The Powers of Several Church Courts

THE ACTION OF THE ASSEMBLY OF 1879 ON WORLDLY AMUSEMENTS, OR THE POWERS OF OUR SEVERAL CHURCH COURTS.

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Blue Banner Books
P O Box 141084
Dallas, TX 75214

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THE ACTION OF THE ASSEMBLY OF 1879 ON WORLDLY AMUSEMENTS, OR THE POWERS OF OUR SEVERAL CHURCH COURTS.[1]

Overture No. 5 – From the Presbytery of Atlanta, asking the Assembly for definite instructions upon the following points, to-wit:

I. Are the deliverances of 1865, 1869, and 1877 on the subject of worldly amusements to be accepted and enforced as law by judicial process?

II. Are all the offences named in them to be so dealt with, or are exceptions to be made?

III. Are the deliverances of all our church courts of the same nature and authority, so far as the bounds of these respective courts extend?

In answer to these questions the committee recommend the adoption of the following minute:

I. This Assembly would answer the first question in the negative, upon the following grounds:

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1. This article appeared in the April number of the *Southern Presbyterian Review,* 1880

1. That these deliverances do not require judicial prosecution expressly, and could not require it, without violating the spirit of our law.

2. That none of these deliverances were made by the Assembly in a strictly judicial capacity, but were all deliverances *in thesi,* and, therefore, can be considered as only didactic, advisory, and monitory.

3. That the Assembly has no power to issue orders to institute process, except according to the provisions of *Book of Discipline,* Chapter VII. in the old, and Chapter XIII., Section 1, in the revised book; and all these provisions imply that the court of remote jurisdiction is dealing with a particular court of original jurisdiction, and not with such courts in general. The injunctions, therefore, upon the sessions to exercise discipline in the matter of worldly amusements are to be understood only as utterances of the solemn testimony of these Assemblies against a great and growing evil in the church. The power to utter such a testimony will not be disputed, since it is so expressly given to the Assemblies in the *Form of Government,* Chapter XII., Section 5, of the old, and in revised *Book of Church Order, Form of Government,* Chapter V., Section 6, Article VI.; and this testimony this Assembly does hereby most solemnly and affectionately reiterate.

In thus defining the meaning and intent of the action of former Assemblies, this General Assembly does not mean, in the slightest degree, to interfere with the power of discipline, in any of its forms, which is given to the courts below by the constitution of the church; or to Intimate that discipline in its sternest form may not be necessary, in some

cases, in order to arrest the evils in question. The occasion, the mode, the degree, and the kind of discipline, must be left to the courts of original jurisdiction, under the checks and restraints of the constitution. All that is designed is, to deny the power of the Assembly to make law for the church in the matter of "offences," or to give to its deliverances *in thesi* the force of judicial decisions.

II. The second question, which is, "Are all the offences named in the deliverances of 1865. 1869, and 1877 to be dealt with in the way of judicial process, or are exceptions to be made?" needs no answer after what has been said in answer to the first.

III. In answer to the third question, relative to the nature and authority of our different church courts, this Assembly would say that the nature and authority of all our church courts are the same so far as the bounds of these respective courts extend, subject, of course, to the provisions for the review and control of the lower courts by the higher. The power of the whole is in every part, but the power of the whole is over the power of every part.

The perplexity about the nature of the deliverances in question has arisen from confounding two senses in which the word discipline is used in our constitution. One is that of judicial process, "the other is that of inspection, inquest, remonstrance, rebuke," and "private admonition." *(Form of Government,* Chapter IV., Section 3, Article IV.) The one is strictly judicial or forensic; the other is that general oversight of the flock which belongs to the officers of the church, as charged by the Holy Ghost with the duty of watching for souls. The one cannot be administered at all

except by a court of the church; the other, while it is a function of that charity which all the members of the church are bound to possess and cherish for each other, is yet the special and official function of the rulers, to be exercised with authority toward those who are committed to their care. In the judgment of this Assembly, great harm is done by the custom of identifying, in popular speech, these two forms of discipline, or, rather, by forgetting that there is some other discipline than that of judicial process. Many an erring sheep might be restored to a place of safety within the fold by kind and tender, yet firm and faithful, efforts in private, who might be driven farther away by the immediate resort to discipline in its sterner and more terrifying forms. The distinction here asserted is recognized in the word of God, and in our constitution, for substance at least, in the directions given for the conduct of church members in the case of personal and private injuries. (See Chapter II., Article III., of the old *Book of Discipline,* and Chapter I., Paragraph 4, of the revised; also Matt. 18:15, 16.) If scandal can be removed or prevented in such cases, more effectually, oftentimes, by faithful dealing in private with offenders than by judicial process, it does not appear why similar good results may not follow from the like dealing in the matter of worldly amusements. *(Minutes General Assembly,* 1879, pp. 23-25.)

THIS action was before the church for more than seven months before any serious assault was made upon it.

The paper reported by the Committee on Bills and Overtures was read deliberately and distinctly twice, and the last paragraph three times, before the vote was taken, and then, after a slight verbal amendment, the whole paper was *unanimously* adopted.[2] The chairman and other members of the committee were amongst the most determined opponents of worldly amusements, and of the same complexion were many of the most intelligent members of the Assembly, men of nerve as well as of conscience, who had never been known to shrink from bearing their testimony and giving their vote for what they believed to be right.

Yet, from the tone of some criticisms that have recently appeared, the impression would be gotten that the Assembly was a trimming, time-serving body, which betrayed the interests of truth, set itself against the current of the teaching of the acts of previous Assemblies, and dishonored the Saviour before the world. We propose to show that the Assembly did no such thing.

