church body by whose members it was elected.

If then, this true body of the church, the members of that congregation, having rights of user in the building, have in a mode which is authorized by the canons of the general church in this country elected and installed other elders, it does not seem to us inconsistent or at variance with the nature of the possession which we have described, and which the chancery court orders to be restored to the defendants, that they should be compelled to recognize these rights, and permit those who are the real beneficiaries of the trust held by them, to enjoy the uses, to protect which that trust was created. Undoubtedly if the order of the chancery court had been executed, and the marshal had delivered the key of the church to defendants, and placed them in the same position they were before that suit waa commenced, they could in any court having jurisdiction and in a case properly made out, be compelled to respect the rights we have stated, and be controlled in their use of the possession by the court, so far as to secure those rights.

All that we have said in regard to the possession which the marshal is directed to deliver to defendants, is equally applicable to the possession held by him pending the execution of that order. His possession is a substitute for theirs, and the order under which he received that possession, which we have recited, shows this very clearly.

The decree which we are now reviewing seems to us to be carefully framed on this view of the matter. While the rights of plaintiffs and those whom they sue for, are admitted and established, the defendants are still recognized as entitled to the possession which we have described; and while they are not enjoined from receiving that possession from the marshal, and he is not restrained from obeying the chancery court by delivering it, and while there is no order made on the marshal at all to interfere with his possession, the defendants are required by the decree to respect the rights of plaintiffs, and to so use the possession and control to which they may be restored as not to hinder or obstruct the true uses of the trust, which that possession is intended to protect.

We are next to inquire whether the decree thus rendered is based upon an equally just view of the law as applied to the facts of this controversy. These, though making up a copious record of matter by no means pleasant reading to the sincere and thoughtful Christian philanthropist, may be stated with a reasonable brevity so far as they bear upon the principles which must decide the case.

From the commencement of the late war of the insurrection to its close, the General Assembly of the Presbyterian Church at its annual meetings expressed in declaratory statements or resolutions, its sense of the obligation of all good citizens to support the federal government in that struggle, and when, by the proclamation of President Lincoln, emancipation of the slaves of the states in insurrection was announced, that body also expressed views favorable to emancipation, and adverse to the institution of slavery. And at its meeting in Pittsburg in May, 1865, instructions were given to the presbyteries, the board of missions, and to the sessions of the churches, that when any persons from the Southern States should make application for employment as missionaries or for admission as members, or ministers of churches, inquiry should be made as to their sentiments in regard to loyalty to the government and on the subject of slavery; and if it was found that they had been guilty of voluntarily aiding the war of the rebellion, or held the doctrine announced by the large body of the churches in the insurrectionary States which had organized a new General Assembly, that "the system of negro slavery in the South is a divine institution and that it is the peculiar mission of the southern church to conserve that institution," they should be required to repent and forsake these sins before they could be received.

In the month of September thereafter the Presbytery of Louisville, under whose immediate jurisdiction was the Walnut street Church, adopted and published in pamphlet form, what it called a "declaration and testimony against the erroneous and heretical doctrines and practices which have obtained and been propagated in the Presbyterian Church of the United States during the last five years." This declaration denounced, in the severest terms, the action of the General Assembly in the matters we have just mentioned, declared their intention to refuse to be governed by that action, and invited the co-operation of all members of the Presbyterian Church who shared the sentiments of the declaration, in a concerted resistance to what they called the usurpation of authority by the assembly.

It is useless to pursue the history of this controversy further with minuteness.

The General Assembly of 1866, denounced the declaration and testimony and declared that every Presbytery which refused to obey its order should be *ipso facto* dissolved, and called to answer before the next General Assembly, giving the Louisville Presbytery an opportunity for repentance and conformity. The Louisville Presbytery divided, and the adherents of the declaration and testimony sought and obtained admission in 1868, into "the Presbyterian Church of the Confederate States," of which we have already spoken as having several years previously withdrawn from the General Assembly of the United States and set up a new organization.

We cannot better state the results of these proceedings upon the relations of the church organizations and members, to each other and to this controversy, than in the language of the brief of appellants' counsel in this court:

In January, 1866, the congregation of the Walnut Street Church became divided in the manner stated above, each claiming to constitute the church, although the issue as to membership was not distinctly made in the chancery suit of Avery vs. Watson. Both parties at this time recognized the same superior church judicatories.

