Gunckel & Rowe

The Church of the United Brethren in Christ vs. the Seceders from said church

Court of Common Pleas.

THE CHURCH OF THE UNITED BRETHREN IN CHRIST

VS.

THE SECEDERS FROM SAID CHURCH.

BRIEF OF GUNCKEL & ROWE,

IN BEHALF OF PLAINTIFFS.

U. B. Publishing House, Dayton, O.

COURT OF COMMON PLEAS.

THE CHURCH OF THE UNITED BRETHREN IN CHRIST

vs.

THE SECEDERS FROM SAID CHURCH.

Memoranda of facts, law, etc., in behalf of Plaintiffs in the several cases brought to quiet title, etc.

Justice Davis, in U. S. vs. U. P. Railway Co., 91 U. S., 72-9, said: "Courts in construing a statute may, with propriety, recur to the history of the time when it was passed, and this is frequently necessary in order to ascertain the reason, as well as the meaning, of particular provisions in it."

For the reason stated, and because it will throw light upon the questions here in controversy, let us in the beginning look at

A LITTLE CHURCH HISTORY.

Historians of the Church seek to trace its history back to the Waldenses and United Brethren in Bohemia; however this may be, the movement in the United States began about 1789, and was cotemporaneous with that of Whitefield and Wesley in Old England and Jonathan Edwards in New England. It was an off-shoot from the German Reformed and Mennonite churches. Otterbein, Boehm, and Guething, who preached in German only, were the leaders, and may be regarded as the founders of the Church. For a time no definite name was assumed, but they were known sometimes as *Die Freiheits Leute* (The Liberty People), *Die Brüder* (The Brethren),

etc., but finally they adopted the name held ever since, "*The United Brethren in Christ.*" They looked to the Bible alone for doctrine and discipline, and tried to follow in practice the primitive church. The pronounced features were freedom, unsectarianism, greater spirituality, what was called experimental religion, and plain living. Preachers received no pay and accounted for and turned over all collections, and even presents, to the Church for charitable work.

The first annual conference was held at Peter Kemp's farm house, near Frederick, Maryland, in September, 1780, and for ten or more years the conferences were held at farm houses, and the church meetings, for the most part, in barns or the open air, showing the plain habits of both preachers and people. During the first fifteen years of its work, the Church had no constitution, no confession of faith, no discipline, not even a roll of members.

See Spayth's History U. B. Church, pp. 82, 157;
Lawrence's History U. B. Church, pp. 287, 288, 301, 319;
Drury's Life of Otterbein, p. 272, *et seq.*

The first General Conference was held in a humble house near Mt. Pleasant, Pennsylvania, on the 6th of June, 1815. The proceedings were conducted in German and printed in German only. Although composed of only fourteen members, all preachers, it assumed and seemed authorized to represent and legislate for the whole Church in the United States. Among other things, it agreed upon a confession of faith and discipline and modestly presented them to the Church for observance.

In the earliest Discipline preserved is this statement: "These (members of Conference 1815), after mature deliberation, found it to be necessary, good, and beneficial to deliver the following doctrines and rules of discipline to the society in love and humility, with the sincere desire that they, with the word of God, might be attended to and strictly observed."

See Discipline, 1819, Hist. Soc. Doc. 198, p. 15.

In a later one the statement is modified thus: "The Conference met and, after mature deliberation, presented to the breth-

ren the following doctrine and discipline, with the sincere desire that these doctrines and rules, with the word of God, should be observed."

See Doc. 201 U. B. Historical Soc., p. 7.

From the beginning, all the laws of the Church, including confession, rules of conduct for both preachers and members, etc., were included in one book, marked "Discipline." In some of them the discipline proper is put as section 2 of the confession of faith, and in the later books the confession and discipline are placed together and numbered as chapters 1, 2, and 3, etc., and apparently as matters of equal authority. Even the Discipline of 1885 uses the word "DISCIPLINE" as comprehending both the doctrines and rules of the Church.

There is not a word in the confession of faith and discipline then adopted about slavery, secret societies, or the manufacture and sale of spirituous liquors.

See Doc's 198, 201, etc., U. B. Historical Soc.
Also Lawrence's History of U. B. Church, pp. 41, 42 and 43.

This Conference provided for annual and quarterly conferences, and for a General Conference, to be held every four years, composed of representatives from the several annual conferences, and made the highest judicatory of the Church and empowered to supervise the whole denomination, review the action of the annual conferences, elect superintendents (bishops), and make such rules and regulations *as the progress of the cause might require.*

See Lawrence's History U. B. Church, p. 56.

In the third General Conference, held in 1821, the anti-slavery clause was added to the discipline, and another clause prohibiting both preachers and members from carrying on distilleries, and recommending them all to labor against the evils of intemperance.

See record, being the first Conference of which the proceedings are preserved, p. 17.

The proceedings of the General Conference were first printed in 1865. For those between 1821 and 1865, we must depend on the original records.

The fourth General Conference changed the discipline and polity of the Church upon the subjects of baptism, itineracy, admission of candidates to the ministry, communion, etc., and for the first time provided for an English secretary and English printing.

See proceedings Conference of 1825, pp. 19, 20 and 22.

The fifth General Conference, which met in 1829, adopted the first declaration against oaths in court, or elsewhere, and favoring affirmations in their stead. This was aimed at Free Masonry. The Morgan episode was in 1826, and the anti-Masonic excitement which followed resulted in making it not only a social, but a political question. The action of the General Conference was manifestly the result of this temporary excitement.

See Conference proceedings 1829, p. 25.

As showing the absolute power of the General Conference over the Church, the following resolution, adopted at this Conference, is given: "Resolved, That hereafter none of our brethren, whether preacher or member, shall be allowed to publish a book or pamphlet without permission from an annual conference."

See Conference proceedings, p. 26.

We venture the assertion that a more arbitrary rule was never, before or since, adopted by any church authority.

In Conference of 1833 the question was raised: "Does the General Conference possess any power which an annual conference does not?" To this the following answer was given: "Yes; it is alone in the power of the General Conference to elect, from among the elders, one or more bishops, and to make such provisions as may be conducive to the good of the whole Church. Provided, however, that none of her acts shall be so construed as to *alter the confession of faith, or in any manner change the meaning, spirit, rules, and regulations of our discipline as they now stand.*"

Proceedings of Conference 1833, pp. 29 and 30.

It is worth noting that the restriction as to the discipline is more strict and rigid than that as to the confession of faith.

Neither were to be altered, but the discipline is not to be in "any manner changed"—"neither its rules nor regulations;" nor even its "meaning or spirit as it now stands."

And yet this very Conference changed the discipline and made, as we have seen, a new rule against secret societies, one of the most important ever adopted in the Church, and out of which has grown most of its troubles and the secession that led to the present litigation. Each Conference following made further changes and additions—some of them radical—so that the Discipline has itself grown from twenty-eight pages in 1819 to one hundred and forty-four pages in 1885.

Indeed every General Conference from the first has adapted itself to the exigencies of the time, and made such changes in discipline and polity as seemed necessary and proper. From the beginning, the United Brethren Church has been an aggressive and progressive one, and to this is largely due its wonderful growth and prosperity.

Constitution of 1837.

For nearly forty years and up to 1837 the Church had no constitution. In the seventh General Conference, which met in Germantown, in this county, Rev. William Rhinehart, although not a member, but only secretary of the Conference, presented a draft of one, which was considered, amended and adopted, all in one day.

> See particularly proceedings of this Conference, p. 66, original record of proceedings.

There was no mention of slavery or secret societies in it, and it provided for amendment as follows: "No General Conference shall have power to alter or amend the foregoing Constitution, except it be by *a vote of two thirds of that body.*"

> See Discipline of 1837, being No. 262 of U. B. Historical Society, p. 14.

But this action seems to have been regarded at the time as only a recommendation, and conditioned upon final adoption by the Church itself.

In the minutes of the proceedings of this Conference we find the following authorized statement: "In the adoption of this constitution the Conference were well apprised that they had transcended the right allowed them by discipline, in view of which a motion was presented by Bishop Heistand that a committee of two be appointed to write and present to Conference now in session a circular in relation to the constitution just adopted, informing the constituents of this body that a memorial will be presented to the next General Conference praying for the ratification of the same according to article 4 section 2." (Journal of General Conference of 1837.)

See Conference proceedings, p. 66.
See Drury's Life of Glossbrenner, p. 88, etc.

It will be noticed that here again the discipline is regarded as the highest law of the Church.

