THE

PRESBYTERIAN REVIEW.

No. 30.—April, 1887.

I.

THE LORD'S SUPPER.

THAT the Lord's Supper is the perpetual memorial of the bitter yet victorious passion of the Son of God, once done that it might be thought of forever ; * that it is one of the ordinances which God has committed to His visible Church for the gathering and perfecting of the saints in this life to the end of the world ; that the words of the institution contain, together with the precept authorizing the use thereof, a promise of benefit to worthy receivers ; that it is an effectual means of salvation ; † that its observance is the Ark of the Church's testimony ; the inner Sanctuary, the Holy of Holies of all Christian worship, the foretaste on earth of the marriage supper of the Lamb in Heaven ; that it "has ever lain in the golden morning light far out even in the Church's darkest night, not only the seal of Christ's presence and its pledge, but also the promise of the bright day of His coming" ‡— these are statements which so fully harmonize the teaching of all Christian creeds that any formal defence of them may seem to be superfluous. But the undisputed acceptance of a doctrine appears sometimes to make its impression less vivid. If theological controversy, like war with carnal weapons, has its lamentable evils, peace also has its insidious dangers. Not the least of these is the overshadowing of truth by extreme views begotten in times of strife. Men lean backward in order to strike hard at heresy, and when the contest is over they do not always regain their upright position.

* Bishop Hall.

† Westminster Confession, ch. 25.

‡ Edersheim's Life and Times of Jesus, vol. 2, p. 502.

VI.

THE CONSTITUTION OF THE PRESBYTERIAN CHURCH: A REPLY TO DR. CRAVEN.

AN Overture contemplating an amendment of the Confession of Faith is before the Presbyteries for their consideration. It concerns the relatively unimportant matter of marriages of affinity; but it necessarily raises the very grave question, How may the Confession of Faith be amended? There is not a syllable in answer to this question in any of the formularies which together make up the Constitution of the Presbyterian Church. The only provision for an amendment of the Constitution is embodied in the following action of the Synod of New York and Philadelphia in 1788:

"The Synod having fully considered the draught of the Form of Government and Discipline, did, on review of the whole, and hereby do ratify and adopt the same as now altered and amended, as the Constitution of the Presbyterian Church in America, and order the same to be considered and strictly observed as the rule of their proceedings by all the inferior judicatories belonging to the body. And they order that a correct copy be printed, and that the Westminster Confession of Faith, as now altered, be printed along with it, as making a part of the Constitution.

"*Resolved*, That the true intent and meaning of the above ratification by the Synod is, that the Form of Government and Discipline and the Confession of Faith, as now ratified, is to continue to be our constitution and the confession of our faith and practice unalterable, unless two thirds of the Presbyteries under the care of the Assembly shall propose alterations or amendments, and such alterations and amendments shall be agreed to and enacted by the General Assembly."

The meaning of this language is unmistakable. Yet Dr. Craven maintains * that the constitutional method of amending the Confession of Faith is by an Overture submitted by the General Assembly to the Presbyteries, and approved by a majority of them. He therefore holds that the Adopting Act, with what he calls "the supplementary resolution," quoted above, is not of binding force: his reasons being (1) that the Adopting Act is not part of the Constitution; (2) that it is in conflict with the Constitution; and (3) that its authority has not been recognized by the General Assembly. These reasons, however, are very inadequate.

* Presbyterian Review, January, 1887.

1. Says Dr. Craven: "It seems to be unquestionable, it must be acknowledged, that it was the intent of the majority of the Synod that framed and adopted 'The Constitution' to establish as the rule of its amendment the resolution supplementary to the Adopting Act. If such was their intent, however, their mistake was in not making it a part of the Constitution itself." There is no good reason for making such a distinction between the Adopting Act and "the supplementary resolution" as would imply that the latter is possessed of less authority than the former. If the Synod, in adopting certain formularies, as the Constitution of the Presbyterian Church, proceeded then to say what the intent and meaning of that adoption was, the resolution setting forth that intent and meaning must have as much authority as the resolution adopting the formularies. There is nothing to justify the sharp distinction which Dr. Craven makes between the Adopting Act and the supplementary resolution, and there is certainly no reason for treating one with greater consideration than the other. Throughout this article the entire action of the Synod quoted above will be spoken of as the Adopting Act.