On the 19th June, 1866, the Synod of Kentucky became divided, the opposing parties in each claiming to constitute respectively the true presbytery and the true synod; each meanwhile recognizing and claiming to adhere to the same general assembly. Of these contesting bodies the appellants adhere to one; the appellees to the other.

On the 1st of June, 1867, the presbytery and synod recognized by the appellants, were declared by the general assembly to be "in no sense a true and lawful synod and presbytery in connection with and under the care and authority of the General Assembly of the Preslyterian Church in the United States of America;" and were permanently excluded from connection with or representation in the assembly; by the same resolution the synod and presbytery adhered to by appellees were declared to be the true and lawful Presbytery of Louisville, and Synod of Kentucky.

The Synod of Kentucky thus excluded, by a resolution adopted the 28th June, 1867, declared "that in its future action it will be governed by this recognized sundering of all its relations to the aforesaid revolutionary body (the general assembly) by the acts of the body itself." The Presbytery took substantially the same action.

In this final severance of presbytery and synod from the general assembly, the appellants and appellees continued to adhere to those bodies at first recognized by them respectively.

In the earliest stages of this controversy it was found that a majority of the members of the Walnut Street Church concurred with the action of the general assembly, while Watson and Gault as ruling elders, and Fulton and Farley as trustees, constituting in each case a majority of the session and of the trustees, with Mr. McElroy the pastor, sympathized with the party of the declaration and testimony of the Louisville Presbytery. This led to efforts by each party to exclude the other from participation in the session of the church and the use of the property. This condition of affairs being brought before the Synod of Kentucky before any separation, that body appointed a commission to hold an election by the members of the Walnut Street Church of three additional ruling elders. Watson and Gault refused to open the church for the meeting to hold this election, but the majority of the members of the congregation, meeting on the sidewalk in front of the church, organized and elected Avery, Leech, and McNaughton additional ruling elders, who if lawful elders, constituted with Mr. Hackney a majority of the session. Gault, and Watson, Farley, and Fulton refused to recognize them as such, and hence the suit in the Chancery Court of Louisville, which turned exclusively on that question.

The newly elected elders and the majority of the congregation have adhered to and been recognized by the general assembly as the regular and lawful Walnut Street Church and officers, and Gault, and Watson, Fulton, and Farley and a minority of the members, have cast their fortunes with those who adhered to the declaration and testimony party.

The division and separation finally extended to the Presbytery of Louisville, and the Synod of Kentucky. It is now complete and apparently irreconcilable, and we are called upon to declare the beneficial uses of the church property in this condition of total separation between the members of what was once a united and harmonious congregatian of the Presbyterian Church.

The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies, may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the State.

1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.

2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.

In regard to the first of these classes it seems hardly to admit of a rational doubt that an individual or an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting and propagating definite religious doctrines or principles, provided that in doing so they violate no law of morality, and give to the instrument by which their purpose is evidenced, the formalities which the laws require. And it would seem also to be the obvious duty of the court, in a case properly made, to see that the property so dedicated is not diverted from the trust which is thus attached to its use. So long as there are persons qualified within the meaning of the original dedication, and who are also willing to teach the doctrines or principles prescribed in the act of dedication, and so long as there is any one so interested in the execution of the trust as to have a standing in court, it must be that they can prevent the diversion of the property or fund to other and different uses. This is the general doctrine of courts of equity as to charities, and it seems equally applicable to ecclesiastical matters.

In such case, if the trust is confided to a religious congregation of the independent or congregational form of church government, it is not in the power of the majority of that congregation, however preponderant, by reason of a change of views on religious subjects, to carry the property so confided to them to the support of new and conflicting doctrine. A pious man building and dedicating a house of worship to the sole and exclusive use of those who believe in the doctrine of the Holy Trinity, and placing it under the control of a congregation which at the time holds the same belief, has a right to expect that the law will prevent that property from being used as a means of support and dissemination of the Unitarian doctrine, and as a place of Unitarian worship. Nor is the principle varied when the organization to which the trust is confided is of the second or associated form of church government. The protection which the law throws around the trust is the same.

