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Constitutional Law -- Civil Courts' Jurisdictions Over Church Doctrines

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NOTES AND COMMENTS

Constitutional Law—Civil Courts' Jurisdictions Over Church Doctrines

Seldom has a decision touched off such a furor of lay discussion in North Carolina as did that of *Reid v. Johnston*.[1] Briefly, the facts of that decision are these: The North Rocky Mount Baptist Church was a member of the North Carolina and Southern Baptist Conventions. The majority of its membership, led by the pastor, voted to disaffiliate from both those associations and to enroll the church into membership in the General Association of Regular Baptist Churches. The legal issue was whether the majority could control the property of the church as against the minority who wished to remain affiliated with the North Carolina and Southern Baptist Conventions. The court held that the minority should control the property. The reasoning was that only the church could control its property and the church was those members—even a minority—who adhere to the customs, practices and doctrines accepted by both groups before dissension. Since the tenets of the Southern Baptist and North Carolina Baptist Conventions had been accepted by both groups before dissension, the minority who remained loyal to those conventions controlled the property.

This raises the fundamental issue—when will civil courts take jurisdiction over, and adjudicate ecclesiastical doctrines?

It is well settled, that under our government, founded as it is, on separation of church and state, civil courts will not entertain controversies relating to strictly ecclesiastical doctrines or laws.[2] Generally, civil courts will investigate ecclesiastical matters if property rights are involved. A Texas case states a common formulation of the principle:[3] "In disputes between factions of religious societies the only questions which the civil courts are authorized to determine are those affecting property rights. In such controversies, ecclesiastical or doctrinal questions will only be inquired in so far as may be necessary to determine the property rights of the parties."

In *Watson v. Jones*,[4] generally accepted as the leading case on the subject, the court classifies the types of situations which come before the civil courts concerning the rights to property held by an ecclesiastical

[1] 241 N. C. 201, 85 S. E. 2d 114 (1954), *See Case Survey* 34 N. C. L. REV. 26 (1955).
[2] 76 C. J. S., *Religious Societies*, Sec. 86 (1952).
[3] Mendolsohn v. Gordon, 156 S. W. 1149 Tex. Civ. App. (1913).
[4] 13 Wall. (U. S. 679, 20 L. Ed. 666 (1872).

body in which there has been a schism as follows: (1). Where the property is held by the religious society subject to an express trust, i.e. where the instrument by its terms spells out to what uses the property is to be devoted. (2). Where the property is held by a hierarchial church—a church over which there are superior ecclesiastical tribunals with ultimate power of control over the whole membership. (3). Where the property is held by a church which is strictly independent of other ecclesiastical organizations "and, so far as church government is concerned, owes no fealty or obligation to any higher authority."[5]

Property Subject to an Express Trust

The first of these situations may be illustrated by assuming that a decedent had devised land "to the Downtown Baptist Church as long as that church follows the doctrine of total immersion," and that a majority of that church had later rejected that doctrine. To which group would the control of the devised property remain? As stated by the Tennessee court in *Nance v. Busby*:[6] "In the case of a definite trust for the maintainance of a particular faith or form of worship the court will even go so far as to prevent the diversion of the property by the action of the majority of the beneficiaries, and if there be a minority who adhere to the original principles, such minority will be held to comprise the exclusive beneficiaries, and entitled to the control and enjoyment of the property without interference by the unfaithful majority." In other words, courts will enforce the terms of a trust and thereby carry out the settlor's expressed intent wherever possible. This principle, with reference to property held by a congregational or independent society subject to an express trust, is generally conceded. However, where the terms of the trust are not clearly spelled out, a question of construction remains as to the exact uses to which the property is restricted. It is in determining this question that the civil courts do become involved in the investigation and comparison of religious doctrines.

