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Brief of Appellants in the Supreme Court of Appeals of Virginia at Richmond Record No. 6153, Billy T. Barber, Chairman of the Board of Elders and Deacons of Level Green Christian Church, et al., Appellants, v. M. Boyd Caldwell, et al., Appellees

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BRIEF OF APPELLANTS

IN THE

Supreme Court of Appeals of Virginia

At Richmond

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CHAIRMAN OF THE BOARD
OF ELDERS AND DEACONS OF
LEVEL GREEN CHRISTIAN CHURCH,
ET AL.,
Appellants,
v.
M. BOYD CALDWELL, ET AL.,
Appellees

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BRIEF OF APPELLANTS

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF VIRGINIA:

The appellants, Billy T. Baber, Chairman of the Board of Elders and Deacons of Level Green Christian

Church, S. A. Huffman, James L. Huffman, Donald M. Caldwell, Roy P. Keffer and Biddle Joe Duncan, Trustees of Level Green Christian Church, Rex Keffer, Stanley Huffman, Donald M. Caldwell, Alton Keffer, Billy T. Baber, Junior Duncan, Stanley Duncan, Albert Lee Smith, Stanley Woods, Minor Huffman, Oscar (Butch) Dudding, J. L. Huffman, H. R. Hughes, Joe Duncan and Jack Harris, respectfully pray that this Court will reverse the judgment in favor of the appellees, M. Boyd Caldwell, Eva H. Caldwell, O. Tracy Hypes, Rena S. Hypes, Ralph P. Hutchison, Hazel W. Hutchison, John S. St. Clair, Margaret E. St. Clair, Howard M. Huffman, Claudine H. Estes, M. Rutherford Estes, Bobby Joe Harless and Geraldine H. Harless, entered by the Circuit Court of Craig County on December 7, 1964 (R., p. 39).

The appellants further pray that this Court will enter final judgment in their favor or, in the alternative, will remand this cause to the trial court with directions that a congregational election be held pursuant to the third and fourth sentences of Code of Virginia (1959 Repl. Vol.), Section 57-9.

Billy T. Baber, Chairman of the Board of Elders and Deacons of Level Green Christian Church, was the complainant in the original bill of complaint (R., p. 3). S. A. Huffman et al., Trustees of Level Green Christian Church, joined as complainants in the amended and supplemental bill of complaint (R., p. 31). The remaining appellants, Rex Keffer et al., were joined as new parties or cross-defendants in the cross-bill filed by the defendants (R., p. 19).

For purposes of this appeal there is complete identity of interest among the appellants, and for the sake of brevity they will be hereafter described as "complainants", even though Rex Keffer et al. were not in fact named as complainants in the trial court. The appellees, M. Boyd Caldwell et al., will be described as "defendants", the position which they occupied in the trial court.

The death of Billy T. Baber, an appellant both as Chairman of the Board of Elders and Deacons and in his own right, and the election of James L. Huffman as Chairman of the Board have been suggested to this Court pursuant to Code of Virginia (1957 Repl. Vol.), Section 8-148. It is submitted that this Court may retain jurisdiction of this cause and enter such judgment as it may deem proper as if the death of Billy T. Baber had not occurred.

The printed record will be cited as "R.", and the appendix to this brief as "App." The appendix contains copies of the opinion of the Honorable W. T. Ford, Judge of the Circuit Court of Rockingham County, Virginia, in *C. N. Dewey, Chairman, etc., et al.* v. *John E. Grasty et al.* and of two decrees pursuant to that opinion.

PROCEEDINGS IN THE LOWER COURT

This cause originated with the filing of a bill of complaint praying that the defendants be enjoined from interference with the operation of the Level Green

Christian Church and with its minister in the performance of his duties, and that they be further enjoined from attempting to hold a religious service in the church contrary to the wishes of the majority of the congregation and its Board of Elders and Deacons (R., pp. 3-4).

The defendants demurred, answered, and filed a cross bill asking that the complainants be enjoined from interference with their use of the church and that the church Trustees be removed from office (R., pp. 16-23).

Part of the evidence was heard by the Honorable Earl L. Abbott, Judge of the Circuit Court of Craig County, on November 11, 1963. Further evidence was heard by Judge Abbott on April 20-21, 1964. During the course of these hearings the court admitted certain documents into evidence over the objection of the complainants; these rulings upon the evidence are the basis of the complainants' Assignments of Error 1-5.

Judge Abbott took the cause under advisement but ultimately disqualified himself from ruling upon the issues (R., p. 37). The Honorable Paul A. Holstein, Judge of the Eighteenth Judicial Circuit, was designated to serve in Judge Abbott's place, and the cause was submitted to Judge Holstein upon written briefs, a transcript of the evidence, the pleadings and exhibits.

On December 7, 1964, Judge Holstein entered the decree from which this appeal is prosecuted (R., pp.

39-44). He denied any relief to the complainants, but he granted the defendants the relief which they had sought, he enjoined the complainants from interference with the defendants' ownership and use of the church property, and he ruled that title to the church property was vested in "the Trustees of Level Green Christian Church (Disciples of Christ)" (R., p. 43). The complainants contend that Judge Holstein's decision was erroneous as a matter of fact and as a matter of law, and this contention forms the basis of Assignments of Error 6-10.

Judge Holstein's decision was based solely upon the written record, and he had no opportunity based on personal observation of the witnesses to form value judgments of their credibility and veracity. However he was confined by the rulings which Judge Abbott had already made upon the admission of evidence. The complainants therefore submit that Judge Holstein's decision is not entitled to the weight which should be accorded to the decision of a trial judge who has heard and seen all of the witnesses and then made his own determination of fact.

STATUTORY AUTHORITY

The complainants ask, as alternative relief (Page 2 above), that this Court remand the cause to the trial court with directions that a congregational election be held pursuant to the third and fourth sentences of Code

of Virginia (1959 Repl. Vol.), Section 57-9, which we here quote in its entirety.

> *"How property rights determined on division of church or society.*—If a division has heretofore occurred or shall hereafter occur in a church or a religious society, to which any such congregation is attached, the communicants, pew holders, and pew owners of such congregation, over twenty-one years of age, may, by a vote of a majority of the whole number, determine to which branch of the church or society such congregation shall thereafter belong. Such determination shall be reported to the circuit court of the county, or circuit or corporation court of the city, wherein the property held in trust for such congregation or the greater part thereof is; and if the determination be approved by the court, it shall be so entered in its chancery order book, and shall be conclusive as to the title to and control of any property held in trust for such congregation, and be respected and enforced accordingly in all of the courts of this State. If a division has heretofore occurred or shall hereafter occur in a congregation, which in its organization and government is a church or society entirely independent of any other church or general society, a majority of the members of such congregation, entitled to vote by its constitution as existing at the time of the division, or where it has no written constitution, entitled to vote by its ordinary practice of custom, may decide the right, title and control of all property held in trust for such congregation. Their decision shall be reported to such court, and if approved by it, shall be so entered as aforesaid, and shall be final as to such right of property so held." Code of Virginia (1919), Section 40; Code of Virginia

(1959 Repl. Vol.), Section 57-9.

ASSIGNMENTS OF ERROR

"1. The admission into evidence of the annual reports 1931-1954, Disciples of Christ, Level Green Church Alleghany District Convention on the grounds that these reports are not records of the Level Green Christian Church, but are records of a separate and distinct association; that the forms of said reports have been prepared by the said association; that there is no evidence to show that the congregation approved the filing of said reports, and that the information contained therein was immaterial to the issues raised by the pleadings.

"2. The admission into evidence by the trial court of a memorandum of Mary Helen Caldwell, of Alleghany District Convention, on the grounds that this memorandum was prepared from records in the possession of the said Alleghany District Convention which was not a part of the Level Green Christian Church, and that said information contained therein was not material to the issues raised in this proceeding, the memorandum referred to being a certain list of questions and answers and being Exhibit No. 23.

"3. The admission into evidence by the trial court of the record book of Alleghany District Convention on the grounds that this report was prepared from records in possession of the said Alleghany District

Convention, which was not a part of the Level Green Christian Church, and that said information contained therein was not material to the issues raised in this proceeding.

"4. The admission into evidence by the trial court of a certain recipe, or cook, book on the grounds that this book was prepared by the Women's Christian Fellowship, or some other person unknown; that there is no evidence as to the correctness of the information contained therein, and that the same would constitute hearsay evidence and is immaterial to the issues raised in this case.

"5. The admission into evidence by the trial court of certain information obtained from what is known as year books of the Virginia Christian Missionary Society on the grounds that there is no evidence that the information testified to from said books was ever authorized to be placed therein by the congregation of Level Green Christian Church.

