

9-1952

In the Supreme Court of Iowa, Alva L. Ragsdale, Pearl Ragsdale, Warren Bailey, Birdie L. Bailey, Lorena Vilmont, Grace Rutherford, Mildred DeCook, Mary Ziesman, Edith Janssen, Mrs. Nora Mitchell, Mrs. Lydia Pool and John Janssen, Plaintiffs, (Appellees), vs. The Church of Christ in Eldora, Iowa, LeRoy Schuler, Ruth Schuler, J. E. Thackery, Henry Kielsmeier, Arthur Chamness, Lewis E. Simcox, Leonard M. Feuerhelm, John Frisbie, C. H. Mitchell, and Lyman R. Lundy as Executor of the Estate of Harlan Wellington Higginbotham, Deceased, Defendants, (Appellants), and Iowa Christian Missionary Society Defendant to Counterclaim, (Appellee), Appeal from the District Court of Hardin County, Honorable Sherwood A. Clock, Judge Presiding,

Recommended Citation
Appellants' Reply Brief and Argument

In the Supreme Court of Iowa, Alva L. Ragsdale, Pearl Ragsdale, Warren Bailey, Birdie L. Bailey, Lorena Vilmont, Grace Rutherford, Mildred DeCook, Mary Ziesman, Edith Janssen, Mrs. Nora Mitchell, Mrs. Lydia Pool and John Janssen, Plaintiffs, (Appellees), vs. The Church of Christ in Eldora, Iowa, LeRoy Schuler, Ruth Schuler, J. E. Thackery, Henry Kielsmeier, Arthur Chamness, Lewis E. Simcox, Leonard M. Feuerhelm, John Frisbie, C. H. Mitchell, and Lyman R. Lundy as Executor of the Estate of Harlan Wellington Higginbotham, Deceased, Defendants, (Appellants), and Iowa Christian Missionary Society Defendant to Counterclaim, (Appellee), Appeal from the District Court of Hardin County, Honorable Sherwood A. Clock, Judge Presiding, Appellants' Reply Brief and Argument. Luther Doniphan Burrus Papers, 1945-1975. Center for Restoration Studies MS #531. Abilene Christian University Special Collections and Archives, Brown Library. Abilene Christian University, Abilene, TX.

IN THE SUPREME COURT OF IOWA

Alva L. Ragsdale, Pearl Ragsdale,
Warren Bailey, Birdie L. Bailey,
Lorena Vilmont, Grace Rutherford,
Mildred DeCook, Mary Ziesman,
Edith Janssen, Mrs. Nora Mitchell,
Mrs. Lydia Pool and John Janssen,
Plaintiffs, (Appellees,

vs.

The Church of Christ in Eldora, Iowa,
LeRoy Schuler, Ruth Schuler, J. E.
Thackery, Henry Kielsmeier, Arthur
Chamness, Lewis E. Simcox, Leonard
M. Feuerhelm, John Frisbie, C. H.
Mitchell, and Lyman R. Lundy as
Executor of the Estate of Harlan
Wellington Higginbotham, Deceased,
Defendants, (Appellants),

and

Iowa Christian Missionary Society,
Defendant to Counterclaim,
(Appellee)

IN
EQUITY

APPEAL FROM THE DISTRICT COURT OF
HARDIN COUNTY
Honorable Sherwood A. Clock, Judge Presiding

APPELLANTS' REPLY BRIEF AND ARGUMENT

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CLERK'S CERTIFICATE

This is to certify that the Appellants' Reply Brief and Argument and extra copies in the above entitled cause, were filed in my office on the _____ day of September, A.D. 1952 and that on the same date I did mail a copy to each of Appellees' attorneys, Paul W. Walters and Robert R. Jordan, 406 Shops Building, Des Moines, Iowa; and Bump & Bump, 505 Central National Building, Des Moines, Iowa.

Signed this _____ day of September, A. D. 1952.

Clerk of the District Court of the State
of Iowa in and for Hardin County.

PREFACE

Appellants will reply to the various matters in Appellees' Brief and Argument in the order in which they appear in said Argument. All references to page numbers are to Appellees' Brief and Argument unless otherwise indicated.

REPLY TO APPELLEES' STATEMENT OF THE CASE

The first of the issues stated by Appellees at page 3 is as follows:

"1. Did the defendants depart from the original faith, teachings, immemorial customs, usages and practices of the Eldora church after Mr. Schuler came as its minister in 1947?"

The foregoing purported issue shows the erroneous basis upon which this cause was determined by the trial court. It is erroneous because:

1st. The Church of Christ in Eldora is a congregational type church and autonomous.

2nd. The majority governs in this type of church and controls in all matters with only one exception, that being the majority cannot divert the property of the church to another denomination or to the support of doctrines fundamentally opposed to the characteristic doctrine of the church.

3rd. There was no showing of any change

of denomination or doctrine.

4th. Thus the majority of the Eldora Church represented by the Defendants in this cause, were entitled to do as they saw fit in reference to teachings, immemorial customs, usages and practices.

REPLY TO APPELLEES' STATEMENT
OF FACTS

By way of introduction to their purported Statement of Facts, Appellees at page 5 say:

"There are many notable omissions from appellants' statement of the facts. Further, in numerous instances, isolated statements have been lifted from the pleadings and evidence out of their context, with the result that a distorted and erroneous picture of the record has been presented."

This statement is followed by a 44 page purported statement of facts which is replete with statement unsupported by Record citations and in all of this statement Appellees have not pointed out anywhere anything that supports the foregoing charge against Appellants.

By way of contrast, Appellants' Statement of Facts is fully supported by references to the Record and it is submitted that Appellants have made a fair statement of the material facts involved in this cause. However, we shall leave it to the Court to determine that matter.

At the bottom of page 6 it is stated:

"The Disciples believed in 'cooperation', a word which had definite meaning to them, and was a basic part of their religion. *****"

This statement omits one very important fact which must be considered in connection with the matter of cooperation. As shown by the context of the Record cited in support of the foregoing statement, cooperation itself is one thing and the manner of cooperation is another. There is no prescribed manner of cooperation, the manner being a mere circumstantial of the Christian institution, a matter of expediency and one in which the churches may have free scope. This is important because the Disciples of Christ organizations present simply one manner of cooperation among the Churches of Christ or Christian Churches. Appellees have apparently taken the position that the manner or method of cooperation formulated by the Disciples of Christ is exclusive, but this of course is not true. (R. p. 408, ll. 22-34; p. 409, p. 410, p. 411, p. 412, p. 413, ll. 1-22).

There is no evidence in this case that Defendants did not believe in cooperation as such, but simply that they do not believe in the method of cooperation prescribed by the Disciples of Christ organizations. The only thing that Rev. Schuler testified to being apart and separate from was the Disciples of Christ that had become an organization with the express purpose of doing

its missionary work and work of the church through organizations, but aside from that function, he considers his church in general a part of the Church of Christ or Christian Church in all other respects, except the matter of agencies and that has always been his position, (R. p. 838, ll. 8-34; p. 839, ll. 1-15) and it must not be overlooked that the method of use of money is a temporal matter and not a matter of religion.

Then at page 7 the following appears:

"There was no claim by appellees in the court below, nor is there any claim here, as appellants assert, (see their Questions Presented by the Appeal, No. 2, pages 4 and 5), that the Eldora church was 'obligated (*italics ours*) to maintain the custom of voluntary affiliation with state and national organizations of the Disciples of Christ.' Such a claim cannot be found in the pleadings or the evidence. The Eldora church could participate or not in state and national work, as it chose."

"Appellees do claim, however, that the Eldora church and its members had the right to participate in the work and government of the organization of the Disciples of Christ, while appellants claim such participation was sinful, (Par. 3.2 of Defendants' Answer, page 66) and that it was wrong to do so. This last was a new teaching and belief brought into the Eldora church shortly

prior to the schism, as we shall see."

Here the Appellees have admitted that the Eldora church could participate or not in the state and national work of the Disciples of Christ as it chose. This is exactly Appellants' position. With this right conceded, we submit that it makes absolutely no difference as to the reason why the Defendants in this cause, representing the majority in the Church, chose not to participate in state and national work of the Disciples of Christ.

The Disciples organizations present one manner of cooperation and if Defendants thought the Disciples organizations were sinful and corrupt, that was their business and it was their choice as to whether or not they followed this particular manner of cooperation, and by Appellees' own admission, they have the right to make this choice. Thus, when the choice was made and the majority of the members of the Church of Christ in Eldora decided not to go along with the Disciples organizations then they have exercised that choice and no one can complain.

Commencing on page 8 and continuing through the middle of page 12, Appellees show the evolution and development of the various Disciples organizations. It is submitted that none of these organizations in any way constitute faith, belief or doctrine, but are, in the words of Alexander Campbell, "***** the mere circumstantials of the Christian institution. *****" (R. p. 410, ll. 16-17).

The very fact that there have been changes within the Disciples organizations from time to

time shows that the particular type of organization or the organization itself is in no way part of the basic religion of the Christian Church or Church of Christ. It is simply an instrumentality to be used or not used in the implementing of the faith, beliefs and doctrines of the Church of Christ or Christian Church.

The various local churches being congregational and autonomous, certainly the majority of such churches have a perfect right to approve or condone, participate or not participate, in these organizations of Disciples of Christ.

Commencing in the middle of page 12 and continuing on page 13, Appellees discuss what they call "independents" and then they go on to set out certain alleged beliefs of the so-called "Independents" without showing that a single one of those beliefs are present within the membership of the Church, and there is no such record. Appellees have attempted here to brand the so-called "Independents" as a separate faith or denomination. This is not so. The reason some of the Christian Churches or Churches of Christ have been labelled "Independents" is because they do not support the general organizations of the Disciples of Christ in that they do not contribute to the United Christian Missionary Society funds or state organizations. (R. p. 788, ll. 3-16).

The so-called "independent churches" support their missionaries directly and the words "independents" and "direct support" mean the same thing. (R. p. 837, ll. 12-17).

The only difference between the so-called

"independent Churches of Christ" or "Christian Churches" and the Churches of Christ or Christian Churches calling themselves the "Disciples of Christ," is the matter of agencies. The independent churches support their missionaries directly. The Disciples of Christ do their missionary work and the work of the church through organizations, (R. p. 838, ll. 8-34; p. 839, ll. 1-34; p. 840; p. 841, ll. 1-30), the final effect being that the agency gets a substantial cut and the heathen expects what is left. Certainly when the so-called independent churches give direct support to their missionaries they are practicing cooperation. The only difference between the basic plan of giving for missions directly and the organizations devised by those who in modern parlance have assumed the name of "Disciples of Christ" is the manner of cooperation and the manner of cooperation is to be determined by the churches themselves, (R. p. 409, ll. 11-34; p. 410, ll. 1-17) for the Christian Church or Church of Christ is a congregational type church and autonomous and one in which the majority rule determines.

