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Digest of Church Law Decisions of 1940

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DIGEST OF CHURCH LAW DECISIONS OF 1940 [1]

This digest is the second annual digest of decisions involving civil church law to be published by the Bureau of Research in Educational and Civil Church Law. It includes every pertinent case appearing in the seventy reporters [2] of the National Reporter System which were published in whole or in part during the calendar year of 1940. Only cases containing problems peculiar to churches are included, and those cases which involve churches solely as litigants are not necessarily included. The author's urge to critically evaluate the included cases has been suppressed as not being within the purpose of the digest.[3]

RELIGIOUS FREEDOM

A. Mandatory Flag Salute as Impairing Religious Liberty.

The right to worship God according to his own conscience has been considered by many courts during the last year. This right, considered so sacred by Americans, probably received its most delimiting interpretation in the case of *Minersville School District v. Gobitis*,[4] which held that children attending a public school could be compelled to salute the flag, as a part of the school's patriotic exercises, or be denied admittance to the school when they failed to do so on the grounds that such a salute constituted the worship of a graven image prohibited by the sincere religious belief of the children. This case settled the controversy as to the constitutionality of such requirements imposed by school boards,

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1 Included in this digest are all the church law cases found in the following Reporters (all inclusive): Atlantic 2d Vols. 10-16; Federal 2d 108-114; Federal Supplement 30-34; New York Supplement 2d 16-22; Northeastern 2d 25-29; Northwestern 289-294; Pacific 2d 96-106; Southeastern 2d 5-10; Southern 193-197; Southwestern 2d 134-143; and Supreme Court Reporter 60.

2 *Ibid.*

3 For a criticism of the Flag Salute decision of Minersville School District v. Gobitis, see the author's article, Kearney, Supreme Court Abdicates as Nation's School Board, 38 Cath. Educational Rev. 457 (1940).

4 310 U. S. 586, 60 S. Ct. 1010 (1940).

and the opinion itself seems to indicate that the Supreme Court will no longer serve as the arbitrator of the legality of acts of local school boards, since among other things Mr. Justice Frankfurter said: "But the court-room is not the arena for debating issues of educational policy." [5]

B. Ordinances and Statutes Restricting Solicitation of Funds.

Several courts have had occasion to pass upon the legality of municipal ordinances or state statutes regulating the solicitation of funds for religious or charitable purposes. The Supreme Court considered the problem in two separate decisions,[6] in each case holding the regulations invalid as violative of the constitutional guaranties of freedom of speech, of the press, and of religious worship. In one of the two cases, that of *Cantwell v. State of Connecticut,* the Court not only invalidated the statute requiring approval of the secretary of the Public Welfare Council before such solicitation of funds and dissemination of religious beliefs, but it also said that the regulation was improper even though the activity of the defendant solicitor was likely to result in a breach of the peace.

A Federal District court [7] sitting in New Hampshire felt compelled to hold invalid an ordinance of the City of Manchester which prohibited the sale of pamphlets or magazines on the city streets without first obtaining a badge from the superintendent of schools, on the grounds the ordinance in question closely paralleled one held unconstitutional by the

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[5] See article referred to *supra* note 3. See also the somewhat inconsistent statement of Mr. Justice Black in Chambers v. Florida, 309 U. S. 227, 241, 60 S. Ct. 472, 479 (1940), wherein he said "Under our constitutional system courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement."

[6] Schneider v. New Jersey, and three other cases, 308 U. S. 147, 60 S. Ct. 146 (1939), Cantwell v. Connecticut, 310 U. S. 296, 60 S. Ct. 900 (1940).

[7] Leiby v. City of Manchester, 33 F. Supp. 842 (1940).

United States Supreme Court [8] as violative of the constitutional guaranty of freedom of speech and of the press. The court in New Hampshire, however, specifically held that such ordinance was not violative of the *religious* freedom claimed by the complainants who were members of the sect called Jehovah's Witnesses.

In *Ex Parte Williams,*[9] however, the Supreme Court of Missouri held that the City of St. Louis could rightfully prohibit the solicitation of funds for charitable purposes unless the solicitor obtained a permit from the charity solicitations commission. The Supreme Court of Washington in two cases upheld the right of municipalities to regulate religious and charitable solicitations, but it invalidated the particular ordinance involved on the ground that it was unequal in its operation since it exempted from its provisions the Seattle Community Fund.[10]

C. Statute Requiring License to Parade.

Closely aligned with the validity of regulations imposed upon the solicitation of funds was the question before the Supreme Court of New Hampshire when it decided [11] that an "Information March" by a number of members of the sect called Jehovah's Witnesses was a "parade" within the statute requiring a license for such demonstrations, and that such statutory regulation was a proper and valid restriction placed upon the use of the highways.

In an analogous case involving a breach of the peace upon a public street a New York court refused to dismiss disorderly conduct charges against a political candidate who in a public address clearly imputed disloyalty and lack of patriotism to the Jews and made an odious and humiliating com-

8 Lovell v. City of Griffin, 303 U. S. 444, 58 S. Ct. 666, 82 L. Ed. 949 (1938); The Cantwell Case, *supra* note 6, is also an authority for this.

9 139 S. W. 2d 485 (Mo., 1940).

10 City of Seattle v. Rogers, 106 P. 2d 598 (Wash., 1940); Same v. Bartlett, 106 P. 2d 601 (Wash., 1940).

11 State v. Cox, 16 A. 2d 508 (N. H., 1940).

parison as against the Jews solely on the basis of their religion, which statements resulted in breaches of the peace and disturbances of public order.[12]

D. Practice of Religion Constituting Nuisance.

While affirming the right to the free exercise of religious worship the Supreme Court of South Carolina upheld a resolution of a city council declaring a church attended by negroes to be a public nuisance. Among other things the evidence showed that the communicants of the particular "House of Prayer" during the course of their religious meetings gave forth weird and unearthly outcries; that there was loud shouting, clapping of hands in unison, and stamping of feet; that the incessant use of drums, timbrels, trombones, horns, scrubbing boards and wash tubs added to the general clamor; and that the disturbance went on far into the night much to the distress of the inhabitants of the several surrounding city blocks.[13]

However, members of Jehovah's Witnesses were held not to have committed a nuisance in a legal sense in going to homes in a community in order to talk to householders who would admit the members and listen, especially where it was shown that the calls were not repeated.[14]

E. Right to Hold Spiritualistic Seance.

In the Nebraska case of *Dill v. Hamilton,*[15] "an ordained spiritualistic medium and minister of the Gospel," sought a declaratory judgment as to the interpretation of a statute punishing "any person or persons who shall hereafter take part in, practice, assist, or become a subject in giving a public, open exhibition or seance or show of hypnotism, mesmer-

12 People on Complaint of Neiman v. McWilliams, 22 N. Y. S. 2d 571 (1940).
13 Morison v. Rawlinson, 7 S. E. 2d 635 (S. C., 1940).
14 People v. Northum, 106 P. 2d 433 (Calif. App., 1940).
15 291 N. W. 62 (Neb., 1940). One judge dissented on the ground this action for a declaratory judgment was in fact an appeal from a criminal conviction of Dill.

ism, animal magnestism or so-called psychical forces for gain." Such statute was held not to prohibit private seances, or any seance which was not "public and open, and for gain," and it was further decided that the fact that the medium received fifteen dollars for each seance did not make the seance "for gain" within the meaning of the statutory prohibition.

Legislative Protection of Religious Practices

A. Kosher Meats.[16]

Three cases involving the sale of kosher meats came before the courts of New York during the past year. Conviction for sale of meat falsely represented to be Kosher was affirmed in the case of *People v. Leder.*[17]

In another prosecution for improper sale of alleged kosher meat the court held that where a group of Rabbis had adopted a plumba as a proper symbol to be attached to Kosher meat, officers would not be enjoined from enforcing the statute regulating the sale of such meat on their assumption that fowl not possessing the plumba was a sufficient deviation from the accepted practice to warrant the instigation of a criminal prosecution.[18]

An interesting case concerning the application of the New York law relative to the sale of kosher meat arose over the question whether a person's false statement that non-kosher meat was sold in plaintiff's kosher market constituted slander. The New York court held that it was and affirmed an award of fifteen hundred dollars damages for such slanderous statement made before several of plaintiff's customers.[19]

B. Sunday Laws.

Several courts have been asked to pass upon the validity of acts performed upon Sunday and other matters relating

16 It is to be noted that People v. Gordon cited in the 1939 digest has been reversed, see 29 N. E. 2d 717 (1940).

17 258 App. Div. 879, 16 N. Y. S. 2d 291 (1939).

18 Greenwald v. Noyes, 172 Misc. 780, 17 N. Y. S. 2d 707 (1939).

19 Cohen v. Eisenberg, 173 Misc. 1089, 19 N. Y. S. 2d 678 (1940).

to the observance of the Sabbath. In speaking of Sunday legislation, Chief Justice Terrell of the Florida Supreme Court commented in part as follows: "Sunday laws were among the early attempts to impregnate the law with a moral flavor. Like other laws actuated by a moral stimuli, they were born of the concept that man is spirit, and that in his period of reflection, he rises above his baser impulses. We are told that Sunday (not necessarily the first day of the week) was created for man that he might have one day in seven to rest from his labors, to reflect on his relation to God, his obligation to his fellow man, and his duty to his country. It ill becomes a court to speak of the policy of any legislation. It is enough to say that Sunday laws have been on the books for more than three thousand years and have been the law of this country since Captain John Smith poured cold water down the sleeves of the cavaliers at Jamestown as a punishment for swearing." The Chief Justice went on and concluded that the ninety-year-old Florida statute designed to prevent unnecessary use of firearms on Sunday had not been repealed by the General Game and Fresh Water Fish Act of 1920, since the later act was predicated on an economic philosophy whereas the former was predicated upon a moral philosophy.[20]

The Court of Appeals of Georgia held that Sunday is *dies non juridicus* and that a service of a copy of a bill of exceptions upon a defendant in error upon Sunday was void, and a writ of error would be dismissed when another such bill was not served within the required time limit.[21]

The Supreme Court of North Carolina decided that the service of an original summons on Sunday was invalid under the statutes of that state.[22]

However, the Supreme Court of Montana, to the contrary has held, that a publication of a summons upon four succes-

20 Harrison v. McLeod, 194 So. 247 (Fla., 1940).
21 Blizzard v. Blizzard, 8 S. E. 2d 679 (1940).
22 Mintz v. Frink, 217 N. C. 101, 6 S. E. 2d 804 (1940).

sive Sundays was a sufficient publication under statute requiring publication once a week for four successive weeks, since such publication was not a judicial act." [23]

In another similar case a New York court avoided an arbitration proceeding because it was held on Sunday in violation of a statute prohibiting "judicial proceedings" on that day.[24]

An ordinance of the City of Detroit prohibiting the transaction of all real estate business on Sunday was held invalid by the Supreme Court of Michigan on the ground that the ordinance conflicted with a state statute which prohibited the transaction of business upon Sunday excepted from its provisions persons who conscientiously believed in the observance of the seventh day of the week as the Sabbath, and the ordinance was void since it applied to all persons without such exception.[25]

Although the illegality of the agreement to pay a real estate broker his fee was not set up by defendant in an action to recover the fee the court nevertheless decided that where the defendant offered the right to sell the property to the plaintiff broker on Sunday the contract of sale was not concluded on that day, and the contract for the brokerage commission did not arise until plaintiff had procured a proper purchaser, and there was no evidence that such occurred on Sunday.[26]

Where it appeared that although a check was given on Sunday in pursuance of a contract, the drawer of the check could not plead its invalidity where it was shown that she had already accepted the benefits of other parts of the contract.[27]

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23 State ex rel. Fisher v. Dist. Ct. of First Jud. Dist. in and for Lewis and Clark County, 99 F. 2d 211 (Mont., 1940).

24 Brody v. Owen, 259 App. Div. 720, 18 N. Y. S. 2d 28 (1940).

25 Builders Ass'n v. Detroit, 295 Mich. 272, 294 N. W. 677 (1940).

26 Barry v. Sparks, 27 N. E. 2d 728 (Mass., 1940).

27 Smith v. Hawkins, 102 P. 2d 865 (Okla., 1940).

TAX EXEMPTION

A. Church Property.

Two decisions concerning the tax exempt status of church property were rendered during the past year. The first was a well reasoned and lengthy decision handed down by the Supreme Court of New Hampshire involving the exemption of the property of Phillips Exeter Academy, wherein the court held among other things that the campus, church, infirmary, academy building with recitation rooms, library, administration building, gymnasium and obsolete building used for storage were "seminary property" and tax exempt.[28] The second case decided that vacant property conveyed to a church for religious purposes exclusively was exempt from taxes under statute excluding from tax levy all property held and used exclusively for religious purposes.[29]

B. Cemeteries.

Even though religious rites might accompany the burial of the dead in a cemetery the Supreme Judicial Court of Massachusetts held that a cemetery corporation was not a religious society within the scope of unemployment compensation statute.[30]

Although the cemetery involved was a public rather than a church affiliated burial ground it is interesting to note that the Supreme Court of Minnesota in the case of *Christgau v. Woodlawn Cemetery Association, Winona,*[31] decided that a "public" cemetery should pay unemployment compensation taxes notwithstanding such cemetery was considered a "charitable" corporation for the purposes of exemption from general property taxes. It was further held that the labor performed in greenhouses connected with the cemetery

28 Trustees of Phillips Exeter Academy v. Exeter, 11 A. 2d 569 (N. H., 1940).
29 Lummus v. Miami Beach Congregational Church, 195 So. 607 (Fla., 1940).
30 Proprietors of Cemetery of Mt. Auburn v. Fuchs, 25 N. E. 2d 759 (Mass., 1940).
31 293 N. W. 619 (Minn., 1940).

was not "agricultural labor" within another exemption found in the Minnesota statute.

Under a statute exempting from taxation cemeteries and "buildings for cemetery use" a chapel on a cemetery grounds which was also used to house administrative offices and had a crematory in the basement was held to be exempt from taxation, by the New Jersey Board of Tax Appeals.[32]

Tort Liability of Religious Institution

The Young Woman's Christian Association was held to possess the immunity from suit of a charitable and religious institution in an action against it for injuries sustained by the plaintiff when she slipped on the floor of the association's building wherein plaintiff and others of the public were given instruction in swimming for a set price. The North Carolina court in denying recovery from the association preferred to follow the rule that a religious charitable institution is not liable in tort to those who receive benefit from it if the institution has exercised reasonable care in the selection and retention of the servants causing the injury. The court further held that the fact that the defendant association carried liability insurance would not affect its general immunity from suit.[33]

Protection of Church's Name

The Georgia Court of Appeals affirmed the decision of the supreme court of that state in revoking a charter granted a church corporation, incorporated under the name of "Methodist Episcopal Church, South, *Incorporated*," so as to prevent such corporation being confused with the unincorporated association known as the Methodist Episcopal Church South.[34]

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32 Ewing Cemetery Ass'n, Inc. v. Ewing Tp., 18 N. J. Misc. 558, 15 A. 2d 195 (1940).

33 Herndon v. Massey, 217 N. C. 610, 8 S. E. 2d 914 (1940).

34 Methodist Episcopal Church South, Inc. v. Decell, 5 S. E. 2d 66 (Ga., 1939). The Supreme Court opinion was commented upon in the 1939 digest.

Another action involving the Methodist Episcopal Church South was brought against the South Carolina Conference of that church for a declaratory judgment for a finding that there had been a valid union of defendant church with the Methodist Episcopal Church, and for an injunction restraining defendant from using the name Methodist Episcopal Church South or any similar name. However, since the action was brought in the Federal District Court of South Carolina after several suits involving the same subject matter had been instituted in the courts of that state the Federal Court declined to take jurisdiction.[35]

Acquisition of Church Property

A. By Will.

Several interesting questions involving the construction of wills and gifts to religious and charitable beneficiaries arose in the case of *In re Macaulay's Estate.*[36] In this case the New York court first held that a bequest of a part of testatrix's residuary estate to "the Order of the Sisters of Mercy of Hartford, Connecticut" was valid although the recipient was an unincorporated association and not capable of taking the bequest in New York, but by the law of Connecticut the Order was capable of so taking. Another share of the residuary estate, left to "His Eminence Cardinal Eugenio Pacelli, of Rome, Italy," for a purpose of his own choosing was similarly upheld under both the law of New York and of the Vatican State. Another share was granted to an incorporated church in trust for the benefit of a day nursery operated by the church, and this was sustained, as was a bequest to an unincorporated branch of an incorporated parent hospital in Albany. Similarly a share was held to go to "Manhattanville College of the Sacred Heart," although not precisely so described by such corporate title in testatrix's will.

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35 Purcell v. Summers, 34 F. Supp. 421 (1940).
36 173 Misc. 887, 19 N. Y. S. 2d 418 (1940).

The Court of Appeals of Maryland recently decided that religious corporations who were beneficiaries of an earlier will but excluded from a later, pending timely legislative action, had such an "interest" in the estate of the testatrix so as to entitle them to *caveat* the later will, as against contention that the right of the religious corporations did not come into existence until sanction of the gift by the legislature.[37]

1. Testamentary Trusts.

Where a will left a sum to testator's widow part of which was to be used in erecting a memorial chapel on grounds of private cemetery such was considered to create a charitable trust to be made effective except in case of a clear impossibility to carry out testator's intent.[38]

In a similar case wherein testator left a fund for the erection of a memorial chapel on property that was taken by eminent domain, the court by the application of the *cy pres* doctrine authorized the erection of a slightly smaller chapel on other land.[39]

Where the testator left five hundred dollars with the direction that it be deposited and the interest acquired therefrom was to be spent for the purpose of keeping the "Yahrzeit" (memorial day) for certain named individuals, such bequest was held to be a trust for religious uses and not affected by the rule against perpetuities, or by any alleged indefiniteness.[40]

A bequest in trust to a named orphanage was held to be a charitable trust exempt from the operation of the rule against perpetuities, notwithstanding the orphanage could if it wished exclude from its benefits all except those of Presbyterian parentage.[41]

37 Associated Professors of Loyola College in Baltimore v. Stuart, 16 A. 2d 895 (Md., 1940).

38 Fitzgerald v. East Lawn Cemetery, Inc., 10 A. 2d 683 (Conn., 1940).

39 In re Wilkey's Estate, Appeal of Wilkey, 10 A. 2d 425 (Pa., 1940).

40 In re Steiner's Estate, 172 Misc. 750, 16 N. Y. S. 2d 613 (1939).

41 Powers v. First Nat. Bank of Corsicana, Tex., 137 S. W. 2d 839 (Tex. Civ. App., 1940).

2. *Conditional Devise.*

A testamentary gift of a residuary estate to a church "for the purpose of building the church, at this time partially built," and with authority in the executor "to turn over and deliver to the officers of said church said residue of my estate, when said church is fully finished and completed and not before," was held to be a present gift of such residue, with the right of possession and enjoyment conditionally postponed, and was not violative of the rule against perpetuities.[42]

B. By Subscription.

Where many persons, including deceased, executed pledge cards in campaign to raise money for erection of large building which would house church auditorium with large hotel apartment, frustration of the purpose of the parties operated to terminate liability of deceased under his pledge.[43]

MANAGEMENT AND OPERATION OF CHURCH PROPERTY

A. Power to Mortgage, and Liability Therefor.

Where trustee of an unincorporated religious association signed a note secured by mortgage, he was held not to be personally liable on the note where he signed as trustee with the authority of the association which by law had power to convey such authority upon him.[44]

In an action on a note and mortgage executed upon an archabbey in the United States to secure a loan for the construction of a University in China it was held that the archabbey would be reponsible for the act of its Archabbot notwithstanding he may not have had authority to so act since the incorporated society had not repudiated his act.[45]

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42 Reithmiller v. Carr, 289 N. W. 338 (Nebr., 1939).
43 In re Metz' Estate, 18 N. Y. S. 2d 883 (1940).
44 Mercantile-Commerce Bank & Trust Co. v. Howe, 113 F. 2d 893 (1940).
45 Benedictine Society v. National City Bank of New York, 109 F. 2d 679 (1940).

B. Liability on Construction Contracts.

Archbishop was held not liable for amount allegedly due for construction of church which was built and held for the benefit of members of the parish in which it was situated, notwithstanding Archbishop was successor holder of the bare legal title.[46]

C. Liability of Church to Judgment and Execution.

Two cases arose concerning this combined problem. The Supreme Court of Arkansas affirmed a judgment against a church for a mechanics lien, notwithstanding defendant's contention that since it was an unincorporated society it was not subject to personal judgment.[47] A New York court also held that the property of a religious corporation could be sold under an execution to satisfy a judgment against it notwithstanding the religious corporation law closely restricted the ordinary sale of such property.[48]

Disposal of Church Property

Where local religious group of church members affiliated for a half century with similar religious groups in general conference in conformity with rules and ordinances constituting the ecclesiastical law of that denomination, the right of dominion, control and disposal of the property of the local religious group was held to be governed by the church law which provided that church property no longer usable for church purposes could be disposed of after decree of its abandonment by the annual conference permitting its sale or lease.[49]

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46 Shipp v. Joseph, 12 A. 2d 49 (Pa., 1940).

47 Robins v. East Arkansas Builders Supply Co., 137 S. W. 2d 924 (Ark., 1940).

48 Rector, Churchwardens, and Vestrymen of Church of the Nativity v. Fleming, 174 Misc. 473, 20 N. Y. S. 2d 597 (1940).

49 Board of Trustees of Kansas Annual Conference of Church of United Brethren in Christ v. Mt. Carmel Community Cemetery Ass'n, 103 P. 2d 877 (Kans., 1940).

BREACH OF CONDITION UPON WHICH PROPERTY ACQUIRED

Where land was conveyed to trustees of a church "to hold the same as long as the same is used" by the church for meetinghouse the Supreme Court of Illinois held that such condition was not broken by the church's execution of an oil and gas lease covering the land, where it appeared that the premises were still used for church purposes and the corporation was still functioning as a church.[50]

Where the devise of the property to the church expressed that it was to be used as a parsonage but contained no statement concerning whether it was to revert back to the heirs of the testator in the event that it was no longer so used, the Ohio court held that such devise passed the entire fee to the property which would not revert back upon devisee's failure to use the property as a parsonage.[51]

The effect of a change in the use of property acquired for religious purposes came before the Court of Civil Appeals of Texas in a case involving the discontinuance of a cemetery owned by a church pursuant to an ordinance of the City of Houston declaring it a nuisance. The property had been acquired by Christ Church's corporate predecessor for a valuable consideration in fee simple, but the *habendum* clause of the deed of acquisition contained the recital that the property should be held "in trust forever" to be used "as a cemetery, and for no other purpose." In holding that the church could dispose of the property the court held among other things that the phrases quoted did not operate to impose a condition subsequent upon the property entitling the heirs of the original seller to retake the property on its discontinuance for burial purposes, and even if it did create a con-

50 Regular Predestinarian Baptist Church of Pleasant Grove v. Parker, 27 N. E. 2d 522 (Ill., 1940).

51 First Presbyterian Church of Salem v. Tarr, 26 N. E. 2d 597 (Ohio App., 1939).

dition subsequent the ordinance of the city declaring the cemetery a nuisance rendered performance of the condition impossible.[52]

Right to Church Property as Between Rival Factions

In an action by several members of an incorporated church against its pastor, trustees and officers for restoration of the church and its property to the plaintiffs, such restoration was ordered where it was shown that plaintiffs' faith was that of the church before the unauthorized amendment to the constitution and the subsequent changes in the constitution did not change it back to the original and proper faith of the church.[53]

In another action similar to the above the Supreme Court of Illinois ruled that the evidence did not substantiate plaintiffs' claim that they composed the faction of the church which adhered to the tenets and doctrines originally taught by the congregation. In reaching its decision, however, the court said it would not consider minor inaccuracies between the new and the old faith and would look for a substantial departure from the old tenets before it granted relief.[54]

In a third case the Supreme Court of Michigan upheld the contention of the plaintiff, but after decreeing restoration of the church property to them, the court refused to go further and decree that the defendants were seceders from the true faith of the original congregation.[55]

Deposition of Minister in Factional Dispute

In a dispute involving the deposition of a minister of an incorporated Baptist church in New York it was held that the corporation, as a corporation and not necessarily as a

52 Toole v. Christ Church, Houston, 141 S. W. 2d 720 (Tex. Civ. App., 1940).
53 Kerler v. Evangelical Emanuel's Church of Hales Corners, 292 N. W. 887 (Wis., 1940).
54 Little Grove Church v. Todd, 26 N. E. 2d 485 (Ill., 1940).
55 Calvary Baptist Church of Port Huron, Mich. v. Shay, 290 N. W. 890 (Mich., 1940).

religious body (which was not passed upon precisely) could depose the minister and later enjoin him from any attempt to exercise his functions as such. It was also decided that the *corporate* disenfranchisement of members of the *corporation* for their misconduct was also proper.[56]

Religion in Education

In addition to the case of *Minersville School District v. Gobitis,* already considered, wherein the Supreme Court sanctioned a mandatory salute of the flag as required by a public school board of all pupils irrespective of their religious belief, several other cases have reached courts of review involving a church and education.

The Supreme Court of South Dakota held that the children of school age residing at an orphanage maintained by the Norwegian Lutheran Church of America were entitled to attend without cost the public school located in the district wherein the orphanage was situated.[57]

The legality of the use of public funds to pay the salaries of teaching Sisters and Brothers, was considered by the Supreme Court of Indiana in three cases all decided in the same opinion. From the facts it appeared that the public school authorities of the City of Vincennes were faced with the possible closing of all the Catholic parochial schools in the city which would place an impossible burden upon the facilities of the public school system. Rather than permit this the public school authorities agreed to operate the parochial schools as public schools, and to staff them with Sisters and Brothers qualified to teach under State law, and chosen by the Superintendent of the Vincennes City Schools. The parochial school buildings were used, and religious pictures of

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[56] Walker Memorial Baptist Church, Inc. v. Saunders, 173 Misc. 455, 17 N. Y. S. 2d 842 (1940). See also the action by Minister Saunders to bring about his reinstatement, which action was dismissed because of his failure to satisfy precedent procedural requirements, Saunders v. Armstead, 259 App. Div. 119, 18 N. Y. S. 2d 279 (1940).

[57] State ex rel. Johnson v. Cotton, 289 N. W. 71 (S. Dak., 1939).

Jesus Christ, the Holy Family and secular pictures of George Washington and other American statesmen were left on the walls of the class room. The teaching staffs and the schools themselves were under the control of the Superintendent of the Vincennes City Schools, and there was no evidence of religious instruction being given as a regular course. The court held that they were public schools and the wearing of sectarian garb by the teachers, and the fact that the salary paid to the teachers might have been turned over by them to their religious communities had no effect upon the result.[58]

The Supreme Court of Kansas in another case involving the alleged use of public funds to support a sectarian school found that under the facts the expenditure by the school board was illegal and should be enjoined where it was shown that the school board operated one school which was adequate for the needs of the district, but that, in violation of constitutional prohibitions against aid to religious institutions, the board had maintained a second school in the home of a priest and sisters of the Catholic Church, and had permitted such to be under the control of such priest and sisters. The court did not pass upon whether the teaching of sectarian doctrines in a properly organized public school might be invalid, but it indicated that such instruction might be in violation of the Constitution of Kansas.[59]

Although not directly involving questions of church law the decision of the New York court revoking the appointment of Bertrand Russell as a Professor of Philosophy in the College of the City of New York is interesting because

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58 State ex rel. Johnson v. Boyd, Same v. Viets, Same v. Krack, 28 N. E. 2d 256 (Ind., 1940). This case has been commented upon in 16 NOTRE DAME LAWYR. 148, and in Catholic Schools and Public Money, 50 YALE LAW J. 917 (1940).

59 Wright v. School District No. 27 of Woodson County, 151 Kans. 485, 99 P. 2d 737 (1940).

of its vigorous denunciation of the appointment as creating a "chair of indecency" and because of Russell's allegedly immoral writings and views was an appointment in direct violation of the public health, safety and morals of the people of the state of New York.[60]

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60 Kay v. Board of Higher Education of City of New York, 173 Misc. 943, 18 N. Y. S. 2d 821 (1940). See also the similar case involving the same man at the University of California, where a writ of prohibition was denied, Wall v. Board of Regent of University of California, 102 P. 2d 533 (Calif. App., 1940).