THE CUMBERLAND CHURCH CASES—SOME NOTES UPON A PROLONGED AND WIDE-SPREAD LITIGATION.

The validity of the union, or merger and consolidation, of the Cumberland Presbyterian Church and the Presbyterian Church of the United States has been contested in so many courts, state and federal, has been the subject of so long a litigation, extending over eight years, from 1907 to 1914, has been of such vital interest to many members of the two denominations, has affected such an amount of property, has covered, in numerous briefs of counsel and opinions of judges, such a wide discussion of the relation of the civil courts to religious bodies and so copious a citation of authorities, that it is impossible within due limits to condense a summary of the reported cases affecting it.[1]

It is to be observed that while allegiance to any church is of small moment to men who are indifferent to all churches, and that while many persons may regard as trivial every cherished belief in doctrine or any love of ecclesiastical government or form of worship, yet to thousands of adherents of particular sects such matters are full of meaning. Tenets, rules, symbols, that are null and void to one, are of precious value to another. Constitutions, government, dogmas, with interpretations and distinctions, which to the man outside of a religious body, are merely "the ingenious quodlibets of a dialectician," are of vital import to the loyal believer.

In no branch of theological belief is this intensity of conviction stronger than in the system called Calvinism. He whose name is given to it, and his successors in its maintenance, William the Silent, Luther, Knox, Melville, Murray, Coligny, Cromwell, Milton, Bunyan, Jonathan Edwards, and many others,

[1] Questions incidental to the particular suits, *e.g.*, of jurisdiction or of procedure, may be disregarded. Illustrations of such points are found in Helm v. Zarecor, 222 U. S. 32, 32 Sup. Ct. 10, 56 L. Ed. 17 (1911) (See also 213 Fed. 648) and Sharp v. Bonham, 224 U. S. 241, 32 Sup. Ct. 420, 56 L. Ed. 747 (1912) (See also 213 Fed. 660). Nor is the specific recovery sought in any individual suit material.

were men of unbending determination. The historians Froude and Bancroft, though not among its ranks, have given high praise to its supporters, notably for their advocacy of civil and religious liberty. John Morley, in his life of Oliver Cromwell, commenting on what is called fatalism, wrote:[2]

> "On the contrary Calvinism exalted its votaries to a pitch of heroic moral energy that has never been surpassed; and men who were bound to suppose themselves moving in chains inexorably riveted, along a track ordained by a despotic and unseen Will before time began, have yet exhibited an active courage, a resolute endurance, a cheerful self-restraint, an exulting self-sacrifice, that men count the highest glories of the human Conscience."

Many quotations of weight might be added, but enough is stated to give a comprehension of the tenacity with which the dissenting members of the Cumberland Church, even though their Calvinism was of a milder type than that of the other Church, contested the legal validity of the union with the other branch of Presbyterians.

It is pertinent at the threshold of any notice of the Cumberland Church cases to quote from the opinion of Mr. Justice Miller in the case of *Watson* v. *Jones*,[3] called "that great case," undoubtedly the leading American case on the relation of our civil polity to religious bodies, and the authority cited in numerous subsidiary cases.

> "The questions which have come before the civil courts concerning the rights of property held by ecclesiastical bodies, may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the state.
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> "The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support or spread of some specific form of religious doctrine or belief.
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> "The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church

[2] Morley: Life of Oliver Cromwell, p. 48.

[3] 13 Wall. 679, 722 (1871).

government is concerned, owes no fealty or obligation to any higher authority.

"The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.

"In regard to the first of these classes it seems hardly to admit of a rational doubt that an individual or an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principles, provided that in doing so they violate no law of morality; and give to the instrument by which their purpose is evidenced, the formalities which the laws require. And it would seem also to be the obvious duty of the court, in a case properly made, to see that the property so dedicated is not diverted from the trust which is thus attached to its use. So long as there are persons qualified within the meaning of the original dedication, and who are also willing to teach the doctrines or principles prescribed in the act of dedication, and so long as there is any one so interested in the execution of the trust as to have a standing court, it must be that they can prevent the diversion of the property or fund to other and different uses. This is the general doctrine of courts of equity as to charities, and it seems equally applicable to ecclesiastical matters. . . .