It is not our purpose to follow the critics through all their discussions. They quote largely from authors, in Latin as well as in English, to prove what no Presbyterian denies, if the passages cited be taken in the sense of their authors. They spend a great deal of time in showing the evil of *dancing,* which the Assembly, indeed, says not one word about specifically, but yet condemns by implication, by "solemnly and affectionately reiterating" the testimonies of previous Assemblies. They insist upon the duty of obedience to the

2. See printed *Minutes*, p. 23.

Assembly on the part of the lower courts, without attempting to define the conditions and limits of that obedience, except in the most general terms. Their statements tend to produce the impression, whether they intended it or not, that the Assembly discountenanced the exercise of discipline in the matter of worldly amusements, though, in this very paper, it cautions the church against such a misconstruction, and intimates that discipline, "in its sternest form," may be necessary in some cases in order to arrest the evils in question.

What, then, is the question, and the only question in fact, which the Assembly was asked to make a deliverance about? It was not one touching the evil of worldly amusements, or the duty of applying to them the discipline of the church. It was not one concerning what action the Scriptures required, or what the principles and rules of the Church of Holland, as expounded by Voetius, demanded, or what the principles and rules of the Kirk of Scotland, as expounded by Principal Cunningham, made necessary. None of these, but simply a question of law in our own church, "the Presbyterian Church in the United States," the question whether the Assembly has the power "to make law for the church in the matter of offences, or to give to its deliverances *in thesi* the force of judicial decisions." It had been contended by some that the deliverances of the Assemblies of 1865, 1869, and 1877 *obliged* the courts of original jurisdiction to discipline for dancing, that is, to exclude every church member convicted of dancing from the privileges of the church; that these courts had no discretion; that they were not allowed to interpret the law of the church for themselves, but must

accept the interpretation of the Assembly, albeit that interpretation had not been given in the investigation of a judicial case regularly brought up (that is, *in hypothesi),* but as an abstract and general proceeding *(in thesi).* It was contended by others that the above-named "deliverances" did *not* oblige the lower courts; that these courts have a power of judgment, both as to law and fact, given them in the constitution, with which the Assembly cannot directly interfere; that the power of the whole church is in every part, session, presbytery, etc.; and that, therefore, the judgment of the part is, constructively, the judgment of the whole, and is valid as such until constitutionally set aside; that, therefore, the authority of all our church courts is the same, so far as their bounds respectively extend, or within the sphere of their jurisdiction; and, lastly, that, while the higher courts are invested by the constitution with the power of "review and control" over the lower, this power is not a power *directly* over the part, but over *the power* of the part; that is to say, the power of judgment in the part can only be overruled and set aside by a *judicial decision* of the higher court upon a cause [case – ed] regularly (legally, constitutionally) brought up from a lower; and that, until such a judicial decision has been constitutionally rendered, the power of judgment in the courts of original jurisdiction, both as to law and fact, remains intact. These are the principles contained in the answer to the third question of the overture from the Presbytery of Atlanta.[3]

3. Assembly's Minutes. page 24.

The reader will observe that the overture has reference only to matters of “offences” and discipline; and the Assembly's answer confines itself to those points. The question is one which concerns the administration of *law* by our courts, and not the making of *regulations* in matters of detail; it is a question belonging to the *diacritic,* or *judicial,* or *disciplinary* power of the church, not to its *diatactic,* or *arranging* power.

Before proceeding to vindicate the action of the Assembly, we beg leave to remind our readers that the principle here involved is one of immense importance. It lies at the root of all the struggles between the advocates of a constitutional government and the advocates of an “absolutism.” The forms of constitutional government and of absolutism, both in church and in state, have varied indefinitely; but the essence of the struggle has always been the same. Abstracted from its accidental forms, the question has always been, whether the power of the whole is over every part, or only over the power of the part; whether the whole is simply a great wheel, of which the parts are only spokes, or whether it be a wheel of which the parts are *also* wheels, each having a sphere and movement of its own, yet moving in subordination to the movement of the great wheel. It was the question between the Ultramontanes and the French in the Middle Ages, as to the relation of the Bishop of Rome to all the other bishops; the man of Rome contending that, as he represented the whole church and was the supreme bishop, all the inferior bishops derived all their authority from him, and were to be governed absolutely by him; that they had no rights which he was bound to respect, because

none which he had not given, and which he, in his sovereign pleasure, could not take away; the bishops contending that their office was created by Christ, and its rights and duties defined by him; that they were subordinate to the man of Rome only in the way of appellate jurisdiction, or of general review and control. It was the question between the bishops and the rectors in parts of the Episcopal Church of the United States some years ago, the bishop asserting that by virtue of his being the highest officer in the church he contained in himself all the rights and functions of the rector of a parish; and that when the bishop was "visiting" a church the rector might be suspended from his office for the time, if it so pleased the superior. It was the question between the Northern Assembly of 1866 at St. Louis, and the Louisville Presbytery, as to the famous (or infamous) *ipso facto* order concerning the "Declaration and Testimony" ministers of that presbytery, the Assembly maintaining virtually the power to lay down the law on the subject, and to execute it, because the presbytery was a "smaller part," and the Assembly was the whole; the presbytery maintaining that, as small a part as it might be, it was a part with the power guaranteed to it by the constitution of "judging ministers," both as to the law and the facts; and, therefore, that the Assembly had been guilty of an usurpation of power. It was the question between the Federal or Consolidation party on the one side, and the States Rights party on the other, in the ante-bellum politics of the United States, the States Rights party contending for the power of the parts (in this case, the States), and resisting the attempt on the part of the Federal government to override that power without regard to the provisions of the Constitution. The great question in the convention

that framed that Constitution was essentially the same, how to strengthen the whole, and at the same time so to preserve the power of the parts, and to such an extent, that the liberty of the people might be safe. Hence, the distribution of the powers of government; hence, the distribution of the power of legislation, a Senate and a House of Representatives, the one founded on the principle of a *numerical* majority, the other on the principle of a *concurrent* majority; the one acknowledging the power of the whole, the other protecting the power of the parts.

This is the principle of the Assembly's paper: that the courts of original jurisdiction cannot be directly interfered with by the General Assembly in their power of judgment as to law or fact; that to these courts "must be left the occasion, the mode, the degree, and the kind of discipline under the checks and restraints of the constitution."

