

Kentucky

University

ITS

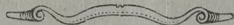
LEGAL STATUS.



LOUISVILLE:
LOWE & STANLEY, 105 FIFTH STREET.
1873..

KENTUCKY UNIVERSITY,

ITS LEGAL STATUS.



In consequence of great and general dissatisfaction as to the management of Kentucky University, nearly two hundred Christian congregations in this State expressed their will during the latter part of the summer and the early part of the autumn past relative to certain changes deemed by them essential to a righteous administration of the University affairs, and forwarded the same to Lexington to be acted on by the Board of Curators at their called meeting in the month of September. But a majority of the board, instead of recognizing any obligation to take action as directed, appointed a committee to draw up an answer to the expressed will of the churches! As a result we have two reports, the one from a majority and the other from a minority of the committee—the former denying and the latter affirming and defending the right of the Kentucky Christian Brotherhood to exercise an imperative voice in the government of Kentucky University.

This claim on the part of the Christian Church in Kentucky is based on its ownership of the institution as a possession which was formerly universally acknowledged. We speak here of the University as distinct from the Agricultural and Mechanical College, to which we lay no claim whatever, and from all connection with which we desire to be released. After all that has been said most clearly demonstrative of our

ownership of the institution, we hardly expected that any one could be found bold enough to deny this right. But as the authors of the report—which we propose here to criticise—are fully aware that the settlement of this great, fundamental question is a settlement final and complete of all other questions touching the control and management of the University, they have felt themselves constrained to controvert what under different circumstances they would never think of denying.

On this vital and all-important point the authors of the document before me are as inconsistent with themselves as they are at variance with the character of the institution and the facts connected with its history. In one place it is asserted that “the ownership and control of the institution is vested in a Board of Curators,” who are represented as “the legally constituted guardians and ‘owners’ of the institution;” while in another it is said that “they regard themselves as trustees of the donors,” holding the University “in trust for those who gave their money to endow and maintain it.” What can be more absurd than to represent a number of men as the “owners” of anything they hold “in trust?” One can neither be an owner in relation to what he holds in trust, nor a trustee in relation to what he owns. Equally absurd is the supposition that one can be a trustee in relation to a donor. A gift is not a trust; nor is he a donor who simply intrusts his property to the guardianship of another. Here, then, are three things—donor, owner and trustee. Let us see how they stand related to each other. A donor alienates from himself what he wishes to give away, and puts it in possession of another who now becomes its owner, and the owner, for the accomplishment of his purpose, finds it convenient, perhaps necessary, to intrust it to the guardianship of a trustee. It will be seen then, at once, that the ownership of Kentucky University can neither be in the donors nor in the curators, who are trustees, but in a third party, to which they stand related as donors and trustees. That this is the Christian Church in Kentucky, both the charter of the University and the facts connected with its history abundantly testify.

"For the ownership and control of said University, at least two-thirds of the Board of Curators shall always be members of the Christian Church in Kentucky." The authors of the report before me contend that this provision of the charter "simply creates an element in the board," and vests the property of the University in the board as "thus constituted," and not "in that congregational community of which the two-thirds are required to be members," adding that the Christian Church in Kentucky, "being unincorporated, neither holds nor can hold legally any property whatever." Now the truth is that legal enactments touching the ownership of property do not and can not vest this attribute in anybody. Ownership must first exist as inherent in some rightful possessor and it is the province of law simply to recognize and protect this previously existing right. Law is not the source of ownership in anything, but only of that protection by which its uninterrupted enjoyment is secured. Unincorporated bodies, as local congregations for example, may and do own property, but that they may be protected by law in the enjoyment of their ownership they appoint trustees as agents to represent them before the law, and in these the legal management, but not the ownership, of their property is vested. And this is the import of the bunglingly written provision of the charter above quoted. It means this or it means nothing. It would be, as we have seen, a solecism absurd in the highest degree to speak of trustees as owning anything they hold in trust for others. The charter of the University "creates an element in the Board" of Curators by providing that two-thirds "shall always be members of the Christian Church in Kentucky," in order that the legal management of the institution should always be in harmony with the rights and wishes of its real owner. For this reason, and this only, was the board "thus constituted."