Says Lawrence, page 323, volume 2: "The Conference, however, did not regard its action as final or as at all binding on the Church. The delegates had not been instructed to make a constitution; and recognizing themselves as only the representatives and servants of the Church, they caused the instrument to be printed, accompanied by a circular, calling the attention of the Church to the same, asking that the delegates to the General Conference of 1841 be instructed to adopt, amend, or reject the same."

The circular was as follows:

CIRCULAR.

To the Members of the Church of the United Brethren in Christ throughout these United States:

Dear brethren, by whose authority we, as a General Conference, have been authorized to legislate on matters pertaining to the government of our church, and having long since been convinced of the great necessity of a constitution for the better regulation thereof, have, by unanimous consent, framed and established the foregoing: We are well aware that we have transcended the bounds given us by our discipline, which will be found in the constitution, article IV, section 2, declaring that the said constitution can neither be altered nor amended without a majority of two thirds of a General Conference. If there had been a general notice given to the Church previous to the election of delegates that there would be a memorial offered to General Conference, praying them to adopt a consti-

tution, and to ratify it agreeably to article IV., section 2, then the General Conference would have had full power to have done so. The object of this circular is (feeling that the government of our church is not as firm as it ought to be) to give notice to our church throughout the Union that we intend to present a memorial to the next General Conference, praying them to RATIFY THE CONSTITUTION NOW ADOPTED, according to article IV., section 2, in testimony of our ardent desire for the welfare of our church, and the general spread of the gospel.

Written by order of General Conference, Germantown, Ohio, May 12, 1837.

Signed in behalf of the same by

WILLIAM R. RHINEHART, Sec'y.

The loose statement and uncertain language of this circular left the Church in doubt as to what, if anything, was submitted, some claiming it was only article IV.; others, the whole constitution. Again, some claimed the constitution took effect after its adoption by the Conference; others urged it was not valid until ratified, and was to be regarded as a mere recommendation, or at best a statute only. Many, both of the clergy and membership, were opposed to any Constitution. They claimed it had never been asked for, never authorized, and as a matter of fact, was not wanted. Certainly it was never voted upon; never ratified; never really submitted for ratification. And so the four years passed, and the delegates were elected to the next Conference *without any reference to the constitution and without instructions or authority as to its adoption or amendment*, much less to the formation and adoption of a new constitution.

See Spayth and Lawrence, as also Drury's Lives of Otterbein and Glossbrenner on conferences of 1837 and 1841.

But in the meantime this constitution of 1837 was printed and placed in the Discipline as "THE CONSTITUTION," and obeyed by the Church as strictly and fully as that which superseded it.

The Constitution of 1841.

When the General Conference of 1841 met it did not ratify or even consider the question of ratifying the constitution of 1837. No memorial, as contemplated by the circular, was received from the former or any conference, or from any person

in behalf of either. But of its own motion the Conference took up the question. It debated for two days whether it would have any constitution, and finally decided by a vote of yeas 15, nays 7, to make one, referring the whole subject to a committee, which reported a *new* constitution. While it largely followed the constitution of 1837, it changed it in several important respects and added the sections upon slavery and secret societies and changed the clause providing for amendments, so that instead of permitting amendments by a vote of the General Conference, it declared that "there shall be no alteration unless by request of two thirds of the whole society."

It was really a new constitution, but the remarkable and undisputed fact is that *it was never ratified by the Church; never submitted to the members for consideration or ratification.*

We are surprised to find that Judge Lawrence, in his "Professional Opinion," repeats the claim that the delegates to the Conference of 1841 were "elected in view of the fact that they were to adopt, amend, or reject the constitution of 1837, or make a new one;" and again that "they were elected for the purpose, among other things, of making a constitution." We beg the court to note the proof of these astounding statements, to-wit: That Dr. Davis says that some laymen, who happened in the Conference, heard a delegate make such a statement! *Somebody says somebody heard somebody say so!* And this upon a grave question of the validity of a constitution. With all deference to our learned friend, we must say that *the assertion is unwarranted and wholly untrue.*

Equally unfounded are several statements as to *how* the constitution was adopted, which are fully answered by a verbatim report of the whole official record as found in the Conference proceedings, as follows:

"A motion was offered by E. Vandemark that a constitution for the better regulation of the Church be adopted. Much discussion ensued. After prayer, Conference adjourned. * * * The motion for a constitution was called up. A spirited discussion ensued. The vote being taken, it carried in favor of a constitution yeas 15, nays 7."

"On motion of J. Coons, a committee of nine was appointed to dratt a constitution, whereupon, J. Russell, J. J. Glossbrenner, George Miller,

Alexander Biddle, H. G. Spayth, J. Montgomery, Wm. Davis, H. Bonebrake, and H. Kumler were appointed (one from each conference) by ballot. Conference adjourned till the committee should be prepared to report."

AFTERNOON SESSION.

"Conference met at four o'clock; committee on constitution made a report, which, being distinctly read twice, on motion was laid on the table until to-morrow morning."

MAY 13TH.

"Conference met. After prayer the constitution was read the third time by sections, and adopted in the words following:" [Here followed the constitution.]

See Conference proceedings, pp. 80, 81.

This is the whole record. It shows the Conference claimed no special power; did not take up the subject as unfinished business or pretend to adopt or ratify a former constitution, but took up the subject *de novo* and assumed the responsibility without any pretence of any specially delegated power.

This Conference, which assumed to make an unalterable law for the Church, was composed of only *twenty-three delegates*, ALL PREACHERS. The membership had neither voice nor vote in this Conference, nor opportunity to vote in approval or disapproval of its work. It had sent no petitions, had made no request for a constitution, given no authority to the members of the Conference to make an organic, much less an *unalterable, law* for the Church. This leads us to inquire:

What is a constitution? And how are constitutions made? And wherein different from statutes?

These questions were asked and answered in Vanhorne vs. Dorrance, 2 Dall (U. S.), 308:

"It is the form of government *delineated by the mighty hand of the people*, in which certain first principles of fundamental laws are established. The constitution is certain and fixed; *it contains the permanent will of the people*, and is the supreme law of the land; *it is paramount to the power of the legislature*, and *can be revoked or altered only by the authority that made it. The life-giving principle and the death-doing stroke must proceed from the same hand.* What are legislatures? Creatures of the constitution; they owe their existence to the con-

stitution; they derive their powers from the constitution. It is their commission, and therefore all their acts must be conformable to it, or else they will be void. The constitution is their original, sovereign, and unlimited capacity. *Law* is the *work* or *will* of the *legislature* in their derivative and subordinate capacity. *The one is the work of the creator, and the other of the creature.*"

"According to the American usage, the word 'constitution' is used to designate the written instrument *agreed upon by the people of the Union or of a particular State* as the absolute rule of action and decision for all departments and officers of the government in respect to all the points covered by it, which must control until *it shall be changed by the authority which established it.*"

1 Story on Cons., 338, *et seq.*
Cooley on Constitutional Limitations, 3.
People vs. N. Y. Central R. R., 24 N. Y., 486.

"A constitution is not operative *until its adoption by the* people."

Parker vs. Smith, 3 Minn., 240.
State vs. New Orleans, 29 La., Ann 863.
Cooley on Constitutional Limitations, 32.

We ask the especial attention of the court to two important cases covering this question, decided by the supreme court of Pennsylvania. The legislature in 1871-2 authorized a vote for the call of a convention to revise the constitution, and the people not only voted to call the convention, but elected the delegates therefor. The question was raised as to the validity of the constitution afterward framed by this convention, and the court says:

"The convention called under the acts of 1871-2 could not take from the people their sovereign right to ratify or reject the constitution or ordinance formed by it, and could not infuse life or vigor into the work before ratification by the people."

See learned opinion in these cases rendered by Chief Justice Agnew.
Wells vs. Bain, 75 Pa., St. 40.
Woods' Appeal, 75 Pa., St. 59.

But it is urged by Counsel for defendants, that in several of the States the constitutions were never ratified by the people. Judge Jameson, in his valuable work on "Constitutional Conventions," says that since the foundation of our government one hundred and fifty-seven conventions have framed constitutions, of which number one hundred and thirteen were submitted to the people for ratification and forty-four were not. But he shows that of the latter many were adopted during the Revolutionary period, when submission was either impossible or impracticable; that some were merely revising conventions and acting under authority of law; that in others the constitutions, although not formally, were substantially submitted and ratified; and that in all of them the conventions which formed the constitutions were specially called for that purpose, and the delegates were elected by the people with special reference thereto. Among the non-submitting conventions is that of 1802 in Ohio, but it is worthy of note that both the later constitutions were submitted and ratified by the people. Since the Kansas trouble, in 1855-9, Congress has provided in its enabling acts that the territories must submit their constitutions to the people for ratification.