"But the third of these classes of cases is the one which is most often found in the courts, and which, with reference to the number and difficulty of the questions involved, and to other considerations, is in every way the most important.

"It is the case of property acquired in any of the usual modes for the general use of a religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government. . . .

"In this class of cases we think the rule of action which should govern the civil courts, founded on 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 binding on them, in their application to the case before them."

It is submitted that the facts of the union of the Cumberland Presbyterian and the Northern Presbyterian Churches do not come exactly under any of the three suppositions just quoted, even if the classification be deemed as logical as it is authoritative.

Perhaps the clearest statement of the facts which underlie these cases is to be found in the elaborate and able opinion of Mr. Chief Justice Cobb in *Mack* v. *Kime*.[4] The Cumberland Presbyterian Church was organized in Tennessee in 1810. The founders were the ministers of what is now known as the Northern Presbyterian Church, who rejected certain doctrines taught in the Westminster Confession. In 1828 the General Assembly of the Cumberland Church was formed. Its form of government was patterned largely after that of the parent church. It grew in members and in influence, and in 1906 it contained seventeen Synods, one hundred and fourteen Presbyteries and a total membership of nearly two hundred thousand. In 1903 a desire for union of broad scope with all Presbyterian organizations took definite shape and various steps were taken which finally culminated in the adoption of the report of the Committee on Union and Reunion, by the General Assembly of the Cumberland Church at Decatur, Illinois, in May, 1906. Upon the adoption of this report, the General Assembly adjourned *sine die*, to meet thereafter only as a component part of the General Assembly of the Northern Presbyterian Church. Developments from this point are described in the report as follows:

"It also appeared that prior to the action of the General Assembly the question of reunion had been submitted to the different Presbyteries, and one hundred and eleven Presbyteries had expressed themselves; sixty of them voting approval, and fifty-one disapproval. It thus appears that a majority of the Presbyteries and a majority of the commissioners in the General Assembly had declared in favor of the union. It is contended, however, by the dissenting members of the Cumberland Presbyterian Church that an analysis of the vote in the Presbyteries will show that a majority of the individuals composing these Presbyteries did not favor the reunion; that is, that while a majority of the Presbyteries, as such, favored the union, the majority of the members composing the different Presbyteries did not approve of the union. Before the adjournment of the General Assembly at Decatur those commissioners, who were opposed to the union entered their protest against the adoption of the report of the committee; and after the General Assembly had adjourned without a date, to meet in subsequent years as a component part of the Northern Presbyterian Church, the

[4] 129 Ga. 1, 58 S. E. 184, 24 L. R. A. (N. S.), 675 (1907).

dissenting members assembled themselves together and declared themselves to be the General Assembly of the Cumberland Presbyterian Church, and proceeded to exercise, as far as they could, the powers of such body. The case which we now have in mind is one of the numerous controversies which sprang up in the territory covered by the Cumberland Presbyterian Church, bringing in question the regularity of the alleged union between that church and the Northern Presbyterian Church.[5]

The decisions of the courts as to the validity of this union between the Cumberland Presbyterian Church and the Northern Presbyterian Church have produced a direct conflict of authority, though a vast majority of the cases have upheld the validity of the union.[6] On the one hand it has been held invalid by the Supreme Courts of two states;[7] on the other it has been held valid in the Supreme Courts of nine states.[8] Its validity has also been recently sustained by the United States District Court for the Western District of Tennessee in the cases of *Sherard* v. *Walton*[9] and *Helm* v. *Zarecor*,[10] and in the recent Missouri case of *Hayes* v. *Manning*.[11]

The contentions in opposition to the validity of the union are strongly stated in the briefs in the respective appeals. The following points are extracted, in reduced expression and number, from the arguments of counsel for the defendants in error in *Brown* v. *Clark*.[12]

[5] Mack v. Kime, 129 Ga. 1, at p. 4.

[6] See opinion of Sanford, J., in Helm v. Zarecor, *supra*, note 1.

[7] Landrith v. Hudgins, 121 Tenn. 556, 120 S. W. 783 (1909); Boyles v. Roberts, 222 Mo. 613, 121 S. W. 805 (1909); and Bonham v. Harris, 125 Tenn. 452, 145 S. W. 169 (1911).

