Ohio.
Court of Common Pleas

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Judge Slough's Full Decision, as prepared by himself, in the first trial of the Church of the United Brethren in Christ vs. the Seceders from said church

# Judge Slough's Full Decision,

*AS PREPARED BY HIMSELF,*

IN THE

## FIRST TRIAL

OF THE

## CHURCH OF THE UNITED BRETHREN IN CHRIST

*vs.*

## THE SECEDERS FROM SAID CHURCH.



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**Court of Common Pleas,**

NEW LEXINGTON, PERRY CO., OHIO,

October 2-3, 1889.

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# JUDGE SLOUGH'S FULL DECISION,

AS PREPARED BY HIMSELF.

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THOMAS L. GRIGGS AND OTHERS *vs.* DAVID MIDDAUGH AND OTHERS. } IN THE COURT OF COMMON PLEAS OF PERRY CO., O., CASE NO. 2170.

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SLOUGH, JUDGE.

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The question involved in this case is one of title to certain real estate described in the petition, which was purchased by the Church of the United Brethren in Christ in 1851, and the title conveyed in trust to certain persons named in the deed and their successors in office forever for the use of that Church.

It is conceded that the title to the property in controversy is held by the Church at large; that it does not belong to the local congregation at Junction City, this county; and that it is held by the trustees of that local congregation for said Church at large. Each of the contending parties claims to be the lawful trustees, and to hold it for the parties respectively represented by them as the true Church of the United Brethren in Christ.

The controversy arose because of certain action of the General Conferences held in the years 1885 and 1889 (the

latter at York, Pa., May, 1889,) respecting the proposal and submission by the former and the adoption by the latter of an amended constitution and a revised confession of faith for the Church.

After participating several days in the proceedings of the last named Conference, and discussing and voting upon the adoption of those instruments, *fifteen* of the *one hundred and thirty* delegates composing that Conference, with Bishop Wright as one of their number at their head, because of the adoption of those instruments (by the votes of *one hundred and ten delegates for*, and the votes of only *twenty delegates* against them), withdrew from that Conference and constituted themselves into a separate "conference" at another hall in another part of the city of York. The General Conference (of 1889) proceeded and completed its business, and the separate "conference" proceeded and completed the business that came before it. Each of these bodies, with their respective adherents, claims to be the true Church of the United Brethren in Christ, and as such entitled to the property of the Church for the uses for which the Church holds it.

In this case the plaintiffs represent the General Conference of 1889 and its adherents, and the defendants represent those who seceded from that General Conference and their followers; and the contest is as to which of these contending parties shall have the Church property above referred to. The plaintiffs claim that the defendants, and those whom they represent, are no longer members of the Church of the United Brethren in Christ; that they have put themselves, or have been put, without the pale of that Church; and that, therefore, they have no just or lawful claim to the title or use of the property of the Church. On the other hand, the defendants claim that the Church, as represented by the plaintiffs, because of its alleged *perversion of the trust*

upon which the Church property is held, has no rightful claim to the property or its further use; and that the property and its use should be decreed to the Church as represented by the defendants. Hence, the main question in this case is: Has there been by the Church, as represented by the plaintiffs, a *perversion of the trust* upon which the Zion Church property at Junction City was granted to the Church of the United Brethren in Christ?

It is claimed by the defendants that this alleged perversion of the trust results from the action taken by the above-mentioned General Conferences, especially the action of the General Conference of 1889, respecting the adoption of the amended constitution and the revised confession of faith for the Church, which action the defendants allege was unconstitutional, illegal, and arbitrary. Now, does the action of these General Conferences in the matters specified work a perversion of this trust? Civil courts can have jurisdiction of a case like this only upon the question of the perversion of a trust. In the inquiry whether there has been a perversion of a trust such as is involved in this case, civil courts may look into the question whether an ecclesiastical body, like the General Conference of this Church, has, in its action, transcended its powers or jurisdiction as a legislative, judicial, or executive body. Civil courts may, as this court apprehends the law, look into and determine the question whether there has been, by the action of such 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—not reasonably open to controversy*. For illustration: Should a General Conference of the Church strike out of its confession of faith the second and third persons of the Holy Trinity, so as to make the faith

Unitarian, here would be such a substantial and obvious departure as would work a perversion of the trust upon which the church property is held.