It cannot be maintained that the Adopting Act is invalidated because it does not happen to be a part of the Constitution. Let it be remembered that the word "Constitution," as Dr. Craven is at such pains to show, was not employed then with the fixed meaning that it has now, and that the members of the Synod of 1788 were not as familiar as we have since become with chapters in written instruments on the mode of amending the Constitution. Dr. Craven says that "the records of no deliberative body of acknowledged intellectual power can show a similar indeterminateness in the use of an important word." It need not surprise us, therefore, that, instead of amending the Form of Government by inserting a section providing for a mode of changing the Constitution, and then adopting the Form of Government thus amended as part of the Constitution, the Synod simply tied up the Form of Government, Book of Discipline, and Confession of Faith in one bundle, and, as it were, wrote upon the cover: Constitution of the Presbyterian Church, unalterable except by consent of two-thirds of the Presbyteries and a subsequent vote of the General Assembly. It is "unquestionable" that the Synod meant to determine the mode of amending the Constitution. It has expressed its intention clearly. It could easily have incorporated this in the text of the Form of Government. Had this been done Dr. Craven would have recognized the rule as binding until repealed. Granting that it were a "mistake" for the Synod not to embody its intention in the Constitution, what is to govern us?—the Synod's "mistake," or the Synod's intention? It is very clear that Dr.

Craven cannot consistently deny the binding force of the Adopting Act, for in the first part of his article he is careful to show that the Form of Government, Book of Discipline, and Confession of Faith are all subject to the same rule regarding constitutional amendments, being all alike parts of the Constitution. His only authority for this is the Adopting Act of 1788. If, however, the Adopting Act is good authority for saying what the Constitution is, it is good authority for saying how it ought to be amended. Dr. Craven's objection seems to assume that nothing can be binding upon the Church outside of the written instruments which make up the Constitution. But this is a mistake ; for if the action adopting the Constitution be not binding, how can the Constitution itself be binding? How indeed does it continue to be the Constitution, except through the continued operation of the Act adopting it as such?

2. Dr. Craven says that the failure of the Synod of 1788 to put into the Constitution the provisions of the Adopting Act regarding amendments is more especially a mistake "in view of the fact that apparently another and an inconsistent rule was set forth in the Form of Government, ch. xii. [xi.], § 6." Speaking of the Assembly of 1799, he says : "It is impossible to suppose that the Assembly acted in ignorance or oversight of the resolution of 1788. The only tenable hypothesis of its course seems to be that its members regarded the two provisions concerning amendments as in conflict, and that as the one was in the Constitution itself, it should prevail over the other." He repeats the same idea when speaking of the Assembly of 1800, and explains their action by supposing that "the majority regarded the provisions of the supplementary resolution and that of the Form of Government as in conflict, and that as the latter was a provision of the Constitution itself, it should prevail." How far Dr. Craven holds the view imputed to the two Assemblies here referred to does not appear, though from the first of the passages just quoted it is fair to suppose that he regards the Form of Government and the Adopting Act as presenting conflicting methods of amending the Constitution. A very slight consideration will show, however, that there is no conflict whatever between the Adopting Act and the Form of Government.

It is fair to suppose that the Synod of 1788 which adopted the Constitution would not be likely to pass a resolution conflicting with one of the fundamental principles of the Constitution. But it is not improbable, on the other hand, that men who were afterward accustomed to read the Form of Government, and who were not in the habit of reading the ecclesiastical records of former years, might lose sight of the Adopting Act and interpret chap. xii. [xi.], § 6, of the

Form of Government as a provision for effecting constitutional amendments. Taking this view of the rule in the Form of Government just referred to, and not inquiring into the history of it, it would be very easy for the men who sat in the Assembly of 1800 to suppose, when their attention was turned to the Adopting Act, that the two were incompatible. It is certainly far easier, at all events, to see how the Assembly of 1800 might erroneously infer that the Adopting Act and the Form of Government were incompatible, than to imagine that the Synod of 1788 passed a resolution that was actually incompatible with the Form of Government which in its amended form they had just adopted. Nothing but absolute necessity should lead us to say, with the Assembly of 1800, that the Synod of 1788 is chargeable with such a blunder.