[8] Mack v. Kime, *supra*, note 4; Wallace v. Hughes, 131 Ky. 445, 115 S. W. 684 (1909); Brown v. Clark, 102 Tex. 323, 116 S. W. 360, 24 L. R. A. (N. S.) 670 (1909); Permanent Committee of Missions v. Pacific Synod, 157 Cal. 105, 106 Pac. 395 (1910); Ramsey v. Hicks, 174 Ind. 428, 92 N. E. 164, 30 L. R. A. (N. S.) 665 (1910), reversing Ramsey v. Hicks, 44 Ind. App. 490, 89 N. E. 597 (1909); First Presbyterian Church v. First Cumberland Presbyterian Church, 245 Ill. 74, 91 N. E. 761 (1910); Sanders v. Baggerly, 96 Ark. 117, 131 S. W. 49 (1910); Harris v. Cosby, 173 Ala. 81, 55 So. 231 (1911); and Carothers v. Moseley, 99 Miss. 671, 56 So. 881 (1911).

[9] 206 Fed. 562 (1913).

[10] *Supra*, note 1.

[11] 172 S. W. 897 (1914).

[12] *Supra*, note 8.

1. The effect of the declaration that union had been accomplished is an ecclesiastical question, and is not binding upon the civil courts.

2. The confessions of faith of the two churches are different, and it is a diversion of the property of the Cumberland Church to devote said property to the Presbyterian Church.

3. The scheme was one of merger and absorption, not authorized by the constitution of the Cumberland Church, and in conflict with it.

4. The express restriction found in section twenty-five[13] is equivalent to an affirmative prohibition against the usurpation of any power not specifically given.

5. The inquiry whether or not the alleged union and merger were in conformity to the constitution of this church is not ecclesiastical; it is the "same question that might arise with respect to any voluntary association in which its constitution was intended to be mutually binding upon all its members, and to protect and preserve the society by recalling it to a recognition of its own organic law."

6. The power to change the constitution, conferred by section sixty[14] therefore, does not authorize the General Assembly and Presybteries to destroy the constitution, or the church, by amendment or otherwise.

7. The constitution is an instrument of delegated powers, specific and limited.

[13] This section of the constitution reads as follows:

"The Church Session exercises jurisdiction over a single church; the Presbytery over what is common to the ministers, Church Sessions, and Churches within a prescribed district; the Synod over what belongs in common to three or more Presbyteries, and their ministers, Church Sessions, and Churches; and the General Assembly over such matters as concern the whole church; and the jurisdiction of these courts is limited by the express provisions of the constitution. Every court has the right to resolve questions of doctrine and discipline seriously and reasonably proposed, and in general to maintain truth and righteousness, condemning erroneous opinions and practices which tend to the injury of the peace, purity, or progress of the church; and, although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation."

[14] This section reads as follows:

"Upon the recommendation of the General Assembly, at a stated meeting, by a two-thirds vote of the members thereof voting thereon, the Confessions of Faith, Catechism, constitution, and Rules of Discipline may be amended or changed when a majority of the Presbyteries, upon the same being transmitted for their action, shall approve thereof. The other parts of the government—that is to say, the general regulations, the directory for worship, and the rules of order—may be amended or changed at any meeting of the General Assembly by a vote of two-thirds of the entire number of commissioners enrolled at that meeting, provided such amendment or change shall not conflict, in letter or spirit, with the Confession of Faith, Catechism, or constitution."

8. The provisions of section sixty,[15] of the constitution of the Cumberland Church are mandatory, and must be strictly followed in order to accomplish a legal change.

9. Nothing that the General Assembly of the Cumberland Presbyterian Church has done, or could have done, precludes civil courts from inquiring or deciding for themselves, when civil rights are involved, whether or not the doctrines of the two churches in question are the same substantially, and whether or not the action taken in reference to the so-called union and merger was authorized by the constitution of the Cumberland Presbyterian Church.

