THE

PRESBYTERIAN REVIEW.

No. 3.—July, 1880.

I.

THE FUTURE OF HUMANITY ON EARTH.

HE would be a bold thinker who should undertake to foretell the fortunes and the state of an American Republic five or ten centuries hence:—who should attempt not only to describe the type or types of government which may then exist here, but also to delineate the personal characteristics of the men and women of that distant era, the social life of the period, the grade of development and of civilization which our humanity will then have attained on this broad and elect continent. How much bolder would he be who, in full view of the present medley of antagonistic elements, religious, political, social, in European society and life, should propose to tell us what Europe will have become, after the agitations and the mutations of the next thousand years! Bolder still would he be deemed who should attempt to prognosticate the future at that distant period, not of any single nation or continent, but of all the continents and all the races of mankind: who should assume to say what this world, in its controlling elements and tendencies, its prevailing spirit and principles and life, will be at the end of five or ten more centuries of activity and of growth. But would not he be boldest of all—daring beyond all comparison—who should venture to prophesy concerning the career and development of our humanity, not for any such given period however prolonged, but down to the last century and the last hour of recorded time: unfolding before our vision that ultimate issue in which the whole of human life on earth shall be consummated, in the decisive day

VII.

RELATION OF AMERICAN CIVIL LAW TO ECCLESIASTICAL JURISPRUDENCE.

ALL of our denominational journals, and not a few secular papers, have noticed a case which recently came before the civil courts in Missouri. One cannot be certain of the accuracy of newspaper reports; and, as no official record is yet obtainable, we are left in doubt as to some of the points in dispute and the full bearing of the rulings of the court. But the outline of facts seems to be this. A member of the Presbyterian Church South was suspended by his Session without, or pending, trial. Notice of such suspension having been read at a prayer-meeting, the member whose good name was involved publicly protested, and with such vehemence, that the Session forthwith excommunicated him without trial. Thereupon the member so dismissed brought suit against the pastor and one of the leading elders, for injury done to his good name and standing under cover of Church law, but contrary to the methods prescribed in the Book of Discipline. Both suits were decided in his favor and heavy damages awarded him against each defendant. The defendants have appealed to the Supreme Court.

One of the prominent papers of the Church South, while admitting that the Session acted outside of the forms of judicial process, asks in view of these findings:

"Does the simple matter of the administration of Church law fall within the jurisdiction of the courts of the State? Are they competent to take cognizance of the exercise of ecclesiastical discipline which does not affect the rights of property? If so, where is the independence of Church and State?"

These questions reveal how little the relations of Church and State are understood; and how easy it is, under disguise

of a popular cry, to advocate something inimical to popular interests. Ecclesiastical findings have been so often reviewed in both English and American civil courts, that the general principles therein involved, ought by this time to be well known. Unfortunately, church officials seldom investigate the subject until forced to do so in a way most unpleasant to themselves. It has seemed to me that just now, when our Church North is revising its Book of Discipline, an examination of this subject might be particularly opportune. Having read carefully all the reported cases, and selected representative decisions, I purpose to show in this paper, what are the general principles which regulate our civil courts in dealing with ecclesiastical affairs, and why every decision of a church court involving civil rights may reasonably be submitted to the civil court for review.

First of all, what is the position of a church court when cited before the bar of a civil tribunal in the States? However lofty may be its claims, however awe-inspiring its ecclesiastical title, it is known to the State only as one of many forms of voluntary arbitration. The State knows nothing of it as a body receiving power from the Scriptures, nothing of it as supernaturally gifted by Apostolical succession or Papal benediction. Like the lodge, the benevolent association, the labor-union, or the lyceum, it is simply a voluntary association of individuals for specific purposes, whose members agree to be mutually bound by certain rules observed among themselves. The form of government which these churches choose, whether it be congregational, constitutional, or prelatical, is simply that form of arbitration which the persons so associated have voluntarily chosen as a method of settling their differences or disagreements. To the civil law it bears a character no more sacred than does a copartnership for banking or pork-packing. While it refrains from those questions which affect civil rights, the State has no knowledge of its existence. But so soon as it raises a hand to the detriment of those interests, the State will cite the Church before its bar as promptly as it will summon a single offender to make answer for his deeds. To the eye of the State the Church wears no character which permits it to do injustice, or that requires its decrees to stand unquestioned; and it possesses

no power which it cannot show to have been conferred by the voluntary action of its members.