"6. That the trial court erred in the decree entered by it on the 7th day of December, 1964, when it found, in Paragraph 1 of said decree, that:

"(a) That the Level Green Christian Church was founded in 1895, and when it further found that on September 15, 1963, the majority faction of the congregation defected from the Church, as the finding was contrary to the law and evidence.

"(b) When the court held in Paragraph 7 that the Trustees of Level Green Christian Church (Dis-

ciples of Christ), Newport, Craig County, Virginia, acquired the said real estate by certain deeds and that the property was dedicated to them by way of trust for the purpose of supporting or propagating the doctrines or principles of Disciples of Christ; and further held that the title to and control of said property, both real and personal, is in the Trustees of Level Green Christian Church (Disciples of Christ).

"(c) That the court erred when it held in Paragraph 9 of said decree that the plaintiffs breached the trust attached to this property by diverting the property of the Church to their own use to the support of doctrines radically and fundamentally opposed to the doctrines of the Disciples of Christ Church.

"(d) That the court erred in his ruling in Paragraph 10 of said decree when it held that the majority faction of the congregation defected from the Church on or about September 15, 1963, and its organization and government, was not a church or society entirely independent of any other church or general society.

"7. The trial court erred in dismissing the complainants' bill of complaint, and the complainants' amended and supplemental bill of complaint; that such ruling was contrary to the law and evidence in this case.

"8. The trial court erred in Paragraph B of said decree when it ruled that title to the Church property is vested in the Trustees of Level Green Christian Church (Disciples of Christ) Newport, Craig County,

Virginia, and their successors in office, as such finding was contrary to the law and evidence.

"9. The trial court erred in Paragraph C of said decree when it granted the relief prayed for by the defendants in their cross-bill, and enjoined and restrained the complainants from unlawfully interfering with the defendants' ownership and use of the Church property which was the subject matter of this suit, as such ruling was contrary to the law and evidence applicable in this case.

"10. The trial court erred when it refused to set aside its decree entered on December 7, 1964, as being contrary to the law and evidence, and should have granted the relief prayed for by the complainants." (R., pp. 46-48)

STATEMENT OF ISSUES

1. Is the Level Green Christian Church in its organization and government entirely independent of any other church or general society?

2. Was the church property acquired in trust to support the principles of the Disciples of Christ denomination?

3. If so, has the majority of the congregation breached the trust by diversion of the property to the support of doctrines radically opposed to those of the Disciples of Christ?

4. Did the trial court improperly admit certain documents of other organizations as evidence of the religious allegiance of the Level Green congregation?

STATEMENT OF FACTS

The records of the Level Green Christian Church may be traced well into the Nineteenth Century when it was known as the "Level Green Church of Christ" or the "Church of Christ worshipping at Level Green." (Baber, R., p. 69; J. L. Huffman, R., pp. 75, 131; Complainants, Exhibit B) In those early days it was a union church with the Methodists (Huffman, R., p. 76), who then owned the church property at Level Green.

Upon the petition of the Methodists' surviving trustees in 1910, the Circuit Court of Craig County directed a conveyance of the church property to the "Trustees of the Methodist Episcopal Church South and the Disciples or Christian Church." (R., p. 268; Exhibit 21) The deed executed pursuant to that decree conveyed the property on which the church sanctuary stands (Huffman, R., pp. 80, 187-188):

> ". . . in trust for the aforesaid Methodist Episcopal Church South and the Disciples or Christian Church in equal proportions . . . as a place of divine worship for the use and membership of the said two churches or denominations, subject to the organic law, rules, usages and ministerial appointments of the said two churches or denominations respectively." (R., pp. 23-25, 40)

A year later, in 1911, the "old parsonage" property (Huffman, R., pp. 111, 188) was conveyed to the:

> "Trustees of the respective Christian Churches situated on Sinking Creek, in Craig County,

> Virginia, to wit: Gravel Hill, Level Green, Bethel and Mt. Carmel . . . for the use and benefit of the respective religious congregations of the Christian Church worshipping at the four respective churches aforesaid as a parsonage or residence for ministers . . . to the aforesaid churches and religious congregations of the Christians or Disciples worshipping at the churches aforesaid." (R., pp. 26-27, 41)

In 1957 the Trustees of Level Green Methodist Church conveyed to the "Trustees of the Level Green Christian Church" the one-half interest acquired by the Methodists in the 1910 deed, "the same property conveyed to the Trustees of the Christian Church and the Trustees of the Methodist Church . . . . " (R., pp. 27-28, 41)

Further property, to complete the Sunday School rooms (Huffman, R, p. 190), was conveyed in 1958 to the "Trustees of Level Green Christian Church" (R., pp. 41, 223). Finally in February, 1963, the church acquired land for its own parsonage (Huffman, R., p. 189); this too was conveyed to the "Trustees of Level Green Christian Church." (R., pp. 28, 42)

In July, 1963, the "Trustees of the Level Green Christian Church", with the approval of the Circuit Court, borrowed $10,000.00 to construct a new parsonage and encumbered all of the church's real property except its interest in the "old parsonage" property (Baber, R., p. 105; Huffman, R., p. 189).

The trial court in the present suit took judicial notice of all of its orders appointing Trustees for the local

congregation (R., p. 327). These disclose that all persons so appointed were named by the court as "Trustees of the Level Green Christian Church" or "Trustees of the Christian Church at Level Green."

Some dissension gradually arose through the period from 1957 to 1963 (J. L. Huffman, R., p. 78; St. Clair, R., p. 89, 93; H. M. Huffman, R., pp. 320-321). Out of approximately 125 active members of the congregation (J. L. Huffman, R., pp. 77, 111; Baber, R., p. 104) some 12 to 16 dissenters (J. L. Huffman, R,. p. 77; St. Clair, R., p. 95) professed allegiance to the Christian Church, Disciples of Christ, and asserted ownership of the Level Green church property in reliance upon their interpretation of the deed of 1910 (St. Clair, R., 91, 97; H. M. Huffman, R., p. 321).

In the decree of December 7, 1964, from which this appeal is prosecuted Judge Holstein stated that, "A division in the congregation of Level Green Christian Church occurred on or about September 15, 1963. . . ." (R., p. 42) Presumably this refers to the congregational meeting held on that date.

The Level Green Church had no written constitution nor bylaws, but it is undisputed that the meeting was called and conducted in complete accord with the traditional and customary usages of the congregation (J. L. Huffman, R., pp. 76, 113-114; Baber, R., pp. 102-103). At the meeting three resolutions were presented to and adopted by the congregation (Complainants' Exhibit A; R., p. 53); several of the 12 to 16 in the dissenting minority were present, but they voiced no opposition (Baber, R., p. 56; St. Clair, R., p. 96).

1. The congregation voted 65 to 0 "in favor of severing all relationships with the Virginia Christian Missionary Society" (Baber, R., p. 53).

2. The congregation voted 83 to 0 to petition the Circuit Court for a correction of the 1910 deed to "the Disciples or Christian Church", in order to identify the grantees as "Trustees of the Level Green Christian Church" in accord with the other deeds to the church property (Baber, R., p. 54; Huffman, R., pp. 74, 112).

3. The congregation voted 75 to 0 to "sustain" the resolution of the Board of Elders and Deacons that no minister could preach in the church without the Board's approval (Baber, R., p. 55; Hamilton, p. 316).

Neither the dissenters nor anyone else have at any time been denied the right to worship in Level Green Christian Church (Baber, R., p. 58; Huffman, R., p. 114). The "minority faction" however engaged the Reverend Jack Hamilton, a clergyman from Giles County, to hold a revival in the church (St. Clair, R., p. 90). The majority of the congregation was notified of the proposed meeting only by public advertisement in the New Castle Record, the county's weekly newspaper (Baber, R., pp. 56-57).

A committee from the church's Board of Elders and Deacons went to Hamilton to advise him of the congregation's resolution requiring Board approval, but he refused to recognize their authority (Baber, R., p. 57; Hamilton, R., pp. 314-317). When the minority persisted in their intent to conduct their

revival the Board, on advice of their counsel, locked the church against them (Huffman, R., p. 114; Keffer, R., pp. 196-197) and sought injunctive protection by the institution of this suit (Keffer, R., p. 194; Baber, R., pp. 250-251).

REVIEW OF AUTHORITIES

Neither in the trial court nor upon the petition for appeal were the controlling precedents fully assembled and discussed. This, we submit, is a necessary prerequisite to development of the complainants' argument upon the particular facts of this case.

1. *The Property Rights of Divided Congregations.*

The rights of the congregations in church property received an authoritative analysis in *Watson* v. *Jones,* 13 Wall. 679, 20 L ed. 666, decided by the Supreme Court of the United States in 1872. The problems were there classified under three general headings.

