



DECISION OF SUPREME COURT.

WINEBRENNER AND OTHERS, vs. COMMON PLEAS. In Equity. James Collier and others, Plaintiffs. vs. Winebrenner and others, Defendants.

OPINION OF THE COURT.—LOWRY C. J. The case is a church quarrel in the denomination of Christians, calling themselves the Church of God, and usually by others Winebrennians. It arose by a majority of the congregation, called the Church of God at Harrisburg, attached themselves to Mr. Collier, and persisting in calling him their pastor, though he was not a minister of the denomination accepted by the Annual Eldership; which is their name for what in other denominations is called presbytery, classis, convention, &c., though, of course, not with exactly identical functions.

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The fundamental question raised by the case is, which party is right in its action? This question is well discussed, on principle and authority, in the opinion of the learned President of the Common Pleas, that we are saved from much of the discussion which would otherwise have been proper. But the case has been very ably and earnestly re-argued here on some points which seem to require a special attention from us, and we proceed to the consideration of them.

The State having prescribed no law for the government of any Church, leaves each Church or denomination to the guidance of its own law, and looks to that as the standard by which all internal disputes are to be tried. One main question therefore is, what is the law of this congregation relative to the mode of obtaining a pastor?

The congregation is in regular association with its sister congregations, and in regular connection with, and subordination to, the provincial and General Elderships or assemblies of the Church, and of course part of the law of each congregation is to be found in the general law of the denomination; and all the reliable oral testimony in the cause, all the usages of the Church, and all its written documents, make it plain that there is no regular way for a congregation to obtain a pastor but by the appointment of the Annual Eldership. This is not a mere custom, but it is rather sought to be avoided by the argument that this mode is not properly a law that binds the congregations, but only an expedient that is useful for pastoral co-operation so long as it is administered to the satisfaction of the several congregations.

The charter of this congregation, obtained from the Legislature in 1848, is not only so framed as to show its independent character; and certainly it does not allude to any more general body of which it is to form a part. But, we may say, it does not forbid any congregational individuality, and it is not inconsistent with denominational unity, as any one that looks may see. And in many denominations, it is quite common, not to say that it is the usual rule, to omit all notice of the denominational bond in their congregational charter, and this without meaning to affect the character of the congregation as it was before the charter, or to declare it independent.

Section 9 of the charter expressly forbids its enumeration of powers and privileges from excluding others not enumerated. The powers given to the congregational officers are no more exclusive of denominational character, powers and laws, than is common in Church charters, and rightly understood, are not at all inconsistent with the associate duties of the congregation.

The Legislature never means by granting or allowing such charters to change the ecclesiastical status of congregations; but only to afford them a more advantageous civil status. And so this charter has been understood; for it has continued all its association without change up to the time of this dispute. And it could not reasonably have supposed that the charter changed its ecclesiastical law relative to the appointment of pastors; for the charter declares nothing on that subject.

It is argued, moreover, that every congregation is proved to be independent, because it is so declared in the "History of the Church of God" given in evidence, and especially because it is there declared that Churches should be formed "subject to no extrinsic or foreign jurisdiction, and governed by their own officers chosen by a majority of the members of each individual Church."

lation is necessary, and that for the purpose of securing the main object, or operation.—These terms accord with the usual functions of such bodies in other denominations; co-operation rather than legislation, and legislation in aid of co-operation. And it is expressly in general accordance with other such assemblies that Eldership is formed, when it is declared in the Constitution, Art. 2, that the Annual Eldership is "for the transaction of such business as properly pertains to ecclesiastical bodies. Certainly it is not an illegitimate form of co-operation for these assemblies to assign to each minister his station, and especially it is not inconsistent with the principle of co-operation, that this assignment is expressly declared to be a function of Annual Eldership. When it legislates beyond this to the injury of any member or congregation, it will be time enough to investigate its functions more closely. We do not need to do so now.

To justify the rejection of the pastor appointed by the annual Eldership, the defendants rely on Article 14 of the constitution, which declares that the Stationing Committee "shall appoint the preachers of the several stations and circuits, and their report shall always be final and conclusive, except it be rejected by a vote of a majority; in which case the committee shall take it back, and report another, subject to a like action."