"All this," says Jameson, "makes it evident that the prevailing sentiment of the country from the earliest times has favored the submission of constitutions to the people, even in cases when the conventions were authorized by law to frame constitutions and specially called and elected for that purpose."

See Jameson's Cons. Conv., pp. 494, 505.

But it is said, if not actually ratified by the membership, it became *valid by the universal acquiescence of the Church thereto*, and that all who have joined the Church since 1841 have tacitly, if not expressly, assented thereto, and so the Constitution of 1841 is founded upon a compact.

Jameson says, that as a matter of fact "*no constitution ever so originated*," and adds: "To say that the constitution is based upon consent is, in my view, as absurd as to attribute to the consent of its component particles the structure and functions of a plant.

Doubtless those particles acquiesce, and if they were sentient beings, with conscience and will, that acquiescence, without ceasing to be determined by natural laws and forces, might be denominated consent. So the acquiescence of great societies or races in the founding of government and dynasties is only by a figure of speech to be called their consent; it is rather resignation to the action of forces which they have neither ability nor desire to countervail. The human race have always acquiesced in the revolution of the earth about the sun; they have sat down to study its causes, and recognized with thankfulness its accruing advantages; no faction, so for as history shows the church, perhaps, in Galileo's time excepted ever even protested against it; but it does not follow, therefore, that the system of planetary motion, of which that revolution is a part, was founded on the consent of the earth or its inhabitants or on a compact between them and the residue of the universe. * * *

"*History records no instance in which such a compact*, as the theory supposes, *was ever made;* and to imagine it except for the purpose of exposition or illustration, is as puerile as to trace the social union of a swarm of bees to a compact made at some imaginary congress, when each bee was in a 'state of nature.'"

But as a matter of fact there has been no such acquiescence in the Church, nor even in the General Conference. It has always been an unsettled and a disputed question. The validity of the constitution was stoutly disputed in Conference of 1845; and in the General Conference of 1849 there was a motion *to strike the constitution from the Discipline because it was invalid, and the motion was entertained, debated and voted upon.* A somewhat similar motion was made in the Conference of 1857. The committee to whom the constitution was referred on question of revision reported in favor of submitting it to a vote of the people for ratification or amendment, but the Conference refused to do so.

See original Conference proceedings 1857, p. 202.

In General Conference of 1849 some petitions were presented asking for lay representation, which could only be

granted by a change in the constitution. They were referred to the committee on revision, which reported it was "inexpedient" to grant the prayer of the petitioners, and this was approved by the Conference. The same subject was considered in five subsequent conferences, in each of which the question of amending the constitution, by a mere vote of the Conference itself, was considered, referred, reported upon, sometimes discussed, and always disposed of on ground, not of right to make the change, but because of expediency, etc.

See original Conference proceedings 1849, p. 149, and 1861, pp. 287, 301.
Also printed Conference proceedings 1869, pp. 199, 209, 212.
Printed Conference proceedings 1873, pp. 105, 188, 189, 193, 200.

Indeed, in one way or another, opposition, dissent, and disregard of the constitution as the fundamental law of the Church have been expressed more or less strongly in every Conference since 1841. The people obeyed it, *not* because it was labelled "Constitution," but *because it was law;* and they obeyed it no more strictly than they did every other law made by the General Conference, which they had been taught to regard as the highest legislative body and the supreme law-making power of the Church.

See bishop's address, pp. 10, 11, 19th conf. pro., 1885.
Report of Standing Committee on Constitution, pp. 134, 135.
Also discussion thereon, pp. 141, 168, 173, 175.

THE POWER TO ENACT IS THE POWER TO REPEAL.

This brings us to the important question: Did the adoption of the constitution by the Conference of 1841 make it the paramount law of the Church? Because they labelled it a constitution, does it have any greater authority or force than an ordinary enactment? Said Judge Welch in Burt vs. Rattle, 31 O. S., 116: "To call a thing by a wrong name does not change its nature."

It was passed with no greater formality and by no different vote than were all the other laws made by the General Conference; why then has it any greater force or validity, and why may it not be repealed or amended by another Conference? If

it had been submitted to the people of the Church and ratified by them, it could not, we readily grant, be changed, except in the way provided in the instrument. But as it is conceded, that it never was submitted to a vote of the Church and never was ratified by its members, why should it have any greater force or authority than a statute? One legislative body cannot bind its successor by any requirement as to how its enactments may be amended or repealed. The power to enact is a power to repeal, and any law passed may be amended or repealed by the same body which enacted it. Even when a by-law requires that no alteration of a law shall be made except by a two-thirds vote of the members, yet the same body by which the by-law was made may repeal it by a majority.

Richards vs. Congre'l Soc'y, 58 N. H., 187.
Com. vs. Mayor of Lancaster, 5 Watts, 152-5.
Warden's of Christ Ch. vs. Pope, 8 Gray, 140-2.
Bloomer vs. Stalley, 5 McLean, 161.
Kellogg vs. Oshkosh, 14 Wis., 623.
Brightman vs. Kivner, 22 Wis., 55.
Morgan vs. Smith, 4 Minn., 67.
Angell & Ames vs. Corp., 459.
Encyclopedia of Law, vol. 3, 691.
Wall vs. State, 23 Ind., 150.
State vs. Oskins, 28 Ind., 364.

The law, as above stated, has been fully recognized by our own Supreme Court. Said Justice Bartley: "The legislature cannot, at one session, by the enactment of a law, in any manner or to any extent whatsoever, limit or abridge the legislative power vested in this body at any subsequent session."

See Plank Road vs. Husted, 30 S., 581.
Also Harrison vs. Doyle, 240 S., 301.

POWER AND SOVEREIGNTY OF GENERAL CONFERENCE.

From 1800 to 1885 the General Conference has assumed and exercised uncontrolled power of legislation and complete sovereignty over the Church. It has made and unmade constitutions; declared what was and what was not the faith of the Church; made disciplines governing the subordinate conferences, the churches, and the conduct of both preachers and members, and changed them when and as it pleased; it has declared from time to time what was right and what wrong;

what lawful and what unlawful; it has made constitutions for the missionary societies, the Sabbath-schools, boards of education, etc., and declared the provisions to be "the law of the Church;" and yet during all of these years, covering nearly a century, it has never, until 1885, submitted a single one of these constitutions, confessions of faith, disciplines, laws, and enactments to subordinate conferences or to the membership of the Church for ratification or approval.

See Old Histories prior to 1821: Conference proceedings in Record up to 1865, and printed Conference proceedings up to date.

Whatever of validity or force any of these constitutions, disciplines, confessions, laws and enactments had, was derived solely from the sovereignty of the General Conference. Such seems to have been

THE U. B. THEORY OF GOVERNMENT.

Says Judge Cooley: "Where, by the theory of the government, the exercise of complete sovereignty is vested in the same individual or body which enacts the ordinary laws, an enactment, being an exercise of power by the sovereign authority, must be obligatory, and if it varies from or conflicts with any existing constitutional principle, it must have the effect to modify or abrogate such principle, instead of being nullified by it. This may be so in Great Britain with every law not in harmony with pre-existing constitutional principles, since, by the theory of its government, Parliament exercises sovereign authority, and may even change the constitution at any time, as in many instances it has done, by declaring its will to that effect."

Cooley Constitutional Limitations, p. 4.
1 Black Com., 161.
Broom Const. Law, 795.
Fischel English Constitution, b. 7, c. 5.

The constant exercise of a power by the legislature from the adoption of the constitution to the present time ought to be deemed almost conclusive evidence of its rightful possession by that body.

State vs. Mayhew, 2 Gil (Md.), 487.

The Conference of 1837 assumed to make a constitution; that of 1841 to supersede it with another; why might not that of 1889 supersede that of 1841 with still another?

But Suppose The Constitution Valid.

As a constitution, shall article 4 be construed so literally and so artificially that "the request" shall be made antecedent to any action on the part of the General Conference looking to alteration? Just what the twenty-three preachers, who assumed to make this constitution, meant by "request" is not easy to determine. Webster says it is "the expression of a desire to some person for something to be granted or done;" "a prayer," "*the expression of a desire to a superior being*," and adds that "*it supposes a right in the person requested to deny or refuse to grant.*" This would make the General Conference superior to the people, the creature superior to the creator!