There is, however, no reason whatever for saying this; for a consideration of the historical conditions under which the rule referred to entered into the Form of Government removes all difficulty. The rule is simply the Barrier Act of the Church of Scotland. Upon the principle *ejus est interpretari cujus est condere*, it is fair to assume that the true interpretation of chap. xii. [xi.], § 6, of our Form of Government, is to be found in the history of the Scotch Barrier Act. The rule, as adopted by the Synod of 1788, read as follows:

"Before any overtures or regulations proposed to the Council [Assembly] to be established as standing rules shall be obligatory on the churches, it shall be necessary to transmit them to all the Presbyteries, and to receive the returns of at least a majority of the Presbyteries in writing, approving of them."

The Scotch Barrier Act reads thus:

"That before a General Assembly of this Church pass any acts which are to be binding rules and constitutions to the churches, the same acts be first proposed as Overtures to the Assembly, and being by them passed as such be remitted to the consideration of the several Presbyteries of this Church, and their opinion and consent reported by their commissioners to the next General Assembly following; who may then pass the same into acts if the more general opinion of the Church thus had agree thereunto."

The Barrier Act was intended to prevent hasty legislation and the usurpation of power on the part of the General Assembly. From 1560 until after the Revolution (1688), says Principal Hill, the General Assembly was in the habit of exercising legislative authority, but after 1697 this Barrier Act prevented such legislation. The fair presumption is that when the framers of our formularies put the Scotch Barrier Act into the Form of Government, they put it there to serve the purpose which the same act served in Scotland. In other words, they meant it to be a check upon the legislative powers of the Assembly. This presumption is supported by the fact that the

Barrier Act in our Form of Government is part of a chapter that defines the powers of the General Assembly.

"To the General Assembly also belongs the power of deciding in all controversies respecting doctrine or discipline; of reproving, warning, or bearing testimony against error in doctrine, or immorality in practice, in any church, presbytery, or synod; of creating new synods when it may be judged necessary; of superintending the concerns of the whole Church; of corresponding with foreign churches in such terms as may be agreed upon by the General Assembly and the corresponding body; of suppressing schismatical contentions and disputations; and, in general, of recommending and attempting reformation of manners and the promotion of charity, truth, and holiness through all the churches under their care."

The revision of the standards is not embraced in the powers of the General Assembly; yet it is clear from the position which the Barrier Act occupies in the Form of Government, as the section immediately following the passage just quoted, that it has reference to the legislative powers of the Assembly and to nothing else. The view has been advanced lately by a prominent writer in our Church that, while a revision of the Constitution requires, according to the Adopting Act, the approval of two-thirds of the Presbyteries, additions can be made to it by a vote of a majority. The provision in chap. xii. [xi.], § 6, of the Form of Government is thus held to apply to "additions" but not to "alterations" of the Constitution. But obviously this view is wrong; for an addition is an alteration, and the Adopting Act declares that the Constitution is "unalterable" unless two-thirds of the Presbyteries, etc. And there is no reason why the process of addition should be made easier than that of subtraction. The faith of the Church could be quite as much imperilled by the one method as the other. But this view of the meaning of chap. xii. [xi.], § 6, of the Form of Government is unhistorical, and therefore wrong. The key to the interpretation of this passage is, as has been already said, the Barrier Act of the Church of Scotland. Taking this view of its meaning, it is easy to show its entire harmony with the Adopting Act. It is true that the Adopting Act regards the Presbyteries, and that chap. xii. [xi.], § 6, of the Form of Government (or, in other words, the Barrier Act), regards the Assembly as taking the initiative. The Adopting Act requires two-thirds, and the Barrier Act only a majority, as the measure of Presbyterial approval necessary to legislation; and these positions are in conflict if the two rules refer to the same thing. But they refer to entirely different things. The two-thirds rule of the Adopting Act has exclusive reference to constitutional amendments; the majority rule in the Barrier Act has no reference to constitutional amendments whatever. The Adopting Act provides the mode of amending certain formularies which together make up the Constitution; the Barrier

Act is meant to cover matters of legislation outside of the Constitution altogether. The supposition that there is any conflict between the two is utterly needless.