> "1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support or spread of some specific form of religious doctrine or belief.
>
> "2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

"3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization." 13 Wall. 679, 722, 20 L. ed. 666, 674.

Watson v. *Jones* was a dispute within the Presbyterian Church of the United States arising from the General Assembly's support of the Federal government in the War Between the States. In the Presbyterian system of church government the General Assembly is the supreme judicatory, and its decision is conclusive under the third of the Supreme Court's classifications. However the Court's comments in *Watson* v. *Jones* upon the first and second of those classes are of peculiar interest to the Level Green controversy.

"In regard to the first of these classes it seems hardly to admit of a rational doubt that an individual or an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting and propagating definite religious doctrines or principles. . . .

"In such case, if the trust is confided to a religious congregation of the independent or congregational form of church government, it is not in the power of the majority of that congregation, however preponderant, by reason of a change of views on religious subjects, to carry the property so confided to them to the support of new and conflicting doctrine. A pious man building and dedicating a house of worship to the sole and exclusive

use of those who believe in the doctrine of the Holy Trinity, and placing it under the control of a congregation which at the time holds the same belief, has a right to expect that the law will prevent that property from being used as a means of support and dissemination of the Unitarian doctrine, and as a place of Unitarian worship. . . . And though the task may be a delicate one and a difficult one, it will be the duty of the court in such cases, when the doctrine to be taught or the form of worship to be used is definitely and clearly laid down, to inquire whether the party accused of violating the trust is holding or teaching a different doctrine, or using a form of worship which is so far variant as to defeat the declared objects of the trust." 13 Wall. 679, 723, 20 L.ed. 666, 674.

This express trust for the support of a specific doctrine is sharply contrasted to a trust simply for the use of a local congregation.

"The second class of cases which we have described has reference to the case of a church of a strictly congregational or independent organization governed solely within itself, either by a majority of its members or by such other local organism as may have been instituted for the purpose of ecclesiastical government; and to property held by such a church, either by way of purchase or donation, with no other specific trust attached to it in the hands of the church than that it is for the use of that congregation as a religious society.

"In such cases, where there is a schism which leads to a separation and to distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordi-

nary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of the members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such 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, and refusing to recognize the authority of the governing body, can claim no rights in the property from the fact that they had once been members of the church or congregation. This ruling admits of no inquiry into the existing religious opinions of those who comprise the legal or regular organization; for, if such was permitted, a very small minority without any officers of the church among them, might be found to be the only faithful supporters of the religious dogmas of the founders of the church. There being no such trust imposed upon the property when purchased or given, the court will not imply one for the purpose of expelling from its use those who by regular succession and order constitute the church because they may have changed in some respect their views of religious truth." 13 Wall. 679, 724, 20 L.ed. 666, 675.

The Supreme Court further elaborated this distinction:

"Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of a religious congregation, and so long as

any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property. In the case of an independent congregation we have pointed out how this identity, or succession, is to be ascertained." 13 Wall. 679, 726, 20 L.ed. 666, 676.

The *Watson* v. *Jones* problem had been anticipated by the Supreme Court of Appeals of Virginia in *Brooke* v. *Shacklett,* 13 Gratt. 301 (1856). The Methodist Episcopal Church had split upon the issue of slavery, and under the plan of separation certain local congregations including the society at Salem, Fauquier County, were entitled to elect whether they would continue to adhere to the Methodist Episcopal Church or whether they would unite with the Methodist Episcopal Church, South. The church property at Salem had been conveyed upon an elaborate trust for the building of a house of worship for the use of the members of the Methodist Episcopal Church in the United States of America.

The trial court ruled that under that deed the Salem church property could be appropriated only for the use of the Methodist Episcopal Church, but this decree was reversed on appeal. The property had been conveyed for the benefit of the local society or congregation, which in the manner prescribed by the plan of separation had connected itself to the Southern Church.

The early Virginia case of *Gallego* v. *Attorney General,* 3 Leigh 450 (1832), had held that our courts

had no jurisdiction to enforce devises to religious societies because of uncertainty as to the beneficiaries. Corrective legislation was enacted to validate conveyances and devises "of land for the use or benefit of any religious congregation." This statute has, with changes not here pertinent, become Code of Virginia (1964 Supp.), Section 57-7.

> "The terms of the act are broad enough to embrace not only such congregations as may be independent of others, choosing their own pastors, and making the laws for their own government, but also such as may be united with other congregations under a common government, from which they may respectively receive the pastors that are to instruct them or the laws that are to regulate them, without having any voice either in the selection or appointment of the former, or in the framing or enactment of the latter." 13 Gratt. 301, 312.
>
> "It is, however, equally obvious that the conveyances, devises and dedications to which the acts mean to give validity, are conveyances, devises and dedications of property for the use of the 'religious congregations' therein mentioned, in the limited and local sense of the term, viz: for the members (of these religious congregations) as such, who, from their residence at or near the place of public worship, may be expected to use it for such purpose." 13 Gratt. 301, 313.

This Court was faced with a cleavage within a congregationally governed church in *Cheshire* v. *Giles,* 144 Va. 253, 132 S.E. 479 (1926). The church property had been conveyed simply to the Trustees

of the Primitive Baptist Church of Martinsville. The majority faction called a minister who had been excluded from membership in his own Primitive Baptist church in Danville. The Pigg River Association of Primitive Baptist Churches decided in favor of the minority who opposed this minister, and the trial court gave judgment accordingly, but this Court reversed and remanded.

The Court's opinion, written by Mr. Justice Prentis, its President, particularly found that each local congregation of the Primitive Baptist Church was independent, subject to no higher ecclesiastical authority, and was the final judge of the faith and doctrine of the church. The Pigg River Association was merely a voluntary meeting for the purpose of worship and consultation.

> "Conceding the independence of the Martinsville congregation (church) under circumstances like those here shown, as we certainly must, it seems to us that the decree is clearly erroneous. It is not shown that there has been any breach of trust or diversion of the property on the part of the Cheshire or majority faction, nor that they have abjured or renounced their ancient faith. It is only shown that they have continued as their pastor one who has been excluded from membership in another independent church, that the Pigg River Association has condemned this action as improper and recognized the minority faction as the true Primitive Baptist Church at Martinsville. Now as to this, each faction and the association are clearly within their rights, but nevertheless it does not follow, because the minority are so held to

be the true Primitive Baptists at Martinsville, in the opinion of the association, that this minority is entitled to take the church property away from the majority, who refuse to accept the advisory counsel of the association." 144 Va. 253, 259, 132 S.E. 479, 481.

Code of 1919, Section 40, which is now Code Section 57-9 (Page 6 above), was enacted to determine just such conflicts, and the last sentences thereof were expressly designed for conflicts within independent congregations. *Watson* v. *Jones,* 13 Wall. 679, 723, 20 L.ed. 666, 675 (Page 16 above), was quoted for the rule that the majority of an independently governed congregation might not employ trust property "to the support of new and conflicting doctrine", but the rule however was determined to be inapplicable in *Cheshire v. Giles.*

"As we have seen, however, nothing has been done or said by the majority of the Martinsville congregation which could, by any fair construction, be held to indicate any substantial change in their views as to the fundamentals of Primitive Baptist doctrine and faith. Without such a change, and the burden is upon the complainants to show this, Code Section 40, as we have concluded, controls the disposition of the property." 144 Va. 255, 260, 132 S.E. 479, 481.

The cause was remanded to the Circuit Court with directions that if it could find no possibility of reconciliation an election be held under Code Section 40 (now Section 57-9) to ascertain which faction was indeed the majority of the Martinsville Primitive Baptist congregation as it existed when the division

occurred. Under the statute this would finally establish the ownership of the church property.

2. *The Controversy within the Christian Church.*

The division of the Level Green Christian Church is not an isolated phenomenon. The history and the doctrines of the Christian Church have been reviewed in detail by the highest courts of other states in the resolution of very similar conflicts.

Respecting *Martin v. Kentucky Christian Conference,* 255 Ky. 322, 73 S.W. 2d 849 (1934), it was well stated in a later Kentucky decision:

"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." *Parker* v. *Harper*, 295 Ky. 686, 175 S.W.2d 361, 363 (1943).

In 1804 Barton W. Stone and his associates withdrew from the Presbytery of Springfield by execution of the "Last Will and Testament of Springfield Presbytery". We shall not here restate that quaint and charming document in its entirety, but we particularly direct the attention of the Court to its earnest plea for ecclesiastical self-government.

"Item. We will, that our power of making laws for the government of the church, and executing them by delegated authority, forever cease; that the people may have free course to the Bible, and adopt the law of the Spirit of life in Christ Jesus. . . .