The delegates in 1841 were largely Germans and uneducated, and whether they understood the full force and meaning of the word may be doubted. The Church was then small and mostly in rural districts, and it was possible for the bishops and preachers to personally know all the members and so learn their opinions and wishes. The proceedings in several subsequent conferences indicate that it expected that the "request" would be verbal, and when the delegates came together at Conference they could compare notes and determine whether or not a particular measure was or was not requested by the Church.

But the Church has outgrown its primitive garments; what fitted the boy has become too small for the man. "The whole society" now comprises 2,640 churches and, the defendants say, 210,000 members. They are scattered over the whole country, from Maryland and Pennsylvania to California and Oregon, including Canada and a portion of the South, not to speak of some thousands in Germany and western Africa. How can all these make a request known? It is no longer possible to do it personally. How otherwise? And how unite in a two-thirds request? How consult, how act in concert, upon any question

of alteration? The only mode suggested is by petitions. But who has not learned how unmeaning, how unreliable, how worthless they are? So easily obtained and so generally manufactured and so rarely indicating popular opinion, they have ceased to influence Congress or any legislative body.

The Conference of 1841 could not have intended a construction that would work such inconvenience, hardship, and injustice; that would prove such an absurdity. May we not, therefore, seek a more reasonable construction?

Vattel long ago said:

"Every interpretation that leads to an absurdity ought to be rejected; by this is meant that no such construction should be put upon a statute as would lead to an absurd consequence. This rule is founded upon the presumption that the legislature did not intend an absurdity; hence, as that intention is to be ascertained, this presumption leads the mind to the conclusion that any construction which would lead to such consequences is not the true one. By an absurdity, in the sense in which we now use the term, we mean not only that which is physically impossible, but also what is morally so. We regard that to be morally impossible which is contrary to reason, or in other words, that which could not be attributed to a man in his right senses."

Vattel, book 2, chap. 17, sec. 282.

"Where a statute (and the rule as to construction is the same, whether applied to constitutional or statutory law), will bear two interpretations, one contrary to plain sense, the other agreeable to it, the latter shall prevail. If words, literally understood, bear only a very absurd signification, it is necessary to deviate a little from the primary sense."

Dwarris on Cons. and Stat. Cons., p. - .

"In doubtful cases, if by giving a literal construction to a statute, it will be the means of producing great injustice and lead to consequences that could not have been contemplated by the legislature, courts are bound to presume that the legislature intended no such consequence, and give such a construction as will promote the ends of justice."

Smith's Com. on Constitutional and Statutory Construction, 695.

"In construing a clause of the constitution, if a literal interpretation of the language involves any absurdity, contradiction, injustice, or extreme hardship, the court may deviate a little from the received sense and literal meaning of the words, and interpret the instrument in accordance with what appears to have been the intention of its framers."

Taylor vs. Taylor, 10 Minn., 107.
Story on Constitution, p. 141, 145, 157, and 161.

CONSTRUCTION OF ARTICLE IV. AS TO AMENDMENT.

The Conference of 1841, which, without any authority not vested in every other General Conference, exercised so much freedom in altering the constitution of 1837, we may safely assume, did not intend to prevent *any* alteration in their own work. The fact that they carefully and specifically provided for its alteration, shows that they anticipated a time when *it ought to be*, and *could be*, amended.

The constitution of 1837, after which they modeled theirs, provided for its amendment by a vote of two thirds of the General Conference. The evil sought to be remedied was the alteration by *Conference without ratification of the people.* The remedy provided was that *the alteration could only be made by two thirds of the whole* society. The mistake was in using the word "request," which, literally construed, leads to confusion, trouble, hardship, and to absurdity, because it defeats the very object for which the article was intended.

Clearly what the Conference intended was either the mode indicated in several conferences, that, before any change should be made, the Conference be satisfied that it was desired by two thirds of the whole society, or the usual and reasonable one found, substantially, in almost all constitutions, to-wit: that the constitution be not altered, except by the consent, approval, or vote of two thirds of the whole society.

And the history of the Church shows that this was the construction put upon it by all the conferences which have been held since the earlier ones composed largely of the same men who sat in the Conference of 1841.

"If there be doubt as to the meaning of a constitutional provision, and the body that made the constitution, although at a subsequent meeting, and when composed of different members, construes it, such construction will be accepted as the true one." * * * *

"If the sense of the law being clear, there arise from it inconveniences to the public good, we must have recourse to the Prince, to learn of him his intention as to what is liable to interpretation, explanation, or mitigation, whether it be for understanding the law, or mitigating its severity."

Domat's Civil Law, quoted by Smith in his Com. on Constitution and Statute Construction, 619.

"Authentic interpretation is that which proceeds from the author or utterer of the text himself. * * * If a legislature or monarch give an interpretation, it is called authentic, although the same individual who issued the law to be interpreted may not give the interpretation. This proceeds upon the reason that the successive legislators or monarchs are considered as one and the same, making law and giving the interpretation in their representative, and not in their personal, character."

Lieber, as quoted by Smith, 603 and 604.

"In construing a statute the construction put upon it by the executive department, charged with its execution, is entitled to great weight."

Westbrook vs. Miller, 56 Mich., 148.
U. S. vs. Philbrick, 120 U. S., 52.
Howell vs. State, 71 Ga., 224.

"A constitution is not to be interpreted as a private writing by rules of art which the law gives to ascertain its meaning, but it is to be studied in the light of ordinary language, the circumstances attending its foundation *and the construction placed upon it by the people, whose bond it is.*"

Chesnut vs. Shane's lessee, 16 Ohio, 599.
Cronise vs. Cronise, 54 Penn., 255.

"The judgment of the highest court of a State that a statute has been enacted in accordance with the requirements of the State constitution is conclusive upon the Supreme Court of the United States, and it will not be reviewed therein."

Atlantic vs. Gulf R. R., vs. Georgia, 98 U. S., 359.
Bank vs. Bennington, 16 Blath, C. Ct., 53.
Smith vs. Good, 34 Fed. Rep., 204.

Conference Action changing the Confession of Faith.

In our short sketch of United Brethren Church history, we have seen that the *confession of faith and discipline were in 1815 modestly presented to the Church, with the bare expression of a desire that they be observed*, and that for years after, the two were published as different sections of the same law, and regarded as equally binding and authoritative upon the Church.

During the first quarter century of the Church, the word "discipline" comprised both confession and discipline, and there was no prohibition against changes in either. Indeed,

up to 1833, it was especially declared that the General Conference had "power to alter or amend the discipline according as they may find it necessary and expedient, "provided only, that they do not establish any article which may tend to abolish, undo, or put aside the itinerant plan."

Discipline of 1819, Doc. U. B. His. Soc., 198, pp. 24, 25.

But the General Conference of 1833 made several specific, material changes in the confession of faith and a dozen or more in the discipline, and then attempted to limit the power of all subsequent general conferences by declaring that "none of her acts shall be so construed as to alter the confession of faith or in any manner change the meaning, spirit, rules, and regulations of our discipline as they now stand."

Proc. Conference 1833, p. 30.

In the so-called constitution of 1837, this provision was changed, and the clause, "Nothing shall be done to change the article of faith," inserted in its stead; thus for the first time making a distinction between it and the discipline. This was followed by the Conference of 1841, which went a step farther, and put into the constitution the words, "No rule or ordinance shall at any time be passed to change or do away the confession of faith as it now stands."

Let us stop to inquire what this provision means. Counsel for defendant tell us, it means that the confession of faith, as then made, may never be altered or amended; never even revised, but must forever remain unaltered and unalterable. If this be so, it matters not what the progress of historical research and scientific investigation; it matters not what the advance of the intellectual and religious world, the creed, made seventy years ago, must remain the immutable truth; and whatever the 2,500 preachers and 200,000 members of the Church now believe, and now desire and want, they must remain forever bound hand and foot by a cast iron rule, made by the twenty-three preachers who constituted the Conference of 1841.

Will any court sustain a construction so utterly at variance with reason, common sense, and public policy?

Said Justice McLean, in Bloomer vs. Stolley, 5 McLean, 158: "There is no mode by which a legislative act can be made irrepealable, except it assume the form and substance of a contract."

And Judge Cooley: "Similar reasons to those which forbid the legislative department of the state from delegating its authority will also forbid its passing any irrepealable law."

Cooley, Cons. Lim., 149.
See authorities before cited on power of one legislature to bind a subsequent one, as also upon the power of courts to construe doubtful provisions, so as to prevent absurdity, injustice, etc.

Blackstone says: "Acts of parliament that are impossible to be performed are of no validity; and if there arise out of them, collaterally, any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void."