And though the task may be a delicate one and a difficult one, it will be the duty of the court in such cases, when the doctrine to be taught or the form of worship to be used is definitely and clearly laid down, to inquire whether the party accused of violating the trust is holding or teaching a different doctrine, or using a form of worship which is so far variant as to defeat the declared objects of the trust. In the leading case on this subject in the English courts, of the Attorney General vs. Pearson, 3 Merrivale, 353, Lord Eldon said, I agree with the defendants that the religious belief of the parties is irrelavent to the matters in dispute, except so far as the King's court is called upon to execute the trust. That was a case in which the trust deed declared the house which was erected under it was for the worship and service of God. And though we may not be satisfied with the very artificial and elaborate argument by which the chancellor arrives at the conclusion, that because any other view of the nature of the Godhead than the Trinitarian view was heresy by the laws of England, and any one giving expression to the Unitarian view was liable to be severely punished for heresy by the secular courts, at the time the deed was made, that the trust was, therefore, for Trinitarian worship, we may still accept the statement that the court has a right to enforce a trust clearly defined on such a subject.

The case of Miller vs. Gable, 2 Denio, 492, appears to have been decided in the Conrt of Errors of New York on this principle, so far as any ground of decision can be gathered from the opinions of the majority of the court as reported.

The second class of cases which we have described has reference to the case of a church of a strictly congregational or independent organization, governed solely within itself, either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government; and to property held by such a church, either by way of purchase or donation, with no other specific trust attached to it in the hands of the church than that it is for the use of that congregation as a religious society.

In such cases where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property.

The minority in choosing to separate themselves into a distinct body, and refusing to recognize the authority of the governing body, can claim no rights in the property from the fact that they had once been members of the church or congregation.

This ruling admits of no inquiry into the existing religious opinions of those who comprise the legal or regular organization, for, if such was permitted, a very small minority, without any officers of the church among them, might be found to be the only faithful supporters of the religious dogmas of the founders of the church. There being no such trust imposed upon the property when purchased or given, the court will not imply one for the purpose of expelling from its use those who by regular succession and order constitute the church, because they may have changed in some respect their views of religious truth.

Of the cases in which this doctrine is applied no better representative can be found than that of Shannon vs. Frost, 3 B. Monro, 253, where the principle is ably supported by the learned Chief Justice of the Court of Appeals of Kentucky.

The case of Smith vs. Nelson, 18 Vermont, 511, asserts this doctrine in a case where a legacy was left to the Associate Congregation of Ryegate, the interest whereof was to be annually paid to their minister forever. In that case, though the Ryegate congregation was one of a number of Presbyterian churches connected with the general Presbyterian body at large, the court held that the only inquiry was whether the society still exists, and whether they have a minister chosen and appointed by the majority and regularly ordained over the society, agreeably to the usage of that denomination.

And though we may be of opinion that the doctrine of that case needs modification, so far as it discusses the relation of the Ryegate congregation to the other judicatories of the body to which it belongs, it certainly lays down the principle correctly if that congregation was to be treated as an independent one.

But the third of these classes of cases is the one which is oftenest found in the courts, and which, with reference to the number and difficulty of the questions involved, and to other considerations, is everyway the most important.

It is the case of property acquired in any of the usual modes for the general use of a religious congregation, which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.

The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery and synod, and which appeals to the courts to determine the right to the use of the property so acquired. Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property. In the case of an independent congregation we have pointed out how this identity or succession is to be ascertained, but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are in the Presbyterian system of ecclesiastical government, in regular succession, the presbytery over the session or local church, the synod over the presbytery, and the general assembly over all. These are called in the language of the church organs, judicatories, and they entertain appeals from the decision of those below and prescribe corrective measures in other cases.

In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them in their application to the case before them.

We concede at the outset that the doctrine of the English courts is otherwise. In the case of the Attorney General against Pearson, cited before, the proposition is laid down by Lord Eldon, and sustained by the peers, that it is the duty of the court in such cases to inquire and decide for itself, not only what was the nature and power of these church judicatories, but what is the true standard of faith in the church organization, and which of the contending parties before the court holds to this standard. And in the subsequent case of Craigdallie vs. Aikman, 2 Bligh, 529, the same learned judge expresses in strong terms his chagrin that the Court of Sessions of Scotland, from which the case has been appealed, had failed to find on this latter subject, so that he could rest the case on religious belief, but had declared that in this matter there was no difference between the parties.

And we can very well understand how the Lord Chancellor of England, who is, in his office, in a large sense, the head and representative of the Established Church, who controls very largely the church patronage, and whose judicial decision may be, and not unfrequently is, invoked in cases of heresy and ecclesiastical contumacy, should feel, even in dealing with a dissenting church, but little delicacy in grappling with the most abstruse problems

Concluded on page 250.