"Item. We will, that the church of Christ resume her native right of internal government. . . .and that she resume her primitive right of trying those who say they are apostles and are not.

"Item. We will, that each particular church, as a body, actuated by the same spirit, choose her own preacher. . . .and never henceforth delegate her rights of government to any man or set of men whatever. . . .

"Item. We will, that our weak brethern, who may have been wishing to make the Presbytery of Springfield their king, and wot not what is now become of it, betake themselves to the Rock of Ages, and follow Jesus for the future." *Martin* v. *Kentucky Christian Conference,* 255 Ky. 322, 73 S.W.2d 849, 850.

At the same time Stone inaugurated the movement which resulted in the organization of the "Christian Church", whose distinctive principles were:

"The Lord Jesus Christ as the head of the church.

"Christian our only name.

"The Bible our rule of faith and practice.

"Individual interpretation of the Scriptures, the right and duty of all.

"Christian character the test of fellowship.

"The union of all the followers of Christ, to the end that the world may believe." 73 S.W.2d 849, 850.

Alexander Campbell soon inaugurated a similar movement which entertained substantially the views of Stone and his followers. Campbell and his group also called themselves "Christians" and their church the "Christian Church". In 1832 at Lexington, Kentucky, delegates from the two churches united into one Christian Church.

"And that he (Barton W. Stone) also said in substance that the followers of Mr. Campbell had as much right to the use of the name 'Christian' as his followers had, and that he viewed the union between the two 'as the noblest act of my life.' It further appears that for more than 100 years the church, whether composed of followers of Barton W. Stone or the followers of Alexander Campbell, was known as the 'Christian Church.'" 73 S.W.2d 849, 851.

The particular dispute in *Martin* v. *Kentucky Christian Conference* arose when a majority of a local congregation withdrew from the Kentucky Christian Conference and also decided to have communion services each Sunday. The church property had been conveyed to the "Trustees of the Christian Church for the purpose of building a church for worship for the Christian Church," with a provision for reverter "when the Christian Church or their successors failed to use it for that purpose. . . " The Court of Appeals of Kentucky held that the local congregation was still conducting itself as a "Christian Church" within the contemplation of the deed.

Of special interest to the Level Green dispute are these comments upon the Kentucky Christian Conference.

"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 has 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 ministers, 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." 73 S.W.2d 849, 851.

In the more recent Kentucky decision of *Franklin* v. *Hahn,* 275 S.W.2d 776 (Ky., 1955), the issues were quite similar to those at Level Green. The majority of the Chaplin Christian Church agreed that their church was founded by followers of Alexander Campbell and Barton W. Stone but contended that the particular congregation had no connection with the denomination known as "Disciples of Christ". The minority which, as in the Level Green case, prevailed in the lower court, claimed that the church was a part of

the Disciples of Christ denomination and desired to affiliate with various agencies of the Disciples, particularly the "United Christian Missionary Society". Each group sought an injunction to prevent the other from interfering with its use and management of the church property.

The Kentucky Court of Appeals first acknowledged "the rule that where the characteristic doctrines of a particular church are well established" the courts will prevent "diversion of the property of the church to another denomination or to a group supporting doctrines radically and fundamentally opposed to the established practices and tenets of the church." In this case however the Court could not determine from the evidence what had been the doctrine of the Chaplin Christian Church at the time of its foundation.

"In view of the inconclusive nature of the evidence on this question and inasmuch as it was not shown that there was any substantial difference in the doctrinal beliefs of the parties, the above stated rule is not applicable in this controversy." 275 S.W.2d 776, 777.

Second, the Kentucky Court pointed out that it, as a secular tribunal, would intervene only in controversies involving civil or property rights and that it would leave "controversies of a doctrinal or theological nature strictly in the ecclesiastical judicature." 275 S.W.2d 776, 777.

Third, the Court repeated its recognition that:
" . . . it is well established that the 'Christian

Church' or the 'Disciples of Christ' groups are strictly congregational in government and activity . . . . Therefore, the local church congregation is the governing body of the church and the determination of a question by a majority of the members is final." 275 S.W.2d 776, 778.

The trial court in *Franklin* v. *Hahn* had erroneously held that the Chaplin Christian Church's cessation of support to the United Christian Missionary Society and other organizations "generally supported by the 'Disciples of Christ' " constituted a defection from the fundamental doctrines of the church, but the appellate court bluntly reversed this mistaken ruling.

"This church, having the congregational or independent form of government, had the right, if the majority of the membership so desired, to withhold support from any voluntary society or organization. From the evidence presented, the 'United Christian Missionary Society' and the societies and schools in question would appear to be voluntary organizations. . . .

"While there may be some difference of opinion among the two groups concerning what the fundamental doctrine of this church was when it was founded, the proof is insufficient to support a finding of fact that this church was established as a 'Disciples of Christ' church. Therefore, the Chancellor erred in concluding that the appellants were failing to adhere to the fundamental doctrines of the Chaplin Christian Church.

"The issues in this case concern matters which should be decided by a majority of the membership of the Chaplin Christian Church. Secular courts have no jurisdiction over ecclesiastical controversies of this character." 275 S.W.2d 776, 778.

The issue of "cooperation" through missionary societies was likewise a major issue in *Ragsdall* v. *Church of Christ in Eldora,* 244 Iowa 474, 55 N.W.2d 539 (1952). The Supreme Court of Iowa discussed the origin of the Christian Church by the union of the followers of Campbell and Stone and observed:

"The name Christian Church or Church of Christ seems to be the original designation of churches of this faith. At sometime in its history (possibly from the beginning) the word 'Disciples' also came into use." 55 N.W.2d 539, 541.

The church records at Eldora as far back as 1855 contained references to the "congregation of Disciples" and to the "Church of Christ known as Disciples", but "the variance of names among churches of the Campbellite origin was surely not significant in the beginning." 55 N.W.2d 539, 543.

Both sides conceded that the Eldora church was autonomous and congregationally governed, in contrast to churches of the episcopal and presbyterian systems, that it was controlled by no higher ecclesiastical organization, and that it was "related" to other churches only by voluntary association and common belief; 55 N.W.2d 539, 541.

The real controversy was defined as the Disciples' contention that the property of the Eldora Church

was diverted from the "fundamental faith" by the refusal of the local congregation "to 'cooperate' with other churches of similar Campbellite origin in a specific way 'in order to get the work of the church done'."

> "We do not agree that cooperation with other Churches of Christ, or Christian Churches, through any particular organization, such as 'Iowa Christian Convention,' 'Iowa Christian Missionary Society,' 'United Christian Missionary Society' or 'International Convention of Disciples of Christ, Inc.', may be or become a matter of fundamental faith from which the majority of an individual church may not depart; or that the property of the individual autonomous church is held in trust for the purpose of promulgating or perpetuating any particular manner of cooperation.
>
> " . . . we find no evidence that their support is compulsory upon the individual church or members. The very independent and autonomous character of the individual church precludes the possibility of any *doctrine* of compulsory support of such institutions, however worthy and even necessary they may appear to be." 55 N.W.2d 539, 543 (emphasis by the Court).

The Iowa Court rejected other contentions of the "Disciples" that the "so-called 'Independents' " had diverted the church property from support of its fundamental doctrines. For example the "Disciples" claimed that the "Independents" had added to the fundamental tenet of the followers of Campbell and Stone—"No creed but Christ"—a requirement of profession of belief in the Virgin Birth of Christ.

> "But is this doctrine of the Virgin Birth so fundamentally different from belief 'in the Fatherhood of God,' 'that Jesus is the Son of God and the Savior,' and 'that the Bible is the Word of God'? Is it basically a violation of the dictum or tenet 'no creed but Christ, no rule of faith and conduct but the Bible'? There may be some theological distinction but there is none to the ordinary lay person. To most people trinitarian belief imputes divine origin to Jesus, stemming from the New Testament account of his birth.
>
> ". . . 'Nice distinctions or shades of opinion on doctrinal points or practice do not merit the interference of a court of equity, and it is only when the departure from the faith is so substantial as to amount to a diversion of the property from the trust purpose that courts will interfere.' . . . .
>
> "However, we are constrained to hold there were here no substantial or basic changes beyond the power of the majority to make. Churches of the congregational type labor under the same difficulties as afflict democratic systems in other fields. The majority's power is limited only by fundamental principles. In episcopal and even in presbyterian systems there is a higher ecclesiastical authority to which the dissatisfied minority of a local church may carry its grievances. That is not true under congregational systems. As to them the court must , as best it can, decide between church litigants on the basis that the power of the majority is limited only as we have stated." 55 N.W.2d 539, 545.

