIAN EVANGELICAL LUTHERAN CHURCH

Organization and form of government, 425.
Independent society, division of property, 426.
Property, division, effect, 427.
Trustees, controversy over election not a schism, 428.

Organization and Form of Government. At a meeting in January, 1851, composed of representatives of the Norwegian Evangelical Lutherans of Southern Wisconsin and Northern Illinois held at Luther Valley, in Rock County, a constitution was adopted containing, among other things, the following provision: "The doctrine of the church is the one revealed in the Holy Word of God, in the baptismal covenant, and in the canonical writings of the Old and New Testament, interpreted in accordance with the symbolical books and confessional writings of the Church of Norway, which are the Apostolic Creed; the Nicene Creed; the Athanasian Creed; the Unaltered Articles of the Augsburg Confession delivered to the Emperor Charles the 5th at Augsburg, 1530; the Smaller Catechism of Luther."

The constitution contained regulations concerning the qualifications of ministers and the forms of public worship. It provided for a synod, composed of ministers, presiding over particular congregations and representatives from every congregation united with the synod. Among the powers of the synod were the following: to make general and special rules and resolutions in all religious and ecclesiastical matters; to decide, without further appeal, upon all matters of the church; to select a superintendent from among the clergy connected with the church; to select from its members a church council, to consist of not less than

two clerical and four lay members, which shall be proportionally the same if the number be increased.

The constitution was submitted to the congregations and was approved, taking effect in 1853. No other synod or conference of Lutherans bearing that name has ever been organized in the United States. A new constitution was adopted in 1876, including a change of name to the Synod of the Norwegian Evangelical Lutheran Church of America. Fadness v Braunborg, 73 Wis. 257.

Independent Society, Division of Property. This society (Koshkonong Congregation) was organized prior to 1852, but the case does not show the date. Prior to May 20, 1852, the members of this congregation living on Liberty Prairie voluntarily separated from Koshkonong Congregation and organized themselves into the Norwegian Evangelical Lutheran Church of St. Paul's on Liberty Prairie. These two congregations were five or six miles apart and were served by the some pastor until 1860. May 20, 1852, land was conveyed to certain persons as trustees, in trust for the erection of a house of worship on the land, for the use of the members of St. Paul's Church according to the rules of the church, and according to the rules which may be adopted from time to time by their authorized synods or conferences. Vacancies in the office of trustees were to be filled by the congregation. A meeting house was erected on the lot. The two congregations of Koshkonong and Liberty Prairie acted jointly for the most part until 1860 with an arrangement that if either society should desire to become independent, the society withdrawing from the union should be entitled to receive one half the value of the parsonage. The society was incorporated in 1862, and the corporation thereupon became vested with the legal title to the property conveyed to the trustees as above stated.

The society was substantially independent, although sustaining certain relations to the synod, and while under general rules the call of the pastor was presumed to be for life, a majority of the corporators had power to discharge a min-

ister at any time. Early in the year 1883 a schism arose in the Liberty Prairie Congregation over the doctrine of election. The pastor, at the request of fifty-one members, called a meeting for the consideration of this question. That meeting adopted, by a large majority, articles of confession on the subject of election. After May 17, 1885, a portion of the minority separated from the congregation and worshiped in halls and private houses under the ministrations of the pastor who had been discharged by vote of a large majority of the congregation. March 3, 1886, the portion of the minority who had so withdrawn held a meeting and elected trustees, and directed the trustees so elected to demand the books of the society. An action was commenced by the minority trustees against the majority trustees to have the minority trustees declared the rightful trustees of the society, and for the possession of the church property. The trial court rendered a judgment in favor of the minority trustees, but this was reversed on appeal, and the majority held to be the true church and entitled to the possession and control of the property. Fadness v Braunborg, 73 Wis. 257.

Property, Division, Effect. For several years prior to February, 1889, the title to the church in which the members of the association worshiped was vested in trustees named in the deeds, and their successors in office. For several years two factions had existed in this society, but had worshiped together until January 9, 1888. On that day both factions met together at the regular annual meeting of the association. At that time all the trustees and a large majority of the association belonged to the faction known as the Anti-Missourians, represented by the defendants; but the minister and a minority of the association belonged to the faction known as the Missourians, represented by the plaintiffs.

At this meeting the Missourians withdrew and elected trustees in place of those claiming to have been deposed. For the next year both factions held services at different times in the same church, each under its own pastor.

February 7, 1889, a corporation was formed, which was

held to include both factions, and the corporation thereby became vested with the title to the property previously held by the society. The plaintiff, the Missourian party, afterward organized another corporation, but this was held not to affect the powers of the corporation formed in February, 1889. Holm v Holm, 81 Wis. 374.

Trustees, Controversy over Election not a Schism. Property was acquired by the society under a general agreement that it should be held and used for religious purposes, with a provision that "in case of a schism (which God forbid) the right of possessing the common property of the congregation is to devolve upon a two-thirds majority of its voting members. The price which those who then retain the property are to pay to those who then lose their interest in it is to be fixed according to the valuation made by three men, of whom each party chose one, and these two a third."

A controversy having arisen over the election of trustees, it was held that this did not constitute a schism within the meaning of the term as applied in the constitution of the society. That, although a part of the society had taken possession of the property and excluded the other part, the law afforded an ample remedy against the wrongful trustees by quo warranto, or otherwise in equity by injunction to prevent unlawful acts, and there could be no division of the property as contemplated by the constitution. Nelson v Benson, 69 Ill. 27.

NUISANCE

Damages, 429.

Damages. First Baptist Church, Schenectady v Troy & Schenectady R. R. Co., 5 Barb. (N. Y.) 79, was an action brought by a religious society against a railroad company to prevent the continuance of an alleged nuisance by the company resulting from the ringing of bells, blowing off steam, and making other noises in the vicinity of the church during service on the Sabbath which so annoyed and molested the congregation worshiping there as greatly to depreciate the value of the house and rendering the same unfit for a house of religious worship. The church corporation was held entitled to recover damages for the alleged disturbance of its meetings by the railroad company, and by direction of the court the jury assessed the damages at six cents. In a similar action brought by the trustees of the same society against another railroad company (First Baptist Church in Schenectady v The Utica & Schenectady Railroad Company, 6 Barb. (N. Y.) 313), it was held that damages claimed by the society resulting from the depreciation in the value of the church property in consequence of ringing bells, blowing off steam, etc., could not be recovered against the railroad company, such damages being too remote. An individual member of the congregation cannot maintain an action for damages for disturbing divine worship.

OATH

Defined, 430.
Jew, 430.

Defined. "An oath is well defined to be the solemn invocation of the vengeance of the Deity if the person sworn do not regard the requisitions of the oath." Arnold v Arnold, 13 Vt. 363.

Jew. A Jew may take an oath on the Old Testament. Rex v Bosworth, 2 Str. (Eng.) 1113; see article Witness, subtitle idolater.

OFFICERS

Committee, tenure, 431.
De Facto, 431.
Eligibility, when presumed, 431.
Holding over, 432.

Committee, Tenure. A committee to take action on a specific object was appointed from among the vestrymen of the society. Afterward the members of the committee were ousted from office as vestrymen. It was held that the right of these persons to act as a committee depended on their continuing in office as vestrymen, and when they ceased to be vestrymen their right to act as a committee was terminated. People ex rel the Rector v Blackhurst, 60 Hun (N. Y.) 63.

De Facto. Persons who had been chosen to various church offices by the members of the society in the usual way and in conformity with the statute, were deemed to be the only officers on whom valid process could be served in a proceeding against the society. They were at least de facto officers. Berrian v Methodist Society, New York, 4 Abb. Pr. (N. Y.) 424.

To make one a de facto officer he must be acting as an officer under color of having been rightfully elected or appointed. A minority of a congregation, assuming to hold an election, cannot give to trustees chosen by them even the color of office, and such trustees are not de facto officers. Trustees v Halvorson, 42 Minn. 503.

Eligibility, When Presumed. If eligibility depends on a person's qualifications as a voter, and his vote is received at a church election without challenge, he is presumed qualified as a voter and therefore qualified to hold office; and after the result of the election has been declared the presiding

officer cannot revise the result, declare that the person elected was not a qualified voter, and therefore not entitled to the office. Re Williams, 57 Misc. (N. Y.) 327.

Holding Over. The committee elected by the church in March, 1830, for one year was held to continue in office after the expiration of the year and until another committee was elected. There was a meeting of the society in March, 1832, but this was held irregular for lack of proper notice, and the committee elected at that meeting could not take the office. Congregational Society, Bethany v Sperry, 10 Conn. 200; see Trustees and Vestry.

PARISH

Business, how transacted, 433.
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Business, How Transacted. It was the ancient custom of Massachusetts where a town consisted of one parish to transact their parochial concerns at town meetings, making no difference in the forms of their proceedings, when acting upon those subjects or upon matters of mere municipal or political concern. Austin v Thomas, 14 Mass. 338.

Clerk. A parish clerk having been dismissed from his office by the rector, though irregularly, and another appointed, the former entered the church before divine service had commenced and took possession of the clerk's seat. It was held that the churchwardens were justified in removing him from the clerk's desk, and also out of the church, if they

had reasonable grounds for believing that he would offer interruption during the celebration of divine service. Burton v Henson, 10 Meeson & Welsby (Eng.) 105.

Committee, Contract. Where a parish appointed a committee of three to build a meetinghouse a contract made by one of the number was not binding on the parish. Kupfer v South Parish, Augusta, 12 Mass. 185.

Defined. In Pennsylvania the term "parish" has no especial legal signification; it is used merely in its general sense. In English ecclesiastical law it has been used to designate the territory committed to the particular charge of a parson or priest. In the absence of a state church here, however, the status of a parish is rendered comparatively unimportant; if used in ecclesiastical divisions, it has just such importance and particular signification as may be given it under ecclesiastical regulations. The rules of a church organization constitute the law for its government, and the civil court will, in general, recognize and enforce these as any other voluntary agreement between the parties. But what may be the law of the church government is a matter of fact in courts of law, and must appear in the proof. Tuigg v Treacy, 104 Pa. 493.

Dissolution, Effect. The omission of a parish for one year to elect parish officers does not necessarily operate as a dissolution of the parish; and if it did, the parish property would not, therefore, vest in the town, although the town held the property in its parochial capacity before the parish was separately organized. Tobey v Wareham Bank, 13 Met. (Mass.) 440.

Division, Effect. A debt incurred by a town comprising one parish for building a meetinghouse was held to be due from the whole town after a part had been incorporated as a second parish, the meetinghouse being within the limits of the first parish. Eager v Marlborough, 10 Mass. 430.

Where lands, which had been originally granted to a town for the use of the ministry were sold by virtue of a resolve of the Legislature and the money put at interest by the

town, the annual income to be applied to the use of the ministry; and afterward, a number of the inhabitants being incorporated into a separate religious society, the residue became a distinct parish; it was held that this residue, those forming a distinct parish, succeeded to all the parochial rights and duties of the town, and were entitled to recover of the town the money and interest arising from the sales of such land. First Parish, Winthrop v Town of Winthrop, 1 Me. 208.

Ecclesiastical Council. As to the effect of the action of an ecclesiastical council recommending the dissolution of the relations between the pastor and his parish, see Bedford case in the article on Congregational Church.

Massachusetts. Originally, all our religious societies were corporate bodies. The town at first exercised parochial powers, most of the people of this State being of one denomination. But as varieties of opinion sprang up it became necessary to separate the parochial from the municipal business, and the parishes formed separate organizations. Other religious societies were incorporated by special acts; but many congregations remained unincorporated. Some persons had conscientious scruples against corporations, and others preferred to manage their religious affairs in a different way. The act of 1811 authorized unincorporated societies to take and hold property and manage the same by agents or otherwise. Silsby v Barlow, 16 Gray (Mass.) 329.

Massachusetts, History. "From the earliest settlement of the colony the territory, as fast as it was granted out to actual settlers, was divided into territorial parishes, and each parish was a corporation. In many cases towns constituted parishes; that is, each town was a corporation, combining all the powers and functions both of a parochial and of a municipal corporation, and under one organization provided for the erection of meetinghouses, the support of public worship, and incidental expenses. Large towns were sometimes divided into two or more territorial parishes, in which case each parish was a corporation, with its proper

organization and officers." Parishes were required to provide for the maintenance of public worship and the support of suitable ministers and religious teachers. The parish system which applied generally throughout the State, did not apply to Boston, "probably because its numbers increased so rapidly, and it was early found that more than one religious society would be necessary within its limits." "Where poll parishes were established they were uniformly constituted corporations by special act of incorporation; such an act was an enabling act, creating a corporation having perpetual succession, and capable of holding real estate to a limited amount, and in such case the fee was in the corporation, to the use of pewholders and other members." Attorney-General v Proprietors of Meetinghouse in Federal Street, Boston, 3 Gray (Mass.) 1, 35, 38.

Meetinghouse, May Be Leased. Where a religious society has no further use for an old meetinghouse, and the land on which it stands abuts on a business street, it is not ultra vires for the society to let the land to a lessee who agrees to buy the meetinghouse, and to pay to such lessee or his assignees on the termination of the lease a just and reasonable sum for such buildings and improvements as shall have been put upon the land during the term of the lease. Hollywood v First Parish, Brockton, 192 Mass. 269.

Meetinghouse, Title After Division of Town. A meetinghouse for public worship, built by a town before it is divided into parishes, becomes, upon such division, the exclusive property of the first parish; and the use of it for many years before the division, for town meetings for municipal purposes, gives the town no easement in it, for such use is presumed to have been with the consent of the town in its parochial character, and an adverse right or an easement cannot grow out of a mere permissive enjoyment. First Parish, Medford v Pratt, 4 Pick. (Mass.) 222.

Members, Liability for Debt. It is generally true that an individual member of an aggregate corporation is not liable for any debts or demands against it. The towns and par-

ishes in Massachusetts are an exception. For on such an execution the body or estate of any inhabitant may be taken to satisfy it. Chase v Merrimack Bank, 19 Pick (Mass.) 564.

Member, Reimbursement for Claim Paid. Where a judgment is recovered against a member of the parish on a claim against the parish, and the parishioner paid the judgment, he is entitled to recover the amount from the parish. Keith v Congregational Parish, Easton, 21 Pick. (Mass.) 261.

Membership. Under the Massachusetts statute any person wishing to become a member of the parish must express his desire in writing, and the parish, by a direct vote or by an act of an authorized agent, must accede to the application in order to constitute him a member. First Parish, Sudbury v Stearns, 21 Pick. (Mass.) 148.

If a person separating from one religious society and joining another files with the clerk of the society left a certificate of the fact under the hand of the clerk of the society which he elects to join, it is conclusive evidence of his having ceased to be a member of the former society. Gage v Currier, 4 Pick. (Mass.) 399.

Where a member of a religious society having, pursuant to the Massachusetts act of 1811, chap. 6, filed a certificate of his membership with the clerk of the town in which he lived, removed before the passing of the act of 1823, chap. 106, to another town, it was held that he was not obliged to file a certificate under the last statute, with the clerk of the oldest religious society in such town in order to exempt himself from taxation by that society; and it was further held that a tax levied on his property by that society might be recovered back by an action of money had and received brought against the society. Sumner v First Parish, Dorchester, (1826) 4 Pick. (Mass.) 361.

Minister. Where in a new town a Congregational minister was settled as the minister of the town, and after his death another minister of the same denomination was settled, this latter was held to succeed to all the rights of the former minister, and to be entitled to possession of the

ministerial lands of the town; although a majority of the town were then of other denominations or persuasions. Jewett v Burroughs, 15 Mass. 464.

Minister, How Appointed. In Maine it was held that without the express concurrence or assent of the town or parish in their corporate capacity no one can become their minister or be legally recognized as such. According to the ecclesiastical usages of the country, the church is generally permitted to nominate a minister, who may be approved or rejected by the parish. If the parish approve, a contract of settlement is then made between them and the minister. Bisbee v Evans, 4 Me. 374.

Minister's Title to Property. When a minister of a town or parish is seized of any lands in right of the town or parish, which is the case of all parsonage lands, or lands granted for the use of the ministry or of the minister for the time being, the minister for this purpose is a sole corporation, and holds the same to himself and his successors. And in case of a vacancy in the office the town or parish is entitled to the custody of the same, and for that purpose may enter and take the profits till there be a successor. Every town is considered to be a parish until a separate parish be formed within it; and then the inhabitants and territory not included in the separate parish, form the first parish; and the minister of such first parish by law holds, to him and his successors, all the estates and rights which he held as minister of the town before the separation. Brunswick v Dunning, 7 Mass. 445.

Minor, Taxation. Personal property belonging to a minor must be taxed in the parish in which the guardian resides, although the minor may reside in another parish and attends public worship there. Baldwin v First Parish in Fitchburg, 8 Pick. (Mass.) 494.

Parishioner. The word "parishioner" included not only inhabitants of the parish but persons who are occupiers of lands liable for parish rents and duties. Attorney General v Parker, 3 Attk. (Eng.) 576.

Parsonage. The fee of lands in a town reserved for parsonage or ministerial lands, vests in the minister of the town when one is settled, and the tenure cannot be changed by a vote of the town, even though the minister assent thereto. And whatever rights the town may acquire in relation to the use or enjoyment of the profits must be under him and in subordination to his legal title. Inhabitants of Bucksport v Spofford, 12 Me. 487.

Where property was conveyed to a town for parsonage purposes the ministers of the town were entitled to the use of the property and became seized successively, in right of their parish. A conveyance by the parish to a minister in fee, for a valuable consideration, was held void for the reason that the property was conveyed to the parish in trust. The parish (in this instance the town) had not the fee of the land, and therefore could not convey it. Austin v Thomas, 14 Mass. 338.

Poll Parish. Poll parishes are voluntary, and when unrestrained by their articles of association, or by their act of incorporation, if incorporated, are, of course, fully at liberty to prescribe terms of membership from time to time, which terms will be of binding authority on all connected with the parish, and they may make by-laws declaring what shall constitute membership, and what shall operate to cause a forfeiture of membership, and such by-laws may as well apply to present as to future members. Taylor v Edson, 4 Cush. (Mass.) 522.

Powers. A parish has no authority to grant moneys except for settling ministers and building houses of public worship, and for purposes necessarily connected with those objects. Bangs v Snow, 1 Mass. 181.

A parish may provide for religious instruction by the erection of meetinghouses and the support of ministers. Alna, Inhabitants of, v Plummer, 3 Me. 88.

Protestant Episcopal Church, Defined. A parish includes the individuals who associate themselves under the articles of incorporation, and, in their formal application for admis-

sion, on their pledge of conformity to the diocesan and general legislation of the church, are received into union with the diocesan convention. Bird v St. Mark's Church, Waterloo, 62 Ia. 567.

Roman Catholic. Territorial areas described in the nomenclature of the Roman Catholic Church as parishes, are not recognized by the law as corporate or political entities; and if they were such, the church could not legislate concerning them. McEntee v Bonacum, 66 Neb. 651.

Taxation. Parish taxes can be assessed only on the polls and property of members of the parish. A tax levied on unimproved property owned by a nonresident was, therefore, held to be invalid. Dall v Kimball, 6 Me. 171.

The erection of a second parish in a town does not prevent the town authorities from assessing parish taxes. Ashby v Wellington, 8 Pick. (Mass.) 524.

Persons assessed for the support of public worship in a parish, who have a right to have their moneys paid over to a minister other than the parish minister, must notify the parish of their desire to have their moneys so paid over, and the minister must demand the moneys within a reasonable time after the assessment is made; and a year from making such assessment is a reasonable time, but in particular cases the time may be extended.

A person leaving the society in which the parish worship, and honestly and in good faith joining one of another religious denomination, is entitled to have his money paid over to the teacher on whose instruction he attends, although he may have no conscientious scruples on the subject. Montague v Inhabitants First Parish in Dedham, 4 Mass. 269.

Where the assessors of a religious society assess a tax on a person who is not a member they are liable to an action of trespass; for they do not come within the provision in St. 1823, chap. 138, s. 5, that in certain cases they shall be responsible only for their own integrity and fidelity. Gage v Currier, 4 Pick. (Mass.) 399.

PARSONAGE

Massachusetts rule, 441.
Ministers' occupancy, 441.
Town land, 442.
Trust for, when invalid, 443.
Use, 443.

Massachusetts Rule. In Massachusetts a minister holds parsonage lands in fee simple in the right of the parish or church, and, therefore, on his resignation, deprivation, or death, the fee is in abeyance until there be a successor. During a vacancy the parish or church have the custody, and are entitled to the profits of the parsonage. If the minister alien with the assent of his parish, or of the vestry of the church, the alienation will bind the successor; if without such assent, it will be valid no longer than he continues minister. An alienation of the parsonage by the town, district, precinct, or vestry is void; for if there be a minister, the fee is in him; or if there be a vacancy, the fee is in abeyance. Weston v Hunt, 2 Mass. 500.

Ministers' Occupancy. The society employed a pastor for a cash salary, and also the use of the parsonage. He took possession of the parsonage in 1870, and occupied it until his death. In 1877 the society was divided, and two new societies were organized, one known as the East Norway Lake and the other as the West Norway Lake Norwegian Evangelical Lutheran Society, and the old society was practically abandoned except for closing up its affairs and disposing of its property. The minister with whom the contract was made continued to occupy the parsonage after the division, serving both societies. After the minister's death in 1885 his personal representatives had no title or interest in the parsonage. The contract did not create the relation of land-

lord and tenant. East Norway Lake Norwegian Evangelical Lutheran Church v Froislie, 37 Minn. 447.

A minister in the Methodist Episcopal Church who occupies the parsonage furnished by the local society is not a servant of the trustees nor of the society in the sense that he could be treated as a trespasser on his refusal to leave it.

The plaintiff, a member of the Newark Conference, had been appointed preacher at Spring Valley, and while officiating in that capacity occupied the parsonage provided by the local society. In January, 1886, he was suspended from all ministerial and church privileges. The trustees of the local society ejected the pastor from the parsonage. In an action by the pastor against the trustees, alleging an assault and forcible exclusion of himself from the house and the conversion of his goods, it was held that the minister was in lawful possession of the parsonage, and the use of force by the trustees to expel him from the house was without justification. Bristor v Burr, 120 N. Y. 427.

Town Land. The proprietors of a new township appropriated a lot of land for a parsonage, at the same time voting that they would endeavor that a Congregational minister should be settled in the town. Afterward a Congregational society was incorporated in the town as a poll parish. It was held that the said society was not entitled to the use of such parsonage, but that the same remained to the first parish, whether of the Congregational order or not. First Parish, Shapleigh v Gilman, 13 Mass. 190.

A town, owning land in fee, and managing its parochial affairs as a municipal corporation, voted in 1712 to fence in three and a half acres for the use of the ministry. The next year they voted to take up and fence in four acres in lieu of the three and a half acres. From that time they exchanged, sold, leased, or managed themselves the lands which they called ministerial, just as they pleased, until 1741, when they voted that certain lands, including the parcel of four acres, should belong to the first parish. In 1777 the first parish conveyed this parcel to an individual. It was held

that this parcel was not technically parsonage land, it not being plainly shown to be the intent of the town that it should go to the ministers of the parish in succession, and so the conveyance made by the parish was valid. Emerson v Wiley, 10 Pick. (Mass.) 317.

Trust for, When Invalid. In Carskadon v Torreyson, 17 W. Va. 43, it was held that a conveyance of property to trustees, intended for a parsonage, for the use of the ministers of the Methodist Episcopal Church in the South Branch Circuit, West Virginia, was void for parsonage purposes, unless for the benefit of a particular local congregation. In this instance the circuit was composed of several congregations, and it could not be determined which congregation was intended as a beneficiary of the trust.

Use. The manse or parsonage house owned by a religious society stands upon a footing different from that of a meetinghouse. There is no right of use in common in the parsonage. It is not a sacred building like a church edifice, but is, properly speaking, an endowment or source of pecuniary revenue to aid in support of the worship in the church property. Its use is not spiritual but temporal. Though it is ordinarily used as a residence for the pastor, there is nothing in its character or ownership to prevent its being used for other purposes as circumstances may render it profitable or beneficial. Everett v First Presbyterian Church, 53 N. J. Eq. 500.

PARTICULAR BAPTIST CHURCH

Particular Baptists, 444.

Particular Baptists. In 1797 the trustees of the town conveyed land to the Particular Baptist Church. In 1800 there was a union between the Particular and Separate Baptists in Kentucky under the denomination of United Baptists. Some thirty or thirty-five years afterward the church known as the Reformed Church was organized, composed in part of persons who had seceded from the Baptist Church. By some arrangement the new church occupied the house of worship used by the original church. A controversy arose over the right to use the church building, the old society claiming the exclusive right to use it, and finally prevented the new society from occupying it. The old society was not incorporated, and it was held that the title which vested in the original trustees in the conveyance from the town did not pass to the officers of the society, and the officers did not have the legal title; but as officers of the society they were entitled to maintain an action to establish the right to the possession of the property. The change of name from Particular to the United Baptist Church was not a change in fact in the society, which continued under the original organization, though under a change of name. The Reformed Church had no right to even a partial use of the church building. It was an entirely distinct body of Christians. Cahill v Bigger, 8 B. Mon. (Ky.) 211.

PARTITION

Joint church ownership, 445.

Joint Church Ownership. In Swoyer v Schaffer, 13 Pa. Co. Ct. 346, it was held that the court had no jurisdiction to decree partition of church property owned in common by two congregations.

PEWS

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Historical Note. Pews constitute a subject of peculiar ownership. They are defined to be inclosed seats in

churches, and it is said that, according to modern use and idea, they were not known until long after the Reformation, and that inclosed pews were not in general use before the middle of the seventeenth century, being for a long time confined to the family of the patron. In England the right of property in a pew is a mere easement or incorporeal right, and hence the English doctrine that case only will lie for the disturbance of the occupant. O'Hear v De Goesbriand, 33 Vt. 593.

Assessment for Expenses. A pewholder who bought a pew at public auction free of rent was held not liable afterward on an assessment for current expenses. Trustees 1st Presby. Cong. Hebron v Quakenbush, 10 Johns (N. Y.) 217.

Changing, Injunction Refused. In Solomon v Congregation B'Nai Jeshurun, 49 How. Pr. (N. Y.) 263, the court refused an injunction to restrain the church authorities from making alterations and repairs in the church edifice which would have the effect of changing the pews and the seating arrangements of the society.

Church Used for General Purposes. In Jackson v Rounseville, 5 Metc. (Mass.) 127, the court said it had been the practice in various parts of the State, especially in Boston, for religious societies to lend the use of their houses to the government, for the annual election sermon, and to various societies and philanthropic associations, to hold meetings, for various purposes; and upon such occasions it has been usual for the body or association to whom the house is lent to control the use of the pews, without regard to the particular owners.

Distribution. In Reynolds v Monkton, 2 M. and Rob. (Eng.) 384, it was held that the churchwardens have a discretionary power to appropriate the pews in the church among the parishioners, and may remove persons intruding on seats already appropriated.

The trustees of a Free Church have the right to control the places where persons should sit, in the absence of any proof that by usage or otherwise rights were acquired to

special seats, and that a person upon refusing to change his seat may be forcibly removed from the seat he is so occupying. Sheldon v Vail, 28 Hun (N. Y.) 354.

In England pews are altogether a matter of ecclesiastical regulation. It is the duty of the churchwardens to distribute them in the most convenient way so as to give to each parishioner a seat. In this country we have no parish churches. With us they are corporations aggregate, made so by law. The temporal concerns are managed by trustees, who have power to dispose of the pews by sale and by letting them out to hire, fixing the amount of rent so as to produce a revenue. The purchase of a pew gives a more permanent right than a mere hiring. A purchaser, as well as a hirer, pays a rent or assessment for the support of the establishment, but still the purchaser has a property which is transmissible. The purchaser of the pew has no right or interest in the soil. His possession is not a possession of real estate. The trustees may at any time pull down or remove the building. In case of a sale and the erection of a new building the right of a pewholder in the old building is transferred to the new building. Matter of Brick Presbyterian Church, 3 Edw. Ch. (N. Y.) 155.

Disturbing Possession. The owner of a pew in a church has an exclusive right to its possession and enjoyment for the purposes of public worship, and may maintain an action for disturbing his possession, even against the society or person in whom the title to the land and building is vested. O'Hear v De Goesbriand, 33 Vt. 593.

The pewholders, in the ordinary cases of meetinghouses or churches built by incorporations under the statute, have only a right of occupancy in their seats, subject to superior rights of the society owning the pew. Trespass is the proper remedy for a disturbance of the pew-owner's right. A pew cannot be sold on an assessment unless the shares are defined, are regularly assessed, and proceedings are in conformity with the constitution and by-laws of the society. Perrin v Granger, 33 Vt. 101.

A person had a prescriptive right to a seat in a church, and being disturbed, might sue in a spiritual court to have his possession quieted. Jacob v Dallow, 2 Salk. (Eng.) 551.

Easement. A pewholder's right of occupancy is subject to the right of the meetinghouse proprietors to sell the church edifice and rebuild elsewhere. First Presbyterian Society of Antrim v Bass, 68 N. H. 333.

Where the pews in a church have been purchased and a title given to the purchaser he has but a qualified interest. His right is subject to that of the trustees or owners of the church, who have the right to take down, rebuild, or remove the church for the purpose of more convenient worship, without making any compensation to the pewholders for the temporary interruption. Van Houten v First Reformed Dutch Ch. 17 N. J. Eq. 130. See also Van Horn v Talmage, 8 N. J. Eq. 108.

A pewholder has an easement in and not a title to the freehold. He has a property in his pew and a right to its exclusive possession. A pewholder has certain privileges by reason of his ownership, such as passing through the aisles, being addressed from the pulpit, etc. He may own a pew and yet not be a member of the parish corporation. First Baptist Society, Leeds v Grant, 59 Me. 245.

A house of worship having been built on land owned by the society, it was held that the corporation and not the members of it became the owner of the property, and that pewholders belonging to another denomination could not exercise any authority in the management and control of the property. A pewholder's right is only an easement. First Baptist Society of Leeds v Grant, 59 Me. 245.

The grant of a pew in perpetuity does not give to the owner of land any fee. The grantee is only entitled to the use of the pew for the purpose of sitting therein during divine service. But the owner of the pew may maintain case, trespass or ejectment, according to the circumstances, if he is improperly disturbed in the legitimate exercise of

his legal right to use his pew for that purpose. Baptist Church, Hartford v Witherell, 3 Paige Ch. (N. Y.) 296.

A person may have the mere possessory right in a pew. Wilkinson v Moss, 2 Lee (Eng.) 117.

Pewholders in a church building have only a qualified and usufructuary right in their pews, subject to the right of the religious society to remodel them, and to alter the internal structure of the building, or enlarge or remove it, or sell it in order to build anew. Sohier v Trinity Church, 109 Mass. 1.

A pewholder acquires only a right of occupancy for worship in connection with the services prescribed by the rules of the church. He does not acquire an absolute title, but his interest is subordinate to the general right of the corporation to alter, repair, rebuild, or sell the edifice. Vorhees v Presbyterian Church of Amsterdam, 8 Barb. (N. Y.) 135, also 17 Barb. (N. Y.) 103.

A pewholder had only the right to occupy a pew for the purpose of worship. The title of the property remains in the corporation and the pewholder cannot compel it to maintain divine service, nor even to open the house for that purpose; and the building may be abandoned without subjecting the society to any liability as against a pewholder. Matter of Saugerties Reformed Dutch Ch., 16 Barb. (N. Y.) 239.

A pewholder does not acquire absolute title to the property, but he acquires only the right to use the pew for the purpose of sitting therein during services. A pew-owner has no title to the building or any part of it, nor to the soil on which it stands, and the society may at their pleasure alter the structure and may even destroy the pew. For this alteration or destruction of the pew the owner has no redress and is not entitled to any compensation if the change was made from necessity; but otherwise if the change was made as a mere matter of convenience or expediency. Cooper v Presby. Ch. of Sandy Hill, 32 Barb. (N. Y.) 222.

Purchaser acquires only the right to use the pew during

divine service, and does not obtain the absolute title. Hinde v Chorlton, 15 Law Times N. S. (Eng.) 472.

The right of a pew gives no right to the soil. It gives only limited estate. The owner may use the property as a pew but he has not an unlimited absolute right. He cannot use it lawfully for purposes incompatible with its nature. Heeney v St. Peter's Ch. 2 Edw. Ch. (N. Y.) 608.

The right of a pewholder to a pew in a meetinghouse is subordinate to the rights of the owners of the house. He has an exclusive right to occupy his pew when the house is used for the purposes for which it was erected, but he cannot convert his pew to other uses not contemplated. If the house is taken down as a matter of convenience or taste by the owners thereof, the owner of the pew is entitled to compensation; but if the house is taken down as a matter of necessity, and because it has become ruinous and wholly unfit for the purposes for which it was erected, the owners of the house are not liable to make any compensation to the separate pewholders, but may take the avails of the materials of which the house is built for the purpose of erecting another house in its place.

The owner of a pew in a meetinghouse may sustain an action of trespass on the case against one who unlawfully disturbs him in the possession of his pew. But he holds his pew subject to the right of the owners of the house to take down and rebuild the house, in case of necessity, without making him compensation. Kellogg v Dickinson, 18 Vt. 266.

Pew-owners have merely a qualified and usufructuary right in their pews, subject to the right of the society to remodel them and to alter the internal structure of the building, or enlarge or remove it, or sell the edifice and rebuild elsewhere. Colby v Northfield and Tilton Congregational Society, 63 N. H. 63.

A pew acquired from a town while it was acting parochially became the property of the pewholder. Such property, however, is not absolute, but qualified, and is subject to

a right of the parish to pull down the church and build another. By the act of 1817 the proprietors of the meeting-house were given power to take down any pew when deemed necessary for the purpose of repairing or rebuilding the house. Daniel v Wood, 1 Pick. (Mass.) 102.

In England, where by special acts a local society was incorporated and the pewholders were declared to possess a fee simple title in the pews, it was held that the proprietor of a pew did not acquire such a freehold interest in any portion of the soil of the church as to entitle him to a vote for the county, but merely an easement or qualified right to the occupation and enjoyment of the pew for the purpose of attending the services of the church. Brumfitt v Roberts, L. R. 5 Com. Pl. (Eng.) 224.

An absolute deed of a church pew in perpetuity is only the conveyance of the right to the use of the pew during divine service in the nature of a leasehold estate, and gives the holder no claim that the relative situation of the internal parts of the church shall not be altered, nor that the church shall remain unaltered unless damages shall be paid or secured. Accordingly, where the church authorities added new pews in front of the plaintiff's pew, and removed the pulpit and chancel some sixteen feet farther off, it was held that the trustees had power to make such an enlargement, and the plaintiff was not entitled to an injunction restraining it. Bronson v St. Peter's Church, Auburn, 7 N. Y. Leg. Obs. 361.

The right of a pew-owner is a right to the use of the pew during divine service. His right is subject to the right of the owners of the house to take down, rebuild, or remove the house for the purpose of more convenient worship. The pew-owners as such do not constitute the corporation and have no voice or vote in the management of its affairs. No pew-owner can become a member against his consent; and if a member, he does not lose his property in his pew by separating from the society. Pew-owners cannot decide what doctrine shall be preached, except where the society is

composed of pew-owners only. Trinitarian Congregational Society, Francestown v Union Congregational Society, Francestown, 61 N. H. 384.

"A pewholder, or owner, has no legal interest in the church edifice, or in the land upon which it stands. The title to it, and the right in the land, whatever that right may be, is in the corporation, and the possession is in the trustees." A pew-owner has only the right to occupy the pew during divine worship, which is a qualified interest and one necessarily limited in point of time. Abernethy v Society of the Church of the Puritans, 3 Daly, (N. Y.) 1.

A pewholder has only the right to occupy it during divine services, and for no other purpose. This right is subordinate to the power of the corporation to remodel the building or to sell it, on deciding to remove. Erwin v Hurd, 13 Abb. N. C. (N. Y.) 91.

Proprietors Union Meetinghouse v Rowell, 66 Me. 400 following First Baptist Society in Leeds v Grant, 59 Me. 245, it was held that pewholders have only an easement, and that the title to the church property is in the proprietors.

Pews in the society's church were held not subject to conveyance in fee by the society, and pewholders have only the right of occupancy. Montgomery v Johnson, 9 How. Pr. (N. Y.) 232.

The meetinghouse was erected by the town in 1791. In 1839 the town permitted the Congregational society to make alterations in the building so as to make an upper and lower floor, and in consideration of this action by the church it was to have exclusive possession of and the right to control the upper room as an audience room to be used for the purpose of public worship. Pews having been constructed and sold, it was held that the owner of a pew held it subject to the right of the society to make alterations and repairs on tendering compensation. Jones v Towne, 58 N. H. 462.

English Custom. In England before the Reformation the body of the church was common to all parishioners. After the Reformation a practice arose of assigning particular

seats to individuals. This assignment of seats was made by the ordinary, by a faculty which was a mere license, and was personal to the licensee, and all disputes concerning it were determined in the spiritual courts. Every parishioner has a right to a seat in the parish church but not to a pew. By later custom churchwardens had supervision and control of the questions relating to the assignment of pews, being presumed to act under the direction of the ordinary. Livingston v Trinity Church, Trenton, 45 N. J. L. 230.

Execution, Sale. Pews which had not been sold by the corporation were sold on an execution issued on a judgment against the corporation for the amount due on certain bonds. By an amendment of the charter of the church, passed in 1842, it was declared that the purchasers of pews in fee simple should hold them forever free from any liability for debts, and that they should never be susceptible of any species of mortgage, and that the sale of such pews need not be recorded. The pews were, therefore, a distinct property, and when owned by an individual, not liable to be seized for his debts. They are quite distinct from the church and the ground on which it stands. City Bank, New Orleans v McIntyre, 8 Rob. Re. (La.) 467.

Forfeiture. A parish on October 1, 1828, sold the pews in their meetinghouse on the following conditions: "The sum bid for choice, and one third of the appraised value shall be paid in cash, one third part in one year, and the residue in two years, with interest. The first payment to be forfeited if the other payments are not made agreeably to the above conditions." The defendant purchased a pew, made the first payment, entered into possession, and continued in possession until October, 1831, but made no further payments. It was held that under the contract the defendant acquired no title to the pew but only a right to acquire a title upon a compliance with the terms of sale; that he had only a license to occupy, or a tenancy for a year, or a tenancy at will. First Parish, Quincy v Spear, 15 Pick. (Mass.) 144.

A pew-owner's right may be forfeited for nonpayment of

assessments. Abernethy v Society of the Church of the Puritans, 3 Daly (N. Y.) 1.

The society owned its meetinghouse in fee simple, and was composed exclusively of successive pewholders. A by-law contained a provision that a grantee should forfeit the pew to the society if he should leave the meetinghouse without first offering it to them for a certain price. A pewholder who ceased to worship in this church and connected himself with another religious society neglected to offer his pew to the treasurer but rented it to another person. It was held that title to the pew had become forfeited to the society. The condition in the by-law regarding a forfeiture was not repugnant to the grant of the pew and was valid. Franch v Old South Society, Boston, 106 Mass. 479. See also Crocker v Old South Society, 106 Mass. 489.

Incorporeal Hereditament. A church pew is not assets in the hands of the administrator. A pew is an incorporeal hereditament. It is not mere personal property, but real property; although perhaps not real estate. The remedy of creditors is by bill against the heir. McNabb v Pond, 4 Brad. (N. Y.) 7.

Indemnity for Loss. Unless a meetinghouse at the time it is torn down by a vote of the proprietors is not only unfit for public worship but so old and ruinous as to render its entire demolition necessary, a pewholder is entitled to indemnity for the destruction of his pew. Gorton v Hadsell, 9 Cush. (Mass.) 508.

The parish has the right to make repairs to a church building, or take it down and build another, and in doing this may destroy a pew; but the pewholder is entitled to indemnity for the injury or loss. Gay v Baker, 17 Mass. 435.

A meetinghouse was built upon land with the permission of the owner, who subsequently conveyed the land to trustees in trust, to be occupied for a meetinghouse common, or green, and for the continuation of a meetinghouse thereon, and when it ceased to be occupied for that purpose to revert to the grantor. It was held that the failure to keep the

house in such repair that it could be occupied for public worship would not of itself terminate the right of a pewholder to his pew nor leave him without right to maintain an action for injury done thereto by a stranger, but would only make his right thereto less valuable, and therefore lessen the amount which he could recover. A pewholder cannot maintain trespass for the mere breaking and entry of the meetinghouse in which his pew is situated, but he may for the destruction of his pew, and this although he sue for the entry with it, for the destruction of the pew is the gist of the action.

A pewholder's right is only a right to occupy his pew during public worship and when the meetinghouse is in such condition that it cannot be, and is not occupied for public worship, he can recover only nominal damages for injury to his pew. Howe v Stevens, 47 Vt. 262.

In Cooper v Presby. Ch. of Sandy Hill, 32 Barb. (N. Y.) 222, it was held that the trustees had a right to change the structure or make such alteration as they thought best; that a pew-owner had no absolute title to the pew, nor to the material of which it was constructed, nor to the soil under it; also that if a pew was altered or destroyed as a mere matter of convenience or expediency, the pew-owner's only remedy was by an action for indemnity or compensation.

A parish may take down a meetinghouse, either as a matter of necessity or of expediency; in the former case they are not and in the latter, they are, bound to indemnify the pewholder for the loss of his pew. Howard v First Parish, 7 Pick. (Mass.) 138.

The pewholder has an exclusive right to occupy his pew, and to maintain trespass, or a writ of entry, against anyone who disturbs him in his seat. But he does not own the soil over which his pew is built, nor the space above it, for there may be other pews in a gallery above him whose owners have an equal right with himself. The parish may take down the building and rebuild on the same spot, or may alter the form and shape of the building for the purpose

of making it more convenient. If this is done in good faith, and the pew is destroyed, the parish must provide an indemnity for the pewholder on just and equitable principles. Gay v Baker, 17 Mass. 435.

Locking Pew. Land was conveyed to the trustees for the use of the church and society for a place of public religious worship for such church and society, and for no other use, intent, or purpose whatsoever. In the deed of pews the provisions of the deed of the property were mentioned. It was held that a pew-owner had the sole right to the use of his pew on all occasions when the house was occupied, though it be opened for purposes different from those mentioned in the conveyance thereof; and he had a right to exclude all other persons from his pew on such occasions by fastening the pew doors or otherwise, in such manner as not to interrupt or annoy those who may occupy other pews. Jackson v Rounseville, 5 Metc. (Mass.) 127.

Loose Bench. The general right of a pewholder does not apply in case of a loose bench which the church authorities permit to be placed in the church and used there by the owner, and he cannot maintain trespass against the trustees for its removal. Niebuhr v Piersdorff, 24 Wis. 316.

Louisiana Rule. A pew in a church being attached to the realty is of the character of a usufruct, and must be classed as an incorporeal immovable. Succession of Gamble, 23 La. Ann. 9.

Mandamus. A mandamus against the trustees of a society is not the proper remedy by a pew-owner to recover possession of it. Commonwealth, v Rosseter, 2 Bin. (Pa.) 360.

Massachusetts Rule. Under the Massachusetts parish system a part of the church edifice was generally appropriated to the erection of pews, which were usually sold and the proceeds applied to the cost of erection, or to the settlement and support of the minister, or other parish purposes. The right to a pew, except in Boston, was regarded for many purposes as real estate, in which the proprietor had a freehold, for the invasion of which a writ of entry, trespass, and

other legal remedies adapted to vindicate rights to real estate, were ever found in constant use. But in its nature it was a freehold, an estate of peculiar character, held in subordination to the corporation, who are sole owners of the soil. "The right to a pew, although everywhere in Massachusetts it is regarded as property, and in every part of the state except Boston as real estate, and in Boston as personal estate, yet it is property of a peculiar nature, derivative and dependent. It is an exclusive right to occupy a particular portion of a house of public worship, under certain restrictions. The owner of a pew is not a tenant in common of the estate on which the house stands; the legal estate is in the corporation, if the religious society be one, or in the trustees, if the property be vested in them to the use of the congregation forming a religious society for public worship." Attorney General v Proprietors of Meetinghouse in Federal St., Boston, 3 Gray (Mass.) 1.

New Building. An action was brought by a pew-owner for trespass for tearing down a pew. The church authorities justified on the ground that the edifice was in a ruinous condition and that the new building was necessary. The court held that this did not necessarily appear from the facts and that there was no permanent decay or unfitness shown. The plaintiff recovered judgment. Gorton v Hadsell, 9 Cush. (Mass.) 508.

The grant of a pew in perpetuity does not give an absolute right as the grant of land in fee. The pew-owner takes only a usufructuary right. If the building be destroyed by casualty, the pew-owner's right is gone. If the church has to be rebuilt on the same, or a different location, the pew-owner has no claim. Kincaid's Appeal, 66 Pa. St. 420.

It was held that the society might abandon its place of worship and erect a new building without subjecting it to any liability as against pewholders in the original edifice. Matter of Saugerties Reformed Dutch Ch., 16 Barb. (N. Y.) 239.

When a church edifice is destroyed by fire or any casualty,

or becomes unfitted for use from age, or is demolished from necessity, the strictly legal rights of the pewholder are gone, but in a new edifice built to replace the former he has an equitable claim to be reinstated in a position corresponding to his former one, upon bearing his fair proportion of the expense; and if his rights in that respect are disregarded, he is entitled to compensation. It is the duty of the trustees to tender to the pewholder a pew in the new edifice corresponding in location to that which he owned in the former building, upon the payment of such a sum, as in equity, he ought to pay if the cost of the new structure exceeds the proceeds of the sale of the old property together with the sums in the treasury of the society; and if they failed to allot him such a pew, he should be indemnified in damages for his loss. Mayer v Temple Beth El, 52 St. Re. (N. Y.) 638.

A deed of a pew in a synagogue provided that if a new synagogue should be erected the owner of the pew should be entitled to a pew of the same number in the new building. A new synagogue was erected, and the trustees allotted to the pew-owner a pew in the same relative location, but not of the same number, which was in a different part of the room. It was held that the pewholder was entitled to a pew of the same number as the old one without regard to its location. Samuels v Cong. Col. Israel Anshi Poland, 52 App. Div. (N. Y.) 287.

If a parish abandon its meetinghouse as a place of public worship, although it continue to be fit for that purpose, and erect a new one on a different site, it does not thereby subject itself to any liability to the proprietor of a pew in the old meetinghouse, it not appearing that the parish acted wantonly or with any intention to injure him. Fassett v First Parish, Boylston, 19 Pick. (Mass.) 361.

New Pew. "Though seats be pulled down in a church, yet a prescription to have a seat remains to every one, so that if seats be built up by the ordinary where another had an ancient one, or built on part of it, it is legal. The defendant had as much seat as she had before, but not in the same

place, and all pulled down without her consent." Archer v Sweetnam, Fort. (Eng.) 346.

Parish Property. Pews in a church belong to the parish for the use of the inhabitants, and cannot be sold nor let without a special act of Parliament. The occupier of a pew ceasing to be an inhabitant of the parish cannot let the pew with, and thus annex it to, his house, but it reverts to the disposal of the churchwardens. Wyllie v Mott, 1 Hagg. Eccles. (Eng.) 19.

Perpetual Lease. The church was erected with funds raised by subscription on the understanding that pews should be held under perpetual leases reserving rent. In Foote v West, 1 Denio (N. Y.) 544, it was held that the purchaser from a pewholder of his right to the pew was not entitled to a deed free from rent but that the rent followed the title to the pew.

Pewholders' Corporate Rights. The pew-owners formed a corporation, which, under the statute, had authority to control the meetinghouse, but such control could be exercised only at a meeting regularly called. A justice of the peace had no power to call such a meeting. Therefore an increased assessment on pews ordered at such an irregular meeting was held void. Bayberry v Mead, 80 Me. 27.

Possession, Mandamus. The court refused a writ of mandamus against the trustees to restore the possession of a pew to its owner on the ground that he had a complete remedy at law. Commonwealth v Rosseter, 2 Bin. (Pa.) 360.

Prescription. In an action for disturbing the pewholder's possession he was required to show a prescriptive right, and possession above sixty years was held an insufficient title on which to maintain the action. Stocks v Booth, 1 D. and E. (Eng.) 225.

A pew in the aisle of a church may be prescribed for as appertaining to a house out of the parish. Quære, as to a pew in the body of the church. Davis v Witts, Forr. (Eng.) 14.

On an application for a faculty to repair and renew a church a parishioner appeared to the decree and prayed a faculty might not be granted without a proviso that a pew, claimed to be held by him by prescription, should not be removed or altered. The prescription was denied. It was held that a prima facie title by prescription was established, and that the faculty should be issued with the proviso. Evidence of repair of a pew claimed by prescription is not absolutely necessary, as no repair may have been made within the period of any one living. Knapp v Parishioners of St. Mary Willesden, 2 Robertson Ecc. Re. (Eng.) 365, 369.

Presumption. Uninterrupted possession of a pew in the chancel of a church for thirty years is presumptive evidence of a prescriptive right to the pew in an action against a wrongdoer; and that presumption may be rebutted by proof that the pew had no existence thirty years ago. Griffith v Matthews, 5 Durnf. & East. (Eng.) 296.

Real Estate. A pew in a church is real estate and title to it can be transferred only by a writing signed by the proper parties. First Bapt. Church, Ithaca v Bigelow, 16 Wend. (N. Y.) 28.

In Deutsch v Stone, 11 Ohio Dec. 436, a pew was held to be real estate, and not subject to attachment on process issued by a justice of the peace; and the pew having been sold by the original owner after the attachment was issued, it was held the title passed to the purchaser notwithstanding the attachment. The court said that the pew was real estate, and its character could not be changed by agreement between the society and the owner. In this case the conveyance from the society to the owner declared that the pew should be deemed a chattel as to the purchaser, but real estate as to the society. Such an agreement could not change the essential character of the pew.

A pew is real estate, and under the testator's will passes by a devise of his real property to his widow with remainder over. A person deriving title to the pew from one who

received it in remainder was held entitled to the property. Bates v Sparrell, 10 Mass. 323.

Rent, Character of Debt. A pew in a church here is a very different kind of property from a pew in one of the churches of the English Establishment. On the death of the owner of a pew his personal representatives succeed to his title for the purpose of sale, but the pew only is chargeable with the rent accruing after his death. Where a pew was granted subject to a yearly rent the law does not imply a covenant that the executors shall pay the rent accruing after the grantee's death. It was accordingly held that in an action against the society for money loaned, the society could not set off pew rent accruing after the owner's death. Church v Wells' Executors, 24 Pa. 249.

Rent, When Preferred Debt. Rent due from the testator upon a church pew is not a preferred debt, under the provisions of the revised statutes unless it is rent due upon a term of years in such pew, which belongs to the executors or administrators as a part of the personal estate of the testator. Johnson v Corbett, 11 Paige Ch. (N. Y.) 265.

Repairs. The right of a pewholder was subject to such repairs and alterations of the church edifice as the church authorities might direct, and their action cannot be restrained by injunction. Solomon v Congregation B'nai Jeshurun, 49 How. Pr. (N. Y.) 263.

The right of a pewholder to a pew in a meetinghouse owned by a religious society is subordinate to the right of the society to repair or remodel the house. A religious society may alter, remove, or destroy a pew in its meetinghouse upon paying or tendering to the owner full compensation when it becomes necessary for the purpose of making needed alterations or repairs in their church edifice. A person wrongfully occupying a pew may be removed from it by a police officer, or by the owner of the pew, or anyone acting at his request. Jones v Towne, 58 N. H. 462.

Where, under the New Hampshire statute the pew-owners, with the consent of the religious society, made alterations

in the interior of the church, rearranging and changing the location of the pews, a subsequent assignment of pews to former occupants by a committee of pew-owners was sustained. Colby v Northfield and Tilton Congregational Society, 63 N. H. 63.

It seems that the Massachusetts act of 1817, c. 189, relating to the appraisement of pews when about to be destroyed for the purpose of repairing and improving the meetinghouse, applies to a territorial parish, and in an action by a pewholder for destroying his pew it was competent to give in evidence the appraisement in connection with the testimony of the appraisers, in justification of the parish, and to show the value of the pew. Kimball v Second Congregational Parish, Rowley, 24 Pick. (Mass.) 347.

Roman Catholic. In Aylward v O'Brien, 160 Mass. 118, it was held that title to pews in the Roman Catholic Church, when conveyed to individuals, was not held by them in any different way than in the churches of other religious denominations. The parish, or the proprietors, may abandon the meetinghouse as a place of public worship without any liability to pewholders, although the pews may thereby be rendered nearly or quite useless; and the fact that the meetinghouse is still fit to be used does not render the parish or the proprietors liable. The right of the pewholder is held to be of such a nature that he is entitled to an indemnity if the parish or the proprietors exercise their right to take down the church when it is in such a condition that its demolition is not actually necessary; but if it has become necessary to take down a meetinghouse, that is to say, if a meetinghouse has become so old and ruinous that its further use is not practicable, the parish or proprietors need not make payment to a pewholder for the removal of his pew.

Land was conveyed to the Bishop of Detroit and his successors in office in trust for the erection of a church thereon, to be used as a place of religious worship, and for spiritual use, benefit, and behoof of the German Roman Catholic

Church and congregation in the city, according to the rites and ceremonies of said Roman Catholic Church, and for other trusts therein expressed. The deed also provided that in the event of a vacancy in the office of bishop happening between the death of the bishop and the appointment of his successor the premises should vest during such vacancy in the archbishop of the Roman Catholic Church of which the diocese should be a suffragan. Trustees of the church were afterward elected under the statute.

In a controversy between the officiating priest and the trustees as to which had the right to rent the slips it was held that, under the deed of trust and the constitution, laws, and usages for the government of the Roman Catholic Church, by which the administration of the temporalities of the church is vested in the parish priest, the right to rent the slips belonged to the priests and not to the trustees. Smith v Bonhoof, 2 Mich. 115.

Sale of Property. Under the New York religious corporations act of 1813, notice to pewholders of an application to sell the property of the church is not necessary. The trustees have power to act. Matter of Second Baptist Society, Canaan, N. Y. 20 How. Pr. (N. Y.) 324.

Sale. Order of court not necessary for a sale of pews. Freligh v Platt, 5 Cow. (N. Y.) 494.

Taxation. The power of the society to impose a tax on pews was held to apply only to the purposes specified in the deed, and a tax for any other purpose was held invalid. First Methodist Episcopal Society v Brayton, 9 Allen (Mass.) 248.

The owner of a pew offered to sell it to the society. Appraisers were appointed, but they did not agree and made no report. The owner continued to occupy the pew. It was held that by such occupancy he must have been deemed to have abandoned the effort to sell the pew to the society, and that he was, therefore, liable for a tax imposed on the pew. Curtis v First Congregational Society, Quincy, 108 Mass. 147.

A pew-owner is not liable personally for a tax levied on the pew unless there be some special ground from which to infer a contract or promise to pay. One tenant in common of a pew cannot bind the others by signing to an increase in the tax. St. Paul Ch. v Ford, 34 Barb. (N. Y.) 16.

Pewholders are liable for increased assessments on pews for church expenses. Curry v First Presbyterian Congregation, 2 Pittsburg, (Pa.) 40.

Where a pew was, by the original deed of the property, subject to taxation for general expenses and for repairs both of the church and lot, and the society was afterward incorporated under a charter which required the assent of a majority of the pewholders for the imposition of such a tax, but the charter contained a provision authorizing its amendment in the discretion of the Legislature, and the Legislature having afterward restored the right to impose a tax for expenses and repairs, it was held that the later statute did not violate the obligation of a contract, and that the society had power to impose a tax on the pews. Bailey v Trustees, Power Street Methodist Episcopal Church, 6 Rhode Island 491.

Pews were sold free of rent to raise money to aid in completing the erection of a church edifice. The trustees could not afterward without the pewholder's consent assess the pew for current expenses, and could not proceed against the pewholder personally to collect an assessment. Trustees First Presby. Cong. of Hebron v Quakenbush, 10 Johns. (N. Y.) 217.

Pews may be assessed for church expenses. Abernethy v Society of the Church of the Puritans, 3 Daly (N. Y.) 1.

Termination of Right. If the building is taken down, or is destroyed by fire, or the pew is destroyed by a necessary alteration in the internal arrangement of the church, the pew-owner's right is gone. Abernethy v Society of the Church of the Puritans, 3 Daly (N. Y.) 1.

Title. The right to a pew granted by a church corporation to a man and his heirs is real property, an incorporeal ease-

ment or usufructuary right in land of another. Presbyterian Church v Andruss, 21 N. J. Law, 325.

Title, Transferable. The title to a pew is transferable as other real estate, and an assignment of the interest of the pew-owner does not transfer the title as against the levy on an execution against the original owner. Barnard v Whipple, 29 Vt. 401.

Trespass. The owner of a pew may maintain trespass against a person who disturbs him in the possession. Shaw v Beveridge, 3 Hill (N. Y.) 26.

Land was conveyed to several persons, most of whom were members of an incorporated religious society, to the use of such persons as should become pewholders in the meeting-house to be erected thereon. The grantees organized themselves as proprietors under an act providing therefor. The title vested in them on such organization in trust for the pewholders, the use shifting to those persons who thereafterward became pewholders. It was also held that the incorporated religious society, which occupied the land by the permission of the body of proprietors, for the purpose of public worship, might maintain trespass against an individual proprietor for obstructing them in such occupation. Second Congregational Society, Northbridgewater v Waring, 24 Pick (Mass.) 304.

PIOUS USES

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Defined. Legacies to pious uses are those which are destined to some work of piety, or object of charity, and have their motive independent of the consideration which the merit of the legatees might procure to them. In this motive consists the distinction between these and ordinary legacies.

The term "pious uses" includes not only the encouragement and support of pious and charitable institutions but those in aid of education and the advancement of science and the arts.

They are viewed with special favor by the law, and with double favor on account of their motives for sacred usages and their advantage to the public weal. State v McDonogh Estate, 8 La. Ann. 171, sustaining a legacy to the city of New Orleans and the city of Baltimore of funds to be used for the establishment and support of free schools in said cities and their suburbs, including special provision for religious and secular instruction of certain specified classes of poor persons in the Town of MacDonogh, a suburb of New Orleans.

Described. Legacies to pious uses have been known to the civil law from the foundation of Christianity. "They are an element in the polity of municipal administrations in all countries which have preserved the features and jurisprudence of Roman civilization."

Legacies to pious uses are those which are destined to some work of piety, or object of charity, and have their motive independent of the consideration which the merit of the legatees might procure to them. In this motive consists the distinction between these and ordinary legacies.

Legacies to pious uses are highly favored by the law on account of their motives for sacred usages and their advantage to the public weal. Williams v Western Star Lodge, 38 La. Ann. 620.

Jews. In Strans v Goldsmith, 8 Sim. (Eng.) 614, it was held that a bequest to enable persons professing the Jewish religion to observe its rites is good.

Land, Devised, Right of Possession. If lands be granted for pious uses to a person or corporation not in being, the right to the possession and custody of the lands remains in the grantor, till the person or corporation intended shall come into existence. Shapleigh v Pilsbury, 1 Me. 271.

Ministerial Land. In New Hampshire it was held that after a grant of land to a town for the use of the ministry, if the town be divided, and such land fall within the boundaries of the new town, the title to the land still remains in the old town. The disposition of such land was not regulated by statute. Where the new town sold such land and received the proceeds it was not liable to a religious society for any part thereof. Union Baptist Society v Town of Candia, 2 N. H. 20.

Minister's Support. The general words "pious uses" are not to be understood in their broadest sense, so as to authorize a religious society to hold lands to any use, however foreign to the purposes of its incorporation, that religion and charity may sanction. The support of its minister is a duty that devolves upon every religious society, and to afford him that support may justly be regarded as one of the objects of its incorporation. It is, therefore, a pious use within the meaning of the statute. Tucker v St. Clement's Church, 3 Sandf. Sup. Ct. (N. Y.) 242, aff'd. 8 N. Y. 558n.

Missionaries. The propagation of the Christian religion,

whether among our own citizens or the people of any other nation, is an object of the highest concern, and cannot be opposed to any general rule of law or principle of public policy. A bequest to certain persons in trust to pay the income to the American Board of Commissioners for Foreign Missions and their associates was held not void for uncertainty. The members of the board could be ascertained, and the income was to be appropriated by the board for the general purposes for which the board was established. It was not necessary to ascertain or describe the particular persons who were to receive in foreign countries the religious instruction intended by the bequest. Bartlett v King, 12 Mass. 537.

Poor. The testator gave all his residuary estate to the incorporated Presbyterian churches in the city of New Orleans, to "the end that the poor of said respective churches may be cared for." The legacy was to pious uses within the Louisiana code, and was not indefinite. The churches entitled to receive the benefit of the legacy are capable of ascertainment, and also the poor who are to be the direct beneficiaries of the testator's bounty. Auch's Succession, 39 La. Ann. 1043.

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Affirmative. In Read v Hodgens, 7 Ir. Eq. 17, it was held that a bequest for masses for the testator's soul was valid and not void as a superstitious use.

In Re Hagenmeyer's Will, 12 Abb. N. C. 432, it was held that a direction in a will that the executors pay from the assets a sum of money for the purpose of having masses said for the testator's soul was valid. Also a bequest in trust to a religious corporation for the same purpose.

Testatrix gave the residue of her estate to two Roman Catholic clergymen, one half to each, with the request that one of them, named, should say, or procure to be said, masses for the repose of her soul three times a week for one year after receiving the money, and the other half was given to another clergyman with a like request as to masses for the repose of the soul of the brother and sister of the testatrix for one year after the money was paid. It was held that no trust was created contrary to the Pennsylvania statute, and the executor was directed to make payment of the residue according to the terms of the will. Dougherty's Estate, 12 Phila. (Pa.) 70.

The testator bequeathed personal estate to his executors to be expended under the direction of the Archbishop of

Dublin. The court ordered the fund paid to him on his declaration that he intended to apply it in part for the maintenance of Roman Catholic officiating clergymen, with directions that they say masses for the repose of the testator's soul. Blount v Viditz, 1 Ir. Re. (Ireland) 42 (1895).

Testatrix by her will directed her executor to use $100 of the estate for masses for her soul. She also gave her residuary estate to the Montrose Avenue Catholic Church in Brooklyn, New York, to be used in saying some masses for her soul and for charity institutions, as directed by the pastor of the church. The bequests were sustained. Hagenmeyer v Hanselman, 2 Dem. (N. Y.) 87.

Testatrix bequeathed to a priest a sum of money to be used by him in saying masses for the repose of her soul. The bequest was sustained. Gilmore v Lee, 237 Ill. 402.

Testatrix bequeathed a sum of money to a Roman Catholic priest for the purpose of celebrating masses for the repose of the souls of the priest's grandfather and grandmother. This bequest was said to be a direct donation to the priest, with an injunction for its use in a particular ceremonial. It was not a trust, and therefore not void because incapable of enforcement by living beneficiaries. Harrison v Brophy, 59 Kan. 1.

Testator gave certain property, real and personal, the proceeds to be used in saying masses for the repose of his soul and the souls of specified relatives. The gift was sustained as a valid charitable use. Hoeffer v Clogan, 171 Ill. 462.

Testator bequeathed a sum to his executor, a portion of which was to be used for having anniversary masses said annually "from the day of my decease, for myself, my deceased wife, and for her deceased sister, Lizzie." The bequest was sustained. Webster v Sughrow, 69 N. H. 380.

Testatrix bequeathed a fund to each of two priests to be used by them in saying masses for the repose of her soul. On an accounting it appeared that one of the priests had died since the death of the testatrix, but that the other

priest was still living. The legacy to the surviving priest was directed to be paid to him on his showing a future performance of the condition to say masses. The fund bequeathed to the priest deceased fell into the residuum. Estate of Howard, 5 Misc. (N. Y.) 295.

Testator directed that certain real estate be converted into money and that three fourths thereof be paid to St. Frances Hospital of New York for the benefit of the Blessed Virgin Mary Purgatorial Fund. The hospital had no such fund, and it was said that the only use that could be made of the bequest was for the saying of masses for the spiritual welfare of the souls of the dead in purgatory. The bequest did not create a trust and it was sustained. Johnston v Hughes, 187 N. Y. 446.

Testatrix made a bequest for masses for the repose of her soul. The trustee died before the testatrix. It was held that the legacy did not lapse, but that the court would appoint a person to execute the trust. It was also held that such a bequest was not a superstitious use, but was a religious use under the laws of New Jersey, and was valid under the provisions of the State and federal constitutions guaranteeing freedom of conscience. Kerrigan v Tabb, 39 Atl. (N. J. Ct. of Ch.) 701.

A provision in a will giving a fund to the priest who may be pastor of the Beaver Catholic Church to be used in saying masses for the testator was sustained as a valid private trust. Moran v Moran, 104 Ia. 216.

Testatrix made a bequest to the priest of St. Mary's Church at Lancaster, New York, to be used in saying masses "for the repose of my soul, and that of my husband, and all my relatives and benefactors." The bequest was sustained. It was held that the legacy to the priest individually did not connect it in any way with the church. By the universal practice of the church such a legacy legally bequeathed belongs to the priest, and neither the church or any superior of the priest therein can call him to an account therefor. Re Zimmerman, 22 Misc. (N. Y.) 411.

A will contained the following bequest: "I give and bequeath the sum of $1,000 which my executor shall pay to the pastor at Newry, Blair County (Pa.), for masses for the repose of my soul and for the repose of the souls of my relatives and the repose of the souls of the faithful of my parish." The bequest was sustained, and the executor was directed to pay the whole amount to the priest, who was to use his discretion as to the time and place of saying the masses, and the number thereof. Seiberts Appeal, 18 W. N. C. (Pa.) 276.

In Matter of Backes, 9 Misc. (N. Y.) 504, a provision in a will directing the executor to expend money for masses for the testatrix and her deceased husband in a German Catholic Church in Buffalo was sustained.

In Brennan v Brennan, Ir. Rep. 2 Eq. 321, the court sustained bequests to be used in saying masses for the repose of the soul of the testatrix, and also the soul of her husband, and the souls of his and her relatives.

Testator bequeathed a sum of money for masses to be offered for the happy repose of the testator's soul, to be apportioned in a particular manner between clergymen named in the will and the officiating clergymen of the city of Toronto. To the objection that this bequest was for superstitious uses and therefore void, the court said the gift was free from any taint of illegality. The testator might appropriate money for this purpose if his religion had taught him that it was important to his spiritual welfare. Elmsley v Madden, 18 Grant's Ch. (Can.) 386.

The testator made a bequest to the clergyman attached to the parish of St. Peter's, Drogheda, at the time of his death from time to time forever therefrom, upon condition that four masses each month shall be celebrated "for the benefit of my soul and the souls of my relatives, the poor souls late of the parish of St. Peter, Drogheda, now suffering in purgatory." This was held valid as to the clergymen in office at the time of the death of the testator and to their survivors and survivor of them, and after their decease the fund

should become a part of the residuary estate. Dillon v Reilly, 10 Ir. Eq. Re. 152.

Testator gave to the parish priest $100 to be used in saying masses for the testator. This was held to be a direct gift and not a trust, and was therefore valid. Sherman v Baker, 20 R. I. 446.

In Coleman v O'Leary, 114 Ky. 388, bequests to provide masses for the repose of the soul of the testator, and also the soul of his mother and other relatives, were sustained.

A testatrix bequeathed a sum of money to executors to be used for masses for the repose of her soul. This was held valid and not a superstitious use. Commissioners of Charitable Donations and Bequests v Walsh, 7 Ir. Eq. Re. 34n.

In Bradshaw v Jackman, 21 L. R. Ir. 12, the court sustained a bequest for masses for the eternal repose of her father and mother, brother and sisters.

Testator made a bequest to the bishop for the purpose of masses for the repose of testator's soul. This was not a bequest for a charitable use under the California Civil Code section 1313, which restricts devises or bequests for charitable uses. Re Lennon's Estate, 92 Pac. 870.

Negative. The income of a trust fund was to be paid to Roman Catholic priests forever, on condition that they say masses for the repose of the soul of the founder. This was held void, and the fund was ordered paid to the founder's representative. Re Blundell's Trusts, 30 Beav. (Eng.) 360.

A bequest to the Roman Catholic Primate of Ireland and his successors forever, upon the condition that he and they shall celebrate twelve masses each "for the salvation of my soul and the souls of my relatives" was held void.

The same testator bequeathed a fund to the clergymen of each of the Friaries of St. Francis, St. Augustine, and St. Dominick, in Drogheda, subject to the condition that there shall be celebrated at each of the said friaries forty masses "for the benefit of my soul and the benefit of the souls of my relatives, and all the poor souls of the parish of St.

Peter, Drogheda, remaining in purgatory." This was also held void. Dillon v Reilly, 10 Ir. Re. Eq. 152.

Testator made the following bequest: "I hereby direct that my executor hereinafter named have masses read for the repose of my soul for which I direct him to expend the sum of $500.00." This bequest was held invalid. Schwartz v Bruder, 6 Dem. (N. Y.) 169.

The testator gave his residuary estate to his executors to be expended by them in procuring prayers in a Roman Catholic church, "for the repose of my soul and the souls of my family, and also the souls of all others who may be in purgatory." This bequest was held invalid in Holland v Alcock, 108 N. Y. 312. The court said: "There is no beneficiary in existence, or to come into existence, who is interested in or can demand the execution of the trust." The bequest was not a gift to the Roman Catholic Church or churches which might be selected by the executors in which such prayers were to be offered. See also O'Connor v Gifford, 117 N. Y. 275; Gilman v McArdle, 99 N. Y. 451.

Testator bequeathed to his executors $500 to be used by them in having masses said for the repose of his soul. The bequest was invalid. Re McEvoy, 6 Dem. Sur. (N. Y.) 71.

Testator made a bequest for masses for the repose of his soul and the souls of his wife, son, daughter, father, and mother, appropriating specific amounts for masses for each. This bequest was held void for the reason that there was no beneficiary or beneficiaries of the trust who may come into equity and enforce the performance. It is evident that such a trust is not capable of execution, and no court could take cognizance of any question in respect to it for want of a competent party to raise and litigate any question of abuse or perversion of the trust. McHugh v McCole, 97 Wis. 166.

In Alabama (Festorazzi v St. Joseph's Catholic Church, 104 Ala. 327) the court declared void a bequest to a church for masses for the repose of testator's soul. It was not a gift to the church, nor was it a charitable use, nor a private trust.

Church of England. The church has not prohibited prayers for the dead. Brooks v Woolfrey, 1 Curteis (Eng.) 509.

General. For a case containing a discussion of principles relating to gifts for masses see Gilman v McArdle, 12 Abb. N. C. 414, and cases cited, especially the Illinois case of Kehoe v Kehoe, 12 Abb. N. C. 427n.

Father Browers, who was a priest in this congregation at the time of his death, left a will in which, among other things, he made a devise of certain real property to the Roman Catholic priest succeeding him in this society, and to the successors of such priest, with a condition that masses should be said four times a year for the repose of the testator's soul. Father Fromm intruded into the property, took possession of it, and assumed to be the priest of the local society, but he had no authority from the bishop or other superior authority in the church. And it was held that he had no power to act and could not lawfully take possession of the property and receive the devise and execute the trust. Browers v Fromm, Add. Pa. Rep. 362.

Perpetuity. A testatrix bequeathed the dividends thenceforth to accrue on certain stock to be paid for the celebration of masses upon every Sunday and other days stated in every year, in a certain Catholic chapel named, for the benefit of her soul and the souls of her parents and other relatives; also for the purpose of keeping in order the tombs of certain relatives; and the remainder of the interest to be paid to her daughters for life, and after their death to be appropriated, while the world lasts, for the celebration of masses for the benefit of her soul and the souls of her relatives. The gift was held void as creating a perpetuity. Beresford v Jervis, 11 Ir. L. T. R. 128.

A bequest in aid of a fund for the erection of a memorial church with an obligation that the parish priest for the time being should celebrate masses at a particular time and place forever, for the repose of the soul of the testator and members of his family was held void as creating a perpetuity, and also because the obligation was impossible of perform-

ance for the reason that the parish priest could not celebrate the masses according to the terms of the will without neglecting other official duties. Brannigan v Murphy, 1 Ir. Rep. 418.

The trust of a fund was to pay the income to Roman Catholic priests forever, upon condition of their saying masses for the repose of the soul of the founder. It was held void, and the fund was ordered to be paid to the representative of the founder. Re Blundell's Trusts, 30 Beav. (Eng.) 360.

Religious Use. In Ireland a bequest to provide masses for the repose of the soul is not illegal. "The acts directed to be procured are, according to the faith which the testatrix professed, sacrifices to God in the most proper sense, and of the most solemn kind, on behalf of all the faithful, living and dead, including a particular memorial of the deceased person specified; but they are not necessarily to be offered in the public congregation of the faithful, or in public at all. The elements of charity in its most extensive, indeed, in its truest sense, which they contain is piety to God. According to the Roman Catholic faith, each celebration of the mass involves the most perfect act of charity." Attorney-General v Delaney, Ir. 10 C. L. 104, 121.

In Attorney-General v Hall, 2 Irish Re. 291 (1896), considering the validity of bequests to Roman Catholic priests for masses in a specified Roman Catholic church for the repose of the soul of the testator and the soul of his wife, the court said that the belief in the efficacy of prayers for the dead is not only lawful but one of the essential doctrines of a religion, the advancement of which the law deems to be charitable, and the bequests were declared to be a valid charity.

Superstitious Use. A devise for the purpose, among other things, of establishing a fund to be used for the perpetual continuance of prayers for the soul of the testator and the souls of others, was held to create a superstitious use under the act of 1 Edw. 6, chap. 14, and was therefore invalid.

Attorney-General v Fishmongers Company, 2 Beav. (Eng.) 151.

Testator gave legacies to be used in saying masses for the repose of his own soul and the souls of other persons, and for other pious uses. The legacies were held void because given for a superstitious use. Heath v Chapman, 2 Drew, Ch. Re. (Eng.) 417.

Testatrix made bequests to several priests "that I may have the benefit of their prayers and masses for the repose of my soul and the soul of my deceased husband." These legacies were held to be for a superstitious use, and therefor void. West v Shuttleworth, 2 Myl. & K. (Eng.) 684.

Time Limit, Bequest. Testatrix bequeathed to her executor the sum of $5,500, to be paid over by them as therein directed; $500 each to the pastors of certain Roman Catholic churches therein named, in the city of Brooklyn, city of New York, and village of Monticello, in Sullivan County, N. Y., and $25 each to the pastors of certain other Roman Catholic churches therein named, in the city of Brooklyn. The testatrix directed these payments to be made for masses to be said in each of said churches for the repose of her own soul, and the souls of her mother, brother, and aunt. Testatrix died within two months after making the will, leaving a father. The bequest was sustained on the ground that the sums payable to the pastors of the specified churches were not bequests to corporations but were "simply legacies to the several persons who, when the will took effect, should be exercising the pastor's functions in the several designated churches." Vanderveer v McKane, 11 N. Y. Supp. 808.

Testator bequeathed a fund to the pastor or his successor, to be used in saying masses for the repose of the soul of the testator, his present wife, and a deceased wife. This was held to be a charitable gift, and the testator having died within thirty days after the execution of the will, the gift was held void, under the Pennsylvania statute of 1855. O'Donnell's Estate, 209 Pa. 63.

Testator bequeathed a fund to a church to be used in say-

ing masses for the repose of his soul, but the bequest was held void for the reason that under the Pennsylvania statute a bequest for religious uses was invalid unless the will was made at least one month before testator's death, it appearing that the will was made within that time. Rhymer's Appeal, 93 Pa. St. 142.

Transfer Tax. A bequest to a pastor and to his successors, to be used in saying low masses for the repose of the soul of the testatrix and others, was held subject to taxation under the transfer tax act. Matter of McAvoy, 112 App. Div. (N. Y.) 377.

A bequest to a Roman Catholic priest, to be applied to masses to be celebrated publicly in a specified Roman Catholic church in Ireland for the repose of the testator's soul and the soul of his wife, is a valid charitable bequest, and exempt from legacy duty under the 38th section of 5 & 6 Vict. c. 82. Attorney-General v Hall, 2 Irish Re. 291 (1896).

See additional cases on this subject cited in the note to Festorazzi v St. Joseph's Roman Catholic Church (104 Ala. 327) in 25 L. R. A. 360, and also in a note to Hadley v Forsee, (203 Mo. 418) in 16 L. R. A. (N. S.) 96.

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Historical Sketch. The Presbyterian Church in the United States, unlike the mother church in Scotland, has not at any time been connected with the civil government; and in this and some other particulars it differed from the mother church in the principles and arrangement of its government before the adoption of its constitution in 1788. At that time the Synod of New York and Philadelphia was the highest tribunal in the church. It adopted the constitution, and by it the General Assembly was created and established as the highest judicatory of the church.

The constitution defines and prescribes the powers of a gradation of courts or bodies, in which the spiritual government of the church is vested, consisting of—

First. The session, composed of the pastor or pastors and ruling elders of a particular congregation.

Second. A presbytery, consisting of all the ministers and one ruling elder from each congregation within a certain district.

Third. A synod, composed in like manner as a presbytery of ministers and elders within a larger district, including at least three presbyteries.

Fourth. The General Assembly, consisting of delegations from the various presbyteries.

It is not controverted that each of these bodies above the session may, in the exercise of an appellate or revisory jurisdiction, review and affirm or reverse the judgments of the one next below it, and that, by a series of appeals, the decisions of a session may ultimately be carried before the General Assembly. Watson v Avery, 2 Bush. (Ky.) 332.

Description. The Presbyterians have a distinct directory of church government and discipline set forth in the same volume with their confession of faith, but separate and distinct from it. They usually worship by themselves, and form a distinct society from the other sects. The Presbyterians are as old as the Reformation. With the Lutherans they separated from the Church of Rome, but they soon separated from each other. The Lutherans established the Episcopal form of church government. The disciples of Calvin established the Presbyterian, and it has existed ever since on the continent. It was afterward established in Scotland, and carried by the Scotch who immigrated in great numbers to Ireland, and planted there. It was brought both from Scotland and Ireland to this country, and churches have been formed here on the model of the church of Scotland, and professing to be governed by the same directory. Each society or parish has its session; a number of parishes form a presbytery; and larger divisions a synod; and the whole are united under a General Assembly. Churches, or societies, are not independent of each other, but connected and dependent. Muzzy v Wilkins, Smith's N. H. Rep. 1.

Government, Form of. The government of the Presbyterian Church is republican in form, and the elders are simply the representatives of the people, to be chosen by them in the mode most approved, and in use in that congregation. Every Presbyterian church is a law unto itself in the election of elders and deacons, limited only to the qualification of the

persons elected, who must be male members in full communion. Dayton v Carter, 206 Pa. St. 491.

Association with Congregational Churches. In 1801 the General Assembly adopted what was known as a Plan of Union for New Settlements. The avowed object of it was to prevent alienation; in other words, the affiliation of Presbyterians in other churches by suffering those who were yet too few and too poor for the maintenance of a minister, temporarily to call to their assistance the members of a sect who differed from them in principles, not of faith, but of ecclesiastical government. To that end, Presbyterian ministers were suffered to preach to Congregational churches, while Presbyterian churches were suffered to settle Congregational ministers; and mixed congregations were allowed to settle a Presbyterian or a Congregational minister at their election, but under a plan of government and discipline adapted to the circumstances. It was obviously a missionary arrangement from the first, and they who built up presbyteries and synods on the basis of it had no reason to expect that their structures would survive it, or that Congregationalists might, by force of it, gain a foothold in the Presbyterian Church despite of Presbyterial discipline. They embraced it with all its defeasible properties plainly put before them; and the power which constituted it might fairly repeal it, and dissolve the bodies that had grown out of it, whenever the good of the church should seem to require it. The General Assembly manifestly designed that local societies so made up in part of Presbyterians and Congregationalists should belong to some presbytery as an integrant part of it. And a delegate from such local church to the Presbytery was given the same right to sit and act in the presbytery as if he had been a ruling elder in the Presbyterian Church. Commonwealth v Green, 4 Whart. (Pa.) 531.

Center College, Danville, Kentucky. The trustees of the college made a contract with the Kentucky Synod providing that whenever the synod should pay or cause to be paid to the

college trustees the sum of $20,000 such synod should have the right to elect the entire board of trustees of the college, thereby placing the college under the supervision of the Presbyterian Church. In consequence of differences growing out of the Civil War, the Kentucky Synod was divided in 1866, each body claiming to be the true synod, and each claiming the right to elect the college trustees. The General Assembly which met at Cincinnati in 1867 declared that the synod which elected the appellants trustees was not the lawful Synod of Kentucky, but that the other synod into which the original synod had been divided was the true synod. Therefore the appellants were not the lawful trustees of the college, and could not exercise any control over its affairs. Kinkead v McKee, 9 Bush. (Ky.) 535.

Congregation, Authority. The authority and controlling power of the congregation recognized in the book of government are exemplified in the practice of these societies. The congregation directs the trustees. The former act as the substantial beneficial owners, the latter as the legal instruments to execute their will. Worrell v First Presby. Ch. 23 N. J. Eq. 96.

Consolidation. It was held in Stokes v Phelps Mission, 47 Hun (N. Y.) 570, that a consolidation could not be had by the Eighty-fourth St. Presbyterian Ch. and the Phelps Mission for the reason that the statute (L. 1876, Ch. 176) so far as it relates to consolidation, only authorizes the consolidation of two or more religious societies or corporations belonging to the same church or denomination. The Phelps Mission was undenominational.

Division of Society, Apportionment of Property. The society was organized in 1833. In 1838, on the separation of the Presbyterian Church into the New School and Old School, the local society attached itself to the Old School and continued in this relation until 1865, when it attached itself to the New School. A discontented minority, which preferred the Old School, thereupon elected trustees and began proceedings to obtain possession of the church property. It

was held that by the changes in the relations of the local society there was no abandonment of doctrine or faith which the church was originally founded to support. The change of relations of the local society was not a perversion of church property and the teaching of new doctrines.

The property of the church was acquired partly under the New School organization and partly under the Old School. The court directed a division of the property among the two parties according to the number in each at the time of the separation. Niccolls v Rugg, 47 Ill. 47.

Division, Powers of Presbytery. This society, composed of about 800 members, was incorporated under the laws of California. It owned real property which was sold for about $50,000. It was intended to use this fund for the purchase of a site and the erection of a house of worship, but there were differences of opinion as to the best location, a small majority preferring one place and a large minority another. The trustees representing the majority bought a piece of property, whereupon the minority petitioned the presbytery for a division of the society, and also an apportionment of the fund arising from the sale of the other property. After hearing all the parties the presbytery divided the society into two societies, one to be composed of the petitioners and others who might join them, to be known as the Central Presbyterian Church, and the other to be composed of the remaining members of the original society, and to be known as the Westminster Presbyterian Church. The latter society was to retain the records of the first church. The presbytery also created a commission to apportion the foregoing fund between the new societies, and the fund was apportioned according to membership. The Central Church accepted the action of the presbytery and became fully organized as a Presbyterian church. The Westminster society rejected the action of the presbytery, and the first church refused to divide the fund with the new Central Church. An action was thereupon commenced on behalf of the Central Church against the first church to recover a portion

of the fund derived from the sale of the original property. It was held that the first church was under the jurisdiction of the presbytery, which had the power to deal with this society in all matters ecclesiastical, and it was under the absolute dominion and control of the presbytery, and the decisions and decrees of the presbytery were binding upon the local society; that the presbytery had power to dissolve the society, and that the decree of dissolution was effective, and binding on all judicial tribunals. It was further held that the members of the Central Church organized on the basis of the decree of dissolution of the first church, were beneficiaries of the trust fund, and that their interest continued after the organization of the new society; that the two branches into which the first church was divided became its legal successors, and that the trust fund should be divided according to the numerical strength of each of the new societies. Wheelock v First Presbyterian Ch., 119 Cal. 477.

