

KENTUCKY UNIVERSITY.

SPEECH OF HON. JOHN A. PRALL,

Delivered in the House of Representatives of Kentucky, February 10th, 1874, in Opposition to the Proposed Amendments of the Charter of Kentucky University.

I propose as briefly as the scope of the subject will admit, to discuss the questions presented in the bill now before the House, and the pending substitute and amendment. Whatever may be the passions or prejudices which the prolonged agitation of these questions may have engendered, I am not conscious of having partaken of either. Towards the Christian Church, in whose name and behalf these propositions have been urged, I can have in my heart no feelings but those of kindness and respect. Among that brotherhood, both of the living and the dead, there are names that I shall never cease to cherish and to venerate. And I am gratified to know that among them are those whose pure lives and stainless Christian character all men recognize and honor, and who deprecate the efforts now being made as heartily as I do.

There are some singular features in the question before us. The proposition is organic, looking to a fundamental change in the constitution and structure of the institution which is the subject of the controversy, and yet the grounds upon which that proposition is urged are personal, and relate to a single individual. It is but another of the instances with which history is replete, in which institutions in their nature permanent and designed to endure for all time, are attempted to be revolutionized in the interest of schemes and purposes, which are personal and transitory. Strangely enough, in the present case, the object

of this fierce and bitter war is the founder of the noble institution from which the leaders of this movement would hurl him in disgrace, and has with a self-abnegation and singleness of purpose almost without a parallel devoted his life to its upbuilding. Its foundations are to be uprooted in order that he may be destroyed. The grand edifice is to be overturned, that he who erected it may be crushed in its ruins.

There is another singular circumstance connected with the attitude of those who support this measure. We have been told again and again for the last three months, almost every day and every hour, in the discussions before the joint committee, in the petitions that have been showered upon us, in the lobbies and everywhere, and in every form of utterance, until the sentiment seemed to pervade the very air we breathe, that Kentucky University was the property of the Christian Churches, and that this exclusive and proprietary right of theirs was so manifest and so indefeasible that it would be robbery to deny to them its exercise. Whatever we may have thought of the merits of this assumption we had at least a right to suppose that its advocates were in earnest. And yet, strangely enough, we find these gentlemen, with undiminished zeal, supporting the substitute which deprives these churches of that ownership and control and gives it over to another class of persons designated as the donors.

I propose now to consider the grounds upon which this claim, on behalf of the Christian Churches, has been asserted, and to show that it is based upon a total misconception of the character, the purposes and the history of the institution. Nothing could be more fallacious than the effort that has been made to treat it as but the outgrowth and expansion of Bacon College, and thus, to determine its character, ignoring all the other great elements that have entered into its composition. Bacon College is no more Kentucky University as it now exists than is the little streamlet, which gushes forth amid mountain fastnesses and impenetrable forests, the great Mississippi, to whose vast and swelling volume of waters it contributes. The Ohio is no more the Allegheny than the Monongahela, by whose confluent currents it is formed. The Kentucky University which existed at Harrodsburg had its origin in Bacon College, but the Kentucky University which is now the subject of discussion is the result of the union of the former with other distinct and important interests which were not merged in it so as to destroy their identity, but confederated with it upon terms which fully recognized their separate individuality. It is a great literary confederation, in which funds derived from widely different sources are brought together in a consolidation which fully recognizes the distinctive character and origin of its members and the special trusts and interests which appertain to each. The original Kentucky University, which formed one of the parties in this consolidation, I am free to concede, had been built up through the exertions of Mr. Bowman, in a large measure by subscription, made by members of Christian Churches; and their preponderating influence in its control so far as it was possible under their congregational system of church polity, had been provided for in the charter of 1858. No greater or more controlling sectarian influence could have been secured without overthrowing their whole system of church government. I do not say this to their disparagement, for such is the system to which the church of which I am an humble member has always adhered. And when our Baptist people conceived the purpose of establishing an educational institution at Georgetown we saw at once that it would be not only unwise, but absolutely impracticable, to place it under the control of the Baptist churches. A church organized under the congregational system has no jurisdiction outside of itself and is subject to the control of no earthly power from without. And while the Baptists have "Associations," and the Christians "State Meetings," these bodies come together mainly to concentrate the influence and energies of these respective brotherhoods in benevolent and missionary objects but can exercise no ecclesiastical power whatever. Hence we found it necessary in founding our institution to have a body created which should control it, and the "Baptist Education Society" was incorporated. The founders of Kentucky University saw the same necessity. Indeed, so fully were the Christian churches impressed with the inherent impossibility of their entering as such upon the direction of an educational enterprise, that when Mr. Bowman, in the fervor of his zeal in behalf of his great work, asked to be permitted to present the claims of the enterprise before the State meeting of his brotherhood, he was promptly refused. And hence when the institution came to be organized, they caused to be incorporated "for its ownership and control," and as custodians of this great trust, a body of men who should be permanent and should name their successors; and these they designated as the "Curators