The manner of cooperation is certainly not a doctrinal matter and when a local church by a majority vote determines that it does not wish to cooperate in the manner prescribed by the Disciples of Christ, it has a perfect right to do so and such determination does not result in any change of the faith, belief or doctrine of the Church of Christ or Christian Church and thus as in the case at bar, it does not constitute any diversion of the property from its trust.

As we have said, there is no difference in the doctrine of the Church of Christ or Christian Church or with the Disciples of Christ by whatever name known. It is simply a matter of a difference in the practice of support of the missionary work. In other words shall the sum total of our offerings go to the heathen or shall we take out a good slice and say we are fully as worthy as they.

Commencing at page 14 and continuing through the middle of page 18, Appellees have set forth various factors which purportedly relate to identity. We shall comment on each of these briefly.

"1. Names:" The name as between Christian Church or Church of Christ is a matter of local preference with each individual church. (R. p. 223, ll. 7-13).

"2. Belief in God:" Defendants believe in the Fatherhood of God. (R. p. 87, ll. 21-23; p. 734, ll. 27-31).

"3. Belief in the Christ." Defendants believe that Jesus is the Christ, the Son of God, and the Saviour. (R. p. 87, ll. 23-24; p. 734, ll. 31-34).

"4. Individual Interpretation of the Scriptures." Defendants believe that the Bible is the word of God, (R. p. 87, ll. 24-25; p. 734, l. 34; p. 735, l. 1).

"5. The Confession of Faith." The manner of accepting the individual into the church is a matter of practice, not a matter of doctrine or of basic religion; and thus the majority among whom were the Defendants, were not only entitled to do as they saw fit in that regard, but in keeping

with their duty to the Church, were compelled to do so.

"6. Baptism." Defendants believe in baptism by immersion. (R. p. 87, ll. 25-26; p. 735, ll. 2-3).

"7. The Lord's Supper." Defendants believe in the weekly observance of the institution of the Lord's Supper. (R. p. 87, ll. 26-28; p. 735, ll. 3-4).

"8. Basic Freedoms." b. This in no way involves doctrinal matter. c. Defendants accept no creed but Christ. (R. p. 87, ll. 28-29; p. 735, ll. 6-7). d. As to the dismissal of persons from membership: The charge upon which Plaintiffs base their case is that there has been a change in the practice of the Church; and Appellees now assert that "a member may not be dismissed from membership." The Church of Christ as early as 1869 "withdrew from" Jane Deacon. (Record Book I.) In 1873 it "withdrew from" a member named Madsen and also from Wm. C. Adams. (P. 70, Record Book 2.) (See Division V, Appellants' Brief & Argument.)

"9. Belief in Cooperation." Defendants believe in the cooperation by Christians and the voluntary cooperation of churches. (R. p. 87, ll. 30-32). But as said by Alexander Campbell, "cooperation is one thing and the manner of cooperation is another." (R. p. 410, ll. 18-19).

"10. The Pattern of the Local Church." The first sentence after this subheading by Appellees is as follows:

"Subject to the principle that local

churches may not change to another faith, they are autonomous or self-governing. ***** The congregation is supreme in its affairs, there being no overhead ecclesiastical authority. *****'

Here the Appellees recognize the correct limitation on the power of a majority in a Church of Christ and that is, that they cannot change the church to another faith but there is no other limitation. In the case at bar, there is no evidence that Defendants changed the Church of Christ in Eldora to another faith or denomination. Thus the majority of this congregational, autonomous church had a right to do everything which it did. The Disciples of Christ constitutes no overhead ecclesiastical authority and has no control over the local church whatsoever. The matter of organization of government within the local church is simply a matter of practice and within the discretion of the members thereof and in no way involve doctrine or faith.

"11. Christian Unity." Defendants likewise believe in cooperation with other faiths and interdenominational organizations and Rev. Schuler's testimony shows that there was such cooperation during his ministry. (R. p. 782, l. 34; p. 783; p. 784, ll. 1-7).

From the middle of page 18 to the top of page 24, Appellees show the affiliation and cooperation of the Church of Christ in Eldora with the Disciples of Christ organizations. However, it must be remembered that this affiliation was

on a voluntary basis and as said by Appellees at page 7:

"The Eldora church could participate or not in state and national work, as it chose."

So whether the Church of Christ in Eldora participated or did not participate in the state and national organizations of the Disciples of Christ was for it to determine, and whether it did or whether it did not participate, could in no way affect the doctrine of the Church of Christ in Eldora or constitute any departure from the doctrine of the Church of Christ in Eldora so as to constitute a diversion of the church property from its trust.

Commencing at the top of page 24 and continuing through to the top of page 38, Appellees set forth purported facts which they assert resulted in a schism.

At the middle of page 24, it is stated in substance that the basic proposition raised at the Eldora Church after the coming of Rev. Schuler was that the church should not continue to be a part of the Brotherhood of the Disciples of Christ.

If fairness is intended by the Appellees why are they not fair enough to say that there was really no other question involved in the Eldora Church or in Goldfield or Laurens except the difficulties that arose from the failure of all these Churches to support the I.C.M.S. Whether or not Schuler desired to join in these activities is immaterial for when he came to Eldora "there

was friction or dissension in the Eldora Church and the basis of that friction was whether or not the congregation would accept the U.C.M.S. or the Iowa Christian Missionary Society - that was the issue." (R. p. 799, ll. 5-15).

The Eldora Church was congregational and autonomous and it had a perfect right by majority vote to determine and resolve this difference for as Appellees say at page 7 "The Eldora Church could participate or not in state and national work, as it chose." A withdrawal from these organizations certainly can constitute no change of doctrine or faith so as to constitute a schism of any kind on behalf of the Defendants and can in no way constitute a diversion of the church property to a different faith or denomination. Though Reverend Schuler did say that he was never a minister affiliated with the organization known as Disciples of Christ as indicated at the bottom of page 24, yet the evidence shows that he was a member of the Church of Christ or Christian Church, and he was an ordained minister of the Church of Christ, (R. p. 734, ll. 1-7); and that he was in active service of the Church. The evidence also shows that he was a Disciple of Christ in the sense that you use the word as a learner and follower of Christ, (R. p. 735, ll. 26-34; p. 736, ll. 1-3; p. 838, ll. 8-34; p. 839); and the only evidence was that he disagreed with those who called themselves the Disciples because of the minor difference in the handling of Missions.

In reference to the Cincinnati Bible Seminary mentioned at the bottom of page 24 and top of page 25, the evidence shows that this school taught the

doctrine of the Church of Christ as it was designated in this case, and that it did not teach any different doctrine than the doctrine of the Church of Christ. (R. p. 842, ll. 7-26).

At page 25 it is stated that Rev. Schuler was employed by a divided vote, but it also appears from the evidence that there were 16 voted in favor of his coming and 5 passed. Thus in any event he was employed by a majority vote. (R. p. 746, ll. 26-29).

It is true as stated on page 25 that some of the literature from the Disciples agencies which came to Rev. Schuler went into the waste basket, but then there is no claim here that he was compelled to use or even to present these materials to the congregation.

It is also stated on page 25 that all giving by the Eldora church to the state and national missionary societies of the Disciples ceased with Rev. Schuler's coming, and that there was no giving to these agencies during his pastorate. However, it appears from the Year Books from 1947 through 1950 that someone in the Church did give to the agencies of the Disciples. (R. p. 316, ll. 22-34; p. 317, ll. 1-23).

At pages 26 and 37 there is set forth the purported conduct of Rev. Schuler at a women's council meeting and his purported conduct in reference to several of the former Church members. However, there is nothing in this which in any way involves faith, belief or doctrine, or in any way results in a diversion of the property of the Church of Christ to a different faith or denomination.

Likewise at pages 28 and 29, there is nothing that in any way involves faith, belief or doctrine.

In connection with the discussion of the adoption of the 1949 Articles of Incorporation commencing in the middle of page 32 and continuing at the top and to the middle of page 34, there are several important facts which have been omitted:

1st. The evidence shows that the date of 1944 as found in the 1949 Articles is a typographical error, and that the date should be 1949. (R. p. 854, ll. 8-16).

2nd. Notice of the adoption of the 1949 Articles of Incorporation and By Laws was given in accordance with the provisions of the 1944 Articles of Incorporation. (R. p. 34, ll. 17-24; p. 810, ll. 24-29; p. 853, ll. 3-9; p. 855, ll. 13-19; p. 843, ll. 9-34; p. 844, l. 1; p. 845, ll. 6-25, 27-30; p. 846, ll. 5-34).

3rd. According to Warren Bailey, one of the Plaintiffs, there were 65 and possibly 70 people present at the annual meeting. "I believe that everyone there with the exception of 13 or 14 voted yes or aye." (R. p. 657, ll. 3-21).

In the middle of page 34, it is asserted that the 1949 Articles and By Laws took the Eldora Church out of the Brotherhood of the Disciples of Christ. This may be, but the affiliation of the Church of Christ in Eldora with state and national organizations of the Disciples of Christ being on an entirely voluntary basis, they had a perfect right to do this, for again as Appellees say on page 7:

"The Eldora Church could participate or not in state and national work, as it chose."

This certainly could constitute no change in the faith or denomination of the Church of Christ in Eldora. It resulted in no change of doctrine and thus in no diversion of the church property from its trust.

The Articles of Incorporation were adopted by a majority vote. (R. p. 779, ll. 13-28; p. 657, ll. 3-21). And there is nothing contained therein which the majority did not have a right to put into effect.

Commencing at the middle of page 34 and continuing on page 35, there are ten statements which are apparently asserted as resulting in a denominational change. We shall consider each of them briefly.

1. The fact that all mention of the Disciples is omitted, certainly is of no importance because the name "Church of Christ" or "Christian Church" is optional with the local church.

2. The Eldora church being congregational and autonomous, it had the power to make rules in reference to admission and expulsion of its members as this is a matter of practice and not a matter of doctrine.

3. Both groups believe in the Virgin Birth. The fact that Appellants by their Articles required a statement of belief in the Virgin Birth, certainly cannot be said to result in a change of doctrine. This is simply a matter of practice in which the

majority was entitled to control and to determine.

4. As to admission of members, the local Church had a perfect right to make its own rules in reference to the admission of members. It is a matter of practice and not a matter of doctrine.

5. Do the Appellees intend to inferentially assert that the application of a strictness of New Testament discipline would be a change of faith, belief or doctrine?

6. Surely the Church had a right to lodge in the General Board the authority to employ or dismiss the pastor. This involves no religious doctrine.