I do not find a single exception to this ruling, either in the State or the Federal courts. In the two cases which have been brought before the Supreme Court of the United States,* this principle has been most emphatically asserted, and it is involved in the decisions of every other case cited in this paper. Whether the decisions of the ecclesiastical authorities have been affirmed or set aside, these authorities are considered simply as so many forms of arbitration chosen by the parties interested to decide certain questions according to certain stipulated methods. Whether it be the decree of a papal bishop as in Hennessey *v.* Walsh† or the vote of a congregation as in the case of Bouldin *v.* Alexander,‡ in either case the Church stands before the law of the land like any other society of voluntary membership.

The first consequence which flows from this is, that the State will refuse to sit in judgment upon questions which pertain only to, or hinge upon, definitions, terms, or descriptions purely spiritual or purely ecclesiastical. The State knows no standard of "Orthodoxy,"§ "Protestantism," "Romanism," or "Presbyterianism;" and while it will decide whether a church court proceeds according to its own prescribed methods of arbitration, it will not undertake to decide which of various parties is truest to doctrinal definitions or traditions. As a consequence a bequest is void which is made to legatees to be chosen for their supposed conformity to any doctrinal standard; and all such legacies are good in law only when made to individuals, or boards which have a corporate existence before the law. Occasionally a judge will go into an exhaustive review of the history of a denomination, as in the case of Smith *v.* Nelson,‖ or that of Watson *v.* Avery;¶ but this is contrary to the general practice of the courts, and especially of the Supreme Court of the United States,** even though the purpose be not to examine the question of fidelity to "standards," but of faithfulness in administration of con-

* See 15 Wallace, 131, and 13 Wallace, 679. † 15 Am. Law Register, N. S., 278.
‡ See 15 Wallace, *ut supra*.
§ Grimes *v.* Harmon, 35 Ind., 198, and authorities thereto appended.
‖ 18 Ver., 511. ¶ 2 Bush, Ky., 332. ** 15 Wallace, 131.

stitutional law. Nor is this to be wondered at by any one at all familiar with the history of ecclesiastical organizations in their relation to doctrine; and perhaps those churches which boast loudest of their dogmatic fixedness, like the Romish, have shifted farthest and most rapidly from the landmarks of their own previous Councils. We have "Old Catholics" in Germany, who are not in communion with modern Rome; and "Old Believers" in Russia, who are separate from the modern Greek Church. The civil courts would have little time for aught else if they were to attempt to hold ecclesiastical organizations to doctrinal consistency and immobility.

But as clearly as this principle is established, that the civil court will not take cognizance of offences or definitions purely spiritual or theological, it is no less clearly held by the courts that no church, under cover of ecclesiastical decisions, can do injury to the civil rights of individuals in matters not voluntarily submitted to their decision, or by methods not so chosen and agreed to. The Church as an arbitrator has no powers not voluntarily conferred; and no authority over questions not specifically submitted.

When an ecclesiastical case is brought before the civil courts, two allegations must be laid—first, that an injury has been done to civil rights; and second, that such injury has resulted from the ecclesiastical court's transcending those limits fixed by the mutual assent of the parties interested.*

But they are very much mistaken who think that civil rights are only rights of real estate, or what is commonly called personal property; or that the man who has submitted, voluntarily, certain questions to the arbitration of a church court, or church official, has thereby left himself, without qualification, to the mercy of such person or such board. The law throws its protection about the man, his professional means of livelihood, and his good name, while also affording a defence to his "estate," and for the reason that his professional acquirements and good name are a most valuable part of his possessions.

As an example of the way in which ecclesiastical decisions may affect civil rights, take the celebrated case of Smith *v.* Nelson, referred to on a previous page. A minister who had

*See these general principles as laid down in Austin *v.* Searing, 16 N. Y., 112.