of Kentucky University," and provided that two-thirds of this body should always be members of the Christian Church.

Thus stood the original Kentucky University when it came here in 1865, and sought and secured the consolidation to which I have referred. And then were united three independent and coequal interests, to-wit: 1st, Kentucky University, as then existing with an endowment of about \$200,000; 2d, the Agricultural College, with a fund of about \$165,000, and 3d, Transylvania University, with an endowment and property estimated at \$165,000. To these were added, as a condition, without which the consolidation could not take effect, the subscription of \$100,000 for the purchase of a farm and erection of the necessary buildings and improvements to carry on the operations of an Agricultural and Mechanical College, and this subscription, which was promptly made, principally by citizens of Fayette county, was supplemented by additional subscriptions to the endowment fund of nearly \$100,000 more, and all made with reference to the consolidation and in aid of the institution to be formed by this union.

Of each of these interests thus blended, and of their relations to the institution formed by their union, I propose now to speak. The Government of the United States, having in view the educational interests of the whole people, had donated to each of the States a fund in land scrip for the endowment of Agricultural and Mechanical Colleges. It was incumbent upon our Legislature to provide for the appropriation of our pro rata of this fund. In my place as Senator from the district of which Bourbon was a part. I presented and urged a proposition from that county, offering a bonus amounting to about \$95,000, for the location of the institution in Paris, and insisted that the State should

there establish a college which should be subject to its control and free from every sectarian influence. I have before me the Senate journal setting forth the proposition in detail. I was met by the proposal of Mr. Bowman, in which he was supported by the members of his church, and by which a larger bonus was offered and accompanied with the most distinct and emphatic protestations, and in which those who supported him all united, that the institution thus to be taken under their auspices should be equally free from sectarian and denominational influence. His proposition was accepted, and the act establishing the Agricultural and Mechanical College of Kentucky as one of the colleges of Kentucky University was passed. It is provided in section 4th that in the appointment of professors and instructors, and in its general management, "no partiality or preference shall be shown to one sect or religious denomination over another, nor shall anything sectarian be taught therein." By section 8th it was provided that the act should not take effect until Transylvania University should be consolidated with Kentucky University, nor "until the Curators of the latter should assent to the provisions of the act, and *"accept it as part of its charter."*

At the same session an act was passed "to consolidate Kentucky University and Transylvania University," by which the Curators of the latter institution were upon the formal consent of both parties being given, invested with the rights and powers of the Trustees of Transylvania, and to *"be bound by the trusts and conditions to which the said Trustees were subject,"* and that "so far as related to the funds and property of Transylvania University, the charter of Kentucky University, *as herein changed,* shall be the charter of the consolidated University." The act also provided that in case the

consolidation should cease, the Trustees of Transylvania might resume their corporate powers and their control of their institution.

There are these notable features in these acts to which I desire specially to call the attention of the House:

First--That a clear and unmistakable distinction is drawn between Kentucky University as it was before entering in this alliance, and the "consolidated University," which was the result of the alliance, and

Second--That it is recognized that the charter of the former "*became changed*," in becoming the charter of the latter.

