

GENERAL ASSEMBLY.

SESSION OF 1866.

THIRD DAY.

SATURDAY MORNING, MAY 19.

During the morning prayer-meeting, remarks of unusual interest were made by Dr. J. R. Paul and Hon. E. A. Lambert. The former called upon the Church to pray and work—especially for a million of blacks in the South between the ages of fifteen and twenty-five, and the four millions of whites in the same region, and between the same ages, in the educational and spiritual training of all of whom so much of the future is bound up.

Mr. Lambert mentioned some incidents in the great revival in Dr. Cuyler's church, Brooklyn, which illustrates the power of faithful and wayside labor with individuals. On the resumption of business, the Iron Mountain Railroad, tendering the Mountain and Pilot Knob, nearly a hundred miles in the interior. The invitation was accepted, and the thanks of the Assembly returned.

Rev. W. E. Knox—I have been requested by a member of the Assembly of the Old School (not officially) to suggest that a committee of conference with reference to joint religious services be appointed by this Assembly to meet a similar committee to be appointed by that Assembly.

Dr. Booth objected to this Assembly taking the initiative step in the matter. We had done so once and nothing came of it.

Mr. Knox stated that it was desired this morning that a joint meeting might be held to-morrow.

The Moderator—I have just been informed that the other Assembly has appointed such a committee.

Mr. Booth—Let us wait until there is some official notice given to us from that body. Mr. Knox's motion was withdrawn by consent of the Assembly.

The Stated Clerk presented a proposal from the O. S. Assembly, now sitting in the Second Presbyterian Church, that this Assembly should appoint a committee to act conjointly with one already appointed by themselves—viz., Rev. Thomas B. Johnson, D. D., N. W. Wells, A. R. Thomson, and H. Chamberlain, and E. Chamberlain and Lucius B. Wells—to arrange for joint devotional exercises during the next week. The proposal was cordially accepted, and Rev. W. E. Knox, D. D., Rev. W. T. Curtis, D. D., and Ruling Elder John A. Foot, were appointed on the part of this Assembly.

The Report of the Ministerial Relief Fund Permanent Committee was read by Rev. Dr. Butler. It will appear in another place.

Overtures from the Presbyteries of Newark and Cincinnati, on the subject of publications in the German language for our German-speaking churches; were referred to the Standing Committee on Publication, and the Commissioners from said Presbyteries were directed to confer personally with said Committee.

DISCIPLINE IN CASES OF CONTUMACY. Hon. Joseph Allison, of special committee, to whom was referred overture No. 14, which is as follows:

"To the General Assembly of the Presbyterian Church, now in session in the city of Brooklyn, N. Y.:

"The undersigned respectfully submit to the General Assembly the following overture, viz.:

"When the judicatory have proceeded, in accordance with Chapter IV, Section 13 of the Book of Discipline, to take the testimony in the case of an accused person, may they proceed to pass judgment thereon as if he were present, or shall he be left simply under censure for contumacy?"

H. W. WILLIAMS, E. E. ADAMS, DANIEL MARCH.

made the following report:

The question thus presented is exclusively one of power. It is not whether, in all cases, it is desirable that a judicatory should proceed to a final determination of the case, nor is it what has been the usage in some of the tribunals of the Church, but it is strictly what does the Book of Discipline authorize? It is freely admitted that a long course of usage under a statute is no inconsiderable evidence of the meaning of the statute, but it must be an usage growing out of the enactment itself, and claimed to have been authorized by it. Mere neglect to exercise powers conferred is no proof that they were not granted. Had the fathers of the Church generally decided that, by Chapter IV of the Book of Discipline, no power is recognized in a judicatory to proceed to the trial of an accused person who has refused to obey its citations, that his contumacious refusal must arrest all steps to purify the Church of the offence charged, beyond taking evidence to prove that offence, and had such a construction of the book been generally accepted, it ought to have weight in answer to this overture. But there is no evidence that any such judicial construction has been generally given to the language of the book.

But there is not enough in judicial decision, nor in authoritative usage to settle the question. After all, it must be answered from the book, and the true inquiry is, what is the fair interpretation of the rules laid down in the fourth chapter. An universally recognized rule of construction is, that, where the purpose of a statute is clear, the means given for effectuating it are to be interpreted with reference to the purpose, and, if possible, so as to secure its accomplishment. Now the ends of discipline are clearly defined. They are declared by the second section of the first chapter to be "the removal of offenders, the vindication of the honor of Christ, the promotion of the purity and the general edification of the Church, and, also, the benefit of the offender himself." The fourth chapter contains the directions given to the church judicatories, by which these ends are to be secured.