It is argued that this recognizes the right of the majority of the congregation to reject a minister assigned to it. But the evidence shows that such has never been the practice of the Church; and this is strong evidence against such an interpretation. There is no evidence on the record sufficient to sustain it; and the ordinary practice of deliberative bodies is all against it. Article 13 provides for a Standing Committee to act for the assembly during its vacation in making and changing appointments of ministers. But the Stationing Committee acts only during the sessions of the assembly and reports to it, not to the congregations; and it is the reports thus made that are final and conclusive, unless rejected by a majority; and this seems to us very plainly to mean a majority of the annual Eldership. To interpret it otherwise would require evidence that has not been furnished to us, and which, we suppose, does not exist. We infer, therefore, from this and other parts of the constitution and from the common practice, that the appointments of the Stationing Committee, not disapproved of by the annual Eldership, are binding upon the congregations.

But it is argued that this congregation has always been accustomed to choose its own pastors, and that, therefore, their choice of Mr. Collier was not disorderly. There is, however, no reliable evidence in support of this allegation. Their congregational minutes show this dispute began. No doubt these often formal meetings of the elders or leading members, or even of the congregation for the purpose of agreeing upon preachers whom they would request the Eldership to send them; the evidence shows this. But this does not prove any law of the congregation or of the denomination; but only an indulgence or liberty, a liberty not to elect a pastor, but only to suggest one whom they might like to have. The appointment of a pastor has always come from the annual Eldership, and not from the congregation, and he was appointed by the annual Eldership.

It might be possible that the annual Eldership, should so far offend the wishes of the congregation, and disregard the fitness of things and the expectations raised by its own customary modes of acting, that equity might justify or excuse a congregation in rejecting its appointments and in choosing a pastor for themselves; but in this case we find nothing of the sort. In almost all instances the annual Eldership sent to this congregation the pastor whom they desired, and no doubt they treated all other congregations in the same manner, as nearly as was practicable. In such matters each one is necessarily liable to some disappointments. There was any favored church, and this was the one at Harrisburg; and this was quite natural, as it was the most influential, and was the mother Church of the denomination.

As to this particular case there seems to have been an extraordinary degree of indulgence on the part of the Annual Eldership towards the majority of this congregation and towards Mr. Collier: for it was not until after he had accepted the pastorate without the consent of the Annual Eldership, or of its Standing Committee; and after he had been convicted of insubordination at an extra session called on account of his irregularity; and after he had refused to submit the difficulty to the adjustment of the Standing Committee as required by the Annual Eldership, and continued to act as pastor, though this had been pronounced insubordinate; and after he had been again tried and convicted of insubordination, and was so far forgiven as to have his license renewed and the pastorate of the Harrisburg Church assigned to him until the first of April following; and after he had used his position as Editor of the newspaper of the Church to maintain the part he had taken; it was not until after all this and more that he was suspended from the ministry by the Standing Committee, and afterwards expelled by the Annual Eldership. Surely Mr. Collier personally, which can be accounted for only on the supposition of high qualities possessed by him, and this may also indicate the grounds of the attachment to him of so many of this congregation, notwithstanding his disorderly course. The evidence reveals to us no reason why this respect and indulgence of the Annual Eldership has not been reciprocated. The utmost that the majority can attain by persistence in this insubordination, can only be the establishment of a new sect, which, according to the ordinary practice of giving names, the world will call Collierites.

Suppose that this congregation was at one time independent. Then, it is argued, it may at any time resume its independence. We do not concede the conclusion; though there may be special cases, wherein such a result may be reached. The principle that governs in such cases is good faith to all the members of the congregation; and that can be preserved only by a loyal adherence to the authorities and organic constitution that were in existence at the time they became members. They can complain of no changes that are made in their organic laws by their legitimate authorities in pursuance of the constitution; but all changes otherwise made exhibit a degree of respect, violation of good faith to them, however great may be the local majorities that attempt them.

But was this congregation ever independent in the sense that it elected its own pastors? We see no evidence of it. It was John Winebrenner that gathered and nurtured this flock, and it was thus, and not by election that he became the pastor of it. And judging this

event by others, he instructed and appointed the preaching elders who assisted in gathering, nurturing and organizing other flocks. And when, after five years' labor, in 1830, he and his five assistants met together to form a regular organization and constitution; most likely they did nothing materially different in relation to the appointment of pastors, from what they had been doing before. It is only after that, that we become possessed of the exact outlines of the system of organization, and possibly before that they had not become distinctly conscious of it themselves. It is not necessary for us to be able to say when its associated form became complete. Distinguishing things are not susceptible of precise definition. We cannot say exactly when a boy becomes a man or when a sapling becomes a tree. It is sufficient, when we are called upon to test the legitimacy of any particular act of an ecclesiastical organization, that we are able to discover and define the law of the organization that applies to the case, whether it be old or new, and whether we can trace its history or not.