In *Wright* v. *Smith,* 4 Ill. App. 2d 470, 124 N.E. 2d 363 (1955), the local congregation of the "Christian Church at Salem" refused to continue its support of

the missionary society, and once again it was confirmed upon legal appeal that this did not involve a departure from fundamental church doctrine nor diversion of trust property.

> "It is further noted that when a church, strictly congregational or independent in its organization, is governed solely within itself either by a majority of its membership or by such other local organism as it may have instituted, and owns property with no other specific trust attached to it than that it is for the use of the church, the numerical majority of the membership of the church ordinarily controls the right to the use of such property." 124 N.E.2d 363, 365.

There is a recognized exception, that the majority may not effect a "fundamental change of doctrine", but:

> "The departure from fundamental faith, however, must be a substantial one and it must be one involving essential matters of faith and fundamental doctrines. . . . A mere severnce of a voluntary ecclesiastical connection by the majority faction of an independent society, assuming it does not involve fundamental change of doctrine, does not in itself involve any diversion of the property from the implied trust" 124 N.E. 2d 363, 365.

In a church with the congregational form of government the local congregation has the authority to determine its custom and practice in matters such as affiliation with missionary societies. Such matters are "non-essentials"; they are not "matters of faith".

> "As to non-essential matters the local congregation has power of decision, and a practice or

> custom could not become a matter of fundamental faith or doctrine in a local church by reason of its continued observance for many years." 124N.E. 2d 363, 366.

The Supreme Court of Indiana in *Stansberry* v. *McCarty,* 238 Ind. 338, 149 N.E.2d 683 (1958), reviewed *Franklin* v. *Hahn* (Page 26 above) and *Ragsdall* v. *Church of Christ* (Page 29 above) and concluded:

> "In all of the cases dealing with Christian Churches which we have been able to examine, the decisions seem to be unanimous in holding that a division of opinion over the support of missionary societies or other church organizations described as 'co-operation' is not a matter of fundamental belief and is not a required tenet for membership in the church. Such difference in views does not 'constitute a new and different church'." 149 N.E.2d 683, 690.

In *Stansberry* the appellate court reversed the judgment of the trial court which had "misconceived the theory of the action and the issues"; 149 N.E.2d 683, 692. The trial judge had been unfavorably impressed by the preaching of the local minister against the "co-operative movement" (149 N.E.2d 683, 687), but the Indiana Supreme Court clearly recognized that "co-operation" was not a matter of fundamental belief nor a requirement for membership.

> "For the court to intermeddle in a church's organization merely because there had been a change in 'the usages, practices, customs, doctrines and tenets' of the church as they existed at the time it

was organized, would be officious and totally unwarranted, unless it is shown also that they were requirements for its fellowship and there has been a fundamental departure therefrom and a violation of the trust of church property." 149 N.E.2d 683, 689.

3. *The Solution of Dewey v. Grasty.*

The controversy within the Christian Church reaches the Supreme Court of Appeals of Virginia for the first time in this case. However the same problem received scrupulous study by the Honorable W. T. Ford, Judge of the Circuit Court of Rockingham County, Virginia, in *Dewey* v. *Grasty*. We have copied Judge Ford's opinion and two decrees in the appendix to this brief. We commend them to this Court, and we shall here discuss only their salient features.

Dissension had arisen in the "Harrisonburg Church of Christ, sometimes indiscriminately known also as the Christian Church and the Disciples of Christ." (App., p. 5) It was "intimated" that the cause of the disunity was the desire of some members of the congregation to work in "co-operation" with the Virginia Christian Missionary Society and to support Lynchburg College (App., p 10). The complainants —the "Dewey faction", who in their desire to "co-operate" with the Virginia Christian Missionary Society would closely correspond to the defendants at Level Green—were allegedly excluded from the management and control of the church (App., p. 6). The Circuit Court resolved the controversy by the

conduct of a congregational election pursuant to the then Section 40 of the Code of Virginia (now Code Section 57-9) to determine which faction constituted a majority of the congregation (App., p. 38).

Much of Judge Ford's opinion is concerned with the manner in which an earlier congregational meeting had been called and conducted, but there is throughout the opinion a clear perception of the entire controversy.

The trial judge recognized on several occasions that the Disciples and Christian Churches are congregationally governed (App., pp. 7, 23, 31, 35).

> " 'Both parties concede that they recognize no rule of conduct in cases of dispute except the New Testament. Alexander Campbell, the Disciples' greatest preacher, if not their founder, says: "It (the church) knows nothing of superior or inferior church judicatures, and acknowledges no laws, no canons or government, other than that of the Monarch of the universe and its laws." . . . . But among religious people who are strictly congregational in their church government, there is no authority in any tribunal that may be thus selected, especially a tribunal chosen only by one party. The decision of such a tribunal may have a moral weight, but it has no legal authority.' Long v. Harvey, 177 Pa. 473; 34 LRA 169." App., p. 8).

From his review of the law and the evidence Judge Ford concluded:

> ". . . it is manifest that the Harrisonburg Christian Church, or Disciples of Christ, or

Church of Christ, is an independent church, which in its organization and government is a church entirely independent or any other church, general society, conference, presbytery or association of any kind or description. It is equally conclusively established that a controversy and division in the congregation exists. It seems clear and conclusive that Section 40 of the Virginia Code of 1942 (Michie's) was enacted to determine just such a controversy. After providing for the division of the Church property generally as affecting other denominations, *in the latter part of said section it refers specifically to such divisions between congregations independently organized as the Christian churches are.*" (App., p. 19; emphasis supplied).

The Court then quoted verbatim the last two sentences of the present Code Section 57-9 (Page 6 above).

In the Harrisonburg case the church property had been conveyed to the "Trustees for the Christian (*Deciple*) Church of Harrisonburg, Virginia" (App., p. 6). The trial court ruled, just as this Supreme Court had ruled in *Cheshire* v. *Giles* (Page 22 above), that there had been no breach of trust nor diversion of church property, no renunciation of the church's "ancient faith", no "substantial change in their views as to the fundamentals of the Christian or Disciple of Christ doctrine, faith and tenets." (App., p. 25).

On the particular issue of "co-operation" with the Virginia Christian Missionary Society the Circuit Court said:

"It further appears that the Disciples of Christ or Christian Churches do not become members of

the Virginia Christian Missionary Society but simply co-operate and work with them. The connection or association is even looser than the connection between the Primitive Baptist Churches and their Associations. In Cheshire v. Giles, Supra, the court held that said Association had no control or, authority over its member churches but simply acted together in co-operation for advice and counsel, which fell far short of being an indication of diversion of church property or abandonment of the congregational form of church." (App., p. 26)

The trial court appointed a master commissioner to supervise a congregational meeting, and it prescribed in its decree the names of the members entitled to vote with or without challenge (App., pp. 39-42). Interestingly enough this election resulted in victory for Grasty, Fletcher and other defendants (App., pp. 43-45) who, in their opposition to the Virginia Christian Missionary Society, occupied a position corresponding to that of the complainants in the Level Green case. The outcome of the election is however of much less import than the recognition of majority rule in a congregational church.

There has been no real denial by the defendants in the present case that the congregational meeting at Level Green on September 15, 1963, was duly called and conducted under the traditional and customary usages of that church (Page 13 above). If however there may remain in the minds of this Court any troubling doubt whether the present complainants represent the true and lawful majority of the Level

Green Christian Church, we ask as alternative relief that this cause be remanded to the Circuit Court with directions that an election be held under Code Section 57-9. For this procedure there is ample precedent in *Cheshire* v. *Giles* and *Dewey* v. *Grasty*.

ARGUMENT

1. *Is the Level Green Christian Church in its organization and government entirely independent of any other church or general society?*

Judge Holstein found in Paragraph X of the final decree that on September 15, 1963, the date of the alleged "defection" by the majority of the Level Green congregation:

> ". . . the congregation of Level Green Christian Church, in its organization and government, was not a church or society entirely independent of any other church or general society." (R., p. 43)

This, we most earnestly submit, is devoid of support by the law or by the evidence.

Every congregation of the followers of Alexander Campbell and Barton W. Stone—whether they may style themselves a Christian Church, a Disciples of Christ Church or a Church of Christ—is independent and self-governing, in contrast to the episcopal or presbyterian systems of church government. There is among the Christians or Disciples no higher ecclesiastical tribunal to whom disputes among the local congregations may be appealed.

That was the holding of the Court of Appeals of Kentucky in *Martin* v. *Kentucky Christian Conference,* 255 Ky. 322, 73 S.W.2d 849, 851 (Page 26 above) an opinion written by "an eminent layman of the Christian Church," (Page 23 above) and repeated and reaffirmed in Kentucky in *Franklin* v. *Hahn,* 275 S.W.2d 776, 778 (Page 28 above), in Iowa in *Ragsdall* v. *Church of Christ in Eldora,* 244 Iowa 474, 55 N.W.2d 539, 541 (Page 29 above), and in Illinois in *Wright* v. *Smith,* 4 Ill.App.2d 470, 124 N.E.2d 363, 365 (Page 32 above). That was the holding of the Circuit Court of Rockingham County in *Dewey* v. *Grasty* (App., p. 19; Page 36 above), in reliance upon the decision of this Court concerning the Primitive Baptists in *Cheshire* v. *Giles,* 144 Va. 253, 132 S.E. 479 (Page 20 above).

That was the undisputed evidence in the Circuit Court of Craig County. The Level Green Church is governed by the vote of the congregation, and its actions have never been subject to the approval of any higher ecclesiastical tribunal (Baber, R., pp. 72, 247; J. L. Huffman, R., pp. 76, 114, 118, 145; Scott, R., p. 215).

A leader of the minority faction at Level Green, John St. Clair, the self-proclaimed victim of "the conspiracy party" (R., pp. 91, 93), conceded that all Christian or Disciples churches were "independent organizations" (R., p. 94).

The defendants' expert, John W. Johnson, Second Vice President of the Virginia Christian Missionary

Society, stated categorically that the Society does not dictate policy to the local churches (R., p. 84) but that Level Green and other local churches govern themselves according to their own rules and regulations (R., p. 87).

> "Q. (Mr. Crush) The Society does not have and has never attempted to operate for them or pretend to have jurisdiction over them?
>
> "A. (Mr. Johnson) The Missionary Society, as well as other agencies, will develop programs and reduce them for the consideration of the local congregation, but in the acceptance of these programs, the development of them is entirely up to the local congregation.
>
> "Q. In other words, they are what we would refer to as totally independent?
>
> "A. Right." (R., p. 88)

The other expert brought to Craig County by the defense was H. Myron Kaufman, Executive Secretary of the Virginia Christian Missionary Society. He referred to an ambiguous "connectional relationship" between Disciples Churches, but there was assuredly no ambiguity when he stated in the same passage that:

> "Each local congregation of the Christian Church, Disciples of Christ, maintains its own autonomy." (R., p. 289)

The Level Green Christian Church is "a congregation, which in its organization and government is a church or society entirely independent of any other

church or general society," within the definition of the third sentence of Virginia Code Section 57-9, and a "division" having occurred the voice of the majority must prevail unless there be a diversion of trust property by a renunciation of the congregation's "ancient faith". That is the law of *Cheshire* v. *Giles* (Page 22 above), applied to the Christian Church in *Dewey* v. *Grasty* (Page 36 above).

2. *Was the church property acquired in trust to support the principles of the Disciples of Christ denomination?*

a. *The defendants' reliance upon the* 1910 *deed.*

There have been five conveyances of property for the benefit of the Level Green congregation: in 1910, 1911, 1957, 1958 and 1963 (R., pp. 23-28, 40-42; Pages 11-12 above). The 1911 deed conveyed the "old parsonage" property to the "Trustees of the respective Christian Churches situated on Sinking Creek, in Craig County, Virginia." The one-half interest of the Methodists in the church sanctuary was conveyed in 1957 to the "Trustees of the Level Green Christian Church", as was the Sunday School property in 1958 and the new parsonage property in 1963. No representative of the Disciples minority has claimed in this suit that a trust was impressed in their favor by any of those conveyances.

Indeed Hazel Porterfield, one of the 1958 grantors, permitted no doubt to remain respecting her intentions:

"No. I don't intend to convey nothing to the Disciples." (R., p. 223)

The defendants have wrapped themselves in the pages of the 1910 deed, which conveyed the sanctuary property to the "Trustees of the Methodist Episcopal Church South and the Disciples or Christian Church" (Page 11 above).

"We claim we are the congregation because we are the Disciples of Christ. We claim our church through the deeded property. That's stated very clearly in that, sir." (St. Clair, R., p. 97)

" 'We've got papers to show for this; we've got a deed for this place. This building belongs to us.' That was the 1910 deed." (H. M. Huffman, R., p. 321)

Satisfied with their own interpretation of one deed the defendants defied the will of the overwhelming majority of their fellow communicants—"The majority doesn't rule when they're wrong" (St. Clair, R., p. 95)—and repudiated the debt which with the approval of the Circuit Court of Craig County encumbers the Church property (Page 12 above):

"Q. (Mr. Crush) Have you discussed anything about paying off the indebtedness of the church?

"A. (Mr. St. Clair) So far as we're concerned the Disciples of Christ has no indebtedness." (R., p. 99)

b. *The confusion in the names "Disciple" and "Christian".*

What is the true significance of the 1910 conveyance to the Trustees of "the Disciples or Christian Church"?

The precedents of other courts and the testimony of the witnesses in this case disclose that any significant distinction between "Christian" and "Disciple" arose at a far, far later date.

The movement inaugurated by Barton W. Stone in 1804 was the "Christian Church". The similar movement commenced by Alexander Campbell was likewise the "Christian Church", and the union of Stone and Campbell was the "Christian Church"; *Martin* v. *Kentucky Christian Conference,* 255 Ky. 322, 73 S.W. 2d 849, 850-851 (Pages 24-25 above).

The church property in *Dewey* v. *Grasty* had been conveyed to "the Christian (*Deciple*) Church", and Judge Ford, as late as 1948 referred to the "Harrisonburg Church of Christ, sometimes indiscriminately known also as the Christian Church and the Disciples of Christ" (App., pp. 5, 6; Pages 34, 36 above).

The Supreme Court of Iowa in *Ragsdall* v. *Church of Christ in Eldora,* 244 Iowa 474, 55 N.W. 2d. 539, considering a Christian Church which as far back as 1855 had been described as the "congregation of Disciples" and the "Church of Christ known as Disciples" quickly parted the veil of semantics.

"The name Christian Church or Church of Christ seems to be the original designation of churches of this faith. At sometime in its history

(possibly from the beginning) the word 'Disciples' also came into use.

". . . The variance of names among churches of the Campbellite origin was surely not significant in the beginning." 55 N.W.2d 539, 541, 543 (Page 29 above).

This is reaffirmed by the witnesses in the present case.

"The Christian Church, the Disciples of Christ and the Church of Christ all have a common origin . . . And Barton W. Stone preferred the name Christians, and Barton W. Stone insisted that the name of the church was the Christian Church, and the members are Christians. Alexander Campbell preferred the name Disciple, and the word Disciple was used occasionally, but not officially, as referring to the members of the church. And so when that refers to the Disciples there it just refers to the members of the Christian Church." (Scott, R., p. 211)

In this the defendants' experts concurred.

"Q. (Mr. Draper) . . . The Christian Church or Disciples of Christ are often one *in* the same?

"A. (Mr. Johnson) The names are interchanged. Some Disciples Churches may be known as Christian Churches. There are some instances where they are Church of Christ, Disciples.

"Q. Some Disciples Churches may be Churches of Christ?

"A. Yes, that's right." (R., p. 87)

The defendants' principal witness, Myron Kaufman, testified that Disciples Churches in certain areas

still use the name "Church of Christ" (R., p. 306). Only in about 1954-1955 was the denominational designation "Christian Church, Disciples of Christ" officially acquired, and until then, "Sometimes *is* was Christian Church with Disciples, and sometimes it was just Disciples of Christ." (R., p. 308)

The same expert was then asked whether there was not tremendous confusion in the use of the names "Christian" and "Disciples" until about ten years ago, and the expert replied:

"There's been confusion since 1832 when the two forces joined together in this union meeting in Lexington." (R., p. 308)

Judge Abbott himself interjected that it was only lately that "the two issues have been brought into focus." (R., p. 284)

There is even now no doctrinal difference between the Disciples and the Christians, whom Kaufman styled the "Independents". Kaufman strained to find differences (R., p. 289) on the points of "cooperation", support of missions through societies, and the ambiguous "connectional relationship" (Page 40 above), but he readily admitted that these were merely differences of operation and administration, and that between the Christians and the Disciples there exist absolutely no differences upon matters of fundamental faith and doctrine (R., p. 301).