We have thus endeavored to state clearly the real and only issue between the advocates and the opponents of the Assembly's action. A great many side issues have been introduced by its assailants. Hence, we must repeat “the state of the question” once more: Does the same force belong to the deliverances *in thesi* of the higher courts as to their judicial decisions? Do the two classes of decisions regulate and determine the administration of discipline in the same way and to the same extent? Or, to express the same thing in other words, does the interpretation of a law by an appellate court – the interpretation being given *in thesi* – bind a court of original jurisdiction in such a sense as to deprive it of its power of judgment as to the meaning of said law, and compel it to accept and act upon the interpretation

of the appellate court as the law of the church? If we understand the assailants of the Assembly, they would answer positively and emphatically in the *affirmative* to this question. The General Assembly of 1879 answers it clearly and *unanimously* in the *negative;* and, we think, truly and righteously, for the following reasons:

1. The constitution of the church, by the very fact that it is a constitution, creates a presumption in favor of the Assembly's answer. There was a time in the history of our church when it had no written constitution. The first presbytery (the "General Presbytery") had none, and there seems to have been none until the "Adopting Act" in 1729, when "the synod" had been in existence for twelve years. Even after the Adopting Act had become the law of the church, and the standards of the Westminster Assembly had been accepted as its constitution, a wide difference was acknowledged as to the binding force of the doctrinal standards and the standards of government and discipline. "The synod," in 1729, simply pronounce "the Directory for Worship, Discipline and Government of the Church, commonly annexed to the *Westminster Confession,* to be agreeable in substance to the word of God, and founded thereupon, and therefore do earnestly *recommend* the same to all their members, to be by them observed as near as circumstances will allow and Christian prudence direct."[4] According to the same authority, this state of things continued down to 1788, when the "Synod of New York and Philadelphia," in preparation for the formation of the "General Assembly," formally adopted,

4. J Baird's *Digest,* p. 6.

after amendment, the standards of government and discipline. Up to this date, therefore, the highest court ("the presbytery," "the synod," "the Synod of New York and Philadelphia") seems to have been practically omnipotent, or practically impotent, according to the temper of ministers, elders, or congregations. Such a condition became, of course, intolerable, and it was felt to be necessary to have a constitution, an instrument which should *constitute,* should put together, the parts in some definite relations, should define and distribute the various powers and establish the checks and balances. It was necessary to have some more definite rule than vague references "to Stewart of Pardovan, and the acts of synod," to regulate discipline and the form of process in the church courts.[5] This was done in 1788.

Now, our position is, that all this creates a presumption in favor of the Assembly of 1879, and against its assailants. For, according to the Assembly, the courts of original jurisdiction *have* an original jurisdiction guaranteed to them by the same constitution under which the Assembly itself acts; while, according to the opposite side, the Assemblies of preceding years intended to stretch their hand over synod and presbyteries, and annihilate the original jurisdiction of the

5. See Minutes of the Synod of New York and Philadelphia for 1786, cited in Hodge's *History of the Presbyterian Church in the United States,* Part I., p. 214. [Ed. Walter Steuart of Pardovan, *Collections and Observations Concerning the Worship, Discipline, and Government of the Church of Scotland in four books.* There are many editions of this work (first edition, Edinburgh, 1709), which served the Presbyterians in Scotland and America for many years as an exposition of their discipline.]

sessions, at least as to the interpretation of the law; exactly as we might suppose "the synod" of 1721 to have done, if the sessions of that day were willing to have their original jurisdiction annihilated. Our fathers of 1721 might have argued that all courts of the church were presbyteries, and therefore that each was entitled to exercise all the functions of a scriptural presbytery; but that the unity of the church required the submission of the parts to the judgment of the whole, absolutely and without limitation, saving only the alienable rights of conscience. And we see not how such a conclusion could be resisted in the absence of a constitution, by which certain rights should be guaranteed to the parts. Accordingly, we find "the synod" exercising the powers of a classical presbytery.[6] This leads us to observe,

2. That such a distribution of powers to the parts, and definition of the relation of the whole to the parts, we find actually made for us in our constitution; and our second position is that no original jurisdiction is given to the General Assembly or the synod in the matter of discipline by our constitution. The courts of original jurisdiction are the presbytery and the session; and in the case of the presbytery, this jurisdiction is restricted to a particular class of objects – ministers of the gospel. All other members of the church are under the jurisdiction of the session. It is asserted, indeed, that the Assembly has some original jurisdiction in the matter of discipline, and the *Form of Government,* Chap. V., Sec. 6, Art. VI., is quoted in proof of it, which contains

6. See Hodge's *History of the Presbyterian Church in the United States,* Part I., pp. 229-230.

these words: "The General Assembly shall have power ... to *decide* in all controversies respecting doctrine and discipline." According to the critics, "decide" means (and must mean) bring to an issue or conclusion in any way the General Assembly may see fit; for example, by deliverances *in thesi.* The General Assembly has only to fulminate its decree, when it is informed of any controversy going on in any part of the church, and the business is done, the controversy is *decided.* This is obliged to be their interpretation of the clause; for if they concede that the decision must be made only in certain ways, or according to certain rules, then the inquiry immediately arises, "in *what* ways?" or "according to *what* rules?" And the only possible answer to this inquiry is, the ways and rules prescribed in the constitution. (See *Form of Government,* Chap. V., Sec. 2, Art. IV.: "The jurisdiction of these courts is limited by the express provisions of the constitution.") This necessary limitation is expressed in a subsequent clause of the same article, in connection with "schismatical contentions," etc. It was necessary there no more than here. We were present in the Committee of Revision when the limitation was put in, and have a very distinct recollection that it was proposed because that clause in the old book was without the limitation (expressed) and had been made the pretext of the infamous "*ipso facto*" order of the Assembly of the Northern Church in 1866, by which the original jurisdiction of the Louisville Presbytery over its ministers had been overridden and annihilated. But, whether expressed or not, it must be understood. If it is not understood, our book is either a mass of nonsense or an instrument of intolerable tyranny. If the clause means what the brethren on the other side assert, then

the Assembly may decide a judicial case, if it choose, by a deliverance *in thesi.*

It is evident, however, that the meaning of the clause is simply this: that the Assembly is the court of *last resort.* The presbytery is a court of appeals, but it cannot *decide* a controversy, because an appeal may be taken to the synod; and the synod cannot *decide* it, because an appeal may be taken to the General Assembly; but the General Assembly *decides,* because there is no higher tribunal. That this is the true interpretation will be evident to anyone who will compare *Form of Government* (of the *old* book), Chapter X., Article VIII., and Chapter XI. Article IV., with Chapter XII., Articles IV., V. The doctrine of that book is that the three courts of the church which have appellate jurisdiction are the presbytery, the synod, and the General Assembly; but that the difference between the General Assembly and the other two is that it has the power to "decide" all controversies judicially, so that these controversies "can no further go." And if this is the meaning of the clause in the old book, we suppose its meaning will be conceded to be the same in the new.

