Ohio.
Court of Common Pleas

Decision of Judge James H. Day in the Second Full Trial of the case of the church of the United Brethren in Christ vs. the seceders from said church

DECISION OF JUDGE JAMES H. DAY

IN THE

SECOND FULL TRIAL

OF THE CASE OF THE

CHURCH OF THE UNITED BRETHREN IN CHRIST

vs.

THE SECEDERS FROM SAID CHURCH.

Ohio.

Court of Common Pleas,

VAN WERT, VAN WERT COUNTY, OHIO,

January–February, 1890.

DAYTON, OHIO:
UNITED BRETHREN PUBLISHING HOUSE,
1890.

Decision of Judge J. H. Day.

J. A. CLAYPOOL AND OTHERS
vs.
CHAS. WEYER AND OTHERS.

In the Court of Common Pleas of Van Wert Co., O., Case No. 8783. Bill to Quiet Title.

J. H. Day, Judge.

The plaintiffs named are J. A. Claypool, H. G. Stemen, D. O. Krusch, Wilson McKenzie, and Charles McKenzie,—the two last named decline to stand as plaintiffs and have joined in the defense,—are described as trustees of the Delphos Church, of the Delphos Circuit, of the Auglaize Annual Conference of the Church of the United Brethren in Christ, claim to be in possession, as such trustees, of certain real estate described in their petition; that the defendants claim some interest adverse to them, and ask that their title be quieted.

The defendants claim title and right of possession of the said real estate in themselves, and demand equitable relief touching the matter.

The real estate in question is in-lot number four hundred and eighty (480) in Kline & Marble's addition to the town of Delphos, Ohio. On this lot is a frame church building, and all of the probable value of $1,500. In August, 1876, this real estate was conveyed to trustees named as "the

trustees of the Church of the United Brethren in Christ, and their successors forever, in trust, to be used as a place of worship, for the use of the ministry and membership of the United Brethren in Christ's Church of the United States of North America: subject to the usages and ministerial appointments of said Church, as from time to time authorized and declared by the General Conference or Assembly of said Church."

It is a fact, conceded by all parties, that the title to this property is in the general church-organization of the Church of the United Brethren in Christ, and that neither the plaintiffs nor defendants have any right or interest therein, other than as lawful trustees of the local church association at Delphos, Ohio, adhering to that Church.

There is a schism, or division, in this Church. A portion of the membership has seceded, and as a result there are two separate and distinct organizations, both making claim to be the only true and genuine Church of the United Brethren in Christ. These two divisions are known by the designation of "Radicals" and "Liberals." The General Conference of the Church which met at Fostoria, Ohio, in May, 1885, by a very decided majority of all its members, appointed a committee of twenty-seven members, known as the "Church Commission." This committee was charged with the duty to formulate amendments to the constitution, in particulars indicated by the General Conference; to revise the confession of faith where revision was needed: but to retain intact, and make no material change in, the doctrines and ideas in the present one; to take the sense of the people of the Church, ascertain their wishes respecting the formulated revised confession of faith and amendments to the constitution, and report the result.

All this was done, and full report of the proceeding was

made to the bishops and General Conference of the Church assembled at York, Pennsylvania, in May, 1889. The work of the commission, as to all the proposed amendments and revision, received largely more than two-thirds of all the votes cast by the people, and was approved and adopted by the General Conference by a vote of one hundred and ten yeas, to twenty nays. Proclamation was made by the bishops of the Church, except one, declaring the revised confession of faith and amended constitution approved by the voice of the Church, and proclaiming them the confession of faith and constitution of the Church of the United Brethren in Christ.

Because of this action of the commission, the people of the Church, the General Conferences of 1885 and 1889, and of the bishops, fifteen of the members of the General Conference of 1889, including one bishop, withdrew from that body, and organized a General Conference of their own at the Park Opera House in York, Pennsylvania. This body of fifteen, at once, after organizing their General Conference, formally declared that the one hundred and ten members of the General Conference, and the five or six other delegates who acquiesced in the action of the majority, by their action in reference to the revision and amendments, had formed a new Church,—had in fact seceded from the Church of the United Brethren in Christ,—and declared their seats as members of the General Conference of the Church of 1889 vacant.