We need not dwell on the argument founded on the deeds of conveyance of the congregational property. It is well answered by the opinion of the learned President of Common Pleas. The trustees, who are the elders, hold the property for the use of the congregation, and that consists of all those who are in full communion with the church, and who adhere, or are willing to submit to the regular order of the church; and adherence to the general denomination, while it continues sound and orderly, is one of the essential elements of that order. According to the fundamental, legal and equitable principles of such associations, that majority which makes use of its corporate organized resistance to the legitimate authority of their ecclesiastical superiors, thereby excludes the members of the minority for refusing to contribute to the support of their disorderly organization; and that institutes as its pastor a regular expelled minister of their denomination; such a majority is not the true congregation.

Mr. Collier was regularly expelled; for his previous attempt to dissolve his connection with the Annual Eldership was utterly nugatory so long as he persisted in maintaining his position as pastor of one of its congregations. Moreover, men without the expulsion, we discover no principle of this denomination by means of which he can be at all recognized as a minister of the gospel; for he never was one except by virtue of the annually renewed license of the annual Eldership, and his last license expired in the end of the year 1859, or the beginning of 1860.

According to the legal and equitable principles of such associations, it is those who adhere or submit to the regular order of the church, local and general, (even though they be a minority) that constitute the true congregation, and also the true corporation, if it be incorporated. It makes no difference in equity that the majority have constituted themselves in strict accordance with the congregational or corporate forms, if they have done so in violation of fundamental principles. One of the most important functions of equity in such cases is to supply the defects of the corporate form, and to see that justice is done in all respects.

The main purpose of protecting the rights of the minority and the fundamental principles of the association. One of the rights of this minority is to have a pastor regularly appointed by the annual Eldership or its stationing committee.

We must consider this congregation as having been in a state of anarchy for the last four years, and during that period all its regular and legitimate action has been suspended, and all its members have ceased to be qualified voters under its charter by falling in arrears in their contributions more than one year—the majority have done so by improperly contributing to the support of their disorderly organization; and the minority by properly refusing on the argument of the minority has refused to support up the organization by itself, but this no where appears on the records in any sufficient manner, and we can take no notice of it.

How, then, shall equity restore the organization to life? It must overlook this period of anarchy and go back to a time when order still existed, and take the members as they then stood, who are willing still to adhere to this congregation in its proper order. We must presume that a reasonable degree of order may be restored to the congregation, when Mr. Collier was last appointed pastor of this congregation; and immediately after that disorder became manifest and permanent—those who were then qualified voters, and who now declare themselves desirous of continuing to be members of the congregation, and willing to submit to its congregational and denominational order, must still be considered members.

But owing to this anarchy, there are no members properly qualified under the charter to hold a new election, and it is not proper to wait until the next charter period for holding an election.

The provisions of the charter are therefore inadequate for the present emergency, and we must supply its defects according to the demands of the occasion.

The plaintiffs, by their appeal, further ask that an account shall be decreed against the defendants; but they do not file their bill as the trustees of the corporation, but only as private members, and as such they have no right to the account prayed for. It is enough that their rights of membership are restored, by bringing back the corporation to its proper order. When order is restored, other wrongs may be corrected in the ordinary way. It seems to us that we need not discuss this case further. What we have said is sufficient to indicate what the decree ought to be. It must be in some respects different from the decree pronounced in the Common Pleas, and we shall amend and correct that accordingly.

BY TELEGRAPH FROM FORTRESS MONROE.

ARRIVAL OF REBEL PRISONERS.

THE REBELS DRIVEN BACK TEN MILES. FORTRESS MONROE, July 4. The steamer State of Maine, with 309 wounded soldiers on board, and the Kennebec with 250, leave Fortress Monroe this morning for New York. They arrived here last night from Harrison's Landing. Many of them are very highly wounded—a finger, a hand, or an arm, while endeavoring to obtain their names the boats were ordered to leave. Colonel E. C. Pratt and A. W. Lewis, Captains J. G. Wilson, John Knoblock, A. H. Hamilton, and Daniel Parker, are on the State of Maine.

The Eleventh Regiment Pennsylvania Reserves were in the first battle of the extreme right wing and suffered severely. Col. Gallagher was wounded and taken prisoner; Lieutenant Colonel Jackson was killed; Major Johns is missing, and Captain Brady was killed. All the other officers are missing except Captain Porter and his two Lieutenants, who were detailed upon other business at the time of the engagement.

Parties on board the steamer Commodore, from Harrison's Landing, report they heard cannonading from one o'clock in the morning until two in the afternoon; others say it continued until six o'clock; the time of the departure of the steamer from Harrison's Landing. She brings down 476 soldiers, mostly wounded; among them is Wm. Raymond Lee, of the Twentieth Massachusetts, who is debilitated, but not materially injured.

Gen. McClellan sent down 633 rebel prisoners to-day, who were marched in Fortress Monroe single file, and a more unique spectacle never could be dreamed of. They wore all sorts of dresses—many of which had undoubtedly been taken from our soldiers—no two were alike, and they were dirty, dingy and worn out. The rear was brought up by about twenty "contrabands," who, as they stepped ashore, grinned ghastly grins and followed their "masses" into the fort. The prisoners were sent here in charge of Lieut. C. D. Mahaffey, of the Staff of Gen. Andrew Porter, Provost Marshal of the Army of the Potomac. Among them are fifty-three officers—two Colonels, three Lieutenant Colonels and three Majors. The following are included in the number: Maj. John Link, Seventh Louisiana; Capt. Cornelius Page, Seventh Louisiana; Surgeon Norton, Eighth South Carolina; Capt. J. W. Rogers, First South Carolina Rifles; Capt. Kirby, Seventeenth Virginia; Capt. Granberry, First Virginia; Capt. John R. Towers, First Virginia; Adjutant Shaw, Adjutant Thirteenth Georgia; Lieut. J. B. Lee, Third Louisiana; Chaplain Martin, Third Louisiana; Capt. James B. Brown, Third Louisiana; Lieut. N. Jones, Seventeenth Virginia; Col. Martin Mass, Seventeenth Virginia; Capt. Robert Simpson, Seventeenth Virginia.

XXXVIIth Congress--First Session.

WASHINGTON, July 5. SENATE. Mr. SUMNER, (Mass.) presented a petition asking that the President be requested to call on all loyal persons to return to their allegiance and report themselves within the lines of the army.

Mr. GRimes, (Iowa,) offered a resolution that the Secretary of War be requested to transmit to the Senate the official report of Gen. Canby, in regard to military operations in New Mexico and the battle of March last.

Mr. RICE, (Miss.) objected to its present consideration. Laid over.

Mr. POWELL, (Ky.) moved to take up the bill abolishing the franking privilege.

Another Speech by Mr. Train.

Mr. Train on England's Neutrality and General Butler's Proclamation.

We find room only for the following extract of one of Mr. Train's recent speeches: NEUTRALITY. Mr. TRAIN—Neutrality signifies weakness—All small minds hesitate. Lack of decision shows lack of power. Generals who win battles are not neutral men. Neutrality on the American rebellion is taking sides in disguise. The man who is soft on the American question is soft on all questions. I despise soft Americans as well as soft Englishmen. It is impossible for an honest man to be neutral. He who is not for me is against me.

The young man counting his employer's money must not be a neutral—if he does not wish to end his life upon the gallows. The coat I have made fits exactly the neutral bankers and leading Americans abroad—who are waiting for victories before hoisting Secession or Union flags. The garment is not out of place on England's back. Neutrality in England is treachery. Americans say, England, with all its faults, we love the still! Englishmen say, America, with all its virtues, we continue to hate thee. Strong men choose sides—weak men are always neutral; once an idiot, always an idiot. The world is packed with fools. No man can serve two masters. He must either love the one and hate the other, or hate the one and love the other. Our Saviour was not a neutral. England for three generations has been unjust to America. He that is unjust in little is unjust in much. The maxim comes from an ancient and respectable authority. Unjust in small matters for half a century, England was just ripe for being unjust in great matters during our revolution. Neutrality is disguise; assassins are neutral before they use the dagger. The tiger in the jungle is a neutral before he attacks an enemy. You first conceal your plan. Error and injustice are neutral before becoming arrogant and impudent.

GEN. BUTLER'S PROCLAMATION. A love of fault-finding is no proof of wisdom. Your criticisms on General Butler's proclamation are as just as your pretended love for America is honest. Critics, says Whyerley, are like thieves, who, condemned to execution, choose the business of executioners rather than to hang. Your distortion of the New Orleans proclamation is a contemptible attempt by preaching that doctrine they could break up our Republic—and pro-slavery advocates when they will do we should preserve the Union. The proclamation you have disseminated is a lie. You mean to say that you believe Gen. Butler issued the order for immoral purposes.