Excommunication by General Assembly. Protesting against the deliverances by the General Assembly during the Civil War on the subject of slavery and loyalty, a large minority of the church in different States issued a paper called the "Declaration and Testimony." Displeased by this paper, the General Assembly rendered an ex parte decree without a form of trial, declaring in effect that the accused ministers should not be allowed to sit in any church judicatory higher than the session, and that if they, or any of them, should be enrolled as entitled to a seat by any presbytery, such presbytery should, ipso facto, be dissolved, and the members adhering to the General Assembly were thereby authorized and directed to take charge of the Presbyterial records, to retain the name, and exercise all the authority and functions of the original presbytery until the next meeting of the General Assembly. In Watson v Garvin, 54 Mo. 353, it was held that the foregoing decree cut off persons included therein from the higher judicatories of the church, but did not excommunicate them, nor in any manner touch them as individual members of the church or congregation.

Free Portuguese Church. In 1851 several persons residing in the Island of Madeira, constituted a religious body known as the Free Portuguese Church, under the jurisdiction of the Free Presbyterian Church of Scotland. Such persons, or at least a part of them, in 1851, received the proper certificate of dismissal from the Free Church Presbytery of Glasgow and came to this country. Their letter of dismissal required that they should unite with and come under the jurisdiction of the Presbyterian Church of the United States. They went to Jacksonville, Illinois, and there assumed to be a religious body under the name of the Free Portuguese Church, and determined to erect a suitable building in which to worship. Not being incorporated, the deed of land was taken in the name of individual members of the church as trustees. The proposed church building was erected by contributions from members and others, chiefly, it appears, from members of the Old School Presbyterian Church in other States, for the purpose of building a church of the Old School Presbyterian order.

In 1856 the Glasgow letter of dismissal was presented to the Sangamon Presbytery, and they were received into the presbytery. In 1858 a schism arose, resulting from the question whether baptism administered to some of the members by the Roman Catholic Church in Madeira was sufficient, or whether there should be an additional baptism according to the Presbyterian practice. The Sangamon Presbytery, to whom the question was submitted, decided against the validity of the Roman Catholic baptism, but considered rebaptism unimportant and unnecessary. A party, led by the pastor who was opposed to rebaptism, held a meeting, and by a narrow majority voted to withdraw from the Sangamon Presbytery, and thereupon organized a new congregation, taking possession of the church property.

The minority adhered to the presbytery, and procured the selection of another pastor. The minority commenced a proceeding against the majority to recover possession of the church property. It was held that whatever may be the

ecclesiastical right of a church, or a portion of a church to sever its connection with the particular presbytery, with or without its consent, it does not follow that the majority in so acting, become entitled to the property of the church to the exclusion of the minority. Their rights still remain, and should be adjusted on the principles of equity. Neither adhering to the presbytery, nor withdrawing from it, is an illegal act, and therefore did not affect the right to the property. The court directed that the church property be sold, and the proceeds divided between the two factions, according to their respective numbers. Ferraria v Vasconcelles, 23 Ill. 456, 31 Ill. 1.

Foreign Missionary Society. The Presbyterian General Assembly was incorporated in Pennsylvania in 1779, and by its charter it was authorized to take by devise. The incorporating act transferred to the corporation all the property and funds of the General Assembly of the Presbyterian Church, a body which, by the constitution of that church, was required to meet and did meet annually. The General Assembly in 1837 established the Board of Foreign Missions, charged with the foreign missionary operations of the church. This was held to be the only Presbyterian foreign missionary society in the United States at the time of making this will and at the death of the testator. This board was the creature of the General Assembly, and might have been dissolved at any time. A devise to the board was invalid because of lack of capacity to take, and a devise to the board could not be treated as a devise to the General Assembly. A devise to the Presbyterian Foreign Missionary Society was therefore held void. Chittenden v Chittenden, 1 Am. L. Reg. (N. Y.) 538.

General Assembly, Southern. Testator bequeathed the residue of his estate "to the trustees of the General Assembly of the Presbyterian Church in the United States, commonly known as the Southern Presbyterian Church, the same, as he was advised, being a body corporate." It appeared that at the outbreak of the Civil War in 1861 the

Presbyterian Church in the United States was divided, the Southern Presbyterian synods meeting to form a Southern General Assembly confined to the Confederate States. In February, 1886, a corporation was organized in North Carolina known as the trustees of the General Assembly of the Presbyterian Church in the United States. This society was held to be the one intended by the testator in his will. It was, therefore, entitled to take the legacy. Guthrie v Guthrie, 10 S. E. (Sup. Ct. App. Va.) 327.

General Assembly, Described, Old School. This is the highest ecclesiastical tribunal in the Presbyterian Church, and all organizations and members of the church act in subordination to it. It possesses the unlimited control of superintending the concerns of the whole church, and of suppressing schismatical contentions and disputations. It combines within itself all the branches which constitute the elements of a complete government, namely, executive, legislative, and judicial. Superintending the concerns of the church and suppressing schism are certainly not judicial acts. The General Assembly is the highest court or judicatory known to the Presbyterian Church; it possesses extensive original and appellate jurisdiction, and no civil court can revise, modify, or impair its action in a matter of purely ecclesiastical concern. But in addition to this it has legislative and executive capacity, and acts upon all subjects coming before it, according as they belong to either or each of those departments. It seems that, in conformity with the theory and doctrines of the church, it is the source and fountain of power, and that its authority is neither delegated by nor derived from any human body. State of Missouri ex rel Watson v Farris et al 45 Mo. 183.

General Assembly, Division, Effect on Legacy. The division of the Presbyterian Church in May, 1838, into Old School and New School and the organization of a separate General Assembly of each division did not affect the status of the legacy included in a will made in November, 1837, before the division, but the branch which was continued as a suc-

cessor of the former single General Assembly was held to be the General Assembly intended by the testator, who provided in a contingency that the legacy should go to the trustees of the General Assembly. The New School General Assembly could not legitimately claim the legacy. Trustees v Sturgeon, 9 Pa. St. 321.

General Assembly Organized. Antecedently to the memorable year of 1788 the Presbyterian churches in the United States, like their parental Church of Scotland, ruled by sessions, presbyteries, and synods, acknowledged a connection between church and state; but in that year, nearly simultaneously with the adoption of the federal constitution, those American churches confederated under a national head called the General Assembly, then organized by an amended constitution for representing all the subordinate councils and for acting as the ultimate council for revision and advice in the ecclesiastical affairs of the aggregated church; and that modified constitution, coevally and concurrently with the political constitution of the United States, denounced all connection between the ecclesiastical and political governments. Gartin v Penick, 5 Bush. (Ky.) 110.

General Assembly, Status. This is not a quasi corporation. Such a corporation has capacity to sue and be sued as an artificial person, which the Assembly is not. It is also established by law, which the Assembly is not. Neither is the Assembly a particular order or rank in the corporation (the Trustees of the General Assembly of the Presbyterian Church), though the latter was created for its convenience. It is a consecrated association, which, though it is the reproductive organ of corporate succession, is not itself a member of the body; and in that respect is anomalous. Commonwealth v Green, 4 Whart. (Pa.) 531.

General Assembly, When Decisions Binding on Church. The powers of this body are not divided but limited by the constitution. If it be true that the inferior courts and people of the church are bound to accept as final and conclusive

the Assembly's own construction of its powers, and submit to its edicts as obligatory, without inquiring whether they transcend the barriers of the constitution or not, the will of the Assembly, and not the constitution, becomes the fundamental law of the church.

But the constitution having been adopted as the supreme law of the church, must be supreme alike over the Assembly and people. If it is not, and only binding on the latter, the supreme judicatory is at once a government of despotic and unlimited powers.

But we hold that the Assembly, like other courts, is limited in its authority by the law under which it acts; and when rights of property, which are secured to congregations and individuals by the organic law of the church, are violated by unconstitutional acts of the higher courts, the parties thus aggrieved are entitled to relief in the civil courts, as in ordinary cases of injury resulting from the violation of a contract, or the fundamental law of a voluntary association. Watson v Avery, 2 Bush (Ky.) 332.

Illinois Orphans' Home. Where a will created a trust for the purpose of erecting and maintaining an orphans' home "for the friendless poor of all denominations," and provides that the Home shall be controlled "by the Presbyterian Churches of Central Illinois," the ruling bodies of these churches in the presbyteries shown to be situated near the center of the State have power to control the Home, and to select from the friendless poor of all denominations those who shall enjoy the testator's bounty. The trust was sufficiently definite, and was capable of execution. Kemmerer v Kemmerer, 233 Ill. 327.

Independent Church Not Possible. Because unity of action, and the means of perpetuating itself, are essential features of the Presbyterian Church; and that the first of these features is preserved in that portion of its organization which combines the whole church into one body, and the other is provided for in the succession of the ministers, which the presbytery alone are authorized to ordain; that the first of

these is an important element, but the last is so essential that without it no Presbyterian church can be said to exist.

That all ecclesiastical authorities upon Presbyterian Church government concur in declaring that several churches must unite to form a presbytery, and that, therefore an Independent Presbyterian church is an anomaly which cannot consist with the Presbyterian system. Wilson v Pres. Ch. of John's Island, 2 Rich. Eq. (S. C.) 192.

Joint Ownership. Land was given to this society and also to the German Reformed Congregation on an agreement that they were to erect and use jointly a house of worship and establish a burying ground. The house was erected and used many years. The agreement was by parol, and there was no conveyance of the land. The transaction was held to be valid, and the donors were declared to be trustees of the land, holding it in trust for the religious purposes to which it had been dedicated by the two congregations. Beaver v Filson, 8 Pa. St. 327.

Local Society, Status. In the Presbyterian system a local church is but a member of a larger and more important religious organization, and is under its government and control. The session or local church is controlled by the presbytery, the presbytery by the synod, and the synod by the General Assembly. The general church is controlled and governed by a body of constitutional and ecclesiastical laws, and exercises legislative and judicial power. Questions of rule, usage, or custom affecting the local church, or the relation of its members to the organization, are subject to the judgment of these several bodies, called judicatories, in the order named, and the decision of the highest to which any question is carried is binding upon all. Gaff v Greer, 88 Ind. 122.

In the Presbyterian form of government a local congregation is but a member of the larger and more important religious organization, and is under its government and control, and is bound by its ordinances and judgments in purely spiritual matters. There are in this system of church organ-

ization three judicatories, or representative bodies—the session, presbytery and General Assembly. The purpose, powers, and jurisdiction of each are distinctly stated and promulgated in the printed books containing its history, articles of faith, and ordinances which constitute the body of ecclesiastical law which governs this denomination. The church session represents, and is chosen by and from the local society, but it has no authority to create and issue rules of discipline or establish usages and customs in religious matters; in this respect it is wholly subordinate to the presbytery, which body is vested with the functions "to resolve questions of doctrine and discipline," "to ordain, install, and remove and judge ministers" and, in general, "to order whatever pertains to the spiritual welfare of the churches under their care." Isham v Fullager, 14 Abb. N. C. (N. Y.) 363.

Mercer Home for Disabled Clergymen of the Presbyterian Faith. Testatrix gave land and money for the purpose of establishing a home for disabled clergymen of the Presbyterian faith, and in the devise of the land prohibited the sale, disposition, or encumbrance of any part of the land, and the application of it to any other use or purpose than that specified in the will. It was held that this did not prevent the court from granting an order on the application of the trustees of the Home, permitting a sale of a small portion of the land, the proceeds to be used for the general purposes of the devise. Such a disposition of the land was not deemed a violation of the restriction contained in the devise. The sovereign, the State, acting through its courts, had visitorial supervision of the devise and its general purpose, and might exercise its discretion to permit a change of the character of the property where this would not be an actual diversion of it to an outside purpose. Re Mercer Home for Disabled Clergymen of the Presbyterian Faith, 162 Pa. St. 232.

Minister, Character of Office. The ministerial office is made the first in dignity, importance, usefulness in the convic-

tions of this body of Christians. By their faith, doctrine, and ordinances only duly ordained ministers can of right administer the sacraments and perform other functions and duties which concern the spiritual welfare of those who are members of the church proper. Isham v Fullager, 14 Abb. N. C. (N. Y.) 363.

Minister, How Called. According to the usage and form of government of the Presbyterian Church, the call is made by the congregation duly convened, and the amount of compensation or salary is fixed by it, and inserted in the call. But the pastoral relation can only be established with the consent and under the authority and direction, of the presbytery having jurisdiction. The call made by the congregation is submitted to the presbytery, and, if approved by that body and accepted by the candidate, the pastoral relation is then formally constituted by installation by or under the direction of the presbytery. West v First Presby. Ch. of St. Paul, 41 Minn. 94.

In First Presbyterian Church, Perry v Myers, 5 Okl. 809, it was held that, according to the usage and form of government of the Presbyterian Church, a call made out by the congregation duly convened, in which the amount of salary is fixed and inserted in the call, does not become effective under the rules and regulations of that church until such call is placed in the hands of the minister to whom it is addressed, and is deemed equivalent to a request of the congregation and of the pastor elected for installation as pastor, but the pastoral relation can only be formally consummated with the formal sanction of the presbytery, and the refusal of the presbytery to place the call in the hands of the minister, or to install him, puts an end to the civil contract.

The rules and regulations of the Presbyterian Church require that a "call" should be made out by a regularly called meeting of the congregation, and when thus made out it should be presented to the presbytery under whose care the person called shall be, and if the presbytery think it expedient to present the call to him, it may accordingly pre-

sent it, and no minister or candidate shall receive a call but through the hands of the presbytery. A call not delivered to the pastor is not binding on the church.

The mode of obtaining a pastor is pointed out in the 15th chapter of the form of government. If the church is satisfied with the ministration of any licentiate, they present him with a call, in which they promise him, among other things, "all proper support, encouragement, and obedience in the Lord." This, if he consent to accept, is presented to the presbytery to which he belongs, and is regarded there as a petition from the congregation that he should be installed their pastor; and it is expressly declared that no candidate or minister shall receive a call but through the hands of the presbytery; and if the presbytery approve it, his installation follows upon his professing, among other things, his approbation of the form of government and discipline of the Presbyterian Church, and promising to subject himself to his brethren in the Lord, and the organization of the church is complete. Wilson v Pres. Ch. of John's Island, 2 Rich. Eq. (S. C.) 192.

In Presbyterian societies the pastoral relation is established and discontinued not by the trustees or by the church but by the congregation and the pastor, under the sanction of the presbytery. The call proceeds from the congregation, contains the agreement to pay the salary, and is subscribed by their elders and deacons, or by their trustees, or by a select committee, as the congregation shall appoint. It is presented to the minister only through the presbytery, and will not be effectuated without its approval. Worrell v First Pres. Ch., 23 N. J. Eq. 96.

Minister, Presbytery's Power of Appointment. The pastor of the church having died, the session appointed a successor for six months. Before the expiration of that time the presbytery, with which the local society was connected, removed the pastor so appointed, and another temporary pastor was appointed. A few days later the congregation held a regular meeting and voted to direct the session to employ for one

year the first temporary pastor selected by it. The minister so appointed took possession of the parsonage and occupied the pulpit about six months, when the presbytery again assumed control and assumed the right to fill the pulpit. The presbytery further assumed to discipline the members of the session, and suspended all of them except one. The congregation protested against the action of the presbytery, and voted to allow the first temporary minister to occupy the parsonage for a specified time without charge, and to pay his salary.

It was held that the presbytery had no jurisdiction to assume control of the temporal affairs of the local society; that the trustees were bound to obey the order of the congregation relative to the occupancy of the parsonage, and that the minister who was placed in possession of the parsonage by direction of the congregation was entitled to retain it during the contract period. Only members of the congregation could maintain an action against the trustees. Everett v First Presbyterian Church, 53 N. J. Eq. 500.

Missionary House of Rest. Testatrix made provision in her will for the erection of a building to be used as a temporary resting place for missionary workers to be called "The House of Rest." The property was to be transferred by the executors to the Women's Occidental Board of Missions, with the executive committee of the Women's Presbyterian Mission Society of the Los Angeles Presbytery as trustees and managers thereof. The gift was sustained to the extent of one third of the estate, that being the amount available for charitable purposes as limited by the statute. Re Peabody's Estate, 154 Cal. 173.

Missions. Testator, after various bequests and devises to Presbyterian institutions for aiding the Presbyterian Church, provided that the residue should be divided equally between the Board of Foreign and the Board of Home Missions, but did not specifically designate such boards as Presbyterian. It was held that the testator evidently intended to make these boards in the Presbyterian Church the ob-

jects of his bounty, and they were held entitled to the legacy. Gilmer v Stone, 120 U. S. 586.

A bequest in aid of missionaries in India, to be expended under the direction of the General Assembly's Board of Missions of the Presbyterian Church, was held void for uncertainty. The beneficiaries were not named and could not be clearly ascertained. Board of Foreign Missions of the Presbyterian Church v McMaster, Fed. Cases No. 1586 (Cir. Ct. Md.).

Testator bequeathed the residue of his estate to home missions, foreign missions, and the American Bible Society. The missionary bequests were held to have been intended for the Home and Foreign Missions of the Southern Presbyterian Church, excepting a specified sum which was to be invested, and the interest paid on the salary of the pastor of the Southern Presbyterian Church at Centerville, West Virginia. All the bequests were held void for uncertainty. Pack v Shanklin, 43 W. Va. 304.

Testator bequeathed a fund to the Board of Trustees of the Reformed Presbyterian Church of Allegheny, Pennsylvania; to the Board of Trustees of the United Presbyterian Church of Pittsburgh, Pennsylvania, and to the Board of Trustees of the First Presbyterian Church of Stockton, California, to be divided equally between them, share and share alike, and to be used for missionary purposes, the same to be equally divided between foreign and domestic missions.

The bequests were sustained, subject to the limitations as to amount contained in section 1313 of the Civil Code of California, which restricted bequests to charitable institutions in excess of one third of the estate. Re Hewitt's Estate, 94 Cal. 376.

Old and New School; Division of 1838. In 1838 occurred the well-known schism, by which the Presbyterian Church was divided into two schools, commonly known by the names of the Old and New Schools. This was effected by the secession of a minority from the General Assembly of the United States. The majority which remained, known as the Old

School, was declared by the judicial authorities of Pennsylvania to be the true corporate General Assembly, which had been before created by the Legislature of Pennsylvania. This last Assembly is designated as that which met in the seventh Presbyterian Church of Philadelphia, and of which Mr. Plumer was moderator. Wilson v Presbyterian Church, John's Island, 2 Rich. Eq. (S. C.) 192.

Old School Assembly, Claims Bequest. Testator, who died in 1863, bequeathed several portions of his residuary estate to the General Assembly of the Presbyterian Church in the Confederate States of America, or General Assembly of the Presbyterian Church, South, explaining that he meant by such General Assembly "the Old School Presbyterian Church in the South," and "should any part thereof reunite with the Northern church, I mean the part which shall remain as a separate body in the South." The bequests were claimed by the General Assembly of the Presbyterian Church in the United States, which was incorporated by the Legislature of Tennessee in 1862. This corporation was held entitled to the foregoing bequests. Frierson v General Assembly of Presbyterian Church, 7 Heisk. (Tenn.) 683.

Old School, General Assembly, Political Deliverances. From the commencement of the late war of rebellion, and during its prevalence, the General Assembly (Old School) at its annual meetings made deliverances on the subject of slavery and loyalty, declaring the obligations of the church in this regard. A large minority of the church in different States considered these deliverances of the General Assembly unconstitutional; that is to say, that the church, as a church, according to its written Confession of Faith and Form of Government, had no authority to make deliverances on purely political and civil matters. This minority protested against these deliverances, and issued a paper called the "Declaration and Testimony," inveighing against the conduct of the majority. This paper gave great offense to the majority, and they took steps for punishing the offenders, which resulted in an ex parte decree rendered by the Gen-

eral Assembly, without the form of trial, declaring in effect that the accused ministers should not be allowed to sit in any church judicatory higher than the session, and that if they, or any of them, should be enrolled as entitled to a seat by any presbytery, such presbytery should, ipso facto, be dissolved, and the members adhering to the General Assembly were thereby authorized and directed to take charge of the presbyterial records, to retain the same, and exercise all the authority and functions of the original presbytery until the next meeting of the General Assembly. U. S. v Church, 8 Utah 310.

Organization. The Presbyterian Church is a congregational body. Its powers are vested in its membership, and may be executed through its delegated authority: The selection of a pastor is primarily in the congregation, but must be approved by the presbytery and accepted by the minister selected; and its trustees are not vested with any power ex officio to employ ministers or to contract as to salaries. This power may be exercised by them only when authorized by direct vote of the congregation, composed of those who are authorized by the laws of the church to participate in such meetings. Myers v First Presbyterian Church, Perry, 5 Okl. 809.

Organization and Form of Government. The Presbyterian Church consists of all those persons in every nation, together with their children, who make profession of the holy religion of Christ, and of submission to his laws. "A particular church consists of a number of professing Christians, with their offspring, voluntarily associated together for divine worship or godly living, agreeably to the Holy Scriptures, and submitting to a certain form of government." Ruling elders are representatives of the people, chosen by them for the purpose of exercising government and discipline in conjunction with the pastors or ministers. The pastor and ruling elders compose what is called the church session. This session is charged with maintaining the spiritual government of the congregation, for which they have the power to

inquire into the knowledge and Christian conduct of the members, to call before them offenders, to receive members into the church, to admonish, to rebuke, to suspend or exclude from the sacraments those who are found to deserve censure. The pastors and the elders, the latter representing the congregation, are the official governing body of the particular church in the administration of its affairs. Deaderick v Lampson, 11 Heisk. (Tenn.) 523.

Pastor, Terminating Relation. After some twenty-six years of service as pastor negotiations were initiated to terminate the pastoral relation resulting in an agreement between a committee of the presbytery and the committee of the elders and trustees, which was ratified by the congregation, by which agreement the pastor was to resign and receive a credit of $2,000 on a bond and mortgage given by him to the society growing out of a purchase by him of the parsonage property. An action was commenced in the name of the society to recover the amount due on the bond and mortgage, ignoring the alleged credit, whereupon the pastor instituted a proceeding to restrain a society from collecting the bond and mortgage, for a judgment establishing the credit of $2,000, and for the cancellation of the bond and mortgage. The validity of the contract was sustained and the minister was held entitled to the relief sought by him. Worrell v First Presby. Ch., 23 N. J. Eq. 96.

Pennsylvania, English Congregation. Land was conveyed by John Penn, Jr., and John Penn (1785) to certain persons for and on behalf of a religious society known as the English Presbyterian Congregation in trust for a site for a house of worship and a burial place, for the use of such society, to be under the control, management, and regulation of such society and its successors, and not for any other use or purpose. The society was incorporated in 1813. A division having occurred in the society about 1838, a minority brought an action to oust the majority from the management and control of the property. It was held that when the General Assembly of the Presbyterian Church in the

United States was divided the persons composing the majority of this congregation did not forfeit their interests in the trust by refusing to acknowledge the authority of either of the conflicting judicatories. It was held that no particular Presbyterian connection was prescribed by the founders, or established by the charter of the society; and that if such connection had been prescribed, there has been no adhesion by a connection essentially different, and that the breaking up of the original Presbyterian confederation has released this congregation from the duty of adhering to any particular part of it in exclusion of another. Therefore, when the General Assembly of the Presbyterian Church in the United States was divided into two distinct fragments, each declaring itself to be the true General Assembly, the persons composing the majority of this congregation did not forfeit their interest in the trust by refusing to acknowledge the authority of either of the conflicting judicatories. Presbyterian Cong. v Johnston, 1 Watts. & S. (Pa.) 9.

Political Deliverances, No Effect on Local Property. The society (at St. Charles, Mo.) was organized in 1818, and afterward acquired property which was to be used for religious purposes in connection with the Presbyterian Church. The local society, after the division of the Presbyterian Church in 1838 into Old School and New School, remained connected with the Old School Assembly. The society was connected with the St. Louis Presbytery. The General Assembly sought to dissolve that presbytery on account of its adhesion to the protest made by the minority of the general church against the political deliverances of the General Assembly during the Civil War. This suit involved local property, the plaintiffs claiming such only because of the position assumed by the defendants in connection with such protest, which it was claimed had resulted in their excommunication. The court held that the action of the General Assembly had no effect on the status of the local property nor of the congregation, and consequently that the defendants could not be excluded from the possession and control

of the local church property. Watson v Garvin, 54 Mo. 353.

Presbytery, Membership. A Presbyterian congregation does not select its delegates to the highest courts of the church pro re nata. The pastor is not strictly the representative of his church, except in so far as he may judge it proper so to act, for he is not a presbyter by virtue of his office as pastor of a particular charge, but by virtue of his ordination to the gospel ministry; he is as much entitled to his seat in the presbytery without having a charge as when he has one.

So the lay representative, who must be an elder, is selected by the session. But as this session, an inferior church judicatory, is composed of elders elected for life or during good behavior, it follows that the congregation has no voice in the selection of such representative, and that he may or may not, according to circumstances, represent the sentiment of the church. Obviously, therefore, the congregation is powerless and passive in the hands of its church courts and cannot be justly charged with the acts of its delegates, in either the presbytery or synod, because in these bodies alone resides the power to call such representatives to an account for any unlawful or contumacious acts, which they may commit in their representative capacity. McAuley's Appeal, 77 Pa. 397.

Presbytery of New York, Powers. The trustees of the Presbytery of New York constitute an ecclesiastical governing body having control over the several Presbyterian churches in the County of New York. As such it assumed to dissolve the Westminster Prebysterian Church of West Twenty-third Street. Its decree of dissolution could extend no further than the ecclesiastical or spiritual side of the organization attempted to be dissolved, for the Religious Corporations Law confers no power upon such a governing body, or anybody else, to dissolve a religious corporation, considered as a legal entity, in the County of New York.

The law of the state of New York prescribing, as it has done ever since 1875, that the temporalities of a religious

corporation shall be administered in accordance with denominational usage, contemplates the coexistence of a church in the spiritual sense and a church in the legal sense, working together toward the same beneficent ends. When, however, the superior governing body having authority over the ecclesiastical organization decrees its dissolution, there still remains the legal entity; that is to say, the trustees of the corporation are left in charge of its property, but without any spiritual body to maintain services or carry on religious work therein. The church as a legal corporate entity remains; the church in a spiritual sense is dissolved and gone. Under such circumstances the trustees hold the property subject to denominational uses, notwithstanding the dissolution of the spiritual church. The presbytery cannot oust them from office by dissolving the spiritual church. It may, however, by virtue of its control in ecclesiastical matters, insist that the trustees continue to administer the property for denominational purposes, and if they fail to do so, undoubtedly it would have a standing in a court of equity to enforce action on the part of the trustees to that end. Westminster Church of W. 23rd St. v Presbytery of New York, 211 N. Y. 214.

Presbytery, Relation to Synod. No presbytery can be in connection with the General Assembly unless it be at the same time subordinate to a synod, also in connection with it; because an appeal from its judgment can reach the tribunal of the last resort only through that channel. It is immaterial that the presbyteries are the electors and the synod is a part of the machinery which is indispensable to the existence of every branch of the church. Commonwealth v Green, 4 Whart. (Pa.) 531.

Property, How Held and Managed. The custody and care of the property pertains to the trustees for the uses and purposes for which they hold the trust. Chief among these is the maintenance of public worship by the congregation, and in so far as that purpose is concerned the trustees must respect the wishes and action of the session as to the use and

occupation of the house of worship. The right of the session to control in any way the property of the congregation is only incidental to the right to the office of elder. Dayton v Carter, 206 Pa. St. 491.

Publication Committee. In 1873 the persons then composing the committee of publication were incorporated by the Legislature of Virginia under the name of "The Trustees of the Presbyterian Committee of Publication," with power to receive and use property not exceeding at any one time $200,000. This charter was approved by the Presbyterian General Assembly at its first meeting after the incorporation, and the committee was authorized to purchase a publishing house, which it did, and established a publishing business at Richmond, Virginia. The object of the committee was the publication and circulation of books, tracts, papers, cards, etc. Testator, a member of the Presbyterian Church, and who was interested in the work of the committee, by his will gave to the Presbyterian Committee of Publication at Richmond, Virginia, one half of the residue of his estate. It was held that the bequest was intended for the corporation known as the "Trustees of the Presbyterian Committee of Publication," that the corporation had the legal capacity to take and hold the bequest, and that the bequest was valid. Wilson v Perry, 29 W. Va. 169.

Ruling Elders, Election, Synod's Power Limited. The order of a synod directing the election by a congregation of additional ruling elders was contrary to the constitution of the church and not obligatory upon the session and congregation of the local church, and consequently persons claiming title to the office of ruling elder by virtue of an election under such void order of the synod did not thereby become ruling elders, and they were not constituted ruling elders by the declaration of the General Assembly. Watson v Avery, 2 Bush. (Ky.) 332.

Scotch Presbyterian Church. Property was conveyed to the society by a deed which provided, among other things, that the society should always be known as the Scotch Presby-

terian Church, that instrumental music should not be used in its service, and that if the property should be sold the proceeds were to be devoted to the same religious purposes, by the same organization and under like conditions. On the sale of the property the Presbytery of Jersey City assumed to direct the disposition of the proceeds, but instead of establishing a new church with the same restrictions the presbytery divided the proceeds between three other Presbyterian churches in Jersey City, in all of which instrumental music was used. In an action by the representatives of the original grantor of the land against the presbytery to prevent the consummation of its plan to divide the proceeds of the sale among certain churches, the court of chancery granted an injunction against the presbytery, but the judgment was reversed on appeal. MacKenzie v Trustees of Presbytery of Jersey City, 67 N. J. Eq. 652.

Scotland. "Before the Reformation the whole territory in Scotland was divided into parishes; and since the firm establishment of the Presbyterian Church as the established religion of Scotland a lot of land is set apart in each parish for a church edifice, and probably for a manse or parsonage house and other parish purposes, and this land is specially and inalienably appropriated by law to the support of public worship conformable to the faith, discipline, and practice of the Presbyterian Church." The Presbyterian Church of Scotland never did, as a hierarchy or ecclesiastical judicatory, take any jurisdiction of the Presbyterian churches in this country. The church in Scotland was divided into parishes, having its Kirk session, a number of parishes together forming a presbytery, several presbyteries forming a synod, and over the whole church is an Assembly formed by delegates from all the synods. Attorney-General v Proprietors of Meetinghouse in Federal Street, 3 Gray (Mass.) 1.

Secession of 1838. In 1801 a plan of Union for New Settlements was adopted, which is described in the foregoing note on Association with Congregational churches. The General Assembly of 1837 adopted a resolution abrogating this plan,

stating in the preamble that it was irregular and unconstitutional, and was not approved by the presbyteries. By operation of the abrogation of this Plan of Union the Synod of Western Reserve was declared to be no longer a part of the Presbyterian Church, and it was also declared that the Synods of Utica, Geneva, and Genesee, having been formed on the basis of the Plan of Union, were out of ecclesiastical connection with the Presbyterian Church, and were not in form or in act an integral part of the church. The resolutions of excision contained the qualification that it was not the intention of the General Assembly to affect in any way the ministerial standing of any member of either of said synods, nor to disturb the pastoral relation in any church, nor to interfere with the duties or relations of private Christians in their respective congregations. Local churches continuing to be strictly Presbyterian might, on application, be admitted to presbyteries conveniently situated, and in any of the exscinded synods presbyteries continuing to be strictly Presbyterian were directly to apply to the next General Assembly, which was authorized to make such disposition of their cases as the Assembly might determine.

Commissioners from the four exscinded synods presented themselves for membership in the General Assembly of 1838 and demanded to be enrolled by the clerks. This demand was refused. This Assembly met in the Seventh Presbyterian Church at Philadelphia in May, 1838. By a law of the church the moderator of the Assembly of 1837 was authorized to preside at the opening of the next succeeding Assembly and until a successor was chosen. The moderator of the Assembly of 1837 assumed the duties of that office at the opening of the Assembly in 1838. The clerks reported the names of commissioners holding regular commissions, and also reported the names of commissioners whose elections were claimed to be irregular on account of the relations of their synods as a result of the action of the Assembly of 1837.

The moderator announced that commissioners whose names had been enrolled would be considered members of the Assembly, and that other persons claiming seats should then present their commissions for examination. Commissioners representing the presbyteries connected with the exscinded synods then attempted to organize the General Assembly by the election of a temporary moderator, ignoring the moderator of 1837, who was then presiding in the new Assembly. The motion to elect another moderator was put by the member who made it, from his place, the regular moderator still retaining his seat, though not acting. The motion for the election of a temporary moderator was declared carried. Clerks were also elected, a motion for their election being put by the newly elected temporary moderator standing in the aisle. The persons sympathizing with this movement then elected a regular moderator. The body so assuming to be organized as a General Assembly then withdrew to the First Presbyterian Church and held sessions there. The General Assembly as organized by the moderator of 1837 continued its sessions in the Seventh Church.

The Assembly which adjourned to the First Church elected trustees under the act of Pennsylvania of 1799, incorporating the trustees of the Presbyterian Church. The trustees there elected procured a writ of quo warranto against the trustees holding office under an election by former regular General Assemblies.

In Commonwealth v Green, 4 Whart. (Pa.) 531, it was held that the General Assembly which met in the First Presbyterian Church was not the legitimate successor of the General Assembly of 1837, and therefore that the trustees in office under former elections at the time the First Church Assembly was organized were not usurpers, as charged in the writ.

Secession, Effect on Pastoral Relation. The pastor, owing to some differences in the congregation, was requested to resign by the presbytery having jurisdiction, but at the sug-

gestion of the presbytery he continued to serve the church a few months longer as a supply. Thereupon he was elected as a stated supply for two years. The question having arisen as to the legality of the vote by which the pastor was employed, the matter was submitted to the presbytery, which held that some persons having been denied the right to vote at this election, the election was invalid, and the presbytery expressed the opinion that the further employment of the pastor was unwise and recommended that another pastor be chosen.

The party supporting the pastor filed a protest with the presbytery and declared its intention to withdraw from its connection with that body. The presbytery thereupon declared that the pastor's party had seceded, and that the remaining members of the church constituted the local society and were entitled to administer its affairs. Subsequently the pastor's party held meetings, elected trustees, and reemployed the pastor. But it was held that this action was irregular and illegal, for the reason that this party had withdrawn and seceded from the organization and could not thereafter exercise powers of control over the property. This action of the presbytery is binding on the civil courts. Gaff v Greer, 88 Ind. 122.

The minority, consisting of a part of the ruling elders, the minister, and others, seceded from the church. They were held not entitled to any part of the church property. By seceding they could not take with them any part of the property which belonged to the corporation or church. The situation was not changed by the fact that the seceders were numerically a majority of the corporation, nor that they remain in possession. Having separated themselves from the ecclesiastical body of the church, formed a new presbytery for themselves, the complainants, who were adhering members, by operation of law, became the corporators, and as such were entitled to the possession. Skilton v Webster, Brightly N. P. (Pa.) 203.

Session. The session is the governing body in the local

society and is composed of the ruling elders and pastor, and in all business of the session the majority of its members govern, the number of elders for each congregation being variable. The possession of the elders, though accompanied with larger and more efficient powers of control than that of the trustees, is still a fiduciary possession. It is as a session of the church alone that they could exercise power. Except by an order of the session in regular meeting they have no right to make any order concerning the use of the building; and any action of the session is necessarily in the character of representatives of the church body by whose members it was elected. Watson v Jones, 13 Wall. (U. S.) 679.

The church session is the governing body of a particular congregation or church, and is composed of the pastor or pastors and the ruling elders, and is charged with maintaining the spiritual government of the congregations. First Presbyterian Church, Louisville v Wilson, 14 Bush. (Ky.) 252.

Session, Powers. The session is not a corporation, and has no standing as a body in any civil court. It cannot maintain an action in a civil court, nor can its component members maintain such an action. The session as a body is chosen by and represents only the communicants of the church, and not the whole congregation. Its jurisdiction is wholly spiritual. As the trustees are a committee of the whole congregation, whose duty it is to manage their temporal affairs, so the session is a committee of the communicants to manage their spiritual affairs. As a judicatory it is its duty to attend to the spiritual needs of the church during the vacancy of the pastorate and to decide upon the qualifications of any pastor who is called temporarily to officiate in public worship. It also has the right to determine upon the character and quality of all services held in the church, as to whether they are, or are not, religious and spiritual according to the tenets of the Presbyterian Church. The session has no power to enforce any of its judgments

except by spiritual discipline. The trustees have no right to close the church edifice against the spiritual authorities of the society unless authorized thereto by the express direction of the congregation. On the other hand, the spiritual authorities have no right to open the church and use it for religious services at the expense of the congregation without their consent. Where there is a dispute between the session and the congregation the former must yield, for the congregation is the superior body. Everett v First Presbyterian Church, 53 N. J. Eq. 500.

Slavery Agitation. The General Assembly of the Presbyterian Church, while often counseling Presbyterians against patronizing slavery, had never advised a rule against it, nor made opposition to it a test of religion, until the civil conflict had become flagrant. In the year 1845 the following question was propounded to the General Assembly: "Do the Scriptures teach that the holding of slaves without regard to circumstances is a sin, the renunciation of which should be made a condition of membership in the Church of Christ?" and the Assembly answered that question in the following words: "It is impossible to answer the question in the affirmative without contradicting some of the plainest declarations of the Word of God. That slavery existed in the days of Christ and his apostles is an admitted fact; that they did not denounce the relation as sinful, as inconsistent with Christianity; that slaveholders were admitted as members in the churches organized by the apostles; that, whilst they were required to treat their slaves with kindness, and, if Christians, as brethren in the Lord, they were not commanded to emancipate them. The Assembly cannot, therefore, denounce the holding of slaves as a necessarily heinous and scandalous sin and calculated to bring on the Church of Christ the curse of God, without charging the apostles of Christ with conniving at sin, introducing into the church such sinners, and then bringing upon them the curse of the Almighty."

While President Lincoln's proclamation of emancipation

had aggravated the horrors of the war, and perverted it from a defense of the Union into a military crusade against slavery, the General Assembly of 1864, without disguise, boldly entered the political field, and espoused the cause of extirpating that domestic institution at once by force and in blood. It then made the following declarations:

"The Assembly, in the name of the Presbyterian Church, expresses her thanks to Almighty God that the President of the United States has proclaimed the abolition of slavery within most of the rebellious States, and has decreed its extinction by military force. He has ordered the enlistment of soldiers of those formerly held as slaves in the national armies. It is the President's declared policy not to consent to the reorganization of civil government within the seceded States upon any other basis than that of emancipation.

"Our communion must also be mindful of the fact that now, while multitudes of these freedmen are taught the use of arms, and found trained in military tactics, and inspired with the thought that they are now called of God, to conquer for their people a position among the races of mankind," etc.

The Assembly of 1865, after the close of the war, ordered all presbyteries to examine Southern applicants for admission into the church on the subjects of the rebellion and slavery, and to reject all who should admit their agency in the revolt, or their belief that slavery is an ordinance of God, unless they give evidence of repentance for their sin and renounce their error. Gartin v Penick, 5 Bush. (Ky.) 110.

Sovereignty, Not in Membership. According to Presbyterian polity, as established from time immemorial, the only acts of sovereignty—if they can be called such—retained by, or permitted to, the individual members, with respect to such matters as are here involved, are the election of deacons and ruling elders when a particular church is organized and when vacancies occur, and the selection of a ruling elder as a representative of the particular church in the presbytery and synod. All other powers of a sovereign character

are vested in the presbyteries and General Assembly. The powers thus vested are, when exercised, binding upon all the members whether the result is satisfactory to them or not. Committee of Missions v Pacific Synod, 157 Cal. 105.

Synod of Secession Church. A will made in 1841 bequeathed a fund to the "Rev. Synod of the Secession Church, of which body the Rev. Dr. Robert Bruce is a member, and the proceeds and avails thereof to be applied to the spreading of the gospel of Jesus Christ here and elsewhere, and for the support of pious young men who may need assistance while preparing for the gospel ministry, in such ways as said synod may consider will best advance the kingdom of Christ"; and at the end of fifty years the devised real estate was to be sold by the executors and the proceeds appropriated to the above purposes in such manner as the synod or General Assembly might direct. The Secession Church referred to was interchangeably called the Associate Church, and the Associate Presbyterian Church. The synod was its highest body. It did not then have a General Assembly.

In 1782 a number of the membership of this church in this country withdrew and entered into a union with some of the reformed Presbyterians in the United States, which were a part of another fraction of the said Established Church, which during the Revolution of 1688 would not act therewith, and were commonly known as Covenanters, and afterward in 1743, as Reformed Presbyterians, under the name of the Associate Reformed Church, with which those who continued to adhere to the Associate or Seceder Church and the Associate Reformed Church formed a union in 1858, under the name of United Presbyterian Church. In 1853 the synod of the Associate Presbyterian Church was incorporated in Pennsylvania. The above bequest was paid to this synod until its incorporation, and afterward to its treasurer until the commencement of this proceeding.

In October, 1858, after the above mentioned union, resulting in the formation of the United Presbyterian Church, certain ministers and elders met at Canonsburg, Pennsylvania,

and organized an Associate Synod of North America. The new organization elected trustees, and claimed that the bequest under the foregoing will should be paid to them. It was held that the trust was properly payable to the original society, namely, the Associate Reformed Presbyterian, which had gone into the union, forming the United Presbyterian Church, and that the new organization formed in 1858, had no interest in the trust. Ramsey Appeal, 88 Pa. St. 60.

Synod, Powers. A Presbyterian synod has power to erect a presbytery, but no power to dissolve one without its consent. Neither has a synod power to appoint a commission to receive the submission of a presbytery, which has been on trial before the synod, to restore or dissolve the presbytery as the commissioners may think proper. This is a delegation of judicial power, not warranted by any known rules of discipline in the Associate Church. Smith v Nelson, 18 Vt. 511.

Trustees. The trustees obviously hold possession for the use of the persons who by the constitution, usages, and laws of the Presbyterian body are entitled to that use. They are liable to removal by the congregation for whom they hold this trust, and others may be substituted in their places. They have no personal ownership or right beyond this, and are subject in their official relations to the property to the control of the session of the church. Watson v Jones, 13 Wall. (U. S.) 679.

Unconstitutional Deliverance on Political Questions. The Presbyterian Church has always been considered, and no doubt is, one of the orthodox Protestant churches, and as such forming a part of the spiritual kingdom of Christ upon earth. Christ authoritatively declared that his kingdom was not of this world. His disciples, as such, owe allegiance alone to him as the great Head of the church; as citizens of a republic or subjects of monarchy or empire their civil allegiance was due to their respective governments. But the kingdom of Christ is wholly independent of civil governments. As the Presbyterian Church is a part of this

spiritual kingdom, it had no right as such to interfere in civil matters. But the Presbyterian Church also has a written constitution which their ecclesiastical judicatories have no authority to violate. They are as much bound by the provisions of this constitution as the supreme law of the church as the State and federal governments are by their respective constitutions. The written constitution of the Presbyterian Church contains this section: "IV. Synods and councils are to handle or conclude nothing but that which is ecclesiastical, and are not to intermeddle with civil affairs which concern the commonwealth, unless by way of humble petition in cases extraordinary; or by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate." Church and state may cooperate in the advancement of objects common to both, but each of them must be careful to act within its own sphere, the one never intermeddling with the affairs that properly belong to the province of the other. It was held that the deliverances of the General Assembly, Old School, during the Civil War, on the subjects of slavery and loyalty were prohibited by its constitution and were therefore nullities so far as property rights were concerned. Watson v Garvin, 54 Mo. 353.

Westminster College. The synod of the Presbyterian Church in Missouri was given the care and control of the college and the appointment of the trustees. It was held that the corporation established for purely academic purposes, for education in literature, in the arts and sciences, is in no sense a religious corporation, even though it be given into the care and under the management of a religious body. And an act creating such a corporation was not obnoxious to the provision of the constitution of Missouri that no religious corporation should ever be established in the State. The property of the corporation was exempt from taxation. State ex rel Morris v Board of Trustees of Westminster College, 175 Mo. 52.

PRIMITIVE BAPTIST CHURCH

Described, 515.

Described. This church is an independent congregational church. Discipline is administered by the body of the congregation. It has no body of canon law prescribing procedure in such cases. No written rules prescribe notice or require a trial. A majority of those members voting when the church sits in conference determines the result upon any motion or resolution disciplining a member. Nance v Bushby, 91 Tenn. 305.

PRIMITIVE METHODIST CHURCH

Organization and form of government, 516.
Adherence to fundamental principles, 517.
Diversion of property, limited, 517.

Organization and Form of Government. In Cape v Plymouth Congregational Church, 130 Wis. 174, the court said the Primitive Methodist Church belonged in the third class of religious corporations described by Mr. Justice Miller in Watson v Jones, 13 Wall. (U. S.) 679, namely, "Where the religious corporation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control, more or less complete, in some supreme judicatory, over the whole membership of that general organization."

The Primitive Methodist churches in several of the Western States were consolidated into what was called a General Conference, known as the Western Conference, under the discipline of which there was primarily the society or congregation as a unit, having power to own property, and, by certain prescribed officers, to manage the ordinary daily affairs. Next in ascendency a few neighboring societies were organized into a circuit or charge, often, though perhaps not always, served by a single pastor or minister. Local churches sometimes grouped in circuits were under the general jurisdiction of Quarterly Conferences, composed of pastors, officers, and representatives of the local societies. Above this Conference there was an Annual Conference composed of certain general officers, and also ministers in full connection, and lay delegates for each one hundred members of a local society. The Annual Conferences had general supervision and jurisdiction of local societies.

Adherence to Fundamental Principles. Several persons associated themselves together for the worship of God and to hear the truths of the gospel expounded, with the exclusive reservation that they were to hear these truths expounded agreeably to the doctrines of their own sect. The associates also intended to purchase a lot and erect a building thereon for worship, the expense of which was to be provided by contributions. One of the deeds authorized the grantor during his natural life to appoint a minister to the church. In one of the deeds a clause was inserted providing that ministers appointed to the society should not preach any other doctrine than that contained in the late Rev. John Wesley's Notes upon the New Testament and four volumes of his Sermons as essential to salvation. It was held that this provision of the deed was violated by the appointment of an Episcopalian as minister. Combe v Brazier, 2 Desaus. (S. C.) 431.

Right to secede from main body denied. American Primitive Society v Pilling, 4 Zab. (N. J.) 653.

Diversion of Property, Limited. The local society was originally incorporated as a branch of the Primitive Methodist Church, connected with the Western Conference. A large majority of the society determined to change its denominational relations, and, accordingly, organized a new society to be allied with the Congregational denomination under the name of the Plymouth Congregational Church. A controversy arose between the two societies relating to the church property.

By a rule of the Primitive Methodist Church, all property is held subject to the uses of each society when not inconsistent with the discipline and usages of the Primitive Methodist Church, and in case a local society should cease to exist, or exist contrary to the usages and discipline of the Primitive Methodist Church, then its property should pass to the Conference trustees, to be held for the benefit of any organized Primitive Methodist Society, in the place where the real estate is situated or, if this be impracticable,

then to be held for the general purposes of the church and under the direction of the Annual Conference. This was held to restrict the use of the property in question to a society subject to the discipline and supporting the doctrine of the Primitive Methodist denomination. The Dodgeville society, with three others, constituted a circuit, which was under the general supervision of a Quarterly Conference of various representatives and officers of the local churches. The repudiation by the Primitive Methodist Society of its submission to the Annual Conference, and setting itself up as the supreme authority over its own affairs and over its members in matters religious and secular, was a departure from the use and purpose for which the partial possession in this property was originally conferred on the society, and to which use such property was limited, and, therefore, that it exceeded the right or power over that property had by either the corporation or its governing officers. Cape v Plymouth Congregational Church, 130 Wis. 174.

PROFANITY

Defined, 519.

Defined. Any words importing an imprecation of divine vengeance, or implying divine condemnation so used as to become a public nuisance, would make out the offense of profanity, although the name of the Deity be not used. Gaines v State, 7 Lea (Tenn.) 410.

PROPERTY

Abandoning doctrines, effect, 521.
Adverse possession, 521.
Alaska, effect of transfer from Russia to United States, 522.
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Abandoning Doctrines, Effect. If the members of a church abandon the tenets of the church, they lose their interest in the property of the church. If they adhere to the doctrines of the church, but abandon the organization, they also lose their interest in the property of the church. Mack v Kime, 129 Ga. 1.

Adverse Possession. This corporation acquired real property in 1863, and at the time of the commencement of this action had been in uninterrupted possession of it for more than forty years. The society was deemed to have acquired the title by adverse possession, notwithstanding the provisions of article 38 of the Maryland bill of rights, which in effect, requires the sanction of the Legislature to a conveyance to a religious society, which sanction had not been obtained. Dickerson v Kirk, 105 Md. 638.

Where a religious society had had uninterrupted possession of land in controversy for thirty years or more, using it as its own, it would be presumed, in the absence of an existing deed to the land, that plaintiff's entry was under a purchase, and that its grantor had a lawful right to convey. Penny v Central Coal and Coke Company, 138 Fed. (Ark.) 769.

While a religious corporation cannot by mere resolution divest itself of the title to real estate, a separation of a church into two societies and the transfer by the parent society to the new society of the church edifice and other

property occupied by the latter will at least lay the foundation of a right to adverse possession, and if the new society afterward becomes incorporated, this adverse possession continues in the corporation thus formed, and the right may thereby ripen into a complete title. Reformed Church, Gallupville, v Schoolcraft, 65 N. Y. 134.

Alaska, Effect of Transfer from Russia to United States. See notes on Alaska and Russian toleration in the article on Lutherans.

Contract. The property of a religious society is vested in the corporation itself and not in the trustees as trustees. The corporation may make an executory contract for the sale of the property, subject to the approval of the court. The power of the court is a regulating power for the purpose of preventing a violation of the trust for the particular use to which the property is dedicated, and to see that the proceeds of sale are invested for the like uses and the order of the court in such cases, authorizing the sale is permissive only and not mandatory. When the rights of the purchaser have become so far fixed that he holds an agreement duly executed by the corporation, and the requisite sanction of the court has been obtained, he can be compelled to pay for the land and is entitled to a conveyance. It is usually preferable, first, to negotiate a sale, agree upon the terms, and then lay the agreement before the court, and by the order obtain an approval thereof and authority to convey and a direction for the investment of the proceeds as the statute requires. Bowen v Irish Presbyterian Congregation, N. Y., 6 Bosw. (N. Y.) 245. See also Muck v Hitchcock, 149 A. D. (N. Y.) 323 as to preliminary contract of purchase and its effect.

Dedication, Diversion. A person owning property in his own right may dedicate such property, by way of trust, to support and propagate any definite doctrines and principles, provided it does not violate any law of morality and sufficiently expresses in the instrument by which the dedication is made the object of the trust. In such cases it is the duty

of the courts to see that the property so dedicated is not diverted from the trust attaching to it, and so long as there are persons in interest, standing in such a relation to the property as that they have a right to direct its control, they may prevent the diversion of the property to any use different from that intended by the donor. If such trust is conveyed to a religious denomination or congregation, it is not in the power of a majority of that denomination or congregation, however large the majority may be, by reason of a change of religious views, to carry the property thus dedicated to the support of a new and different doctrine.

Where it is alleged, in a case properly pending, that property thus dedicated is being diverted from the use intended by the donor by teaching a doctrine different from that contemplated at the time the donation was made, however delicate and difficult it may be, it is the duty of the court to inquire whether the party accused of violating the trust is teaching a doctrine so far at variance with that intended as to defeat the objects of the trust, and if the charge is found true, to make such orders in the premises as will secure a faithful execution of the trust confided. Lamb v Cain, 129 Ind. 486.

Dedication. In Atkinson v Bell, 18 Tex. 474, the court sustained a parol dedication to an unincorporated Methodist Society of land on which a church was afterward erected and occupied by the society many years.

Dedication to Religious Uses. That property may be dedicated to public or religious uses is well established, both in civil and common law. In order to sustain a dedication of property it is not necessary that there should be a certain grantee, to whose use it is made, nor is it essential that the right or use should be vested in a corporate body; it may exist in the public, and have no other limitation than the wants of the community at large. Antones et al v Eslava's Heirs, 9 Port. (Ala.) 527.

Denominational Use. Property which is devoted to the purposes of a given religious organization must be used for

the purpose to which it is devoted, and where the controlling authority of the organization (whether it be a majority of the congregation of those churches having a congregational form of government, or the highest court of a church in those churches which have different tribunals, with appeals from one to the other) engages in a palpable attempt to divert the property to a purpose utterly variant from that to which it was originally devoted, the civil courts will interfere, even at the instance of a minority, in cases where the form of church government is congregational, or at the instance of the dissenters without regard to property, where the form of government is other than congregational, and protect them in their property rights against those who, without authority, are attempting to carry the property along lines that are utterly variant from the purpose for which the organization was formed. But in all cases of this character it must appear that the governing authorities of the church have abandoned the tenets and doctrines of the original organization. Whether they have so abandoned them is an ecclesiastical question, and if, under the form of government of the church, there is a tribunal of any character erected for the decision of these questions, the civil courts will not undertake to revise or review the judgment of this tribunal, provided the question is of such a character that it would admit of dispute, and would therefore be proper for decision by the ecclesiastical tribunal. Mack v Kime, 129 Ga. 1.

Diversion. Where a congregation has been organized and holds its property as a constituent part of any particular religious denomination, or in subordination to the government of any particular church, it cannot, without just cause, sever itself from such connection or government. If it does so, it necessarily forfeits its rights and property to those of the organization who maintain the original status. McAuley's Appeal, 77 Pa. 397.

A minority have the right to insist upon carrying out the proposition for which the church or society was organized,

and a majority will not be permitted to divert the common property to other uses, or to use it for the support and maintenance of doctrines or a polity essentially at variance with its original constitution. Schradi v Dornfeld, 52 Minn. 465. See Bonham v Harris, 145 S. W. 169.

If property be conveyed to trustees for the use of the corporation, and its organic act proclaims the religious belief of its members, the sect to which it belongs, so as to indicate clearly the particular use intended by the grantor, or the conveyance expressly indicates the limitations upon such use, or if a corporate organization be formed as a society of a particular church and it becomes possessed of property in any way in trust to that end, in either case the property is held in trust for the use so indicated, and such use cannot be perverted without consent of all the parties to the trust. Franke v Mann, 106 Wis. 118.

Where a majority of a religious society has withdrawn therefrom and organized a new church of a different denomination, the minority, adhering to the original society, are entitled to the use and occupation of the church building held in trust for said society, and the new church and its trustees may be restrained from interfering with such use. Neither seceding members, though a majority, nor any majority of a religious society, no matter how fully invested with all corporate powers, have a right to divert its property from the uses defined and limited by the grant of such property to it, or the purposes of its organization as regards the particular religious faith it was organized to promote. Cape v Plymouth Congregational Church, 117 Wis. 150, 130 Wis. 174; see Apostolic Holiness Union of Post Falls v Knudson, 21 Idaho 589.

When property has been acquired, whether by gift or purchase, for the maintenance and support of the faith of any recognized denomination or church, every member of the association acquiring it, corporate or unincorporated, has a right to resist its diversion to other antagonistic uses, whether secular or religious, and therefore those who hold

the title or control, whether a corporation, or the officers of the association, hold it charged with a trust to apply it to the uses for which it was acquired, and not to inconsistent ones. Marien v Evangelical Creed Congregation, Milwaukee, 132 Wis. 650.

The New York act of 1875, chap. 79, provides that the property and revenues of every corporation formed under section three of the act of 1813, shall be applied by the trustees for the benefit of such corporation according to the discipline, rules, and usages of the denomination to which the church, the members of the corporation, belong, and forbids the diverting of the same to any other purpose. These provisions distinctly recognize the denominational character of the corporations referred to, and the existence of a church as an organized body, to which any such corporation may belong, to whose uses its temporalities may be devoted, and for any diversion or attempted diversion for which from such uses an ample remedy is given in a court of equity. A remedy under this statute may be invoked by any member of the corporation and against the trustees of the corporation. The act of 1875 applies to section six as well as under section three of the act of 1813. First Reformed Presbyterian Church v Bowden, 14 Abb. N. C. (N. Y.) 356.

"Where a church is endowed with property for the support of a particular faith, and is subsequently incorporated, it is not competent for a majority of the church, the congregation, or the corporators, or of a majority of each combined, to appropriate such property for the maintenance of a different faith. The question of the particular religious faith or belief is not material in such cases, except so far as the court is called upon to execute the trust, and to that end it merely inquires what was the faith or belief, to maintain which the fund was bestowed." Kniskern v Lutheran Church, 1 Sand. Ch. (N. Y.) 439.

The title to the church property of a divided congregation is in that part of it which is acting in harmony with its

own law; and the ecclesiastical laws, usages, customs, and principles which were accepted among them before the dispute began are the standard for determining which party is right. McGinnis v Watson, 41 Pa. St. 9.

Division of Society. A Presbyterian church separated into two factions, one joining the New School and one joining the Old School. It was held that the property should be divided in proportion to the number of church members and pewholders in each society. Niccolls v Rugg, 47 Ill. 47.

The settled rule of the civil courts in cases of disorganization and factional divisions of an ecclesiastical body is that the title to church property is in that part of it which is acting in harmony with its own law, and the ecclesiastical laws and usages, customs, and principles which were accepted among them before the dispute began, and the standards for determining which party is right. The right of ownership abides with that faction, great or small, which is in favor of the government of the church in operation with which it was connected at the time the trust was declared. The court will adjudge the property to the members, however few in number they may be, who adhere to the form of church government, or acknowledge the church connection for which the property was acquired. Reorganized Church of Jesus Christ of Latter Day Saints v Church of Christ, 60 Fed. Rep. 937. (W. D. Mo. Cir. Ct.)

The title to the church property of a congregation that is divided is in that part of the congregation that is in harmony with its own laws, usages, and customs as accepted by the body before the division took place, and who adhere to the regular organization. St. Paul's Ref. Church v Hower, 191 Pa. St. 306.

The title to church property of a divided congregation is in that part of it which adheres to the original organization, and is acting in harmony with its own laws and the ecclesiastical customs, usages, and principles which were accepted among them before the dispute began. But this rule is subject to the modification that church judicatories may

make such changes in the laws, usages, and customs as they may by their laws be authorized to make, or which are not fundamental departures from the general plan and purposes of the organization, and the further power to enforce upon the subordinate members of the organization due observation of those changes and modifications. Clark v Brown, 108 S. W. 421 (Texas).

Land was conveyed to the local society on which to erect a church edifice, and a building was erected accordingly. After occupying the property several years a division arose in the congregation over the alleged unsoundness of faith of a person selected as pastor. This division resulted in the exclusion of this pastor and some members from the society. Thereafter each party, namely, those who had joined in the exclusion, and those who were excluded, claimed the possession of the property, and the right to control it. The party which expelled the defendants kept possession of the property, and refused to allow its use by the excluded persons, and for this purpose kept the building locked. Members of the excluded party obtained entrance through a window, and, opening the door, permitted other members of that party to enter, and religious services were held therein. The party which had exercised the power of expulsion was entitled to the possession of the property, and the persons excluded had no right by mere acts of trespass to obtain possession of the property and assume to manage and control it. The majority party were represented by deacons who were the trustees of this society, and had charge of its property and records. Fulbright v Higgenbotham, 133 Mo. 668.

A division occurring among the members of the church, it was held that the faction which adhered to the general faith and doctrine of the denomination was entitled to continue in possession and control of the church property. Smith et al v Pedigo et al 145 Ind. 392.

Execution. A church and the lot upon which it is erected are private property, and subject to levy and sale in the

same manner as other private property. Presbyterian Congregation, Erie v Colt's executors, 2 Grant's Cas. (Pa.) 75.

Gospel and School Lots. In New Hampshire lots reserved for the support of the ministry and for schools were, except as to a lot set apart for the first minister, deemed the property of the town, and when such lots were sold the proceeds belonged to the town and not to its inhabitants. It was, therefore, held that a religious society organized after the reservation of the lots could not legally claim a division of the proceeds derived from the sale of land reserved for the support of the ministry, or any part of such proceeds, to the separate use of the society. The property belonged to the town as a corporation, and not to any number of its inhabitants. Baptist Society, Wilton v Wilton, 2 N. H. 508.

Illinois Rule. In Illinois the trustees of an incorporated religious society or association do not hold the property, in the absence of a declared or, at least, clearly implied trust, for any church in general, nor for the benefit of any peculiar doctrines or tenets of faith and practice in religious matters, but solely for the society or congregation whose officers they are; and they are not, in the discharge of their duties, subject to the control of an ecclesiastical judicatory. The property belongs to the society or congregation so long as the corporation exists, and when it ceases to exist the property belongs to the donors or their heirs—and this conclusively distinguishes this property from property held in trust for the benefit of a particular religious denomination. Where property is held in trust for the benefit of a particular religious denomination the dissolution of the local corporation can in nowise affect the trust so long as the religious denomination has an existence, for it is to it, and not to the corporators, that the use belongs. Calkins v Cheney, 92 Ill. 463.

Joint Use. Where the constitution and by-laws of a church corporation composed of members of two nationalities provide for alternate use of the church property for separate services by members of either nationality, members of one

nationality are entitled to such use of the church property without application to the corporate board of trustees by any organized portion of the corporate stockholders or members. Peterson v Christianson, 18 S. D. 470.

A deed was made to trustees "for the use of the Presbyterian and Lutheran congregations respectively, as at present organized, etc., but if either congregation deem it conducive to their interests, the property be equitably divided by a committee of impartial persons selected by both congregations." One congregation, having taken exclusive possession of the property, held that it was a dispute and division between members of an unincorporated society in relation to their rights and privileges, and not merely as tenents in common of real estate, and equity had jurisdiction to restore those excluded to their rights. Kisor Appeal, 62 Pa. 428.

Land was conveyed to the trustees of the Missionary Baptist Society with a proviso that the land was to be used for church purposes, but was to be controlled by the trustees of the Baptist Society to be used by such Baptist Society or by any other Protestant denomination to preach in when not used by said missionary Baptist; to be used for moral lectures when not used for religious work. Sunday school was to be conducted before or after preaching. This language was construed to give to the Baptist Church the first right to use the property for all religious purposes, but that when it was not being so used by the Baptists, and was idle, it could be used for any religious rite by any other Protestant denomination. It appeared that the house of worship was erected from contributions made by members of several denominations and by persons not connected with any denomination. Sharp v Benton, 23 Ky. Law Rep. 876, holding that the Christian Church was entitled to use the house for its regular service, when the house was not otherwise occupied.

Land was conveyed for church purposes on the express condition that the church to be situated on the land was to

be open at all times, when not used by the Baptist denomination, to all evangelical orders of Christians. The subscription list upon which was raised the money to erect the building, provided that "said house when completed should be free for the use of all evangelical orders of Christians when not used by the Baptists." After several years of such general use the Baptists sought to prevent the use of the building by another order. It was held that the Baptists had the preference, but that when the building was not in use by them it might be used by other evangelical denominations, and an injunction was granted restraining the Baptists from interfering with the use of the building by the Methodists and evangelical order claiming the right to use the building when it was not in use by the Baptists. Tomlin v Blunt, 31 Ill. App. 234.

Lay Control, Pennsylvania Rule. The Pennsylvania act of April 26, 1855, required that "all property which the corporation shall in any way acquire shall be taken, held, and enure, subject to the control and disposition of the lay members of the society, or of such officers thereof as shall be composed of a majority of lay members, citizens of Pennsylvania, having a controlling power;" and this provision was to be included in the charter. In Alexander Presbyterian Church, Philadelphia, 30 Pa. St. 154, the proposed charter was rejected because it did not contain this provision. See also Re St. Paul's Church, 30 Pa. St. 152.

By the Pennsylvania act of 1855 all church charters were required to contain a clause subjecting all the church property to the control of the lay members of the corporation or church, through constituted officers, a majority of whom shall be citizens of Pennsylvania. Cushman v Church of Good Shepherd, 188 Pa. St. 438.

Limitation of Amount, Right to Excess. In Hanson v Little Sisters of the Poor, 79 Md. 434, it was held that the question as to the capacity of the society to take property in excess of the amount prescribed by its charter could not be raised collaterally, nor in a proceeding for the construction of a

will, but only in a direct proceeding by the State. The gift to the society was not void on its face, and must be held valid as to all the world until it has been determined at the instance of the State that the charter has been violated. The corporation can take property to any amount, but can hold it, as against the State, only to the amount provided by its charter.

Majority's Right. In Berryman v Reese, 11 B. Mon. (Ky.) 287, the court sustained an action by the majority against a minority of the church, which had been excluded therefrom, to prevent the occupancy of the church by the minority and any interference with the occupancy and enjoyment of the church by the majority. The majority was entitled to hold and use the property.

The society in 1827 received a conveyance of land in trust for the use of the society and occupied the house of worship erected on such land. In 1841 certain members of the society were expelled by the majority. The expelled members and other persons organized a new society. Afterward this new society took possession of the original house of worship and used it in defiance of the majority. The majority party sought an injunction restraining the minority from attempting to use and control the church, and it was held that the expelled members had no right to the property. Shannon v Frost, 42 Ky. 253.

Where property is held by such voluntary religious associations or corporations, absolutely and without any limitation, a majority may dispose of, retain, or occupy and manage it as they please, admitting the minority to the same benefits as themselves. McBride v Porter, 17 Ia. 204.

When two factions in the same congregation disagree as to which is entitled to the control of the church property, and both sides profess adherence to the same faith and practice, the right must depend upon the will of the majority, unless there be shown some law, regulation, rule, or practice of the church determining otherwise. Nance v Bushby, 91 Tenn. 303.

Member's Right. Where a conveyance of a lot of ground is made to certain individual members of a religious body, who have no corporate existence, in trust, to them and their successors in office, for church purposes, all the members of the body become beneficiaries in such property in an equal degree, notwithstanding some of them may have contributed a larger sum than others toward the common enterprise. Ferraria v Vasconcellos, 23 Ill. 456, 31 Ill. 1.

When membership ceases the beneficial interest in the property terminates. It is only as a constituent element of the aggregated body or church that any person could acquire or hold as a beneficiary any interest in the property thus dedicated to that church. Nance v Bushby, 91 Tenn. 303.

Members Unlawfully Expelled, Right to Be Heard. An action was brought to set aside a deed of church property which, it was alleged, had been unlawfully obtained by the pastor and his wife with intent to defraud the society, convert the property into money, and purchase other property elsewhere; and with the purpose of consummating this object, the pastor had by various means procured the expulsion of certain members of the society who objected to his operations. The court held that the complainants, who had been unlawfully expelled, had a right to be heard on this question, and that a full inquiry should have been made into all the facts and circumstances attending the alleged transfer of the property. Hendryx v People's United Church, Spokane, 42 Wash. 336.

Methodist Episcopal Church, Separation, Effect on Title. In 1833 land was conveyed to certain persons as trustees for the purpose of erecting and using a house of worship according to the rules and Discipline of the Methodist Episcopal Church of the United States. The property was to be held by the trustees and their successors, who were to be appointed under the laws of Alabama. The register in chancery had power to appoint trustees to fill vacancies. The register appointed trustees, who were held to succeed to the legal title vested in the original trustees. The fact

that the Methodist Episcopal Church of the United States was divided in 1844, and that a part of it was erected into a denomination known as the Methodist Episcopal Church, South, which included the property in question, did not affect the title of the trustees. Malone et al Trustees v Lacroix, 144 Ala. 648.

Minority's Right. In St. Andrews Ch. v Schaughnessy, 63 Neb. 792, it was held that under the Nebraska Religious Corporation act a minority of the members could not lawfully retain possession of the corporation property, as against the corporation itself, for the purpose of compelling the corporation to recognize their rights as members.

Mob, Destruction by, Action for Damages. Property of the society, consisting of buildings and personal estate, was destroyed by a mob in May, 1844. In an action against the county to recover the value of the property, it was held that proof of the value of each item of property was not necessary, but a general estimate might be submitted to the jury, and that the society was entitled to recover the fair value of the property destroyed. Brothers of the Order of Hermits of St. Augustine v Philadelphia County, 4 Clark (Pa.) 124; Brightly N. P. 116.

Object and Use. Church property is for the use of the members of the church, so long as they remain members, for the worship of God according to their articles of faith and in the manner provided by the rules and instructions and discipline of the association, and may be so used at any proper time by any member. Pounder v Ashe, 44 Nebr. 672.

Parish, Massachusetts Rule. Under the Massachusetts parish system the legal title of church property was in the corporation, consisting either of the town as an entire parish, or a subdivision of the town as a separate parish, and the property was held to a special use—that of the support of public worship. Attorney-General v Proprietors of Meeting House in Federal Street, Boston, 3 Gray (Mass.) 1, 37.

Pastor's Salary, Land May Be Sold to Pay. Church prop-

erty may be sold to pay the pastor's salary. Lyons v Planters' Loan and Savings Bank, 86 Ga. 485.

Priest's Occupancy. A priest was removed from office by his bishop, by which removal he was deprived of all the privileges and rights incident and pertaining to said position. The bishop subsequently served a notice on the priest to deliver up possession of the real estate occupied by him. But notwithstanding this removal and notice, the priest continued to occupy the property and refused to surrender it, keeping it locked, and with threats, menaces, and force declined to permit his successor to minister to the congregation, and occupy the church property. It was held that the priest's occupancy was that of a servant and not that of a tenant; that his occupancy of the property was simply an incident to his relation to the congregation as its priest and his appointment to the position by the bishop. A summary proceeding to recover possession of the property was sustained. Chatard, Bishop v O'Donovan, 80 Ind. 20.

Pulpit, Cannot Be Seized on Execution. Where a meeting-house had been erected by a corporation formed for that purpose, and the property had been conveyed to the parish subject to the rights of pew-owners, it was held that the pulpit could not be seized on execution. Revere v Gannett, 1 Pick. (Mass.) 169.

Removal of Church Edifice. The house of worship may be removed from one lot to another or from one village to another without an application to the court. Pewholders have no standing to object to such removal. Matter of the Second Baptist Society, Canaan, N. Y., 20 How. Pr. (N. Y.) 324.

Reversion. Property was conveyed to a church with the condition forfeiting the estate to the grantor and giving the right of reentry if the property should ever be used for other than church purposes. The city appropriated a part of the land for a street. It was held that the church, and not the grantor, was entitled to the damages awarded for

opening the street. Cincinnati v Babb, 29 Wkly. Law Bul. (Ohio) 284.

Property was conveyed to a society of Friends for use "so long as it may be needed for meeting purposes, then said premises to fall back to the original tract." The removal of the buildings which the society had erected furnished no reason for a necessary inference that the land was no longer needed for meeting purposes. This did not constitute a forfeiture of the title, and there was no reversion. Carter v Branson et al, 79 Ind. 14.

Reversion on Discontinuance of Specified Use. Land was conveyed to a religious society for a nominal consideration, with a provision that the property should be used for church purposes only, and that if it ceased to be so used, the grantee should pay the grantor a stipulated sum. It was held that if the property was not used for church purposes, the actual consideration was to be the sum stipulated, but there was no limitation on the continuance of the estate. Board of Education Normal School District v Trustees, First Baptist Church, Normal, 63 Ill. 204.

Property was conveyed to trustees and their successors "for the use of the members of the Methodist Episcopal Church of the United States of America (so long as they use it for that purpose, and no longer, and then to return back to the original owner) according to the rules and Discipline of the church. The equitable estate was in the members of the church so long as they used the house as a place of worship in the manner prescribed and no longer. And when the specified use of the property was discontinued, or abandoned, the title reverted to the original owner. The estate of the trustees terminated when the house ceased to be used for the purpose intended. A mere temporary suspension of services there, or a discontinuance of the use without authority, would not, ipso facto, determine the use. The active control of the clerical authorities of the church over preachers, preaching, and church property, is to take from the society at large, or laity, the power of continuing

in the building as a place of worship, according to the rules and discipline of this church, after the ecclesiastical authority has resolved to discontinue the services of its preachers there. To worship as members and under the Discipline, they must accept the traveling preacher sent to them by the bishop. Consequently, the trust ceased when the proper church authorities, acting under and according to the rules and Discipline, totally abandoned the building as a place of worship for the members of this church. Henderson v Hunter, 59 Pa. St. 335.

Sale. Under the New York statute proceedings by a majority of the trustees of a religious corporation for a sale of its property are sufficient without a vote of the members of the corporate body. The trustees are the agents of the corporation for this purpose. Property of a religious corporation cannot be disposed of except by a sale thereof; accordingly, an agreement amounting substantially to a consolidation of two societies, in consideration of which one was to convey its property to the other and a new board of trustees was to be formed, the grantee corporation to take the name of the grantor corporation, was held not to be a sale within the statute. Consequently, the court had no power to make an order authorizing such a transfer of church property, and a deed based on such an order was void. Madison Avenue Baptist Church v Baptist Church in Oliver Street, 46 N. Y. 131, 73 N. Y. 82.

A religious corporation has the title to its real property, may determine when it should be sold, and has the sole and exclusive power to enter into contracts for that purpose. It is not necessary that the consent of the court should precede the making of the contract, but such a contract of sale cannot become effective without a court order which should be obtained before a conveyance is made. Congregation Beth Elohim v Central Presbyterian Church, 10 Abb. Pr. N. S. (N. Y.) 484.

In Wheaton v Gates, 18 N. Y. 395, an order of the county court directing the trustees to distribute the proceeds of

a sale of the church property among the pew-owners was set aside, it being held that the court had no jurisdiction to make such an order.

The jurisdiction of the supreme court to authorize a sale of the property of a religious corporation depends on the facts existing at the time the order is made, and such an order cannot be upheld by showing that facts existed which were in no way placed before it or brought to its attention or considered by it. Madison Ave. Bapt. Ch. v Oliver St. Bapt. Ch. 73 N. Y. 82. See also 46 N. Y. 131.

On an application for the sale of church property it was held that a preliminary agreement with a prospective purchaser need not have been made, nor need a new site have been definitely determined. The court might make a conditional order for a sale, subject to its approval. Pew-owners have no right to object to a sale of the property, but vault-owners who had received the title to lots in fee, and had erected vaults and monuments thereon, were held to have an estate which could not be disturbed without their consent. Matter of Brick Presbyterian Church, 3 Edw. Ch. (N. Y.) 155. See also Brick Presbyterian Church v New York, 5 Cow. (N. Y.) 538, sustaining a by-law of the city of New York prohibiting further interments in the cemetery owned by this church.

Under the New York religious corporations act of 1813 the trustees have power to remove the church edifice from one lot to another, or from one village to another, without an order of the court, but they cannot sell the real estate of the society without such an order. On an application for such an order notice to the pewholder is not necessary. Matter of Second Baptist Society, Canaan, N. Y., 20 How. Pr. (N. Y.) 324.

Sale for Debts. Where money had been loaned to the trustees for the purpose of erecting a house of worship, and notes given therefor, it was held that the trustees might, under the Discipline, mortgage the property for a debt, and on their refusal to make such a mortgage the court had

power to order a sale of the property for the same purpose. Bushong v Taylor, 82 Mo. 660.

Sale or Mortgage. The vestry or trustees of a religious corporation may apply to the court for an order to sell or mortgage its property without a vote of the corporators. Matter of St. Ann's Church, 23 How. Pr. (N. Y.) 285. But see the New York Religious Corporations Law Sec. 200, which prohibits the trustees without the consent of a corporate meeting, from incurring debts beyond what is necessary for the care of the property of the corporation.

Sale, Reinvesting Proceeds. Where a deed of land to a religious corporation was absolute and unconditional in form it imposed no trust on the corporation "beyond that general duty which the law puts upon a corporation of using its property for the purpose contemplated in its creation." It was, accordingly, held that the corporation might sell the property on obtaining the required judicial consent and the proceeds might be applied to the purchase of other property. Matter of First Presby. Society, Buffalo, 106 N. Y. 251.

In this case the question was considered but not decided whether the local Presbyterian society was bound to obtain the consent of the presbytery before selling its property. It appeared that the society did apply to the presbytery, which granted its consent on condition that the majority of the local society should vote for such sale at a public meeting and that a majority did so vote. A sale was authorized by the court but without determining whether such precedent permission of the presbytery could be required under the act of 1875, chap. 79, and the act of 1876, chap. 140, which provided, in substance, that church property should be held according to the rules and usages of the denomination to which the local society belonged.

Land was conveyed to trustees and their successors forever for the use of the Methodist Episcopal Church in the United States, and the trustees were required forever to permit ministers and preachers belonging to said church and duly authorized, to preach in the house of worship, to be

erected on such land. It was held that the court had power to direct a sale of the property free from the trust, proceeds to be invested in other property to be used for the same purpose by the local society. Re Sellers Chapel Meth. Church, 139 Pa. St. 61.

Sale, When Court Order Not Necessary. The trustees had power to purchase a new site, and remove the church edifice from the old site to the new without an order of the court. Matter of Second Baptist Society, Canaan, N. Y., 20 How. Pr. (N. Y.) 324.

Where a church edifice had been severed from its foundations and placed on rollers preparatory to its removal from the lot it was held to be personal estate, and might be sold by the trustees without an order of the court. Beach v Allen, 7 Hun. (N. Y.) 441.

The provision in the New York Religious Corporations Law prohibiting a sale of church property without leave of the court applies only to domestic religious corporations, and has no application to the property of a foreign corporation. Muck v Hitchcock, 212 N. Y. 283.

Secession, Effect on Title. The title to the church property of a congregation that is divided is in that part of the congregation that is in harmony with its own laws, usages, and customs as accepted by the body before the division took place, and who adhere to the regular organization. It does not matter that a majority of any given congregation or Annual Conference is with those who dissent. The power of the majority, as well as that of the minority, is bound by the Discipline, and so are all the tribunals of the church from the lowest to the highest. Krecker v Shirey, 163 Pa. 534.

An organized church cannot be divested of its property by even a majority of its members who enter into a new organization, although they adopt the same name, provided the other organization still exists; and when seceders from an organized church enter into such new organization they forfeit all claim to any interest in the former church and

lose all identity with it. Venable v Coffman, 2 W. Va. 310.

A church organization, possessing and holding property as a church, cannot be divested of their property by a part, even a majority, of its members reorganizing themselves into another organization, even by the same name, provided the old organization still exists as an organization. By the reorganization the persons constituting it in effect, by such revolutionary movement and secession, exclude themselves from the church organization and forfeit all claim to any interest in the property held by the church or identity with it. Harper v Straws, 14 B. Mon. (Ky.) 48.

Sewing Circle, Funds. A sewing circle was organized for the purpose of raising funds to refurnish the church edifice. Some of the persons composing the society were and others were not members of the church. The sewing circle had a treasurer to whom was paid money derived from various sources, including contributions, entertainments, exhibitions, etc. It was held that the money thus raised became the property of the church or religious society, and that this corporation could maintain an action against the treasurer of the sewing circle to recover the funds. First Baptist Church in Franklindale v Pryor, 23 Hun. (N. Y.) 271.

Special Trust, Effect. Land was conveyed to certain persons as trustees of the local society for the support, encouragement, and preferment of religion and in trust "for the religious society denominated the Associate Reformed Church of the town of Seneca," and another piece was conveyed to the society for a parsonage. It was held that the trustees of the society took the property for the use of such society, according to the law and principles which governed the organization of such corporations. They could not take it nor hold it in any other character, or upon any other trust. The property thus conveyed belongs to the corporation which was composed of all the members of the society entitled to vote in the election of trustees, and a majority of whom thus controls the property of the corporation, and,

as a necessary consequence, decides the ecclesiastical relations and connections of the society and the character of the religious views, opinions, and doctrines inculcated from its pulpit. The deed did not declare the ecclesiastical connection of the society at the time of its date, or upon its face seek professedly to perpetuate its connection with any ecclesiastical judicatory. The action of the society and its minister in obtaining connection with the Rochester City Presbytery of the Old School Presbyterian Church in the United States, and thus, in effect, severing its relations with the United Presbyterian Church, was not any abuse of the trust, nor did it involve any special departure in things fundamental in respect to the spiritual concerns and worship or doctrines of the church. Burrel v Associate Reformed Church, Seneca, 44 Barb. (N. Y.) 282.

Sunday School Building. A fund paid to the treasurer of a religious society for the purpose of aiding in the erection of a building for the use of the Sunday school was deemed the property of the church, and the society in its corporate capacity was held entitled to recover the fund from the treasurer after the expiration of his term of office. Rector, Church of the Redeemer v Crawford, 43 N. Y. 476.

Suspending Power of Alienation. The case considers the validity of a gift of a fund to a religious corporation to be kept intact forever, the income of which was to be paid to another religious corporation for ten years. It was held that the transaction did not amount to an unlawful suspension of the power of alienation of personal property. The title to the fund passed to the donee which was the ultimate beneficiary. Tabernacle Bapt. Church v Fifth Ave. Baptist Church, 32 Misc. (N. Y.) 446.

Surplus on Sale. Where property is conveyed to a particular church as such, and it be sold for its debts, the surplus is held by the trustees as the original was held, for the benefit of the church, and not subject to any conditions not attached to the first. Harper v Straws, 14 B. Mon. (Ky.) 18.

Taxation. Property of the church was held under a lease for ninety-nine years and renewable forever. This was held to be of such a permanent character as to entitle the property to exemption from taxation. Church of the Epiphany v Raine, 10 Ohio Dec. 449.

A lease for 999 years for a gross sum is, for all practical purposes, a conveyance in fee simple. Such a lease given for pious uses under the statute of 1702 (Conn.) under which statute the land was exempt from taxation, was a fraud on the statute, and would in most cases be in fraud of the donor. The act of 1859 subjecting to taxation certain property held for religious purposes was retrospective and was not unconstitutional. Brainard v Colchester, 31 Conn. 407.

Title, How Held. A house of worship erected on land owned by a corporation is owned by the corporation and not by the members of it, and the corporation, in this instance the parish, had control of the house and the right to determine its general use, including the employment and settlement of the pastor. First Baptist Society, Leeds v Grant, 59 Me. 245.

Title, When Not Affected by Exclusion of Society. In 1889 St. John's Church, of Islip, was read out of the diocese of Long Island by the diocesan convention, but it was held that the church, being an incorporated society under the statute, was not divested of the title to property which it was authorized to take. Ludlow v Rector, etc., of St. John's Ch., 68 Misc. (N. Y.) 400.

Trust, Limitation by Testator. Testator devised real estate to an ecclesiastical society, with a provision that such property should not be sold or disposed of, with numerous details regulating the conduct of the trustees appointed to administer the trust. All the provisions were held to consitute a limitation of the trust and not a common law condition. Stanley v Colt, 5 Wall. (U. S.) 119.

Trustees, General Rights. The trustees of an incorporated religious society are entitled to the possession of all the

temporalities, and are considered as lawfully seized of the ground and building belonging to the church; and if the trustees close the door of the church against the minister and congregation, and they break and enter the church by force, an indictment, at the instance of the trustees, will lie against them, for such forcible entry. The People v Runkle, 9 Johns. (N. Y.) 147.

Unconditional Gift. A person who gives property to a local religious society without attaching any conditions to the gift must be presumed to have made it in contemplation of the law of the church by which, upon abandonment or dissolution of the local society, its property would pass to the governing body of the denomination. Heisler v Methodist Protestant Church of Mapleton, 147 N. W. (Iowa) 750.

Unincorporated Society. Where property is conveyed to an unincorporated religious society and the society afterward becomes incorporated, the corporation becomes the owner of the property so conveyed. Baptist Church, Hartford v Witherell, 3 Paige Ch. (N. Y.) 296.

Where a grant is made to individuals for the use of a church which at the time of the grant is not incorporated as such the persons to whom the grant is made stand seized to the use; and when the church afterward acquired a legal capacity to take and hold real estate the statute executes the possession to the use, and the estate vests. Reformed Protestant Dutch Ch. v Veeder, 4 Wend. (N. Y.) 497.

Vestry Room. The appropriation of a part of the consecrated ground of a church was authorized for a vestry room in Campbell v Paddington, 24 Eng. Law & Eq. Rep. 597.

PROTESTANT

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Augsburg Confession. In consequence of the protest against the decree of the Diet of Spires (or Spire, or Speiers) holden within and for the empire of Germany under the emperor Charles V, in the year 1529, the followers of Luther were denominated Protestants, a general term which was applied alike to all who adopted the principles of the Reformation in opposition to the Catholic Church, and which has continued to the present time. Now, the principles of the Reformation thus adopted by Luther of Saxony and his fellow laborers—and among whom were Zuinglius in Switzerland, Melanchthon in Germany, Calvin in France, Cranmer in England, and Knox in Scotland—preceded first by the Waldenses among the Alps and later by Wickliffe in England, and after him by Hus and Jerome of Bohemia, were founded upon the Bible alone, received as the revelation of God's will, and held to be the supreme and only rule of faith and practice. In this they all agreed, though they differed widely in many of their views of doctrine and of church polity.

These views and principles were incorporated into a general confession by the Diet held at Augsburg in Bavaria in the year 1530, which has since been known as the Augsburg Confession. This event marked the culmination of the German Reformation; and this confession was for a time the established Protestant creed. This confession consisted of two parts: first, the positive and affirmative part, consisting

of twenty-one articles, which embraced their views of Christian doctrines as taught in the Bible; while the second part consisted of seven articles, consisting of points of difference between themselves and the Roman Catholics. A man cannot be a Protestant without first being a Christian. Hale v Everett, 53 N. H. 1.

Congregation. The term "Protestant congregation" means those who attend a ministry professing that doctrine. Attorney-General v Drummond. 3 Dru. & War. (Eng.) 162.

Fink's Asylum. Testator bequeathed a fund for the purpose of establishing in New Orleans an asylum for Protestant widows and orphans, to be known as Fink's Asylum. The court held that the bequest was sufficiently definite, the objects being the widows of a prescribed class, living in New Orleans. These were capable of identification. The will did not create a perpetuity, except to the ordinary extent applicable to bequests of this character. A corporation was formed known as the Fink's Asylum, and this corporation intervened in the suit, claiming the legacy. The court held that the trust was to be administered by the city of New Orleans. Fink v Fink Executors, 12 La. Ann. 301.

Heidelberg Catechism. It is part of the general history of the world that after the Protestant Reformation had been set on foot by Luther the first authoritative declaration of the principles of the great reformer was presented to Charles V, June 25, 1530, at the city of Augsburg, in certain articles of faith embodied in what is known as the Augsburg Confession; and this confession, revised by Melanchthon, under the supervision of Luther, has ever since, it is believed, constituted the accepted creed of the Lutheran Church. Soon afterward ardent reformers censured the retention by the Lutherans of the practice of auricular confession, and their supposed doctrine as to the Presence in the sacrament under the name of "consubstantiation." These reformers of the Reformation, under the lead of Calvin, formulated their amended creed in what is known as the Heidelberg Catechism, which disputed the doctrine of consubstantiation, in-

sisted that the sacrament in both kinds should be given to the laity, discarded the use of the Hostie, or consecrated wafer, and denounced in all its forms the practice of auricular confession to priests. Ebbinghaus v Killian, 1 Mackey (Dis. of Col.) 247.

Vital Principle. Religious toleration is the vital principle of Protestantism. Anderson v Brock, 3 Me. 243.

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Baltimore Church Home and Infirmary. The Church Home and Infirmary, Baltimore, incorporated under the Maryland act of 1852, chap. 231, to be under the management and control of the Protestant Episcopal Church, was not a religious corporation under the statute of that State. Baltzell v Church Home and Infirmary, Baltimore, 110 Md. 244.

Bishop. There was no Protestant Episcopal bishop in America until after the Revolution; Bishop Seabury, of Connecticut, consecrated in 1784, being the first American bishop of this denomination. Bartlett v Hipkins, 76 Md. 5.

Central New York Diocese. There never was any corporation known or designated as "The Diocese of Central New York." Law 1841, chap. 134, created a corporation known as the "Trustees for the Management and Care of the Fund for the Support of the Episcopate of the Diocese of Western New York." Law 1863, chap. 59, created a corporation known as "Trustees of the Parochial Fund of the Protestant

Episcopal Church in the Diocese of Western New York." By Law, 1868, chap. 429, provision was made, in view of the division of the Diocese of Western New York, for the creation of a new corporation in the new diocese subsequently called the Diocese of Central New York, the powers and object of such new corporation to be substantially the same as those specified in the act of 1841, and also for the creation of a new corporation in the new diocese, the powers and object to be the same as those specified in the act of 1863. The powers of the corporation created under this statute were extended in 1887 and again in 1888. These statutes resulted in the creation of a corporation known as "The Trustees for the Management and Care of the Fund for the support of the Bishop under the Directions of the Convention of the Church of the Diocese." The testatrix, by a will made in 1895, devised a stone house owned and occupied by her in New Hartford to the "Corporation of the Diocese of Central New York," to be used as the bishop's residence of said diocese. In Kingsbury v Brandegee, 113 App. Div. (N. Y.) 606, the devise was sustained on the ground that the testatrix intended to give the property to the trustees of the Diocese of Central New York, the later corporation as above indicated.

Curate. The curate is ex officio a member of the board of wardens, having one vote like any other member. Wardens of the Church of St. Louis v Blanc, 8 Rob. (La.) 52.

Described. The Protestant Episcopal Church in United States is an organized body of Christian people, and in its ecclesiastical organization it has a constitution, canons, rules, and regulations for its government. It is divided into dioceses, each designated by an appropriate name, and having greater or less territorial extent. East Carolina Diocese v Trustees North Carolina Diocese, 102 N. Car. 442.

Domestic and Foreign Missionary Society. Testatrix, a resident of Maryland, made a gift to this society, with a request that the fund be used for domestic missions. The missionary society was incorporated in New York for the purpose

of conducting general missionary operations in all lands, and had power to take gifts and bequests for the objects above stated. Its work was divided into two classes—domestic and foreign missions. Bequests for domestic missions are used for that purpose only; bequests without specification are divided equally between the two, domestic and foreign. The bequest was held valid. Domestic and Foreign Missionary Society, Protestant Episcopal Church v Gaither, 62 Fed. Rep. 422.

Elections, Rector's Power. Under the New York statute regulating elections in a Protestant Episcopal church the rector is both the presiding and returning officer, and his certificate of election is presumptive evidence that the persons named therein were duly elected; and if the certificate is attacked, it must be shown that the certificate was erroneous and that persons other than those mentioned in the certificate were elected. People v La Coste, 37 N. Y. 192.

English Origin. The English ecclesiastical law forms the basis of the law regulating the affairs of the Episcopal Church in this country, and is in force except so far as it has been modified and changed by statute, and by the usages and canons of the church. Livingston v Trinity Church, Trenton, 45 N. J. Law, 230.

Glebe Land, Sale. In Claughton v Macnaughton, 2 Munf. (Va.) 513, it was held that under the Virginia act of 1802 glebe land could not be declared vacant and sold if there was a minister who had been put into possession of the property, and this possession did not depend on the regularity of the election of the vestry. The order of the vestry that the minister be inducted into the parish was sufficient to prevent a sale of the land as vacant.

Governing Body. The church is a regularly organized religious establishment, and is entirely independent of all State or federal governmental control. The membership is purely voluntary and is composed of the clergy and the laity. The supreme governing body is the General Convention, composed of representatives of both clergy and

laity, and which has general jurisdiction over the affairs of the church and its members, as prescribed in the constitution thereof; the legislative will of the convention is expressed in the form of canons of the church, changeable from time to time, as the General Convention may determine. The church is divided into dioceses, the governing body of each of which is a diocesan convention, presided over by a bishop of the diocese, who is, besides being president of the convention, clothed with certain other powers as the head of the diocese. Satterlee v U. S., 20 App. D. C. 393.

Government Ownership Disapproved. The church began proceedings for the sale of a large tract of land owned by it. Such sale was resisted by the overseers of the poor, who claimed the right to the property under an early Virginia statute. The court ordered a sale of the property, holding, among other things, that the corporation had the title, and the land was not subject to any claim by the overseers of the poor. Terrett v Taylor, 9 Cranch (U. S.) 43.

Griswold College. About 1866 the bishop of the Iowa Diocese formed a plan of erecting, on land belonging to Griswold College property, a church edifice to be called the "Bishop's Church." The college authorities transferred the title to land for the purpose of the new church, on condition that the property should be held by the bishop and his successors in trust for the purpose aforesaid. The erection of the church edifice was begun by the bishop, and was carried forward as rapidly as funds would permit. The bishop had charge of the enterprise, and collected nearly, if not all, the funds. Subscriptions being inadequate, the bishop borrowed money on his individual credit for the purpose of carrying on the enterprise. The total expenditure was about $70,000, and the amount received by the bishop was $60,000. He advanced, or used $10,000 from his own funds.

About the time the church edifice was completed and consecrated the bishop died. His administrator brought an action to recover the $10,000 advanced by him, or for a judgment declaring a lien on the property for the amount

advanced. It was held that the advances by the bishop were voluntary, and without any obligation on his part. This was a charitable or religious trust, with no beneficiary known to the law, it appearing that to allow a recovery would be to put an end to the trust estate and to the trust itself, and defeat the whole object thereof, as contemplated by the bishop himself and by those who contributed their funds for the erection of the church. French, Adm'r. v Trustees, Griswold College, 60 Ia. 482.

Guild. The vestry authorized a guild to erect a building on a part of the society's land, which building was occupied and used by the guild for various church purposes. Later the guild sought to use the building for its own benefit by renting it to outside parties. The vestry prohibited such use, and this control of the property by the vestry was sustained, it being held, among other things, that the guild could not recover damages against the vestry for its refusal to permit the guild building to be used for outside purposes. Read v St. Ambrose Ch. 6 Pa. Co. Ct. 76.

Iowa Diocese. This diocese comprises the entire State of Iowa, and was, on joint vote of the two houses of General Convention, admitted into union with the Church of the United States. By the constitution of the diocese it is a part of the Protestant Episcopal Church in the United States and acknowledges the authority of that church. Bird v St. Mark's Church, Waterloo, 62 Ia. 567.

Long Island Diocese. The act (L. 1871, Ch. 750) incorporating the trustees of the estate belonging to the diocese of Long Island exempted its property from taxation. Real property donated to the trustees and not occupied for religious purposes was held exempt from taxation. People v Dohling, 6 App. Div. (N. Y.) 86.

Missions. The Domestic and Foreign Missionary Society held entitled to receive and administer a legacy for a mission to be established at Port Cresson on the west coast of Africa. Domestic and Foreign Missionary Society's Appeal, 30 Pa. St. 425.

Testatrix bequeathed to this society a fund to be used for the purpose of erecting an Episcopal chapel, and sustaining a mission upon the homestead of the testatrix. Various practical objections were made to the bequest, including the statement that the mission could not be maintained at the place indicated, and would receive no patronage. Testatrix had a right to devote her property to this purpose, and the court could not overrule her intention by assuming in advance that the location would prove to be inconvenient. The trust was for an object plainly charitable. This bequest was sustained. Eliot's Appeal, 74 Conn. 586.

Testatrix, a resident of Maryland, made a bequest "to be paid for the special benefit of the foreign missions associated with the Episcopal Church." The corporation known as the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States claimed the bequest, this being the only general missionary society in the Protestant Episcopal Church. The bequest was held to be indefinite, and not subject to explanation by extrinsic evidence. The above-named missionary society was not entitled to the bequest. Domestic and Foreign Missionary Society Protestant Episcopal Church v Reynolds, 9 Md. 341.

A bequest to the Diocesan Missionary Societies of Maryland and Virginia, was held void as to Maryland, for the reason that there was, at the time, no incorporated missionary society capable of taking the bequest, but it was held valid as to Virginia, there being in that State an incorporated missionary society. Brown v Thompkins, 49 Md. 423.

North Carolina, Legacy Apportionment. Until 1883 the Protestant Episcopal Church in the State of North Carolina constituted the diocese of North Carolina. In that year, in accordance with the constitution and canons of the church, a diocese known as East Carolina was constituted out of part of the territory of the Diocese of North Carolina, and the church in the residue of the territory retained the name of the Diocese of North Carolina. Testatrix, by a will made in 1881, devised certain of her property "to the

board of trustees for the Protestant Episcopal Church in the Diocese of North Carolina." Testatrix died in 1885. It was held that the object of the testatrix' bounty was the Episcopal Church in the State of North Carolina, and the Diocese of East Carolina is entitled to share with the present Diocese of North Carolina in the property. East Carolina Diocese v Trustees North Carolina Diocese, 102 N. Car. 442.

Old Ladies' Home, Trust for Sustained. The will contained a bequest to provide "a home for ladies of advanced age or infirm, who are or may hereafter become connected with the St. Paul's Church society, or with the mission or the church that is to be established upon my homestead." It was held that the terms of the bequest were entitled to a liberal construction. The bequest applied to persons who had no home or no comfortable one. The society was at liberty to provide a home for each person, individually, or in private families, or to gather them in one general residence. The bequest was sustained. Eliot's Appeal, 74 Conn. 586.

Pennsylvania Convention. By the constitution of the church the Convention of the Protestant Episcopal Church of Pennsylvania is composed of the clergy and of lay deputies. They deliberate in one body, but, when five members require it, they vote as two distinct orders, and the concurrence of each order is necessary to give validity to any measure. The proposed charter of a local society was rejected because it contained a provision prohibiting the disposition of its property without the consent of the Convention. The clerical members of the Convention could prevent the alienation of property, and the charter was, therefore, held repugnant to the provisions of the Pennsylvania act of April 26, 1855, which vested the control of property in the lay members of the local society. Re St. Paul's Church, Chestnut Hill, 30 Pa. St. 152.

Philadelphia Episcopal Academy. This institution, incorporated by a special act in 1787, was under the jurisdiction of the Protestant Episcopal Church, and was maintained as an academy for the instruction of students primarily of that

faith. The institution was held to be a public charity, and therefore exempt from taxation. Episcopal Academy v Philadelphia, 150 Pa. 565.

Philadelphia Orphan Asylum. Testatrix provided for the establishment of an asylum for the maintenance and education of white female orphans between the ages of four and eight years, who should either have been baptized in the Protestant Episcopal Church in Philadelphia or elsewhere in Pennsylvania, and also other female white children of the same ages without any other description, except that orphan children of Protestant Episcopal ministers should be preferred, that the form of worship and instruction should be that taught in the Protestant Episcopal Church. This was held to create a public charitable institution, which was exempt from taxation. Burd Orphan Asylum v School District of Upper Darby, 90 Pa. St. 21.

Property, Title of General Denomination. The trustees of the Protestant Episcopal Church elected and chosen by the diocese of Chicago are authorized to accept and make conveyances for the uses and purposes mentioned in the private acts of 1849 and 1861, and the bishop of the diocese of Chicago, as the successor of the bishop of the diocese of Illinois, may take, hold, or convey property for the uses and purposes expressed in the private act of 1853. Kennedy v LeMoyne, 188 Ill. 255.

Reader, Status. In Sanger v Inhabitants in Roxbury, 8 Mass. 265, it was held that a reader is a public teacher of piety, religion, and morality, within the meaning and intent of the third article of the Massachusetts bill of rights.

Rector, Call, Dissolving Relation. The rector was called by the churchwardens and a majority of the vestry. He accepted the call in writing and entered upon the duties of his office. His election was afterward certified to the convention of the diocese of New York, and he took his seat in the convention by virtue of that certificate. The call was not for a specified time. It was held that after the defendant had been called and settled, without any expressed limita-

tion of time, he could not, according to the rules of this church, be dismissed or removed without his own consent, except by the bishop of the diocese. The rector did not resign. He was held to have been regularly employed, and the preliminary injunction restraining him from further performance of the duties of rector was held to have been improperly granted. Youngs v Ransom, 31 Barb. (N. Y.) 49.

Rector, Cannot Be Excluded from Property. The rector is a member of the vestry and by the law of the State, as well as the law of the church, is entitled to the possession and control of the church property according to the rules of the church for the purposes prescribed by the law of the church and to be used according to its rules and discipline. The vestry cannot remove him from office. Ackley v Irwin, 71 Misc. (N. Y.) 239.

Rector, Title of Local Society. The parish, or congregation was incorporated in 1855, under the laws of Illinois, and the trustees were appointed. A contract had already been made for the purchase of a lot on which to erect a house of worship and parsonage. This property was conveyed to the trustees of Christ Church in 1862. The deed contained no declaration of trust. The majority of the congregation were classed as Low Church, and the bishop of the diocese belonged to the school known as High Church. In view of these differences, the local society desired to hold the property strictly for the use and benefit of the parish or congregation, free from the interference and control of the bishop, and the incorporation of the parish or congregation and the appointment of trustees, and the conveyance to them so far as any particular purpose or object was shown to have been thereby intended, were to attain this end. An injunction was sought for the purpose of preventing the rector from occupying the parsonage, from using the house of worship, and from paying him for services as rector from the funds of the church.

It was held that if persons chose to give him money he had a right to receive it, whether or not he had any right

to officiate as rector. It was alleged that the rector had been deposed from the ministry of the Protestant Episcopal Church by the proper church judicatory, because of nonconformity with certain of its tenets. Notwithstanding this alleged deposition, the rector was continued by the officers of the society, who were sustained by nearly all of the congregation. It was held that in the absence of any trust in the conveyance of property to the society, the trustees did not hold it for any church in general, nor for the benefit of any peculiar doctrines or tenets of faith and practice in religious matters, but solely for the society or congregation whose officers they were, and they were not, in the discharge of their duties, subject to the control of any ecclesiastical judicatory. "Christ Church was organized as a parish of the Protestant Episcopal Church, and it is liable to the Discipline of that church. But that does not affect property rights acquired and held for the use of the parish or congregation as a corporate body, as distinct from the Protestant Episcopal Church in general. This property and its use belong to the parish or congregation, and there is no sufficient reason for taking it from them and giving it to the church at large for the benefit of others." The injunction was denied. Calkins v Cheney, 92 Ill. 463.

Rector, Casting Vote. By the charter of this society (Church of the Evangelist) the vestry was composed of the rector and twelve vestrymen. A vacancy having occurred, a meeting was held, attended by the rector and eleven vestrymen. Six of the vestrymen voted for one candidate, and the other five, with the rector, voted for another candidate. The rector then voted to dissolve the tie, thus voting twice. It was held that he had a right to vote once, but could not again vote to dissolve a tie, and therefore that the vestryman claiming to have been elected by the rector's two votes was not legally chosen. Neilson's Appeal, 105 Pa. 180; see as to New York rule, subtitle below, Vestry, casting vote.

Rector, Charges Against. A rector was charged with nonconformity to the doctrines of the church, intentional omis-

sions in the ministration of its ordinances, and an attempt was made to organize a court, composed of his brother clergymen, for his trial. He appealed to the civil court, and alleged, as the chief reason for interposition, the want of authority in the spiritual court to try him, and the misconstruction of the canons. The ecclesiastical court determined that it had jurisdiction. The civil court declined to restrain the ecclesiastical court from continuing the trial of the rector. Chase v Cheney, 58 Ill. 509.

Rector, Changing Diocese, Effect. The society made a contract with Mr. Brockway by which he was to become the rector of the church at a stipulated salary. This church was in the Central New York Diocese, and Mr. Brockway was a minister in the Western New York Diocese. By the law of the denomination a minister moving from one diocese to another could not gain a canonical residence in the latter diocese except by the approval of the bishop of that diocese. In this case the bishop of Central New York refused to approve Mr. Brockway's transfer, and after he had officiated several months as rector the bishop served on him an order of inhibition prohibiting him from further service in the Central New York Diocese. The local society and Mr. Brockway joined in an action against the bishop of Central New York to compel him to give a certificate of transfer, and for a judgment declaring the order of inhibition null and void, and restraining the bishop from interfering with the carrying out of the contract between the church and Mr. Brockway. It was held that the bishop had jurisdiction to make the order, and that the court had no right to consider the merits and determine whether there was just cause for the order. Rector Saint James Church v Huntington, 82 Hun. (N. Y.) 125.

Rector, Defined. A rector, as the word is understood by the canons of the Protestant Episcopal Church, is a duly ordained clergyman of the church in priest's orders, who has been elected to the rectorship by the vestry of the parish, agreeable to the canons of the church, and in whose

call or invitation or notification of election there is no limitation of time specified when the engagement or contract (for such the engagement between the clergyman and the vestry as two principals, is considered) is to cease. Bird v St. Mark's Church of Waterloo, 62 Ia. 567.

Rector, Dissolving Relation. By a canon of the Protestant Episcopal Church a rector canonically elected and in charge, cannot resign his parish without the consent of the parish or its vestry, nor can such rector be removed therefrom by the parish or vestry, against his will, except upon the dissolution of his pastoral connection in the manner and by the authority designated by other canons.

In 1890 the rector was chosen by the local society and entered on the duties of his office. In 1893, in consequence of dissensions in the society, the bishop made an order terminating the pastoral relation of the rector, and directing the local society to pay him the amount of his salary then unpaid. The pastoral relation was dissolved upon the petition of the officers of the society. The court held that the order of the bishop was not sufficient under the law of the church to dissolve the pastoral relation without further proceedings. Jennings v Scarborough, 56 N. J. Law, 401.

In 1798 a general church canon provided that "in case of any dissolution of his pastoral relations either party may give notice of such disagreement to the bishop, and the decision of the bishop in the premises shall be final and binding upon the parties." But this canon was not to be in force in any diocese which has made, or shall hereafter make, provision by canon upon the subject, or in any diocese with whose laws or charters it may interfere. No canon on this subject had been adopted in Maryland, but the statute of 1798, continuing in substance the act of 1779, chap. 9, relative to the Protestant Episcopal Church, provided that the vestry of the local church should have the power to call a rector and make contracts in relation thereto, including the term of service and the severance of the pastoral relations. The general church canon on this subject was, there-

fore, held not applicable in the Maryland diocese. Bartlett v Hipkins, 76 Md. 5.

By its admission into the diocese of Iowa the parish of St. Mark's became a part of the church in the United States and amenable to its canons. One of the canons is that the rector cannot be removed by the vestry against his will. These canons were declared to be a part of the contract of employment. The vestry could not, by reducing the rector's salary without his consent, compel him to accept a dissolution of the pastoral relation. In this case the rector was held entitled to recover the full amount of the stipulated salary less the amount received during the current year. The contract could not be modified by the church without the rector's consent. Bird v St. Mark's Church, Waterloo, 62 Ia. 567. In this case it was also held that by the canons of the church a rector canonically elected and in charge, or an instituted minister, may not resign his parish without the consent of said parish or its vestry, if the vestry be authorized to act in the premises, nor may such rector or minister be removed therefrom by said parish or vestry against his will except that the pastoral relation may be dissolved when the parties cannot agree respecting the separation, by the bishop acting with the advice and consent of the standing committee of the diocese or missionary jurisdiction.

Rector, Election, Sufficiency. This church was subject to the canons and laws of the Protestant Episcopal Church of the United States and Diocese of California. The society was not incorporated, but had been a mission under the direct supervision of the bishop, with a minister in charge. On the 29th of May, 1882, the mission was organized as a parish. Vestrymen were elected and assumed the duties of their office. They elected a rector, but did not give the bishop any notice of such an election, and no appointment was made by him. Afterward, at the meeting of the vestry, the rectorship was declared vacant, and notice thereof was given to the rector previously elected, and to the bishop. The bishop

appointed another rector to supply the place until a rector was elected.

On the 29th of July, 1883, the newly appointed rector was expected to take charge of the service at the regular hour, 11 o'clock A. M. About 9 o'clock A. M. of the same day the former rector, so chosen by the vestry, entered the church and commenced to hold service, and continued such service until after the hour of eleven o'clock, and after the arrival of the newly appointed rector. The rector so in charge of the irregular service gave notice that on the next day, July 30, an election would be held for the purpose of choosing five vestrymen. At the hour appointed for the meeting on the evening of July 30, the church was locked, and thereupon several persons met at the house of one of the parishioners, and held an election, choosing five vestrymen, as required by the notice. The notice of election, the meeting on the 30th, and the election of vestrymen were held to be irregular and invalid. Dahl v Palache, 68 Cal. 248.

Rector, Exclusion from Church. The vestry assumed authority to exclude the rector from office and prevent him from occupying the church edifice and parish building. Such exclusion was wrongful, and the rector was held entitled to the use and control of the property according to the canons of the church. In this right he was sustained not only by the civil court but also by the judgment of a properly constituted ecclesiastical tribunal. Ackley v Irwin, 71 Misc. (N. Y.) 239.

Rector, Exclusion, When Unlawful. In 1861 the plaintiff was called to be rector of this society, and continued in that office until 1867, when on the next Sunday after Easter the church was closed against him, and he was also excluded from the parochial schoolhouse. This expulsion was by the wardens and vestrymen. The rector brought an action against them for damages, and recovered judgment. It was held that the plaintiff, by his official connection with the society, acquired all the customary powers and privileges pertaining to the rectorship, including the right to occupy

the house of worship and the parochial schoolhouse for the purpose of performing the functions relative to his office, and his exclusion therefrom was unlawful. Lynd v Menzies, 33 N. J. Law, 162.

Rector, How Called. The churchwardens and vestrymen have the exclusive power of calling and inducting a minister. The persons qualified to vote for the churchwardens and vestrymen have no such right. Humbert v St. Stephen's Church, N. Y. 1 Edw. Ch. (N. Y.) 308.

The vestry has the power to appoint and remove the rector; the congregation has no power of removal. Stubbs v Vestry of St. John's Ch. 96 Md. 267.

The provision of the New York religious societies act of 1813, section 8, which provides for fixing the salary of a minister by a vote of the congregation, does not apply to Protestant Episcopal churches. A call to a parish and its acceptance and consequent entry upon the duties of the office of its minister, are all which we have in this country resembling the presentation, admission, and induction of the English Church, and neither these terms nor the ceremonies indicated are known to our law as applicable to any of our churches. The congregation, in the manner indicated by the law of the land, and in case of Episcopal churches by their vestry, call a clergyman to exercise his functions in their parish and fix his compensation. The term "institution" in English ecclesiastical law is applied to the investiture of the spiritual as induction is to that of the temporal part of the benefice. There is no such thing known to our law as institution or induction, and the ecclesiastical law of the mother country is no part of the law under which we live. Youngs v Ransom, 31 Barb. (N. Y.) 49.

Rector, Legacy for Support Sustained. A devise to the society for the purpose of providing a fund for the support of the rector was sustained in Tucker v St. Clement's Church, New York, 3 Sandf. Sup. Ct. (N. Y.) 242, aff'd 8 N. Y. 558n.

Rector, Right to Occupy Property. One of the rights of the rector under a call from a particular congregation is that

of preaching on Sundays in the church provided by the congregation. This does not involve any question of title to the property, but the rector must of necessity have the right to partake in such use of the property as the congregation has. Whatever place the congregation provide for the purpose of public worship in the parish, into such place the rector, by virtue of his office, has the right to enter in order to conduct such worship. Lynd v Menzies, 33 N. J. Law, 162.

Rector, Tenure of Office. The vestry adopted a resolution that the rector be elected permanently to the rectorship of the church. It was held that the word "permanently" meant for an indefinite period, and that it was intended that the rector should hold the office until one or the other of the contracting parties should desire to terminate the connection. Perry v Wheeler, 75 Ky. 541.

The rule or regimen of the Episcopal Church as to the tenure of its parish ministers is that when they have once been placed in charge of congregations they can neither leave, nor be dismissed, except by mutual consent, without the intervention of the bishop. When a minister is called or settled in an Episcopal parish without any limitation of time he can only be dismissed or sever the connection by mutual consent or by superior ecclesiastical authority on the application of one of the parties. Youngs v Ransom, 31 Barb. (N. Y.) 49.

The vestry on the 22d day of May, 1902, adopted a resolution terminating the relation of the rector to the society to take effect on the 31st of July following. The rector had no notice of this intended action by the vestry except by the resolution, which was immediately served on him. It was held that the rector had no vested right in the office and was not entitled to notice of the intended action by the vestry. The rector applied for an injunction restraining the vestry in removing him from office. The injunction was denied. Stubbs v Vestry of St. John's Ch. 96 Md. 267.

Sale, Legislative Power. An act was passed in 1871 author-

izing the society to sell its real property and use the avails, first for the payment of the society's debts, and for the compensation of pew-owners, and rights in tombs situated upon the land. The balance was to be applied in the purchase of another lot and the erection of a church thereon. The act was applied for by a majority of the society, and accepted by it. In an action to restrain the sale it was held that the Legislature had power to pass the act, notwithstanding the fact that the conveyance of the land provided for a perpetual use thereof, and the church to be erected thereon, for religious purposes. Nor was the title of the society affected by the provision in the canons of the Protestant Episcopal Church that the consent of the bishop and the standing committee should be obtained for removing, taking down, or otherwise disposing of a church. Titles to property must be determined by the laws of the commonwealth. The canons are matters of discipline and cannot be enforced by legal process. Sohier v Trinity Church, 109 Mass. 1.

Sale of Church Property. Sale of church site, consent of bishop and standing committee must be shown. Lane v Calvary Church of Summit, N. J., 59 N. J. Eq. 409.

Trinity Church, Charter. This society was incorporated while New York was a province of Great Britain and the charter incorporated "all persons inhabiting or to inhabit the city of New York, and in communion with the Protestant Church of England." "The Protestant Episcopal Church was the established church of the mother country; and the crown, in its generosity to the Episcopalians in the city of New York, naturally sought to place Trinity Church on a footing as similar to that of the Church of England as local circumstances would permit." Groesbeeck v Dunscomb, 41 How. Pr. (N. Y.) 302.

Trinity Church, Charter Superior. In Burke v Rector, etc., of Trinity Church, 63 Misc. (N. Y.) 43 affirmed 132 App. Div. (N. Y.) 930, it was held that Trinity Church, having been chartered by the English crown in 1697, was not sub-

ject to the provisions of the religious corporations law of New York so far as such provisions are inconsistent with or in derogation of the charter rights and privileges of that corporation.

Trinity Church, St. John's Chapel. Trinity Church was incorporated by the British crown in 1697. The parish of Trinity Church embraces the entire borough of Manhattan, and includes Trinity Church and nine chapels, with one rector, and several vicars, curates, and assistants. The vestry is the governing body of this church, and necessarily exercises all the corporate powers. The vestry have the supervision and control and are the sole managers of the corporation in respect to its temporalities. St. John's Chapel belongs to the Trinity corporation, and not to the corporators or other members of the congregation. In deciding to close the chapel the vestry did not exceed its powers, and the court cannot undertake to review the exercise of their discretion or judgment. Burke v Rector, etc., Trinity Church, 63 Misc. (N. Y.) 43.

Trust, Conveyance to Bishop. A conveyance of real property to the Bishop of Georgia for the use of the church in the division of Georgia created a trust in which the bishop became trustee by virtue of his office. The incorporation of a society and the erection of the house of worship, and the establishment of religious services in connection with the property conveyed to the bishop, did not transfer the title to the society, but it was still held by the bishop in trust, and it could not be mortgaged without his consent. Beckwith v Rector, etc., St. Philip's Parish, 69 Ga. 564.

Trustees, Cannot Act for Two Societies. Several persons were wardens and vestrymen in both church societies. As trustees of St. James they procured the conveyance of certain real property of that church, without consideration, to the Church of the Redeemer. It was held that by this conveyance these trustees derived some advantage as trustees of the Church of the Redeemer, and, being agents of both societies, the transaction was deemed by the court as fraud-

ulent, and the deed was set aside. St. James Church v Church of the Redeemer, 45 Barb. (N. Y.) 356.

Unincorporated Society, Cannot Take Title to Land. The rector brought an action against the society for unpaid salary. The society had acquired land from trustees as a site on which to erect a house of worship, and a church was built on the west part of the lot. The society was not then incorporated, but afterward a corporation was formed. The corporation being indebted to the rector, conveyed to him in payment of his claim, the east half of the lot. The law prohibited the acquisition of property by a religious society until it was incorporated. In this case the property was acquired by the society before incorporation, and there was no conveyance to it afterward, and the title was held to be in the grantors, notwithstanding the attempted conveyance to the society and its subsequent incorporation. The conveyance to the rector of the east half of the lot was made at the request of the society by the trustees who had originally conveyed it, for the reason that these trustees still held the legal title. The rector by accepting the deed obtained a complete title, which could not afterward be questioned by him, by the trustees, nor by the society. All parties were estopped from claiming any defect in the title. Skinner v Grace Church, Mt. Clemens, 54 Mich. 543.

Vestry, Cannot Act Without Meeting. The vestrymen of a church as representatives of a corporate body, must meet in order to take official action. They cannot act singly, upon the streets, or wherever they may be found. It was also held that the necessity of a meeting was not obviated by the fact that a paper was signed, at first by a minority, and subsequently by a majority of the vestry, but without a meeting at which a quorum was present. Re Rittenhouse Estate, 140 Pa. 172.

Vestry, Casting Vote. A churchwarden presiding has the right to vote on every question, and in case of a tie may again vote and dissolve the tie. The senior churchwarden presiding at a meeting of the vestry which had under con-

sideration a motion to call a rector, voted on the main question, thus creating a tie, and thereupon declared the motion lost. It was held that under the statute the presiding officer might again vote and dissolve the tie, and that his announcement that the motion was lost was equivalent to the casting vote in the negative. People v Church of Atonement, 48 Barb. (N. Y.) 603.

Note: The foregoing case was decided under a statute (laws of 1813, Chap. 60, sec. 1) which expressly provided that the presiding officer, at a meeting of the vestry or trustees, should have "the casting vote." Section 42 of the revised Religious Corporations Law of 1909, which among other things, regulates the meetings of the vestry or trustees, provides that at a meeting of the vestry or trustees each member thereof should be entitled to one vote. No provision is made for the casting vote. Section 198 of the new act which regulates the meetings of boards of trustees generally, contains the provision that "in case of a tie vote at a meeting of the trustees, the presiding officer of such meeting shall, notwithstanding he has voted once, have an additional casting vote," but by section 190 Protestant Episcopal Churches are excluded from the operation of the article which contains this provision. See as to Pennsylvania rule subtitle above, Rector, casting vote.

Vestry, Acting without Formal Resolution. The vestry, the governing body of a church, could authorize the rector, who was president of the vestry, to act as its agent in certain transactions without passing a formal resolution for that purpose; oral authority from a majority of the members, given during a session of the body, was sufficient. Cann v Rector, Church of the Holy Redeemer, 121 Mo. App. 201.

Vestry, Increasing. The vote of a Protestant Episcopal church to increase the number of vestrymen does not affect the rights and powers of the former vestrymen until the additional members have been chosen. Wardens, Christ Church v Pope, 8 Gray (Mass.) 140.

Vestry Meetings. To constitute a legal meeting as trustees

the rector, if there be one, and one church warden, together with five vestrymen, must be present. Moore v Rector St. Thomas, 4 Abb. N. C. (N. Y.) 51. In this case it was held that five of the eight vestrymen must be present, and it made no difference that there were vacancies in the office of some of the eight. The statute contemplates a meeting by a majority of the whole number authorized by the statute, and not a majority of those in office at a particular time without regard to existing vacancies.

The vestry of a Protestant Episcopal Church have authority to call meetings of the proprietors. The vestry may transact business in the absence of both wardens if a majority of all their members are present; even if it has been voted at several annual meetings that one warden and four vestrymen constitute a quorum for transacting business. Wardens, Christ Church v Pope, 8 Gray (Mass.) 140.

Vestry, Powers. The society was incorporated in 1859. In 1870 the vestry adopted the so-called free-church plan, under which pews were appropriated to all regular attendants at Sunday morning services, without reference to the amount contributed, but existing assignments were substantially preserved, no change being made without the pew-holder's consent. It was held that the vestry had power to make by-laws concerning the assignment and occupancy of pews. Livingston v Trinity Church, Trenton, 45 N. J. Law 230.

In Beckett v Lawrence, 7 Abb. Pr. N. S. (N. Y.) 403, it was held that the vestrymen have power to remove, or cause to be removed, persons disturbing religious services in the church.

In Cushman v Church of Good Shepherd, 188 Pa. St. 438, it was held that the vestry of Protestant Episcopal churches, or congregations, represent the laity, and the church charter must be deemed to include the act of 1855 relative to lay control. The vestry had power to dispose of church property under ecclesiastical rules, in the interests of the church, unless they attempt to violate a condition subject to

which the property was granted, or money to purchase and build it was contributed.

The property consisted of a house of worship. Two of the windows were memorials for Bishops Bowman and Kemper. The society proposed to remove the church edifice to another town, and include the memorial windows in the new building. The proposition to change the location of the house of worship was approved, the court observing that "we must assume that both the corporation and the contributors made the condition subject to the law of the church that if the congregation became depleted in numbers and substance by reason of death and removals or shifting of population, this particular church might be disposed of, and all the associations connected with it should, as nearly as possible, be transferred to a successor wisely located in a new field.

Vestry, Promissory Notes. At a parish meeting of an Episcopal church, the vestry submitted a report that it had arranged to purchase lots for the church and rectory, and that the Church Association of Michigan had signified its willingness to advance a certain amount, provided the property should be deeded to the association in trust for the parish, and that interest at seven per cent should be paid on the money advanced, and the principal should be paid in one-hundred-dollar installments. The meeting authorized the vestry to carry out the arrangement. It was held that the vestry was authorized to give notes for the amount secured. Miller v Childs, 120 Mich. 639.

Virginia, Early Church. At a very early period the religious establishment of England seems to have been adopted in the colony of Virginia, and, of course, the common law upon that subject, so far as it was applicable to the circumstances of that colony. The local division into parishes for ecclesiastical purposes can be very early traced; and the subsequent laws enacted for religious purposes evidently presuppose the existence of the Episcopal Church, with its general rights and authorities growing out of the common law. What those rights and authorities are need not be

minutely stated. It is sufficient that, among other things, the church was capable of receiving endowments of land, and that the minister of the parish was, during his incumbency, seized of the freehold of its inheritable property, as emphatically *persona ecclesiæ*, and capable, as a sole corporation, of transmitting that inheritance to his successors. The churchwardens also were a corporate body clothed with authority and guardianship over the repairs of the church and its personal property; and the other temporal concerns of the parish were submitted to a vestry composed of persons selected for that purpose. In order more effectually to cherish and support religious institutions, and to define the authorities and rights of the Episcopal officers, the Legislature from time to time enacted laws on this subject. By the statutes of 1661, chaps. 1, 2, 3, 10, and 1667, chap. 3, provision was made for the erection and repairs of churches and chapels of ease; for the laying out of glebes and church lands, and the building of a dwelling house for the minister; for the making of assessments and taxes for these and other parochial purposes; for the appointment of churchwardens to keep the church in repair, and to provide books, ornaments, etc.; and, lastly, for the election of a vestry of twelve persons by the parishioners, whose duty it was, by these and subsequent statutes, among other things, to make and proportion levies and assessments, and to purchase glebes and erect dwelling houses for the ministers in each respective parish. It is conceded that, after the Revolution, the Episcopal Church no longer retained its character as an exclusive religious establishment. And there can be no doubt that it was competent to the people and to the Legislature to deprive it of its superiority over other religious sects, and to withhold from it any support by public taxation. Terrett v Taylor, 9 Cranch (U. S.) 43.

Virginia, Education Society. Protestant Episcopal Education Society v Churchman's Rep's 80 Va. 718, sustained a bequest to the Protestant Episcopal Education Society of Virginia, such bequest to be used exclusively for educating

poor young men for the Episcopal ministry, upon the basis of evangelical principles as now established.

Wardens and Vestry, Status. Wardens and vestry of Episcopal societies are the known and recognized representatives and committee of such societies; and any bequest to such wardens and vestry is a bequest to the society itself, or to them as trustees for its use. Trinity Ch. v Hall et al, 22 Conn. 132.

Warfield College. Testatrix devised fifty acres of land, and gave the proceeds of another fifty acres for the purpose of establishing Warfield College in Maryland, to be a school for boys. The devise and bequest were made to the convention of the Protestant Episcopal Church of the Diocese of Maryland. The fifty acres of land included buildings and improvements. The devise and bequest were sustained. The Protestant Episcopal Convention was held entitled to take the bequest and devise, and they were declared valid. Halsey v Convention of the Protestant Episcopal Church, Maryland Diocese, 75 Md. 275.

Western New York Diocese. A bequest to the Parochial Fund of the Diocese of Western New York in trust for the maintenance of religious services in a private unincorporated memorial chapel was held void, for the reason that the society had no power to take such a trust under its charter, and also that the charter contemplated an organized body having legal existence; and the language of the will in question did not specify any particular parish or any organized body which should receive the income. Butler v Trustees, Parochial Fund Protestant Episcopal Church, Western New York, 92 Hun. (N. Y.) 96.

Widows and Orphans' Fund. A fund known as the widows and orphans' fund was raised by subscription in 1804, "for the benefit of the widows and orphan children that may be left by the future ministers of this church." The fund was largely increased by accumulations. It was held that the fund provided for the support of widows and orphans of a particular class, was an eleemosynary charity, and in

this case could be apportioned and distributed for the purpose of carrying the charity into effect. Sears v Attorney General, 193 Mass. 551.

Worship, Rector's Authority. Under Canon 15 of the Protestant Episcopal Church the rector of the parish, subject to the canonical authority of the bishop, may determine and prescribe what services shall be held in a church and in what manner and by whom they shall be performed. Burke v Rector, etc., of Trinity Church, 63 Misc. (N. Y.) 43.

QUO WARRANTO

Trustees, 574.
Vestrymen, 574.

Trustees. In an action of ejectment by one set of trustees against another set, both claiming to have been regularly elected and entitled to the possession of the property, it was held that the title to the office of trustees could not be determined in that action, but that the question could only be determined by quo warranto instituted by the attorney general. Concord Society, Strykersville v Stanton, 38 Hun (N. Y.) 1.

In an action by the society to recover possession of real property, the defendants attacked the title of the trustees of the plaintiff and alleged that they, the defendants, were the true trustees. The court said the question could not be tried collaterally, but only by quo warranto. First Presbyterian Society, Gallipolis v Smithers, 12 Ohio St. 248.

Quo warranto was held the proper remedy to test the title to the office of trustees of the society. Commonwealth ex rel Gordon v Graham, 64 Pa. St. 339; see also Schilstra v Van Den Heuvel, 82 N. J. Eq. 612.

Vestrymen. This writ is available to try the title to the office of vestrymen in the Protestant Episcopal Church. State v Stewart, 6 Houst. (Del.) 359.

REFORMED CHURCH

Description, 575.
Diversion of property, 576.
Division of society, effect, 576.
Legacy, limitation, 576.
Succession to Calvinist Society, 576.
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Description. It seems that the peculiar doctrines represented originally by the Calvinist society of the last century, and embodied in the Heidelberg Confession, have been held under different names by the Reformed Church in this country for more than a century. Those names have been affected by various circumstances, as the nationality of the members and the location of the churches. Among these designations were "High Dutch," "German Presbyterians," and "Sacramentarians." So, under the general denomination Calvinists, was included the term "German Calvinists"; and the opinion was expressed by one witness that the Reformed Church of the United States is the only historical successor of the church intended by the name of the Calvinist Society.

A distinctive feature in the belief of the religionists known as the Reformed Church, represented under these different denominational titles, is their adhesion to the tenets of the Heidelberg Confession, unembarrassed by other distinguishing points of doctrine which are held by other religious bodies having a Calvinistic origin. It was said that the dogmas of that confession constitute the creed of the Reformed Church essentially as they were maintained by the Calvinistic Society during the last century, ever since their first promulgation by the Calvinist branch of the reformers. Ebbinghaus v Killian, 1 Mackey (D. of C.) 247.

Diversion of Property. An action by the original society against a seceding party which had sought to establish a society adhering to the doctrines of the Lutheran Church to prevent the diversion of the property and the appropriation of it by the Lutherans was sustained, in Baker v Ducker, 79 Cal. 365.

Division of Society, Effect. The defendant, a pewholder and an officer of the church, was sued for two years' pew rent. He resisted payment on the ground that his liability had been terminated, or at least suspended, by the action of certain members of the society who had practically reorganized it in an illegal manner, and had usurped all authority, excluded the existing officers from their offices and employed a minister who had not been sanctioned by the synod, and otherwise arbitrarily assumed control and management of the society contrary to the rules and Discipline of the church. The court held that the pewholder was not liable for pew rent under these circumstances. Ebaugh v Hendel, 5 Watts. (Pa.) 43.

Legacy, Limitation. In Keiper's estate, 5 Pa. Co. Ct. 568, the society was held entitled to a legacy which was given for the erection of a Reformed church, to be paid only in case there should be no debt on the church property, or until the legacy, with accrued interest, would place the church entirely out of debt. The testator during his lifetime contributed to the society, which was then engaged in the erection of a church, and the church was erected three years before he died.

Succession to Calvinist Society. In Ebbinghaus v Killian, 1 Mackey (Dist of C.) 247, the trustees of the society were recognized as the lawful successors of the Calvinist Society mentioned in a deed of trust, and entitled to the beneficial interest in the lot in controversy, and to its rents, issues, and profits, as against a Lutheran Society.

Successor to Reformed Dutch Church. In 1871 the name of the General Society of the Reformed Dutch Church in the States and Territories of the United States was changed

from "The Reformed Dutch Church of America" to "The Reformed Church of America," and after that time the word "Dutch" was omitted from the corporate names of the churches constituting that society. De Camp v Dobbins 29 N. J. Eq. 36. See article on Reformed Dutch Church.

Trust, Intention of Testatrix. Testatrix made a residuary bequest to the society "to promote the religious interests of the said church, and to aid the missionary, educational, and benevolent enterprises to which the said church is in the habit of contributing." It was held that this society was the one intended as the object of the bequest, and that a misnomer of a corporation in a gift to it will not defeat the gift. The trust was sustained. De Camp v Dobbins, 29 N. J. Eq. 36.

REFORMED DUTCH CHURCH

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Origin in America. Among the early settlers of New Jersey and New York were many emigrants from the United Provinces. They did not, like the settlers of New England, seek an asylum from the religious persecutions of their native land, but, like them, they brought here their industry, their virtues, and especially their ardent attachment and steadfast adherence to the religious faith of their forefathers. As early as 1622 congregations were formed. In process of time these became numerous, spreading over a large portion of the then inhabited parts of New Jersey and New York, each enjoying its religious worship and privileges, all guided by the doctrines of Heidelberg and Dordrecht, and most of them holding that competent and safe spiritual guides and teachers were to be found only in the mother country, where all their early clergymen were either born or educated. Until the year 1771 no general system of church government was organized. In that year the numerous flocks,

somewhat distracted and divided, more especially on the question whether adequate ministers could be raised here or must be sought abroad, were brought together into a common fold. A general system of church organization, similar in outline to the Reformed Dutch in Holland, and substantially the same as now exists, was then unanimously, and as we may infer from other public records, cordially adopted.

In the year 1799, when the New Jersey statute for the incorporation of religious societies was enacted, all those who professed the faith and claimed to be members of the Reformed Dutch Church were divided among numerous congregations but united in a general ecclesiastical frame of government, comprehending a consistory of each congregation, a classis having a jurisdiction over a few neighboring congregations, a particular synod, embracing a few classes, and a General Synod having jurisdiction over the whole. Their affairs were regulated according to the ancient constitution of their church; an authentic copy of which was published in 1793, and another under the authority of their highest judicature in the year 1815. Den ex dem. Day v Bolton, 12 N. J. L. 206.

History. In 1772 the Dutch Church in the United States separated, so far as absolute authority is concerned, from the ecclesiastical jurisdiction of Holland, and established a general system of church judicatories in this country.

Each separate church is governed by a consistory composed of the minister, elders, and deacons, from which an appeal lies to the classis, a body consisting of representatives from the several churches under its charge; the several classes send delegates to a particular synod, which is the next judicatory in order, from which latter body an appeal lies to the General Synod, as a tribunal of the last resort, and no particular church, or its members or officers, can lawfully withdraw from the connection; also, pastors and ministers of the several churches are provided and are required to be approved by the classis to which the particular church is subject. Miller v Gable, 2 Denio (N. Y.) 492.

Classis of 1822. In October, 1822, ten persons—five ministers and five elders and deacons—met and organized themselves into an ecclesiastical body, which they called the Classis of the True Reformed Dutch Church in the United States of America. They published to the world the reasons and grounds of their organization. They complained with minuteness of detail that the church once noted for its soundness in the faith had become corrupt in its principles and practice. They alleged a prevailing laxness of discipline and prostitution of the sacred ordinances of the gospel, and declared as follows: "We, the undersigned, ministers, elders and deacons, have unanimously agreed to restore the church to its original purity, and together with the congregations under our care, do unite in declaring ourselves the True Reformed Dutch Church in the United States of America, and as a rule of our faith and practice to abide by all the standards ratified and established in the National Synod, held at Dordrecht in the years 1618 and 1619, without the least alteration, by which act we do not separate from, but remain the identical Reformed Dutch Church."

At the same meeting they resolved that until their numbers were sufficiently increased to be divided into classes and synods, the judicatories in the church should consist of only two descriptions—consistories and a classis; and the classis should be known and distinguished by the name of the True Reformed Dutch Church in the United States of America. This classis not having been organized in the manner provided and sanctioned by the constitution of the Reformed Dutch Church, cannot be deemed a constitutional judicatory of that church. Indeed, they did not thus claim so to be, but avow themselves to have separated from and to be disconnected with that body. Den ex dem. Day v Bolton, 12 N. J. L. 206.

Consolidation, When Void. Sutter v Reformed Dutch Church, 6 Wright (Pa.) 503, contains a history of the movement by which it was sought to unite this society with a

branch of the Low Dutch Reformed Church, and it was held that such attempted change was void.

Congregation, Right to Withdraw. In Pulis v Iserman, 71 N. J. Law 408, it was held that each particular congregation had the right to withdraw from the classis and synod with which it had been connected and become independent, without loss of ecclesiastical or civil function.

Consistory, General Power. The Consistory of the Reformed Dutch Ch. of Prattsville v Brandow, 52 Barb. (N. Y.) 228, sustained the validity of a bequest of this society against the objection that a consistory was not authorized to control the bequest, it being claimed that the board of trustees possessed this power. The will expressly gave the bequest to the consistory to be used as they might deem best.

Division of Society, Adverse Possession. The High Dutch Reformed Church at Schoharie received in 1835 a deed of land in Gallupville, on which a house of worship was erected, and the church at Schoharie and the church at Gallupville were both occupied by the society until 1844, when action was taken resulting in the division of the society, and that part of the congregation living at and near Gallupville was set off from the parent congregation with the expectation that a distinct society would be organized at Gallupville according to the rules of the denomination. The church property at Gallupville was also set off to the new society. No formal title was transferred, and could not be, for the reason that the portion of the congregation at Gallupville was not then incorporated, but the action taken was deemed to lay the foundation of a right by adverse possession. The Gallupville society continued in possession of the property from 1844 to 1869, when it was incorporated, and the property then continued in possession of the corporation, which succeeded to all the rights of property possessed or enjoyed by the unincorporated society. Reformed Church, Gallupville v Schoolcraft, 65 N. Y. 134.

Division of Society, Effect. The local society was incorporated in 1809. On the same day two tracts of land of about

twenty-three acres were conveyed to them in their corporate name. The officers of the society took possession of the property, and received and used the rents and profits. Later there was a division in the society, resulting in the election of two sets of officers, each claiming to be the true legal incumbents, and entitled to hold the property. Both parties admit that the premises belong to the corporation. Both admit that the minister, elders, and deacons, for the time being of the Reformed Dutch Church in the English neighborhood, are entitled to the possession. The case involved the question as to which of these persons were the trustees. The action was brought by the trustees out of possession.

This congregation was originally attached to the Classis of Hackensack. On a division of that classis in 1800 the congregation was placed under the supervision of the Classis of Bergen. By the incorporating act the ministers, elders, and deacons became in fact the trustees of the society, and the act did not require an election of trustees as such. In 1824 a part of the congregation withdrew and dissolved the relations of the society with the Classis of Bergen, denying the authority of the Classis of Bergen, and of the General Synod, because those bodies had departed from the doctrine and standards of the Reformed Dutch Church. The withdrawal in 1824 included the minister, elders, and deacons. The remaining members of the local society continued as members of the congregation in the English neighborhood. Their standing in the church was not affected by the withdrawal of the officers. The seceding portion of the congregation attached itself to the recently organized classis of the True Reformed Dutch Church in America, but that church or organization was not a Reformed Dutch Church, and, therefore, the withdrawing ministers, elders, and deacons, who attached themselves to this new organization, known as the Classis of 1822, ceased to be members of the ancient Reformed Dutch Church.

On the 18th of February, 1824, the Classis of Bergen suspended the minister of this society, and declared vacant the

seats of the elders and deacons as members of the consistory of the church at the English neighborhood, and deposed them from their respective offices. No appeal was taken from the action of the classis. The classis ordered a new election, which was, accordingly, held and confirmed at a subsequent meeting of the classis. The trustees so elected were declared to be the legal representatives of the original society, and entitled to the possession of the property. Den ex dem, Day v Bolton, 12 N. J. 206.

A case involving the status of the Reformed Dutch Church in Bergen has already been noted. See preceding note. The case now under consideration was for the foreclosure of a mortgage given by the consistory of the church, composed of the minister, elders, and deacons constituting trustees before they were deposed and removed by the Classis of Bergen. The debt on which the mortgage was purported to have been based having been sufficiently established, the court held the mortgage to be valid and capable of enforcement. Doremus v Dutch Reformed Church, 3 N. J. Eq. 332.

The minister and members of the consistory withdrew from the denomination and joined the Presbyterian Church but still claimed the right to hold the property. It was held that the minority adhering to the principles of the original denomination were entitled to the possession and control of the church property. True Reformed Dutch Church v Iserman, 64 N. J. L. 506.

Judicatories. Under the constitution of this church there are four ecclesiastical judicatories: (1) The consistory, composed of the ministers, elders, and deacons; (2) the classis, composed of all the ministers, and an elder delegated from each consistory within certain bounds; (3) the particular synod, composed of three ministers and three elders from each classis within certain bounds of the whole country. In these assemblies, or judicatories, it is provided that ecclesiastical matters only shall be transacted, and that a greater assembly shall take cognizance of those things alone which could not be determined in a less, or that appertain to the

churches or congregations in general which compose such an assembly. Comitt v Ref. Protestant Dutch Church, 54 N. Y. 551.

Minister, Deviation in Doctrine, No Right to Use Pulpit. In Suter v Spangler, 4 Phila. (Pa.) 331, the union of the First Reformed Dutch Church of the City and vicinity of Philadelphia with the synod of the Reformed Dutch Church of the United States contemplated a spiritual connection and none other, and did not involve the permanent submission of the former to the ecclesiastical judicatories of the latter, nor required the property of the church to be used for the promulgation and support of the doctrinal faith of the synod. The said church was founded as a Calvinistic church; and it was the duty of courts of justice to prevent the application of its property to religious uses different from those that were originally intended by the donors and those who established the church. No person who does not receive and preach the doctrine of predestination, and the entire system of Calvinistic theology as received and taught by the said church, can have any right to its pulpit, and a court of equity will restrain such person from officiating therein.

Property, Transfer to Another Denomination Prohibited. A large number of members of this society sought to form a corporate union with the Western Presbyterian Church of Philadelphia, under the title of the Immanuel Presbyterian Church, the effect of which would be to merge both societies in one, and transfer all their property to the new society. The original society was established as a Reformed Dutch Church, and a house of worship was erected by contributions from the members of the society and others. The society became connected with the Classis of Philadelphia. The real property which at first was held by trustees was afterward conveyed to the society as such. All the pastors of the church were of the Dutch denomination and members of the Philadelphia Classis. It was held that the situation constituted a trust which could not be violated by trans-

ferring the property to the Presbyterian Society and forming a consolidation with it. Whenever a church or religious society has been duly constituted, as in connection with, or in subordination to some ecclesiastical organization or form of church government, and as a church so connected or subordinate, has acquired property by subscriptions, donations, or otherwise, it cannot break off this connection and unite with some other religious organization, or become independent save at the expense of impairing its title to the property so acquired. Jones v Wadsworth, 11 Phila. (Pa.) 227.

Society, How Formed. From the constitution of the Reformed Dutch Church, and from precedents in the acts and proceedings of the Reformed Dutch Church and of the True Reformed Dutch Church, it appears that the formation of a new congregation or consistory or church judicatory in connection with and subordinate to that church is to be made with the consent and by the authority of the proper ecclesiastical assembly. A portion of the members of the church, or converts professing its faith, cannot by their own act and without the sanction prescribed by the constitution, form a new consistory, classis, or synod within the plan of the church. Den ex dem. Day v Bolton, 12 N. J. L. 206.

Taxation of Parsonage. The society owned a parsonage which was erected from contributions derived from various sources. These contributions did not constitute an endowment or a fund within the meaning of the statute which exempts from taxation such a fund or endowment. The parsonage was, therefore, held to be subject to taxation. State, First Reformed Dutch Church v Lyon, 32 N. J. Law 360.

Theological Seminary, Legacy Sustained. A bequest in aid of the theological seminary at New Brunswick, to be applied in educating pious and indigent young men for the gospel ministry, was sustained as valid by way of a charitable use to the Synod of the Dutch Church. Hornbeck v American Bible Society, 2 Sandf. Ch. (N. Y.) 133.

Trust, When Deviation in Doctrine not Objectionable. See Miller v Gable, 2 Den. (N. Y.) 492, for a discussion on the

power of a local church to use property for the teaching of doctrines different from those held by the general denomination. Goble v Miller, 10 Paige Ch. (N. Y.) 627 was reversed.

Trust, When Valid. The conveyance to certain individuals, of the site of the Dutch Church in Garden Street, in the city of New York, in 1691, in trust for the use of the ministers, elders, and deacons of such church and their successors, and to have a house of public worship erected thereon and for no other use whatever, was a valid conveyance at the common law to a charitable and pious use; and the court of chancery has original jurisdiction to enforce the performance of the trust. Dutch Church in Garden Street v Mott, 7 Paige Ch. (N. Y.) 77; see article on Reformed Church for note on change of name.

REFORMED PRESBYTERIAN CHURCH

Division of society, majority's right, 587.

Division of Society, Majority's Right. This society was incorporated in 1850. By one section of the articles of incorporation corporate powers were vested in the subscribers and their successors, members of the congregation who should adhere to and maintain the system of religious principles declared and exhibited by the Reformed Presbyterian Synod of North America, "of which the Reverend Doctors Wylie and Crawford are now officiating ministers." The church property which was the subject of controversy in this action was conveyed to the corporation in March, 1850, for the use of the congregation and their successors and assigns.

The plaintiffs in this action seceded from the congregation in February, 1870, and claimed the property on the ground that they constituted the real Fifth Reformed Church. It was alleged that the defendant, constituting the majority, had withdrawn from the Reformed Presbyterian Church of North America, and from the jurisdiction of the General Synod.

In June, 1868, the Reformed Presbytery of Philadelphia suspended its relations to the General Synod, in consequence of certain proceedings of the synod which were disapproved by the presbytery, but the presbytery expressly asserted its continued membership in the Reformed Presbyterian Church. The protest of the First Presbytery of Philadelphia was presented to the synod at its next meeting in May, 1869, and the synod thereupon adopted resolutions declaring the officers and members of the presbytery to be without the jurisdiction of the General Synod, and placing several con-

gregations, including the Fifth Reformed, under the jurisdiction of the Second Presbytery of Philadelphia, provided such congregation adhered to the General Synod, and applied for admission to the Second Presbytery.

This action of the synod was held to be without authority, and the majority of the local congregation were declared the true Fifth Reformed Church, entitled to all the rights and privileges accorded to the society under the rules of the Reformed Presbyterian Church, and the control and management of the property under the original conveyance thereof. McAuley's Appeal, 77 Pa. 397. See also Kerr's Appeal, 89 Pa. 97.

RELIGION

Defined, 589.
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Defined. The term "religion" has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with. Davis v Beason, 133 U. S. 333.

In all Christian countries the word "religion" is ordinarily understood to mean some system of faith and practice resting on the idea of the existence of one God, the Creator and Ruler, to whom his creatures owe obedience and love. Religion comprehends all systems of belief in the existence of beings superior to and capable of exercising an influence for good or evil upon the human race, and all forms of wor-

ship or service intended to influence or give honor to such superior powers. It is in this sense of the word that we speak of the religion of the North American Indian, the religion of the fire worshipers, or the ancient Egyptians. A bequest in aid of any such system would, therefore, be a bequest for a religious use within the meaning of the Pennsylvania act of 1855. Knight's Estate, 159 Pa. 500.

Religion is that sense of Deity, that reverence for the Creator, which is implanted in the minds of rational beings. It is seated in the heart and is conversant with the inward principles and temper of the mind. It must be the result of personal conviction. It is a concern between every man and his Maker. Public instruction in religion and morality, within the meaning of our constitution and laws, is to every purpose a civil and not a spiritual institution. Muzzy v Wilkins, Smith's N. H. Rep. 1.

Children, Education. In Re Jacquet, 40 Misc. (N. Y.) 575, 82 N. Y. S. 986, it was held that where a father and mother are Catholics their children, when committed to the care of a guardian, must be brought up as Catholics.

Church and State. At the time of the emigration of the Pilgrims, not only in the country whence they came but in all Christendom, religion was an engine of state, and the support and protection of the latter was deemed indispensable to the preservation and maintenance of the former. This alliance had existed for ages, and the light of inspiration alone could have taught them at once that its dissolution, so far from endangering or destroying the Christian religion, would promote its purity and increase and perpetuate its beneficial influence. In the early periods of our history we find that the government maintained a superintendence over the ecclesiastical affairs of the commonwealth, and instances are numerous in which the governor and magistrates were appealed to and lent their aid in the settlement of religious controversies. The leading principle in the religious system of the colony is the compulsory support of public worship and the liability of every inhab-

itant to contribute toward its maintenance. This principle runs through all the legislation upon the subject, both under the colonial and provincial governments. It was incorporated into our constitution and is now an operative provision of it. To the practical operation of this principle many exceptions have been made, but it never has been abandoned. It is now a prominent feature of our parochial laws.

The original mode of supporting public worship was by the several towns; and towns were established first along with a view of parochial duties as to the management of municipal affairs. Each town was required to be provided with a minister, and every inhabitant was liable to be taxed for his support. And not only in the settlement of ministers but in all elections and other civil matters the right of suffrage was confined to church members in full communion. Each town was required to provide houses of public worship, and individuals were prohibited from erecting such houses without the consent of the town. For about a century all the inhabitants were required to pay ministerial taxes, and in the early days every inhabitant was required to attend public worship on Sundays, and on fast and thanksgiving days, and was subject to a penalty for neglect. Oakes v Hill, 10 Pick. (Mass.) 333.

Constitution of the United States. The first amendment to the constitution, in declaring that Congress shall make no law respecting the establishment of religion, or forbidding the free exercise thereof, was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets or the modes of worship of any sect. The oppressive measures adopted and the cruelties and punishments inflicted by the governments of Europe for

many ages to compel parties to conform in their religious belief and modes of worship to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of the persons and enforce an outward conformity to a prescribed standard, led to the adoption of the amendment in question. Davis v Beason, 133 U. S. 333.

Duty of State. The duty of the state with respect to religion—its whole duty—is to protect every religious denomination in the peaceable enjoyment of its own mode of public worship. This duty is not due alone to the different denominations of the Christian religion, but is due to every religious body, organization, or society whose members are accustomed to come together for the purpose of worshiping the Supreme Being. State v Scheve, 65 Neb. 853.

English Toleration Acts. "As a consequence of the Protestant Episcopalian religion being the state church in the reigns of Elizabeth and George I, and also of the then existing laws in relation to the exercise of other religions, it is probable that the only trusts, which by reason of their object being the advancement of religion would have been recognized as charitable at the time of the statutes in question, were trusts for the advancement of that particular religion. Nevertheless, it is clear that the religious services, the public celebration of which involved the public benefit contemplated by later statutes, must now be taken to include the religious services of, at least, any denomination of Christians, because when from time to time the passing of the various toleration acts rendered lawful the exercise of religions other than that of the Established Church, trusts for the advancement of the Roman Catholic religion, of the religion of Protestant dissenters, and even of that of the Jews were held charitable within the meaning of the Statute." Attorney General v Hall, 2 Irish Re. 291, 307 (1896).

Freedom. That society, or, which is the same thing, that the civil magistrate should ever undertake to prescribe to men what they shall believe and what they shall not believe is a thing so absurd that we should hardly believe it upon

less evidence than that of experience. Opinions are not the proper objects of human authority. The mind of man was not intended by its wise Creator to be subjected to the control of finite limited beings like itself. Freedom of thought is the prerogative of human kind, a quality inherent in the very nature of a thinking being, a privilege which ought never to be denied. No human government has a right to set up a standard of belief, because it is itself fallible. It has not pleased God to enlighten by his grace any government with the gift of understanding the Scriptures. Uniformity of faith is not practicable, and if it were, is not desirable. Muzzy v Wilkins, Smith's N. H. Rep. 1.

Girard College Case. Stephen Girard by a will bearing date December 25, 1830, among other things, gave a large amount of property to the city of Philadelphia for the purpose of establishing and maintaining therein a school for the instruction of poor white male orphan children and directing the erection and equipment of buildings necessary for that purpose. The clause relating to this institution contained the following restriction: "I enjoin and require that no ecclesiastic, missionary, or minister of any sect whatsoever, shall ever hold or exercise any station or duty whatever in the said college; nor shall any such person ever be admitted for any purpose, or as a visitor, within the premises appropriated to the purposes of the said college. In making this restriction I do not mean to cast any reflection upon any sect or person whatsoever; but, as there is such a multitude of sects, and such a diversity of opinion amongst them, I desire to keep the tender minds of the orphans who are to derive advantage from this bequest free from the excitement which clashing doctrines and sectarian controversy are so apt to produce; my desire is that all the instructors and teachers in the college shall take pains to instill into the minds of the scholars the purest principles of morality, so that, on their entrance into active life, they may, from inclination and habit, evince benevolence toward their fellow creatures and a love of truth, sobriety, and industry, adopting at the

same time such religious tenets as their matured reason may enable them to prefer."

Certain heirs of the testator began proceedings in the United States Circuit Court to have the will declared void as to the residuary estate, partly on the ground of an alleged lack of capacity of the city to take the property and partly because the alleged trust was void for uncertainty. The complainants objected among other things that the foundation of the college upon the principles and exclusions prescribed by the testator in the foregoing extract from his will was derogatory and hostile to the Christian religion, and so was void, as being against the common law and public policy of Pennsylvania; and this for two reasons: first, because of the exclusion of all ecclesiastics, missionaries, and ministers of any sect from holding or exercising any station or duty in the college, or even visiting the same; and, secondly, because it limited the instruction to be given to the scholars to pure morality, and general benevolence, and a love of truth, sobriety, and industry, thereby excluding, by implication, all instruction in the Christian religion. Judge Story, speaking for the Supreme Court in Vidal v Girard's Executors, 2 How. (U. S.) 127, said that Mr. Girard did not say that Christianity should not be taught in the college. But that no ecclesiastic of any sect should hold or exercise any station or duty in the college. Judge Story suggested that laymen might instruct in the general principles of Christianity, as well as ecclesiastics, and that there was no restriction as to the religious opinions of the instructors and officers. The Judge further suggested that "the Bible, especially the New Testament, without note or comment might be read and taught as a divine revelation in the college, its general precepts expounded, its evidences explained, and its glorious principles of morality inculcated." The court thought that Mr. Girard intended to exclude sectarians and sectarianism from the college, leaving the instructors and officers free to teach the purest morality, the love of truth, sobriety, and industry by all appropriate

means; and, of course, including the best, the surest, and the most impressive. It was held that there was nothing in the foregoing restriction inconsistent with the Christian religion. The will was sustained.

Government Not to Teach. The suggestion that it is the duty of government to teach religion has no basis whatever in the constitution or laws of this State (Nebraska) nor in the history of our people. The teaching of religion would mean teaching the system of faith and worship of one or more of the religious sects; it would mean sectarianism in the public schools. State v Scheve, 65 Neb. 853.

Importance to Society. Religion is of the utmost importance to every community. The history of the past furnishes abundant evidence of the truth of this proposition. It is the basis of civilization. Were it not, we should be in a state of moral darkness and degradation, such as usually attend the most barbarous and savage states. It is to the influence of it that we stand indebted for all that social order and happiness which prevails among us. It is by the force of religion more than by that of our municipal regulations, or our boasted sense of honor, that we are kept within the line of moral rectitude, and constrained to administer to the welfare and comfort of each other. In short, we owe to it all that we enjoy, either of civil or religious liberty. Commonwealth v Dupuy, Brightly N. P. (Pa.) 44.

Legislative Regulation. Although it may be true that "religion can be directed only by reason and conviction, not by force or violence," and that "all men are equally entitled to the free exercise of religion according to the dictates of conscience," as the bill of rights of Virginia declares, yet it is difficult to perceive how it follows as a consequence that the Legislature may not enact laws more effectually to enable all sects to accomplish the great objects of religion by giving them corporate rights for the management of their property, and the regulation of their temporal as well as spiritual concerns. Terrett v Taylor, 9 Cranch (U. S.) 43.

Ohio. Religion by the constitution is declared to be essen-

tial to good government. Religion, therefore, is regarded by the constitution as good. It simply gives the state no power to declare which religion or religious sect is better or best. "No preference shall be given by law to any religious society" is the language of the constitution. This makes the state impartial and neutral between every creed, faith, and sect existing among its people for the time being. Protestants of every denomination, Catholics and Jews, have thus had their respective creeds made equal before the law, and all declared to be good, and no preference can be given by law to either. Humphreys v Little Sisters of the Poor, 7 Ohio Dec. 194.

Rational Piety. The obligation to support rational piety is common to all nations, because it is the firmest support of lawful authority, and the highest pledge of the people's safety. Beam v First Methodist Episcopal Church, Lancaster, Pa., 3 Pa. L. J. Rep. 343.

Restraining Interference. "Individual conscience may not be enforced, but men of every opinion and creed may be restrained from acts which interfere with Christian worship, and which tend to revile religion and bring it into contempt." Lindenmuller v People, 33 Barb. (N. Y.) 548.

RELIGIOUS BELIEF

No excuse for neglecting parental duty, 597.

No Excuse for Neglecting Parental Duty. State v Chenoweth, 163 Ind. 94, contains an interesting review of English and American cases bearing on the effect of religious belief as a defense in a prosecution for neglecting parental duty by refusing to provide medical aid to children.

RELIGIOUS CORPORATIONS

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Amending Charter. The charter of a religious corporation cannot be amended without notice of an intention to submit the proposed amendment at a specified meeting. Re African Methodist Episcopal Union Church, 28 Pa. Sup. Ct. 193.

Assignment for Creditors. De Ruyter v St. Peters Church, 3 N. Y. Re 238 sustained an assignment by the society, of its property to trustees for the benefit of creditors. The chancellor had approved the assignment. It was also held that a religious corporation might at common law assign its property in trust for the payment of its debts unless restrained by its charter, or by statute.

Banking. A society organized for religious purposes under the Ohio statute could not lawfully establish a savings bank and engage in the general business of banking. Such business was not authorized by its charter. Huber v German Congregation, 16 Ohio St. 371.

Business Block. In First Methodist Episcopal Church,

Chicago v Dixon, 178 Ill. 260, it was held that a corporation created for the purposes of religious worship, and authorized to receive and hold land and erect buildings for such purpose and no other, has power to erect only such buildings as are directly and distinctly appropriate to the advancement of the cause of religion, and necessary to the comfort and convenience of the congregation when engaged upon religious duties, and that trustees had no power to erect an office building on the lot.

Capacity to Take Property, How Determined. The question whether a religious corporation has capacity to take property in excess of the amount prescribed by its charter can be raised only by the State in a direct proceeding for that purpose. The question cannot be raised collaterally at the instance of a private individual who may be interested in the property, nor in a proceeding for the construction of a will. Hanson v Little Sisters of the Poor, Baltimore and St. Mary's Church, Hampden, 79 Md. 434.

Changing Form of Government. The right of a majority of the corporators of a religious society to change their form of church government, and pass from a Congregational church to an organization in connection with the Presbyterian body, is unquestionable. Bellport Parish v Tooker, 29 Barb. (N. Y.) 256.

Charter. Although a church does not enjoy the attributes of a corporation, yet having a well-established identity, it was quite within the scope of legislative power to constitute certain of its officers, also equally well known, by the name of their office, a corporation, and to endow them with power to take estates, real and personal, in succession; and also with a capacity to sue and defend all actions touching the same. Anderson v Brock, 3 Me. 243.

Consolidation. A religious society cannot be incorporated for the sole purpose of consolidating it with another, with the ultimate design of acquiring the property of such other and applying it to the maintenance of a church with a different polity and where a somewhat different faith exists.

The statutes providing for the consolidation of religious corporations were designed to enable existing religious corporations, organized in good faith for the advancement of religious interests, and for a time carried on for such purpose, to consolidate when it becomes apparent that such interests can be better advanced by the union of the corporations. When a majority of trustees of one corporation are also the trustees of another corporation, boards of trustees so constituted cannot enter into a valid contract for the consolidation of the corporations. Matter of M. E. Society v Perry, 51 Hun (N. Y.) 104.

Two Hebrew congregations agreed to consolidate, one of them to receive all the property of the other, and the transferring congregations were to enjoy all the privileges and be subject to all the duties of the congregation to which the transfer was made and with which the consolidation was to be effected. By the agreement either congregation could, within a year, withdraw from the consolidation on giving notice of its intention so to do. It was held that the consolidation agreement did not comply with the Religious Corporations Law, sec. 12, nor with the Membership Corporations Law, sec. 7, and that, therefore, the attempt to consolidate was beyond the powers of the congregations and that a single dissenting member of either corporation could maintain an action to set aside the agreement. Davis v Cong. Beth Tephila Israel, 40 A. D. (N. Y.) 424.

Where two religious corporations have consolidated without attempting to follow the provisions of the statute providing therefor, either party to such action may sue to set aside the consolidation as ultra vires without any prior request so to do from its members. Chevra Medrash Auschei Makaver v Makower Chevra Aucchi Poland, 66 N. Y. Supp. 355.

Constitution and By-Laws Make Contract. Where a number of persons associate to form a religious congregation, to acquire property for its use, and incorporate for the more convenient holding and control of the property, the consti-

tution or body of rules which they adopt to prescribe who shall be members of the corporation, and entitled to a share in the control of it, is the contract by which they are bound. Trustees, East Norway Lake Norwegian Evangelical Lutheran Church & others v Halvorson, 42 Minn. 503.

Contract, Excursion. For the purpose of raising money to apply on a church debt the society chartered a steamer for an excursion. It was held that the church could not engage in a general business enterprise, but that it was limited to the work of preaching, teaching, ministering to spiritual edification, and promoting works of mercy and benevolence. A steamboat company refused to perform the contract, and there was no excursion, and the church was compelled to refund money to the ticket holders. In an action by the church against the company for damages, it was held that the contract was illegal, and beyond the power of the religious society, and that the only amount recoverable of the steamboat company was the amount paid as hire for the vessel with interest. The church could not recover damages for losses by reason of the failure of the excursion. Harriman v First Bryan Baptist Church, 63 Ga. 186.

Corporate Acts. Where the exercise of corporate acts is vested in a select body, an act done by the persons composing that body, in a meeting of all the corporators, is not a valid corporate act. Landers v Frank St. Church, Rochester, 97 N. Y. 119, also 114 N. Y. 626.

Corporator's Right, How Acquired or Lost. A right as a corporator in a religious society is obtained by stated attendance on divine worship therein, and contributing to its support by renting a pew or by some other mode usual in the congregation.

Such a right cannot be derived by descent from the founders of the society, or from the former contributors to, or worshipers in, the same.

The association between a religious incorporation and its corporators is voluntary on the part of the latter, and is dissolved by their withdrawing from attendance on its wor-

ship, omitting to contribute to its support, and uniting in the establishment of another like incorporation. Cammeyer v United German Lutheran Churches, 2 Sandf. Ch. (N. Y.) 208.

Debts, Members Not Personally Liable. A member of an incorporated church is under no legal obligation to pay its debts, and his only moral obligation is to contribute of his means and of his influence to the extent of his ability to meet the just demands upon that organization so long as he is a member of it. "He who gives credit to a church organization knows that the only source to which he is entitled to look for payment is the property or assets of which the corporation is owner, and to the voluntary offerings or gifts of the members and friends who may be moved or persuaded to contribute to that purpose." Allen v North Des Moines Methodist Episcopal Church, 127 Ia. 96.

It was held in Richardson v Butterfield, 60 Mass. 191, that the members were not individually liable on a judgment and execution against the corporation.

Debt, Ratification. Several persons interested in the erection of a church edifice joined in a promissory note to secure a loan of an amount sufficient to meet the deficiency. The note was discounted and the proceeds used by the treasurer of the church. Subsequently subscriptions were received and contributions made in other ways for a part of this indebtedness. It was held that by raising subscriptions and soliciting contributions the indebtedness was ratified, and the church became liable for the payment of any balance remaining unpaid. The note given for the original loan was for the benefit of the society, and the makers of the note had no personal interest therein. Trustees of Christian Church v Cox, 78 Ill. App. 219.

Debt, Treasurer's Loan. In Wilson v Tabernacle Bapt. Church, 28 Misc. (N. Y.) 268, the corporation was held liable in an action against it to recover money borrowed by its treasurer, without the knowledge of the trustees, but which money was used for the benefit of the corporation.

Debts, Reimbursement. In an action by the church to compel the conveyance to it of a lot of land on which a house of worship had been erected, and which certain persons had agreed to convey to the church when incorporated, it was held that although the society was unincorporated at the time of making the agreement to convey, its subsequent incorporation entitled it to a deed, but the vendor having expended a large sum of money in the erection of the church in addition to his subscription, was held entitled to be reimbursed before making the conveyance. Canajoharie and Palatine Church v Leiber, 2 Paige Ch. (N. Y.) 43.

De Facto, Property Rights. A religious association, although by reason of irregularities in complying with the provisions of the Massachusetts General Statutes, chap. 32, it has failed to become a corporation, is nevertheless entitled by the General Statutes, chap. 30, sec. 24, to hold property given to it by the name which it assumed; and another religious society subsequently incorporated, is not entitled to take the name or the property. Glendale Union Christian Society v Brown, 109 Mass. 163.

De Facto. In All Saints' Church v Lovett, 1 Hall's Sup. Ct. (N. Y.) 195, it was held that even if the certificate of incorporation was defective in some particulars, the society became a de facto corporation, and it might be presumed that all the requirements of the statute were complied with. A person who accepts an appointment to an office by such a de facto corporation cannot, in an action against him by the corporation, allege that the original incorporation of the church was invalid or irregular.

A bequest to this church was contested on the ground that the proof of incorporation was defective, but the court held that the society had claimed and exercised the powers of a corporation for nearly twenty years, and it was, therefore, to all intents and purposes a de facto corporation and entitled to the legacy. Chittenden v Chittenden, 1 Am. L. Reg. (N. Y.) 538.

Denominational Character. The corporation organized

under the religious corporations act of 1813 has no denominational character, nor can such a character be in any manner engrafted upon it. That portion of the members organized into a separate body called the church may belong to a peculiar denomination, but it has no power to impress its distinctive character upon the corporation, so as to render it ineffaceable by the voice of a majority of the corporation. Petty v Tooker, 21 N. Y. 271; see amendment of 1875, chap. 79.

Dissolution, Effect. The charter of the corporation was terminated by the expiration of the time fixed by the statute as the life of the corporation, and the corporation was thereby dissolved. It was held that by such dissolution the property and rights of the corporation became vested in its members, who might, as they did, afterward reincorporate and resume possession of the property, and administer the trust vested in the former corporation. Cong. of Roman Catholic Church v Texas R. Co., 41 Fed. 564.

Dissolution, State Law Superior to Church Law. In the Matter of the petition of the Third Methodist Episcopal Ch. in the city of Brooklyn, 67 Hun (N. Y.) 86, an order dissolving the corporation was sustained, although not made in accordance with the obligation of the Discipline of the Methodist Episcopal Church. "No church Discipline can supersede the law of the State."

Diversion of Trust. A religious corporation holding property charged with a trust for certain purposes can no more divert it to other and inconsistent uses, even by due corporate action, than can any other trustee. When such use is for the promotion of the doctrines and discipline of some particular denomination, courts will prevent diversion to the support of a different and inconsistent one, if even a single individual legally interested objects. Cape v Plymouth Congregational Church, 130 Wis. 174. See also Martin v Board of Directors of German Reformed Ch. of Peace of Washington County, 149 Wis. 19.

Government. When a church has been incorporated, the

regulations and customs of the communion to which it belongs regarding the disposition of secular business will be respected by the courts so far as possible; and if the mode of government in force in the denomination at large is not by congregations, but by superior clerical personages, assemblies, synods, councils, or consistories, the authority of these will not be displaced if it can be upheld consistently with the laws of the sovereignty. Klix v St. Stanislaus Church, 137 Mo. App. 347.

Incorporation. The holding of the meeting, the election of trustees, and the execution of the certificate in accordance with the statute constitute the substantial requirements to create a corporation, although the recording is necessary to its complete consummation. An error in recording or the loss of one or more seals after they were legally and properly affixed, would not prevent the corporation from taking effect as such. Trustees, St. Jacob's Lutheran Church v Bly, 73 N. Y. 323.

North St. Louis Christian Church v McGowan, 62 Mo. 279, involved several questions relating to the effect of incorporation. It seems that at a regular meeting of the congregation the majority voted to incorporate the society. According to the rules of the denomination, this was held binding on the entire congregation, including the minority. It was also held that the clerk's list of members contained presumptively the names of all persons belonging to the congregation. The incorporation was sustained.

Incorporation, Collateral Inquiry. The validity or regularity of proceedings for the incorporation of a religious society cannot be determined by the surrogate in a proceeding on an application for the probate of a will. Matter of Arden, 20 St. Rep. (N. Y.) 865.

Incorporation, Validity, How Questioned. The validity of the incorporation of a religious society cannot be drawn in question by a private suitor in a collateral proceeding. The appropriate remedy is by writ of quo warranto at the suit of the attorney-general, or perhaps a prosecuting

attorney. Klix v St. Stanislaus Church, 137 Mo. App. 347.

A person subscribing to a fund being raised for the purpose of erecting a church edifice may, in an action against him on his subscription, contest the validity of the incorporation of the society. In First Baptist Church v Rapelee, 16 Wend. (N. Y.) 605, it was held that a certificate of incorporation could not be acknowledged before a commissioner of deeds, and having been so acknowledged such certificate was defective.

Liability for Debt. The trustees borrowed money and gave their promissory note therefor, in which the signers were described as trustees, and the note was given for and on behalf of the church. Neither the loan nor the note was authorized by a vote of the trustees, and the note was signed by them without any meeting or formal action. It was held that the society was not liable on the note. Dennison v Austin, 15 Wis. 334.