Property of a Hierarchical Church

The United States Supreme Court has recently stated the applicable principle in this area in *Kedroff v. St. Nicholas Cathedral*.[7] At issue in that case was the beneficial use of the St. Nicholas Cathedral, the seat of the Russian Orthodox Church in North America. In 1924 the plaintiffs, who represented most of the Russian Orthodox Churches in the United States, seceded from the administrative control of the Moscow Patriarch and formed the Independent American Church. That action

[5] *Id.* at 718, 20 L. Ed. 666 at 674.
[6] 91 Tenn. 303, 18 S. W. 874 (1892).
[7] 344 U. S. 94 (1952).

was taken because of attempts of the Soviet Government to control the patriarchate. In asserting the right to the property, the plaintiffs raised no question as to the legitimacy of the Patriarch, or as to his appointments, or as to the orthodoxy of the Mother church, but relied on a New York statute which stated that the beneficial owner of all Russian Orthodox Church property in the state was the Independent American Church.[8] The New York Court of Appeals held for the plaintiffs and found that the statute was within the province of the legislature in that it was a legitimate supervision of religious corporations "and was a recognition, reasonably founded, that the Church in Moscow was no longer capable of functioning as a true religious body, but had become a tool of the Soviet Government primarily designed to implement its foreign policy."[9]

The Supreme Court reversed and held the statute to be invalid. The decision was put squarely in terms of religious liberty—the court said that such statutory transfer of control of church property "violates the Fourteenth Amendment. It prohibits in this country the free exercise of religion."[10] The court relied heavily on the *Watson* case, which itself upheld the right of the general Presbyterian judicatory to property with which a proslavery congregation had seceded. The Supreme Court in the *Watson* case said, "it is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance."[11]

One writer expressed the result of the decision in the *Kedroff* case in this manner, "The Court thus raised to the dignity of a constitutional right a hitherto debated principle of American Church law—the principle that the property of a hierarchical church is to be disposed of in accordance with the decision of its rulers, however sound the reasons and however great the number of church members defying this authority."[12]

Property Not Subject to an Express Trust

If property were donated to the "Downtown Baptist Church" without any specific trust being impressed thereon and subsequently a majority of members of that church voted for an act or course of conduct different from that which had existed previously, would the majority control the church property?

[8] N. Y. RELIGIOUS CORP. LAW §§ 105-08 (1945).
[9] 302 N. Y. 1, 33, 96 N. E. 2d 56, 74 (1951), See note 64 HARV. L. REV. 1360 (1951).
[10] 344 U. S. at 107.
[11] 13 Wall. (U. S.) 679, 729, 20 L. Ed. 666, 676 (1872).
[12] 67 HARV. L. REV. 110 (1953).

The general rule is that the majority faction of an independent or congregational church, however regular in its actions or procedures in other respects, may not, as against a faithful minority, divert the property of the church to another denomination or to support doctrines radically and fundamentally opposed to the characteristic doctrines of the church even though the property is subject to no express or specific trust.[13] This differs from the rule with regard to expressly held trust property in that in this area *some* changes are possible, while with respect to property held by an express trust, the specific terms of the trust cannot, by majority vote, be set aside or departed from.

Two questions arise here: Whether the change was a fundamental or radical departure from previous doctrine? Should a civil court decide whether the issue involved in such a fundamental change?

In most matters of church doctrine, the duly constituted tribunal will decide such questions. Civil courts will not ordinarily attempt to interfere with the decision of that tribunal, but will leave matters of doctrinal differences to be ironed out within the church.[14] It is generally conceded that the "tribunal" referred to in congregational or independent churches is the majority of the membership meeting in due course. A recent summary of the law in this area is found in the following Alabama decision:[15]

> "But to justify court interference it must be shown that the purpose of the majority [of a Baptist church] is to make a gratuitous transfer of the property to another denomination, or to disavow and depart from the characteristic, distinctive doctrines and practices of the society. Such purpose must appear either from an open avowal on the part of the majority, or from its acts and conduct manifesting such purpose beyond all reasonable doubt. It is not enough that a schism or division has developed among the members on account of differences of opinion in the interpretation and application of the declared doctrines and practices of the society; such matters must be settled by the society itself in its own way."