7. Who may better try or dismiss a member than the General Board? Someone should be vested therewith.

8. It is true that secret Board meetings are something new. The rule heretofore has been that a Board member tells his wife, his wife tells the neighbor, and the neighbor tells the next neighbor, and within thirty minutes after a meeting of the Board, every scandal that came up for attention of the Board of the Church is public, and it made no difference what the character was of the person assailed. He or she was an immediate subject of public scrutiny, condemnation and the finest character might be dragged in the filth of public scandal--and this the Appellees must condone or else they have absolutely no criticism of the By-Law.

9. The question of the term of office of Elders and Deacons in their offices is new inso-

far as any of the Articles we have seen, but it is based upon this belief of certain of the members of the Church, some believing that that is a Scripture term for which Elders and Deacons should be elected, but Appellees seem to forget that the congregation has a right to read the Scriptures as it sees fit and believe them accordingly, and if that is the thought of the congregation, then that is the rule that is to be enforced.

10. The majority had a perfect right to control the devolution of its property.

Commencing at the top of page 36 and continuing through to the top of 38, the dismissal of the Plaintiffs from the Church of Christ in Eldora is shown. The church had a right to effect such dismissal. (See Division V, Appellants' Brief and Argument).

In the middle of page 38 Appellees assert that the identity of a church may be determined by many factors and then set forth the various factors which they contend determine the manner of identity. However, it is Appellants' position that if the principle of government is that majority rules, and such is the case here--the application of the criterion in such a case calls for an adherence to or sanction by the majority, and the numerical majority of members must control the right to use of the property. In the case at bar, this would mean that the Defendants are entitled to the use of the property on the basis of identity for they represent the majority in this case.

Commencing at the bottom of page 39 and

continuing to the middle of page 42, Appellees make up a purported summary of facts and differences relating to:

"Beliefs, Teachings, Freedoms and Traditions."

There are ten of these all told, and we shall consider each one briefly.

1. This is a matter of practice and not a matter of doctrine. It is admitted that the so-called Disciples "believe in the Virgin Birth" and that they also believe in no Creed but Christ. Certainly an acceptance of full and complete authority of Christ is not inconsistent with this creed. The majority had the power and the authority to put into effect this by-law. At most it cannot be said to be a departure from the faith.

2. As heretofore said, a confession in the belief in the Virgin Birth and the acceptance of full and complete authority of Christ can in no conceivable way be said to be inconsistent with "no creed but Christ."

3. The By Law in question does not controvert the right of the individual in the interpretation of the Scriptures as claimed by Appellees. It does not result in any change in faith or doctrine.

4. As has been heretofore stated by Appellees, it is a matter of choice with the local church as to whether it shall use the name "Christian Church" or "Church of Christ."

5. There is no evidence that the Defendants

did not believe in cooperation. The evidence is that they do not believe in the manner of cooperation endeavored to be forced upon them by the United Christian Missionary Society and the Iowa Christian Missionary Society.

6. The matter of admission and expulsion of members is not doctrinal, but it is within the power of the local, autonomous church to make such regulations as it sees fit in this regard. This practice was one which was in effect in the earliest history of the church.

7. There is no evidence that the members of the Eldora Church could not give their money wherever they chose. There is evidence that money designated for the United Christian Missionary Society or Iowa Christian Missionary Society was not permitted to go from the church, but this did not in any way deny the members the right to send directly to these organizations any moneys that they saw fit to send, and each member had the absolute right to give or to withhold.

8. The Eldora Church still has deaconesses, and it is certainly not a doctrinal matter that they are not longer included on the Board. This is a practice which rests within the autonomy of the local Church.

9. The matter of terms of office likewise relates to a practice which the local Church was entitled to control, and in no way involves a change of doctrine.

10. The matter of tolerance raised here in no way involves doctrine, but in any event, it is shown that the Church of Christ in Eldora did participate and cooperate with other churches in

various matters during Rev. Schuler's ministry. (R. p. 782, l. 34; p. 783; p. 784, ll. 1-7).

Commencing at the middle of page 42 and continuing to the middle of page 44, there is set forth a summary of facts and differences relating to:

"Immemorial customs, usages, practices and characteristics."

There are some 15 of these, and we shall consider each of them briefly.

1. A reading of the Record shows that the answer is not correctly quoted. The Defendants recognize interchangeable use of the names "Christian Church or Church of Christ." In fact, Schuler so testified. (R. p. 837, ll. 1-5).

2. Certainly the congregation is the supreme authority, and it is asserted by Appellees here that the Board may employ or discharge a minister without consulting the congregation. (R. p. 44, ll. 2-9). Assume this to be true. The congregation has invested the Board with power. The action of the Board is the act of the congregation.

3. The By Law requiring belief in Virgin Birth is not complained of as a change of doctrine.

4. The Church of Christ in Eldora, being autonomous, had the right to make its rules and regulations in reference to the admission and expulsion of its members. This practice had been followed in the early history of the Church heretofore discussed.

5. It is asserted that the By Law in question provides an additional creed in addition to the creed of Christ, but this can hardly be true in view of the fact that the By Law requires a confession of the Virgin Birth and baptism and an acceptance of the full and complete authority of Christ. These can be in no way said to be at variance with the statement, "no creed by Christ;" and

6. This By Law certainly does not take away any individual interpretation of the Scriptures.

7. The Church of Christ in Eldora being congregational and autonomous, it had a right to make its rules and regulations in regard to the admission and expulsion of its members.

8. Defendants do not in any way denounce cooperation as such, but merely the manner of cooperation which the Disciples of Christ organizations have endeavored to inflict upon the Eldora Church against their will.

9. The undisputed evidence shows that during Rev. Schuler's ministry, the Eldora Church of Christ did cooperate with other churches. (R. p. 782, l. 34; p. 783; p. 784, ll. 1-7).

10. The Church of Christ in Eldora being congregational and autonomous, hence it had a right to expel its members.

11. The method of election of officers is a matter of practice and has no bearing on religious faith, belief or doctrine.

12. Deaconesses being optional, it was up to the local church to determine whether or not to have them; and certainly whether they had

deaconesses or not, did not involve any matter of faith, belief or doctrine; and if they didn't have them, it could not be said to constitute a diversion of the property from the trust. The record citation here does not support the statement as made by Appellees. It refers only to the matter of women serving on the Board. It does not refer to the matter of having or not having deaconesses.

13. Certainly the matter of literature in no way involves faith, belief or doctrine; since the local Church could belong or not belong to the Disciples organizations as they saw fit, surely they could use or not use their literature as they saw fit.

14. The Church had a right to participate in the Disciples of Christ organizations or not as they saw fit because it is congregational and autonomous and the affiliation was voluntary. Thus one which could be withdrawn by a majority vote of the congregation.

15. Here again the church had a right to do as it saw fit. There is no evidence that the members of the Church of Christ in Eldora couldn't as individuals support the organizations of the Disciples of Christ if they so desired. As a matter of fact, some individuals apparently did support the organizations. (See R. p. 316, ll. 22-34; p. 317, ll. 1-23). As to what the church did as a church, of course the majority was entitled to determine the matter.

In this whole list of fifteen so-called "Immemorial Customs" there is no one that changes, or even pretends to change, faith, belief or doctrine. They all relate to that which the Church in

its progress may change at will as may seem best to the majority from time to time.

Commencing in the middle of page 44 and continuing to the middle of page 46, there is a purported statement of facts in reference to the affiliation of the Church of Christ in Eldora with the state and national organizations of the Disciples of Christ. Such participation is not denied by Appellants but as stated at the bottom of page 44 and top of page 45:

*** * * * There was voluntary participation in this on county, district, state and national levels by the Eldora church for over ninety years. * * * *"

Since the Eldora Church is congregational in form and autonomous and since the affiliation with these organizations was voluntary, it had a legal right to withdraw such affiliation at any time by a majority vote.

Commencing at the bottom of page 46 and continuing through most of page 47, is a discussion in reference to the Articles of Incorporation and By Laws. By way of reply to this we will not repeat, but we do direct the Court's attention to page 22, page 23 and page 24 of Appellants' Brief and Argument.

At the bottom of page 47, there commences a discussion in reference to the ministers and this continues through page 49. We have heretofore discussed the matter of Rev. Schuler's ministry and the type of minister which he is, and again we do not repeat.

We have also discussed the use of the term "independent." We are not dealing here with two different faiths and two different denominations as the Appellees are endeavoring to assert. The faith, beliefs and doctrines of the Church of Christ and Christian Church are the same. The only difference involved in this cause being whether the particular local church participates in the organization known as the Disciples of Christ or whether it supports its missions directly. There being no obligation to maintain the voluntary affiliation with the Disciples of Christ organization, certainly a severance of that relationship can constitute no departure from the doctrine of the Church of Christ or Christian Church, and none has been shown in this case.

As stated at page 49 "The issue of identity, therefore, becomes in fact simple." However, the reason that it is simple is not that asserted by Appellees, but rather it is because the question of identity in this case is determined by looking to see who represents the numerical majority of the church; and without controversy, the majority is represented by the Defendants in this cause, and they are entitled to the use of the church property.

REPLY TO APPELLEES' ARGUMENT
PROPOSITION I

In the middle of page 52, it is stated:

"In religious societies that are autono-

mous or self-governing, a majority may not divert the property from uses of the fundamental faith, immemorial customs, usages and practices."

It is Appellants' position that the foregoing statement is an erroneous statement of the law, the correct rule being that the majority of a congregational type church controls in all matters with one exception only, that being that the majority may not divert the property of the church to another denomination or to the support of doctrines fundamentally opposed to the characteristic doctrines of the church. (See Division II, Appellants' Brief and Argument).

Therefore, so far as the customs, usages and practices involved in this case are concerned, the majority had a right to do as they saw fit. (See Division III Appellants' Brief and Argument).

We shall now consider the authorities cited by Appellees in support of their proposition asserted at page 52. We shall consider them in the order in which they appear in the Brief and Argument commencing at the bottom of page 52.

45 Am. Jur. 764, Sec. 55.

An important portion of this reference is omitted. The proper quotation is as follows:

"Change of Denominational Relations or Fundamental Doctrines. - While it is true that in the case of independent religious societies each church or congregation is a self-governing unit, a majority thereof is supreme only so long as it

remains true to its fundamental faith, immemorial customs, usages, and practice. Hence, the weight of authority is to the effect that the majority of a religious society, however regular its actions or procedure may be, may not, as against a faithful minority, divert the property of the society to another denomination or to the support of doctrines RADICALLY AND FUNDAMENTALLY OPPOSED TO ITS CHARACTERISTIC DOCTRINES, even though such property is subject to no express trust; and the minority members of a church acting in harmony with its ecclesiastical laws and adhering to the faith constitute the church, as against a majority which have departed from the faith. *****"

Thus it is seen that the only real basis for complaint must be a departure from doctrines only; and it is only when such new doctrines are radically and fundamentally different that the Court may take notice.