The General Conference, composed of the members and delegates who did not withdraw, also passed a resolution declaring the seats of the withdrawing members vacant,—that said members had seceded, in fact, and were no longer ministers or members of the Church of the United Brethren in Christ. The organization that accepts, as valid, the revised confession of faith and the amended constitution, is known as "Liberal," and is represented in this law-suit by the plaint-

iffs, except Wilson and Charles McKenzie; and the one that refuses to accept as valid, and conform to, the revised and amended order of things, is "Radical," and is represented here by the defendants.

The foregoing is a brief statement of the facts as they were made manifest from the pleadings, concessions of the parties, and the statement of witnesses.

The question presented for consideration and decision of the Court is: Which of these contending parties stands for, or represents, the Church of the United Brethren in Christ? There has been a secession; which organization is the seceders?

As determining this question, it is important to ascertain and know, precisely, what was accomplished by the General Conferences of 1885 and 1889 in the adoption of an amended constitution and a revised confession of faith for the Church.

Certainly, if the Church, by legitimate methods, in accordance with recognized rules prescribed by the supreme authority, has fairly accomplished a change in its organic law, or a revision of its creed, making no essential change therein, the rightfulness and validity of such action would be manifest. In such case, the body would only be exercising a right that inheres in it, and it would not, in any sense, lose its identity, or forfeit any of its rights and franchises, nor would its members who procured, approved, or adhered to the altered or changed condition; but members who refused to progress with the body, refused to accept and conform to the new order of things, and, instead, adhered to the old, would be obnoxious to a charge of secession. It would be otherwise, however, if the action taken was unfair, irregular, and unauthorized, or, if instead of revision merely, and amendment, a new constitution, a new religion, a new Church, was established. In such case, those who adopted, approved, and followed the new, would be the seceders, and those who adhered

to the old organization would constitute its legitimate membership and be entitled to enjoy all its rights and franchises.

The effect of secession in such case would be the forfeiture, by the seceding members, of all right to any part of the Church property; and it would make no difference if the seceding members constituted a majority.

See 14 O. S., 32.
41 Pa. St., 9.
17 Withrow (Iowa), 203.
88 Pa. St., 60.

The right to amend, to improve, is a natural one, and inheres in every body, whether of a single individual, or a collection of individuals acting together as an associated body, or a body corporate or politic. Ordinarily, in this democratic country, a simple majority—more than one-half—may properly make a desired change. This rule is of universal application, unless a restrictive one has been adopted. This latter seems to be the situation of the United Brethren Church.

An instrument called "Constitution," adopted by the General Conference of the Church in 1841, Article IV., provides, "There shall be no alteration of the foregoing constitution, unless by request of two-thirds of the whole society." The same instrument, Article II., Section 4, provides, "No rule or ordinance shall at any time be passed, to change or do away the confession of faith as it now stands."

Counsel for plaintiffs claim that the instrument called constitution is not constitution at all,—is in no sense organic, for the reason that it was only adopted by the legislative authority of the Church, which had no authority to make a constitution; that it was never submitted to the people of the Church or approved by them.

This criticism, doubtless, is deserved; but, lest it be not so, I prefer, in the disposition of the case under consideration, to

regard it as organic: because, as I think, the General Conference of 1885, which by its committee, or "commission," proposed amendments to it; the people of the Church who voted on the question of amending it, and the General Conference of 1889, which adopted the proposed amendments to it, so recognized and regarded it. Regarding, then, the constitution of 1841 as valid organic law, it follows, perforce, that it can only be amended in accordance with its own terms and provisions; that is, "by request of two-thirds of the whole society."

Has this been done? The constitution does not stipulate or point out any course of procedure or method by which an alteration or amendment may be accomplished: so any fair method or course is proper; but only forbids any alteration unless "by request of two-thirds of the whole society."

What did the framers of the constitution mean by "request," and what is meant by "two-thirds of the whole society," in the connection in which they are used?

The ordinary meaning of the word *request*, as defined by Webster, is, the expression of a desire to some person for something to be granted or done; "prayer"; the expression of a desire to a *superior being*.