The civil court may examine and say whether the General Conference of this Church proceeded in an *obviously illegal and arbitrary manner—in a manner evidently in disregard of its plain organic law* (its constitution)—to amend its constitution and change in essentials of doctrine its confession of faith. This court is of the opinion that amendments to the constitution and changes in the essentials of the faith should be made agreeably to the organic law. But the general rule is that the doctrinal decisions and judicial constructions (of church constitution and legislation under it) of the highest judicatory of a church are binding upon the civil courts, and the latter have no power to review or reverse them. Upon this point the following authorities are cited:

In the case of Watson vs. Jones, decided by the Supreme Court of the United States, and reported in 13 Wallace, 679 to 733, the court on page 727 of opinion says: "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."

Farther along in the opinion the court says: "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. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.* But it would be a vain consent and would lead to the total subversion of such religious bodies if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed."

There is much more said in the opinion in that case that bears upon the determination of the questions in this case. The same rule is laid down by High on Injunctions (last edition), Section 310, etc.; 45 American, 449; 41 Pennsylvania State, 9; 45 Missouri, 183; 89 Indiana, 136.

Harrison vs. Hoyle, 21 Ohio State, 294.
Gaff vs. Greet, 88 Ind., 122.
Potter on Corporations, vol. 2, 709 etc , 719, 720.
Walker vs. Wainwright, 16 Barb., 486.
Robertson vs. Bullions, 9 Barb.. 64.
German Ch. vs. Seibert, 3 Pa. St., 282.
Shannon vs. Frost, 3 B. Mon., 253.
Gibson vs. Armstrong, 7 B. Mon., 481.
Hale vs. Everett, 53 N. H., 2.
Terraria vs. Vasconce, 23 Ill., 403.
Harmon vs. Dreher, 1 Speer Equity, 87.
German Ref. Ch. vs. Seibert, 3 Barr., 282.
McGinnis vs. Watson, 41 Pa. St., 1.
Chase vs. Cheney, 58 Ill., 509.

"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 denominations to which they belong.

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"Where a schism occurs in an ecclesiastical organization which leads to a separation into distinct and conflicting bodies, the respective claims of such bodies to the control of the property belonging to the organization must be determined by the ecclesiastical laws, usages, customs, principles, and practices which were accepted and adopted by the organization before the division took place."

The White Lick Quaker case, 89 Indiana, 136.

"The principle may now be regarded as too well established to admit of controversy, that in case of a religious congregation or ecclesiastical body, which is in 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 judicatory as final and conclusive upon all questions of faith, discipline, and ecclesiastical rule."

High on Injunctions, vol. 1, Section 310, 314.

Judge Owens, in delivering the opinion of the Supreme Court of Ohio, in the case of Mannix vs. Purcell, not yet reported, but found in Law Bulletin, vol. 21, on page 76, says: "It has been held that where a religious body becomes divided, and the right to the property is in conflict, the civil courts will consider and determine which of the divisions submits to the church local and general. This division is entitled to the property. In determining which of the divisions has maintained the correct doctrine, the findings of the supreme ecclesiastical tribunal of the denomination in question are binding upon the civil courts." [See authorities cited by Judge Owens in this case.]

Now, the Church of the United Brethren in Christ is a perfectly organized society. It has its houses of worship, its burial grounds, etc. (its property), its congregations, its pastors, its bishops, its quarterly conferences, its annual conferences, and its General Conference. The General Conference of the Church is its supreme legislative, executive, and judicial body. The Church possesses the *element or quality of unity* and the *power of perpetuity*, and such a society can no more be affected by the withdrawal of a faction of its members than the universe can be destroyed by the disappearance or extinguishment of some of Heaven's lesser luminaries. The General Conference of the Church is—to quote and adopt from the decision of Chief Justice Gibson in the great Presbyterian Church case—"a homogeneous body, uniting in itself, without separation of parts, the legislative, executive, and judicial functions of the Church government, and its acts are referable to one or the other of them, according to the capacity in which it sat when they were performed."

