CHURCH PROPERTY DISPUTES IN THE CIVIL COURTS

THE EXTENT to which civil courts may assume jurisdiction of ecclesiastical matters in church property disputes[1] was involved in the North Carolina case of *Reid v. Johnston*.[2] There, a Baptist church, organized in 1894, received land on a conveyance which attached no doctrinal limitations to its use.[3] In 1953, a new pastor, supported by a majority of the congregation,[4] led a movement to withdraw from the Southern Baptist Convention[5] and to establish an Independent Missionary Baptist Church. A dissident minority, seeking to frustrate this proposed plan, however, brought an action in ejectment to determine which faction should be entitled to control the church property.

The court classified the church as an independent, self-governing body, but announced that the defendant-majority had so far departed

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[1] 67 HARV. L. REV. 91 (1953). Notes, 39 MICH. L. REV. 1040 (1941); 4 U. PITT. L. REV. 76 (1937); 1 SYRACUSE L. REV. 484 (1950). "The fact of conflict between the rules and regulations of the . . . church and the laws of the state in this regard remains. It is idle to dispute such fact; it is too patent to be questioned. . . ." Mazaika v. Krauczunas, 233 Pa. 138, 152, 81 Atl. 938, 943 (1911).

[2] 241 N.C. 201, 85 S.E.2d 114 (1954). Notes, 54 MICH. L. REV. 102 (1955); 7 S.C.L.Q. 670 (1955).

[3] The grantor conveyed by deed to named trustees and their successors one quarter acre of land which is the present site of the North Rocky Mount Baptist Church. The deed provided that the trustees should hold such land "for the especial use and behoof and benefit" of this church. In 1949 a lot on which the church parsonage is now located was conveyed to the trustees likewise with no express limitation. Total real and personal property of the church has a fair market value of from $250,000 to $300,000. *Id.* at 207, 85 S.E.2d at 119.

[4] The vote was 241 in favor of the plan, 144 opposed; and 200 abstained from voting.

[5] The Southern Baptist Convention was formed on May 8, 1845. Its purpose as stated in Article 11 of the Convention Constitution, is "To provide a general organization for Baptists in the United States for the promotion of Christian missions at home and abroad and any other objects such as Christian education, benevolent enterprises and social services which it may deem proper and advisable for the furtherance of the Kingdom of God." 1955 Annual of the Southern Baptist Convention 22. This broad purpose does not evince any effort to establish basic doctrines or beliefs to which its members churches must adhere. "Each church is autonomous or self-determining in all matters pertaining to its own life and activities. It is not subject to any other church or body of any kind whatsoever, but only to Christ and His authority. . . . Churches may seek to fulfill their obligation to extend Christ's kingdom by cooperating with these general organizations, but always on a purely voluntary basis, without surrendering in any way their right to self-determination." 1928 Proceedings, Southern Baptist Convention 32-33.

from Baptist principles as to lose its right to control the property. The decision pointed to the fact that the majority, in addition to the withdrawal from the Southern Baptist Convention, was discontinuing the use of Southern Baptist Sunday school materials, suspending financial aid to various Baptist ecumenical endeavors, discharging Sunday school teachers, and giving the pastor sole control of the pulpit.[6]

One characteristic feature of the separation of church and state has been the recognition by the civil courts that they have no jurisdiction over ecclesiastical matters in church property disputes, except in so far as it is necessary to decide an ecclesiastical question in determining who has the right of control.[7] There still arises, however, some difficulty in defining the circumstances under which exercise of even this limited ecclesiastical jurisdiction is proper.

The difficulty has been rather easily resolved by the courts in two classes of cases. Where the church involved is part of a hierarchical body with centralized control, the established ecclesiastical tribunal will finally determine all doctrinal dissensions.[8] The civil courts in such cases are plainly precluded from any exercise of ecclesiastical jurisdiction,

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[6] The court said that only those members of a congregation who adhere to the "characteristic doctrines, usages, customs and practices of that particular church," accepted by both factions before the dissension arose can constitute the true congregation, even though that group be a minority. Reid v. Johnston, 241 N.C. 201, 207, 85 S.E.2d 114, 118 (1954). This determination, unfortunately, requires the court to define exactly what these doctrines are—not a simple task in congregational churches, where no unanimity of opinion exists, and in which each church has much freedom to define with particularity what what their individual beliefs should be.

