SUPREME COURT OF THE UNITED STATES.

No. 12.—December Term, 1872.

John Watson, Joseph Gault, J. W. Heeter, A. Given, George Fulton, Henry Farley, and E. T. Polk, Appellants, vs. William A. Jones, Mary J. Jones, and Ellenor Lee.

Appeal from the Circuit Court of the United States for the Dist. of Kentucky.

Mr. Justice MILLER delivered the opinion of the court:

This case belongs to a class, happily rare in our courts, in which one of the parties to a controversy, essentially ecclesiastical, resorts to the judicial tribunals of the state for the maintenance of rights which the church has refused to acknowledge, or found itself unable to protect. Much as such dissensions among the members of a religious society should be regretted, a regret which is increased when passing from the control of the judicial and legislative bodies of the entire organization to which the society belongs, an appeal is made to the secular authority; the courts when so called on must perform their functions as in other cases.

Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints. Conscious as we may be of the excited feeling engendered by this controversy, and of the extent to which it has agitated the intelligent and pious body of Christians in whose bosom it originated, we enter upon its consideration with the satisfaction of knowing that the principle on which we are to decide so much of it as is proper for our decision, are those applicable alike to all of its class, and that our duty is the simple one of applying those principles to the facts before us.

It is a bill in chancery in the Circuit Court of the United States for the District of Kentucky, brought by William A. Jones, Mary J. Jones, and Ellenor Lee, citizens of Indiana, against John Watson and others named, citizens of Kentucky, and against the trustees of the Third or Walnut Street Presbyterian Church, in Louisville, a corporation created by an act of the Legislature of that State. The trustees, McDougall, McPherson, and Ashcraft, are also sued as citizens of Kentucky. Plaintiffs allege in their bill that they are members in good and regular standing of said church, attending its religious exercises under the pastorship of the Rev. John S. Hays, and that the defendants, George Fulton and Henry Farley, who claim without right to be trustees of the church, supported and recognized as such by the defendants, John Watson and Joseph Gault, who also, without right, claim to be ruling elders, are threatening, preparing and about to take unlawful possession of the house of worship and grounds belonging to the church and to prevent Hays, who is the rightful pastor, from ministering therein, refusing to recognize him as pastor, and to recognize as ruling elder, Thomas J. Hackney, who is the sole lawful ruling elder; and that when they obtain such possession they will oust said Hays and Hackney, and those who attend their ministrations, among whom are complainants.

And they further allege that Hackney, whose duty it is as elder, and McDougall, McPherson, and Ashcraft, whose duty as trustees it is to protect the rights thus threatened, by such a proceeding in the courts as will prevent the execution of the threats and designs of the other defendants, refuse to take any steps to that end.

They further allege that the Walnut-street Church, of which they are members, now forms, and has ever since its organization in the year 1842, formed a part of the Presbyterian Church of the United States of America, known as the Old School, which is governed by a written constitution that includes the confession of faith, form of government, book of discipline and directory for worship, and that the governing bodies of the general church above the Walnut-street Church, are, in successive order, the Presbytery of Louisville, the Synod of Kentucky, and the General Assembly of the Presbyterian Church of the United States. That while plaintiffs and about one hundred and fifteen members who worship with them, and Mr. Hays, as pastor, Hackney, the ruling elder, and the trustees, McDougall, McPherson, and Ashcraft, are now in full membership and relation with the lawful General Presbyterian Church aforesaid, the defendants named, with about thirty persons, formerly members of said church, worshipping under one Dr. Yandell as pastor, have seceded and withdrawn themselves from said Walnut-street Church, and from the General Presbyterian Church in the United States, and have voluntarily connected themselves with and are now members of another religious society, and that they have repudiated and do now repudiate and renounce the authority and jurisdiction of the various judicatories of the Presbyterian Church of the United States and acknowledge and recognize the authority of other church judicatories which are disconnected from the Presbyterian Church of the United States and from the Walnut-street Church. And they allege that Watson and Gault have been, by the order of the general assembly of said church, dropped from the roll of Elders in said church for having so withdrawn and renounced its jurisdiction, and the assembly has declared the organization to which plaintiffs adhere to be the true and only Walnut-street Presbyterian Church of Louisville.