Manifestly, they were intended to be a complete and efficient system adequate to the purposes in view. If they fail of that, the avowed object of their framers is defeated. Then there is no power to remove an offence in any case where the alleged offender refuses to submit himself for trial. Plainly, it is the offence charged which is sought to be removed, either by bringing the offender to repentance, or by the judgment of the church upon it, and ultimately, if necessary, removing the offender. It is from that offence the church is to be purified, and the honor of Christ vindicated, for by that offence the evil has been done. Anything that comes short of discipline, for that fails of accomplishing the avowed purpose for which the directions of the fourth chapter were prescribed. Contumacious disobedience of citations is another distinct offence, punishment for which is entirely collateral to discipline for the cause that induced the commencement of the process. It is contempt of the lawful authority of the church, and suspension for it is an expression of opinion respecting the delinquent's guilt or innocence of the charge preferred originally against him. Suspension for contumacy would be proper, without regard to anything beyond it. It is quite conceivable that an accused person may wilfully disobey citations, and yet be innocent of the charges made against him. It certainly would be an anomaly in any judicial proceeding to hold that a penalty inflicted for a collateral offence vindicates the law against another and possibly much greater crime.

It is therefore, the definition of discipline are to be secured, a Church session must have power to proceed to trial and judgment, though the accused person refuse to obey the citations duly served upon him, and it is not to be concluded without clear evidence that means to secure those ends are inadequate. When the meaning of the language used in the fourth chapter is sought, the best guide to it will be found in the paramount intention the language was designed to subserve. The directions given must be construed consistently with that intention, to further, rather than to defeat it. Looking then to the sections of the fourth chapter, and regarding them as part of a system designed for the purpose above mentioned, to be interpreted to secure those ends, the conclusion seems inevitable that whenever an accusation has been made against a church member, and a church judicatory has entered judicially upon its consideration, and obtained jurisdiction by service or citations upon him, it may go on to final judgment, though he refused to obey the citations. It is observable that the entire fourth chapter is but an outline of process. It does not undertake to prescribe minutely each step that may be taken. It does not even expressly authorize a judicatory to proceed in any case. It rather assumes that having taken judicial cognizance of the proceeding the tribunal will go to trial and judgment. Like a writ of summons in a civil court, the citation is notice that the judicatory has assumed jurisdiction of the case, and that it will proceed to its final determination. When that notice has been given, as prescribed, it is contemplated rather than expressly required, that witnesses will be examined, and that a judgment will be given.

It would be a rash conclusion from the absence of a specific grant of these powers, to deny any right to take testimony, to try, and to give judgment. The powers are not only to be implied, but they are comprehensively given by the general provision of the first section, that "the judicatory shall judicially take the offence into consideration, when all other means of removing it have failed," and they are included also in the direction to issue citations. Nor is there any substantial distinction made between cases in which the accused yields obedience to the citations, and those in which he is contumaciously disobedient. The thirteenth section is the only one that is supposed to make a difference. By that a second citation is required to be accompanied with a notice that, if the person cited does not appear at the time appointed, the judicatory, besides censuring him for his contumacy, will after assigning someone to manage his defence, proceed to take the testimony in his case, as if he were present." It has sometimes been asked if it was intended that the judicatory might proceed in such a case to the final judgment, why was not notice required that they would do so? Why limit the notice to taking testimony? These questions are easily answered. A notice that the judicatory will proceed to trial and decision would be unnecessary and superfluous. It has already been given in the assumption of jurisdiction over the case, and in the citations, but notice of taking testimony is a different matter. Separate notice of that is generally given in all judicial proceedings. Its design is to give a party an opportunity to cross-examine the witnesses produced against him. And, as the judgment in all ecclesiastical courts must be founded upon evidence, as a judgment for default of appearance is not authorized, it is proper that the accused should have special notice of taking the testimony, though he may refuse to appear in answer to the citation. In fact, however, notice that the testimony will be taken is notice that the judicatory will go on with the trial, for taking testimony is a part of the trial, its first stage. Undue inferences are therefore drawn from the form of the notice: it is supposed to indicate that the proceedings are to stay, when the testimony shall have been taken. It is a misapprehension, but very feeble implication that, because notice of one thing is required (a thing very peculiar in itself, and always demanding a special notice,) therefore nothing else can be done. A similar mode of reasoning would render a trial in any case impossible.