Black. Com., Vol. I. p. 91.

The supreme court of Michigan, in two cases, declared ordinances of certain cities in that State "invalid, because unreasonable."

People vs. Armstrong, 41 N. W. Rep., 275.
Frazer's case, 63 Mich., 396.

So the supreme court of Illinois declared certain ordinances of cities in that State void, "because unreasonable and oppressive."

Clinton vs. Phillips, 58 Ill., 102.

Other States have held the same way.

Commissioners vs. Gas Co., 12 Pa. St., 318.
Kip vs. Patterson, 26 N. J. Law, 298.
Commissioners vs. Robertson, 5 Cush., 438.
Dunham vs. Rochester, 5 Con., 462.
Dillon vs. Mun. Corp., § 253.
State vs. Sinks, 42 O. S., 345 6, as to effect of State legislation "plainly unreasonable and improbable."

But the provision is susceptible of a

MORE REASONABLE CONSTRUCTION,

The one that the subsequent conferences placed upon it, to-wit: that no radical change, no wholesale alteration be made; noth-

ing done that would "do away" with the entire confession. An examination of the proceedings of the several conferences held since 1815 shows that at every one of them changes in the confession of faith and discipline, more or less material, have been made; many of them at the instance, or by the vote, of some of those who now so loudly proclaim themselves the only "defenders of the old faith." Some of them were made directly, by striking out some words and inserting others, as, for example, in the paragraph on baptism, in what the seceders claim to be the "old confession of faith of 1815," *there were ten changes in the phraseology made between 1815 and 1841.* Others were made indirectly, by changing or adding to the discipline, in the prescribed examination of candidates for admission to the Church and ministry. Among these were those made in conferences of 1853 and 1857, upon the question of depravity, defining what is "natural depravity," and what "total depravity." Others were made by declaring what text-books must be used in the course of study in the Theological Seminary. Others especially relating to conduct, were adopted as resolutions, as, for example, those relating to Sunday observance, slavery, intemperance, secret societies, dress, women's rights, smoking, etc. In course of time, by these methods, the doctrines of the Church became scattered over the whole discipline. *The revised confession*, about which such a clamor is raised, *simply brought them together, and put them in proper shape.*

Judge Lawrence, in his "Professional Opinion," page 6, admits that a "few changes" to the confession were made between 1815 and 1833, but that they were "immaterial," and that those made after 1833 related not "to belief but to discipline," and one of them merely to correct a typographical error. It is enough to know that what he says was to remain "forever unchanged," *was changed, and frequently.* Whether these changes were material or not, or whether they related to belief or conduct, or were the result of typographical or other mistake, is of no importance whatever. In either case it demonstrates, most clearly, that the Church construed the provision reasonably, and revised the confession, from time to time, as seemed necessary and proper. And that the final

revision, made in 1885-9, was really desired and fully sanctioned by the Church is conclusively shown by the result of the vote upon the confession, submitted as it was upon a separate ballot, and so freed from any question as to the adoption of the constitution or the anti-secrecy provision, to-wit: Yeas, 51,070; nays, 3,310; majority in favor of its adoption, 47,760.

Conference Action changing the Constitution.

An examination of the proceedings of the ten General Conferences between 1841 and 1885 will show not only that the validity of the constitution of 1841 was persistently questioned, but that the constitution itself was changed; that is, its meaning was enlarged, restricted, or modified, from time to time, by successive conferences, as the progress of the Church and the times seemed to require.

The question of a direct, verbal change of Article I., so as to permit lay representation, was considered, reported, and voted upon in Conferences of 1857 and 1869, and actually carried in 1873. A few petitions asking the change were presented, but it was admitted that the "request" came *from only one sixty-seventh of the whole society.* The Conference, after several days' discussion, adopted the amendment by a vote of ninety in favor of, and only twelve against it. It was made subject to the approval of the Church, and the mode of submission was carefully provided. It was substantially the same as that adopted by Conference of 1885.

Conference proceedings for 1873, pp. 105, 168.

There having been difference of opinion shown in the discussion as to the meaning of Article IV., the following resolution was adopted by the Conference: "*Resolved*, That the explicit rendering of Article IV. of the constitution be submitted to the Board of Bishops, and that they be instructed to publish the same in the *Religious Telescope.*"

Conference proceedings 1873, p. 205.

So far as appears from the records, the bishops rendered and published no opinion, and the amendment was never voted upon or even submitted to the Church.

But the action of this Conference, held sixteen years ago, settled two things:

First. That the General Conference conceded the necessity and assumed the right of giving a reasonable construction to Article IV. of the constitution.

Second. That properly construed, Article IV. did not require an *antecedent* two-thirds request, by way of petition or otherwise, of the whole society to validate an amendment.

In Watson vs. Jones, 13 Wallace, 733, the court specifies the cases in which the decision of the ecclesiastical court must be regarded as final and conclusive, and among them is "*the right of construing their own laws.*"

But if any doubt remained as to these points, they were removed by the action of the Conferences of 1885 and 1889, and the construction of said article so given is final and conclusive. This brings us to the

Proceedings of the Conferences of 1885 and 1889,

And again to the question, What is the reasonable and proper construction of Article IV of the constitution? Manifestly, that put upon it by the General Conference, to-wit: that no alteration of the constitution shall be made without the consent or approval of two thirds of the whole society. As the General Conference meets but once in four years, it adopted the best possible mode to enable the Church to pass upon the question of the proposed amendments. It appointed a commission (which was only another name for a committee), which, after maturing its amendments, submitted them fairly to the people, who voted upon them, and the result was reported to the Conference of 1889 as follows: For the amended constitution, 50,685; against it, 3,659; majority for the amended constitution, 47,026. Every effort seems to have been made to secure a full and fair vote.

No one charged that there was not a "fair vote and an honest count." More than two thirds of all who voted, voted for the amended constitution and confession of faith. This was *the "request" and the "request of two thirds of the whole society."* The Conference finding it thus *fully authorized, adopted the amended constitution and revised confession of faith, and after proclamation by the bishops, they became and were the law of the Church.*

But it is said that many did not vote, and therefore it was not the vote of two thirds of the whole society. It has been decided that the whole number of votes cast at an election at which an amendment to a State constitution is submitted will be taken as the number of electors of the State, and that where an act required a "majority of the legal voters" of a township or county, it "intended to require only a majority of the legal voters of the township or county voting at the election." The question is well settled by numerous decisions in the federal and State courts, and the Conference was undoubtedly right in holding that after submitting the amendments to a vote of the Church, *two thirds of those who voted was two thirds of the "whole society."*

St. Joseph vs. Rogers, 16 Wallace, 663-4, and authorities there cited.
Wardens of Christ Ch. vs. Pope, 8 Gray, 140-3.
Richardson vs. Society, 58 N. H., 188-9.
State vs. Swift, 69 Ind., 505.
Green vs. Weller, 32 Miss., 850.
Prob. Anit cases, 24 Kans., 700.
Dayton vs. St. Paul, 22 Minn., 400.
Miller vs. English, 21 N. J., 317.
Mad. Av. Ch. vs. Bap. Ch., 2 Abb. Pr. (N. S.), 234.
95 U. S., 369.
1 Sneed (Tenn.), 690.
20 Ill., 159.
20 Am. Corp. cases, 93.

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

Action of General Conference, Final and Conclusive.

But we think the history and facts already detailed make it clear that the General Conference of the United Brethren Church, like the "General Assembly of the Presbyterian Church," is, to use the language of Chief-Justice Gibson, "a homogeneous body, uniting in itself, without separation of parts, the legislative, executive, and judicial functions of the government, and its acts are referable to one or the other of them, according to the capacity in which it sat when they were performed."

Commonwealth vs. Green, 4 Wheat, 531.

And the General Conference, as we have seen, has not only considered and judicially determined all the questions hereinbefore discussed, but in its legislative capacity has approved and sanctioned the work of its commission and adopted the constitution and confession, and as the chief executive power of the Church declared them to be the supreme law and the approved doctrine of the Church, and so far as has been necessary, enforced obedience thereto.

Is not this final and conclusive?

In the celebrated case of Watson vs. Jones, *which has been followed in almost every State*, Justice Miller said:

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority, is that whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church-judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them.

* * * * * * * * * * * * *

"The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. *All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it.* But it would be a vain

consent and would lead to the total subversion of such religious bodies if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed."