They pray for an injunction and for general relief.

The defendants, Hackney, McDougall, McPherson, and Ashcraft answer, admitting the allegations of the bill, and that though requested they had refused to prosecute legal proceedings in the matter.

The other defendants answer and deny almost every allegation of the bill. They claim to be the lawful officers of the Walnut-street Presbyterian Church, and that they and those whom they represent are the true members of the church. They deny having withdrawn from the local or the general church, and deny that the action of the general assembly cutting them off was within its constitutional authority. They say the plaintiffs are not, and never have been, lawfully admitted to membership in the Walnut-street Church, and have no such interest in it as will sustain this suit, and they set up and rely upon a suit still pending in the Chancery Court of Louisville, which they say involves the same subject matter, and is between the same parties in interest as the present suit. They allege that in that suit they have been decreed to be the only true and lawful trustees and elders of the Walnut-street Church, and an order has been made to place them in possession of the church property, which order remains unexecuted, and the property is still in the possession of the marshal of that court as its receiver. These facts are relied on in bar to the present suit.

This statement of the pleadings is indispensable to an understanding of the points arising in the case. So far as an examination of the evidence may be necessary it will be made, as it is required in the consideration of these points.

The first of these concern the jurisdiction of the circuit court, which is denied; first, on the ground that plaintiffs have no such interest in the subject of litigation as will enable them to maintain the suit, and secondly, on matters arising out of alleged proceedings in the suit in the Chancery Court of Louisville.

The allegation that plaintiffs are not lawful members of the Walnut street Church is based upon the assumption that their admission as members was by a pastor and elders who had no lawful authority to act as such. As the claim of those elders to be such is one of the matters which this bill is brought to establish, and the denial of which makes an issue to be tried, it is obvious that the objection to the interest of plaintiffs must stand or fall with the decision on the merits, and cannot be decided as a preliminary question. Their right to have this question decided, if there is no other objection to the jurisdiction, cannot be doubted. Some attempt is made in the answer to question the good faith of their citizenship, but this seems to have been abandoned in the argument.

In regard to the suit in the Chancery Court of Louisville, which the defendants allege to be pending, there can be no doubt but that court is one competent to entertain jurisdiction of all the matters set up in the present suit. As to those matters, and to the parties, it is a court of concurrent jurisdiction with the circuit court of the United States, and as between those courts the rule is applicable that the one which has first obtained jurisdiction in a given case must retain it exclusively until it disposes of it by a final judgment or decree.

But when the pendency of such a suit is set up to defeat another, the *case* must be the same. There must be the same parties, or at least such as represent the same interest, there must be the same rights asserted and the same relief prayed for. This relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same.

The identity in these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties

It the case of Barrows vs. Kindred, 4 Wallace, 397, which was an action of ejectment, the plaintiff showed a good title to the land, and defendant relied on a former judgment in his favor, between the same parties for the same land, the statute of Illinois making a judgment in such an action as conclusive as in other personal actions; except by way of new trial. But this court held that as in the second suit plaintiff introduced and relied upon a new and different title, acquired since the first trial, that judgment could be no bar, because that title had not been passed upon by the court in the first suit.

But the principles which should govern in regard to the identity of the matter in issue in the two suits to make the pendency of the one defeat the other, are as fully discussed in the case of Buck vs. Colbath, 3 Wallace, 334, where that was the main question, as in any case we have been able to find. It was an action of trespass, brought in a state court, against the marshal of the circuit court of the United States for seizing property of plaintiff, under a writ of attachment from the circuit court. And it was brought while the suit in the federal court was still pending, and while the marshal held the property subject to its judgment: So far as the *lis pendens* and possession of the property in one court, and a suit brought for the taking by its officer in another, the analogy to the present case is very strong. In that case the court said: "It is not true that a court, having obtained jurisdiction of a subject-matter of suit, and of parties before it, thereby excludes all other courts from the right to adjudicate upon other matters having a very close connection with those before the first court, and in some instances requiring the decision of the same question exactly. In examining into the exclusive character of the jurisdiction in such cases, we must have regard to the nature of the remedies, the character of the relief sought, and the identity of the parties in the different suits." And it might have been added, to the facts on which the claim for relief is founded.