[7] In *Elston v. Wilborn*, 208 Ark. 377, 378, 186 S.W.2d 662, 663 (1945) it was stated, "[T] he courts have steadily asserted their refusal to determine any controversy relating purely to ecclesiastical or spiritual features of a church or religious society. The courts intervene only to protect the temporalities of such bodies, and to determine property rights." See also, Watson v. Jones, 80 U.S. (13 Wall.) 679 (1892); Parker v. Harper, 295 Ky. 686, 175 S.W.2d 361 (1943); Bray v. Moses, 305 Ky. 24, 202 S.W.2d 749 (1947); Calvary Baptist Church of Port Huron v. Shay, 292 Mich. 517, 290 N.W. 890 (1940); U.S. CONST. amend. I; N.C. CONST. art. I, § 26 (1868).

[8] The leading case establishing this rule is *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727 (1872), wherein the Supreme Court said, "[W]henever the question of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them. . . ." See also Trinity Methodist Episcopal Church v. Harris, 73 Conn. 216, 47 Atl. 116 (1900); Mack v. Kime, 129 Ga. 1, 58 S.E. 184 (1907) (Presbyterian); First Presbyterian Church v. First Cumberland Presbyterian Church, 245 Ill. 74, 91 N.E. 761 (1910); O'Donovan v. Chatard, 97 Ind. 421 (1884) (Roman Catholic); Braun v. Clark, 102 Tex. 323, 116 S.W. 360 (1909) (Presbyterian).

and are limited to enforcing the property rights already determined on doctrinal grounds by the church courts.[9]

A second group of cases is characterized by an original conveyance to an independent and autonomous church, but with the express limitation that the property only be used to perpetuate the religious doctrines of that denomination.[10] Such a conveyance is usually held to create an express trust;[11] and the courts, in order to give effect to the explicit intent of the grantor, must exert ecclesiastical jurisdiction to decide which faction still adheres to these doctrines.[12]

The *Johnston* case, however, does not fall into either of the above two classes, but rather is typical of a third. This group includes cases in which independent, congregational churches, have received their property free of any express doctrinal limitations. The announced rule for deciding a dispute between factions of these self-governing churches is that the will of the majority controls, *but* only so long as there is no fundamental divergence from the faith, usages, and customs of the particular denomination.[13]

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[9] In *O'Donovan v. Chatard*, 97 Ind. 421 (1868), the court held that it was without jurisdiction in a damage suit brought by a Roman Catholic priest against the bishop for removing him from office, as jurisdiction in these matters remained entirely within Roman Catholic ecclesiastical authority.

[10] Of course, the original grant does not usually convey all of the church property, but conveys only the land on which the church is to be erected; or, perhaps the original grant is a large sum of money which establishes the foundation from which the church grows by later contributions. It is obvious that most of these later gifts are unrestricted by the express doctrinal limitations attached to the major donation. However, the courts have never applied a different set of rules to each type of gift. Perhaps such uniform treatment may be justified on the theory that, since the restricted property constitutes the foundation of the organization, the restrictions extend by necessary implication to the later grants.

[11] "[A]n individual . . . may dedicate property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principles. . . . And it would seem also to be the obvious duty of the court . . . to see that the property is not diverted from the trust which is thus attached to its use. . . . This is the general doctrine of courts of equity as to charities, and it seems equally applicable to ecclesiastical matters." Watson v. Jones, 80 U.S. (13 Wall.) 679, 723 (1872). See also Smith v. Pedigo, 145 Ind. 361, 33 N.E. 777 (1893); Park v. Champlin, 96 Iowa 55, 64 N.W. 674 (1895); Baptist Church v. Whitmore, 83 Iowa 138, 49 N.W. 81 (1891).

[12] Failure to effectuate the grantor's expressed doctrinal intent would subject the property to a claim of defeasance by the grantor's heirs on the ground that the grant created a defeasible fee. This problem seldom arises, however, since such disputes are resolved in favor of the group adhering to the doctrines expressd in the original conveyance. See note 11 *supra*.