One specific guidepost stands out in this area, and that is that the *withdrawal from a voluntary ecclesiastical connection* is not considered a change in fundamental doctrines or practices. As one authority ex-

[13] Bogard v. Boone, 200 Ky. 572, 255 S. W. 112 (1923); Grupe v. Radsill, 101 N. J. Eq. 145, 136 Atl. 911 (1927). *Contra,* Christian Church v. Crystal, 78 Cal. App. 1, 247 Pac. 609 (1926), *But c.f.* Dyer v. Superior Court, 94 Cal. App. 260, 271 Pac. 113 (1928).

[14] Mack v. Kime, 129 Ga. 1, 58 S. E. 184 (1907).

[15] Williams v. Jones, 258 Ala. 59, 61 So. 2d 101 (1952). For cases construing what are fundamental changes, see Annot. 8 A. L. R. 113 (1920), and Annot. 70 A. L. R. 83 (1931).

presses it, "it is to be observed that the rule stated . . . that the majority faction of an independent or congregational society may not divert the property from the denomination to which the society belongs or from the fundamental and distinctive doctrines or tenets to which it originally subscribed, does not prevent the majority faction of such a society, over the objection of the minority faction, from severing a voluntary ecclesiastical connection of the society with another body."[16]

In the case of *Wehmer v. Fokenga*,[17] a rather strong decision, the Nebraska court was faced with deciding whether the majority faction of a Lutheran church, after having voted to leave the synod to which they had belonged and to join another synod, could control the church property. The trial court found as fact that the two synods differed in both doctrine and tenets.[18] The court held that the finding of the trial court could not be sustained because the civil courts are not so equipped as to make findings on ecclesiastical dogma. The court preferred to leave the question of fundamental tenets and doctrines to the decision of the rulers of the church—the majority of members in the local church.

The North Carolina Position[19]

A proper application of the rule applied to congregational churches is found in the case of *Wheeles v. Barrett*.[20] Property had been conveyed to the "City Mission of Rocky Mount" which was a non-denominational religious and social organization promoting religious training, education, Christian unity, and the spreading of the Gospel. Subsequently, a majority of members voted to form, from the Mission, "The Central Baptist Church." After this was done the issue of control of the property arose and the court held that the diversion of the property by the majority was without authority in law. This seems clearly within

[16] Annot. 8 A. L. R. 105, 123 (1920).

[17] 57 Neb. 510, 78 N. W. 28 (1899).

[18] ". . . for instance, the congregations in the Iowa synod practice what is called 'close communion'—that is, these congregations do not permit members of other Christian churches to commune with them, while the . . . General synod admit all Christians to their communion table. The congregations of the Iowa synod believe in the doctrine of Chiliasm, or that Christ will visibly reign on earth for a thousand years, . . . the General synod reject this doctrine. In the matters of church discipline or government the congregations of the Iowa synod will not allow a minister belonging to another synod to officiate, . . . the General synod permit ministers of any synod to act as their pastors. The congregations of the Iowa synod do not permit their members to belong to secret societies, . . . the General synod do not control their members as to that respect." 57 Neb. 510, 512, 78 N. W. 28 (1899).

[19] Due to considerations of space the scope of the North Carolina position will be limited to the problem presented in the principal case, i.e. non-hierarchical churches where the property is not subject to an express trust. For cases where property is held subject to an express trust, see N. C. GEN. STAT. § 61-3 and annotations thereto.

[20] 229 N. C. 282, 49 S. E. 2d 629 (1948).

the general rule because there was a diversion of the property of the Mission to another and entirely different organization, whose doctrines were directly opposite to those of the original Mission.

Similarly, the decision in *Dix v. Pruitt*[21] follows the majority rule of allowing the church property to be controlled by a minority if the majority diverts the property of the church for use in another denomination or to support of doctrines fundamentally or radically different to the characteristic doctrines of the society as it existed before the diversion. Basically, the facts in that case were: A minister in Danville, Va. had been expelled from the Primitive Baptist Church of that city. He had been given employment as a minister in Dan River after the majority of members, with knowledge of his expulsion, had so voted. The minority introduced evidence of the customs of Primitive Baptist churches among which was a tenet that once a member had been expelled from a church, he could not be accepted in another Primitive Baptist church without having first been taken back into fellowship by the expelling church. Our court held that the majority had violated a fundamental doctrine of the church by employing an expelled minister and awarded the control of property to the minority.

While the general rule was correctly stated in the *Dix* case there appears to be a conflict in its application. The Alabama court when faced with an almost identical fact situation, had this to say on the problem.[22] "So we will not undertake to rationalize the claimed fundamental differences which gave rise to the dissatisfaction in the Mount Olive congregation. It is sufficient to say that the court, if it would, could not determine with the slightest degree of accuracy that the method of exclusion of Copeland from membership was that radical departure of doctrine to justify court action."

In *Organ Meeting House v. Seaford*[23] the majority of members of a Lutheran church declared that the local church was leaving the synod to which the church formerly belonged and taking membership in a different synod, previously unknown to the Lutheran church. The plaintiffs were trustees under the original conveyance and opposed the movement to the new synod. The court held that it would not decide a religious controversy between the members of the church. The court said, "with respect to the allegation made by the plaintiffs (minority), that the defendants, or the church they represent, have strayed from the true faith, or that errors have crept into the church government, the answer is, that on that question, it is not for them nor this Court to

[21] 194 N. C. 64, 138 S. E. 412 (1927).
[22] Mt. Olive Primitive Baptist Church v. Patrick, 252 Ala. 672, 42 So. 2d 617 (1949).
[23] 16 N. C. 453 (1830).

decide. It might be more than difficult to qualify any earthly tribunal to decide it."[24]

In *North Carolina Christian Conference v. Allen*,[25] the court held that a voluntary association with which an independent church is affiliated has no control over that local church. In that case it was held that a "conference" had no right or interest in the church property as it was not a proper party to a suit involving the control of the church property. The dispute arose out of the refusal of the majority of members to accept a pastor sent by the "conference." The court by way of explanation of the differences between hierarchical and independent churches said, "The churches of the congregational system often combine into associations, conferences and general conventions. But unlike such organizations under the connectional system, these bodies under the congregational system are purely voluntary associations for the purpose of joining their efforts of missions and similar work, but having no supervision, control, or governmental authority of any kind whatsoever over the individual congregations, which are absolutely independent of each other."[26] This language by Chief Justice Clark seems strong enough to allow a voluntary severence from such association or convention by a local church of the congregational form without interference of a civil court, i.e. that such severence is not a fundamental or radical change of doctrine.

A converse of severence from a voluntary association is found in *Windley v. McCliney*.[27] There, property was deeded to "Trustees of the Free Will Baptist Church of Pantego" and the congregation subsequently united with other churches and changed its name to the "United American Free Will Baptist Church." (A minority of the local church then objected to a revision of discipline for which the delegate of the local church had voted.) The minority, going back to the "Free Will Baptist Church of Pantego" claimed the church property because of the original designation in the deed to that church. The trial court found as fact that the discipline involved did not essentially differ in doctrine from what had gone on before. The Supreme Court affirmed a judgment which excluded neither faction from the use of the church building, but recognized the ownership and control as being in the whole membership "and that their will must be determined by the majority."[28] The court then, in effect, held that the local church did not lose its independence or identity as the "Free Will Baptist Church of Pantego" by being a member of the association.

[24] *Id.* at 455.
[25] 156 N. C. 524, 72 S. E. 617 (1911).
[26] *Id.* at 526, 72 S. E. at 618.
[27] 161 N. C. 318, 77 S. E. 226 (1913).
[28] *Id.* at 321, 77 S. E. at 228.

Thus if a majority of the members votes to associate with a convention against the wishes of the minority, there being no other change in discipline, and the court, as here, upholds that right, then logically it would appear that a majority could sever its relationship with the convention and the court uphold that action.