"A party," says the court by way of example, "having notes secured by a mortgage on real estate, may, unless restrained by statute, sue in a court of chancery to foreclose his mortgage, and in a court of law to recover judgment on his note, and in another court of law in an action of ejectment for possession of the land. Here, in all the suits, the only question at issue may be the existence of the debt secured by the mortgage. But, as the relief sought is different, and the mode of proceeding different, the jurisdiction of neither court is affected by the proceedings in the other." This opinion contains a critical review of the cases in this court of Hagan vs. Lucas, 10 Peters 402; Peck vs. Jenness, 7 How., 624; Taylor vs. Carryl, 20 How., 594; and Freeman vs. Howe, 24 How., 450, cited and relied on by counsel for appellants; and we are satisfied it states the doctrine correctly.

The limits which necessity assigns to this opinion forbids our giving at length the pleadings in the case in the Louisville Chancery Court. But we cannot better state what is, and what is not, the subject-matter of that suit or controversy, as thus presented and as shown throughout its course, than by adopting the language of the Court of Appeals of Kentucky, in its opinion delivered at the decision of that suit, in favor of the present appellants. "As suggested in argument," says the court, "and apparently conceded on both sides, this is not a case of division or schism in a church; nor is there any question as to which of two bodies should be recognized as the Third or Walnut-street Presbyterian Church. Neither is there any controversy as to the authority of Watson and Gault to act as ruling elders; but the sole inquiry to which we are restricted in our opinion is, whether Avery, McNaughton, and Leech are also ruling elders, and therefore members of the session of the church."

The summary which we have already given of the pleadings in the present suit shows conclusively a different state of facts, different issues and a different relief sought. This *is* a case of division or schism in the church. It *is* a question as to which of two bodies shall be recognized as the third or Walnut-street Presbyterian Church. There *is* a controversy as to the authority of Watson and Gault to act as ruling elders, that authority being denied in the bill of complainants; and, so far from the claim of Avery, McNaughton, and Leech to be ruling elders being the sole inquiry in this case, it is a very subordinate matter, and it depends upon facts and circumstances altogether different from those set up and relied on in the other suit, and which did not exist when it was brought. The issue here is no longer a mere question of eldership, but it is a separation of the original church members and officers into two distinct bodies, with distinct members and officers, each claiming to be the true Walnut-street Presbyterian Church, and denying the right of the other to any such claim.

This brief statement of the issues in the two suits leaves no room for argument to show that the pendency of the first cannot be pleaded either in bar or in abatement of the second.

The supplementary petition filed by plaintiffs in that case, after the decree of the chancery court had been reversed on appeal, and which did contain very much the same matter found in the present bill, was, on motion of plaintiffs' counsel, and by order of the court, dismissed, without prejudice, before this fuit was brought, and of course was not a *lis pendens* at that time.

It is contended, however, that the delivery to the trustees and elders of the body of which the plaintiffs are members, of the possession of the church building cannot be granted in this suit, nor can the defendants be enjoined from taking possession as prayed in the bill, because the property is in the actual possession of the marshal of the Louisville Chancery Court as its receiver, and because there is an unexecuted decree of that court ordering the marshal to deliver the possession to defendants.

In this the counsel for appellants are, in our opinion, sustained, both by the law and by the state of the record of the suit in that court.

The court, in the progress of that suit, made several orders concerning the use of the church, and finally placed it in the possession of the marshal as a receiver, and there is no order discharging his receivership; nor does it seem to us that there is any valid order finally disposing of the case, so that it can be said to be no longer in that court. For, though the chancery court did, on the 20th of March, 1857, after the reversal of the case in the court of appeals, enter an order reversing its former decree and dismissing the bill, with costs, in favor of the defendants, the latter on application to the appellate court, obtained another order dated June 26th. By this order, or mandate to the chancery court, it was directed to render a judgment in conformity to the opinion and mandate of the court, restoring possession, use, and control of the church property to the parties entitled thereto, according to said opinion, and so far as they were deprived thereof by the marshal of the chancery court under its order.