Also in 45 Am. Jur. 776, 777, Sec. 67, Religious Societies, there appears the following correct statement of the rule at page 777 as follows:

"Nevertheless, as previously stated, the weight of authority is to the effect that the majority faction of an independent or congregational society

may not, as against a faithful minority, divert its property, although subject to no express and specific trust, to another denomination or to the support of doctrines fundamentally opposed to its own characteristic beliefs. *****"

Mt. Zion Church vs. Whitmore, 83 Iowa 138, 49 N.W. 81.

In this case the Mt. Zion Baptist Church at Bonaparte adopted certain articles of faith as published in the minutes of the Des Moines Baptist Association in 1848. In 1855 the pastor of the church and certain of the members became adherents to the doctrine of "sanctification by a second experience." This was claimed to be beyond the articles of association and the question was by agreement submitted to a council of Baptist ministers who held that contention to be true. The holding of this case is stated concisely in the first syllabus of the Court at page 138, where it is said:

"that the adherents of said doctrine of sanctification, though constituting a majority of the whole number of members of said church, could not divert the use of its property to the promulgation of doctrines different from the faith for the advancement of which the church was organized, and that a court of equity would interfere to protect the minority in having the trust property applied in accord with the original intent."

The determination in this case is based on a clear change of doctrine.

Park v. Chaplin, 96 Iowa 55, 64 N.W. 674.

The material facts in holding this case are stated in the syllabus of the Court at page 55, where it is said:

“A body incorporated as a Free Baptist Church was deeded property without declaration of trust in the deed. It became a member of a Quarterly Meeting whose manual provides that any church in the body which requests permission to join another Quarterly Meeting or other ecclesiastical denomination shall receive a letter of recommendation. Upon a vote of twenty-five for and five against it was ordered that said church should join the Baptist Church and carry its property to it. The Free Baptist and the Baptist churches hold to different doctrines.

Held, this action should be enjoined so far as the property is concerned, though the proposed change would be a benefit in worldly prosperity, wealth, popularity and membership.”

This case was determined on the basis of an attempted change of denomination or doctrine. Christian Church vs. Carpenter, 108 Iowa 647, 79 N.W. 375.

In this case the doctrine of Mt. Zion Baptist Church vs. Whitmore was approved as “not questioned” and the following paragraph at page

650 shows the decision:

“***** The property must be kept in sacred trust for the promulgation of the doctrines of the New Testament according to the generally accepted interpretation of the Church of Christ.”

45 Am. Jur. p. 776, Sec. 66.

The following language appears in the above section at page 776, and follows immediately after the language cited by Appellants:

“* * * * In general, that question is to be determined by ascertaining which of the two factions adheres to or is sanctioned by the governing body of the society, and those who adhere to the acknowledged organization are entitled to the use of the property, whether or not they adhere to the doctrines originally professed. * * * *”

Then to get the full significance of the quotation from this authority set forth by Appellees, and the above additional language set forth by Appellants, it is necessary to consider it in connection with the following language from 45 Am. Jur. 776, 777, Religious Societies, Sec. 67:

“In the case of a schism in a church of strictly congregational or independent organization, governed solely within itself, which leads to a separation into

distinct and conflicting bodies, controversies frequently arise as to the rights of opposing factions to property held by the church with no other specific trust attached to it than that it is for the use of a congregation as a religious society. In such cases, it is the well-settled rule that the doctrines previously laid down to the effect that the basic inquiry in the case of a schism in a religious society is one of identity of organizations, and that in general that issue is to be determined by ascertaining which of the two factions adheres to or is sanctioned by the governing body of the society, are applicable. Thus, if the principle of government of the society is that the majority rules, the application or the criterion in this class of cases calls for an adherence to or sanction by the majority, and the numerical majority of members must control the right to the use of the property. This general principle, however, doubtless presupposes some formal vote or action at a meeting called in substantial compliance with the rules of the society, or at least one which affords an opportunity to the members to be heard. If there are within the congregation officers in whom are vested the powers of control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property.

The minority, in choosing to separate themselves into a distinct body, can base no rights in the property upon the fact that they have been members of the church or congregation."

Thus in the case at bar, when the criterion of identity is applied to the facts involved, there can be no question but what the defendants, representing the majority in this case, are entitled to the use of the property.

McBride vs. Porter et al, 17 Iowa 203.

The real basis for the determination of this cause is expressed in the third syllabus of the Court appearing at the bottom of page 203 and top of page 204, and it is as follows:

"A deed conveyed property to certain persons 'as trustees of the Associate Congregation of Pleasant Divide, subordinate to the Associate Presbytery of Iowa, subordinate to the Associate Synod of North America;' after the union of the Associate and the Associate Reformed churches, a majority of the congregation at Pleasant Divide refused to assent to the union, while a minority organized as a United Presbyterian church, under the union: Held that the trustees of the United Presbyterian church, while representing a minority of the members of the former association, were the trustees named in the deed, and were entitled to the pos-

session of the property described therein."

The case was made to turn solely upon the terms of the trust expressed in the deed and whatever faith was represented by the Presbytery to which the conveyance was made, whether in the minority or in the majority, was held to be entitled to the property.

This case in no way supports the proposition for which it is asserted by Appellees.

Application of Trinity Church of Infinite Science vs. First Spiritualist Church, 20 N.W. 2d 534 (Minn.)

The decision in this case is shown by Notes 1 and 3 which appear on page 534 and 535, and are as follows:

"Where original objectives of church are specifically linked for their realization with a certain general ecclesiastical organization with which church is attached as integral part by express provision, court cannot determine if such objectives can be otherwise satisfactorily achieved through similar organization."

"A spiritualist church congregation whose articles of incorporation, constitution, and by-laws provide for affiliation with state and national spirit-

ualist associations, as part of fundamental purpose for which congregation was founded, cannot by majority vote, as against any dissenting member, amend the charter to effect a transfer of affiliation to another organization or effect a diversion of use of property to a purpose other than that for which it was organized."

and the following language appearing at page 537:

"*****Clearly, appellant by its original dedication became so irretrievably affiliated with the state and national associations as to place a change of affiliation beyond the power of any majority, however large, as against a single dissenting member."

It is submitted that this case has no application to the facts in the case at bar.

Christian Church vs. Church of Christ
76 N.E. 703 (Ill.)

The holding in this case is summarized in the fourth syllabus of the Court at page 703, as follows:

"A conveyance was made to the trustees of an unincorporated congregation. The congregation for over 70 years upheld the doctrines which were taught as its

inception. One faction continued to uphold such doctrines, while another faction taught and practiced what was known as innovations. Both factions incorporated. Held, that the faction which continued to teach the doctrines originally taught was entitled to the church property."

Then the following language appears at page 706:

"It is, however, urged that the great majority of the church congregations which are professed followers of Alexander Campbell have adopted, in practice, the innovations from the practice of which defendants in error hold aloof, and that the plaintiffs in error are in accord with the spirit of a more enlightened age than the defendants in error, and that their practices are in harmony with the later teachings of Alexander Campbell himself upon the subjects upon which they differ in their practices and belief from the defendants in error. It appears from the undisputed testimony that the churches organized in accordance with the teachings of Alexander Campbell were all congregational, and that these congregations, including the Sand Creek congregation, were, and always have been sovereign in all mat-

ters pertaining to church government; that is, each congregation has the right to determine for itself what its practices in the manner of conducting the worship of God in the congregation and its church business shall be, so long as such practices are not in conflict with the positive commands of the Bible. Such being the fact, although it might appear that every congregation bearing the name 'Christian Church' or 'Church of Christ,' organized throughout the land, other than the Sand Creek congregation, had adopted the practices heretofore referred to, the action of those congregations would not be binding upon the Sand Creek congregation unless that congregation had indorsed and adopted them for the government of of the Sand Creek congregation. ****"

This case in no way sustains Appellees' position. On the contrary, the foregoing language shows that the Appellants in the case at bar, representing the majority of the congregation, had the right to determine what the practices of the church should be in the manner of conducting the worship of God in the congregation and its church business, and that the actions of other congregations would have no binding effect upon the Eldora Church unless adopted by it.

Kerler vs. Evangelical Emanuel's Church
292 N.W. 887 (Wisc.)

At page 889 the Court said:

*****The contention that the congregation has been, since its organization and now is, an independent religious congregation subject to the majority rule of its members is not sustained by the evidence.
*****'

The uncontroverted evidence in the case at bar shows that the Church of Christ in Eldora is a congregational type church and autonomous and one in which the majority governs. Thus, this case has no application to the facts in the case at bar. This falls within that class of cases where the local church is subordinated to the control of a supreme governing body. The Disciples of Christ in fact disclaim any such control.

Parker vs. Harper, 175 S.W. 2d 361
(Ky.)

The following language shows the basis of this case:

(p. 364, 365) *****It is testified by one witness that there are forty-two points of doctrinal disagreement, although not that many are specified. What we may refer to as the Harper faction is opposed to the use of instrumental music in the church, to the support of missionary organizations and of church related

schools, to activity of women in church, and to the use of instructional and interpretative literature in the Sunday School. These differences, it is testified, are deemed very essential by those who are called the 'antis.' Mr. Harper deemed them so acute that he proclaimed 'he would as soon belong to the Pope or the Mormons as to belong to the other group.'

“(5) As gathered from the original declarations of faith of the Christian Church or Church of Christ, as published in *Martin v. Kentucky Christian Conference*, supra, and from general knowledge, we understand there has never been any fundamental or established creed or dogma of the church as a body of religious worshipers other than the broad acceptance of the New Testament without specific interpretation. Indeed, there is no unified body but only a society of Christians, composed of independent, co-operating congregations. It is left to each congregation to interpret the scriptures as they pertain to the forms and practices of worship. Particularly applicable, it would seem, is the manifestly just rule that as against a protesting faithful minority, the courts will not permit the diversion of the property by those who support doctrines radically and fundamentally opposed to the characteristic beliefs of the founders of the local

church.****'

''****We are of the opinion there was such departure from the faith of the founders of the church at Martin as calls for the protection of their property rights by the courts.''

First Regular Baptist Church vs. Allison, 154 A. 913 (Pa.)

The real basis of this decision is shown by the following language which appears at page 914 of the Court's opinion:

''Defendants, who are appellants here, contend that, since a Baptist church is of the congregational and not of the federated type, and there is no church judicatory to which property disputes in a particular congregation can be referred, they, as the majority of the membership, have the right to decide all matters which relate to the Indiana church property, and the other faction, being in the minority, must submit to that which has been so decided. This statement would be too broad even in the case of an unincorporated congregation. It is undoubtedly true, as contended by appellants, that each particular and individual (Baptist) church is actually and absolutely independent in the exercise of all its churchly rights, privileges

and prerogatives' that the action of the majority of the congregation is controlling. If it attempts to pass that barrier, and to do that which is essentially non-baptistic, it subjects itself, so far as property rights are concerned, to the supervision and control of a court of equity. Nagle v. Miller, 275 Pa. 157, 118 A. 670. Indeed, appellants admit this, when they state their contention to be that the individual churches 'can change their former usages and practices at any time, so long as they do not depart from the religious principles, beliefs and forms of worship of the church.' It follows that the majority of the members of an unincorporated Baptist church cannot make changes which result in such a departure, if thereby property rights are affected.

''(4) Where, however, there is a trust specifically declared in the deed of the property, which is the subject of the litigation, or where there is a charter for the church which owns that property, the rights of the respective parties are to be determined by a consideration of the deed or charter, and no majority, however great, can affect or destroy those rights by any act which is antagonistic to the deed or charter; and this is so no matter what the rights of the parties would otherwise have been. In

the present case we have both a deed and a charter."

The question presented so far as is applicable to this case is set forth at page 915 where the Court said:

"Our first question is, therefore, Are the defendants attempting to divert the use of the property to those who do not 'adhere and hold to the belief, religious principles, doctrines and articles of faith as contained and set forth in the confession of faith of said church,' or who are in antagonism to 'the faith, practice and discipline of the regular Baptist Church of the United States of North America?' ****"

The conclusion of the Court is expressed also at page 915 as follows:

"The chancellor believed the witnesses called on behalf of appellee, and found that the changes made by appellants were substantial, and not merely in methods of expression. In this he was sustained by court in banc. ****"

Thus in this case the Court concluded that there was a substantial departure from the "belief," "religious principles," "doctrines" and "articles of faith" of the church involved.

Bakos et al vs. Takach, et al
14 Ohio Appeals 370

The distinguishing feature of the excerpt from this case set forth by Appellees on page 97 and 98 of their Brief and Argument is the following:

*****If there is a trust confided to a religious corporation, even though it be of the independent or congregational form of government, it is not within the power of the majority of that congregation, however preponderate, by reason of a change of views on religious subjects, to carry the property so confided to them in trust to the support of a different doctrine. To justify the application of this rule of law the trust and the abuse of it should be clearly established. We think that has been done in this case.*****"

Thus according to this case, a change of doctrine must be clearly established, and this in no way supports the proposition asserted by Appellees at page 52. On the contrary, it supports the very position taken by Appellants in this case.

There are a number of additional cases cited in support of Proposition 1 at page 51 and 52 and which are not considered in Appellees' Argument following this proposition. We shall give brief consideration to each of these authorities, taking them up in order in which they are

cited under Proposition 1, but omitting those cases which have been considered in Appellees' Argument, and which have heretofore been considered by Appellants.

Hughes vs. Grossman
201 P. 2d 670 (Kans.)

At page 674 of the Court's opinion, it is said:

“Where the church holds its property or is entitled to its use as a denominational church, the courts, when called upon, will award the property, and all rights pertaining thereto, to those who continue to adhere to the doctrine, tenets, and rules of the church as they existed before the division; even though they constitute only the minority****”

Smith vs. Pedigo, 33 N.E. 777 (Ind.)

The following is stated in the fourth syllabus of the Court at page 778:

“Where property is conveyed to trustees for the use of a church having a well-known and established doctrine, faith, and practice, a majority of the members has not the power, by reason of a change of religious views, to carry the property thus dedicated to a new and different doctrine.”

The basis for this decision was a departure from the original belief, faith and doctrine of the church. The last two pages of this opinion are devoted to a discussion of Mt. Zion Baptist Church v. Whitmore, 83 Iowa 138, 49 N.W. 81, and the Indiana case is decided in accordance with the Whitmore case.

Lamb vs. Cain, 29 N.E. 13 (Ind.)

This case does not involve a congregational type church and the holding of the Court is summarized in the second syllabus of the Court as follows at page 13:

“2. The general conference of a church appointed a commission to amend the church constitution, and to revise the confession of faith, and directed that the report of such commission be submitted to the people of the church, and, if the result showed that two thirds of the number of votes cast were given for the approval of the proposed constitution and revision, that the bishop publish such result in the official organs of the church; whereupon the constitution and confession of faith so adopted should become the organic law and fundamental belief of the church. These directions were followed, and the amended constitution and revised confession were declared adopted by the next general conference, as having received the necessary two-thirds vote.

Held, that the question was for the church authorities alone, whether such action conflicted with those provisions of the former constitution forbidding any change whatever in the confession of faith, and permitting alterations of the constitution only on request of two-thirds of the whole church, but giving no directions as to the time and manner of making such requests; and the civil courts, having no ecclesiastical jurisdiction, cannot question the decision of the general conference."

The reason for this decision is that the general conference made the law. It was adopted in accordance with the constitution and became the law of the church and consequently all who adhered to the law as finally amended constituted the true church. There is no general conference in the case at bar which has any ecclesiastical authority over the local Church of Christ in Eldora.

Gaff v. Greer, 88 Ind. 122, 45 Am. Rep. 449

This case decides:

"Where a presbytery have decided that certain members of a Presbyterian Church under its jurisdiction have seceded, the decision binds the civil courts, and the seceders, although a majority, lose their rights to the

church property."

This case has no application to the facts in the case at bar, and in no way supports the proposition for which it is cited by Appellees.

Bear v. Heasley, 57 N.W. 270 (Mich.)

Paragraph 6 of the syllabus at page 270 disposes of everything material in this case, and reads as follows:

"When a general conference has disregarded the constitution of the church, its acts cease to be legitimate, and the adherents of the constitution, however few, have the right of possession of the church's real estate."

We fail to see how this case in any way supports the proposition for which it is cited.

Hale v. Everett, 53 N.H. 9, 16 Am. Rep. 82

This case occupies 111 pages of the Report. However, the matter insofar as it is of importance in the case at bar, is contained in the following syllabus:

"Certain persons organized themselves under a general statute into a corporation as a 'unitarian society of Christians,' and continued to hold property and con-

duct public worship as such until the pastor publicly avowed that he was 'neither a Unitarian nor a Christian.' Thereupon a majority of the members of said society formed a new society and re-employed said pastor. He continued to preach his own doctrines in the meeting house of the society, and was supported by a majority of the society. The minority filed a bill against the majority and the pastor, praying an injunction to restrain the preaching of such doctrines in the meeting-house. Held, that they were entitled to the injunction."

Philomath College v. Wyatt
39 P. 1022 (Ore.)

At page 1023, the Court says:

"I shall first consider whether there has been a change in the confession of faith or fundamental doctrine of the church. When I speak of a change, I mean one that is material and vital to the established tenets and doctrines of the church, as it is not every trivial transmutation of phraseology, or every addition to the so-called confession of faith, eo nomine, where taken or transposed from the discipline to that particular instrument, that will destroy church identity. I cannot see how the

dogmas of the church are changed or destroyed by transferring doctrine previously contained in the discipline to the confession of faith, or vice versa. The fundamental belief remains the same. For instance, if justification and sanctification are doctrine to which all members of the church must subscribe before they can become such, how can it become important whether they are contained in the confession of faith, eo nomine, or in the discipline. There must be a radical change of faith or doctrine."

Krecker v. Shirey, 30 A. 440 (Pa.)

This is another case dealing with the general conference or synod as distinguished from a congregational type church such as we have involved in the case at bar. The material part of this decision is paraphrased in the first and third syllabus of the Court which are as follows:

"The laws of an ecclesiastical body will be recognized and enforced by the civil courts if not in conflict with the constitution or the laws of the state."

"The decision of the general conference, established by the ecclesiastical body in its book of discipline as the supreme court of law in the church on the meaning and effect of the provisions of the book of

discipline, if not in violation of any law or usage of the church, is binding on the ecclesiastical body and will be followed in a court of law."

Roshi's Appeal, 69 Pa. 462, 8 Am. Rep. 275

There are two phases of this decision:

1st. "The title and use of the property of a divided congregation, and the officers pertaining thereto, belong to that portion which adheres to the denomination and conforms to its rules."

2nd. "A class is of the German Reformed churches, of the United States, sitting as an ecclesiastical Court, declared certain offices held by Defendants vacant. Held, that the ecclesiastical decision was binding on the civil courts."

Schnorrs App., 67 Pa. 138; 5 Am. Rep. 415

The holding in this case is expressed by the syllabus as follows:

"The title to the church property of a divided congregation is in that part, though a minority, which adheres to the

ecclesiastical law, usages and principles of the denomination under which the church was constituted."

Finley vs. Brent, 12 S.E. 228 (Va.)

This case decides as follows:

"Where property is left in trust for the sole and exclusive benefit of the religious congregation of regular, orthodox Methodist protestants of a certain place, the majority of such congregation cannot, by leaving such church and joining the Methodist Episcopal Church, take such property with them for the use of the latter church."

This case is another of the cases which does not permit the diversion of the property of the church to another denomination.

REPLY TO APPELLEES' DIVISION A

The following proposition is asserted under Division A at page 99:

"There is a distinct and separate group, fully organized, who are trying to take over various properties of the brotherhood known as the Disciples of Christ. They are called, in this record, 'Independents.' "

This is the first time anywhere in this case

that the so-called brotherhood of the Disciples of Christ has made any claim to a right, title or interest in the property of the Church of Christ in Eldora, or any other church, for the undisputed evidence in this case is that the Church of Christ in Eldora is a congregational type church and autonomous. Their affiliation with the state and national organizations of the Disciples of Christ is entirely voluntary, and there is no ecclesiastical organization over any local church. All the property involved in this case was conveyed to the Church of Christ or to the Trustees of the Church of Christ and the property in no way belongs to the Brotherhood known as the Disciples of Christ.

We shall consider first the authorities set forth in the Argument under this Division, and we shall consider them in the order in which they appear in the argument.

First Constitutional Presbyterian Church vs. Congregational Society, 23 Iowa 567

The force of this decision is expressed in the third syllabus of the Court at page 567 which is as follows:

“A majority of the trustees and members of a voluntary association of individuals for religious purposes, have not the power, upon retiring therefrom, and forming with others a new and different religious organization, to control the property of the old association and divert it from the particu-

lar purpose to which it was dedicated, by transferring it to the use of the new organization against the desires and opposition of the minority of the old one, who continue to adhere and remain in subordination thereto.”

It must be remembered that in a Presbyterian Church, the presbytery fixes the doctrine and the doctrine is subject to change as the presbytery sees fit.