Liability for Injuries Caused by Negligence of Employee. An action cannot be maintained against a religious corporation to recover for injuries sustained by reason of the negligence of an employee of the corporation where there is no allegation that such employee was not fully qualified for the work he was engaged to perform, or that there has been any negligence on the part of the officers of the corporation in his selection. The defendant was organized as a missionary society. It had no funds except those contributed from time to time by friends for the purpose of carrying on the missionary work. The donors selected this society as the trustee to carry on missionary work. The estate, funds, and property of the corporation were impressed with the trust, and the court said it was not lawful to divert these funds from the objects for which they were contributed and use them in the payment of damages for a personal injury received by a stranger at the hands of an agent not shown to be unworthy or unfit for the purposes for which he was employed. Funds contributed for a public charity cannot

be used for the payment of damages for injuries resulting from the negligence or misconduct of the managers, agents, or employees of the corporation or persons charged with the duty of administering the trust. Haas v Missionary Society of the Most Holy Redeemer, 6 Misc. (N. Y.) 281; see also McDonald v Massachusetts General Hospital, 120 Mass. 432.

Liability for Injuries to Employee. In Bruce v Central Methodist Episcopal Church, 147 Mich. 230, it was held that the church was liable to an employee of a contractor, engaged in decorating the church building, for injuries sustained by reason of the breaking of defective scaffolding furnished by the agents of the church; and the fact that the society administered a charitable trust for the benefit of its members and others did not exempt it from liability for the acts of its agents.

Majority, When Action Binding on Minority. The acts of the majority of a corporation are, as a general rule, binding on the minority. But such acts to be so binding must be conformable to the charter of the corporation, or they are of no effect against a dissenting minority. The charter of every corporation is its constitution, which protects the rights of all the corporators, majority and minority. Acting within the charter, the corporation majority is sovereign; but seeking to transcend it, the majority become powerless. Langolf v Seiberlitch, 2 Parson Eq. Cas. (Pa.) 64.

Majority's Right. A majority of the members of an unincorporated society became incorporated on the 3rd of September, 1831. The minority became incorporated in November, 1831. It was held that the corporation composed of the majority became the real corporation and succeeded to the property rights of the unincorporated society, including land conveyed to it for church purposes. Baptist Church, Hartford v Witherell, 3 Paige Ch. (N. Y.) 296.

Members. When a corporation is formed for religious purposes every one who belongs to the congregation becomes,

by force of the statutes, a member of the corporation, even though a few individuals are named in the charter as trustees or directors, and that document is issued to them. A church or congregation by incorporating is constituted a civil political institution, composed of the members of the congregation, and the sovereignty of the body, so to speak, vests in and remains with the majority, regardless of whether they adhere to the orthodox faith of the sect and continue in fellowship with its synods, presbyteries, or other governing bodies, or become heretical and recusant. Klix v St. Stanislaus Church, 137 Mo. App. 347.

Member Expelled, No Claim for Damages. The plaintiff, who had been excommunicated by the congregation, brought an action against the corporation to recover for money contributed by him for the purchase of property. It was held that the corporation was not responsible for the act of the congregation, and therefore not liable in damages to an excommunicated person. Reinke v German Evangelical Lutheran Trinity Church, 17 S. Dak. 262.

Member's Expulsion. A religious corporation has no capital stock. Its constitution and by-laws, as well as the authorizing statute, require all powers relating to business and property to be exercised by a board of trustees, only two thirds of which must be members of the church. These trustees, whose action the congregations by which they are elected may reject or ratify, have nothing to do with the matter of discipline or expulsion, and the corporation is not bound by nor answerable in damages for the conduct of unofficial members. Reinke v German Evangelical Lutheran Trinity Church, 17 S. D. 262.

Member's Liability. Members are not individually liable on a judgment and execution against the corporation. Richardson v Butterfield, 60 Mass. 191.

Members, When May Not Be Excluded. The corporation has no power to try for any moral delinquency or to disfranchise a corporator in consequence thereof. Mandamus is

not the proper remedy in such a case, but the corporator has an adequate remedy at law. People ex rel Dilcher v German United Evangelical Ch. of Buffalo, 53 N. Y. 103.

Michigan Rule. In Michigan a religious society does not become a corporation merely by selecting trustees. Allen v Duffie, 43 Mich. 1.

Minors as Members. Where a religious corporation consists of certain persons and their families it was held that the minor sons as members of the father's family became members of the corporation, and continued such after arriving at full age until they changed their membership in some mode provided by statute. Bradbury v Cary, 5 Me. 339.

New Organization, Effect. "The members or some of the members of an insolvent or dormant corporation may organize a new corporation for the promotion of the same purposes to which the old one is dedicated, without becoming chargeable with its debts or obligations." "On the other hand, the mere change in the name of a corporation has no effect upon its legal status or upon the rights of creditors." Allen v North Des Moines Methodist Episcopal Church, 127 Ia. 96.

New York Rule. Under the New York religious corporations act of 1813 the corporation "consists not of the trustees alone, but of members of the society; the society itself is incorporated, not merely the trustees, and its members are the corporators." Gram v Prussia Emigrated Evangelical Lutheran German Society, 36 N. Y. 161.

Object and Purpose. "A corporation is formed for the acquisition and taking care of the property of the church, and is in no sense ecclesiastical in its functions." Hundley v Collins, 131 Ala. 234.

The only and primary object of the corporation is the acquisition and taking care of property. The rules of the church as to the discipline of members have no relation to the corporate property or corporate matters. Sale v First Regular Baptist Church, Mason City, 62 Ia. 26.

Organization, Notice. The minister refused to read a notice

of a meeting for the incorporation of the society, and the notice was thereupon read by one of the members at the close of a regular service, after the benediction, and before the congregation had dispersed. This was held to be a sufficient notice of the meeting, as the statute did not require a notice to be given by a particular officer or person. West Koshkonong Cong. v Otteson, 80 Wis. 62.

Pew-Owners. Under the Maine revised statutes of 1871, chap. 12, pew-owners of a meetinghouse were authorized to form a corporation, and such corporation might control the meetinghouse. Mayberry v Mead, 80 Me. 27.

Presumption. A religious society that in good faith has exercised corporate powers for ten years must be treated as a legal incorporation, even though the proceedings taken to incorporate it were in themselves fatally defective. First Congregational Church, Ionia v Webber, 54 Mich. 571.

Promissory Note. A promissory note purporting to be made by the corporation and signed by its president, secretary and treasurer was held not enforcible (against the corporation) without proof that the note was made by authority of the corporation. Trustees have no power to bind the corporation by individual action, but the board must act as a body. People's Bank v St. Anthony's Ch. 109 N. Y. 512.

Property, Limitation. If a corporation takes land by grant or devise, in trust or otherwise, which, by its charter, it cannot hold, its title is good as against third persons and strangers; and the State alone can interfere. If the corporation exceeds the prescribed amount though it be by an original purchase, nobody but the State can interfere with the holding of the property which it acquires, and it is a matter of which individuals cannot avail themselves in any way. De Camp v Dobbins, 29 N. J. Eq. 36.

It is too late on appeal to raise, for the first time, the question that a corporation has already acquired property up to or exceeding the statutory limit. Such a question cannot be raised collaterally, and the burden of proof as to

the amount of property already acquired is not on the corporation. Conklin v Davis, 63 Conn. 377.

Religious Connection. The mere fact that a corporation is under the control of members of a particular church does not make it a religious corporation. Baltzell v Church Home & Infirmary, Baltimore, 110 Md. 244.

Removal to New House. The society erected and moved into a new meetinghouse. The act of going from the old meetinghouse to the new one was the act of the society, and they took with them all the rights of the society and body corporate, vacating none, leaving none behind; so that no persons, after such removal, could remain behind and claim to be the ancient, or remains of the ancient society. Filing a new certificate of incorporation under the mistaken supposition that the first certificate had been lost, simply continued the old society and was not a new incorporation. Miller v English, 21 N. J. Law, 317.

Roman Catholic, Charter. Application for charter which was opposed by the bishop of the diocese. The applicants were of Polish birth, and the purpose for which a charter was asked was stated to be "the support of public worship according to the faith, doctrine, discipline, and usages of the Roman Catholic Church." The bishop alleged that the object was not as so stated, but is really to secure the incorporation of a schismatic body which has received the censure and condemnation of the duly constituted authorities of the church mentioned; that under the canon law of that church no such organization as that proposed can be formed except with the consent of the ordinary or bishop, and that he has not given his consent, and will not do so; that public worship according to the usages of the Roman Catholic Church cannot be conducted without a regularly ordained priest in good standing, whose attendance could not be obtained in the present instance; and, finally, that the possession of a charter would only make it possible for a group of factious, turbulent, and designing persons to delude Catholics of Polish birth into the idea that this was a regularly

organized Roman Catholic congregation. These allegations were admitted by counsel for the applicants. The court said it had no concern with the general policy of the Roman Catholic Church, and could take no notice of its schisms and differences on points of doctrine and discipline. But while a schismatical body of the church had a legal right to a separate incorporation, its application for a charter must be done openly and with due knowledge of the character of the body, but such a body could not be permitted to appropriate the name, and with it the appearance of regularity which belongs to the duly established organization. The name proposed attaches to and covers the doctrine, discipline, and usages of the general church with which it is associated. In the use of that name the body which had an unqualified right to it was entitled to protection against its usurpation by others who have no such right, and who only seek to employ it for purposes of deception. The application for a charter was refused. Re Charter Church of Mother of God, Czenstochowa, 5 Lack. Leg. N. (Pa.) 128.

Status. Religious societies are, in this State and nation, civil bodies politic, and unlike the ecclesiastical corporations of England, which are composed only of clericals, such as archbishops, deans, monks and abbots, and amenable only to spiritual courts. Klix v St. Stanislaus Church, 137 Mo. App. 347.

Status, As Compared with English Parson. A religious corporation in this country stands in the place of the parson in England, who, as a corporation sole, holds the legal title to the estates of the church. But those societies could not, at common law, be seized under writs of execution directed to the sheriff. Beam v First Methodist Episcopal Church, Lancaster, Pa., 3 Pa. L. J. Rep. 343.

Taxation. The property of a religious corporation is not exempt from assessment for local improvements. Harlem Presbyterian Church v N. Y., 5 Hun. (N. Y.) 442.

Three Elements. The statute recognizes three distinct classes or bodies as existing in the religious corporation

and defines their relative powers and duties: First. The church, or spiritual body, consisting of the office bearers and communicants. Second. The congregation, or electors, embracing all the stated hearers or attendants on divine worship who are competent to vote for trustees. Third. The trustees of the corporation, who have the control of all its temporalities, to be improved, used, and managed by them for the benefit of all the stated hearers and the communicants as far as practicable.

The church, or spiritual body, as to its doctrine, government and worship is to be governed and regulated by its own peculiar rules, which neither the trustees nor the congregation have any right to interfere with or alter without the consent of the church itself. Lawyer v Cipperly, 7 Paige Ch. (N. Y.) 281.

Trustee. A corporation cannot act as trustee in relation to any matter in which it has no interest. But where property is devised or granted to a corporation, partly for its own use and partly for the use of others, the right of the corporation to take and hold the property for its own use, carries with it, as a necessary incident, the power to execute that part of the trust which relates to others. Re Howe, 1 Paige Ch. (N. Y.) 213.

Trustees, Powers. In a corporation organized under the New York religious corporations act of 1813 the trustees elected and acting as such, and their successors, are vested with the custody, possession, management, and legal control of all the property and temporalities belonging to their particular society, in the same manner and to the same effect as the directors of private corporations are entitled to the possession and control of their property, and may, therefore, maintain an action to recover the possession of the church property from which they have been evicted by the members of the society. Members of the society cannot forcibly take possession of the church building of the corporation and hold and control it in opposition to the authority, will, and requirement of the trustees. All such acts of individual

corporators, or of the whole body of the corporation, exclusive of, and in opposition to the trustees, are illegal and all such persons so acting are simply trespassers. First Methodist Episcopal Church, Attica v Filkins, 3 T. & C. (N. Y.) 279.

Trustees, Majority Must Meet and Act. Where there is a definite body in a corporation the majority of that definite body must not only exist at the time when any act is to be done by them, but a majority of that body must attend the assembly where the act is to be done. Moore v Rector, St. Thomas, 4 Abb. N. C. (N. Y.) 51.

Unauthorized Sale of Property. If a religious corporation sells and conveys real property without an order of the court, such a sale and transfer may be rescinded upon the return, or offer to return, the consideration received. Associate Presbyterian Congregation, Hebron v Hanna, 113 App. Div. (N. Y.) 12.

Who Constitute. In the Protestant Episcopal Church the vestry, and not the congregation, constitute the corporation. Stubbs v Vestry of St. John's Ch. 96 Md. 267; see also Tarter v Gibbs, 24 Md. 323.

A religious corporation, under the New York statute, consists not of the trustees alone but of the members of the society. The society itself is incorporated, and its members are the corporators. The relation of the trustees to the society is not that of a private trustee to the cestui que trust, but they are its officers, with the powers of the officers of other corporations. Such societies do not belong to the class of ecclesiastical corporations in the sense of the English law, but are to be regarded as civil corporations governed by the rules of the common law. Bellport Parish v Tooker, 29 Barb. (N. Y.) 256.

As to who are corporators, see Burrell v Associate Reformed Church, Seneca, 44 Barb. (N. Y.) 282, holding that the corporation consists of all of the members of the society entitled to vote in the election of trustees.

The trustees, deacons, churchwardens, or other similar

officers of an unincorporated church, if citizens of the United States, are a corporation for the purpose of taking and holding in succession all real and personal estate given to their church. Bean v Christian Church, South Danbury, 61 N. H. 260.

Under the Maryland act of 1802, providing for the incorporation of religious societies, the trustees and not the congregation constitute the corporate body. African Methodist Bethel Church, Baltimore v Carmack, 2 Md. Ch. 143.

Young Men's Christian Association. This association was held not a religious corporation within the New York Transfer Tax Law as amended in 1900, and therefore not exempt from the payment of a transfer tax on a legacy. Re Watson, 171 N. Y. 256.

In Matter of Fay, 37 Misc. (N. Y) 532, it was held that the association (incorporated under a special act) was not a religious corporation within the meaning of the Transfer Tax Act, and was therefore not exempt from taxation under that statute.

Young Women's Christian Association. The work of the Young Women's Christian Association, in accordance with the objects of its incorporation, includes the holding of gospel services, teaching English to foreigners, and furnishing food and lodging for women passing through the city, for which compensation is received from those who are able to pay. Its general object is religious and charitable, and its property exclusively devoted to that object would undoubtedly be exempt from general taxation under the New Hampshire statutes. It is therefore entitled to exemption from the inheritance tax. Carter v Whitcomb, 74 N. H. 482.

RELIGIOUS ESTABLISHMENT

Defined, 617.

Defined. A religious establishment is where the State prescribes a formulary of faith and worship for the rule and government of all the subjects. Muzzy v Wilkins, Smith's N. H. Rep. 1.

RELIGIOUS FREEDOM

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American Rule. In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. Watson v Jones, 13 Wall. (U. S). 679.

Charitable Institutions. In Reg. v Haslehurst, 13 Q. B. D.

(Eng.) 253, the court sustained the employment of a Roman Catholic clergyman to minister to the religious wants of the Roman Catholic inmates of the workhouse. Citing the poor law amendment act of 1834, which, in substance, provided that no rules or orders of the Poor Law Commissioners should oblige any inmate of a workhouse to attend any religious service contrary to his religious principles, and that it should be lawful for any licensed minister of the religious persuasion of any inmate to visit the workhouse for the purpose of affording religious assistance to such inmate and instructing his child or children in the principles of their religion.

Civil Courts, Limitation of Power. Religious freedom and religious toleration would not long survive if one member of a religious organization, feeling himself aggrieved in some matter of religious faith or church polity, could successfully appeal to the secular courts for redress, and have these courts determine that one faction of a religious organization was orthodox, and living and acting in conformity with the organic creed of the church, and another faction was violating and disregarding such organic law. Wehmer v Fokenga, 57 Neb. 510.

Civil Courts. Freedom of religious profession and worship cannot be maintained, if the civil courts trench upon the domain of the church, construe its canons and rules, dictate its discipline, and regulate its trials. Chase v Cheney, 58 Ill. 509.

Compulsory Church Attendance. Testatrix bequeathed to a son a sum of money to be paid in installments, on condition that he regularly attend a specified church "when not sick in bed, or prevented by accident or other unavoidable occurrence." It was held that this bequest did not violate the provision of the Wisconsin constitution securing religious toleration. The provision in the will was not against public policy. Testatrix had a right to impose such a condition in connection with the bequest. Re Paulson Will, 127 Wis. 612.

Discrimination Not Allowed. Before the constitution Jews and Gentiles are equal; by the law they must be treated alike. It was held that an ordinance of the City Council of Shreveport, Louisiana, prohibiting the transaction of certain kinds of business on Sunday, but exempting from the operation of the ordinance persons who kept Saturday as the Sabbath, was invalid. Shreveport v Levy, 26 La. Ann. 671.

Limitation. Religious liberty does not include the right to introduce and carry out every scheme or purpose which persons see fit to claim as part of their religious system. While there is no legal authority to constrain belief, no one can lawfully stretch his own liberty of action so as to interfere with that of his neighbors, or violate peace and good order. Matter of Frazee, 63 Mich. 396.

By the constitutional provision guaranteeing religious freedom, unlimited freedom of conscience and religious belief and profession is secured to every person, but it affords no justification for acts or practices in religious services which disturb the public peace, or disturb others in their religious worship; and a statute prohibiting acts having a tendency to endanger the public peace, or to distract the attention and interrupt the quiet of others, is not in conflict with this constitutional provision, although the prohibited acts may form a part of the services of religious worship. Religious liberty, as recognized and secured by the constitution, does not mean a license to engage in acts having a tendency to disturb the public peace under the form of religious worship, nor does it include the right to disregard those regulations which the Legislature have deemed reasonably necessary for the security of public order. A reasonable measure of prevention to avoid disturbance is not an infringement of constitutional rights. State v White, 64 N. H. 48, holding that beating a drum in a compact part of the town without the command of an authorized military officer, as required by law, could not be justified by the claim that the act was done in accordance

with the defendants' sense of religious duty and in worshiping God according to the dictates of their own consciences, and that they were not disturbing the public peace or the religious worship of others.

Louisiana. In the treaty of cession (1803) the First Consul (Napoleon Bonaparte) of the French Republic exacted a stipulation in favor of the inhabitants of the ceded territory, that they should be incorporated into the Union, and admitted as soon as possible, according to the principles of the federal constitution, to an enjoyment of all the rights, advantages and immunities of citizens of the United States, and that in the meantime they should be maintained and protected in the free enjoyment of their liberty, property, and the religion which they professed. This stipulation was personal to every inhabitant of the country in relation to his property and the religion he might profess. He was solemnly guaranteed the free enjoyment of his religious opinions, whatever they might be. It was not a stipulation in favor of any particular church or religious establishment, but a full guaranty to every inhabitant of the ceded province that he should not be molested on account of his religious belief or form of worship. No man can be molested, so long as he demeans himself in an orderly and peaceable manner, on account of his mode of worship, his religious opinions and profession, and the religious functions he may choose to perform, according to the rites, doctrine, and discipline of the church or sect to which he may belong, and this absolute immunity extends to all religions and to every sect. Wardens of the Church of St. Louis v Blanc, 8 Rob. Re. (La.) 52.

Massachusetts. The Declaration of Rights in the Constitution of Massachusetts was intended: "1. To establish, at all events, liberty of conscience and choice of the mode of worship. 2. To assert the right of the State, in its political capacity, to require and enforce the public worship of God. 3. To deny the right of establishing any hierarchy, or any power in the State itself, to require conformity to any

creed or formulary of worship." Adams v Howe, 14 Mass. 340.

Memorials. If pious persons choose, as an incident of their house of worship, so to construct, or decorate it as to continually call to mind deceased persons noted for piety or devotion, it in no way transgresses their franchise. Cushman v Church of Good Shepherd, 188 Pa. St. 438.

Minor Children. It is the parent's duty, as well as his right, to give his children moral and religious instruction. This parental authority, however, is always for the good of the children, and therefore is not absolute in all things or despotic. It must at all times be exercised in subservience to the laws and to the rights of others. He dare not enforce it to commit acts of idolatry or blasphemy. He dare not force it to abandon the paths of innocence and virtue, and compel it to worship at a temple dedicated to vice, corruption, and abomination. Against any such parental control our constitution and laws would at once interpose their authority and wrest the child from the dangers of such false teachings and from the influence of such unholy opinions and practices. All parental authority must, in every well-regulated, Christian community, be subject to its institutions and its laws. Parental authority is human authority. No lawmaking power can confer upon parents the right to control or interfere with the rights of conscience of a minor child who has arrived at the years of discretion. A father has no right to control or interfere with the rights of conscience of a minor child in relation to the worship of Almighty God. His exercise of parental authority so as to control or interfere with the rights of conscience of such minor child would be an exercise of human authority so as to control or interfere with the rights of conscience in a particular case, whereas it is declared that it cannot be done in any case whatever. Commonwealth v Sigman, 2 Clark (Pa.) 36.

Officer. The Constitution of Missouri, art. 2, sec. 5, declares that no person can, on account of his religious opin-

ions, be rendered ineligible to any office of trust or profit. This was held to apply to a guardian of a minor who was said to occupy an office of trust under the constitution. State ex rel Baker v Bird, 253 Mo. 569.

Oregon. The right of mankind to believe and teach such doctrines regarding religion as meet the approval of their consciences is recognized under our form of government as inherent, but it is freely accorded to every sect and denomination in the land, and is so interwoven with the principles which underlie our political fabric that it cannot be taken away without the general consent or a violent revolution. The law not only tolerates the privilege, but it protects every one in the enjoyment of it. The people are entitled as an incident to such right to form associations, adopt creeds, organize churches, and establish seminaries of learning for the advancement of their peculiar tenets of faith, and to acquire property and erect buildings to aid them in accomplishing that end. Liggett v Ladd, 17 Ore. 89.

Pennsylvania. Under the Pennsylvania constitution all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, and no human authority can in any case whatever control or interfere with the rights of conscience. This law was not intended to exempt any religious society from the respect that is due to the organization and moral and social order of the State, from necessity of holding its land under the State, and according to its laws. But it does mean, that for its own internal order, and for the mode in which it fulfills its functions, it is to be a law unto itself, or have its law within itself, provided it keep within the bounds of social order and morality. McGinnis v Watson, 41 Pa. St. 9.

Polygamy. Bigamy and polygamy are crimes by the laws of all civilized and Christian countries, by the laws of the United States, and of Idaho, where the case arose. To call their advocacy a tenet of religion is to offend the common sense of mankind. However free the exercise of religion

may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation. The statutes of the territory of Idaho excluding from the right of suffrage bigamists and polygamists, and any persons advocating plural marriages, were sustained as a valid exercise of legislative power. Davis v Beason, 133 U. S. 333.

Sectarian Controversies. Religious freedom is one of the distinguishing characteristics of our country. No one sect of Christians is, in law, entitled to preeminence over another; and all denominations of Christians, while they demean themselves peaceably, may equally claim the protection of the law. Every religious sect is free to profess and to propagate its sentiments, to inculcate them by words and in writing, and consequently to display the errors of others. And while the various combatants confine themselves to using the arms of reason alone, preserving good humor and Christian charity and forbearance toward each other, the peace of the State will not suffer, and the government and laws will protect them all. Doubtless more good than evil results from the diversity of religious opinions which prevail at the present day, and from the controversies which exist between the different sects. Individuals are excited to search the Scriptures for themselves, and rival sects are more emulous to cultivate and display the virtue of the Christian character. Commonwealth v Batchelder, Thac. Cr. Cas. (Mass.) 191.

United States. Each individual within the jurisdiction of the United States, whether he be within the limits of a State or elsewhere, has a right to determine for himself all those questions which relate to his relation to the Creator of the Universe. No civil authority can coerce him to accept any religious doctrine or teaching, or restrain him from associating himself with any class or organization which promulgates religious teaching. Whether he shall adopt any religious views, or, if so, what shall be the character of these views, and the persons with whom he shall

associate in carrying out the particular views, are all questions addressed to his individual conscience, which no human authority has the right, even in the slightest way, to interfere with, so long as his practices in carrying out his peculiar views are not inconsistent with the peace and good order of society. Mack v Kime, 129 Ga. 1.

For a sketch of the origin and adoption of the First Amendment to the constitution of the United States, see Reynolds v U. S., 98 U. S. 145.

Virginia. Consistent with the constitution of Virginia the Legislature could not create or continue a religious establishment which should have exclusive rights and prerogatives, or compel the citizens to worship under a stipulated form or discipline, or to pay taxes to those whose creed they could not conscientiously believe. But the free exercise of religion cannot be justly deemed to be restrained by aiding with equal attention the votaries of every sect to perform their own religious duties, or by establishing funds for the support of ministers, for public charities, for the endowment of churches, or for the sepulture of the dead. And that these purposes could be better secured and cherished by corporate powers cannot be doubted by any person who has attended to the difficulties which surround all voluntary associations. Terrett v Taylor, 9 Cranch (U. S.) 43.

Voluntary Basis. Under our form and theory of government every ecclesiastical system rests on the voluntary principle, and the support and maintenance of churches depend on voluntary contributions. No ecclesiastical organization in this country possesses legal capacity unless incorporated, or unless it is acquired by a conveyance of property in trust for the use and benefit of the church. The fourth section of the Alabama declaration of rights provides "that no one shall be compelled by law to attend any place of worship, nor to pay any tithes, taxes, or other rate for building or repairing any place of worship, or for sustaining any minister or ministry." State ex rel McNeill v Bibb St. Church, 84 Ala. 23.

See also article on Religious Toleration.

RELIGIOUS GARB

New York, 626.
Pennsylvania, 626.

New York. In O'Connor v Hendrick, 184 N. Y. 421, the court sustained the validity of an order made by the New York State Superintendent of Public Instruction prohibiting teachers from wearing a distinctive religious garb while engaged in the work of teaching in a public school. Two teachers affected by this order were members of the Sisterhood of St. Joseph, and they continued to wear the religious garb of the society after notice of the superintendent's order. They were held not entitled to recover compensation for services rendered while wearing such garb after notice of such order.

Pennsylvania. The religious belief of many teachers all over the commonwealth is indicated by their apparel. Quakers or Friends, Ommish, Dunkards, and other sects wear garments which at once disclose their membership in a religious sect. Ministers or preachers of many Protestant denominations wear distinctively clerical garb. No one has yet thought of excluding them as teachers from the schoolroom on the ground that the peculiarity of their dress would teach to pupils the distinctive doctrines of the sect to which they belonged. The dress is but the announcement of a fact that the wearer holds a particular religious belief. Hysong v Gallitzin Borough School District, 164 Pa. 629. See also the article on Sectarian Instruction.

In 1895 an act was passed providing that no teacher in any public school of this commonwealth shall wear in said school, or whilst engaged in the performance of his or her duty as such teacher, any dress, mark, emblem, or insignia indicating the fact that such teacher is a member or adherent of any religious order, sect, or denomination. The act was sustained in Commonwealth v Herr, 229 Pa. 132.

RELIGIOUS PRINCIPLES

Defined, 627.
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Defined. Religious principles are those sentiments, concerning the relations between God and man, which may influence human conduct. Of these perhaps the most influential hitherto has been the view entertained as to the probability that God would punish vice. A person's sentiments on that subject must be deemed part of his religious principles. It is urged that disbelief cannot be called religious principle. Perhaps, if one denied the existence of a Supreme Being, it might in a proper sense be said that he had no religious principles, because he could not entertain any opinion touching the relations between God and man, unless a denial of any such relations might be so denominated. But to a person who believes in the existence of a Supreme Being there pertain necessarily, or at least probably, some views with regard to the relations between him and us, which modify the life of the individual. The mere fact that in those relations he has discovered no divine purpose of punishment for specific acts does not militate against his possession of religious principles and among them are his belief, his disbelief, and his doubt concerning those relations. State v Powers, 51 N. J. L. 432.

Limits of Inquiry. No civil tribunal has the right to enforce a creed or system of doctrine or belief on any man, or to require him to assent to any prescribed system of doctrine, or to search out his belief for the purpose of restraining or punishing it in any temporal tribunal; but such a tribunal has a right to ascertain by competent evidence, what are the religious principles of any man or set of men, when, as may frequently be the case, civil rights are thereon to depend, or thereby to be decided. Hendrickson v Decow, 1 Saxton, (N. J.) 577.

RELIGIOUS SOCIETIES

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Building Committee. Two out of three members of a building committee, appointed to erect a church edifice, made a contract for that purpose, in which they were described as a building committee. It was held that the two members of the committee who signed the contract were not personally liable thereon. The contract created an obligation against the society, and not against the individuals who signed as the building committee. Hewitt v Wheeler, 22 Conn. 557.

By-Laws. Wherever religious associations have been organized to assist in the expression and dissemination of religious doctrine, and have created for their direction in matters of doctrine, church government, and discipline, tribunals within the association, the final and controlling effect of the ecclesiastical polity thus formed upon the individual members and congregations and officers within the general

association will not be questioned, but will be given effect to in the civil courts. All who unite themselves to such a body do so with the implied consent to submit to the system of ecclesiastical control, and are bound by it. First Presbyterian Church, Perry v Myers, 5 Okl. 809.

Change of Denominational Relations. In Bellport Parish v Tooker, 29 Barb. (N. Y.) 256, it was held that the society could change from a Congregational to a Presbyterian church.

"Every religious society, unless restrained by some special trust, by the general law were at liberty to change their denomination, and profess and possibly to inculcate any Christian faith or doctrine, and adopt the form of worship most agreeable to themselves; and by doing so, no forfeiture could be incurred." Attorney-General v Proprietors of Meetinghouse in Federal Street, 3 Gray (Mass.) 1.

Change of Doctrine, Effect. Where the constitution of a religious society vests the power to make or repeal any rule of discipline in the General Conference, subject to the restriction that no rule or ordinance shall at any time be passed to change or do away with the existing confession of faith, and prohibits any alteration of the constitution unless by the request of two thirds of the whole society, and the Conference, without such request, formulates substantial changes in and additions to the confession of faith and amendments of the constitution, and on a vote of two thirds of the members of the society voting, but not of the society, declares said altered confession of faith and amended constitution adopted, such action is invalid, and the title and right to the possession of the real estate of the society is in that part thereof which is acting in harmony with the original constitution and laws, regardless of its numerical strength. Bear v Heasley, 98 Mich. 279; see the article on United Brethren in Christ.

Chapels. Chapels founded in connection with a congregation or parish will not be allowed to cut loose from the church under whose care and auspices they were established,

and carry with them the property acquired, in part or in whole, by the contributions of the mother church or its members, or that which persons not connected with the organizations may have given for its support as an adjunct to the parent church. Rector, etc., Christ Church v Rector, etc., Church of the Holy Communion, 14 Phila. (Pa.) 61.

Committee, Defense in Legal Proceedings. In Harbison v First Presbyterian Society, 46 Conn. 529, it was held that a committee of an ecclesiastical society has power to defend at the cost of the society against legal proceedings endangering either the existence of the corporation or its rights or property. It may thus defend against a petition for an injunction forbidding the sale of its pews. But such a committee has no power to defend at the cost of the society against legal proceedings which affect only themselves personally in their character as a committee. It may not so defend against proceedings to test the question whether the committee has been legally elected.

Congregation and Corporation, Distinction. The members of the society or congregation form the corporate body, such members being the corporators, and the trustees are mere officers of the corporation. The body or entity thus brought into existence is a civil corporation with such functions and powers as the statute confers upon it and its officers, and in no sense is it an ecclesiastical corporation. It is wholly independent in its existence, and in the control and management of its affairs, of all religious judicatories; it is a creature of the State, subject to such control as its own laws may impose; and none of the provisions of the act are intended to disturb, interfere with, or regulate the actions and powers of the numerous voluntary religious organizations which exist among the people; but such bodies are recognized as existing, and are considered entirely spiritual associations, distinct and separate from the body politic. Thus, in mere membership the same persons may be a religious society, holding to peculiar religious notions, having their own creeds and forms of worship, and at the

same time be members of the corporate body—the corporators with rights, privileges, and interests which come from that relation. The acts of 1875, chap. 79, and 1876, chap. 176, requiring the trustees to administer the property according to the rules and Discipline of the denomination, and prohibiting a diversion of the property, did not affect the nature of the title vested in the corporation, but they related wholly to the officers of the corporation. The church or congregation to which the corporation belongs is always a question of fact to be determined from the testimony which may be presented in a particular case. Isham v Fullager, 14 Abb. N. C. (N. Y.) 363.

Congregational. A congregational society is generally made up first of the church and next of those who worship with the church and favor the same views, and who assist in supporting the preaching and public worship of that church. The society, as such, often, perhaps generally, has no creed or published religious opinions distinct from the church; the church is the basis of the whole. This is true in the Congregational societies in this country, generally, whether orthodox or Unitarian. The ministers are generally settled by the society, but they become pastors of the church as well as of the society; and the creed or belief of the society is not to be sought in the constitution or by-laws, but in the creed or belief of the church with which said society is connected. Hale v Everett, 53 N. H. 1.

Congregational, Division, Effect. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property. The minority in choosing to separate themselves into a distinct body, and refusing to recognize the authority of the governing body, can claim no rights in the property from the fact that they had once been members of the

church or congregation. This ruling admits of no inquiry into the existing religious opinions of those who comprise the legal or regular organization; for, if such were permitted, a very small minority, without any officers of the church among them, might be found to be the only faithful supporters of the religious dogmas of the founders of the church. There being no such trust imposed upon the property when purchased or given, the court will not imply one for the purpose of expelling from its use those who by regular succession and order constitute the church, because they may have changed in some respect their views of religious truth. Watson v Jones, 13 Wall. (U. S.) 679.

Connectional Relations. The American Primitive Methodist Society, located at Paterson, New Jersey, was not congregational in its form of government, but was affiliated with the Annual Conference of the Primitive Methodist Church. The local church had no written constitution, and none was needed to establish its connection with the general church. American Primitive Society v Pilling, 4 Zab. (N. J.) 633.

Consolidation. Corporations cannot consolidate without legislative authority. An agreement of consolidation signed by the presidents of two corporations, incorporated under different acts, one, religious, organized under 2 R. L. 1813, chap. 60, and the other benevolent, organized under laws of 1848, chap. 319, and also signed by the secretary of the alleged consolidated corporation, there being no assent of the supreme court to the consolidation, nor any confirmation by the trustees of one of the corporations, is of no effect, and the corporations remain in being. Chevra Bnai Israel Aushe Yanove und Motal v Chevra Bikur Cholim Aushe Rodof Sholem, 24 Misc. (N. Y.) 189.

The N. Y. act of 1873 chap. 176, which among other things authorized the consolidation of two or more religious societies or corporations belonging to the same church or denomination did not permit the consolidation of two corporations, one of which was Presbyterian and the other unde-

nominational. Stokes v Phelps Mission, 47 Hun (N. Y.) 570; see also Re Methodist Episcopal Society v Perry, 51 Hun (N. Y.) 104.

Constitution. A constitution for a voluntary society may be proper, as an organization, but it has none of the powers or requisites of a constitution in political bodies, which emanates from a higher power than the Legislature, and always is supposed to be enacted by a power superior to the Legislature, and is unchangeable except by the body which established it; but that body can change it at pleasure. Smith v Nelson, 18 Vt. 511.

Contract. The society was unincorporated. In New Ebenezer Association v Gress Lumber Company, 89 Ga. 125, it was held that with a building committee of the society, consisting of five members, authority to make binding contracts in behalf of the committee would have to be exercised by a majority of the members, either directly or by delegating the power to a less number. One member alone could not contract without being authorized so to do by a majority.

Conveyance, Presumption. Where real estate is conveyed to trustees in trust for the use of a church or congregation, as a place of worship, which church or congregation is afterward incorporated, the court, after a great lapse of time, will presume a conveyance from the original trustees, or their heirs, to the corporation. Dutch Church in Garden St. v Mott, 7 Paige Ch. (N. Y.) 77.

Debts. Dissenters are held liable for debts of the society contracted before they withdraw. Hosford, etc. v Lord, 1 Root (Conn.) 325.

Debts, When Successor Not Liable For. The disbandment of an incorporated religious society following a sale of its property on foreclosure, and the incorporation of a new society composed in part of the same persons, and the purchase of the church property by the new corporation from the purchaser on the foreclosure sale, does not make the new corporation liable for the debts of the first corporation.

Allen v North Des Moines Methodist Episcopal Church, 127 Ia. 96.

Defined. A religious society or congregation, as recognized by the New York religious corporations law, is what is usually denominated a poll parish in some of the neighboring States. It consists of a voluntary association of individuals or families, united for the purpose of having a common place of worship, and to provide a proper teacher to instruct them in religious doctrines and duties, and to administer the ordinance of baptism. Although a church, or body of professing Christians, is almost uniformly connected with such a society or congregation, the members of the church have no other or greater rights than any other members of the society who statedly attend with them for the purposes of divine worship. Baptist Church, Hartford v Witherell, 3 Paige Ch. (N. Y.) 296.

Religious societies of sects and denominations are founded for the purpose of uniting together in public religious worship and religious services, according to the customary, habitual, or systematic forms of the particular sect or denomination, and in accordance with, and to promote and enforce their common faith and belief. There cannot be a sect or denomination of religious persons without any common religious belief. State v Trustees, 7 Ohio St. 58, holding that a library association was not entitled to share in the proceeds of the rent of public land set apart by the state to aid religious denominations.

Devise, Diversion. Where property was devised to a religious society for the purpose of maintaining a free school in a specified district it was held that an agreement by the society to divert this fund from the object for which it was given and apply it to the support of the ministry was void, being a fraud upon this purpose. Bailey v Lewis, 3 Day (Conn.) 450.

Devise, New York Rule. The New York religious corporations act of 1784 did not authorize a religious corporation to take by devise, nor was this power extended by the Re-

vised Statutes. Such a devise to a corporation cannot be sustained as a charitable use. Ayres v Trustees, Methodist Episcopal Church, New York, 3 Sandf. Sup. Ct. (N. Y.) 351.

Dissolution. No meeting of the board of trustees was necessary to authorize a majority to make an application for the dissolution of the society under the act of 1872, chap. 424. Matter of Third Methodist Episcopal Church, Brooklyn, 67 Hun (N. Y.) 86.

The court declined to direct a dissolution of a corporation known as the Proprietors of the New South Meeting House in Boston against the protest of a minority of the members. Re New South Meeting House, Boston, 13 Allen (Mass.) 497.

Diversion of Property. It is not in the power of a majority of a denomination or congregation, however large the majority may be, by reason of a change of religious views, to carry its property to a new and different doctrine. Smith et al v Pedigo et al 145 Ind. 361, 392. See also to same effect Mt. Zion Baptist Ch. v Whitmore, 83 Iowa 138.

Division, Effect on Property. The title to the church property of a congregation that is divided is in that part of the congregation that is in harmony with its own laws, usages, and customs as accepted by the body before the division took place, and who adhere to the regular organization.

In such a case it does not matter that a majority of any given congregation or Annual Conference is with those who dissent. The power of the majority, as well as that of the minority, is bound by the Discipline, and so are all the tribunals of the church from the lowest to the highest.

Upon the questions arising under the Discipline, as upon those arising under the articles of faith, the decisions of the ecclesiastical body are ordinarily final, and they will be respected and enforced by the courts of law. Krecker v Shirey, 163 Pa. St. 534.

Division, Minority's Right. An adhering minority of a local or territorial parish, and not a seceding majority, con-

stitutes the church of such parish to all civil purposes. Stebbins v Jennings, 10 Pick. (Mass.) 171.

Doctrine and Worship, Control. A religious society owning a meetinghouse may decide, without interference from the pew-owners, what doctrines shall be preached in their house, and what religious teachers shall be employed to preach them. Trinitarian Congregational Society, Francestown v Union Congregational Society, Francestown, 61 N. H. 384.

Freedom of Organization. Religious societies are not free if they may not choose their own form of organization. They may organize as independent churches, and then their law is found in their own separate institutions, customary and written. Or they may organize as associated churches, and then their law is to be found in their own rules, and in those of the associated organisms. McGinnis v Watson, 41 Pa. St. 9.

Illinois Rule. The incorporated religious societies are not to be classified with ecclesiastical corporations, as known to the English laws, which were composed entirely of ecclesiastical persons and subject to ecclesiastical judicatories, but, rather, with civil corporations, to be controlled and managed under the general principles of law applicable to such corporations, as administered by the civil courts. Calkins v Cheney, 92 Ill. 463, Robertson v Bullions, 11 N. Y. 243.

Incorporation. A substantial compliance with the requirements of the statute relating to incorporation is sufficient, and an error in recording the papers will not prevent the incorporation from taking effect. Matter of Arden, 20 St. Rep. (N. Y.) 865.

Incorporation, Certificate Seal. In Trustees St. Jacob's Lutheran Church, 73 N. Y. 323, the incorporation of the society was sustained notwithstanding the absence of seals on the certificate as recorded, it appearing that seals were affixed when the certificate was executed.

Incorporation, How Proved. The necessary certificate of

incorporation being lost, the incorporation was permitted to be proved by a certified copy of the record of the incorporation. Second Methodist Episcopal Church of Greenwich v Humphrey, 49 St. Rep. 467.

Incorporation Not Necessary. "A church or religious society may exist for all the purposes for which it was organized independently of any incorporation of the body under the statutes of the State." Hundley v Collins, 131 Ala. 234.

Independent, Diversion of Trust. If the trust is confided to a religious congregation of the independent or congregational form of government, it is not in the power of the majority of that congregation, however preponderant, by reason of a change of views on religious subjects, to carry the property so confided to them to the support of new and conflicting doctrine. It is the duty of the courts in such cases, when the doctrine to be taught or the form of worship to be used is definitely and clearly laid down, to inquire whether the party accused of violating the trust is holding or teaching a different doctrine, or using a form of worship which is so far variant as to defeat the declared objects of the trust. Watson v Jones, 13 Wall. (U. S.) 679.

Individual Rights. A collection of individuals as a church acquiring rights as a church and subsequently dissolving, have no individual rights growing out of the formal organization. Berryman v Reese, 11 B. Mon. (Ky.) 287.

Joint Incorporation. The Maryland act of 1802, chap. 111, authorizing the incorporation of churches, is not to be restricted to individual churches or societies singly, but two different denominations may unite and form one society or congregation within the meaning of the act. Neale v Vestry of St. Paul's Church, 8 Gill. (Md.) 116.

Liability. In Gray v Good, 44 Ind. App. C. Rep. 476, it was held that religious societies, whose trustees were incorporated, were liable, as such, only for the acts of such trustees.

Liability of Members. All members of an ecclesiastical society without local limits, formed by voluntary associa-

tion, pursuant to section 13 of the Connecticut statute relating to religious societies, are not individually liable for the debts of such society. Jewett v Thames Bank, 16 Conn. 511.

Majority, Powers. The majority may direct and control consistently with the particular and general laws of the organism, but not in violation of them. Sutter v Trustees First Reformed Dutch Church, 42 Pa. 503.

Religious societies acting as corporate bodies under the statute, must be governed by majorities, and the minority must submit or secede. This rule must, in the nature of things, apply in all temporal affairs, but difference in faith or doctrine may be determined on different principles. Miller v English, 21 N. J. Law, 317.

The will of a majority when known and duly expressed must conclude unless so palpably unjust as clearly to indicate an arbitrary, wanton, and destructive purpose. "It is the right of a majority to control in all civil affairs, and no less in the management of the temporalities of a religious society than any other." Cooper v Presby. Church of Sandy Hill, 32 Barb. (N. Y.) 222.

Massachusetts Rule. A religious society is not a private corporation under the Massachusetts act of 1852, chap. 312, sec. 42, relative to the improper or illegal use of a franchise. Goddard v Smithett, 3 Gray (Mass.) 116.

Meetings. If a society vote to hold their annual meetings upon a certain day in each succeeding year, a meeting held on a day so fixed, without further notice, is not legal, even after a practice of holding them thus for fifty years. Hicock v Hoskine, 4 Day's Rep. (Conn.) 63.

Meeting, How Called. If the charter does not provide a plan for calling meetings of the society for the election of trustees, such a meeting may be called by a justice of the peace on the application of five members of the society. Ladd v Clements, 4 Cush. (Mass.) 476.

Name. In Pennsylvania it was held that a proceeding to change the name of a religious corporation could not be entertained by the court without notice of the application first

served on the auditor-general. Re First Presbyterian Church, Bloomfield, 107 Pa. St. 543.

Order changing name may be revoked. Re Abyssinian Baptist Church, 13 N. Y. Supp. 919.

New York Act of 1813. At the time of the passage of this act there existed in this State numerous denominations organized into voluntary associations, each distinct and separate from each other, differing in faith, doctrine, usage, and discipline, all independent, being entirely free from State interference and control. This was the situation from the early settlement of the country. None of these religious bodies possessed any of the capacities, attributes, and rights of a corporate body. In the law they had no legal existence. They were regarded as spiritual organizations, many of them embracing within their aims and purposes other objects, such as supporting schools and colleges, founding charities. After the formation of the corporation the spiritual body remains, which is composed of the church members. The corporation entity deals with the temporalities of the society only. Isham v Fullager, 14 Abb. N. C. (N. Y.) 363.

Organization, Powers. Where persons formed themselves in an association for religious purposes, without any lay organization, under the Massachusetts statutes or otherwise, but solely under the advice and direction of the ministers and elders of their denomination, and entered into an agreement which they afterward fulfilled, to support and maintain public worship, became a religious society under the statute, and became competent as such to take grants or donations, and to prosecute an action of trespass to maintain and defend the possession of real estate granted or leased to them for their use as a religious society. Christian Society Plymouth v Macomber, 5 Metc. (Mass.) 155.

Property, Conveyance to Members, Effect. In Pennsylvania it was held that religious societies were in the nature of corporations, and that a grant to the members of such a

society, where the purpose is to promote the charity for which the society was organized, is a grant to the society itself. Brown v Lutheran Church, 23 Pa. St. 495.

Property, How to Be Used. An incorporated society must appropriate its property for the payment of their debts; and if they neglect to do so, and permit the property to be wasted, the individual members may be liable. A meeting-house is not liable to be taken in execution for the debts of such society. Bigelow v Congregational Society, Middletown, 11 Vt. 283.

Quorum. The rule of the common law is where a society or corporation are composed of an indefinite number of persons, a majority of those who appear at a regular meeting of the same constitute a body competent to transact business. Field v Field, 9 Wend. (N. Y.) 394, in which the rule is applied to a meeting of members of a local Society of Friends.

Reincorporation, Identity. The society was incorporated in 1838 under the Religious Corporations Act of 1813. It was reincorporated in 1851 under the same act. The earlier society had become practically dissolved by failure to elect trustees. The surviving members reincorporated under another name. It was held that this would not affect the identity of the society, it appearing that the new society was the same as the one which was incorporated in 1838. The new society was, therefore, entitled to the property owned by the original society. First Society v Brownell, 5 Hun. (N. Y.) 464.

Rules of Order. A religious society may prescribe such rules as they may think proper for preserving order when met for public worship, and they may use the necessary force to remove a person who is disturbing the society by a willful violation of a rule. McLain v Matlock, 7 Ind. 525.

School Moneys, Sharing In. In Connecticut it was held that all the religious societies located within the parochial limits designated for the accumulation and distribution of school moneys, were the owners of such moneys, and entitled

to participate in the income thereof. Cargel v Grosvenor, 2 Root (Conn.) 458.

Secession. The majority of the members of a church cannot, having abandoned the religious faith on which it is founded, hold the church property against the minority adhering to such faith. The title to the property acquired by the association before the existence of a schism will remain in that faction of the association which abides by the doctrines, principles, and rules of the church which the united body professed when the property was acquired. True Reformed Dutch Ch. v Iserman, 64 N. J. L. 506; see article on Secession.

Self-Government. The members of such a society, in the exercise of their religious liberty, have the undoubted right to adopt rules for their own church government, if not inconsistent with the constitution and laws of the land. Prickett v Wells, 117 Mo. Rep. 502.

Separation, Effect. It is a well-settled principle that when part of any religious association separate and establish a new society they cease to be members of the original society, and have no longer claim to their property. Trustees Associate Ref. Ch. v Trustees, Theological Seminary 4 N. J. Eq. 77.

Separation or Independence, When Impossible. Whenever a church or religious society has been originally endowed in connection with, or subordination to, some ecclesiastical organization and form of church government, it can no more unite with some other organization or become independent than it can renounce its faith or doctrine and adopt others. Indeed, in many churches, its ecclesiasticism, or form of church government, is an important, if not a fundamental, point of doctrine. It is based, in their view, upon a scriptural model or teaching. Roshi's App. 69 Pa. 462.

Services, Society May Regulate Admissions and Conduct. While it is usual in all Christian societies and places of public worship that all persons who choose may in fact

attend, and it is usual to set apart free seats, this is a matter of courtesy and not of right. On the contrary, any religious society, unless formed under some unusual terms, may withhold this courtesy, and close their doors, or admit whom they choose only; and circumstances may be easily imagined in which it would be necessary to their peace and order that they should exercise such right. Attorney-General v Proprietors of Meeting House in Federal Street, Boston, 3 Gray, (Mass.) 1.

Subscriber's Right to Prevent Diversion. Where a person who, in pursuance of an agreement set forth in the subscription list, has furnished funds to aid in the construction of a building for a public purpose, and which funds have been applied to that purpose, he has a right to insist that such building shall not, without good cause, be converted to other uses; and he may maintain an action either in his own name, or on behalf of all the subscribers to prevent a violation of the contract. In this case the contributions were made for the erection of a church to be used by the Baptist Society, and it was also to be used for the purpose of having lectures and concerts of a religious nature. It was held that the society could not, without the consent of the contributors, sell the property for mercantile purposes without any intention to erect another church edifice. Avery v Baker, 27 Neb. 388.

Threefold Aspect. First. The congregation that usually meets together for religious worship and instruction. Second. The church, strictly so called, composed of those entitled to full church privileges. Third. The trustees or corporation. Worrell v First Presbyterian Church, 23 N. J. Eq. 96.

Two Societies, One Minister. It is not illegal for two religious corporations to unite in the settlement of a minister if they agree to worship together; and the circumstance that one of the corporations is in an adjoining State makes no difference. Peckham v North Parish, Haverhill, 16 Pick. (Mass.) 274.

Unincorporated, Status. In Magill v Brown, Fed. Cas. No. 8,952 (U. S. Cir. Ct. Pa.) (Brightly N. P. 347), Judge Baldwin expressed the opinion that in Pennsylvania there was no decision that an incorporation is necessary to give to any association of individuals the capacity of taking and enjoying an estate in perpetuity, either by the assumed name of the society or by trustees for their use. Neither is there an adjudged case turning on the statutes of mortmain by which any estate has ever been vested in the commonwealth by a forfeiture incurred in consequence of an alienation to a corporate body, without license, charter, or law, or any evidence that such license was ever granted by the proprietor or governor. The view which we feel constrained to take of the constitutions of 1701, 1776, and 1790, all of which remain in force so far as respects the rights of property, conscience, and religious worship, is this: that all bodies united for religious, charitable, or literary purposes, though without a written charter or law, are to be considered as corporations by prescription, or the usage and common law of the State, with all the attributes and incidents of such corporations by the principles of the common law, and entitled to all rights which are conformable to the customs of the province. Incorporations were almost unknown, yet to all sorts of pious and charitable associations, in every part of the province, valuable bequests were made by those who were ignorant of the niceties of expression necessary to accomplish the object at common law. Nothing was more frequent than bequests to unincorporated congregations, without the intervention of trustees; and even when there was a corporation it frequently happened that the corporate designation was mistaken, or the trust vaguely defined, notwithstanding which, the testator's bounty was uniformly applied to the object.

In Wilkins v Wardens, etc., St. Mark's Protestant Episcopal Church, 52 Ga. 351, it was held that a religious society which was not incorporated according to law, or which had not recorded its name and objects, as provided by the

Georgia code, could not be sued as such, but that its members were liable on its contracts as joint promissors or partners.

Union with Another Denomination. In Sutter v Reformed Dutch Church, 6 Wright (Pa.) 503, it was held that where a congregation of one denomination forms a union with another belonging to a different denomination, which had an established form of church government, the congregation is bound by the rules of the denomination which it has joined, and cannot afterward secede therefrom by a vote of the majority of its members.

War Claim. This society was incorporated in 1862. In a proceeding in the Federal Court of Claims to recover compensation for property alleged to have been lost or destroyed during the Civil War, it was held that the society was organized for religious purposes, and that it had not given aid or comfort to the rebellion. The society was held entitled to recover from the United States the value of the property lost. Hebrew Congregation Benai Berith Jacob v United States, 6 Ct. Cl. (Ga.) 241.

Who Constitute. According to the legal and equitable principles of such associations, it is those who adhere or submit to the regular order of the church local and general (even though they be a minority), that constitute the true congregation, and also the true corporation if it be incorporated. Weinbrenner v Colder, 7 Wright (Pa.) 244.

Withdrawal from Synod, Effect. The Zion's English Evangelical Lutheran Congregation had power to withdraw and did withdraw from the District Synod of Ohio, and any action by the synod, subsequent to such withdrawal, assuming to suspend the minister of the congregation, A. S. Bartholomew, and providing for filling a vacancy in the pulpit, was void. Members of the congregation not in sympathy with the withdrawal movement afterward held a meeting and assumed to amend the Constitution in relation to the election of trustees and declare the office of two trustees who had joined the withdrawal movement vacant, and

elected others in their places. An action was brought by the new trustees against the original trustees, and the minister to secure possession and control of the church property. It was held that the congregation, having severed its relations with the district synod, the trustees who had been ousted had not vacated the offices, but were still the local trustees and entitled to the possession of the property and bound to administer the trust vested in them by the original deed and by the charter. Bartholomew v Lutheran Congregation, 35 Ohio 567.

RELIGIOUS TOLERATION

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Connecticut. It is the settled policy of this State to so frame its legislation that each denomination of Christians may have an equal right to exercise religious profession and worship, and to support and maintain its ministers, teachers, and institutions in accordance with its own practice, rules, and discipline; and this policy is conformable to the provisions of our constitution. Christ Church v Trustees of Donations and Bequests for Church Purposes: Trustees of Donations and Bequests for Church Purposes v Christ Church, 67 Conn. 554.

Described. In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe on personal rights, is conceded to all. The law knows no heresy and is committed to the support of no dogma, the establishment of no sect. Pounder v Ashe, 44 Nebr. Re. 672.

"The belief of no man can be constrained, and the proper expression of religious belief is guaranteed to all." "When religious belief or unbelief leads to acts which interfere with the religious worship and rights of conscience of those who represent the religion of the country, as established, not by law, but by the consent and usage of the community, and

existing before the organization of the government, their acts may be restrained by legislation, even if they are not indictable at common law." "The religious tolerance is never consistent with a recognized religion. Compulsory worship of God in any form is prohibited, and every man's opinion on matters of religion, as in other matters, is beyond the reach of law." Lindenmuller v People, 33 Barb. (N. Y.) 548.

Mormons. In the Late Corporation of the Church of Jesus Christ of Latter Day Saints v United States, 136 U. S. 1, considering questions involved in the acts of Congress repealing the acts creating the Mormon Church, and dissolving the corporation, and the right of the federal government to declare the property of the corporation forfeited to the United States in consequence of the persistent propagation of the doctrine and practice of polygamy, the court said: "One pretense for this obstinate course is that their belief in the practice of polygamy, or in the right to indulge in it, is a religious belief, and therefore under the protection of the constitutional guaranty of religious freedom. This is altogether a sophistical plea. No doubt the Thugs of India imagined that their belief in the right of assassination was a religious belief; but their thinking so did not make it so. The practice of suttee by the Hindu widows may have sprung from a supposed religious conviction. The offering of human sacrifice by our own ancestors in Britain was no doubt sanctioned by an equally conscientious impulse. But no one, on that account, would hesitate to brand these practices now as crimes against society, obnoxious to condemnation and punishment by the civil authority. The state has a perfect right to prohibit polygamy, and all other open offenses against the enlightened sentiment of mankind, notwithstanding the pretense of religious conviction by which they may be advocated and practiced.

Municipal Ordinance. An ordinance in the city of New Orleans, adopted April 7, 1858, prohibiting the assemblage of colored persons for religious worship except under speci-

fied conditions was sustained in African Methodist Episcopal Church v New Orleans, 15 La. Ann. 441.

Parental Duty. The provision in the New York constitution guaranteeing freedom of religious worship was not violated by a provision in the penal code requiring parents to furnish medical attendance to their children in time of need, and a father was held not excused from liability for failure to furnish medical attendance by reason of his belief in divine healing which could be accomplished by prayer; that he did not believe in physicians and his religious faith led him to believe that the child would get well by prayer. People v Peirson, 176 N. Y. 201.

Pennsylvania. In their frame of government of the Province of Pennsylvania, together with certain laws agreed upon in England on the 25th of April, 1682, will be found the following provision, which formed the 35th section: "That all persons living in this province, who confess and acknowledge the one Almighty and Eternal God, to be the creator, upholder and ruler of the world, and that hold themselves obliged in conscience to live peaceably and justly in civil society, shall in no ways be molested or prejudiced for their religious persuasion or practice in matters of faith and worship, nor shall they be compelled at any time to frequent or maintain any religious worship, place, or ministry whatever." In pursuance of this plan of government thus formed, and to carry out those great and enduring principles, will be found, in one of the first laws enacted by them, and entitled a law concerning liberty of conscience, the following remarkable sentiments: "Almighty God, being only Lord of Conscience, Father of Lights and Spirits, and the author as well as object of all divine knowledge, faith, and worship, who only can enlighten the minds and persuade and convince the understanding of the people in due reverence to his sovereignty over the souls of mankind; it is enacted by the authority aforesaid, that no person at any time hereafter, living in this province, who shall confess and acknowledge one Almighty God to be the creator, upholder

and ruler of the world, and that professeth him or herself obliged in conscience to live peaceably and justly under the civil government, shall in anywise be molested or prejudiced for his or her conscientious persuasions, nor shall he or she at any time be compelled to frequent or maintain any religious worship, place, or ministry whatever, contrary to his or her mind, but shall fully and freely enjoy his or her Christian liberty in that respect, without any interruption or reflection; and if any person shall abuse or deride any other for his or her different persuasion and practice in a matter of religion, such shall be looked upon as a disturber of the peace and be punished accordingly." Here we have the sound doctrines and Christian precepts of William Penn, promulgated to the world as the true foundation of this new government. He was attached to the Society of Friends, and in a government framed by him and in laws dictated by his wisdom, we first find provision made for true liberty of conscience in relation to religious worship. Before this time these principles had no place in the statute books of any people. They formed no part of the institutions of any country. They do not appear to have entered into the mind of any man except Lord Baltimore, who was a Roman Catholic, and had introduced the principles into Maryland. Here in this country for the first time they were made a part of the fundamental law of a distinct people. Commonwealth v Sigman, 2 Clark (Pa.) 36.

Protestantism. Religious toleration is the vital principle of Protestantism. Anderson v Brock, 3 Me. 243.

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RELIGIOUS WORSHIP

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Basis of Public Recognition. "The public recognition of religious worship is not based entirely, perhaps not even mainly, upon a sense of what is due to the Supreme Being himself as the author of all good and of all law; but the same reasons of state policy which induced the government to aid institutions of charity and seminaries of instruction will incline it also to foster religious worship and religious institutions, as the conservators of public morals and valuable, if not indispensable, assistants in the preservation of public order." Trustees First Methodist Episcopal Church, South v Atlanta, 76 Ga. 181.

Camp Meeting. Camp meetings are places of religious worship; it is the favorite meeting place in the pleasant season of the year of one of the largest and most influential religious bodies in the land. The meetings are conducted in the same manner as if held in church; it is divine wor-

ship, and so understood by all Christian people. Commonwealth v Fuller, 4 Pa. Co. Ct. 429.

Defined. "In modern times, the provision of a place and other means of public worship, according to the Protestant ideas, implies the assembling of a body of persons together for the general services of public worship, and for religious instruction: and as connected therewith, a select body, forming and connected together by the covenant, who constitute a church in full communion, invested, among other things, with the especial duty and privilege of administering the Christian ordinances." Attorney-General v Proprietors of Meetinghouse in Federal Street, Boston, 3 Gray (Mass.) 1.

Religious worship consists in the performance of all the external acts, and the observance of all ordinances and ceremonies which are engaged in with the sole and avowed object of honoring God. Chase v Cheney, 58 Ill. 509.

The term should be construed to include within the beneficial operations of the statute every variety of religious faith and belief and every religious philosophy of life or death. As applied to a church which accepts the inspiration of the Scriptures and the divinity of Jesus, it means the assembling together of the members in a congregation, together with others that may choose to come, for the purpose of worshiping God according to the religious forms of the particular organization in question. Re Walker, 200 Ill. 566.

In popular usage "religious service" is synonymous with "divine service." Proof that a congregation was assembled at a Methodist Episcopal church, at which there was preaching and taking up of a collection, is sufficient to show that there was a congregation of persons lawfully assembled for divine service. McDaniel v State, 5 Ga. App. 831.

Duty of Person Attending. It is the duty of every person attending church, no matter of what denomination, to pay that respect to the place and the people assembled there as not to disturb or molest them in their worship. Under the

free constitution of this country no man is compelled to go to any particular church, nor, indeed, to any church at all, but if he does so (as it is the duty of every man to go to some church), it is his duty to behave himself while there with decorum and respect. People v Brown, 1 Wheelers Cr. Cases, 124.

Majority May Regulate. A few of the members, including some of the officers, but against the protest of the majority, placed a musical organ in the church for use in the service. This church was Congregational and independent. The majority of the officers and congregation had power to control forms of worship and the minority did not possess power to place an organ in this church without the consent of the majority. Such action by the minority was unauthorized and illegal and constituted a perversion of the church property which could be restrained by the order of the court. Hackney v Vawter, 39 Kan. 615.

Musical Instruction; Singing. "If the purpose of the meeting be solely for instruction in the art of singing, although confined to the singing of sacred songs, this would not be an assemblage met for religious worship." Adair v State, 134 Ala. 183.

Orphan Asylum. Religious services held in a colored orphan asylum on Sunday for the inmates only, visitors not being admitted, do not constitute public worship. Association for the Benefit of Colored Orphans in New York v New York, 104 N. Y. 581.

Place of, When Exempt from Taxation. The buildings owned by the association were held to be places of worship within the constitutional provision exempting such places from taxation; also vacant land held pending its sale used for the general purposes of the association was exempt under the provision of the constitution allowing the exemption of not more than one half an acre in cities. Commonwealth v Young Men's Christian Association, 25 Ky. Law Rep. 940.

Preserving Order. A churchwarden may take the hat off

the head of one who sits there covered during divine service. Such act does not constitute an assault. Hall v Planner, 1 Levinz (Eng.) 196.

Protestant Meetings. In State v Scheve, 65 Neb. 853, involving a question of the right to read the Bible and conduct religious service in the public schools, Judge Ames said: "Protestant sects who maintain, as a part of their ritual and discipline, stated weekly meetings, in which the exercises consist largely of prayers and songs, and the reading and repetition of scriptural passages, would no doubt vehemently dissent from the proposition that such exercises are not devotional, or not in an exalted degree worshipful, or not intended for religious edification or instruction; that they possess all these features is a fact of such universal and familiar knowledge that the courts will take judicial notice of it without formal proof."

Regulations, When Illegal. The authorities of a church adopted a regulation that no person should go out of the church during divine service without their express permission. This regulation was held to be illegal, and an infringement upon natural liberty and private right. People v Brown, 1 Wheelers Cr. Cases (N. Y.) 124.

Removing Disturbers. A religious society may prescribe such rules as they may think proper for preserving order when met for public worship, and they may use the necessary force to remove a person who is disturbing the society by willful violation of a rule. McLain v Matlock, 7 Ind. 525.

Usage and custom have made it peculiarly the duty of the minister or priest to conduct the services of religious meetings, to preside over them, to preserve order therein, and act as the organ and spokesman of the congregation. It is most appropriate that the minister or priest should preserve order and rebuke all violations of it. As the acknowledged presiding officer of the meeting it is his duty to check all attempts to interrupt its order, quietness, and solemnity, and for this purpose he unquestionably has full power and

authority to call upon others to aid him or direct them to remove the offender. Wall v Lee, 34 N. Y. 141.

Right of Choice. The courts cannot compel an individual to attend worship in any place, nor remain connected with any church, nor to receive anyone as his pastor. These are matters which are relegated to the domain of the individual conscience, and over which neither Legislature nor court can exercise any control. Religious freedom means absolute personal independence. Feizel v First German Society of M. E. Church, 9 Kan. 592.

Sunday School, When Not Included. Two societies built a house of worship together, under an agreement which provided that the house should be used in common only for divine service. For twenty years the house was used only as a place of worship. The congregation organized and maintained a union Sunday school in a schoolhouse near the church. After a time the Lutherans withdrew from the union school, and established a Sunday school in the audience room of the church against the protest of the German Reformed Society. It was held that the term "divine service" did not include a Sunday school. That the term was intended to include prayer, praise, and worship in the ordinary sense, and not school instruction as applied under the Sunday school methods. Gass Appeal, 73 Pa. 39.

Taxes, Apportionment. The provision in the Massachusetts Declaration of Rights that "all moneys paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the teacher of his own religious denomination, on whose instruction he attends" was held not to include a public teacher chosen by a voluntary association of Universalists. The society must have been incorporated to entitle its members to direct the disposition of taxes raised for religious purposes. Barnes v First Parish, Falmouth, 6 Mass. 401.

Usage of Congregation. When a house is erected for religious worship, and it cannot be discovered what was the

nature of the worship intended by it, it must be implied from the usage of the congregation, and it is the duty of the court to administer the trust in such manner as best to establish the usage, considering it a matter of implied contract with the congregation. Greek Catholic Church v Orthodox Greek Church, 195 Pa. St. 425.

ROMAN CATHOLIC CHURCH

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Archbishop, May Appoint Directors of Corporation. In 1888 the Franciscan Fathers of St. Louis, Missouri, conveyed to Archbishop Kendrick certain real estate in trust for the congregation of St. Stanislaus of the city of St. Louis, and assigns forever, which congregation was composed of Polish communicants of the Catholic Church. Afterward the archbishop executed a conveyance of this property to the St. Stanislaus congregation. The archbishop had power to appoint the directors of the corporation.

The plaintiffs in this action claimed the right to elect the

directors or to take part in their election. It was held that the plaintiffs were not members of the St. Stanislaus Parish corporation, nor entitled to a decree conferring the right of membership upon them. Klix v St. Stanislaus Church, 137 Mo. App. 347.

Archbishop, Title to Property. Real estate was conveyed to the archbishop by his individual name without any trust or limitation. The property was intended for the use, and was used as the archbishop's residence. The property was paid for in large part by contributions from members of the congregation. The archbishop held the title for the church, and not as an individual. It was held that the property was not exempt from taxation. Katzer v Milwaukee, 104 Wis. 16.

Archbishop, Title to Property, Pews. The archbishop, who by the law of the church, owned the soil on which the church edifice stood, conveyed a pew by deed in the usual form, except that it did not have a seal, nor use words calling for a seal. It was held that the question whether the pew-owner had acquired the right to a pew by adverse possession should have been submitted to the jury. It was also said in the case "that the archbishop had no greater rights in respect to the demolition of pews than an organized religious corporation of any other denomination would have had by reason of its ownership of the church." Aylward v O'Brien, 160 Mass. 118.

Bishop and Priest, Relations. The bishop has power to determine questions relating to the service and usefulness of the priest. The relation between them is not that of a hirer and hired. When a priest dedicates his life to the church and takes upon himself the vows of obedience to its laws he is presumed to be actuated by a higher principle than the hope of gain. Where he has an actual contract with his congregation or his bishop for a salary it may be enforced as any other contract; but where he relies upon the duty of his church to support him he must invoke the aid of the church if he seeks redress. In Tuigg v Sheehan, 101 Pa. St. 363, the plaintiff, who had at some time occupied

the position of priest of the parish, brought an action against the bishop to recover salary for three years. During that time the priest had not performed any service, and had been absent from the parish most of the time. It was held that there was no contract relation between the priest and the bishop, and no action could be maintained against the bishop for his salary.

Bishop, Authority. The bishop of the diocese (Pittsburgh) is trustee of the congregation in its temporal affairs, and, either directly himself or through the priest and pastor of his appointment, controls and directs the receipts, and application of the property, income, and expenditures of the congregation, but the bishop has no right to appropriate the property for other use than that of the congregation. Tuigg v Treacy, 104 Pa. 493.

Bishop's Control Over Priest. The bishop made a decree or order transferring the defendant, a priest, from Seward to Red Cloud in the diocese of Lincoln. The defendant was at that time occupying certain church property at Seward, and also at Ulysses. He refused to vacate the property and remove to Red Cloud, as required by the bishop's order. The order transferring the defendant included an order suspending him from the mission at Seward. Subsequently the bishop excommunicated the priest for disobedience to the order, and for gross insubordination, but the defendant continued to exercise the functions of a priest at the mission, including the collection of revenues, and refused to permit another priest appointed as his successor to assume the duties of his office. The defendant denied the right of the bishop to make the removal without giving him, the defendant, an opportunity to be heard. The defendant did appear on notice for the purpose of a hearing, but challenged the right of the bishop to act in the matter, and the defendant thereupon appealed to the highest church court. He responded to another notice to appear, again challenged the bishop, again appealed. On the first hearing the plaintiff was enjoined from proceeding with the case until the deci-

sion of the appeal by the defendant to the court at Rome. Bonacum v Murphy, 71 Neb. 463. On a rehearing, page 487, the former judgment was reversed and the proceeding dismissed without prejudice to a new proceeding by either party.

Bishop, Liability on Contracts. A bishop cannot be held liable on the contracts of his predecessor unless he has expressly agreed in proper form and for a sufficient consideration to become liable thereon. The personal contracts of a bishop are the same as those of a layman, so far as their form, force, and effect are concerned. Baxter v McDonnell, 155 N. Y. 83.

Bishop, No Contract Relation with Local Church. This was held in Wardens of the Church of St. Louis v Blanc, 8 Rob. (La.) 51, where it was also said that the relation between the bishop and a local society gives rise to no contract obligation. The bishop is quite independent of the churchwardens except in relation to his spiritual or sacerdotal functions.

Bishop Not Liable for Priest's Salary. In Rose v Vertin, 46 Mich. 457, it was held that the bishop who designated a priest to serve a particular church did not thereby become liable for the priest's salary. They were both servants of the church, the bishop's relation being that of a superior, and the priest was bound to look to the congregation for his compensation.

Bishop's Powers. The bishop is the governing power of the Catholic Church in his diocese. He is said to be the supreme pastor, the supreme teacher, the supreme governor. It is his duty, under the laws and discipline of the church, to administer the regulations above mentioned, and in so doing necessarily to construe and interpret them. His decision is to be final and conclusive, except as reviewed by his ecclesiastical superiors at Rome. Bonacum v Harrington, 65 Neb. 831.

Bishop, Relation to Corporation, Louisiana Church of St. Louis. This church was incorporated in 1816 by special

act of the Louisiana Legislature. The act provided for a board of churchwardens composed chiefly of laymen. This board had no power to appoint a curate, but it was their duty to provide for the salary of the curate; but they had a right to withhold all salary from any person whatever, and even to prevent any person claiming to be curate, from entering the church belonging to the corporation. In an action brought by the churchwardens against the Bishop of Louisiana to recover damages for having asked for an increase in salary, asserting the right of approving the tariffs, requesting that the curate have supervision of the records of marriages and appointment of subordinates who officiated in the church, declining to appoint a curate and to admit that the churchwardens had the right to appointment; thanking the temperance society for sympathizing with him in his cause, and withdrawing from the services of the church all priests except one, resulting in the substantial desertion of the cathedral services, it was held that the relations between the churchwardens and the bishop implied no civil contract, and consequently gave rise to no civil obligations. The bishop was independent of the churchwardens except in relation to his spiritual or sacerdotal functions. Wardens of the Church of St. Louis v Blanc, 8 Rob. (La.) 52.

Bishop's Supervision. Under the law of the Roman Catholic Church the bishop has full power in the administration of church affairs; there are no separate parishes; the diocese is the parish and the bishop the universal parish priest; all power possessed by priests or pastors is delegated from the bishop; the clergyman in charge of a church for the time being has charge of all its temporalities; it belongs to such pastor to make all contracts relating to the temporal affairs of the church, and he is not the agent or servant of the bishop in such matters; the only control of the bishop over the pastor is by ecclesiastical discipline; and a bishop cannot remove a priest except for cause and by ecclesiastical discipline. Leahey v Williams, 141 Mass. 345.

Bishop's Title to Land—Cemetery. A conveyance of land was made to a bishop and to his heirs and assigns forever "in trust for the Catholic community for the purpose of a free burial ground." The bishop acquired an estate in fee, and could maintain an action of trespass against the beneficiaries. The land was purchased and paid for by members of the community, the deed being taken in the bishop's name. The land was surveyed and lots assigned to different members of the community, who ornamented the lots and incurred the expenses in connection therewith. Fitzpatrick v Fitzgerald, 13 Gray (Mass.) 400.

Bishop's Title to Property. Land was conveyed to the Bishop of Galveston for the use of the Roman Catholic Church, to be held by him and his successors in office for such use forever. It was held that the bishop took a fee simple title for the benefit of the church. Olcott v Gabert, 86 Tex. 121.

It is a matter of historical and common knowledge that the form of government in the Roman Catholic Church is an episcopacy, and in which the diocesan bishops possess enlarged powers respecting the temporal as well as the spiritual affairs of the church in their respective dioceses. Blanc v Alsbury, 63 Tex. 489.

"The title to the real estate resides in the bishop of the diocese. In a certain sense he is a trustee thereof for religious uses, but there is no declaration of trust, and he controls the enjoyment and transmits the title by devise. The purpose of this arrangement is to exclude the laity from that power of interference which they would have were the title vested in the corporation. But inasmuch as the holders of such titles are not corporations, either sole or aggregate, as are the English bishop, deans, and even parsons, lands held by them do not pass to their successors in office unless through the instrumentality of a deed or will." Strong's Relations of Civil Law to Church Polity, quoted by Judge Vann in Baxter v McDonnell, 155 N. Y. 83.

The church property in the Diocese of Cincinnati was held

in the name of the bishop or archbishop, but in trust for the various congregations who contributed for the support of pastors and the expenses of the local churches. The local congregations were not so organized as to enable them to hold the title to church property. The archbishop being heavily indebted, made an assignment for the benefit of creditors, but it was held that it was not an official assignment. The assignment carried only the archbishop's individual property, and not the property held by him in trust for the various congregations and for other religious purposes. Mannix v Purcell, 46 Ohio St. 102.

Certain members of the local society, being dissatisfied with the management of the property, brought an action against the bishop for the purpose of obtaining some part in the control of the property, alleging that the property was acquired by contributions from the people under circumstances which created a trust. The legal title had been conveyed to the bishop without any provision creating a trust, and under the law of the church the property was held for the use of the congregation who attend public worship therein. The plaintiffs were not entitled to the relief sought. Hennessey v Walsh, 55 N. H. 515.

Where property is purchased by a congregation for a special purpose, although the deed is made to the bishop, the congregation is entitled to control the property, and the bishop holds the property in trust for the congregation. Fink v Umscheid, 40 Kan. 271.

In Heiss v Vosburg, 59 Wis. 532, it appeared that in 1866 the trustees of Sinsinawa Mound College conveyed certain real estate, on which there was a church building, to the bishop of Milwaukee for the nominal consideration of one dollar. It also appeared that the bishop devised this property to his official successor, who brought this action, claiming that the defendants had unlawfully entered on the premises, torn down and removed the building thereon and were digging up and removing the soil for the purpose of laying the foundation for a new building which they threat-

ened to erect against his wish and protests. The defendants, who were members of the Roman Catholic Church at Sinsinawa Mound, known as St. Dominic's Church, claimed that the church building was originally erected by funds and materials furnished by the congregation, and that it had been practically under the control of trustees chosen by the congregation since 1866; also that the deed to the bishop was in trust for the congregation.

The court held that the original deed to the bishop from the college was absolute, and conveyed a fee simple title, leaving nothing in the congregation or the trustees thereof, and that they had no interest in the property. Neither the congregation nor its trustees could lawfully tear down the church building, even for the purpose of erecting a new one, against the protest of the bishop who held the legal title, and who had control of the property under the law of the church.

The association (St. Joseph's Lithuanian Catholic Congregation) purchased real estate for the purpose of erecting thereon a church building, the title being taken in the name of certain persons as trustees. Subsequently, by a vote of the congregation, the title of the property was transferred to the bishop. At a later meeting of the congregation trustees were selected to take charge of the property and were directed to procure to themselves a transfer of the title of any property in which the society was interested, and which was then held by any other person. The bishop declined to transfer the property to these new trustees and an action was commenced to compel a conveyance. It was held that the bishop, by taking title to the property, became a trustee of the society to the same extent, and with the same powers as the trustees named in the original deed. Therefore the bishop was only a depository of the legal title of the property, holding it in trust for the congregation. The plaintiffs were entitled to a decree directing the bishop to transfer the property to them as trustees of the congregation, such conveyance to be in trust for the purposes

specified in the original deed. Krauczunas v Hoban, 221 Pa. 213.

A bishop holds the title as a mere trustee. The trust in such case gives to the trustee neither interest in the estate nor power to control it or direct its management in any way; it creates no duty for the trustee to perform and leaves nothing to his discretion; he is simply the passive silent depository of the legal title and nothing more. Mazaika v Krauczunas, 233 Pa. 138 cited in Carrick v Canevin, 55 Pa. Super. Ct. 233, 243 Pa. Super. Ct. 283; see the question again in Novicky v Krauczunas, 245 Pa. 86.

Bishop, When Not Liable in Damages. In Wardens of the Church of St. Louis v Blanc, 8 Rob. (La.) 51, it was held that a bishop cannot be made liable in damages for any expression of opinion as to the extent of his ecclesiastical authority, nor for any act or omission in the exercise of his spiritual functions. Such acts or omissions violate no legal right, nor do they involve any dereliction of legal duty or obligations. Courts of justice enforce civil obligations only—not spiritual ones.

Burial Ground. Land embracing about forty acres was conveyed to the bishop for a burial ground. One acre was used for the cemetery and the other was used as farm lands. It was held that the part not actually used for cemetery purposes was subject to taxation. Mulroy v Churchman, 52 Ia. 238.

California Missions. According to all the Spanish and Mexican authorities, the missions were political establishments, and in no manner connected with the church. The fact that monks or priests were at the head of these institutions proves nothing in favor of the claim of the church to universal ownership of the property.

If it be relied on that a priest or monk had government and control of the mission, the answer is simply that they were the civil governors; and although they combined with the power of civil government the functions of spiritual fathers, this was only the more effectually to carry out one

of the objects of those establishments, which was to convert and Christianize the Indians. Neither the missions nor the priests of the missions were incorporated into the general body of the church, nor were they in any respect under the control or direction of its diocesan ecclesiastics, whose rule was absolute over all their inferiors. On the contrary, the mission establishments arose directly from the action and authority of the government of the country; laws and regulations were made for them by its legislative authority, without referring to or consulting the authority of the church, and the lands settled by them were not conveyed to anyone, neither to priest nor neophyte, but remained the property of the government, and there is not a word in all the decrees and acts of the government which would even show that the church building devoted to worship alone ever became the property of the church corporate until the decree of secularization of 1833. Nobili v Redman, 6 Cal. 325.

Catholic Knights of Wisconsin. The Order of Catholic Knights of Wisconsin was organized for the sole benefit of members of the Roman Catholic Church, for them only so long as they remain practical Catholics. The decedent was married by a Protestant minister, and was thereupon, ipso facto, excommunicated and ceased to be a Catholic, practical or otherwise. Thereupon all liability on the benefit contract ceased, and expulsion was not necessary. The provisions of the contract on this subject were self-executing. Membership in the society was purely voluntary, and the agreement did not impose any religious test contrary to the provisions of the constitution of Wisconsin. Barry v Order of Catholic Knights, Wis., 119 Wis. 362.

Catholic, Relation How Determined. No power save that of the church can rightfully declare who is a Catholic. The question is purely one of church government and discipline, and must be determined by the proper ecclesiastical authorities. The decision of the church authorities is final. Dwenger v Geary, 113 Ind. 106.

Cemetery, Exclusion of Non-Catholics. The society owned

a cemetery in Queens County. The rules and doctrines of the church forbid the burial, in consecrated ground, of the body of one who was not a Roman Catholic, or who was a member of the Masonic fraternity. The refusal of the cemetery to permit the burial of a Freemason, although a Roman Catholic, in this cemetery was sustained in People ex rel Coppers v Trustees, St. Patrick's Cathedral, N. Y., 21 Hun. (N. Y.) 184. It was also held that his right to burial therein was not secured by a paper acknowledging the receipt of a sum of money specified as being for the purchase money of the plot. Applicants for burial plots in Catholic cemeteries are presumed to know the regulations of the church concerning burials, such as the exclusion of non-Catholics and Freemasons.

McQuire v St. Patrick's Cathedral, 54 Hun (N. Y.) 207, involved the right of burial in a lot in a Roman Catholic cemetery under a receipt acknowledging the payment of a stipulated sum, and under which the intestate's wife had already been buried in the lot described. The receipt was held to convey a mere revocable license, and the court denied an application to compel the cemetery authorities to permit the interment of the intestate.

Cemetery, Suicide Not Entitled to Burial. Land was conveyed to the bishop of the Diocese of Fort Wayne for a cemetery. The bishop took the land in trust as a burying ground for the Catholics of the city. The congregation, with the cooperation of the grantors, caused the land to be laid out into lots, and it was consecrated and set apart according to the ritual and principles of the Roman Catholic Church for the burial of the bodies of such persons as were entitled to sepulture according to the rites and doctrines of the church. To entitle a person to burial in this cemetery he must have been at the time of his death a member of the church in full communion, and must have performed all of his church duties. A person who committed suicide was not entitled to burial in consecrated ground. A person who obtained a burial lot in the cemetery sought

to bury therein the body of his son who had committed suicide. Such burial was resisted by the church authorities, who brought this action to restrain the lot-owner from such use of the lot contrary to the rules of the church. The church authorities decided that the person whose burial was sought was not a Catholic, and not entitled to burial in the cemetery, and the court held this decision final and conclusive. The power of making rules regulating the use of the cemetery was lodged in the bishop of the Diocese of Fort Wayne, and the pastor of St. Mary's Church. The moment this cemetery was consecrated it came under the dominion of the church. It was held that the church authorities, including the bishop and pastor, could maintain an action to restrain the burial of the suicide in consecrated ground. Dwenger v Geary, 113 Ind. 106.

Congregation, Relation to General Church. Congregations may hold Catholic doctrines just as other denominations hold Catholic doctrines, but ecclesiastically and in sight of the Roman Catholic Church, they have no existence; they are not recognized by the papal authority. The congregation cannot divorce itself from the church, or form an independent organization and retain the ownership of the property. Dochkus v Lithuanian Benefit Society, St. Anthony, 206 Pa. St. 25.

Corporate Rights. The corporate existence of the Roman Catholic Church, as well as the position occupied by the papacy, has always been recognized by the government of the United States.

At one time the United States maintained diplomatic relations with the Papal States, which continued up to the time of the loss of the temporal power of the papacy. Moore's Digest of Int. Law, vol. i, pp. 130, 131. Ponce v Roman Catholic Church, 210 U. S. 296.

English Toleration. The testator bequeathed the residue of his personal estate to trustees, to be used for the education of poor children in the Roman Catholic faith. This bequest was held void, the court observing that "while the

Roman Catholic religion has received a considerable degree of toleration by the statute of the present King (31 Geo. III, chap. 32), yet there is a provision in that act that all dispositions before considered unlawful shall continue to be and be deemed so." There is no doubt a disposition, for the purpose of bringing up and educating children in the Roman Catholic religion, was unlawful before that time. Cary v Abbot, 7 Ves. Jr. (Eng.) 490.