In obedience to this mandate the chancery court, on the 18th September, three months after the commencement of this suit, made an order that the marshal restore the possession, use, and control of the church building to Henry Farley, George Fulton, B. F. Avery, or a majority of them as trustees, and to John Watson, Joseph Gault, and Thos. J. Hackney, or a majority of them as ruling elders, and to report how he had executed the order, and reserving the case for such further order as might be necessary to enforce full obedience.

It is argued here by counsel for appellees that the case was, in effect, disposed of by orders of the chancery court, and nothing remained to be done which could have any practical operation on the rights of the parties.

But if the court of appeals, in reversing the decree of the chancellor in favor of plaintiffs, was of opinion that the defendants should be restored to the position they occupied in regard to the possession and control of the property before that suit began, we have no doubt of their right to make such order as was necessary to effect that object; and as the proper mode of doing this was by directing the chancellor to make the necessary order, and have it enforced as chancery decrees are enforced in his court, we are of opinion that the order of the court of appeals, above recited, was, in essence and effect, a decree in that cause for such restoration, and that the last order of the chancery court, made in accordance with it, is a valid subsisting decree, which, though final, is unexecuted.

The decisions of this court in the cases of Taylor vs Carryl, 20 How., 594, and Freeman vs. Howe, 24 How., 450, and Burk, vs. Colbath, 5 Wallace, are conclusive that the marshal of the chancery court cannot be displaced as to the mere actual possession of the property, because that might lead to personal conflict between the officers of the two courts for that possession. And the act of Congress March 2, 1793, 1 U. S. Statute, 334 § 5, as construed in the cases of Diggs vs. Walcott, 4 Cranch 129, and Peck vs. Jenness, 7 How., 625, are equally conclusive against any injunction from the circuit court, forbidding the defendants to take possession which the unexecuted decree of the chancery court requires the marshal to deliver to them.

But, though the prayer of the bill in this suit does ask for an injunction to restrain Watson, Gault, Fulton and Farley from taking possession, it also prays such other and further relief as the nature of the case requires, and especially that said defendants be restrained from interfering with Hays, as pastor, and plaintiffs in worshiping in said church. Under this prayer for general relief, if there was any decree which the circuit court could render for the protection of the right of plaintiffs, and which did not enjoin the defendants from taking possession of the church property, and which did not disturb the possession of the marshal of the Louisville chancery, that court had a right to hear the case and grant that relief. This leads us to enquire what is the nature and character of that possession to which those parties are to be restored.

One or two propositions which seem to admit of no controversy, are proper to be noticed in this connection. 1. Both by the act of the Kentucky legislature creating the trustees of the church a body corporate, and by the acknowledged rules of the Presbyterian Church the trustees were the mere nominal title holders and custodians of the church property, and other trustees were, or could be elected by the congregation, to supply their places once in every two years. 2. That in the use of the property for all religious services or ecclesiastical purposes, the trustees were under the control of the church session. 3. That by the constitution of all Presbyterian churches, the session, which is the governing body in each, is composed of the ruling elders and pastor, and in all business of the session, the majority of its members govern, the number of elders for each congregation being variable.

The trustees obviously hold possession for the use of the persons who by the constitution, usages and laws of the Presbyterian body, are entitled to that use. They are liable to removal by the congregation for whom they hold this trust, and others may be substituted in their places. They have no personal ownership or right beyond this, and are subject in their official relations to the property, to the control of the session of the church.

The possession of the elders, though accompanied with larger and more efficient powers of control, is still a fiduciary possession. It is as a session of the church alone that they could exercise power. Except by an order of the session in regular meeting they have no right to make any order concerning the use of the building; and any action of the session is necessarily in the character of representatives of the