Do you really understand the word "order" in the proclamation? The very idea is contrary to the instincts of our nature, insulting to the American people, and outraging the senses of our race. You give the order a meaning never intended. It was unfortunately worded, but the spirit of the order was a proper one. Ladies hold the remedy. Let them remain loyal, let them behave like women, not like human vipers. The terrible slaughter of our country will some day lay heavy upon their consciences. Women who go out of their way to insult Federal officers who have treated them with every courtesy, by pouring hot water out of their faces on the pave, or as far as unsexing themselves as to strike an officer, ought not to object, when martial law is ordered, to proclamations that enforce civility where rudeness was so marked.

The municipal law permits no disorder in the street. Women breaking it are sent to the calabasses. That is the terrible order, nothing less—nothing less—that arouses England and provokes this debate. Lord Palmerston takes advantage of it to have another fire at the Americans, and Gregory and Welsh are mad with delight. Lord Carnarvon also brings out Earl Russell, and all the newspapers clap their hands with joy—and you, gentlemen, echo the sentiment of the land. Do you remember a picture in the Illustrated News during the Seppoy revolution? I do—and their features were prominent—cannon—English officers, and Sepoy messengers—English officers, and Sepoy messengers are bound on the muzzle of the guns—and with their flag of truce tied around, they were blown towards the camp from whence they came.

Did Mr. Seward get up in his place in the Senate Chamber and protest against it in the name of humanity? The atrocities of your soldiers in India were only equalled in their brutality of Nena Saib himself. When a British officer enters a Sepoy village, he gives the order to his regiment to ravish the Sepoy women, and then level their houses to the earth. Humanity shudders for civilization. Compared with such funds, General Butler is a scholar, a gentleman, and a Christian. How forgetful of the rights of civilization for our statement to remain silent without recording their indignation at such brutal acts! England must feel proud of those Christian officers, and no wonder she is indignant at Butler.

Have you forgotten the siege of Limerick? Is it true that Englishmen ravished the women before battering the garbison and burning the town? Do you remember the cold blooded slaughter of the Macdonalds of Glencoe, under the same dynasty? Verily, what a man was Lord Byron!

You are the best of cut-throats!—Do not start! The phrase is Shakespeare's, and not misapplied: War's a brain-spattering—win't you slipping art, Unless her cause by right be sanctified. If you have soul once a generous part, If you have soul once a generous part, I'll be delighted to learn who, Save you and yours, have gained at Waterloo!

Daoust in Hamburg—Janot in Lisbon—Malakoff in the Algerian caves—were guilty of acts—and Wellington at St. Sebastian—worthy of Russia in Poland and Haynau in Austria. Butler's offence is words—England's offence is the act. Was Butler's motive good or bad? It is the motive, not the act, that blackens the crime. England is not the land to give American examples as to the treatment of woman.—America is a country where its youth are taught not to insult an old man or old woman, and a woman can go through the entire country

without being insulted. America is the land where education and religion give tone to the moral of our people. How careful England is to find fault with our Federal army! Have you seen any questions on the Parliamentary paper, asking if the reports are true regarding atrocities of the Confederate army? Has the Federal power as friend at Court to ask these questions of Lord Palmerston? Is it true that savages, led on by Confederates, scalped our wounded Sprague found some of his skulls, who were killed at Bull Run, buried with their faces downward? Is it true that Federal soldiers wounded on the ground at the battle of Winchester were bayoneted by Confederate soldiers? Is it true that the ladies of a certain town in Virginia invited one hundred Federalists to their homes to tea, and their brothers, who were in ambush, rushed in and put all to the sword?

Surely America ought to have one friend bold enough in Parliament, when Gregory and the Premier are hurling their invectives against America, to inquire if it is true that the skull of a Federal officer is a bon bon for a rebel lady; that Madame Bauregard, who was treated with so much politeness by Gen. Butler, was a cameo cut from the bow of a Federal Colonel!—that rebel ladies wear rings and brooches made out of the skulls of our brave officers; that the proper thing for the rebel gentleman at Richmond is to have a right good-fellow on a human head! In conclusion, let me ask if England paid our Federal officers? If England must be consulted before we declare martial law? I was not aware that Abraham Lincoln was elected President of the powerful American Republic by the bankrupt monarchies of Europe. [Cheers and applause.]

Miscellaneous.

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