Fraternal Beneficiary Society. The Bohemian Roman Catholic Central Union of the United States of America was formed, to be composed exclusively of members of the Roman Catholic Church. Members must have performed the duties required by the church, one of which was to go to confession and receive the sacrament of the holy communion every year during Easter time. A member did not receive the sacrament of the holy communion during Easter in 1896. He admitted the neglect, and was suspended by the society, and died during the suspension. By the laws of the order, a suspended member lost all benefits during his suspension. In an action on a beneficiary certificate it was held that the suspension was within the powers vested in the society by the contract of membership; that the organization of such a fraternal society was not inconsistent with any principle of religious liberty; that the suspended member, by violating the provisions of the contract, had forfeited his right to the benefits intended by the organization, and the action was not maintainable on the certificate. Franta v Bohemian Roman Catholic Central Union, 164 Mo. 304.

Independent Corporation, Powers. The society was organized by French residents for the purpose of having a French church of the Roman Catholic faith, with a French Roman Catholic priest as pastor, and under the same general government and authority as other Roman Catholic churches. The society was duly incorporated and adopted a constitution. Before the incorporation, and before the building of the church, the voluntary association had made application to the Roman Catholic bishop at Springfield for a French

priest to act as their pastor. This application was denied by the bishop, because he did not approve the establishment of another Roman Catholic church at North Brookfield. The new society erected a church and again applied to the bishop for the appointment of a priest, but this application was also denied. The society then engaged a priest on its own account.

Subsequent to the settlement of the pastor the bishop notified them that those who continued to attend the church would be excommunicated. Some members returned to the established church, others declined to attend any church, while still others adhered to the new society and maintained services there. Subsequently a meeting was called for the purpose of revising the list of church members. At this meeting certain names were crossed off the record. At the same meeting trustees of the society were elected. The former trustees attempted to close the church, and notified the pastor that his services would no longer be required. An action was brought by the new trustees against the old trustees to prevent them from closing the church and preventing its use for religious services. The expulsion of certain members on the revision of the list was sustained. But the election of officers at the meeting at which the list was revised was held to be irregular for the reason that it was not within the terms of the call of the meeting. It was also held that the trustees could not close the church because, in their judgment, to keep the church open would be to defeat the purposes for which the association was formed. The association having been incorporated under the statute providing therefor, and having adopted a constitution without any provision as to the form of worship, it became an independent society not subject to the jurisdiction of the bishop. The court granted a decree preventing the trustees from closing the church building of the association against any religious services held for the public advancement of the worship of God, or to insure religious instruction on Sunday, by any members of the association. Canadian Religious Association v Parmenter, 180 Mass. 415.

Independent Society, St. Anthony Church. The congregation worshiped according to the forms and rites of the Roman Catholic Church, but it did not adhere to and was not connected with the ecclesiastical body known as the Roman Catholic Church, and had never placed itself by any voluntary act of its own under the power of the head of the diocese of the church. It owned property which had been acquired with contributions made by the congregation, and employed a pastor without any knowledge that he had been assigned by the archbishop.

In an action to compel the transfer of the property of the church to the archbishop it was held that the court had no authority to compel such a transfer. Dochkus v Lithuanian Benefit Society of St. Anthony, 206 Pa. St. 25.

Jesuit Order. "The Society of Jesus is a religious order founded by Ignatius Loyola. It is understood to be composed of missionaries and teaching priests of the Roman Catholic faith. As we understand it, there is no legal incorporated body, but the priests are bound only by their vows of poverty, chastity, and obedience, and after a second novitiate, by a fourth vow, requiring them to go wherever the pope may send them for missionary duty. They are governed by a general, and the society has been established in the United States for many years." Coleman v O'Leary, 114 Ky. 388. In this case, considering the validity of a devise to the society of land to be selected by it, at a given location, for purposes of education or religion, the court said there was no trustee created by this bequest who can be made subject to the control of the court, and compelled to execute the provisions of the trust. But a definite trustee was not necessary under the Kentucky statute, if the objects of the charity were sufficiently definite. It was held that the object of the trust was too indefinite; that in case of necessity it would not be enforced by the court by the appointment of a trustee or otherwise. The bequest was held void.

Ladies' Club. The society, intending to erect a new house

of worship, a number of its members constituted themselves a voluntary and unofficial committee to raise funds for this purpose. With such funds they purchased certain real estate, taking a conveyance to one of their number, who executed a declaration of trust, in which he agreed to convey the property to the bishop on receiving the amount contributed therefor by the committee. A club composed of ladies of the society raised funds either for the specific purpose of building a new church or for such other specific church purpose as the club members should determine upon. The club united with the men's committee in purchasing the property in question, and neither the club nor the committee represented the bishop or the society. Subsequently the ladies' club obtained from the trustee a half interest in the property purchased. The church edifice was not erected on this land, but on another lot. The half interest acquired by the ladies' club was conveyed to the bishop, the plaintiff. In an action by the bishop to recover the other half interest which was still retained by the trustee it was held that the bishop was not entitled to recover, for the reason that the amount contributed by the committee in the purchase of the lot had not been paid to them. Eis v Croze, 149 Mich. 62.

Louisiana Corporation, Powers of Local Officers. The wardens of the society fixed the compensation of a curate, and it was paid for more than a year, when the resolution fixing the compensation was rescinded by the wardens, and notice given accordingly to the curate that at a specified time his compensation would cease. The curate seems to have continued his relations, or attempted to do so, in opposition to the action of the wardens. It was held that the church wardens were, in their corporate capacity, the legal owners of the property which the act of incorporation authorized them to hold, to be used for the purposes specified in the charter. They were the sole temporal administrators, and could not be controlled by the clergy in their administration. They were responsible to the congregation only, who might choose others, if those in authority should misuse or abuse

the powers conferred by the Legislature. The court further said that neither the pope nor any bishop had, within this State, any authority except a spiritual one; and as courts of justice sit to enforce civil obligations only, they never attempt to coerce the performance of those of a spiritual character. Church of St. Francis, Pointe Coupee v Martin, 4 Rob. (La.) 62.

Mexico. The right of the property in fee being in the King, as long as his dominion was acknowledged in America, after the Revolution, was in the Mexican government as successor to the former sovereign power, the clergy being permitted only the enjoyment of the use. The church in Mexico seems to have been entirely under the control of the political authority; so much so that the ceremonies and religious festivals were regulated by law. Blair v Odin, 3 Tex. Rep. 288.

Mexico and Texas. Prior to the Revolution of 1836 the Catholic was the established religion of the republic of Mexico, and all citizens of Texas were required to conform to the teachings of that church. It was supported by the government, and, by taxation, the citizens were compelled to contribute thereto. One of the charges made against the republic of Mexico in the Declaration of Independence was, "It denies us the right of worshiping the Almighty according to the dictates of our conscience by the support of a national religion, calculated to promote the temporal interest of its human functionaries rather than the glory of the true and living God." The third division of the Declaration of Rights in the Constitution of the republic of Texas, reads as follows: "No preference shall be given by law to any religious denomination or mode of worship over another, but every person shall be permitted to worship God according to the dictates of his own conscience." The constitution of the State of Texas framed in 1845, contains practically the same provision as is now embraced in the constitution of this State in these words: "Sec. 4. All men have a natural and indefeasible right to worship God according

to the dictates of their own conscience; no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his own consent." Thus we see that the provision in our constitution was a protest against the policy of Mexico in establishing and maintaining a church of state, and compelling conformity thereto, and was intended to guard against any such action in the future. Church v Bullock, 109 S. W. (Tex.) 115.

Minority's Right. It was held that a minority could not retain possession of the church property for the purpose of compelling the majority to recognize the minority as members of the corporation. St. Andrews v Shaughnessy, 63 Neb. 793.

Nebraska, Status of Church. Considering whether title to certain local church property was in the Roman Catholic Church, the court in Bonacum v Murphy, 71 Neb. 487, said, "That church is not, in contemplation of the laws of Nebraska, a corporation or a partnership, or a legal entity of any sort, and does not claim so to be. It is a hierarchy composed of a series of clerical dignitaries of various ranks and degrees, scattered over the whole world, and deriving their power and importance from the papal court at Rome, to whom they owe allegiance, and from whom they are liable at any time to suffer degradation. That court claims to be an independent sovereign power, a political as well as an ecclesiastical state, having universal dominion, superior to all other principalities and powers of whatever description and wherever situated. As such it can acquire territorial rights in Nebraska, if at all, only with the consent of its Legislature, by treaty with the government at Washington."

New York, Incorporation, Effect. The act of 1863, chap. 45, amending the religious corporations act of 1813 as to Roman Catholic churches, authorized the archbishop, the vicar-general, and the pastor of a church, together with two other persons to be selected by them, to make and file a certificate of incorporation and therein designate the title of the

church, and declared that the persons signing the certificate and their successors should be a body corporate by the name designated therein. The Court of Appeals in People's Bank v St. Anthony's Roman Catholic Church, 109 N. Y. 512, held that the trustees did not become a corporation, but that the corporation was composed of the members of the church and congregation, the trustees being simply the governing body of the corporation. Certificates of indebtedness or promissory notes given for loans of money to the society and signed by the president, secretary, and treasurer of the board of trustees, the latter being also pastor, without any evidence of action by the board as a body authorizing the issue of such notes and certificates, were held not to be binding on the corporation.

Orphan Asylum, Not a Common School. In People ex rel the Roman Catholic Orphan Asylum v Board of Education, 13 Barb. (N. Y.) 400, it was held that the Roman Catholic Orphan Asylum of Brooklyn was not a common school under art. 9 of the constitution, and therefore was not entitled to share in the revenues of the common school fund. See Sargent v Board of Education, Rochester, 177 N. Y. 317, cited in article on Sectarian Institution.

Parish Register. The register of a parish of a Catholic Church kept as required by the rules and laws of the church, when produced is admissible in evidence; and it is of such a public nature that its contents may be proved by an immediate copy duly verified. Hancock v Supreme Council Catholic Benevolent Legion, 67 N. J. Law, 614.

Pennsylvania, Early Toleration. In Magill v Brown, Fed. Cas. No. 8,952 (U. S. Cir. Ct. Pa.) (Brightly N. P. 347), which involved the validity of bequests to numerous Quaker societies, Judge Baldwin, in the course of his opinion, said: "In 1733-34 Governor Gordon informed the council that a house had been erected in Walnut Street for the exercise of the Roman Catholic religion, in which mass was openly celebrated contrary to the laws of England, particularly to the statute of 12 Will. 111, which extended to the colonies.

The council were of different opinion, and declared that the Catholics were protected by the charter of privileges and the law concerning liberty of conscience, but they referred the subject to the governor, that he might consult his superiors at home. No other proceedings, however, took place." This opinion of the council accords with the declaration of William Penn to the members of the Assembly in 1701 that he had justly given privileges and precedency of property as the bulwark to secure the other. It was a rule of property, and the basis of the usage and common law of the state. The opinion of the council was the practical exposition of the charter, as understood and acknowledged, of which there cannot be a stronger case than the one that occurred.

Philippine Islands. The status of the church in the Islands is considered in Barline v Ramirez, 7 Philippines 41.

The Roman Catholic Church has a legal personality and the capacity to hold property in the insular possessions of the United States, and this right is not affected by the fact that the property was acquired by gifts or from the public funds. Santos v Roman Catholic Church, 212 U. S. 463. See also Ponce v Roman Catholic Church, 210 U. S. 296 and Barlin v Ramirez, 7 Philippines 41.

Pope's Position Under International Law. The Holy See still occupies a recognized position in international law, of which the courts must take judicial notice.

"The Pope, though deprived of the territorial dominion which he formerly enjoyed, holds, as sovereign pontiff and head of the Roman Catholic Church, an exceptional position. Though in default of territory, he is not a temporal sovereign, he is in many respects treated as such. He has the right of active and passive legation, and his envoys of the first class, his apostolic nuncios, are specially privileged. Nevertheless, he does not make war, and the conventions which he concludes with states are not called treaties but concordats. His relations with the kingdom of Italy are governed, unilaterally, by the Italian law of May 13, 1871, called 'the law of guarantees,' against which Pius IX and

Leo XIII have not ceased to protest." 1 Moore's Dig. 39, Ponce v Roman Catholic Church, 210 U. S. 296.

Porto Rico. By the Spanish law, from the earliest moment of the settlement of the island to the present time, the corporate existence of the Catholic Church has been recognized. The Roman Catholic Church has been recognized as possessing legal personality by the Treaty of Paris with Spain of 1898, and its property rights solemnly safeguarded. In so doing the treaty followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession. The juristic personality of the Roman Catholic Church and its ownership of property was formally recognized by the concordats between Spain and the papacy, and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era. The fact that the municipality may have furnished some of the funds for building or repairing the churches cannot affect the title of the Roman Catholic church to whom such funds were thus irrevocably donated, and by whom these temples were erected and dedicated to religious uses. Ponce v Roman Catholic Church, 210 U. S. 296.

Priest. The relation between a bishop and a priest is not that of master and servant but that of an ecclesiastical superior and inferior. Baxter v McDonnell, 155 N. Y. 83.

Priest, Action Against for Slander. A Roman Catholic priest told his congregation from the pulpit that a civil marriage by a physician who was divorced from his first wife, excommunicated him from the church; that it should debar him from employment as a physician by the members of the parish under penalty of loss of the ministrations and sacraments of the church in case of their illness, and that anyone needing the priest should not send for him when the physician was present, as he did not wish to be under the same roof. It was held that the words might properly be

submitted to a jury as actionable per se, without an averment of special damage. Morasse v Brochu, 151 Mass. 567.

Priest's Authority. A Catholic priest was called to an almshouse to administer a sacrament of penance to an inmate, who was a Roman Catholic and believed the sacrament essential to her, and had requested him to administer it. Such administering required entire secrecy between the defendant and the sick person. The keeper's wife, who was present, was requested to leave the room but refused, and was thereupon ejected by the priest, he using only such force as was necessary for that purpose. In an action against the priest for the assault it was held that he was only a visitor and had no control of the room, and that his priestly office gave him no authority to exclude any person therefrom. Cooper v McKenna, 124 Mass. 284.

Priest, Bishop's Power of Removal. By the laws and customs of the Roman Catholic church in the United States a priest is liable to be removed from the charge of a congregation at the pleasure of his bishop, without trial. He cannot, however, be suspended from his priestly functions without specific accusation and trial. The pastoral relation is neither created nor dissolved by agreement between the priest and congregation—the bishop appoints or removes the shepherd as he deems for the priest's good or for the interest of the flock. Removal is the exercise of episcopal authority according to the bishop's judgment. It may be without supposition of wrong, and it leaves the priest in the same position as all other priests who are without employment. Suspension is a judicial act based on something which calls for such sentence. Stack v O'Hara, 98 Pa. 213.

Priest, Expulsion. In St. Vincent's Parish v Murphy, 83 Neb. 630, the court declined to consider whether a priest had been legally excommunicated and expelled from the church, the question being one of ecclesiastical jurisdiction only, and not within the jurisdiction of a court of equity.

Priest, Maintaining Order at Meetings. The action of the priest in charge of a religious service in attempting to

remove a person who disturbed the meeting by demanding an explanation of a reference in the sermon was sustained, and it was held that the priest was not liable in an action for damages as for an assault. See next note.

Priest, Power to Preserve Order in Church Services. "In Catholic meetings it is appropriate that the priest, as the presiding officer of the meeting, should preserve order and rebuke all violations of it." Wall v Lee, 34 N. Y. 141.

Priest, Not Bishop's Agent. The pastor borrowed money from the plaintiff and others, under contract of repayment in the form of deposit books in the name of the church, which was not incorporated and had no power to acquire or hold property. The money received from the depositors was mingled with other church revenues and constituted a common fund, used for general church purposes. The bishop held the legal title to all the real property. It was held that the pastor was not the agent of the bishop in financial affairs without express authority. In this case it was held that the bishop was not liable for the debt contracted by the pastor. Leahey v Williams, 141 Mass. 345.

Priest, Obligation. Removal of a priest by the bishop of his diocese was sustained. The priest at his ordination obligated himself as follows: "I promise and swear that I will serve the missions of the Diocese of Philadelphia under the obedience of the ordinary forever in perpetuam, so help me God, and these his Holy Gospels." Toward the end of the ceremony he placed his hands in those of the bishop, who then asked him, "Do you promise to me and my successors obedience and reverence?" and he answered, "I do promise it." The law of the church authorized the bishop to remove a priest, but such removal did not amount to a suspension of his priestly functions. Stack v O'Hara, 98 Pa. 213.

Priest, Removal without Notice. The priest in charge of the society was removed by the bishop without any accusation or hearing, and was not assigned to any other parish. As priest he received no stated salary, but was entitled to the pew rents, Sunday collections, subscriptions, and offer-

ings. His profession and these sources of income were deemed to be property of which he could not be deprived by the summary order of the bishop without an opportunity to be heard. It was held that his removal as pastor of the church, and also the prohibition and disfranchisement forbidding him to exercise any priestly functions in Williamsport, were unlawful. O'Hara v Stack, 90 Pa. St. 477. See 98 Pa. St. 213, where this case is explained.

Priest's Right of Action against Bishop. No suit can be maintained by a priest of a Catholic church against his bishop for removing him from his office of priest, the civil courts in such cases having no authority to inquire as to the rightfulness of ecclesiastical decisions. O'Donovan v Chatard, 97 Ind. 421.

Priest, Salary. In Twigg v Sheehan, 104 Pa. 493, it was held that no action lies in favor of a Roman Catholic priest against his bishop for salary or support during a period in which the bishop refused to assign him a charge.

Property, How Held. The canons of the Roman Catholic Church provide and require that the title to the property of the Roman Catholic congregation which is under the jurisdiction of the Roman Catholic bishop of the diocese in which the congregation has its place of worship, must be in the ordinary, or in the bishop of the diocese. Krauczunas v Hoban, 221 Pa. 213.

If a congregation is formed for the purpose of religious worship according to the faith and rites of the Roman Catholic church, has accepted the pastor assigned to it by the archbishop of the diocese, has placed itself under the authority of the archbishop, and submitted itself to his authority in all ecclesiastical matters, the title to its property must be taken and held as provided by the canons of the Roman Catholic Church. The property acquired by the congregation under such circumstances is the property of the church, and is subject to its control, and must be held in the manner directed by its laws. Dochkus v Lithuanian Benefit Society of St. Anthony, 206 Pa. St. 25.

The canons, decrees, and rules of the Roman Catholic Church for the Diocese of Cincinnati required all property held and used for ecclesiastical purposes to be conveyed to the bishop or archbishop of the diocese by name, his heirs or assigns forever, to be held by him in trust for the uses for which it was acquired. Mannix v Purcell, 46 Ohio St. 102.

Property Right. The Roman Catholic Church has been recognized as possessing a legal personality and the capacity to take and acquire property since the time of the emperor Constantine. See the Law of Constantine of 321 to that effect, cited in Justinian's Code.

The strictest prohibition against alienating the property of the church exists in that code, and it provides that the alienation of church property shall not take place, even with the assent of all the representatives of the church, since these rights "belong to the church," and the church is the mother of religion; and as faith is perpetual, its patrimony must be preserved in its entirety perpetually.

In his history of Latin Christianity (vol. 1, p. 507) Dean Milman says: "The Christian churches succeeded to that sanctity which the ancient law had attributed to the temples; as soon as they were consecrated they became public property, and could not be alienated to any other use. The ground itself was hallowed, and remained so even after the temple had been destroyed. This was an axiom of the heathen Papinian. Gifts to temples were alike inalienable, nor could they be pledged; the exception in the Justinian Code betrays at once the decline of the Roman power, and the silent progress of Christian humanity. They could be sold or pledged for the redemption of captives, a purpose which the old Roman law would have disdained to contemplate."

And Milman also points out that in the barbarian codes most sweeping provisions are found, recognizing the right of the church to acquire property and its inalienability when acquired. Church property everywhere remained untouched by the rude hands of invading barbarians. Tres-

pass upon or interference with such property was severely punished, and gradually it became exempted from taxation. Ponce v Roman Catholic Church, 210 U. S. 296.

Providence Hospital. This hospital was incorporated by Congress in 1864, and was under the general auspices of the Roman Catholic Church, the title to its property being held by the Sisters of Charity of Emmitsburg, Maryland. In 1897 Congress appropriated funds to be expended under the direction of the commissioners of the District of Columbia in the erection of two isolating buildings in connection with two hospitals. Under this act the commissioners and the authorities of the Providence Hospital made an agreement for the erection of an isolating building on the hospital grounds. It was held that this agreement did not violate the provision of the federal constitution respecting the establishment of religion. The incorporating act did not refer to any religious belief or ecclesiastical connection, and the court remarked that no inquiry could be made into the belief of the incorporators on religious matters. It was a secular corporation, though managed by persons who hold to the doctrines of the Roman Catholic church. Bradfield v Roberts, 175 U. S. 291.

Rector, Ratifying Acts. A contract for labor and materials in the erection of a church and rectory by the society was made in the name of the trustees, but was, in fact, signed only by the rector. A subsequent contract was also made in practically the same form, that is, in the name of the corporation, but signed only by the rector. Subsequently the church gave a mortgage on its property to raise money. This mortgage was signed by the president and secretary of the board of trustees, and authenticated by the rector with the seal of the corporation. The mortgage was authorized by the Supreme Court. The proceeds of the mortgage were deposited in a bank in the name of the rector, and the money was drawn out by him from time to time, and used in part on payments on the contracts. The society was deemed to have knowledge of the various transactions by the

rector, and to have authorized or ratified the contracts made by him. He was the agent of the corporation, and it was bound by his acts. Condon v Church of St. Augustine, 112 App. Div. (N. Y.) 168.

St. Annes Catholic Apostolic and Roman Church, Detroit, Michigan. This was an ancient French parish organized according to the methods of the Gallican Church, which elected lay trustees as managers of its temporalities. The treaty of Paris of 1763 recognized all these old organizations as entitled to protection, and the act of 1807 was plainly designed to enable the parish to obtain record evidence of its corporate constitution under the American local government. The parish has been since affirmatively recognized by Congress, by the treaty-making power, and by the State as well as Territorial Legislature as owning land in Detroit and elsewhere. The governor and judges conveyed to the corporation at different times tracts of land, including the land in question with various restrictions as to occupancy and municipal rights. Cicotte v Anciaux, 53 Mich. 227.

Sexton's Salary. The church was held liable for the salary of the sexton employed by the majority of the trustees, of whom the priest in charge was one, and the liability of the church was not affected by the fact that the ladies of the altar had agreed to pay one half of the salary. St. Patrick's v Abst, 76 Ill. 252.

Sisters of St. Francis. About 1875 the superioress of the Convent of the Sisters of St. Francis, which had been located in Germany, with some thirty of the Sisters, came to Iowa City for the purpose of establishing a convent there. Needing additional accommodations to those at first used the parish priest contributed $500 for enlarged facilities, paying the money to the superioress on condition that it should be repaid if the society should abandon its purpose to establish a convent, or if its work should be given up. The contract was made with the superioress as the agent of the society. The project to establish a convent having been

abandoned, the priest brought an action against the superioress for the money so contributed. It was held that she was not personally liable for the debt. Emonds v Termehr, 60 Ia. 92.

Slander, Excommunication. A priest during the Sabbath service made the following statement: "May the Lord have mercy on two men, who brought me to court yesterday, bringing shame and scandal upon me; my curse and the curse of God be down upon Patrick Fitzgerald and Patrick Butler, who brought me to court yesterday, bringing me shame and scandal, and that it remain on them." The court said these words were not slanderous in themselves, and were not made so by any averments in reference to the business of the plaintiff, and they did not make a defamatory charge. The priest at the same time pronounced an anathema and sentence of excommunication against Fitzgerald. On demurrer, the court assumed that the priest possessed the power of excommunication, and, possessing this power, his sentence was a judicial act not reviewable by the civil courts. Fitzgerald was subject to the discipline of the church. If the priest had no power to excommunicate, then Fitzgerald was still a member of the church, and had no cause of action for the attempted excommunication. A sentence of excommunication, even if pronounced by competent authority, and still more, if possible, when pronounced without authority, is incapable of impairing or affecting a man's civil rights. Fitzgerald v Robinson, 112 Mass. 371.

Spanish America. Roman Catholicism has been the official religion of Spain since the time of the Visigoths. As far as the church in Spanish America was concerned, the King of Spain was supreme patron. Under the bulls of Julius II (1503-1513) and Alexander VI (1492-1503) there were conceded to the Spanish crown all the tithes of the Indies, under the condition of endowing the church and providing the priest with proper support. The church in Spanish America, through this royal patronage, came into possession of

considerable properties. The right of the church to own, maintain, and hold such properties was unquestioned, and the church continued in undisputed possession thereof. Down to the occupation of Porto Rico by the American troops in August, 1898, amounts were regularly appropriated by the Spanish government for the expenses of worship in Spain, Cuba, Porto Rico, and the Philippines. Ponce v Roman Catholic Church, 210 U. S. 296.

Spanish America, Limitation of Papal Authority. In 1792 property in Mobile, Alabama, was purchased by the King of Spain for the purpose of building thereon a parochial church, and dwelling house for the officiating priest. The property was conveyed to the King. "The words used in the deed would indicate that it was contemplated by the intendant, at the time of the purchase, to appropriate the lots to the purposes of the church, yet there is nothing in the deed which would oblige him thus to use them." A covenant to hold the property for the use of the local church might have been implied if the purchase had been made with the funds of the church, but clearly not where the royal chests alone had contributed the means of payment. The deed authorized the King to possess, sell, or alienate the property "at his sovereign pleasure." "Notwithstanding the veneration which the Spaniards have manifested for the Holy See, the vigilant and jealous policy of Ferdinand early prompted him to take precautions against the introduction of the papal dominion in the New World. For that purpose he obtained from Alexander VI (1492-1503) a grant to the crown, of the tithes, in all the newly discovered countries, on condition that he would provide for the religious instruction of the natives. Soon after, Julius II (1503-1513) conferred on him and his successors the right of patronage, and the absolute disposal of all ecclesiastical benefices there. The pontiffs, unacquainted with the value of what Ferdinand demanded, bestowed these donations with an inconsiderate liberality, which their successors have often lamented, and wished to recall. In consequence of those grants the Span-

ish monarchs became, in effect, the heads of the Catholic Church in their American possessions. In them the administration of its revenues was vested. Their nomination of persons to supply vacant benefices was instantly supplied by the pope. Thus in all Spanish America authority of every species centered in the crown. There no collision was known between spiritual and temporal jurisdiction. The King is the only superior; his name was alone heard of, without looking to a dependence upon any foreign power. Papal bulls were not recognized as of any force in America until they had been examined and approved of by the Royal Council of the Indies; and if any bull was surreptitiously introduced and circulated in America, without obtaining that approbation, ecclesiastics were required not only to prevent it from taking effect but to seize all the copies of it and transmit them to the Council of the Indies. Thus limited was the papal jurisdiction in the Spanish possessions in America." Antones et al v Eslava's Heirs, 9 Port. (Ala.) 527.

Spanish Sovereignty. By the grants from Pope Alexander and Pope Julius II the Spanish sovereigns, Ferdinand and Isabella, became, in effect, the heads of the Catholic Church in their American possessions. In them the administration of the revenues was vested. Their nominations of persons to supply vacant benefices was instantly supplied by the pope. Thus in all Spanish America authority of every species was vested in the crown. At that time no collision was known between spiritual and temporal jurisdiction. The King was the only superior, his name alone was heard of, without looking to the dependence on any foreign power. Papal bulls were not recognized as of any force in America till they had been examined and approved of by the Royal Council of the Indies. Blair v Odin, 3 Tex. Rep. 288.

Spanish Supremacy in Colonies. The right of patronage in the Spanish colonies in America was expressly reserved to the King of Spain exclusively. This right of patronage

consisted in the right of the King to nominate and present archbishops, bishops, and other prelates, to the bishop of Rome, under the name of the pope, who approved of the same, unless the nominees had not the qualifications prescribed by the canons, and gave the institution necessary. The King also nominated and designated to the archbishops and bishops, such priests as he destined to the service of the churches, and those prelates were bound, except for good and legitimate reasons, to grant to such priests the canonical institution necessary for the functions and powers of their office; and all persons, whether secular or ecclesiastical, were forbidden to exercise this right of patronage or presentation. Wardens of the Church of St. Louis v Blanc, 8 Rob. Re. (La.) 52.

Students, Voting Residence. A person was not permitted to enter St. Joseph's Seminary, Yonkers, New York, or remain therein, unless he intended in good faith to become a Roman Catholic priest, and renounced all other residences or homes save that of the seminary itself, and upon his admission to the priesthood he was to continue in the seminary until assigned elsewhere by his ecclesiastical superiors. The New York constitution provides that "for the purpose of voting no person shall be deemed to have gained or lost a residence while a student of any seminary of learning." It was held that the mere residence in the seminary under the conditions stated did not entitle the student to vote in Yonkers. Matter of Barry, 164 N. Y. 18.

Texas. By the successful revolution the republic of Texas became possessed of the right and title to all the land, or public domain, that belonged to the government of Mexico at the date of the revolution by as full and perfect title as was vested in that government, or in the government of Coahuila and Texas. Blair v Odin, 3 Tex. Rep. 288; see also subtitle above, Mexico and Texas.

Unincorporated Church, Trust Sustained. A bequest of a sum of money to trustees for the purpose of maintaining a church on the testator's farm, although the church had not

been and could not be incorporated, was sustained in Seda v Huble, 75 Ia. 429. The will created a valid trust.

Woodstock College, Maryland. The bequest was to the "College of the Sacred Heart of Jesus situated at Woodstock, Howard County, Maryland." The evidence showed that this was a misnomer, Woodstock College being the beneficiary intended. Under the Maryland Declaration of Rights this society could not take a legacy without the sanction of the Legislature. The court allowed the legatee time to apply to the Maryland Legislature for the required sanction, and directed the legacy to be held to await the result of the application. Matter of Fitzimmons, 29 Misc. (N. Y.) 731.

A legacy was given to Woodstock College, Howard County, Maryland. This college is located in Baltimore County instead of Howard County. This was the only Woodstock College in Maryland, and it was therefore held to be the college intended by the will. Kerrigan v Conelly, 46 Atl. (N. J.) 227.

SALVATION ARMY

Described, 690.
Devise sustained, 690.
Municipal ordinance, Kansas, 691.
Municipal ordinance, Michigan, 691.
Municipal ordinance, New York, 691.
Municipal ordinance, Pennsylvania, 691.

Described. The Salvation Army is an unincorporated religious society having its headquarters in London, England. The officers of the organization have military titles. The head officer in England is called "General," the subordinate officer, who is head of the organization in the United States, is called "Commander"; a "major" has charge of a division of the country, and a "captain" has charge of a local post or barracks. While these officers have military titles, they perform duties similar to those of the officers in other religious denominations. Thus a commander corresponds to a bishop, a major to a presiding elder, and a captain to a minister or pastor. The barracks is the church. The property of the society in this country is held in the name of the commander, and he is appointed by the general in England. Lane v Eaton, 69 Minn. 141.

Devise Sustained. Testator gave a fund to trustees for the St. Paul branch of the Salvation Army, to be used for the purchase of a lot on which the Army was to erect a building for the purpose of its meetings, and if the local branch should be legally organized, the trustees were directed to convey the property to the corporation. The Salvation Army was not incorporated. It was held that the devise to the local branch, which was not incorporated, was invalid, but that the branch might become incorporated under the statute within a reasonable time, and would then be entitled to the property. Lane v Eaton, 69 Minn. 141.

Municipal Ordinance, Kansas. Certain members of the branch of the Salvation Army in the city of Wellington, Kansas, were arrested, charged with the violation of a city ordinance prohibiting parades without a license. In Anderson v Wellington, 40 Kan. 173, the ordinance was declared to be illegal and void, because it was unreasonable and did not fix the conditions uniformly and impartially, and contravened common right.

Municipal Ordinance, Michigan. Members of the Army in this city (Grand Rapids) paraded the streets without obtaining the mayor's license, as required by an ordinance. A member of the band was arrested for violating the ordinance. It was held that the ordinance was unreasonable. It is not competent to make any exceptions either for or against the Salvation Army because of its theories concerning practical work. In law it has the same right, and is subject to the same restrictions in its public administrations as any secular body or society which uses similar means for drawing attention or creating interest. Matter of Frazee, 63 Mich. 396.

Municipal Ordinance, New York. Members of this organization in Rochester were on a Sunday afternoon walking on a sidewalk on a public street in single file toward and near their barracks. Some of them were singing a religious song and one carried a small flag. Their object was to attract outsiders to their army barracks where a religious meeting was to be held. The persons so marching were arrested for violating a city ordinance against disturbing the public peace, and were convicted. On appeal the judgment of conviction was reversed, the court holding that the act of the defendants did not, under the circumstances, constitute a violation of the ordinance. People v Rochester, 44 Hun (N. Y.) 166.

Municipal Ordinance, Pennsylvania. In Wilkes-Barre an ordinance was adopted which, among other things, prohibited the beating of a drum in a public street without a permit from the mayor. An ensign in the Salvation Army vio-

lated the ordinance by beating a drum at an open-air meeting in a public street without a permit. He defended his act by alleging that the ordinance was void as an infringement on religious liberty as guaranteed by the Pennsylvania constitution, and also as obnoxious to the fourteenth amendment to the federal constitution. It was held that the ordinance was a valid exercise of police power and did not infringe the religious liberty of a member of the Salvation Army. "The mere beating of a drum is not a part of divine worship. Nor are we aware that any other sect or denomination of Christians has ever introduced a bass drum into the instrumentation of their music. The city ordinance is not directed against their doctrine or dogmas, their faith or their forms." Wilkes-Barre v Garabed, 11 Pa. Sup. Ct. 355.

SCHISM

Defined, 693.
Effect on property rights, 693.

Defined. The term means a division or separation in a church or denomination of Christians occasioned by diversity of opinions. Nelson v Benson, 69 Ill. 27.

A schism is defined by lexicographers to mean, in a general sense, division or separation; but, appropriately, a division or separation in a church or denomination of Christians, occasioned by diversity of opinions, or breach of unity among people of the same religious faith, and its use in the Kentucky statute in connection with the word "division" certainly imports no more than a separation of the society into two parts, without any change of faith or ulterior relations. McKinney v Griggs, 5 Bush. (Ky.) 401.

Effect on Property Rights. The universal rule is that where there is a schism in a church those remaining faithful to the tenets of the church at the time of the dispute, whether they be in the majority or the minority, are entitled to hold the property. Boyles v Roberts, 222 Mo. 613.

SCHOOLHOUSE

Other use, 694.

Other Use. In Scofield v Eighth School District, 27 Conn. 499, it was held that the inhabitants of a school district have no right to use the schoolhouse of the district for religious meetings and Sunday schools against the objection of any taxpayer of the district, even though the district may have voted to allow such use.

School authorities have no power to grant the use of a public schoolhouse for the purpose of conducting a Sunday school therein. Dorton v Hearn, 67 Mo. 301.

Its use cannot be authorized for general purposes not connected with education. Spencer v Joint School District, 15 Kan. 259.

In State v Dilley, 145 N. W. (Neb.) 999, it was held that holding Sunday school or religious meetings in a country schoolhouse not exceeding four times a year, and not so as to interfere with school work, did not constitute the schoolhouse a "place of worship" within the Nebraska Constitution, art. 1, sec. 4.

SECESSION

Abandonment, when deemed effective, 695.
Changing denominational relations, 696.
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Abandonment, When Deemed Effective. A seceding minority from the General Conference, the highest legislative and judicial body in the church, must, in general, be regarded as abandoning the church; nor is there any exception to this rule unless in the case of a usurpation of power in the governing body so revolutionary in its character as to result either in the creation of a new and essentially different organization, or in such a radical change of the articles of faith as to constitute an essentially different religion from that previously followed by the church. Horsman v Allen, 129 Cal. 131.

Changing Denominational Relations. In 1858 a portion claiming to be the majority of the congregation of the Associate Reformed Church at Seneca, New York, voted to dissolve its connection with the United Presbyterian Church and join the Rochester City Presbytery of the Old School Presbyterian Church. The minister of the local church had already taken the same step and had been admitted to the Rochester Presbytery. This local society then became, in effect, part of the Rochester City Presbytery of the Old School Presbyterian Church. If a religious society thinks proper to separate from the church with which it has professedly been connected and to form a connection with another denomination, the trustees have the power to employ such minister as they think fit, and to exclude from the pulpit a minister appointed by the ecclesiastical judicatory with which the society was professedly connected. Burrel v Associate Reformed Church, Seneca, 44 Barb. (N. Y.) 282.

Congregational. In a Congregational church the majority, if they adhere to the organization and to the doctrines, represent the church. An expulsion of the majority by a minority is a void act. Bouldin v Alexander, 15 Wall. (U. S.) 131.

Consent, When Necessary. The members of a church affiliated with others of the same denomination and connectional relation cannot, by resolution, secede from the main body and establish a new church without the consent of the general church or its authorized agent. American Primitive Society v Pilling, 4 Zab. (N. J.) 653.

Diversion. When property is held by a religious society in trust for its members, none of the members, though they constitute a majority, have any right or power to divert the property to the use of another and different church organization; and the fact that they procure a change of the name of the corporation by order of court cannot aid them in such diversion. Baker v Ducker, 79 Cal. 365.

Division of Property. In case of a division of a religious

society or corporation, where both parties still adhere to the tenets, doctrines, and discipline of the organization, the property should be divided between them in proportion to their members at the time of the separation. Hale v Everett, 53 N. H. 1.

In 1845 land was conveyed to trustees of the local society called Dunkers, or Tunkers, on which land a meetinghouse was afterward erected with contributions from members of the society. In 1882 a division arose in the society, one section withdrawing and organizing a new society, calling themselves Progressives. Those remaining called themselves Conservatives. It was held that the Progressives were not entitled to the property, but must be deemed to have seceded from the society, but the court suggested that in view of the fact that there was no serious difference of opinion on the questions relating to faith and doctrine, and that all parties desired to avoid litigation, an agreement be made between them by which the property should be sold, and the proceeds divided, one third to the Progressives, and two thirds to the Conservatives, such proceeds to be used by the respective societies in the erection of independent houses of worship, and otherwise carrying forward the work of the society. Ex parte Shoup, 9 Ohio Dec. 648.

Effect. The seceding members of the church congregation relinquish all claims upon the original church property. Lutheran Congregation, Pine Hill v St. Michael's Evangelical Church, 48 Pa. St. 20.

Effect on Property Rights. Where the congregation of a church is divided the title to the property is in the part, though a minority, which is in harmony with the laws, usages, and customs accepted by the body before the division, and which adheres to the regular organization. Bose v Christ, 193 Pa. St. 13.

The title to church property in case of a division of a religious corporation, remains with that portion of the church which adheres to the tenets and discipline of the organization to whose use the property was originally dedi-

cated, even although it may be in a minority. Ferraria v Vasconcelles, 23 Ill. 456, 31 Ill. 1.

There is no doubt about the right of individual members of a church organization to secede therefrom at will. The same is true of any number of members of such organizations; but no number, however great the majority may be, has the right to secede and take the church property with it to the new affiliation, so long as there remains a faction which abides by the doctrines, principles, and rules of the church government which the united body professed when the land was acquired. Karoly v Hungarian Reformed Church, 83 N. J. Eq. 514.

The local society was declared to be a part of the German Reformed Church of the United States, and subject to a specified classis. Several members of the church, by elections and various proceedings, sought to make the church independent, and rejected the authority of the classis. It was held that those members and officers who adhered to the original organization were entitled to the possession and control of the church property, and that the seceders had no power to make the church independent. Roshi's App., 69 Pa. St. 462.

The question arose as to the right to use a chapel which had been erected for the use of one particular class of seceders from the Established Church of Scotland. Certain members of the seceding class again seceded from that class and established a new group of seceders, who thereupon claimed the possession and control of the chapel. The original society for which the chapel had been erected was connected with the Associate Synod. The court held that, according to the facts presented on the trial, both parties claiming the property still adhered to the religious persuasions and principles of the Associate Synod, to which were attached the members of the local society at the time the chapel was erected, but that one party continuing to occupy the property while the other did not, it was in effect declared that the party actually in possession should not

be disturbed. Craigdallie v Aikman, 2 Bligh (Scotland) 529.

When the members of a religious congregation divide, and one faction breaks away from the congregation and forms a new organization, the title to the property of the congregation will remain in that part of the congregation which adheres to the tenets and doctrines originally taught by the congregation to whose use the property was originally dedicated. Christian Church of Sand Creek v Church of Christ of Sand Creek, 219 Ill. 503.

This society was chartered as a branch of the German Evangelical Reformed Church in the United States, subject to the synod of that church, "and was in all respects to be governed by its rules and regulations"; and a charter expressly prohibited any alteration in the congregation for another denomination. Two parties having arisen claiming different views as to church government, the plaintiffs began an action to restrain the defendant from exercising control over the property. It was held that the plaintiffs were the true church and entitled to the possession of the property. The defendants were held to be seceders. Schnorr's Appeal, 67 Pa. 138.

The members of the church in Cincinnati became incorporated under the general act of 1819, and in 1827 they were incorporated by a special act of the Legislature. Afterward the treasurer of the society and other members withdrew and organized another society under a different name, built a church, and conducted worship therein. After the secession, the remaining members elected trustees and appointed a new treasurer in place of the one who had joined the seceding party. The new treasurer brought an action against the former treasurer to recover the sum of money remaining from the proceeds of the sale of the burying ground owned by the society. The plaintiff recovered judgment. Methodist Episcopal Church, Cincinnati v Wood, 5 Ohio 283.

Forfeiting Church Property. Land was conveyed to a local society to be held and enjoyed by it so long as it should be

connected with a particular synod. It was held that the society by withdrawing from that synod and joining another forfeited its interest in the property. Rodgers v Burnett, 108 Tenn. 173.

Forfeiting Property Rights. It is well settled that members who secede from a church organization, or a religious society, thereby forfeit all right to any part of the church property; and whether there has been a secession or not, within this rule, is a mixed question of law and fact, to be decided upon the evidence with a view to all the circumstances, including the acts of the parties and the motives which have prompted such acts. Hale v Everett, 53 N. H. 1.

Where a portion of a church congregation refuses to adhere to the distinctive tenets imposed upon members of the congregation, and secedes and adopts new tenets or a new belief, it forfeits its rights in the church property. Rex v Wasyl Kapij, 15 Manitoba Re. 119.

Injunction. The property of a church must be held and used in trust for the promulgation of the generally accepted doctrines of that church, and members departing therefrom and causing a schism therein, will be enjoined from controlling or interfering with its management. Christian Church v Carpenter, 108 Ia. 647.

Lutherans. In 1815 testator by his will made a bequest to the Lutheran congregation in Selinsgrove to be invested in specified securities "for the use of the said congregation forever." The local church was attached to the old Pennsylvania Synod of the Lutheran Church, of which the West Pennsylvania Synod was a part. In 1843 a portion of the members became dissatisfied with the new measures and doctrines introduced into the church by their minister and thereupon gave him notice that his services were no longer required, and finally closed the doors of the church against him. The members who accepted the teachings of the minister erected a new church building and organized a society of which this minister became pastor. Those who rejected the teachings of the minister continued to occupy the orig-

inal church building and invited a new pastor, who was recognized by the old Pennsylvania Synod. The congregation worshiping in the new church was attached to the East Pennsylvania Synod. The East and West Synods did not recognize each other. Each congregation claimed to be the Lutheran Church to which the legacy was given. In an action involving the title to the legacy it was held that the Lutheran congregation in Selinsgrove, holding and teaching the doctrines which were held and taught when the testator was a member of it, and when he made his will, was the congregation entitled to the bequest. App v Lutheran Congregation, 6 Pa. St. 201.

Majority's Right. Dissensions having arisen in the society, a minority withdrew and attempted to organize another society under the same name. It appeared that the original society was Congregational in character, and was to be controlled by a majority of its members. In an action to prevent the minority from asserting title, and claiming possession of the property, it was held that the majority was entitled to the possession and control of the church property. Gipson v Morris, 36 Tex. Civ. App. 593. See also 31 Tex. Civ. App. 645, 28 Tex. Civ. App. 555.

The wrongful and violent seizure of the edifice and property belonging to a church of the Congregational form of government by a minority of the members, contrary to the wishes of a majority, the deposition of officers of the church and of trustees who held the property, and the retention and use thereof by the minority to the exclusion of the majority, furnish good grounds for equitable relief. Bates v Houston, 66 Ga. 198.

A minority of the members, in response to an invitation from the pastor made while he was occupying the pulpit, decided to secede from the local church and set up for themselves, claiming to be the true United Baptist Church at Lulbegrud. They alleged that the majority had gone out from the society and abandoned the Baptist Union. For a time each party occupied the church edifice on different Sun-

days in each month. The majority party instituted proceedings to obtain the exclusive possession and right to use the church. It was held that this party must be considered the church, and entitled to the exclusive possession and enjoyment of the church property; that the minority party, having expended large sums for repairs and improvements on the property, was entitled to reimbursement, and to use the church property until such reimbursement had been made. Hadden v Chorn, 8 B. Mon. (Ky.) 70.

The society had an existence as far back as 1790. Until 1855 the church property was occupied by the society in harmony. At that time differences arose in the society resulting from some practices initiated by the pastor. A secession occurred, and another society was organized, and the seceding minority brought an action against the majority to obtain possession of the church property. It was held that the title to the property remained in the successors of the original congregation, and that the minority, the seceding party, could not assert any title thereto, and had no right to the possession thereof. The congregation was at first attached to the West Pennsylvania Lutheran Synod. Lutheran Congregation, Pine Hill v St. Michael's Evangelical Church, 48 Pa. St. 20.

Minority's Right. In Brown v Monroe, 80 Ky. 443, members of a colored church under the jurisdiction of the Methodist Episcopal Church, South, withdrew and attached themselves to the African Methodist Episcopal Church of the United States, and used, and claimed the right to use the local church property. It was held that the right to the possession and use of the property remained in those members of the local church who did not withdraw, but who adhered to the Methodist Episcopal Church, South. The seceders had no right to the property.

In 1827 the major part of the church, including the deacons, with others constituting a minority of the parish, formed a new society under the name of the Evangelical Religious Society in the south parish or precinct of Brook-

field. Others remained in the original society and employed a new pastor. This society elected the plaintiff as its sole deacon. Each society claimed to be the true church.

It was held that an adhering minority of a local or territorial parish, and not the seceding majority, constituted the church of such parish for all civil purposes. Therefore the plaintiff, as a representative of the original society, was entitled to the possession of the property. Stebbins v Jennings, 10 Pick. (Mass.) 172.

A minority or seceding party cannot destroy the identity of a religious society or church by claiming to be itself the society or church. Hadden v Chorn, 8 B. Mon. (Ky.) 70.

The separation of a majority of the members did not affect the status of the property, but the minority remaining were to be deemed the legal society. Baker v Fales, 16 Mass. 488.

Plaintiffs, a minority of a local society, brought an action to restrain the majority from asserting title and right of possession and control of the church property. The division arose out of differences concerning certain points of doctrine. A church council to which the question was referred decided, on an ex parte hearing, that the plaintiffs, the minority party, represented the true church, and that the defendants, a majority, were seceders, and had adopted doctrines not generally accepted by Baptists, but the majority ignored this decision. The court held that the majority party was entitled to control the property, at least until they have been shown to have ceased to constitute the church by departing from its fundamental faith. The court declined to consider the question as to which party most nearly represented the true faith of the church. Jarrell v Sproles, 20 Tex. Civ. App. 387.

Any number of the members of a church who disagree with other brethren, or with the minister, or with the parish, may withdraw from fellowship with them and act as a church in a religious point of view, having the ordinances administered and other religious offices performed. As to all civil purposes, the secession of a whole church from the parish

would be an extinction of the church, and it is competent to the members of the parish to institute a new church or to engraft one upon the old stock if any of it should remain; and this new church would succeed to all the rights of the old in relation to the parish. Where a majority of the members of a Congregational church separate from the majority of the parish, the members who remain, although a minority, constitute the church in such parish, and retain the rights and property belonging thereto. Baker v Fales, 16 Mass. 488.

Political Differences. A church edifice was erected in 1847, and the congregation continued as one harmonious body until the close of the Civil War. Soon afterward the loyal portion of the congregation, including two out of three elders, but constituting a minority of the membership of the church, on account of difference of political sentiment, procured the discharge of the minister, took possession of the church, and employed another minister. About 1857 or 1858 the Jonesboro church connected itself with the United Synod, of the Presbyterian Church in the United States, and had kept up and continued that connection until the union of the body with the Old School Presbyterian Assembly in 1864. After the war the minority of a congregation, without notice to the majority, assumed to carry the church back to the New School Presbyterian Church North. Subsequently the majority reorganized the Jonesboro church, not as a secession, but as the church itself. It was held that the effect of the purchase or donation of land for church purposes, and the erection of an edifice thereon, was to provide that the building should be used for the purposes of the Presbyterian congregation as organized, and as it might continue to be in the future, and for all time to come. Such organizations are self-perpetuating. The minority could not exclude the majority. There was no complaint against the majority, growing out of any change of religious opinions. The only differences were of a political character. It was held that the action of the minority in

excluding the majority, and in taking possession of the church, was unauthorized and void; that the minority did not constitute the church, and could not make itself the church by any declaration of its own. The majority was declared to be entitled to the possession of the church property and archives for the reason that it constituted the Presbyterian Church in Jonesboro. Deaderick v Lampson, 11 Heisk. (Tenn.) 523.

Presbyterian Church. The standards of the church teach that this right of secession is fundamental in every branch of the associate church, when any may judge such a step proper or necessary; not only is it a right, but it is a duty to separate from a church corrupt in principle, or perhaps fallen into gross error and doctrine. Skilton v Webster, Brightly N. P. (Pa.) 203.

Proof Necessary. Before corporators can forfeit their membership they must be proved to have seceded from the corporation of which they are members. If a portion secede, and the rest, however small their number, adhere, the adherents by their fidelity secure their corporate existence, and are entitled to all the privileges and property of the corporation. Harmon v Dreher, 1 Speer's Eq. (S. C.) 87.

Right of. In Smith v Nelson, 18 Vt. 511, it was said that the society and the denomination of which it formed a part, were founded on the principle that it is both the right and duty to secede, as was done by Erskine and others in 1733, from the prevailing party, who may obtain a majority in the judicatories, synods, and assemblies, when in the opinion of the seceders such majorities have departed from the Word of God, and received and approved standards of doctrine, worship, government, and discipline.

In the absence of testimony it will be presumed that religious societies cannot dissolve their connection with the principal organization without permission. If the right to withdraw by a church at pleasure does exist, according to the constitution, government, and usages of the general organization, it must be proved as a fact, and, like any other,

must depend upon the evidence deduced on the trial. Vasconcellos et al v Ferraria et al, 27 Ill. 237.

Roman Catholic. The society was divided and two congregations formed therefrom, one retaining the original name, and the other taking a new name—St. Peter and St. Paul Catholic Congregation. This division was made with the approval of the bishop of the diocese. The original property was sold to the original congregation, and a bond was given to the new congregation for its interest in the property. In an action on the bond it was held that there was a valid consideration for the contract resulting from the division and separation and the agreed apportionment of the original property. Arts v Guthrie, 75 Ia. 674.

Temporary Withdrawal. Part of the members withdrew from the society (Swedish Church) and organized another church. They subsequently returned to the original society. Their withdrawal was held not to be a secession from the church but only a temporary separation from the local society. Peterson v Samuelson, 42 Neb. 161.

Trust Fund. Seceders from a religious society are not entitled to share in the benefits of a fund held in trust for the society. Attorney-General ex rel Abbot v Dublin, 38 N. H. 459.

Trustees, Seceding. Before the persons seceding from a religious corporation or society can recover possession and control of the church property by virtue of being the rightful trustees of such corporation, against those who have remained in continuous possession and control, claiming to be such rightful trustees, they must have been peaceably admitted to the offices of such trustees, or have established their title thereto by some direct proceeding or action brought for that purpose. Fadness v Braunborg, 73 Wis. 257.

United Brethren. Property was held in trust for a certain sect, the United Brethren in Christ, and at a General Conference, which constituted the highest authority in the sect, an amended constitution and revised confession of faith

were adopted. A small part of the General Conference seceded, claimed to be the true representatives of the church, and demanded the benefit of the property. It was held that where such changes do not conflict with any formal doctrinal matter, nor with the substance of the faith, and are adopted in the method provided for by the constitution of the church, the schismatics cannot obtain aid from the courts. Griggs v Middaugh, 10 Ohio Dec. 643.

A division in the United Brethren Society at Fairview, Ohio, resulting from the adoption of an amended constitution and a revised confession of faith by the General Conference of 1889, after which a minority withdrew and organized a new society, did not give such minority a right to the property of the local church. The majority who adhered to the original organization were entitled to such property, and to its possession and control. Brundage v Deardorf, 92 Fed. 214, aff'g 55 Fed. 839.

The effect of a withdrawal of members from the church of the United Brethren in Christ in Canada was considered in Brewster v Hendershot, 27 Ont. App. 232 (see article on United Brethren in Christ), where it was held that persons who adhered to the original denomination were entitled to control the property, and that the seceders had not and could not acquire any right to the property, and could not exercise any control over it.

SECTARIAN INSTITUTION

General, 708.

General. Considering the provision of the Illinois constitution prohibiting appropriations by the State, or by a municipal corporation in aid of a church, sectarian school, or other institution controlled by a church or religious denomination, the court said that appropriations for the support of inmates were in aid of the institution. The rendition of service by the institution in giving instruction to children committed to it is not the criterion by which questions of aid must be determined. The institution is sectarian if it is under the distinctive control of a particular religious denomination and teaches its own faith and creed to the inmates to the exclusion of any other faith or creed. Cook County v Industrial School for Girls, 125 Ill. 540.

In Sargent v B'd. of Education (Rochester) 177 N. Y. 317, it was held that St. Mary's Boys' Orphan Asylum of the city of Rochester was neither a school nor an institution of learning within the meaning of sec. 4 of art. 9 of the constitution prohibiting the payment of public moneys to a denominational school or institution of learning, but, on the contrary, was an orphan asylum within the meaning of sec. 14 of art. 8 of the constitution permitting the payment of public moneys for the secular education of the inmates therein. The fact that such asylum was controlled by a religious organization and that the teachers employed by the Board of Education, who were duly licensed to teach by the public authorities, were members of a sisterhood connected with such denomination, is immaterial, since the statute clearly recognizes the fact that the instruction of the inmates is neither practicable nor possible elsewhere

than in the institution itself, and it is the duty of the board to provide for their secular education therein, regardless of the religious belief of those in control of the asylum. It appeared that no denominational tenet or doctrine was taught or religious instruction imparted in the asylum during the hours of school prescribed by the rules and regulations of the Board of Education, but religious instruction was given in the evening at seven o'clock.

SECTARIAN INSTRUCTION

Illinois Industrial School for Girls, 710.
Illinois, 712.
Iowa, 713.
Kansas, 713.
Massachusetts, 713.
Meaning, how determined, 714.
Nebraska, 714.
Ohio, 714.
Pennsylvania, 715.
Prayer, 715.
South Dakota, 716.
Taxpayers' presumption of consent, 716.
Texas, 717.
Wisconsin, 718.

Illinois Industrial School for Girls. This institution was by statute authorized to receive dependent female infants, committed thereto by the county court, and to keep them until they arrived at the age of eighteen years, unless sooner discharged according to law. The county judge made certificates from time to time, approving bills for clothing for the girls, such bills to be paid by the county treasurer. In an action by the school against the county for tuition, care, and clothing, a judgment was recovered for the amount established. The Cook County commissioners refused to pay the judgment on the ground that they were forbidden by the constitution, art. 8, sec. 3, which, among other things, prohibited any appropriation by the State or any municipality in aid of any church or sectarian purpose or school or other educational institution controlled by any church or sectarian denomination.

The operations of the Industrial School were carried on through two Roman Catholic institutions, and on the prem-

ises and in the buildings of such institutions, known as the House of the Good Shepherd and St. Joseph's Orphan Asylum, which were respectively under the supervision and control of orders of Sisters known as the Sisters of the Good Shepherd and Sisters of Charity. In each institution distinctively Roman Catholic religious exercises were observed at different times during the day, and no religion was taught except that of the Roman Catholic Church. Both institutions conducted schools for the instruction of children. The court held that both the institutions—the House of the Good Shepherd and St. Joseph's Asylum—were schools exclusively maintained by the Roman Catholic Church, and were therefore to be classed as sectarian institutions. As bearing on the question of the character of the House of the Good Shepherd, it was shown that a county judge of Cook County was refused admission to the institution, and was informed that he must have a permit from the bishop or some other Catholic gentleman in good standing.

The Industrial School was incorporated, and had received authority to accept dependent female infants under the statute. Seven of the officers of the Industrial School were officers and managers of the House of the Good Shepherd, and the remaining two officers of the school were Roman Catholics. At the time of the commencement of the action the Industrial School had no building or other property. The children nominally sent to the Industrial School were mixed with other persons sent to the House of the Good Shepherd. There was no separate classification. It was shown that a large number of girls already in the House of the Good Shepherd and the Saint Joseph's Orphan Asylum were taken into the county court and adjudged to be dependent, and were thereupon committed to the Industrial School, but, in fact, returned to the institutions from which they had been brought. It was held that the payment of the amount claimed by the Industrial School would be a payment in support of schools controlled by a church, and in aid of a sectarian purpose. It was held further that the

Industrial School never having established and maintained an industrial school for girls, as contemplated by the act of 1879, it was not entitled to avail itself of the provisions of that statute. The act did not contemplate the organization of nominal industrial schools, and the care of persons committed to them by other institutions, but each school organized under the act was expected to maintain a home of its own for the reception of children committed to it. Cook County v Industrial School for Girls, 125 Ill. 540.

Illinois. The Board of Education, acting under statute authority, leased for school purposes the basement of a Roman Catholic church. It was held that the board had power, and it was its duty, to lease a building for school purposes, if the district had no schoolhouse, or the schoolhouse had become unfit for use, and the renting of a part of a Roman Catholic church was not legally objectionable. It appeared that Roman Catholic teachers and children of Catholics were required to attend at a Catholic church, the basement of which was used for the school, at eight o'clock in the morning on school days, and hear mass read by the priest, and then repair to the schoolroom, and engage in the study of the church catechism for half an hour before the opening of the school, and at the close of the school at noon the Angelus prayer was read by the teachers and pupils.

In a proceeding to prevent the use of school funds for sectarian instruction it appeared that the plaintiff had no children which would be affected by the religious exercises in the church before school, and that there was no ground for equitable relief. It was alleged that the Board of Education had threatened to employ Catholic teachers. It was held that the law did not prescribe any religious belief as a qualification of a teacher in the public schools, and therefore the school authorities might select a teacher who belonged to any church, or to no church, as they might think best. Milliard v Board of Education, 121 Ill. 297.

Iowa. Teachers in the school were accustomed to occupy a few minutes each morning in reading selections from the Bible, in repeating the Lord's Prayer, and singing religious songs. The plaintiff had two children in the school, but they did not attend these exercises. He requested their discontinuance, but his request was refused. The Iowa statute contained the following provision: "The Bible shall not be excluded from any school or institution in this State, nor shall any pupil be required to read it contrary to the wishes of his parent or guardian."

It was held that this did not violate the provision of the Iowa constitution that "the General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates, for building or repairing places of worship, or the maintenance of any minister or ministry," and that the plaintiff was not entitled to the relief sought. The schoolhouse did not by the religious exercises described become a house of worship within the meaning of the constitution. Moore v Monroe, 64 Ia. 367.

Kansas. In Kansas it was held (Billiard v Board of Education, Topeka, 69 Kan. 53) that repeating or reciting the Lord's Prayer and the Twenty-third Psalm in public schools did not constitute an act of religious worship, and did not violate the constitution and statute, nor did it constitute sectarian instruction or the teaching of religious doctrine. The Lord's Prayer and the Twenty-third Psalm were repeated by the teacher without response, comment, or remark. These and other opening exercises occupied about fifteen minutes, and the pupils were not required to take part in them but were only required to preserve order and proper decorum.

Massachusetts. The school committee of the town had authority to make an order that the Bible should be read and prayer offered at the opening of the schools on the morning of each day. But such an order could not be made if

the enforcement of it violated the religious convictions of the pupils. A school committee had power to exclude from the school a pupil violating the order unless the parents of the child had requested that he be excused from the observance of the rule. Spiller v Woburn, 12 Allen (Mass.) 127.

Meaning, How Determined. In State v Hallock, 16 Nev. 373, the court for the purpose of determining the meaning of the phrase "sectarian purposes" examined the history of the State, in relation to appropriations, as shown by the statutes and legislative journals. It was held that the word "sectarian" was used in its popular sense, and a religious sect was defined as a body or number of persons, united in tenets, but constituting a distinct party by holding doctrines different from those of other sects or people, and it was said that every sect of that character is sectarian within the meaning of that word as used in the constitution. The Nevada Orphan Asylum, a Roman Catholic institution, was held to be sectarian and not entitled to share in an appropriation of public funds.

Nebraska. Exercises in public schools, consisting of the reading of passages selected by the teacher from a book commonly known as King James version, or translation, of the Bible, in singing certain religious and sectarian songs, and in offering prayer to the Deity according to the customs and usages of the so-called orthodox evangelical churches of this country, and in accordance with the belief and practices of such churches, the pupils joining in the singing of such songs, and hymns, constitute religious worship and are sectarian in their character within the meaning of the constitution of Nebraska. State v Scheve, 65 Neb. 853.

Ohio. The constitution of the State does not enjoin or require religious instruction, or the reading of religious books in the public schools of the State. The Legislature having placed the management of the public schools under the exclusive control of directors, trustees, and boards of education, the courts have no rightful authority to interfere

by directing what instruction shall be given, or what books shall be read therein. Board of Education of Cincinnati v Minor, 23 Ohio St. 211.

Pennsylvania. Members of this order were employed as teachers in the public schools at Gallitzin Borough, Pennsylvania. There was no evidence of religious instruction during school hours. But after school hours the schoolroom was used by the teachers in imparting Catholic religious instruction to children of Catholic parents, with the consent of, or by request of, the parents. The Catholic teachers wore the habit of the order. Teachers are not disqualified because of their religious opinions. The court said that the school authorities had power to employ members of the Order of Sisters of St. Joseph as teachers in the public schools. The members of the school board were Catholics. The voters of the borough numbered between four and five hundred, and all but about fifty of these were Catholics. The religious belief of teachers, and all others is generally well known to the neighborhood and to pupils, even if not made noticeable in the dress, for that belief is not secret but is publicly professed. The teachers might lawfully wear in school the garb of their order. Hysong v Gallitzin Borough School District, 164 Pa. 629. See also Religious Garb.

Prayer. In the school maintained in Brooksville Graded School District, the following prayer was offered at the opening of school exercises each day: "Our Father who art in heaven, we ask thy aid in our day's work. Be with us in all we do and say. Give us wisdom and strength and patience to teach these children as they should be taught. May teacher and pupil have mutual love and respect. Watch over these children, both in schoolroom and on the playground. Keep them from being hurt in any way, and at last, when we come to die, may none of our number be missing around thy throne. These things we ask for Christ's sake. Amen."

This prayer was held not to be sectarian instruction

within the meaning of the Kentucky constitution and statutes.

The school was not a place of worship, nor its teachers ministers of religion within the contemplation of section 5 of the constitution, although a prayer may be offered incidentally at the opening of the school by a teacher. The Bible is not a sectarian book, and when used merely for reading in the common schools, without note or comment by teachers, is not sectarian instruction, nor does such use of the Bible make the schoolhouse a house of religious worship. Hackett v Brooksville Graded School District, 27 Ky. L. Re. 1021.

South Dakota. The constitution prohibits sectarian aid and sectarian instruction in schools supported in whole or in part from the public treasury. In Synod v State, 2 S. Dak. 366 (14 L. R. A. 418) it was held that Pierre University, a Presbyterian institution, was a sectarian school within the meaning of the constitution, and that therefore appropriations for the university could not be made from the public treasury, even as compensation to the institution under a contract with the territorial board of education by which the institution was designated. The university was designated as one of the educational institutions in which a class of students should be taught the method and practice of teaching in the common schools.

Taxpayers' Presumption of Consent. Where taxpayers have acquiesced for twenty years in the expenditure of money raised by taxation in maintaining public schools in which sectarian instruction was given contrary to the constitution, which prohibits such instruction, they cannot maintain an action against school officers to recover from them personally the amount so unlawfully expended. The school officers had a right to presume that the taxpayers, who had knowledge of the facts, consented to such expenditure, and the court said that under the circumstances it would be inequitable to compel the officers to reimburse the district for money so expended.

In the same case the court sustained the action of the school authorities in hiring a part of the parochial school building for the use of the district, the regular schoolhouse being inadequate for the accommodation of all the pupils. The power to rent was based on the general authority conferred by the statute. Dorner v School District No. 5, 137 Wis. 147.

Texas. The Board of Education of Corsicana, Texas, adopted resolutions recommending opening exercises in the public schools each day, consisting of reading of extracts from the Bible, the recital of the Lord's Prayer in concert, and the singing of hymns in which the pupils were invited, but not required, to join; and exercises were accordingly instituted and observed in nearly all the rooms in the high school. Certain residents of the district, including Roman Catholics, Jews, and one person who did not believe in the inspiration of the Bible, protested against these exercises, but the trustees declined to discontinue them, and in this action they were sustained by the State superintendent of public instruction. The selections from the Bible which have been read in the several rooms of the schools have been principally passages from the Old Testament, including selections from Psalms, Proverbs, and some of the old familiar stories from the Old Testament. The selections read from the New Testament are usually the Sermon on the Mount and passages of like tenor. In all reading the Bible used is King James version. The reading of the Scripture was without comment. The children were not required to join in the Lord's Prayer, or in the singing, but were invited to do so, and most of them did join in both exercises. The reading of the Bible and repeating of the Lord's Prayer was not compulsory, and some teachers read extracts from general literature instead of Bible selections. It was alleged that these exercises made the school a place of worship within the meaning of the constitution, and that such exercises were sectarian within the provision of the constitution prohibiting sectarian appropriations.

It was held that the exercises did not constitute sectarian instruction, nor turn the school into a religious society. Such a society was defined as "a voluntary association of individuals or families united for the purpose of having a common place of worship and to provide a proper teacher to instruct them in religious doctrines and duties, and to administer the various ordinances of religion." It was also held that the exercises did not make the school a place of worship within the meaning of the constitution. Such a place of worship was defined as "a place where a number of persons meet together for the purpose of worshiping God." Church v Bullock, 109 S. W. (Tex.) 115.

Wisconsin. In State ex rel Weiss v Edgerton District School, 76 Wis. 177, considering the provision of the Wisconsin constitution prohibiting sectarian instruction in schools, it is said that it manifestly refers exclusively to instruction in religious doctrines, and the prohibition is only aimed at such instruction as is sectarian; that is to say, instruction in religious doctrines which are believed by some religious sects and rejected by others. Hence to teach the existence of a Supreme Being of infinite wisdom, power, and goodness, and that it is the highest duty of all men to adore, obey, and love him, is not sectarian, because all religious sects so believe and teach. The instruction becomes sectarian when it goes further, and inculcates doctrine or dogma concerning which the religious sects are in conflict. It was held further that the reading of the Bible in public schools, although unaccompanied by any comment on the part of the teacher, is such instruction.

SHAKERS

Community of interest, no action for personal services, 719.
Competency as witnesses, 720.
Covenant, 720.
Deacons, actions by, 721.
Expulsion, effect, 721.
Massachusetts, 722.
New York, 722.
Partition or withdrawal of property, not permitted, 724.
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Community of Interest, No Action for Personal Services. A community of interest is an established and distinguishing principle of the association; that the services of each member are contributed for the benefit of all, and all are bound to maintain each, in health, sickness, and old age, from the common or joint fund, created and preserved by joint industry and exertion. And each one by the express terms of the covenant engages "never to bring debt or demand against the deacons nor their successors, nor against any members of the church or community, jointly or severally, on account of any service or property thus devoted and consecrated to the aforesaid sacred and charitable use." The plaintiff, who had been a member of the society or family of Shakers in New Gloucester for about twelve years after he became of age, brought an action against the society to recover compensation for his services rendered while he was a member of the family. It appeared that he was originally placed in the family by his father, but after reaching his majority he signed the foregoing covenant. It was held that the contract was binding on him and that he could not recover compensation for services. Waite v Merrill, et al, 4 Me. 90.

Competency as Witnesses. Members of the family or society were held competent as witnesses in a suit not directly concerning the common property in which the deacons are parties. Richardson v Freeman, 6 Me. 57.

Covenant. "The preamble recites that it is their faith and invariable practice that 'all who come into membership do freely and voluntarily dedicate and devote themselves and all they possess to the service of God forever; and it being their faith, that the union and relation of the church, in one joint interest, is a situation the most acceptable to God, and productive of the greatest good of any state or situation attainable on earth,' therefore covenanted and agreed together by these articles:

"1st, To gather themselves together, and be constituted and formed in the order of a church."

The second article creates an office of trustee, or agentship, and appoints three of the brethren thereto.

By the third article new members are allowed to come in, and bring and devote to the joint interest of the church, all such property as they justly hold, etc. The joint interest of the church thus formed by the free-will offerings of the members respectively, shall be possessed and held by the whole body jointly, as their natural and religious right; that is, every individual of or belonging to the church shall enjoy equal rights and privileges in the use of all things pertaining to the church, according to their order, and as every one has need, without any difference being made on account of what any one brought in. "And it shall be the duty of all the members to support and maintain the joint interest of the church, according to their several abilities as members, for the good of the whole."

The fifth article makes "it the duty of the trustee or agentship to take charge of all the property dedicated, devoted and given up, as aforesaid, to the joint interest of the church, or that may thereafter be given or devoted for the benefit of the church." "The said joint interest shall be held by them in the capacity of agents or trustees, and shall be and remain

forever inviolably under the care and oversight and at the disposal of the trustee or agentship of the church, in a continual line of succession; that the transactions of the trustees in the use and disposal of the joint interest shall be for the mutual benefit of the church and in behalf of the whole body, and to no personal end or purpose whatever. But the trustees shall be at liberty, in union with the body, to make presents and bestow deeds of charity upon such as they may consider the real objects that are without." In case of a vacancy in the trusteeship the duties are to be transferred and devolve on a successor to be appointed so that each individual appointed to the office of trusteeship shall be invested with the power and authority of managing and disposing of the property and interest of the church."

7th, As the whole end and design of our thus uniting in church relation is to receive and diffuse the manifold gifts of God to the mutual comfort and happiness of each other, as brethren and sisters in the gospel, and for the relief of the poor, the widow, and the fatherless, and such as may be deemed real objects of charity; no one shall make any account of labor or property or services, devoted by us to the purposes aforesaid, or bring any charge of debtor damages, or hold any demand whatever against the church, or community, or any member thereof, on account, either of services or of property given, rendered or consecrated to the aforesaid sacred and charitable uses.

The third article precludes any claim to a division to be made according to what each brought in. Gass and Bonta v Wilhite, 2 Dana (Ky.) 170.

Deacons, Actions By. Deacons may sue for trespass on society property. Anderson v Brock, 3 Me. 243.

Expulsion, Effect. The plaintiff was expelled from the society for refusing to conform and subject herself to the counsels and directions of the elders. She was not entitled to damages for such expulsion for the reason that she had signed the covenant in which she agreed to conform to the rules and orders of the society, which vested supreme

authority in the ministers and elders. They had authority to expel a member. The civil court could only inquire as to the authority vested in the ministers and elders, who could not determine the question whether according to the rules of the society, the plaintiff had been properly expelled. In this case the plaintiff was charged with entertaining opinions and promulgating doctrines within the society at variance with the established belief and subversive of the organization. Grosvenor v United Society of Believers, 118 Mass. 78.

Massachusetts. In Lawrence v Fletcher, 8 Metc. (Mass.) 153, it was held that under the Massachusetts constitution the Shakers are a sect or denomination of Christians, and without reference to the act of 1785, chap. 51, they are included in the act of 1811, chap. 6, respecting public worship and religious freedom, and after the passage of that act had full power to receive donations, gifts, and grants to manage, improve, and use the same, and to elect suitable trustees, agents, or officers therefor; and that they were equally within the purview of the act of 1834, chap. 183, and of the revised statutes, chap. 20, sec. 25, and that by force of the act of 1811, chap. 6, if not legally empowered before, they were authorized to elect deacons or trustees to take and hold and manage the property of the community.

New York. It was held in Feiner v Reiss, 98 A. D. (N. Y.) 40, that the society of Shakers at Mt. Lebanon, New York, was not a religious corporation but a voluntary unincorporated society formed by the consent of the individuals composing it for religious and business purposes and which has obtained by various statutes the corporate power to have property held by trustees in perpetual succession. It was also held that the society need not obtain an order of court for the sale of its property, but that such a sale was valid if made by the trustees in the manner pointed out by the statutes and by-laws of the society, and especially, as in this case, where such a conveyance was approved in writing by the ministry and elders of the society. Such a con-

veyance was held sufficient to transfer the title to the property.

The society at Watervliet, New York, had existed many years prior to 1839, when an act was passed relative to the status of societies of Shakers and declaring the rights and duties of trustees. The Watervliet society was an offshoot of the parent society at New Lebanon, and it is a fundamental rule and principle pervading these communities that there shall be no individual ownership of property, but that all the property held by individuals, on their admission to the society, shall be surrendered, and all acquired in the prosecution of its business shall be held for the common purposes and uses of the aggregate body. The society, although called in the covenant a church, is not solely organized for purposes of religion. Prior to 1839 the local title to the property of the society was vested in and held by trustees, appointed from its members in trust, for the uses and purposes expressed in the covenant, and subject to the rules, conditions, and regulations therein prescribed. Each trustee executed upon his appointment a written declaration of the trust, and their authority and powers were defined in the covenant. The trust was for the benefit of the entire society, and not for any private interest. The act of 1839, chap. 174, declared that all deeds of trust of real or personal estate, executed and delivered prior to January 1, 1830, to any persons in trust, for any United Society of people called Shakers, shall be valid and effectual to vest in the trustees the legal estates and interests conveyed, for the uses declared in such deeds, or declared in any declaration of trust executed by the trustees in the same manner, and to the same effect as before January 1, 1830, and the act confirmed all trusts created prior to January 1, 1830. The act provided that the trust should continue and devolve on the successors of the existing trustees. The act also authorized future trusts. The effect of the act was to make the trustees a corporate body, and the property held by them corporate property, and, therefore,

an action relating to a contract by the society could be maintained against the trustees as such and enforced against corporate property in their hands. White v Miller, 71 N. Y. 118.

Partition or Withdrawal of Property, Not Permitted. Several persons intending to form a society of Shakers, entered into a covenant to surrender to the society all their common property. The joint interest of the church thus formed by the free-will offerings of the members, respectively, shall be possessed and held by the whole body jointly as their natural and religious right; that is, every individual of, belonging to the church, shall enjoy equal rights and privileges in the use of all things pertaining to the church, according to their order and as everyone has need, without any difference being made on account of what anyone brought in. The affairs were to be managed by a trustee, who was given large discretionary powers in the administration.

By the 7th article the members of the community expressly disclaim any intention to make any demand as compensation for services, and would not present any claim or debt or damage on account of any property given, rendered, or consecrated for the sacred uses of the society.

Two persons who had seceded from the society brought an action to procure a partition or division of the property, and an assignment of the amount claimed by them to be due. It was held that such an action could not be maintained for the reason that the articles of agreement expressly declared the intention of all parties to relinquish their claims to the property given to the community. The property was not to be held by the members by a joint and several interest but was to be held by the community as a unit. The members were entitled to use the property as needed for their support but could not withdraw it from the common fund. Gass and Bonta v Wilhite, 2 Dana (Ky.) 170.

Property, How Held. As early as 1791 a company of persons denominated Shakers formed themselves into a community in the town of Harvard as a religious society and

entered into covenant relations with each other as a church according to their peculiar faith and tenets. As early as March, 1801, they chose deacons and a clerk, and by mutual agreement under seal appointed their deacons and their successors in office to hold the property of the church and to have the management of its temporal concerns; in December, 1814, they new modeled their covenant, making it more full and formal, and made a new arrangement in regard to the office of deacon, constituting a part family deacons, giving them the oversight of their domestic or internal concerns, and constituting other deacons or trustees to whom were committed the charge of their property and business with the world, which society, in all its essential features, continues under the same organization to the present time.

A transfer of certain property to the trustees of this society was sustained. Such a transfer need not have been to the society by name nor to the deacons. A transfer to the trustees was sufficient, who, as such, as well as their successors, were capable of taking and holding property. It was not necessary to name the trustees; a description which distinguished them from all others was sufficient. Lawrence v Fletcher, 8 Metc. (Mass.) 153.

The constitution of this society required the legal title of all its property to be vested in trustees, upon a declaration of trust, designed, in a convenient and legal manner, to accomplish the purpose of having all things common. A judgment rendered against the trustees of the church family of Shakers, and the successors of said trustees in their official capacity, was held valid and could be satisfied without the aid of a bill in equity, by execution levied upon property of the church, of which the legal title is held by the trustees. Davis v Bradford, 58 N. H. 476.

Trustees, Promissory Note. This society was incorporated with a membership of about one hundred, which was constantly changing by additions, withdrawals, and deaths. The property was held in common without any individual

interest in any member, and is managed and disposed of for the purposes of the society by certain trustees chosen by the society from time to time. An action on a promissory note given by the trustees in behalf of the society was held properly brought in equity against the society and the trustees. Society of Shakers at Pleasant Hill v Watson, 68 Fed. 730.

SLANDER

Archbishop's criticism of priest, 727.
Minister, 727.
Privileged statements, church trial, 727.

Archbishop's Criticism of Priest. The archbishop of Milwaukee, speaking in a Roman Catholic service in a church at West Bend, said of the priest in charge of the church at Barton that "Father —— is not responsible or he is excusable, or he may not be entirely of a sane mind as he was injured in his brain in a railroad accident. That he is no more the parson or priest of Barton, and that he had taken all rights away from him, and that the congregation no more acknowledged him as parson or priest, and that he has good reason to transfer him." It was held that these words were slanderous per se. Hellstern v Katzer, 103 Wis. 391.

Minister. In Elsas v Browne, 68 Ga. 117, it was held that to charge a minister of the gospel with collecting money for a specific object, and, instead of so appropriating it, with embezzling and applying it to his own wrongful uses, is actionable; if not imputing to him a crime punishable by law, it is certainly charging him with being guilty of a debasing act, which may exclude him from society.

Privileged Statements, Church Trial. Slanderous statements made by one being examined as a witness in a church trial, which is conducted according to ecclesiastical discipline, are not privileged statements, and can be proved in a prosecution for defamation of character. Grant v State, 141 Ala. 96.

Division, Minority's Right. The society purchased land on which it erected a church building, the expense of which was borne by members of the society. Afterward a division arose in the society and part of its members, constituting a minority, procured the incorporation of a new society. In an action involving the title and possession of the property of the society it was held that the corporation organized in proceedings taken by the minority was a valid corporation under the statute. Spiritual and Philosophical Temple v Vincent, 127 Wis. 93; 105 N. W. (Sup. Ct. Wis.) 1026.

SPIRITUALISTS

Camp grounds, 729.
Devise rejected, 729.
Trust sustained, 729.
Unincorporated society, cannot take bequest, 730.

Camp Grounds. The association was incorporated in 1877 by statute. The scheme of the corporation included a camp ground with wharf, hotel and other public buildings, private residences and cottages. The incorporators were spiritualists, and came together for the purpose of acquiring and developing some place upon the seashore as a summer resort for spiritualists, incidentally as a site for spiritualists' camp meetings. The society erected a temple and auditorium in which to conduct its exercises. A camp meeting was held each year. The corporation paid all the expenses of the meeting. In July, 1895, the corporation made a lease of the property to its trustees. It was held that the society had authority to establish and maintain a camp meeting on its property. Nye v Whittemore, 193 Mass. 208. See also article on Camp Meetings.

Devise Rejected. A West Virginia will contained a devise to a trustee for the benefit of the First Spiritualist Church of Baltimore. This was held void for uncertainty. Miller v Ahrens, 150 Fed. 644.

Trust Sustained. A will contained the following residuary clause: "All the rest, residue, and remainder of my estate, real and personal, whatsoever and wheresoever found, I give and bequeath unto my executors hereinafter named, and their successors in trust, for the purchase of books upon the Philosophy of Spiritualism, not sectarian, or of any creed, church, or dogma, but of free liberal bearing. Said books to be placed by my executors where they can be free to all

who desire to think for themselves, and who are seeking for the truth from the true and living God, for I believe in one God, one church, and one country: first, the Great Unknown; second, the whole human race, as one family; third, the whole globe, the home of all nations—that is my Trinity."

It was held that the residuary gift was expressed in terms sufficiently certain to enable it to be carried into effect; that though the trust was a perpetuity, which executors and their successors could not execute, yet it was also a charity, which a court of equity could not permit to fail for want of a trustee. Jones v Watford, 62 N. J. Eq. 339.

Unincorporated Society, Cannot Take Bequest. The Progressive Spiritualists' Society was an unincorporated voluntary religious association and as such association was incapable of taking a direct bequest to it. Fralick v Lyford, 107 A. D. (N. Y.) 543.

SUBSCRIPTION

Building committee, action by, 731.
Condition accepted, 731.
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Subscription note, validity, 739.
Sunday, 739.
Sunday school, 739.
Title to fund, 740.
Unincorporated society, 740.
Withdrawal from society, effect, 741.

Building Committee, Action By. A promise to pay to a building committee a certain amount of money for the purpose of erecting a meetinghouse, of which committee the promisor was one, may be maintained against him in the name of the other members of the committee or the survivors of them. Such action was held maintainable, even though the edifice had been finished, and the committee discharged from further duty. Chambers v Calhoun, 18 Pa. St. 13.

Condition Accepted. Where one signs a subscription for the erection of a church, upon condition that a certain amount be subscribed, together with an agreement that he should be repaid the sum he had expended in the erection

of a temporary chapel, such agreement followed by the repayment constitutes a binding contract between the parties, which cannot be revoked except by mutual consent nor rescinded except upon abandonment of the scheme or failure to collect the amount agreed upon.

Where subscription to a church building fund is conditioned on a certain amount being subscribed a subscriber is not prejudiced by a finding that the required amount was subscribed, when the evidence shows that including his subscription, and the amounts collected for memorial windows, sale of pews, and money raised at a church fair, the amount collected exceeded in the aggregate the required amount. Hodges v O'Brien, 113 Wis. 97.

Where divers persons subscribed to a fund for the support of public worship, promising to pay to the trustees of the parish funds the sums subscribed, on condition that the trustees should manage the fund in a certain manner, and apply the income thereof to the support of a Congregational minister and to the payment of the parish taxes which might be assessed on the subscribers, it was held that the promise was binding on the subscribers, the acceptance of it on the conditions prescribed being an engagement on the part of the trustees to perform those conditions. The subsequent change of the articles of faith adopted by the church, though in some essential particulars, does not absolve the parties from the obligation of such contract. Fryeburg Parsonage Fund v Ripley, 6 Me. 442.

Condition, Variation. A subscription for the erection of a church under a resolution by which three fourths of the cost was to be raised by subscriptions running three years, and a contract was let for the erection of the church at a price of which the subscriptions were at least three fourths in amount, a subscription was held not invalidated by a subsequent increased cost of construction which was provided for by increased subscriptions amounting to at least three fourths of the cost. First Evangelical Lutheran Church v Gardner, 28 Pa. Sup. Ct. 82.