3. Dr. Craven says that the Adopting Act (meaning that part of it which he calls the "supplementary resolution") has not been recognized by the General Assembly. "So far from acting thereon, the united Church from the beginning, even when prominent members of the Synod of 1788 were in her Assemblies, has always acted on the rule contained in the Form of Government. . . . So far from *changing* (amending) the supplementary resolution of 1788, she has unvaryingly treated it as of no authority, and has acted on the provision of the Form of Government, chap. xii. [xi.], § 6, as though it alone touched the matter of constitutional amendments, and also covered the entire field thereof. Not only has every amendment been adopted, but every proposition for amendment (including one for the amendment of the Confession) has been made on the basis of the provision in the Form of Government." This is by far the most important reason assigned by Dr. Craven in support of his contention. His plea is plausible, but not invulnerable. The citations from Dr. Craven's article made above raise two questions, one of fact, the other of inference from the fact. How far is it true that the Assembly has ignored the Adopting Act? and how far does the practice of the General Assembly settle the question respecting the binding force of the Adopting Act of 1788?

Let it be observed, then, in answer to the first question, that it is only in a very qualified way that it can be justly said that the Assembly has treated the Adopting Act as of no authority. For, in the first place, no amendment of the Confession of Faith has been made since 1788. There is no precedent, therefore, in support of Dr. Craven's position, so far as the Confession is concerned. Dr. Craven, of course, may say that since the Form of Government and the Confession are both parts of the Constitution, the rule for amending the two is the same. But the question now under discussion is not how the Assembly ought to act, but how it has acted; and it must not be forgotten that Dr. Craven cannot say that the Assembly ought to act regarding the Confession of Faith as it has acted regarding the Form of Government without falling back upon the very Adopting Act whose binding force he is seeking to invalidate through the help of the Assembly's precedents. But, in the second place, there is good reason to believe that the General Assembly did not intend to include the Confession of Faith in what it called the Constitution. The Assembly of 1799, in reply to a memorial from the Presbytery of New York, interpreted the expression "standing rules" in Form

of Government, chap. xii. [xi.], § 6, to mean "articles of the constitution." Dr. Craven assumes that they used the word "constitution" with the same breadth of meaning as that given it in the Adopting Act, and that therefore by the interpretation of this Assembly of "standing rules," and by the subsequent change of "standing rules" into "constitutional rules," warrant is given for amending the Confession of Faith according to the provision of Form of Government, chap. xii. [xi.], § 6. But if we read the action of the Assembly of 1799, and particularly that portion of it that Dr. Craven prints in italics, it will appear that the Assembly was not using the word "constitution" with as much amplitude as Dr. Craven supposes. "The minute of the Overture is as follows (*italics mine*)" :

"The respective Presbyteries were and they hereby are required to send up to the next Assembly their opinion on the section of the Constitution referred to, and if they think proper to advise and empower said Assembly to make the alteration therein proposed in the phraseology of this section, *according to the mode pointed out in the Constitution for effecting any alteration in that instrument.*"

"*That instrument*" (italics mine). What instrument? The Constitution is here identified with "that instrument" which contained the section that the Assembly was proposing to amend; that is to say, the Form of Government and Discipline. The Confession of Faith formed no part of "that instrument." Dr. Craven seems to assume that when the Assembly of 1799 speaks of the Constitution it had the Adopting Act in mind, and intended to include the Confession of Faith, whereas it is almost certain that it had in view only those formularies that refer to the administration of government. There is no evidence that the Assemblies of 1799, 1800, 1801, 1802, and 1803 had any intention of including the doctrinal standards in what they called "constitutional rules." It is true that the Assembly of 1804 said that "no amendments can be made in our Standards till a majority of the Presbyteries shall have expressed their approbation thereof in writing;" but this is the only instance in which a General Assembly can be said to have explicitly sanctioned the idea that the Confession of Faith may be amended by vote of a majority of the Presbyteries. The action of the Assemblies of 1826 and 1827, so far as it has any weight, favors Dr. Craven's view. But that of 1826 has as little weight as the action of the Assembly of 1886, in the case of the overture now pending. The probability is that it was sent down to the Presbyteries as the present overture was sent down, without any consideration of the question how the Confession may be amended, and being a case of *coram non judice*, does not deserve much consideration. The testimony of the Assem-

bly of 1827 is even of still less importance, for it is simply the tacit acceptance of a Report to the effect that the consent of forty-five Presbyteries is necessary "to make any alteration in the Constitution of the Church;" "that *fifty* of them had voted against the erasure, and eighteen in favor of it," and that "the section, therefore, is not to be erased." It is possible that if the overture had received the approval of forty-five Presbyteries, the Assembly of 1827 would have ordered the section referred to to be erased; but it is more than probable that the attention of the Assembly would have been called to the provisions of the Adopting Act by some one opposed to the amendment, and it is not unlikely that the defenders of the Adopting Act would have come out of the debate with flying colors. As the Overture was overwhelmingly defeated, however, no one took the trouble to raise the abstract question as to the mode of making constitutional amendments; and the result is that the unchallenged Report of a Committee that was never formally adopted comes now to be cited as a precedent in support of Dr. Craven's position. But Dr. Craven would probably admit that the precedents of 1826 and 1827 are very greatly diminished in value by the considerations just named. It is plain, in fact, that while Dr. Craven cites the precedents of 1826 and 1827 in behalf of his contention, they do not constitute his main support. The strength of his case is not what the Assembly has done, but what in his judgment it might, could, would, and should do. It is only in the very partial and relatively unimportant way implied in the action of the Assembly in 1826, 1827 and 1886 that he can show that the Adopting Act has been ignored by the Assembly so far as it applies to the Confession of Faith. But the revision of the Form of Government having been effected by the provisions of the Barrier Act, it may be said that there is no reason why the revision of the Confession may not be effected in the same way. "It is vain to object," says Dr. Craven, "that all the proposed amendments, save one in 1826, respected books other than the Confession. This, indeed, is true; but the object of amendment mentioned in the deliverances of the Assemblies is the CONSTITUTION, and of this the Confession forms a part." Herein, however, Dr. Craven reveals his fallacy. He does not follow the Assembly in distinguishing, as the Assembly of 1799 evidently did, between the Confession of Faith and "articles of the constitution;" nor does he follow the Adopting Act in maintaining the necessity of a two-thirds vote as the condition of constitutional amendment. His position is a singular one,—being in fact based in part upon the action of Assemblies whose decisions he does not accept, and in part on provisions of the Adopting Act whose binding force he is so anxious to set aside.

He takes the Adopting Act as his authority for what makes the Constitution, and so contradicts the Assembly of 1799; and he takes the Assembly as his authority for amending the Constitution by a majority vote, and so contradicts the Adopting Act of 1788. This, however, by the way. It is more important to remember just now that the Adopting Act has never been set aside by any Assembly before whom the subject of constitutional amendments was discussed, to any extent beyond the application of the rule of the Adopting Act to the Form of Government and Discipline; and that while it is true that the Assemblies of 1799 and 1803 supposed that the provisions of chap. xii. [xi.], § 6, of the Form of Government, were applicable to the formularies just mentioned, there is no evidence that they regarded them as applicable to the Confession of Faith; but, on the contrary, strong reasons for supposing that they did not.

But though it were possible to show that the General Assembly has invariably used the word "Constitution" in the sense defined by the Adopting Act, and though it were proper to argue, as Dr. Craven does, that the General Assembly's precedents for amending the Form of Government may be fairly regarded as expressing the view of the General Assembly respecting amendments of the Confession, it would by no means follow that Dr. Craven's conclusion is correct. His position is that since the Form of Government, being part of the Constitution, is amended by a majority vote of the Presbyteries, therefore the Confession, being also part of the Constitution, may be amended in the same way. It does not occur to Dr. Craven apparently that one may also argue that since the Confession of Faith, being part of the Constitution, can be amended only by a two-thirds vote of the Presbyteries, therefore the Form of Government and Book of Discipline, being also parts of the Constitution, must be amended in the same way. To reason in that way would, of course, call in question the legality of many changes that have been made in the Form of Government and Book of Discipline; and it would raise the inquiry how far the practice of the Assembly is conclusive in respect to what is the law of the Presbyterian Church. Dr. Craven closes his article with a sentence which does not indeed avow any dogmatic conviction on the part of the author regarding the latter point, though it clearly implies that Dr. Craven is of the opinion that it would be a bold thing for any one to call in question the "unvarying judgment" of the General Assembly on a point of ecclesiastical law. "If there be any force," he says, "in the unvarying judgment of the Supreme Court of the united Church as to the interpretation of its Constitution, then it is manifest that the rule for the amendment of all portions of the Constitution is the one

contained in chap. xii. [xi.], art. 6, of the Form of Government." The mention of the "Supreme Court of the united Church" very naturally suggests the analogy of the Supreme Court of the United States. But it must be remembered that the General Assembly is a legislative as well as a judicial body, and that the question here under discussion has never in a single instance been presented to the General Assembly when sitting in a judicial capacity, and under the formalities and restrictions of judicial action. The General Assembly has dealt with the question only as a legislative body, and then in serious consideration of its merits only in a very few instances. The analogy just referred to is therefore seriously disabled by this consideration; and the force of Dr. Craven's argument is still further diminished when, as has been shown, it is impossible, even on the legislative side of Assembly action, to appeal to an "unvarying judgment" in support of the position for which Dr. Craven contends.

If, however, it were true that the General Assembly had by "unvarying judgment" interpreted the Constitution in accordance with Dr. Craven's views, it would not follow that either Dr. Craven or the Assembly would be right; for no one would deny that the General Assembly might err, and that successive Assemblies might fall into the same mistake. So that, though it were shown that a certain position represented the unvarying judgment of the Assembly, it would not necessarily follow that the position is right. It is safe to say, then, that Dr. Craven's third reason for denying the binding force of the Adopting Act is inadequate. And here this discussion might properly end; for the language of the Adopting Act is so plain and its place in Presbyterian history so fundamental that it may be fairly regarded as binding until the opposite is proven. This much, however, may be conceded to Dr. Craven,—that since the Assembly has ignored the Adopting Act so far as the Form of Government is concerned, and since there is a presumption always in favor of the Assembly's wisdom, it is but fair that, having shown the inadequacy of Dr. Craven's reasons for denying the binding force of the Adopting Act, something further should be said in support of the position advocated in this article.

The Adopting Act may be called the condition precedent of the organization of the Presbyterian Church, and on that account occupies a position of peculiar importance. To make the matter clearer, let the principle involved here be considered from a point of view nearer the present time. The Reunion of the Old and New School branches of the Presbyterian Church was effected in 1869 in accord-

ance with a certain Basis of Union. Will any one deny that that Basis of Union is still binding? Suppose that, contrary to the terms of that Basis, the precedents of either branch during the period of separation were made the basis of ecclesiastical decisions; or that the General Assembly were to decide that the Confession of Faith is no longer a symbol of the Church's Faith, contrary to the stipulation that it "shall continue to be sincerely received and adopted"—would not such action be wrong, and unconstitutional? Yet the Basis of Union is not a part of the Constitution; and it seems, therefore, that the violation of an extra-constitutional rule may be an unconstitutional act. Suppose now that successive Assemblies should continue, without protest from any quarter, to violate the Basis of Union. Would not these acts still be unconstitutional? Would wrong ever become right by repetition? Would the "unvarying judgment" of a hundred Assemblies legalize an inherently unconstitutional procedure? Clearly the united Church owes its existence to this Basis of Union, and a violation of this Basis is a violation of contract. Let us go back, then, to the period prior to 1837, remembering that the present united Church is the legal successor of the respective Old and New School Presbyterian Churches, and so of the undivided Church prior to 1837. The Church prior to 1837 sustained a relation to the Adopting Act somewhat analogous to that which the Church to-day sustains to the Basis of Union. The Synod of New York and Philadelphia was the Presbyterian Church, and had full power to make and adopt rules for its own government. That Synod decided that the time had come to complete the organization of the Presbyterian Church by constituting a General Assembly. Preparatory to this step it adopted the formularies known as the Constitution, and having adopted them in 1788, it organized four Synods and arranged for the meeting of the General Assembly. The adoption of the Constitution and the organization of the General Assembly were the result of the action of the Synod of New York and Philadelphia in 1788. The Assembly being created by the act of the Synod, it must be bound by it. By that act the Synod adopted a Constitution and provided the terms according to which it may be amended. Will any one deny that if the Assembly of 1789 or 1790 had repudiated the Confession of Faith, and had adopted the Racovian catechism instead, it would have acted unconstitutionally; and that the party remaining faithful to the Adopting Act, however small it might have been, would have been the true successor, in equity at least, of the Synod that constituted the Assembly? At what period, then, in the history of the succeeding Assemblies did the Adopting Act cease to be binding, if, indeed, it be not binding?