Christian Church v. Carpenter
108 Iowa 647, 79 N.W. 375

In this case the doctrine of Mt. Zion Baptist Church was approved as “not questioned” and the following paragraph at 650 shows the decision:

“****The property must be kept in sacred trust for the promulgation of the doctrines of the New Testament according to the generally accepted interpretation of the Church of Christ.”

Parker v. Harper, 175 S.W. 2d 361 (Ky.)

The basis of this decision has been considered in Reply to Proposition 1 of Appellees’ Brief and Argument, supra.

It must be made clear to the Court at this point that there is no claim that the Defendants in this case are any part of the so-called anti-organ group discussed in the Parker and Carpen-

ter cases supra.

At page 104 there is a discussion of the group which Appellees label as "independents." The reason that some of these Churches of Christ have been labelled independents is shown by the following testimony given by Rev. Schuler on cross-examination by Mr. Bump:

"Q. Now, let's go to this. Are there a group of churches called the Church of Christ of which you are affiliated with?

"A. Yes.

"Q. Are they sometimes called Independents?

"A. They have been labelled Independents.

"Q. That is all right, labelled Independents. They are labelled Independents because they do not support the general organizations of the Disciples of Christ in that they do not contribute to the United Christian Missionary funds or State organizations?

"A. They have been labelled independent churches because they prefer the direct support method of missionary work and not through the organization work.

"Q. They are labelled that by some because they do not support what we will call the organized missionary work?

"A. That is right."

(R. p. 787, ll. 31-34; p. 788, ll. 1-16).

This is the only meaning assessed to the word "independents," in the Record of this case and at page 7 of their Argument, Appellees say:

*****The Eldora church could participate or not in state and national work, as it chose."

The Church of Christ in Eldora is a congregational type church and autonomous. (See pages 7-9 of Appellees' Brief and Argument). And its affiliation with the state and national organizations of the Disciples of Christ was on an entirely voluntary basis; (See Appellants' Brief and Argument, p. 13 to 17) and the answer to the claims of Appellees is found in the recent Iowa case of Keith vs. First Baptist Church of Algona, Iowa, 50 N.W. 2d 803. At page 807, the Court said:

"In reality, Plaintiffs, by arguing 'a right to continue in that (convention) cooperation' that has existed in the past, are arguing the local church can be compelled to send delegates to all

future annual meetings of the conventions. Since delegates are selected by majority vote they in effect ask the court to command a majority vote in favor of convention delegates in order that they have that continuance of convention 'cooperation' that has existed in the past. We greatly fear any judicial tribunal would find it difficult to protect such a so-called right of 'cooperation.'''

and the following language which appears at page 809:

''Plaintiffs' entire argument is without any supporting testimony showing a basic departure from the long adhered to faith of the defendant church. We see no use in reviewing the many cases cited where questions concerning withdrawal by a church of a voluntary affiliation are involved. The general rule is that a church with a congregational form of government can by majority vote withdraw from a voluntary affiliation and make a new one.''

The entire basis of this law suit is shown by the following testimony of Rev. Schuler given on cross-examination by Mr. Bump:

''Q. Now, I believe you said in direct examination that when you came to Eldora there was some friction or dissention in the church?

''A. There was considerable amount of it.

''Q. Do you know what the basis of that friction was?

''A. The basis of that friction was whether or not they would accept the U.C.M.S. or Iowa Christian Missionary Society. That was the issue.''

(R. p. 799, ll. 5-15).

Thus when the majority of the Church of Christ in Eldora chose not to accept the U.C.M.S. or the Iowa Christian Missionary Society, then under the law laid down in the Keith case, supra, the case at bar should be reversed.

At the bottom of page 805 there is reference made to the fact that Schuler is a graduate of the Cincinnati Bible Seminary. Rev. Schuler also testified however that this school taught the doctrine of the Church of Christ as it has been designated in this case. (R. p. 842, ll. 7-9).

At pages 106 and 107, certain evidence is set forth which purportedly shows what kind of minister Rev. Schuler is. However, that testimony simply shows that he did not affiliate himself with the Disciples of Christ. There is affirmative testimony that he is a minister of the gospel of the Church of Christ in Eldora, and that he was ordained as a minister on October 31, 1947, by the Hampton Church of Christ, that he was ordained in the Church of Christ by the

Elders in the Church of Christ. (R. p. 734, ll. 1-7).

During the time that he has been a minister of the Church of Christ he has learned the basic doctrines of the Church. (R. p. 734, ll. 19-25).

Rev. Schuler testified his belief in all the doctrines alleged in Plaintiffs' Petition, and that it was the standard belief of the Church of Christ. He also said that the names "Christian Church" or "Church of Christ" has been used interchangeably in days gone by, but there has been no difference in the doctrine of the two, the basic doctrine of the Church. (R. p. 734, ll. 27-34; p. 735, ll. 1-16).

The only thing that Rev. Schuler has denied is that he belonged to an organization so affiliated or denominated as Disciples of Christ separate and apart from the Church of Christ. He has never denied that he was a disciple of Christ, and he testified that he truly was as he used the word "disciple" as a learner and follower of Christ. (R. p. 735, ll. 22-33).

There is no proof here that Rev. Schuler preached any doctrine any different than that alleged in the Petition.

Commencing at the bottom of page 107 and continuing to the top of page 109, Appellees have set forth an excerpt from the trial Court's opinion. The first paragraph of that excerpt has been considered in Appellants' Brief and Argument at pages 58 and 59.

Appellants' position on the second paragraph of the Court's excerpt relating to the expulsion of the members of the Church of Christ in Eldora

is set forth in Division V of Appellants' original Brief and Argument.

At page 109, Appellees have injected their own remarks and say that "if the contention of the defendants is true, that a majority may do anything it wishes--why could it not sell or rent the church for a theater?****"

Appellants make no such claim, as we have recognized throughout the limitation on the power of the majority of a congregational type church and that is, that the majority may not divert the property of the church to another denomination or to the support of doctrines fundamentally opposed to the characteristic doctrines of the Church. Appellants do assert that there was no change of doctrine in the case at bar, and that the majority did have a right to do any of the things that were done in this case. They do not claim that a majority may do anything that it wishes as has been asserted here by Appellees.

Thus Appellees' references to First Constitutional Presbyterian Church vs. Congregational Society, 23 Iowa 567 and Mt. Zion Church vs. Whitmore, 83 Iowa 138, have no application whatsoever at this point.

Then picking up again at the bottom of page 110 and continuing through page 112, Appellees set forth a further excerpt from the opinion of the trial court. The right of the Defendant corporation to effect such change in its By-Laws is discussed at page 52 and page 53 of Appellants' original Brief and Argument. There is no basis for the Court's assumption made in this phase of his opinion that the Christian Benevolent Asso-

ciation is the head of the anti-group in the Christian Church. The Record does not support this assumption in any way, and thus the trial court erred in so assuming.

Then as shown on page 112 of Appellees' Brief and Argument, the Court said:

“****The defendants preach and say and argue that the Eldora Church not only need not, but must not recognize a state ornational group, even though they have been affiliated with said groups throughout all the years of its existence, and yet they themselves by these By-Laws are headed the same way.****”

This statement of the Court completely overlooks the fact that the Church of Christ in Eldora is a congregational type church and autonomous, and that the affiliation with the groups involved in this case was on an entirely voluntary basis, and these facts are established conclusively by Plaintiffs' own evidence. (See Appellants' Brief and Argument, pages 7-9, p. 13-17).

The last paragraph of the excerpt of the Court's opinion is set forth on page 112 is entirely a conclusion and opinion of the Court and has no foundation in the law. There is no law that “churches must be affiliated together as a group and to do so there must be a state and national organization.”

Commencing at the bottom of page 112 and continuing to the top of page 114, Appellees set forth the facts relating to the expulsion of Plain-

tiffs and others from the Church of Christ in Eldora. We have considered this matter of expulsion in Division V of our original Brief and Argument, and it is to be noted that the Appellees make no answer to that division of Appellants' Brief and Argument.

REPLY TO APPELLEES' DIVISION B

The proposition stated under Division B at page 115 is as follows:

“The fundamental inquiry is one of identity of the church. In other words, which of the rival factions is the true successor of the society as it existed prior to the schism. This is the rule applied to an independent or an autonomous church congregation.”

At the commencement of the argument under this Division, Appellees make reference to several authorities, and we shall consider these authorities in the order in which they appear in the argument.

45 Am. Jur. 775, Religious Societies,
Sec. 66

The following language appears at page 776 of this same authority and follows immediately after the language cited by Appellants.

“****In general, that question is to be

determined by ascertaining which of the two factions adheres to or is sanctioned by the governing body of the society, and those who adhere to the acknowledged organization are entitled to the use of the property, whether or not they adhere to the doctrines originally professed.****''

Then to get the full significance of the quotation from this authority set forth by Appellees, and the above additional language set forth by Appellants, it is necessary to consider it in connection with the following language from 45 Am. Jur. 776, 777, Religious Societies, Sec. 67:

''In the case of a schism in a church of strictly congregational or independent organization, governed solely within itself, which leads to a separation into distinct and conflicting bodies, controversies frequently arise as to the rights of opposing factions to property held by the church with no other specific trust attached to it than that it is for the use of a congregation as a religious society. In such cases, it is the well-settled rule that the doctrines previously laid down to the effect that the basic inquiry in the case of a schism in a religious society is one of identity of organizations, and that in general that issue is to be determined by ascertaining which of the two factions adheres to or is sanctioned by the governing body of the society, are

applicable. Thus, if the principle of government of the society is that the majority rules, the application of the criterion in this class of cases calls for an adherence to or sanction by the majority, and the numerical majority of members must control the right to the use of the property. This general principle, however, doubtless presupposes some formal vote or action at a meeting called in substantial compliance with the rules of the society, or at least one which affords an opportunity to the members to be heard. If there are within the congregation officers in whom are vested the powers of control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property. The minority, in choosing to separate themselves into a distinct body, can base no rights in the property upon the fact that they have been members of the church or congregation.''

The principle of government of the Church of Christ in Eldora is that the majority rules for it is congregational type church and autonomous.

Thus in applying the criterion of identity to the case at bar, under the rule stated in 45 Am. Jur., supra, it calls for an adherence to a sanction by the majority, and the numerical majority of members must control the right to use of the

property. Thus in applying this test, the Defendants in the case at bar are entitled to the church property.

Park vs. Chaplin, 96 Iowa 55, 64 N.W. 674

This case does not support the proposition asserted by Appellees at page 115 of Division B. This is a case in which the majority of the members of a free Baptist Church which owned property without declaration of trust voted that the church should join the Baptist Church and carry the property to it. It is admitted that the Free Baptist Church and the Baptist Church held to different doctrines.