Moreover, the 13th section affords strong affirmative evidence that a trial and judgment were contemplated by its framers, notwithstanding the refusal of the accused to obey the citations. The evidence is found in the notice that the judicatory will assign some person, not to appear for the accused at the trial, but to manage his defence, "to manage his defence." The idea of defence in a judicial proceeding is inseparable from answer or trial. If, therefore, the non-appearing accused has a defence to be managed, he has an answer to be put in, a trial to undergo. Taking testimony in support of the accusation is no part of the defence. Cross-examination of the witnesses may be a part, but the appointee of the judicatory is to manage the whole.

It may also be argued that the provision for taking testimony at all, when an accused person fails to respond to the citation, implies that the case may proceed to a final determination. For what purpose take testimony, if no action is to be based upon it? If it is said to preserve it for the use when the accused, repenting of his contumacy, may choose to appear for trial, it may be answered that no such purpose appears in the book. None of the provisions usual, when the object sought to be accomplished is the perpetuation of testimony, are even hinted at. By the sixteenth section the judgment is required to be entered upon the records of the judicatory, but nothing is said of the preservation of unused evidence. It is not even required to be reduced to writing, unless demanded by one of the party.

It may also be argued from the language of the fourteenth section, that the trial for the offence charged is intended, though the citations have been disobeyed.

may not deny himself his plainest rights. While he may not be tried for an alleged offence, he has no just cause to complain of a trial to which he has been summoned by a tribunal having jurisdiction, and which he has persistently refused to attend. In such a case, it is he who has thrown away his own rights. They are not taken from him. This is a principle universally recognized in Courts of civil law and equity, and such Courts go further. They construe a refusal to obey process requiring an appearance as a substantial confession of the complaint, and they render judgment accordingly. It is true that State Courts, having criminal jurisdiction, do not try persons for crimes and misdemeanors in their absence. This is for two reasons. They have power to compel attendance, which ecclesiastical Courts have not, and the punishments they inflict affect the life, the liberty or the property of the convicted criminal. In fact, they concern the life or the liberty of the accused, for even if the penalty be only a fine, its payment is usually enforced by detention in custody until satisfaction be made. But ecclesiastical tribunals can pronounce no judgment that touches either the life, the liberty or the property of the accused. Their sentences are pecuniary in kind, it is assuming a false analogy to assimilate a trial before a church session to an indictment and trial in a Criminal Court. It bears a much stronger resemblance to proceedings very common in Courts of law, in which members of associations or corporations are called upon to respond for some alleged breach of corporate duty, for which they are liable to be punished by the imposition of penalties, or by a motion from membership. In such cases when the person summoned refuses to obey the mandate of the writ, Courts proceed at once to dispose of his case and render final judgment. No one ever supposed that by so doing injustice was done, or that any right of the accused was invaded. Much less can he complain who has been tried by a church judicatory, and who has contumaciously refused to obey the citation, if the tribunal proceed to try the case, presuming nothing against him but contumacy from his own refusal, but founding its judgment solely upon the testimony of witnesses. This objection, therefore, when examined, seems to be without substance.

In conclusion, it remains only to recommend, as the opinion of the committee, that the overture be answered by a declaration of the Assembly, that in the case proposed, the judicatory may proceed to trial and final judgment, as if the accused was present.

SAMUEL W. FISHER, W. STRONG, JOSEPH ALLISON, THOMAS BRAINERD.

The report was accepted and ordered put upon the docket.

STATE OF THE COUNTRY. Dr. H. B. Smith—There is one subject upon which the Assembly has always appointed a committee of late years, and that is, "On the State of the Country." We have passed through the state of war, and come to the state of peace, but are still in the midst of difficult questions, which seem to demand some expression of opinion from ecclesiastical bodies. I have been expecting a motion to this effect from some other member of the Assembly, but none having been made I now move that a special committee be appointed on the State of the Country.

I make the suggestion that the oldest and most venerated member of this Assembly, Dr. Beman, be appointed chairman of this committee.

A member, whose name we failed to obtain, objected to the proposal. Our testimony is on record; it is full and unequivocal: Why repeat it? Besides, it will be past the wisdom of the Assembly to find out what is the state of the country; at least, if we can do it we shall be wiser than the politicians, the President, or the Congress. Further, an utterance from us, in the present emergency, would rather imperil tranquility than tend to tranquillize.

John A. Foot took an entirely different view. It seems to me, he said, that body so large, so respectable as this, and representing so large and respectable a constituency, cannot but have weight. We all know that there is a great diversity of opinion, and many feel that the present is a time as full of dangers and difficulties as any through which we have passed. The country expects that we will, after prayer, give our views upon a question that interests everybody. We have to-day heard most eloquently of the importance of work as well as of prayer. Now then certainly ought not shrink from giving the opinions that we may have upon these great questions, but to say nothing more than our constituency has done, it moves them all to pray to God in this emergency, it will do a great deal of good. If we say to them that we call upon all our rulers to approach this question without selfishness, asking God to aid them, and putting aside everything like hatred, malice, ill will, and everything of that kind, it will do good. And if we say that looking upon him whom we have for President, and seeing that at the original inception of the rebellion he stood up alone from the Southern States and denounced treason as a crime, we feel under obligations to him for that; it seems to me something like that would say prejudice. And, if we say further, kindly say that we cannot conceive that he should make the mistake of taking that an Executive was going to be the Judiciary, the Legislature, and all the other departments of the Government—to use the language of the sailor—that he was captain, mate, and all hands, it would be proper.

Very many things have taken place since the last meeting. Now it seems to me that it is eminently proper that we should utter our opinions on the subject and give no uncertain sound, and when we speak on the subject we should speak of a number of questions that are near our hearts; and permit me to say, it will come with great effect and great weight, for I remember that when the General Assembly in 1863 passed a resolution, we contended on a particular point; it was precisely the point between liberty and disloyalty, and we discussed it almost all day. I felt willing to go for it because Dr. Barnes proposed it. I study Barnes' notes a great deal. When this resolution was read to the President, he said: "Gentlemen, I thank you for the point you have made, it was precisely that point; it strengthens me to feel that I have all the denominations now sustaining me. I don't pretend that I have every one of all, but I have all the denominations, and it strengthens me to feel that I have praying men to sustain me." The utterances of this body will have a very great effect. I have not had a political office for more than ten years, and don't expect and don't want one. I have just as a feeling I ought to have as a Christian, and as a man in regard to these questions, and old as I am, I feel that my interests are bound up with this country, and old as I am I fear that I may still see confusion and every evil work in our land if we don't take the right ground.

As I said with reference to the President, I feel under great obligations to him, but I must say that I have not unlimited confidence in him. He evidently is a man, and no more than a man. I read in the last speech he made that he was sometimes a whole day without thinking; that he was President. When I read that I could not help thinking that his position had elevated him so much, that he was not exactly the man he would be, if he was in the position that I am in. I remember in a town, one near where I live, was an old woman, whose husband had the house painted green, and she once said that she sat sometimes a whole day without once thinking that her house was green and her husband a Justice of the Peace. (Laughter.) Now the trouble with her was the same as the trouble with the President. It was strange that she shouldn't think of his being President for a whole day, or that the old lady should forget about the green house, but the unfortunate thing was that she should have mentioned it, and that there should have been a correspondent of the London Times green enough to have reported it.

The motion prevailed, and the Moderator announced the Committee on the State of the Country as follows:—Rev. N. S. Beman, D. D., Rev. H. B. Smith, D. D., Rev. W. Gearhart, D. D., Rev. Henry Fowler, D. D., Rev. Joseph Allison, Hon. F. V. Chamberlain, Hon. T. P. Handy.

Rev. T. J. Shepherd, of the Committee on Bell, Read Overtures, reported back certain resolutions, with recommendation that they be adopted, as to the appropriate committees, which action was accordingly taken.

The hours for the meeting of various committees were announced, and the Assembly adjourned until Monday.

FOURTH DAY. MONDAY, MAY 21. MORNING SESSION.

On motion of Rev. Lucius J. Root, reports from the Committee on Synodical Records was made the first order of business for the afternoon.

Rev. Mr. Kellogg, from the committee appointed to consider the petition of S. D. Barlow, Esq., President of the St. Louis and Iron Mountain Railroad, tendering the use of a train of cars for an excursion to Iron Mountain and Pilot Knob, reported and recommended that Thursday next be set apart as the day for the excursion. After some discussion, and suggestions as to other days, the report of the committee fixing Thursday was adopted.

Members of the Assembly desiring to go on the excursion were requested to enter their names and the names of their hosts, so that the President of the Railroad Company might know how many cars to provide.

Rev. Henry B. Smith, D. D., moved that the communication from Rev. McCosh representative from the Presbyterian Church of Ireland be received, and that the Assembly appear to-morrow morning, at 11 A. M., to hear the communication.

RECEPTION OF DR. HARPER. On motion of Rev. Dr. Shaw, Rev. Dr. Harper, representative of the United Presbyterian Church of North America, was invited to address the Assembly.

Dr. Harper, after a few preliminary remarks, said: "We are children of the same King, and heirs of the same glory, therefore I do feel that in speaking to you I am speaking to brothers in Christ."

Perhaps it may be proper for me at the outset to read to you some statistics which I have prepared, from which you may gain something in regard to the Church which I represent. The United Presbyterian Church had its existence in the Associated Reformed Presbyterian Church, in this country, in 1858, and in all matters of faith, government and practice are closely identified with the larger body of the Presbyterian Church of this country. We have fifty-one Presbyteries, seven Synods, and one General Assembly, constituted like your own, of delegates from the different Presbyteries. We have thirty missionaries in the foreign field, and one hundred and twenty in the home field. We have some forty or fifty laboring among the freedmen, chiefly in Tennessee and Mississippi. We have four theological seminaries, five hundred and sixteen ordained ministers, seventy licentiates, and ninety one theological students and six hundred and fifty-nine congregations.

We have six prominent Boards—the Board of Home Missions, the Board of Foreign Missions, the Board of Church Extension, Education, and Theology. We have three religious weekly papers and one monthly. We have raised for all the Boards \$187,000. With regard to the work which we are doing, it may be proper, Mr. Moderator, for me to state to the Assembly that that portion of the Church which I represent feels that the great work of the Church of God in this country and in foreign countries is missionary labor, and to subserve the great principles of the Bible and truth. Never was the world so accessible as now—never were there so many facilities presented to the Church for doing good as at this day—never did the great head of the Church call us so loudly as he now calls us to engage in this great work. We feel, therefore, that it is the special work of the Church; and so feeling, we are endeavoring to concentrate our energies to forward it in this country and in foreign lands.

We feel, too, Christian brethren, that for the furtherance of this work it is very desirable that there should be increased unity and co-operation among all the followers of Christ. We desire, therefore, increased unity of the Church of God. It seems to us especially becoming to our principles that we should so desire, because our existence as a Church is the result of union. We feel how happy it is, for such as are brethren, to dwell together in unity, therefore we are engaged in this work. We feel, therefore, that it is the special work of the Church; and so feeling, we are endeavoring to concentrate our energies to forward it in this country and in foreign lands.

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Our united cry and inspire in all our congregations with the sessions, supplies and pastors, that sentiment of expanded zeal, which we need to make us of the full extent of our ability a Missionary Church.

The churches in our Western Synods have a vast home field, which they cannot dutifully or safely neglect. And all our churches whether in the newer or older States, have in charge the magnificent enterprise of establishing upon this great continent the seat of power, the home of liberty, the goal of the ages past, the starting-point of the ages to come—that glorious Kingdom of Christ, for which the continent was created, for which the Republic stands. We must not try to alter, but rather to increase the instinctive ardor which fires the hearts of our people in the East and West.

This magnificent middle belt, the highway of the King, which divides our continent, stretching from the Eastern to the Western sea, is our Land of Promise. And at whatever cost of money, toil and time, we must take it, and transmit it with its institutions, sanctified and made permanent, to the coming generations, as the legacy of the Presbyterian Church of America, to the latter days of time. But to do this home-work well, we must do our work in other lands well also; for we are of least use to ourselves when we are most selfish, and shall do most and most successfully for Christ's cause at home, when we do most and most willingly for his kingdom abroad. May God, by whose favor alone we can be made strong in this or other lands, keep our churches from the fatal mistake of doing little for missions among the heathens under the impression that thereby they can do more for Christianity at their own doors.

The Committee learns with great satisfaction, that two of our Presbyteries are employed in missionary labor, and two others are under appointment, in the service of the American and Foreign Christian Union. The Rev. Ramon Montsavage, of the Presby