The Adopting Act provides that the Constitution may be amended by vote of two-thirds of the Presbyteries. Suppose that this provision had been placed in the Constitution. Then two-thirds of the Presbyteries might have overtured the Assembly to change the provision requiring two-thirds by substituting a smaller fraction Dr. Craven thinks that if the Synod meant to require a two-thirds vote as the condition of constitutional amendment, they ought to have put this provision in the Constitution. But the Synod's plan gives greater security against change. For if the mode of amending the Constitution be part of the Constitution, it is conceivable that two-thirds of the Presbyteries might recommend the Assembly to change the Constitution by substituting the word "majority" for "two-thirds." But suppose that it is thought desirable to change the Adopting Act, how is it to be done? Can the General Assembly, by a vote of a majority, set it aside? They have no such authority. Can the Presbyteries, by a two-thirds vote, overture the Assembly, and in this way legalize the repeal? That is a provision, however, that is found only in the Adopting Act itself, and has application only to the Constitution. The attempt to repeal it by means of its own provisions would be an admission that it is still binding; and the application to it of provisions which it makes with exclusive reference to other formulas would be without warrant. So far, then, from wishing that the mode of amending the Constitution had been made a part of the Constitution, or believing that its binding force is lessened through lack of this, it is safe to say that it is better where it is; and that, standing where it does, it must always be the rule whereby constitutional amendments are to be effected.

It may be said, however, that since the General Assembly is the highest judicatory in the Church, there is no appeal from its decisions, even though they may be wrong. This is only saying that there is no remedy for the wrong that would be done if the highest judicatory of the Church should persistently override its written law. This, however, introduces a more serious phase of the question. The Presbyterian Church sustains fiduciary relations to large property interests which have been acquired under a Constitution that contemplates the conservation and perpetuation of a definite system of doctrine and ecclesiastical polity, and that can be legally changed only under the operation of a very definite rule. This rule protects the rights of every minority exceeding one-third of the Presbyteries. If now the rights of this minority were to be disregarded, and the Constitution of the Presbyterian Church radically changed by a vote of a bare majority of the Presbyteries, it is not difficult to

conceive that schism might occur, and a suit be instituted to secure these property rights and determine the question of legal succession between rival Assemblies. It would be alleged, on the authority of the decision of the United States Supreme Court in the case of the Walnut Street Church in Louisville,* perhaps, that the civil courts could not go behind the decisions of the highest courts of the Church in the interpretation of the Constitution of the Church. But it is difficult to believe that this position would be maintained : for while it is true that the decisions of ecclesiastical courts must be conclusive in certain matters of ecclesiastical discipline, even though they involve questions concerning the rights of property, provided that these decisions are made in a constitutional way,—it does not follow that the civil court can decline the burden of determining whether the decision has been made in a constitutional way.† If a bequest or devise in trust were given to a Theological Seminary, or to any of the Boards or other institutions of the Church, upon condition that, should the General Assembly ever amend the Confession of Faith in an unconstitutional manner, the property should revert to the testator's heirs, and the heirs should bring suit for its recovery on the ground just referred to, it seems reasonable to suppose that the courts would be compelled to inquire into the constitutionality of the Assembly's proceedings. If now the General Assembly were called upon to defend an action involving the unconstitutionality of its proceedings, it would hardly do to say that the Assembly's action is sufficient evidence of constitutionality ; for that would be equivalent to saying that the Assembly is not bound by the provisions of its own Constitution. Nor would it do to say that an act that was unconstitutional at first became constitutional by repetition ; for usage has not yet become a good plea for breach of faith. In the event of a suit of the kind imagined, there can hardly be a doubt that the courts would hold that the Adopting Act of 1788 is the rule according to which all amendments of the Constitution are to be effected.

The Adopting Act and the Barrier Act are the two fundamental principles controlling the legislation of the Presbyterian Church. The first has reference to the mode of amending the Constitution.

---

* *Watson* v. *Jones*, 13 Wallace, 679. See also *Presbyterian Digest*, 1886, p. 251.

† The case of *Watson* v. *Jones* does not precisely correspond to the one supposed here ; but it seems not to have governed the Supreme Court of Pennsylvania in the case of the Second Reformed Presbyterian Church, Philadelphia ; for Mr. Justice Gordon, in delivering the opinion in that case, said : "We confine ourselves to the single question of the regularity of the Synodical decree dissolving the Second Congregation," etc. *Kerr's Appeal*, 89 Pa. St. Rep. 97.