Christian Church vs. Carpenter
108 Iowa 647, 79 N.W. 375

This case does not support the proposition for which it is cited. The following final paragraph of the opinion sums up the entire decision:

"The property must be kept in sacred trust for the promulgation of the doctrines of the New Testament according to the generally accepted interpretation of the Church of Christ."

At pages 118 and 119, an excerpt from the trial court's opinion is set forth. Here again the trial court has completely overlooked the evidence that the Church of Christ in Eldora is congregational in type and autonomous, and that

its affiliation with state and national organizations of the Disciples of Christ was on an entirely voluntary basis. (See Appellants' Brief and Argument, pp. 7-9; pp. 13-17). Thus we submit the findings of the trial court contained herein are not supported by the Record.

At the bottom of page 119 and continuing on the top of page 120, Appellees set out the statement:

"A congregation of Disciples was organized on May 20, 1855."

This excerpt is taken from the records of the Church of Christ in Eldora. However, it is Appellants' position that the word "disciples" as there used does not refer to the Disciples of Christ organization, but rather refers to individual members of the Church as disciples of Christ or as followers of Christ. This is borne out by the case of Christian Church vs. Carpenter, 108 Iowa 647, for the following language appears at page 650 of the Court's opinion:

"****But both parties rest on theirs as being that which should guide the "Disciples," as members of this church are often called."

But we do not believe that the word as used in the Church records refers to the Disciples of Christ as the term has been used throughout the Plaintiffs' case, or in other words, in the name of the Brotherhood so-called.

At page 120, 121 and top of page 122, Appellees discuss various ministers who have served the Church of Christ in Eldora. Regardless of the ministers involved, the doctrine of the Church is the same and we submit there has been no showing of any change in the basic doctrine of the Church of Christ in Eldora, and thus no diversion of the property has been effected by Defendants.

As to the association of the Church of Christ in Eldora with the state and national organizations of Disciples of Christ, as we have said before, it is on a voluntary basis and the Eldora Church is a congregational type church and autonomous, and the majority had the right to do as they saw fit in reference to such affiliation.

REPLY TO APPELLEES' DIVISION C

The argument under this division is commenced by an excerpt from the trial court's opinion. The material portion of this opinion has been considered in Appellants' original Brief and Argument at pages 54 and 55.

Commencing at the bottom of page 124 and continuing to the middle of page 126, there is evidence set forth in reference to the type of minister which Rev. Schuler is. We have heretofore discussed this matter and will say nothing further about it here.

At the bottom of page 126, Appellees set forth a quotation which they say is what Rev. Lair purportedly said about doctrine. What Rev. Lair said about doctrine is more accurately

shown by the Record citations found in Appellants' Brief and Argument at pages 9 and 10.

Then at the top of page 127, they say that the first noticeable difference is a provision in the By-Laws that:

"Only members shall be received who have been examined and accepted by the pastor."

There is no such provision in the By-Laws. This claimed quotation comes out of thin air for the Record citation with which they supported their quotation is in 'fact' as follows:

"Admission of Members. - Persons found to be qualified as believing in the Virgin Birth of Christ, having been properly baptized according to Biblical teaching and accepting full and complete authority of Christ as so examined and accepted by the Pastor shall be entered on the Church Rolls and received as a member."
(R. p. 42, ll. 13-20).

This is a far cry from the quotation made by Appellees based on this Record reference.

The qualifications set up in this By-Law are:

- 1st. A belief in the Virgin Birth of Christ.
- 2nd. Baptism.
- 3rd. Acceptance of full and complete authority of Christ.

Reading this By-Law as a whole makes it evident that examination by the pastor is simply to determine whether a prospective member believes in the Virgin Birth and is willing to accept the full and complete authority of Christ, and then that he is properly baptized.

We submit there is no discretion in the pastor to turn the prospective member away if the member says that he believes in the Virgin Birth of Christ, and is willing to accept full and complete authority of Christ and then is properly baptized.

This is no different doctrine than Appellees assert, for at the bottom of page 34 of their Brief and Argument, they state that the Disciples believe in the Virgin Birth, and in their Petition it is asserted that "they accept no creed but Christ." (R. p. 13, ll. 19-20). And certainly if a person accepts full and complete authority of Christ, then they are accepting no creed but Christ.

This By-Law provides for no new doctrine as Appellees contend and we assert that it is self evident.

Then continuing on page 127, Appellees say:

"As a proof that this is contrary to our doctrine, Rev. Lair further says:

" I know of no church of the Disciples of Christ or Christian Church of our Brotherhood that has any such provision. The rule in our Brotherhood is that when this confession is made and the

member is immersed, he is a member of the church.' "

They cite page 233 of the Record in support of this statement. It is set up as a direct quote but in fact it is not.

Commencing at the middle of page 127, there is an excerpt from the statement of Dr. Gaines Cook, Executive Secretary of the International Convention of the Disciples of Christ. There is also a further quote of his testimony continuing on page 128. In reference to the matter of membership, it is Appellants' position that it is within the autonomy of the local Church to make its rules and regulations in reference thereto. See Appellants' original Brief and Argument commencing at the bottom of page 55 and continuing to the middle of page 59.

Commencing on page 129 and continuing on page 130, there is a discussion of the matter of expulsion of members. Again we refer the Court to Division V of Appellants' original Brief and Argument, and it is submitted that Appellees have in no way answered Division V on the basis of the law involved.

Commencing at the bottom of page 130 and continuing through page 132, there is a discussion of the practice of supporting the agencies of the Brotherhood.

As we have heretofore shown and argued, the Church of Christ in Eldora is congregational and autonomous and its association with the agencies of the Brotherhood of the Disciples of Christ was purely on a voluntary basis and under

the rule of law enunciated in the case of Keith vs. First Baptist Church, Algona, Iowa, 50 N.W. 2d 803, a church with a congregational type government, can by a majority vote withdraw from a voluntary affiliation and make a new one.

Both Appellees and the trial court have failed to give proper recognition to these facts and this rule of law.

On page 133, there is a purported summary of the differences in doctrines, beliefs, customs, usages and practices involved in this case. There are fifteen comparisons between the so-called "Old" and "New." We shall comment on each of these briefly in the order in which they appear.

1. The evidence shows the name to be optional with the local church. (R. p. 222, ll. 33-34; p. 223, ll. 1-13). In all the Articles of Incorporation the name "Church of Christ" is used. (R. p. 20-47). Also, in each of the deeds involved in this case where real estate was conveyed to the church, it was conveyed to the Church of Christ. There is no basis here for any claim of change of doctrine or diversion of the property from its trust.

2. We agree the congregation is the supreme authority. There is no evidence in this case that the minister governs the church or has any authority to govern the church. The only evidence of any kind that Schuler governed the Church was the claim of some of Plaintiffs' witnesses that Schuler said it was his job to govern the Church. (R. p. 591, ll. 31-32). But this does not make it so. As to the authority of the Board

to employ and discharge pastors, it involves no matter of doctrine and no diversion of the property from its trust, and in any event, it is a matter of autonomy of the local Church which the majority was entitled to control.

3. This matter has been heretofore discussed in detail, and the claimed difference between the old and the new is not so.

4. This is a matter of the local autonomy of the Church as we have heretofore shown.

5. There is nothing which shows any denial of the right of the individual to interpret the Scriptures.

6. There has been no additional creed added by Defendants in this case for Christ is their creed.

7. This is a matter within the local autonomy of the church and does not in any way involve doctrine or diversion of the property from its trust.

8. There is nothing in the Record which shows that Defendants do not believe in cooperation, but they do not believe in the United Christian Missionary Society or Iowa Christian Missionary Society or that manner of cooperation, and this is their privilege. Their association with such organizations is entirely voluntary and they were entitled to withdraw by a majority vote.

9. The evidence is that the Church of Christ in Eldora did cooperate with other faiths during Schuler's ministry.

10. This has no bearing on the issues in this case, and the right to determine matters in

reference to membership is within the power of the local congregation.

11. This again is a matter of internal affairs of the local Church of Christ in Eldora. It involves no doctrine and is a matter in which the majority is entitled to govern and certainly in no way constitutes any diversion of the property from its trust.

12. If deaconesses are optional, then certainly the local church has the right to do as it sees fit in that matter. In any event, there is no evidence that it is wrong to have deaconesses in this case. There is evidence that the Eldora Church concluded not to have deaconesses on its board, but then this is a matter which it alone had a right to determine. There is nothing doctrinal here, nothing which in any way can constitute a diversion of the property from its trust.

13. If receiving of the literature of the Brotherhood is optional, then the Church had a right to determine not to have it. Certainly there can be no claim here that Defendants are compelled to use such literature. If they wanted to throw it in the wastebasket, that was their privilege. This certainly constitutes no doctrinal matter nor any change in faith, belief or doctrine.

14. The Church of Christ in Eldora is congregational and autonomous, and its affiliation with the Disciples of Christ organizations has always been on a voluntary basis, and under the Iowa law, a majority of such a church can by majority vote withdraw from such affiliation. This constitutes no change of doctrine nor diversion of the property from the trust.

15. There is no change here as asserted and the evidence so shows. In any event, it has nothing to do with faith, belief or doctrine, and in no way involves a diversion of the property from its trust.

REPLY TO APPELLEES' DIVISION D

The validity of the adoption of the 1949 Articles of Incorporation and By-Laws of the Church of Christ in Eldora is fully discussed in Division IV of Appellants' original Brief and Argument, and will be given no further consideration here, except to say that so far as the applicability of Section 504.19 of the 1950 Code of Iowa is concerned, the 1949 Articles were adopted in accordance with the previous Articles in effect. Thus the portion of that statute relating to cases where there is no provision in the articles has no application to the facts in the case at bar.

REPLY TO APPELLEES' ANSWER TO APPELLANTS' ARGUMENT

Appellees deny that the primary question presented by this appeal is "whether or not the Church of Christ in Eldora can by a majority vote, withdraw from a voluntary affiliation with state and national organizations of the Disciples of Christ" but we reassert that it is the primary issue, for the real basis of the controversy throughout this entire case is whether or not the Church of Christ in Eldora, being congregational

and autonomous and being affiliated on a voluntary basis with the state and national organizations of the Disciples of Christ can by a majority vote sever that relationship. The only controversy in the congregation of the Church of Christ in Eldora was not over basic faith, belief or doctrine, and thus the doctrine of the Church of Christ in Eldora has in no way been changed by Defendants.

The entire basis of this law suit was elicited by Mr. Bump on his cross-examination of Rev. Schuler, and is shown by the following testimony:

"Q. Now, I believe you said in direct examination that when you came to Eldora there was some friction or dissention in the church?

"A. There was considerable amount of it.

"Q. Do you know what the basis of that friction was?

"A. The basis of that friction was whether or not they would accept the U.C.M.S. or Iowa Christian Missionary Society. That was the issue."
(R. p. 799, ll. 5-15).

The real power back of this law suit, the instigating force, is the Iowa Christian Missionary Society led by Rev. Loren E. Lair.

This organization and the national organization without any authority or basis are trying to subject the local Christian Churches or Churches of Christ to their control.

Appellees endeavor to say that the case of Keith vs. First Baptist Church of Algona, Iowa, 50 N.W. 2d 803, has no application to the facts in the case at bar, but we submit that the facts themselves reveal otherwise. We have discussed the applicability of this case to the facts in the case at bar in Division III of our original Brief and Argument.

Then on page 137, Appellees say:

"The cases cited in Appellants' Brief at page 41 do not sustain their doctrine."

We shall consider each of the cases briefly which Appellants say do not sustain our doctrine.

All of the authorities cited on pages 40, 41 and the top of page 42 are cited to support the rule of law that "a church with a congregational form of government can by a majority vote withdraw from a voluntary affiliation." And we submit that every one of these cases support that rule of law.

Turning back to the particular cases that Appellees say do not support this rule:

Manning vs. Yeager, 82 So. 435 (Ala.)

The following language from the 4th syllabus at page 435 supports the rule for which it is cited:

"Proof that a Missionary Baptist Church withdrew from association with Cullman Baptist Association, and the Alabama Baptist State Convention, and, acting in concert with three or four Baptist churches in Cullman County, formed another association, and that pastor thereof was opposed to foreign missionaries and educated ministry, and indulged in ribald, coarse, and scurrilous language with reference to the Foreign Mission Board and Howard College, held insufficient to show diversion of church property to a use inconsistent with the Missionary Baptist Church faith."

Guin v. Johnson, 161 So. 810 (Ala.)

The following language from the 6th syllabus at page 810 supports the rule for which it is cited:

"Where majority members of church changed affiliation from Freewill Baptist Association to Progressive Freewill Baptist Association, and evidence showed that articles of faith and church ceremonies of the two associations were not so radically different so that change would constitute a diversion of church property from uses to which it was intended,

bill for injunction to restrain Progressive Freewill Baptist Church from use of church property was denied."

Booker vs. Smith, 214 S.W. 2d 513 (Ark.)

We shall make no reference to this case except to say that the Supreme Court of Iowa cites it to support the rule which Appellants have asserted that it supports. See Keith vs. First Baptist Church, Algona, Iowa, 50 N.W. 2d 803, at page 809.

Duessel v. Proch, 62 A. 152 (Conn.)

The following language from the 1st syllabus at page 152 supports the rule for which it is cited:

"Where certain land was conveyed to trustees of a certain Lutheran church, following the Unaltered Augsburg Confession of Plymouth, and to their successors or assigns, trustees of such church, 'to them and their own proper use and behoof,' such church being congregational in government, having a mere optional affiliation with national associations or synods of such churches, the use of the property by a corporation subsequently organized from the old congregation, following the general Lutheran belief and the Unaltered Augsburg

burg Confession of Plymouth, etc., was authorized."

Rose v. Briggs, 266 S.W. 236, (Ky.)

The following language at pages 236 and 237 supports the rule for which it is cited:

"The Church of the Living God has no rules or constitution creating what is called the state presbytery or the general presbytery. There is nothing defining the powers of either of these bodies. There is no evidence whatever that the local congregation at Winchester has in any way conferred upon either of these bodies any power over it, except in an advisory capacity. The general presbytery is composed of all the ministers of the church, meeting annually at Anderson, Ind. The state presbytery is composed of all the ministers in the state, meeting annually at Winchester, where a camp meeting is held. But there is nothing in the record conferring upon either of these bodies anything more than advisory action.

In order to deprive the local congregation of the control of its own church property, which it built with its own means, there must be either a written constitution or a clearly shown parol constitution conferring more than

power to make advisory decisions. To take out of the statute all cases on such meager evidence as we have here would be in fact to emasculate it. It is very common in all congregational bodies to create associations with advisory powers. The power to do more than this; that is, the power to enforce obedience to the advice must be clearly shown. The organization of the general church seems to be entirely along the same lines as the organization of the local congregation; that is, it is purely a spiritual matter. The physical organization which is necessary to take the case out of the statute is entirely out of keeping with the fundamental conception of the church, as is shown by the evidence. Cox v. Prewitt, 197 Ky. 716, 247 S.W. 976.

"In the Baptist Church there are associations. In the Disciples or Christian Church there are conferences. But none of these take anything more than advisory action. This congregation came mainly from these churches, and there is nothing in the record indicating that it has surrendered in any way of its independence."

Ennix v. Owens, 271 S.W. 1091 (Ky.)

The following language at pages 1092 and

1093 supports the rule for which it is cited:

"On the other hand, there are a number of religious bodies having a congregational form of government in which the congregation has supreme control of its own matters. A congregation may at its election put in its lot with an association conference or convention, but the decision of these bodies is only advisory. From the proof in the case it is undisputed that the Church of God belongs to this class. It is voluntary with any congregation whether it will join any assembly. It joins an assembly simply by sending its messenger to it. It is only a member so long as it sends a messenger to the assembly. When it ceases to send a messenger it is no longer carried as a member. In the congregation the majority rules and there are, so far as the record shows, no officers to direct the affairs of the congregation; the congregation runs itself and there is no authority above the congregation to set in judgment upon what the congregation does.***

"The proof shows that the assembly is composed of the ministers of the denomination who have united with that assembly and the messengers of the church present at the assembly. There is

nothing in the record to indicate that the assembly has ever taken anything more than advisory action in the case of any church. We do not find in the record any substantial contradiction of the testimony above quoted. Plainly the words 'of the Mountain Assembly' were used in the deed after the word, 'trustees,' because all of the persons purchasing the property were then connected with the Mountain Assembly and planned that the church they were about to organize should go in the Mountain Assembly. They had the same right to their assembly relation as any other church, and like any other church the majority rules. When they organized a church in the Mountain Assembly they organized it with all the rights of a church in that assembly, and one of these rights was that the congregation should control its local matters, and this necessarily carries with it the right to change the assembly if they saw fit. To hold otherwise would be to say that the assembly had supreme power over this church, and that it could not separate itself from the assembly in any event. Plainly that was not the understanding of these people when they formed this church. They were all Baptists or Congregationalists in some form or other, and their whole course shows that all the parties from the be-

ginning until this controversy arose regarded that the majority of them could control its policies.

“This is plainly not a case where denomination has a definite form of government, and in which each congregation is subordinate to the higher bodies of the church.”

Bray vs. Moses, 202 S.W. 2d 749 (Ky.)

The following language from the 7th syllabus at page 749 shows that it supports the rule for which it is cited:

“Under rules of voluntary association of independent churches, a majority of congregation of one of member churches was not prevented from withdrawing the local church from the association.”

Martin vs. Kentucky Christian Conference
73 S.W. 2d 849

The following language at pages 851 and 852 supports the rule for which it is cited, and it is to be noted that this case deals with the very type of church involved in the case at bar:

“But even if we were less certain as to the soundness of this conclusion, it would not follow that the judgment awarding the property to the Kentucky

Christian Conference would be proper. For a great many years the Kentucky Christian Conference was an unincorporated society. By an act of the General Assembly approved April 5, 1878, (Loc. & Priv. Acts. 1877-78, c. 812), it was incorporated with certain powers. It always has been and is now a purely voluntary society composed of ministers and delegates from affiliated churches which send letters and reports indicating their condition and progress. No Christian Church or its minister is compelled to be a member of the Conference. It is not a supreme judicatory, with the power to make laws for the government of the churches, or to prescribe articles of faith, or to control church property. Indeed, the possession of these powers would be subversive of the very purpose for which the church was formed. Indeed, it cannot be disputed that the Christian Church had a congregational form of government and that each local church administers its own government by the voice of a majority of its members. That being true, it cannot be doubted that a majority of the members of a Christian Church has the power to call its own minister, to determine when and by whom protracted meetings may be held, to withdraw the church from a purely voluntary organization, such as a Conference, and also to provide

for holding communion services weekly rather than at less frequent periods, without departing from the faith.”

Parker v. Harper, 175 S.W. 2d 361 (Ky.)

Though Appellees assert that this in no manner supports the rule for which it is cited by Appellants, yet the following language appears at page 363:

“In dealing with controversies within churches having the congregational form of government without any judicatory with revisory powers, it is well recognized that the determination of any question by a majority of the members is final. As was written concerning a Baptist Church by the late Judge Logan, an eminent layman of that denomination, in Thomas v. Lewis, 224 Ky. 307, 6 S.W. 2d 255, 258, such a congregation is a pure democracy, and ‘as long as it acts as a local church functioning under its own laws and regulations (it) may say to all mankind that, ‘Mine are the gates to open and mine are the gates to close.’ No power may interfere with the authority of the local congregation so exercised.’ And as further said, ‘The minority is always bound by the majority.’ But the opinion recognizes the qualification that if the property is impressed with a trust with particular terms, the trustees will

not be allowed to violate them. This condition is more definitely stated in Martin v. Kentucky Christian Conference, supra. That opinion, written by the late Judge Clay, an eminent layman of the Christian Church, has placed in our records an interesting and instructive history of the origin and primary doctrines of that church. The question with which it dealt was whether a group which withdrew from affiliation with an organization known as the Kentucky Christian Conference and decided to have communion service every Sunday instead of less often or the group which had voted to the contrary, was entitled to the use of the property. The lot had been donated to the congregation for ‘the purpose of building a church for worship for the Christian Church,’ and the deed contained a reversionary provision should it be used otherwise. It was found by the Court that affiliation with the Conference was a matter for each congregation to determine, and that either practice with respect to the communion services is proper within the policy of the Christian Church; hence, that the majority vote of the congregation should control.”

Calvary Baptist Church of Port Huron, Michigan vs. Shay, 290 N.W. 890 (Mich.)

We shall only say, as to this case, that it is cited by the Supreme Court of Iowa in Keith vs. First Baptist Church, Algona, Iowa, 50 N.W. 2d 803 at page 809 in support of the same proposition for which it is asserted by Appellants.

CONCLUSION

The conclusion as set forth in our original Brief and Argument applies here as well and this cause should be reversed.

Respectfully submitted,

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ATTORNEYS' COST CERTIFICATE

We hereby certify that the cost of printing the foregoing Appellants' Reply Brief and Argument was \$87.00.

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PRINTERS' COST CERTIFICATE

We hereby certify that the cost of printing the foregoing Appellants' Reply Brief and Argument was \$87.00.

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