Condition, Specified Amount to Be Raised. A subscription was sustained by which subscribers were to be bound only on condition that the whole amount needed for specified repairs should be raised, it appearing that about one half the amount was subscribed, and the contractor was authorized to raise the balance by a sale of the pews. This was held to be a substantial compliance with the terms of the subscription. McAuley v Billenger, 20 John. (N. Y.) 89. See Stewart v Trustees of Hamilton College, 2 Denio (N. Y.) 403; see also Hodges v O'Brien, cited in note on Condition Accepted.

Consideration. Twenty-third St. Church v Cornell, 117 N. Y. 601, involved the validity of a subscription for the erection of a new church edifice. It was held that the subscription by testatrix was without consideration, and that the church could not recover thereon.

Defective Incorporation, When a Defense. A person who subscribes to a fund for the erection of a church edifice is not estopped from contesting the validity of the incorporation of the society and may raise the question in the action against him. First Baptist Church v Rapelee, 16 Wend. (N. Y.) 605.

Existing Debt. In United Presbyterian Ch. v Baird, 60 Ia. 237, it was held that the borrowing of money by a church corporation to pay its existing indebtedness, with reliance upon a subscription to repay the borrowed money, constitutes a sufficient consideration to support the contract of subscription. Following Trustees v Garvey, 53 Ill. 401.

The defendant with others made a subscription toward the payment of a debt due for the building of a church edifice, which had been erected before the subscription was made. The trustees borrowed money with which to pay the debt, relying on the subscription. The defendant claimed that there was no liability. It was held that while the trustees by borrowing money to pay the debt had not increased their liability, they had on the faith of the subscription incurred a new liability to new parties. "They have

borrowed money relying upon this subscription as a means of payment, and the fact that they have used the money to discharge a preexistent debt does not change the fact that they have incurred a new and different liability. Where a person subscribes to a public enterprise, and work is done, money expended, or liability incurred, on the faith of such subscription, it becomes binding." Trustees v Garvey, 53 Ill. 401.

A subscription to raise money to pay off a mortgage on church property was held to be without consideration, and not enforceable by the corporation, nor could the corporation avail itself of mutual promises of the subscribers. Such promises did not constitute a consideration in favor of the corporation. Presbyterian Church of Albany v Cooper, 112 N. Y. 517. See also notes on Sunday subscriptions below.

Liability Is Several. Subscribers to a fund for the construction of a church who have built the church and incurred obligations therefor on the faith of the subscriptions are the real parties in interest, who may maintain an action to collect an unpaid subscription.

A promise to pay such subscription, even if made directly to a committee, is held to have been made to them as agents for all the subscribers who should join in the enterprise, and the latter, as principals, may maintain an action upon it. The liability of each subscriber to such a fund is a several one, and hence is to be enforced in an action against him alone. Hodges v Nalty, 104 Wis. 464.

Mutuality. In an action on a subscription note it was held that when several agree to contribute to a common object which they wish to accomplish, the promise of each is a good consideration for the promises of the others, and the society was entitled to maintain an action on the note. Congregational Society, Troy v Perry, 6 N. H. 164.

Where there are mutual subscriptions for a common object, and there has been an expenditure of money in the accomplishment of the object, a subscription is binding as

a valid contract. Whitsitt v Trustees Preemption Presbyterian Church, 110 Ill. 125.

Performance by Society. Several persons joined in a subscription for the purpose of erecting a Presbyterian church edifice, the sum subscribed to be paid to a treasurer to be chosen by the subscribers. Such a treasurer was afterward chosen. Persons interested in the movement subsequently incorporated a Presbyterian society, and a church edifice was erected in reliance on the subscriptions. The defendant, a subscriber, was present at meetings for the incorporation, and for other purposes connected with the movement, and was cognizant of the various steps taken in the matter, and expressed no dissent. It was held that there was a good consideration for the defendant's subscription, which could be enforced by the treasurer chosen by the corporation upon proof of an understanding when the subscription was made that the edifice should become a part of the temporalities of a Presbyterian society to be organized. Presbyterian Society v Beach, 74 N. Y. 72.

Subscriptions were made for the purpose of purchasing land and erecting a meetinghouse, but the house was not built, and no shares were issued. The subscriber, who had taken ten shares, was sued on his subscription, but the court held that the society could not recover. The subscription paper was mutually made among members of the society and other friends, and with the building committee, but there was no contract with the church. First Universalist Society, Newburyport v Currier, 3 Metc. (Mass.) 417.

A subscription was made for the purpose of raising funds to rebuild a church. Subsequently, with the subscriber's consent, the society built a new church edifice, relying in part on this subscription. The defendant refused to pay the subscription. It was held that this was a case of services rendered and expenses incurred by the trustees at the request and by the direction of the defendant, for which an action would lie, upon the subscription paper; also that the subscription paper, and the subsequent request and direction

of the defendant to the corporation, considered together, established a conditional promise to pay $150, provided the trustees of the church would erect a new church edifice; and that the condition having been performed by the corporation before the retraction of the promise, the defendant was liable to pay the sum subscribed by him. Barnes and others, Trustees First Presbyterian Church, Glens Falls v Perine, 9 Barb. (N. Y.) 202.

Perpetual Liability. An action was brought by the society on a subscription providing for a specified payment annually for the support of the ministry so long as the then incumbent should be the minister of the congregation. The minister was deposed by the classis, but on an appeal to the synod that body restored him to his position. Afterward the classis at different times declared the minister to be in full possession of his ministerial functions, and at other times declared that he must be considered as having been deposed. In the action on the subscription the defense was that the relation of the minister to the congregation had been discontinued, and that therefore the subscription was no longer binding. It was held that the action of the synod on the appeal practically disposes of the whole matter and that subsequent action by the classis had no effect as against the decision of the synod. A judgment on the subscription was sustained. Dieffendorf v Reformed Calvinist Church, 20 Johns. (N. Y.) 12.

A subscription was held valid which provided for an annual payment for the support of a minister so long as he remained in service, and so long as the subscribers continued to reside within four miles of the meetinghouse. First Religious Society of Whitestown v Stone, 7 John. (N. Y.) 112. See note below on effect of withdrawal from society.

Promissory Note. According to Catholic usage, the parish priest is generally church treasurer, but with power to appoint a special treasurer with the approval of the bishop. In this case the plaintiff had been appointed such treasurer, and the promissory note in controversy had been delivered

to him by the maker. This was held sufficient delivery. Where promissory notes given in payment of a subscription to a church erection fund are made in consideration of a selection of a site and commencement of work by a given date, in an action thereon, evidence of initiatory steps and discussions of a congregation prior to the giving of the notes is inadmissible for the purpose of varying their terms. Michels v Rustemeyer, 20 Wash. 597.

A promissory note given in aid of the Kentucky Baptist Education Society was held to be a valid subscription. The society was under obligation to appropriate the money for the purposes of its charter. This was held to be a sufficient consideration for the subscription. Collier v Baptist Education Society, 8 B. Mon. (Ky.) 68.

Revocation. A minister was engaged to conduct dedication services, and solicit subscriptions to be applied on the church debt. The request to him for this service was made at an informal meeting of the trustees, pastor, and class leaders. The minister solicited subscriptions during the services, but it was held that he was not the agent of the corporation. A person made an offer to pay a specified amount, which was deemed only an offer, and no contractual relation was established between him and the corporation. The corporation had not accepted the offer, but a short time after it was made one of the trustees, not by any special authority but apparently on his own motion, called on the subscriber to perform his proposal. The subscriber thereupon revoked and repudiated his offer, and in an action by the corporation on the subscription it was held that this revocation was in time, and that no liability had been created. Methodist Episcopal Church, Sun Prairie v Sherman, 36 Wis. 404.

Roman Catholic Church, Special Purpose. Money raised on a subscription for a new church edifice is raised for a special purpose and belongs to the congregation, and it does not become the property of the bishop of the diocese or priest of the parish. Amish et al v Gelhaus et al, 71 Ia. 170.

Special Agreement. A subscriber to a fund being raised for the purpose of erecting a church agreed to give the rent of certain property for three years. This did not mean a lease of the property itself, but the rent derived therefrom, and an action on the subscription was sustained and judgment rendered for the amount of rent pledged by the subscriber. Trustees of First Baptist Church in Syracuse v Robinson, 21 N. Y. 234.

Subscriber's Death, Effect. Testatrix joined in a subscription for the erection of a church edifice, which subscription was on condition that a stated amount should be raised. Before the time fixed for payment of the subscription, and before any expenditure had been made on the church edifice project, testatrix died. Testatrix did not request the corporation to build a new edifice, and the church did not promise that it would, and there was no endeavor to obtain subscribers occasioned by the expressed wish or direction of testatrix. It was held that there was no consideration for the subscription, which at most was only an executory gift, and this was revoked by the death of testatrix. It was also held that a subscription by several persons was not a consideration for any one, that the executors could not bind the estate by their assent to the subscription, and that the church could not recover the amount subscribed. Twenty-third St. Baptist Church v Cornell, 117 N. Y. 601.

The society, although unincorporated, was held competent to maintain an action on a contract. In this case an action was brought on a subscription to aid in building a church, but the subscriber died before the organization of the society was effected. It was held that the liability of the subscriber was terminated by his death; and an action could not be maintained by the society against his estate. Phipps v Jones, 20 Pa. 260.

Subscriber's Intention as to Object. A subscription was taken to raise funds for the erection of a Catholic chapel. Parol evidence was held admissible to show the intention to erect a Roman Catholic church for use as a place of public

worship according to the rites and ceremonies of that denomination. O'Hear v De Goesbriand, 33 Vt. 593.

Subscription Note, Validity. Where members of a religious society which had a ministerial fund in the hands of an incorporated board of trustees voluntarily subscribed to increase the fund, and afterward gave their promissory notes to the trustees for the amount of their respective subscriptions, it was held that the notes were founded upon a sufficient consideration. Parol evidence that such notes were upon the condition that the principal should not be called for so long as the interest continued to be punctually paid was held inadmissible. Trustees, Hanson Church v Stetson, 5 Pick. (Mass.) 506.

Sunday. A subscription made on Sunday to liquidate the indebtedness of a church corporation contracted in the erection of a building to be used as a place of worship does not come within the inhibition of the revised statutes of Indiana as common labor, but falls within the exception of works of charity, and is valid and enforceable. Bryan et al v Watson, 127 Ind. 42.

A subscription on Sunday to aid in the payment of a church debt is valid. Such subscriptions are deemed a charity within the general exception prohibiting Sunday labor. First Methodist Episcopal Church, Fort Madison v Donnell, 110 Ia. 5.

A subscription to raise money to pay for a house of worship is not invalid because taken on Sunday in a congregation assembled for ordinary religious services. Allen v Duffie, 43 Mich. 1; see also Dale v Knepp, 98 Pa. 389.

A subscription made on Sunday to aid in the erection of a church is valid. See the same case as to a conditional subscription. Hodges v Nalty, 113 Wis. 567.

A subscription to a church made on Sunday was held void in Indiana. There was no evidence of a subsequent ratification, or a new promise. Catlett v Trustees, Methodist Epis. Ch., Sweetser station, 62 Ind. 365.

Sunday School. In Rector v Crawford, 43 N. Y. 476, the

church was held entitled to recover from its former treasurer money collected on subscriptions for a Sunday school building fund of the church, although the Sunday school had a voluntary organization independent of the church.

Title to Fund. In Amish et al v Gelhaus et al 71 Ia. 170, it was held that money raised on a subscription for erecting a new church edifice was the property of the congregation, and not the property of the bishop or priest. Referring to the claim that by "the laws and rules of the Roman Catholic Church the bishop of the diocese and the priest of the parish, under the direction of the bishop, are invested with the absolute control of the funds and the property of the church, and the laity have no right to interfere with such control," the court observed that this rule might be "applicable if this fund had been raised for the general purposes of the church and paid to the priest without any obligation upon him to apply it to a specific purpose," but the money having been raised for a special purpose, it passed into the hands of the priest as a trust fund, and it did not vest absolutely in either bishop or priest to be disposed of as they might think for the best interest of the church.

Unincorporated Society. In Presbyterian Society v Beach, 74 N. Y. 72, the defendant was held liable on a subscription in aid of a project to erect a Presbyterian church edifice, it appearing that the subscribers were to pay their subscriptions to a treasurer to be chosen by themselves, but that a corporation was afterward organized. The corporation was held entitled to recover on this earlier subscription on proof of an understanding when the subscription was made, that the money was to be raised for the erection of a church edifice to become the property of a Presbyterian society to be organized.

It is no defense in a suit to enforce a subscription to aid in building a church that the society was not incorporated. A notice to trustees of the society, after organization, that the subscriber will not pay his subscription unless a certain person is excluded from speaking in the church, while

the proffered donation appears at the head of the list as an unconditional subscription, is not sufficient to release the subscriber from liability. Snell v Trustees, Methodist Episcopal Church, Clinton, 58 Ill. 290.

Where subscriptions have been made in anticipation of the formation of a corporation, and the corporation is afterward formed, payment of such subscriptions is enforceable in the name of the corporate body. Whitsitt v Trustees Preemption Presbyterian Church, 110 Ill. 125.

A subscription to aid in erecting a church edifice made to an unincorporated religious organization inures to the benefit of the corporation afterward created. Willard v Trustees, Methodist Episcopal Church of Rockville Center, 66 Ill. 55.

Action upon a subscription whereby the defendant agreed to pay to the plaintiff, who was described in the subscription as the treasurer of an unincorporated association, a sum named for the purpose of aiding in the erection of a church edifice for such association. It was held that as the association was not a corporation, the words in the subscription describing him as treasurer thereof should be treated as surplusage, and he could maintain an action in his own name. That the erection of the church edifice by the plaintiff was a sufficient consideration to authorize a recovery. McDonald v Gray, 11 Ia. 508.

Reformed Presbyterian Church v Brown, 24 How. Pr. (N. Y.) 76, sustained a subscription for the erection of a church edifice and for the pastor's salary, although the society was not then incorporated, and it was held that the corporation, afterward formed, was entitled to recover the subscription.

Withdrawal from Society, Effect. A person joined with several others in a written agreement to pay a specified sum annually for the support of the preaching of the gospel in a particular church. At the end of two years he declined to continue annual payments on the ground that he had changed his religious sentiments, and could not conscien-

tiously contribute to the object specified in the contract. In an action by the society to recover payments which had accrued after the signer's withdrawal from the society, it was held that the contract continued binding during the life of the subscriber, notwithstanding a change of religious sentiment, unless it could be shown that he had been discharged by a vote of the society. No such discharge was shown. The defense that to compel payment after a change of religious sentiments would violate the defendant's rights of conscience under the constitutional guaranty of religious freedom was rejected, the court holding that the agreement to pay constituted a contract from which the defendant could not withdraw at his own mere volition. First Congregational Society, Woodstock v Swan, 2 Vt. 222; see above, notes on Perpetual Liability.

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Agent's Unlawful Acceptance. An agent cannot bind his principal by the acceptance of an instrument of guaranty on Sunday, even though it bears date on a secular day, and the principal had no personal knowledge of the unlawful act. Moseley v Hatch, 108 Mass. 517.

Amusements. The act of 1860, chap. 501, prohibiting certain amusements in the city of New York on Sunday, was sustained in People v Hoym, 20 How. Pr. 76, (Sp. T.) as a valid exercise of legislative power, and it was held that the exhibition on Sunday of a play called "One of Our People" or "Brave Isaac," in the New York "Stadt Theater" on the Bowery, was a violation of the statute.

Services were held Sunday evening under the auspices of a society called "Recreative Religionists," and consisted of pieces of sacred music performed on the organ, accompanied by other instruments and a gratuitous choir; but there were some paid singers. An address was delivered, always instructive; sometimes of a religious tendency, sometimes neutral rather than religious, but never aggressively irreligious, and never profane. Certain hymns were printed and circulated among the audience, but they were never sung. Most of the hymns could scarcely be called devotional, but expressed sentiments of adoration toward the Supreme Being and all of them exhortations to moral duty. There was no public prayer or address to the Deity other than was contained in the musical compositions. There was no debating or discussion; nothing dramatic or comic, or tending to the corruption of morals, or to the encouragement of irreligion or profanity. Admission to the body of the hall was gratuitous, but tickets were sold and money taken for admission to reserved seats. The place was registered as a place for religious worship. It was held that the place was not a place of public entertainment or amusement within the statute prohibiting certain entertainments or amusements on the Lord's Day. Meetings for religious worship are not within the act. It is not essential to such protected religious worship that it should be in accordance with the religion of the State, or even with the general religion of the nation. Baxter v Langley, 38 L. J. Mag. Co. (N. S.) Eng. 1.

Arbitration, Award. An award of arbitrators is a judicial proceeding, and if made and published on Sunday is void. Story v Elliot, 8 Cowan (N. Y.) 27.

Assignment for Creditors. An assignment was made and delivered on Saturday, but no schedule was annexed. The schedule was attached the next day, Sunday. This annexation on Sunday was sustained in Clap v Smith, 16 Pick. (Mass.) 246.

Attachment. The Massachusetts statute of 1791 fixed the period of Sabbath observance from midnight until sun-

set. Filling and delivering an attachment after sunset on Sunday was not a violation of the statute regulating Sunday observance. Johnson v Day, 17 Pick. (Mass.) 106.

Attorney's Clerk, Extra Compensation. An attorney's clerk engaged at a weekly salary to do such things as are usually done by clerks in attorneys' offices, is prohibited, by the statute to prevent working on Sunday, from recovering of his principal a compensation extra his weekly allowance for services as a clerk performed on that day. Watts v Van Ness, 1 Hill (N. Y.) 76.

Baker. In Rex v Younger, 5 T. Rep. (Eng.) 449, it was held that the statute, 29 Car. chap. 7, did not prohibit a baker baking dinners for his customers on Sunday. See also to the same effect Rex v Cox, 2 Burr. (Eng.) 785, which involved the right of the baker to bake puddings and pies and meats on Sunday, in addition to making bread, which was his ordinary calling. The baking of puddings, etc., was held not to be a violation of the statute.

A baker who keeps his store open for business, and sells ice cream, cakes, etc., on Sunday, is guilty of performing worldly employment on Sunday, contrary to the Pennsylvania Sunday law of 1794, and the local acts of 1855 relating to Allegheny County. Burry's Appeal, 1 Monag. Pa. Sup. Ct. Cas. (Pa.) 89.

Bank Paper. Commercial paper falling due on Sunday should be presented on Monday. Salter v Burt, 20 Wend. (N. Y.) 205; see various State statutes on this subject.

Balloon Ascension. An agreement to make an ascension in a balloon from a public garden on a Sunday for a compensation is a contract for the performance of servile labor, and an action for the compensation cannot be sustained. Sunday, originally established as a day of rest and religious worship, has become by statute a civil institution, to be observed by courts, public officers, and all private citizens. Brunnett v Clark, 1 Buff. Super. Ct. (Sheldon) (N. Y.) 500.

Barber. In Kentucky (Stratman v Commonwealth, 137 Ky. 500) a statute was held unconstitutional which made it

unlawful to open a barber shop on Sunday and engage in the business of barbering and which imposed a penalty different from that applicable to other prohibitions of business on Sunday.

Barbering on Sunday was held not to be a work of necessity or charity, and therefore not permissible under the Wisconsin Statute. Stark v Backus, 110 Wis. 557.

Shaving and hairdressing for hire in a shop kept for the purpose is a worldly employment or business, which, if done on Sunday, is, unless a work of necessity or charity, forbidden by the act of April 22, 1794. Such an occupation is not rendered a work of necessity or charity by the fact that there are some persons whose beards require shaving daily, or whose occupations through the week make it difficult or impossible for them to get shaved except upon Sunday, when it appears that the shop is kept open for all persons indiscriminately, and the work done is not merely shaving but all the work of a barber. Mere lapse of time or the developments of modern life cannot repeal such a statute. Commonwealth v Waldman, 8 Pa. Co. Ct. 449.

In Ex Parte Jentzsch, 112 Cal. 468, it was held that section 310½ of the California Penal Code, enacted in 1895, making it a misdemeanor to keep open and conduct a barber shop or to work as a barber on Sundays and other holidays, was an undue restraint of personal liberty, and was special legislation and based upon an arbitrary classification, and not a proper exercise of the police power, and was unconstitutional and void.

In State v Krech, 10 Wash. 166, it was held that a statute prohibiting the sale of goods, wares, and merchandise on Sunday, or the opening of places of business for that purpose, did not prohibit the opening of a barber shop on Sunday. So in Tennessee (State v Lorry, 66 Tenn. 95) it was held that a barber keeping open his shop and carrying on his business on Sunday was liable to a penalty but was not subject to indictment.

The New York act of 1895, chap. 823, prohibited barber-

ing on Sunday except in Saratoga Springs and in New York city, where it was permitted until one o'clock in the afternoon. The act was amended in 1907, chap. 297, as to Saratoga Springs, and was continued in the Penal Law of 1909, sec. 2153. The original statute was sustained in People v Haynor, 149 N. Y. 195, and in People ex rel Bobach v Sheriff, 13 Misc. (N. Y.) 587, 35 N. Y. Supp. 19.

Baseball. It was held in Capital City Athletic Association v Police Commissioners, Greenbush, 9 Misc. (N. Y.) 189, that baseball-playing on Sunday, for profit, upon private grounds, if not within the strict letter of the Penal Code, is a business that is against the public policy of the State.

Three persons played ball on private grounds simply pitching the ball from one to another without making any noise. Such playing was held not to be within the prohibition of the New York Penal Code, sec. 265. It was further held that to constitute a violation of the statute the playing must seriously interrupt the repose of the community on Sunday. People v Dennis, 35 Hun (N. Y.) 327.

Baseball-playing on Sunday at an unfrequented place is not such a breach of the peace as to make the parties playing indictable for a common nuisance in the absence of evidence that anyone in the immediate neighborhood was disturbed by any disorder or behavior on the part of the people present. To constitute a breach of the peace the peace must be broken or disturbed by such disorderly and unlawful conduct as actually disturbs the peace and quiet of somebody in the immediate neighborhood where the acts complained of are committed. Commonwealth v Meyers, 8 Pa. Co. Ct. 435.

In Greater Newburgh Amusement Company, Inc. v Sayer, 81 Misc. (N. Y.) 307, it was held that public games of baseball between professional teams on Sunday violated the provision of the Penal Law which prohibits public sports on that day, although no admission fee was charged.

Bill, Acceptance. A bill was drawn on Sunday, but there

was no evidence as to the day on which it was accepted. It was held that the bill was not void as violating the Sunday law. Begbie v Levi, 1 Crompt. & Jer. (Eng.) 180.

Bill of Exchange, Indorsement Void. Such a bill indorsed on Sunday is void. Saltmarsh v Tuthill, 13 Ala. 390.

Bill of Sale. An action on a bill of sale made on Sunday cannot be defeated by the objection of a person who was not a party to the sale and had no interest in the property. Richardson v Kimball, 28 Me. 463.

The execution on Sunday of a bill of sale of personal property, in pursuance of a sale made on Friday, does not affect the validity of the sale. Foster v Wooten, 67 Miss. 540.

Bond. A bond signed on Sunday is not void if not delivered on that day. Commonwealth v Kendig, 2 Barr. (Pa.) 448.

A bond executed on Sunday is void under the statute, but not at common law. Fox v Mensch, 3 Watts. & S. (Pa.) 444.

A bond executed on Sunday, but not from necessity or charity, cannot be made the basis of an action. It was secular labor and within the prohibition of the statute. Pattee v Greely, 13 Met. (Mass.) 284.

Business. The carrying on of one's ordinary business on Sunday is an indictable offense at the common law, and also under the statutes of Tennessee, if conducted so openly as to attract public attention and thereby tend to corrupt public morals. It is no defense to such prosecution that the accused conscientiously believes in observing and actually observes the "seventh" rather than the "first" day of the week as the Sabbath. Parker v State, 16 Lea (Tenn.) 476.

Butcher. Exercising trade of butcher on Sunday was no offense at common law. Rex v Brotherton, 1 Str. (Eng.) 702.

Camp Meeting, Charge for Admission. A compulsory payment of a fee for admission to camp-meeting grounds at a service held on Sunday was held to constitute worldly business under the Pennsylvania statute. "When the wayward sinner is forbidden entrance to the church unless he hands

over his nickel to the doorkeeper, the church so demanding and receiving on Sunday is in no better position, so far as worldly business is concerned, than would be the circus man with his one price of admission to all the several and combined shows of his monster aggregation, or the peddler with his busy booth." Commonwealth v Weidner, 4 Pa. Co. Ct. 437.

Canal Lock-Keeper. A lock-keeper in the employ of the Schuylkill Navigation Company is not liable to conviction for violating the Pennsylvania act of 22d of April, 1794, prohibiting worldly employment upon Sunday, for opening the lock gates on the Schuylkill Canal to admit of the passage of boats on the Sabbath day, on the demand of owners or captains of boats navigating the canal. The Schuylkill River is a public highway, and as people have a right for some purposes to pass along it, even on Sunday, the company must keep it open and the agents of the company are not to judge as to the lawfulness of the travel, which is done at the risk of incurring the penalty prescribed for the violation of Sunday, inflicted in the mode prescribed by law. Murray v Commonwealth, 24 Pa. 270.

Charitable Institution, Resolution. A resolution amending a by-law of a charitable institution relative to relief of such members was held not void because adopted on Sunday. McCabe v Father Matthews, 24 Hun (N. Y.) 119.

Chattel Mortgage. A promise by the purchaser of mortgaged personal property to pay the mortgagee the amount due, if the latter will surrender the note and mortgage to the mortgagor, is not within the statute of frauds. It is no defense to a suit on such promise that the purchase from the mortgagor was made on Sunday, nor that there was a breach of the mortgagor's warranty. Provenchee v Piper, 68 N. H. 31.

Church, Resolution to Employ Minister. An ecclesiastical corporation may, at a regular service on Sunday, adopt a resolution to employ a minister. Arthur v Northfield Congregational Church, 73 Conn. 718.

Cigars. The sale of cigars on Sunday in the usual course of the seller's business to a habitual smoker of cigars is a violation of the Sunday law.

A hotel keeper may not keep open on Sunday a stand, room, or other place for the purpose of general sales of cigars or tobacco to resident customers or boarders, however it may be as to the transient guest who had no opportunity to provide for his Sunday wants.

The court does not know judicially that smoking a cigar by one who has acquired the habit is a necessity.

The word "necessity," as used in the Sunday law, does not mean an absolute or physical necessity, but a moral fitness or propriety of the work or labor done under the circumstances of the particular case. It ought to be an unforeseen necessity, or such as could not reasonably have been provided against. Mueller v State, 76 Ind. 310.

A sale of cigars by a tobacconist in his shop in the usual way and for ordinary use on the Lord's Day is not a sale of drugs and medicines, within the meaning of these words in the Massachusetts statute of 1887, incorporating certain exceptions into the public statutes, chap. 98, sec. 2, which prohibited the keeping open shop on that day for the purpose of doing business. Commonwealth v Marzynski, 149 Mass. 68.

A sale of cigars on Sunday by a licensed innkeeper, whether to his guests or to strangers, was illegal under the Pennsylvania act of 1794. Baker v Commonwealth, 5 Pa. Co. Ct. 10.

Commercial Paper. A creditor drew an order on his debtor in favor of a third person, which was accepted, and the money thereon was paid to the creditor. The entire transaction occurred on Sunday. The creditor was about to leave town, and the payment was an accommodation to him. The court held that the transaction was not a work of necessity or charity, and that an action could not be maintained upon the acceptance. Mace v Putnam, 71 Me. 238.

If drafts were accepted and delivered on Sunday, they

were void between the parties; but if they were falsely dated as of another day, and came into the hands of an innocent holder, who took them for value without notice, and in the due course of trade, the acceptor was estopped from setting up that defense in a suit against him by such holder. But if the contract of purchase was on Sunday, then it was not in the due course of trade, and the holder would not be protected. The acceptances in this case were dated on Saturday, but there was no evidence that the holder received them on Sunday, or knew of any irregularity in their execution. Harrison v Powers, 76 Ga. 218.

Common Carrier. Where cattle were received Sunday afternoon by a railroad company to be transported over its line it was held that such prohibition against Sunday business did not apply; also that the railroad company was liable in damages for failure to transport the cattle promptly, instead of waiting until Monday morning. Philadelphia, Wilmington & Baltimore R. R. Co. v Lehman, 56 Md. 209.

A contract for the transportation of property upon a steamboat is not void because made on Sunday, nor because the voyage is to commence and does commence Sunday evening. Horses were on Sunday placed on board a steamer for transportation, and on that day the freight was paid and a receipt taken, but there was no contract requiring the trip to begin that day. The steamer started on Sunday, and on Monday was wrecked, resulting in the loss of the horses. It was held that the contract was not void because made on Sunday. Merritt v Earle, 29 N. Y. 115, aff'g. 31 Barb. (N. Y.) 38.

Contract. Though an executory contract of sale made on Sunday is illegal and not enforceable, yet where the contract is executed by delivery of possession the title of the property sold passes, and the property is not thereafter subject in the hands of the vendee to attachment in favor of the vendor's creditors. Blass v Anderson, 57 Ark. 483.

An agreement on Sunday between a debtor and his cred-

itor and a third person, that such third person should pay the debt as an accommodation to the debtor, and the debt was paid on that day, the transaction was held void under the Maine statute against doing business on Sunday, and that it was not a work of necessity nor charity. In an action by the third person on a written order given as a part of the transaction it was held that he was not entitled to recover. Mace v Putnam, 71 Me. 238.

A letter written and delivered on Sunday, promising to pay for services, may become the basis of a contract if there is no evidence of actual acceptance on that date, and the services are performed on a week day. Tuckerman v Hinkley, 9 Allen (Mass.) 452.

If a letter is written and delivered on Sunday, requesting and promising to pay for the performance of services, and there is no proof of an agreement made on that day to perform the same, the person who received the letter may maintain an action upon the promise contained therein, if he subsequently performs the service on week days. Tuckerman v Hinkley, 9 Allen (Mass.) 452.

A contract for the purchase of goods was initiated on Saturday and completed on Sunday. It was void, but was held enforceable by reason of the subsequent promise of the purchaser to pay for the property which was deemed a ratification of the original contract. Williams v Paul, 4 M. & P. (Eng.) 532.

While an executory contract made on Sunday will not be enforced by the courts, such a contract may be ratified and reaffirmed on a secular day, and will then become valid. In this case a note was discounted on Sunday, and a check for the proceeds delivered dated the next day, but the money was not drawn until the following Wednesday. It was held that the loan was valid. The contract was not completed until Wednesday. Cook v Forker, 193 Pa. St. 461.

In Tillock v Webb, 56 Me. 100, it was held that a contract for the use of a horse and buggy on Sunday not for a purpose of necessity or charity was void, and that a promissory

note given by the hirer as compensation for damages to the horse and buggy, was without consideration.

A contract by which a horse is let on the Lord's Day is void, and a court of law will not enforce it nor give compensation or damages for breach of it. But if the person hiring the horse, having completed the distance agreed upon, undertakes a new and independent journey, not within the terms of the illegal contract, the illegality of the contract furnishes no defense for his subsequent acts. Trover may be maintained for the wrongful conversion of the horse, unless the owner to establish his claim invokes aid from the unlawful agreement.

A let a horse to B on the Lord's Day to go three miles; B went with him six miles further, and overdrove him so that he died. It was held that an action of trover lay for damages. Morton v Gloster, 46 Me. 520.

If a contract for the hire of a horse was made on Sunday, and the horse was injured by the negligence of the hirer, an action may be maintained against him by the owner, notwithstanding the fact that the hiring was on Sunday. Harrison v Marshall, 4 E. D. Smith (N. Y.) 271.

Letting a horse on Sunday is a matter of business, and traveling with a horse for pleasure on Sunday violates the statute. If the horse is injured by immoderate driving in consequence of which he dies, the owner cannot recover even if the injury occurred while the hirer was driving beyond the place named in the contract. Gregg v Wyman, 4 Cush. (Mass.) 323.

A contract for the purchase of land was initiated, but not completed, on Sunday. A payment on the contract was made on a subsequent week day, but there was a failure of consideration resulting from the refusal of one partner to confirm the contract made with his copartner. The plaintiff who made the payment on the contract was held entitled to recover it back, and the Sunday negotiations were held no bar to the action. Merrill v Downs, 41 N. H. 72.

A contract for the performance of work on a railroad was

initiated by negotiations begun but not concluded on Sunday. The work was performed and recovery on the contract was sustained on the ground that the Sunday negotiations constituted a mere proposition, not resulting in a completed contract on that day. Stackpole v Symonds, 23 N. H. 229.

In an action in Vermont based on a fraud in the exchange of horses which occurred in New Hampshire on Sunday it was held that the contract, if made in another State, was not in violation of the law of Vermont. A contract made on Sunday is not tinged with any general illegality; it is illegal only as to the time in which it is entered into. Adams v Gay, 19 Vt. 358.

A contract made on Sunday for the performance of labor, which was afterward performed on week days, rendered the employer liable for the amount agreed upon. Receiving the labor was in effect a ratification of the contract, and he was bound to pay for it. Meriwether v Smith, 44 Ga. 541.

When the time for the performance of a contract falls on Sunday the compliance on the following day will be a sufficient performance. Stryker v Vanderbilt, 27 N. J. Law Rep. 68.

Where the last day for performing a contract falls upon Sunday the party has the following Monday on which to perform. Otherwise, as to contracts where days of grace are allowed, the last of which falls on Sunday, if Sunday be the next day after presentment of a protest of a bill or note, the notice of protest will be in time if sent on the following Monday. Anonymous, 2 Hill (N. Y.) 375.

A contract entered into in New York by parties resident there, and to be performed there, is to be governed by the laws of that State. According to the judicial decisions in New York, it is settled that when the day of the performance of a contract, upon which days of grace are not allowed, falls on Sunday, that day is not to be counted. and the contract may be performed on the next Monday. Stebbins v Leowolf, 3 Cush. (Mass.) 137.

An executed contract made on Sunday is not void. There-

fore a sale of personal property on a week day for which a note was given on Sunday, possession of the property having been transferred to the buyer and the note paid, the transaction was held valid, notwithstanding a part of it occurred on Sunday. Chestnut v Harbaugh, 78 Pa. St. 473.

A contract for the sale of property initiated on a week day, but not completed until Sunday, must be regarded as a Sunday contract and therefore void. Smith v Foster, 41 N. H. 215.

It was held in New York that any business not judicial can be lawfully done on Sunday, except so far as it is prohibited by statute. The exposure of certain articles to sale is prohibited. The prohibition is evidently directed against the public exposure of commodities to sale in the street, or in stores, shops, warehouses or market places. It has no reference to mere private contracts, which are made without violating or tending to produce a violation of the public order and solemnity of the day. Every man is permitted, in those respects, to regulate his conduct by the dictates of his own conscience. In this case the contract was made on Sunday in Canada, but it related to property in this State, which was transferred by one partner to another in settlement of partnership affairs. The transfer was sustained. Boynton v Page, 13 Wend. (N. Y.) 425.

An agreement was made on Sunday for the extension of a debt on condition that a certain amount should be paid at a specified date, and the amount was afterward paid accordingly. The contract was not void, although made on Sunday. It was a new contract and binding on both parties. The Sunday law should not be used as a means to perpetrate a fraud. Uhler v Applegate, 26 Pa. St. 140.

Where a contract was to be performed on demand, a demand for the performance on Sunday need not be complied with. A party is not bound to perform a contract on that day. Delamater v Miller, 1 Cow. (N. Y.) 75.

A contract made on Sunday is not void at common law. An executory contract made on Sunday cannot be enforced,

but an executed contract consummated on Sunday, which does not need the aid of the court to enforce it, will not be avoided on that ground. A deed previously signed and acknowledged, but delivered on Sunday, will pass the title to the grantee. Shuman v Shuman, 27 Pa. St. 90.

If an offer made on Sunday be accepted on Monday, the contract is not invalid under the New Hampshire public statutes, chap. 271, sec. 3. McDonald v Fernald, 68 N. H. 171.

Conversion, Driving Horse Beyond Contract Limit. A person who hires a horse of its owner to drive to a particular place, and drives it to another place, is liable in tort for the conversion of the horse, although the contract of hiring was made on the Lord's Day, and, as both parties knew, for pleasure only, and therefore, illegal and void. Hall v Corcoran, 107 Mass. 251.

Courts. In Story v Elliot, 8 Cow. (N. Y.) 27, it is held that by the common law all judicial proceedings are prohibited on Sunday. Making an award is a judicial proceeding, and is invalid if made on that day.

Courts, Ancient Hebrew Custom. Sir Henry Spelman quotes several Hebrew writers as authority for the statement that Jewish courts frequently sat on the Sabbath, and that it was customary for the Sanhedrin to hold sessions each week day "from morning to night in the Gates of the city; and on the Sabbath, and on festivals upon the walls. So the whole year then seemed a continual term, no day exempted." Swann v Broome, 3 Bur. (Eng.) 1597; see also Story v Elliot, 8 Cow. (N. Y.) 27, where the court quotes from Lord Mansfield's opinion.

Courts, Charging Jury. The Tennessee Code of 1858 recognized the common law rule prohibiting holding courts on Sunday; accordingly, it was held that unless authorized by statute the judge presiding on a criminal trial could not lawfully charge the jury on Sunday. Charging a jury was said to be a high judicial function. Moss v State, 173 S. W. (Tenn.) 859.

Courts, Early Christian Custom. Lord Mansfield, in Swann v Broome, 3 Bur. (Eng.) 1597, considering a question involving the validity of judicial proceedings on Sunday, gives an interesting history of ancient usage, quoting from Sir Henry Spelman's Original of Terms the statement that "the Christians at first used all days alike for hearing of causes, not sparing (as it seemeth) the Sunday itself." Lord Mansfield says the Christians had two reasons for this course: "One was, in opposition to the heathens, who were superstitious about the observation of the days and times, conceiving some to be ominous and unlucky, and others to be lucky, and therefore the Christians laid aside all observance of days. A second reason they also had, which was, by keeping their own courts always open, to prevent Christian suitors from resorting to the heathen courts." Beginning with the year 517 several canons were made by church councils restricting and finally prohibiting judicial proceedings on Sunday. These canons were confirmed by William the Conqueror and Henry II, and so became a part of the common law of England.

Courts, New York City Magistrates. In People ex rel Burke v Fox, 205 N. Y. 490, it was held that New York city magistrates may exercise jurisdiction on Sunday where it is necessary to preserve the peace, and, accordingly, a summary conviction of disorderly conduct on that day was sustained; citing sec. 5 of the Judiciary Law; Cons. Laws, chap. 30 and the Inferior Criminal Courts Act of 1910, chap. 659, sec. 71, conferring jurisdiction on city magistrates to sit on Sunday.

Deed. A deed made on Sunday is void. A contract not otherwise invalid, but void only because made on Sunday, constitutes an exception to the general rule that void contracts are not susceptible of ratification. A deed takes effect from the time of its delivery, and though signed and acknowledged on Sunday, if delivered on another day, it is a valid deed, whatever may be the effect upon the acknowledgment. Where a deed is executed on Sunday, but by the pro-

curement of the grantor is dated upon the preceding day, he cannot assert the invalidity of the deed against a subsequent bona fide purchaser. Love v Wells, 25 Ind. 503.

Defined. In Maine it was held that the Sabbath, as established by statute, commences at midnight preceding and ends at sunset on the Lord's Day. Traveling after sunset on that day is not illegal. Nor was it any defense in an action for damages against a town, for injuries to plaintiff's horse by a defect in one of their highways received after sunset on the Sabbath day, that the plaintiff let his horse on Sunday, and at the time of the injury the horse was being used under such contract. Bryant v Biddeford, 39 Me. 193.

Under the Texas law Sunday includes the twenty-four hours from midnight to midnight. The giving of two or more theatrical performances in the same place on the same day does not constitute separate offenses. Muckenfuss v State, 55 Tex. Cr. Re. 229.

Under the New Hampshire statute of 1799 the Lord's Day includes twenty-four hours from midnight to midnight. The service of civil process on that day is illegal. Shaw v Dodge, 5 N. H. 462.

It was held in Connecticut, Fox v Abel, 2 Conn. 541, that the term "Lord's Day" included the solar day only, the time between sunrise and sunset, and that the service of a body execution after midnight on Sunday, and before sunrise was not a violation of the statute against the service of civil process on the Lord's Day.

Demurrage. In view of the statute prohibiting servile labor on Sundays, a contract to pay demurrage will, in the absence of any proof to the contrary, be deemed to intend to mean demurrage for working days, and to exclude Sundays. Rigney v White, 4 Daly (N. Y.) 400.

Disorderly Conduct. The Sunday law of 1794 is expressly limited to worldly business and unlawful sports or diversions, and does not apply to drunkenness, swearing, and disorderly conduct. Noftsker v Commonwealth, 22 Pa. Co. Ct. 559.

Employer and Employee. The prohibition contained in the Virginia Sunday law was held to apply both to an employer and to an employee. Puckett v Commonwealth, 107 Va. 844.

Execution. The sheriff received an execution on a week day with instructions to hold it until further directions. On Sunday the plaintiff in the execution directed the sheriff to proceed. On Monday, when about to levy under this execution, he received another execution. It was held that the latter execution had priority. The direction to the sheriff given on Sunday was a nullity. Stern's Appeal, 64 Pa. St. 447.

Judgment was entered in the forenoon on Saturday. An execution was issued Sunday night immediately after midnight. The statute prohibited the issue of an execution until the lapse of twenty-four hours after the entry of the judgment. It was held that Sunday must be excluded from the computation of time, that the execution was prematurely issued, and that a levy under it was void. Penniman v Cole; 8 Metc. (Mass.) 496.

Where the lien of an attachment continued thirty days after the rendition of the judgment, and the last day fell on Sunday, the time was not thereby extended. Sunday could not be excluded from the computation, and an execution issued on that day was too late and invalid. Alderman v Phelps, 15 Mass. 225.

Food. A proprietor of an ice cream saloon and a cake and bread bakery sold ice cream, cake and bread to persons who either ate them on the premises or carried them away. Such sales were held not to be a violation of the Pennsylvania Sunday law of 1794. Commonwealth v Keithan, 1 Monag. Pa. Sup. Ct. Cas. 368.

Foreclosure Sale. In Sayles v Smith, 12 Wend. (N. Y.) 57, the court sustained the regularity of a notice of sale in foreclosure by advertisement which provided for a sale on Sunday, saying that such sale on Sunday was not prohibited by law; but in this case the sale was postponed before the Sun-

day fixed for the sale, and was had on the following day, Monday.

Games. Under the Sunday law of Mississippi the term "games" means such sports and contests as are publicly exhibited, and not private diversions, and therefore, an indictment alleging that the defendant "did unlawfully play at cards and dice on Sunday" charged no offense. Rucker v State, 67 Miss. 328.

Gaming, Dice. The Texas statute against gaming for money in a city on Sunday was held to include gaming with dice prohibited by a subsequent statute. Borders v State, 66 S. W. (Texas) 1102.

Habeas Corpus. A writ of habeas corpus may be executed on Sunday. Rice v Commonwealth, 3 Bush (Ky.) 14.

Ice Cream. The sale of ice cream on Sunday by a baker who conducts a refreshment room in connection with the bakery but who does not furnish ordinary public entertainment, is a worldly employment prohibited by the Pennsylvania act of 1794. Commonwealth v Burry, 5 Pa. Co. Ct. 481.

Immoderate Driving. An action will not lie to recover damages arising from the immoderate driving of a horse during a pleasure drive on the Lord's Day for which he was hired. Parker v Latner, 60 Me. 528.

In Way v Foster, 1 Allen (Mass.) 408, it was held that no action lies for an injury to a horse from immoderate driving, if he had been intrusted by the owner to the defendant to be driven in violation of the statute for the observance of the Lord's Day.

Injuries, Action for Damages. It was held in New Hampshire that it was a good defense to an action brought in that State for injuries sustained in the State of Maine while traveling for pleasure on the Lord's Day that no recovery could be had under the laws of that State. Beacham v Portsmouth Bridge, 68 N. H. 382.

Insurance. Where a life insurance policy required the payment of a premium within thirty days after notice, and the time expired on Sunday, it was held that a payment, or

tender, on the next day was in time, and the policy was continued in force. Campbell v International Life Assurance Society, London, 4 Bosw. (N. Y.) 298.

Intoxicating Liquors. If the prohibition includes selling liquor on Sunday, and also exposing for sale on Sunday, on proof of sale only the defendant cannot also be convicted of exposing for sale as a part of the same transaction. He is not liable to two penalties. The act of selling necessarily includes the act of exposing for sale. Brooklyn v Toynbee, 31 Barb. (N. Y.) 282.

A hotel keeper who was authorized to sell liquor to be drunk on the premises, except on Sunday, could not avoid the penalty of the statute against Sunday sale by requiring the purchasers to first eat a cold lunch placed on the table at which the liquors are served. Commonwealth v Hagan, 140 Mass. 289.

Keeping open on Sunday a place for the illegal sale of intoxicating liquors was held to constitute an offense against the Massachusetts Sunday law. Commonwealth v Trickey, 13 Allen (Mass.) 559.

Where a sale is made on Saturday on an agreement that the saloon keeper should keep the beer on ice, and hand it to the customer on Sunday through a broken glass in a door, was held to be a violation of the statute against selling liquor on Sunday. Wallis v State, 78 S. W. (Texas) 231.

Proof of intent is necessary on a charge against a licensed tavern keeper for selling liquor on Sunday. Such intent cannot be presumed from the fact that the sale is by a bartender. The question is for the jury. People v Utter, 44 Barb. (N. Y.) 170.

Jews. Jews are bound to observe the civil regulations made for the keeping of the Christian Sabbath. Society for the Visitation of the Sick v Commonwealth, 52 Pa. 125.

Persons professing the Jewish religion, and others who keep the seventh day as Sabbath, are subject to the penalties imposed for violation of the Sunday law of 1794. Commonwealth v Wolf, 3 Ser. & R. (Pa.) 48.

Justices, Extra Compensation. A special justice of the city of New York, receiving an annual salary for his services in that capacity, cannot recover extra compensation for services performed on Sunday. Palmer v Mayor, N. Y., 2 Sandf. (N. Y.) 318.

Laborer, Hiring. It was held in Rex v Whitnash, 1 Man. & Ry. (Eng.) 452, that a contract for hiring a servant for a year, made between a farmer and a laborer on a Sunday was not within the prohibition in 29 Car. 2, chap. 7, sec. 1.

Lease. A written lease was executed on Sunday, and the lessee entered into possession that day. The lease was absolutely void. Subsequent possession of the property and the payment of rent by the tenant created a tenancy, the terms of which depended on some contract aside from the written lease, which could not be resorted to for the purpose of ascertaining the terms of the contract. Vinz v Beatty, 61 Wis. 645.

An agreement for rent of land made on Sunday is void; but if the lessee occupies the premises during the term stated in the agreement, such agreement, with other facts and circumstances, may be shown for the purpose of establishing the tenant's liability for rent. Rainey v Capps, 22 Ala. 288.

A lease executed on Sunday is void, and subsequent occupation of premises will not be deemed a ratification of it, but some new promise or condition in respect thereto is necessary. Parol evidence that it was not executed on the day it bore date is incompetent. McIntosh v Lee, 57 Ia. 356.

A guaranty for the fulfillment of a lease executed and delivered on the Lord's Day between sunrise and sunset is void under Revised Statutes chap. 50, although the lease itself be not executed until a week day following. Merriam v Stearns, 10 Cush. (Mass.) 257.

Legal Proceedings. Where an act is required by statute to be done in a given number of days less than a week an intervening Sunday may be excluded in the computation of the time. Where the time fixed by statute for doing an act

exceeds a week, and the last day falls on Sunday, the act must be done on the preceding Saturday. Anonymous, 2 Hill's Rep. 375.

Sunday is not to be reckoned one of the three days for which an officer may adjourn the sale of an equity of redemption taken on execution. Thayer v Felt, 4 Pick. (Mass.) 354.

In Missouri it was held that where the last day for filing a claim against a decedent's estate fell on Sunday, the claim might be filed on Monday. Keys v Keys' Estate, 217 Mo. 48.

Under a statute which provided that when notice of desire to take the poor debtor's oath is served by leaving a copy at the place of abode of the creditor, not less than twenty-four hours shall be allowed before the time appointed for the examination. Sunday must be excluded in the computation of time. Cunningham v Mahan, 112 Mass. 58.

In an action commenced on Sunday the defendant appeared, answered, tried the cause, and made a motion for a new trial without any objection as to the irregular commencement of the action. On appeal the defendant for the first time raised the Sunday objection, but it was held to be too late. Venable v Ebenezer Bapt. Ch., 25 Kan. 177.

Service on a Sunday of a notice and affidavits or other papers, which are to be the foundation of a motion for a rule, is irregular and void. Field v Park, 20 Johns. (N. Y.) 140.

A declaration in trespass may be delivered on Sunday. Hargrave & Taylor (Hill. 13 W. 111) Fort. (Eng.) 375. See also White and Martin, (Mich. 8 W. 111) Fort. (Eng.) 375.

Legislative Powers. A statute prohibiting common labor on Sunday is a mere municipal or police regulation, whose validity is neither strengthened or weakened by the fact that the day of rest it enjoins is the Sabbath day. The Legislature has power to require cessation of labor at stated intervals, and to name the day of rest. Bloom v Richards, 2 Ohio St. 387.

As to the power of the Legislature to protect Sunday from desecration, see Neuendorff v Duryea, 69 N. Y. 557; People

v Dunford, 207 N. Y. 17, 20; People v Moses, 140 N. Y. 215; also Lindenmuller v People, 33 Barb. (N. Y.) 548.

"The establishment and regulation of the Sabbath is within the just powers of the civil government. With us the Sabbath as a civil institution is older than the government." "It is a law of our nature that one day in seven must be observed as a day of relaxation and refreshment, if not for public worship. Experience has shown that the observance of one day in seven as a day of rest is admirable service to a state, considered merely as a civil institution." "The stability of government, the welfare of the subject, and the interests of society, have made it necessary that the day of rest observed by the people of a nation should be uniform, and that its observance should be, to some extent, compulsory, not by way of enforcing the conscience of those upon whom the law operates, but by way of protection to those who desire and are entitled to the day." "As a civil institution the selection of the day is at the option of the Legislature; but for a Christian people it is highly fit and proper that the day observed should be that which is regarded as the Christian Sabbath, and it does not detract from the moral or legal sanction of the law of the State that it conforms to the law of God, as that law is recognized by the great majority of the people. The Sabbath exists as a day of rest by the common law, and without the necessity of legislative action to establish it; and all that the Legislature attempts to do in the Sabbath laws is to regulate its observance." "The Christian Sabbath is, then, one of the civil institutions of the State, and to which the business and duties of life are, by the common law, made to conform and adapt themselves." Lindenmuller v People, 33 Barb. (N. Y.) 548.

The Christian Sabbath is a civil institution older than our government, and respected as a day of rest by our constitution, and the regulation of its observance as a civil institution is within the power of the Legislature as much as any regulations and laws having for their object the preserva-

tion of good morals and the peace and good order of society. Karwisch v Mayor, etc., Atlanta, 44 Ga. 205.

It is no part of the object of the act to enforce the observance of a religious duty. The act does not, to any extent, rest upon the ground that it is immoral or irreligious to labor on the Sabbath any more than upon any other day. It simply prescribes a day of rest from motives of public policy as a civil regulation. The principles on which the statute rests are wholly secular, and they are none the less so because they may happen to concur with the dictates of religion. The Legislature has no power over things spiritual but only over things temporal, nor any power whatever to enforce religious duties, simply because they are religious, but only, within the limits of the constitution, to maintain justice and promote the public welfare. The act rests on public policy alone. McGatrick v Wason, 4 Ohio St. 566. State Legislatures, and Congress within the District of Columbia, have power to set apart Sunday as a day of rest and prohibit labor thereon. This is not done for the purpose of enforcing religious observance, but the regulation is made in the interest of good order and the welfare of society. The Legislature might select any other day, but by selecting the Sabbath day has selected the day society generally recognizes as a day of rest, irrespective of any legal requirement. Referring to the Maryland act of 1723, among other things prohibiting blasphemy, the court said it was evidently intended to prevent the desecration of the Lord's Day, and not primarily to enforce a day of rest. It was held that this statute, and others of a similar import, enacted during the colonial period, had become obsolete by the formation of a State government and the adoption of different policies of legislation which had limited the enactment of laws in relation to Sunday to the cessation of certain prescribed forms of business on that day, and which do not assume to impose any religious obligation on the citizen. District of Columbia v Robinson, 30 App. D. C. 283.

Levy. A levy on property is void. Peirce v Hill, 9 Port. (Ala.) 151.

Loan. A loan of money made on the Lord's Day is void. Whether the promise to repay be in writing, verbal, or implied, it cannot be enforced. Meader v White, 66 Me. 90.

Mail Carrier. A contract with the postmaster-general to carry mail required it to be carried between certain points every day. This was held to justify carrying the mail on Sunday, notwithstanding the statute which prohibited traveling on that day, except as a work of necessity or charity. Commonwealth v Knox, 6 Mass. 76.

Marriage. A marriage contract may be performed on Sunday. Hayden v Mitchell, 103 Ga. 431.

Meat Market. Keeping open a butcher shop and selling meats and vegetables from it on Sunday is a violation of the Arkansas statute of 1895 imposing a fine on every person who shall on Sunday keep open a store or retail any goods, wares, and merchandise. Petty v State, 58 Ark. 1.

Moving Pictures. A moving-picture show was held to violate the New Jersey statute. Rosenberg v Arrowsmith, 89 A. (N. J.) 524; see also Ex parte Zuccaro, 162 S. W. (Tex.) 844; also Lempke v State, 171 S. W. (Tex. Crim. App.) 217; see also People ex rel Kieley v Lent (Yonkers) 166 A. D. 550 (N. Y.), but see Hauck v Ingles, 148 N. W. (Minn.) 100.

Municipal Ordinance. An ordinance of the town of Columbia, South Carolina, prohibiting the sale of certain goods on Sunday was sustained in Town Council, Columbia v Duke, 2 Strobh. L. (S. C.) 530. It did not violate the provision of the State constitution relative to the freedom of religious profession and worship, nor did it violate the amendment to the federal constitution on the same subject.

An ordinance adopted by the city of Charleston prohibiting the sale of certain goods on Sunday was held not to be a violation of the provision of the State constitution declaring freedom of religious profession and worship. The defendant was an Israelite who kept the seventh day—the

Jewish Sabbath. The court held that Sunday was a day of rest, and that Sunday had nothing to do with it. The prohibition containing the ordinance operated against Christians and Jews alike. City Council, Charleston v Benjamin, 2 Strobh. L. (S. C.) 508.

If the general State law contains provisions relative to Sunday observance, and prohibiting business on Sunday, city authorities have no power to enact an ordinance on the same subject, but they may enact ordinances on subjects not embraced in the general law. Rothschild v Darien, 69 Ga. 503.

Necessity. A person who repairs a railroad track on Sunday by removing a broken rail and replacing it with a new one does not violate the statute against worldly business on Sunday. In this case the broken rail was discovered on Sunday morning. Commonwealth v Fields, 4 Pa. Co. Ct. 434.

Repairing on Sunday a belt in a mill which broke on Saturday was held to be a work of necessity, as otherwise the mill could not have been run on Monday. State v Collett, 79 S. W. (Ark.) 791.

Works of necessity are not limited to labor for the preservation of life, health, or property from impending danger. The necessity may grow out of, or, indeed, be incident to the general course of trade or business, or even be an exigency of a particular trade or business, and yet be within the exception of the act. McGatrick v Wason, 4 Ohio St. 566, declaring it lawful to load a vessel on Sunday if there was no other time to do so, in view of the danger that navigation might be closed.

It was held not a work of necessity to clear out a wheel-pit on Sunday, for the purpose of preventing the stoppage on a week day of mills which employed many hands. A person who gratuitously assisted the owner of the wheel-pit in clearing it out on Sunday, and during such service was injured, was not entitled to recover damages for the injury, for the reason that his illegal act in working on Sunday was so inseparably connected with the cause of action as to pre-

vent his maintaining the suit. McGrath v Merwin, 112 Mass. 467.

An aged woman, while in a hospital suffering from severe injuries, executed on Sunday an assignment of personal property in trust for her own benefit, comfort, and support during life, for her funeral expenses, and a burial lot, and for the celebration of masses for the benefit of her father, brother, and herself. This was held to be a work of necessity or charity under the statute, and was valid. Donovan v McCarty, 155 Mass. 543.

The Illinois criminal code, which prohibits labor on Sunday, work of necessity and charity excepted, does not mean by the word "necessity" physical and absolute necessity, but a moral fitness or propriety of the work done under the circumstances of each particular case. Any work, therefore, necessary to be done to secure the public safety, by the safekeeping of a felon, or delivering him to bail, must come within the true meaning of the exception in the statute. Therefore it was held that a prisoner might enter into a recognizance on Sunday without violating the statute. Johnston v People, 31 Ill. 469.

"By a work of necessity is not meant by the statute a physical and absolute necessity but any labor or work which is morally fit or proper to be done on that day under the circumstances of the particular case." Commonwealth v Fuller, 4 Pa. Co. Ct. 429.

It was held that when a defect in a highway is discovered on Sunday which may injure the limbs and the lives of travelers, it is not only morally fit and proper that it should be immediately repaired, but it is the imperative duty of the town which is bound to keep the highway in repair to cause it so to be done, or to adopt means to guard against the danger until it can be done, and work and labor for this purpose is no violation of the law or of religious duty. Flagg v Millbury, 4 Cush. (Mass.) 243.

Running certain trains on Sunday by railroad companies is a work of necessity under the Pennsylvania act of 1794,

and it is necessary to have such cars inspected and repairs to keep the road open and the cars moving. It was held that an inspector who repairs cars on Sunday was not guilty of an offense under this statute. Commonwealth v Robb, 3 Pa. Dist. Re. 701; 14 Pa. Co. Ct. 473. In Page v O'Sullivan, 159 Ky. 703, it was held that the service performed by a prison guard was a work of necessity.

Newspapers. In Commonwealth v Teamann, 1 Phila. (Pa.) 460, it was held that a charge of disorderly conduct in selling newspapers on Sunday could not be sustained without evidence that the crying of newspapers on the streets had been committed in such a disorderly manner as to constitute a breach of the peace.

A person kept open his place of business on Sunday, and Sunday papers of that date were upon that day sold therein, and he received and caused to be delivered to the customers upon his route as a carrier upon that day the newspapers which had that day been published. This was held a violation of the Pennsylvania Sunday law of 1794. That carrying on any business on Sunday may be profitable to the persons engaged in it, that it may serve the convenience or tastes or wishes of the public generally, is not the test which the statute applies. Commonwealth v Matthews, 2 Pa. Dist. Re. 13.

The publication of a newspaper on Sunday was held to be worldly employment under the Pennsylvania act of 1794, and a person who was a stockholder, director, and general business manager of the newspaper company was held liable for a violation of the statute. Commonwealth v Houston, 3 Pa. Dist. Re. 686, 14 Pa. Co. Ct. 395.

A contract for the publication of an advertisement in a newspaper to be issued and sold on Sunday is void. Judge Allen, after quoting the statute regulating Sunday observance says: "The statute is in harmony with the religion of the country and the religious sentiment of the public," and that the statute should be liberally construed in respect to the mischiefs to be remedied. Smith v Wilcox, 24 N. Y. 353.

Roth v Hax, 68 Mo. App. 283, sustained the validity of a notice that a contract for street improvements would be let on a given day, although the first insertion of such notice was in a Sunday newspaper.

In Montana the court sustained the validity of the publication of a notice of the submission of a constitutional amendment, although it was published in the Sunday issue of one paper, there being in that State no statute prohibiting such a publication. The court said that the common law rule would govern in such a case. State ex rel Hay v Alderson, 49 Mont. 387, 142 P. 210.

In Sentinel Co. v Motor Wagon Co., 144 Wis. 224, it was held that the publisher of a newspaper could not recover for an advertisement published on Sunday.

A contract to distribute newspapers on Sunday was held void. Knight v Press Co., 227 Pa. 185.

Object. The law gives to the public the right of enjoying the Sabbath as a day of rest and of religious exercise, free and clear of all disturbance from merely unnecessary and unauthorized worldly employment. Where this law is contravened in such a manner as to disturb that enjoyment by noise or disorder accompanying it, or incident to it, it may be treated as a breach of the peace. Commonwealth v Jeandell, 2 Grant's Cas. (Pa.) 506.

The institution of the Sabbath is not only admirably adapted to promote and establish religion among us, but to secure and preserve our physical as well as moral health and strength. Commonwealth v Dupuy, Brightly N. P. (Pa.) 44.

Omnibus. Driving an omnibus on Sunday is worldly employment, and within the prohibition of the Pennsylvania act of 1794. The driver of the omnibus cannot defend by showing that he was under a contract for monthly hire, and that it included Sunday. Johnston v Commonwealth, 22 Pa. St. 102.

One Offense Only. A person can commit but one offense on the same day, by exercising his ordinary calling on a Sunday, contrary to the statute of 29 Car. 2, C. 7. And if

a justice of the peace proceed to convict him in more than one penalty for the same day it is an excess of jurisdiction for which an action will lie before the convictions are quashed. Crepps v Durden, 2 Cowp. (Eng.) 640.

Ordinary Calling. The English statute of 29 Charles II, chap. 7, sec. 1, enacts that "no tradesman, artificer, workman, colorer, or other person whatever shall do or exercise any worldly labor, business, or work of their ordinary callings upon the Lord's Day." The construction given to this statute has been that it prohibits only the prosecution of a man's ordinary secular business upon the Lord's Day. The terms "of their ordinary callings" have been held to qualify and restrict the general phraseology which precedes them. Boynton v Page, 13 Wend. (N. Y.) 425.

A farm laborer who sold soda water and lemonade on one Sunday was held not liable under a statute prohibiting a person from carrying on his ordinary business or calling on Sunday. Repeated acts are necessary to constitute an ordinary calling or business. Ellis v State, 5 Ga. App. 615.

Payment on Debt. A payment on Sunday discharges the debt. Jameson v Carpenter, 68 N. H. 62.

Physician's Prescription. Under the Texas local option law whisky is treated as medicine, and it was, accordingly, held that a sale of whisky on Sunday by a druggist on a physician's prescription was not a violation of the statute prohibiting the sale of merchandise on that day. Watson v State, 46 Tex. Cr. Re. 138.

Plaintiff's Violation of Law, When No Defense. A law relating to the Sabbath defines a duty of the citizen to the State, and to the State only. A party who erects an obstruction in a navigable stream and thereby occasions an injury to another cannot, in an action for such injury, set up a defense that the plaintiff was unlawfully engaged in worldly employment on Sunday when the injury occurred. Mohney v Clark, 26 Pa. 342.

Preserving Property. If property is exposed to imminent danger, it would not be unlawful to preserve it on Sunday,

and remove it to a place of safety. Parmalee v Wilks, 22 Barb. (N. Y.) 539, sustaining a contract providing for moving to a place of safety logs forming a part of a raft, which had been broken up in a storm.

Process. A writ of inquiry to damages cannot be executed on a Sunday, nor can damages be assessed by the jury on that day, even though the testimony is taken on the previous day. Butler v Kelsey, 15 Johns. (N. Y.) 177; see also Lord Cornwallis and Hoyle (Mich. 6 Geo. 1) Fort. (Eng.) 373.

Criminal process may be served on Sunday if such service is necessary on that day. With this limitation a warrant issued under a statute restricting the sale of intoxicating drinks might be served on Sunday unless it could be shown that the service was not necessary. Keith v Tuttle, 28 Me. 327.

A writ issued on Sunday was held void. Haynes v Sledge and Maxy, 11 Ala. 530.

Promissory Note. In Towle v Larrabee, 26 Me. 464, it was held that a promissory note made on the Lord's Day, given and received as the consideration for articles purchased on that day, is void.

A note signed and delivered on Sunday is, as between the parties, invalid. It is otherwise if it be only signed on that day and subsequently delivered. The note in this instance was indorsed on Monday. If it was an accommodation paper and indorsed on Monday, it apparently then first became a binding contract and an action could be maintained upon it. Bank of Cumberland v Mayberry, 48 Me. 198.

A promissory note, though executed on Sunday is valid if delivered on some other day. Hofer v Cowan, McClung Co., 55 Cent. Law Journal (Ct. App. Ky.) 290.

A promissory note given on Sunday is void as between the parties and a subsequent promise to pay it will not make it valid. Pope v Linn, 50 Me. 83.

A note given on Sunday for a horse purchased on that day is void. O'Donnell v Sweeney, 5 Ala. 467; see also

Plaisted v Palmer, 63 Me. 576, check given for purchase price.

A subsequent innocent indorsee for value is protected against any defect in a promissory note arising from the fact that it was given on Sunday. State Capital Bank v Thompson, 42 N. H. 369.

Under 8 Vic., Ch. 45, sec. 2, a note made on Sunday in payment of goods sold on that day is void as between the original parties, but not as against an indorsee for value, and without notice. Houliston v Parsons, 9 Up. Can. Q. B. 681; see also Crombie v Overholtzer, 11 Up. Can. 55.

The obligation to repay a loan is not defeated by the fact that the note on which it is borrowed was made on Sunday, or that authority to deliver it was given on that day, so long as the lender knew nothing of these facts. Beman v Wessels, 53 Mich. 549.

A promissory note executed upon Sunday in consummation of a contract previously made, not being a work of necessity or charity, is void. But though such note be written and signed on Sunday, yet it will not, on that account, be void if not delivered until some other day. Lovejoy v Whipple, 18 Vt. 379.

A note made on Sunday is void and a recovery cannot be had thereon. It cannot be presumed that the note was given on a contract made on Saturday. If there was such a contract, the action should be brought thereon instead of on the note. Kepner v Keefer, 6 Watts (Pa.) 231.

A note made payable in specific articles fell due on a Sunday. It was held that a tender of performance the next day was in time. Barrett v Allen, 10 Ohio 426.

The holder of a promissory note, bearing date on a secular day taken before maturity, and in good faith and for a valuable consideration, may maintain an action thereon, although the note was, in fact, made on Sunday. Cranson v Goss, 107 Mass. 439.

A promissory note given on Sunday for an antecedent debt is valid and binding. Kaufman v Hamm, 30 Mo. 387.

A note given on Sunday for goods previously purchased was held not void under the Georgia act of 1762. The note was not made in the exercise of the ordinary calling or business of the parties. Sanders v Johnson, 29 Ga. 526.

Where a note falls due on Sunday a tender on the following day is good. Avery v Stewart, 2 Conn. 69.

In Maine the prohibition against business on Sunday relates only to the time between midnight and sunset. A promissory note was executed on Sunday before sunset. The payee was not present at the execution of the note but received it on a subsequent week day. The transaction was not complete until the delivery of the note, and the note was accordingly held valid. Hilton v Houghton, 35 Me. 143.

A horse was sold on Sunday, and the buyer on that day gave to the seller a note for the price. Afterward the buyer made two payments on the note, retaining the horse. Such payments and retention of the horse were deemed a ratification of the original contract, and the seller was held entitled to recover on the note. Sumner v Jones, 24 Vt. 317.

Negotiations were begun late Saturday night for the purpose of preventing the imprisonment of a person charged with theft. The sister of the person charged gave a note in settlement of the matter, but it was not signed until about two o'clock in the morning. The court sustained an action on the note, notwithstanding the fact that it was made after the beginning of Sunday. Carpenter v Crane, 1 Root (Conn.) 98.

The indorsee of a negotiable promissory note, who procured it to be indorsed by the payee on the Lord's Day, cannot maintain an action thereon in his own name against the maker. Benson v Drake, 55 Me. 555.

In New Hampshire a promissory note made on Sunday was held to be void. Allen v Deming, 14 N. H. 133.

A note made on Sunday is not invalid at common law. O'Rourke v O'Rourke, 43 Mich. 58.

A note dated on Sunday may be a forgery where it is

charged and proven that it was, in fact, made on a week day. State v Sherwood, 90 Ia. 550.

In Michigan a note made and delivered on Sunday is void, although payable in another State. Arbuckle v Reaume, 96 Mich. 243.

A business transaction prohibited by law, in this instance the indorsement of a promissory note on Sunday, is void, and the contract cannot be enforced. First National Bank, Bar Harbor v Kingsley, 84 Me. 111.

Railroad Train. Running passenger cars on Sunday is a violation of the law of 1794. Commonwealth v Jeandell, 2 Grant's Cas. (Pa.) 506; see also Sparhawk v Union Passenger Railway Company, 54 Pa. St. 401.

An action lies against a street railway company to recover damages for injuries sustained by a person who was riding for pleasure on Sunday. Horton v Norwalk Tramway Company, 66 Conn. 272.

A locomotive engineer in charge of a stock train was injured while running his train on Sunday. It was held that there was no evidence that the running of the train was a work of necessity or charity; therefore that the engineer was performing labor in violation of the statute, and he was precluded from maintaining an action for personal injuries. Read v Boston & Albany R. R. Co., 140 Mass. 199.

The running of railroad passenger trains on Sunday, transporting passengers, and baggage, was held to be a work of necessity. Commonwealth v Louisville & Nashville R. R. Co., 80 Ky. 291.

Under the Georgia Penal Code, sec. 420, which prohibits the running of a freight or excursion train on Sunday, it was held that only the superintendent of transportation was indictable for the violation of the statute, and that a proceeding could not be maintained against the trainmaster who acted under the orders of the superintendent. Craven v State, 109 Ga. 266.

Redemption from Sheriff's Sale. Where a redemption from a sheriff's sale was on Saturday it was held that the next

redemption, which the law required to be made within twenty-four hours, might be made on Monday, Sunday not being a day on which such an act could be performed. Porter v Pierce, 120 N. Y. 217.

Religious Services. What is a work of necessity or charity is a question of law for the court and not a question of fact for the jury. Religious services on Sunday constitute a charity, including the sermon, the music, and any other exercises usually forming a part of the services, and persons who engage in this service do not violate the Sunday law. "It is a matter of common observation that religious societies solicit moneys for their needs and take subscriptions at their regular meetings on the first day of the week. The custom is from time immemorial. The regular Sabbath offerings, as they are called, are limited sometimes to gifts for the poor, or for sacramental purposes, or missions, but quite as often they embrace gifts for the general needs of the society, including the repairs of the church, lighting and heating, the payment of taxes, and the numerous other needs which do not differ at all from the needs of ordinary business associations." "The support of public worship is a work of charity within the meaning of the statute." A subscription on Sunday to raise money to pay for a house of worship is valid. Allen v Duffie, 43 Mich. 1.

Rescission of Contract. The rescission of a contract requiring certain formalities to make the rescission effective is as much a matter of business as that of making the contract itself, and if done on Sunday is illegal and void. Benedict v Bachelder, 24 Mich. 425.

Sale. If the charges on a party's own day book, upon which he relies as evidence of his claim, are dated on the Lord's Day, he must show that the sale was not, in fact, made on that day, or he cannot recover. Bustin v Rogers, 11 Cush. (Mass.) 346.

Negotiations on Sunday for the sale of property are invalid, and pass no title to the property. It is settled law in Michigan that a Sunday contract is a prohibited transac-

tion, the illegality of which forbids it being made a sale by a mere delivery later. The delivery must be accompanied by circumstances which in themselves supply the necessary elements of a contract, without depending upon the Sunday transaction for any essential. Aspell v Hosbein, 98 Mich. 117.

A vendor of personal property, when sued in this State upon his warranty, cannot defend upon the ground that the sale was made on Sunday, if the sale occurred in Louisiana, there being no law in that State prohibiting the enforcement of Sunday contracts. McKee v Jones, 67 Miss. 405.

Sale of a horse invalid. Knights v Brown, 93 Me. 557.

A contract for the sale of horses on Sunday is secular labor or employment within the Vermont statute. Such a contract cannot be enforced, and an action cannot be maintained on a warranty made on the sale or exchange of horses on that day. Lyon v Strong, 6 Vt. 219.

An action cannot be maintained for a deceit practiced in the exchange of horses on the Lord's Day. Robeson v French, 12 Met. (Mass.) 24.

In Tucker v Mowry, 12 Mich. 378, it was held that a contract of sale made on Sunday is void; and the vendor may on a subsequent day tender back the purchase price, and recover his property by replevin if it is not returned on demand.

The mere making of a bargain on Sunday for the sale of a horse is not void in New York unless the horse was publicly exposed for sale. The sale as made was not void at common law in New York, nor did it violate any statute. Miller v Roessler, 4 E. D. Smith (N. Y.) 234.

A contract for the sale of a horse was initiated by certain negotiations on Sunday, but the horse was not delivered, nor the money paid until the following Tuesday. The contract was not void as violating the Sunday law. Bloxsome v Williams, 3 Barn. & Cre. (Eng.) 232.

In Ohio it was held that a contract for the sale of land made on Sunday was not invalid and did not constitute

common labor under the Sunday law of 1831. Bloom v Richards, 2 Ohio St. 387.

In Northrup v Foot, 14 Wend. (N. Y.) 248, it was held that an action could not be maintained in New York based on an alleged deceit in the sale of a horse made in Connecticut on Sunday, where such sale was void.

The private sale of a span of horses on Sunday is not void at common law; nor is it void under the New York statute prohibiting the exposure for sale of goods, wares, and merchandise on Sunday. Batsford v Every, 44 Barb. (N. Y.) 618.

A horse was sold privately on Sunday by a horse dealer to one who knew the seller's calling. It was held that such a sale did not violate the Sunday statute of North Carolina, and did not prevent the purchaser from maintaining an action for deceit on the sale of a horse. Melvin v Easley, 7 Jones Law Rep. (N. C.) 356.

A sale of goods on a Sunday, which is not made in the exercise of the ordinary calling of the vendor, or his agent, is not void at common law or by the statute of 29 Car. 11, chap. 7. Drury v Defontaine, 1 Taunt. (Eng.) 135.

A contract for the sale of a horse on Sunday is void. The seller of a horse on Sunday cannot recover the animal back from the purchaser, or maintain trover for its value, on the ground that the contract was void and that no title passed. If the seller of the horse on Sunday was made drunk by the purchaser thereof, for the purpose of defrauding him, the parties were not in pari delicto and the seller can recover his horse. Block v McMurray, 56 Miss. 217.

A horse dealer cannot maintain an action upon a contract for the sale and warranty of a horse made by him upon a Sunday. Fennell v Ridler, 5 Barn. & Cres. (Eng.) 406.

Salesman, Services on Sunday. In Wisconsin a traveling salesman, under a contract by which he was to receive a salary and also his expenses not exceeding an average specified amount for each working day, was permitted to include Sunday among the working days, where he had actually

traveled or rendered service on that day. Ornstein v Yahr & Lange Drug Co., 119 Wis. 429.

Saloon. A saloon is open within the contemplation of 3 How. Stat., sec. 2283 (Michigan), requiring saloons to be kept closed during Sunday, where a door leading from the saloon into a hallway is left open, and people are allowed to enter the hallway which does not connect with any room other than the saloon. People v Schottey, 116 Mich. 1.

Saloon Closing, Mandamus. In People v Busse, 141 Ill. App. 218, it was held that a peremptory mandamus would not be granted on the application of a private citizen to compel the mayor of the city to enforce Sunday saloon closing laws. See same rule as to a police commissioner who had granted saloon privileges in addition to those prescribed by statute. A mandamus was refused to compel him to enforce the law or vacate the order promulgated by him Gowan v Smith, 157 Mich. 443.

Search Warrant. A search warrant is not a civil process, and it may be executed on Sunday. Wright v Dressel, 140 Mass. 147.

Seaweed. The gathering of seaweed about ten o'clock on the evening of the Lord's Day on a beach at a considerable distance from any house or public road is not a work of necessity in the sense of the Massachusetts General Statutes, chap. 84, sec. 1, although it will probably be floated away beyond reach unless then gathered. Commonwealth v Sampson, 97 Mass. 407.

Security for Good Behavior. Security for good behavior cannot be required of a person convicted on several occasions of a violation of the law against doing worldly business on Sunday. Commonwealth v Foster, 28 Pa. Super. Ct. 400.

Seventh Day Observance. Persons who habitually observe the seventh day as the Sabbath are nevertheless amenable to a statute prohibiting certain labor and business on Sunday. Specht v Commonwealth, 8 Pa. St. 312.

Slot Machine. The provision of the South Carolina statute

prohibiting sales of goods on Sunday was held to include machines automatically vending mercantile wares. A customer put money in the slot and the machine automatically produced the articles sold. "Goods in these machines are exposed to sale as actually and effectually as if the owner or operator were present showing the goods and delivering the same on receipt of price. The intent and effect is an actual sale and delivery of goods to every customer who will pay the price as directed by the seller." Cain v Daly, 74 S. C. 480.

Social Club, Treasurer Receiving Money. The treasurer of a social club received on Sunday money belonging to the club. Even if this receipt of money by him on Sunday was a violation of the Maryland statute, he could not interpose such violation as a defense in an action by the club to recover the money. Haacke v Knights of Liberty Social and Literary Club, 76 Md. 429.

Soda Water. Selling soda water as a beverage on Sunday in connection with drugs is a violation of the Pennsylvania act of 1794 prohibiting worldly employment on Sunday. Splane v Commonwealth, 9 Sad. (Sup. Ct. Cases, Pa.) 201.

Stagecoach. In Sandiman v Breach, 7 Barn. and Cres. 96, it was held that the statute (3 Car. 1, chap. 1, and 29 Car. 2, chap. 7) did not make it unlawful for stage coaches to travel on the Lord's Day.

Statute, Constitutional. Sec. 247 of art. 27 of the Code of Maryland, public general laws, prohibiting work on Sunday, is not a violation of the State or federal constitutions. Judefind v State, 78 Md. 510.

The Texas act of December 2, 1871, known as the Sunday law, makes it a misdemeanor for any dealer in a lawful business to sell or barter (except drugs or medicines) on Sunday, between nine o'clock A. M. and four o'clock P. M. within the limits of any city or town, under a penalty of not less than $20 nor more than $50. It was held that this enactment was constitutional, and still in force, and was not a local law, nor repugnant to the guaranty of equal rights

given by the constitution of 1876. Bohl v State, 3 Tex. Ct. App. 683.

The Kentucky act of 1903, sec. 1303, prohibiting keeping open a barroom or selling liquor therein on Sunday, was sustained as an exercise of police power, notwithstanding the provision of the constitution requiring the General Assembly to provide a law whereby the sense of the people of any city, etc., may be taken as to whether or not liquors shall be sold therein, or the sale thereof regulated. Keeping a barroom open on Sunday and selling liquor on that day are distinct offenses. Commonwealth by Barth v McCann, 123 Ky. 247.

Statute of Limitations. A part payment made upon Sunday will not take a debt out of the operation of the Statute of limitations. Clapp v Hale, 112 Mass. 368.

Statute, Unconstitutional. In Ex Parte Newman, 9 Cal. 502, the California act of April, 1858, "for the better observance of the Sabbath," was held to be a violation of sections 1 and 4 of the State constitution relating to the independence of the citizen and religious toleration. The constitution when it forbids discrimination or preference in religion does not mean merely to guarantee toleration but religious liberty in its largest sense, and a perfect equality without distinction between religious sects. The enforced observance of a day held sacred by one of these sects is a discrimination in favor of that sect, and a violation of the religious freedom of the others. Considered as a municipal regulation, the Legislature has no right to forbid or enjoin the lawful pursuit of a lawful occupation on one day of the week any more than it can forbid it altogether.

Statute, When Retrospective. In Maine it was held that an act passed in 1880 regulating defenses on certain contracts made on Sunday applied to a contract made in 1876, and a defense was rejected because not complying with the later statute. The statute was remedial and might be retrospective. Berry v Clary, 77 Me. 482.

Subscriptions on Sunday. See Subscriptions.

Sunset. A mortgage deed made, executed, and recorded after sunset on Sunday was sustained in Tracy v Jenks, 32 Mass. 465, under a statute of that State, passed in 1791, which prohibited ordinary business between the preceding midnight and sunset on Sunday.

Surety Contract. A surety contract executed on Sunday is not invalid unless delivered to the beneficiary on that day, or he had knowledge of its execution on Sunday. Sherman v Roberts, 1 Grant's Cas. (Pa.) 261.

Telephone. A telephone company may be required to keep its exchange open during reasonable hours on Sunday. The question, "What are reasonable hours?" depends for its solution on various considerations, including the size of the town or village, the number of patrons, and the amount of income and expense, and the demand for service. Twin Valley Telephone Co. v Mitchell, 27 Okl. 388.

Tippling House. In Georgia, under the statute prohibiting keeping open a tippling house on Sunday, it was held that it made no difference in law whether the place be called a barroom, or a glee club resort, or a parlor, or a restaurant, if it be a place where liquor is retailed and tippled on the Sabbath day with a door to get into it, so kept that anybody can push it open, and go in and drink, and the proprietor of it was guilty of keeping open a tippling house on Sunday. Hussey v Georgia, 69 Ga. 54.

Tort. In an action to recover damages for an injury resulting from a tort, it is no defense that the act was committed on Sunday. Bridges v Bridges, 93 Me. 557.

In Logan v Mathews, 6 Pa. St. 417, it was held that the Pennsylvania law was not violated by a son who hired a horse and wagon on Sunday to visit his father. "The visit to his father was discharging a filial duty, which nothing in the law hinders or forbids."

Traveling. A woman who worked in a mill in one town and temporarily boarded there went on Saturday to see her children in an adjoining town. One of them being sick, she remained until Sunday night, when she went to the town

where she worked to procure medicine for the sick child, intending to send it home by another person, and on her way was injured by a defect in the highway. It was held that the jury would be warranted in finding that she was traveling from necessity or charity. Gorman v Lowell, 117 Mass. 65.

The act of riding on Sunday, being lawful or unlawful according to the motive and object of the party, it was held, in an action for the arrest of the plaintiff on a charge of violating the statute for the due observation of that day, that the course of conduct of the plaintiff immediately preceding the arrest, particularly his coming into town from another place, and riding up and down the streets, and going from one public house to another, was admissible to show with what intent the plaintiff was riding at the time of the arrest. Ward v Green, 11 Conn. 455.

One who travels from one town to another on the Lord's Day for the sole purpose of visiting a friend whom he knows to be sick, and thinks may be in need of assistance, and of rendering such assistance as on inquiry he might find necessary, is traveling from charity; and in an action against a railroad corporation, for injuries sustained while a passenger on that day, on putting in evidence that he was traveling for the purpose above stated, he is entitled to go to the jury on the question whether he was traveling lawfully, or not, although he offers no evidence of the ground of his belief that his friend was in need of assistance. Doyle v Lynn & Boston Railroad Company, 118 Mass. 195.

The plaintiff lived a mile from the church, and going thither with his lady in his coach upon a Sunday, was robbed; and brought this action against the hundred, and recovered; for the statute extends only to the case of traveling; but the chief justice said if they had been going to make visits, it might have been otherwise. Teshmaker v Hundred de Edmington, 1 Str. (Eng.) 406.

A hired domestic servant who drove his employer's family to church on the Lord's Day did not violate the Pennsyl-

vania Sunday law of 1794. Commonwealth v Nesbit, 34 Pa. 398.

A journey on Sunday to visit one's children who are properly away from home is not a violation of the Vermont statute against traveling on Sunday, except in cases of necessity or charity, and the fact of such traveling is no bar to an action to recover damages for injuries received from a defective highway. McClary v Lowell, 44 Vt. 116.