10. The property involved in this particular cause belonged to the local congregation. Where a congregation is divided, the civil court will, upon its own investigation, award the local property to those members, whether a minority or majority, who adhere to the original organization, and are acting in harmony with its own laws, and the laws, usages, customs, principles and doctrines which were accepted among them before the dispute began—and are the standard for determining the controversy.

It is hoped also that the foregoing points, though curtailed, comprise, in effect, the results of the comprehensive discussions of the judges who wrote for the majority of their respective benches in the cases of *Boyles* v. *Roberts*,[16] *Landrith* v. *Hudgins*,[17] and *Bonham* v. *Harris*.[18] The opinions are elaborate, exhaustive and entitled to great respect. The analysis of the distinctions between the credal declarations is clearly and learnedly argued. This question is put by one of the writers, in this way:

"Can the simple statements which we have copied from the Cumberland Presbyterian Confession of Faith be held a full equivalent of the vast and imposing theological structure contained in the Westminster Confession of Faith?"

The ordinary lay mind would answer, "No," but the question seems futile, because the ecclesiastical jurisdiction had settled it —according to the weight of authority. In the above three opinions, however, the contrary view is asserted and maintained. The crucial paramount postulate of general interest in each may be rendered, perhaps too succinctly, thus: Civil courts are not bound by the rulings of church courts in cases involving prop-

[15] See *supra*, note 14.
[16] *Supra*, note 7.
[17] *Supra*, note 7.
[18] *Supra*, note 7.

erty rights. The Tennessee cases now stand, since the late Missouri case,[19] separately from the others, *per contra,* there being no express trusts shown by the facts.

The views maintained by the appellate tribunals that sustained the validity of the union may be found in the case of *Hayes* v. *Manning,*[20] notable for its reversal in effect of the prior decision of the same court, though with a membership somewhat changed, in *Boyles* v. *Roberts.*[21] The new opinion is by Mr. Justice Walker, and three other judges concurred in it, another concurring only in the result, for a specified reason. Mr. Justice Graves dissented, adhering to his original position. It is to be observed that the present determination was reached after mature study of the whole number of cases previously heard and decided. Reference to parts of the opinion of Mr. Justice Walker will show "the last word" upon the several matters in controversy. A synopsis must suffice.

(1) The right of the General Assembly of the Cumberland Church to unite with the Presbyterian Church is shown, by repeated unopposed efforts to unite with other organizations and is a practical interpretation by it of its constitution.

(2) The contention is not sustained that despite this long continued construction of the constitution no power exists in the constitution authorizing the union of the church with another organization. The words "the jurisdiction of the church judicatories is limited by the express provisions of the constitution" [21a] are held to mark the boundaries between the jurisdiction of the four church courts, the Sessions, Presbytery, Synod and General Assembly, so as to prevent the encroachment of one upon the authority conferred on the other. The implied authority to do whatsoever may be necessary to be done or to exert a power conferred or perform a duty implied always follows a grant of specific power or the imposition of a definite duty upon a person or a court. (The judge here states the authority of the General Assembly.)

(3) The individual members of the Cumberland Church are bound by the action of the General Assembly and Presbyteries in effecting the union unless authority to make it has been withheld by express inhibition from those judicatories which are otherwise admitted to be clothed with absolute power in directing the affairs of the church.

[19] Hayes v. Manning, *supra,* note 11.

[20] *Supra,* note 11.

(4) There is no provision in the constitution prohibiting union by the Cumberland Church with another whose faith is in harmony with its own.

He concludes as follows:

"The great weight of authority supports the rule that the decisions of the higher court of a church as to purely ecclesiastical questions within the jurisdiction of such court to decide will be accepted as conclusive by the civil courts in determination of property rights."

The learned judge adds to his interesting opinion a fine tribute to Calvinism.