Further, the "controversies" of this clause are not mere debates or discussions between *any* parties in the church, but legal or forensic controversies, carried on, according to the forms prescribed, in the courts of the church by "parties" in the technical sense. Otherwise, it would be absurd to speak of any court *deciding* a controversy. A debate in the church will go on until the disputants are satisfied or tired out. But a controversy before the courts cannot go further than the Assembly; it must be decided there. The debate

may still go on as before, but the legal controversy must stop, unless the lower courts venture to arraign the Assembly, and complain to that court of its own acts.

Another provision relied on by our opponents in this question is that of Chapter XIII., Section I, of the *Rules of Discipline,* "General Review and Control." In reference to this the act of the Assembly of 1879 very justly says that the provisions of this section "imply that the court of remote jurisdiction is dealing with a *particular* court of original jurisdiction, and not with such courts in general;" and, therefore, a general order from the Assembly to the presbyteries or sessions to institute process would not be constitutional. The Assembly might have added, (1), That the heading of the whole chapter ("Of the modes in which a *cause* may be carried from a lower to a higher court") shows that a judicial process and a judicial act are the things spoken of, not deliverances *in thesi;* and, (2), That the provisions of Section I. provide for the appellate court only in its action on the court *next* below[7] The General Assembly has no power, in any case, to order a session to institute process. It may order a synod, and, since the presbyteries are the constituent bodies of the Assembly, it might, by straining the constitution a little, order the presbyteries to institute process; but there is no color of pretext in the constitution for the exercise of such power over the session, except in deciding a cause judicially. Can any instance be produced from the records, or digest of the General Assembly, of an *injunction,* in the matter of discipline, addressed to a ses-

7. See sub-sections 1, 5

sion, Or to the sessions in general, before 1869? If it can, let it be produced.

We repeat, then, that the Assembly has no original jurisdiction in the matter of discipline. Now, what is the "jurisdiction" of a court? The very word means a declaration of law, according to its etymology *(jus dicere),* and suggests that to declare the law is one of the functions, the prime function, of a court. To deprive a court of this function, then, is to deprive it of jurisdiction; and in denying to the General Assembly original jurisdiction in the matter of discipline, the constitution *eo ipso* denies to it the *original* power of declaring the law in an authoritative manner, in the sense of jurisdiction. Such an authoritative declaration, such jurisdiction, belongs to it only as a court of appeals, or of last resort. On the other hand, if the Assembly assumes the power which is claimed for it, the courts of original jurisdiction are converted into mere commissions for taking testimony; for the functions of declaring the law and of fixing the penalty have been assumed by the Assembly, and the only function left is that of finding the facts.

3. Once more, the principle of the Assembly's paper is clearly sanctioned by sound reason. The court which is trying a case, which has all the circumstances before it which modify the act or acts charged in the indictment, is in a better condition for understanding the law than a court which is not trying the case, but is looking at the law in an abstract way, And, most assuredly, the court first named is in a far better condition to graduate the censure according to the degree of criminality than the other. What is a judicial interpretation of a law but an interpretation in connection with a

given case? Does the law against "lascivious" dancing apply to *this* case? Is *this* a case of "lascivious" dancing? This is the question that the court has to decide; and no court has a right to say that *all* dancing is lascivious any more than it has a right to pronounce all stage-plays lascivious. The church, indeed, might, in her fundamental law, have forbidden – whether she had the right before God and his word to do so is not now the question – the square and the round dance as equally lascivious, as she might have forbidden the reading of the stage-plays of Addison and those of Congreve, Wycherly, and Farquhar as equally lascivious; and she might have pronounced *any* act of dancing, or the reading of *any* of these plays, to be a sufficient reason for the exclusion of any of her members from her privileges. In such a case there would be no occasion to exercise the art of interpretation. But when she has used the words *(Larger Catechism,* Question 139) "lascivious songs, books, pictures, dancings, stage-plays," it is as certainly implied that there may be *some* dancings and stage-plays that are not lascivious as that there are some books and pictures that are not. Now, what are and what are not, the courts of original jurisdiction are better judges, when pronouncing judgment in actual process, than any court can be which is sitting in judgment upon the abstract question. So our constitution virtually says, and so the General Assembly of 1879 virtually says.

We confess to a great astonishment that brethren should insist that deliverances *in thesi* have the same force as judicial decisions. The two classes of acts are reached by processes wholly different. A deliverance *in thesi* may concern

a subject which has never been before the church or any of its courts; may be "sprung" upon the Assembly by some ardent and eloquent member, and be carried by his personal influence and eloquence. A judicial decision by that court necessarily implies discussion in at least *two* of the lower courts – in a cause originating in the session it is implied that the matter has been discussed in *three* – before it is called to decide. The cause is represented on both sides by counsel, who are fully heard; and the members of the court next below are heard, etc., etc.; all circumstances which give assurance that the matter has been fully discussed by those most competent to do it. Further, the deliverance *in thesi* is apt to be sweeping and general. The judicial decision is upon a case, is interpreted by it, and is applicable only to similar cases. The responsibility in delivering a judgment in a judicial case will be more sensibly felt by the members of the court, because they are not only interpreting the law, but are judging a brother, and are determining his ecclesiastical status – perhaps even the complexion of his eternal destiny. It is to remind the members of the court of this very solemn responsibility that the provision is made in the *Rules of Discipline,* Chapter VI., Article XII. Why this emphatic discrimination between the judgment in a judicial case and a deliverance *in thesi,* if the two are of the same force and effect? And why, again, is the appellate court forbidden to reverse the judgment of an inferior court, even upon a formal review of its records, if it be *only* a "review," and not a judgment of the appellate court upon appeal or complaint?[8] And yet brethren contend that the Assembly may, by a sweeping deliverance *in thesi,* virtually do what the constitution says that it shall not do even on a deliberate

"review," even in a single case, unless that case come before the court in the way of appeal or complaint.