The *Reid*[29] case is the latest North Carolina decision on the problem. The court, in attempting to distinguish the decision in the *Organ Meeting House*[30] case, held that the majority did more than merely disaffiliate from the North Carolina and Southern Baptist Conventions. The court listed six items, in substance as follows: (1). They ceased all connection with the above mentioned Baptist conventions and withdrew financial support of agencies sponsored by those conventions, except for a Baptist orphanage. (2). After they disaffiliated they continued as an Independent Baptist Church. (3). They ceased to use Sunday School literature approved by the Southern Baptist Convention and began using literature supplied by the General Association of Regular Baptist Churches, in which organization they had planned to enroll. (4). The Board of Deacons had approved the exclusive control of the pulpit by the church's minister, Mr. Johnston. (5). They discharged several Sunday School teachers for the reason that they opposed the views of the majority of members. (6). Finally, the minister had done all he could to separate himself as far as possible from the programs of the North Carolina and Southern Baptist Conventions.

It is submitted that all of the above items do not successfully distinguish this case from the *Organ Meeting House* decision, and that all that the majority did was implement their decision to leave the North Carolina and Southern Baptist Conventions. The cessation of literature and financial support to those Conventions flowed naturally and proximately from the decision to disaffiliate. The release of employees who did not believe or teach what the majority thought, was within the prerogative of any employer. Is the court saying that it is permissible for the group to disaffiliate but that they must continue to support in every manner—financially, spiritually and morally, those organizations which they had previously voted to abandon?

The above argument seems to be strengthened by this quotation from the *Organ Meeting House* case. "Whether the grantor would have any claim to it, [church property] in case the church were to become Mohammedan or Pagan, or profess their belief in the heathen mythology, I am not now, nor shall I ever be called upon to give an opinion. *I am also spared from giving any opinion, provided they worship Almighty God according to the dictates of their own conscience. But I am free*

[29] 241 N. C. 201, 85 S. E. 2d 114 (1954).
[30] 16 N. C. 454 (1830).

to give the opinion, that as long as their religious tenets and devotions are confined to the sphere of Christianity, the grantor can have no claim; . . . . If the grantor has no right, on what foundation does the plaintiffs claim rest? It appears, that they [plaintiffs] are seceders from the church, and are not the trustees or representatives of it; they were a minority of the members before their secession. Had they remained in the church, they must have yielded to the government of the majority. Much less can they have any control over it, when they are no part of it. It is a rule applicaable to aggregate corporations or to societies, that the will of the majority must govern. A contrary rule would be as absurd, as to say, that a lesser number contained more units than a greater.

"With respect to the allegation made by the plaintiffs, that the defendants, or the church they represent, have strayed from the true faith . . . on that question, it is not for them, nor this Court to decide. It might be more than difficult to qualify any earthly tribunal to decide it."[31]

On principle it would seem desirable that a religious society in a country of religious equality should be allowed to change its faith without losing its property, where no express trust is present and the church is non-hierarchical. It is submitted that the general rule in this area should be construed in the light of the words and spirit of the *Organ Meeting House* case, and that as long as the majority "worship Almighty God according to dictates of their own conscience" or at least remain "confined to the sphere of Christianity," they should control the property of the church. Civil courts should adopt the view of the Nebraska court in the *Wehmer* case, "whether the religious teachings, faith, and church polity of these synods differed in essential particulars was and is a question for the ecclesiastical tribunals, not the civil courts."[32] To hold otherwise is to have a temporal court adjudicate religious doctrines under the guise of "property rights."

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Constitutional Law—Second Class Mail

Article 1, section 8 of the United States Constitution grants to Congress the power to establish post offices. Since the dissemination of news has always been considered a contribution to the public good, special mailing rates were accorded to newspapers in 1792.[1] In 1879 Congress divided the mails into four classes,[2] with matters coming within

[31] *Id.* at 455.
[32] 57 Neb. 510, 516, 78 N. W. 28, 30 (1899).

[1] Act of February 20, 1792, I STAT. 232.
[2] Sec. 7 of the Classification Act of 1879, as amended, 39 U. S. C. § 221 (1926) provides: