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Article 14

Associations and Societies: Religious Societies - Protection of Entrusted Property against Change in Fundamental Doctrines - Holiman v. Dovers, 336 S.W. 2d 197 (Ark. 1963)

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force the Gegauf patent against the Japanese.[22] The written agreements between Gegauf and Singer in no way mention an agreement to exclude the Japanese, nor was any evidence adducd showing that a verbal agreement existed. Moreover, no showing was made that Gegauf had any power to enforce such an agreement, if made, against Singer. The trial court, far from finding a conspiracy to exclude the Japanese, found that the "dominant and sole purpose of the license agreement was to settle the conflict in priority."[23] The Supreme Court found this holding to be clearly erroneous and reversed the conclusions of the District Court.

The Singer case should stand as a warning to those who must advise clients relative to their bargaining for the exchange of patents or rights thereunder. Where a common motive exists to enforce the patents against infringers, and litigation to exclude the infringer results, little more is required to establish an illegal conspiracy in restraint of trade.

[22] *E.g.*, "We agree that something should be done against Japanese competition in your country and maybe South America. . . . [I]t may be possible that we can both strengthen our positions with respect to the Japanese competition which you mention. . . ." United States v. Singer Mfg. Co., 374 U.S. 174, 184 (1963).

[23] United States v. Singer Mfg. Co., 205 F. Supp. 394 (1962).

ASSOCIATIONS AND SOCIETIES: RELIGIOUS SOCIETIES– PROTECTION OF ENTRUSTED PROPERTY AGAINST CHANGE IN FUNDAMENTAL DOCTRINES

The Landmark Baptist Church of Traskwood, Arkansas, functioning on property restricted by three deeds to the use of "Landmark Baptists," was rent with a dissension which matured in a bill by the minority group of church members to enjoin the pastor and majority faction from using the church property. Their assertion was that the property was subject to a trust under which the church premises must be used only to promote the doctrine of the Landmark Baptist Church; and that the pastor had and was teaching doctrines fundamentally, basically, and radically different from the faith of a Landmark Baptist Church in violation of that trust. The bill seeking to enjoin and eject the majority faction failed in the Chancery Court of Saline County, Arkansas, but this decision became reversed in the Supreme Court of that state. At a subsequent rehearing, the Supreme Court extended the injunction and ejected the majority faction from the property. *Holiman v. Dovers*, 336 S.W. 2d 197 (Ark. 1963).

In a case of this sort with constitutional overtones, it is necessary to establish: the court's jurisdiction where religious matter is involved; the rights of a minority in this congregational, independent church; the trust

upon the property; the violation of the trust by promotion of fundamentally opposed doctrines; and, the weight of evidence necessary before the court can determine doctrines and radical departures from them.

Conscious of the theory of separation between church and state,[1] the courts will not entertain to resolve disputes of an ecclesiastical nature.[2] However, when an ecclesiastical controversy would involve the rights to or possession of property upon judicial resolution, then the courts have determined to have proper jurisdiction and authority to hear the matter.[3] In truth, even when the case turns solely upon determinations of ecclesiastical doctrines and laws, the court is under obligation to adjudicate them so long as a property right is involved.[4] Ordinarily the bench will not hear the matter until all resorts to higher church council have been exhausted, but where, as here, the church is independent or congregational, a resort to court action is the only way to resolve doctrinal departures.[5]

In the instant case, this land has been and is deeded to "Landmark Baptists." Such conveyances usually are set up to trustees for the use of a particular church.[6] But even where such a trust is not expressed in the deed to a church, the law will imply such a trust for use only by and in accordance with the named faith.[7] It becomes a matter of law that a breach of use will result in a forfeiture of the rights of the users; more specifically, that the land must not be employed for or diverted to a kind of worship differing substantially from the practice of the named church or faith.[8]

[1] U.S. CONST., amends. I and XIV.

[2] Stewart v. Darriel, 206 Ga. X855, 59 S.E.2d 36 (1950); Purcell v. Summers, 35 F. Supp. 421 (D.C.S.C. 1940); Bailey v. Washington, 236 Ala. 674, 185 So. 172 (1938); Coleman v. Swanson, 293 Ill. App. 622, 11 N.E.2d 840 (1937).

[3] Watson v. Jones, 80 U.S. (13 Wall) 679 (1869); Bramlett v. Young, 229 S.C. 519, 93 S.E.2d 873 (1956); Conic v. Cobbins, 208 Miss. 203, 44 So.2d 52 (1950); Hatfield v. Cummins, 171 Ind. 112,85N.E. 359 (1908); Monk v. Little, 122 Ark. 7, 182 S.W. 511 (1916).

[4] Schwartz v. Jacobs, 352 S.W. 2d 389 (Mo. 1961); Katz v. Goldman, 33 Ohio App. 150, 168 N.E. 763 (1929); Zollman, *American Civil Church Law*, 77 Columbia U. Studies, 215 *et seq.* But see Kelley v. McIntire, 123 N.J. Eq. 351, 197 Atl. 736 (1938), where the court would not adjudicate dispute of faith and doctrine, where suit was to enjoin pastor and other members from using the property for purposes other than in accord with customs, constitution, and usages of the denominations. Tending to the same, see Wehmer v. Fodenga, 57 Neb. 510, 78 N.W. 28 (1899).

[5] Beard v. Francis, 45 Tenn pp. 513, 309 S.W.2d 788 (1957); Hatchett v. Mt. Pleasant Baptist, 46 Ark. 291 (1885); German Reformed Church v. Commonwealth, 3 Pa. St. 282 (1846).

[6] Bahos v. Takach, 14 Ohio App. 370, (1921); Nance v. Busby, 91 Tenn. 303, 18 S.W. 874 (1892).

[7] Wheeless v. Barrett, 229 N.C. 282, 49 S.E.2d 629 (1948); Odoms v. Woodall, 246 Ala. 427, 20 So.2d 849 (1945); Hennessey v. Walsh, 55 N.H. 515 (1898).

[8] In re Craig's Estate, 356 Pa. 564, 52 A.2d 650 (1947); First Regular Church of Indiana, Pa. v. Allison, 304 Pa. 1, 154 Atl. 913 (1931).

An examination of the authorities reveals a well established principle that the control of all the affairs of an independent, self governed congregational church belongs to the majority of that church.[9]

As an exception to this rule it is established by the weight of authority, that the majority of each independent or congregational society . . . may not, as against a faithful minority, divert the property . . . to the support of doctrines radically and fundamentally opposed to the characteristic doctrines of the society, even though the property is subject to no express trust.[10]

The difficulty in applying the rule rises under the foreboding presence of the first amendment which unequivocally separates church and state,[11] prohibits judicial determination of religious doctrine, and which is made applicable to the states through the fourteenth amendment.[12] But the same authority reveals that this separation need not be absolute.[13] Concerning the situation in point, it has been held that the amendment does not prohibit equity jurisdiction and control that property shall be administered according to the purposes to which it has been dedicated.[14]

It is here that the problem lies. How can the keeper of temporal justice avoid making determinations of ecclesiastics? Where a dispute involving property depends upon such determinations, the court must determine: (a) what is the fundamental doctrine of the church, (b) what is the doctrine held by the factions, and (c) whether there has been a fundamental or radical departure from the doctrine of the church. It is conclusive that matters of faith, morals, and pure ecclesiastics cannot be taken under judicial notice.[15] Neither is the bench at liberty to arrive at

[9] Rush v. Yancey, 233 Ark. 883, 349 S.W.2d 337 (1961); Booker v. Smith, 214 Ark. 102, 214 S.W.2d 513 (1948); Elston v. Wilborn, 208 Ark. 377, 186 S.W.2d 662 (1945); Kidwell v. Crawford, 298 Ky. 380, 182 S.W.2d 968 (1944).

[10] Mitchell v. Church of Christ, 128 So. 781, 783, 221 Ala. 315, 317 (1930); See Watson v. Jones, 80 U.S. (13 Wall.) 679 (1869); Nagle v. Miller, 275 Pa. 157, 118 Atl. 670 (1922); Christian Church v. Crystal, 78 Cal. App. 1, 274 Pac. 605 (1926). The rule has found application also in Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, N. Hampshire, N. Jersey, N. York, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin. But see First Baptist Church of Paris v. Fort, 93 Tex. 215, 54 S.W. 892 (1899); and Wehmer v. Fodenga, 57 Neb. 510, 78 N.W. 28 (1899).

[11] Lewis v. Allen, 207 N.Y.S. 2d 862 (1956); Zorach v. Clausen, 343 U.S. 306 (1952).

[12] U.S. CONST., amend. XIV. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ."

[13] *Accord,* Baer v. Kolmorgen, 181 N.Y.S. 2d 230 (1958).

[14] St. Nicholas Cathedral of Russian Orthodox v. Kreshik, 196 N.Y.S. 2d 655, 164 N.E. 2d 687 (1959), rev'd. on other grounds; Ward v. Crisp, 189 Tenn. 513, 226 S.W.2d 273 (1949).

[15] Sweeney v. Newspaper Printing, 177 Tenn. 196, 147 S.W.2d 406 (1941); Kompier v. Thegza, 213 Ind. 542, 13 N.E.2d 229 (1937); Freidman v. Swift, 18 F. Supp. 596 (D.C.N.Y. 1937).

legal conclusions with respect to religion.[16] Yet the three conclusions above must be drawn, and the only recourse left is to treat doctrine as a matter of fact; therefore, what is and what is not fundamental belief must be resolved through the evidence as it sheds light upon the court.[17]

In this endeavor, fearful of first amendment infringement, the procedure of the courts has been to view doctrinal differences only as matters of evidence with determinative effect to the main issue—who has the right to possession and use of the property.[18] Once having assumed this stance, the danger of giving legal definition to a sect's doctrines becomes remote. A church's beliefs are a changing, at least growing body. Therefore, while the doctrines of the Landmark Baptists may change, they are nonetheless the same religious group now as before. The courts attempt only to discover and determine which doctrines "at the time of the wrongful use" are considered fundamental.[19]

Ordinarily in a court of equity the bill need be supported and established by a preponderance of the evidence.[20] But in cases at equity where the relief prayed for would result in the deprivation of property and use of it, the accepted rule is that the proof must be clear and convincing before the decree or injunction will lie.[21] Of the few cases exactly in point, favor is lent to the requirement of more than a preponderance where the determination is of fundamental church doctrine. There is not only the possible anomaly of judicial interpretation of religious doctrine, but a very real danger that a lack of weighty evidence has worked a forfeiture under the due process clause, in light of the first amendment prohibition.[22]

[16] Though in some instances, when either the statement or act of belief is obviously antagonistic and dangerous to the integrity of the state, the court can impose summary sanction. McGowan v. State of Maryland, 366 U.S. 420 (1961); United States v. Mohammed, 288 F.2d 236 (C.A.Ill. 1961).

[17] See Chesire v. Giles, 144 Va. 253, 122 S.E. 479 (1926).

[18] First English Lutheran Church v. Block, 195 Okla. 579, 159 P.2d 1006 (1945); Davis v. Turner, 148 S.W.2d 256 (C.A.Tex. 1941).

[19] Holiman v. Dovers, 366 S.W.2d 197 (Ark. 1963); Davis v. Scher, 356 Mich. 291, 97 N.W.2d 137 (1959).

[20] Home Mortgage v. Ramsey, 49 F.2d 738 (1920); Hargreaves v. Burton, 59 Utah 575, 206 Pac. 262 (1922).

[21] Pierce v. N.Y. Dock Co., N.Y., 265 F. 148 (1920); Duvall v. Hambleton, 98 Md. 12, 55 Atl. 431(1903); Vansciver v. Bryan, 13 N.J. Eq. 434 (1861).

[22] While under the rule, even the slightest preponderance may weight the case in favor of one or the other party, some implication or forecast of probability on the part of the court may still be necessary in order to conclude a departure from doctrine. In light of the fact that the first amendment, via the fourteenth, prohibits even such slight activity by the court in interpretation of religious docrine, can such a decision meet the qualification of due process? However sure and direct the speculation may be, the incontrovertible fact remains that to support the finding the court was required to say, "it seems to be," or "it is most probable." Only one instance is found where the absolute demands of the first amendment were relaxed. St. Nicholas Cathedral of Rus-

The better view, considering the real possibility of such judicial intrusions, follows Lord Halsbury's summation of this sensible attitude in his practical refusal to "speculate as to what is or is not important in the views held."[23] "The fact that property was impressed with a specific trust, and abuse of such trust, must be clearly established."[24]

While the search of authorities has revealed no case in which the court has demanded such "decided weight," the inference is strong that the court will not determine departures from fundamental doctrines in its absence.[25] Relief was twice refused in the face of conflicting testimony when such departure was not clearly shown.[26] In another adjudication when the evidence did not clearly support a doctrinal departure, the court stated that it "would conclude from the evidence, *though with some doubt*, that the synod had not departed from such faith and doctrine."[27] "To justify interference it must be shown that the purpose of the majority is . . . . (manifest) beyond all reasonable doubt."[28] Such statements are supported by affirmed decisions on lateral issues involving a disavowal of right, and equitable relief against another's legal right.[29]

Some isolated jurisdictions have been found which expressed the opinion that a preponderance of the evidence is sufficient to sustain the bill, but these may be excused as a failure by the court to use precise language for the cases appear to be amply supported by their evidence.[30]

Wariness is the keyword in the application of this rule, for any slight misapplication might easily violate the articles of our Bill of Rights, whose purpose it is the court's interest to protect and promote.[31]

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sian Orthodox v. Kreshik, 196 N.Y.S.2d 655, 164 N.E.2d 687 (1959) stated, "This amendment does not stand in the way of judicial requirement under principles of equitable jurisdiction that property of a religious society shall be administered according to purposes to which it has been dedicated."

[23] Free Church of Scotland v. Overtoun, A.C. 515, 613 (1904) (H.L.).

[24] Trustees of Pecader Presbyterian v. Gibson, 26 Del. Ch. 375, 388, 22 A.2d 782, 794 (1941).

[25] Cleaver v. Conference of African Union, 99 U.S. App. D.C. 371, 240 F.2d 57 (1956); Caples v. Nazareth Church of Hopewell, 245 Ala. 656, 18 So. 2d 383 (1944); Holiman v. Dovers, 366 S.W.2d 197 (Ark 1963).

[26] Fort Worth Primitive Baptist Church v. Fischer, 237 S.W.2d 377 (Tex. 1951); Wadell v. Goldin, 211 G. 820, 89 S.E.2d 170 (1955).

[27] Dressen v. Bramier, 56 Ia. 756, 760, 9 N.W. 193, 197 (1881).

[28] Mitchell v. Church of Christ, 128 So. 781, 784, 221 Ala. 315, 318 (1930); See also, Hale 1. Everett, 53 N.H. 9 (1868).

[29] Duvall v. Hambleton, 98 Md. 12, 55 Atl. 431 (1903); Vansciver v. Bryan, 13 N.J. Eq. 434 (1861).

[30] Sapp. v. Callaway, 208 Ga. 805, 69 S.E.2d 734 (1952); Fadness v. Braunborg, 73 Wis. 253, 41 N.W. 84 (1889).

[31] For a further discussion of the problems involved in judicial intervention in church disputes, see note, *Judicial Intervention in disputes over the use of church property*, 75 HARV. L. REV. 1142 (1962).