JUDICIAL DECISIONS

ON THE

IDENTITY AND PROPERTY

OF THE

United Presbyterian Church of America,

CONTAINING THE ARGUMENTS OF COUNSEL, TOGETHER WITH THE DECISIONS BOTH IN THE LOWER AND SUPREME COURTS OF PENNSYLVANIA AND NEW YORK, ON THE LAW OF CHURCH PROPERTY,

WITH AN INTRODUCTION

BY REV. JOHN T. PRESSLY, D. D.,

OF ALLEGHENY CITY, PA.

BUTLER, PA:
COMPILED AND PUBLISHED BY S. P. IRVIN, Esq.
1862.

SINGERLY & MYERS, PRINTERS, PITTSBURGH, PA.

INTRODUCTION.

THE UNITED PRESBYTERIAN CHURCH, as a distinct portion of the household of faith, originated in a union formed between the Associate Reformed and the Associate Presbyterian churches in North America, which union did not call into being a new church, but has continued the existence of the church in an enlarged form and under a new organization. That this may more clearly appear, it is proposed to review some of the leading facts in the history of the different parts of which this ecclesiastical body is composed.

The Associate Presbyterian church had its origin in a secession from the established church of Scotland, which took place in the year 1733. The principal causes which led to this secession, were prevailing corruptions in the doctrines of the church and the tyrannical exercise of power in her government. Some of the leading divines of the church, among whom JOHN SIMSON, Professor of Theology in the University of Glasgow, occupies a prominent place, openly maintained principles subversive of the great doctrines of the Bible, and utterly at variance with the received Standards of the church. This alarming state of things in the church aroused those who felt the obligation resting upon them to contend earnestly for the faith once delivered to the saints. Among these faithful servants of Christ, who were not ashamed to avow and defend the truth, when opposed by men high in place, the Rev. EBENEZER ERSKINE occupies a prominent position. For a sermon preached by this eminent servant of Christ, before the Synod of Perth

and Sterling, October 18th, 1732, in which he fearlessly advocated the cause of truth, he was called to account; and by the abuse of power, it was resolved that a rebuke should be administered, as the reward of his fidelity, in lifting up a testimony against prevailing error. To this tyrannical proceeding, Mr. ERSKINE replied, that he could not submit in silence to the rebuke and admonition which had been tendered to him, as he was not convinced of having done any thing that deserved censure. He at the same time presented a written protest against the sentence, requesting that the paper might be read and recorded in the minutes of the Assembly. The paper was to the following effect:

"Although I have a very great and dutiful regard to the judicatories of the church to whom I own my subjection in the Lord, yet in respect, the Assembly have found me censurable and have tendered a rebuke and admonition to me for things I conceive to be agreeable to and founded on the Word of God and our approved Standards, I find myself obliged to protest against the said censure, as importing that I have in my doctrine at the opening of the Synod at Perth in October last, departed from the Word of God and the foresaid Standards, and that I shall be at liberty to preach the same truths of God, and to testify against the same or like defections of this church, on all proper occasions." In this protest Messrs. WILSON, MONCRIEFF and FISHER united.

The result was, that, since these brethren could not be induced to withdraw their testimony to the truth and in opposition to prevailing defection, they were in the first place suspended from the exercise of the office of the holy ministry, by the Commission of the Assembly; and finally the relation between them and their respective charges was dissolved. The following sentence was pronounced by the Commission· "The Commission of the General Assembly did, and hereby do loose the relation of Mr. EBENEZER ERSKINE, minister at Sterling; Mr. WILLIAM WILSON, minister at Perth; Mr. ALEXAN-

DER MONCRIEFF, minister at Abernethy, and Mr. JAMES FISHER, minister at Kinclaven, to their respective charges, and do declare them no longer ministers of this church; and do hereby prohibit all ministers of this church to employ them, or any of them, in any ministerial function. And the Commission do declare the churches of the said Mr. ERSKINE, Mr. WILSON, Mr. MONCRIEFF and Mr. FISHER vacant from and after the date of this sentence."

When these brethren were called before the Commission, and this sentence was intimated to them by the Moderator, they read the following paper; and after reading it, they left it in the hands of the Clerk under a protest, that it might be engrossed in the minutes.

"Edinburgh, November 16th, 1733. We do hereby adhere to the protestations formerly entered before this court, both at their last meeting in August, and when we appeared first before this meeting. And further we do protest in our own name, and in the name of all and every one in our respective congregations adhering to us, that notwithstanding of this sentence passed against us, our pastoral relation shall be held and repute firm and valid. And likewise we do protest, that notwithstanding of our being cast out from ministerial communion with the established church of Scotland, we still hold communion with all and every one who desire with us to adhere to the principles of the true Presbyterian, Covenanted Church of Scotland, in her doctrine, worship, government and discipline; and particularly with every one who is groaning under the evils, and who are afflicted with the grievances we have been complaining of; who are in their several spheres wrestling against the same. But in regard the prevailing party in this established church who have now cast us out from ministerial communion with them, are carrying on a course of defection from our reformed and covenanted principles; and particularly are suppressing ministerial freedom and faithfulness in testifying against the present

backslidings of the church, and inflicting censures upon ministers for witnessing by protestations and otherwise against the same: Therefore we do, for these and many other weighty reasons to be laid open in due time, protest, that we are obliged to make a secession from them, and that we can have no ministerial communion with them, till they see their sins and mistakes, and amend them. And in like manner, we do protest, that it shall be lawful and warrantable for us to exercise the Keys of Doctrine, Discipline and Government, according to the Word of God, and the Confession of Faith, and the principles and the constitutions of the Church of Scotland, as if no such censure had been passed upon us: Upon all which we take instruments. And we hereby appeal to the first free, faithful and reforming General Assembly of the Church of Scotland." Signed EBENEZER ERSKINE, WILLIAM WILSON, ALEXANDER MONCRIEFF and JAMES FISHER.

Hence the origin of that Secession which gave rise to the "Associate Presbytery." These persecuted brethren did not withdraw from the Church of Scotland, nor relinquish their adherence to any article embraced in her formula of faith; but, from a corrupt and tyrannical party in that church, who by the abuse of power had excluded them from her communion.

After the aforesaid unrighteous sentence had been pronounced by the Commission upon these four brethren, dissolving the relation between them and their respective congregations, and declaring them no longer ministers of the Church of Scotland, they met for consultation in relation to the course to be pursued by them in the trying circumstances in which they were placed. On this memorable occasion they enjoyed the company and counsel of the Rev. Messrs. RALPH ERSKINE and THOMAS MAIR, who subsequently adhered to the Secession. The result was, that after spending two days in prayer and conference, they resolved to form themselves into a

Presbytery, to be denominated the Associate Presbytery.

Heaven seemed to smile upon the new organization; it met with favor among the better class of the common people, and a good degree of peace and prosperity was enjoyed. And such was the increase both of ministers and congregations, that in the space of about ten years, they formed three Presbyteries and constituted themselves into a Synod.

But unhappily, at the first meeting of the Synod in March 1745, a subject was introduced, which, after giving rise to much angry discussion, resulted in a division of the body. The subject of controversy was introduced into the Synod, by an overture which was transmitted from the Presbytery of Dunfermline, requesting that body to give a deliverance as to the lawfulness of what was termed the "Burgess oath." The subject which gave rise to the difficulty, was the religious clause contained in the oath imposed upon burgesses in some of the towns of Scotland. The clause referred to, is expressed in the following words. "Here I protest before God and your Lordships that I profess and allow with my heart, the true religion presently professed within this realm, and authorized by the laws thereof; I shall abide thereat, and defend the same to my life's end, renouncing the Roman religion called papistry." What is the true meaning of the clause "the true religion presently professed within this realm", was the difficulty which gave rise to long and keen contention. "One party in the Synod interpreted these words to be of similar import with the true religion *as* presently professed and authorized; and maintained that swearing this part of the oath was equivalent to giving a solemn approbation of those corruptions that prevailed in the established church, and against which the Secession had publicly testified. Another party maintained that this clause of the oath, bound the individual who swore it to approve of the true religion itself, as that which

was settled and professed in this realm, but did not bind him to approve of the manner in which it might be settled and professed; and that therefore, it did not require of him any approbation of the prevailing corruptions in either church or state." The difference between these worthy brethren, had respect to the true and proper meaning of the oath. According to the interpretation put upon the language by one party, all would admit that the oath could not be taken lawfully; but according to the other interpretation, all difficulty was removed. And yet, behold how great a matter a little fire kindleth. To such a degree were these brethren excited, and so deplorably were their feelings embittered against each other, that a rupture in the Synod was the unhappy result. Two Synods were now formed, each claiming to be the only lawfully constituted Synod of the Secession church, while each denied to its rival, this exclusive claim. That party who approved of the decision of Synod in April 1746 condemning as sinful, and as inconsistent with the Secession testimony, the swearing of the religious clause in certain burgess oaths, were designated "Antiburgher;" the other party who opposed the Synod's giving any decision on this question, and who contended that it should not be declared a term of communion, were designated "Burgher;" and hence these two terms became distinctive of the two Synods.

But while the brethren composing these two Synods, like Paul and Barnabas, were involved in a "contention so sharp that they separated one from the other," they remained equally firm in their adherence to the ecclesiastical Standards of the mother church. As the fathers of the Secession, who were by the exercise of tyrannical power thrust out of the church, distinctly avowed their unaltered attachment to the doctrine, government, discipline and worship of the Church of Scotland, so, in this respect, each of the Synods into which the Secession was now divided remained the same.

In doctrine, government, discipline and worship, they were one; the unhappy cause of difficulty, was a diversity of views relative to the lawfulness of the "Burgess oath."

At an early period in the history of the Secession, the attention of the brethren was directed to the propagation of the gospel in the new world. Previous to the American Revolution members of both branches of the Secession, as well as of what was termed the Reformed Presbytery had taken up their abode in the British colonies. As the members of each of these ecclesiastical bodies were few in number, and as ministers were scarce, the necessity of union among the friends of a pure gospel was strongly felt. This led to consultation among the members of these three portions of the church, which resulted in a union. And as some of the individuals composing the union had been previously members of the Associate Presbytery and others of the Reformed Presbytery, upon the consummation of the union, the united body assumed the designation of the "Associate Reformed Church." "The body thus formed, was made up of three Presbyteries and fourteen ministers, and immediately set itself to the great work to which it felt called in the providence and by the grace of God. After much labor and with great care, the Synod at its meeting in Greencastle, Pennsylvania, May 31st, 1799, issued its formal Standards. This work was the result of many meetings and much prayerful deliberation. It retained the Westminster Confession of Faith, and the Catechisms larger and shorter, unchanged, except in the matter of the civil magistrate's power in relation to religious things; and in this the XX., the XXIII., and the XXXI. chapters were altered so as to express on this subject, the present faith of the church, without any additional testimony or explanation. Under the things forbidden in the second commandment in the Larger Catechism, the word *tolerating* is changed into *authorizing*. In all other things these venerable formularies of truth

were left unaltered. The Westminster Directory for worship and the propositions of Church Government were not changed, and the rules of discipline and forms of process were merely systematized for greater convenience in the administration of church authority. The book as thus prepared, and as it has continued in force ever since, was styled, "The Constitution and Standards of the Associate Reformed Church in North America." Here again we see the same church under a new organization, adhering to the same system of doctrine, government, worship and discipline.

Some of those, however, who had been members of the Antiburgher Synod, as well as some of the Reformed Presbytery did not see proper to enter into this union; and each of these parties, in process of time being strengthened by emigration from the mother country, these two organizations were still continued as distinct bodies from the Associate Reformed Church.

To many it was a source of grief, that brethren so nearly one in their religious views, should remain ecclesiastically separated from each other. The great importance of union among the friends of truth, in opposition to the common enemy, was strongly felt; and from time to time efforts were put forth, to bring about a result so desirable. Without giving any detailed account of these efforts to promote union, it is sufficient for my present purpose to state, that after years of consultation, and much prayerful deliberation, the Associate Reformed and Associate Presbyterian churches have been happily united under one banner.

Both these churches previous to this union, had in common with the mother church of Scotland, adopted the Westminster Standards. The Associate Reformed Church in adopting the Confession of Faith, had thought proper to modify certain portions of that venerable document, which relate to the powers of the civil magistrate *circa sacra*, so as to express more clearly the views which are held on that subject; while the Associate

church retained the Confession unaltered, explaining as the Church of Scotland had done, the sense in which the Confession was received. Between these churches there was no difference with respect to doctrine, worship, government and discipline. In relation to the obligation resting upon the church, to bear testimony in behalf of the truth, and in opposition to error, they were of one mind. As to the principle of bearing testimony, they were agreed; while in relation to the preferable mode of carrying out this principle, there was a circumstantial difference. The Associate Reformed Church regarded the received Standards of the church, as her fixed testimony in behalf of the truth, while she recognized the obligation and avowed the determination to emit occasional testimonies in defence of the truth and in opposition to error, as the circumstances of the church might require. In connection with the Confession of Faith, the Associate church adopted a "Declaration and Testimony for the doctrine and order of the church of Christ, against the errors of the present times."

As on these subjects, there was no difference between these churches involving principle, in preparing the way for union, it was agreed, that in declaring our adherence to the Westminster Standards, there should be a distinct exhibition of the views of the united church on the subject of the power of the civil magistrate, as to sacred things; and also, that on certain points which were either not distinctly introduced into the Confession of Faith by its framers, or not exhibited with that fullness and explicitness, which the circumstances of the church, the times in which we live, and the views and practices of those around demand of us as witnesses for the truth, there should be a distinct deliverance. Accordingly a Basis of Union was prepared on this principle, which after due consideration was adopted by the two bodies.

After the Basis of Union which had been prepared, had been submitted in overture to the Presbyteries of the two churches, the subject came before their supreme ju-

dicatories at their meeting in 1857. The action of the Associate Synod is in the following words: "Whereas a large majority of the Presbyteries are in favor of adopting the Basis, even though no amendments be made, we therefore recommend the adoption of the following resolutions:

1. Resolved that the Basis which has been in overture be, and hereby is adopted as a Basis of Union with the Associate Reformed Church; the declarations without amendment, and the argument and illustration in their amended form, as a useful guide to the meaning of the declarations.

2. Resolved that it be transmitted to the Asscciate Reformed Synod for their concurrence."

Accordingly the document being laid before the General Synod of the Associate Reformed Church, the following action was taken:

"Whereas the consummation of a union of the Associate and Associate Reformed Presbyterian churches, is a high duty, and of great importance to the maintenance of the peculiar principles held in common by these churches; and whereas the Testimony proposed to us by the Associate Church as a Basis of Union contains no principle which is not expressly embodied in the Standards of the Associate Reformed Church, or has in some form received her sanction; and whereas, it is not doubted that the wisdom of the united church will effect any modification of the form of Church Government, or the Directory for Worship of the Westminster Standards necessary to harmonize them with the common faith and practice of the two churches, or any desirable modification of the formula of questions to applicants; and whereas a majority of the Presbyteries of the Associate Reformed Church have declared themselves in favor of receiving the Basis as it is, rather than to fail of obtaining this union; and whereas it is believed that the great mass of the people in both of these churches anxiously desire it; and that their spiritual interests urgently require its

speedy consummation; and whereas finally, it is to be feared, that if the present overture should be rejected, the accomplishment of this object will be long postponed and the heart-burnings and contentions between these churches in former years be to some extent revived, and similar evils produced among ourselves; therefore

1. Resolved, that the Associate Reformed Church does hereby declare her acceptance of the Testimony proposed as a Basis of Union by the Associate Synod, and overtured by the General Synod of 1856 to the Presbyteries, in the confidence, that any modifications or amendments necessary to harmonize said Basis with the faith and practice held in common by the two churches, or render it more entirely acceptable, will be in due time effected by the united church; and in the confidence that reasonable forbearance will be exercised toward any member of either body that may feel constrained to dissent from any article in the Basis.

2. Resolved, that a committee of one minister from each subordinate Synod be appointed to communicate this action to the Associate Synod, and in conjunction with a similar committee of that Synod, if it shall see proper to appoint one, to agree upon and recommend the necessary measures for the immediate consummation of the union."

Thus the two churches through their supreme Judicatories signified their approbation of the proposed plan of union, and their readiness to proceed to its consummation.

Accordingly the Basis of Union being now adopted by the two bodies, and the necessary arrangements being made, this long desired union, was with appropriate ceremonies happily consummated on the 26th of May, 1858; and hence the origin of the new organization, denominated THE UNITED PRESBYTERIAN CHURCH OF NORTH AMERICA. In the formation of this union, there was neither an abandonment of any article of

faith formerly held, nor the introduction of any new doctrine, but the development and expansion of that system of doctrine, worship, government and discipline adopted substantially by the Church of Scotland, after the light of the Reformation had dawned upon her. In the various formulas of faith prepared by the Scottish Reformers, JOHN KNOX and his coadjutors, we see the recognition and development of certain great principles, among which the following occupy a prominent place: That Jesus Christ is the sole King and Head of the Church; That He is the Source of all authority in the Church; That in relation to doctrine, worship, government and discipline, the Word of God is our only rule. In accordance with these principles, the corruptions of Popery were banished from the Church; the rites and ceremonies of prelacy were rejected; and the doctrines and institutions of man in the worship of God were set aside. At length the Westminster Standards, in the preparation of which some of Scotland's ablest men performed an important part, were adopted by the Church of Scotland. "The General Assembly which met in Edinburgh on the 4th of August, 1647" says HETHERINGTON, "is chiefly memorable for its ratification of the Confession of Faith, of the Westminster Assembly of Divines, and for the adoption of that translation and metrical version of the Psalms, which is still used in the Church of Scotland." In these Standards, that system of doctrine, which by way of distinction is denominated Calvinistic, is exhibited, and the Presbyterian form of church government is maintained as that which has been ordained by the King and Head of the Church.

In process of time, various subjects have engaged the attention of the Christian public, since the days of the Westminster Assembly, on which that venerable body was not led to make any distinct declaration. Among these may be mentioned particularly, the subject of Communion, of Psalmody, of Slavery and of

Secret Societies. On these and on some other subjects, the circumstances of the times seemed to require of us a more distinct deliverance. Accordingly, the United Presbyterian Church prepared and adopted a Declaration and Testimony containing eighteen Articles, in which there is a distinct exhibition of her views on these various subjects. These Articles do not contain any doctrine inconsistent with the Confession of Faith as received by these churches previous to the union, but unfold more clearly and fully the truth on various subjects, on which the Confession was either silent, or has given no distinct deliverance. The United Presbyterian Church is therefore to be regarded not as a new ecclesiastical body which has just come into existence, but as the same which has existed since the days of the Reformation in Scotland, now appearing under a new organization and advanced to a greater degree of maturity.

PREFACE.

This book is eminently entitled to public patronage. In addition to the legal learning upon Church Rights and property, it contains within itself an abridged treatise upon Church Organization for centuries past. The reader in a condensed form at once obtains an intelligible view of the importance of Church organization, founded upon principle in contradistinction to immaterial differences on unimportant subjects. No one who reads and understands this little work can fail to appreciate its value, not merely on account of the publicity it gives to a highly important decision of the Supreme Court of the State of Pennsylvania, but more on account of the theological knowledge it discloses of the the origin of the various schisms which sprung up in the Presbyterian Church.

It is gratifying to know that the chief cause of distraction, which led to separation and new organization were in no single instance attributable to a relinquishment of fundamental principle. The vital element of Presbyterianism has never been affected, and is to day the same it ever was: and hence it required no sacrifice of Faith to form the union which has been consumated in the United Presbyterian Organization and now endorsed by the highest judicial sanction of one of the first States of the Union. The

opinion of Chief Justice Lowrie is regarded as a model production as well in matter as manner. His conceded learning, his familiarity with church history and great devotion to christianity impart to it an interest, which must necessarily secure for this work an extended circulation. The recent reciprocal action of the several branches of the Presbyterian body is to be regarded as highly significant, and as tending strongly to an ultimate merging of all minor differences in a general union, an event greatly to be desired, and for the consumation of which, the prayers of the good should every where be earnestly invoked.

IN THE

Supreme Court of Pennsylvania,

WESTERN DISTRICT.

ROBERT WATSON, WM. MOORE AND JOSEPH SLOAN, Trustees of the United Presbyterian Congregation of Unity Church, Respondents below and now Appellants,

vs.

JAS. J. MCGINNIS, CHAS. POLLOCK AND JOHN WILSON, Trustees and Members of United Congregation of the Associate Church, Complainants below and Appellees.

APPEAL FROM THE COMMON PLEAS OF BUTLER COUNTY.—IN EQUITY.

NAMES OF PARTIES, AND COPY OF RECORD,

ROBERT WATSON,
WM. MOORE, JOSEPH SLOAN,
Trustees, United Presbyterian Congregation of Unity Church,
Appellants.

VS.

JAMES J. M'GINNIS, CHARLES POLLOCK, AND JOHN WILSON,
Trustees and Members of the Unity Congregation of the Associate Church.

Com. Pleas of Butler Co.
In Equity.
No. 1. June 3rd 1860.

COPY OF RECORD.

Among the records and proceedings of the Court of Common Pleas in Equity, in and for the County of Butler, in the Commonwealth of Pennsylvania at June Term A. D. 1860, No. 1 are the following to wit:

DOCKET ENTRY.

March 26th, 1860,

Bill in Equity filed.

And now to wit, March 26th, 1860, bill presented and read, courts, award a subpœna returnable to first Monday of May next. And now to wit, May 3rd 1860, answer to complainants, bill filed 23rd June, 1860 replication of complainants to answer of defendants filed same day on motion of Graham and Mitchell the court appoint James Breden, Esq. examiner to take testimony upon notice having been given to defendants.

By the Court.

James J. M'Ginnis
Charles Pollock and
John Wilson, Trustees of
Unity Congregation

1 vs.

The United Presbyterian
Congregation of Unity
Church and Robert Martin,
William Moon and Joseph
Sloan.

Pro. Brown, 7,25
dep. respondent, 12,25
" complainant, 8,75
Pro. Wilson, 8,25

And now to wit July 19th, 1860, commission issued to James Breden, Esq., examiner. Nov. 26th 1860, depositions on part of respondents filed Nov. 30th 1860, depositions on part of complainants filed for argument at Dec. Term 1860.

December 8th 1860. *Argued C. V. A. April 6th*, 1861.

Decree filed. Service waived and accepted April 6th 1861, exceptions to decree filed. For argument at June Term 1861. June 27th, 1861, the courts overrule the exceptions to the form of the decree, and now do decree in the form of the decree filed April 6th 1861, which is ordered shall stand as the decree of the court, and the court further order a stay of proceedings in favor of the complainants under the decree for the term of eight weeks.

By the Court,

ALLEN WILSON, Pro.

June 18*th*, 1861. *Opinion of the Court filed.*

And now to wit, August 3rd 1861. Defendants appeal from the decision of the Court of Common Pleas to the Supreme Court of the State of Pennsylvania, same day affidavit of appellants filed, same date appellants enter into recognizonce, in the sum of five hundred dollors with two sureties conditioned, &c., see recognizance filed.

BUTLER COUNTY, ss. Commonwealth of Pennsylvania.

{L. S.} I, Allen Wilson, prothonotary of the Court of Common Pleas of said courts in the commonwealth aforesaid, do certify that the foregoing is a correct copy of the Docket entry in the above case. In witness whereof I have hereunto set my hand and affixed the seal of the said court, this 28th day of August, A. D. 1861.

ALLEN WILSON, Pro.

A SHORT ABSTRACT OF BILL AND ANSWER.

Ist, of the bill.

That the Associate Synod of North America was and is a separate and independant ecclesiastical organization of Presbyterians, from 1784, to the time of the government complained of, and held doctrines and usages peculiar to the Associate Church.

That said Synod was composed of the several Presbyteries, and they of the ministers and people of the several congregations of the Associate Church.

That the said Synod had supreme Judicial and Legislative authority over all the Presbyteries, Sessions, ministers and congregations composing the same, touching all ordinary matters of doctrine and discipline. That "Unity Congregation was organized as early as 1800, and became a member of said Synod, and continued to be such until the greivances complained of, that they erected in 1803 a meeting house, having in said year purchased from Robert Leason, two acres of land upon which said house is erected in Venango Township, Butler County, Pa.

That articles of agreement were made 24, June, 1803, for the same, between said Leason of the one part and John Pol-

lock and others as trustees of Unity congregation of the other part and their successors in office, for the use of said congregation forever,and at the same time recorded in Butler County. That the said congregation paid the purchase money and went into possession and used the same as a house of public worship from 1803 till time of grievance.

That in the year of 1858, and previous thereto, there was a certain other alleged ecclesiastical organization, known as the Associate Reformed Synod of North America, which had separated in the year 1747, in Scotland from the Associate Church, and held and maintained doctrines, principles and usages fundamentally differing from the doctrines &c. of the Associate Church.

That a basis of Union beetween the Associate Synod and Associate Reformed Synod was proposed and after movements on part of divers restless, and evil disposed persons, ministers and people of the congregation, and Presbyteries of the said Synods said basis was agreed upon, and a partial union formed called the "United Presbyterians Church," which complainants allege is contrary to the doctrines and principles of the Associate Church.

That neither Associate Synods nor Presbyteries had any power to form the Union.

That at the time of union, Unity congregation had no regular minister, and was not regularly connected with any Presbytery of the Associate Synod and could not legally be represented in any of said Presbyteries or Synods.

That by the Constitution and laws of the said Associate Church, consent of the members to secession or dissolution or union with other bodies was necessary, and to be ascertained by an election, and that the same was made without such election and against the wishes of a majority of the congregation.

That the parties who favored union, procured without the knowedge or consent of the complainants below, an Act of Incorporation by the State of Pennsylvania entitled, "An Act to Incorporate the United Presbyterian Congregation of Unity Church, of Venango Township, in the County of Butler," approved 29 March 1859; and have taken forcible possession of the meeting house and ground and claim the exclusive title and occupancy. That they have introduced minis-

ters to officiate in said house, and thus exclude the complanants from the rights and privelges which they have heretofore enjoyed.

Conclude by praying that United Presbyterian Congregation of Unity and the supply ministers and all other ministers of the United Presbyterian Church be enjoined from the use of the house and ground for purposes of worship, and that the complainant orators and all or others who adhere to the faith and practice of the Associate Church be restored to the possession, use and occupancy of said church property.

ABSTRACT OF ANSWER.

That the complainants were not at the time of filing the bill in equity Trustees of the Unity Congregation, and that Jas. J. M'Ginnis is not now, and never was, a member of said congregation.

That the Associate Synod of North America was a separate and independent ecclesiastical organization until the time of the union in 1858, by which it then became merged and lost its identity, except so far as provided for by the act of union, that it should continue. That the purchase money for the property in question was paid for at least in part by the members of Unity Congregation of the United Presbyterian Church.

That prior to the union many of the dissenters, and now complainants, had withdrawn from the church because of personal objections to the Rev. Wm. A. Black—that the objections were fully heard by the Presbytery of Shenango and dismissed.

That the Associate Reformed Church never had any existence in Scotland, and never did seperate from the Associate Church.

That the Associate Reformed Church holding as they ever did, and as the United Presbyterian Church now does, to the Westminster Confession of Faith, the larger and shorter catechism, and the form of Presbyterian church government, does not differ from the doctrines, principles and usages of the Associate Church; that the union was not partial but thorough; that the basis was drawn up by the Associate Church, and was adopted almost unanimously.

That full power existed to form the union, and that the

Session of Unity congregation duly considered and adopted the same, which was carried to the Presbyterian Synod by an elder appointed for that purpose and there approved.

That a year before the adoption of the union the basis was submitted to the members of Unity congregation in printed tracts, and so far as is known, met with general approbation, without objection or dissent from any quarter.

That the united church was incorporated but has not usurped the property, nor take enforcible possession of the house and ground, nor is it true that they have excluded by force any one from the lawful and proper use of said property.

That the title by deed of 4th, August 1859, as well as by the union, as also by possession is vested in the United Presbyterian church, in accordance with the original grant.

That Rev. J. N Dick, and Rev. David Forsythe, preached in said church by direction of Presbytery, and with the consent, desire and approbation of the congregation, and that at said service all were privileged to attend.

That it was not uncommon before the union to exchange pulpits and inter-commune, and that by recommendation from Synods of Associate as well as Associate Reformed branch of the union

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HISTORY OF THE CASE.

Unity Congregation, Venango Township, Butler County, was organized in the year 1800, the Rev. Thos. M'Clintock, of the Associate Church being the Pastor. Its members were of the Associate Church, and in ecclesiastical connection with the Associate Synod of North America; and so continued until the Union of 1858, between the Associate and Associate Reformed Churches.

In 1803, Robert Leason, by agreement in writing, sold to "James Scott and Reuben Irwin, Trustees for Rev. M'Clintock's Congregation, two acres of land, including the meeting house and spring near it, for the proper use and behoof of the congregation, to have and to hold forever."

In 1833, the former article being supposed to be lost, Leason by a second writing, agreed to sell and to convey to persons

named therein, "trustees legally chosen for said congregation" two acres and twenty perches of land, by metes and bounds "including the brick meeting house and burying ground," in consideration of $22,55, and to "give immediate possession, and to give the said trustees or successors, for the use of the said congregation (Unity) forever, a complete and perfect title." A postscrip to this writing, signed by Leason, states the loss of the former, and that this is signed to secure the Congregation of Unity in the same property, in a slightly different shape. In 1836, Leason receipted for the purchase money in full.

After the Union, by an act approved March 29, 1859, that portion of the congregation entering into the Union, were incorporated under the name of "The United Presbyterian Congregation of Unity Church of Venango Township in the County of Butler." To this incorporation, Leason conveyed the premises by deed of August 4, 1859.

In May, 1856, the Associate Synod of North America, approved of a basis of Union with the Associate Reformed Church, which was sent to the Associate Reformed Synod for approval, and also overtured to the Presbyteries and Sessions of the Associate Church.

In May, 1857, a large majority of the Presbyteries approving the Associate Synod, by a vote of 104 to 13, adopted the basis, the declaration without amendment, and the argument and illustration, in their amended form, and transmitted it to the Synod of the Associate Reformed Church, then in session, which adopted it in confidence of future amendments being made, to harmonize the faith and practice of the two churches, and that reasonable forbearance will be exercised to those constrained to dissent from any article in the basis.

On receipt of this resolution of the Associate Reformed Synod, the Associate Synod reciprocated this confidence of forbearance, with the proviso that no one be permitted to teach or to act in opposition to the doctrine and order of the church. A committee from each Synod was appointed to make arrangements for the Union. who reported to their Synods in 1858. In May, 1858, the Synods respectively acted on the report, and finally united on it in a slightly amend ed form. The preamble consisted of two sections; one reciting one understanding, that the basis should be a term of com,

munion, and the other the forbearance to be exercised toward the brethren, who could not fully subscribe to the standards of the United Church. The Union was forthwith formally consummated with proper ceremony, under the name of the United Presbyterian Church of North America. The Synods of the respective bodies, were continued for certain special purposes. The Associate Synod, including the Moderator, adjourned on its own motion, to Xenia, Ohio, in May, 1859. By the proof it appears, that seven ministers of the Associate Synod protested against the act of Union.

In the minutes 1858, pp. 86 & 88, the protest of Revs. McAuley, Hindman, and others, appears to have been read and filed.

The Presbytery of Indiana, (according to the proof) after consulting the protesting members of synod, called a synod of the Associate Church, composed of the protesters, to meet in Cannonsburg, Pa., in 1859, the witness, Rev. McAuley, being one who signed the call.

The Presbytery of Clarion, composed of the Revs. Hindman and McAuley, and two or three elders, became subordinate to the Synod of the Associate Church, called and held at Cannonsburg by those who protested. That portion of the Unity Congregation which refused to go into the Union, petitioned the Presbytery of Clarion for a Minister, and accordingly the Rev. Jno. M. Snodgrass, was duly installed, and a communion held by him, with the assistance of Rev. McAuley, in August, 1858.

In reply to the overture of 1856, the Shenango Presbytery of the Associate Church, to which Unity Congregation was attached, reported the Synod of 1857, its unanimous adoption of the basis of Union. The session of Unity Congregation, at a meeting in February 1857, composed of the Pastor and the Elders, approved of the basis; "with some small emendations! This basis had previously been read from the pulpit for information; and printed copies were in circulation in the congregation. No formal meeting, or election was held by the congregation to act upon the basis. Unity Congregation at the time of Union 1858, had about one hundred and thirty members, of whom about seventy-three went into the Union and held possession of the premises in controvery. About fifty-eight; includiug several snspended members, refused to

go into the Union. The bill, in this case, is presented in behalf of this minority, against the majority of the congregation, to regain possession and control of the church property; on the ground, that the grant by Robert Leason, was to a congregation professing the doctrines, and adhering to the Government of the Associate Church according to its standards, as they existed in 1803, and that the Union, is such a departure from these, that the dissenting members cannot be compelled to follow.

A brief reference to the secession in Scotland from the Established Church there—the causes which led to it, and the history of the seceding body since, may be referred to as somewhat interesting and instructive, and not wholly irrelevant in considering the questions involved in the issue of this case.

The Associate Church originated in a secession from the Established Church of Scotland in the year 1733. The grounds alleged to justify secession were corruption in the doctrines of the Church, and tyranny in the administration of her government. Ministers were chosen, not by election of the people, but by patronage. The crown or nobility named the ministers.

The Seceders in 1744 consisted of twenty-six ministers, one synod and three presbyteries. Some refused to take what was called the Burgess oath to support the religion then professed within the British Government. A sharp contest sprung up and lasted till 1747, when a breach occurred, and two distinct synods was the result, (the synods being about equally divided in opinion.) The one called the "General Associate or Anti-Burger Synod," the other the "Associate or Burger Synod." The two branches, after a separation of more than seventy years, were re-united on the 8th of Sept. 1820.

In 1753 the Rev. Mr. Gellatly and Rev. Mr. Arnot arrived in this country as missionaries of the Associate Church. Their principal field of labor was Lancaster, Chester and York counties. They constituted themselves into a Presbytery under the name of the Associate Presbytery of Pennsylvania, subordinate to the Associate anti-Burger Synod of Scotland. They were opposed by the General assembly Presbyterians as schismatics from the reforming forefathers.

The two Synods of Scotland adhered to the same testimony, and were separated only because of the Burgess oath. In 1776 the Associate Presbytery having become strengthened by missionaries sent from Scotland, they agreed to divide themselves into two Presbyteries—the one called the Associate Presbytery of Pennsylvania, the other the Presbytery of New York, both subordinate to the Synod of Edinburgh. Soon after the American Revolution the two Associate Presteries and the Reformed Presbyterians, or Covenanters, attempted to effect a union, and in 1782 the union was effected. From this union, however, two ministers, Marshall and Clarkson and three ruling elders protested, and appealed to the Associate Synod of Scotland, claiming to be the true and legitimate Associate Presbytery of Pennsylvania.

The united body took to themselves the name of the Associate Reformed Church, and the protesters or seceders the name of Associate Church, subordinate to the Synod of Scotland. Some ten ministers, soon after, arrived from Scotland as missionaries. The Associate Church, so called, thus strengthened continued to increase.

In 1794, finding the supply of ministers from abroad inadequate, they established a Theological Seminary in Beaver County, Pa., of which Dr. John Anderson continued to be Professor until 1819. In 1820 two seminaries were established—one at Philadelphia, the other at Cannonsburg. The same year a union of the two branches of the secessions in Scotland took place—the Burger and anti Burger Synods became united. This gave rise to an effort to effect a union here that year, and the best men labored with pious zeal to affect it.

For about forty years a manifest desire existed to unite the the two bodies, and within that period, especially within the last ten years, it was not unusual for ministers of the Associate Church to occupy the pulpits of ministers of the Associate Reformed Church; and for those of the Associate Church to occupy the pulpits of the Associate Reformed Church—called exchange of pulpits—thus showing a fraternal feeling, and one that was fast tending to produce harmony and unity in the two bodies. Meanwhile efforts were being made to bring about a union—ministers, elders and congregations of each branch labored to effect it.

In 1855, the Synod of the Associate met that year at Xenia, Ohio, and then and there deliberately considered, of their own motion, the grave subject of union, and formed what was called a basis of union to be submitted to the Associate Reformed Synod. No definate action had been taken this year; the year following the subject again occupied the attention of Synod—a basis was agreed upon, and overtured by the congregation. The Synods of the Associate and of the Associate Reformed met at Pittsburgh the spring of the year 1857. The proposition for union proceeded from the Associate Synod and was well considered by the Associate Reformed and accepted. Thus the two bodies, long separated, agreed upon a basis upon which they could unite, harmony and good feeling and almost entire unanimity prevailing in both Synods. But as the rules of the church required that, it became necessary to submit terms or basis of union to be sent down to the several congregations to be overtured—that is, considered and either approved or rejected—final action could, therefore, not be had until reports should be made as to the action of the several congregations. This was done, as the testimony fully establishes, and the consent of the congregations to the basis of union given. The Unity Congregation, now called the "United Presbyterian Congregation of Unity Church," assenting to it, approving and adopting it by every avenue of church authority—ministers, elders and congregation—after having had the whole matter explained by their minister, printed copies of the basis of union circulated among them, and a direct vote of the congregation taken, agreed to it with almost entire unanimity. And an elder, (Joseph Rosenberry) elected as their lay delegate to the Synod with instructios to vote for the union—thus fully assenting, through their regularly constituted representative, who voted in obedience to their instructions. The Syonds then of both bodies met at Pittsburgh in May, 1858, received reports from the several congregations, and after a full, free and frank interchange of sentiments, and anxious and deliberate considerations, as fully appears by the proceedings *agreed upon a union of the two bodies*, under the name of the "United Presbyterian Church."

OPINION OF THE COURT AND DECREE.

AGNEW, P. J.—In considering the foregoing statement,

two principal facts appear: 1st, that the property, in the church building and ground, was vested by the title papers, in the congregation, and not in the church at large. 2d, That the act or Union was purely ecclesiastical, and did not profess to meddle with church property.

The written agreement and payment of purchase money, vested in the congregation the entire equity, and fifty odd years' possession, both by limitation of time and a presumption of grant, vested in it the legal title. The deed to the United Church in 1859, therefore amounts to nothing. The question presented then is: What effect has this *ecclesiastical* union upon the *civil* rights of the parties?

Civil rights, to which rights of property belong are exclusively within the jurisdiction of the civil tribunals and a private right of property cannot be transferred from one citizen to another, even by the legislative power of the State; except in the enforcement of civil rights, and for certain high purposes of public use. Much less then, can an ecclesiastical body change rights of property. The policy of this State is further evinced in the act of 1855, which provides that property held in trust for religious uses, shall be subject only to the control, of the lay members or of such constituted officers, or representatives, as are composed of a majority of lay members, having a controlling power.

The action of the Presbytery of Shenango, and of the session of Unity Congregation, was nothing more than an approval of the *basis*, overtured to them by the Synod of the Associate Church. Upon looking into the *basis*, which is in proof, we discover it to be only a statement or *testimony* of the doctrines and faith of the church; and the resolutions of Union are merely an adoption of this basis, and a provision for the name of the United Body, and for its ecclesiastical government. The actions of the Church Judicatories, and the acquiescence of the majority of the congregation had reference, therefore, merely to ecclesiastical affairs.

What were the right of property of the congregation, before the Union, and what effect did it produce upon them?

In Lex. vs. Whitman 17, S & R. 388, recognized in Remmington vs. Methodist Church, 1st Watts 224, and followed in App. vs. Lutheran Congregation, 6th Barr. 201, and other cases; a trust in favor of an incorporated religious con-

gregation is held to be an available one, and will be enforced in a court of equity.

It is also settled by the decision of Lord Eldon, in Attorney General vs Pearson, 3d Merrivale 353—400; recognized in this State in Presbyterian Congregation, vs Johnson, 1st W & S, 38—45; that 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 by the usage of of the congregation; and that it is the duty of the Court to administer the trust in such a manner as best to establish the usage, considering it a matter of implied contract with the congregation."

Both by proof and admission it appears, that the Unity Congregation was composed of members of the Associate Church, subordinate to the Associate Synod of North America; and so continued, and was ministered to by pastors in the same connection, down to the time of Union. The grant, therefore, was clearly for the use of a congregation of "Seceders," as they are generally known, in connection with the associate church Their rights of property must, therefore, depend on their connection with that church. This brings us to the decisive question in the case. Which portion of the members, the majority or the minority, is truly this congregation of Seceders, and is entitled to represent Unity congregation, in reference to the trust. The test of this is adherence to the principles, for the maintenance of which, the trust was originally founded.

This is settled by decisions in England, Scotland and our own state. In Craigdallie vs. Arkman, decided in the House of Lords, Lord Eldon shows that the older Scottish rule of the majority, decision, as to test of title, is unsound; and "involved a power in the majority, against just principles of the laws of trusts, to divert from the purpose, for which it could be shown clearly to be held, property, bought or built with common funds for that purpose. The sole question, in every such case, is whether the congregation itself, or what portion, adheres to the principles, the maintenance of which formed the purpose of the trust, Again he says, "if there was no such provision (i. e. in the case of schism) in the instrument and the congregation happened to divide, he did not find that the law of England would execute the trust, for a religious society, at the expense of a forfeiture of their property, by the cestuis que

trust, for adhering to the opinions and principles, in which the congregation had originally united." 1st Dow. p. 16.

In Craigie vs. Marshall, decided in 1850 by Lord Justice Clark and Lord Moncrieff, referred to the Thurso property case, presently to be noticed, Lord Moncrieff is quoted as saying: "In such questions between the members of a congregation, originating in supposed differences of religious principles, the civil right is to be determined by the question, whether one party or the other is *adhering* to the *original principles*, on which the society *was formed*, or the congregation founded: To the same effect, he quotes the principles, as stated by Lord Medwin, in Smith vs. Galbraith in 1837: "If we can find out what were the original principles of those who originally attend the church we must hold the building appropriated to the use of the persons who adhered to the original principles, though these be a minority of the congregation." It was held in this case that the resolutions of the Synod or governing body were not obligatory on the congregation, so as to compel the members to go along with the governing body, at the peril if they refused, of losing their right and interest in it.

The strongest case, most elaborately considered, and almost a parallel to this, is the Thurso Property Case, reported in the Original Secession Magazine, for January 1860, printed in Glasgow, in Scotland, p. 430. The decision was delivered by Lord Wood, in the second division of the Court of Sessions, and made by four Judges. The question grew out of the Union in 1852, between the "Free Church of Scotland" and the "Synod of United Seceders."

The associate body, known as the "Synod of United Original Seceders," divided upon the resolution of Union with the Free Church thirty-two voting for it, and thirty-one against it; the latter protesting and withdrawing, and declaring themselves to be the Synod of United Original Seceders.

In consequence of this, the congregation of United Original Seceders, at Thurso, divided; the pastor and majority going into the Union, and retaining possession of the church property; and the minority adhering to the Protestant minority of the Synod. The title of the property was to the "Managers and Trustees for the said associate congregation of Thurso, in connection with the General Associate Synod

of Edinburg, and under the ministerial inspection of the now deceased Rev. Robert Dowie, late minister of the Gospel, and his successor in office, for the time being, in connection with the said General Synod." No dispute existed, as to the identity of the congregation and Synod, which at the time of the Union had changed its name to that of the United Original Seceders. The opinion of the Court sustains the title of the *adhering minority*, on a number of grounds, founded primarily on the principle that the adhering party to the original principles of the trust cannot be ousted by any act of Church Government deviating from those principles. The decision further holds, that the *fact* of adherence throws the *onus* on the non-adhering party, though in the majority. The majority had contended that, "when it could not be shown that the majority in uniting, any more than the minority in resisting Union, were departing from any such principles or precept, the law would not disregard, but would recognize the resolution of the majority as decisive of the right to the feudal property held in trust for the congregation." But the Court held upon the authority of Craigie vs. Marshall, and in principle, an adhering party, majority or minority, standing where it had ever stood and taking no steps, would not by the action of another party be placed in a dilemma of being compelled to concur in the Union, or bound to show that there was a positive adverseness between some of the doctrines of the secession and those of the Free Church. That the standing party was not bound to risk the loss of property by taking a step into another relation which might be doubtful; that they had a right to stand upon their own separate *distinct peculiar organization and name* as a sect, as indicating their *peculiar* opinions, *history*, *character and testimony*. The opinion then proceeds to show as an additional ground merely, the difference between some of the tenets of the secession and the Free Church.

In our own State there is no case precisely in point, but the principles ruled lead to the same result. In Presbyterian Congregation vs. Johnston, 1st W. & S. 9, the deed of trust from the Penns was for "the Society of English Presbyterians and their successors in and near the borough of York, and was made before the organization of the General Assembly of the Presbyterian Church. This congregation, before and after

the deed of trust, was in connection with the Carlisle Presbytery of the Presbyterian Church, and continued until the Old and New School division. The pastor and majority of the congregation, in consequence of the conflict in the church, resolved that it was inexpedient for the present to recognize the jurisdiction of any of the conflicting church jurisdictions which may claim authority over them, but disclaimed any intention of becoming an independent authority. They therefore rejected the authority of the Carlisle Presbytery, and finally connected themselves with the Presbytery of Harrisburg, which was in connection with the General Assembly of the New School Church. In deciding the case, C. J. Gibson puts it on the ground that the trust must govern, and it prescribes in this case no particular connection, the General Assembly not then being in existence, and that if it had been, this is a case where the body itself falls apart, in such a way that the congregation was released from fealty to either section. In reasoning the case, he puts the point of difference between a division of one into two and a union of two into one. He says: "Even without an express condition (in the grant) it might be a breach of the compact of association for the majority of a congregation to go over to a sect of a different denomination, though it were different only in *name*. For instance, the majority of a congregation of Seceders could not carry the church property into the Presbyterian connection, though these two sects have the same standards and plan of government." This is essentially the principle of the Thurso case. Means vs. the Presbyterian Church, 3d W. & S, 303, has no special features but establishes the principle, the trust in the title must be enforced; and that permitting strangers to it to assist in improving the property, "would not divest the title acquired under the deed, or defeat the primary object of the grantors." App vs. Lutheran congregation, 6th Barr, 201, is more to the point. A legacy was left to the Lutheran congregation in Selingsgrove. A minority becoming displeased at doctrines taught by the pastor, shut the doors against him. The pastor and the majority built a new church and connected themselves with a new Synod; both, however, claimed to be Lutherans. The Court, Burnsides, J., gave the legacy to the minority, saying: "The new church does not belong to the old Lutheran church. It is attached to a new

Synod, and is not governed by the same ecclesiastical government that ruled Frederic Hawyer (the donor of the legacy) in his lifetime. I approve of the doctrine of Lord Eldon, in the case of the Attorney General vs. Pearson, 3d Marivale, 400, that it is the duty of the Court to decide in favor of those, whether a minority or a majority of the congregation, who are adhering to the doctrine professed by the congregation, and the form of worship in practice, as also in favor of the government of the church in operation with which it was connected at the time the trust was declared." To this case we may add Trustees vs. Sturgeon, 9th Barr, 331, which though decided on mere ground of identity of continuance, yet distinctly recognizes the principle of the preceeding case of Apps. vs. Lutheran Congregation, adopts the language of Lord Eldon, 3d Merrivale, 400, as consonant to truth and nature, and explains Presbyterian Congregation vs. Johnston, 1st W. & S., as we have done upon the express terms of the grant. The case of Skilton et. al. vs. Webster et. al., Brightly's Reps. 203, decided by Judge Rogers at Nisi Prius, is too diffuse to refer to at length, but it supports the same principles in reference to the observance of the trust and the effect of a secession from the Church Government to which it was subordinate, notwithstanding the seceding party retained the same name and doctrines. The Judge, after citing the case of People vs. Steel, decided by the Supreme Court of New York, 7 Penn'a Law Journal, 224, in support of these principles, says: "*It is nothing* to the purpose that the defendants are numerically the *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 are adhering members, by operation of law became the corporators, and as such are entitled to the possession."

Adherence then being the test, we come to consider the nature of the act of Union and its effects, for the purpose of determining the present existence and identity of the associate church, and whether in the Union it still stands as the depository of its original principles and form of government and the safeguard of the trust, or whether such a *merger* has taken place as to cause the loss of its distinctive name, identity and standards. To determine this correctly, we must first examine

the elements brought into the Union, the Associate and the Associate Reformed Church.

The Congregation of Unity being in connection with the Associate church, we must resort to those documents which exhibit the origin, doctrines and government of *that* church, and the attitude *it* assumed towards the Associate Reformed Church. These consist of the declaration and testimony adopted by the Associate Church at Pequa, August 25th, 1784, the narrative prefixed thereto, adopted at Philadelphia, October 25th, 1784; the act of the Associate Synod of Scotland defining the connection of the Associate Presbytery of Pennsylvania with said Synod, passed at Edinburg, May 7th, 1788, and ratified by the Presbytery of Pennsylvania Nov. 3d, 1788; the act concerning Public Covenanting, passed at Philadelphia April 29th, 1791; the act concerning the admission of church members to communion, passed at Philadelphia April 28th, 1791, and the ordination vows, approved Nov. 4th, 1784. The narrative was approved, says the act "both as a testimony by them to the cause and work of God in former times, and as an account they are in duty bound to give the present and following generations that they may not forget the works of God." From this narrative we learn that the associate church, which began with the secession of Erskine, Mincrieff, Wilson and Fisher from the established church of Scotland in 1733, had its origin in the firm adherence of those men to the doctrines of the church in all their sternness and rigor, and their inflexible purpose to testify against the errors and backslidings into which the church had fallen. For this purpose they formed a solemn testimony, the chief design of which (says the narrative) "was to express the adherence of the Associate Presbytery, and of those who joined with them, to the testimony of those who had in former times contended and suffered for the truth in Scotland; to condemn those sins and backslidings of past generations in which the present were more or less directly following them; to assert and vindicate these truths which had been slighted and denied by the judicatories of the established church; to endeavor according to the covenanted obligations they were under, the preservation of the reformed religion in Scotland in *doctrine*, *worship*, *discipline* and *government;* to transmit the truth in this solemn manner to posterity, and by an open confession to sat-

isfy all who should inquire as to the principles which they maintain, and the foundation upon which they, through grace of our Lord Jesus, desired to stand." In fulfillment of these views, the Associate Presbytery of Pennsylvania passed the act just mentioned concerning public covenanting; adopting, with the changes necessary to adapt it to their circumstances, the "National Covenant of Scotland," the "Solemn League and Covenant," the "acknowledgment of sins," and the "solemn covenant engagement unto duties." These solemn acts were oaths, not only in spirit but express form. "With our hands lifted up to the Most High God do swear." Their rigid and unbending character will be better seen in their perusal.

In the year 1743, the Associate Presbytery of Scotland having proceeded to the "duty of Solemn Covenanting," and entered into "a bond for the renewing of these covenants," adapted to the circumstances of the times, the Rev. Mr. Nain "dissented from his brethren because they would not swear to the National Covenant and Solemn League, in the very words in which they were originally framed, and because they condemned the principles of a party who disowned the civil government of the country, alleging that certain religious qualifications not to be found in the rulers of Great Britain, were so essential to the being of Magistracy in a Christian land, that it was sinful to acknowledge or obey those who were destitute of them, even in such things as are in themselves lawful. To this party Mr. Nain joined himself, not as appeared from a persuasion that they were in the right way, but from very sinister motives. By his assistance they constituted themselves into what they announced to the world by the name of the Reformed Presbytery." Such is the language of the "Narrative," page 31, characterizing that element entering into the Union of 1782, with the Associate Presbytery of New York and a part of that of Pennsylvania, and constituting the "Associate Reformed Church." Of this Union the Narrative gives an account, exhiblting its attitude towards the Union in terms indicating strong repugnance and a belief that it involved a concession of principle. According to the "Narrative" (p. 44) a scheme of Union was set on foot between these Presbyteries, New York and Pennsylvania and the Reformed Presbytery, (Covenanters,) who were of the

same principles with these in Scotland just mentioned. The Union was agreed to by the Associate Presbytery of New York in 1780, and (the Narrative proceeds) at a meeting of the Presbytery of Pennsylvania, June 12th, 1782, its friends had by the casting vote of the Moderator a majority in the latter. The members who voted against Union protested and appealed to the Associate Synod, (Scotland,) but the other party avowing that they, as a Presbytery, did not longer acknowledge their connection with that Synod as belonging to it, therefore refused to admit of any protest in which there was an appeal to it. Upon this the protestors seeing the *principles* and *constitution* of the Presbytery *plainly deserted* by their brethren, judged it their duty to do what they could for preserving both by withdrawing, which they did accordingly, having declared in a protest that the power of the Associate Presbytery belonged to them who adhered to its *principles* and *constitution.*" This course, according to the "Narrative," was approved by the Associate Synod of Edinburg.

The reasons of the protestors who are, as they claim, the true and continuing Associate Church, were that the Union involved a *laying aside of their public testimony for the truth, that their ordination engagements were binding on them to continue in the profession then made* and in the society of their brethren, the other members of the Associated Synod of Edinburg, that the principles of the *Reformed* Presbyteries about civil government were repugnant, and for denying them the Associate Church was denounced in the testimony of the Reformed Presbytery, "as teachers of false doctrine, as treacherous in covenant, as enemies of the Lord's work, as barefacedly belying the Scriptures, as guilty of a most dreadful and deceitful imposition on the generation;" testimony never retracted; that the measures taken to establish the Union were irregular and subversive of Presbyterial order, and adds the Narrative, "the first fruits of this Union were such as manifested change in the principles of those who had gone into it." The articles of Union (it alleged) were defective and some ambiguous. "But (it proceeds) these soon gave way to what was still more defective and ambiguous, viz: The constitution framed by the Synod of these United brethren, 1783. This last is one of the most *dubious*

professions of the faith we remember to have seen made by any church. Almost every article of it is expressed in such a manner as it may be understood in different senses, and *we have reason to believe it was thus framed with that very design.*"

Without detailing further the strong, perhaps bitter utterance of the Narrative against the Union which formed the "Associate Reformed Church," it concludes, "upon the whole it is *absurd* for any one to allege that the brethren who left us stand on the same ground that they formerly did." "They either were or are now in the wrong course."

Thus stood the Associate Church in an attitude of invincible repugnance and irreconcileable opposition to the Associate Reformed Church, from 1784 until long after the creation of this trust in 1803. Whether the Associate church, as the protestors claim themselves to be, is the true successor of that existing before the Union of 1782, or whether it was right or wrong in its hostility to the Associate Reformed Church is not the question, nor is it for us to decide upon these questions. We are only to inquire what church it was the congregation of Unity belonged to in 1803, when the trust was created, for it was to the principles of this church the trust was dedicated, and we must take it as it professes to be itself, and not as others may think it should be. It was the Associate Church as it existed in 1803; whether it was a secession in 1782 from the Union, or was the continued Associate Church as it claimed to be, to which the members of this congregation belonged. A church having not only the common standards of Presbyterianism but certain superadded acts of their own contained in their declaration and testimony, narrative, acts relating to covenanting and to communion and ordination vows, which they held to tenaciously. Of these we shall speak again.

Such, then, are the elements of the Union of 1858, and such the relation which the Associate church, by her own acts, held to the Associate Reformed Church, the other element of the Union.

We come now to the Union of 1858. A strict seceder would naturally be struck with the *forbearance* to be exercised towards those whose conscience would not permit them to sanction the Union on the basis adopted. The Associate

Reformed Synod accepted the basis, "in the confidence that any modification or amendments necessary to harmonize said basis with the faith and practice held in common by the two churches, or to render it more entirely acceptable, will be in due time effected by the United Church, and in confidence that reasonable forbearance will be exercised towards any member of either body that may be constrained to dissent from any article in this basis." In return the Associate Synod resolved, "That we cordially reciprocate the confidence expressed by these brethren respecting mutual forbearance, it being distinctly understood that under the plea of reasonable forbearance no one be permitted to teach or to act in opposition to the doctrine and order of the *United Church.*" These resolutions of 1857 are followed by the joint resolutions of 1858, consummating the Union, of which the preamble recites: "And, whereas, it is agreed between the two churches, that the forbearance in love which is required by the law of God, will be exercised towards our brethren who may not be able fully to subscribe the standards of the *United Church*, while they do not *determinedly* oppose them, but following the things which make for peace and things wherewith one may edify another."

Without questioning the wisdom or the propriety of the forbearance resolved upon by the two churches, a matter not within our province, the question is, how would the forbearance be looked upon by a rigid seceder, firmly attached to the standards and acts of his own church, and determined not to depart therefrom. He would be struck with the patent fact, that the Union in the contemplation of those who formed it, was attended with such doubts and difficulties on the very basis adopted, that provision was necessarily made against too strict an enforcement of discipline upon those who could not see their way clearly under the new testimony. This in the mind of such a Seceder was in itself an abandonment of the strictness of his tenets; order in the church and government of Christ being a part of his belief This *expressed* doubt in the act of Union itself, was with him a sufficient reason to reject it. In presenting thus the repugnant attitude of these two churches, and the forbearance to dissenters contained in the act of Union, it will be seen that we have done it in that light in which it would be looked upon by a Seceder who ad-

hered rigidly to the acts of his own church, the Narrative, Testimony, &c. The reason is, that each individual, in matters of conscience, must judge for himself; and he cannot be carried by the acts of others into a position which he judges to be against his religious convictions and his duty.

We are not to be understood as speaking in condemnation of the Union—far from it. The progress of the church towards unity, so far as it can be done without a sacrifice of principle or of conscientious conviction of duty, should be the desire of every Christian.

We come now to the main ground of opposition to the Union as contended on part of the complainant. It is alleged that the "basis" is an abandonment of certain peculiar tenets of the Associate church and is repugnant to others. The specifications contained on these grounds are given by the Rev. McAuley in his testimony, to the number of eleven.

Many of these specifications belong to the theologian, not to the lawyer, and, therefore, we shall not undertake to pronounce upon them. But there are certain clear and distinctive differences between the standards of the United church and the Associate church, which we are compelled to notice, because they form solid reasons for dissent to one who does not choose to abandon the old standards of the latter church.

The "basis," upon its face, does not purport to adopt the "*declaration*" and "*testimony*," the *acts* concerning "*covenanting*" and "*communion*" and "*ordination vows*" of the Associate church, nor even to supply them in *whole*. We do not mean to say that the essentials of "*Presbyterianism*" are omitted in the "basis," but that some of the essentials of *Secederism* after 1784 are. It is true that both the Associate and United church adopt the Westminster standards, including the confession of faith, larger and shorter catechisms, the form of Presbyterial government and directory for public worship, which to this extent puts them upon the same foundation. But beyond this there is a large territory of tenets, and their peculiar interpretations, some of rigid character, to be found in the declaration and testimony of the Associate church, and the other acts we have enumerated, upon which the members of that church stood as a term of communion, and which consistently with their standing in *that* church they could not abandon.

Thus the act of August 25th, 1784, adopting the declaration and testimony of the church, declares that it contains "their views of *present truth* and *duty*, and a *confession* of that *faith* to which *through the Grace of our Lord Jesus* they are resolved to adhere." The act of April 28th, 1791, relating to the communion, declares "that the profession of the faith required of those who desire communion with us, shall be an adherence to the Westminster confession of faith, larger and shorter catechisms, form of Presbyterial church government, and directions for the public worship of God, as these are received and *witnessed* for by us in our *declaration* and *testimony*, and also that they *profess their approbation* of the said *declaration* and *testimony* for the *doctrine and order* of the Church of Christ."

In the ordination vows the teachers of the church, (ministers and elders,) are required to believe the standards of the church "*as they are received* in the *declaration* and *testimony* published in the year 1784," and to "*adhere* to the *declaration* and *testimony* for the *doctrine* and *order* of the Church of Christ, and against the errors of the present time"

Now whatever may be the view of those who entered the United church, that in all the essentials of "*Presbyterianism*" the basis and testimony of that church accord with these former views and professions in so much that they could conscientiously act upon this conviction; but this is not the view of the rigid Seceder, who does not choose to abate a jot or tittle of his peculiar *declaration* and *testimony*. These acts of his church are a term of his communion, and they indicate his peculiar belief, and contain his peculiar interpretation of the standards themselves. Even the "Narrative," though by the act adopting it not to be required as a term of communion, is such a "testimony to the cause and work of God in former times," and such "an account they are in duty bound to give, to present and following generations, that they may not forget the works of God;" as the rigid adherent to the church might not be willing to abandon, it being *in his eyes* an authentic and authoritative history of his church.

If you tell him all the essentials of Presbyterianism are to be found in the basis of Union, he replies: True, I find all the standards of the Presbyterian family there; but where

are the declaration and testimony of *my* church, in which these standards are explained, illustrated and enforced. That testimony is a part of my faith and was the solemn act of my church, as *better* adapted to the circumstances in which we are placed, and were *directly pointed* against the errors of the *present time.* It reminds me that my church is a secession church and of its origin and faith; it was vowed unto the Lord by my teachers in the church, and I carry it with me to the table of my Redeemer."

There is a difference between the requirements of the United and Associate churches, as to communion, which requires to be noticed. The article of the united church simply asserts that communion should not be extended "to those who refuse adherence to her profession and subjection to her government and discipline, or who refuse to forsake a communion which is inconsistent with the profession that she makes," &c. The adherence and subjection here referred to, are the profession and government of the *United Church,* which we have seen does not embrace the testimony and communion act of the Associate Church. The terms of communion in the United church refer, therefore, to the Westminster standards and the "basis" only. But the Seceder, according to his standards, requires more; he requires a *positive profession* of the *interpretation* of the Westminster standards, as contained in the *declaration and testimony* of 1784, and of *approbation* of this declaration and testimony for the *doctrine and order* of the Church of Christ.

Another feature in the article on communion is that refusal to adhere, &c., is set forth as a *disqualification,* and is apparently *negative* in its character; while the associate church requires a *positive* profession of a specific kind. Now, this may not be a substantial difference, but it certainly is a seeming or formal difference, so much as to cause the weak to stumble, and hence the firm Seceder might be unwilling to accept it as a term of communion.

What then was the effect of the union upon the associate church, as it stood in 1803, at the time of the grant to Unity Congregation of the property in question and afterwards? It brought this church into connection, and amalgamated it with an element (the reformed Presbytery) against which it had strongly testified as dissenting from the true secession

faith, and which had not retracted its charge against the Associate church of a violation of its covenant oaths, and of belying the faith, and amalgamated it with that portion of the Associate church which went into the Union in 1782, and against which it testified as departing from the true secession faith, and being in the wrong course. It brought into connection and amalgamated it with the Associate Reformed Church which was formed by the union of these two elements, and against which, as a new body, it also testified. It merged the Associate church into a new church, under a new name, depriving it thus of its identity in name and distinct existence, whereby its origin, its efforts in the cause of Divine truth, and its peculiar character, became lost and were buried beneath the foundation of a new superstructure. It relaxed the rigid discipline of the Associate church by the provision for forbearance adopted as a condition of Union. And, finally, it deprived it of those acts and testimonies which were its peculiar standards, distinguishing it from other members of the Presbyterian family.

Now all this may have been right and wise for aught we know, and no doubt was conscienciously acquiesced in by those who went into the Union. But that is not the question here; the question here is one simply of *fact*, not of propriety, whether there has been a substantial yielding up, in the act of Union, of these *distinct* features in *names*, *tenets* and *identity* of the associate church, as characterized its members as a peculiar people, and were the objects of the trust estate, for the advance of which the trust was declared. For if it be decided that the church property follows that portion of this congregation which went into the Union, and if the Union is in fact a yielding up of some of the principles of doctrine and government, for the benefit of which the trust was created, then those who have refused to go into the Union must either follow the property into the Union, in order to preserve their rights of property, or by staying out, in obedience to their consciencious convictions of duty, lose these rights of property. This presents the simple question, whether they must violate their consciences to preserve their property.

The law answers this with an emphatic—No. The trust was not made for the church at large, but for this particular congregation. The church had no hand in creating it.

Those who were the immediate parties to it, established it to advance the principles of faith and church government then existing. Those who hold to these principles are the persons who have the civil right. It is not in the power of the church government, by any change it may make in these principles, to draw the trust after it; if those interested in it do not choose to follow, and those who do follow, even though a majority, cannot draw after them those who choose to stand where they ever stood, for with them it is a standing still for conscience sake.

Whether in so standing, the minority of this congregation did so from conscientious convictions of duty, or from baser motives, as alleged by the respondents, we cannot decide. That must be referred to their Maker, who will judge them of their conscience. It is sufficient that they have a ground, in the departure of the church from them, upon which they may conscientiously stand, if they will, and say they will stand where they always stood, "resolved (in the language of the ordination vows) through Grace to endeavor faithfulness in adhering to the testimony maintained by the Lord's witnesses for these Reformation principles we profess, in contending earnestly for the faith once delivered to the Saints, and in attending to all these duties which the Lord has enjoined upon us, and which we in *this* church are by *these* our *covenant* engagements bound to perform." It is true the church may, by her government and in the progress of her attainments, change her tenets, and cut them off by her discipline if they refuse to follow, but she cannot, by such change, alter the terms on which the trust in the title was created without their consent, and in cutting them loose from her, for their adherence to the old tenets, she also cuts loose the property from her control.

For these reasons we are of opinion that the minority of this congregation were not bound to go into the Union, and that the acts of the church government, and of a majority of the congregation, were not competent to carry the property into the Union with them; that by these acts the church relation on which the right of property was formed, was changed, and the minority who choose to stand fast and adhere to that relation, as it before existed, were left the rightful owners, and as such are entitled to regain possession.

For the benefit of those interested we have written more at large than might be needful for the judicial mind. It will be seen that the case is put, not on the want of power or propriety in the churches to effect the ecclesiastical Union, but upon their incompetency by such act to change the relation upon which the trust or civil right depends. It will be noticed, also, the nature of this relation of the Associate church to the trust, requires us to speak from the stand point of that church in 1803, when the trust arose, and to view the opposite element of Union in 1858, (the Associate Reformed) as *she* did.

With the merits of the ecclesiastical controversy we have nothing to do, and pronounce no opinion on it.

The solicitor of the complainant will draw up the form of a decree, and serve it on the opposite solicitor in accordance with the equity rules.

DECREE.

And now, to wit: December 8th, 1860, this cause came on to be heard, and was argued by counsel, and was held under the advisement of the court until the March term of said court. And now, to wit: March 30th, 1861, the court having advised upon the said cause, upon consideration therefore, it is ordered, adjudged and decreed as follows, to wit: That the said United Presbyterian congregation of Unity church, of Venango township, in the county of Butler, and all the members, officers and Trustees thereof, and all the Ministers thereof, both stated and temporary, shall be and are hereby strictly enjoined and restrained from the possession and use of said meeting house and two acres of ground, in the bill mentioned and described, for the purpose of worship as a United Presbyterian congregation; and that the complainants and all other members of the congregation of the Unity Associate Church in the said township and county, who adhere to the ancient faith and practice and ecclesiastical connection of the said Associate church, as the same was and existed in the said Unity congregation of the Associate church, at and before the union of the Asssociate Synod of North America, and the Synod of the Associate Reformed church, shall be, and are hereby ordered to be restored to the possession use

and free enjoyment of the said meeting house and lot, as fully and entirely as they used and held the same prior to the said union, and to have, use and enjoy the same without any let, hindrance or molestation from the said United Presbyterian congregation of Unity church. And it is further ordered and decreed that the respondents pay the costs of this proceeding, to be taxed and allowed according to the rules and orders of the court. By the Court.

ASSIGNMENTS OF ERRORS.

The court below erred in deciding that a change of doctrine produced a forfeiture of property.

2nd, In deciding that in the basis of union there was a departure from the faith, principles and discipline of the Associate church.

3d, In deciding against the power through the church judicatory to constitute the union.

4th, In decreeing the exclusive possession of the property to the complainants.

5th, In enjoining in said decree the ministers and members of the United Presbyterian church from the use of the building and grounds as a place of public worship.

6th, In decreeing under all the circumstances in favor of complainants.

ARGUMENT.

Samuel A. Purviance, J. N. & J. Purviance and J. W. Kirker, for Appellants.

There is nothing in the agreement of sale by R. Leason, in 1803, to show that the grant was made upon the condition that the controlling power of the church should not change any of its creed or tenets. The grant is for Rev. M'Clintock's congregation, for the proper use and behoof of the congregation, then an unincorporated body of Christians.

When it became incorporated, 29th March, 1859, Leason conveyed to the respondents, thus recognizing that body as the legitimate representatives of the one with whom he contracted fifty-six years before. The recognition by the grantor of the right of the majority, is a concession on his part that

nothing had been done in contravention of any trust which may have been created by the original deed. He consummates the existing contract by a deed—alleges no forfeiture. The land is sold and the fee becomes fully vested in the Society, and is entitled to be held by them as their absolute property. If a donation be made to accomplish a particular object expressed in the deed, the terms of the limitation would secure the use, and equity would take care it was not diverted from the end for which it was designed.

At common law a majority is sufficient to determine the act of the whole body. Statutes were passed in derogation of the common law, making the unanimous assent of the society necessary to any corporate act, but by statute 33d, Henry 8th and C 27, all such statutes are made void, and the majority declared to have absolute control.

Our act of 26th April, 1855, confers upon the majority of lay members of a church, the power to say in what way the realty shall be held and enjoyed. The clause in this statute prohibiting its diversion from the purposes to which it may have been dedicated, creates no greater limitation than to restrain its transfer to an entirely different purpose than that named in the grant. At common law and statute, then, a majority control, and by neither is there any limitation or condition, growing out of change of opinion, creed or tenet, imposed.

The deed of Layson vested in all the congregation rights which no revolution of sentiment—which a majority of the members might produce—could divest. "It is a principle of the common law, equally consonant with the common sense of mankind and with the maxims of eternal Justice, that a division of an empire creates no forfeiture of previously vested rights of property." Lemet et. al. vs. Terret et. al., 9th Cranch, 43. Trustees Dartmouth College vs. Woodson, 4th Wheaton, 518.

"The trustees are *virtute officii* entitled to the possession of all the temporalities, and are considered as lawfully seized of the ground and buildings belonging to the church." The People vs. Runkle, 9th Johnston, Rep. 3,147.

"When duly met, corporate acts may be done by the majority of those constituting the meeting." Cowp. 530.

Did the deed of 1803 in this case prescribe any particular form of worship or set of tenets?

It is a naked grant of land to James Scott and Reuben Irwin, as trustees of Rev. M'Clintock's congregation, of two acres of land, including the meeting house and spring near to it, for the proper use and behoof of the congregation to have and to hold forever."

The grant was evidently made without limitation of tenets or articles of faith. It was made for the use of the Rev. M'Clintock's *congregation*, which is called in the subsequent explanatory papers of 1833, *Congregation of Unity*.

The case of Presbyterian congregation vs. Johnston, 1st Watts and Sergeant, page 37, is relied upon by the Judge below as a recognition of Attorney General vs. Pearson, 3d Merrival, 353, 400, and of the language of Lord Eldon therein quoted: in substance, that the character of the worship must be implied from the usage of the congregation, and that it is the duty of the Court to administer the trust in such a manner as best to establish the usage.

This was a rule applied as between the grantor and grantee. In this case it is just the reverse. Leason, the grantor, parted with his property for a price, and had no power to claim a forfeiture; besides, he has done just the reverse by conveying by deed of 4th Aug., 1859, any reserved right he had to the respondents. Judge Gibson says in the case referred to, "that contemporaneous usage is evidence of an implied contract between the *founders* and the *congregation*, 1st Watts and Sergeant, 37, but he does not recognize its applicability to the case which he was then considering. Presbyterian congregation vs. Johnston, 1st Watts and Sear. 37. The grant was from John Penn, Sr., and W. Penn, Jr., to Wm. Scott and Arch. McClean, "in trust for, and as a site for a house of religious worship, and a burial place, for the use of the said religious society of English Presbyterians and their successors, in and near the said town of York, in the county of York." In 1813 it was incorporated by the style of "the Trustees of the English Presbyterian congregation in the borough of York."

It is to be remembered the application in this case was by the minority to oust the majority, on the ground that the latter had been guilty of a departure from the faith of the

church. Judge Gibson, in the close of his opinion, says: "In conclusion, we are of opinion that no particular Presbyterian connexion was prescribed by the founders, or established by the charter." 1st Watts and Serg., Presbyterian congregation vs. Johnston, page 40.

In the grant of 1803, by Leason, no particular denomination is designated—it was a grant of the ground upon which a house had been previously erected, to Rev. M'Clintock's congregation, including the meeting house and spring," and this grant on 4th August, 1859, confirmed to "the United Presbyterian congregation of Unity church, of Venango township, in the county of Butler." It is admitted the respondents represent this incorporation. It is pretty manifest that, in the language of Judge Gibson, "No particular Presbyterian connexion is prescribed by the founder in this case." The country in 1803, or previous, when the house was built, was new and sparsely settled. But few meeting houses were to be found, and were used in that early period more in common than now. How or by whom this house was built does not appear, but one thing is certain, it was built in the spirit of Christian confidence and liberality, built upon a parol grant of Mr. Leason, followed by his liberal written grant, without limitation, and finally consummated by his deed to the United congregation, which we have a right to infer was regarded by him as a continuation of the "congregation to which the sale was originally made." In the case of the Presbyterian congregation vs Johnston, already referred to, the opinion of Judge Hays was confirmed by that of Judge Gibson, the former using this language: "In the interpretation of charters, as of other contracts, words are to be construed in their ordinary popular and grammatical sense, and here a congregation is, according to common acceptation, a number of families and individuals who come together at stated times in a church, or other appointed place, for the purpose of divine worship." 1st Watts and Serg, page 27; also in Webster's Unabridged, 249, will be found the same definition.

The Court below relied mainly upon what he terms the strongest case, the Theoso property case reported in the original secession magazine for January, 1860, printed in Glasgow, Scotland, page 430. The grant was to "the mana-

gers and trustees for the said Associate congregation of Theoso, in connection with the General Associate Synod of Edinburg, and under the ministerial inspection of the now deceased Rev. Robert Downie, late minister of the gospel, and his successors in office for the time being, in connection with the said general Synod." This was a grant with a limitation, a connection with the General Associate Synod of Edinburg is prescribed in distinct terms by the founder. Judge Gibson's conclusive reason for ruling Presbyterian congregation vs. Johnston as he did, was because "No particular Presbyterian connection was prescribed by the founder," which is a prominent feature of the grant in the present case.

The grant in Johnston's case was to "the society of English Presbyterians and their successors, in and near the borough of York." It was proved by parol that this church was in connexion with the Carlisle Presbytery, and yet, because the connexion had not been prescribed by the founder, it was not a limitation which controlled the action of the majority. In the case of Trustees vs. Sturgeon, 9th Barr, 321, the same rule which was previously settled in case of App. vs. Lutheran church, 6th Barr, 201, was declared, and which Judge Coulter says: "But it impinges no principle, nor invades any rule settled by this decision. He refers to the distinguishing features between Johnston's case in 1st Watts and S., and Sturgeon in 9th Barr, shewing that in the former "no particular ecclesiastical connexion was intended other than that the gift was to the society of English Presbyterians, in and near the borough of York, and then closed his opinion in Sturgeon with a still further allusion to Johnston's case, as follows: "The deed of the founder was the polar star of decision there, which even the charter could not alter, and here the intent of the testator in his last will and testament gives the same steady and sure guide to reason and to justice." 9th Barr, page 332.

The minority in this case being the complainants, ask an ouster of the majority from the buildings and ground which is common to all, and ask it simply on the ground of a departure from the faith of the church. The purchase money and expenditure in building was in common, and yet they ask a Chancellor to put them into possession of the labor and money of their fellow churchmen, without proposing any

reimbursement either in whole or in part. Would this be equity? We say that whatever may be the disposition of the question as to who is the church, it does not and cannot affect the title to the property, which must remain as before, the property of the congregation.

If a religious society purchase lands, a majority of them have a right to control their uses and occupation, notwithstanding any supposed error in doctrine, shown to be a departure from the belief of the majority at the time of the purchase—6th Ohio Report, 147.

Judge Lane's opinion refers to 5th Ohio Reports, 205.

Rule 1st—It is incident to the very nature of the corporation to hold such property at the will of the majority, if the charter of the incorporation does not otherwise provide.

Rule 2nd—It does not follow that the property is lost by ceasing to hold certain opinions.

Rule 3d—The majority could not exclude their fellow corporators, but may occupy and manage as they please, admitting the minority to the same benefits as themselves.

"One cannot reclaim property in the hands of a trustee without paying or tendering all necessary and proper sums advanced on account of the trust property, as well as the original debt and interest." Barker vs. Parkenham, 2d W. C. C. R., 142.

"A trustee has a lien upon the estate in his hands for advances, and where there are several tracts, and ejectment is brought for a particular tract, the *cestue que* trust cannot recover it without discharging the claim of the trustee upon the whole. Cecil vs. Kordman, 1 Benny, 134, 127.

"Where a party lawfully in possession under a defective title, has made permanent improvement, if relief is asked in equity by the true owner, he will be compelled to allow for such improvements. 2d Story's Equity, page 664, Sec. 1237.

So money, *bona fide*, laid out in improvements on an estate by one joint owner, will be allowed on a bill by the other if he ask for a partition." *Ibid vs, Ibid.*

He who seeks equity must first do equity, and therefore, if as already shown, a division of an Empire creates no forfeiture of vested rights at common law, and as shown by the case 6 Ohio, a change of doctrine does not affect in any way the right of property, upon what principle does a minority of

a congregation ask to obtain the exclusive possession of the property in question, and that, too, from the hands of those who are legally invested the trustees, as shown by the case of the People vs. Runkle, 9 Johnson's Reports, 147.

If all this authority is to be laid aside, still the equitable principle of protection can be invoked to stay the hands of the minority from an ouster of the majority, until they have first tendered the minority the value of the improvements made upon the premises.

The Judge below is for giving possession to the minority, because, he says, it would be a constraint upon their conscience to be compelled to attend the worship of the majority. Had the minority maintained the possession, it would have been equally unjust, if unjust at all, toward the majority, in compelling them to worship in a church which had been abrogated by the regularly constituted church judicatory of the Associate Church, of which the minority were acknowledged members.

In such a case a Chancellor should refuse to settle a question of faith, or interfere with the possession of church property, for any alleged departure from the faith, leaving the parties to their action of ejectment to reinstate themselves in the possession, if they had been ousted by their tenants in common.

But another question is necessarily forced upon our consideration. Is it the policy of civil courts to interfere in matters of ecclesiastical faith, upon which the judgment of an ecclesiastical court has been pronounced? In the case of German Reformed Church vs. Seibert, 3 Barr, page 291, Judge Rodgers used the following language:

"The decisions of ecclesiastical courts like every other judicial tribunal are final, as they are the best judges of what constitutes an offence 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 judgment 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."

In May, 1856, the Associate Synod of North America,

the acknowledged head of Unity Church, approved of a basis of union with the Associate Reformed Church, which was overtured to the Presbyteries and Sessions of the Associate Church, and in May, 1857, the Associate Synod by a vote of 104 to 13, adopted the basis, a large majority of the Presbyteries having previously approved the same. Amongst the numbers, the Shenango Presbytery of the Associate Church, to which Unity congregation was attached, reported to the Synod of 1857, its unanimous adoption of the basis of union. The session of Unity congregation, at a meeting in February, 1857, composed of the pastor and the elders, approved the basis.

From the lowest to the highest of the judicatories of this church, the question of adherence to, or departure from faith, was ably discussed and learnedly reviewed, and decided by all of them in one way, that the basis was no violation of, or departure from the faith or discipline of the church, and the decisions and decrees of these learned divines who constituted these ecclesiastical judicatories, are asked to be reversed by the decree of a Chancellor in a civil court. The respondents and appellants, therefore maintain,

1st, That the grant in this case (of Leason in 1803) was made to an unincorporated religious society, without limitation as to doctrine or Presbyterial connection.

2d, That it was a grant for a consideration, in which the title passed absolutely to the grantees, and is, therefore, unlike the grants in the cases relied upon mainly by the court below, in which the founder imposed the limitation in a gratuitous grant giving a right of forfeiture for its non-observance.

3d, The grant was confirmed to the respondent by the grantor, and this, too, after the former had been regularly incorporated by act of the Legislature of Pennsylvania.

4th, That the deed of Mr. Leason, in 1859, to the respondents, as the Trustees of the United Presbyterian church of Unity, vests in said Trustees for the use of the church, the title to the ground and buildings, and gives them the undoubted right of using the same, if not exclusively, at least in common with the minority.

5th. That it is incident to the very nature of a corporation to hold the property at the will of the majority, if the charter of incorporation does not otherwise provide.

6th, That it does not follow that the property is lost by ceasing to hold certain opinions.

7th, That even for a departure from faith, if the minority would be entitled to the exclusive possession of the property, it could only be upon the reimbursement of the majority of their proportional share of the cost of land and building.

8th, That the complainants, if ousted by their tenants in common, would have legal remedy, and are not entitled to relief in equity.

9th, That the United Presbyterian Church having been regularly established by ecclesiastical judicatories, and recognized by legislative act of incorporation, it is not the policy of civil courts to interfere with this ecclesiastical determination, or with the law making power which has declared the union valid.

These are questions which the court is asked to pass upon before entering upon the broad field of theological discussion, as to whether the union involved in point of fact a relinquishment of the faith or discipline of either of the churches in question. The learned Theologians concerned in bringing about this Union, have, in their judgment at least, formed it upon a basis in strict consonance with their long cherished convictions of its entire harmony with the faith and discipline of the fathers of the church, and of all the narratives, testimonies, leagues and covenants of the same. A few lay members, headed by a single clergyman of one of the churches of Pennsylvania, claim the intervention of a civil court, through a Chancellor, to undo, by a single decree, what it has taken years of labor of the most learned divines to accomplish. Whilst, as has been shown, at common law and under the maxims of eternal justice, the division of an empire creates no forfeiture of vested rights of property, these few malcontents, not satisfied with the breaking up of a union of fifty-four thousand people, claim, beside, that a forfeiture has accrued of the property, and, unwilling to use it in common, they claim its exclusive possession. The disintegration of ecclesiastical power by the simple act of secession for conscience sake, is becoming too common, and, if allowed the sanction of civil courts, will ultimately tend to the abrogation of all ecclesiastical control.

A single obstinate man, if he can find a Chancellor who

will give him a decree, will be able to set at naught the will of a congregation, and the adjudications of Presbyteries, Synods and General Assemblies. The protesting church in this case, by its elders and pastor in Presbytery and Synod, agreed upon the Union, and their acts and decisions are asked to be nullified by the refusal of a fragment of the congregation to acquiesce in the controlling power of their own body.

But aside from these points, how stands the one upon which the case is made mainly to turn in the court below. The respondents maintain that the basis of union involves no departure of faith or discipline. The Chancellor in a civil court says it does, while all the church judicatories connected with that union regard it otherwise.

The ground of opposition to the union is to be found in the testimony of Rev. M'Auley, comprised in eleven specifications, many of which, as observed by His Honor Judge Agnew, belong to the theologian and not the lawyer; but certain others which he regards as clear and distinctive differences between the standards of the United and the Associate churches, he felt compelled to notice, because, as he says, they form solid reasons for dissent to one who does not choose to abandon the old standards of the latter church. The Revs. Kerr, Galbraith, Vincent and Black, all formerly of the Associate church, testify that there has been no change in church discipline, faith or doctrine. Why should the opposite opinion of M'Auley, who admits the power to form the Union, be relied upon by a Chancellor? The preponderance being with the respondents on this point, it should have been so decided, but the Judge below selects from the standards of the United and Associate churches, enough to satisfy him that a rigid Seceder was not bound to yield to the action of his church judicatories.

Because, as the Judge says, the basis does not purport to adopt the "declaration" and "testimony," "the acts concerning covenanting and communion," and "ordination vows" of the Associate church, nor even to supply them in whole.

Although the basis may not in so many words recognize the declaration and testimony, yet they are substantially endorsed.

The declaration on covenanting being the 17th article on

page 124 of book marked C, is as full as language can well express. M'Auley objects, because he says it is limited to extraordinary occasions, while the argument and illustration show that the duty is recognized as belonging to a single believer. The declaration only declares it is not required at at stated times, which in no wise conflicts with the declaration and testimony of the Associate church. The broad and comprehensive language is used in the Union declaration "as the providence of God and the circumstances of the church may indicate." What more could be required? The fifth article of the declaration of the Associate Church is headed, "Of Public Covenanting," which, with the illustration, would seem to imply this great duty to be of a somewhat public character. M'Auley did not point out any essential difference, and it is very apparent upon a comparison of the several articles, none can be discovered.

Next as to the communion: The Associate article 2d, in book marked B, page 111, requires three things: 1st, A proper knowledge of the truth. 2d, Make a faithful profession of it; and 3d, Whose conversation and practice become the Gospel.

The Union, article 16, on the same subject, in Book C, page 119, requires, 1st, Adherence to the profession, and subjection to the government and discipline of the church. 2d, The communion to be consistent with the keeping of the ordinances pure and entire, and so as to discountenance all corruption of the doctrines and institutions of Christ." M'Auley objects to this, because, he says, "it is indefinite, and seems to allow occasional deviations from the practice of close communion."

On page 124 of Book C, it will be seen the United body, in their illustration of the communion article, expressly disapprove of inter-communion between members of different churches. How Mr. M'Auley could have fallen into this mistake, cannot well be conceived. The language of the Union article would seem to be more restrictive than that of the Associate body.

M'Auley objects to the article in reference to secret societies, in not declaring positively against their communion; see page 116 of Book C. The article is substantially so, as by pronouncing such oaths inconsistent with the genius and

spirit of Christianity, the church and members are bound under the Communion Article, on page 119 of the same book, to discountenance the practice as a "corruption of the doctrines and institutions of Christ," and as a consequence to exclude from the communion all who may be members of any such institutions.

By a comparison of the formula prescribed by the United church, see Book C, page 407, with the act of the Associate Presbytery of Pennsylvania, of the 28th April 1791, Book B, page 167, both in relation to the admission of church members to communion, it will be observed how identical the requirements are.

Beside all this, in the testimony of the United Presbyterian Church, on page 88 of Book C, it will be seen that the Westminster standards, including the Confession of Faith, Catechism, larger and shorter, the form of Presbyterian church government and directory for public worship, are all in explicit terms adopted. These embrace every duty incumbent upon the Christian, and yet to cover any omission, and to provide for every conceivable delinquency of frail human nature, the testimony of the United Church, as found upon page 88 of Book C, contains eighteen articles with declarations, arguments and illustrations, the orthodoxy of which it is not attempted to question.

The respondents deny that the complainants are in position to be heard. A Synod could only be called by the Moderator, and as the Moderator of the Associate Synod went into the United body, it left the dissenters powerless to keep up an organization. The Associate Church became a dissolved body, without further ecclesiastical authority. Its organization passed into the United body through the legitimate action of its Moderator, Ministers and Elders.

A familiar acquaintance with the history of the Presbyterian Church, is the best answer which can be given to the arguments of complainants. The grievances of which they complain are based upon supposed vital differences in faith and practice, when, in reality, nothing of the kind exists. The Mother Church, the Church of Scotland, from which sprang the Old and New School, Reformed, Associate Reformed, Covenanter and Associate Churches, was a pure, unadulterated Presbyterian Institution. The essential element

of its organization was its Presbyterian form of government; for the maintenance of which, against the repeated invasion of James the 6th and Charles the first, his son, Scotland was involved in years of civil war and bloodshed.

These Monarchs, with prejudices deeply seated against Presbyterianism, sought to establish unity of church government in the two kingdoms, and as Scotland was the smaller of the two, it was determined she should conform to England.

In the latter there were various ranks or orders recognized amongst the clergy, from the Curate up to the Archbishop, or to the King as the earthly head of the Church, and the power of maintaining order and settling disputed questions being in the hands of the superior clergy. In Scotland all the clergy were of equal rank, and the power of maintaining order was not deposited with any class, but in courts composed of clergymen and lay members.

History declares that the English "Ecclesiastical organiza-"tion resembled the feudal or monarchical form of civil gov-"ernment, while that adopted in Scotland resembled the Re-"publican model."

In 1606 James' influence procured the passage, by the Scotch parliament, of a measure restoring the order of Bishops. In 1610 he procured, it is said partly by force and partly by bribery, the passage of an act constituting Prelates presidents of Synods, and this was followed by the publication of the famous five articles of Perth, to wit: 1st, Kneeling at the holy sacrament; 2d, Private communion; 3d, Private baptism; 4th, Confirmation of children by the Bishop, and, 5th, The observance of Christmas, Good Friday, Easter and Pentecost as holidays. The day upon which these were ratified by Parliament, a dark and stormy day, was ever afterwards spoken of as the "black Saturday."

These innovations were followed up by others, which led to the signing of a National Covenant to defend and uphold Presbyterianism with the lives of those who appended their names to this memorable document in 1638. Hence originates the name of Covenanter, a name not assumed, but by the force of circumstances, conferred as if by general consent, upon the bold and determined Presbyterians, who, with pens dipped in their own blood, signed this memorable Covenant. Thus Covenanters became distinguished Presbyterians, none

the less so because they were Covenanters, and none the less Covenanters because Presbyterians.

These same Presbyterians afterwards divided into Associate, Associate Reformed, Reformed, &c., but never deserted the great vital principle of Presbyterian organization upon which they were united by a National as well as an additional solemn league and covenant.

The prominent testimony which they have ever regarded as their polar star, is that neither Clergy or King are to be considered the head of the Church, that Christ is that head, and is alone to be regarded as their chosen and universal Sovereign.

History presents no instance of any diversity of opinion amongst Presbyterians on any substantial doctrinal points, nor is there anywhere to be found amongst Presbyterian Churches, any substantial difference in the forms of church worship. Loyalty to Presbyterianism, to the principles upon which the Church was founded, was ever regarded as the great requirement in church membership.

To this day all the Presbyterian Churches maintain, in their pristine vigor, the vital elements of their original organization, their Presbyteries, General Assemblies, Synods, equality of representation between lay and clergy, aversion to a book of canon, a liturgy, to confirmation by Bishops and to an observance of holidays, and their refusal to recognize any one as the great head of the church but Christ himself. All other differences of opinion were but of a subordinate character, and not of sufficient importance to produce distraction, much less separation. It is impossible to follow the history of Presbyterianism without at the same time wondering why it should have fallen into schisms upon mere matters of form, the control of which should at all times be confided exclusively to the Church Judicatory. Of what use are ecclesiastical courts, if their adjudications and decrees cannot be enforced except at the will and pleasure of the members.

From the foundation of the Presbyterian Church till the present day, no doctrinal change has been made. The Confession of Faith is as it was from the beginning, and the mode of worship identically the same the world over. The Sexton of the church may, if he choose, wear a black coat and white handkerchief, and thus fail to be distinguished from

the Pastor. The dulcet tones of an organ may be called in to the aid of imperfect vocal music, or, as connoiseurs might say, to increase and perfect the melody, but what of this, it affects no vital principle, and yet some might feign to consider it a serious innovation.

History is silent as to any differences in the pure original mother church of Scotland upon Psalmody. Our ancestors grasped and held the substance and cared but little for the form. They regarded David as a man of like passions with themselves, of great infirmity as to moral restraint, and yet a man after God's own heart. They sang his songs with pure delight, but made their mountains echo with the songs of other worthies, and made the sentiment and not the man their polar star. As to what is or is not God's inspiration is after all but matter of opinion. The devout Clergyman sometimes, as if by magic, glows with divine inspiration, and moves and melts by language, as if from Heaven, the hearts of hitherto impenitent sinners. Who has a right to say that God is not, through such agencies, temporarily inspired, accomplishing the great purposes he has in view. Other differences are of but minor consequence, and all clearly within the power and control of the church itself.

To change a name or abolish some unimportant formula of church government, is clearly within the recognized powers of an ecclesiastical body. Names are often the result of accident, and yet civil and ecclesiastical institutions have passed for ages under soubriquets thus conferred. Presbyterian, Methodist, Seceder, Covenanter, were all of a fortuitous origin. John Wesley was an Episcopalian, and sought to infuse greater vitality in the church by prescribing for its worship a *methodical system*, such as class meetings, &c., and hence he and his followers were called Methodists. They dropped a prelatical form for a plainer and less ornamental mode or method of worship. The Covenantor obtained his soubriquet by his having covenanted to maintain Presbyterianism; the Seceder by having withdrawn, not from Presbyterianism, but from what he supposed to be the abuses of it

Prejudices not unfrequently become interwoven with systems and are mistakenly assumed for principles The class meeting which Mr. Wesley established, might, by the church judicatory, be dispensed with, and yet no one would have any

right to complain of its abolition as a departure from principle. The Covenantor might drop his mistaken notion of of separatism from the government in which he lives, as no such heresy was entertained by his Presbyterian progenitors. They were loyal to the government in every sense of the word, and only resisted innovation upon their ecclesiastical rights.

The Seceder, consistently with principle, could fall back upon his original name, if he were but satisfied the abuses of which he complained had ceased. Progress marks the history of the church as it does of the world, and who has a right to stay its onward march. The Presbyterian Church, originally one great family fram 1605 to 1688, presented a united front in its resistance of oppressions and its refusal to relinquish the main elements of its organization. Throughout this memorable period there were no schisms on minor points, but all willingly and cheerfully poured out their blood and contributed their treasure in the great struggle to promote the unity and harmony of the Presbyterian Church.

The successful termination of efforts so laudable, should have been hailed as the harbinger of a closer union in the future. The day has already dawned, the scales of prejudice are fast falling from the eyes of the hitherto unenlightened laymen and clergy of the various branches of this great church, and the time, it is to be hoped, is not remote, when all who are in principle Presbyterian will lay aside the trivial causes which led to their nominal separation and on the broad platform of charity and forbearance for minor differences, unite in one common bond of fellowship and communion, to continue henceforward in perpetual alliance as the United Presbyterian Church.

APPENDIX.

EQUITY DOCKET, NO. 1, JUNE TERM, 1860.

James J. M'Ginnis, Charles Pollock and John Wilson, Trustees of Unity Congregation, vs the United Presbyterian Congregation of Unity Church and Robert Martin, Wm. Moore and James Sloan.

Depositions of witnesses produced, sworn and examined before James Bredin, an examiner apointed by the Court to take the testimony, on the 30th day of August, A. D., 1860. On part of complainants.

Rev. John M'Auley, sworn: I am a minister of the Associate Church, have been so for 22 years. The Associate Church was an independent ecclesiastical organization in the United States, before the year A. D., 1858, and for many years previous to that date. Its representative bodies were composed of, first, the Associate Synod of North America, and of Presbyteries and Sessions subordinate thereto. The Associate Synod was composed of ministers and elders of the Associate Church. All ministers of the Associate Church in the United States, in good standing, were entitled to seats. Every duly constituted session was also entitled to a representative in the Synod. Each Presbytery was composed of all the ministers of the Church within a certain geographical boundary, with representatives from duly constituted sessions in said boundary, as in the case of Synod. The Associate Synod of North America was organized, A. D., 1788, and continued so organized until the year 1858, and still does continue its organization.

The standards of the Associate Church were, the Westminster confession of faith unaltered, the "larger and shorter catechisms," the "form of Presbyterial church government,

the "Directory of Public Worship," also, the "Declaration and Testimony," adopted in 1784. This book (marked "A" by the examiner) is a copy of the confession of faith, and this book (marked "B" by the examiner) is a copy of the "Declaration and Testimony." All members of the church, clergy and laity, were required to subscribe to these standards, and these standards were made terms of communion by the church. The Associate Church were strictly close communionists. The law of the church did not allow ministers of other denominations to officiate in any way, and does not allow them.

I am acquainted with Unity congregation of Venango township, Butler county, and have been so for several years; have preached in that church often, when Mr. Pollock was minister, and since.

Said congregation was and is ecclesiastically connected with the Associate church of the United States.

In the year A. D., 1828, there was a union formed by a portion, a majority of the Synod of the Associate church, with a majority of the General Synod of the Associate Reformed Church. A part of the Presbytery of Clarion, of the Associate church, declined going into the Union, (two ministers.) also the whole of the Presbytery of Northern Indiana Associate church; a part of the Presbytery of Iowa, and individual ministers, members of other presbyteries, refused to go into the Union, viz: Rev. John D. McVay, of Illinois, Titus Basfield, of Canada, refused. A large majority of all the settled congregations in other Presbyteries, in Chartiers, Ohio, Miami Presbyteries, refused to unite. Parts of the congregation in this presbytery with which Unity congregation was connected (Shenango Presbytery) also refused to unite. I declined to unite. The reasons why those who did not go into the Union and refused to unite, were:

One reason: The alteration of the Confession of Faith, in chapters 20th, 23d and 31st, by those forming the Union.

Another: The laying aside by the United body of the "Declaration and Testimony" of the Associate Church, not one article entire of the same being retained and the "basis of Union" contains nothing similar to the articles of the "Declaration and Testimony." Witness now refers to book marked "B," page 27; also same book, page 63.

A third reason: The laying aside by the United body of

the formulary questions proposed to ministers, and deacons and elders at their ordination.

A fourth reason: The laying aside, by the united body, of the "Book of Discipline" used by the Associate church.

A fifth reason: The Associate Reformed Church having originally departed from the Associate Church, the united body has not attempted to show where the Associate Reformed Church have shown a disposition to retract the errors into which they fell at the time of their departure.

A sixth reason: We do not consider the article framed by the united body as faithful in regard to psalmody.

A seventh reason: We do not believe the "basis of union" was ever adopted as a term of communion by the Associate Synod, or by the Associate Reformed Church.

An eighth reason: We object to the joint action of 1858, of the "Associate" and "Associate Refermed" churches, in not requiring the members to subscribe fully to the standards of the United Presbyterian Church, and allowing them to make a qualified opposition to the same, as appears in "church memorial" book, marked "C" by the examiner page 137.

A ninth reason: We object to the article in regard to secret societies, adopted by the Union, because said article does not positively exclude members of said societies from the communion of the church, is merely stating that they (church members) *ought not* to have fellowship with such associations, see Book "C," page 116. While the Associate Church positively refuses communion to members of said societies.

A tenth reason: We object to the article on covenanting as being defective in not referring to any specified covenant engagements to which they adhere, and 2d, in treating its observance as only required on extraordinary occasions, see article Book "C," page 124.

An eleventh reason: We object to the article of the United body on Communion, Book "C," page 37, as indefinite and seeming to allow occasional deviations from the practice of close communion.

A number of the above reasons, and others, were set forth by the Associate Synod which met in Cannonsburg, Pennsylvania, Nov. 1858, and were afterwards published in pamphlets

by order of Synod in 1859. (Pamphlet to be furnished by witness, and to be returned with these depositions.)

The "General Assembly" of the United body differs from the "Associate Synod," in its lay members being elected by the Presbyteries instead of the Session, as is the rule in the Associate church, and the ministers claiming seats in the General Assembly of the United Presbyterian Church, also require a communion from the several Presbyteries, while in the Associate Church all ministers were entitled to seats by virtue of their office.

The organization of the United body differs from the Associate Church in having *subordinate* Synods.

I could not, for the above reasons, give in my adhesion to the United body without a violation of my faith and conscience and my ordination vows, and believe those of the Associate church who refused to go into the Union were actuated by conscientious motives in such refusal, and not by wilfulness or improper motives.

The Unity congregation petitioned the Presbytery of Clarion (of the Associate Church) for a pastor, in 1859. One of the reasons stated in that petition was, that their late minister had united with the United Presbyterian Church. [Objected to.] The Rev. John M. Snodgrass was duly elected and installed as pastor of Unity congregation. On Sabbath, the 19th of August, I assisted him to administer the communion. The congregation was divided by the Union of 1858, part refusing to go into the Union.

Cross examined.—I officiate in Reimersburg, Clarion county, Pennsylvania; am attached to Clarion Presbytery; there are five ministers in that Presbytery. One of the present members originally protested against the Union. In 1858, I was a member of Clarion Presbytery, and of the Associate Synod. The Associate Synod, and the Associate Reformed Synod, had the power to unite the two bodies, though not the right to compromise the truth in forming that Union. The "basis" of Union was considered and discussed by the Associate Synod, and accepted and adopted by a majority of that body, and protested against by a minority, of which I was one. There were, I believe about 100 ministers present, and of that number 7, I think, protested. The Presbytery "Shenango" was represented in the Associate Synod.

That is, the Sessions composing that Presbytery were represented, and ministers within the bounds of that Presbytery were present, though the Presbytery, *as such*, was not entitled to and had not a representation. I believe the persons, ministers and elders, as mentioned in book marked by examiner "D," as present from the Presbytery of Shenango at the meeting of the Associate Synod, May 9th, 1858, were present; at least I know a number of them were; the Rev. Wm. A. Black was there, and he had charge of Unity congregation at that time; I believe I was the only minister in the Associate Synod, from Pennsylvania, who protested against the Union at that time. Article 17th, on pages 43, 18, and 44, of book marked "E" by the examiner, is the article adopted by the United body on Psalmody. Article 16, page 34, same book, is, I believe, the article adopted by the United body in regard to communion. I believe the same version of Psalmody was used by the Associate and Associate Reformed churches as bodies, though individuals of the Associate Reformed Church used uninspired compositions when worshiping with other denominations. Don't know whether ministers of the Associate and Associate Reformed churches officiated in each others' churches or not before the Union. Heard of a case of the Rev'd brought before Presbytery. I was the member of the Presbytery who installed Rev. Mr. Snodgrass, having been appointed by Presbytery for that purpose. That Presbytery was composed of Rev. John Hindman and myself, ministers, and two or three elders. Don't recollect the elders' names; can't state the time of the meeting of the Presbytery which appointed me, not more than from one year to one year and one half ago.

Examination in chief resumed: There was no law of the Associate Church which delegated to the Synod the power of dissolving the organization, or merging it in any other organization, or forbid it. The Associate Church was sometimes known as the Seceders. JOHN M'AULEY.

Sworn and subscribed, August 30th, 1860.

Rev. John M'Auley, resumed in chief: There is a body calling itself the Associate Synod, (composed of those members of the original Synod who agreed to the Union and are now members of the United Presbyterian Church,) which met at Xenia, Ohio, in 1859. They met at night as the Associ-

ate Synod, and in daylight met with the General Assembly of the United Presbyterian Church; this body did not represent any members of the Associate Church, because the ministers and elders composing it were members of the United Presbyterian Church.

Cross-examined.—The Synod which met at Cannonsburg was a "called meeting," or a *pro re nata* meeting; it was called by the Presbytery of Northern Indiana, after consulting with the protestors; I united in the call. In ordinary circumstances the Synod meets at the call of the Moderator. This book, marked "F" by the examiner, is the book of discipline which was used by the Associate Church at the time of the meeting. See page 14, as to meeting of Presbytery. The Cannonsburg meeting, at Cannonsburg, was not called by the Moderator, he having gone into the "United Presbyterian" church.

The meeting at Xenia was by adjournment from Pittsburgh. The adjournment was made after the Union was consummated. JOHN M'AULEY.

Sworn and subscribed, August 31st, 1860.

JAMES BREDIN, Examiner.

Complainants now offer in evidence an article of agreement between Robert Leason, and James Scott and Reuben Irvin, Trustees of the Rev. Mr. M'Clintock's congregation, all of Slipperyrock township, Butler county, Pa., dated July 8th, 1803, (not objected to by defendant.) for the sale of 2 acres of land, part of the tract on which Robert Leason lives, including the meeting house and spring, for the proper use and behoof of the congregation, to have and to hold forever, consideration $8 per acre.

James Anderson sworn: I have been acquainted with the congregation of Unity church since 1810. Rev. Thomas M'Clintock was the pastor at that time; he belonged to the Associate church; he officiated until after 1820. Rev. Wm. C. Pollock succeeded Mr. M'Clintock; he officiated about 14 or 15 years; think it is about ten years since Mr. Pollock left. Mr. Pollock was a "Seceder," or belonged to the Associate church. Rev. Mr. A. Black succeeded Mr. Pollock, he was also attached to the Associate church; he was there three or four years. The first meeting house was built in 1820, before my recollection of dates; it was a log house;

there is now a brick house, a good size, built by the congregation, aided by subscriptions from outsiders. The building was used exclusively by the Associate church; I was a member of the congregation until the dispute with Mr. Black, that is from before the new house was built until 1856. I think Mr. Black has not preached there statedly since the Union. The congregation of the United Presbyterians, Rev. Mr. Forsythe pastor, occupy the building for their place of worship.

The United Presbyterians have taken possession of the house, and locked the door, so as to prevent others using it. I know that they refused to allow the associate part of the congregation to use the church building as a place of worship for the Associate church. [It is admitted by respondents that the purchase money of the ground was paid before the Union, and is receipted on a second article between the same vendor and John Pollock and others, trustees of the Unity Congregation of Scrubgrass, and their successors, &c., for the use of said congregation forever.]—J. B., Ex.

I am now a member of Unity congregation of the Associate church. The trustees of that congregation are James J. M'Ginniss, Charles Pollock and John Wilson. The congregation belong to the Associate Church, and refuse to go into the Union with the Associate Reformed Church.

Note.—The article referred to as the 2d article, is dated June 2d, 1823, and recorded in Deed Book J, page 482.

I was suspended about a year before the difficulty between the congregation and Mr. Black. I was cited for distilling whiskey. Thos. Kelly, Joseph Rosenberry and others, were members of the session at the time I was suspended. I was not a member of the congregation at the time of the Union. James J. M'Ginnis is not, and was not, I believe, a member in full communion with Unity congregation; he is not a communicant at all; his wife is. Chas. Pollock had been suspended from church privileges by Mr. Black before the Union. Wm. Perry and Robert Dixon were members of the session which suspended me; they are now members of the session of the Associate Church to which I belong. (Further examination on this point objected to as not properly cross-examination.)

It is about three weeks since I attached myself to the Asso-

ciate Church, or renewed my membership in Unity congregation.

Complainants object to the evidence as to suspensions, &c., as being matters of record, and request the production of the minutes of the sessions and church records, to show the action as to each particular case.

Examination-in-chief resumed: I had been distilling generally every winter from 1820 until the time of my suspension.

JAMES ANDERSON.

Sworn and subscribed, Aug. 31st, 1850.