It will be a dark day for our church when it shall decide that an accidental majority in a General Assembly may make law for the lower courts in a deliverance *in thesi.* The General Assembly of 1834 was a New School body; that of 1835 was Old School; that of 1836 was New School; and that of 1837 was Old School again. How know we that such a very pleasant alternation may not occur again? We know it may be said that all this might happen even in judicial decisions, and that, in point of fact, one of these Assemblies *did* decide the same judicial case in contradictory ways at the same sessions. It has been also alleged that the Assembly of 1879 decided one way by its paper on "Worldly Amusements," and another way by its approval of the records of the Synod of Georgia. Granting this for the sake of argument (we think it a mistake), what do this and the other instances prove? They prove that the Assembly is in any case a fallible body; and this again is a reason for giving it all the aids above enumerated as belonging to a judicial process to help it in coming to a decision. In other words, a fallible body is less likely to fail (where the interpretation of the law is in question) in a judicial decision than in a deliverance *in thesi.*

Now, it may be said that if this new view be just, then the judgment of the court of original jurisdiction ought to be final as being more likely to be just than even in the judicial decisions of the appellate court. The answer is, that if the

8. *Rules of Discipline,* Chapter XIII., Section 1. Article IV.

government is to embrace more than one congregation; if the idea of the unity of the church is to be realized on any larger scale than that of a single *coetus fidelium,* there must be appellate jurisdiction, and a power given to some higher court to "*decide*" all controversies. This is the reason why a "judicial decision" of the General Assembly becomes law and continues to be law until a contrary decision is rendered by the same court-law, in the sense of a regulator of the exercise of discipline in the courts below.

This is a sufficient answer to the objection. A fuller answer would be found in a general exposition of our theory of government and of the usefulness of our system of courts; but for such an exposition a volume would be required. None of our readers are unreasonable enough to expect such an exposition here.

4. The principle of the Assembly's paper is also sanctioned by the practice of the civil courts. We are aware that prejudice exists against analogies from this source; and we acknowledge that harm has been done by not taking into account the differences between the nature and ends of the civil government and those of the ecclesiastical. But there are some principles and methods which all governments must recognize if they would secure justice and liberty. A single glance over the old *Book of Discipline* is sufficient to convince anybody that our fathers borrowed largely from the forms of process in the civil courts; and a careful comparison of the new book with the old will show that in the new there has been a greater approximation to those forms than in the old. Whether this feature of the new book be an improvement or not, is a question about which brethren will

differ in opinion; but the fact is certain, and might be copiously illustrated if we had the time.

Now, what is the practice of the civil courts? Is a court below bound by an interpretation of a law which has been given *in thesi* by the Supreme Court? Does the Supreme Court give any such interpretation? Is any decision of that court, as to the meaning of the law not given in judgment upon a case, binding upon the courts below?

But it is said the analogy will not hold. The courts of the state are *only* courts, while the courts of the church are invested with legislative powers. If by legislative power is meant the power to make laws as distinct from *diatactic* regulations, we deny such a power altogether, even to the church as a whole, much more to any of her courts. Christ is the only lawgiver, and the power of the church is only "ministerial and declarative." If diatactic regulations are meant, then our answer is, as we said before, that we have nothing to do with that kind of power in this discussion, except so far as the constitution itself is in great part a result of the exercise of that power. Besides, all courts, civil and ecclesiastical, exercise a power of this sort. We see not, therefore what the objection means, or why the courts civil and the courts ecclesiastical are not in exactly the same predicament as to the matter in question. In both the law is behind the courts, both are acting under the law, and in both systems the courts of original jurisdiction have the right to interpret the law for themselves, until a judicial decision of the highest court shall *decide* the matter.

5. Lastly, the Assembly of 1879 is sustained by its predecessor of 1877. Being asked by the Presbytery of Atlanta to

interpret "the law of the church concerning worldly amusements, as set forth in the deliverances of the Assemblies of 1865 and 1869," the Assembly gives the following as a part of its answer: "The extent of the mischief done depends largely upon circumstances. *The church session, therefore, is the only court competent to judge what remedy to apply."*[9] Now, why should the Assembly of 1879 be censured for doing exactly what its predecessor had done? We know of no Assembly, indeed, which has gone beyond exhortation and admonition to the presbyteries and sessions on this subject, except that of 1869.

Since we began to write, our attention has been called to the action of the Synod of South Carolina on this subject, from which it appears that "many have understood the action of the General Assembly as favoring indulgence by church members in worldly amusements." This ought to surprise nobody who has any experience of the weakness of mankind. The Assembly does, indeed, "solemnly reiterate the testimonies" of its predecessors against indulgence in these amusements; but this goes for nothing with extremists, who meet in the conclusion that the Assembly, though pretending to utter or to reiterate solemn testimonies, is really in favor of the thing testified against. This conclusion is derived by both extremes from the fact that the Assembly condemns a particular method of dealing with the subject. One extreme considers dancing and other worldly amusements so firmly lodged in the practice of church members that nothing but the weight of the Assembly's mandate com-

9. Minutes, p. 411.

pelling the sessions to suspend and excommunicate offenders can dislodge it. The other extreme, the offenders themselves, agree with the first in this view, and both conclude that, as the Assembly has refused to issue any such mandate, and refused upon the ground of the want of power, indulgence is granted. This is not the first time that church courts have been subject to misconstruction. They have been charged with favoring indulgence in strong drink, because they refused to say that all use of liquor as a beverage was a sin, and that all who retail liquor are unworthy of a place in the church. Perhaps the time will come when the Assembly will be asked to decree the moral obligation to the tithe, and that all church members who shall be convicted of paying less shall be turned out of the church. **If** it should refuse, then the tithe men may unite with the men who give nothing in asserting that it is "favoring indulgence" in the luxury of giving nothing to the cause of God.