been deposed from his office, and shut out from his pulpit, brought suit to recover his standing, and to have the ecclesiastical judgment set aside, upon the ground that his salary was in part paid out of a funded legacy, from which income he was debarred by acts of the church court in contravention of its own written laws. And he was so restored by the civil courts, which decided that his civil rights had been unwarrantably trespassed upon. In a still later case, that of Robertson *v.* Bullions,* it was decided that a minister's right to the ordinary emoluments of his office was a civil right in which the law must protect him; and in the case of Walker *v.* Wainwright,† it was decided that a minister's exemption from jury duty and militia service was a civil right which might be defended in a civil court. But not a few of our ablest and best known American jurists go even farther than this, and declare that the office of the ministry itself, while upon one side a purely spiritual office, is, viewed upon its other side, a profession with honors, exemptions, and emoluments, all of which are civil rights capable of defence from unwarrantable injury in civil courts. The suspension or deposition of a minister is, therefore, an act necessarily civil, as well as ecclesiastical, and a church court must show a clear warrant for its action if its action is to stand. "We are clearly of the opinion," said Judges Lawrence and Sheldon in the celebrated Cheney case, "that when a clergyman is in danger of being degraded from his office and losing his salary and means of livelihood by the action of a court unlawfully constituted—we are clearly of the opinion that he may come to the secular courts for protection. It would be the duty of such courts to examine the question of jurisdiction, and if they find that such tribunal . . . . is exercising a merely usurped or arbitrary power, they should furnish such protection as the laws of the land will give."‡ Judge Redfield, in editing this case for the "American Law Register," and no name stands higher than his, declares that whatever may be the decision in Illinois upon one case, any other decision than that above quoted cannot stand long in Illinois, "and will most certainly not be accepted as law anywhere else." So the Hon. Richard H. Dana, in reviewing the same case, declares that the

* 9 Barbour, 64. † 16 Barbour, 486. ‡ 10 Am. Law Register, N. S., 295.

ministry is so inseparably connected with civil rights that an ecclesiastical deposition must always be subject to review before the civil courts, in order to inquire whether such ecclesiastical tribunal acted with warrant or not. In view of the decisions of court after court, it ought to be considered as well established, that ecclesiastical bodies, sitting as arbitrators, have no more license to transcend their constitutional limitations than any other persons to whom specific questions are entrusted for orderly adjustment.

It might have been added that appeal has been taken in regard to a contested election of elders;* in regard to the rights of a corporator,† who was cut off from his corporate rights by a "by-law" of the church which forbade an ex-communicated person to vote upon any question relating to church affairs; and both cases were fully considered in the State court and the decisions of both ecclesiastical bodies reversed. There are indeed very few ecclesiastical decisions which do not affect civil interests, and as Chief Justice Williams has said, the church court "must be able to show a clear and unmistakable assent, by parties interested, to its jurisdiction; that jurisdiction must have been embraced in the original terms of the compact; and must not be ignored or transcended in the decision."‡

This brings us to consider the vexed question of "jurisdiction." Practically all our State and Federal courts are agreed up to this point. All regard church tribunals, or "courts," as mere forms of arbitration. All agree that civil injuries must be resented by the civil courts from whatever quarter they come. All agree that there are few ecclesiastical decisions possible which do not affect, and that directly, civil rights. But upon the question of "jurisdiction" we may divide the decisions into three classes—the broad, the strict, and the middle classes. The Supreme Court of the United States, in the cases referred to above,§ refused to consider the question of "regularity" as affecting the question of "jurisdiction." These decisions would allow a wide latitude to church courts, practically permitting them to be, in the majority of cases, judges of their own jurisdiction, as well as interpreters of their own laws. This principle pushed too far simply abolishes the constitution

* Watson *v.* Avery, 2 Bush, Ky. † People *v.* St. Stephen's Church, 6 Lansing, 172.
‡ Smith *v.* Nelson, *ut supra.* § 13 Wallace, 679, and 15 Wallace, 131.

of any church; and in place of its written law substitutes the whim, passion, or prejudice of the chance assembly. This was the effect, indeed, in the Cheney case above cited, against which Judges Lawrence and Sheldon of Illinois, Judge Redfield of Massachusetts, and Hon. Richard A. Dana entered such vigorous protest. Hallam tells us that "the discretion of the judge is the first engine of tyranny;" and such it has proved whenever it is left unreservedly to church courts to interpret the limit of their own power.

On the other hand, our civil courts have sometimes undertaken to examine minutely into the question of jurisdiction, and in the law reports of Vermont,* Kentucky,† and Missouri, one may find the form of government, history, and traditions of the Presbyterian Church elaborately set forth. The decisions in these cases followed the strict rule of Great Britain that an error in the proceedings will invalidate the decision of an ecclesiastical tribunal as immediately as it would that of a suit before the Queen's Bench.‡ And if the case of Rev. Mr. McCarthy, of New York, was correctly reported in the daily papers, about a year since, the judge in this case restored Mr. McCarthy to his membership in the State Association of Universalists, which had expelled him, on the ground, not of the lack of jurisdiction, but its irregular exercise.

But it is safe to say that the majority of decisions in our civil courts have taken the middle ground. They are neither ready to commit the personal interests of thousands of the State's best citizens, and millions of benevolent funds, to the irresponsible decisions of tribunals left to exercise "jurisdiction" wherever they claim it; nor are they prepared to review every church trial in order to see whether the whole proceedings might not be invalidated by some technical objection. Taking the common-sense ground that people who choose arbitrators must assume some risks of ignorance or prejudice, they still maintain that these arbitrators shall not be permitted to do whatever they may affirm they have power to do. "The most that can be said," says Commissioner Earl (reviewing

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* Smith *v.* Nelson, 18 Ver., 511. † Watson *v.* Avery, 2 Bush., Ky.

‡ See decision in McMillan *v.* Free Church of Scotland, quoted in 10 Am. Law Register, N. S., 295, and English rulings quoted in 13 Wallace, 679.

the broad interpretation in 13 Wallace), "is that the opinion of a church court as to its own jurisdiction should have great weight."* "It is the duty of this court," says Judge Edmonds, "to inquire into the question of jurisdiction."† "The organic law of the Church," says Judge Robertson, "is a fundamental contract, necessarily inviolable, for the protection of every member."‡ "The action of a Synod is final," says Chief-Justice Lowrie, "provided it is in accordance with its own laws."§ And as the same judge elsewhere puts it, "A man when he joins a church or enters its ministry is entitled to the presumption that he will be governed by the laws to which he has assented." So, too, say Judges Lawrence and Sheldon, "It is the duty of the (civil) courts to inquire into the question of jurisdiction, and if they find such tribunal is exercising a merely usurped or arbitrary power, they should furnish such protection as the laws of the land will give."‖ To these could be added, perhaps, as many more; and it may be confidently asserted as the prevalent rulings of our State courts that, while not interfering to prevent or correct technical irregularities in ecclesiastical tribunals, they will not suffer such tribunals to arbitrarily interpret the question of their own powers to the detriment of a man's good name or professional standing, or the abuse of trust funds.

Now it should be remembered, that in the proper understanding of these questions, no other Church has a larger interest than the Presbyterian Church. In the rulings of our civil courts, churches are divided into three classes: those whose government depends wholly upon the vote of the individual congregation; those whose government is wholly in the hands of the bishop; and those which are under the government of a written constitution.¶ The only question which can come before the civil courts in regard to a Congregational church is: "Is the decision, which is in question, a decision of a *bona fide* majority of the actual congregation?"** That such freedom from formal alliances has its benefits, no

* Connith *v.* Ref. Church, 54 N. Y., 551.
† 16 Barbour, 468.
‡ 9 Am. Law Register, N. S., 211.
§ McGinniss *v.* Watson, 41 Penna., 9.
‖ 10 Am. Law Reg., *ut supra.*
¶ 13 Wallace, 679.
** Bouldin *v.* Alexander, 15 Wallace, 131.

one will deny; but that it has its drawbacks is still more plain to any one who knows how the fathers of New England built churches for men of Unitarian faith to control. The Church thus secures the largest amount of freedom from the State only by renouncing its protection, and subjecting its vested interests to the caprice of any chance majority of the hour. And the same effect is seen in churches with a strictly prelatical form of government. Where the property is held by the bishop, and the standing of the minister depends upon the will of the bishop, no rights are left to be defended because all have been voluntarily surrendered.* But when the arbitrator is neither one man's will nor the vote of a chance majority, but the decision of a constitutional assembly, it becomes of all things important that that assembly understand the limit of its powers and its responsibility for any infringement of civil rights not warranted by the written law under which it is constituted. Churches under congregational government surrender nothing to the general control of the Association; churches under a purely prelatical form of government reserve nothing, the property being held by the bishop, and the priest vowing a personal obedience; but churches associated under a formulated creed and written form of government, surrender and reserve at the same time; they enter into a definite and stipulated contract, which defines at once the obligations and the liberties of the members. The decrees of such assemblies, which are warranted by the constitutional definition of their powers, the civil courts will enforce, and have enforced, again and again; the decrees of such assemblies, which are without warrant in the constitutional definition of their powers, the civil courts have reversed in nearly every State in the Union.†

Nothing could be more just, nothing else is possible in a free country. There cannot be two tribunals with absolute power over the civil rights of citizens. If a people choose to submit themselves, their persons, their professional standing, their ecclesiastical and benevolent funds, absolutely into the hands of a bishop, they alone are responsible for what they

* Hennessey *v.* Walsh, 15 Am. Law Register, 278.

† See the cases cited in 18 Ver., 511; 2 Bush, Ky., 332; 16 N. Y., 112; and 41 Penna., 9.

may chance to suffer. But when such surrender has not been made, the State must stand for the defence of its citizens against any infringement of their civil rights from whatever quarter it may come. All that the State requires of the Church is what she requires of every other corporate body, not to usurp undelegated power to the detriment of her citizens. For the State to do less than this, is for her to bear the sword in vain and be untrue to those interests which she is divinely commissioned to protect.

The theory of "a Church and State, each free and each supreme," is not a Protestant theory, but a Papal; and can be realized only when the citizen definitely renounces the protection of the State and hands over his interests, without reserve, to the Church. The State cannot presuppose such a surrender. This absolute freedom of Church decree from State revision was the highest ambition of that pope of popes Gregory VII.; and it was for this cause that almost the only English saint in the papal calendar, Thomas à Becket, gave up his life. A church whose decisions are final upon all questions of church property, upon the civil rights of her members and her ministers, is, as Lord Kames has said, "the very instrument by which during the middle ages one-half the lands of Europe and one-fourth its male population were rendered neither amenable to the civil law nor possessed of its protection." The one fetter which ensures the despotism of Rome even in this free republic, is the priest's ordination vow, which renounces, so far as the conduct of his superiors toward himself is concerned, the protection of the State. And we may notice in passing, that the only Protestant Church in the States which has followed in the line of this papal renunciation of civil protection, is the Protestant Episcopal Church in the State of Illinois. This Church, under the lead of the late Bishop Whitehouse, adopted an article as an amendment to the Constitution of the Diocese (Art. XVIII.), which declares: "No clergyman shall resort to any civil court or tribunal for the purpose of arresting, impeding, or avoiding any ecclesiastical proceedings against him. The penalty for any violation of this article shall be suspension, *ipso facto*, from the functions of the ministry." If one will turn to the decisions of church councils of the fourth and fifth cent-

uries,* he will find this same article among the foundation-stones upon which the papacy was afterward reared. Ecclesiastical despotism can never flourish except when, either by the civil law or the ordination vow, the ecclesiastic is put outside the protection of the civil power. The first step toward the loss of ecclesiastical liberty is the renunciation of the protection of the civil arm. Some of our statesmen, and not a few of our clerics, repeat the popular cry, "A free Church in a free State;" but one ought to understand just what is meant by it. Thus a Presidential Message of 1875 recommended a constitutional amendment which should declare "Church and State forever separated and distinct; but each free within its own proper sphere." If by this is meant that the State should not make laws for the Church, it is wholly unnecessary. If by it is meant that the State shall not have power to review the decisions of the Church with a view to ascertaining its constitutional jurisdiction, the amendment would carry us back to the middle ages. If, again, the State is and must be the final and supreme judge of the "sphere" of both, it is hard to understand how one is to lay out the boundaries of Church and State so that they shall be "forever separate and distinct;" except upon the papal theory that the State shall be final judge for the laity, and the Church do as it will with the cleric. But it is hardly to be supposed that this is the meaning of the proposed amendment. And if it be neither of these, it must mean just what we have now, a Church free to adopt its own constitution, but answerable, like any other offender, before the bar of civil justice when it transgresses the voluntarily assigned and accepted limits of its authority.

No one can deny that the study of this question is of the utmost importance to constitutional Churches. Mr. Gladstone says, in one of his late Essays, that "in every religious body, without exception, there forms a special tradition, which, without constant watchfulness on the part of those who love truth, lapses and glides away from the facts of history." The tendency is constantly to put forward that tradition as if it were law. It has happened to some of us to hear in an ecclesiastical assembly the bold assertion made, "I shall vote to suspend this

* See Hallam's "Middle Ages," Chap. VIII.

man from the ministry, not because he has violated the law or polity of his Church, but because he has disregarded her customs;" and suspended he was. It is not to be wondered at that our church courts, with such loose notions of their power over the civil rights of their members, should be called so often to defend themselves before the tribunals of the State. The Church constitution is a compact, a contract, a written and definite agreement between the general body and each individual member. To the enforcement of that contract, and its inviolability, the State stands pledged, as to the enforcement of all other contracts and agreements involving civil rights. Were it otherwise, constitutional Churches would cease to exist. There being no power to enforce their original compact, it would endure no longer than the various ecclesiastical bodies should see fit to observe it. Without this resort to the judgment of the civil court to review, and to the civil arm to enforce their decisions, but two forms of Church government would survive: the Roman, based upon absolute submission; and the Independent, knowing no law but the will of the majority for the present hour.

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