Dr. Craven is quite correct in saying that there is only one rule for amending the Constitution, and that it is applicable alike to the Confession of Faith, the Form of Government, and Book of Discipline. He is wrong, however, in supposing that that rule is found in the Form of Government, chap. xii. [xi.], § 6. That rule is given in the Adopting Act. It follows, therefore, that all changes that have been made in the Form of Government and Book of Discipline without the consent of two-thirds of the Presbyteries and a subsequent enactment of the Assembly have been unconstitutional.

The Barrier Act, however, is intended to serve a different purpose. The Presbyteries of New York were right when they said to the General Assembly of 1799 that the rule enacted by a previous Assembly "for the government of Presbyteries in the reception of foreign ministers" was unconstitutional, because it had not been submitted to the Presbyteries as required in Form of Government, chap. xii. [xi.], § 6; and the General Assembly of 1799 were wrong when they interpreted "standing rules" in the article just referred to as applying to "articles of the constitution," and as intended to provide a mode of amending the Form of Government. The error respecting the import of the Barrier Act crept into the Church in 1799, and has kept its place there ever since. More than once since then the General Assembly has adopted rules and made them obligatory upon the churches without first submitting them to the Presbyteries; but in doing this the Assembly has acted *ultra vires* and in violation of a specific provision of the Form of Government. Through a misinterpretation of chap. xii. [xi.], § 6, of the Form of Government, the Church has been led into errors of two descriptions. In applying it unwarrantably to changes in the Constitution, it has failed to apply it to legislation outside of the Constitution. Many of the difficulties which now beset the Church, some hasty and ill-advised legislation, and much of the existing difference of opinion respecting the legislative powers of the Assembly, would have been avoided if the Assembly had paid strict regard to the difference between the Adopting Act and the Barrier Act, refusing to amend the Constitution without the approval of two-thirds of the Presbyteries, and refusing also to make any rules intended to bind the churches until the approval of a majority of the Presbyteries had been secured.

There is no reason, however, for the continued repetition of these mistakes, but very strong reasons for avoiding them. There is needed:

1. A return to the Adopting Act as the law governing all changes in the Constitution.

2. A more formal recognition of the legislative powers of the Assembly, qualified as to matters intended to be obligatory upon the churches, by the provisions of the Barrier Act.

The advantage of this is obvious. There is a fixed and a variable element in the Church's life. This fixed element is represented in the Constitution, changes in which should be few and made with great deliberation. There is very properly great sensitiveness throughout the Church respecting frequent propositions to change the Constitution. On the other hand there is a variable element; new exigencies demand new legislation, which should be provided for by enactments of the Assembly. If legislation did not mean, as under existing practice it so commonly does, a change in the Form of Government—the addition of a chapter or the erasure of a section—there would be no reason why Presbyteries should be inhospitable to overtures submitted to them by the Assembly. It would be flexible, and a law could be amended or repealed as circumstances might suggest. The Acts of the Assembly, like those of any other legislative body, should be drawn carefully, discussed deliberately, and recorded according to a system that would make reference to them easy. Those intended to be obligatory on the churches should be sent down to the Presbyteries, as required in Form of Government, chap. xii. [xi.], § 6, and should become law only when approved by a majority of them, and enacted by a subsequent Assembly.

The present method of the Assembly is open to serious criticism. Legislative enactments without approval of Presbyteries; *in thesi* deliverances which, however valuable, are not obligatory; and judgments in appellate cases, which alone are authoritative as precedents to the inferior judicatories, are very apt to be quoted without much discrimination,—the result being, that while some are willing to treat every decision of the Assembly that they may find in the "Minutes" as law, others are beginning to treat all the decisions of the Assembly as having little or no binding force. This state of things must continue until it is made clear that there is a great distinction to be observed between the opinions of the Assembly sometimes called "deliverances," which have only moral weight, but are not laws; its judgments rendered in appellate cases, which alone should be cited as decisions of the Supreme Court of the Church; and its legislative enactments, which, if intended to be obligatory upon the churches, must be made in accordance with the provisions of the Barrier Act.

FRANCIS L. PATTON.