"Insofar as *Bibical* doctrine is concerned on teachings in the Bible there would be no difference." (R., p. 288)

In summary we have four of the five conveyances of church property to the "Trustees of Level Green Christian Church" with only the conveyance of an undivided one-half interest in 1910 to the Trustees of the "Disciples or Christian Church". We have a long record, clearly established in the law and in the evidence, that the nouns "Disciple" and "Christian" were used interchangeably among the followers of Alexander Campbell and Barton W. Stone for well over a century from the foundation of their church, that the variation in names was generally accepted as insignificant, and that by the admission of defendants' own expert, Myron Kaufman, confusion prevailed in the interchangeability of the names until about ten years ago. We have the further admission by the same expert that even now the "Disciple" and the "Christian" may be distinguished only by methods of church administration and that there continues no distinction in substantive faith and doctrine.

c. *The conveyance for the use of the local congregation.*

The Level Green Christian Church is assuredly not a member church of any religious organization "in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete in some supreme judicatory", as was the Presbyterian Church under the third category of *Watson* v. *Jones,* 13 Wall. 679, 722, 20 L.ed 666, 674 (Page 16 above). The church at Level Green is congregationally governed, and it would be repetitious to restate our argument upon that proposition (Pages 38-41 above).

Was the property conveyed to the church, by the 1910 deed or by any other deed, "by the express terms of the instrument devoted to the teaching, support or spread of some specific form of religious doctrine or belief", within the first of the *Watson* v. *Jones* categories? Let us examine closely the criterion which the Supreme Court imposed for its first classification. The property must be dedicated "by way of trust to the purpose of sustaining, supporting and propagating definite religious doctrines or principles." The illustration given is the church dedicated for the use of the believers in the Holy Trinity which may not be used for the dissemination of Unitarian doctrine.

> "It will be the duty of the court in such cases, when the doctrine to be taught or the form of worship to be used is definitely and clearly laid down, to inquire whether the party accused of violating the trust is holding or teaching a different doctrine, or using a form of worship which is so far variant as to defeat the declared objects of the trust." *Watson* v. *Jones,* 13 Wall 679, 723, 20 L.ed 666, 674 (Page 17 above).

In such circumstances, as the Kentucky Court acknowleged in *Franklin* v. *Hahn,* 275 S.W. 2d 776, 777 (Page 27 above), the property of the church may not be diverted "to another denomination or to a group supporting doctrines radically and fundamentally opposed to the established practices and tenets of the church." But is not this rule inapplicable to the Level Green conflict just as the Kentucky Court found it inapplicable in *Franklin* v. *Hahn*?

"In view of the inconclusive nature of the evidence on this question and inasmuch as it was not shown that there was any substantial difference in the doctrinal beliefs of the parties, the above stated rule is not applicable in this controversy." (Page 27 above)

The second of the *Watson* v. *Jones* categories presents the key which shall unlock the door.

"The second class of cases which we have described has reference to the case of a church of a strictly congregational or independent organization governed solely within itself, either by a majority of its members or by such other local organism as may be instituted for the purpose of ecclesiastical government; *and to property held by such a church, either by way of purchase or donation, with no other specific trust attached to it in the hands of the church than that it is for the use of that congregation as a religious society.*" 13 Wall 679, 724, 20 L.ed. 666, 675 (Page 17 above; emphasis supplied).

"Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, *but of property purchased for the use of a religious congregation.*" 13 Wall. 679, 726, 20 L.ed. 666, 676 (Page 18 above; emphasis supplied); see also *Wright* v. *Smith,* 4 Ill. App.2d 470, 124 N.E.2d 363, 365 (Page 32 above).

This is, in other words, a conveyance "of land for the use or benefit of any religious congregation," expressly validated by Code of Virginia, Section 57-7,

and its predecessor statute, expounded by this Court more than a century ago as a conveyance:

". . . for the use of the 'religious congregations' therein mentioned, in the limited and local sense of the term, viz: for the members (of these religious congregations) as such, who, from their residence at or near the place of public worship, may be expected to use it for such purpose." (*Brooke* v. *Shacklett,* 13 Gratt. 301, 313 (Page 20 above).

Except only the Roman Catholic Church, whose "laws, rules or ecclesiastic polity" require that title to its properties be vested in its bishops pursuant to Virginia Code Section 57-16, every local congregation of every religious society and denomination in Virginia may hold its property in trust for "the use of that congregation as a religious society."

Where there is "no other specific trust attached to it in the hands of the church that that it is for the use of that congregation as a religious society," the secular courts should be reluctant indeed to contravene the decision of the ecclesiastical authority, whether it be the supreme judicatory in the episcopal or presbyterian system or whether it be the majority of the local church in the congregation system.

"There being no such trust imposed upon the property when purchased or given, the court will not imply one for the purpose of expelling from its use those who by regular succession and order constitute the Church because they may have changed in some respect their views of religious truth." *Watson* v. *Jones,* 13 Wall. 679, 724, 20 L. ed. 666, 675 (Page 18 above); see also *Stansberry* v. *McCarty,* 238 Ind. 338, 149 N.E.2d 683, 689 (Page 33 above).

This salutary principle was disregarded by the Circuit Court of Craig County in its decree of December 7, 1964, that all of the property of the Level Green Christian Church "was dedicated . . . by way of trust for the purpose of supporting or propagating the doctrines or principles of Disciples of Christ." (R., p. 42, Paragraph VII)

3. *Has the majority of the congregation breached the trust by diversion of the property to the support of doctrines radically opposed to those of the Disciples of Christ?*

Assuming solely for argument that a trust was impressed to support the doctrines of the "denominational Disciples of Christ Church", the trial court still erred in its conclusions that:

> The Level Green congregation practiced "the fundamental doctrines and faith of the Disciples of Christ until on or about September 15, 1963, when the majority faction of the congregation defected from the Church;" (R., p. 40, Paragraph I)
>
> "When the division in the congregation occurred the majority faction (Complainants) renounced their affiliation and their faith in the Disciples of Christ Church, and breached the trust by diverting the property of the Church to their own use to the support of doctrines radically and fundamentally opposed to the doctrines of Disciples of Christ Church." (R., p. 42, Paragraph IX)

With what "heresy" have the majority of the Level Green congregations allegedly besmirched their sanc-

tuary? Jack Harris, the minister of Level Green Christian Church, was asked the fundamental beliefs of the church; he replied:

> "We believe that Jesus Christ is God's Son, born of the Virgin, and died and arose again in a bodily way, and is coming again literally to receive his people.
>
> "We believe that in order to be a member of the Lord's Church, which is revealed in the New Testament, and which Church we're trying our best to be, a person must hear the word of the Lord; he must repent for his sins; he must confess Jesus Christ as God's Son and his personal Savior, and he must be emmersed through the remission of sins that he might receive the gift of Holy Spirit and thus be added to the Church by the Lord." (R., p. 153)

We ask as did the Iowa Court in *Ragsdall* v. *Church of Christ in Eldora,* 244 Iowa 474, 55 N.W.2d 539, 545 (Page 31 above) how this may be deemed a violation of the fundamental tenet of Alexander Campbell and Barton W. Stone:

> " 'No creed but Christ, no rule of faith and conduct but the Bible.' "

Member after member of the congregation confirmed that there had been no change in the preachings of the Level Green Christian Church for at least 30 to 40 years, that the doctrines preached by Jack Harris were the same as had been taught from the pulpit of the little church for more than a generation (J. L. Huffman, R., p. 76; Ruth Reynolds, R., p. 179; Keffer, R., p. 191; Scott, R., p. 204; Hazel Poterfield, R., p. 216).

The defendants' experts had no knowledge of the doctrines taught at the little church, and they could not state whether there had been any doctrinal change from that which had been taught in years gone by (Johnson, R., p. 87; Kaufman, R., p. 304).

The defendants themselves were completely unable to point to any change in doctrine. John St. Clair, the self-proclaimed victim of the "conspiracy" (Page 39 above), contended that "the unity is gone," but even he refused to state that there had been any doctrinal change (R. p. 94). Howard Huffman complained of a dispute over the building program which began back in 1957, and he protested that he and other older members were being "pushed . . . out" (R., pp. 320-321). Huffman and Boyd Caldwell objected that Jack Harris did not believe in "unity" with other churches, but Huffman finally granted that he based this opinion upon the fact that he personally could not get along with Mr. Harris (R., pp. 323, 325).

The "defection" of September 15, 1963, is a patent euphemism for the actions of the congregational meeting on that date. It will be remembered that without one dissenting vote the Level Green Christian congregation voted overwhelmingly to sever all relations with the Virginia Christian Missionary Society, to petition the Circuit Court for a correction of the 1910 deed, and to require approval of the official Board as a prerequisite to preaching in the church (Page 14 above). Obviously these actions were the result rather than the cause of any cleavage in the Level Green congregation.

The malcontent minority had already asserted its claim to the church sanctuary by its interpretation of the 1910 deed to the "Disciples or Christian Church" (Pages 13, 42 above), and the majority of this rural congregation would reasonably contemplate recourse to the courts to quiet title to the church property. It is likewise reasonable that any congregation, regardless of denomination, would, as a matter of administrative procedure, vest in its governing body the right to control those who would use its pulpit as a public forum. The revival planned by the Reverend Jack Hamilton and the minority who had imported him was an outright contempt of authority thus lawfully granted, and in truth this defiance precipitated the institution of this suit (Page 15 above).

There was moreover no subversion of faith nor doctrine in severing relations with the Virginia Christian Missionary Society. Johnson, Second Vice President of the Society, expressly stated that the Society had absolutely no jurisdiction nor control over the local congregations, that they were independent, governed only by their own rules and regulations (R., pp. 87-88; Page 40 above). This was confirmed and elaborated by Myron Kaufman, the Executive Secretary.

Kaufman, of all witnesses in this case most competent to testify upon this particular issue, explained that the function of the Virginia Christian Missionary Society was the coordination of fund raising for benevolent and educational purposes, the suggestion of goals for the local churches which created no contractual obligation and were observed only voluntarily

(R., p. 290). The Society is a "creation of the local churches", and there is nothing in its composition which impairs the independence of the congregation. There is in fact nothing to prevent a local church, whether it considers itself Christian, Church of Christ or Disciples of Christ, from withdrawal from the Virginia Christian Missionary Society (R., p. 302).

> "Q. (Mr. Crush) Then for that matter there would be nothing wrong with all of the Disciples of Christ Churches themselves joining together and deciding to completely cut and sever their relations with Virginia Christian Missionary Society, is there?
>
> "A. (Mr. Kaufman) They could disband the society.
>
> "Q. And still be Disciples of Christ Churches, wouldn't they, because your Society has no control over them?
>
> "A. That's right." (R., p. 303)

Here, as in so many other facets of the case, the undisputed evidence is in complete accord with the decisions of other courts which have been confronted with this controversy. The Circuit Court of Craig County has "misconceived the theory of the action and the issues"; *Stansberry* v. *McCarty,* 238 Ind. 338, 149 N.E.2d 683, 692 (Page 33 above).

The Disciples or Christian Churches are not subsidiaries of the Virginia Christian Missionary Society, and the connection is looser even than the connection

between the Primitive Baptists and their Association described in *Cheshire* v. *Giles; Dewey* v. *Grasty* (App., p. 26; Page 37 above). The congregationally governed church may, if the majority desires, freely withhold support from the missionary society or any other voluntary organization; *Franklin* v. *Hahn,* 275 S.W.2d 776, 778 (Page 28 above). Cooperation with other churches of Campbellite origin through conventions or missionary societies may not become a matter of fundamental faith, and the property of the local congregation is not "held in trust for the purpose of promulgating or perpetuating the particular manner of cooperation." The independent nature of the church is completely antithecal to "any *doctrine* of compulsory support of such institutions." *Ragsdall* v. *Church of Christ in Eldora,* 244 Iowa 474, 55 N.W.2d 539, 543 (Page 30 above).

> "A mere severance of a voluntary ecclesiastical connection by the majority faction of an independent society, assuming it does not involve fundamental change of doctrine, does not in itself involve any diversion of the property from the inplied trust." *Wright* v. *Smith,* 4 Ill. App.2d 470, 124 N.E.2d 363, 365 (Page 32 above).
>
> "For the court to intermeddle in a church's organization merely because there has been a change in 'the usages, practices, customs, doctrines and tenets' of the church as they existed at the time it was organized, would be officious and totally unwarranted, unless it is shown also that they were requirements for its fellowship and there has been a fundamental departure therefrom and a violation of the trust of church

property." *Stansberry* v. *McCarty,* 238 Ind. 338, 149 N.E.2d 683, 689 (Page 33 above).

4. *Did the trial court improperly admit certain documents of other organizations as evidence of the religious allegiance of the Level Green congregation?*

Judge Holstein, deciding this case upon the written record, was handicapped by Judge Abbott's previous ruling upon the evidence (Page 5 above). In five separate instances the trial judge admitted irrelevant and prejudicial evidence, without proper probative value in the determination of this cause (R., pp. 46-47, Assignments of Error 1-5).

a. Certain annual reports were sent by Alleghany District Convention to Level Green Christian Church where they were presumably completed and returned to the Convention (J. L. Huffman, R., pp. 137-143; Mary Helen Caldwell, R., p. 278; Exhibits 3-9, 22). On the tops of the forms, prepared by Alleghany or by the Virginia Christian Missionary Society, were printed the words "Disciples of Christ."

These reports are not records of the Level Green Christian Church but are records of a separate and distinct association. James Huffman, one of the complainants, wrote numbers into the blanks on some of these forms; other reports were in no way related to any specific member of the Level Green congregation. No report was signed.

They were routine forms calling for routine data concerning membership, losses, and professions of faith

in the little rural church. There is no evidence whatsoever that the Level Green congregation or its official Board authorized or ratified the reports, or in any way intended by their completion to pledge allegiance to any church hierarchy.

> "I wouldn't doubt a bit in the world but what Level Green Church at that time, the people weren't concerned about dotting every I and crossing every T, and we most likely would have sent in a report on almost any type of form. But this is the report of the Society." (Huffman, R., p. 141)

b. Miss Mary Helen Caldwell, Secretary of Alleghany Distirct Convention, prepared a memorandum from the records of the Convention (R., pp. 273-277; Exhibit 22). This Convention is a voluntary association with no control over the local congregation and which may be attended by anyone who so desires, regardless of denomination.

Judge Abbott asked Miss Caldwell if she knew whether the Convention was attended by Christian churches, not affiliated with the Disciples. She replied:

> "No one was barred from the Convention in my life time." (R., p. 281)

Miss Caldwell repeated on cross examination that there was no denominational requirement for attendance.

> "Q. (Mr. Collins) According to Mr. Dillow, Presbyterians could attend if they so desired?

"A. (Miss Caldwell) Yes. So far as I know there's no line drawn.

"The Court: But they probably wouldn't.

"A. I think there have been relatives that have attended, and if I could go back over enough of the records I expect I could name many denominations." (R., p. 285)

Myron Kaufman added that the function of the Convention was an exchange of information and fellowship, that the Convention exercised no power over the individual churches, and that a church could elect to participate one year but decline the next (R., p. 304).

c. The record book of Alleghany District Convention, also admitted into evidence (R., p. 280; Exhibit 23), is tainted by the same error which vitiates Alleghany's reports and Miss Caldwell's memorandum. There is simply no justification for the contention that attendance at the Convention or participation in its work is evidence that the participant renounces his own church membership and accepts affiliation with the Disciples of Christ.

d. The trial court also admitted into evidence a cookbook compiled by the Christian Women's Fellowship of Level Green Christian Church(R., pp. 181, 185; Exhibit 10). It is frankly difficult to comprehend that the defendants seriously offer a cookbook as a binding pledge of denominational affiliation. There is no proof whatsoever to identify the unverified "Church History" at the front of the book;

it is at most the product of some member of a women's organization, separate and distinct from the congregation at Level Green Christian Church, which had no responsibility and gave no authorization for its preparation.

e. Myron Kaufman was permitted to testify to certain information from the Year Books of the Disciples of Christ (R., pp. 279-280, 294-298). This deserves but scant attention.

"Q. (Mr. Crush) As far as you know there is nothing on record where the Level Green Christian Church ever asked to be listed in the Year Book, is there, as far as you know?

"A. (Mr. Kaufman) As far as I know, no." (R., p. 301)

There is not one scintilla of evidence that any of these documents represented an official act of the Level Green Christian congregation. They concern at best "non-essential" matters which do not reach to fundamental faith and doctrine. It indeed stretches the bounds of relevancy to incredibility to adjudge that the congregation made a binding profession of fundamental religious belief through an anonymous "Church History" in a women's cookbook.

CONCLUSION

The appellants respectfully pray that this Court will reverse the decree entered by the Circuit Court of Craig County on Dcember 7, 1964, and that it will enter final judgment in their favor or, in the alternative, remand this cause to the trial court with directions

that a congregational election be held pursuant to Code of Virginia (1959 Repl. Vol.), Section 57-9.

Respectfully submitted,

Billy T. Baber, Chairman of the Board of Elders and Deacons of Level Green Christian Church, S. A. Huffman, James L. Huffman, Donald M. Caldwell, Roy P. Keffer, and Biddle Joe Duncan, Trustees of Level Green Christian Church, Rex Keffer, Stanley Huffman, Donald M. Caldwell, Alton Keffer, Billy T. Baber, Junior Duncan, Stanley Duncan, Albert Lee Smith, Stanley Woods, Minor Huffman, Oscar (Butch) Dudding, J. L. Huffman, H. R. Hughes, Joe Duncan and Jack Harris.

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