Inasmuch as the membership of the Church is itself the superior, and by its collective voice makes the supreme authority of the Church—the General Conference, it would seem that the word "request," in this connection, as coming from the membership, was used unadvisedly, or else in a peculiar and restricted sense. The origin and surroundings of this denomination throw some light, and make this last surmise appear likely.

This Church at the beginning was German. Up to, and as recently as, 1833, its discipline, confession of faith, and other official documents were printed exclusively in German.

When this constitution was formulated and adopted in 1841, the membership, ministry, and delegates to the General Conference were largely German; probably well learned in their own language, but in English, indifferently so. It is in evidence that the constitution was published both in German and English. It seems likely that the original draft of the constitution was in the German. It is certain that in the German publication the word "request" does not appear at all; but there was used the German word ſtimme (*stimme*), or ſtimmen (*stimmen*), which, being correctly rendered into good English, means *voice* or *vote*.

All these considerations, it seems to me, make it probable that there has been a mistranslation of the German word, and an ill-considered and improper use of the word "request." The Article IV. should read, "unless by the voice, or vote, of two-thirds of the whole society"; for it is reasonably clear that what was intended was, that before any change should be made, the Conference be satisfied that it was desired by two-thirds of the people composing the society; in other words, that the constitution be not altered except by the consent, approval, or vote, of two-thirds of the whole society.

What is two-thirds of the whole society? Defendants claim it is two-thirds of the entire number reported and enrolled as members of the society, including men, women, and children,—for it is in proof that children of eight and ten years of age were received and enrolled as members of this Church,—aggregating more than 200,000; while plaintiffs contend it is two-thirds of all those who vote at an important legal election, the membership having due notice of such election.

The rule contended for by defendants seems unjust and impracticable, and, if allowed, would have the effect to entirely block the wheels of progress, and make it impossible

for the zealous, active, interested, and earnest membership to make needed improvements for the welfare of the association.

The General Conference of 1885, the supreme judicial authority of the Church, construed Article IV. of the constitution, and held that on submitting the amendments to the people, after due notice, two-thirds of all the members who voted at the election should be held to be two-thirds of the whole society.

This was a decision of the question of ecclesiastical cognizance, by the highest Church judicatory; and under the holding in the case of Watson *vs.* Jones, 13 Wallace, 679, is final and conclusive, and must be so accepted by the legal tribunals. Especially ought this holding of the General Conference to be regarded as settling the question, when it is known to be correct in principle and in consonance with the holding of the civil courts upon the same question.

There is not much room for controversy on this question. The principle, as it seems to me, is well settled by a long line of decisions in both the federal and State courts. There are some very respectable and able decisions to the contrary, but the great weight of authority, as I think, holds as did the General Conference, and settles the rule as contended for by the plaintiffs,— that two-thirds of the whole society is two-thirds of all those voting at an important legal election upon due notice As sustaining this view, see particularly,—

72 Illinois, 63.
111 United States, 556
1 Sweed (Tenn.), 690.
10 Minn., 85.
37 Missouri, 270.
McCrary on Elections, Sec. 173.
See, also, 16 Wallace, 663-4.
58 N. H., 188-9.

69 Indiana, 505.
21 N. J., 317.
95 U. S., 360.
20 Am. Corp. Cases, 93.

If these conclusions are correct, then, applying them to the facts, the result must be obvious.

The General Conference of 1885, desiring some alterations in the organic law, put in motion proceedings looking to that end, by appointing a committee to formulate the desired amendments, with instructions to submit them to the consideration of the membership, to ascertain their wishes touching them, and to report the result.

The time fixed for taking the sense of the people was in November, 1888, when the people of the Church were also called upon to select delegates to the approaching General Conference of 1889. The work of the committee, so far as the amendments were concerned, was completed before January, 1886, and they were at once brought to the attention of the membership. The greatest publicity was given to the matter; and for more than three years before the vote was taken, the proposed alterations and changes were canvassed and discussed. Ministers and laymen everywhere joined in the discussion, and took counsel of each other as to what was best to be done respecting them.

It is doubtful if there was a single intelligent member of that Church in all this broad land who was not fully apprised of what was going forward, and opportunity afforded him to express his wishes—to voice his sentiment—in reference to the subject. Every effort seems to have been put forth to secure a full and fair vote.

Many who were opposed to any change refrained from voting, but were active and assiduous in circulating written petitions or protests, and securing signatures thereto, request-

ing the General Conference to make no change in the constitution or confession of faith. These protesting brethren might with propriety, and, in the general summing up of the result of the vote, ought, I think, to be considered as voters adverse to the amendments.

The correct total number of names signed to the protests was 16,187. Under these circumstances the vote was taken, and resulted:

For the revised confession of faith - - -	51,070
Against, including protestors - - - - -	19,497
For the amended constitution - - - -	50,685
Against, including protests - - - - -	19,846
For lay delegation - - - - - - -	48,825
Against, including protests - - - - -	21,821
For section on secret combinations - - -	46,994
Against, including protests - - - - -	23,485

It will be perceived that the total vote, if we include the protests, was more than 70,000, and that each of the propositions submitted received the endorsement of more than two-thirds of all the votes cast.

The result of the vote, with the proposed amendments, was reported to the General Conference of 1889, and, as we have seen, was considered and debated by that body, voted upon and adopted by a vote of one hundred and ten delegates for, to twenty delegates against; was declared and proclaimed by the General Conference and the bishops of the Church as its confession of faith and constitution. The only remaining question is: Has there been a departure from the old faith, or have new and strange doctrines been incorporated in it? Has the revision of the confession of faith, as accomplished, made material and essential changes in the doctrines and beliefs of the Church, so as to, in effect, make a new religion? I am unable to so find, from the proofs submitted; indeed, the

great weight of the evidence is to the effect that there has been no such change.

Change, it is true, has been made, but it has been formal only, and not of substance. The phraseology in some matters is different; doctrinal matters, essential beliefs held and taught by the Church from the beginning but not incorporated into the formal written confession of faith, have been brought in and made part,—codified, as it were,—but the sentiment, the idea, has been preserved, so that no new doctrine has been interpolated, and no old one omitted or lost.

This conclusion has been arrived at, from the consideration of all the evidence submitted, upon the theory that the question was still an open one. But is it?

The question is one of creed, belief, doctrine, and is of purely an ecclesiastical cognizance. It has been decided by the General Conference of the Church, which is the supreme judicatory of the Church, adversely to the claim of the defendants, and is not its decision upon that point, at least, final and conclusive?

In the leading case of Watson against Jones before referred to, Mr. Justice Miller said: "In this class of cases we think the rule of action which should govern the civil courts, founded in a 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 in their application to the case before them." This, "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 denominations to which they belong."

See 13 Wallace, 679.
54 N. Y., 561.
66 N. Y., 654.
89 Indiana, 136.

24 O. S., 294.
41 Pa. St., 1.
45 Missouri, 185.
58 Illinois, 509.

The conclusion reached is, that the Church of the United Brethren in Christ, by fair and legitimate methods, and in accordance with the forms and requirements of its organic law, has rightfully effected a change in its constitution and revised its confession of faith, and by so doing it has not lost its identity or forfeited any of its rights.

It follows that those who refuse to adhere to the Church as reformed must be accounted as having seceded, and forfeited all right to the Church property.

A decree will be entered quieting the title in plaintiffs.

Remark.—The trial at Van Wert began January 28, 1890. The presentation of testimony, oral and documentary, occupied four full days, closing February 1. The arguments began on Monday, February 10, and closed on the 12th, occupying two full days. The decision of the judge was handed in on the 28th of February.

The witnesses examined included a number of the leading men on both sides, and the testimony was quite full and exhaustive.

The plaintiffs were represented by Col. I. N. Alexander, of Van Wert, and Hon. J. A. McMahon and Hon. L. B. Gunckel, of Dayton, Ohio. Mr. Gunckel was not present, but made his pleading in a carefully prepared, printed brief.

The counsel for the defendants were Hon. Wm. Lawrence, of Bellefontaine, and Hon. Geo. W. Houk, of Dayton.