A person who violates the law by traveling on Sunday may nevertheless recover damages from a town for injuries received by reason of a defective highway, if the illegality of so traveling did not contribute to the injury. Wentworth v Jefferson, 60 N. H. 158.

Persons may travel by railroad train on Sunday to attend a camp meeting. A railroad ticket agent who sells tickets for that purpose on Sunday is not guilty of a violation of the statute of Pennsylvania against the performance of worldly employment or business on that day. Commonwealth v Fuller, 4 Pa. Co. Ct. 429.

One who works by night instead of by day, and travels on the Lord's Day for the purpose of seeing his master and inducing him to change his hours of labor from night to the day time, in order that he may sleep better, is not traveling from necessity or charity, and cannot maintain an action against a town for an injury sustained by him while so traveling, by reason of a defect in a highway which the town is by law obliged to keep in repair. Connolly v Boston, 117 Mass. 64.

A person cannot legally travel on the Lord's Day from one city to another, a distance of several miles, for the purpose of visiting a stranger if no occasion of necessity or charity is shown for him to pay such visit and cannot maintain an action against a street railway company to recover damages for a personal injury received by him while so traveling on one of their cars, in consequence of their negligence. Stanton v Metropolitan R. R. Co., 14 Allen (Mass.) 485.

The facts that the exercises of a spiritualist camp meet-

ing included a show to which an admittance fee was charged, and that some of the speakers declared that they would throw away the Bible in their search for the truth, are not conclusive that the person traveling on the Lord's Day to attend the meeting did so unlawfully; and the question whether he traveled except from necessity or charity is for the jury. Feital v Middlesex Railroad Company, 109 Mass. 398.

Trespass, Adjusting Damages. The amount of damages resulting from trespasses by animals was adjusted on Sunday, and the agreement was subsequently completed on a week day. The Sunday arrangement was valid. Taylor v Young, 61 Wis. 314.

Trust, Declaration. A declaration of trust executed on Sunday for the purpose of consummating a previous oral agreement that the property conveyed should be held in trust for the grantor does not violate the Massachusetts statute against doing business on Sunday. Faxon v Folvey, 110 Mass. 392.

Vaudeville. A theatrical entertainment on Sunday, under the auspices of a Jewish religious and charitable society, was held not to be a violation of the Massachusetts statute concerning the observance of the Lord's Day. It was said that the net proceeds of the entertainment were paid to the society for its general purposes, which were conceded to be religious and charitable. Commonwealth v Alexander, 185 Mass. 551.

Violation, Remedy For. The violation of the Virginia Sunday law was held not to be a misdemeanor, and the forfeiture imposed therefor is recoverable only by a civil warrant and not by a criminal warrant against the offender. Wells v Commonwealth, 107 Va. 834.

Warrant. An escape warrant may be executed on Sunday. James & Parsons (Hill. 2 Anne) Forts. (Eng.) 374.

A warrant cannot be issued on Sunday for traveling on that day, nor can an arrest be made under a warrant issued on that day. Pearce v Atwood, 13 Mass. 324.

Warrant of Attorney. A warrant of attorney executed on Sunday was sustained in Baker v Lukens, 35 Pa. St. 146.

Will. Execution of a will on the Lord's Day by a testator is not "work, labor, or business," within the meaning of Massachusetts general statutes, chap. 84, sec. 1, and a will so executed is valid. Bennett v Brooks, 9 Allen (Mass.) 118.

SUNDAY SCHOOL

Relation to church, 789.
Treasurer, when responsible to parent society, 789.

Relation to Church. The Sunday school room and the lecture room of a modern church are as essentially used for religious purposes as the body of the church building itself. The Sabbath schools are an important auxiliary of every Christian church and indispensable to its life and growth. That the services in such schools are, in the main, of a religious character is too well known to be seriously disputed. Craig v First Presbyterian Church, 88 Pa. St. 42.

A bequest to the society in aid of the Sunday school was sustained. The school was an integral part of the church organization, and therefore embraced within the scope of the corporate functions and work of the church. The bequest was sufficiently definite and certain, and capable of being enforced. Eutaw Place Baptist Church v Shively, 67 Md. 493.

Treasurer, When Responsible to Parent Society. The treasurer of a Sunday school connected with a religious corporation is responsible to the corporation for the funds collected by such treasurer for a project under the patronage of the corporation. First Church of Christ Scientist in Buffalo, N. Y. v Schreck, 70 Misc. (N. Y.) 645, 127 N. Y. Supp. 174.

SUPERSTITIOUS USE

Existence doubted, 790.
Origin, 790.
Roman Catholic publications, 790.
Shakers, 791.

Existence Doubted. In Frierson v General Assembly of Presbyterian Church, 7 Heisk. (Tenn.) 683, doubt was expressed whether in the United States, where no discrimination is made in law between the professors of any particular religious creed, any such thing as a superstitious use can be said to exist.

Origin. In Sherman v Baker, 20 R. I. 446, it is said that the strife of the time of the Reformation naturally found vent in statutes. Among them was that of 1 Edw. VI. chap. 14, for vesting in the Crown property, devoted to "superstition and errors in Christian religion," which specified "vain opinions of purgatory and masses satisfactory, to be done for them which were departed." From this came the English doctrine of superstitious uses.

Roman Catholic Publications. Moneys in English stocks were assigned to trustees upon trust to pay the dividends to the settler during his life, and after his death to apply them in printing and promoting the circulation of a book in the Latin and French languages, inculcating the peculiar doctrines of the Roman Catholic religion; and the deed contained a proviso that if any of the trusts should be declared by a court of law or equity to be void, then the trustees should stand possessed of the fund in trust for the executors and administrators of the settlers. It was held that the trusts, after the limitation for life to the settler, were in the nature of superstitious uses, and therefore void. De Themmines v De Bonneval, 7 L. J. Ch. (Eng.) 35.

Shakers. The use created by the trust for this society would at no time since the Reformation have been deemed a superstitious use in England, for though the courts there disallowed trusts in favor of the Catholic or Jewish religion, as inimical to the established religion and settled policy of the government, yet trusts in favor of dissenting Protestants have always been sustained and enforced. In this case two members of the society sought a partition of its property and to recover their alleged shares therein. It was held that by the terms of the covenant they had no cause of action against the society. Gass and Bonta v Wilhite, 2 Dana (Ky.) 170.

SWEDENBORGIANS

Bequest, rejected, 792.
Bequest, sustained, 792.

Bequest, Rejected. In 1861 the corporation was formed in Illinois known as the General Convention of the New Jerusalem in the United States of America. The charter gave it general power to receive, take, and hold property in any of the ordinary ways, specifying them. This was the representative body of the New Jerusalem Church. Testatrix bequeathed her residuary estate to two ministers, or the survivor of them, or the person selected by them, as their successor "in trust for the benefit of the New Jerusalem Church (Swedenborgian) as they may deem best." It was held that the bequest could not be deemed to have been for the corporation of the General Convention, but for the benefit of the entire church, and that it was, therefore, too indefinite for enforcement. The bequest was declared to be invalid. Fifield v Van Wyck's Executors, 94 Va. 557.

Bequest, Sustained. The First New Jerusalem Society of Pittsburgh was incorporated in 1863, and attached itself to the General Swedenborgian Church of Pennsylvania and with the General Convention of the United States. The Pennsylvania branch of the General Church separated from the General Convention in 1890. In 1892 the Pittsburgh church severed its connection with the General Church. The minority of the Pittsburgh church then organized a new church known as the Church of the Advent. A bequest to the "New Church of Pittsburgh" was awarded to the First New Jerusalem Society of Pittsburgh. Re Aitken Estate, 158 Pa. 541.

TAXATION

American Sunday School Union, 793.
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American Sunday School Union. The American Sunday School Union, though engaged in the publication and circulation of moral and religious books, was held to be a trading corporation under the Pennsylvania law and therefore subject to taxation. American Sunday School Union v Philadelphia, 161 Pa. St. 307.

Camp Meeting Associations. See Camp Meetings.

Cemetery. The New York act of 1879, chap. 310, exempts from assessment cemetery lands owned by a religious corporation. A claim of exemption was sustained in Matter

of White Plains Presbyterian Church, 112 App. Div. (N. Y.) 130.

Where, out of forty acres of land alleged to be held by a church as a burying ground, only one acre was actually used for burial purposes and the remainder as farmland, it was held that the remaining thirty-nine acres were subject to taxation. Mulroy v Churchman, 52 Ia. 238.

Corporate Securities. In Pennsylvania it was held that bonds and mortgages owned by a religious corporation, the income of which was used for the payment of the pastor's salary, were subject to taxation under the act of 1851, which subjected to taxation the property of an association or incorporated company from which an income or revenue was derived. Presbyterian Church v Montgomery County, 3 Grant's Cas. (Pa.) 245.

Dissenters. Conscientious dissenters are liable to be taxed for debts incurred before they dissented. Lord v Marvin, 1 Root (Conn.) 330.

Georgia Rule. The constitution of Georgia provides that "No money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or denomination of religionists, or of any sectarian institution." This provision was held not to be violated by a statute exempting church property from taxation. Trustees First Methodist Episcopal Church, South v Atlanta, 76 Ga. 181.

Illinois Rule. The provision in the charter exempting the society from taxation for local improvements was held void under the constitution of 1848. The Legislature had no power to extend the exemptions authorized by that instrument. Chicago v Baptist Theological Union, 115 Ill. 245.

Land Adjacent to Building. The idea of a church edifice necessarily carries with it the use of ground ample for its use. To be exempt from taxation it is not necessary that such ground should be indispensable for the use of the church; but if it is no more than is reasonably appropriate to the purpose, and is used for no other, it comes within the

limits prescribed by the statute. Mannix v County Commissioners, 9 Ohio Dec. 18.

Liquor Tax Law. A two-story building, the upper story of which was used for religious worship by a Jewish congregation and the lower story for its Sunday school and also by several Jewish charitable societies, which paid rent for the use of the building, was held to be a church under the liquor tax law. Matter of McCusker, 47 A. D. (N. Y.) 113.

Masses. A testatrix bequeathed to the pastor of a Roman Catholic church, and to his successors as pastors, money to be used in saying low masses for the repose of the soul of the testatrix and others named by her. The bequest was held liable to taxation under the transfer tax act. Matter of McAvoy, 112 A. D. (N. Y.) 377.

Member, Exemption. Members of unincorporated societies may be exempted from assessments for support of parish church. Adams v Howe. 14 Mass. 340.

Under the Massachusetts act of 1811, chap. 6, sec. 2, a person becoming a member of any religious society, though of the same denomination as the society to which he previously belonged, and filing a certificate pursuant to the statute, is exempted from taxation in every other religious society. Holbrook v Holbrook, 1 Pick. (Mass.) 248.

Member, Liability. In Muzzy v Wilkins, Smith's N. H. Rep. 1, it was held that a Presbyterian could not be taxed for the support of a Congregational minister.

Members, Support of Church. Members may be exempted from taxation for support of parish church. Adams v Howe, 14 Mass. 340.

Member, When Liability Arises. Where a religious society voted to raise a sum of money, without appropriating it, intending that it should be assessed on a valuation of the 1st of May following, and be applied to defray expenses to be incurred after that day, it was held that a person who separated himself from the society after the vote, and before the first of May, was not liable to assessment. Inglee v Bosworth, 5 Pick. (Mass.) 501.

Ministers. In Pennsylvania it was held in Commonwealth v Cuyler, 5 Watts & S. (Pa.) 275, that the act of 1841, providing for taxing salaries of public officers, did not apply to a Presbyterian minister. He did not hold a public office, and his position was not within the statute.

By the Connecticut act of 1702 a fund provided for the maintenance of the ministry of the gospel was exempt from taxation, and this exemption was not abolished by the adoption of a State constitution, nor by subsequent State statutes. Such a fund, owned by an incorporated religious society, was assessed on the town tax list, and the tax was collected from a member of the society. In an action by him against the town to recover the amount so paid it was held that he was entitled to judgment, for the reason that the property was exempt. From the opinion in this case, it seems that members of an incorporated religious society are liable personally for the debts of the corporation. Atwater v Woodbridge, 6 Conn. 223.

Assessors act judicially in determining a minister's claim to exemption from taxation and are not liable personally for an erroneous decision. Barhyte v Shepherd, 35 N. Y. 238.

New Hampshire. The constitution of New Hampshire does not exempt church property from taxation. A statute of the State exempted such property up to the value of $10,000 and provided for taxing the excess. Franklin Street Society v Manchester, 60 N. H. 342.

Ownership and Use. In order to entitle church property to exemption from taxation it must not only be used exclusively for religious purposes but must be owned by the congregation. In this instance the land was owned by an individual who had erected thereon a house of worship for the use of a religious society. The property was held to be subject to taxation. People ex rel Swigert v Anderson, 117 Ill. 50.

Parsonage. The use of property, and not the ownership, determines the question of exemption. Parsonages are not exempt although erected on a portion of a church lot, which would otherwise be exempt, and occupied by the minister

free of rent, if the language of the exemption only includes places actually used for religious worship with the grounds attached thereto and appurtenant to the house of worship. A parsonage which was not occupied by the minister of the church, but was rented out, was held not to be exempt from taxation under the provision of the Kentucky constitution exempting from taxation a parsonage occupied as a home, and for no other purposes, by the minister of any religion. Broadway Christian Church v Commonwealth, 23 Ky. (Part 1) 1695.

A parsonage erected by a religious society on their church lot is liable to taxation as real estate. State, Church of the Redeemer v Axtell, 41 N. J. L. 117.

A building used by a religious society as a rectory or parsonage is subject to taxation. First Presbyterian Church v New Orleans, 30 La. Ann. 259.

Under the provisions of the fourth clause of the sixth section of the Indiana assessment law (1 G. & H. 69) a parsonage that has been erected for the convenience and accommodation of the pastor of a church is not exempted from taxation. Trustees of Methodist Episcopal Church v Ellis, 38 Ind. 3.

A parsonage is used for a residence, and therefore primarily for a secular purpose. A statute exempting it from taxation was held invalid under the Illinois constitution, which prohibits the Legislature from exempting from taxation property not used exclusively for religious purposes. People ex rel Thompson v First Congregational Church, 232 Ill. 158.

Where it appears by a case stated that a part of a building erected for the purposes of religious worship is in use as a parsonage these facts are not sufficient to support a tax upon that part of the church building in use as a parsonage, the building being exempt under the act of May 14, 1874. Northampton County v St. Peter's Church, 5 Pa. Co. Ct. 416.

In Iowa a parsonage was held exempt from taxation. Cook v Hutchins, 46 Ia. 706.

Parsonage is subject to taxation. State, First Reformed Dutch Church v Lyon, 32 N. J. L. 360.

The parsonage was held liable to taxation although standing on the same parcel of land as the church edifice, fronting on the same street, and separated from the church by a narrow space. People ex rel Hutchinson v Collison, 22 Abb. N. C. (N. Y.) 52.

Pennsylvania Rule. In Pennsylvania it was held that the constitutional provision exempting church property from taxation relates to taxes proper, or general public contributions, levied and collected by the State, or by its authorized municipal agencies, for general governmental purposes as distinguished from peculiar forms of taxation or special assessments imposed upon property, within limited areas for the payment of local improvements therein, by which property assessed is specially and peculiarly benefited and enhanced in value to an amount at least equal to the assessment, and that, therefore, a church was liable to assessment for paving a street in front of its property. Broad Street, Sewickley Methodist Episcopal Church, 165 Pa. St. 475.

Resulting Benefits. "Property is made more secure both by the education of children, and the religious and moral instruction of adults. In this additional security every owner of an estate receives a compensation for the moneys paid by him toward the support of those institutions." The property of a manufacturing corporation was held liable to taxation for parish purposes. Amesbury Nail Factory Company v Weed, 17 Mass. 54.

Sunday School Building. A corporation was organized for the purpose of erecting a Sunday school building. The first story was used for Sunday school and religious meetings. The second story was leased to the city for public school purposes. A special act exempted the property of this Sunday school association from all taxation. It was held that the entire property was exempt. Howard Sunday School Association Appeal, 70 Pa. 344.

Transfer Tax. A devise to a religious society of land and

buildings thereon, to be used exclusively as a parsonage, is not subject to the succession tax under the Massachusetts act of 1891. First Universalist Society, Salem v Bradford, 185 Mass. 310.

A bequest to St. Paul's Protestant Episcopal Church, Poughkeepsie, was held liable to taxation. Catlin v Trinity College, 113 N. Y. 133.

Use for Other Purposes. Church property occasionally rented for lectures, concerts, readings, amateur theatricals, and other like entertainments does not thereby become subject to taxation, especially if the income is used for the benefit of the local society. Such use of the property is not a departure from the ordinary purposes of the property sufficient to show an intention to devote it to commercial purposes. First Unitarian Society, Hartford v Hartford, 66 Conn. 368.

Worship, Boston. The inhabitants of Boston never were compellable by law to pay taxes for the support of public worship. Attorney-General v Proprietors Meetinghouse in Federal Street, Boston, 3 Gray (Mass.) 1, 39.

Young Men's Christian Association. A branch association in Auburn, Maine, owned real property a part of which was rented for a boarding house and another part for stores. The portions of the property so rented were held liable to taxation. Auburn v Y. M. C. A., Auburn, 86 Me. 244.

Under the revenue act of Illinois, real estate of a Young Men's Christian Association, the object of which association is the improvement of the spiritual, mental, social, and physical condition of young men, which real estate is leased to various tenants for profit, is not exempt from taxation. People ex rel Gore v Young Men's Christian Association, 157 Ill. 403.

Property owned by this association in Louisville, Kentucky, was held exempt from taxation on the ground that the buildings were used as places of religious worship. Adjacent vacant lots held for sale were also exempt. Commonwealth v Young Men's Christian Association, 25 Ky. Law Rep. 940.

TOWN

Connecticut, ecclesiastical affairs, 800.
Maine, parochial powers, 801.
Massachusetts, parochial powers, 801.
New Hampshire, gospel land, 802.
New Hampshire, parochial powers, 802.

Connecticut, Ecclesiastical Affairs. The inhabitants of each town in this State (Connecticut) not divided into societies, are by law a corporation for the purpose of supporting public worship and the gospel ministry, as well as for civil purposes; and in their corporate capacity have power to receive and hold estates, real and personal, for said uses, and to call and settle ministers, build meetinghouses, etc. The name and description by which they receive estates, and transact business in their ecclesiastical and civil capacity is the same, to wit, the inhabitants of the town of, etc.

When part of the inhabitants of such town are constituted a new and distinct society the remaining inhabitants are by law considered, for ecclesiastical purposes, as the same corporation, having continuance and succession, by the name of the inhabitants of the first society, and which before existed by the name of the inhabitants of the town, and as holding the meetinghouse and all other estates that the inhabitants of such town received, acquired, and held, for any of the uses for which societies are constituted, and as bound to perform all the contracts and agreements made by the inhabitants of such town, with the minister for his support, or respecting any other matter appropriate to a society. Huntington v Carpenter, Kirby (Conn.) 45.

In Connecticut every town incorporated by law contains in it all the rights, powers, and privileges of an ecclesiastical society, and is subject to all the duties, and so long as it

remains in one entire body, may manage its ecclesiastical concerns in town meeting; but as soon as the inhabitants become separated, for ecclesiastical purposes, as a part being set off and annexed to other societies, they must cease to transact their ecclesiastical business in town meeting—as a town they include all the divisions—as an ecclesiastical society they exclude them. And this ecclesiastical society continues to exist through all the divisions and subdivisions, and hath right to have and hold all interests granted to the town for ecclesiastical uses, at a time when there was no other ecclesiastical society in the town that could take. Sedgwick, etc. v Pierce, 2 Root (Conn.) 431.

Maine, Parochial Powers. In Maine towns in which no distinct and separate parish or religious society has been established may provide for religious instruction by the erection of meetinghouses and the support of ministers; but this power ceases on the establishment of a separate parish in the town, and thereafter taxation and other proceedings must be in the name of the parish. Alna, Inhabitants of v Plummer, 3 Me. 88.

Massachusetts, Parochial Powers. The town settles a minister and makes other contracts of a parochial nature; it also establishes schools, engages instructors, and makes contracts in regard to other municipal objects. It also purchases and receives grants, donations, and conveyances of property, real and personal, some expressed to be for the support of a minister and others for the support of schools, all of which are, or may be, held and managed under one corporate organization and by one set of officers. Afterward a part of such town is set off into a distinct territorial or poll parish, and the remainder of the town by law becomes a parish. After the separation all those rights, duties, and obligations which belonged to the town in its parochial character devolve upon that portion of its inhabitants, who by operation of law become successors to the town in that capacity; whilst all those which belonged to the town in its municipal character continue so to belong,

notwithstanding the erection of a new parish. Stebbins v Jennings, 10 Pick. (Mass.) 172.

Towns may assess taxes for parish purposes and conduct parochial proceedings. Ashby v Wellington, 8 Pick. (Mass.) 524.

New Hampshire, Gospel Land. In a grant to a township it was provided that one share of land should be "for and toward the support of the gospel ministry there forever." It was held that this share belonged to the town; that a minister settled over a church and incorporated religious society in the town could not hold it against the town; and that the town could sell the land and divide the proceeds equally among the different Christian denominations therein. Cilley v Cayford, Smith (N. H.) 150.

New Hampshire, Parochial Powers. The New Hampshire act of 1819 repealing the law authorizing towns to vote and grant money for the settlement, maintenance, and support of the ministry did not deprive them of the right to appropriate property previously acquired for religious purposes to the uses for which it was designed by granting it to religious societies within the town. Candia v French, 8 N. H. 133.

TREASURER

General duty, 803.
Liability, 803.
Power to borrow money, 804.

General Duty. Money was contributed to the society for the purpose of building a church edifice. The pastor delivered it to a treasurer to be kept. It was held that he had no right to withhold it on the ground that the vestry intended to divert it from the purposes for which it was contributed. If such contribution created a trust, it became such only between the vestry and the contributor, and the vestry is responsible to him if it diverts the fund. The treasurer's duty is to return to his principal his principal's money when due, whether it be trust funds or not. Mount Calvary Church v Albers, 174 Mo. 331.

Liability. A treasurer of a religious society is personally responsible for its funds received by him, and may be required to make restitution of any funds that may have been misapplied. The board of trustees have no power to direct the use of a trust fund for the payment of the pastor's salary. Immanuel Presbyterian Church v Riedy, 104 La. 314.

Funds were contributed for the purpose of erecting a building for the use of a Sunday school. The treasurer of the church received the money, but after the termination of his office refused to pay over the fund to the church. It was held that the society had a right to recover the fund. "Though the subscription may have been set on foot without authority from the church as a corporation, yet if the money was raised apparently as a church fund, and the donors, at the time of giving, supposed that they were giving to the church, and intended so to do, the church could adopt the acts of those who raised the fund and claim the

benefit of the donations for the purpose for which they were given." The church was especially authorized by statute to accomplish the precise purpose for which the fund was raised. The evidence was sufficient to show that the fund was subscribed for the benefit of the church, and not simply for the Sunday school connected with the church. Rector, Church of the Redeemer v Crawford, 43 N. Y. 476.

Power to Borrow Money. There is no presumption that a treasurer of a religious corporation has power to borrow money, sign notes, and bind the corporation. His authority must be established by evidence. Wilson v Tabernacle Bapt. Church, 28 Misc. (N. Y.) 268.

TRUSTEES

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Abandonment of Office. A trustee who withdraws from the church must be deemed to have abandoned his office, especially when he joins another church which prohibits its members from holding official relations in other denominations. Ross v Crockett, 14 La. Ann. 811.

A trustee who calls for and receives a letter of dismissal from the society does not thereby necessarily withdraw from the civil constituency of the church, but by his acts and conduct, especially participating in the organization of another society, he may be deemed to have abdicated his office, which thereby became vacant and might be filled by a new election. Laight St. Church v Noe, 12 How. Pr. (N. Y.) 497.

Actions, De Facto Trustees. The trustees de facto of an unincorporated society may maintain an action for trespass on the society's property. Green v Cady, 9 Wend. (N. Y.) 414.

Actions, Illinois Rule. In Illinois actions by or against a

religious society must be in name of trustees. Ada St. Methodist Episcopal Church v Garnsey, 66 Ill. 132.

Actions, Pre-Organization Contracts. "The trustees of an incorporated church, as the representatives of all the members of a church, may in the corporate name enforce agreements made for the use and benefit of the society before its legal organization." Whitsitt v Trustees Preemption Presbyterian Church, 110 Ill. 125.

Action, Trespass. Where a religious society consisting of many worshipers was the owner of certain lands in controversy its trustees were entitled to sue for an injury to the freehold, consisting of a wrongful removal of coal from beneath the land, without joining the members of the congregation. Penny v Central Coal and Coke Company, 138 Fed. 769.

Appointment by Court. The action of a circuit court in appointing trustees of church property is the subject of appeal, and the question of the regularity or validity of their appointment cannot be questioned collaterally in an action of ejectment by newly appointed trustees to recover possession from trustees removed. Kreglo v Fulk, 3 W. Va. 74.

Appointment by Minister. The preacher in charge, by a certificate in due form, appointed trustees of the society. It was held that this constituted the persons trustees of the property. On the day of their appointment the trustees received a deed of land in trust for the erection of a house of worship thereon, according to the rules and Discipline of the denomination. A house of worship was erected on the land in 1854. An action was brought to quiet the title, which involved many questions relating to trusts and the validity of the trust contained in the original conveyance, but these were not disposed of by the court. Methodist Episcopal Church, Newark v Clark, 41 Mich. 730.

Borrowing Money. The power to borrow money is implied in a charter of a religious society unless such power is actually denied by the charter. The trustees had general

supervision of the corporation affairs. Under this implied power, an individual note given by a trustee for money borrowed to rebuild the church edifice was held to be a debt against the corporation, and an action was maintainable thereon. First Baptist Church, Erie v Caughey, 85 Pa. St. 271.

Building Committee. Where a building committee representing an unincorporated religious association consists of five members, authority to make binding contracts in behalf of the committee would have to be exercised by a majority of the members, either directly or by delegating the power to a less number. One member alone could not contract without being authorized so to do by a majority. New Ebenezer Association v Gress Lumber Company, 89 Ga. 125.

By-Laws. The society or congregation appoints the trustees, and may remove them and fill the vacancies. It may adopt such rules and regulations in relation to the duties of the trustees, and the management of its society, as the members may deem proper. Calkins v Cheney, 92 Ill. 463.

By-Laws, Assessments on Pewholders. The trustees of a religious association may adopt by-laws or resolutions to equalize the amount necessary for its support, and assess the proportionable amount on each pewholder, though there is no provision in the constitution or articles of association authorizing them so to do. A pewholder was liable for any increased assessment so levied by the trustees. Curry v First Presbyterian Congregation, 2 Pittsburgh (Pa.) 40.

Closing Church. The trustees of a religious society do not have the power of closing its church at their own will, because of their judgment to keep the church open will be to defeat the purpose for which the association was formed. Their power is only to manage the prudential affairs of the society. Canadian Religious Association v Parmenter, 180 Mass. 415. See Ministers, Exclusion from Church Edifice.

Control of Property. The trustees, as officers of the corporation, have entire control over the property owned by

the corporation, including the church or place of worship, and courts of equity have no jurisdiction to interfere with the actions and doings of the trustees in the management of the property belonging to the corporation, for the reason that the Legislature had expressly exempted religious corporations from the jurisdiction which had been given to these courts over other corporations. Isham v Fullager, 14 Abb. N. C. (N. Y.) 363. But see the act of 1875, chap. 79, also the act of 1876, chap. 176. These acts concern the trustees as agents of the corporation. The title to the property continued in the corporation, but it was made the duty of the trustees to use and manage the property and revenues of the corporation according to the rules, usages, and discipline of the church or denomination to which it belongs, that is, the spiritual body, the members thereof who organized and were instrumental in creating the corporation; and if they depart from this rule, they are subject to be restrained by the courts. Isham v Fullager, 14 Abb. N. C. (N. Y.) 363.

Conveyance. Where trustees of a gospel lot were by statute declared to be a body politic and corporate a deed of a part of the land signed by them as individuals was sustained. De Zeng v Beekman, 2 Hill (N. Y.) 489.

Conveyance By, When Required. Persons who purchase land in their own names but for the benefit of a religious society are bound to convey such land to the society upon its incorporation. Such conveyance is charged with a trust in favor of the society. Trustees So. Bapt. Church v Yates, 1 Hoffman Ch. (N. Y.) 141.

Corporate Character, Maryland Rule. The trustees and not the members constitute the corporation. African Methodist Bethel Church, Baltimore v Carmack, 2 Md. Ch. 143.

Corporate Control of. Robertson v Bullions, 11 N. Y. 267, sustained the right of a portion of the corporators to prevent the trustees from applying the temporalities of the church in paying for the services of a minister who had been duly deposed from his office.

Covenant of Warranty. Trustees in a deed of church property included a covenant of warranty. There was no evidence of authority from the congregation to make this warranty. It was held that the trustees were personally liable on the covenant. Klopp v Moore, 6 Kan. 27.

De Facto. A de facto trustee is one who is acting as an officer under color of having been rightfully elected or appointed. Trustees, East Norway Lake Norwegian Evangelical Lutheran Church and others, v Halvorson, 42 Minn. 503.

A deed of land to trustees de facto of an unincorporated religious society conveys no title to the society. Bundy v Birdsall, 29 Barb. (N. Y.) 31.

The proceedings of de facto trustees are valid till they are ousted by a judgment at the suit of the people, and no advantage can be taken of any nonuser or misuser on the part of the corporation by any defendant, in any collateral action. All Saints Church v Lovett, 1 Hall's Sup. Ct. (N. Y.) 195.

Diversion of Property. In a proceeding based on an allegation that the pastor and certain trustees had conspired together to change the ecclesiastical denomination of the society, and divert its temporalities from the religious denomination with which it was connected, to another, it was held that under the act of 1875, chap. 79, the trustees were charged with the care of the temporalities of the corporation and prohibited from diverting such temporalities to any other use. It was also held that one member of the society could maintain a proceeding against the trustees to procure an injunction restraining them from diverting the property. First Reformed Presbyterian Church v Bowden, 14 Abb. N. C. (N. Y.) 356.

"A grant of land was made in 1789 to the trustees of an evangelical Lutheran congregation, consisting of two churches, 'for the common use and benefit of the said Lutheran congregation forever.' Prior to 1800, with other donations, a house of worship was erected by each church, and other temporalities were acquired. Each church became

incorporated under the general statute. At the time of these endowments their standard of faith and doctrine was the Augsburg Confession of Faith. In 1830 they became a part of the Hartwick Synod of the Evangelical Lutheran Church. In 1837 the trustees of the two churches, in connection with the pastor and the church councils, dissolved their connection with the Hartwick Synod and united with other churches in forming a new synod, which adopted a declaration of faith, essentially variant in three principles and cardinal doctrines, from the Augsburg Confession. Held that these proceedings of the trustees were a perversion of their trust, and an unlawful diversion of the property of the churches from the objects and purposes for which it was originally contributed." Kniskern v Lutheran Church, 1 Sandf. Ch. (N. Y.) 439.

Under the religious corporations act of New York, 1813, as modified by the laws of 1875, chap. 79, and laws of 1876, chap. 176, the trustees cannot permit the use of the church edifice by a clergyman who adopts and advocates religious views at variance with the articles of faith of the denomination to which he and the trustees belong; and the adherents of the church who maintained the original faith are entitled to an injunction restraining such use of the property. Isham v Trustees of the First Presbyterian Church of Dunkirk, 63 How. Pr. (N. Y.) 465.

Election. If the rules of a church require its trustees to be elected on a particular day in the year, after notice given on the preceding Sunday by the pastor, a board of trustees elected on a different day, without the notice, are not trustees de jure. Trustees de facto of a church may rightfully eject from the church persons who claim to be its trustees, and who have taken possession of it, but who are neither trustees de facto nor de jure, and are mere intermeddlers with its temporalities. First African Methodist Episcopal Zion Church v Hillery, 51 Cal. 155.

By statute the trustees were divided into three classes, the seat of one class becoming vacant every year, thus requiring

an annual election of one third of the number, which election was required to be at least six days before the vacancy should happen. It was held that an election on Pinxter Monday (Monday after Whitsunday) in each year, though a movable holy day, and not a day certain, was valid.

Differences having arisen in the church, the trustees closed the doors of the church edifice against the minister and the congregation. The minister and the congregation having broken into the church, they were held liable for indictment for forcible entry and detainer. People v Runkle, 9 Johns. (N. Y.) 147.

Election, Burden of Proof. In questions involving elections, the burden of proof is on persons claiming to have been elected. African Baptist Church v White, 24 Ky. Law Rep. 646.

Election, Place. When the usual place of meeting of a society has been changed by them, an election of trustees at the old place of meeting is invalid. Miller v English, 21 N. J. Law, 317.

Employment of Counsel. In Parshley v Third Meth. Church, 147 N. Y. 583, plaintiff brought an action to recover for legal services as counsel in prosecuting charges against the minister in a church tribunal. There was no official action by the trustees for the plaintiff's employment, the only authority being conferred by the individual suggestion of certain trustees, and there was no evidence of a ratification by the board. The plaintiff was held not entitled to recover; the court expressed some doubt whether the board of trustees could lawfully employ counsel to take proceedings against a minister in a church tribunal.

Excluding Minister from Church Edifice. See Ministers.

Forcible Entry and Detainer. A majority of the corporators forcibly expelled the trustees from the church edifice and assumed control thereof. It was held that the trustees could not maintain an action for forcible entry and detainer but that the action must be brought in the name of the corporation for the reason that the corporation as such, and

not the trustees, held the legal title to the property. People ex rel Fulton v Fulton, 11 N. Y. 94.

Holding Over. Trustees regularly elected for a fixed period hold their offices until removed by others being elected in a similar manner; but such removal cannot take place in less than one year after their election. American Primitive Society v Pilling, 4 Zab. (N. J.) 653.

Trustees do not hold over where successors have been actually chosen, although the election was subsequently declared invalid. Judgment of ouster in such case creates a vacancy which may be filled by a new election. People ex rel Cock v Fleming, 59 Hun (N. Y.) 518; 13 N. Y. Supp. 715.

Individual Authority. Trustees of a religious corporation organized under the general act of 1813 as amended have no separate or individual authority to bind the corporation, notwithstanding evidence that a majority agreed as to a particular transaction. The trustees can only act as a body. People's Bank v St. Anthony's Church, 109 N. Y. 512.

Individual Liability. Trustees made a written agreement with a contractor for the completion of a parsonage, signing the contract as individuals, and not as trustees, although they were described in the paper as trustees. Afterward the contractor made another agreement with the trustees as such, which agreement was signed by them as trustees. The contractor brought an action against the trustees who signed the first agreement, seeking to recover of them individually. It was held that their individual liability had been merged in the official liability by reason of the second contract, and that an action could not be maintained against them as individuals. McGhee v Lose, 22 Pa. Co. Ct. 371.

A minister was called by an instrument under a form prescribed by the rule of the denomination and signed by three elders and one trustee. This was held not to be a call by the officers signing it, but was a call of the congregation, and the persons signing the call were not individually liable for the minister's salary. Paddock v Brown, 6 Hill. (N. Y.) 530.

Joint Interest. Trustees are in law but a single person, and an action cannot be maintained by church trustees against a cotrustee for trespass to the property for the reason that as trustee he has the same interest as the other trustees, and he cannot be both plaintiff and defendant. Trustees of a religious society have possession and custody of the temporalities of the church, whether real or personal estate, and are the proper parties to bring an action for an injury to either. A trustee alleged to be a trespasser could not be sued while he continued in office. Trustees, First Society of the Methodist Episcopal Church, Pultney, v Stewart, 27 Barb. (N. Y.) 553.

Liability, Property Sold to Pastor. The trustees of a church are not as such liable for the price of lumber sold and delivered to the pastor on his individual account, when in making the purchase he neither acted as agent of the trustees nor had authority to do so, and this is so though the lumber was with their knowledge, used in improving the property of the church. Montgomery v Walton, 111 Ga. 840.

Meeting, Duty to Attend. People ex rel Kenney v Winans, 29 St. Rep. (N. Y.) 651. A writ of mandamus was granted on the application of the rector to compel certain vestrymen to attend a meeting of the vestry.

Meeting Necessary. Trustees cannot bind the corporation except by action at a meeting at which a quorum is present. Even a majority of the trustees cannot legally act except in this formal manner. Ross v Crockett, 14 La. Ann. 811; see also Thompson v West, 59 Neb. 677.

The trustees of a religious corporation, organized under the incorporation act of Illinois, are the only persons empowered to bind the corporate body legally, and in order to do this the trustees must meet as a board and take action as such. The separate and individual action of the trustees, or any number of them, without holding a meeting of the board, is not binding upon the corporation, and cannot of itself create a corporate liability. First Presbyterian Church, Chicago Heights v McColly, 126 Ill. App. 333.

Under the New York religious corporations act of 1813, as amended in 1863, trustees have no separate or individual authority to bind a corporation. They must act as a body. The trustees of a corporation have no separate or individual authority to bind the corporation, and this although the majority or the whole number, acting singly and not collectively as a board, should assent to the particular transaction. People's Bank v St. Anthony's Roman Catholic Church, 109 N. Y. 512.

The trustees of a religious corporation can alone bind the corporate body, and to execute this power they must meet as a board, so that they may hear each other's views, deliberate, and decide. The separate action of the trustees individually, without meeting and consulting together as a board, even though a majority in number should agree upon a certain act, is not binding upon the corporation, and does not and cannot of itself create a corporate liability. Constant v St. Albans Ch. 4 Daly (N. Y.) 305.

Mingling Charitable and other Funds. "If the officers of a religious society intermingle funds held by them upon distinct trusts, one of which is charitable, and another, although not strictly charitable, is in the nature of religious uses, and there is evidence by which the amount of each fund can be approximately ascertained, the charity will not, for that reason, be entitled to the whole amount but the court will determine, with as much accuracy as possible, the amount now justly belonging to each fund." Attorney-General v Old South Society in Boston, 13 Allen, (Mass.) 474.

Minister's Employment. In this society, which was independent, the property was vested in trustees, and it was held that the employment of a minister ought to be sanctioned by them, especially where it appeared that such employment, though approved by a majority of the congregation, might destroy the peace and harmony of the church. German Ref. Ch. v Busche, 5 Sandf. Sup. Ct. 666.

Occupying Property After Termination of Contract. As to

the right of a minister to occupy the church edifice after his contract with the society, see Conway v Carpenter, 80 Hun. (N. Y.) 429, where it was held that after such a termination of the contract, even if unlawful, the minister had no right to continue to occupy the property. He might, according to circumstances, have a right of action against the society for unlawfully excluding him from the pulpit.

Official Term. At the time of the incorporation of the society the term of office of trustees, as fixed by the General Conference, was unlimited, but the General Conference of 1864 limited the term of office to one year. It was held that a trustee elected in 1862 could not hold office permanently, but his office became subject to the limitation imposed by the General Conference in 1864, and he was therefore entitled to hold only one year unless reelected. Currier v Trinity Society, M. E. Church, Charlestown, 109 Mass. 165.

Official Title Must Be Shown. Trustees must show title to office in action relating to church property. Antones et al v Eslava's Heirs, 9 Port. (Ala.) 527.

Ouster, Effect. A vacancy is created by a judgment ousting certain trustees illegally declared to have been elected. New elections may be ordered to fill the vacancy. People ex rel Cock v Fleming, 59 Hun (N. Y.) 518, 13 N. Y. Supp. 715.

Possession of Property. The trustees held the church property in trust for the church and congregation and it is their possession; and the courts are bound to protect them against every irregular and unlawful intrusion made against their will, whether by members of the congregation or by strangers. People v Runkle, 9 John. (N. Y.) 147.

Trustees of a religious society organized under the act of 1813, chap. 60, sec. 3, were held to be vested with the custody, possession, management, and legal control of the property and temporalities belonging to their particular society, in the same manner and to the same effect as the directors of private corporations are entitled to the possession and control of their property; and such trustees may sue in the name of the corporation and to recover possession of the property

from which they were evicted by persons claiming to be a majority of the corporators. The trustees are the legal representatives of the corporation and the individual corporators have no control over its temporalities except to vote at the election of the trustees. The corporators cannot take possession of the property and control it as against the trustees. The corporators who took possession of the property in defiance of the trustees were trespassers. An eviction of the trustees was in legal effect an eviction of the corporation. First M. E. Church in Attica v Filkins, 3 T. & C. (N. Y.) 279. See also People ex rel Fulton v Fulton, 11 N. Y. 94.

Powers, Georgia Rule. In Georgia, it was held that trustees appointed by the superior court have prima facie a right to represent the trust committed to them, and to protect it from an improper and illegal diversion by others. Bates v Houston, 66 Ga. 198.

Powers, Maine Rule. In Maine, trustees of Methodist Episcopal churches hold property in trust for the use of the society or church, and their powers and duties are continued to their successors. The title to property is in those persons who are trustees for the time being. They have no authority to create a debt for materials to be used in building a church edifice, and an action cannot be maintained against them for such a debt. Bailey v Methodist Episcopal Church, Freeport, 71 Me. 472.

Powers, New York Rule. Under the New York religious corporations act of 1813 "the relation of the trustees to the society is not that of a private trustee to the beneficiaries of the trust, but they are the managing officers of the corporation, and trustees in the same sense in which the president and directors of a bank or railroad company are trustees, and are invested, in regard to the temporal affairs of the society, with the powers specifically conferred by the statute, and with the ordinary discretionary powers of similar corporate officers. Gram v Prussia Emigrated Evangelical Lutheran German Society, 36 N. Y. 161.

Powers, Pennsylvania Rule. A church cannot be bound by the action of the trustees beyond the express powers granted by the members. Miller v Church, 4 Phila. (Pa.) 48.

Presumption of Official Title. Persons who are in the open and peaceable exercise of the powers and duties of officers in a corporation are presumed to have been duly elected, and to be entitled to the position they occupy. Strangers cannot be permitted to contest their title, or to impeach the validity of their acts by assigning irregularities in their election, or in any of the antecedent proceedings of the corporation. Reformed Methodist Society, Douglas v Draper, 97 Mass. 349.

Promissory Note. Where the business of a church corporation is required by the articles of incorporation to be conducted by its officers as a board of trustees, the president and secretary have no power to execute a note binding upon the corporation without authority from such board. Authority conferred by the trustees to erect a church building, however, would carry with it the power to contract debts necessary for that purpose, and notes executed therefor would be valid. Cattron v First Universalist Society, Manchester, 46 Ia. 106.

The defendants gave a promissory note for labor performed in the erection of a parsonage. The note was signed by the defendants as trustees. They were held to be agents of the society and personally liable. Chick v Trevett, 20 Me. 462.

The trustees of the society gave their promissory note for money borrowed, to be used in the erection of a church edifice. The note was signed by them as trustees of the society. It was held that the note became their individual obligation and judgment was rendered accordingly. Parol evidence was inadmissible to explain the character and purpose of the note, and to show that it was understood to be an obligation against the church. Hayes, et al, v Brubaker, 65 Ind. 27.

Five trustees of the society made a promissory note, each person signing it as trustee. This was held to be the act of

the society. The trustees are the corporate body, and they alone can act for and bind the society by the assumed name. Little v Bailey, 87 Ill. 239.

Where one of the trustees negotiated a loan for the society, and he and another trustee signed a promissory note in which the trustees were described as such, and in which they assumed to give the note for and on behalf of the church, and the note was afterward signed by the other trustees, but without any action by the board either authorizing the loan or the giving of the note, it was held that the society was not liable, but that the holder might recover against the trustees individually. Dennison v Austin, 15 Wis. 334.

A pastor's wife brought an action on a note for the balance due him on salary. The note had been given by the trustees. There was some question relative to the authority to give the note and whether it had received the sanction of the society by a proper resolution. The judgment for the plaintiff was affirmed on appeal. Gladstone Baptist Church v Scott, 25 Ky. Law Rep. 237.

The trustees gave a promissory note, describing themselves in it as trustees of the society, and signing it in the same manner. This was held to be the note of the corporation, and the makers were not individually liable. New Market Savings Bank v Gillet, 100 Ill. 254.

An incorporated church may delegate to their vestry and wardens the power of transferring a note by indorsement. Garvey v Colcock, 1 Nott & McC. (S. Car.) 138.

Property, Trustees Cannot Distribute. The trustees have no authority to distribute the property of the society among its individual members or any class of them, nor can this authority be conferred by the county court by an order directing a sale of the church property. Wheaton v Gates, 18 N. Y. 395.

Quorum. Under the New York religious corporations act the provision requiring a majority of the vestrymen was held to contemplate a majority of the legal number, and not merely of a less number actually in office. Moore v Rector, St. Thomas, 4 Abb. N. C. (N. Y.) 51.

Quo Warranto. The title of rival claimants to the office of trustee of a religious corporation cannot be determined in an equitable action brought by one claimant or set of claimants against another claimant or set of claimants. The remedy is by an action brought by the attorney-general in the name of the people. Reis v Rohde, 34 Hun (N. Y.) 161.

The title as corporators of trustees de facto of an incorporated religious society cannot be impeached in a collateral proceeding by showing that they are not trustees de jure. This can be done only in a direct proceeding by information in the nature of quo warranto. First Presbyterian Society, Gallipolis v Smithers, 12 Ohio St. 248.

This was held the proper remedy to test the title to office of trustees of a religious society. Commonwealth ex rel Gordon v Graham, 64 Pa. St. 339.

The title to office of a rival trustee of a religious corporation cannot be tried in an action of ejectment. Such a question can be determined only in an action of quo warranto brought by the attorney-general. Concord Society, Strykersville v Stanton, 38 Hun (N. Y.) 1.

It is the settled law of this country that an information in the nature of a quo warranto will lie against one who intrudes himself into the office of trustee of a church corporation. Lawson v Kolbenson, 61 Ill. 405.

Religious Services. "The trustees of all religious societies hold the property subject to its appropriate use, and have no legal right to determine when the religious meetings shall be held, or who shall officiate, unless such power is given to them by the rules and discipline of the denomination to which they belong, and they may be compelled by proper proceedings at law, or in equity, to fulfill their duty." American Primitive Society v Pilling, 4 Zab. (N. J.) 653.

Removal. Trustees are not necessarily communing members of the church. Excommunication from communing members does not disqualify them, even if the excision be regular. They cannot be removed from their trusteeship

by a minority of the church society or meeting, without warning, and acting without charges, without citation or trial, and in direct contravention of the church rules. Bouldin v Alexander, 15 Wall. 131 (U. S.) 131.

An action by an individual member of the society for the removal of an alleged faithless trustee was sustained. Nash v Sutton, 117 N. Car. 231.

Representative Character, Cannot Act in Two Capacities. An attempt to consolidate this society with a Wesleyan society to be organized for the sole purpose of consolidation and take property of the original society was held invalid. It appeared that a majority of the board of trustees of the original society were also a majority of the proposed new Wesleyan society, and it was held that a consolidation could not be effected. By the joint action of such majorities such trustees could not act in two capacities; the Court Street church and its property could not in this manner be transferred to a society belonging to another denomination, which society was proposed to be organized for the sole purpose of such consolidation and transfer. Matter of M. E. Society v Perry, 51 Hun (N. Y.) 104.

Representative Character. The trustees of an incorporated religious society can alone bind the corporation. The action of the vestry has no such force. Where the act relied upon was adopted at a meeting of the conference or council, which consisted of the minister, elders, deacons, and trustees, convened in mass, the corporation was not bound, although a majority of the trustees were present. Where the exercise of corporate acts is vested in a select body, an act done by the persons composing that body in a mass meeting of all the corporators, or in union or amalgamated with other like bodies, parts of the congregation, is not a valid corporate act. Cammeyer v United German Lutheran Churches, New York, 2 Sandf. Ch. (N. Y.) 208.

The trustees hold the property in trust for the beneficiaries, consisting of pewholders, contributors, and other persons directly connected with the society. Such persons

are entitled to the use in common of the church edifice for worship and to the benefit of the revenues of the church to aid in the support of the public worship in the church edifice. They, and they alone, have a personal pecuniary interest in the church property. Everett v First Presbyterian Church, 53 N. J. Eq. 500.

The trustees of a religious society are mere agents to give effect to the will of the corporators, or a majority of them, as to all matters within the scope of the corporation. Kulinski v Dambrowski, 29 Wis. 109.

Trustees alone can represent the society in making contracts, and from it alone they receive their instructions which are not expressed in their charter. A meeting of the church members, as such, is not a meeting of the incorporated society, and it cannot instruct the trustees in their duties or assume any power over them. The court granted an application by the trustees for an injunction restraining certain members of the church from interfering with the possession of the church property by the trustees. Baptist Congregation v Scannel, 3 Grant's Cas. (Pa.) 48.

Roman Catholic, How Chosen. Under a statute authorizing the incorporation of a Roman Catholic congregation it was held that the provision in the statute for the selection of two lay members by a committee of the congregation was mandatory, and that persons chosen by the congregation without a committee were not entitled to hold the office. State v Getty, 69 Conn. 286.

Seating, Power to Regulate. In Sheldon v Vail, 28 Hun (N. Y.) 354, it was held that the trustees of a free church might regulate the seating and forcibly remove from a seat a person who had been asked to take another place.

Status. The office of trustee does not confer on the incumbent any legal interest in the property of the corporation, or impose on him any personal liability for its debts or assessments; therefore a commissioner appointed to determine the damages to land taken for a street was not disqualified because he was a trustee of a religious corporation own-

ing premises liable to assessments for benefits. People v Mayor, 63 N. Y. 291.

These officers are trustees in the same sense with the president and directors of a bank, or of a railroad company. They are the officers of the corporation to whom is delegated the power of managing its concerns for the common benefit of themselves and all other corporators; and over whom the body corporate retains control, through its power to supersede them at every recurring election. Robertson v Bullions, 11 N. Y. 243.

Statute of Limitations Cannot Be Waived. Trustees of a religious corporation should not be permitted to allow claims against the corporation which are barred by the statute of limitations. Matter of Orthodox Congregational Church, Union Village, 6 Abb. N. C. (N. Y.) 398.

Temporalities. Trustees have control of the temporalities belonging to the church. Bristor v Burr, 120 N. Y. 427.

Title to Office. Trustees were elected at a time other than that fixed by the custom of the church, and without the usual notice. The election did not make the persons chosen trustees de jure. An entrance into the church by persons thus irregularly chosen was held not to affect the rights of the existing trustees who held office under previous elections, and were entitled to the possession of the church property. First African Methodist Episcopal Zion Church v Hillery, 51 Cal. 155.

Title to Office, Necessary to Maintain Action. Persons claiming to be trustees of a religious society, but who have not been admitted to the office or exercised any functions thereof, cannot maintain an action in the name of the society to restrain individuals, in possession and claiming to be trustees of the society duly elected, from closing the church edifice and from preventing the pastor from holding religious meetings therein, etc. Plaintiffs must first establish their title to the office, and this question cannot be determined on a motion for an injunction. North Baptist Ch. v Parker and others, 36 Barb. (N. Y.) 171.

TRUSTS

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Advowson. A testator gave so much of his residuary personal estate as should be applicable to charitable purposes to trustees upon trust "to invest the same, apply the income, or any portion of the capital, in grants for or toward the purchase of advowsons or presentations or in erecting or contributing to the erection, improvement, or endowment of churches, chapels, or schools, or in paying, or contributing to the salaries or income of rectors, vicars or incumbents, masters or teachers, but upon the following conditions." The specified conditions were in effect that no churches, schools, clergy or teachers should receive any benefit unless they belonged to the Evangelical party in the Church of England. None of the conditions applied in terms to the purchase of advowsons or presentations, and the will did not create a charitable trust as to the advowsons, and there being no apportionment, the whole bequest failed, and there was an intestacy. Hunter v Attorney General, 80 Law Times Rep. N. S. (Eng.) 732.

Archbishop, Moral Trust. Testator gave the residue of his estate to St. Teresa's Church, and also to St. Joseph's House for Homeless Industrious Boys, with a proviso that if he died within thirty days after making the will, then the residue should go to Archbishop P. J. Ryan, of Philadelphia, absolutely. The testator died within thirty days after making the will. The archbishop testified that he did not know testator, and had not heard of him. It was held that the property became the absolute property of the archbishop, but he acknowledged his obligation to administer it according to the testator's intention, and for the advancement of religious and charitable interests. It was not legally im-

pressed with a trust, but there was a moral trust which the archbishop recognized and declared his intention to observe. It was held that the archbishop was entitled to the property. Flood v Ryan, 220 Pa. 450.

Auburn Theological Seminary. Previous to the Revised Statutes a pecuniary legacy to a corporation, payable out of the proceeds of real estate, which the executors were directed to sell, was valid, although the corporation was not authorized by its charter to take real estate by devise. Auburn Theological Seminary v Childs, 4 Paige Ch. (N. Y.) 419.

Beneficiary, How Determined. If a deed is made to three named persons as trustees for "The Christian Church," a court of equity should enforce the trust in favor of "the Church of Christ," where it is shown that the Church of Christ was legally incorporated, and that the persons named as trustees in the deed were in fact the trustees of the Church of Christ, and there was no proof that there was any legally organized or any unorganized religious society, or church having the name "The Christian Church" at the time the deed was made, nor one thereafter legally organized. Church of Christ v Christian Church, Hammond, 193 Ill. 144.

Bishop. A conveyance to a bishop and his successors of a lot on which there was a church, and in which church the grantor had a technical fee, and for which conveyance he received a valuable consideration, with the provision that the property should be forever for the use of the Protestant Episcopal Church at Old Town, Maine, was held not to contain a condition which could be the basis of a forfeiture, but that the property was received by the bishop in trust for the benefit of the local parish. Neely v Hoskins, 84 Me. 386.

A trust conferred upon a bishop or other ecclesiastical functionary, so far as concerns title and ownership of land, is in itself not different from a trust vested in any other natural person. The death of a bishop who simply holds lands in trust, like that of any other individual who occupies the position of a trustee, vests the trust in the courts. If a successor in the trust is desired, appeal must be made to the

proper court for his appointment. This is so whether the individual be an ecclesiastical functionary of the highest rank or a layman of the humblest degree. Dwenger v Geary, 113 Ind. 106.

Cemeteries. A sum of money was bequeathed to ecclesiastical societies to be invested as a perpetual fund, the annual income thereof, or so much thereof as should be necessary, to be applied in keeping in good order certain burial lots, and the remainder of the income, if any, applied to the maintenance of the religious services of the societies. It was held that a bequest for keeping burial lots or cemeteries in good order or repair was not given in charity, and, therefore, was not protected by the statute of charitable uses. Coit v Comstock, 51 Conn. 352.

Charitable, Defined. Charitable trusts include all gifts in trust for religious and educational purposes in their ever-varying diversity; all gifts for the relief and comfort of the poor, the sick and the afflicted, and all gifts for the public convenience, benefit, utility or ornament, in whatever manner the donors desire to have them applied. Carter v Whitcomb, 74 N. H. 482.

Church, Incapacity. A trust created by the rules of a church, which is not shown capable of making contracts, accepting benefits, or compelling performance, is not recognized by the law. Baxter v McDonnell, 155 N. Y. 83.

Christmas Presents. Testator bequeathed to the Sunday school of this society a fund the interest of which was to be used annually in making Christmas presents to the members of the school. It does not appear what the gifts were to be; it does not appear that they are even to be rewards of merit, or to be used as a means of inducing attendance on the part of scholars at the school, or to promote their good conduct there, or of inciting them to attention to religious instruction given to them there; nor whether they are to be given to all the scholars or part only. The gift is in trust, and it is not a charity in the legal sense, and was void. Goodell v Union Association of the Children's Home, 29 N. J. Eq. 32.

Church Library, Sunday School. Testator bequeathed to the church a fund which was to be kept invested by the church and the income paid to his housekeeper during her life, but after her death the income was to be used for the purchase of a church library, the support of a Sabbath school in the church, and for other church purposes as might be determined by the society. It was held that the corporation could not act as trustee in a matter in which it had no interest, but in this case the power of the corporation to take the property for its own use carried with it as an incident the duty of administering the trust for the benefit of the housekeeper. Matter of Howe, 1 Paige (N. Y.) 213.

Corporate Capacity. When the powers of a corporation are not defined and restricted by its charter, or by any general law, its capacity to take, hold, and dispose of real estate is precisely the same as that of a natural person, and such a corporation may hold lands as trustee. Real estate may be granted to any religious corporation, in trust, for any specific use or purpose comprehended in the general object of its incorporation. Tucker v St. Clement's Church, New York, 3 Sandf. Sup. Ct. (N. Y.) 242, aff'd 8 N. Y. 558 n.

Court to Administer. Testator in 1850 made a will, devising certain property to be applied to the education of poor young men of Bedford County, that may be deemed by the court worthy and intend preparing themselves for the ministry, without regard to religious sect, being Christian as a matter of course. Testator died in 1873, and his heirs contested the validity of the trust. It was held that the testator intended to vest the discretion of the selection in the court of common pleas, and while that court could not exercise such a discretion either by itself, or a trustee of its appointment at the date of the will, yet at the time of the death of testator it had acquired that capacity by virtue of the act of 26th of April, 1855, which empowers said courts to act as testamentary trustees. Although the act of 1855 is prospective only, and the court, therefore, had no power to act as trustee at the date of the will, the testator here having appointed

the court, the act removed this disability, and made it competent to administer the trust. Mann v Mullin, 84 Pa. St. 297.

If a legacy for charitable purposes is given to an association which is incapable of undertaking the trust, this court will appoint a trustee to receive the legacy and apply it to the purpose intended by the testator. In this case a legacy was given to the Bible Society of the Methodist Episcopal Church, but that Bible Society had been discontinued before the will was made. The total fund available was less than this legacy. The will also gave a legacy to the American Bible Society; that society being willing to undertake the trust, the court directed the payment to it of the fund in trust that the society should expend the amount received in the circulation and distribution of Bibles. Bliss v American Bible Society, 2 Allen (Mass.) 334.

Dedication of Land for Religious Purposes. Two persons, owners of real estate, gave it to two religious societies for the purpose of erecting thereon a church and establishing a burying ground. The agreement was by parol. Members of the congregation and others contributed funds with which the church was erected, and it was used as a house of worship by both congregations. In an action to recover possession of the property brought by a person who claimed to derive title through a judgment against one of the grantors, on which his interest had been sold, it was held that the persons who made the dedication and the successor of one of them, through the sheriff's sale, held the property in trust for the uses originally intended. The legal effect of the agreement was to vest the equitable title in the original subscribers to the fund for the erection of a house of worship, and also in their representatives and successors, and it was a dedication for a valuable consideration to them. In Pennsylvania, religious and charitable institutions have always been favored without respect to forms. Beaver v Filson, 8 Pa. St. 327.

Denominational Limitation. Where a deed of lands gave to trustees the right to appoint, not an individual corporation

or society, but some religious denomination to exercise ecclesiastical control over the premises, namely, the occupation for religious services on Sundays and Wednesday evenings, the appointment of a designated religious denomination necessarily implies a limitation of such use to the doctrines and purposes of that denomination. An appointment of a Primitive Methodist Church under this deed was sustained in Cape v Plymouth Congregational Church, 130 Wis. 174.

Denominational Use. Under a trust for the purchase of a lot and the erection of a church, conditioned that the Methodist Episcopal Church should have the right to occupy the house two Sabbaths each month and other religious denominations the other Sabbaths, the Methodist Church may lawfully transfer its interest to another denomination using the same property. Alexander v Slavens, 7 B. Mon. (Ky.) 351.

Discretion of Trustees. A devise for the "dissemination of the gospel at home and abroad" was held not void for uncertainty. The method of administering the trust, and the instrumentalities to be used, were committed to the discretion of the trustees. Attorney-General v Wallace, 7 B. Mon. (Ky.) 611.

Diversion. A change in the ecclesiastical relation of a church for whose benefit property is held in trust does not necessarily involve any perversion of the trust or diversion of the fund from its legitimate purpose. Swedesborough Ch. v Shivers, 16 N. J. Eq. 453.

"A fund created by a religious society for the instruction and education of children in the faith and doctrines of the society as professed at the time of the creation of the fund cannot be diverted from its original object and destination; if a diversion be made or attempted, a court of equity will interpose and correct the procedure." In such case the question is not which faith or doctrine is the soundest or most orthodox, but for what object or purpose was the fund originally established by the founders of it. The court will enforce the trust, but will not seek to enforce the peculiar faith and doctrines. Field v Field, 9 Wend. (N. Y.) 395.

Where a trust was established for the purpose of erecting a schoolhouse and church, and maintaining a burying ground, the society designated as trustees cannot create a new use, or convey the estate for purposes inconsistent with those for which they held it, and, therefore, a grant by the trustees to another religious society of equal rights and privileges to the property was held invalid, but it was held that this diversion of the property might be ratified by the beneficiaries, and was deemed to have been ratified by Articles of Association between the original society and the grantee society, by which it was agreed that the property should be used and enjoyed by the two societies as tenants in common. Brown v Lutheran Church, 23 Pa. St. 495.

Donor's Intention. The donor's intention must be implicitly followed, or nothing can be done. Attorney General v Bishop of Oxford, 1 Bro. C. C. (Eng.) 444 n.

Equity Jurisdiction. It is the duty of equity tribunals to give effect to the powers of the trust if they be legal, and to that end they must ascertain and determine its scope and object; and in that investigation they are authorized to resort to the early history of the church, as contained in standard and authentic works on the subject, prior in date to the existence of the particular controversy. Ebbinghaus v Killian, 1 Mackey (Dis. of Col.) 247.

If property is dedicated by will or deed of the donor for the express purpose of being held and exclusively used for the teaching, support, or maintenance of some specific dogma, or creed or form of religion, and that purpose is declared by the instrument under which the property is held, a trust arises, and a court of equity will prevent a perversion of the trust attached to its use. So long as there are persons or agencies within the meaning of the original dedication, and willing to carry out the uses intended to be maintained by the donor, a court of equity upon their application will extend its aid in executing the trust. Brundage v Deardorf, 92 Fed. 214, aff'g 55 Fed. 839.

The dedication of a meetinghouse to the use of a religious

society creates a charitable trust, enforceable in equity; and where the object of a bill is to secure a trust, secure peace and enjoin multiplied invasions of an alleged right, chancery has jurisdiction of it. Curd v Wallace, 7 Dana (Ky.) 190.

In Tennessee the rule that where a trust is created for a lawful object, definite in its character, and vested in trustees, so that it is properly cognizable in the courts of chancery, has continued in existence from the earliest period and is still in force. Dickson v Montgomery, 1 Swan (Tenn.) 348, sustaining bequests to the treasurer of Clarke and Erskine College in trust for home missions, for foreign missions, and also for the education of ministers under the auspices of the Associate Reformed Synod of the South.

When the devisee is indefinite the court can name a trustee to administer the gift as a trust. Kingsbury v Brandegee, 113 App. Div. (N. Y.) 606.

If the object of the trust be lawful, and sufficiently specific and definite to enable the court to execute it, it will never fail for want of a trustee. The court will execute the trust. Attorney-General v Jolly, 1 Rich. Eq. (S. C.) 99.

In Bowden v McLeod, 1 Edw. Ch. (N. Y.) 588, it was held that the court of chancery had complete jurisdiction of trusts for religious purposes, and trustees of religious societies, and will interfere in any abuse of the trust and will compel the trustees to discharge their duties fairly with respect to the property.

Foreign, Unincorporated Society. In Washburn v Sewall, 50 Mass. 280, it was held that a bequest by a testatrix residing in Massachusetts to the Concord Female Charitable Society located in Concord, New Hampshire, was valid although the society was not incorporated and that a court of equity would appoint a trustee to receive the bequest in trust for such charities as were administered by such society.

Funds, How Applied. Under a will providing for the establishment of a free church and the maintenance of a minister and public worship therein, with authority to use the prin-

cipal for rebuilding the house if destroyed, it was held that the expenditure of a portion of the income for the services of a sexton and for fuel was not a misapplication of the trust fund. Attorney-General v Union Society, Worcester, 116 Mass. 167.

Home for Aged Persons. In Odell v Odell, 10 Allen (Mass.) 1 the court sustained a bequest to a savings bank in trust to be invested by the bank, the interest to be added to the principal semiannually for fifty years. At the end of that time the sum which shall have accumulated shall be appropriated by a society of ladies from all the Protestant religious societies in Salem, to provide and sustain a home for respectable, destitute, and aged native-born American men and women. "The above annual payment shall be made from the income of my real estate, which real estate shall be held in trust by my executors until the last payment shall have been made to the trustees of the Salem Savings Bank; then my real estate shall be divided among the grandchildren of my late brother," etc. The bequest was valid, even if the direction for accumulation was invalid.

Implied from Bequest or Conveyance. A conveyance or bequest to a religious association, or to trustees for that association, necessarily implies a trust. Fuchs v Meisel, 102 Mich. 357.

Indefiniteness. "The owner of property may do as he pleases with it, provided the disposition be not to unlawful purposes, and what he may do himself he may do by agent while living or by executor after death." In this case testatrix directed her executors to distribute and pay the residue of her estate to and among such religious charitable and benevolent purposes and objects or persons or institutions as they, in their discretion, might deem best and proper. The will created a valid trust which was not void for uncertainty or indefiniteness. The executors had full power as to the distribution of the fund, and the court would not interfere with the exercise of their discretion so long as they were acting in good faith. Dulles Estate, 218 Pa. 162.

A bequest for the ministers of the New York Yearly meeting of Friends called Orthodox, who are in limited and straitened circumstances, is not too vague or uncertain, or too indefinite in its objects. So of a bequest for the relief of such indigent residents of the town of Flushing, as the trustee or trustees of the town for the time being should select. Both gifts were held to be valid. Shotwell v Mott, 2 Sandf. Ch. (N. Y.) 46.

Testatrix provided contingently for the use of a part of her estate by paying it to such worthy poor girls as the executors might select, to aid in their education. The executors were given full power as to the amounts to be paid and the times of payment. This provision was held void for uncertainty. Wheelock v American Tract Soc. 109 Mich. 141.

Legislature Cannot Modify. Tharp v Fleming, 1 Houst. (Del.) 580, held void a statute providing for the sale and conversion of real estate into personalty, devised by a testator in perpetuity and trust to a charity.

Legislative Power. Land dedicated to the use of several religious societies to be a perpetual fund for the support of the ministration of the gospel on the premises, and to be divided equally between the societies, was held valid, although no trustee was created by the deed. The Legislature had power to appoint a trustee to administer the trust. Bryant v McCandless, 7 Ohio (pt. 11) 135.

Limitation. Under the New York religious corporations act of 1813 the trustees cannot take a trust for the sole benefit of members of the church as distinguished from other members of the congregation, nor for the benefit of any portion of the corporators to the exclusion of others, no trust being authorized by the statute except for the use and benefit of the whole society. The trustees of a religious corporation in this State cannot receive a trust limited to the support of a particular faith, or a particular class of doctrines, for the reason that it is inconsistent with those provisions of the statute which give to the majority of the corporators, without regard to their religious tenets, the entire control over

the revenues of the corporation. Robertson v Bullions, 11 N. Y. 243; Gram v Prussia Emigrated Evangelical Lutheran German Society, 36 N. Y. 161; see also Bellport Parish v Tooker, 29 Barb. (N. Y.) 256.

Marine Bible Society. The testator made a bequest to the Marine Bible Society, but there was no such society in existence at the time of his death. There had been previously a society known as the Boston Young Men's Marine Bible Society, organized for the purpose of circulating Bibles among destitute seamen. The court sustained the trust, notwithstanding the nonexistence of the society named in the will, and appointed a trustee to receive and dispose of the legacy, by appropriating the avails thereof to the purchase of Bibles, to be distributed among destitute seamen, as near as may be in conformity with the constitution and by-laws of the Boston Young Men's Marine Bible Society, as it formerly existed. Winslow v Cummings, 3 Cush. (Mass.) 358.

Missions. A bequest of money to be applied to the support of missionaries in India, under the direction of the General Assembly Board of Missions of the Presbyterian Church in the United States, was held void for uncertainty. The court could not determine whether all missionaries were to be beneficiaries, or only Presbyterian missionaries, or whether missionaries in service at the date of the will, or at the death of the testatrix, or for all future time were to be included. The true rule as to such bequests is that the beneficiaries must be certain and definite, and so clearly ascertained that they have a standing in a court of equity to enforce the trust. Board of Foreign Missions of the Presbyterian Church v McMaster, Fed. Cas. No. 1,586 (Cir. Ct. Md.).

Object, How Ascertained. Land was conveyed to the trustees of the society. There was no trust unless the mere conveyance to a religious society constituted a trust. It was held that although the religious opinions of the grantor might not be inquired into for the purpose of ascertaining the nature and extent of the trust, the circumstances sur-

rounding the making and accepting of the conveyance may be inquired into for the purpose of ascertaining the object of the trust. In this case a trust was implied that the property should be used for the purposes of those adhering and in subordination to the religious denomination to which it was conveyed. The presbytery decided that the minority were adhering and in subordination to it; and that those trustees who had withdrawn from the society were not adherents of the Presbytery. It was held that the seceding trustees could not, as they had attempted to do, lease the property to a Congregational church. First Constitutional Presbyterian Church v Congregational Society, 23 Ia. 567.

Other States. The validity of a bequest of a New York testatrix to a religious denomination for the purpose of acquiring real property in another State on which to erect a church and rectory must be determined by the law of such other State. Mount v Tuttle, 183 N. Y. 358.

Parol, When Insufficient. A trust in land cannot be created by parol in an unincorporated religious society. Where several persons, members of different denominations, and some apparently not members of any denomination, signed a subscription paper for the erection of a church edifice, the paper providing that the building when not occupied by the Baptists be opened for any Christian denomination contributing to its erection and paying their portion of the incidental expenses. The Universalists and Liberal Christians joined the enterprise. The money was paid to a Baptist minister, who bought a lot and erected a building thereon, which was used by the Baptists on Sundays and other days and also by the Universalists. The minister conveyed the property to certain persons, describing them as trustees of the Baptist society. There was no such corporation. The grantees refused to allow the house to be used by any denomination except the Baptists, and in an action against them it was held that the subscribers to the fund for the erection of the church had acquired no right in the premises, nor was any valid trust created on their part which would

authorize the court to grant the relief sought. Follett v Badeau, 26 Hun. (N. Y.) 253.

Parsonage. A conveyance of property in trust for use as a parsonage to be occupied by ministers of the Methodist Episcopal Church of the United States, according to the rules and Discipline adopted by the General Conference, was held void for uncertainty under the statutes of Virginia and West Virginia. The property was not specifically conveyed in trust for the use of a local congregation as the minister's residence. The property was conveyed for the benefit of a particular circuit, but a circuit is not a permanent territorial division, as its boundaries were likely to be and in this case had been changed. The trust was, therefore, not for the benefit of a particular local congregation as required by statute. The members of the Methodist Episcopal Church residing within the bounds of the circuit, liable at any time to be changed, did not constitute a congregation within the meaning of the statute. There were, in fact, several distinct congregations within the circuit mentioned in the deed. Carskadon v Torreyson, 17 W. Va. 43.

Philips Academy Divinity School. For a history of its foundation and purposes, see Trustees Philips Academy v King, 12 Mass. 546, where the court sustained a bequest to that part of the academy known as the divinity school, to be administered according to the plan of the "associate foundation" previously established, and held that technical interpretation of biblical texts in support of the principles of Calvinism should not prevail as against the more liberal purpose of inculcating the broader principles of Christianity as applied to the mode of daily life and the regulation of personal conduct.

Poor Jewish Families. A bequest for the benefit of poor deserving Jewish families, residing in New Haven, Connecticut, was sustained in Bronson v Strouse, 57 Conn. 147. The trustees had power to determine what families were within the description and might disburse the fund accordingly.

Poor Ministers. A bequest for the benefit of poor ministers

of a specified religious denomination is valid, though it does not appoint the trustees of the fund. It is competent for a testator to empower the executors and trustees of his will to designate the first trustees of such fund. If it were otherwise, the trust would remain, and the court of chancery would appoint the trustees. Shotwell v Mott. 2 Sandf. Ch. (N. Y.) 46.

Princeton Theological Seminary. The Associate Reformed Church authorized the collection of funds and the establishment of a theological seminary with a suitable library. In Associate Reformed Church v Trustees Theological Seminary, Princeton, 4 N. J. Eq. 77, it was held that the General Synod had no power to effect a consolidation with the General Assembly of the Presbyterian Church and thereby transfer the library and funds from the theological seminary of the Associate Reformed Church to the Presbyterian Theological Seminary at Princeton.

Religious Services. A bequest to a person in trust for the purpose of maintaining religious services during her lifetime in a private unincorporated memorial chapel, was void for the reason that there was not in existence any person, corporation, or clergyman who could enforce the trust; and a bequest over, after this trustee's decease, to the parochial fund of the Protestant Episcopal Church in the Diocese of Western New York was also void, for the reason that the trustees of this fund could not take the trust under the act creating the organization. The trust attempted to be established through this society provided that the income thereof should be used for paying a clergyman who should hold divine services in the said memorial chapel as often as convenient, also for keeping it in repair as well as its cemetery adjacent. The charter contemplated an organized body having legal existence; and the language of the will in question did not specify any particular parish, or any organized body which should receive the income. Butler v Trustees Parochial Fund Protestant Episcopal Church, Western New York, 92 Hun (N. Y.) 96.

Sectarian Purpose. If a trust is created, or a charity given for the benefit or use of a sectarian society by its sectarian and denominational name, it is to be presumed that it was intended to be used to advance the peculiar doctrines of that sect; and if a meetinghouse is conveyed in trust for certain persons, to be under the control of the society of Christians, it would be the duty of the court, upon proper application and proofs, to see that the house was controlled by a society of Christians, and not by Mohammedans, pagans, or infidels, even though a majority of the original society have apostatized from the faith of the sect which formed the society.

The denominational name of a religious society to which, or to whose use, a donation or grant is made, and the doctrines actually taught therein at the time of the gift or grant, and immediately after, and the length of time they continue to be thus taught without interruption may be resorted to, to limit and define the trust in respect to doctrines deemed fundamental; that where the conveyance is merely to the religious corporation by name, with no other designation of its purposes or trusts (as in this case), the denominational name, in connection with the contemporaneous acts of the corporators, may be a sufficient guide to the nature of the trust; that where there is no specific designation in the deed as to the particular religious tenets or doctrines which it is to be used to advance or support, the denominational name may indicate the nature of the trust, so far as respects doctrines admitted to be fundamental; and that, if the society of one religious sect or denomination becomes incorporated with a strict denominational name descriptive of the fundamental doctrines of the sect to which it belongs, it will be presumed that it was constituted for the purpose of advancing the vital doctrines of such sect or denomination, and that society or those having control of property held in trust for the benefit of such religious society, should be restrained from applying the property, or the use of it, to the promotion of tenets or doctrines

clearly opposed and adverse to the fundamental principles of the faith and doctrines of such sect or denomination at the time, and immediately after the trust was created. Hale v Everett, 53 N. H. 1.

Sunday School. Property was conveyed to trustees in trust for the uses of a Sabbath school, for the diffusion of Christian principles as taught and practiced by Christian Evangelical denominations, with power to erect, repair, and renew from time to time all buildings necessary to carry out the object and purposes of the trust herein described. The trustees and their successors had power to sell the land to this society, and received in exchange other land which was subsequently reconveyed to the society. Such transfer required the concurrence of all the trustees, and it was therefore held that the trustee who did not give his consent could maintain an action to set aside the conveyance and restore the property. Morville v Fowle, 144 Mass. 109.

Suspending Power of Alienation. A conveyance to trustees of an unincorporated religious society for the purpose of erecting a house of worship on the land conveyed, with the provision that vacancies in the office of trustee should be filled by the congregation, does not suspend the power of alienation, for the reason that such trustees are persons in being, by whom an absolute fee in possession could be conveyed. Fadness v Braunborg, 73 Wis. 257.

Title. A conveyance of property to a religious society for general religious purposes vests the title in the trustees of the society and they become seized for the use of the body. Each member of the church becomes entitled to a beneficial interest in the property of the church so long as his or her connection or membership continues. Brunnenmeyer v Buhre, 32 Ill. 183.

Unincorporated Society. Land was conveyed to two persons in trust for an unorganized religious society, and upon the organization of the society was conveyed to them, upon condition that they should hold, occupy, and improve the same for religious worship, and support a minister there. It

was held that the minister and a minority of the society, not being pewholders, nor having paid any purchase money, could not maintain a bill in equity to restrain the society from reconveying the estate to the trustees, discharged of any trust, nor to compel them to permit the minister to preach in the house. Clark v Evangelical Society, Quincy, 12 Gray (Mass.) 17.

Under the New York act of 1813 property, both real and personal, may be held in trust for the use of an unincorporated religious society without any restriction as to time, except that it shall terminate upon lawful incorporation of the religious society, when by virtue of the act the title vests in the corporation. The trust may be shown by parol as well as by deed. The same rule governs as to personal property held by an incorporated religious society for the use of an unincorporated society as if it were held by natural persons. Rector, etc., Church of the Redemption v Rector, etc., Grace Church, 68 N. Y. 570.

Where property is purchased by an unincorporated religious society for a special purpose, or is taken in the name of a third person with the purchaser's consent, a trust is created which can be enforced, although not in writing. Fink v Umscheid, 40 Kan. 271.

The fact that a religious society to whose trustees land was conveyed in trust for the erection thereon of a church had not been incorporated when the deed was delivered did not invalidate the trust. The deed in such case vested the legal title in the trustees, and upon the subsequent incorporation of the society such legal title became vested in the corporation subject to the trust. Fadness v Braunborg, 73 Wis. 257.

A conveyance of land to a committee of a congregation or an unincorporated religious society, vests the title in such committee as trustees "for a body of individuals who have united together and contributed of their means to purchase land and erect a house of public worship," and the pewholders and other persons associated with the congre-

gation are beneficiaries of the trust. An unincorporated congregation or society is incapable of taking title to real property, but the conveyance must be to a person or persons in trust for the society. The legal estate is in the trustees, but the beneficial estate is in the members. Such a trust may be terminated and new denominational relations assumed and formed by consent, and especially by the unanimous consent of the members of the society. Attorney-General v Proprietors of meetinghouse in Federal Street, 3 Gray (Mass.) 1.

A purchase of land for a church by an unincorporated society, the title to be taken in the name of two designated members who were to convey the property to a corporation to be subsequently organized, imposed on such grantees a trust which was fully discharged by the conveyance to the corporation. Centenary Methodist Episcopal Church v Parker, 43 N. J. Eq. 307.

Where there is a devise of real estate to a church incapable of taking the title because not incorporated, the devise is not void, but the legal title descends to the heirs, charged with the trust, which they will be required to execute, or a court of equity will appoint a trustee to execute the trust, until the church becomes incorporated, and acquires the capacity to hold the legal title. Byers v McCartney, 62 Ia. 339.

Universalist Church. A bequest for the establishment of a universalist society, with provision for the erection of a building, and the employment of a preacher, was held a charity and valid. Cory Universalist Society v Beatty, 28 N. J. Eq. 570.

Worship, Usage, How Determined. "Where an institution exists for the purpose of religious worship, and it cannot be discovered from the deed declaring the trust what form or species of religious worship was intended, the court will inquire into the usage of the congregation respecting such worship, and if the usage turns out upon inquiry to be such as can be supported, it will be the duty of the court to

administer the trust in such manner as best to establish the usage, considering it as a matter of implied contract between the members of the congregation. Where a congregation becomes dissentient among themselves the nature of the original institution must alone be looked to as the guide for the decision of the court, and to refer to any other criterion—as to the sense of the existing majority, would be to make a new institution." "If any persons seeking the benefit of a trust for charitable purposes should object to the adoption of a different system from that which was intended by the original donors and founders; and if others of those who are interested think proper to adhere to the original system, the leaning of the court must be to support those adhering to the original system, and not to sacrifice the original system to any change of sentiment in the persons seeking alteration, however commendable that proposed alteration may be." Attorney-General v Pearson, 3 Merv. (Eng.) 353.

UNINCORPORATED SOCIETY

Bequest to, void, 844.
Church assessments, 844.
Conveyance to, valid, 844.
Incorporation, effect, 845.
Incorporation, effect on title to land, 845.
Members, liability, 845.
Property, how held, 846.
Right to sue, 846.
Roman Catholic, 846.
Trustees, protected, 846.

Bequest to, Void. In New York a voluntary unincorporated association has no legal capacity to receive a bequest even for a charitable purpose. Pratt v Roman Catholic Orphan Asylum, 20 App. Div. (N. Y.) 352.

A bequest to an unincorporated association or society is void—there can be no valid trust without a certain donee or beneficiary. First Presbyterian Society, Chili v Bowen, 21 Hun (N. Y.) 389.

Church Assessments. Members may be exempted from assessment for support of parish church. Adams v Howe, 14 Mass. 340.

Conveyance to, Valid. An unincorporated society may purchase land for a church and take the title in the name of designated members to be conveyed to the corporation to be subsequently organized. Upon such a conveyance to the corporation the trust imposed on the first grantees is fully discharged, and no trust follows as against the corporation itself. Centenary Methodist Episcopal Church v Parker, 43 N. J. Eq. 307.

A conveyance to an unincorporated religious society of land for church purposes is valid, and vests title in the officers of the society. Alden v St. Peter's Parish, Sycamore, 158 Ill. 631.

Incorporation, Effect. If an unincorporated society becomes incorporated, property owned by it passes to the new corporation. Gewin v Mt. Pilgrim Baptist Church, 166 Ala. 345.

Incorporation, Effect on Title to Land. A conveyance was made in 1882 to certain persons, describing them as trustees of this society. The next year, 1883, the society erected a church edifice on the land. In December, 1885, the society was incorporated. The trustees named in the incorporation papers were the same persons named as grantees in the deed. Under the statute the corporation became the owner of property previously acquired by the unincorporated society, including that conveyed to trustees as above described, and was held to be in possession of it at the time of this action, but owing to defects in several conveyances, it seems that the church had not acquired a good title to the property. De Sanchez v Grace Methodist Episcopal Church, 114 Cal. 295.

Members, Liability. Members of a church organization having no legal existence, who are directly instrumental in incurring liabilities for it, or who authorize or ratify transactions made in its name, are personally liable, while those members who do not in any way participate in such transactions are exempt from liability. The members of a building committee of such an organization who have charge of the work of constructing a church building are personally liable for materials furnished to them for such purpose, although the account was charged in the name of the society, and although the seller was informed that the church intended to raise the necessary funds by a church fair and by individual subscriptions. Clark v O'Rourke, 111 Mich. 108.

In Thurmond v Cedar Spring Baptist Church, 110 Ga. 816, it was held that the members of an unincorporated religious society were liable as joint promissors or partners for a debt contracted in the erection of a church edifice.

The society was not incorporated, and it had not filed and recorded its name and objects as required by the code. It was held that the society could not be sued as such but

that its members were liable on its contracts as joint promissors or partners. Wilkins v Wardens etc., St. Mark's Prot. Epis. Ch., 52 Ga. 351.

A member of an unincorporated religious society is not responsible for its debts unless he in some way sanctioned or acquiesced in their creation. Males v Murray, 7 O. Nisi Prius Re. 614, citing De Voss v Gray, 22 O. S. 159; see also Plattsmouth First National Bank v Rector, 59 Neb. 77.

Property, How Held. Members of voluntary unincorporated associations can hold property in no other way than through the medium of trustees acting as depositaries of the legal title, and this equitable interest entitled each beneficiary to the same voice in the management and control of the property as if he were a joint owner and holder of the legal title. Clark v Brown, 108 S. W. (Tex.) 421.