Commonwealth vs. Green, 4 Wheat, 531.

All persons becoming members of the Church of the United Brethren in Christ not only accept its constitution and confession of faith as they are when they enter the Church, but they either expressly or tacitly consent to such changes in either as this supreme authority of the Church shall lawfully make.

Now what of the General Conferences of 1885 and 1889 of this Church, and what of the action of each respecting the amended constitution and the revised confession of faith? It is admitted that these General Conferences were lawfully constituted. No question is or has been made touching the validity of the election or credentials of the delegates respectively composing these General Conferences. On the contrary, it is and has been conceded on all hands that the delegates to these General Conferences were regularly and lawfully chosen, certified and commissioned. It is also practically admitted that the delegates to the General Conference of 1889 were elected with especial reference to the action taken by the General Conference of 1885 and the action to be taken by the General Conference of 1889 respecting the amended constitution and the revised confession of faith. The constitution of 1841 (in force up to 1889) expressly provided for its amendment; and it is granted in argument by counsel for defendants that changes even in the essentials of the faith may be made after changing the constitution of the Church so as to provide the mode or manner of altering the confession of faith. This court is of the opinion that the amendment of the constitution and the revision of the confession of faith (which were made) could lawfully be made at the same time.

But it is contended that the constitution of 1841 provided that it might be amended only upon "the request of two-thirds of the whole society," and that the amended constitution and the revised confession of faith were made and adopted without the required request of two-thirds of the whole society, indeed without any request of the society. Now is it true, either in law or in fact, that the constitution was amended and the confession of faith revised without the request of two-thirds of the whole society that the same be done? Is not the precise contrary true, that both were done regularly and law-

fully upon the express request of two-thirds of the whole society? What was done by the General Conference of 1885 toward the amendment of the constitution and the revision of the confession of faith? The General Conference of 1885 appointed a committee to formulate an amended constitution and a revised confession of faith, *to be submitted to a vote of the entire membership of the Church at an election to be held after full and due published notice thereof and of the nature of the proposed amendment and revision.* Such *proposed* amended constitution and revised confession of faith, together with notice of such election, were fully and duly published, and such election was regularly and duly held. The clergy and the press of the Church made diligent and urgent effort to secure a full vote of the entire membership of the Church. All had opportunity to vote, and the election was in every way free and fair. The result of the election was: For the amended constitution and the revision of the confession of faith, 50,685 votes; against, 3,659, being 14 votes *for* to one vote *against.* Certainly the members who abstained from voting have no just cause to complain of this result.

What followed this election? Were the proposed amended constitution and revised confession of faith at once declared adopted? No. They, with the vote thereon, were fully and duly reported to the General Conference of 1889, and the same were, by that body, with full freedom, duly considered, discussed, voted upon, adopted, and declared as the amended constitution and the revised confession of faith of the Church, and, as ordered by that body, the same were published and proclaimed by the bishops of the Church as its amended constitution and revised confession of faith. Their adoption, etc., was by a vote of 110 delegates *for* to the vote of 20 delegates *against.*

Now, here was a positive, express request to the General Conference of 1889. Certainly no valid objection can be made

to this convenient and proper *form* of request. But defendants complain that of the 208,000 members of the Church only about 54,000 voted at the election, whereas the constitution of 1841 required the request of two thirds of the "whole society" to authorize amendment of the constitution, etc.; and that, since 54,000 votes are not two-thirds of 208,000 votes, therefore, the request required by that constitution was not made. The trouble with the position of the defendants upon this point is that it is not well taken. The practical and lawful construction of the provision in the constitution of 1841 for its amendment is that *if the form of expressing such request is by a vote of the membership of the Church at an election held for that purpose, "two-thirds of the whole society" means in law two-thirds of all those voting at such election.* To repeat: Largely more than two-thirds of all the members voting at the election voted intelligently and understandingly for the amended constitution and the revised confession of faith. This was in law the valid request of more than "two-thirds of the whole society." This is according to the legal and only practical rule in such cases. It is held by the courts that, where an amendment to a State constitution is submitted to a vote of its electors for adoption, under a requirement that a majority of all the votes in the State must be for such amendment to effect its adoption, such requirement is complied with if at such election a majority of all the electors voting vote for such amendment. The same rule obtains respecting elections held in counties and in townships for the adoption of acts of the State legislature. See the following authorities:

St. Joseph vs. Rogers, 16 Wallace, 644 and 663-4, and authorities there cited.
Wardens of Christ Ch. vs. Pope, 8 Gray, 140-3.
Richardson vs. Society, 58 N. H., 188-9.
State vs. Swift, 69 Ind., 505.

Green vs. Weller, 32 Miss., 850.
Prob. Anit cases, 24 Kans., 700.
Dayton vs. St. Paul, 22 Minn., 400.
Miller vs. English, 21 N. J., 317.
Mad. Av. Ch. vs. Bap. Ch. 2 Abb. Pr. (N. S.), 234.
95 U. S., 369.
1 Sneed (Tenn.), 690-692.
20 Ill., 159-163.
20 Am. Corp. cases, 93.
48 Ill., 262
10 Minn., 87.
22 Minn., 53.

Said Judge McIlvaine in Harrison vs. Hoyle, 21 Ohio State, 269: "All members of the society are included, because, if not present, participating in the action of the meeting, their absence was voluntary, and hence there is no ground for complaint."

That the constitution was lawfully amended is, in view of the authorities, quite beyond controversy, and that the revised confession of faith was made and adopted in accordance with the organic law of the Church seems to the court equally indisputable. In the judgment of the court the revision makes no *changes* in the *essentials* of the old confession of faith. The modifications made are not substantial or material, but are merely improvements in the form and style of expression. The substance of the faith remains the same. Certain articles were added to the old confession of faith, but these added articles only embody and express doctrinal matters, not set forth in the old confession of faith, of not only common but of universal belief in the Church ever since its foundation. There is nothing whatever in any of these added articles that, to any extent, *clashes* or *conflicts* with any doctrinal matter in the old confession of faith.

The records of the Church, which are in evidence, show that up to the General Conferences of 1885 and 1889, no constitution, or confession of faith, or rule of discipline, was ever

submitted for adoption to a vote of the membership of the Church. Prior to these General Conferences, all such matters were acted upon as within the absolute control of the General Conference—all was formulated and adopted by that body alone. But the General Conferences of 1885 and 1889, more clearly appreciating their high duties, and more regardful of the rights and consciences of all the members of the Church, lawfully and very properly prepared the way and provided the means of taking the sense and voice of the whole membership of the Church upon the questions of amending its constitution and revising its confession of faith; and having lawfully taken the sense and voice of the membership upon these questions, the General Conference of 1889 proceeded accordingly, and in a constitutional manner, to adopt and declare the amended constitution and the revised confession of faith, and the bishops of the Church, as lawfully authorized, published and proclaimed the same as such. In taking this action, the clause in the constitution of 1841, providing for its amendment, was construed by the General Conferences of 1885 and 1889, as they, and each of them, had the lawful right to do; and their decision on that point being clearly within their powers and manifestly correct, is final, and binding upon the civil courts.

In *all* the acts and proceedings of these General Conferences, respecting the formulation, submission, and adoption of the amended constitution and the revised confession of faith, they each proceeded and acted within their constitutional and lawful powers; and they having determined all questions concerning them, it is not within the province or power of a civil court to review or reverse their decisions.

Indeed this court feels called upon to say, in view of all the evidence and the law of the case, that this Church has done its work in these matters in not only a lawful but Chris-

tian manner, and with a degree of care, wisdom, and correctness commendable to the churches of the world.

The defendants, with Bishop Wright and his other followers, having withdrawn from the Church, and their names having since been stricken from the rolls of membership thereof, they, the defendants, have no rightful claim to the property involved in this litigation, but the plaintiffs are entitled to the same for the uses of the Church, and the decree of this court to that effect is accordingly entered in favor of the plaintiffs.

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