[13] This formula has consistently been held to require that such divergencies must be so drastic as to amount to something approaching a change in denomination. Mere

The application of this limitation on majority control,[14] however, involves certain conceptual difficulties. If civil courts are limited by the rule that they have no jurisdiction over ecclesiastical matters except in so far as is necessary to decide property rights,[15] then upon what legal basis can they rest the fundamental divergence rule?[16]

The express trust cases[17] suggest an *implied* trust theory as the legal justification for the civil courts' jurisdiction in such cases, and this im-

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internal disputes concerning shades of theological opinion will not suffice. "[A] majority in a Baptist Church is supreme . . . so long as it remains a Baptist Church or true to the fundamental usages, customs, doctrine, practice, and organization of Baptists." Dix v. Pruitt, 194 N.C. 64, 69, 138 S.E. 412, 415 (1927); "It is familiar law that where factional differences occur in an ecclesiastical body, the rule of the civil courts . . . is to give effect to the will of that part of the organization acting in harmony with the ecclesiastical laws, usages, customs, and principles which were accepted among them before the dispute arose." Skyline Missionary Baptist Church v. Davis, 245 Ala. 455, 457, 17 So.2d 533, 535 (1944); Highland View Baptist Church v. Walker, 259 Ala. 301, 66 So.2d 122 (1953); Hughes v. Grossman, 166 Kan. 325, 201 P.2d 670 (1949); Wheeless v. Barrett, 229 N.C. 282, 49 S.E.2d 629 (1948). *But cf.*, "A Baptist church is a pure democracy, and in all matters relating to its government, election of its officers, its articles of faith, and the management of its affairs the local congregation present and voting at a meeting regularly held, on any question, determines the matter finally. . . . From the determination of a question by a majority of the congregation there is no appeal to any ecclesiastical authority. A Baptist congregation, as long as it acts as a local church functioning under its own laws and regulations, 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." Thomas v. Lewis, 224 Ky. 307, 313, 6 S.W.2d 255, 258 (1928); First Baptist Church of Paris v. Fort, 93 Tex. 215, 54 S.W. 892 (1900).

[14] This limitation probably reflects a judicial determination, prompted by cases involving more basic changes [*e.g.* Hale v. Everett, 53 N.H. 9 (1868) (majority abandoned faith in Christ as the Messiah); Mt. Zion Baptist Church v. Whitmore, 83 Iowa 138, 49 N.W. 81 (1891) (Majority adopted doctrine of "Sinless Perfection" and voted the opposing minority out of the church); Dix v. Pruitt, 194 N.C. 64, 138 S.E. 412 (1927) (attempt to receive members without baptism or profession of faith)], that the majority of a congregational church should not be allowed unrestrained control of freely given church property. Otherwise, there is the possibility that the courts would have to support a decision by a narow majority vote in an independent church to deny the divinity of Jesus.

[15] See text to note 7 *supra*.

[16] It is consistently held that majority stockholders of a private corporation have a duty to protect the minority interest. Tower Hill-Connellsville Coke Co. v. Piedmont Coal Co., 64 F.2d 817 (4th Cir. 1933). The courts, perhaps, feel justified in restricting majority rule in private corporations on the theory that they are "creatures of the state." But to depart from the professed doctrine of separation of church and state, the courts must express some substantial legal basis on which to justify interposing their judgment as to what are the fundamental doctrines of an independent church.

[17] See note 11 *supra*.

plied trust theory is the rationale announced in most decisions.[18] It is perhaps logically satisfying to the courts, because they can so easily envisage a desire of the grantors, though unexpressed, that the basic beliefs of the church benefiting from their grant shall not be entirely foreign to doctrines inspiring the grant.

In spite of this superficial appeal, however, in many fact situations both the rationale and the application of this theory may be quite unsupportable. In the unusual case when the grantor had any actual intent at all, it is as likely as not that he desired the maintenance of a church in which the majority would be free, at the most, to adapt to new religious doctrines, and, at the least, to associate with various ecclesiastical organizations within the denomination. Moreover, the implied trust theory is difficult to apply because, in the case of most churches, fundamental changes have been accepted without litigation subsequent to the time of the original grant. As a result, the courts have split widely as to whether to look to the doctrines prevailing when the property was acquired,[19] or to those generally accepted when the litigation arose.[20] The former solution would frequently be satisfactory to neither faction; and the latter might, conceivably, prevent the majority from reverting to those very doctrines which inspired the grant.