Right to Sue. In an action by the society against its treasurer to recover funds in its hands, the treasurer objected to the capacity of the society to sue, on the ground that it had not become a corporation. Several meetings of the society were shown, and the transaction of various items of business, but the court said these things might have been done by an unincorporated association, and were not necessarily evidence of the existence of a corporation. It was also said that the treasurer was not estopped from denying the corporate existence of the society. Fredenburg v Lyon Lake Methodist Episcopal Church, 37 Mich. 476.

Roman Catholic. In the Roman Catholic Church, property owned by an unincorporated society is conveyed to the bishop. But property purchased by a congregation for its special use continues subject to its control notwithstanding a conveyance to the bishop who holds it in trust for the particular congregation, and it cannot be used for general church purposes. Fink v Umscheid, 40 Kan. 271.

Trustees, Protected. Courts of equity will protect unincorporated societies in what they hold, in order to sustain trusts, because of their charitable uses, which would otherwise be held void. Hundley v Collins, 131 Ala. 234.

UNITARIANS

Bequest sustained, 847.
Doctrines and worship, schism, 847.
Taxation, 851.

Bequest Sustained. In Congregational Unitarian Society v Hale, 29 A. D. (N. Y.) 396, this society was held entitled to receive a legacy given by a New York testator, although the society was not incorporated, it appearing that under the laws of Massachusetts such a society was entitled to take and hold property.

Doctrines and Worship, Schism. This society was incorporated in 1827 for the purpose of promoting religious knowledge and Christian virtues. In 1828 a meetinghouse was erected for the purpose of promoting Christian worship. The fund for erecting the house was provided by stock, sold to several persons, nearly all of whom were members of the society. A conveyance of the land on which the meeting house was erected was made to five persons in trust for the general purposes of the society, which conveyance vested the proprietors of the property with the management and control thereof, including the sale and occupancy of the pews. At a meeting of the proprietors, held prior to the sale of the pews, an annual pew tax was established, the proceeds to be used for the promotion of public worship under the direction of the society. Pews were sold and conveyed in accordance with these regulations. Vacancies in the board of trustees were duly filled from time to time by election. The legal title to the property was held by trustees of the society in trust for the use of the stockholders or proprietors of said meetinghouse, but not for their general or unrestricted use.

A question arose as to the right to the title and possession of the property, growing out of religious opinions announced by the pastor of the society. It was claimed by one

party that he had ceased to hold, maintain, and preach the doctrines of Christianity as held by the founders of the society and their successors, and that he had preached doctrines opposed to the Christian faith and tending to subvert it among the members of the society. The trust was reposed in this society because it was composed of Unitarian Christians, and the trust was not established for the benefit of persons who were simply members of a civil corporation.

It was held that the defendants, who claimed to be a majority of the society, had in fact, most of them seceded from the doctrines and faith of the original sect which founded the society, and were no longer in any proper sense of the term Unitarian Christians. The meetinghouse of this society was dedicated by Christian ministers of the Unitarian congregational churches in the usual form, and the first minister was ordained by the same council of ministers that dedicated the church. Before the dedication a church corporation was formed composed of members of the society.

On the 26th of April, 1829, the Dover Unitarian Society adopted the following covenant:

"As it seems to be the duty of every Christian church cautiously to obey the injunction of the apostle that all things be done decently and in order, while at the same time it avoids imposing anything by way of covenant or articles of faith, which may not be conscientiously complied with by all who profess faith in our Lord Jesus Christ, and thereby deprive many of the benefit of Christian ordinances who have a right and privilege to enjoy them; therefore,

"*Resolved*, That the following acknowledgment shall be the covenant of this church, to be assented to by all who may hereafter wish to unite themselves with us for the benefit of Christian ordinances: Do you believe in Jesus Christ as the Messiah, and accept his religion as a revelation from God, the true guide of your faith and rule of your duty? With a deep sense of your imperfection and weakness, and a humble and grateful reliance upon God for the pardon of sin, and assistance in duty, will you solemnly and

earnestly endeavor, by attendance upon the services of religion, and by the offices of Christian charity and piety, to become a sincere disciple of Jesus Christ, that being faithful to yourself, your fellow men, and to God, you may not be found wanting in that day when he shall judge the world in righteousness by that Man whom he hath appointed?

"*Resolved*, further, That any person wishing to unite with us in the celebration of the Lord's Supper, his desire having been previously signified by the pastor of the church, he shall, unless some serious objection be made, be received on the acknowledgment of the above covenant, or any other form of words he may prefer expressing a belief in Christianity, to the full communion of this church to the enjoyment of all its benefits.

"*Resolved*, further, That baptism shall be administered to all who desire it, to themselves or their children, upon their assent to the following declaration, which shall be put to them by the pastor before administering the ordinance: Do you believe in Jesus Christ as the Messiah, and regard his religion as a revelation of God?"

The Lord's Supper was administered April 26, 1829. The court held that this society was not only Christian in name but also in its principles, doctrines, and ordinances. The court further held that the society, since its organization and until September, 1864, had maintained regular public Christian worship on the Sabbath, and had preaching by regularly ordained ministers of the Unitarian denomination for Christians, who there, at such meetings, preached and taught the doctrines of Christianity, as held by the sect of Christians called Unitarian.

The defendant, Francis E. Abbott, became pastor of the church on August 31, 1864, and continued as such until April 1, 1868, when he resigned. During the latter part of his ministry he said that "Jesus Christ was like other men, with no more authority," and compared Christ with Garrison and other good men; that he considered Christ as a mere man, and fallible like other men; that Christ was not

the Messiah, and that if he (Christ) believed himself to be the Messiah, he was mistaken. Finally Mr. Abbott said he was not a Christian nor a Unitarian so far as Unitarianism was based upon Christianity, or the recognition of Christ as the Messiah; and proclaimed himself a theist and preached his theistical doctrines to such an extent as to give great dissatisfaction to the members of the church and society. In consequence of such dissatisfaction, Mr. Abbott, acting on the advice of friends, resigned the pastorate, which took effect on the 1st of April, 1868. The text of his farewell sermon, preached on the 29th of March, 1868, was from the writings of Ralph Waldo Emerson.

The 1st of April, 1868, Mr. Abbott commenced preaching for an independent society in a hall in Dover, and after preaching there a few Sabbaths, he returned to the church of the Unitarian Society, and preached there alternate Sundays for a few months. Later, in a communication to the Liberal Christian, published in New York, Mr. Abbott said, among other things: "I have come to the conclusion that in no sense is Jesus the Messiah or Christ of God. The soul is its own Christ. Humanity is its own Messiah. I reject Christianity that I may still cleave to religion, which admits of no mediator, because it is immediate." "Religion has no more to do with Jesus than it has with Judas. It leaves the soul alone with God. It acknowledges no leader; is loyal to no master; imitates no exemplar, looks to no redeemer; needs no Saviour, knows no Christ." He said he could not make the confession that Jesus was the Christ of God.

In May, 1868, a large number of members of the society made a written protest against the use of the church property except for the avowed purposes of its organization. Mr. Abbott admitted the general change of sentiment from that of a minister of the gospel of Jesus at the time of his ordination to that of the gospel of humanity.

After Mr. Abbott's resignation some of the wardens who sympathized with him invited him to continue to occupy the pulpit, but he declined to do so unless the society would

change its name to conform to his own change of view by which he had ceased to be either a Unitarian or a Christian. At a parish meeting on the 12th of April, 1868, the wardens were instructed to employ only Unitarian Christians to supply the desk. Mr. Abbott's friends organized an independent society. This society held its first meeting on the 26th of April, 1868, in the American Hall, at which time Mr. Abbott took charge of the services. On the 27th of April another parish meeting of the regular society was held, and wardens were elected and a resolution adopted assigning the use of the church to each of the two divisions of the society for one half the time, under which arrangement the independent society was permitted to occupy the church half of the time. Mr. Abbott occupied the pulpit.

The court said that the defendants, except Mr. Abbott, by forming an independent society had abandoned the regular Unitarian society, and forfeited all right to that society's property, which belonged to the old society, and it could not be diverted to purposes not contemplated by the original trust. An injunction was granted against the use of the meetinghouse by Mr. Abbott or by any other persons preaching the same doctrines, or permitting the use thereof, except for the purposes for which the original society was formed. Hale v Everett, 53 N. H. 1.

Taxation. The statute of Connecticut exempted from taxation a fund not exceeding $10,000, composed of stocks, bonds, etc., owned by a religious society, and invested for the benefit of the church, the income derived therefrom being used for local church purposes. It was held that an investment of such a fund in real estate did not continue the exemption but such real estate was subject to taxation. It was also held, in this case, that in view of the long continued practice in the state of exempting church property from taxation, an occasional renting of church property for lectures, concerts, readings, amateur theatricals, and other like entertainments did not subject the property to taxation. First Unitarian Society, Hartford v Hartford, 66 Conn. 368.

UNITED BRETHREN IN CHRIST

Amended constitution and confession of faith, 852.
Amending constitution, 1885–1889, 853.
Canada, 853.
Division, 855.
Government, 856.
History, 859.
History and form of government, 860.
Majority's right, 861.
Philomath College, 862.

Amended Constitution and Confession of Faith. In 1849 land was conveyed to trustees for the use of the local society, according to the rules and discipline of the denomination. There was then a house of worship on the land conveyed. The legal title to the property was held by such trustees, and their successors, regularly chosen by the society.

The General Conference of 1889 adopted a revised constitution and confession of faith by a vote of 110 to 20. The minority of that General Conference withdrew and organized another General Conference, declaring its adherence to the old constitution and confession. Each party having representatives in the local society elected trustees according to the rules and discipline of the denomination. The trustees representing the minority party brought an action against the majority trustees to obtain the church property. It appeared that after the adoption of the revised constitution and confession of faith in 1889 there was no change in the teaching of doctrines or beliefs of the denomination which were the same as those taught prior to that date. The amended constitution and confession of faith approved by the vote taken in November, 1888, and ratified and declared adopted by the General Conference of 1889, became the only constitution and confession of faith of the denomination. Lamb v Cain, 129 Ind. 486.

A church was erected in Sparta in 1875, and a parsonage in 1880. The defendants in November, 1891, by force broke into the church, removed the lock therefrom, and since such date have so retained the property. In 1892 the defendants took forcible possession of the parsonage of said church, and have continuously held possession thereof. This case involved the question as to the validity of the action of the General Conference of 1889 in adopting an amended constitution and revised confession of faith, and it was held, following Bear v Heasley, 98 Mich. 279, that the revised constitution and confession of faith were not constitutionally adopted, and were therefore invalid. Lemp v Raven, 113 Mich. 375.

Amending Constitution, 1885-1889. The General Conferences of 1885 and 1889 were regular and properly constituted according to the law of the church. The constitution could be amended, and the confession of faith revised at the same time, as they were, in fact, amended and revised in 1889. This amendment and revision were regular and in substantial compliance with the law of the denomination. The revised confession of faith is not in conflict with the original confession, and does not constitute a serious departure from the ancient landmarks of the church. Griggs v Middaugh, 10 Ohio Dec. 643.

Canada. Brewster v Hendershot, 27 Ont. App. (Can.) 232, considers the division of the United Brethren denomination in Canada. According to the statement of facts in the case, it seems that the action arose out of the dispute "amongst the members of the religious society known as the United Brethren in Christ, which in 1889 culminated in the withdrawal of a small section from the main body. Those remaining, representing the great majority of the members, have become known as the Liberals; those withdrawing were for some time known as the Radicals, but they have now assumed the title of Conservatives. The differences between these two sections soon extended to questions relating to the title of property held for the use and benefit

of the church, and resort was had to the courts. Suits were instituted in the courts of several of the States of the Union, and in every instance except one the courts resolved that the liberals represented the church and were entitled to the church property."

The present case involves the right to a parcel of land in the village of Stevensville, in the county of Welland, with a church building erected thereon. The land was conveyed to trustees of the United Brethren in Christ "in trust for the United Brethren in Christ forever." The plaintiffs represent the Liberals, and the defendants the Radicals, or Conservatives. Since the division in 1889 the church building had been occupied by the Radicals subsequently known as the Conservatives. On the trial it was established by admission that there was then no congregation of Liberals at Stevensville, and that the plaintiff's trustees were appointed by the yearly conference of the United Brethren Church for Canada, and also by resolution of the Quarterly Conference of the circuit to which Stevensville belongs, and not by the congregation at Stevensville. The court says, citing Itter v Howe, 23 Ont. A. R. 256, that the plaintiffs represent the denomination known as the United Brethren in Christ. Two of the defendants were also two of the trustees to whom the title to the property was originally conveyed. The court said the title to the property was in these two defendants as surviving trustees, and although they had withdrawn from the original denomination, they were bound to hold and administer the property on behalf of, and for the purposes of their cestuis que trust of that denomination, and not for those who, though calling themselves by the name of the United Brethren in Christ, are not that body. The persons who, calling themselves Radicals, withdrew from the original denomination had no authority to consider themselves the true church. The plaintiffs, and those in harmony with them have been adjudged to be the church, and as such entitled to the use and benefit of the property held for it, and there being no congregation at Stevensville,

the court, under the Ontario statute, directed that the proceedings be taken for the appointment of trustees by the court.

Division. Prior to May 13, 1889, the church of the United Brethren in Christ was a united single ecclesiastical organization, governed by a system of judicatories, consisting of the official board having authority in and over a particular congregation; Quarterly and Annual Conferences having jurisdiction over the churches within a particular territory, and a General Conference, composed of representatives elected by the Annual Conference, which had jurisdiction over all. A division occurred in the General Conference of 1889, and a small minority withdrew from the place in which the Conference was in session, and organized themselves into a General Conference and claimed to be the true and only organization having valid succession and authority as the General Conference of the church. This division extended into many of the Annual Conferences and congregations. Those thus withdrawing were in large part a party which, in the United Church, had been known as "Radicals," and those remaining were called "Liberals." The voluntary religious society, called the church of the United Brethren in Christ, was organized in the year 1800, or about that time. No creed or formal confession of faith was adopted until 1815, when the General Conference of that year adopted and promulgated the instrument called the Old Confession of Faith. In 1841 the General Conference of that year adopted an instrument for the government of the church, being the body of organic law called the Old Constitution. That constitution was never submitted to the members of the society for their adoption or approval, and was the act of the General Conference alone, a body then composed of a small number of clergymen, representatives of the Annual Conferences by whom they had been elected. The constitution of 1841 was adopted by the General Conference of that year. It was not authorized by any direct delegation of authority, nor sanctioned by any subsequent vote of the

members. Nothing more clearly demonstrates the supreme authority claimed and exercised by the General Conference than this fact that it imposed a constitution and confession of faith upon the church without special authority theretofore conferred, or submitting its work for adoption or rejection by the membership. This constitution provided that there should be no alteration of it except by the request of two thirds of the society, and the same constitution prohibited the adoption of any rule or ordinance altering or doing away with the confession of faith as it then stood. Some plan being necessary in order to carry into effect these constitutional provisions, it was competent for a General Conference to formulate such plan. Whether lay assent should precede or follow action by the Conference was not of the essence of the matter. Neither was it vital that such lay concurrence should be indicated by vote or by petition. The General Conference of 1885 adopted a report formulating a plan for the submission of questions relating to the alteration of the constitution and revision of the confession of faith, and prescribed the method of ascertaining the opinion of the society, and provided that if two thirds of all the votes cast should be in favor of the proposed alterations, the bishops should announce the result, and the alteration should thereupon take effect. The General Conference of 1889 adopted a resolution, reported by a special committee, confirming the action of the General Conference of 1885, and the commission created by it, in submitting to the society an amended constitution and a revised confession of faith, and declaring that such amended constitution and new confession of faith had been duly adopted, and were in full force and effect. Brundage v Deardorf, 92 Fed. 214, aff'g 55 Fed. 839.

Government. This church was an organized religious society having official bodies for the government of the church, its members, congregations, and officers, each being clothed with certain powers, as follows:

First. The official board of each congregation, which

meets monthly and transacts the business of the congregations. It consists of the recognized preachers, exhorters, leaders, stewards, and trustees, and Sunday school superintendents, who reside within the bounds of the congregation, or hold membership therein.

Second. The Quarterly Conference, composed of the presiding elder of the district and the preacher in charge, and recognized preachers, exhorters, class leaders, stewards, trustees, and Sunday school superintendents, who reside within the district, or hold membership therein. It meets quarterly, and among other things appoints trustees of the meeting-houses, who hold during the pleasure of the Quarterly Conference.

Third. The Annual Conference which meets yearly, is composed of the elders, and licentiate preachers who have been received by the Annual Conference in each district, and is presided over by the bishop of the church.

Fourth. The General Conference, which meets every four years, composed of elders elected by the church members in every Conference district throughout the society.

The official board is subordinate to the Quarterly Conference, the Quarterly Conference to the Annual Conference, and the Annual to the General Conference, the last being the highest legislative and judicial body of the church.

Some time prior to the year 1800 the church of the United Brethren in Christ was organized as a religious society. No General Conference of the church was held until 1815, when on the 6th of June of that year the first General Conference was held at Mt. Pleasant in Pennsylvania, in pursuance of a call which had before that time been made. This Conference formulated a Discipline which contained the rules and doctrine or confession of faith of the church. Some modifications in the confession of faith were made by subsequent General Conferences until 1885. The confession of faith was not submitted to the members of the church for approval.

The General Conference of 1841 adopted a new constitution. The constitution was not submitted to the members

of the church for approval. The General Conference of 1885 appointed a committee on revision which at the same Conference presented a report recommending a revision of the constitution, and also of the confession of faith. On the adoption of this report a commission was appointed with power to prepare a plan for submitting the proposed revised constitution and confession of faith to the members of the church prior to the next General Conference. The plan adopted required the submission of the question to the members of the church in November, 1888. The plan was submitted.

The total enrollment of members of the church at that time was 204,517. Of this number only 54,369 voted either way on the revision plan. Nearly the entire vote cast was in favor of the revision. The General Conference of 1885 had provided that the revision should be deemed adopted if approved by two thirds of all the votes cast on the proposition. The actual affirmative vote was much more than two thirds of the votes cast, but much less than two thirds of the entire church membership. The vote was ratified and approved by the General Conference of 1889, and by its direction the bishops issued a proclamation on the 13th of May, 1889, announcing the adoption of the revised constitution and confession of faith.

The vote of approval in the General Conference of 1889 was 110 in favor of the revision and 20 against it. A minority withdrew and organized another General Conference, transacted business, claimed to be the true General Conference, and declared its adherence to the old constitution and confession of faith.

The majority, continuing the General Conference, adopted resolutions declaring, among other things, that the minority had, by the withdrawal, separated themselves from the church and ceased to be members of it. The minority were known as the Radical party, and the majority as the Liberal party.

The Indiana court held that, for the purpose of consider-

ing the question of an approval of the constitution by the required percentage of the vote, the whole number of votes cast must be considered as including all the legal voters, observing that any other rule would be impracticable and would lead to endless confusion and contention. The General Conference of 1889 determined and declared the adoption of the revised constitution and confession of faith. This was the highest declaration that could be made by the church. The General Conference had power to make this determination, and the civil courts were bound by such adjudication. The court held that the constitution and confession of faith adopted in 1889 became the true constitution and confession of faith of the denomination, and the members of the denomination who adhered to this constitution and confession constituted the true church, and those who rejected this action by the General Conference of 1889 became seceders. Lamb v Cain, 129 Ind. 486. See also Philomath College v Wyatt, 27 Or. 390, where it was held that members of the church who had joined it since the adoption of the constitution of 1841 are presumed to know the contents of the constitution, and to have assented to it, and were bound by it. Members who joined prior to 1841, and remained in the church were bound by the constitution.

History. This church originated in a voluntary association of Protestants of various denominations at some period during the eighteenth century; and its original creed was simply that of the orthodox Protestant churches generally, but allowing divergencies in matters where they differed. It receives its first organization from a Conference of its ministers held at Baltimore, Maryland, in the year 1789. Its first General Conference was held at Mt. Pleasant, Pennsylvania, in 1815, at which time a form of Discipline and a confession of faith were adopted. Up to this time the church was without any formal Discipline or confession of faith, nor until the year 1841 did it have any constitution. A constitution was adopted by the General Conference of 1841.

At the General Conference of 1889 a new constitution and a revised confession of faith were adopted by a vote of 110 to 20. Thereupon the minority assembled in another part of the city, (York, Pennsylvania) and undertook to carry on the session of the Conference, claiming that it had exceeded its powers, and that the other delegates, by their illegal action in adopting and adhering to the amended constitution and revised confession, had abandoned the church of the United Brethren in Christ and organized another and distinct church. Both organizations continued to use the old name; and their respective adherents have come to be called, those of the majority organization "Liberals," those of the minority "Radicals." Horsman v Allen, 129 Cal. 131.

History and Form of Government. In Bear v Heasley, 98 Mich. 279, it was said that this church was originated nearly a century and a half ago, but it had no written confession of faith until 1815, when its General Conference, held in Pennsylvania, adopted one. This confession of faith was recognized and adhered to as containing the fundamental doctrines of the church until 1889. The church had no written constitution till 1837, when a General Conference, held at Germantown, Ohio, formulated and unanimously adopted one. The members of that Conference doubted their authority to adopt a constitution, and therefore the Conference issued a circular to give notice to the church throughout the nation that "we intend to present a memorial to the next General Conference, praying them to ratify the constitution now adopted." The Conference met quadrennially, and when it assembled in 1841 it appears to have ignored entirely the constitution of 1837 and the validity of its adoption and adopted another, which is one of the subjects of this controversy. The regularity of the adoption of this constitution was early questioned by some members of the church. It is too late now, however, to question it, since it was recognized and treated as the organic law of the church for nearly fifty years. It provided for a

General Conference to consist of the bishops, and of elders elected by the members of every Conference district throughout the society. All ecclesiastical power to make or repeal any rule of discipline was vested in this Conference. The Discipline, which was early adopted, made it the duty of the General Conference "to examine the administration of each Annual Conference, whether it has strictly observed the rules and preserved the moral and doctrinal principles of the Discipline in all its transactions." In 1885 the General Conference adopted a resolution declaring the General Conference to be the highest judicial authority of the church. The General Conference is the highest judicatory of the church, and is intrusted with the general supervision of its affairs, both temporal and spiritual. In all matters, therefore, in which it has jurisdiction its judgments are binding upon the church, its clergy, and its members, and will not be reviewed by the civil courts. The relation between the members of this association is one of contract, and the confession of faith and the constitution constitute the terms of the agreement, which is binding upon all. An amendment of the constitution of a society must be adopted in accordance with the provisions of the constitution in force at the time of such adoption respecting such amendment; otherwise it is invalid. See also Russie v Brazzell, 128 Mo. 93.

Majority's Right. A division of the society occurred in consequence of differences arising from the adoption of the new constitution and revised confession of faith by the General Conference in 1889. Each party to the action claimed title to the local property, because, as alleged, it represented the true church. The majority was in possession of the property. The minority based its claim to the property on the ground that the so-called revised constitution and confession of faith were void.

The property in question was deeded to the trustees of the local society in 1866. It was held that though there be a change in church polity, or alteration in the expressed form of faith, if the substantial theological doctrine and the

general polity be retained, there is no such departure as would amount to a misuse or perversion of the trust. The principles of the denomination, its general polity and articles of faith, were not materially altered by the action of the General Conference of 1889 in adopting the new constitution and revised confession of faith, and this action did not constitute a departure from the established faith and policy of the denomination. The majority of the local church was held entitled to possession of the property. Kuns v Robertson, 154 Ill. 394. See also Griggs v Middaugh, 10 Ohio Dec. 643; Schlichter v Keiter, 156 Pa. St. 119; Horsman v Allen, 129 Cal. 131; Brundage v Deardorf, 92 Fed. 214 aff'g. 55 Fed. 839; Itter v Howe, 23 Ont. App. Rep. (Can.) 256.

Philomath College. An action was brought by the college (Philomath College v Wyatt, 27 Or. 390) which involved the status of the religious bodies from which the parties claimed to derive their title and their right to hold the college property. Each set of trustees was elected by an Annual Conference claiming to be the Annual Conference of the said church in Oregon, and the decision of the case turned on the question which was the true Annual Conference; and this decision depended on the question whether the revised confession of faith and amended constitution of the church had been regularly adopted, and were in force.

This confession of faith and amended constitution had been approved by more than two thirds of the members of the church voting thereon, in November, 1888, according to a plan submitted by a revision commission created by the General Conference of 1885. The result of this vote was reported to the General Conference of 1889, and it was approved. Following this ratification the proclamation was issued by the bishops announcing the adoption of the revised confession of faith and amended constitution, which thereupon became operative and in full force. The plaintiff, the college, adhered to the revised confession of faith and amended constitution as approved and proclaimed in 1889.

The defendants adhered to the confession of faith and constitution as they existed prior to 1889. The college was incorporated under an Oregon statute in 1865, as a general literary and educational institution, under the auspices of the church known as the United Brethren in Christ. The trustees of the institution were chosen by the Oregon Conference of the church. The decree sustained the proceeding of 1889 adopting the revised confession of faith and amended constitution. This decree was affirmed on appeal by a divided court.

UNITED PRESBYTERIAN CHURCH

Organization, 864.
Minority's right, 864.

Organization. The United Presbyterian Church was formed in the year 1847 by the union of two churches which had separated from the Established Church many years before, and were known as the United Associated Synod and the Relief Church. General Assembly of Free Church of Scotland v Overtoun, (1904) Law Rep. Appeal Cases, p. 515.

This church was formed in 1858 by the union of the "Associate Presbyterian Church of North America" and the "Associate Reformed Church of North America." Wilson v Livingston, 99 Mich. 594.

Minority's Right. A deed conveyed property to certain persons as trustees of the Associate Congregation of Pleasant Divide, subordinate to the Associate Presbytery of Iowa, subordinate to the Associate Synod of North America. After the union of the Associate and the Associate Reformed Churches, a majority of the congregation at Pleasant Divide refused to assent to the union, while a minority organized as a United Presbyterian Church under the union. It was held that the trustees of the United Presbyterian Church while representing a minority of the members of the former association were trustees named in the deed, and were entitled to the possession of the property described therein. McBride v Porter, 17 Ia. 204. See Associate Reformed Church.

UNIVERSALISTS

Action, how to be brought, 865.
Bequest sustained, 865.
General convention, 865.
Pews, by-laws, 865.
Stock, subscription, 866.
Taxation, 866.
Transfer tax, 866.
Trust sustained, 866.
Unincorporated society, conveyance directed, 867.

Action, How to Be Brought. In an action by the society by name, it was held that the action should have been brought in the name of the wardens and vestrymen, or trustees as such of the church, naming it. An action in the name of the society was improperly brought. Drumheller v First Universalist Church, Pierceton, 45 Ind. 275.

Bequest Sustained. Testator made a bequest to the Universalist religious denomination in the county to constitute a permanent fund, the use to be applied annually for the support of that denomination. The bequest was held to be sufficiently certain and definite, and the court provided for trustees to administer the fund. First Universalist Society, North Adams and others v Fitch, 8 Gray (Mass.) 421.

General Convention. The Universalist General Convention was incorporated and organized under the laws of the State of New York. A Virginia will contained a devise of a remainder to the General Convention, the land to be sold by the convention and the money applied to mission work in the United States. The devise was sustained, and the convention was held capable of taking and holding the property, and selling it for the purposes specified in the will. Jordan v Universalist General Convention Trustees, 107 Va. 79.

Pews, By-Laws. This society which was incorporated,

erected a house of worship and sold pews under a contract by which they were to remain the property of the purchasers so long as all assessments thereon for expenses of the church were regularly paid, but on default for one year the pew was to revert to the society. Afterward by-laws were adopted regulating the proceedings relative to the assessment and collection of taxes. Subsequently the name of the society was changed. It was held that the society had power to make the by-laws, and that a person who purchased a pew after the change of name, could not object to the proceeding by which the name had been changed. Mussey v Bulfinch Street Society, 1 Cush. (Mass.) 148.

Stock, Subscription. The society made a by-law relative to subscriptions to stock in support of the church, fixing the price of each share at $25, with a provision that a person paying $3 more might receive a redeemable certificate. The by-law was held valid, and a holder of a certificate issued in accordance with the by-law was entitled to recover the par value of the stock. Davis v Proprietors Second Universalist Meeting House, 8 Metc. (Mass.) 321.

Taxation. After the assessment for a given year in which the church had been exempted, it ceased to be used as a church. It was held that the board of revision had a right to add the property to the receiver's list, charged with a just proportion of taxes, corresponding to the unexpired fraction of the current year. Moore v Taylor, 147 Pa. 481.

In Henderson v Erskine, Smith's N. H. Rep. 36, it was held that Universalists did not constitute a separate sect entitling them to exemption from taxation, for the support of a Congregational minister.

Transfer Tax. A devise to a religious society of land and buildings thereon, to be used exclusively as a parsonage, was not subject to the succession tax under the Massachusetts act of 1891. First Universalist Society, Salem, v Bradford, 185 Mass. 310.

Trust Sustained. A testator, by his will, bequeathed a fund to trustees to be used for the erection of a hall in Sparta for

the purpose of establishing a Universalist church in that town. The trustees were required to secure the incorporation of a Universalist society under the New Jersey law, and erect a hall within one year after the testator's death, and in case of a failure so to erect the building the fund should revert to the testator's estate. By a codicil it was provided that the fund was to be paid over to certain trustees therein named, after they should have established a society of the Universalist denomination in Sparta, and also should have been incorporated, and a part of the fund was available in the discretion of the society for the employment of a Universalist preacher. These provisions were also to be carried out within a year after the testator's death. It was held that the executors having refused to pay over the fund, the trustees named in the will and codicil were not in default, and the bequest had not been defeated by any negligence on their part. The society was incorporated within a year after the testator's death. Cory Universalist Society v Beatty, 28 N. J. Eq. 570.

Unincorporated Society, Conveyance Directed. Land was conveyed to three trustees in trust for an unincorporated religious society. A church edifice was afterward erected on the land, and the society was incorporated. Two of the trustees thereupon conveyed the land to the corporation, but one of them refused to execute a conveyance. In an action brought to compel the conveyance he defended on the ground that the society was largely indebted for expenses of erecting the church edifice for which he was personally responsible, and he objected to parting with the title until the debts were paid. Notwithstanding this situation the court ordered the execution of a proper conveyance. Fourth Universalist Parish v Wensley, 5 Wkly. Note Cas. (Pa.) 273.

VOTERS

Assessment, 868.
Contribution, 868.
Episcopalians at Congregational meeting, 869.
Qualifications, how determined, 869.
Qualifications, how fixed, 870.
Qualifications, in general, 870.
Stated attendants, 872.
Withdrawal, effect, 872.
Women, meeting for incorporation, 872.

Assessment. If the law requires an assessment as the basis of a right to vote at a parish meeting, the omission of a person's name from the assessment list deprives him of the right to vote even if he has the requisite property. Sparrow v Wood, 16 Mass. 457.

Contribution. A person whose right to vote depends on his contribution to the church and expenses must contribute to its support according to the usages and customs thereof. This undoubtedly means substantial and vital aid and support, material support without which the organization cannot exercise its ordinary functions and perform its customary and appropriate duties and ministrations. It means the parting with, and contribution of, a portion of one's worldly substance, in the usual and customary way, to be used in meeting and defraying the expenses incurred by the church, congregation, or society in the support of public and divine worship. People v Tuthill, 31 N. Y. 550.

In State v Crowell, 9 N. J. L. 391, it was held that a person was not entitled to vote as a member of a Presbyterian congregation, who does not contribute his just proportion according to his own engagements or the rules of that congregation, to all the necessary expenses of the church, and that an election of trustees of a Presbyterian Church made

by persons not being contributors to the support of the church (and therefore not qualified by their rules to vote) is void.

Episcopalians at Congregational Meeting. The First Society of Chatham, not Episcopalian, was entitled to the income of the proceeds of certain lands granted in January, 1702, by the town of Middletown, which then included the town of Chatham afterward erected, such income to be applied in support of schools or of a minister, in the discretion of the members of the society. Subsequently Episcopalians residing in Chatham assumed the right to vote at a meeting of the First Society and did vote to appropriate the income of the fund for the support of schools. It was held that the Episcopalians were not members of the First Society, and had no right to vote at a society meeting, and no right to any part of the money resulting from such original appropriation of land. Sage, etc. Committee of the First Society, Chatham v White, 2 Root (Conn.) 111.

Qualifications, How Determined. The presiding officer at a church election acts judicially in receiving a vote, and if unchallenged, the person offering the vote is presumed to possess the requisite qualifications, and after the result of the election has been declared the presiding officer cannot reconsider the matter, determine that the voter was not qualified, and reject his vote. Re Williams, 57 Misc. (N. Y.) 327.

The society was incorporated by a charter which provided that all Old School Presbyterians were entitled to membership, and that adults who had, during the year immediately prior to an election, contributed to the support of the church a sum not less than $2 for a pew or portion of a pew are eligible as trustees and voters at such an election. Subsequently the pews were made free and there was no pew rent. After this change it was held that persons were members of the corporation and therefore voters, who had, during the year preceding an election, been regular attendants at the church services, and had contributed not less than $2 for its

support. Commonwealth ex rel Scull v Morrison, 13 Phila. (Pa.) 135.

Aliens otherwise qualified were held entitled to vote at elections. An inspector of election was held eligible as a candidate. By-laws were sustained authorizing the president to appoint inspectors of elections, and providing that tickets should contain nothing but names of candidates. Commonwealth v Woelper, 3 Ser. and R. (Pa.) 29.

In M'Ilvain v Christ Church, Reading, 8 Phila. (507), it was held that a person was entitled to vote at an election of vestrymen who at any time before the election had taken a pew or sitting, and paid its rate, for the preceding year; and it was not necessary that the pew or sitting should have been taken and held for the year preceding the election.

Qualifications, How Fixed. If the qualifications of voters at the election of officers of a religious society are not prescribed by statute, such qualifications may be determined by each denomination. American Primitive Society v Pilling, 4 Zab. (N. J.) 653.

Qualifications, in General. See People ex rel Sturges v Keese, 27 Hun (N. Y.) 483, holding that the New York act of 1868 Ch. 803, amending former statutes relating to the qualifications of voters did not apply to existing corporations unless the provisions of the act were adopted by the vestry. These provisions had not been adopted by this society.

Upon questions affecting the property of a religious corporation, the right to vote thereon should not be confined to persons only who are members of the church. Those who have contributed to its support, although not members, should be allowed a voice in such matters. Niccolls v Rugg, 47 Ill. 47.

In Commonwealth v Cain, 5 Ser. and R. (Pa.) 510, the court sustained by-laws limiting the right to vote to persons who had been members of the society twelve months, and prohibiting persons from exercising the right who were in arrears two years on pew rents.

It having been provided in the fourth section of the act of incorporation of the Church of the Holy Trinity in the city of Philadelphia that the members of the church having subscribed to the building of the same, or who shall hereafter contribute not less than 10s. annually toward the support of the church, shall meet at a time designated in the act, in each year, at such place in the said city as shall be appointed by the trustees, of which notice to be given, and choose by ballot eight lay trustees by a majority of members so qualified to vote; it was held that persons who only a few days before the election, or less than a year before it, had contributed 10s. or more to the support of the church, but who had not for several years before been contributors, were not annual contributors within the meaning of the act, and were not entitled to vote, either at the election for trustees, or at the preliminary meeting for the election of officers to conduct it, though their contributions were made with a bona fide intention of becoming members of the church. Juker v Commonwealth ex rel Fisher, 20 Pa. St. 484.

In Weckerly v Geyer, 11 S. and R. (Pa.) 35, it appeared that the charter of a congregation was granted by the Pennsylvania proprietors in 1765 under which a voter must have been a contributing member and a communicant. This charter was confirmed by the assembly in 1780 with some alterations, one of which was that no person should be entitled to vote who was under the age of eighteen years. It was held that considering both charters together, a voter must have been a contributor, a communicant, and eighteen years of age.

The question as to the qualification of voters at an election for trustees of a religious society arises for decision when the voter offers his vote. If the vote is not challenged, it must be received; if it is challenged, the inspectors must determine the question of qualification. Having received the vote, the inspectors have decided the question, and they cannot afterward disregard the vote on the ground that it is illegal, and the inspectors, at the close of the polls, having

canvassed the votes and declared that certain persons had received a specified number, which was a plurality of all the votes received, cannot afterward review their own action in receiving the votes and make a certificate declaring, in effect, that certain votes alleged to be cast for the successful candidates were in fact illegal. The reception of the votes by the inspectors was conclusive as to the voter's right to vote, and such certificate assuming to review and revise the vote is a nullity. Hartt v Harvey, 32 Barb. (N. Y.) 55.

Stated Attendants. "A stated attendant is one who attends statedly which is defined to be regularly at certain times, not occasionally."

Regular attendance at the stated times for worship as established in the church, or society or congregation, as distinguishable from irregular or occasional attendance, is what is necessary. This attendance must be personal and cannot be supplied by another. The regular attendance of the wife, or other members of the family, will not answer. And no amount of contribution to the support of the church or society can be accepted in lieu of this personal presence statedly.

Persons who attend a few times only in the course of the year, as compared with the number of stated times for worship within such year, and at irregular and uncertain intervals are clearly not stated attendants. People v Tuthill, 31 N. Y. 550.

Withdrawal, Effect. A member of this society withdrew therefrom, and afterward demanded the right to vote at a parish meeting, producing a certificate of the clerk of the society that he had ceased to be a member thereof. It was held that until he joined this society he was subject to taxation in the parish, and was a voter therein, and that when he ceased to be a member of the society his original relations to the parish were restored including the liability to taxation and the right to vote. Oakes v Hill, 10 Pick. (Mass.) 333.

Women, Meeting for Incorporation. The certificate of

incorporation recited that the meeting was composed of the male members of the society, but it did not appear that the female members were excluded, or were prevented from participating in the meeting. It was held that the female members of the society, if any, must be presumed to have absented themselves from the meeting; and if they did, the male members were competent to take the necessary proceedings for incorporation. Lynch v Pfeiffer, 110 N. Y. 33.

WESLEYAN METHODISTS

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Request Sustained. Testatrix gave certain property to the trustees to be applied according to directions to be given by the annual meeting of the ministers of the Wesleyan Methodists of Canada, including a small annual payment to the local society for the support of preaching. The provision in the will did not constitute a charitable use, and was therefore valid, at least in part. Doe v Read, 3 U. C. K. B. (Can.) 244.

Testator bequeathed a fund to the Wesleyan Methodist Society of Belturbet, and to the Wesleyan Methodist Society of Ireland. These bequests were held valid. The court said that the two societies named by the testator in his will were, respectively, the local Methodist Society of Belturbet and the General Methodist Society of Ireland. The addition by the testator of the word "Wesleyan" did not throw the least doubt on his meaning. Hadden v Dandy, 51 N. J. Eq. 154.

Conference, Powers Relating to the Trial and Suspension of a Minister. The Conference had power to submit to a committee questions relating to the conduct and trial of a minister. The committee had power to suspend the minister for a specified period. Dempsey v North Michigan Conference, Wesleyan Methodist Connection of America, 98 Mich. 444.

History. A large number of Wesleyan Methodist Associations cooperated in June, 1843, in forming a convention at which a religious denomination was organized called the Wesleyan Methodist Convention of America. The convention adopted a Discipline and rules regarding the details of

organization including Annual Conferences, and also a General Conference to meet once in four years, beginning in 1844. Smith v Bowers, 57 App. Div. (N. Y.) 252 affirmed 171 N. Y. 669.

Member, When Right of Action Lost. In Smith v Bowers, 57 App. Div. 252, affirmed 171 N. Y. 669, it was held that a person who had for more than a year ceased to be a stated attendant at the services of the church of which he had formerly been a member, and whose name had been dropped from the roll of members, could not maintain an action against the society, nor its trustees, to prevent the use of the church property for purposes inconsistent with the discipline and rules of the association.

WILL

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Auburn Theological Seminary. A legacy to the Auburn Theological Seminary, payable on the death of the testator's daughter without lawful issue, was sustained in Trustees of Auburn Theological Seminary v Kellogg, 16 N. Y. 83. The

seminary was authorized by its charter to take a legacy for the purposes specified in the will, namely, "to endow a professorship in the seminary."

Bishop to Be Appointed. A legacy (in England) for the establishment of a bishop in America, not yet appointed, is not void, but the money was to remain in court until the appointment of a bishop. Attorney-General v Bishop of Chester, 1 Bro. C. Cases (Eng.) 444.

Capacity to Take. Testator made a bequest to this society to be paid after five years from his death. The fund bequeathed was larger than the society was authorized to receive at the time of the testator's death, but before the first payment became due, the Legislature increased the amount which the society was authorized to take, but it was held that this did not aid the society, the want of capacity at the death of the testator could not be removed by subsequent legislation; such legislation could only be prospective in its operation. First Congregational Church, New Orleans v Henderson, 4 Rob. (La.) 211.

Conditional Bequest. A gift to a church for the purpose of aiding in the payment of a mortgage on the church property, on condition that the remaining amount of the debt should be raised within two years after the testator's death, was held to be a condition precedent and the bequest was invalid. Booth v Baptist Church of Christ, Poughkeepsie, 126 N. Y. 215.

Constitutional Limitation. The constitution of Missouri made void every gift, sale, or devise of land exceeding one acre in extent "to any minister, teacher, or preacher of the gospel, as such, or to any religious sect, order, or denomination."

A devise to three persons in trust for a religious society to be organized and known as St. Mary's Church, including property intended for a rector's residence, the church and a school, exceeding in amount the one acre limited by the constitution of Missouri, was held good as to an acre. Barkley v Donnelly, 112 Mo. 561.

The court held to be invalid a devise to the society of an acre of land, and a bequest supposed to be sufficient to erect a church thereon. Such devise and bequest were prohibited by the Missouri constitution. First Baptist Church v Robberson, 71 Mo. 326.

A will of testatrix was regularly admitted to probate, except a clause which gave the residue of the estate to Peter Richard Kenrick. In a proceeding for the probate of this clause its probate was contested on the ground that it violated the provision of the constitution of 1865 forbidding any gift, bequest, or devise for the support, use, or benefit of any minister, public teacher, or preacher of the gospel as such, or to any religious sect, order, or denomination. It appeared that prior to the present will the testatrix made another will, in which the residue of the estate was given to Peter Richard Kenrick in his official capacity as archbishop of the Roman Catholic Church for the benefit of the church. The first will was made prior to the adoption of the constitution, and a new will was thereafter made, omitting the archbishop's title and the object of the bequest. It was held that the bequest was void under the constitution. Kenrick v Cole, 61 Mo. 572.

In Boyce v Christian, 69 Mo. 492, it was held that this society was a religious sect and therefore incapable under the Missouri constitution of receiving a devise, notwithstanding it was but a local congregation uncontrolled by any general ecclesiastical organization.

Conveyance, Includes Will. A will is a conveyance within the meaning of the 3 Vic. chap. 4, clause 16, relative to a deed or conveyance made to a bishop or rector or other incumbent of the Church of England, provided such deed or conveyance be made and executed at least six months before the death of the person. Doe Baker v Clark, 7 U. C. Q. B. (Can.) 44.

Corporation, Bequest by Nonresident. A New York act of 1860, chap. 360, which provided that "no person having a husband, wife, child or parent, shall, by his or her last will

and testament, devise or bequeath to any benevolent, charitable, literary, scientific, religious, or missionary association or corporation in trust or otherwise more than one half part of his or her estate, after the payment of his or her debts, and such devise or bequest shall be valid to the extent of one half and no more," was held not to apply to a Massachusetts testator; accordingly, it could not prevent a New York corporation from receiving a bequest from a nonresident testator without regard to the limit of amount. Healy v Reed, 153 Mass. 197.

Dissolution of Society, Effect. A testator devised real estate in trust, for the payment of the income in support of a pastor, or elder in a church in the town where testator resided, of a certain faith and practice so long as the members of that church or their successors should maintain the visibility of a church in such faith and order. Afterward the only two members of the church at a meeting called by public notice, voted and resolved that they would no longer endeavor to maintain the appearance of a visible church, and declared the church dissolved and extinct. It was held that the church was thereupon dissolved, and ceased to be a visible church, and that the trustee held the estate as a resulting trust, for the testator's heirs-at-law. Easterbrooks v Tillinghast, 5 Gray (Mass.) 17.

Foreign Beneficiary. In Magill v Brown, Fed. Cas. No. 8,952 (U. S. Cir. Ct. Pa.) (Brightly N. P. 347), it was held that one of the privileges secured in every State to the citizens of the several States by art. 4, sec. 2 of the constitution of the United States, is that of exemption from the law of alienage and the consequent right of enjoying property in the several States; and, accordingly, a devise or bequest cannot be defeated on the ground that the beneficiary is a citizen or a corporation of another State than the testator.

In this case the will of a resident of Pennsylvania contained bequests largely for religious purposes to persons, societies, or institutions in Pennsylvania, Maryland, Ohio,

and Virginia. These bequests were sustained under the clause of the federal constitution which provides that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

Foreign Society. A bequest to a Massachusetts religious society by a resident of New York was sustained in Re Bullock, 6 Dem. Sur. Ct. (N. Y.) 335. The capacity of the society to take was to be tested by the Massachusetts law, under which the bequest was valid.

Identifying Beneficiary. It is not necessary that the name of the devisee should be mentioned in the will; it is enough if the devisee be described by words that are sufficient to denote the person meant by the testator; and to distinguish him from all others. Evidence is admissible to show the beneficiary intended in case of doubt. Button v American Tract Society, 23 Vt. 336.

A devise to the Diocese of Central New York to be used as a bishop's residence was sustained in Kingsbury v Brandegee, 113 App. Div. (N. Y.) 606, on the ground that although there was no corporation by the technical name mentioned in the will, the testatrix evidently intended to give the property to the corporation known as the trustees of the Diocese of Central New York.

The testator devised a portion of his estate to the Society for Ameliorating the Condition of Jews. At the time of his death the only society of this class in existence was the "American Society for Ameliorating the Condition of the Jews," which was incorporated by the Legislature of New York in 1820. This society was held entitled to receive the devise. Brewster v McCall's Ex'rs., 15 Conn. 274.

The misnomer of a legatee or devisee, whether that legatee be an individual or a corporation, will not invalidate the gift or devise, if the true object of the testator's bounty can be ascertained either from the will itself or by evidence aliunde. It was competent to show that a bequest to "St. Mary's Roman Catholic Church of Cooperstown, N. Y.," was intended for the "Church of the Lady of the Lake, Coopers-

town, N. Y.," that being the true name of the corporation. Re Foley Estate, 27 Misc. (N. Y.) 77.

Testatrix made a bequest to the treasurer for the time being of the Society for the Propagation of the Gospel among the Jews in aid of the general purposes of that society. There was no society bearing that name. There were two societies organized for the same general purpose as that named in the will, one "The London Society for Promoting Christianity among the Jews," and the other "The British Society for the Propagation of the Gospel among the Jews." Evidence was admitted to show which of these societies was intended by the testatrix, and the fact that she had subscribed to the London Society was held to turn the scale in favor of that institution, and the legacy was made payable accordingly. Re Fearns Will, 27 Wkly. Rep. (Eng.) 392.

A will dated in 1826 devised a portion of the testator's estate to the American Tract Society. The testator died in 1838. At that time there were two American Tract societies, one in Boston, which was incorporated before the execution of the will; the other was in New York, was not incorporated, and was organized after the execution of the will. It was held that the Boston society was entitled to the devise. Brewster v McCall's Ex'rs. 15 Conn. 274.

A testator made a bequest to the Franklin Seminary of Literature and Science, New Market, New Hampshire. There was no institution of that name, but there was an institution incorporated by the name of the trustees of the South Newmarket Methodist Seminary. It was held that there was a latent ambiguity in the description of the legatee in the will, which might be explained by parol evidence. South New Market Methodist Seminary v Peaslee, 15 N. H. 317.

What is sufficient description of corporations or societies as beneficiaries? A corporation or an individual entitled to take by devise may take as well by description as by name. American Bible Society v Wetmore, 17 Conn. 181.

Indefiniteness. A bequest of a certain sum to the Univer-

salist religious denomination in the County of Berkshire as a permanent fund, the use to be applied annually for the support of that denomination, is not void for uncertainty; and if no trustee is named in the will, equity will appoint trustees to execute the trust, on a bill filed by the organized Universalist societies of the county. First Universalist Society, North Adams, and others v Fitch, 8 Gray (Mass.) 421.

A bequest was made to the Protestant Church Bible Society. So far as appeared in the case, no such society ever existed. The court said that it must be inferred from the bequest that the testator meant a society whose objects were charitable, as the cheap distribution of Bibles would be. The testator's object was held to have failed, and a decree was made directing the application of the fund according to a scheme to be determined. Cottrell v Parkes, 25 T. L. R. (Eng.) 523.

Testatrix bequeathed a portion of her residuary estate to her husband for the purpose of making such distribution among religious, benevolent, and charitable objects as he may select. This was held void for indefiniteness. Hegeman's Executors v Roome, 70 N. J. Eq. 562.

A testator made a bequest to a trustee to be used only toward the erection of a church, and directed that it should not be paid by the trustee until he is perfectly satisfied that no debts of any kind whatever rest on said church property, or until said amount with accrued interest, would place the church entirely out of debt. The erection of the church was begun in testator's lifetime, and completed three years before his death. During the time of its building the testator contributed various sums, but for other purposes than that designated by the legacy. At the testator's death there was a small debt against the church. It was held that the church was entitled to the whole amount of the legacy, less the inheritance tax. Keiper's Estate, 5 Pa. Co. Ct. 568.

Devises for poor and needy people of a church who are dependent upon their own labor for a livelihood, for religious

societies of a said city without regard to sect who prefer to work for the good and well-being of mankind, and for building and maintaining of a foundling hospital to relieve unfortunate females and protect their offspring, describe beneficiaries with sufficient certainty. Phillips v Harrow, 93 Ia. 92.

A testator made a bequest for the use of "Roman Catholic priests in and near London." The legatee died during the lifetime of the testator. It was held that the legacy did not lapse, but was intended for the benefit of Roman Catholic priests in and near London both at the testator's death and afterward; the legacy was not deemed indefinite because of the use of the word "near," for the reason that the court might direct a scheme to be approved by the master. Attorney-General v Gladstone, 13 Sim. (Eng.) 7.

Testator gave his residuary estate to the Orthodox Protestant Clergymen of Delphi and their successors to be expended in the education of colored children, "both male and female, in such way and manner as they may deem best, of which a majority of them shall determine; and my object in this bequest being to promote the moral and religious improvement and well-being of the colored race."

There was no organization like that named in the will either in Delphi, Indiana, or elsewhere. It was, therefore, held that there was no trustee competent to take the devise. The devise was also held void for uncertainty, for the reason that it was impossible to select the beneficiaries intended to be the objects of the testator's bounty; no method was prescribed for selecting the colored children who should receive the proposed instruction. Grimes Executors v Harmon and others, 35 Ind. 198.

Testator gave his real estate to his wife for life, with a provision that upon her death the real estate should be disposed of by the bishop (of Dubuque) and apply so much thereof to the church or to the education and maintenance of poor children as he, in his wisdom might think proper and legal.

The devise was held void for uncertainty, the court observing that it is uncertain what church is intended. It is uncertain what poor children are intended to be the recipients of the testator's bounty. The poor children of no particular city, town, church, or State are designated. If there were no difficulty in this respect, it is still uncertain whether the testator intended his bounty should go to the church or to the poor children. It is uncertain how much is to go to the charity. The bishop is to determine not only the object, but the amount of the fund it is to receive, and how much it is proper and legal should be so applied. It is uncertain whether the bishop is to administer the trust in his official or in his individual capacity, and whether the power is to be exercised by him or his successors. Lepage v McNamara, 5 Ia. 124.

A devise of real estate, describing the devisees only as "those members of the Society of the Most Precious Blood who are under my control and subject to my authority at the time of my death," is void because not pointing out with sufficient certainty the persons who are to take. Society of the Most Precious Blood v Moll, 51 Minn. 277.

A legacy in aid of a mission to be established in Africa by the Protestant Episcopal Church was sustained in Domestic and Foreign Missionary Society's Appeal, 30 Pa. St. 425, although the objects of the bounty were not definitely described. A legacy to a mission is sufficiently definite.

Testator, who died in 1809, made a bequest to the Methodist Episcopal Church in America whereof Francis Asbury is at present (the date of the will) the presiding bishop. The bequest was held void for uncertainty. The Methodist Episcopal Church of America was an aggregate body, composed of a multitude of individuals not incorporated, and was incompetent to hold property of any kind. Holland v Peck, 2 Iredell Eq. (N. C.) 255.

Intention. A bequest to the "Baptist societies for foreign and domestic missions, and the American and Foreign Bible societies" is valid and sufficiently specific; and if societies

can be found, which were organized and known by those names at the time of the testator's death, they will be considered the societies referred to in the will and capable of taking the bequest whether incorporated or not. Carter v Balfour Adm., 19 Ala. (N. S.) 814.

Testator made a bequest to the Catholic Church, and the Baptist, Presbyterian, and Methodist Churches. It was held that the churches in the town where the testator resided were intended as the objects of his bounty. Trustees, Catholic Church Taylorsville v Offutt's Adm., 6 B. Mon. (Ky.) 535.

For the purpose of explaining a devise to a Protestant Episcopal church in New Canaan, Connecticut, evidence was admitted to show that there was an incorporated society with a complete organization bearing that title, and that there was also another body composed only of communicants and baptized persons called the church, and that the testator referred to the latter body and intended the devise for its benefit and not for the incorporated society. Ayres v Weed, 16 Conn. 291.

Legacy Forfeited by Change of Doctrine. Testator, a Unitarian, made a bequest to a town for the support of Unitarian doctrines and teachings. The society afterward changed its faith and doctrine and became Trinitarian. It was held that the legacy was thereby forfeited. Princeton v Adams, 10 Cush. (Mass.) 129.

Legislative Sanction. Under the provisions of art. 38 of the Maryland Declaration of Rights, that "every devise or bequest of lands and of goods and chattels, to or for the benefit of any minister, public teacher, or minister of the gospel, as such, or any religious sect, order, or denomination, without prior or subsequent sanction of the Legislature shall be void," it was held that such sanction by the Legislature was valid, even if expressed in an act passed after the death of the testatrix. The Legislature had power to express its sanction within a reasonable time after such death. Church Extension of the Methodist Episcopal Church v Smith, 56 Md. 362.

So in Matter of Fitzimmons, 29 Misc. (N. Y.) 731, it was held that where a foreign corporation could not take without action upon the part of the Legislature of its domicile, the court directed that the legatee be given a reasonable time to obtain the legislative sanction.

Testatrix by a will, which was admitted to probate in September, 1876, gave a legacy to the above society. The Legislature in 1878 passed an act approving the bequest, but the executor's final account had already been filed. The society was held entitled to receive the legacy. England v Vestry Prince George's Parish, 53 Md. 466.

Misdescription. Legacies were given to religious societies by names which were not their correct corporate names but which plainly described the respective institutions the testator had in mind, but no other institution of similar name claimed either of them. The bequests were sustained. Re Dickenson's Estate, 56 Misc. (N. Y.) 232.

Parol Evidence. If the object of the bequest is uncertain, parol evidence is admissible to explain the testator's intention. Roy v Rowzie, 25 Gratt. (Va.) 599.

Perpetuity. A provision in a will directing the executor to pay the net annual income derived from the rent of certain real estate to religious corporations for twenty years, after which the property was to be sold, created a perpetuity under the Wisconsin statute, and was therefore void. De Wolf v Lawson, 61 Wis. 469.

Quakers, Yearly Meeting, Void Devise. A devise to a Yearly Meeting of Quakers for the purpose of aiding a boarding school in Providence was held void, for the reason that the Yearly Meeting was only an unincorporated voluntary association, and could not take by devise. Greene v Dennis, 6 Conn. 293.

Religion, Advancement. A bequest to testator's parents with directions that on their death a specified sum should be used "for the interest of religions, and for the advancement of the Kingdom of Christ in the world," and for that purpose the sum specified was to be paid to several organizations in

different portions, it was held that these residuary bequests did not constitute a trust, nor was the provision void for uncertainty. The money devoted to the advancement of religion was to be expended by well-known religious organizations, and they were entitled to receive the residuary bequests and use them for the purposes expressed by the testator. American Tract Society v Atwater, 30 Ohio St. 77.

Testator provided that his residuary estate after the death of his widow, should be appropriated by the executor for the advancement of religion, in such manner as in his judgment will best promote that object. In a proceeding to have this provision declared void for uncertainty, the court held that it was capable of execution by the executor, at the proper time, and that the court could not anticipate that the executor would not properly apply the bequest when the residuary provision became effective. Miller v Teachout, 24 Ohio St. 525.

A bequest made for the use of the Welch Circulation Charity Schools as long as they should continue, and the increase and improvement of Christian knowledge and promoting religion, and to purchase Bibles and other religious books, pamphlets, and tracts as the trustees think fit, was sustained, but a devise of the house in which such charity should be carried on was declared void. Attorney General v Stepney, 10 Ves. Jr. (Eng.) 21.

Reward of Merit. A bequest of a fund, the income of which was to be used for rewards of merit to poor pupils in the parochial schools of Louisville was sustained in Coleman v O'Leary, 114 Ky. 388.

Sailors' Home, Boston, Massachusetts. Testator gave a legacy to the Sailors' Home in Boston. Two societies claimed the legacy, one called the National Sailors' Home, which had no sailors' home in Boston, and the other, the Boston Ladies' Bethel Society, which was maintaining a sailors' home in Boston at the time of the testator's death. The latter society was held entitled to the legacy. Faulkner v National Sailors' Home, 155 Mass. 458.

Slavery and Intemperance. Legacies were given to this society so long as it should bear public testimony against slavery and intemperance. When such public testimony ceased the right to the legacy ceased, and thereafter the residuary legatees became entitled to the fund. Matter of Orthodox Congregational Church, Union Village, 6 Abb. N. C. (N. Y.) 398.

Sunday School. Testatrix bequeathed to the society a sum of money for the use of the Sunday school, one half for the library and one half for running expenses. This was held to be a trust to be administered by the court by the appointment of a trustee if necessary. Cowan's Estate, 4 Pa. Dist. Rep. 435.

Testator's Religious Opinions. In Attorney-General ex rel Bailey v Moore's Executors, 19 N. J. Eq. 503, it is said that "the cases in which consideration of the religious faith of the founder of a charity is resorted to for the purpose of ascertaining his intent, are, without exception, cases in which the primary object of the foundation was the propagation of religious doctrines, or the donor in the instrument of foundation has made some express provision relative to the religious instruction to be given."

Time Limit. A testator died five days after making his will. A bequest to the college (of St. Francis Xavier) was held invalid, for the reason that it was not made at least two months prior to the testator's death as required by sec. 6 of the act of 1848, chap. 319. Matter of Fitzimmons, 29 Misc. (N. Y.) 731.

A bequest to the society (of St. Vincent de Paul) was sustained on the ground that the society was not subject to the two months' limitation in the act of 1848, chap. 319. Matter of Fitzimmons, 29 Misc. (N. Y.) 731.

A devise of the residuary estate to the Roman Catholic Little Sisters of the Poor was held void because the will was made within two months of the testatrix' death. Marx v McGlynn, 88 N. Y. 357.

A devise to the society was held void under a will made

within one calendar month prior to the death of the testator. The will was dated February 10, and the testator died March 9. Re Carnell's Estate, 9 Phila. (Pa.) 322.

Testatrix made provision in her will for the education of a relative for the Presbyterian ministry, directing the payment of the expenses occasioned by his education until he should have become an ordained Presbyterian minister; but if he should refuse to accept the provision for his education, or neglect to pursue the required studies to fit him for the ministry, then the money available for such education was to be paid to Princeton College, and to be used for the education of Presbyterian ministers. It was held that this was not a trust primarily for religious uses, but that the primary purpose was the education of the relative, and the testatrix having died within one month after making her will, the bequest did not become void under the Pennsylvania statute. McMillen's Appeal, 11 Wkly Notes of Cases (Pa.) 440.

In Stephenson v Short, 92 N. Y. 433, it was held that the two months clause relating to devises and bequests to corporations, contained in sec. 6, chap. 319, of the Laws of 1848, applied to all wills, and therefore that a bequest to a missionary society in a will executed two days before testator's death, was invalid.

Under a Pennsylvania statute declaring void bequests among other things for religious uses unless the will was made at least one month before the testator's death, it was held that a legacy to a church to be used in saying masses for the repose of the testator's soul was void, it appearing that the will was made within one month before testator's death. Rhymers Appeal, 93 Pa. St. 142.

Testatrix executed a will on October 8, 1899, between the hours of 3 and 5 o'clock P. M. She died on November 8 of the same year between the hours of 7 and 8 o'clock P. M. It was held that the testatrix died within one calendar month after the execution of the will, the court observing that the manifest meaning of the statute, Pennsylvania act of 1855, is that such a month must fully elapse between the

dates of the two events. A calendar month is made up of days, in this case thirty-one days, and the time to be computed in this case meant thirty-one full calendar days, beginning when October 8 ended, at midnight, and ending at the close of November 8, at midnight. Concerning the object of the statute making void a will executed within one month prior to the testator's death, the court said that the statute is for the protection of a testator of the last full calendar month of his life against yielding to any influences during that period—so often a susceptible one—which may unduly lead him to divide his estate, or any portion of it, to religious or charitable uses. Re Gregg's Estate, 213 Pa. 260.

Simmons v Burrell, 8 Misc. (N. Y.) 388, holds that a residuary bequest to corporations made within two months before testator's death, is invalid.

Sec. 6 of chap. 319 of the New York Act of 1848, declaring invalid a will executed within two months prior to the death of the testator so far as it affects a gift to a charitable corporation, was not repealed nor amended by chap. 641 of the laws of 1881. Matter of Conner, 44 Hun (N. Y.) 424, 1 St. Rep. (N. Y.) 144.

The provision in the act of 1848, chap. 319, sec. 6, prohibiting gifts to certain corporations by a will made within two months prior to the death of the testator applies only to corporations organized under that act, and it was, accordingly, held that gifts to certain foreign corporations authorized by their charters to receive such gifts were valid. Gifts to corporations described in the act are not against public policy, and testamentary gifts to such institutions are not condemned by any policy outside the statute. Hollis v Drew Theological Seminary, 95 N. Y. 166.

In Harris v American Baptist Home Mission Society, 33 Hun (N. Y.) 411, it was held that a bequest to this society was not subject to the provision contained in chap. 319 of the laws of 1848, making invalid such a bequest made within two months prior to the death of the testator.

A gift to Yale College made by a will executed within two

months before the testator's death, and including property, the annual income of which exceeded $10,000, was sustained. The only living relative of the testator was an aunt. Re Lampson, 161 N. Y. 511.

See Kavanagh's Will, 125 N. Y. 418. Testator died within one month after the will was made. The case holds that the court may take judicial notice that the fifth edition of the revised statutes, published in 1859, was in common use in 1866, when an act was passed applying to certain provisions of the revised statutes, and that under the circumstances this edition of the revised statutes must have been intended by the Legislature.

A person executed a will, disposing of her property to various persons and societies. Two days after the execution of the will she, then being very ill, was informed that if she should die within a month the bequests to charities would fail. She thereupon executed documents making an immediate transfer of property for the purposes, or some of them, indicated in the will.

This disposition of her property was sustained as a valid gift, and was not within the prohibition of the Pennsylvania statute prohibiting a legacy or devise for charitable purposes contained in a will executed within one month prior to the testator's death. McGlade's Appeal, 99 Pa. St. 338.

A legacy to a church contained in a will made within thirty days of the death of the testatrix was held valid under the Pennsylvania act of 1855, for the reason that the will was made in pursuance of a promise by the testatrix to one who bequeathed the property to her that she would give to the church. The church was entitled to invoke the aid of a court of equity to compel the performance of the promise. Re Hoffner's Estate, 161 Pa. 331.

Testatrix bequeathed a fund to the pastor of the church, but there was no trust or condition for charitable use. It was held that, under the circumstances, the bequest was to the pastor as an individual, and was not subject to the pro-

visions of the statute making void a bequest for religious purposes made within the one month prior to the death of the testatrix. Re Hodnett's Estate; O'Reilly Appeal, 154 Pa. 485.

The testatrix had no children and no descendants at the time of executing the will, which was executed less than ninety days before her decease, and which made the bequest to charitable uses. The will was held valid under the Georgia Code, which applied the restrictive time limit only to a testator leaving a wife or children or the descendant of the child. Reynolds v Bristow, 37 Ga. 283.

Trustee, Will Acknowledging Trust. Testator who was a trustee of a fund for the payment of the salary of a minister of this church, by his will acknowledged such trust as binding on him, and appointed trustees to hold, invest, and manage said fund, and pay its income on such salary, and bequeathed the fund to them for that purpose. The bequest was held valid. Morris Executors v Morris Devisees, 48 W. Va. 430.

Undue Influence. A member of the society conveyed a large amount of property to the pastor, nominally for the benefit of the society. The burden was on the pastor to show good faith in the transaction, although he derived no personal benefit from it, as the law presumes undue influence. Where a person enfeebled by age and illness, and susceptible to influence, conveys property to his pastor, in trust for the parish, greatly in excess of its needs, in addition to previous liberal gifts, and contrary to his intentions, expressed before and after making the conveyance, and the pastor had opportunities to exert influence, the law presumes that the conveyance is invalid, and in the absence of evidence, overcoming the presumption, the conveyance must be set aside. Good v Zook, 116 Ia. 582.

Unincorporated Society. A devise directly to a voluntary association was held void in Tennessee, but having been made to trustees for the use and benefit of the association (Friendship Church, Polk County) it was sustained. Equity

would enforce the trust. Cobb v Denton, 6 Baxter (Tenn.) 235.

A bequest to the Ladies' Mite Society was held invalid for the reason that the society was not incorporated. Such an unincorporated society could not take the property by bequest, and was incapable of enforcing the trust declared by the will for its benefit. Church Extension of the Methodist Episcopal Church v Smith, 56 Md. 362.

Testator devised land to Francis Asbury for the use of the Methodist society and a school. The Methodist society was not incorporated, and was, therefore, incapable to take the devise which was held void. Murphy v Dallam, 1 Bland Ch. (Md.) 529.

Unitarians. A legacy to the minister or ministers to be applied by them to the support of Unitarians was sustained. Re Barnett, 29 (38 Pt. 1) L. J. Ch. (Eng.) 871.

Ursuline Community. A bequest to Bishop England, of South Carolina, in trust for the ladies of the Ursuline order residing in Charleston, was sustained. It appeared that at the time the will was executed there was in Charleston an institution which had been incorporated by the name of "The Ladies Ursuline Community of the City of Charleston," and it was and now is known and spoken of invariably as "The Ladies of the Ursuline Convent" or "order"; and there had not been and was not any similar society or institution in the State of South Carolina. The designation in the will was deemed sufficiently definite. Banks v Phelan, 4 Barb. (N. Y.) 80.

Young Men's Christian Association. Testator bequeathed the interest of $1,000 yearly to help form a Young Men's Christian Association. The gift was sustained. Goodell v Union Association of the Children's Home, 29 N. J. Eq. 32.

WINEBRENNERIANS

See the article on Church of God at Harrisburg.

WITNESS

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Atheist. In Anonymous, Fed. Cas. No. 446, it is said that the testimony of an atheist is not admissible.

The Connecticut court permitted evidence to show that a witness was an atheist. Beardsly v Foot, 2 Root (Conn.) 399.

An affidavit cannot be excluded by the presentation of a counter affidavit that the first affiant is an atheist. His competency cannot be questioned ex parte, but he must have an opportunity to explain his views. Leonard v Manard, 1 Hall's Sup. Ct. (N. Y.) 200.

Child. Where a child of tender years, upon being examined by the court as to her competency to testify as a witness, stated that if she swore falsely and did wrong she would go to hell, but that if she told the truth and did right she would go to heaven, such answers show the child to be a competent witness without being questioned as to her belief in a Supreme Being. Grimes v State, 105 Ala. 86.

A child nine years of age testified, on a preliminary examination, that she "understood the nature of an oath, and that if she did not swear to the truth she would get

into hell fire." She was held to be competent. Draper v Draper, 68 Ill. 17.

A child ten years of age, upon examination, said she did not know what God and the laws of the country would do to her if she swore falsely, but that she would tell the truth. She was held to be a competent witness. Davidson v State, 39 Tex. 129.

A child can be examined as a witness if there is a belief in a state of rewards and punishments, and a conviction that punishment will follow falsehood, although she was ignorant of the meaning of an oath. Commonwealth v Ellenger, 1 Brewst. (Pa.) 352.

It is for the trial court to determine after a proper examination whether a child understands the nature of an oath, the obligation it imposes, and his responsibility to the Supreme Being for not testifying to the truth. Commonwealth v Mullins, 2 Allen (Mass.) 295.

A girl of thirteen years of age called as witness said she understood an oath was to tell the truth, and that she would be punished if she did not, but did not know how or by whom she would be punished. Before being sworn, she was instructed by a Christian minister who told her God would punish her if, after taking the oath, she testified what was not true; and that she did not know this before. She was held to be competent. Commonwealth v Lynes, 142 Mass. 577.

A Negro girl about nine years of age who said she did not know what the Bible was; had never been to church but once, and that was to her mother's funeral; did not know what book it was she laid her hand on when sworn; had heard tell of God, but did not know who it was; and if she swore to a lie, she would be put in jail, but did not know she would be punished in any other way, was held incompetent as a witness. Carter v State, 63 Ala. 52.

In Jones v Brooklyn B. and W. E. R. Co., 21 St. Rep. (N. Y.) 169, a boy eleven years old testified that he believed in heaven, the home of God, and in hell, the home of the devil,

that at death the good will go to heaven and the bad to hell, and that it was bad to lie. He was held competent as a witness.

A boy of twelve years who could repeat the Lord's Prayer, and had heard that the bad man caught those who lied, cursed, etc., but had never heard of God, or the devil, or of heaven or hell, or of the Bible, and had never heard and had no idea what became of the good, or of the bad after death, is not a competent witness. State v Belton, 24 S. Car. 185.

A girl ten years old said she attended Sunday school, and knew it was wrong to tell a lie. It was held not to be error to admit her as a witness. Johnson v State, 1 Tex. Ct. App. 609.

Competency. One who believes in the existence of God, and that an oath is binding on the conscience, is a competent witness, though he does not believe in a future state of rewards and punishments. Brock v Milligan, 10 Ohio 121.

A person who believes in a God, though not in future punishments, is a competent witness. The Pennsylvania act of 1885 removed every form of incompetency including that arising from defect of religious belief. Commonwealth v Kauffman, 1 Pa. Co. Ct. 410.

No person is incapacitated from being a witness on account of his religious belief. Perry v Commonwealth, 3 Gratt. (Va.) 632.

In Massachusetts it was held in Commonwealth v Burke, 16 Gray (Mass.) 33, that a person offered as a witness could not be examined as to his religious belief. The purpose and effect of the provision of the general statutes, 1860, chap. 131, sec. 12, were to render persons who were disbelievers in any religion competent witnesses, and to cause their disbelief to be proved only to affect their credibility.

A person who does not believe in the obligation of an oath, and a future state of rewards and punishments, or in accountability after death, is not a competent witness; but every person who does so believe, whatever may be his reli-

gious creed, is competent, being sworn according to that form of oath which he holds to be obligatory. Curtis v Strong, 4 Day (Conn.) 51.

The true test of competency is whether a person believes in the existence of a God who will punish him if he swear falsely. Persons who believe that future punishment is not eternal are included in this rule. Cubbison v M'Creary, 2 Watts & S. (Pa.) 262.

In Commonwealth v Barnard, Thach. Crim. Cases (Mass.) 431, a person offered as a witness at first testified that he believed in a God, but that he considered an oath no more binding on his conscience than a simple promise. He attached no religious obligation or sanctity to an oath. He further said that he had no idea of such a being as the one living and true God, who knows the secrets of all hearts, who takes knowledge of the actions of men, and who will reward or punish them as their conduct in this life is good or evil. He was held not competent as a witness.

Neither belief in a Supreme Being nor in divine punishment is requisite to the competency of a witness in Florida. The common law rule does not apply in that State. Clinton v State, 53 Fla. 98.

A person believing in the being of a God, and in his attributes, as a righteous avenger of wickedness, and in the existence of a future state, is competent to be sworn as a witness. Commonwealth v Batchelder, Thach. Cr. Cas. (Mass.) 191.

A person who is proved to have openly and repeatedly avowed that he had no belief in the existence of a God, cannot be admitted to testify in a court of justice. Norton v Ladd, 4 N. H. 444.

A person's religious belief or unbelief cannot render him incompetent as a witness. Ewing v Bailey, 36 Ill. App. 191.

A person is not rendered incompetent by reason of his disbelief in God. Londener v Lichten, 11 Mo. App. 385.

All persons who believe in the existence of a God and a future state, though they disbelieve in a punishment here-

after for crimes committed here, are competent witnesses. Noble v People, 1 Ill. 54 (Breese, Beecher).

It seems that a member of an eleemosynary corporation is a competent witness in a suit in which the corporation is a party. Miller v Trustees of Mariner's Church, 7 Me. 51.

A person not believing in the existence of a Supreme Being who will punish false swearing is not a competent witness, but the objection to his competency must be taken before he is sworn. After he has testified his disbelief may be shown, to affect his credibility. The People v McGarren, 17 Wend. (N. Y.) 460.

A person offered as a witness is subject to examination by the court as to his religious belief. Commonwealth v Wimmemore, 1 Brewst. (Pa.) 356.

A person is a competent witness who believes in the existence of a God, and that he will punish falsehood and perjury in this world, although he does not believe in future rewards and punishments. Blocker v Burness, 2 Ala. (N. S.) 354.

Deaf Mute. A deaf and dumb person who can be communicated with by signs is a competent witness under our statute, if he has sufficient discretion, and understands that perjury is punishable by law, though he has no conception of the religious obligation of an oath. Snyder v Nations, 5 Blackf. (Ind.) 295.

Evidence. In Connecticut, parol evidence was admitted to show that a proposed witness was an infidel and did not believe in the being of a God and in revealed religion. Bow v Parsons, 1 Root (Conn.) 481.

Idolater. In Ormichund v Barker, 1 Wilson K. B. (Eng.) 84, the case is stated as follows: An infidel, pagan, idolater may be a witness. It was held by the Lord Chancellor, assisted by Lord Chief Justice Lee, the Master of the Rolls, the Lord Chief Baron, and Justice Burnett, that an infidel, pagan, idolater may be a witness, and that his deposition sworn according to the custom and manner of the country where he lives may be read in evidence; so that at this day it seems to be settled that infidelity of any kind doth not

go to the competency of a witness. In the debate of this point, Ryder, the attorney-general, cited the covenant between Jacob and Laban, Genesis, chap. 31, v. 52, 53, where Jacob swore by the God of Abraham, and Laban swore by the God of Nahor. Vide Psalm 115; 106, v 36.

Immunity from Examination. A witness cannot be required to testify to his want of belief in any religious tenet, nor to divulge his opinions upon matters of religious faith. Dedric v Hopson, 62 Ia. 562.

Oath. An oath is an appeal to God, by the witness, for the truth of what he declares, and imprecation of divine vengeance upon him, if his testimony shall be false. The witness must believe in the existence of God. He must believe in rewards and punishments after death, and a belief that men will be punished in this life for their sins, but immediately after their death be made happy, is not sufficient to entitle a witness to be sworn. Atwood v Welton, 7 Conn. 66.

An oath is an appeal to God to witness what we say, and we thus invoke punishment if what we say be false. Mohammedans may be sworn on the Koran; Jews on the Pentateuch, and Gentiles and others, according to the ceremonies of their religion, whatever may be the form. Jackson v Gridley, 18 Johns. (N. Y.) 98.

Party, Religious Belief. A party has a right to be a witness in his own behalf, and this is a civil right, protected by the constitution. A party who claims the right to testify in his own behalf cannot be denied on the ground that he does not believe God will punish perjury. State v Powers, 51 N. J. L. 432.

Quaker. A Quaker's testimony on his affirmation is admissible in an action of debt on statute 2 Geo. 11, chap. 24, against bribery. Atcheson v Everitt, 1 Cowper (Eng.) 382.

Religious Belief. The proper question to be asked a witness in order to ground an objection to his competency is not whether he believes in Jesus Christ, or the holy gospels, but whether he believes in God and a future state. King v Taylor, 1 Peake's N. P. (Eng.) 11.

Some kind of religious belief has always been considered indispensable, in order to the binding obligation of an oath on the conscience of the one sworn. At times it has been deemed an essential prerequisite that the person sworn should believe in all the articles of the Christian faith. And Mr. Starkie, in the last edition of his work on Evidence, says, "All persons may be sworn who believe in the existence of God, a future state of rewards and punishments, and in the obligation of an oath." "It is obvious that a sincere deist, a Mohammedan, or a pagan of any name, if he believe in the existence of God, may feel the sanction of an oath as binding upon his conscience as the most devout Christian." Arnold v Arnold, 13 Vt. 363.

This convent (Ursuline Convent) was destroyed by a mob August 11, 1834. Twelve persons were indicted for capital burglary and capital arson. Various questions arose during the trial relating to the competency of witnesses, and the admissibility of evidence, especially the right to inquire as to the religious faith and prejudices of the witnesses and jurors, and the manner of administering oath. Commonwealth v Buzzell, 16 Pick. (Mass.) 153.

In order to be a qualified witness a person must believe in the existence of a Deity and a future state of rewards and punishments. Perry's Adm. v Stewart, 2 Har. (Del.) 37; Wakefield v Ross, 5 Mason (U. S.) 16.

In order to test the competency of a witness on account of his religious belief, he may be either interrogated personally concerning it, or his declarations to others upon the subject may be shown. The question, whether or not such declarations have been correctly understood and reported, will, of course, be open to proof of a like character. Harrel v State, 38 Tenn. 125.

A person who does not believe in the existence of a God, nor in a future state of rewards and punishments, cannot be a witness in a court of justice under any circumstances. Jackson v Gridley, 18 Johns. (N. Y.) 98.

Note: Under the New York constitution (art. 1, sec. 3)

as amended in 1846, "no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief."

In Commonwealth v Buzzell, 16 Pick. (Mass.) 153, the court held that the religious faith of a witness was not a subject for argument or proof, for the purpose of showing that he was entitled to more or less credit than witnesses of a different religious sect; and that under the constitution and laws witnesses of all religious persuasions are placed on the same footing, and each is to stand on his own individual character.

One who does not believe in the existence of God is not a competent witness. Thurston v Whitney, 2 Cush. (Mass.) 104.

An acknowledgment of belief in God and his providence is sufficient to establish the competency of a witness who has been objected to on account of defective religious belief. Jones v Harris, 1 Strobh. Law (S. Car.) 160.

"A person who believes there is no God, is not a competent witness." Scott v Hooper, 14 Vt. 535, citing Arnold v Arnold, 13 Vt. 362.

In Bush v Commonwealth, 80 Ky. 244, it was held that a rule which excludes a witness in a criminal case on account of his religious belief, or his disbelief in any system of religion is in violation of the constitution and the policy of free government.

"One who believes in the existence of a Supreme Being, and that God will punish in this world for every sin, though he does not believe that punishment will be inflicted in the world to come, is a competent witness." Shaw v Moore, 49 N. C. 25.

Evidence is admissible that a witness does not believe in a God nor in future rewards and punishments. Arnd v Amling, 53 Md. 192.

A person who does not believe in the existence of a God other than nature, nor in a future state of existence is not a competent witness. U. S. v Brooks, 4 Cranch C. C. (U. S.) 427.

A person who has no religious belief, who does not acknowledge a Supreme Being, and who does not feel himself accountable to any moral punishment here or hereafter, but who acknowledges his amenability to the criminal law, if he forswears himself, cannot become a witness. Central Military Tract R. R. Co. v Rockafellow, 17 Ill. 541.

In Pennsylvania a belief in a future state of reward and punishment is not essential to the competency of a witness, nor is it cause of exclusion that one does not believe in the inspired character of the Bible. The test of competency is whether the witness believes in the existence of a God who will punish him if he swears falsely. But whether the punishment will be temporary or eternal, inflicted in this world or that to come, is immaterial upon the question of competency. Blair v Seaver, 26 Pa. 274.

In U. S. v Kennedy, 3 McLean (U. S.) 175 it was held that a witness to be competent must believe in God, and in rewards and punishments, but that he is competent if these are received in this life.

In State v Townsend, 2 Harr. (Del.) 543, it was held that a person could not be a witness who did not believe in a God and a future state of existence.

A person who believes in a God and also in the Bible, but does not believe that the only punishment inflicted for wrongs in this life is the pangs of a guilty conscience, or in a future state of rewards and punishments after death, is a competent witness. Bennett v State, 1 Swan (Tenn.) 411.

Roman Catholic, Oath How Administered. In Commonwealth v Buzzell, 16 Pick. (Mass.) 153, 156, et. seq. (33 Mass.), in the course of the trial the witnesses were severally called to be sworn on the Holy Evangelists. When Bishop Fenwick was called to take the oath, he inquired the reason for this distinction, and objected to it, if this departure from the usual form was intended or could be construed as establishing an invidious distinction against Catholics. Whereupon it was stated by the court, that whether the oath be

taken in the usual mode, by holding up the hand, or any other, it is in law equally binding, and that false testimony in either case would equally subject the party guilty to the punishments of perjury. It was also a rule of law, now adopted in practice, that a witness is to be sworn, according to the form which he holds to be the most solemn, and which is sanctified by the usage of the country or of the sect to which he belongs. It is well understood as a matter of general notoriety, that those who profess the Catholic faith are usually sworn on the Holy Evangelists, and generally regard that as the most solemn form of oath, and for this reason alone that mode is directed in this court, in case of administering the oath to Catholic witnesses. This is done by the witness placing his hand upon the book, whilst the oath is administered, and kissing it afterward. The oath was then administered to Bishop Fenwick in this form.

Universalist. One who believes in the existence of a God, who will punish him if he swears falsely is a competent witness. This includes a Universalist who believes that future punishment will not be eternal. Butts v Swartwood, 2 Cow. (N. Y.) 431.

YOUNG MEN'S CHRISTIAN ASSOCIATION

Auxiliary, 905.
Property, limitation, 905.
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Auxiliary. The Auxiliary of the Young Men's Christian Association is a society composed of women, whose object is to extend spiritual, intellectual, social, and financial help to the Young Men's Christian Association of Nashua. The purpose of the latter association, as set forth in its charter, is to improve the spiritual, intellectual and social condition of the young men of Nashua, and its property to the amount of $25,000 is thereby exempted from taxation. It is deemed a charitable institution, and its property is exempt from taxation and the Woman's Auxiliary belongs to the same class. Carter v Whitcomb, 74 N. H. 482.

Property, Limitation. A corporation known as the Young Men's Christian Association of Decatur, Illinois, was duly formed under the Illinois statute, for the purpose of promoting growth in grace and Christian fellowship among its members; and aggressive Christian work, especially by and for young men, and to seek out and aid the worthy poor. It prescribed no form of worship and imposed no obligations on its members in this respect. The association was not subject to the limitation contained in the Illinois statute prohibiting a religious corporation from holding more than ten acres of land, and therefore a devise of an undivided one half of 160 acres to the Association was sustained.

Incidentally, the court observed that questions relating to the amount of property which a corporation might take under statutory limitations were to be determined only on the application of the State, and not of parties interested in the property itself. Hamsher v Hamsher, 132 Ill. 273.

Taxation. The association in Auburn, Maine, owned real estate valued at $20,000; a portion of the property was let for a boarding house, and another portion for stores. An assessment of $10,000 was made on the nonexempted portion of the property. It was held that the rented portion of the property was liable to taxation. Auburn v Y. M. C. A., Auburn, 86 Me. 244; see also the article on Religious Worship, subtitle Buildings, Exemption from Taxation.

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