We hope our brethren will not be frightened into taking unconstitutional ground by such clamors. The sessions who are unfaithful to their duty on this subject, can find no comfort in the act of the Assembly; for that act leaves their responsibility intact, leaves it where it was before, leaves it where the constitution has put it; that act refuses to relieve the sessions of their responsibility by transferring their responsibility to the Assembly. The sessions who are unfaithful will find in the Assembly's act no cover for their unfaithfulness in a cloud of dust such as would certainly be raised if the Assembly were to embody the views of its critics in a deliverance. They are brought face to face with their responsibility, and are given to understand that there must

be no shirking or dodging. At the same time, the Assembly's deliverances *in thesi* have given all the *moral* support to the sessions that could be reasonably demanded.

We have said enough, we think, in the way of explanation and of positive argument, to vindicate the wisdom and righteousness of the Assembly's act. We propose now to consider an argument upon which the brethren on the other side seem to rely with great confidence for sustaining their position concerning the powers of the General Assembly. This argument is drawn from the acts of "the Council of Jerusalem," as recorded in the 15th chapter of the Acts of the Apostles. The argument seems to be this: The council of Jerusalem issued a decree, an authoritative direction, an injunction, to the believers among the Gentiles to abstain for a time, through motives of charity towards their Jewish brethren, from the use of their Christian liberty in certain matters. *Ergo,* the General Assembly of the Presbyterian Church of the United States has the power to pronounce *in thesi* all dancing between the sexes to be "lascivious and therefore sinful," and to require that this deliverance be accepted and enforced by the courts of original jurisdiction in the way of judicial process. not for a time, but always. Now, the connection between these two propositions is not very obvious. One cannot help thinking that the last of the two is the conclusion of an extended *sorites,* of which there are many links missing. We confess we are too obtuse to find out what these missing links are. Meantime, while we are waiting for them to be pointed out. We shall attempt to show that there is no legitimate connection whatever between the acts of the council of Jerusalem and the special

power claimed for the General Assembly of the Presbyterian Church of the United States by these who are opposed to the act of 1879.

We shall take no advantage from the opinion held by many learned men, that the decree of the council of Jerusalem was given by inspiration of the Holy Ghost. (Acts xv. 28.)

This was the opinion of Dr. Thornwell, as we heard from his own lips; so, also, Dr. Addison Alexander: "'To the Holy Ghost and to us,' the natural and obvious construction is that the apostles and those joining with them in this act, claim for their own decision a divine authority, as having been suggested or inspired by the Holy Ghost. Nothing can, therefore, be inferred from this phrase, with respect to the authority of councils and their canons, except so far as they are known to be under the same guidance and control."[10]

This interpretation would make short work of the debate; for we suppose the most extreme champions of the Assembly's authority are not prepared to assert that its decrees are inspired in the high sense of being the rule of faith and practice. We give the brethren on the other side the advantage of the assumption that that ancient council, although consisting in part of apostles, had no other guidance of the Holy Spirit (at least in kind) than is enjoyed by our General Assembly; that in both the most ancient and the most recent of Assemblies the conclusion is reached under this guidance by arguments drawn from Scripture and providence, from what

10. *Commentary on the Acts,* 15:29.

God has said and from what he has done. Supposing this to be so:

1. Our first remark is that the council of Jerusalem can furnish no warrant or model for our General Assembly, for the simple reason that it was not a General Assembly; that it was not a body of representatives from the whole church. Indeed, there is not a particle of evidence that there was any "church" in the apostolic age, in the sense of "the Presbyterian *Church* in the United States." The word *church* is never used in the New Testament, in the singular number, of an organized visible body of professed believers more extensive than such a body within the limits of a single city. The passage in Acts 9:31, even according to the oldest MSS. and the modern editions, does not necessarily mean anything more than the mass of the followers of Christ. The word in that place may have the same sense as in the phrase "visible church catholic," in our *Confession of Faith,* Chapter XXV., Article 2, which had been in Article 1 defined as consisting of "all throughout the world that profess the true religion." In the place in Acts it is a part only of this visible church which is described, those who professed the true religion "throughout Judea, Galilee, and Samaria." The reader will please observe we have only said that such a church as ours *did* not exist, not that it could not have existed. The principle (*ratio*) of such a church existed, and was exemplified or realized on the scale of a single city, say Jerusalem; but the time had not yet come when its exemplification on the scale of a province or nation was demanded. Now, if no such church existed, of course there was no General Assembly of such a church, and the council of Jerusalem was no such

body. Accordingly, there is no evidence that any body of Christians beyond the city of Jerusalem was represented in the council. Paul and Barnabas were present, indeed, and gave an account of what the Lord had done by them among the Gentiles; but they do not seem to have taken any part in the debates. It would have been unwise in them to have done so; for it was *their* work which gave rise to the question before the council; and the very reason why Paul did not decide the question by his apostolic authority, and why a *Jewish* council was called to decide it, was, that it was a question which concerned the liberty of the Gentiles from the Levitical yoke. If this liberty could be recognized by the church at Jerusalem, the headquarters of Judaism, and by a council consisting exclusively of Jewish Christians, then the peace of the Gentile churches was secured against Judaizing impostors who pleaded authority from the church at Jerusalem. There ought not to have been, therefore, (as there were not) any Gentile element in the council. Even Paul and Barnabas, though Jews, had become too much identified by their work with the Gentile churches to admit of their taking part in the proceedings of the council without imminent danger of impairing the moral influence and effect of its decisions. They could not "represent" the church of Antioch, since their special relation to that church had ceased, after they became missionaries. If Antioch was represented at all, it was by the "certain others" (Acts 15:2) who went up with Paul and Barnabas; but, for the reasons above given, it is almost certain that it was not represented, and that the council was purely Jewish.