Now, suppose for the sake of the argument, we concede that Kentucky University before the consolidation was as intensely and narrowly sectarian as the most bigoted could desire, let us enquire how far and in what manner its constitution was "*herein changed*." Evidently if we assume that such was its original character the change must have been radical and fundamental. This change was affected, first, by accepting as part of its charter the provisions of the act incorporating the Agricultural College which absolutely excluded every sectarian influence in its control, and secondly by assuming in respect to the funds and property of Transylvania all the trusts and conditions to which its Trustees were subject.

What were those trusts and conditions which attached to the funds and prosperity of Transylvania which were then formally assumed and thus made to enter into and become part of the charter of the consolidated University? Time would not permit that I should trace them in detail. They extend through nearly a century. They date back to a period coeval with the dawn of civilization this side of the mountains. They have their beginning in the act of

1780, which I have now before me by which the old Commonwealth of Virginia incorporated the Transylvania Seminary in what was then the county of Kentucky, and endowed it with certain lands, the purpose as therein broadly announced being "the education of youth and the encouragement and promotion of every design which may tend to the improvement of the mind and the diffusion of useful knowledge." It was the maternal gift of Virginia to her first-born daughter, the light of science and literature which she kindled amid the gloom of the wilderness. It existed before the brotherhood of Christians, in whose behalf this claim is asserted, were known, and before their illustrious founder was born. Built up and fostered with resources derived from the common treasury, it was an institution for the whole people. Upon foundations thus broad and unsectarian the noble superstructure was erected. By successive acts and appropriations of the Legislatures of Virginia and Kentucky, and by donations from the city of Lexington and from individuals, including the bequest of twenty thousand dollars from the late Col. Morrison, the institution expanded into Transylvania University. Historic and venerable, her name is honored wherever science has a votary. Successive generations of her sons, in the triumphs and glories of the field and the forum, have illustrated the fame of their alma mater. Passing successively under the control of men of different religious sects, the institution never subordinated itself to either, nor subverted or violated those great trusts which marked its origin and under which the narrowness of sectarianism in its administration was impossible. Such was the institution which the consolidated University adopted, and with its pur-

poses, its spirit, and its trusts unchanged and unimpaired, made part of itself.

I come now lastly to consider the remaining element which entered into and completed the consolidated structure. I allude to the subscriptions made subsequently to these consolidations, and the larger portion of which were necessary to meet the condition upon which, by its terms, the compact of union was made to depend. And I confidently invite the attention of every lawyer who hears me to the character and legal effect of the trust thus created. A trust implies a donor who creates it, a trustee who is to administer it and a *cestui que* trust or beneficiary for whose use it is given. The donor had originally the absolute dominion over and control of his means. He might carve out of it whatever interests in others he might choose to create, whether legal or equitable, retaining the residuum of interest in himself. He might, by a declaration of trust, make another person the beneficiary or give irrevocably to a class of persons who might bring themselves within its reach, the benefits of the charity provided and reserve to himself the administration of the fund in aid of the purpose to which he might have dedicated it. Or he might, by an act equally irrevocable and complete, give over its administration to another person or to a body of men who, while they lived, should be the custodians of the trust; or looking to the limited duration of human life, and desiring that his works should live after him, he might create a power of appointment by which the body of trustees should be perpetuated in all time to come. He would thus, by his voluntary act, have parted with all interest, legal and equitable, and have thus parceled out all the elements of which his original ownership was composed. In giving away these fractional parts of a complete

interest, he would have divested himself of it all, as entirely as if he had made one single and absolute gift.

Such was the nature of the trust created by these donors. Its character and its purpose were unmistakeable. The Curators of Kentucky University were a body of men whose names were known and announced and whose character and fitness for the work to be entrusted to them might be scrutinized and canvassed. The mode in which the body should be perpetuated was established in the charter and known to the world. It was this body of men and such others as they should from time to time select, to fill their places, that these donors selected as the trustees who should administer the charity to which they were contributing. It might have been wiser for them to have selected some other body of men and some other mode of perpetuating the body, but it is sufficient to know that they did not do it. It might have been better for them to have referred the selection of trustees to periodical elections by a convention of delegates from the Christian Churches, but in the exercise of their unquestionable right in giving away their own money to direct the channel in which it should go they did not so determine. And we have no right to determine it for them nor to change the direction which they themselves chose to give to the charity they themselves bestowed.

The charter of the University, as modified by the compacts of consolidation, entered into and formed part of the donations, not only as to the administrators but also as to the purposes of the gifts. And where in it do we find a shadow of warrant or foundation for the assumption that the Christian Churches are the *cestui que* trusts—that "Kentucky University is the property of the Christian Churches?" Surely it will not be sought for in the

act creating the Agricultural College, or in the acceptance of the trusts by which the Trustees of Transylvania were bound, to which I have adverted, and all of which were then part of the constitution of the institution to which these donations were given. Nor yet can it be gathered from the 3d section of the charter of the original Kentucky University, in which its purpose is declared to be "to promote the cause of education in all its branches, and extend the sphere of science and Christian morality." And it cannot be found, although it has been sought, in the section which provides that two-thirds of the Curators shall be, as two-thirds of them always have been, members of the Christian Church. A section, which is only descriptive of the persons who are to administer the trust, can not, without manifest violation of the clear import of language, be tortured so as to be made to define the objects of the trust. A charity might be created of which the administrators might all be required to be Christians, and the objects and beneficiaries might all be heathen. The foundation of this alleged ownership is nowhere to be found in the charter. The Trustees are the Curators, and the *cestui que* trusts are the youth of the land, who may avail themselves of the advantages of the institution, and bring themselves within reach of its noble benefactions. It is precisely as if each donor had said in some formal instrument:

"I give — dollars to A, B, C, &c., now the Board of Curators of Kentucky University, and to such other persons as they may from time to time select to fill vacancies in said board, to have and hold the same in trust, that they shall forever use the proceeds thereof in promoting the cause of education in all its branches, and extending the sphere of science and Christian morality

through the instrumentality of the institution formed by the consolidation of Kentucky University as it formally existed with Transylvania University and the Agricultural College, and subject to all the trusts accepted in said consolidation." Such was the trust created by these donations, and we have no right to disturb it. A court of equity may interpose to uphold and enforce the trust, but no legislative body can rightly interfere to subvert or destroy it.

Let us suppose that Mr. Bowman had come in 1865 to the Kentucky Legislature, and to the Trustees of Transylvania, and to the individuals from whom he asked donations, and said: "We have an institution belonging to the Christian Churches, with an endowment of \$200,000, and we purpose that you shall unite with it your funds amounting to over half a million of dollars; that your five hundred thousand shall be swallowed up by our two hundred thousand, and that it shall become the property of the Christian Churches, and be administered in their interest, under the direction of a convention of delegates they may select." Does any man doubt that one might have counted on his fingers all the votes such a proposition would have received? A proposition thus arrogant and monstrous would have been repelled with the indignation it would have deserved. And yet this which no man would have dared then to ask, is now imperiously demanded. On the contrary Mr. Bowman and his friends came saying to us, if not in words, at least by the fair import of his proposition: "We have an institution built up mainly by our Christian brotherhood, and in the management of which they have secured by charter for members of our churches a preponderating influence. We have not succeeded in procuring such an endowment as we had hoped, and we now propose to unite our resource^s

with yours and build up a great University for the whole people from whom your funds have been derived, and which shall be controlled upon broad and liberal principles and carefully preserve and carry out the great and unsectarian trusts to which they are subject." Such was the spirit of the proposition which eventuated in the union that was formed. The Regent and the Curators have observed it faithfully to the letter. And their fidelity in the execution of this great trust is "the sum and substance of their offending."

I shall pass by untouched the appeals to passion and prejudice which have been thrown into this debate. They do not befit the gravity of the great questions under discussion. Mr. Bowman needs no defense at my hands. His character, which, amid difficulties and trials such as have fallen to the lot of but few men, he has established and maintained is an impregnable defense against every assault. The great work of his life is a vindication far more eloquent than any words I can speak. The name of Prof. Shackelford has been thrust conspicuously into this controversy, and it seems to be thought a sufficient ground for revolutionizing a great institution in which he is Professor that he has given utterance to views which have been construed to favor the education of colored candidates for the ministry in the mixed schools already existing in other States rather than the establishment of separate schools. It is sufficient to say that the suggestions in the letter referred to had no reference to the institution now under discussion, and that Kentucky University with its professorships embracing men of every class of opinions and of every faith, political and religious, does not descend to this narrow espionage over the private sentiments and thoughts of those who

are unitedly engaged in the great, broad and beneficent work to which its energies are devoted. Prof. Shackelford is a Kentuckian and a gentleman, and a man of pure and spotless life, and his opinions whatever they may be, are his own. But, strange to say, while these gentlemen are horrified at the thought that somewhere in Ohio colored young men should be taught theology in the same schools with the whites they are proposing to commit the destinies of this University to the control of a convention of delegates from all the Christian Churches in Kentucky, in which assemblage the most potent members, because representing the largest constituencies, would be the colored representatives of the colored churches of Lexington, Louisville and Covington.

I come now, lastly, to speak of the amendment offered by the gentleman from Covington, (Mr. Scales) by which it is proposed to sever the Agricultural College from the University, by the withdrawal by the State of the endowment given in aid of it by the General Government. What is to be done with it when set adrift does not anywhere appear in the proposition. Whether it shall be permitted to lapse or revert or to be made to seek some other resting place, must be left for some future Legislature to determine. But the significant feature of the proposition is, that while it withdraws the endowment fund, it leaves behind, and to be surrendered to sectarian control and in the interest of a different institution from that for which it was designed, the splendid estate at Ashland and Woodlands, purchased by the subscriptions of citizens of Fayette county, of every sect and party, as an experimental farm for the Agricultural College. No proposition can be plainer than that this property is an appendage of the Agricultural College and inseparable from it. The condi-

tion of its consolidation with Kentucky University as set forth in the act was that a hundred thousand dollars should be raised for this purpose. The appeal made by Mr. Bowman was promptly responded to, and the money was given for the purpose distinctly announced and understood by all of carrying out and meeting this condition. The object to which the fund should be directed thus declared in the act under which the subscription was made, entered into and controlled the donations made to carry it out. The fund was wisely expended for the object for which alone it was given. A noble estate was purchased, embracing four hundred and forty acres of the finest land in America, running up almost into the heart of the city of Lexington. No fairer or fitter spot could have been chosen on the globe. Its soil of inexhaustible fertility; its green meadows and its grand old forests combined to charm, with all the fascinations of rural life, the young student about to be inducted into the intelligent pursuit of the noblest of avocations. Nature and art had vied with each other in its embellishment. It had been the home of the farmer statesman and patriot sage—the immortal Clay—and it was here, amid its shady walks and roseate bowers that he had found his favorite retreat and

sought tranquility and repose from the stormy conflicts of the forum. It was fit and wise that amid the inspiration of these hallowed scenes and associations the youth of the land, should be led forward in imitation of his noble character and in emulation of his immortal fame.

And it is proposed now that this noble estate shall be diverted from the purpose to which the people of Fayette devoted it, and turned over to the proprietary ownership and control of the Christian Church, in aid of a sectarian institution.

Mr. Speaker, I will detain the House no longer. We have nothing to do with the question which has been so persistently thrust upon us. If the applicants here have the rights they assert, this is not the forum for their assertion. The law provides its remedies. Let them appeal to the courts for the vindication of the rights they claim. If they have not these rights, it is not our province to give them. We surely ought not to do it by overturning trusts that are sacred and inviolable, and dismembering and destroying a great educational institution, in which the whole people of Kentucky have a substantial interest, and upon whose past and to whose future they look with a just and manly pride.