

FORM OF GOVERNMENT, § 14-1,2,3,

Nature and authority of "In thesi" deliverances of Church courts.

[See also *PCUS Digest*, Form of Govt., § 18-1. Cf. *PCUS Digest*, Conf. of Faith, XXXIII, 4.]

1. "In thesi" deliverances are didactic, advisory, monitory.

1879, p. 23. Overture asking the Assembly for definite instructions upon the following points, to-wit:

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

Second, Are all the offenses named in them to be so dealt with, or are exceptions to be made?

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

In answer to these questions the Assembly unanimously adopted the following minute:

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

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, Chap. VII, in the old, and Chap. XIII, Sec. I, in the revised Book [pres. § 14-6, 113-1]: 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, Chap. XII, Sec. V, of the old, and in revised Book of Church Order, Form of Government, Chap. V, Sec. VI, Art. VI, [pres. § 1S-6] 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 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 "offenses," or to give to its deliverances *in thesi* the force of judicial decisions.

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

Third, 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 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, Chap. IV, Sec. III, Art. IV) [pres. § 15-6]. 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 cure. 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 Chap. II. Art. III. of the old Book of Discipline, and Chap. I, Art. IV, of the revised [pres. § 101-5]; also Matthew xviii, 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.

2. "In thesi" deliverances must be submitted to unless contrary to the Constitution and the Scriptures.

1880, pp. 201, 202. "The Synod of South Carolina hereby overtures the General Assembly, respectfully praying that it will consider and repeal, or at least seriously modify, so much of the deliverance of the last Assembly, in relation to worldly amusements as declares that all deliverances of the General Assembly, and by necessary implication, of the other courts of the Church, which are not made by them in a strictly judicial capacity, but are deliverances *in thesi*, can be considered as only didactic, advisory and monitory."

The Assembly, in virtue of its power to give authoritative interpretations of the Word, declares:

1. Nothing is law, to be enforced by judicial prosecution, but that which is contained in the Word as interpreted in our Standards.

2. The judicial decisions of our courts differ from *in thesi* deliverances, in that the former determine, and when proceeding from our highest court, conclude a particular case; but both these kinds of decisions are alike interpretations of the Word by a church court, and both not only deserve high consideration, but both must be submitted to, unless contrary to the Constitution and the Word, as to which there is a right of private judgment belonging to every church court, and also to every individual church member.

3. The right of private judgment.

1881, p. 383. Overture touching the right of private judgment (answered:)

The Form of Government (Chap. V, Sec. II, Art. II.) [pres. § 14-3] declares that "church courts can make no laws binding the conscience, but may frame symbols of faith," etc. It follows that church courts are not infallible, but on the contrary, "all may err, and many have erred; therefore they are not to be made the rule of faith or practice, but to be used as a help in both." [Confession of Faith, XXIII, 3.] Thus the right of private judgment is asserted; this right, however, is not opposed to lawful authority, but to the assumption of power to bind the conscience. [See also this Digest, preceding section.]

4. No deliverance "in thesi" can modify or set aside a judicial sentence.

1879, p. 57. Overture from the Synod of Kentucky asking the General Assembly to reconsider the action of the Assembly of 1878, approving the action of the Presbytery of Louisville "in restraining from the exercise of the functions of the ministry a minister deemed irresponsible for his words and acts by reason of unsoundness of mind, without the usual form of judicial process."

And the Synod furthermore asks the Assembly to “make such a deliverance on the subject as shall obviate any liability to misinterpretation, or danger of the introduction of principles or usages at variance with the regulation of our Standards, and threatening to the rights and liberties of our ministers and people.”

[The Assembly made the following answer:]

While it might be competent for one General Assembly, under such rules as the Constitution provides, to grant a new hearing of a case which has been judicially decided by a previous General Assembly, yet, inasmuch as this memorial simply asks for a deliverance in a case adjudicated by the Assembly of 1878, this Assembly declines to grant the request of the memorial, for the reason that no deliverance *in thesi* can modify or set aside a judicial sentence.”

5. Authority of deliverances of Church courts and force of logical inferences from the same.

1881, p. 390. To the overture the Assembly returns the answer: AH just and necessary consequences from the law of the Church are a part of the same, in the logical sense of being implicitly contained therein. The authority of this law is, however, two-fold: it binds all those who profess to live under it as a covenant by which they are united in one communion, so that there is no escape from its control except by renouncing its jurisdiction; and it binds because it has been accepted as a true expression of what is revealed in Holy Scripture as infallible truth. The consequences deduced from it cannot, therefore, be equal in authority with the law itself, unless they be necessarily contained within it, as shown by their agreement also with the Divine Word.

6. “In thesi” deliverance not binding on a judicial case before trial.

1936, p. 35. The Committee recommends that the General Assembly decline to give an *in thesi* deliverance prior to a judicial case as an *in thesi* deliverance is merely an opinion and not a judgment and would not be binding in a judicial case before trial.

[Ed. note: There are several similar refusals.]

7. Examples of “in thesi” deliverances refused.

[See this Digest: Conf. of Faith, Chap. I, Par. II; Miscel. Deliv. of Doctrinal Nature; Form of Govt., § 14-5, 15-6, 16-7; Pastoral Letters, etc.; D. W. W., § 201-1 ff.]

8. Examples of “in thesi” made.

[See this Digest: Conf. of Faith, Chap. IV, Par. II, Miscel. Deliv. of Doctrinal Nature; Form of Govt., § 15-6; Pastoral Letters, etc.; D. W. W., § 201-1 ff.]