The case in the fifteenth of Acts was not analogous, therefore, to a case of "reference," in our own church, by a lower court to higher. The church of Antioch (session or presbytery) sustained no such constitutional relation to the church in Jerusalem as the session of the Central church in Atlanta, or the Presbytery of Atlanta, sustains to the General Assembly. And this leads us to observe:

2. In the second place, that the church of that age had no written constitution at all like that of the Presbyterian Church in the United States. Hence, we cannot argue from the one to the other, when treating a question of constitutional law in our own church. The question with us is not what powers a General Assembly might have had where there was no constitution; or what powers might have been conferred upon it by *a* constitution; but what powers belong to it by virtue of *the* constitution of the Presbyterian Church in the United States. It will not do to argue merely from the scriptural powers of a church court, of a presbytery, of this presbytery at Jerusalem. All the courts of our church are presbyteries ("congregational," "classical," "synodical," and "general"), and are all of equal powers and the same powers, until a distribution of powers is made by a constitution. Hence, if we argue direct from the court of Jerusalem to the General Assembly of our own church, upon the ground of the scriptural powers of a presbytery, we can argue direct to *any of* our courts, and make the decrees of all equally authoritative. But the moment you bring in the fact of a constitution, in which the powers are distributed, the whole state of the question is changed. Hence, we cannot argue from the powers of a body not acting under a constitu-

tion, to the powers of a body acting under one; nor from the powers of a General Assembly of the Kirk of Scotland to the powers of our own Assembly.

It may be asked, why did the cities of Derbe, Lystra, Iconium, and others, as well as the "brethren of the Gentiles in Antioch, and Syria, and Cilicia," to whom the decree of the council at Jerusalem was addressed, submit to that decree? The answer is easy for those who hold that decree to have been inspired and to have been acknowledged to be such. For those who hold that the decree was uninspired, that the assembly at Jerusalem was simply the presbytery of that city, with the addition of the apostles sitting merely as presbyters, the answer would be more difficult. It would probably be either that the decree had received a subsequent apostolic sanction (of Paul or some other), or that it was submitted to by voluntary consent. In the case of Antioch, there would be an implied consent in the very act of sending the question up to Jerusalem to be decided. On either supposition, the brethren on the other side of the question which is concerned in the present discussion will receive little aid or comfort. On the first, the difficulty is that we have no apostles. On the second, their cause is given up, because the authority of the Assembly is made to rest on consent. If it should be said that the consent of the lower courts is implied in accepting the constitution, then the whole difficulty returns. The very question we are discussing is, whether the part, because it is a part, is subject to the whole, because it is a whole; or whether the power of the part is subject to the whole under conditions clearly defined in the constitution. The other side cannot be allowed to beg the question.

3. Once more, conceding, for the sake of argument, that the decree of the council at Jerusalem was accepted as binding, though uninspired, by all the Gentile believers, still we contend that the claim set up for the General Assembly to lay down the law *in thesi,* and to enforce it by judicial process, is unsupported by the doings of that council. The claim set up for the Assembly is in regard to "offences," and the power asserted for it is the power to make law for offences, or, at least, to interpret the law so authoritatively in regard to them as to compel the courts of original jurisdiction to institute judicial process.

Now, this is a power of *discipline,* the power of declaring the law of Christ, and of inflicting the censures which he has ordained for sin. No such power was exercised by the presbytery at Jerusalem. It exercised the *dogmatic* power in declaring the will of Christ in regard to the liberty of the Gentiles, and the *diatactic* power in regard to the use of their Christian liberty in certain things; but they exercised no *diacritic* or disciplinary power. Turretin, indeed, represents them as so doing in denouncing the Judaizers as "subverters of souls." But this denunciation is simply a corollary from the dogmatic decision, and the decree itself is a direction in regard to indifferent matters, with one exception. This exception has been a source of perplexity to interpreters of every grade and class, save those of the Greek Church. That church has held the decree to be of perpetual obligation. The papal body and the Reformed churches have held that it was temporary and provisional, with the exception before named.

Now, this is one of the characteristics of the objects of the diatactic power, that they are liable to change. The moral law is unchangeable, and the infraction of it is always sin; and sin is the proper object of discipline. But the diatactic power is exercised about "circumstances" which are variable, about modes of doing things, about restraints upon Christian liberty, etc. Hence, Turretin, in the passage referred to, gives as an example of this kind of power the decree of the council of Jerusalem touching the eating of blood, etc.

In order, therefore, to make this decree parallel with the deliverances *in thesi* of the General Assembly these last should be interpreted as referring to matters of Christian liberty, and as temporary restraints upon it. Are the brethren with whom it is our unhappiness to differ willing to take that view of them? Of course not. Why, then, ring the changes upon the council of Jerusalem?

But it may be asked, May not church members be disciplined for violations of diatactic regulations? We answer, Never *directly.* The disregard of such regulations may occasion so much scandal as to make the disorderly person liable to the censures of the church. (See *Confession of Faith,* Chapter XX., entitled "Of Christian Liberty and Liberty of Conscience," specially Article IV., where our faith on this subject is laid down.) The discipline is administered for the scandal rather than for the violation of the rule itself. The session of a church appoints the hour of 11 o'clock Sunday morning for public worship. One of the members of the church refuses to attend church, upon the pretext that there is no divine authority for holding service at that hour; that 9

A.M., 12 M., and 3 P.M., and, perhaps, "candle lighting" (Acts 15:8) are the only hours that have the warrant of Scripture example for public worship. Such a member would, no doubt, be disciplined; but it would be for despising the divine ordinance of public worship. So it is easy to imagine the practice of dancing or of liquor-selling to be attended with such scandal as to require the session, in faithfulness, to subject the actors to discipline. We add our conviction that there are such scandals, and that there are sessions which are delinquent in their duty in regard to them. We earnestly hope that our defence of the independent jurisdiction which belongs to them will not be construed into an approval of their unfaithfulness.

The exposition which has been given of the nature of diatactic regulations will serve to show the irrelevancy of a great deal that has been said and quoted on the other side. Nobody denies that the General Assembly has original jurisdiction in certain matters; that it may issue "injunctions" which the courts below are bound to obey. For example, it has the power "to institute and superintend the agencies necessary in the general work of evangelization." This implies some system in collecting the revenue by which the work is to be maintained; and the Assembly has a right to regulate the details of the collecting and disbursing of the needful funds, and to issue "injunctions" in regard to them. We are far enough from denying to the Assembly the exercise of authority. We only deny that it has a certain kind of authority; and to refuse steadily to recognize any authority which has not been given to it in the constitution is the most effectual way to strengthen the authority which *has*

been given to it. They are the real enemies of the Assembly's authority who would make its power absolute. If the Assembly assumes the powers of the sessions, then one of two things will almost certainly occur: either the sessions will rebel, in defence of their constitutional powers; or, they will consent to become ciphers, and their work will not be done at all. It is as certain as anything can be that the Assembly cannot discharge the judicial functions of the session. Why, then, attempt them? We believe the act of 1879 was a wise, just, and wholesome act, and earnestly hope it will not be reversed.

Before concluding this article we propose to notice some of the arguments, or methods of argument, used on the other side of this question.

1. The argument *ad invidiam.* The position taken by the Assembly of 1879 is stigmatized as virtual independency. "If the authority of the Assembly," it is said, "be confined to judicial cases, then this is the only wall that separates us from independency. Throw down that narrow partition, and we are all at once embraced in a common fold." Upon this singular statement we remark:

(*a*), We are not aware that any defender of the Assembly's act has said that its "authority is confined to judicial cases." We have asserted its diatactic power as laid down in the constitution. We have not denied its dogmatic power. This power is asserted in the constitution, as is the last named, for *all* the courts, and of course for the highest also. So, also, the power of exercising discipline is claimed in a general way for all the courts. (See *Form of Government,* Chap. V., Sec. 2, Art. II., first sentence.) The ground upon

which all these powers are claimed for all the courts is then stated in Article III. But now the difficulty arises, that if all the courts have the same original powers, how is confusion to be prevented? This question is answered in Article IV., and admirably answered. We wish we had the space to quote the whole of it. We must quote a sentence or two: "It is necessary that the sphere of action of each court should be distinctly defined." "The jurisdiction of these courts is limited by the express provisions of the constitution." "Although each court exercises exclusive original jurisdiction over all matters specially belonging to it, the lower courts are subject to the review and control of the higher courts, in regular gradation. Hence these courts are not separate and independent tribunals; but they have a mutual relation, and every act of jurisdiction is the act of the whole church, performed by it through the appropriate organ." If this is independency, then the act of the Assembly is independency, for it is exactly in the line of these sections and articles of the constitution.

(*b*), The statement that the power of ultimately deciding in judicial cases, according to *Rules of Discipline,* Chapter XIII., is "a narrow partition, and that, when thrown down, we and the independents are all at once embraced in a common fold," is both amazing and amusing. It is very much like saying that the narrow partition of rationality is the only thing that separates us from the brutes, and if this was thrown down, we all, men and brutes, should at once be embraced in a common fold. Abolish the specific difference in any case, and the species is of course "embraced in the same fold" with the genus. Now, in the matter of discipline,

the acknowledgment of appellate jurisdiction in a court higher than the church sessions is precisely the specific difference by which Presbyterianism is distinguished from independency as expounded by John Owen.

(*c*), It is very easy to bandy epithets. We might charge the assailants of the General Assembly with popery with as much justice as they charge us with independency. What is popery but making the pope the *fountain* of all law, without regard to the rights and powers of the lower bishops, assembled in council or otherwise. If the Assembly is made the *fountain* of all law, without regard to the rights and powers of the courts of original jurisdiction, have we not a polyheaded pope?

2. It is argued that, if the doctrine of the Assembly of 1879 be sound, it is useless to overture it on any subject. "Of what value," is asked, "the answers to the hundreds of overtures sent up to the Assembly," if they have no binding authority? The answer is, If these overtures refer to matters over which the Assembly has original jurisdiction, the answers *have* binding authority; and, in regard to other matters, is it nothing to have the judgment of the Assembly as to the meaning of a law, in the way of instruction, as a guide and help to the lower courts? Does not everybody know that it was common in the Reformation era for the church of one country to ask the judgment and advice of the churches and learned doctors and universities of other countries? If the "advice and instruction" of the Assembly are of no account, why does the constitution take the trouble expressly to provide for such "advice and instruction"? (See *Form of Government,* Chap. V., Sec. 6, Art. VI.). It seems we have a

higher opinion of the Assembly's moral weight than the brethren who are set for the exaltation of its authority. We heartily wish that the sessions would heed its instructions and warnings in reference to worldly amusements, and administer discipline, both private and public, as circumstances may demand.

Brethren must be content to leave this matter of discipline, as to original jurisdiction, where the constitution has placed it, with the presbyteries and sessions. What more vital to the purity and prosperity of the church than the admission of men to the ministry and of members to the church? These are matters belonging to the presbyteries and sessions, and in one sense – since it is easier to keep unworthy people out of the ministry and the church than to get them out after they are in – more important than the discipline of exclusion. Indeed, a great deal of the discipline, in the sense of exclusion, is occasioned by the facility with which persons are admitted to the church and the ministry. Many pastors and sessions are now employed in turning out members who were brought in by the dragnet and machinery of itinerant "revivalists." Now, does anybody believe that the General Assembly could manage this evil by laying down, authoritatively, the terms of communion? Pass what "laws" it may, the character of the pastors and elders, after all, will determine the character of the church; and the character of the pastors and elders will be determined by the habitual training to which they have been subject, not by the acts of Assembly; by the continual dropping, not by the occasional deluge.