J. BREDIN, Examiner.

Complainants offer paper marked "M." Not objected to. Complainants rest their evidence.

I do certify that the within named witnesses were duly sworn and examined before me on the 30th and 31st days of August, A. D., 1860. John Graham and L. Z. Mitchell, Esq's., appeared as counsel and solicitors for complainants, and J. N. Purviance and J. W. Kirker, Esq's., as solicitors for respondents, being present at the examination.

J. BREDIN, Examiner.

Butler County, ss., Commonwealth of Pennsylvania.

{L. S.} I, Allen Wilson, Prothonotary of Court of Common Pleas in and for the said county of Butler, in the Commonwealth aforesaid, do certify that the foregoing is an original paper as filed in the above case. In witness whereof I have hereunto set my hand and affixed the seal of the said Court, at Butler, this 28th day of August, 1861. ALLEN WILSON, Pro.

IN A CASE IN EQUITY IN BUTLER, PA.

DISSENTER *vs.* TRUSTEES OF U. P. CHURCH of Unity, Venango Tp.

The undersigned being called to give testimony in this case, would beg leave to state some of the fundamental principles of Church polity upon which the case at issue does most probably turn.

1. It is the established practice of Presbyterian Churches to meet annually, on their own adjournment, to transact any business which may concern the welfare of the church.

2. The Judicatories of the Presbyterian Church consist of Sessions, which have jurisdiction over the particular congregation to which they belong, and consist of the Pastor, who is "Ex-officio" Moderator or President of the court, and as many Ruling Elders as the congregation may see proper to choose; Presbyteries, which consist of the Ministers within a given territory, and a Ruling Elder from each settled charge; Synods, consisting of all the Ministers within a given district, and an Elder from each pastoral charge, and General Assemblies, which consist of a number of Ministers and Elders chosen from each Presbytery, according to a ratio agreed upon by the General Assembly, or Œcumenical Counsels, composed of representatives of several General Assemblies.

See Westminster Confession of Faith, Philadelphia edition, W. S Young, printer, page 577, under the head of "Classical Assemblies," and page 582 of "Synodical Assemblies."

3. The object of the meeting of these courts, is, in general, the government of the church, by a regular gradation of courts, from Sessions to General Assemblies.

See Compendium of the Laws of the Church of Scotland, page 205, "Overtures and Acts."

A. D., 1697, Enacted, that before a General Assembly of this Church pass any acts which are to be binding rules and constitutions of the church, the same acts be first proposed as overtures to the assemblies, and being by them passed as such, be remitted to the consideration of the several Presbyteries of this church, and their opinions and consent reported by their Commissioners to the next Assembly following, who may then pass the same into acts of the more general opinion of the church thus had, agree thereto.

(I have copied the above with care, as the books containing them are rare and difficult of access.)

It is plainly the principles and every where acknowledged practice of the Presbyterian Church, to pass finally upon and enact "rules and constitutions" which have been passed by overture.

If, then, the point at issue with the parties litigating be, whether or not the United Presbyterian Church has been formed and constituted according to the established principles of Presbyterian Church polity, I would simply present the facts in the case.

1. See Minutes of the Synod of the Associate Presbyterian Church, at Xenia, Ohio, 1855, Report of the Committee on the subject of Union, page 106 to 109.

[Signed.]

J. PATTERSON, and others.

Particularly see resolutions on page 111, specifying the points to be treated in a testimony, proposing to be a basis of Union of the two Churches, and the appointment of a Committee of Drs., Cooper, Rodgers, and Patterson, for preparing an exhibit of the animus of the church on the various points in question.

The minutes states that the committee was appointed, and for that purpose, by unanimous vote of Synod, (the highest court of Judicature in the Associate Church.)

2. The above named committee report, and resolutions were adopted in reference to it.

See Minutes of Synod, Allegheny City, 1856, page 98, "Resolutions on the subject of Union."

By these resolutions it was agreed that the document entitled "Basis of Union," was transmitted to Presbyteries and Sessions in order to obtain their mind by the next meeting of Synod.

This Basis was returned with an affirmative recommendation on the following year.

See minutes of Synod, Philadelphia, 1857, Report of Presbyteries at large, and particularly page 76, fourth paragraph, "as a large majority," &c., with resolves 1 and 2. This was done by the Associate Synod acting in its true and proper character. All which, too, in perfect keeping with constitutional principles.

Then in the final adoption of this contemplated Basis and the formal consummation of the Union.

See Minutes of Synod, Pittsburgh, 1858, page 77 and 78, "Resolutions on the subject of Union," &c.

I was an integral member of the Associate Synod when these resolutions were passed, and have perfect knowledge of the correctness of the record.

The Union in question was thus formerly consummated, and here ends our testimony upon this point.

I would farther testify, that the same page, 78, Minutes of 1858, states correctly that the Associate Synod will adjourn

to meet in Xenia, Ohio, on the 3d Wednesday of May, 1859, and that said Synod did meet according to adjournment at the time and place designated and transact business. That it there adjourned to meet in the City of Philadelphia in the following year, viz: 1860.

When and where they met, transacted business as shown by the minutes, and now stands adjourned to meet as before.

The Associate Synod is thus to be found by an unbroken succession of meetings, for more than three quarters of a century. Meetings held on its own adjournment and conducted by its own officers.

If it be thought pertinent to the case in hand we would state farther: Respecting the meeting of church courts, they meet on their own adjournment, or by a call of the officers, with the concurrence of other brethren. This last, see Book of Discipline, is technically called *Pro re nata*, or for a special purpose.

The brethren who have declined going into this Union and who call themselves the Associate Presbyterian Synod, are not entitled to this designation without they are self-constituted and self-styled, while the body whose name they have assumed is to be found elsewhere.

This we allege:

1. Because this body met neither at the time nor place to which the Associate Synod adjourned.

See minutes of 1858, above referred to.

The meeting was not one pursuant to adjournment.

2. The officers of the Associate Synod are all in the United Church, and there could be no meeting such as that, by which these Dissenters organized, legally called or legally held, according to the books.

G. C. VINCENT

JAMES J. MCGUINIS, *et al.* TRUSTEES, &c,

vs.

THE UNITED PRESBYTERIAN CONGREGATION OF UNITY CHURCH, *et al.* In Equity, No. 1, June Term, 1860.

Depositions of witnesses produced, sworn and examined on part of Respondents, before James Bredin, an Examiner, on the 30th of August, 1860.

Rev. Samuel Kerr.—I was a minister of the Associate Church prior to the year 1858; belonged to Shenango Presbytery; was acquainted with Unity congregation, which was also connected with that Presbytery, and was so connected at the time of the "Union" in 1858; I was a member of the Associate Synod in 1858, at the time the Union with the Associate Reformed Church was consummated; the Associate Synod met at Xenia in 1855, when overtures were made by the Associate Reformed Church for a Union of the two bodies; the proceedings had on these overtures are to be found in Book marked "G" by the Examiner, pages 109 to 111; the proceedings of the Associate Synod for the year 1856, on the same subject, are to be found in Book marked "H" by the Examiner, page 98. The action of the Synod on the same subject in the year 1857, is to be found in Book marked "J" by the Examiner, pages 75 and 76. The action of the Associate Reformed Synod on the subject, is stated on pages 84, 85 and 86 of the same book, and see further action of the Associate Synod, same pages. The action of the Synod and the consummation of the "Union" are to be found in Book "D," pages 77 and 88; the action of the United body is to be found on page 100 of the same book.

The "Basis of Union" as adopted by the United body, does not change the faith as professed by the Associate Church; the doctrine is the same in substance as held by the Associate Church; there are some items (which we view as attainments) in the basis, such as the supremacy of the Divine law; protests against the errors of the times, as secret societies, slave-holding, &c., which were not contained in the old "Declaration and Testimony" of the Associate Church. These attainments, as we call them, were approved by the Associate Synod of 1855, three years before the Union, without a dissenting voice, noted on the minutes, and were directed to be incorporated in the "Testimony."

On the subject of psalmody there is no change made by the basis of Union; if anything, the language is stronger in regard to exclusion of the devotional compositions of uninspired men from being used in public worship.

In regard to close communion, no change is made in substance in regard to that article; we are professedly now as before close communionists

No new book of discipline was adopted by the United body, but in 1859 each Presbytery was authorised to use either the book of discipline of the Associate Church or of the Associate Reformed Church, until a new book should be framed and adopted, which has not yet been done. The General Synod and the subordinate Synods of the United body were to be regulated by the rules in force in the Associate Reformed Church at the time of the Union, for the time being.

No change was made by the "Basis of Union" in doctrine, faith or discipline of the two bodies, in regard to the Westminster Confession of Faith, larger and shorter catechisms, Presbyterial form of church government; that is, no change in substance. As I understand it, we hold the same doctrine in regard to the 20th, 23d and 31st chapters of the Westminster Confession of Faith in the United body that we held in the Associate Church, that is, we regard the power of the civil magistracy. See Book "B," page 68.

In going into the Union with the Associate Reformed Church, I did not violate my faith or conscience, or the ordination vows which I made in the Associate Church.

The reasons why the Associate Synod met after the Union was formed, was principally to settle the business affairs of that branch of the church.

I think there were about 200 members of the Associate Synod present when the Union was consummated; the great mass voted for the Union, and I think only from 11 to 17 against it. By reference to the minutes I find the vote was ——, (not found.)

I was, in 1858, before the Union, (and am now,) Secretary of the Presbytery of Shenango. Since the Union both parties in this congregation made application to the Presbytery of Shenango to refer the settlement of the difficulties in this congregation to the Presbytery of Butler. In 1856 or 57, a paper, marked "K" by the Examiner, was presented to the Presbytery of Shenango. Mr. Chas. Pollock was the member of the congregation who presented the paper. I asked Mr. Pollock what Mr. Black preached about, banks, tariff, &c., he said not. I asked him as to slavery, I think he said nothing.

The Presbytery of Shenango met at Unity Church, and heard the charges, and acquitted Mr. Black.

Complainants here requested the production of the minutes of the Presbytery that took action upon the complaint against Mr. Black, and of any papers in regard to that complaint in the possession of Presbytery or witness, and object to any testimony being offered until said papers are in evidence.

These papers now presented by the witness, and marked "K" by the Examiner, are the charges made against Mr. Black; application for a dissolution of his pastoral relation with Unity congregation; a protest against said dissolution, &c.

Cross-examined.—I believe it is a general principle in the Presbyterial form of church government, that all articles imposing terms of communion must be overtured; that is, sent down from the General Synod to the Presbyteries and Sessions to be approved or rejected by them, and their report thereon to be made to the Synod; it is always so as to matters of faith.

The "act and testimony" of the Associate Church, were required to be subscribed to by the members of that church, as one of the terms of communion.

I believe there was no substantial difference in doctrine between the Associate and Associate Reformed bodies.

Examination in chief resumed.—The Associate Synod had the power to unite with any other ecclesiastical organization that they might see fit to unite with; I have never heard the power questioned.

Cross-examined.—I consider the power to unite, as spoken of above, an inherent right in the Synod.

SAMUEL KERR.

Sworn and subscribed, August 30th, 1860.

J. BREDIN, Examiner.

THOMAS KELLY, *sworn.*—I was a member of Unity congregation, Associate Church, before the Union; had been for about thirty-two years; was an elder about twenty-one years before the Union; am now an elder of the United Presbyterian Church; was a member of the Session at the time James Anderson was suspended from the communion of the church. Minutes of Sessions now offered in evidence. Book marked "N" by the Examiner. Mr. Anderson's suspension was in 1856.

November 10th, 1857, James Sloan, Wm. Blair, and John Wilson, suspended.

December 8th, 1857, James P. Riddle, Robert Dixon, Wm. Perry, Joshua Griffin and David Perry, suspended.

March 15th, 1858, Wm. Moore, Charles Pollock and Samuel Eakin, suspended.

April 19th, 1858, James Perry, David Sloan and James R. Pollock, suspended.

May 13th, 1858, J. B. M'Ginnis, Albert Scott, John Leslie, Thos. Parks and David Russel, suspended.

All the above named suspended are protestors against the "Union," except Wm. Moore, who was restored. (Admitted that they are members of the congregation of Rev. Mr. Snodgrass.) I was present in church when the "Basis of Union" was submitted to Unity congregation, or rather to the Session of that congregation. I believe it had before that been read to the congregation by Rev. Black. The Session considered and approved the "Basis of Union," February 3d, 1857. There were about 130 members of the congregation (including those suspended) at the time of the "Union," some of those who were protesting against the "Union," communed with us once after the "Union." The seventy-three above stated were all in full communion with the Associate Church at the time of the "Union," and still remain in communion with the United body. About fifty-eight, including those suspended, and all others who had any claims to membership, refused to go into the "Union." At the time of the Union the elders were, Wm. Perry and Robert Dixon, who were suspended, and Joseph Rosenberry, Franklin Jamison, Samuel J. Sloan, J. B. M'Lintock, and myself, who were in full communion with the Associate Church. The last named five approved the "Union," and continue as elders of the congregation in the United Presbyterian Church. I think, to the best of my recollection, Joseph Sloan was appointed before the "Union" to take charge of the church building and grounds, and continued in charge until the "Union." He is now in the United body. I believe the course of those who refused to go into the Union, was caused by the difficulties (previous to the "Union") in the congregation, and not by objections to the "Union" itself.

I was in the session when Mr. Rosenberry was appointed

to attend the meeting of the Associate Synod (which consummated the Union) on May 13th, 1858; The Session was regularly constituted, and consisted of four members.

Cross-examined.—I have not heard any of those members who approve the "Union" say their course was caused by the previous difficulties in the congregation, though I believe that was the cause; my belief is formed from my knowledge of the general train of affairs in the congregation, and not from any conversations with those who oppose the "Union."

Examination in chief resumed.—There were ministers of the Associate Reformed Church preached in our church before the "Union;" the congregation generally attended. Rev. Mr. Fife, Rev. Mr. Braden, and Rev. Mr. Pollock, all of the Associate Reformed body, preached there before the Union. For a year, or a year and one-half before the "Union" was consummated, it had become customary for ministers of the two bodies (afterwards united) to exchange pulpits occasionally; don't know of any law authorizing those exchanges of pulpits, or prohibiting them.

THOMAS KELLY, JR.

Sworn and subscribed, August 31st, 1860.

J. BREDIN, Examiner.

REV. WM. A. BLACK.—I was a minister of the Associate Church for five or six years previous to the "Union;" was settled for four years in Unity congregation, Venango township, this county, and in Clintonville church, Venango county, both belonging to the Presbytery of Shenango, Associate Church; after the "Basis of Union" was overtured, or sent down from the Synod to the Sessions, I read the "Basis of Union" to the congregation, part on one Sabbath day, and the remainder of it the next Sabbath; if I recollect aright, a meeting of Session was appointed to consider it; I was present at that meeting of Session as Moderator, as will appear by the minutes of Session referred to by Mr. Kelly; Mr. Rosenberry was the elder appointed by the Session of this congregation, who represented this congregation at the meeting of Synod which consummated the "Union;" I had dissolved my connection with the congregation before that Synod met; some half dozen copies (printed) of the "Basis of Union" were circulated among the congregation, besides said Basis being often published in the church periodicals, of

which a number were received by the congregation; as I understand it, the "Basis of Union" was first adopted and approved by the Associate Synod, and then handed over to the Associate Reformed Synod for their adoption and approval; I believe it was the mutual work of the ministers and people of both bodies; I do not consider there was any surrender by either body of any fundamental principles in forming the "Union," as held by either church prior to the Union. The Westminster Confession of Faith, the larger and shorter catechisms, and the Presbyterial form of church government are preserved substantially by the United body, as they were held by each of the bodies prior to the "Union." I am now connected with the ministry of the United Presbyterian Church, and as a minister of that church have preached several times in Unity church.

The witness here desired to make a statement and denial of the charges made against him in regard to 'preaching politics,' stating, however, that he occasionally alluded to the subject of slavery, particularly on communion occasions; this objected to, and not considered relevant.

I consider there is nothing in the faith, doctrine or discipline of the United Presbyterian Church which conflicts with my faith, conscience, or my ordination vows as a minister of the Associate Church.

James J. M'Guinis was not a member of Unity congregation during my pastorate. Prior to the Union, Mr. Harper, of the Associate Reformed Church, preached in Unity church by my invitation; this was only a short time before the Union was consummated.

Cross-examined.—Mr. M'Guinis was treasurer of the Supply Fund previous to my settlement, and door-keeper during part of my pastorate; I did denounce the fugitive slave law as a blot on the statute book. (Objected to.) My resignation as pastor of Unity congregation took effect the Sabbath previous to the meeting of Synod at which the Union was consummated.

Examination in chief resumed.—Some time before the Union, Robert Dixon expressed himself as favorable to it, and after the Union Mr Dixon appeared at New Castle before the Presbytery of Shenango (Associate) as a delegate from Unity congregation, requesting a reference of the diffi-

culties in the congregation to Butler Presbytery, in view of the congregation being re-united. Butler Presbytery was of the Associate Reformed Church.

WM. A. BLACK.

Sworn and subscribed, August 31st, 1860.

J. BREDIN, Examiner.

REV. WM. GALBRAITH, *sworn*.—I was a minister of the Associate Church (and now of the United Presbyterian) for twenty-two years prior to the Union; my pastoral charge was the Freeport congregation and branches connected with it; I belonged to the Allegheny Presbytery; I was a member of the Associate Synod in 1856, and was at its meeting that year, and participated in forming and adopting the Basis of Union, afterwards submitted to the Associate Reformed Church; was present at the meeting of Synod at Philadelphia in 1857, when the Basis was adopted, and referred to the Associate Reformed Synod. The proceedings in 1858 were merely illustrative of the manner in which it was adopted and a consummation of the Union. The Basis of Union had been overtured by the Synod to the various Presbyteries and Sessions for their actions. There is no law on the subject, but when articles of faith are introduced, or changes to be made therein, the practice is for the Synod or higher court to overture, or refer the same to the Presbyteries, Sessions or other subordinate courts to take action thereon; I speak of the practice in Presbyterian bodies, as far as I am acquainted with them. Congregations as such are never mentioned in overturing as far as I know; the sessions represent the congregation. The reports of the various Presbyteries and Sessions were made to the Synod, on this Basis of Union, before the adoption of that basis; that is the sessions reported to the Presbyteries, and the Presbyteries to Synod, as was the practice. On the adoption of the Basis of Union in the Associate Synod, there was no protest made that I know of; none noted on the minutes. The vote stood 104 to 13. I mean no protest against the adoption of the Basis.

By protest I mean an announcement of a refusal by those protesting to be bound by the action of Synod. By voting in the negative or dissenting from the action of the Synod; those so voting or dissenting do not signify an intention to refuse to be bound by the will of the majority.

The Westminster Confession of Faith, the larger and shorter Catechisms, and the Presbyterial form of church government, are retained in the same way by the United body as held by the two bodies before the Union. The only change made is as to the position that 20th, 23d and 31st chapters of the Confession of Faith, subject to certain limitations as found in Book "B," page 68. The United body have not changed the doctrine so held by the Associate church; there was no change made by the United body of the doctrine and faith as to psalmody or communion, as held by the Associate Church.

There is nothing in the doctrine, faith, or practice of the United Presbyterian Church which conflicts with my faith or conscience, or ordination vows as an associate minister.

I believe that this Basis of Union was regularly adopted by the Associate Synod, and that that Synod had the power to form a Union of this kind.

There is no written law on the subject of a Union with other ecclesiastical organizations, but the Synod had the inherent right to unite with another ecclesiastical body, as for instance the majority of present Synod had the right to unite with the General Assembly of the Old School Presbyterians, or with any other body with which they could agree on a Basis of Union. I consider the minority would be bound by the action of the majority by so doing: changed the terms of communion, that is a change in substance, not of form.

W. GALBRAITH.

Sworn and subscribed, August 31st, 1860.

J. BREDIN, Examiner.

Respondent offered a deed from Robert Leason and wife, to the United Presbyterian Congregation of Unity Church, of Venango township, Butler county, for two acres, twenty perches of land, in said township, on which the meeting house is erected. Not objected to.

SAMUEL LEASON, *sworn.*—I live in the neighborhood of this church; not more than thirty rods from the church door. The doors had not been locked for years before the "Union," and a leak that continued some time after the "Union;" I

think it was in the fall of 1858, that the lock was put on the door or the next spring; saw Joseph Sloan putting the lock on the door.

SAMUEL LEASON.

Sworn and subscribed, August 31st, 1860.

J. B., Ex.

FRANKLIN JAMISON sworn.—Joseph Sloan was elected doorkeeper of the meeting of the congregation. See minutes January 4th, 1858, of the congregation, where it says, "on motion, Joseph Sloan took the keeping of the house for the ensuing year." James Perry, Wm. Perry, Robert Dixon, Alexander Scott, Joseph Griffith, James Anderson, Charles Pollock, James Pollock, David Perry, James P. Riddle, Thomas Parks, John Leslie, David Russell, Baxter McGinnis, Samuel Eakin, of Indiana, Wm. Blair, David Sloan, Jas. Sloan, and John Wilson, are the names of the male members of the congregation who refused to go into the "Union," so far as I know. I am an elder of the congregation, and am well acquainted with the congregation. The female dissenters are principally members of families of the above named males. Though there are some widows, heads of families, dissenting, two that I recollect of.

Cross-examined.—We claim, that is, those who are now Presbyterians, claim the exclusive possession of the church property, though all are invited to attend our public worship.

Examination-in-chief resumed.—Of those named as dissenting from the "Union," David Perry and Wm. Perry gave up their seats in the church before the Union, to wit: on January, 1857, also May 21, 1857, James J. M'Ginnis gave up his seat; that is, he refused to pay any longer to Mr. Black, but said he wanted to hold on to his seat; I told him he could not do that; January 4th, 1857, Samuel M'Ginnis gave up his seat; same date David Sloan gave up his seat; June 7th, 1857, Thos Parks gave up his seat; 21st of same month, James Pollock and John Wilson gave up their seats; July 7, 1857, Joshua Griffin and Wm. M'Cool gave up their seats; Nov. 11th, 1857, Wm. Blair gave up his seat; Dec. 17th, James Sloan and Robert Cochrane gave up their seats.

The withdrawal of the above members caused a large increase of the stipends of the remaining members, in order to pay our pastor his usual salary.

Cross-examined.—Some of the above named throwing up their seats, said in so doing, that they would not pay any more while Mr. Black was pastor, but would resume their seats if or when he would leave. David Perry said he would pay no more while Mr. Black remained. Johnston M'Ginnis wanted to throw up his seat, but wanted the seat to remain undisposed of until he would resume it again; his objections were to Mr. Black; at the same time he gave up Samuel M'Ginnis' seat on the same terms. When James Pollock gave up his seat, he said he would not pay for the seat but would hold it; I understood he did not want to pay Mr Black. When John Wilson gave up his seat, he said he still adhered to the Associate Church. I understood the reason why they threw up their seats, as being on account of the difficulties with Mr. Black, though some of them said nothing at the time they gave up their seats. Some time afterwards John Griffin came to me and told me to keep his seat for him.

Examination-in-chief resumed.—None of these persons, in giving up their seats, made any objections to the "Union," or alleged that as a cause for their course.

FRANKLIN JAMISON.

Sworn and subscribed, August 31st, 1860.

J. BREDIN, Examiner.

JOHN POLLOCK, *sworn.*—I have what is called the second article (the one that is recorded) between Robert Leason and the Trustees of the church as to the sale of the land. The second article was entered into because the lines of the survey were altered. This paper marked "O" by the examiner, is the second article; at the time it was entered into the other article was supposed to be lost.

JOHN POLLOCK.

Sworn and subscribed, August 31st, 1860.

J. BREDIN, Examiner.

JOSEPH ROSENBERRY, *sworn.*—I was a member and elder of Unity Congregation, Associate Church, before the "Union." I was a member of the session, though not present at the meeting which approved of the "Basis of the Union." I heartily approved of the "Basis of Union" in expression and sentiment, which was well known to the congregation and

session; I was the delegate from the session of Unity congregation to the Associate Synod in Pittsburgh, which met in 1858, and was present at the meeting of Synod; voted for the "Union;" I represented the pastoral charge composed of Unity and Clintonville congregations. There was an increase of communicants each year of Mr. Black's charge, but especially the last year Mr. Black was with us.

JOSEPH ROSENBERRY.

Sworn and subscribed, August 31st, 1860.

J. BREDIN, Examiner.

Respondents offer no testimony.

I do certify that the witnesses whose names and depositions are given above, were duly sworn and examined before me on the 30th and 31st of August, A. D., 1860, John N. Purviance, and J. Kirker, Esqs., appearing as solicitors for respondents, and John Graham and L. Z. Mitchell, Esq's., present as solicitors for complainants.

JAMES BREDIN, Examiner.

Butler County, ss., Commonwealth of Pennsylvania.

{L. S.} I, Allen Wilson, Prothonotary of the Court of Common Pleas in and for said county, in the Commonwealth aforesaid, do certify that the foregoing is an original paper as filed in the case. In witness thereof I have hereunto set my hand and affix the seal of the said Court this 28th day of August, 1861.

ALLEN WILSON, Pro.

To the Honorable Judges of the Court of Common Pleas of the County of Butler, sitting in Equity.

And thereupon your orators complain and say that they are the Trustees and members of Unity congregation, of the Associate Church, situated in the township of Venango, in the county of Butler, and residents in the vicinity and neighborhood of said congregation, that said congregation is connected with the Associate Synod of North America.

That the said Associate Synod of North America was, and is a separate and independent ecclesiastical organization of Presbyterians in the United States of America, from the year 1784 until the time of the grievances hereinafter complained of—and as an ecclesiastical organization its ministers and

people held certain doctrines and usages which were peculiar to the Associate Church, as such, and had no communion or ecclesiastical fellowship with any other ecclesiastical organization.

That the said Synod was composed of the several Presbyteries, and they of the ministers and people of the several congregations of the Associate Church. That the said Synod had supreme, judicial and legislative authority over all the presbyteries, sessions, ministers and congregations composing the same, touching all ordinary matters of doctrine and discipline.

That the said "Unity congregation" was organized as early as the year 1800, and became a member of the said Synod, and continued to be such until the time of the grievances hereafter complained of—and that in the year 1803, had erected a meeting house, for the worship of God, and that in the said year the said congregation purchased from Robert Leason two acres of land in the township and county aforesaid, upon which the said meeting house had been erected. That the said purchase was made by articles of bargain and sale from the said Robert Leason, of the one part, and James Scott and Reuben Irvin, trustees of the said congregation, for the use, benefit and behoof of said congregation of the other part, and that the said purchase was confirmed by articles of agreement, bearing date the 24th June 1833, between the said Robert Leason and John Pollock and others, trustees of Unity congregation aforesaid, and their successors in office, for the use of the said congregation forever, which said articles are recorded in Butler county, in Book J, page 482, which said parcel of land is bounded and described as follows, to wit: On the North, East, South and West, by lands of the said Robert Leason.

That said Unity congregation paid the purchase money of the said land, according to said agreement, and entered into the possession of said meeting house and two acres of ground, and continued to be seized and possessed thereof, and to use the same for a place for the public worship of God, according to the doctrines, usages and principles of the Associate church from the year 1803, aforesaid, until the time of the grievances hereinafter complained of.

That in the year 1858, and previous thereto, there was a

certain other alleged ecclesiastical organization known as the Associate Reformed Synod of North America, which said Associate Reformed Synod had separated in the year 1747, in Scotland, from the Associate church, and continued so separated, in Scotland and the United States, from that time down to the time of the grievances hereinafter complained of, and held and maintained doctrines, principles and usages fundamentally differing from those of the said Associate church, and contrary as believed always by the said Associate church to the plain teachings of the Word of God and sound doctrine.

That before the year 1858, there was a movement on the part of divers restless and evil disposed persons, ministers and people of the congregations and presbyteries of the said Synod, to wit: The Associate Synod of North America and the alleged Associate Reformed Synod of North America towards a union of the same in one ecclesiastical body, to be called the "United Presbyterian Church," and, after divers meetings of presbyteries and synods, proposals, resolutions and conferences, a basis was agreed upon, and a partial union effected, under the name of the "United Presbyterian Church" aforesaid, which laws of union, your orators say, is contrary to the doctrine, principles and usages of the said Associate church, as clearly taught in the Confession of Faith, continued act and testimony, and other standards, and as they believe required by the word of God.

And your orators further complaining unto your Honors, say, that the said Associate Synod of North America nor the presbyteries composing the same, had any power to form the said union, and thereby merge and dissolve the said synods, presbyteries and congregations into a different ecclesiastical organization without the consent of all the ministers and people first had and obtained thereto, or at least a majority of the people of each congregation, and that majority ascertained according to the customs and usages and laws of the Associate Church aforesaid, or to divert the use of the property of any such congregation to the worship of members of a different ecclesiastical organization.

That at the time of the formation of the said alleged union, the said Unity congregation had no regular minister and was not regularly connected with any presbytery of the said Asso-

ciate Synod, and could not legally be represented in any of said presbyteries or synod, and that said congregation was not so represented, and did not give their consent to the said union.

That by the constitution and laws of the said Associate Church, the consent of the members of each and every congregation is necessary to any act of secession or dissolution, or union with any other ecclesiastical body, such consent to be ascertained by an election of the proper congregation held in pursuance of a regular notice, according to the laws and usages of the said Associate church.

That the said union between the said churches, (so far as the same has been made,) was made without any election of said congregation or consent thereof, and that the said union is a fundamental departure from the doctrines and usages of the said Associate church, and contrary to the wishes, convictions and earnest protestations of your orators and a large number of the members of said congregation, to wit: a majority thereof.

That a part of the members of the said congregation are in favor of the said union and without the knowledge and consent of your orators and that part of the congregation who are opposed to the said union, procured an act of incorporation from the General Assembly of the State of Pennsylvania, entitled "an act to incorporate the United Presbyterian congregation of Unity church of Venango township, in the county of Butler," "approved the 29th March, 1859," and have also usurped the property of the said congregation, and and have taken forcible possession of the said meeting house and two acres of ground, and have by force excluded your orators and all others of the said congregation who have and do oppose the said union, from the use, occupancy and enjoyment of the said property, and claim the exclusive title, use, and occupancy thereof, contrary to the true intent of the original founders of said church and grantors and purchasers of said property.

That the said part of said congregation who are in favor of the said union, and are incorporated as aforesaid, have introduced the Rev's Dick, Forsythe, &c., ministers of the said United Presbyterian Church, to the pastoral charge of the said congregation, and have thus excluded your orators and

all others of the said congregation who adhere to the ancient faith and practice of the Associate church, and to ecclesiastical connexion with the Associate Synod of North America, from all the rights and privileges which they have heretofore enjoyed, and of right ought still to enjoy, as members of said congregation.

And your orators, further complaining, say, that the ministers of the Associate Reformed Church aforesaid, were never allowed by the Associate church aforesaid, to minister in any of the Associate churches, nor the members of the congregations composing the said churches to intercommune, and that your orators and those of the said Unity congregation who reject the said union, cannot enter into the same, or receive the ministrations of the said ministers or any others not ministers of the Associate church, without surrendering conscientious convictions of truth and duty, and a sacrifice of what they believe to be the faith once delivered to the saints, as taught by the Associate church from its foundation to the present.

In consideration whereof, and forasmuch as your orators are remediless on the premises, according to the strict rules of the Common Law, and inasmuch as all the said doings and pretences of the said Unity congregation, as incorporated by the said Act of Assembly, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orators, and as your orators can only have relief in a Court of Equity, where matters of this nature are cognizable and relievable, to the end therefore that the "United Presbyterian congregation of Unity church," by Robert Martin, William Moore, and Joseph Sloan, the trustees thereof, may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and to the best of their knowledge, remembrance, information and belief, full, true, direct and perfect answers make to the several interrogatories hereinafter numbered and set forth, and also to this bill, that is to say,

1st—Was the Associate Synod of North America a separate and distinct ecclesiastical organization?

2d—Was the Associate Reformed Synod of North America a separate and distinct ecclesiastical organization?

3d—Was their any intercommunion between said churches, their ministers or people, or any ecclesiastical fellowship prior to the union in 1859?

4th—Did Unity congregation belong to the Associate Church, and was it ecclesiastically connected with the Associate Synod of North America and is it still so connected.

5th—Was this congregation connected with any presbytery at the time of the alleged union and had it any regular minister.

6th—Was there any election of said congregation to determine whether they should go into said union held in pursuance of notice, if so, state when and where the election was held and who attended said election.

7th—Was the act of incorporation referred to in the bill obtained without the knowledge and consent of that portion of the congregation which rejected the union and was the same gotten up secretly and for the purpose of some supposed advantage.

8th—Has the United Presbyterian congregation of Unity taken exclusive possession and do they hold of the property mentioned in this bill, if so, did they break open the lock or otherwise forcibly obtain hold of the same.

9th—Does the said United Presbyterian congregation of Unity claim to be the owners of said property to use and enjoy the same to the exclusion of those of the said congregation who reject the union.

10th—Was Rev. Mr. Dick, Rev. Mr. Forsythe the present supply ministers prior to the union, ministers of the Associate Reformed Church and would they have been allowed, prior to the union to minister in said congregation of unity, according to the usages and laws of said Synod of North America.

And your orators pray your Honors that the said United Presbyterian congregation of Unity, and the said supply ministers of the same, and all other ministers of the United Presbyterian Church, be strictly enjoined and restrained from the use of the said meeting house and two acres of land, described and set forth in the bill, for the purpose of worship as a United Presbyterian congregation, and that your orators and all others of said congregation who adhere to the ancient faith and practice and ecclesiastical connection of said Associate

Church, may be restored to the possession, use and occupancy of the said church property as fully and entirely as they had and held the same prior to the alleged union, and such other relief as in equity and good conscience the nature of the case may require.

And may it please your Honors to grant unto your orators the most gracious writ of subpœna of the State of Pennsylvania, directed to the said United Presbyterian Church of Unity, and to the said Revs. Dick, Bredin, Forsythe, &c., ministers, and to the said Robert Martin, Wm. Moor and Joseph Sloan, trustees thereof, thereby commanding them at a certain day, and under a certain pain therein, to be specified personally to be and appear before your Honors in this Honorable Court, and then and there to answer all and singular the premises, and to stand to perform and abide such order and decree therein as to your Honors shall seem meet. And as in duty bound your orators will ever pray.

JOHN WILSON,
CHAS. POLLOCK,
JAMES J. McGUINNES.

BUTLER COUNTY, ss:

Before me, a Justice of the Peace of Butler County, personally came John Wilson, Chas. Pollock and James J. McGuinnes, who being duly sworn according to law, deposeth and saith that the facts set forth in the foregoing bill are just and true to the best of their knowledge and belief, and further say not.

Sworn to and subscribed before me this 14th, 1860.

ROBERT CARNAHAN, J. P.
JAMES J. McGUINNES,
CHAS. POLLOCK,
JOHN WILSON.

Butler County, ss., Commonwealth of Pennsylvania.

I, Allen Wilson, Prothonotary of the Court of Common Pleas of said County, in the Commonwealth of Pennsylvania, do certify that the foregoing is an original paper as filed in the above case. No. 1, June Term, 1860. Equity.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Butler, this 10th day of September, A D., 1861.

ALLEN WILSON, Pro'y.

James J. McGuinnes,
Chas. Pollock and
John Wilson
vs.
The United Presbyterian Congregation of Unity Church and Robert Martin, William Moor and Joseph Sloan.

Bill in Equity.

In the Court of Common Pleas of Butler County.
No. of Term, A. D. 1860.

To the Honorable the Judges of the Court of Common Pleas of the County of Butler:

The defendants above named, reserving to themselves all right of exception to the said bill of complaint for answer thereto jointly and severally say;

1. That the plaintiffs above named, were not at the time of filing the said bill in Equity, Trustees of Unity Congregation of Venango Township in the County of Butler. That one of said plaintiffs, to wit: J. J. McGuinnes, is not, nor was he ever a member of said congregation. That the Associate Synod of North America still exists.

2. That the Associate Synod of North America was a separate and independent ecclesiastical organization until the time of the union in 1858 between the Associate Church and the Associate Reformed Church, by which said union the former became merged and lost its identity as such, except so far as was or might be necessary for the transaction of civil business connected particularly with the ecclesiastical body, as a civil body the act of union provided that they should not go out of existence.

3. That the presbyteries are composed of ministers and ruling elders. A ruling elder to be entitled to a seat in the presbytery as a member thereof, must bear a commission from the session of the congregation which he represents. That the Synod has judicial power, but not legislative, over the presbyteries, sessions, ministers, &c., as to ordinary matters of doctrine and discipline. That the Synods are composed of delegates elected by and to represent the several presbyteries.

4. That the purchase money for the property mentioned in the said bill was paid, at least in part, by the members of Unity congregation of the United Presbyterian Church.

5. That prior to the Union many of the dissenters, and

now complainants, had left said Unity Congregation, vacated their pews, withdrew their support, and were not members of said congregation. That the Rev. Wm. A. Black was regularly installed as pastor of said congregation in May, 1854, and continued to officiate as such until May, 1858. That the complainants had seceded and withdrawn from said church in or about March, 1857, because of personal objection to Rev. Wm. A. Black; that their objections were heard fully by the Associate Presbytery of Shenango, and the charges preferred dismissed, and Rev. Wm. A. Black sustained.

6. That the Associate Reformed Church never had any existence in Scotland, as such—never separated from the Associated Church; it is, therefore, incorrect to say that the Associate Reformed Church ever formed any portion of the Associate Church, either in Scotland or in the United States, and consequently could not occupy the relation of seceders from a body with which they were not in communion. That the Associate Reformed Church, holding, as they ever did, and as the United Presbyterian now do, to the Westminster Confession of Faith, the catechisms larger and shorter, and the form of presbyterial church government, it is not correct that the said United Presbyterian Church maintained doctrines, principles and usages fundamentally differing from the doctrines, principles and usages of the Associate Church, and it is believed that the teachings of the said United Presbyterian Church are in accordance with the Word of God and sound doctrine.

7. That the union was the united work of the ministers and people of both churches, and that in forming the said union there was no surrender of fundamental principles by either, and that the doctrines of the Bible in its purity is maintained in letter and spirit by the United Presbyterian Church as set forth in the Confession of Faith, and the testimony of the church or basis of union. That the said union was full, entire and almost unanimous and not as alleged (by complainants) partial. That the basis upon which the said two churches finally agreed and united, was drawn up by the Associate church, and was adopted almost unanimously in accordance with regular presbyterial usages.

8. That full power, it is believed, existed to form the said union, and that said union was formed with the consent of

ministers and people; that on the 3d day of February, 1857, the session of Unity congregation in public meeting regularly held at the church, upon due and timely notice, considered the basis of union, and after a consideration of it, article by article, approved it as a whole, with some small amendments.

9. That about a week before the time of said union, on 26th May, 1857, Rev, Wm. A. Black's resignation as the pastor of said congregation, took effect. That on the 13th day of May, 1858, the session of said congregation met at said Unity church of Venango Township, and appointed Mr. Joseph Rosenberry (an elder in the Associate Church) to attend Synod at Pittsburgh to represent said congregation. The Associate congregation of Unity was then in connection with the Associate presbytery of Shenango, and that subsequent to the union, said congregation recognized their connection with said presbytery of Shenango by sending commissioners to said presbytery, and that the congregation of Unity was represented in the Synod that formed the union, and assented thereto through an elder of said congregation then and there present

10. That the said congregation of Unity, had an opportunity, according to the usages of the church, to assent or dissent to the union, and that their assent to said union was given through regularly constituted authorities, and no dissent expressed.

11. That the union, it is believed, met the cordial approbation of a majority of the congregation of Unity, and that a number of the present dissenters expressed their approval of the union. That the Rev. Wm. A. Black read to said congregation from the pulpit the basis of union about a year before the union was formed, and distributed printed copies of said basis, and so far as is known, the same met with general approbation, without objection or dissent from any quarter.

12. That the General Assembly of Pennsylvania, by an act approved March 29th, 1859, incorporated the United Presbyterian congregation of Unity, the said act being entitled, "An Act to incorporate the United Presbyterian congregation, of Unity church of Venango township, in the county of Butler." That the said United Presbyterian church have not usurped the property of the Associate church, nor have they taken forcible possession of the said meeting-house and two

acres of ground. Nor is it correct that they have by force excluded any one from the lawful and proper use, occupancy and enjoyment of the said property. That the title to said property by deed of conveyance dated 4th August, 1859, from Robert Leason, and Hannah, his wife, as well as by the terms, force and effect of said union, as well as by continued possession, is duly and lawfully vested in the United Presbyterian congregation of Unity church. That the said United Presbyterian congregation hold, own and possess the same, in accordance with the original grant, having a good and legal title thereto.

13. Rev. J. N. Dick and Rev. David Forsythe preached in Unity church by direction of presbytery, and with the consent, desire and approbation of the congregation, and that at the said ministerial services, all were privileged to attend.

14. That for years before the union it was not uncommon or regarded contrary to any rule of either church, to exchange pulpits, by Associate Reformed ministers preaching in the churches of Associate congregatiens, and of Associate ministers preaching from the pulpits of Associate Reformed churches. And frequent intercommunion took place shortly before the union, and this according to recommendation of Synods of both churches. That Rev. Mr. Bredin, of the Associate Reformed church, by invitation from Unity congregation before the union, preached to said congregation in the meeting house of said congregation; That no change of doctrine, faith or discipline, affecting conscience, has been made.

ANSWER TO INTERROGATORIES, NOS. 1, 2, 3, &c.

1st. The Associate Synod of North America was a separate and distinct ecclesiastical organization.

2d. There was no such Synod as the Associate Reformed Synod of North America. The title of the Associate Reformed Synod was, "The General Synod of the United States."

3d. There was intercommunion between the members of the Associate church and the Associate Reformed church prior to the union in 1858.

4th. The Presbyteries and Synods of the Associate church still exist, but the dissenters, now complainants, are no part

of said ecclesiastical organization. Prior to the union, Unity congregation belonged to the Associate church and was connected with the Associate Synod of North America, but since the union, the said congregation is ecclesiastically connected with the United Presbyterian church, by virtue of the action of the Synods uniting the churches.

5th, At the time of the union, Unity congregation was connected with the presbytery of Shenango. The minister in charge, Rev. W. A. Black's resignation had taken effect about a week before the union, and no minister was in charge at the time of the union.

6th, No election was held, but the matter of union was considered, and the assent of the congregation was obtained according to the usages of the church.

7th, The act of incorporation was obtained with the general knowledge and consent of the congregation, and was fairly obtained and for a proper purpose. That before the said charter was obtained, the dissenters or complainants had voluntarily withdrawn from Unity congregation.

8th, The United Presbyterian congregation of Unity are in the lawful possession of the property described in the said bill. No lock was broken to get possession, or forcible means used to obtain possession or hold it.

9th, The United Presbyterian congregation of Unity claim to be the owner of the said property, and a right to use and enjoy the same, and willingly invite all to attend and hear the Word of God preached in said church.

10th, Rev. Mr. Dick and Rev. Mr. Bredin were ministers of the Associate Reformed church prior to the union. Rev. Mr. Forsythe was a minister of the Associate church, and for a year or more before the union the Rev. Mr. Dick and Rev. Mr. Bredin would have been allowed to minister in said congregation of Unity without any violation of the laws and usages of the Associate Synod of North America.

And the defendants jointly and severally deny all manner of unlawful combination and confederacy wherewith they are by the said bill charged without this, that there is any other matter, cause or thing in the said complainant's bill of complaints, contained material or necessary for said defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed or denied, is not true

to the knowledge and belief of said defendants, all which matters and things the defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismisssed with their reasonable cost and charges in this behalf most wrongfully sustained.

ROBERT MARTIN,
WM. MOOR,
JOS SLOAN.

BUTLER COUNTY, ss.

Before me, the subscriber, a Justice of the Peace in and for the said county of Butler, personally came Jos. Sloan and Wm. Moor, who, being duly sworn as the law directs, deposeth and saith that the facts set forth in the foregoing answer are just and true to the best of their knowledge and belief, and further saith not.

JOS. SLOAN,
WM. MOOR.

Sworn and subscribed before me this 21st of April, A. D., 1860. G. C. ROESSING.

BUTLER COUNTY, ss.

Before me, the subscriber, a Justice of the Peace, in and for the said county of Butler, personally came Robert Martin, who, after being duly sworn as the law directs, deposeth and sayeth that the facts set forth in the within and foregoing answer, are just and true to the best of his knowledge and belief, and further saith not.

ROBERT MARTIN.

Sworn and subscribed before me this 23d day of April, A. D., 1860. S. G. PURVIS.

Butler County, ss., Commonwealth of Pennsylvania:

I, Allen Wilson, Prothonotary of the Court of Common Pleas in and for said county of the Commonwealth aforesaid, do certify that the foregoing is an original paper, as filed in the above case. In witness whereof I have herennto set my hand and affixed the seal of the said Court at Butler this 28th day of August, A. D., 1861.

ALLEN WILSON, PRO'Y.

DEED.

This Indenture, made the fourth day of August, in the year of our Lord one thousand eight hundred and fifty-nine, between Robert Leason of Venango township, Butler county,

and State of Pennsylvania, and Hannah Leason his wife, party of the first part, and the United Presbyterian Congregation of Unity Church, of Venango township, in the county of Butler, State of Pennsylvania, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of twenty-two dollars and twenty-five cents, lawful money of the United States of America, unto them well and truly paid by the said party of the second part, at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release, convey and confirm unto the said party of the second part, also (successors) and assigns, all the following described piece, parcel, tract or lot of land lying and being in Venango township, Butler county, and State of Pennsylvania, bounded and described as follows, to wit: Beginning at a post on the tract of land which the said Robert Leason now resides on, in the said township, thence East 15 perches to a post, thence North 10 perches to a post, thence West 11 perches to a post, thence North 6 perches to a hickory, thence N. 60 deg. W. eighteen perches to a white oak, thence S. 10 perches to a post, thence 3 36 deg. E. nineteen perches to the place of beginning. Containing two acres and twenty perches, including the brick meeting house and burying ground, be the same more or less." Together with all and singular the buildings, improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof: and all the estate, right, title, interest, property, claim and demand whatsoever of the said parties of the first part, in law, equity, or otherwise howsoever, of, in and to the same and every part thereof, to have and to hold the same described piece, parcel, tract or lot of land, hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, also (successors) and assigns, to and for the only proper use and behoof of the said party of the second part, also (successors) and assigns forever.

In witness whereof the said parties of the first part have to

these presents set their hands and seals. Dated the day and year first above written.

Sealed and delivered in the presence of us, and the warrantee erased before signing.

ROBERT LEASON.
HANNAH LEASON.

Received, the day of the date of the above indenture, of Robert Martin, Joseph Sloan, and William Moore, Trustees of the United Presbyterian Congregation of church within named, the sum of twenty-two dollars and twenty-five cents, ($22 25,) lawful money of the United States, being the consideration money above mentioned, in full.

Witness,
JOSEPH CUMMINS,
SAMUEL LEASON.

his
ROBERT ⋈ LEASON.
mark.

On the fourth day of August, Anno Domini, 1850, before me, a Justice of the Peace in and for said county, personally came the above named Robert Leason and Hannah Leason his wife, and acknowledged the above indenture to be their act and deed, and desired that the same might be recorded as such. She, the said Hannah Leason, being of full age, and by me examined separate and apart from her said husband, and the contents of the said indenture being first made fully known to her, declared that she did, of her own free will and accord, sign and seal, and as her act and deed, deliver the same, without any coercion or compulsion of her said husband. Witness my hand and seal the day and year aforesaid.

JOSEPH CUMMINS, J. P.

ARTICLE OF AGREEMENT.

Article of agreement made and constituted and concluded the 24th day of June, A. D., one thousand eight hundred and thirty-three, by and between Robert Leason, of the county of Butler and State of Pennsylvania of the one part, and Samuel Eakin, James Scott, John Pollock, Robert Mitchell, Esqs., and Samuel Sloan of Unity congregation, situate in Scrubgrass settlement; the said Samuel Eakin, James Scott, Robert Mitchell, Esqs., of Scrubgrass and Irwin townships, in Venango county, and John Pollock and Samuel Sloan, of Venango township, Butler county, all in the State aforesaid,

Trustees legally chosen for said congregation of the other part, witnesseth: That the said Robert has this day bargained with and sold unto the said Samuel, James, John, and Robert, a certain lot of land, with the appurtenances, situate in Venango township, Butler county, Pa., beginning at a post on the tract of land the said Robert Leason now resides on in said township; thence east fifteen perches to a post; thence north ten perches to a post; thence west eleven perches to a post; thence north six perches to a hickory; thence north sixty degrees, west eighteen perches to a red oak; thence south ten perches to a post; thence south thirty-six degrees, east nineteen perches to the place of beginning, containing two acres and twenty perches, including the brick meeting house and burying ground, being the same, more or less, for which the said Samuels, James, John, and Robert, Trustees aforesaid, agree to pay the said Robert Leason twenty-two dollars and twenty-five cents, money of the United States, or money equivalent thereto, in manner as follows, viz: six dollars and seventy-five cents to him in hand paid, the receipt whereof is acknowledged; said Leason further agrees, on his part, to give the aforesaid Trustees possession of the said premises on demand; and the said Leason doth engage himself by these presents to give said Trustees or their successors, for the use of said congregation for ever, a complete and perfect title for the same, clear of all incumbrance whatsoever, as soon as he can or does obtain a title for the tract of land he now resides on, of which tract of land the aforesaid described lot is a part thereof. In full testimony of all the covenants and agreements herein before mentioned, and for the due performance thereof, the said parties to these presents do hereby firmly bind themselves, their heirs, executors and administrators, each to the others, in the final sum of two thousand dollars, like money as aforesaid. In testimony whereof they have hereunto subscribed their hands and seals, the day and year above written.

Witness present,
JAMES ANDERSON.

ROBERT LEASON, [L. S.]
SAMUEL EAKIN, [L. S.]
JAMES SCOTT, [L. S.]
JOHN POLLOCK, [L. S.]
ROBT. MITCHELL, [L. S.]
SAMUEL SLOAN. [L. S.]

Received on the day of the date of the foregoing article, $6 75, in part of the consideration money.

ROBERT LEASON.

Witness present,
JAMES ANDERSON.

Venango County, ss.

Personally appeared before me, a Justice of the Peace in and for said county, Robert Leason, Samuel Eakin, James Scott, John Pollock, and Samuel Sloan, the aforesaid signers, and acknowledged the foregoing instrument of writing to be their act and deed, and that as such may be entered on record. Taken and acknowledged the 24th day of June, 1833, before me,

ROBERT MITCHELL, [L. S.]

To all whom it may concern: I do hereby certify, that about the year one thousand eght hundred and two, I sold the said meeting house lot, though not altogether in the same shape now agreed on, to the then Trustees of the same congregation, and signed an article for the same, which article is now lost or mislaid, or cannot now be obtained, and to secure the said congregation of Unity, I now sign the aforesaid article.

Witness my hand, the 24th day of June, 1833.

ROBERT LEASON, [L. S.]

Witness present,
JAMES ANDERSON.

The 27th February, 1807.—Then received eight dollars on the within described lot, by settlement with Robert Leason, for four years stipends due Mr. McClintock, for which I receipted to said Irwin on lot.

I do certify the above to be correct.

ROBERT LEASON.

This 1st July, 1833.

ATTEST, JOHN JAMISON.

September 23d, 1836.—Received of Samuel Eakin, Trustee of Unity congregation, seven dollars and fifty cents in full on the within article, by me,

ROBERT LEASON.

ATTEST, JOHN JAMISON.

Butler County.

Recorded in the office for Recording Deeds in and for said county, in Book "J," pages 481 and 482.

Given under my hand and the seal of said office, at Butler, this 27th day of September, A. D., 1836.

JOHN WELSH, *Recorder.*

ARGUMENT FOR THE APPELLEES.

The opinion of the Court below embracing a very full argument of the case, it is only considered necessary to add a brief reply to the argument of appellant's counsel.

The answer to the fourth interrogatory in Plaintiff's Bill, admits that before the union Unity Congregation belonged to the Associate Church, and was connected with the Associate Synod of North America, and that its ecclesiastical connection with the United Presbyterian Church since the union, was by virtue of the action of Synod, uniting the churches. (See appendix to Appellees' Paper Book, where answers to 4th and 5th interrogatories are printed.)

It is not true as stated in the answer to the bill, that the petitioners were expelled from ecclesiastical connection with Unity congregation, or had withdrawn from the same, although some did not attend public worship on account of objections against Rev. W. Black, the minister. Suspension from church privileges is not expulsion from membership, and consequent extinction of civil right Suspension is merely a deprivation of church privileges—such as communion and kindred benefits for the time being, but is not a dissolution of membership, and therefore the civil rights which attach to membership remain.

Appellants are in error in alledging that any part of the purchase money to Leason was paid by members of the United Presbyterian Church as such, as the proof and statement, page 8, Appellant's Paper Book, show that the entire purchase money was paid to Leason in 1836, twenty-two years before the United Presbyterian Church existed.

The second section of the answer of respondents admits that the Associate Synod of North America, a separate and independent ecclesiastical organization until the union in 1858, thereby became merged and lost its identity as such. (See

Appendix to Appellees' Paper Book, where second section of respondents' answer is printed.)

So far as respondents' answer and Appellants' argument seem to imply that the "basis of union" was adopted by Unity *Congregation*, the answer and argument. see Appellants statement, 9th page, 3d paragraph. "The basis was simply read from the pulpit, for information; but no formal meeting or election was held by the congregation to act upon the basis," and neither a majority or minority of the congregation did by vote. election. or other public expression, ever approve the said basis of union.

So far as the "answer" denies forcible possession, it is in error. See proof, and if true, amounts to nothing, as the church is used by the majority of the congregation as United Presbyterian, and its pulpit filled under the authority of that church, which is a misuser and a violation of the grant.

Statute 33d, of Henry VIII, chapter 27, referred to in appellants argument, page 29, is not in force in Pennsylvania. See report of Judges, and Roberts' Digest. Therefore this statute making unanimous consent necessary, as referred to by appellants, (same place in Paper Book,) is not in force in Pennsylvania.

The Act of April 26, 1855, Pamphlet Laws, 330, referred to by appellants' paper book, page 29, chapter 2, is in restraint of the power of the clergy over the property of the church; and so far as it is an enabling act authorizing a majority of the male members to declare the purposes of the trust, whenever not previously declared, it prohibits any diversion of the property from the purposes, uses and trusts to which it had before been lawfully dedicated, and is especially directed against the power of the clergy to control the property of the church, as is contended for by the appellants in the act of union of 1858, which, if having the effect now contended for, would be a direct control and transfer of church property by the clergy, and that, too, into a new church never contemplated by the owners of the property and enjoyers of the trust.

It is not denied that at Common Law a majority of the members of an unincorporated association may decide and control in all those matters within their legitimate sphere; but this does not extend to those acts which violate the constitution of the body, or the trusts upon which it is founded.

The argument of the appellants seems to be founded on the position that by the terms of the grant of 1803, confirmed by that of 1833, certain rights of property were invested in persons who composed the congregation as individuals, and that having this right vested in them as individuals, it cannot be forfeited through any change of opinion or sentiment, and that upon any division or rupture of the body or congregation, these rights of property must be compensated for in equity, because of their being supposed to be vested and indefeasible; and it seems to be further supposed that because the trust rests in parol and is not expressed in writing, it is not fixed or certain and may be the subject of control by a majority of the members. But the whole argument is founded upon an erroneous supposition; the trust was not declared for individuals nominatum, but was vested in trustees for the use of the congregation under the charge of the Rev. McClintock—it is admitted by the respondents themselves in their answer to the 4th and 5th interrogatories of the bill, as well as distinctly shown in the proof that this was a congregation of Seceders in connection with the Associate Synod of North America. The character of those therefore who were to participate in the trust (though shown by parol) is as clearly fixed as though it it had been specifically declared by writing. The authority of the decision of Lord Eldon, in Attorney General vs. Pearson, 3 Merrivale, 353, and the authority of Presbyterian Congregation vs. Johnston, 1st Watts & Sergeant, 38; has not been overturned by any authority on the part of the appellant. The authority of these cases, as well as the reason of the thing, proves that the nature of the worship to be advanced by the trust, must be gathered from the usage of the congregation and the duty of the court to administer the trust accordingly. It is clear, therefore, that the rights of the members of this congregation depend upon the character thus stamped upon the trust—it is therefore membership in a congregation of Seceders that vests in the individual his right to participate in the trust—his right of property is not, therefore, vested in him as a person, individually, independent of this membership. Individually, he is neither named nor described in the grant, and therefore as such can claim no participation in the trust. It is because he is a member not of a body of persons merely,

but of a congregation of Seceders, that he is permitted to participate therein. If his right in the trust property were personal and fixed, the position of the appellant that he could not be ousted therefrom by changes of opinion or sentiment, or deprived thereof without compensation, might be conceded; but his rights here being conditional and dependent upon his ecclesiastical connection are not fixed, and the moment he departs from that connection his hold upon the property is lost. As long as there is a congregation of Seceders there, and a membership to enjoy the trust, the trust must remain with them. It would be manifest that if a member of this congregetion were to connect himself with another congregation, thongh they might be of the same faith, he would lose his participancy in the trust. This proves that his right is not personal and fixed, but conditional and dependant upon his membership in this congregation.

The congregation being a congregation of Seceders, their bond of union as a congregation being founded in the principles of the Associate Church, his departure from these principles clearly separates him from the congregation and disconnects him from the trust.

The rights of a member of an unincorporated religious congregation or body, differ very much from those of a tenant in common or a stockholder in a corporation. The whole argument of the appellant is founded in a misconception of this, and his authorities, in a great measure, have reference to persons in the latter class. The title to the property in the former case is vested in Trustees, as they are called; but the trust is not of that character which vests an estate in the member of the congregation. He has no transmissible rights of property. He cannot sell and make title to the property. It does not descend to his heirs at law or pass to his personal representatives. The trust for him is merely a right to permit him to enjoy the privileges attached to his membership in the congregation. It does not make any difference that he paid a part of the purchase money or participated in the improvements. This he does not as an owner of the property, but as a member of the congregation. The consideration is not that he shall have an estate in the premises. By his own assent to the purchase, the title is not in trust for him personally or individually, but is invested in others to carry out

the purpose of religious worship. It is this which he participates in and not the title. He has an interest in the property, that is in its use only as ancillary to this purpose. If the purpose be abandoned the right ceases. Having no estate in the thing itself, he can enjoy it only so far as he retains his connection with the purposes of its use. Now this is the very thing which the nature of the religious worship established there governs. If the property was given to be possessed by him as a Seceder, for the religious worship of Seceders, it is his connection with this worship which establishes his right of enjoyment as a participant in that mode of worship. It is well settled that a trust in real estate itself can be established by parol, and much more clearly can the mere nature of the worship, which is the object of the trust, be established by parol, when the general trust is already declared in the writing.

The positions have been met by no adverse authorities cited in the appellant's argument. The member of the congregation having no estate, legal or equitable, in the property, no right in law or equity which is transmissible by alienation, descent or succession, but only a modified right of enjoyment of it as ancillary to the worship there performed, his rights are of a fixed or personal character, only so far as he is a member of the society for whose peculiar nature and form of worship the trust exists.

Membership in the religious body for whose use the trust exists is clearly, therefore, the condition upon which the rights of the persons composing the congregation depend, and this membership itself depends on the common bond or ligament which holds the society together, and that is the nature of the worship for the promotion of which the property was obtained. This is the common tie which connects individual with individual, and like a golden thread running throughout the whole, binds them in one body and congregates them together. What is that common tie in this case? Secederism, connection with the Associate Church. This is the worship for whose benefit the trust exists, and membership in this church is therefore the criterion of right. Nor can a member be transferred, without his consent, to another church, or be compelled to engage in a worship of a different nature. This is a personal right affecting his conscience, and

not a mere matter of ecclesiastical jurisdiction within the church to which he belongs. There may be a right to govern him in the church of his choice, but not to carry him over by resolutions of Synods into one that is not so.

The right of the majority to control is dependent on this same principle. It is not denied that as to matters within the scope of the trust the majority may govern, but it must be a majority of those interested in the purposes of the trust. While they are Seceders, while they continue in the same worship for which the trust was established, they can unquestionably control the affairs of the congregation. But abandonment of this worship immediately severs them from the power of control. They cannot go into a new church, become the subjects of a different bond of union, and still ask to control the worship established in the place deserted by them. This brings them into direct conflict with the consciences of those who remain under the old bond. The ligament which connected them to those who remain true to their ancient faith, is severed by their departure into a new worship. They have no longer that tie which drags with it the subjects of their former authority. The power to control is gone with the rupture of the common cord.

Nothing can be clearer than this, that those who have gone into a new church cannot devote the property to a worship of a different nature, and thereby divert it from the purposes of the trust. It is only by assuming that the majority has a personal estate and interest in the property itself that this construction is reached.

The argument of appellant, Paper Book, page 36, Sec. 2, "That this was a grant for a consideration, in which title passed absolutely to the grantees, and is therefore unlike the grants relied upon mainly by the court below in which the founders imposed the limitation in a gratuitous grant, giving a right of forfeiture for its non-observance," is founded in error as shown by the foregoing. The title of the member of the congregation in this instance has been shown to be not absolute but conditional; besides the cases relied upon by the court below, are not cases of conflict between the founder and the persons claiming the trust, but of conflict between separate portions of the claimants themselves as to which shall enjoy the trust. Nor is it material whether the grant was

gratuitous, or for a consideration, for in all these cases, as in this, the controversy concerned not the grantor, but the claimants of the trust; and the question was, in every instance, which party among the claimants of the trust should enjoy it.

It is manifest that the deed made by Leason in 1859, long after his interest in the property had ceased, except the dry legal title which he held as trustee, for those entitled under his contract, could legally convey no title inconsistent with his prior contract, and it is also manifest that the incorporation of that portion which has gone into the United Presbyterian, could vest in them no greater rights under the trust than they before had. It follows that neither the deed nor the Act of the Legislature can in anywise affect the case. Both were acts subsequent to the union of the churches producing the division in the congregation.

The court in this case has not undertaken to interfere in matters of ecclesiastical faith, upon which the judgment of an ecclesiastical court has been pronounced. The union of two churches, distinct and independent in name, standards and church government, is not the decision of an ecclesiastical court of a case within its jurisdiction. It may be conceded that where an ecclesiastical tribunal has decided upon a matter within its proper jurisdiction, as for instance, that an act done is an offence against the word of God or the discipline of the church, its decisions are conclusive, and will not be re-examined by the civil courts. But a union of such distinct churches which merges one into a new body, destroys its identity, extinguishes its name, amalgamates it with a new and adverse element, changes some of its fundamental doctrines or acts, and severs it from its ancient traditions and history, is not the judgment of an ecclesiastical court upon a matter within its jurisdiction. However a member of a church body may be subject to the jurisdiction of his own ecclesiastical court, in the exercise of its discipline and government upon him, he is not the subject of transfer into a new jurisdiction belonging to a new body, and however the most learned and able members of the new church may look upon its adherence to or departure from the faith of either of the bodies of which it is composed, their discussions and opinions upon this point do not and cannot constitute a judgment of an ecclesiastical body. They are but opinions upon the pro-

priety of union, and the question of the effect of union upon the civil rights of members, must necessarily be determined by the courts of law. It is not within the jurisdiction of an ecclesiastical tribunal in this country, to say to a man that he shall belong to any one particular church, or that he shall have any church connection. This is a matter of conscience with the individual. How then can an act of union transfer the member of the Associate Church, without his consent, into the United Presbyterian Church, and how can this union be considered the judicial act or judgment of a competent ecclesiastical tribunal, which the member is bound to obey, under the penalty of a forfeiture of his rights of property in the building known to him as the Associate Church. This not to be the subject of review by a civil court, would be to permit injustice to be done while the law lay silent. The act of union was not the judgment of an ecclesiastical jurisdiction within the scope of its authority, but was an attempt at self destruction which could only involve those who attempted it, and was, by its very nature, the exercise of a power foreign and unknown to the ecclesiastical organization itself.

The right of divine worship and interpreting the Scriptures is fundamental; belonging to every citizen, and secured to him by the bill of rights in the Constitution, Article 9th, Sec. 3d, "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences, no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship." His right to consort with others agreeing with him in the same scriptural belief, in the exercise of the same species of divine worship, is a corollary from this proposition. This difference of interpretation, belief and worship, separates men into denominations or churches as commonly called. The right not only to be, but to remain a Seceder, a Methodist, a Presbyterian or a Catholic, is constitutional and inviolable. It is a sacred right also, because founded in conscience, of which the Almighty is the only Arbiter or Judge, and not the subject of either civil or ecclesiastical control.

Organized denominations or churches have their forms of Government and judicatories, Episcopal, Presbyterian or Congregational, which forms and judicatories are established for the preservation and regulation of the particular kind of divine worship the people composing the denomination have assented and agreed to, and they stand as conservatories of these principles and doctrines. Whatever powers they exercise, legislative or judicial, they do so for this purpose, and in subordination to the fundamental rights of those who compose the denomination or church.

It is a clear deduction from this fundamental right of the people to enjoy religious convictions, and worship in security without being compelled to attend or support any place of worship or maintain any ministry against their consent, that the powers of the legislative and judicial bodies of the church, established for their preservation and regulation, cannot be exercised for their change or destruction. They cannot therefore destroy or change the identity of the denomination or church, so that its members cannot any longer find in it the same association or body which was the depository and conservatory of their doctrines, worship and government, nor can they change the doctrines worship and government. In short they can do nothing which reaches and destroys, or changes substantially, anything fundamental; that is, they cannot do it so as to act compulsively upon the members, whose right to enjoy these convictions of conscience is inviolable, and who may follow, or not, the church judicatory into the new relation, as they may elect. Hence a church court, whether acting legislatively or otherwise, cannot compulsorily unite different denominations into one. A man cannot be made a Seceder, an Associate Reformed, or a Presbyterian, without his consent. It makes no difference whether the act of union carries him clear over into the doctrines, worship, and government of the other, or divides them so to require him to accept them in part, his right is to remain intact and he is not bound to accept either a total or a partial transformation.

The act of union with a different denomination, whereby the church becomes merged in a new body, is beyond the jurisdiction of the church legislative or judicatory, and is therefore void as to those who do not elect to follow. This

furnishes the distinguishing criterion of the civil jurisdiction. The civil tribunals are bound by the acts of a church judicatory, within the scope of its powers, but not bound by them when outside of its jurisdiction. If the acts of the church judicatories were conclusive in all cases, the citizen would be without remedy for injuries to his civil rights, wherever those rights are interwoven with his religious opinions, as in every case of a civil trust for a religious use. The property which he buys for the enjoyment of his peculiar worship, might be taken from him by the act of the church body which carries him into a new relation. For if the church decision be that the relation is not new, or is within the scope of its power to dictate, and the decision be conclusive, he must follow the church movement or resign his right of property. But his fundamental and constitutional right of conscience demands redress at the hands of the law, and the civil tribunal must necessarily decide whether the act of the church judicatories is beyond the scope of its powers, by determining whether the change is a departure in doctrine, worship or government, and whether it introduces the member into a different relation from that which he before held. The civil right being dependent on the church relation, the civil tribunal must necessarily take cognizance of this relation in establishing the civil right.

Adherence to Secederism then being the test, as in the language of the court below, and of all the authorities cited by the court, let us see whether (as the appellants maintain) it be true "That the basis of union involves no departure from the faith and discipline of the Associate Church." That by the act of union the Associate Church was deprived of its name, is admitted. The new organization is called the United Presbyterian Church. That by the same act of Union the Associate Church was deprived of its identity, is admitted in respondent's answer, [see paper book of appellant, page 6, chapter 2,] as follows: "That the Associate Synod of North America was a separate and independent ecclesiastical organization, until the time of the union in 1858, by which it then became merged, and lost its identity," &c.

The basis of union, and the act of union itself, having then, as proved and admitted by respondents, attempted the extinction of the name of the Associate Church, and the merging

of its very existence into a new and separate organization, thus destroying its identity, the next thing to which attention is directed, is the discordant elements thus attempted to be merged. The Associate Church had, for many years, borne testimony against the errors of the Associate Reformed Church, and refused to hold communion with its ministry or membership on account of these errors. On the other hand, (quoting from the opinion of the court below,) the Associate Church was denounced in the Testimony of the Reformed Presbytery, "as teachers of false doctrines, as treacherous in covenant, as enemies of the Lord's work, as barefacedly belying the Scriptures as guilty of a most dreadful and deceitful imposition on the generation."

This mutual accusation was either true or it was false; either believed or not believed. If false, no apology has been uttered—no retraction of the charge has been made; if true, the causes of separation still exist; and well may the Seceder, in view of the fearful denunciation of his church referred to above, never retracted, hesitate and refuse to go into a union with the denouncing element, and say that it would involve a departure from the Narrative and declaration, Act and Testimony of his church, which his conscience would not permit him to make, and which could not be forced upon him by others.

The act of union also involved a departure from the government of the Associate Church, in that it introduced a governing body called a subordinate Synod, unknown to the government of the Associate Church. See testimony of Rev. McAuley, appellants paper book, page 44, and Church Memorial U. P. Church, page 137, 4th resolution, as follows: "*Resolved*, That there shall be subordinate synods, and these shall be the same as those now existing in the Associate Reformed Church; to which synods the different Presbyteries in the Associate Church shall attach themselves for the present," &c. Also 5th resolution: "*Resolved*, That the general and subordinate synods shall be regulated by the rules presently in force in the Associate Reformed Church, until the United Church see fit to alter such rules." Thus not only bringing the member of the Associate Church under a new church authority—to wit, subordinate synods—but also subjecting him to new rules of government therein, to wit: "the rules

presently in force in the Associate Reformed Church," the church of his former special dislike.

The two synods that formed the basis and consummated the act of union, were well aware of the odium which attached to it, as already shown and the departure from faith and practice it further involved; for, in view of this, they passed what may be called a Tolerating Act, with a penal clause attached. See joint action of synods on Union, 1858, Church Memorial, page 137, preamble to resolutions: "*Whereas*, It is understood that the testimony submitted to the General Synod of the Associate Reformed Church by the Associate Synod, was proposed and accepted as a term of Communion, on the adoption of which the union of the two churches was to be consummated; and, whereas, it is agreed between the two churches that the forbearance in love which is required by the law of God, will be exercised towards any brethren who may not be able fully to subscribe the standards of the United Church, while they do not determinedly oppose them," &c. Which preamble is founded on the "Action of the General Synod of the Associate Reformed Church on Union, 1857;" and "Additional Action of the Associate Synod on Union, 1858." See Church Memorial, pages 135 and 6, and Appendix to this paper book, where same are printed.

In view of this action alone, a Seceder may well inquire—Why, if there be no departure from the faith, practice and standards of my church in this basis of union, is it necessary, in the language of the Associate Reformed Synod, "to harmonize said basis with the faith and practice" of my church? and why necessary for me to accept it "in the confidence that any modifications or amendments necessary to so harmonize it, would be in due time effected by the United Church"? and why, if nothing were wrong, express "confidence that reasonable forbearance would be exercised towards any member of either body that may feel constrained to dissent from any article in this basis"? The whole thing, upon its face, shows that the basis of Union involved a serious departure from the faith and practice of the Associate Church, and might justly be made the subject of complaint by any one who declined to go into the union. It was evidently a yielding up of doctrine, faith, tenets and peculiarities which had a deep hold upon the conscientious convictions of individuals

for the sake of union, and therefore required toleration and forbearance, except, as in the language of the resolution of one Synod, that no one was to be "permitted to teach or act in opposition to the doctrine of the United Church."

The very language of the basis itself was calculated to put the member of the Associate Church upon his guard against the errors of doctrine and departures from faith and practice introduced. That these are numerous, a reference to the testimony of Rev. M'Auley, the Narrative, Declaration and Testimony, an Act concerning Public Covenanting, an Act concerning Admission, and an Act concerning Ordination Vows of the Associate Church, the Westminster Confession of Faith, Larger and Shorter Catechisms, &c., and Church Memorial of United Presbyterian Church, all of which were in evidence in the court below, will abundantly show.

Rev. M'Auley, in his testimony, gives some of the reasons of those who did not go into the union:

1st. The alteration of the Confession of Faith, in chapters 20, 23, and 31, by those forming the union. See Confession of Faith, pages 105, 6, 7, 8, 9 and 10. By a reference to these chapters it will be seen that the subject treated of is "Christian Liberty and Liberty of Conscience." This, without the comment and illustration, extends over six pages, and contains matter of which every word of the text is alleged by the Seceder to be important; every word of which his church has born testimony to as of vital importance as matter of faith and practice.

How is this subject treated in the Church Memorial, the standard of the United Presbyterian Church, into which it is professedly adopted? In the Memorial, page 112, Art. 13, it is styled "Of the Supremacy of God's Law;" and the text contains just five lines which cannot and do not comprehend even the merest substance of the original, as found in the Confession of Faith. Has not the Seceder a perfect right to maintain, that the beauty, strength and power of this chapter, as found in his Confession of Faith, are marred and destroyed by this alteration?

Passing here the second reason given by Mr. M'Auley, which has been fully dwelt upon in the learned opinion of the court below, and somewhat in this argument, let us take up his third reason, to wit: "The laying aside, by the united

body of the formula of questions proposed to ministers and elders at their ordination"—commonly called Ordination Vows. In the Narrative, &c., of the Associate Church, book marked by the Examiner "B," page 174, these questions are put to ministers and elders at their ordination :

Question 2d, Do you believe and acknowledge the whole doctrine of the Confession of Faith, and Catechisms, larger and shorter, agreed upon by the Assembly of Divines at Westminster, with Commissioners from the Church of Scotland, *as they are received in the Declaration and Testimony, published in the year* 1784 *by the Associate Presbytery of Pennsylvania, now the Associate Synod of North America,* to be the doctrine taught in the Word of God, and are you resolved to maintain this as the confession of your faith against all contrary opinions ?

Question 4th, Do you adhere *to the Declaration and Testimony of the Associate Synod of North America* for the doctrine and order of the Church of Christ, &c, ? See question.

Question 5th, Do you acknowledge the perpetual obligation of the Solemn Covenant Engagements we in this church are under, as these have been explained in the Declaration and Testimony of the Associate Synod of North America, &c. ? See question.

These questions, together with others in this formula, are not put to the ministers and elders of the United Presbyterian Church ; they can nowhere be found in its standards, and the subject matter of the questions themselves is totally inconsistent with and repugnant to its organization. How can the Seceder, who has thus sworn that he believes and acknowledges the whole doctrine of the Confession of Faith, Catechisms, &c., as these are received in the Declaration and Testimony published by the Associate Presbytery of Pennsylvania, now the Associate Synod of North America, &c., and has further bound himself, as in questions 4 and 5, be asked to forswear himself and violate his solemn ordination vows by going into the United Presbyterian Church, which has repudiated the Declaration and Testimony of the Associate Synod of North America, the expounder to him of Confession of Faith, Catechisms, Solemn Covenant Obligations, and all his other church duties and obligations ?

Rev, M'Auley gives as a sixth reason, "We do not consider the article framed by the United body as faithful in regard to Psalmody."

The article on Psalmody, Church Memorial U. P. Church, page 128, Art. 18, is this: "We declare that it is the will of God that the songs contained in the book of Psalms be sung in His worship, both public and private, to the end of the world; and in singing God's praise, these songs should be employed to the devotional compositions of uninspired men." Here the subject is treated of in a few lines, and it is said "these songs should be;" with the Seceder it is "must be," not "should be." Turning to the Narrative of the Associate Church, pages 121, 2, 3 and 4, we find the subject treated of faithfully and at length. The whole chapter is too lengthy to introduce into the argument bodily; suffice it to say, that among other objections, the Seceder objects to the chapter on Psalmody in the new body, as permitting other parts of the Holy Scriptures than the Psalms to be paraphrased and sung in the public and private worship of God, while he has been taught to believe, and his church has so held, that no part of the same can be so used but the Psalms proper—or, as they are called, the Psalms of David. This difference to the Seceder is vital. He has been known to be peculiar and rigid on the subject of Psalmody, and he conscientiously desires to remain so. As to the reason of the Rev. M'Auley, "We object to the article of the United body on Communion, book 'C,' page 73, as indefinite and seeming to allow occasional deviations from the practice of close communion," it will be observed by reference to the Narrative, &c., of the Associate Church, book marked by Examiner "B," page 167, "Act of the Associate Presbytery of Pennsylvania, concerning the admission of church members to communion, passed at Philadelphia, April 28, 1791," the 2d rule is as follows: "That the profession of the faith required of those who desire communion with us, shall be an adherence to the Westminster Confession of Faith, Larger and Shorter Catechisms, Form of Presbyterial Church Government, and Directory for the public worship of God, as these are received and witnessed for by us in our Declaration and Testimony, and also that they profess their approbation of the said Declaration and Testimony for the Doctrine and Order of the Church of

Christ." The Church Memorial, page 119, under the head of "Communion," makes no such requisition as contained in the above, which is direct, plain and positive in its terms, and cannot be mistaken. The rule of the Associate Church requires that no one shall be admitted into communion unless he adheres to the Westminster Confession of Faith, Larger and Shorter Catechisms, Form of Presbyterial Church Government, and Directory for the Public Worship of God, *as they are received and witnessed for by the Associate Church*, and also that the person profess his approbation of the said *Declaration and Testimony of the Associate Church*. What does the article on Communion, Church Memorial, page 119, say? "We declare that the church *should not* extend communion, in sealing ordinances, to those who refuse adherence to her profession or subjection to her government and discipline, or who refuse to forsake a communion which is inconsistent with the profession that she makes; nor *should* communion in any ordinance of worship be held under such circumstances as would be inconsistent with the keeping of these ordinances pure and entire, or so as to give countenance to any corruption of the doctrines and institutions. Is this like the requirement set forth in the Associate rules? Does it even bear any resemblance to them? Certainly not. Then how can the member of the Associate Church enter into communion with the new church, whose requirements in this respect are so very vague and indefinite? For these and other reasons of departure, the Rev. M'Auley swears that he cannot "give in his adhesion to the United body without a violation of his faith and conscience and his ordination vows;" nor does he, in so swearing, seem to have fallen into any mistake, as argued by the counsel for appellant.

The reason given by Mr. M'Auley, and the departures mentioned by him, are too numerous to be further entered into in detail in this argument. The case being one of great importance, involving, as it does, not only rights of property, but rights of conscience also, the mind of the court will, no doubt, of its own suggestion, be directed to these important points more fully than the limits of this argument will admit. They are, therefore, respectfully referred, as bearing on this point, to "The Reasons for Perpetuating the Organization of the Associate Synod of North America, notwithstanding the

union of portions of the Associate and Associate Reformed Churches in 1858," published in Xenia, Ohio, in 1859; which, to say the least of it, is certainly a dignified and able vindication of their conduct in refusing to go into the union. The question, then, as presented to the court, is loss of name and identity, merger, and departure from faith and practice, doctrine and discipline, of the respondents from the Associate Church, and the consequent loss of interest in the church property. A question like this was presented to the Chancellor of New Jersey, in the case of the Associate Reformed Church vs. The Trustees of the Theological Seminary, 3 Greene Ch. R. 79. The General Synod of the Associate Reformed Church, in 1822, formed a union with the General Assembly of the Presbyterian Church, by which it surrendered its separate existence and became merged in the latter body. This involved the transfer of the Library and funds of the Seminary, which was under its charge, and was not then incorporated. There was a considerable portion of the Associate Reformed Church, who, refusing to become connected with the Presbyterian Church, remained adhering to their peculiar tenets and their separate organization. They constituted, of necessity, the Associate Reformed Synod, if that body any longer existed, and they proceeded by bill against the Princetom Seminary, to whom their church property had been transferred. The Chancellor of New Jersey held that the surrender of the majority of the Asssociate Reformed Synod, although it might have the effect of merging them in the Presbyterian Church, did not put an end to the body which they left, if there remained any constituents to form and reproduce, or, rather, continue that body. He held, also, that it was a breach of trust to devote the property, which had been contributed for the supply of the ministry of the Associate Reformed Church, to the use of another denomination; and on these grounds he administered the relief sought. How can the result be different here?

APPENDIX OF APPELLE.

ARTICLE OF AGREEMENT,

Between Robert Leason, James Scott, and Reuben Irwin, dated 8th July, 1803:

THIS INDENTURE, made this eighth day of July, in the year of our Lord one thousand, eight hundred and three, between

ROBERT LEASON, of the one part, and JAMES SCOTT and REUBEN IRWIN, Trustees for the Reverend Mr. McClintock's congregation, all of Slippery Rock township, Butler county, and Commonwealth of Pennsylvania, witnesseth, that for and in consideration of Eight Dollars per acre, the said Robert Leason hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said James Scott and Reuben Irwin, Trustees, two acres of land, being part of that tract or parcel of land now in tenure and occupied by said Robert Leason, including the Meeting House and Spring near it, for the proper use and behoof of the Congregation, to have and to hold forever, for which two acres of land the said Robert Leason obliges himself to make a good and sufficient Deed unto the said James Scott and Reuben Irwin, Trustees, for and in behalf of the Congregation, at which time the said Trustees shall pay unto the said Robert Leason, his heirs, executors or administrators, the above mentioned sum of Eight Dollars per acre, or the full sum of Sixteen Dollars, and the said Robert Leason, for himself and his heirs, the said two acres of land against him, his heirs and assigns, and against every other person and persons whatsoever, to the said James Scott and Reuben Irwin, for the use of the said Congregation, and to the said Congregation shall warrant and forever defend by these presents. In witness whereof, the said parties have hereunto set their hands and seals the day and year above written.

Witness present,
JOHN POLLOCK.

ROBERT LEASON, [L. S.]
JAMES SCOTT, [L. S.]
REUBEN IRWIN, [L. S.]

Filed, March 30, 1861.
ALLEN WILSON, *Prothonotary.*

Respondents answer to 4th and 5th interrogatories of plaintiff—

"That the Associate Synod of North America was a separate and independent ecclesiastical organization until the time of the Union, in 1858, between the Associate Church and the Associate Reformed Church, by which said union the former became merged and lost its identity as such."

"Prior to the union, Unity congregation belonged to the Associate Church, and was connected with the Associate

Synod of North America, but since the union the said congregation is ecclesiastically connected with the United Presbyterian Church, by virtue of the action of the Synods uniting the churches."

"At the time of the union, Unity congregation was connected with the Presbytery of Shenango."

ACTION OF THE ASSOCIATE CHURCH ON UNION, AND ALSO ACTION OF ASSOCIATE REFORMED CHURCH ON UNION; ALSO JOINT ACTION OF THE ASSOCIATE AND ASSOCIATE REFORMED SYNODS ON UNION, 1858, COMMENCING ON PAGE 134, CHURCH MEMORIAL, AND ENDING ON PAGE 138.

VI.—ACTION OF THE ASSOCIATE CHURCH ON UNION, 1857.

The Testimony having been overtured to the Presbyteries for their consideratian, and the reports having been read, the committee to whom this subject was referred, presented the following report, which was adopted:

WHEREAS, A large majority of the Presbyteries are in favor of adopting, even though no amendments; we therefore recommend the adoption of the following resolutions:

1. *Resolved*, That the Basis which has been in overture be, and hereby is, adopted as a Basis of Union with the Associate Reformed Church: the declarations without amendment, and the argument and illustration in their amended form, as a useful guide to the meaning of the declarations.

2. *Resolved*, That it be transmitted to the Associate Reformed Synod for their concurrence.

3. *Resolved*, That Drs. Cooper and Patterson, and Mr. James McCandless, be appointed delegates to the Associate Reformed General Synod, to convey to them the results at which this Synod has arrived.

ACTION OF THE GENERAL SYNOD OF THE ASSOCIATE REFORMED CHURCH ON UNION, 1857.

WHEREAS, The consummation of a union of the Associate and the Associate Reformed Presbyterian Churches, is a high duty, and of great importance to the maintenance of the peculiar principles held in common by these churches; and, whereas, the Testimony proposed to us by the Associate Church as a Basis of Union, contains no principle which is not expressly embodied in the standards of the Associate Re-

formed Church, or has in some form received her sanction; and, whereas, it is not doubted that the wisdom of the United Church will effect any modification of the Form of Church Government, or the Directory for Worship of the Westminster Standards, necessary to harmonize them with the common faith and practice of the two churches, or any desirable modification of the formula of questions to applicants; and, whereas, a majority of the Presbyteries of the Associate Reformed Church, have declared themselves in favor of receiving the Basis as it is, rather than to fail of obtaining this Union; and, whereas, it is believed that the great mass of the people in both of these churches anxiously desire it, and that their spiritual interests urgently require its speedy consummation; and, whereas, finally, it is to be feared that, if the present overture should be rejected, the accomplishment of this object will be long postponed, and the heart burnings and contentions between these churches, in former years, be to some extend revived, and similar evils be produced among ourselves; therefore,

1. *Resolved*,, That the Associate Reformed Church does hereby declare her acceptance of the Testimony proposed as a basis of Union by the Associate Synod, and overtured by the General Synod of 1856 to the Presbyteries, in the confidence that any modifications or amendments necessary to harmonize said basis with the faith and practice held in common by the two churches, or render it more entirely acceptable, will be, in due time, effected by the united church; and in the confidence that reasonable forbearance will be exercised toward any member of either body that may feel constrained to dissent from any article in this basis.

2. *Resolved*, That a committee of one minister from each subordinate Synod be appointed to communicate this action to the Associate Synod, and in conjunction with a similar committee of that Synod, if it shall see proper to appoint one, to agree upon and recommend the necessary measures for the immediate consummation of this union.

WM. FINDLEY,
M. McKINSTRY.

The committee contemplated in the second resolution is composed of the following persons, viz: Rev. Messrs J. T.

Pressly, D. D., S. C. Baldridge, Samuel Millen, George C. Arnold, and William Findley.

Additional Action of the Associate Synod on Union, 1857.

The report of the delegates on union was taken up, and the following preamble and resolutions were adopted unanimously:

Whereas, The General Synod of the Associate Reformed Church has accepted the Basis which has been in overture as a Basis of Union; and whereas, they have repeatedly reaffirmed that the doctrines contained in this Testimony are those to which they adhere; and whereas, we believe the time has arrived, in the good providence of God, when the unhappy division which has long separated these sister churches should be healed; therefore,

1. *Resolved*, That we cordially reciprocate the confidence expressed by these brethren respecting mutual forbearance: it being distinctly understood that, under the plea of reasonable forbearance, no one be permitted to teach or to act in opposition to the doctrine and order of the United Church.

2. *Resolved*, That a committee of five be appointed by this Synod to act conjointly with any committee of the Associate Reformed Synod, and empowered to make all necessary arrangements as to time, place, manner, for the final consummation of this union.

3. *Resolved*, That we have great reason to express our gratitude to God, who has led these churches to such a happy result in their efforts for Union.

Drs. Cooper, Rodgers, Patterson, Beveridge, and Hanna, were appointed the committee contemplated in the second resolution.

VII.—Joint Action of the Associate and Associate Reformed Synods on Union, 1858.

Resolutions on the subject of union.

Whereas, It is understood that the Testimony submitted to the General Synod of the Associate Reformed Church by the Associate Synod, was proposed and accepted as a term of communion, on the adoption of which the union of the two churches was to be consummated; and, whereas, it is

agreed between the two churches that the forbearance in love, which is required by the law of God, will be exercised towards any brethren, who may not be able fully to subscribe the standards of the United Church, while they do not determinedly oppose them, but follow the things which make for peace, and things wherewith one may edify another :

1. *Resolved,* That these churches, when united, shall be called the "United Presbyterian Church of North America."

2. *Resolved,* That the respective Presbyteries of these churches shall remain as at present constituted until otherwise ordered, as convenience shall suggest.

3. *Resolved,* That the Supreme Court of this church shall be a General Assembly, to meet annually, to be composed of delegates from the respective Presbyteries, the number of delegates to be according to the proportion of the members constituting each Presbytery, as now fixed by the rules of the Associate Reformed Church, until a change shall be found expedient.

4. *Resolved,* That there shall be subordinate Synods, and these shall be the same as those now existing in the Associate Reformed Church, to which Synods the different Presbyteries in the Associate Church shall attach themselves for the present, according to their location, provided that the separate Synods and Presbyteries of the said Associate Reformed and Associate churches shall also continue as at present constituted, until otherwise directed.

5. *Resolved,* That the General and subordinate Synods shall be regulated according to the rules presently in force in the Associate Reformed Church, until the United Church shall see fit to alter such rules.

6. *Resolved,* That the different Boards and Institutions of the respective churches shall not be affected by this union, but shall have the control of their funds, and retain all their corporate or other rights and privileges, until the interests of the church shall require a change.

7. *Resolved,* That these and other regulations found necessary, being agreed upon by the respective Synods at the present meeting in the city of Allegheny, the two Synods shall meet at such a place as shall mutually be agreed upon, and after addresses by Dr. Rodgers, Dr. Pressly, Rev. Mr. Smart, and Rev. Mr. Prestley, be constituted with prayer by

the senior Moderator, after which a Moderator and Clerk shall be chosen by the United Church.

ACT OF THE ASSOCIATE PRESBYTERY OF PENNSYLVANIA, CONCERNING THE ADMISSION OF CHURCH MEMBERS TO COMMUNION, PASSED AT PHILADELPHIA, APRIL 28th 1791.

The Presbytery having taken into their serious consideration a petition some time ago laid before them, requesting a more particular direction about the way in which ministers and sessions ought to proceed in the admission of such as apply to them for being received into church fellowship:

Declare, that though there is so much said in our Declaration and Testimony, as may, with proper application to particular cases, be sufficient; yet, as far as possible to prevent disorder, and to assist all concerned in this matter, the Presbytery agree to transmit a copy of the following to the several sessions under their inspection:

The general rule of admission to the seals of the covenant, is a profession and a practice agreeable to the Lord's word. More than this none have a right to demand; and if less is accounted sufficient, we act not uprightly in the cause and work of our Lord Jesus Christ, who solemnly charged us to teach his church, "To observe all things whatsoever he has commanded us."

In agreeableness to this general rule, the following particular rules ought to be attended to:

I. That in congregations where there is a session. none ought to be admitted to communion but by the session constituted.

II. That the profession of the faith required of those who desire communion with us, shall be an adherence to the Westminster Confession of Faith, Larger and Shorter Catechisms, Form of Presbyterial Church Government, and Directory for the Public Worship of God, as these are received and witnessed for by us in our Declaration and Testimony; and also that they profess their approbation of the said Declaration and Testimony for the Doctrine and Order of the church of Christ.

III. That they profess their resolution, through grace, to continue in the faith, according to the profession they now make of it, and be subject to the order and discipline of the

house of God; to be diligent in their attendance on public ordinances; to make conscience of secret prayer; of keeping up the worship of God in their families morning and evening, and of promoting the knowledge of Christ and his truths—as by other means, so more especially by a holy and spiritual conversation.

IV. That particular care ought to be taken that none be admitted to sealing ordinances who are scandalous in their lives, or known contemners of any moral duty.

The Presbytery earnestly recommend to sessions, who are courts of Christ's house, to imitate him in condescending to the weakness of his people; and if it appears that persons who apply for admission to sealing ordinances are disposed to use the means of knowledge—are desirous of instruction—closing with the end of our association, according to the measure of their knowledge, and concerned to be kept in the Lord's way; though such persons may be, in many respects, of small attainments and of little knowledge or utterance, yet they are by no means to be excluded from our communion, but rather invited and heartily received, that such promising beginnings may be encouraged.

ATTESTED: WILLIAM MARSHALL, *Moderator*,
JOHN ANDERSON, *Presbytery Cl'k.*

THE ORDINATION VOWS OF THE ASSOCIATE SYNOD OF NORTH AMERICA; OR THE FORMULA OF QUESTIONS TO BE PUT TO MINISTERS AND ELDERS AT THEIR ORDINATION.*

FOR MINISTERS AND ELDERS.

Quest. I. Do you believe the Scriptures of the Old and New Testament to be the word of God, and the only rule of faith and practice?

Quest. II. Do you believe and acknowledge the whole doctrine of the Confession of Faith, and Catechisms, Larger and Shorter, agreed upon by the Assembly of Divines at Westminster, with commissioners from the Church of Scotland, as these are received in the Declaration and Testimony, published in the year 1784, by the Associate Presbytery of Pennsylvania, now the Associate Synod of North America, to be the doctrine taught in the Word of God; and are you re-

* This formula was judicially approved at Philadelphia, November 4th, 1784, by the Associate Presbytery of Pennsylvania, now the Associate Synod of North America.

solved, through the grace of our Lord Jesus Christ, to maintain this as the confession of your faith, against all contrary opinions?

Quest. III. Do you acknowledge Presbyterial Church Government to be of divine institution, and appointed by Jesus Christ, the only King, Head and Lawgiver of the church, to continue in it to the end of time; and do you adhere to the same, as stated in "The Form of Presbyterial Church Government and Ordination of Ministers," agreed upon by the assembly of divines at Westminster, and testified for by us; and are you resolved, by the Lord's assistance, to maintain and defend the same against all contrary opinions?

Quest. IV. Do you adhere to the Declaration and Testimony of the Associate Synod of North America, for the Doctrine and Order of the Church of Christ, and against the errors of the present time? And do you, in your judgment, disapprove the manifold errors and latitudinarian schemes prevailing in these United States, which are condemned in that Declaration and Testimony as contrary to the word of God, to the profession of the faith we make, and to the solemn engagements we in this church are under to continue in that profession?

Quest. V. Do you acknowledge the perpetual obligations of the solemn covenant engagements we in this church are under, as these have been explained in the Declaration and Testimony of the Associate Synod of North America; and are you resolved, through grace, to endeavor faithfulness in adhering to the testimony maintained by the Lord's witnesses for these reformation principles we profess—in contending earnestly for the faith once delivered to the saints, and in attending to all these duties which the Lord in his word has enjoined upon us, and which we in this church are, by these our covenant engagements, bound to perform?

Quest. VI. Do you engage to submit yourself willingly and humbly, in the spirit of meekness, to the admonitions of this Presbytery,* [of the Session of this congregation,†] remembering that while they act uprightly they judge not for men but for the Lord, who is also with them in the judgment; and do you promise that you will endeavor to maintain the

* Since the erection of the Synod, they ordered the following words to be added after "Presbytery;" "as subordinate to the Associate Synod of North America."
† The words enclosed, for elders.

spiritual unity and peace of this church, carefully avoiding every devisive course, neither yielding to those who have made defection from the truth, nor giving yourself up to a detestable neutrality and indifference in the cause of God; but that you will continue steadfast in the profession of the reformation principles maintained by us, and by our brethren of the Associate Synod in Scotland, and do nothing directly or indirectly to destroy our unity with them in the cause and work of God; and this you promise, through grace, notwithstanding any trouble or persecution you may be called to suffer, in studying a faithful discharge of your duty in these matters?

Quest. VII. Do you sincerely aim at having the glory of God, love to our Lord Jesus Christ, and zeal for the edification of his mystical body, for your great motives and chief inducements for entering into the office to which you are now to be set apart, and not any selfish views, or worldly designs or interest?

Quest. VIII. Are you conscious that you have used no undue methods in procuring your call to the office of the holy ministry,* [in this congregation†] [to the office of eldership in this congregation‡]?

Quest. IX. Do you engage, in the strength of our Lord and Master, Jesus Christ, to rule well your own family, [if it should please the Lord to give you one‖], and to live an holy and circumspect life, following after righteousness, godliness, faith, love, patience and meekness?

FOR MINISTERS.

Quest. X. Do you promise, through grace, to perform all the duties of a faithful minister of the gospel, in preaching it, not with enticing words of man's wisdom, but in the purity and simplicity thereof, not ceasing to declare the whole counsel of God; as also in catechising, exhorting from house to house, visiting the sick, and performing whatever other duties are incumbent on you from the word of God, as a faithful minister of Jesus Christ, for the convincing and reclaiming of sinners, and for the edifying of the body of Christ?

* For ministers, ordained without a particular charge.
† For ministers ordained to a particular charge.
‡ For elders.
‖ The enclosed words to be used as there is occasion.

FOR MINISTERS.

Quest. XI. Do you accept of the call given you, to labor as a minister of the gospel in this congregation; and engage that, through grace, you will endeavor to act in it as a wise and faithful servant of Jesus Christ, maintaining a tender regard to his flock, rightly dividing the word of truth, and watching for souls as one that must give an account?

FOR ELDERS.

Do you accept of the call given you to the office of eldership in this congregation, and do you engage, through grace, diligently and cheerfully to discharge all the parts of that office, in endeavoring to act with a single eye and an upright heart in judging about matters of God; and laboring, by all means competent to you, in the office to which you are called, for the edifying of the body of Christ?

FOR MINISTERS AND ELDERS.

And all these things you promise and engage unto, through grace, as you will be answerable at the coming of our Lord Jesus Christ, with all his saints, and as you would desire to be found among that happy company at his glorious appearing?

OPINION OF JUDGE LOWRIE.

Appeal from the decree of the Court of Common Pleas of *Butler County*, in Equity.

The history of the case is sufficiently stated in the opinion of Chief Justice Lowrie, *infra.*

The opinion of the Court below (Agnew, P. J.) decreeing in favor of the complainants below, was reported at length in the *Legal Journal* of April 22, 1861, vol. 8, page 321.

The respondents below, Watson *et al*, are appellants in the Supreme Court.

The case was argued at Pittsburgh, Nov. 19, 1861, by *S. A. Purviance* for Appellants, and by *Lewis Z. Mitchell* for Appellees.

The opinion of the Court was delivered at Harrisburg, May 8, 1862, by

Lowrie, C. J.—About 1803, the Unity Congregation, belonging to the Associate or Seceder Church of North

America, purchased a lot of ground in Venango township, Butler County, and erected a meeting house upon it, and there continued to worship God in unity until 1858. Then the Seceder Synod of North America, by a very large majority, and after many years consideration, formed a union with the Associate Reformed Synod; and a majority of the Unity Congregation, and the Shenango Presbytery, to which it belongs, have approved of the union thus formed. A minority of the congregation, and several ministers of the Associate Church disapprove of it, and the minority of the congregation claim the lot and meeting house. Which party is entitled to it? The Common Pleas decided in favor of the minority; is this right?

Our fundamental law on this subject is written in the Constitution, Art. 9, §3: All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences, and no human authority can, in any case whatever, control or interfere with the rights of conscience.

Of course, 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, or from the 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. This is the same rule that the law applies to individuals in their contracts about legitimate business. Their contracts and their own interpretation of them, so far as they can be ascertained, and the customs of the trade in which they are engaged, are the elements out of which we derive the law of the case which they present for our decision.

In its most general form, therefore, our question is: Judging this congregation by its own order, was its union with the Associate Reformed Church, and incorporation into the United Presbyterian Church, regular?

But this raises another question: how far is the congregation bound by the act of its Synod? 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

or 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 organism. When persons join a church belonging to such a general organism, they assent to its laws, and are entitled to the implication that the affairs of the church are to be managed according to them. This result of our law and of the relations of associates in churches, is so clear, obvious and necessary, that we need not dwell upon it.

It has, however, a qualification already alluded to in general, which ought, perhaps, to be more specially stated. If the general organism extend over several States, it may require much more than ordinary charity, prudence and discretion in directing its legislation and action so as to preserve its sphere of influence and usefulness in its integrity. If it should make terms of communion, or adopt a course of ecclesiastical action in any form that is hostile to the policy of one or more of the States embracing its churches, it may induce a perfectly lawful division; for no State can help to sustain an organism that it judges to be hostile to its own principles, and none of its citizens can be presumed by law to have intended to concede authority for such hostile action. It was under the influence of this principle that our American churches separated from their mother churches in England, Scotland and Holland, before and after our revolution, without being chargeable with secession. It has also divided many of our churches, between North and South, or excluded them altogether from any foothold in the South. The Church of Rome was in many instances saved from such a division, by submitting to laws, as in England, or by entering into concordats with States, by which its ecclesiastical action was greatly restrained by subjection to civil law.

We state this limitation merely by way of precaution; for it is not needed in this case. But, subject to this limitation, our question may now be more fully stated thus: Has the act of union of the Associate and the Associate Reformed Synods been so conducted, that, judged by the law of this congregation and of the general organism to which it belongs, it can now be properly declared to be a member of the United Presbyterian Church? The congregation was divided by the act of union; and that part of it which is acting in harmony with

its own law, must be approved and sustained by the State law. That one of them has obtained a charter of incorporation, has no influence on the question, and is not pretended to have. The title depends upon the legitimate, orderly and regular maintenance of the organized congregation, or succession of associate owners.

We desire it to be noticed that, in this statement of the question, we adopt fully the view of Lord Chancellor Eldon, in the case of the Attorney-General vs. Pearson, 3 Meriv. 400, relative to the usage or customs of the congregation, as the law of the case; while we do not adopt his view in treating it as a trust created by the vendor, and to be used according to his intention. No doubt there are cases where such titles are really trusts, by reason of donations for special purposes; but this is not so often found in cases of church property as in gifts for charitable uses. Questions of this kind have often been obscured by treating them as trusts by the grantor. It is quite natural to call them so, because the rights under them have been usually enforced in equity as trusts. They are analogous to trusts strictly so called, but not identical with them in every aspect. As between the trustees holding the legal title, and the congregation holding the equitable title, they are trusts. But as between the congregation and any other person, they are simply titles.

In the case of the Methodist Church vs. Remington, 1 Watts 226, Chief Justice Gibson treated such a title as a trust; but as one not created by the vendor, but by the persons paying the purchase money, and resulting to them on a failure of the purpose; and, therefore, we may say, belonging to them so long as they keep up the regular organization and purpose. And this Court has taken this view expressly in three different decisions. 3 Harris 500; 5 ib. 96: 9 Casey 424; the first of which was by Chief Justice Gibson, and the second of which he participated in and heartily approved. The same is decided in Gibson vs. Armstrong, 7 B. Mon. 481. That it is not a trust, but a title, in the congregation, when property is purchased by itself for its own use, is quite manifest from the Act of 1731, under which this purchase was made, which contemplates only titles, and from the facts that the property may be sold by the congregation, or by the sheriff for its debts; the change of its creed violates no duty

to the grantor, and the title does not revert to him on a dissolution of the society.

In Craigdallie vs. Aikman, I Dow's Parl. Rep. 1, Lord Eldon laid down the rule that a congregation's title depends upon its adherence to the opinions and principles in which it had originally united, and this has been followed and repeated in many cases. But we should grievously misapply this rule if we should interpret it as meaning that no congregation can change any material part of its principles or practices without forfeiting its property. This would be imposing a law upon all churches, that is contrary to the very nature of all intellectual and spiritual life; for it would forbid both growth and decay; not *prevent*, for that is impossible. The guaranty of freedom to religion, forbids us to understand the rule in this way. And all history forbids it. Let us be indulged in so much detail, in the illustration of this, as is necessary to make the principle clear by means of the facts which it has produced. Many of the principles of human action depend so closely upon the peculiar development of a given people, that they are not susceptible of clear illustration, except by instances and cases drawn from the conduct, life, and history of that people. But, on the other hand, very many of them are so common to all humanity, that any illustration of them must be inadequate that does not embrace a wide sphere of human conduct both in time and space.

The principle is that all intellectual or spiritual growth involves some change or development of opinions, principles and practices, and therefore some change in the systems which are constituted of those opinions, principles and practices; for these are the elements of systems and decide their character. And the *fact* is, that from the very origin of Christianity, such a change has been continually going on in the Christian church in all its branches, congregations and members, without producing a forfeiture of the property held even by those in which the change has been most decided. Changes in principles and practices are not incompatible with legitimate social succession, but are necessary elements of its normal progress. All denominations admit that all others must change in the progress towards union, even though they may suppose their own system too perfect to undergo any change.

Let the facts of history prove this legitimate progress; and

as we cannot answer for the exact accuracy of the history of any of them, let us be satisfied with approximate and general accuracy, and make our principle sure by the number and variety of the instances which illustrate it. Any one can add to them at pleasure.

It will not be pretended that the Jewish church would have lost its legitimate succession, and its synagogues, if it had generally believed in the Messiah and become Christian, for this would have been a proper spiritual growth within the limits of social identity. For three centuries the Christian Church was entirely independent of the State; but it did not lose its titles by becoming united with the imperial government, and becoming subject to its control or interference in its organization, principle and practice, though this was a very substantial change. At first all its principles were independently developed, afterwards all its general councils needed an imperial call, and their decrees an imperial sanction to give them authority and validity.

The form of electing and consecrating the Pope of Rome has passed through very many and very radical changes, and yet the Roman Catholic Church did not thereby lose any of its rights of property, though the Pope is an essential element of its organization. The usage of the church shows that the form of his election and consecration is not essential. And if the Union agreed upon between the Greek and Latin churches at the Council of Lyons in 1274, had been consummated, the Latin church would not have been so changed as to have lost its rights; though by that agreement the Greeks were allowed to retain many of their peculiarities.

When Norway, Sweden, Denmark, and large portions of Germany and Switzerland cast off their connexion with the Pope of Rome, they introduced very great changes in their organization and principles; changes for which two centuries of earnest thought had prepared the way; and yet they retained all their churches and other institutions. In many places there were no Catholics left to enjoy or claim them.

The Scotch and English churches were at first independent of the Pope. Under Gregory the Great and the monk Augustine the English church became subject to his primacy and depended upon him for the maintenance of its organization. Under Edward III., by the statutes against provisors and

praemunire, prohibiting all ecclesiastical appointments by the Pope in England, and appeals to him, and all decrees coming from him, it became substantially independent of him, though still acknowledging his primacy. Afterwards it rejected the Pope and substituted the King as head of the church, as he practically was before; adopted the English Bible, translated and altered the Prayer Book, and adopted the thirty-nine articles. Most of these changes were of a very substantial character certainly, but the Scotch church went further still. In 1176 it became subject to the Roman Pontiff. In 1560 this primacy was rejected, and gradually episcopacy was abolished, and Presbyterianism substituted, and the Westminster Confession and Directory of worship adopted. And yet in none of those instances did the developed and altered church lose its cathedrals or churches, colleges or universities.

It was on the decrees of the Council of Basle, confirmed by the pragmatic sanction in 1438, and by the French Parliament in 1439, that the French church for centuries founded its freedom and independence, while recognizing the primacy of the Pope. And yet the court of Rome refused its sanction to those decrees. When councils fell into disuse those differences between the demands of particular States and of the Court of Rome in ecclesiastical matters were usually settled and allowed by concordats, and the differences were often very wide. Where there are wide differences in the intellectual and moral development of nations, united by one ecclesiastical bond, there must be considerable differences both in the law of the church and in its actual administration.

And in all the early colleges and universities of Europe, there is a similar departure from the original purposes of their creation and of their founders. Many of them were established with the expectation that they should teach the Ptolemaic Astronomy and the realistic or nominalistic, or the Aristotelian or Platonic phases of scholastic philosophy; but all this has passed away, and now none of those are taught. Like churches, these are educational institutions, and their members are disciples; and the very fact of their success brings development and change; and often their trouble is that they are not themselves sufficiently developed to manage and direct the change which they have produced.

Nor can it be said that the authority by which all those in-

stitutions passed over to the propagation of opinions contrary to the thought of the original founders, was grounded on mere might, without right. All such institutions were created for the benefit of the people, and, to meet this purpose, they must grow in form and principle with the demands that are made upon them, and no founder can be presumed, and hardly even allowed, to have intended otherwise Moreover in those days church and state were one, being but two aspects of one partially or fully united government. The law of the church was not therefore in the church itself simply, but in the church and the state combined, that is, in the whole people. When the conscience of the whole State underwent a change, it could not decide that a corresponding change in the church, which was part of itself, was illegitimate. Having only its own conscience as a standard to judge by, it could not pronounce that wrong which was in accordance with its conscience. In the early times of New England, the organic unity and force of Congregationalism was secured by the fact that the State was an essential part of the organism. The withdrawal of the State from this connection made a great change in the church; and yet the State could not pronounce that change fatal to the church's rights, because by its withdrawal, the State had already declared that change legitimate.

We must, of course, look at this question as statesmen and jurists, and not as theologians. Whatever may be the limits that theologians may fix for the growth of the church in form or principles, we can fix none until the law can decide what particular church is perfect. All history reveals the church to us as an institution that is continually educating, developing and changing society, and changing with the changes it produces, and this right to change is part of its freedom. No doubt many religionists think that no change can ever go so far as to justify the rejection of their peculiar customs; though to other intelligent men they may appear manifestly absurd. Such persons would expect us to prohibit all change in their practice or to declare it illegitimate. A case among the Russian dissenters may illustrate what might be thus fixed by civil law, at least until the law of nature would interfere for our relief. With them the change of the calender, blessing with two fingers uplifted instead of three, using

two instead of three syllables in uttering the name Jesus, pronouncing halleluiah three times instead of once, shaving the beard, and improving the mediaeval chants and service-books by modernizing the language, were considered as damnable heresies, and as justifying separation. The State cannot visit regular and orderly changes in religion with forfeiture of rights without condemning the Reformation, and setting itself up as judge of religious controversies, which with us is always disclaimed.

No doubt the consciences of many are offended by the changes which they witness around them, and very often this is so when those changes constitute a real and valuable progress. Such changes often operate very hardly upon those who fall in the rear of the social movement; but no law can cure this, which many individuals and classes feel as an evil. The progress of the race cannot be stopped because there are many who cannot keep up with it. No man or generation of men can stop it, for nature will vanquish all obstructions and do its work.

From all this it seems very plain that we must judge these people and their acts, relative to this dispute, by the ecclesiastical laws, usages, customs and principles which were accepted among themselves before the dispute began, and ascertain which party is right, tried by that standard. One of the most obvious of those principles is the authority of the church to legislate upon its doctrines, forms and practice; a principle legitimately descended to them from the Church of Scotland, and maintained in full vigor by them ever since. The evidence abounds in the documents annexed to the testimony of the witnesses, and we shall only make the vigor and extent of the principle more clear by adding some facts derived from McKerron's History of their church.

In 1557 the Church of Scotland adopted their first covenant, in 1559 a second, in 1638 another, and in 1643 the Solemn League and Covenant. After the Reformation, until 1560, they used, by general consent, the Book of Common Order of the Genevan Church, and then they adopted the First Book of Discipline, in 1578 the second, and in 1647 the Westminster Assembly's Directory of Worship. Until 1560 they had no confession of faith, and then they adopted the one called John Knox's, in 1581 the one called Craig's, and

in 1648 that of the Westminster Assembly. This is enough to show that the church from which these parties descended had, for one of its principles, the church's authority to legislate on all matters of faith and practice falling within the sphere of its action, under the guidance, as both admit, of their understanding of the word of God.

In 1733 the secession from the church of Scotland, which gave rise to the Associate or Seceder Church, took place. Let us take a glance at their history, that we may understand the degree of vigor which this principle had among them. Their legislation appears under various forms called by them Testimonies, Acts and Testimonies, and Covenants, and even their Narratives of the Reformation Testimony contained some legislative character.

They always acknowledge the Bible as their primary rule of faith and practice, the Westminster Confession, Catechisms, Directory and Form of Government, as secondary and derivative, and their other forms of legislation as subordinate to these. And, before we trace the history of their legislation in matters of faith and practice, let us notice the degree of permanence and value which they attach to these subordinate acts, as they declare themselves in their Narrative of 1784. We may do it briefly, because a sketch of their practice will illustrate it more fully.

Thus they speak of their testimonies as acts "suited to the times and circumstances of our lot," and as expressing their views "of present truth and duty," and of their Covenants as bonds "suited to the circumstances of the time," as "absurd" if applied to our days, having the design to "encourage one another in promoting the reformation," and this shows clearly enough that they are, in some degree, temporary expedients, and subject to renewal and change as circumstances may seem to them to require. And they expressly declare that their Narrative shall make no part of the profession to be required of church members. And, though deriving their origin and principles from their reforming ancestors, they refuse to approve all their church action, and add: "Imperfections adhere to the best works of man; and there are many things which might be excusable and even expedient in the peculiar circumstances of the church in that period, which would be quite improper in a more orderly, settled state of affairs," and

admit that we ought to profit by the experience of past ages, and improve on it. Doubtless many of their old Testimonies would not be repeated now-a-days. Change and progress are, therefore, a recognized part of their ecclesiastical life, and this progress they usually call their "attainments." Let us trace it historically.

On their secession in 1733, they adopted their first Act and Testimony declaring their adherence to the old standards, and bearing testimony against the errors of the Church of Scotland. In 1737 they adopted a new one, somewhat modified. In the same year they admitted two ministers, Mr. Mair and Ralph Erskine, to their presbytery, though they did not accept the Act and Testimony of the church, but presented one of their own, which the presbytery pronounced equivalent. In 1741 they adopted a Testimony against a general fast kept by the Church of Scotland and by some of themselves, because it had been appointed by the civil authority. In 1742 they bore testimony against the great revival in which Whitfield participated, as a delusion of Satan, and appointed a solemn fast on account of it; and adopted "an act concerning the Doctrine of Grace," which they say "is *still* to be considered as belonging to the testimony made of the faith." In their second Testimony they condemn the union of England and Scotland, which had taken place thirty years before, and the acts of toleration passed in the time of Queen Anne, and the repeal of the penal laws against witches. In 1744, they declared that the act of renewing their covenants should be a term of communion, yet very soon they suffered it to fall into disuse.

And now we come to a division among themselves. In 1746, the Synod passed an act declaring the taking of the burgess' oath inconsistent with Seceder principles, because it required the maintenance and defence of "the true religion presently professed in this realm." The next year this act was qualified so as not to be treated as a term of communion, and those who were offended at this, separated themselves and constituted that branch of the church called Anti-burghers, and those who remained were called the Burghers. We may add that, out of this division, grew several law suits in the Scotch courts, and they were generally decided in favor of the majority in each congregation, because neither of the parties

was recognized as a legally constituted body; a reason which is not very convincing.

Let us follow the Burghers. In 1753 they published a new Narrative, Act and Testimony, and in 1778 a Re-exhibition of the Testimony. In 1766, they approved of their missionaries in America joining the Anti-burgher presbytery there, and in 1782 approved of the joining in the union that constituted the Associate Reformed Church there. In 1796 they bore a new testimony on the relation of the church to the state, and this gave rise to another body of seceders, who called themselves Original Seceders. We do not follow their history; but it was this secession that gave rise to the case of Craigdallic vs. Aikman, 1 Dow 1, and on its going back from the House of Lords, it was decided by the Lords of Session, in 1815, that those seceders had not "the slightest ground for the charge of abandonment of the original principles of the Seceders."

Let us go back to the Anti-Burghers, from whom the seceders in this country chiefly claim their descent. The narration of 1784, of the American branch of the church, leaves out all their internal dissensions of this period, and no doubt this was a very prudent concession to the fact that the Presbytery here was composed of both Burghers and Anti-Burghers. But we may notice a few facts showing the extent of the legislative authority asserted by them. Of course they, the Anti-Burghers of Scotland, testified against the Burgher error that had caused the division. In 1778 they bore testimony against the act of Parliament repealing the penalties and disabilities imposed upon Roman Catholics, "as inconsistent with the duty of Christian and protestant rulers, contrary to the laws of God, greatly dishonoring to the Redeemer, and a further progress in the public and national apostacy from the Reformation." In 1784 they disapproved of the Associate Reformed Union here; and in 1788 they bore testimony against slavery, which was also done by the Synod here in 1811.

In 1805 they enacted a renewal of their covenants, with new Narrative, Act and Testimony, Acknowledgment of Sins, Profession of Faith and Engagement to duties. In doing so they say that they do not approve of all the measures of the Reformation. "It is not to the imperfect managements of

men that we declare our adherence, but to the Reformation itself." And, they add, "we are not precluded from embracing, upon due deliberation, any further light which may afterwards arise from the Word of God about any article of truth." And, as some of their number objected to these documents on account of their vagueness, novelty, opposition to, and abandonment of old Covenants and Testimonies, the Synod granted leave to those to receive and act upon the old documents, provided they did not impugn the new ones, and allowed persons to be admitted to the communion on either. But the objectors were not satisfied, and therefore seceded and formed the "Constitutional Associate Presbytery," and enacted a new Testimony adapted to the circumstances. In 1837, it is said they joined the established church.

It is important also to gather their opinions relative to unions among separate Christian communities. Almost all Christians desire and hope for this consummation, and of course can recognize no law against it, except such as depends on their own defects or that of others. The Seceders and all bodies of kindred principles do the same, when it can be done consistently with divine truth. Let us look at their acts.

The Union of the Burghers and Anti-Burghers, and of the Reformed or Covenanters and Seceders in America, into the Associate Reformed Church, we have already noticed. There were proposals almost continually pending among them to bring about such unions. In 1741 the Presbyterians of America divided, partly on account of differences connected with the great revival in which Whitfield was so conspicuous, and in 1758 they reunited in the Joint Synod of New York and Philadelphia. In 1818 the Church of Scotland in Nova Scotia and the two branches of the Seceder Church there united and took the name of the Presbyterian Church of Nova Scotia. About the same time the Burghers and Anti-Burghers of Ireland united under the name of the Presbyterian Synod, distinguished by the name of Seceders." What they called their "Basis of Union" consisted of the regular Presbyterian standards and the original secession testimony and an agreement to bear testimony in future, and to leave "the adaptation (of the symbols) to be afterwards digested, adopted and exhibited to the world." In 1820 the Burghers and Anti-Burghers of Scotland united under the name of the

United Secession Church. They also adopted a "Basis of Union," and in it they agreed to abstain from agitating the questions which occasioned the separation, reassert the Presbyterian symbols, disclaim compulsory principles in religion, allow diversity of sentiment on the subject of the civil magistrates' power about ecclesiastical affairs, reassert the justice of their original secession, and also the moral duty of public covenanting without requiring its observance as a term of communion, and leave the Formula and the Testimony to be settled by the united church.

No doubt most men, who are instrumental in the enactment of regulations that seem to them of great social importance, have very large ideas relative to the permanence or perpetuity of their institutions; but this cannot make them perpetual. However much they may intend to bind posterity by them, they must fail if posterity does not find them adapted to its times and circumstances. Human nature respects its inherited institutions, and this is one of God's provisions to secure social order and to save us from anarchy. But such an inheritance is never received without some modification, whether it be made unconsciously or by design. And since intentions can never be equivalent to facts, and are so proverbially fallible and insecure, surely the intentions and hopes of one generation are not to be taken for the actual facts, usages and customs of several succeeding ones. Though these intentions of perpetuity do often appear, yet they do not constitute the actual law that rules through successive generations.

No doubt many have had such an idea of the perpetuity of the church Formula of admission to the ministry and to membership, and that all are bound to accept its terms without any qualification or forbearance. But this would seem to be treating them as more than divine, for even the divine, in its connection with humanity, is a continual growing, and the Saviour himself "grew and waxed strong in spirit," and "increased in wisdom and stature and in favor with God and man." Their formulas have never been treated as perpetual and unalterable, and very often, at some of the stages in the progress of the church, when a change has become developed into form, the necessity of forbearance, as between the old and the new, has been recognized. We have already given some instances of this. We find it always when unions have

been formed, and we need not look to church history for this; for, according to universal principles of human nature, it is a necessary element of all unitive action.

No doubt they adopted a Formula when they constituted their first presbytery. When they admitted Ralph Erskine and Mr. Mair, they allowed a *substantial* conformity. About 1738 the Formula was changed. On the Burgher schism there was a new one, another in 1796, another in 1804, by the church in Scotland. The church here had also one of its own adoption. On such occasions it appears to have been common to feel and express the duty of forbearance. One of the Seceder Synods reserved it for themselves in 1839, when they united with the Church of Scotland. It was granted and advised by the Synod in 1782, to the great discontent of some, when the dispute arose about the necessity of lifting the sacramental elements before the consecrating prayer, and no doubt it has been done on very many occasions, when men of undue earnestness, partisanship, or selfishness, or of uncommon perspicacity, regarded it as involving great laxity or sacrifice of principle.

After this historical survey of the principles and usages of the Seceder Church, it becomes very easy to dispose of all the special objections to this act of union. It is objected that, by the Basis of Union, the Confession of Faith is altered on the subject of the relation of the church to the State, and of the duties of the civil magistrate. But these articles were originally adopted by the General Assembly of the Church of Scotland under a similar interpretation. And were so interpreted by the Presbyterian Church here in their adopting act of 1729, and the Seceders have always claimed and exercised the right of interpreting them in their own way. We do not discover here any sacrifice of principles.

Again, it is objected that the union is an abandonment of the Testimony of 1784 against the Associate Reformed Church, and this without any retraction on their part. Certainly it is; but that Testimony was neither in its nature nor in its intention perpetual. The body that enacted might repeal it. But the objection takes a very special form. Because, more than a century ago, the Covenanters or Reformed had denounced the Seceders "as teachers of false doctrine, as treacherous in covenant, as enemies to the Lord's work, as

barefacedly belying the Scriptures, as guilty of a most dreadful and deceitful imposition on the generation :" and because, eighty years ago, the Covenanters had united with Seceders in forming the Associate Reformed Church ; therefore the Associate Reformed Church must repent of this sin of the Covenanters, not before God, but before man. This is a very remarkable visitation of the sins of the fathers upon the children unto the third and fourth generation, not by God, however, but by man ; and displays a mind remarkably receptive and tenacious of offense, and demanding redress far beyond the time allowed by any statute of limitations known to us. It ought not to be expected that we should sympathize with such high strung censoriousness and party spirit and vindictiveness on either side. We must be more reasonable, and allow people to settle old disputes simply by shaking hands, if they please, and saying nothing about old scores. Even without seeing how to account for old causes of difference, they may discover enough that is good and honorable in each others principles to justify them in meeting again and working together for the common good. .There would have been more reason in the objection that the Basis of Union abandons the Testimony of 1827 against the Union of the Burghers and Anti-Burghers ; but here again the answer is, they had as good a right to abandon as to enact it. By this and several other objections, the plaintiffs put themselves substantially on the ground occupied by Mr. Nairn, who seceded in 1743 and helped to organize the Covenanter Church.

The name Seceder is abandoned. Yes, it is ; but that is a natural incident of the union, and must go with its principal. Moreover that is not the name which they adopted, it was imposed upon them by the public. It is surely to be regretted that the acts of the church should be offensive to its members ; but it is much more to be regretted that any members should be so wedded to a name or other form as to be offended at what the church regards as a progress that increases the organic force of its principles. The Episcopal Church of the United States lost none of its rights at our revolution by giving up its old name of the Church of England in America; and all its churches, including Trinity, New York, retained their property under the new organization and the new name, though the old was very dear to many of its members. All

growth and progress makes some disturbance, and some change of relations and requires some rearrangement of systems. This is the natural course of all things known to men, and no man has authority to condemn it. If he is competent he may guide the growth, and *thus* control its consequences.

There are other objections; that, in the Basis of Union, there is an abandonment of Seceder strictness in relation to communion, psalmody, secret societies, and the duty of covenanting and bearing testimony, and generally of the rigidity of secederism. These we may consider together.

The historical sketch that we have given shows that in none of these matters has the Synod transcended its usual authority. All these objections proceed on the assumption of a want of due strictness. And here we adopt the language of Lord Stowell in the case of the Procurator General vs. Stone, I Haggard's Cons. Rep. 424, on a charge against a minister for affirming doctrines contrary to the Thirty-nine Articles. "It is not the duty or inclination of this court to be minute and rigid in applying proceedings of this nature; and if any article is really a subject of dubious interpretation, it would be highly improper that this court should fix on one meaning, and prosecute all those who hold a contrary opinion regarding its interpretation."

And we adopt also the language of the Judicial Committee of the Privy Council in Gorham's case, where it was decided that the Bishop of Exeter was wrong in refusing institution to a minister because of his holding that spiritual regeneration is not conferred in baptism. They say: Upright and conscientious men cannot in all respects agree on subjects so difficult, (as many theological questions.) This court has no authority to decide what ought to be the doctrine. We do not affirm that the doctrines of Jewell, Hooker, &c., can be received as evidence of the doctrines of the church; but their conduct, unblamed and unquestioned as it was, proves, at least, the liberty which has been allowed of maintaining such doctrines."

All these objections proceed upon the assumption of a degree of strictness and rigidity which the law cannot appreciate. *Apices juris non sunt jura.* Our ideals of strictness are never the actual law of any society, except in times of excitement on the subject to which they relate. Extremes never

represent the true living law of any people, though they may represent that towards which it is growing, or that which it has outgrown. It is a plain law of nature that time and peace wear off the acerbities and extreme points that grow up in all social divisions, and we are not authorized to counteract this result. Union among churches is a perfectly legitimate part of their purpose and of their freedom, and mutual concession is part of the natural law of it, which we cannot direct or limit.

We need not inquire how far the Basis of Union relaxes the former strictness on the subject of communion, psalmody, covenanting and bearing testimony; for, if the objections are true in fact, there may have been good reasons for doing so, and of this the presbyteries and synods were their constitutional judges. They may have judged that the strictness which was generated in times of great intellectual collisions, was not the normal condition of affairs; that the requisition of an intelligent acceptance of the Confession of Faith, Catechisms, Covenants, Narrative and Testimony, as a condition of membership, might seem like requiring people to be thorough theologians before being received as disciples; that, in logical phrase, the more comprehensive is their system of principles, the less extensive it must be; the more doctrines it makes essential, the fewer people can accept it; the more exacting the bond, the fewer will come under it; and that, though an intelligent joining in bearing testimony against the errors and sins of those around them and of past generations, may secure a very considerable acquaintance with the history of doctrines and of church controversy, yet it may be carried to such an extreme as to beget a very large amount of pride and censoriousness, and substitute a mere legalism for religious principles. However this may be, they have adopted a testimony on all these subjects, which they have deemed sufficient, and we find in it no such departure from ancient usages as entitles us to condemn their decision. We cannot condemn such proceeding as unlawful without deciding that there can be no unions of the church without a forfeiture of civil rights, and that the law almost compels the perpetuation of divisions.

Many judicial decisions very properly make such questions as those turn upon the fact of identity; but, as this term itself stands in need of explanation, we have not hitherto

made much use of it. The foregoing discussion, however, prepares us now for a reasonably precise understanding of it, with the assistance of a very few additional suggestions. The analogies of identity of mere dead matter would not help us much, for it is living identity we are dealing with. A few of these may aid us.

That acorn: follow the idea of identity in it. Future generations may point to that old oak some centuries old, with many of its branches gone, and decay commenced, and say: there it is. That helpless infant; the next generation may point to a Newton, or a Washington, with his mature growth, and his immense accretions of intellectual power, and moral majesty, and social influence, and say: there he is.

But it is rather identity of social life that we want to understand. All social life involves a common participation in spiritual acquisitions, a mutual giving and receiving of moral and mental influences according to the capacities and opportunities of each individual, and a social and individual growth thereby. All institutions, to be social at all, must be adapted to this giving and receiving of influence, and must share in the social growth; educational institutions that have not this adaptation must die by their own success. And yet they must have organic form that will give them force and save them from being merged in the common mass. To be social institutions, without this adaptation, and participation, and growth, is a contradiction in terms, as much, though not so obvious, as to say that the radii of a circle are unequal.

It is essential, therefore, to social institutions that they grow with society, and in adaptation to its intelligence and wants, and times and circumstances, and in so far as they fail in this, they detract from their social identity and social life, and begin to decay. Of course, for *such* departure we can have no measure, and therefore no definite law; but the natural law is not hard to discover. Thousands of institutions have died out, because of this want of reciprocity with a growing society. Thousands of governments have failed and disappeared for the same reason. Too often they represent mere social *form*, while all the social *life* is in the people alone. All organizations, political or social, that consult only their own wills, and that oppress or condemn society because it will not accept what they decree to be benefits, and in the

form in which they choose to confer them, must necessarily be rejected by society when it can obtain substitutes.

Yet the people remain and preserve their social identity in all these changes of government. We cannot deny the identity of the Transalpine Gauls with the modern French, because of the many subjugations and revolutions, and changes of government and religion which they have undergone in the last two centuries; nor that of the Anglo-Saxons with the English because of similar changes. All such changes are but the accidents of the social life, the continuity of which constitutes its identity.

It will readily be seen that we are not here announcing any positive law of civil society, but simply endeavoring, it may be unsuccessfully, to illustrate a fundamental principle of social law. Philosophy and history may trace out these social principles in long periods; but such a task is beyond the demands of legal administration, its duty being best fulfilled by keeping itself in harmony with the common order of society for the time being. It *must* regard the forms and accidental principles of social organisms much more than history and philosophy do, because they are of great importance in the short periods to which legal actions refer, and because history and philosophy investigate, while the law regulates, the course of events. *They* may recognize social identity wherever they can trace a continued social unity, however great may be the variety and changes of its forms and principles. Law deals with short periods in its administration, and with individuals and societies under government, and expects to find social unity continued without any violent rupture of forms or departure from principles, and yet makes all reasonable allowances for development according to principles, and with due respect for customary forms. Let these thoughts pass for what they are worth in themselves. If they do not illustrate the subject, they are good for nothing here.

Doubtless there may be cases, wherein the change complained of, as a violation of social identity, is conducted according to all the forms of order that are recognized in a given society, and yet it may be of such a character, or be produced by such unfair means, or by such partisan agitations, as not to be entitled to the support of the law in its equitable administration of justice. Or the general organism may so

fall into anarchy that the subordinate organisms can have no peace or prosperity under its rule, and then a separation may be justified in equity. It may allow secession in such cases, because it has no adequate remedy; while in mere civil relations it cannot admit its own inability. But we forbear to give any special opinion in supposed cases of this kind. In this case there is nothing of the sort. We can hardly imagine a case that could have been more patiently, deliberately, charitably, and thoroughly considered, and it was almost unanimously decided.

We might have decided this case by saying that there is nothing in the plaintiff's evidence that shows that the action complained of, judged by the constitution and usages of the Seceder Church, was brought about by any excess of authority on the part of the presbyteries and synod. But we have preferred to treat the case as if the burden of proof was on the defendants, and show affirmatively that the proceeding is in harmony with the authority usually admitted to belong to those bodies.

Among the cases that sustain the foregoing views is that of the Attorney General vs. Gould, 2 Law Reporter (London) 495, where the church lot was purchased by and "for the use of the congregation of Particular Baptists," &c., which congregation then practiced close communion, though in association with other Baptist churches that allowed free communion. After many years a majority agreed to allow free communion in this church also, and on a suit by the minority to prevent it, the Master of the Rolls, Sir John Romilly, decided that the majority of an independent congregation had power to make such a change of its usages, and that there was nothing in the form of the deed to prevent it.

But one of the very ablest judicial opinions that we find in our books on this subject, is that of Chief Justice Marshall of Kentucky, in Gibson vs. Armstrong, 7 B. Monroe 481, wherein it is decided that in general organizations of united churches, the law of the general organism is binding on all the individual churches and that even a majority seceding, lose all their rights in the church property. And this view we find ably supported by several other decisions. Harper vs. Straws, 14 B. Monroe 48; Den vs. Pilling, 4 Zabriskie 653. The Johns' Island church case, 2 Richardson's Eq. R.

215. A contrary rule would encourage partisan strifes in congregations and in general church organisms for the purpose of unjustly getting possession of church property, and would endanger the peace and effective social force of all church union: a position which the State and its law ought not to occupy. We think the defendants now incorporated, are entitled to the property.

Decree of the Common Pleas is reversed, and the bill of the plaintiffs is dismissed at their costs.

SUTTER, *et al.*, vs. THE TRUSTEES OF THE "FIRST REFORMED DUTCH CHURCH."

SAME VS. SAME.

A majority of a religious congregation have power to dissolve their connection or union with a denomination with which they had connected themselves after their organization.

Appeal from the Common Pleas of Philadelphia. Dissenting opinion of

THOMPSON, J.—I cannot agree to a judgment of affirmation in either of the above cases, and it is due to the profession as well as to myself, that the reasons for my dissent from the judgment of the majority of my brethren should be stated. The case presents some delicate and very nice points in civil jurisprudence. Indeed, I am greatly impressed with the idea that the boundary of mere civil jurisdiction has been transcended in arriving at conclusions below and here.

In order to a satisfactory understanding of what may be said, however, it will be necessary to present the facts and state the main points of controversy as clearly, but briefly as possible. Dissenting opinions must be self-sustaining, as the facts are not entitled to be officially presented by an authorized reporter, and ordinary readers would hardly be likely to hunt them up for themselves, and hence the necessity for a statement of them in this opinion.

The complainants claim to be pew-holders or renters in the "First Reformed Dutch Church of the City and vicinity of Philadelphia," and bring their bills of complaint against the trustees of the church to restore them, as appears by the second bill.

1. From dissolving the union formed in 1813 between this church in its corporative name and capacity, of the "Evangelical Congregation of the City and vicinity of Philadelphia," and the New Brunswick classis, an inferior church, indicatory of the Dutch Reformed Church in the United States, and that it may be decreed to be unlawful for the trustees of the said church to supply the pulpit of the church with a pastor, or to interfere with the exercise of that power by the consistory of the church.

2. In the first bill, which for convenience I notice as the second, the prayer is to enjoin the trustees from applying the income, property and effects of the church in the inculcation or teaching of any other doctrine, faith or practice, than those contained in the Heidelburg Catechisms, as expounded in its *Calvinistic interpetation*, being that given by the ecclesiastical assembly known as the Synod of Dort, which assembled at Dordrecht, in Holland, in the year 1618 or 1619, and from establishing in the pulpit of the said church as its pastor or teacher, any clergyman who is not of "sound doctrine" with reference to this standard of faith, and who is not regularly ordained as required by the *charter and fundamental articles* of said corporation, "and especially from installing in the pastorate of said church the Rev. George W. Smiley, or applying the income or effects of said corporation for his maintenance, support or salary as the minister of said church," &c.

These I think are the material matters embraced in the plaintiffs' two bills. Many things seem to be set forth in them by way of inducement, but being denied in the answers, and not proved by the complainants, consequently go for nothing. Such, for instance, as that the said "First Reformed Dutch Church of the City and vicinity of Philadelphia was originally organized in 1809;" that it was the *design* and *purpose* of the fundamental law of the church that the pastors should be *Calvinistic* and not *Arminian* in doctrine, and should be ordained by Christians so holding. That illegal votes had been given in the passage of the resolution for dissolving the union with the classis, and the like.

These things were mostly unsustained by proof, and where there was any testimony well disproved, the complainants' case gathers no strength from such allegations.

The learned Judge of the Common Pleas overruled many points in the plaintiffs' bill as insufficient in law to entitle them to relief, but on certain other grounds to be noticed, decreed in both cases in their favor, and hence these appeals by the trustees.

The members of the association which constituted this congregation and church, originally belonged to a congregation known as the "German Reformed Congregation in the City of Philadelphia," which was and still is in ecclesiastical connection, and is a part of the German Reformed Church of the United States. Its declared standard of faith with the Bible, is the Heidelburg Catechism. The withdrawal from the church took place in 1809, and all the testimony accords in proving that the separation was not schismatic, but only because the seceding members wished to have church service in English instead of German, as more profitable and suitable to the education and tastes of the youths belonging to them. Not being able to secure this in the old church, they accordingly withdrew, and associated themselves as a congregation, at first under the name of the "Second Reformed Association," certainly regarding the church they left as the same in faith, and to be considered the *first* German Reformed Church. They soon purchased a burying ground, procured a place to hold public worship, and organized formally as a congregation, by the name of the "Evangelical Reformed Congregation of the city and vicinity of Philadelphia." By this name they were incorporated by the court in 1810, and to the trustees duly appointed under the charter, the title to the burying ground and church lot was conveyed in trust for the congregation. Fundamental articles for the government, and declaratory of a standard of the faith of the congregation were adopted, and remain unchanged until this hour, excepting only in the names. The temporalities of the church were committed to the trustees, and upon them also devolved the duty of calling or inviting candidates for the ministry when there was a vacancy, the eventual employment of whom depended on a vote of the congregation. By the Fundamental Articles the pastor was required to be of the "Reformed or Presbyterian denomination, regularly ordained, of sound doctrine, and unblemished character." And "he must preach the word of God, and doctrines of Jesus Christ, according to

the Prophets and the Apostles, and the precepts contained in the Heidelburg Catechism." Rub's and Reg. art. 1.

"The spiritual affairs of the congregation," according to Art. IV., "shall be under the government of the minister and seven elders, who shall form a session."

By Art. IX. of the charter it is declared, it shall not be construed to prevent the congregation from "uniting with *any* other Christian denomination *whenever* it shall appear to a majority of the members of said congregation to be for their advantage."

Under this charter and these fundamental articles, the congregation remained for several years. It was their desire, and they made efforts, to procure a minister of the German Reformed denomination to preach to them in English, but were unsuccessful. They procured a clergyman of the Presbyterian, and after him, one or more ministers in succession of the Dutch Reformed denomination, to preach in English. The question was often agitated about a union with some other church judicatory, but never settled until in 1813, during the pastorate of the Rev. Brodhead, of the Reformed Dutch Church, when a union, or connection was formed with the classis of the Reformed Church of New Brunswick, New Jersey. This was brought about, doubtless, by the influence of this reverend gentleman, for before his time the project of union had always failed. In the provisional resolutions of the congregation, a declaration is made which indicates the presence of a very partial advocate for that peculiar church, for the act is put upon the ground that "from religious education and habits, we (the congregation) are more closely connected with the Low Dutch Reformed Church than any other denomination." It is difficult to believe that this declaration was intended by the congregation to mean so much as is attributed to it now. This is to say, an expression of preference for the faith and practice of a church in which the members had not been trained and brought up, over one in which from infancy they had been accustomed to worship, as had their fathers before them. I utterly discard this as evidence of a preference for the doctrines of the Heidelburg Catechism, as now claimed to have been understood by the congregation, although, perhaps, it might have been by the penman so designed. It must not be allowed the weight of a

feather against the solemn declaration in the fundamental articles, and the known faith and practice of those who adopt them. They were German Reformed in sentiment, and their standard of faith was the Heidelburg Catechism, which it is proved, from many sources, is not essentially Calvinistic, and tolerates a diversity of belief on a subject which is a dogma of the Dutch Reformed Church, namely, the doctrine of limited atonement.

In 1815 this first step was followed by another. The name of the church was changed from the name by which it was originally incorporated, to the "First Reformed Dutch Church of the City and vicinity of Philadelphia." But, as already said, no change was attempted in the Fundamental Articles. They remained as originally declared, and I may as well say here, that by them the identity in faith and practice of the church is to be ascertained for the purpose of giving the proper direction to the trusts in its favor. Some incongruity in the forms of government took place after the connection, arising from an admixture of those belonging to the Dutch Church with those provided for in the articles of incorporation of the church in question. Such as a change in the form of calling a minister, and the establishment of a consistory to take the place of the church session. These were acquiesced in, but they were sheer interpolations, for the articles of union did not provide for a single change in the machinery of government provided by the congregation for its own government. Indeed it is not claimed that the original articles were altered or modified in the least. Hence it is not improper to say that a government and practice not authorized, was usurpation; of course, therefore, these things furnish no proof of the faith of the church, but rather of a disposition to assent in silence to what was deemed immaterial in points of difference.

From 1815 until 1860 we hear of no difficulty in the church. About the last mentioned period a new church edifice was erected by the congregation, which had increased in strength and importance. A pastor was wanted, and was called by the trustees, in conformity with the articles on that subject, and elected by the congregation, and so recorded on the books of the consistory. The classis of the Dutch Church, in some way not disclosed, claimed the right to supervise the action

of the trustees and congregation in these matters. They assembled, appointed a committee to call on the pastor to declare his faith, and to submit to an examination by the classis. The minister elect declared his adherence to the standard of the congregation, but denied the dogma of the Dutch Church on the subject of a limited atonement as promulgated in the canons of the Synod of Dort, and refused to submit to discipline on this point by the classis. Whereupon the committee recommended the passage of a resolution by the classis, "that as the election was null and void on account of unsoundness of doctrines, that the consistory proceed to call a pastor in accordance with the rules and constitution of the Reformed Dutch Church, as though no call had been made upon the Rev. George Smiley." This resolution was unanimously adopted by the classis. After this action of the classis, the trustees called a congregational meeting of the church, to consider the question of dsssolving the existing connection with that body. Immediate action thereon was prevented by an application for an injunction to restrain the action in this matter. The special injunction, however, being refused, the congregation reassembled pursuant to adjournment, and on the 7th of February, 1861, did, by a vote of seventy-five to sixty, declare their union with the classis of the Dutch Church dissolved and at an end.

The complainants now contend that this vote was ineffectual to dissolve the connection. That the whole number of the congregation entitled to vote was one hundred and sixty, and that a majority of that number, viz: eighty-one in the affirmative was necessary to effectual action. On the other hand, it is insisted that it was a constitutional vote, there being a majority of the whole body present, and a clear majority of that number voting in the affirmative. The learned judge concurred in the views of the plaintiffs, and on the final hearing granted the injunction prayed, namely, to restrain the trustees of the congregation from interfering with the authority of the consistory, "in the discharge of their offices and duties, which by the faith and practice of the Reformed Dutch denomination of Christians, or by the usage and prac- of the First Reformed Dutch Church of the city and vicinity of Philadelphia, pertained to the consistory of said church, and especially in the office and duty of providing preachers,"

&c., and they be required to keep open the church and its pulpit for such clergymen as may be selected by the *consistory of said church*. In short, the decree covered the whole ground—determined against the dissolution of the connection —the right of the trustees to call a minister, and the eligibility of a minister so called and elected by the congregation.

The decree rests solely on the insufficiency of the vote of the congregation thus taken to dissolve the union. The rights, by a constitutional vote, to dissolve the union, was admitted by the learned judge. I am at a loss to comprehend how it could be denied indeed. I do not understand that it is by the plaintiff's counsel. The union is to be formed by the act of competent parties. Each admitted the other to be so, by entering into and consummating the arrangement. The effect of the union did not *ipso facto* extinguish the distinct existence of either. They were separate bodies in union, for an agreed purpose. It was the compact that held them in union, and that dissolved, each remained as before. The article in the charter quoted, expresses this idea, by declaring it to be the right of the congregation to unite with *any* Christian denomination *whenever* it shall appear to be to their advantage. It regards them in union or otherwise, to be what the charter made them, a distinct corporate body. The argument that assimilates the exercise of this right to the execution of a power which becomes *functus* by execution, confounds plain distinctions. It was declared a right inhering in the corporation to be exercised like any other. Such right as exigencies or chance should require. No other limits are put upon it. It is utterly unlike the thing to which it is compared. The very nature of a power ordinarily, is to enable one to do some thing for another. When the act is performed, the power is exhausted, and the agent has no further authority. But the right of a corporation to act according to its discretion *whenever* its interests justifies, action is a general right, and is not in the nature of a power. It is part and parcel of the franchise. But I need not elaborate this, for the following cases all recognize the right of dissolving ecclesiastical connections like this: Com. vs. Green, 4 R. 531; Johnson vs. The Presbyterian Cong. 1 W. & S. 9; Miller vs. Galle, 2 Denio, 533.

The right to dissolve being established, the remaining in-

quiry is whether it was constitutionally effective in this case. On this point I think the learned judge erred.

There is a common law rule for the ascertainment of the sense of public bodies where no written rules exist. Where a deliberative body is composed of independent members, text writers and judicial authority unite in stating the rule to be, that the majority of those who attend after notice can effectually act; Angell & Ames on Corp. 501, 502, 505; Wills on Municipal Corp. 66. To this effect is Rex vs. Whittaker, 9 B. & C. 648. In Gosling vs. Veley, 7 Act. & L. 438, a parish vote was to be held by church wardens, and the parishioners in vestry assembled; it was held that the church wardens could legally act in the premises if the parishioners did not attend, and if they did attend the majority would control. A congregation is a public body, composed of indefinite numbers, as much so as a municipal corporation, and should be governed by the same rules.

But even if it be claimed with corporations with definite numbers of shareholders, the rule is also clear; there the *majority of the whole* being assembled, the majority of the assembly is the controlling power. The maxim is "*ubi major pars, ibi totum,*" the absent being supposed to take sides and be included in the greater part; Grant on Corp., 68, 69, 70, and 155; Angell & Ames, 499; Reg. v. Bailiffs of Ipswich, 3 South, 155. In the case of St. Mary's Church, 7 S. & R., Gibson, J., said that "where no special provision is made by the charter, the whole are bound by the decision of the majority of the corporators present." So in substance is Johnson v. Green, and this was the rule of the Roman law: "*reperturs ad universos quod publice fit per majorem parte.*"

The rule is one of necessity, and needs no authority to support it. The vote in this case was by a majority of the whole number assembled. This expressed the will of that assemblage as fully in law as if every member had voted in its favor, if there was no express rule requiring a different number. Was there any such rule?

When we return to the charter, and the rules and regulation for the government of the congregation in search of such rule, no such rule is to be found. And it is a significant fact, that whenever a greater number than a majority is required, in other cases it is provided for, and the occasion stated.

Rules in the election of a minister, he must be chosen by "a majority of the votes of the qualified voters." On the dismissal of a minister, "*two-thirds* of the whole number" of the congregation must agree. "To alter any fundamental article, two-thirds of the members present must coincide in the same."

Here we have three different rules applicable to three different occasions which may arise, but to no other, they are all special, none of them touch this vote therefore, the rule of the common law must apply, for none other is provided, and whether the meeting be considered as of indefinite numbers, or that of a close corporation, the rule of the majority of the aspects above stated controls.

Art. IX. of the charter declares that the congregation has the power of uniting with any denomination of Christians *whenever* it shall appear to a majority of the members to be for their advantage. Supposing this to be a rule regulating the number necessary to vote *for* a union, it goes no further. It does not establish a rule on the question of dissolution. It was wise to limit the power to carry the congregation out of its normal conditions; for otherwise its faith might be subverted, and the church and the trust destroyed; and it was equally wise to allow a greater facility of return to its original status as authorized and fixed by its fundamental laws. That condition would be presumed to be lawful, which the condition in a union might be doubtful. These were the reasons, I think, for leaving the rule special, applicable only to action in one direction.

It is clear, therefore, that no rule existed to require a greater vote to effect a constitutional dissolution of the connection between this congregation and the classis of the Dutch Church, than that which was given on the 7th February, 1861. It was a majority of the whole number present, who were a majority of the *whole* members of the congregation, a lawful quorum. The court erred, therefore, in my opinion, in disregarding the common law rule when no other rule existed to govern the case, and in decreeing the act of dissolution of the date mentioned as unconstitutional.

2. The decree in this, the first of these bills, will now be noticed. It enjoins the respondents from employing or applying the resources of the church to the support of any minister

who shall teach any other doctrines of faith than is inculcated by the "Heidelburg Catechism, as the same is expounded in its *Calvinistic* interpretation, being the interpretation given to the same by the Synod of Dort," or any clergyman "not of sound doctrine with reference to said standard," and not regularly ordained as required by the charter and fundamental articles of the congregation, and especially from employing as pastor the Rev. George W. Smiley.

The faith of a religious body can only be passed upon by the civil courts, where incidental to a question of property. When a society or church has acquired property, the law maintains the trust of it for the uses and purposes designed by the founders. To ascertain whether the trust is properly administered in accordance with this design, it often becomes necessary to inquire into the faith and practice of those claiming to be beneficiaries. It is only in this aspect that temporal courts have jurisdiction to have doctrinal points in theology discussed at all. It is only for the purpose of ascertaining the identity of the present use with the original dedication, that it is allowed; Attorney General v. Pearson, 3 Mer. 352; Miller v. Gales, 2 Denio, 492; Presbyterian Church v. Johnston, 1 W. & S., 9; St. Mary's Church, 7 S. & R., 517.

This line of authority brings systematically before us, it is supposed, a certain point of this logical doctrine in the case in hand. The trust property here is held for the use of a congregation, whose fundamental articles require that its ministers "must preach the word of *God,* and the doctrines of *Jesus Christ,* according to the Prophets and Apostles, and to the principles contained in the Heidelburg Catechism."

Now I think it obvious, that what is meant by this declaration is that the teaching must be the *general* doctrines of the standard; those which harmonize with the views of Protestant and Reformed denominations on the *general* doctrines of the Christian Church. The dedication is in a general sense, and if peculiar dogmas not *generally* received as elements in all Reformed Churches were intended, they should have been expressed, or necessarily implied, or they cannot be recognized, for there is no rule by which to prove they were included in the laws, and these fundamental articles were for an independent church, and union with any of different faith was not contemplated. This being so, a subsequent union

would not change the objects of the trust. I grant a different rule would hold had the trust been created with a view to the support of religion or doctrines in connection with some specified denomination. There the rule seems to be that the trust will be administered according to the tenets of the latter. But this was not the case here. Neither was the dogma declared to be essential in the original articles, nor was the connection necessarily to be with a church which held it; and here this rule of administration of the trust does not apply.

There was no such designation, and the congregation might have remained independent indefinitely, and then its tenets would be determinable only by its fundamental principles, as declared in its written testimonies and practices. Did its voluntary union with a judicatory of a distinct church organization change these fundamental principles? I think not, and I think the object of this connection was for the purpose of christian association, advice and intervention, in case of congregational dissensions in spiritual or doctrinal matters only. Government was not abdicated by the independent church, and not by one written line nor word was it conceded to the Dutch church. But even if that point were conceded, and government allowed to the classis what was to be the power and principles of the government? I candidly answer, I think they were to be those established by the written articles of the church, and the practice growing out of the faith of its members. It cannot be seriously contended that it lost its distinctive character by the union. To hold this, would be to assert that union was absorption, and that by the act the church which I denominate as the expellants, became a *part* of the Dutch church. As this is not claimed, then, I hold that if all its characteristics were not changed by the union, none were. They were all equally vital, and by all overwhelmed and absorbed, I repeat none can be claimed to have been. There was no written consent or protocol even to that effect. The original fundamental articles remained unchanged—the change of name, however, for whatever object designed, had no effect on the principles of the congregation. These must stand, and this controversy turns on them.

According to the rule already stated, we inquire what were the principles of this congregation in its creation and incorporation? By these the question must be determined whether

there has been any, or there is about to be any diversion of the trust property in the employment of a minister performing the faith, and called according to the fundamental articles of the church as has been the Rev. Mr. Smiley? Let who will determine this question, the synod or classis of the Dutch church, the court below, or this court, it must be by the tenets of the church when founded, or by showing a clear change of fundamental principles.

On this point we may notice the fact before referred to, that the founders of this church were a portion of a German Reformed congregation, whose standard of faith was the Heidelburg Catechism. To whom had been preached its doctrines, independently of and against the dogmas of "limited atonement," as held by the Dutch Church. The testimony of Rev. Dr. Helfenstein, now eighty-six years old, and the pastor of the German Reformed Church at the time of the succession, proves this; so does Henry Jordan, one of the founders and original contributors to the church out of which this controversy has arisen; so also do Mr. Offerman and Mr. Benser. These ancient witnesses all belonged to the present church, and three of them assisted in founding the new. These witnesses prove the faith and practice of the present church. That in the Heidelberg Catechism was taught the doctrines of free grace and unlimited atonement. Not one word of testimony was given by the complainants to disprove this. I have already said, and the proof shows it, that the separation was not about any difference in doctrine, but only because those who left wanted the doctrines of their church taught in English for the benefit of their children.

That the new congregation had no intention of changing its former doctrines of faith, is also apparent in the fact, that the name they assumed before complete organization as a church, was the "*Second* Reformed Association;" second to what? Certainly to the parent church which they deferred to as first in that series in Philadelphia. Again, when incorporated, they adopted as their corporation name, "The Evangelical Reformed Congregation of the City and vicinity of Philadelphia." This name was consistent with an agreement in doctrine with the parent stock; of itself, however, this only amounts to a negative of any idea of a departure in doctrine. But what is more to the point and decisive, I

think, is the question of the present consistency of the church with the doctrines of the church as founded, and the fundamental articles of the church originally adopted and never altered.

These adopt the Heidelburg Catechism as a true exposition of Scripture, and as the standard of faith to be taught by their ministers, and to be subscribed to by the elders, who, with the minister, have the spiritual concern of the congregation in charge as a church session. Witnesses, writers and judicial decisions concur in saying, that in this form, and without the doctrine of a limited atonement being considered an element, is the Heidelburg Catechism accepted as the standard of faith of the German Reformed Church. Testimony of *Rev. Albert Helfenstein*, sermon of Rev. Dr. Bomberger, of German Reformed Church, in Race Street, 1860. [The old Paths, by J. F. Berg, 1845] Miller v. Galle, 2 Den. 492. Errors and Appeal, New York; Marcusley Rec. Vol. 4, p. 179.

This catechism, it thus appears, admits diversity of belief on minor points of faith. "The main design of framing it," says Dr. J. F. Berg, [The Old Paths, 1845,] "was to present the *great truths* of the Christian faith in such a manner that *all really evangelical minds* might harmonize in the statement. It is believed that it can be rejected by none, excepting those who repudiate the *essentials* of Christianity." This is a truthful presentation, I think, and may stand for the substance of what numberless preachers and writers have said in regard to it. Now it is evident that if a purely German Reformed Church had by fundamental articles declared the Heidelburg Catechism as their standard of Faith, that the dogma in question would not have thereby been necessarily or essentially any portion of the standard. Reasonable minds, in view of the practice of that church, will concede this. Who were they that founded this church in question, and declared this standard? They were members of a German Reformed Church, brought up in its faith and practice, and although they separated from the parent church, they did not separate from its faith. We are to find the objects of a trust in the faith and principles of the society for which it was created, say Attorney General vs. Pearson and the Presbyterian Church vs. Johnston, (sup.) We have it proved and ascertained here as clearly as a fact was ever proved, that the members

of the original association and congregation were German Reformed. We must desert settled law, else interpret the language of the fundamental articles in the light of the faith of those establishing them, and that was in the German Reformed view of the standards. If that, then, was its origin, it is no diversion of the trust funds to continue the propagation of the faith of its founders. The presumption that they founded their church in their own faith and practice, and that their language means that nothing but the clearest evidence of renunciation or alteration should be allowed to overthrow it. It requires clear and unambiguous words, and by a man clearly competent to make a will, before we can believe that he means to disinherit those for whom he ever labored and well loved. So in matters of faith, conscientious men adhere as firmly to tenets believed to be truths, as they do to their natural affinities. The evidence must be clear to induce a belief of an entire change in either case.

The Vice Chancellor, Hoffman, whose opinion was affirmed in the Court of Errors and Appeals, in Miller vs. Galle, (Sup.) agrees with our case exactly. He says, "here, then, is the only standard, (the Heidelburg Catechism,) to which the doctrines of the church is referred—by which the adherence of a pastor and a congregation is to be judged; and I find all the pastors, whose admission is considered an intrusion, teaching this catechism. If they teach it with an Arminian construction, I cannot interfere. It is not established that the property was to be held for *those otherwise interpreting it.*" Neither in the faith nor practice of the founder of this church, nor in the words which they use to declare its standard, is there a syllable fairly construed which proves the position of the complainants, that the dogma of the Synod of Dort was to control the interpretation of the catechism. Inherently it does not. The catechism itself, history informs us, was the work of divines holding divers views in regard to the atonement. Frederick III., Elector of the Lower Protectorate, caused it to be written, and its principal contributors were Zacharius Ursinius, a disciple, we believe, of Melancthon and Caspar Oliveanus, of Calvin; while the Elector himself was known as a Philipist. Dr. Mayer, in his History of Religious Denominations in the United States, 344, points to this fact as the reason why the doctrine of a limited atone-

ment, as taught by Calvin, and forty-four years after the promulgation of the catechism, was announced as a canon of the Low Dutch Reformed Church of the Synod of Dort, is not considered an essential element of faith by those whose standard is the Heidelburg Catechism. This being the proof by the witnesses, writers, and historians, we are to regard it as clear that the Heidelburg Catechism is a standard of faith for those of the German Reformed denomination, or any others who adopt it generally, and without qualification—without obligation to believe in the Calvinistic or Arminian view of this mysterious and utterly unsoluable question by human capacity. I therefore adopt the conclusion of the Vice Chancellor in Miller vs. Galle: "I find it, (the catechism,) susceptible of our Arminian construction. If it never receives such construction, I am not able to say that the will and intents of the founders are thereby violated," and I can cordially agree in sentiment with Gardiner, President of the Court of Errors and appeals, in the same case, that if any class of Christians believe that spiritual blessings flow only in a particular channel, they should clearly and explicitly make this appear, before others shall be compelled to accord in that belief; if not, conscience and right of conscience, may be infringed upon, and rights of property be abandoned. The majority of this congregation will be in this category, if this decree be affirmed. They must either sit under the teachings of a doctrine not agreeable, as they think, to their Christian standard of faith, or go hence and seek a more congenial association elsewhere. They ask only that on this point, that the Calvinistic interpretation of the catechism be omitted. That its more enlarged and benificent doctrines of salvation be taught, leaving individuals the freedom of conscience on peculiar dogmas untrammelled. I say peculiar, because the doctrine in question is very far from being unchallenged in the Christian church in its largest sense, or in its Reformed and Protestant sense. I am in no wise competent to express any opinion of its Scriptural character, and as a judge of civil judicatory it does not become me to do so, but I may say that in the present age of the world, it is not, I think, a fundamental article of faith in anything like a majority of the Protestant churches. It is therefore the more improbable that the church here intended it should be an article of faith

with them. It is a settled principle that the doctrine of the founders of a religious trust will control it. When that principle is to be yielded, if it is to be, then it will become more common than ever hitherto, to divert trusts, and carry off bodily congregations and churches from their original faith. A fraternal connection for the purpose of Christian association and advice between distinct but not altogether incongruous bodies, an assimilation in name, but in nothing else, may be sufficient as a general rule for such purpose, but when the wrong is disclosed, it will be no less a wrong because it may have been accomplished by very gentle means. I think the controlling majority of this church will belong to this predicate, if these decrees stand. It will be a vain effort to procure a dissolution of the connection, if it must be accomplished as required by the decision below. New members, absentees, and those otherwise opposed, will pretty certainly defeat the required majority.

I am of opinion, therefore, that the classis have no jurisdiction to declare the election of Rev. George W. Smiley null and void, and direct the consistory to call a pastor in accordance with the rules and constitution of the Reformed Dutch Church, as though no call had been made upon Rev. George W. Smiley.—*Res. of Classis. Because* the Rev. George W. Smiley had been, and was, called and elected by the church, in accordance with its fundamental articles, which have never been changed or altered. And, *because* the Rev. George W. Smiley did believe in, and proposed to teach, the Heidelberg Catechism, which was the standard of faith declared by the church. And, further, *because* it was not attempted to be proved that he proposed to teach it in a sectarian, or in any but its general Christian sense; the only proof being that he refused to teach it in accordance with the canons of the Synod of Dort. He was, I think, exactly within the only standard of the church which called him, in all these particulars. This decree of the court below affirms the action of the classis, and thus, in my judgment, is the trust completely diverted from its original purpose. It has not been shown that the fundamental articles of this church have been abrogated, altered, or have ceased in faith and practice to be the exponents of the sentiments of the congregation; if this be not so, then why are not proceedings in

accordance therewith constitutional? And if constitutional, where is the authority to overrule them? Having no constitutional authority to do it, the exercise is essentially despotic. These articles not only provide for a call by the trustees, and an election by the congregation of a minister, but for his dismissal by an act of the congregation; I cannot comprehend, therefore, the right or necessity for interference by the court, unless it were clearly shown that the minister employed was so employed in direct violation of the church rules so employing him, which has not been done here.

The willingness on the part of the minister elect in this case to teach the Heidelburg Catechism in its general sense, (and there is neither complaint nor proof to the contrary, except his refusal to deliver it in a Calvinistic sense, which does not prove a determination to preach it in an unscriptural sense,) is exactly the sense in which we as judges are to judge of it. Its general Christian sense. In The King vs. Woolston, 2 St. 837, which was an indictment for blasphemy, (in denying the miracles of our Saviour,) there the court would not suffer it to be doubted, whether to write against Christianity *in general* was not an indictable offence and punishable in the temporal courts. But "they desired, however, that it might be taken notice that they laid the stress on the word *general*, and did not include disputes among learned men upon controverted points." Lord C. J. Raymond, in Fitzgillon's Rep. of the same case, page 64, said, "we do not meddle with any difference of opinion, and we interfere only when the very root of Christianity itself is struck at, as it plainly is by this allegorical scheme. The New Testament and the whole relation of the life and miracles of Christ being denied."

I think this should be our rule; otherwise, we are thrown with the contests of the schoolmen as to what doctrines are or are not explained in a prepared system. It is out of supposed implied doctrines, the controversy here arises. It is not expressed in the catechism, nor in the fundamental articles which expound the trust, and it is not among a large portion of the Christian world a doctrine of the Bible. It is a disputed point, and we should not say that it is an essential element in the faith of this church when it is not so expressed, and standing as it has ever stood, and will ever stand, a rock in

the ocean of polemics, far above and beyond the reach of man to comprehend—to prove or disprove.

I would, for these and many other reasons, themselves apparent, reverse the decrees in both these cases.

SUTTER, VOUTE and others, vs. SPANGLER, APPLE and others.

A congregation having formed a union with a denomination having an established church government, is bound by its rules, and cannot secede by a vote of the majority.

This case came up on appeal from the Common Pleas of Philadelphia. The opinion of the Court was delivered by

Lowrie, C. J.—It was in 1809, that a colony from the German Reformed Congregation of Philadelphia united together to organize the church now called the First Reformed Dutch Church of Philadelphia. On the 15th of January, 1810, they obtained a charter of incorporation under the general law, by the name of the Evangelical Reformed Congregation of Philadelphia, and certain rules and regulations, called also Fundamental Articles, were made part of their charter by reference. As yet they had formed no connection with any general ecclesiastical organization, but they evidently had and retained the intention to form one, for they reserve the right in their charter, which declares that nothing in it shall "hinder the said congregation from uniting with any other Christian denomination whenever it shall appear to a majority of the members to be to their advantage."

This intention we find retained at the date of 18th December, 1811, and expressed at a congregational meeting then held, by the unanimous adoption of the form of government of the Presbyterian Church, which includes a general organization and a government by Presbyteries, (or *classes*, as the Germans and French usually call them,) and by assigning as reasons that, though it was not best "at this time" to seek an *actual* union with any church, yet that to stand apart would be to establish a new religious sect or party, which "would be imprudent and unscriptural," and that their forefathers were Presbyterians, and that there was no important difference between the Presbyterian form of government and that of the Reformed Dutch Church, which had been adopted by German Reformed Churches in this country.

Besides this, it is evidently retained in the Fundamental Articles, for a pastor is required to be of "the Reformed or Presbyterian denomination, regularly ordained." In the ecclesiastical language of the Germans and their descendants, the Reformed are the Calvinists, or those who adopt the Presbyterian discipline, as distinguished from the Lutherans, and, therefore, here Reformed and Presbyterian are used as equivalent and mutually explanatory terms. It is not some one of the reformed denominations that they show their intention to unite with, for that would distinguish their purpose only as against the Roman Catholics. But it is the "Reformed Denomination," which they evidently regard as one in substance, though existing in separate organisms.

The intention was carried out by a congregational meeting held 14th April, 1813, when it was unanimously resolved to rescind their resolution of 1811, adopting the Presbyterian discipline, and to connect themselves with the Synod of the Reformed Dutch Church, through the classis of New Brunswick, and they did then actually consummate the union. This of course gave them a complete form of church order, without any legislation of their own. All that had been done before was simply provisional. This act of union was the completion of the process of organization, in accordance with their original and continued purpose. It set aside all inconsistent and merely provisional legislation or regulation that had taken place before, and the charter expressly allows this. And in pursuance of their new duties in the union, the congregation proceeded to organize its spiritual management in accordance with the constitution of the Reformed Dutch Church, and have acted under it and in that connection ever since, until this difficulty began in 1860; all their pastors having been installed by the classis, and having pledged themselves to adherence to the symbols of the Reformed Dutch Church. And so soon as the union was formed, the congregation took immediate steps to have its charter changed, so that its name might be brought into conformity with its new connection. The alteration was fully effected on the 13th November, 1815, and their name ever since has been the First Reformed Dutch Church of Philadelphia.

But now we come to the origin of this controversy. On the 4th October, 1860, the congregation convened to elect a

new pastor, and forty-five out of seventy-two votes were cast for the Rev. George W. Smiley. He was not a minister of the Reformed Dutch Church, but appears to have been a pastor of an independent Methodist Church in Louisville, Ky. A call for his services were regularly made, and, according to the constitution of the church, was sent to the classis, that it might approve the call, and install the proposed pastor, if it should see the way clear for so doing. The classis met on the 13th Nov., 1860, for the special purpose, and Mr. Smiley did not appear, and on consideration of the matter, the classis resolved, "In view of the facts in the case, viz: the rejection of certain doctrines of the church before the committee by Mr. Smiley, (a standing committee during the intervals of meetings of the classis,) and his refusal to appear before the classis for examination, your committee recommends that the classis declare the election of George W. Smiley null and void, and direct the consistory to proceed to call a pastor in accordance with the rules and constitution of the Reformed Dutch Church, as though no call had been made upon the Rev. George W. Smiley." This was unanimously adopted by the classis.

And here commences the disorder. The meeting of the classis was in this church, and during the closing prayer that followed the decision, "a large number of those present, of both sexes, manifested their disapprobation of the proceedings by rising to their feet, passing out, and engaging in audible conversation." Then the dissenters from the above decision immediately called a congregational meeting, to assemble on the 22d Nov., 1860, for the purpose of dissolving the connection with the Reformed Dutch Church; and it was to prevent this that the first bill was filed. But we need not stop here, as the proceedings went on, and a second bill was filed to cover them all.

The meeting was adjourned from time to time on account, it is said, of the proceedings in court, until the 7th February, 1861, when out of its one hundred and sixty-six members entitled to vote, seventy-five voted for, and sixty against the dissolution of the connection with the Reformed Dutch Church, and passed resolutions for that purpose. It is not very important to this case, but it is a good illustration of the ordinary operation of partizan strifes, to notice the efforts

used by one party to secure its majority. We have no information about the other. The majority of the trustees were in favor of dissolving the union, and, after the difficulty began to develop itself, they allowed several pew-holders to divide their sittings, so as to admit others into membership who would vote for them. Several also voted with them who had ceased to attend the church, and had no connection with it other than owning pews which they had not been able to sell. The majority also employed a carriage and several committees to bring in voters, taking care that no undue influences should be brought to bear on them by the way. By the resolutions then adopted, the majority put themselves back upon the Fundamental Articles of the 8th January, 1810, and the charter granted 15th Jauary, 1810.

Now the sum of all this detail is this: that in 1809 and 1810, this congregation organized as such, not as an independent church, but with the purpose of becoming a part of some Reformed or Presbyterian denomination or general organization thereafter; that in April, 1813, it did thus complete its organization by becoming a member of the Reformed Dutch Church, by a unanimous vote, and has remained so ever since; that in 1860 it called a pastor that did not belong to their church, and whom the proper authorities refused to admit as a minister; and that because of this they have attempted, by a majority of the votes of a congregational meeting, to secede from the general body, and carry with them the common property, without any regard to the wishes of the minority.

We have said nothing about the reasons why the classis refused to admit a strange minister into their denomination, as a minister, because it is everywhere admitted that their reasons, so far as they are theological, are not to be reviewed by us. Moreover, we do not see that the classis needed to give or to have any reasons for refusing such an admission. If they should refuse to install, or should oust one of their own regular ministers, for not believing some special doctrine on which the church had always allowed its ministers to differ, without suffering in their ministerial standing, this would bring up the principle of Gorham's case, in England, and might require us to investigate the fact of such allowed difference, in order to prevent a sudden and arbitrary change from operating unjustly. Nothing of that kind is here. The con-

gregation called a strange minister, subject to the approbation of the classis; for in no other way could such a call be orderly. The call was null, or only inchoate until he should be admitted into the classis. He was not admitted, and therefore the majority attempted a secession. There is no theology in the question raised on such a fact. And whether the majority had a right to pass an act of secession or not, involves no question of theology.

We have simply the question whether the act of secession was a regular exercise of lawful authority. If it was, very many must be taken by surprise. There are only two or three of the original members left, and they voted for the connection that has always since existed. Every other member joined the congregation, recognizing it as a portion of the Reformed Dutch Church, and knowing it therefore to be subject to the laws and constitution of that church. There, then, we are to find the standard by which we are to judge this act of secession. And if the church is to be free, we can judge it by no other. If the State imposes law upon it for its internal relations, beyond which it is necessary for the order and security of the State, then it is not free. Of course this does not admit that any church may arbitrarily or fraudulently abuse or set aside its own laws to the injury of any one, and without any chance of civil redress.

But we need not enlarge upon this, for no one pretends that this secession is not a violation of the constitution of the Reformed Dutch Church, unless this congregation had a right of secession, reserved by implication from the circumstances of the union, or allowed by law as growing out of these circumstances.

Now let it not be supposed that there is any practical analogy between such a secession and that of our American Revolution, or that which the Southern States are now attempting to establish; or that anything we may say can have any reference to these. All such secessions profess to rise above civil law, and to be themselves acts of the law-making power, and became in fact so, when the portion that is left has no power adequate to prevent the consummation of the act.

But this act of secession is made *under authority, under* civil law, is not to be suppressed by the power of the other

party, and the State is appealed to to correct what is wrong in it. Here, therefore, the appeal is not to the vague generalities of natural law, unless it may be where positive law fails to furnish us a guide. The State not having itself instituted any positive law for the case, we must resort to the laws to which the parties have always heretofore submitted, and which were of their own adoption. Do we find in that any right of secession?

It is supposed to be involved in the fact that from 1809 to 1813, this congregation was independent of the Reformed Dutch Church, that during that period it bought the lot and built the house which were the predecessors of the present ones, and the proceeds of the sale of which helped to buy and build the present ones, and therefore the secession involves no diversion of the property from its original purposes, unless the original doctrines have been abandoned. But we have shown that one of the original purposes of the congregation was to form just such a connection as this which is now attempted to be violated, and that it was formed and maintained for over forty-five years, and that every member of the congregation joined on the faith that the law instituted by that act of union was the law of this congregation in common with others. It follows, therefore, that the secession is a violation of that law, unless we can find some other authority for it that is superior to that law, or provides a mode by which the congregation may set it aside. In tracing associate secession, we do not regard principles merely, but also regularity of form and action.

It is supposed that because, in the charter, the right is reserved in a majority to make such a connection, a majority may dissolve it. But we do not see it so. According to the mere terms used, that article was fulfilled, and the right exhausted by the exercise of it in the act of union, and we do not see how it can be implied that it was to extend further. Surely no respectable denomination would accept and foster congregations who would reserve a right to separate from it at their pleasure. This they would regard as no better than congregationalism. One of the highest benefits which they regard as belonging to permanent union is, that all congregations thus united take a greater interest in each, and the general authority takes an interest in all, and is able to prevent

such unseemly strifes as this one. And no doubt another reason is, that, apart from the religious duty of union, there is real value to society in securing a large unity of opinion in religious and moral principles, and in preventing as much as possible, that sort of rivalry of opinion and anarchy of principles that weakens the social bond, and endangers the unity of the State or nation. But we mean not to judge their reasons.

It can hardly be supposed that this right of secession of the congregation from its denomination depends upon a congregational majority, as such majorities are very apt to be wrong, especially on exciting occasions, and the fact of majority proves rather power than right. Many nations have been ruined by majorities, and the minorities, though right, had to share in the ruin. Yet in the constitution and regulation of civil governments, we can have no better practical rule than that of majorities. And where questions are thus decided without agitation or excitement, or the misleading influence of self-interest, they are usually decided rightly, because in adaptation to social needs, and in accordance with circumstances. And if they are wrongly decided, there is no superior civil authority that can correct them.

But in the case of all societies and bodies that are subordinate to the State, they are all *under law*, and the State may have authorities that can control even majorities, and hold them to the observance of law. It is weak if it has not. Without this, selfishness and party spirit, and caprice, would rule in all such bodies, and would so often do injustice that all subordinate associations would be abandoned by the wise and prudent, and by the lovers of quiet and order. People join such associations for the sake of their benefits, and from faith that they will be conducted according to known rules and principles, and not by mere whims of majorities, It is therefore of no sort of importance what may be the majority in such matters, it cannot weigh a feather against well known law, in affecting the rights of the minority. Before civil authority the question is, not which party has the majority, but which is right according to the law by which the body has hitherto consented to be governed.

Even States have to submit to an analogous rule in both their internal and external relations, but especially in the latter. Not that there is any civil authority to control and

judge them, but because surrounding States, and the world, and God, control and judge them. No degree of majority or unanimity can save them from such responsibility. To right, and duty, and good order, and respect for the right of others, even majorities must conform, or take the penalty; it is because they know this, that the selfishness, and wrong, and disorder of majorities, is not more prevalent than it is.

Those congregations which are united together in constituting a large denomination, besides feeling such a union to be a duty, think they are in some measure secured against the disturbances which active and ill-trained minds are apt to cause, by raising parties and excitements in single congregations, and by seeking to carry out some fancy of their own by drumming up majorities, because the general law of the denomination acts as a check upon such proceedings.

No doubt this general law is not always well administered, perhaps it is sometimes found too rigid to yield to changes of circumstances, and to the growth of knowledge and of customs; but this is no serious evil so long as people are perfectly free to abandon religious connections that have become distasteful to them. Any societies that are so rigid as really to fall behind the growing light of truth, will in time find the proof of it in their decreasing numbers and decaying influence. It certainly cannot be right for a people to join them without believing in their system, or because of the attractive eloquence of their preacher, and then to make use of their position in order to force upon them a constitutional or doctrinal revolution.

But we need not enlarge upon this subject. What we have said in the case of McGinnis vs. Watson, relative to the union of the Seceders and Associate Reformed, argued at Pittsburg, last term, will give further information relative to our views on this kind of cases.

We have no doubt that the majority of the congregational meeting transgressed their own law, and attempted to violate the rights of the minority, by calling a pastor whom their classis would not accept, and by resolving the secession from the Reformed Dutch Church. The majority may direct and control consistently with the particular and general laws of the organism, but not in violation of them. This principle s decided in many cases. Presby. Cong. vs. Johnson, 1

Watts & S., 37; Dew vs. Bolton, 7 Hulst., 205; Miller vs. Gable, 10 Paige, 627; Attorney General vs. Murdock, 7 How., 444; 1 De Gen. M. Gorden, 12 Eng. L. & E. R., 83, 98. And in this last case Vice Chancellor Knight Bruce says, nothing less than a unanimous vote can do it, and this may, for then no right is violated.

There is nothing in the laws of this congregation, or of the Reformed Dutch Church that authorizes the Trustees to engage supplies for the pulpit during the vacancy of the pastorate; that duty belongs to the consistories. Constitution, c. 2, art. 2.

But as our views do not entirely correspond with those of the court below, on the whole case, we must somewhat change the decree. The case comes here as two causes on two bills and answers, when it ought to have been one, on bill and supplemental bill; but the parties have made no objection on this account, and therefore treat it as a bill and supplemental bill, and we shall treat it so, and make a single decree. We add, moreover, that the "Trustees," as a legal body, ought not to have been made defendants, but only individuals; for it was an abandonment of their legal functions to do the act complained of.

DECREE.

These two causes came on for hearing at the last term of this Court at Philadelphia, on an appeal from the final decrees thereon of the Court of Common Pleas of Philadelphia, and were argued by counsel, and it is now here ordered that the first of the said causes be consolidated with second one, and on full and mature consideration it is decreed and declared, that the resolution of the 7th February, 1861, passed by a majority of the voters at a congregational meeting of the First Reformed Dutch Church of the vicinity of Philadelphia, to withdraw the said church from its connection with the Reformed Dutch Church of North America, is null and void as an act of the said congregation, and that the organization of the said majority, in separation from its said connection, was a secession thereof from the said first Reformed Dutch Church, and that the minority who remained continued to constitute the lawful congregation, under their charter, and are, with such of the majority as return to the usual and com-

mon order of the said church, entitled to all the rights thereof; and that the trustees of the said church have no lawful right or authority to provide supplies, or a pastor, for the vacant pulpit thereof, or in any way to interfere as trustees therein, but that this duty, according to the constitution of the Reformed Dutch Church of North America, belongs to the consistory of the particular church, and that that portion of the said church and congregation who remain in connection with the said Reformed Dutch Church of North America, are entitled to the papers, documents, and books of the said congregation, and to the management and control of all the property thereof; and it is further ordered and decreed, that the defendants, and each of them, be strictly enjoined from any interference with the affairs or management of the congregation, that is inconsistent with this decree, and from any sort of interference therein, until they severally signify to the Trustees of the lawful congregation their return to connection therewith, and that a writ of injunction issue accordingly, and that the defendants individually named pay the costs, and that the bills as against the Trustees as an official body be dismissed.