These words from the opinion of Mr. Justice Sanford, in *Helm* v. *Zarecor*,[22] also are explicitly positive:

"Without referring in detail to the various objections to the validity of the union, which are urged with great clearness and force in the briefs submitted in behalf of the defendants, a full discussion of which would carry this opinion to undue length, it is sufficient for present purposes to say, that, after careful consideration of the foregoing cases, I am constrained to conclude that not only the weight of authority but the sounder reasoning is on the side of those cases in which the union has been held to be valid. The reasons leading to that conclusion are stated so fully in the cases in which the union has been upheld, especially in *Wallace* v. *Hughes, Ramsey* v. *Hicks, Sanders* v. *Baggerly,* and *First Presbyterian Church* v. *First Cumberland Presbyterian Church*,[23] that I deem it unnecessary to repeat them here. The corner stone upon which these opinions are, in my judgment, to be based, is the decision in *Watson* v. *Jones*,[24] in which after careful consideration, it was held by the Supreme Court of the United States that where in a controversy in a civil court, the property rights of a religious organization are dependent upon a question of doctrine, discipline, ecclesiastical law, rule, custom or church government that has been decided by the highest tribunal within the organization to which it has been carried, the civil court will accept that decision as conclusive, and will be governed by it in its decision of the case before it."

Some reflections come to mind after running over the reports of the foregoing cases. The first is the religious liberty

[21] *Supra,* note 7.
[21a] See § 25, *supra,* note 13.
[22] *Supra,* note 1.
[23] For the citations of these cases, see *supra,* note 8.
[24] *Supra,* note 3.

guaranteed by the First Amendment of the Constitution of the United States. *Patria est communis omnium parens.* She gives her children freedom of conscience. Further, the authoritative weight of the opinion of the Supreme Court of the United States in *Watson* v. *Jones*[25] is impressive. Again, there is shown a notable change of sentiment in the two Presbyterian religious bodies that became one. Divergences of doctrine which caused the separation in 1810 evaporated in 1906. Theological tenets, stated with formality most positive, faded away in the *rapprochement.* Eminent theologians were left in the vocative. The preponderating majority of the representatives in the several judicatories of each church eliminated distinctions. Deep ploughing in the soil of theology seemed obsolete.

A fourth thought is that present religious scholarship seems to be engaged in studies of higher criticism, *et id omne genus,* and in matters of modern "liberalism" in the attempt to construct a broad ethical and (can it be said?) human theology. Such topics are not for ordinary laymen who were brought up to believe in compendiums of doctrines—definite and stern, perhaps, but majestic in reverence and in clarity.

We may notice particularly the new spirit of church unity, deemed splendid in its disregard of all tenets that possibly can be disregarded in its community of faith and in its catholicity, with a beneficial purpose for the uplift of men. It is broad in its category of "non-essentials" but fervent in its adherence to unity in "essentials" and its rallying cry is, "In all things charity."

Again, observe the consideration of every question involved shown by the judges of the high courts hereinbefore enumerated, the learning of those who have given the several opinions in their opposite determinations of the questions involved, and the obvious sincerity of the judicial convictions reached, all of which are not forcibly persuasive of the merit of the cry that is sometimes heard for the right to "recall" judges who, under the grave responsibility of their duty, are firm and unyielding to prejudice, whether religious or political.

[25] *Supra,* note 3.

Consider, once again, the respect shown by the civil courts to the thought expressed in the old proverb in Pliny, founded upon common sense and constantly quoted: *Sutor ne ultra crepidam.* That this does not obtain everywhere is often apparent when one sees that scanty knowledge and slight experience, or even no knowledge and no experience, seem basic for the expression of dogmatic opinions upon questions of theology, medicine, law, finance, economics, or what not. These differ totally from the conclusions of thoughtful reasoning and from those progressive ideas and endeavors which are the results of high unselfish motives and careful study the utterance of which is intended for the common good of men. Such beneficial declarations are entitled to freedom of speech and indeed cannot be suppressed. Yet courts (except, perhaps *ex necessitate,* as for example, to preserve trusts for religious uses),[26] do not consider or interpret or promulgate the doctrines of particular churches. They do not follow as a precedent the well-known words in "Paradise Lost."[27]

> "Others apart sat on a hill retired,
> In thoughts more elevate, and reasoned high
> Of Providence, Foreknowledge, Will, and Fate—
> And found no end, in wandering mazes lost."

John W. Patton.

Philadelphia, May, 1915.

[26] For cases of trusts, see "The Civil Courts and the Churches," 54 AM. LAW REG. 391.

[27] Milton: Paradise Lost, Book II, line 556.