We ask the special attention of the court to this case, as also to the following authorities upon the same questions:

Watson vs. Jones, 13 Wallace, 679, 733.
Harrison vs. Hoyle, 21 Ohio State, 294.
Gaff vs. Greet, 88 Ind., 122.
Potter on Corporations, vol. 2, 709, etc., 719, 720.
Walker vs. Wainwright, 16 Barb., 486.
State vs. Farris, 45 Mo., 183.
Robertson vs. Bullions, 9 Barb., 64.
German Ch. vs. Seibert, 3 Pa. St., 282.
Shannon vs. Frost, 3 B. Mon., 253.
Gibson vs. Armstrong, 7 B. Mon., 481.
Hale vs. Everett, 53 N. H., 2.
Terraria vs. Vasconce., 23 Ill., 403.
Harmon vs. Dreher, 1 Speer Equity, 87.
German Ref. Ch. vs. Seibert, 3 Barr., 282.
McGinnis vs. Watson, 41 Pa. St., 1.
Chase vs. Cheney, 58 Ill., 509.

"The civil courts act upon the theory that the ecclesiastical courts are the best judges of merely ecclesiastical questions and of all matters which concern the doctrines and discipline of the respective denominations to which they belong.

* * * * * * * * * * * * *

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

The White Lick Quaker case, 89 Indiana, 136.

"The principle may now be regarded as too well established to admit of controversy, that in case of a religious congregation or ecclesiastical body, which is in itself but a subordinate member of some general church organization, having a supreme ecclesiastical judicatory over the entire membership of the organization, the civil tribunals must accept the decisions of such judicatory as final and conclusive upon all questions of faith, discipline, and ecclesiastical rule."

High on Injunctions, vol. 1, sec. 310; 314.

In the recent case of *Mannix vs. Purcell, et al*, in our own supreme court, Chief-Justice Owen says: "The contention is that to resort to the law of the church as proof upon which to

qualify the absolute terms of the grant, is to permit the law of the church to supersede or dominate the civil law, and much sensitiveness is shown by eminent counsel upon this subject. There is here no ground for alarm. It is no innovation on the law of evidence in determining questions like the one at bar, to call in aid of the civil tribunal upon the law of the particular church involved for the purpose of determining the title to church property. * * *

"It is but a form of establishing, by convenient and very convincing proof, what entered into the contemplation of the parties to the grant at the time the title vested. It has been held that where a religious body becomes divided, and the right to the property is in conflict, the civil courts will consider and determine which of the divisions submits to the church, local and general. This division is entitled to the property. In determining which of the divisions has maintained the correct doctrine, *the findings of the supreme ecclesiastical tribunal of the denomination in question is binding upon the civil courts.*" The chief-justice cited McGinnis vs. Watson, 41 Pa. St., 9; Ramsey's Appeal, 88 Pa. St., 60; First Pres. Society vs. Langley, trustee, 25 Ohio St., 128; Ferraria vs. Vasconcellos, 31 Ill., 25; 3 Am. & Eng. Ency. of Law, 135.

Law Bulletin, vol. 21, p. 76.

It is upon this question that Judge Lawrence quotes *so repeatedly* from Chief-Justice Fuller *as if from an opinion rendered by him in the United States Supreme Court*, when as a matter of fact *it is from an article written by him when merely a practicing lawyer and seventeen years before he was appointed chief-justice.* He had just been beaten in the case of Chase vs. Cheney in the supreme court of Illinois. Sore from the defeat, he wrote an article for the *American Law Register* criticising the decision of the court.

But his objection to the decision even then went mostly to the question, whether a court might inquire into the jurisdiction and good faith of the ecclesiastical tribunal; points that do not arise in this case, for *who will question the fact that the General Conference had jurisdiction and acted in good faith in rendering its decision?*

Has There Been a Departure from the Old Faith, Usages, Etc.?

We think not. We think the Court will find that in all this revision there has been no abandonment of the old faith, usages, customs, etc., of the Church. This was carefully guarded by the Conference of 1885, in creating the Commission and defining its powers. The preamble indicates the reason for revising the confession of faith, to-wit: "Whereas, our confession of faith is silent or ambiguous upon some of the cardinal doctrines of the Bible *as held and believed* by our Church." Note that it is not because the Conference wants to abrogate, change, or abandon any of the old doctrines, but simply to put, verbally, into the confession of faith, *not new* and *strange doctrines*, but the *old ones*, long *held and believed by the Church*, but by mistake or oversight omitted therefrom. This is made clear and emphatic, by the conditions named in the act itself. The Commission is to "consider our present confession of faith," etc.: "*Provided*, first, that this Commission shall *preserve unchanged* in substance *the present confession of faith so far as it is clear;* second, *that it shall also retain the present itinerant plan;* third, that *it shall keep sacred the general usages and distinctive principles of the Church*," etc.

And that the Commission obeyed these instructions and kept strictly within the bounds so prescribed, is shown by the report of the committee to whom the matter was referred in the Conference of 1889, and the action of the Conference thereon.

The committee reported that after careful examination of the work of the Commission, and comparison of the instructions and *limitations* made by the Conference of 1885, with the work of the Commission, it found *that said instructions and limitations had been "obeyed and carried out with commendable accuracy,"* and further, "that the *proceedings* and *acts* of the Commission had been found to be *regular*, and *in accord with the directions given by the highest authority known to our Church," and therefore worthy of adoption.* The Con-

ference, after fair and full discussion and careful deliberation, *adopted this report*, and finding that the revised confession of faith and amended constitution had been, "*requested*" by more than two-thirds of the members who voted at the election held for that purpose, *ratified and confirmed them*, and *rightly declared them to be the "fundamental belief and organic law of the Church."*

Can there be any question as to the force and validity of this action?

Must not this decision of the highest legislative and judicial power in the Church be final and conclusive?

To what purpose, then, the long and labored arguments of Counsel for defendants, touching the regularity of the proceedings of the Commission, and the regularity of the action of the Conference and the procedure of the bishops thereon? Were not all these things passed upon, properly and finally, by the General Conference, and is not its decision *upon these points*, if no other, *final* and *conclusive?*

In deciding similar questions raised as to the validity of certain proceedings in a convention called to form a new Constitution in Pennsylvania, the Supreme Court of that State said:

"Whether one-third of the members of the convention requested a separate submission of an amendment, and whether the request was in an orderly way, was for the convention to decide, and could not after their action be inquired into. Error of procedure in the convention cannot be inquired into, the convention having acted within the scope of its powers."

Wells vs. Bain, 75 Pa. St., 40.

Will the Court Go Behind the Decision of the General Conference?

But notwithstanding the undisputed fact that the work of the Commission was approved by the Church, and the revised confession adopted by the General Conference and ratified by the people, Counsel for the seceders insist that the Court shall go behind all these decisions of the highest judicatory of the Church and disregard the expressed will of the people, and con-

sider *de novo,* the question, whether the Commission did or did not "preserve unchanged, in substance, the confession of faith so far as it is clear," and whether it did or did not make essential and material variations therein, and so follow Counsel and their expert witnesses into a fruitless investigation of the "thousand and one creeds of Christendom," and an endless discussion of dogmatic theology, ending in the illimitable field of sectarian controversy. Has the Court the leisure or inclination to engage in this ecclesiastical hair-splitting? Will it undertake to decide, for instance, whether the alleged change, "resurrection from the dead,"—the very phrase used, it is admitted, by Christ and his apostles, and found in the Nicene, and most of the creeds of Christendom, from "resurrection of the body," which it is admitted was never used by Christ or his apostles, was, or was not a justifiable, if a substantial change? Will the Court attempt to define sanctification, and determine what is its equivalent expression; and whether it was a departure from the old faith to use the very word introduced by Otterbein, and insert a doctrine universally believed by the Church and made essential to admission to its ministry? And the "communion of the saints"—it is not in the Scriptures—was not in the Apostles' Creed originally, but crept in, nobody knows when or how, was not in the so-called Otterbein creed, and was never used by Boehm, Goeting and the founders of the Church—was its rejection, whatever it may, or may not mean, a departure from, or a return to, the old faith? Add to these the divers metaphysical questions involved in the doctrines of depravity, justification, regeneration, adoption, future punishment, *et cetera*: questions which have been the subject of heated, profitless discussion for eighteen centuries, and which probably will continue to be in the same fruitless controversy for eighteen centuries to come—is the Court sufficient for this Herculean task? Will it not rather say, as did the Supreme Court of Pennsylvania, in a similar case: "The decisions of ecclesiastical courts, like every other judicial tribunal, are final; as they are the best judges of what constitute an offense against the word of God and the discipline of the Church. Any other than those courts must be incompetent judges of matters of faith,

discipline, and doctrine; and civil courts, if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt, which would do anything but improve either religion or good morals."

German Ref. Ch. vs. Seibert, 3 Pa. St., 282.

And says Justice Miller in Watson vs. Jones:

"It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies (Episcopal, Presbyterian, Methodist, etc.,) as the ablest men in each are in reference to their own. It would, therefore, be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so."

It must be kept in mind that this is *not* a case where the property, which is the subject of the controversy, is held by deed or will of the donor, and *by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.* In such a case, we readily grant, it would be the duty of the Court, however delicate or difficult it might be, to determine whether the party accused of violating the trust, is holding or teaching a doctrine so different as to defeat the declared object of the trust.

Many of the cases cited by Counsel for the seceders, and from which they quote so frequently, are cases of this character, or cases where the property is held by a religious society *which is strictly independent of other ecclesiastical associations*, and *so far as doctrine or government is concerned, owes no fealty or obligation to any other authority.*

The distinction between these and churches, like the United Brethren in Christ, which are subordinate members of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate control in some supreme judicatory over the whole membership, is clearly shown in Watson vs. Jones, 13 Wallace, 729, where the Supreme Court holds that:

"In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of Church and State under our system of laws, and supported by a preponderating weight of judicial authority, is that whenever the questions of

discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church-judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final and as binding on them in their application to the case before them."

But should the Court, notwithstanding all this, be disposed to go behind the decision of the General Conference and look into the question of creeds, it would find that what is called the new confession *is not new at all*, but *embraces the whole of the so-called Otterbein creed in almost its exact language, and the substance of all that is contained in the Confession of 1815*, — expressed, some of it, in the identical words, the rest of it in clearer and better language—*adding, simply, certain doctrines precious to all Christians, and which had always been believed in the Church*, and had been at different times, and in different ways, authorized and placed in the Discipline, but not included formally, as they manifestly should be, in the creed of the Church. Dr. Davis and the other controversialists, who testify as experts, object to some passages in this confession, but their evidence, closely scrutinized, shows that their criticism is verbal, not substantial; while the witnesses called on the other side, including Bishop Weaver, Professors Drury, Funkhouser, etc., the ripest scholars and ablest divines in the Church, declare in the most unequivocal terms, that there is no departure from the old faith; nothing really new to the Church; no substantial difference between it and the old confession, and the doctrines before that time, declared by the Church.

Such precisely was the verdict of the General Conference—the highest judicatory in the Church—and such the voice of the membership as expressed at the polls, and which, even if not binding, should have great weight in the determination of the question.

Do Creeds Ever Change?

But Counsel for the sëceders gravely tell us that "creeds never change." The Apostles' Creed, as now received, shows ten changes since 341. To avoid a similar fate for the Nicene Creed, the Œcumenical Council declared it should "remain forever," but a comparison between the creed of 325 with that

of 381 shows thirteen changes, and another important one was made in 589 by adding the "*filioque*." The Athanasian Creed was merely an expansion of the two former creeds; but the additions are shown by the fact that it is six times as large as the Apostles' Creed. Although changed, these creeds have not ceased to be reverently used by the Church.

Schaff's Creeds of Christendom, vol. 1, pp. 21-28-9.
Krauth's Reformation Theology, pp. 271-5.
McClintock and Strong, vol. 2, 262.

And change has in the same way marked the history of the modern church. The Church of Scotland established its covenants in 1557, changed them in 1559, again in 1638, again in 1843, and still again within a later period. The Augsburg Confession has had frequent additions made to it in each country where the Lutheran Church has been established. The Westminster Confession has been changed and must be changed again, and radically, too, or it will divide the Presbyterian Church. Newer churches, like the Methodist, Baptist, and Congregational, have gained adherence and popularity by a departure from the old creeds, and the adoption of new creeds and new methods, or by leaving the questions to their individual churches. Of all denominations, the Church of Rome is least given to change, and yet it has added two important dogmas within the memory of living men, to-wit: the Infallibility of the Pope and the Immaculate Conception.

And yet not one of these Churches has lost its identity or property.

The same advance in biblical learning and research has led to the revision of the authorized versions of the Old and New Testaments.

The eminent historian and scholar, Dr. Philip Schaff, says: "There is a development in the history of symbols. They assume a more definite shape with the progress of biblical and theological science. They are mile-stones and finger-boards in the history of Christian doctrine." Canon Farrar expressed the same thought: "The history of religions all through the ages has shown that *a creed is simply a register of the results of research up to a certain truth.*"

Says the learned Presbyterian divine, Dr. Morris:

"It should be held constantly in view that the church which frames a creed has a right at any moment to revise it wherever it is defective—to modify, expand, abbreviate, change the document itself, and also to regulate at all times the use or abuse of it by ecclesiastical authorities. Such a prerogative is certainly to be exercised with great caution, but the right to exercise it, like the right to interpret the scripture, is cardinal in Protestantism, and is inherent in every Protestant church."

Dr. Morris' Ecclesiology, p. 121.

The World Moves; Must the Church Stand Still?

But suppose the confession of faith and constitution were changed. The world moves; shall the Church stand still? Every year brings new light; must the Church remain in darkness? In all else there is progress, improvement; why not here also? Almost all other Churches have at one time or another changed their creeds, and the result is renewed life, growth and prosperity; shall this one stop, decay, and die? Says the eminent biblical scholar Dr. Philip Schaff, so much relied upon, and so frequently quoted from, by counsel and their clerical experts:

"Revision is in the air. Some years ago it was the revision of the Bible; now it is the revision of creeds. The former has been successfully acplished without doing any harm either to the Bible or Bible readers; the latter will be accomplished at no distant day, with the same result of sundry improvements in minor details without detriment to the substance. * * *

"We live in an age of research, discovery, and progress, and whosoever refuses to go ahead must be content to be left behind and to be outgrown. Whatever lives, moves; and whatever ceases to move, ceases to live. It is impossible for individual Christians or churches to be stationary: they must either go forward, or go backward."

Schaff, Creed Revision in the Presbyterian Churches, p. 1.

Judge Ranney, in 14 Ohio State, 44, quotes approvingly from an early decision of the Supreme Court of Ohio, in a contest as to which of two organizations was the "First Baptist Church of Dayton," to-wit:

"It does not follow that they lose their property by ceasing to entertain certain opinions. The declaration of faith under which they were

organized, contains no attempt to bind them to abide in the same belief. * * * The opinions of such a body cannot but change. To fix their fleeting wherries, to anchor them immovably in the stream of time, is beyond human power: for the mind at least is free; ranging by its inherent strength through the boundless fields of knowledge, molding its belief according to its apprehension of the truth, and incapable of fixedness, until the day when all truth shall be made known. And if it were possible, it were wrong; to limit activity of mind, is to set boundaries to human knowledge."

Keyser vs. Stensifer, 6 Ohio Rep., 363.

In case of Methodist Church vs. Wood, 5 Ohio, 288, the court decided that those who seceded from the church were not entitled to any portion of the property of the society from which they seceded, and gave as its reason therefor, that "*the efforts of the dissatisfied members were not directed within the Church to effect a reformation in its government and discipline*, according to the usages of the society, to conform to their wishes."

It is, therefore, not only permissible, but advisable, to work *within* a church for "reformation in its government and discipline."

These very questions were discussed by Chief Justice Lourie in McGinnis vs. Watson, 41 Penn. St., p. 282, and we quote a few sentences, in the hope that they may induce the Court to read the whole opinion:

"To say that the Church may not change its doctrines, practices, etc., would be to impose a law upon 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 would be impossible. * * * The fact is, that from the very origin of Christianity, changes have been continually going on in the Christian church in all its branches, congregations and members without producing a forfeiture of the property held by even those in which the change has been most decided. * * * 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 a part of its freedom."

And the following is particularly applicable to the present controversy:

"No doubt the consciences of many are offended by the changes 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."

The Constitution of the United States, pronounced by Gladstone "the most wonderful work of man," not only provided for amendment, but seemed to require amendment the first year after its adoption, when a most important addition, to-wit, the bill of rights, was adopted.

Commenting upon the fifth article of the Constitution, Judge Story says:

"A government which, in its organization, provides no means of change, but assumes to be fixed and unalterable, must, after awhile, become wholly unsuited to the circumstances of the nation; and it will either degenerate into a despotism, or by the pressure of its inequalities bring on a revolution. It is wise, therefore, in every government, and especially in a republic, to provide means for altering and improving the fabric of government, as time and experience, or the new phases of human affairs, may render proper, in order to promote the happiness and safety of the people."

And again:

"We cannot too much applaud a constitution which thus provides a safe and peaceable remedy for its own defects, as they may, from time to time, be discovered."

Story, Com. on Constitution, 679-682.

But the *real* trouble in the Church was *not* one of doctrine, government, or polity: it was the construction and enforcement of the

Clause Against Secret Combinations.

As we have already seen, this question did not trouble the early Church, and the rule against secret societies does not appear in the Disciplines prior to 1829, nor in the Constitution of 1837. But the trouble began with the insertion into the Constitution of 1841 of the vague, unmeaning clause: "There shall be no connection with secret combinations." What was meant by "secret combinations"? and what by "no connection"? Upon whom was the restriction? The General and Annual Conferences, or the membership? As churches were

then beginning to have secret societies within the church, or tributary thereto, and such was the plain reading of the words, it *seemed* that the prohibition was against any official connection between the Conferences and "secret combinations," whatever they might be. On the other hand, it was stoutly maintained that it was meant to, and did apply, to the membership.

Certain it is, that the subject soon became, and until the secession of one of the parties to the controversy, continued to be, the unfortunate source of constant discussion, dispute, and irritation in the Church. Not only the General, but most of the Annual Conferences, tried their hands at its construction; defining, enlarging, or limiting its meaning, as their convictions and feelings on the question from time to time prompted. Even "the little conference around the York corner," seceding because of change, tried its hand at construing, defining, and changing the meaning of the words "secret combinations." [See their Conference Proceedings, page 41.] And this, notwithstanding Judge Lawrence's assertion, that *to define* is *to change*, and *to change* is *to violate the constitution.*

The controversy touching this provision grew so bitter that it became absolutely necessary for the peace and well-being of the Church, that the matter be finally and definitely settled, and that the Church declare in clear, unmistakable language what was its real belief on the question, and what the true rule of conduct to be enforced in the Church. This was done in the Constitution of 1889, as follows:

"We declare that all secret combinations which infringe upon the rights of those outside their organization, and whose principles and practices are injurious to the Christian character of their members, are contrary to the word of God, and that Christians ought to have no connection with them."

"The General Conference shall have power to enact such rules of discipline with respect to such combinations as in its judgment it may deem proper."

This is a decided improvement in language, and yet no abandonment of the old principles and faith of the Church. It is clear, strong, unmistakable in its condemnation of what was conceived to be wrong, and in enforcing the duty of the

membership in relation thereto. And then it provides, in a reasonable, practicable way, for its enforcement, by giving the power to the General Conference to enact such rules as may, from time to time, become necessary or proper to enforce its observance by the Church.

As indicating how closely the new constitution kept within the line of the old principles and faith, compare the above article of the new constitution with the following interpretation put on the old constitution by the General Conference of 1885, and placed in the Discipline as the law of the Church, prior to the Conference at Fostoria:

"A secret combination, in the sense of the constitution, is a secret league or confederation of persons holding principles and laws at variance with the word of God and injurious to Christian character, as evidenced in individual life, and infringing upon the natural, social, political, or religious rights of those outside its pale."

See Discipline 1885, page 82.

Secession.—Rights of Seceders.

On the question of the adoption of the revised constitution, etc., in the Conference of 1889, the vote stood: *yeas*, 110; *nays*, 20. Of the latter, five remained, and cheerfully acquiesced in the will of the majority. But to quote from "An Outline History of Our Church Troubles," written by one of the delegates:

"One missionary bishop and fourteen delegates who had voted in the negative, on the confirmation of the work of the Commission, withdrew from the lawful place and lawful General Conference, and, securing *another hall*, in *another part* of the city of York, proceeded to organize another body and Church; claiming that they were and are the original and only true Church of the United Brethren in Christ. This small minority—far less than a quorum of the General Conference; without records, without a secretary, without anything to show that it had any connection with or standing in the Church of the United Brethren in Christ—arrogated to itself the absurd and ludicrous prerogative of declaring that the very body out of which the little faction had crept, had turned itself out of the Church, whose highest representative it was, and whose overwhelming sentiment it had the honor to reflect."

These seceders seem to have forgotten the solemn warning of their own Discipline: "If we are united, what can stand before

us? If we are divided, we shall injure ourselves, the work of God, and the souls of our people."

Discipline, 1885, page 78.

The Church, it is conceded, was united in 1885, and both parties united in the Fostoria Conference, but the final vote on the Commission showed the defendants in a hopeless minority. It being in the court of last resort, they could not appeal, except to the membership of the Church. This they did, by entering their protest in the journal and publishing an address to the Church. This carried the question back to the people, who had four years for discussion and consideration, and finally the opportunity to reverse the decision and action of the Conference of 1885 in either or both of two ways, to-wit: first, to vote down the proposed amended constitution and confession of faith; second, to elect only such delegates to the Conference of 1889 as would vote to reverse and nullify the former proceedings. BUT THE PEOPLE DID NEITHER. On the contrary, they adopted the proposed amendments by a vote of ten to one and sent 110 delegates to sustain it, against 20 who opposed it. But it is said that those opposed to the work of the Commission refused to vote upon the constitution and confession; but it is admitted that they voted for delegates to the General Conference. The whole vote cast for and against the constitution was 54,344; the whole number cast for delegates was 58,839, showing they numbered only 4,495; adding these to the 3,659 who voted against the constitution makes 8,154. So that if they had all voted against the constitution it would still have been carried by 42,531 majority, or say by six to one.

In this we make no account of the fact, that in five Conferences, controlled by the defendants, they refused to appoint tellers to count the votes cast on the work of the Commission. They voted for delegates, however, casting 7,251 votes, included in figures given above. Outside of these Conferences, the vote on Commission was 52,350, and the votes for delegates 51,802 that is, outside of these five Conferences, where the people were disfranchised, the vote on the Commission was 548 more than that cast for election of delegates to the General Conference.

Now, the General Conference of 1889 was elected under the old constitution and laws, and was as regular and legal in every way as any that ever preceded it. Indeed, no one then questioned, as no one now disputes the fact, that it was the true and lawful General Conference of the United Brethren Church, with power to legislate and decide for the whole society. The fifteen delegates who seceded recognized all this by appearing and taking their seats in the Conference and participating for several days in its discussions and deliberations. Those who refused to vote on the amendments sent remonstrances, which were read and referred. So in this way and through their representatives, they had their day in court. Had they secured a majority in favor of their views, they would have remained, and all would have been well with them, however ill with the Church. But they found themselves in a more hopeless minority than four years before, to-wit: about one to eight. Instead of yielding, as the minority sometimes must, and continuing the fight, as they could, within the Church, and again appealing to the people, or going to the civil courts for a redress of their supposed grievances, they withdrew and set up for themselves, and became, if we are to credit the astounding statement of Counsel for defendants, "the only true General Conference of the whole Church." To an objection that 15 was hardly a quorum of 131, Judge Lawrence refers to the Thirty-seventh Congress, when the House decided that "a majority of the members chosen *and loyal* constituted a quorum," and assuming that his fifteen clients were *the only loyal* delegates, claims that they constituted a quorum, legally authorized to legislate for the whole Church. Unfortunately for this ingenious argument, his reference, Barclay's Digest, p. 191, does not sustain his statement, and does not use the word "*loyal*" at all: the rule adopted being that a majority of all *elected* shall constitute a quorum, and applying this to the case at bar, *sixty-six would be required to constitute a quorum!* Indeed, the law is too well established to need discussion, that in the absence of an express provision to the contrary, it requires a majority of the whole number constituting a deliberative body to make a quorum.

And now what is the effect of secession in a case like this, and what are the property rights of the seceders?

Fortunately the Supreme Court of the State of Ohio has answered the question: "Members who secede from church organization thereby forfeit all right to any part of the church property."

Wiswell vs. First Congregational Church, 14 O. S., 32.
M. E. Ch. vs. Wood, 5 Ohio, 283.
Same vs. Same, Wright, 12.

And elsewhere the courts have held even more strongly:

McGinnis vs. Watson, 41 Pa. St., 9.
Den vs Botton, 12 N. J. L., 205.
As. Ref. Ch. vs. Theol. Sem., 4 N. J. Eq., 77.

And if the Court cares to look at still other authorities, sustaining the same proposition, they may be found in Judge Lawrence's articles, written before he was employed to give an opinion in this case, on "The Law of Religious Societies," published in *American Law Register*. (See volume 21, page 362.)

Respectfully submitted.

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