Though a minimum judicial restriction on majority control of church property may be proper, the courts should recognize the limited justification for their intervention. The *Johnston* case appears to have exceeded this justification by greatly extending prior cases which laid down this "fundamental divergence" rule.[21] The changes there adverted to

[18] Dix v. Pruitt, 194 N.C. 64, 138 S.E. 412 (1927); Highland View Baptist Church v. Walker, 259 Ala. 301, 66 So.2d 122 (1953); Western North Carolina Conference v. Tally, 229 N. C. 1, 47 S.E.2d 467 (1948); Rimmer v. Austin, 191 Miss. 664, 4 So.2d 224 (1941); "The principle that the civil court will, even in the absence of an express trust, recognize an implied trust arising from . . . the fundamental and characteristic doctrines of the church as held at the time the property was acquired is well formulated. . . ." Annot., 8 A.L.R. 98, 114 (1920). *But cf.* Watson v. Jones, 80 U.S. (13 Wall) 679, 725 (1871). "There being no such trust imposed upon the property when purchased or given, the court will not imply one. . . ."

[19] Apostolic Holiness Union of Post Falls v. Knudson, 21 Idaho 589, 123 Pac. 473 (1912); Christian Church v. Church of Christ, 219 Ill. 503, 76 N.E. 703 (1906); White Lick Quarterly Meeting of Friends v. White Lick Quarterly Meeting of Friends, 89 Ind. 136 (1883); Peace v. First Christian Church, 20 Tex.Civ.App. 85, 48 S.W. 534 (1898).

[20] Schnorr's Appeal, 67 Pa. 138 (1870); Boyles v. Roberts, 222 Mo. 613, 121 S.W. 805 (1909); Russian Orthodox Greek Catholic All Saints Church v. Kedrovsky, 113 Conn. 696, 156 Atl. 688 (1931); Bose v. Christ, 193 Pa. 13, 44 Atl. 240 (1899).

[21] Previous decisions by this court and others had heretofore required changes of a

by the court are practices subject to wide variance among churches both congregational and hierarchical in form, and are more akin to internal business matters than to matters of fundamental faith and doctrines in the Baptist church.[22] It is submitted that the *Johnston* holding cannot be followed without unduly restricting church management and obstructing normal religious growth.[23]

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much deeper nature: Rock Dell Norwegian Evangelical Lutheran Congregation v. Mommsen, 174 Minn. 207, 219 N.W. 88 (1928) (attempted union between Lutheran and another denomination); Dix v. Pruitt, 194 N.C. 64, 138 S.E. 412 (1927) (attempt to receive members without baptistm or profession of faith); Mattson v. Saastamoinen, 168 Minn. 178, 209 N.W. 648 (1926) (majority controls on questions of business matters or changes in conduct of worship); Bakos v. Takach, 14 Ohio App. 370 (1921) (attempt to change denomination).

[22] Not one of the departures desired by the majority, discussed in the text to note 6, *supra*, represents a fundamental departure from Baptist tenets. As to every one of these matters, there is wide divergence among the churches presently comprising the Southern Baptist Convention. Even in churches with ecclesiastical courts, such as the Presbyterian and Methodist, there is no complete uniformity in the use of Sunday school materials, hymn books, etc. The North Carolina court, in addition, held that if this church carried out its plan to affiliate with the General Association of Regular Baptist Churches, it would actually be changing denominations. The only support adduced for this proposition was that the General Association adhered to the doctrine of premillennialism. The court neglected to consider that a majority in any Baptist church is free to choose between premillennialism and postmillennialism, and that the churches in the Southern Baptist Convention are, in fact, widely split on this question. Furthermore, an examination of the Articles of Faith of the General Association of Regular Baptist Churches reveals that any individual Baptist church could join the organization without a fundamental change in tenets. It is startling for the court to class any of these changes as fundamental when the Southern Baptist Convention, itself, has no Articles of Faith announcing its fundamental tenets. Even more startling, however, has been the subsequent denunciation by the Southern Baptist Convention of the testimony given by the witnesses for the plaintiff-minority.

[23] The logical extereme of this decision would result in the civil courts usurping from the majority in independent churches the determination of what are their fundamental religious beliefs. The possibility of such a result was foreseen in *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733-34 (1872), where the Court said, "But it is easy to see that if civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the *criteria* by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Eldon, and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions."