

PUBLISHED EVERY SATURDAY, BY WILLIAM S. MARTIN, CORNER SEVENTH AND GEORGE STREETS, PHILADELPHIA.

TERMS—Three Dollars per annum, payable in six months, or Two Dollars and Fifty Cents if paid in advance. A lib-

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YORK PRESBYTERIAN CHURCH CASE.

Opinion of the Hon. Judge Kennedy in the York Presbyterian Church Case, in the Supreme Court of Pennsylvania, May Term, 1841.

KENNEDY, J.—This is an action of ejectment for a lot of ground in the borough of York, containing about two acres, with a brick church, a two-story dwelling house, and a frame stable thereon. The plaintiffs claim to be incorporated under a charter certified by the Governor of this Commonwealth, on the 7th of December, 1813. As such incorporation, they also allege to be entitled to the possession of the property in question. In support of their claim, after giving the charter of incorporation in evidence, they read in evidence a Deed of bargain and sale, bearing date the 29th of September, 1785, from John Penn, Jr., and John Penn, Esquires, late Proprietors of Pennsylvania, to George and William Scott, and Archibald McLean, Esquires, conveying to them, their heirs, and assigns, the said lot of ground in consideration as well of the inclination of the bargainees to comply with a request made of them by the bargainees on behalf of themselves and other members of the religious society of English Presbyterians in and near the town of York, in York county, and the Commonwealth of Pennsylvania, to grant to the said society, in fee, the said lot of ground, as a site for a house of religious worship, and a burial place, for the use of the said religious society of the said English Presbyterians in and near the town of York, as the sum of five shillings lawful money of Pennsylvania, to the bargainees in hand paid by the bargainees, to have and to hold the said lot of ground with its appurtenances unto the said George Irwin, Wm. Scott, and Archibald McLean, their heirs and assigns for ever, to the use of the said religious society of English Presbyterians, and their successors in and near the said town of York, in the county of York; and in confidence that the said George Irwin, Wm. Scott, and Archibald McLean, and the survivor of them, their heirs and assigns shall and will permit and suffer the said lot of ground, and the buildings thereon, thereafter to be erected, to be from time to time, and at all times thereafter for ever, at the disposal and under the care, regulation and management of the said religious society and their successors, in and near the town of York aforesaid; and to and for no other purpose whatsoever. Other evidence was also given, showing that previously to the 16th of October, 1838, the plaintiffs and defendants individually were members of the religious society of English Presbyterians in and near the town of York; and at that time and for many years previously even prior to the date of the deed aforesaid from the Penns, at least as early as 1765, were and had as a congregation formed a constituent part of the Carlisle Presbytery, and consequently were and had been under its immediate care and direction. That the town of York, in consequence of a communication from the Presbytery of Carlisle, reciting that the congregation had applied by a commissioner appointed for that purpose, to the Presbytery for leave to present a call to the Rev. B. J. Wallace, a member of it, to the town of York, which application had never been made, although Mr. Wallace, had been steadily preaching to said congregation for the last eight months, without having presented himself or his credentials to the Presbytery, or to the committee of the Presbytery appointed to examine the credentials of travellers to the town, and that there was reason to apprehend that the congregation would receive injury by such a state of things continuing; and therefore resolving that in the judgment of the Presbytery, Mr. Wallace had been acting in an irregular manner; that the stated clerk write to the Presbytery of Carlisle, reciting the substance of Mr. Wallace's conduct, and the opinion of the Carlisle Presbytery respecting it; and that a copy of the foregoing be sent by the stated clerk to Mr. Wallace and the said session of the congregation of York.

At the meeting of the congregation held in consequence of this resolution, on the 16th of October, 1838, a resolution was offered and seconded, stating that the congregation having been formerly the whole people of its organization in connection with the Carlisle Presbytery, ought not to be separated from it. This resolution was carried by a majority of the persons present, and a substitute adopted, declaring, "that the church and congregation continue to recognize the Confession of Faith of the Presbyterian Church of the United States of America, as containing the system of doctrine taught in the Holy Scriptures, and approved of the government of the same Church on the basis of the Constitution. That in studying the peace and unity of that church, (congregation,) and in the peculiar circumstances in which it was placed, while they disclaimed any intention of becoming an independent church, they deem it inexpedient, for the present, to recognize the jurisdiction of any of the conflicting church judicatories, which may claim authority over us." The resolution thus adopted by the majority being looked upon by the minority as an avowed determination to separate the church or congregation from the Carlisle Presbytery, offered a protest, which they requested to be entered upon the minutes of the church, as they were resisted by the majority, who still proceeded further, and passed a resolution declaring, "That that church and congregation cheerfully exonerated the Rev. B. J. Wallace from any charge of neglect on his part, in not having earlier obtained his certificate of dismissal from the Presbytery of Murrumbidgee, Kentucky, as they were requested him to do, and that they would not be bound by the majority, who still proceeded further, and passed a resolution declaring, "That that church and congregation highly approve of the ministerial labours and conduct of the Rev. B. J. Wallace, since he had been among them, and believed that his talents and piety highly qualified him to promote the spiritual interests of that congregation." And lastly, "That although they did not desire, for the present, that any change should take place in the ecclesiastical relations of their minister, the Rev. B. J. Wallace, yet they were willing, should circumstances render it absolutely necessary, that he

should seek such connexions, as would afford him requisite ecclesiastical protection." That from this time the congregation became divided into two parts, the one part being the minority, who were for adhering to their connexion with the Carlisle Presbytery, and the other part, who retained and still continue to retain possession of the lot of ground together with the buildings thereon, including the meeting house, and the Rev. B. J. Wallace as their preacher. That afterwards, on the 9th of November, 1838, when a committee from the Presbytery of Carlisle, appointed for the purpose of visiting the congregation at Lancaster city, to visit the English Presbyterian church in York, to confer with the officers and members of said church, came and announced their presence for that purpose, instead of being received and admitted to a conference by the party in possession of the church house, they were refused admittance, and a copy of their resolution, passed on the 16th of October preceding, the purport of which is stated above; and to a request made by the said committee to be admitted into the church house, a positive denial was given. That afterwards, in 1839, the majority without consulting the Carlisle Presbytery, united with the Presbytery of Harrisburg, which was established some short time previously by what is generally called and known by the name of "The General Assembly of the New-school Presbyterians in the United States of America," consisting part of a secession from "The General Assembly of the Old-school Presbyterians in the United States of America." That this same majority claiming to be "The congregation of the English Presbyterian church in the borough of York, in the county of York, and state of Pennsylvania, after their union with the New-school Presbyterians, on the first day of November, 1838, elected the defendants as trustees under the ninth article of the charter, read in evidence, while the minority still continuing their connexion with the Carlisle Presbytery, and the General Assembly of the Presbyterian Church of the United States of America, claiming in like manner to be the congregation of the English Presbyterian church in the borough of York, &c., also elected trustees in conformity to the said article. These would seem to be the undisputed facts of the case; out of which two questions have arisen.

First, are the minority to be regarded as "The Religious Society of the English Presbyterians in and near the town of York, in the county of York, and state of Pennsylvania, mentioned in the deed from the Penns; and as being the same who were incorporated by the charter given in evidence? And secondly, admitting the said minority to be the same, and the trustees elected by them to be the congregation, as mentioned in the charter given in evidence, have they as an incorporation such a right to the possession of the property in dispute as will entitle them to recover it in this action? In regard to the first question, it is proper to premise that it is not denied, but admitted, that the religious society of English Presbyterians in and near the town of York, &c., mentioned in the deed of the Penns, as the society for whose use the lot in question was thereby conveyed to the trustees therein named, is the same religious society which was subsequently incorporated in the year 1813, by the name, style, and title of "The trustees of the English Presbyterian church or congregation located in and near the town of York, in the county of York, &c." And indeed, if it be that the words "in and near the town of York," describe the same topographical limits as the words "in the borough of York," the description of the society as given in the deed would seem to be substantially the same with that contained in the charter of incorporation; for either is clearly sufficient to show that the society intended to be made the object of the bounty of the Penns was a Presbyterian church or congregation, composed of members of the English language, exclusively in their religious worship and exercises, and residing at the time of making the deed, "in and near the town of York, &c., the town not then being a borough, but afterwards, when it came to be incorporated as such, residing within the limits of the borough, which as may be fairly inferred were extended, so as to embrace the town and its vicinity, or the land and the inhabitants upon it, in and near the town. Now in the exposition of deeds, as also in all other instruments of writing containing the contracts of parties, the intention of the parties, if it can be ascertained, and carried into effect, and it is the bounden duty of courts, when appealed to, to cause this to be done to the utmost extent of their powers. The object and design of the trust created by deed, as in this case, must therefore be particularly attended to, and when the object and design of the trust is plainly indicated by the terms of the deed, courts are bound, when properly called on for that purpose, to give effect to the trust according to such design. And even when the object of the trust is not plainly pointed out and specified upon the face of the deed, so as to discover therefrom what form or species of religious worship was intended, the purpose of the congregation in that respect will be inquired into and resorted to by the court, as a directory in the administration of the trust.—Accordingly Lord Eldon in the case of the Attorney General vs. Pearson, 3 Meriv. 400, lays it down, that when an intention exists for the purpose of religious worship, and it cannot be discovered from the deed declaring the trust, what form or species of religious worship was intended, the court can find no other means of deciding the question, than through the medium of an inquiry into what has been the usages of the congregation in respect to it; and if the usages turn out upon inquiry to be such as can be supported, it is the duty of the court to administer the trust in such a manner as to establish the usages, considering it as a matter of implied contract between the members of that congregation. But if on the other hand, it turns out, that the institution was established for the express purpose of such form or species of religious worship, or the teaching of such particular doctrines as the founder has thought most conformable to the principles of the Christian religion, he considered that, that it was not in the power of individuals having the management of that institution at any time, to alter the system of doctrine taught in the Holy Scriptures, and approved of the government of the same Church on the basis of the constitution." But surely no intelligent man would suppose that such a declaration or salvo as this could have the effect of either preserving their membership in the congregation, or their standing in the Presbyterian Church, of the United States of America. Their resolution solemnly taken, and subsequently acted upon amounted to a withdrawal and secession, at least for the time being, from the Presbyterian Church, notwithstanding their resolution to the contrary. But it is said that their resolution, in this respect was at most as they were a mere declaration of

intention, on their part to be and remain neutral, until the civil war which had broken out and was then raging in the Presbyterian Church should be settled and finally ended, and that the afterwards united themselves with a Presbytery called the Presbytery of Harrisburg, which was organized by the New-school General Assembly, but it must be admitted that for a certain time at least, that is from the 16th of October 1838 until the following— they had placed themselves entirely without the government of the Church, and were wholly unwilling to submit to it. Notwithstanding the religious faith may have continued the same, that it was before, yet the instant they refused to submit to the government and discipline of the Presbyterian Church, to which they had been united, they ceased to be members of that Church. To constitute a member of any church, says Chief Justice Ewing in Denney vs. Boston et al. 7 Halst. Rep. 214, two points at least are essential, without meaning to say that others are not so, a profession of its faith, and submission to its government." And such is the effect in the language and spirit of the book entitled "The Confession of Faith," which contains a statement of the principles of the Presbyterian Church, together with a Directory for the worship of God, and a plan of its Government and Discipline. Indeed it is perfectly obvious that government and submission is necessary to the spiritual welfare and happiness of the members of the church, as civil government, and the enjoyment of all the rights pertaining to our persons, as also those which we have to things. And seeing the church cannot compel obedience to its laws and mandates otherwise than by the exertion of a moral force merely, it is perfectly just and reasonable that those who renounce the church, or refuse to yield obedience to its regulations, should be held as having forfeited their right to membership. If this were not so it would answer little or no purpose, that the Presbytery, for instance, in the Presbyterian Church is vested with a power, among other things "to visit particular churches under its care, for the purpose of inquiring into their state, and to receive such as may have arisen in them; to unite or divide congregations at the request of the people, or to form or to order new congregations, and in general to receive whatever pertains to the spiritual welfare of the churches under its care." See Confession of Faith, Form of Government, &c. The members of the church are not subject to the government of the Presbyterian Church, that they are not considered members of the latter church; and for the same reason Presbyterians are not considered members of the Reformed Dutch Church, although they may be members of the latter church, which I take to be correct, goes to show that the defendants, notwithstanding they may have continued to hold to the same religious faith and tenets that they did before their withdrawal from their former connexion with the government of the Presbyterian Church, yet their standing in that church, and their right to the lot in question, as long as any part of the congregation remained to enjoy it under the government of the Presbyterian Church in the same manner as at the time the lot was granted by the Penns, and ever afterwards— unless indeed it be that their having become members of the Reformed Dutch Church, as already mentioned, prevented their title in the lot, as being the congregation for whose use and benefit it was granted. Individually and personally they can have no claim, because it is not probable that any one of them was a member of the congregation at the time the lot was granted, and they were not members of the Presbyterian Church when the lot was granted. But supposing the contrary to be the fact, still if it has not been shown already, it will be that the only interest which they acquired under the deed of gift was limited in its duration to the time of their continuing to be members of the congregation. It is therefore only by reason of the defendants' being or having become members of the same congregation, and continuing to be such, that they could pretend to have a claim to the property in question.

It appears on the face of the deed from the Penns, that the society or congregation for whose use the lot was given was a Presbyterian congregation, and that the trustees named in the deed of the deed, as it appears from the date of the deed, and for twenty years previously they had been under the care and jurisdiction of the Presbytery of Carlisle, one of the judicatories of the only Presbyterian Church known during that period in the United States of America, so that the congregation being not sufficiently designated in the deed of gift, so as to disclose clearly the object and design of their primitive formation, it was made manifest from the evidence by a usage of upwards of twenty years, that it was formed for the purpose of worshiping under the protection and authority of the government of that Church, and that also, as it would seem. Now if the defendants after their first declaration of neutrality *flagrante bello* had submitted themselves again to the authority of the Presbytery of Carlisle, or the Synod or General Assembly to which it belonged, they would doubtless be entitled to be considered as part of the same congregation, and if it be that they are really the majority, and had no other object in view than the worship of God, under a full conviction of the Presbyterian faith, according to its Directory, it is most likely that they would thus have attained it. This however they did not choose to do, but elected to join the Presbytery of Harrisburg, a judicatory called Presbyterian, that had no connexion whatever with the Church and government under which the congregation existed, either at the time of the gift, or of the withdrawal by the defendants therefrom. It is a Presbytery organized by a secession from the Presbyterian Church of the United States of America, styling themselves, however, "The General Assembly of the Presbyterian Church of the United States of America," and claiming not only to be, but likewise all the rights belonging to that body. But they have been held by this court in *Amey vs. Green, et al.* 4 Wheat. Rep. 531, not to be considered as part of the rights pertaining to the same. By the division in that case, this New-school Assembly, as they are pretty generally denominated, were held not to be the General Assembly of the Presbyterian Church of the United States of America, but a secession merely from it, that could not be considered the same in any respect whatever. It is said however, that this decision was founded upon the fact and the principle that they were a minority of the Presbyterian body. This I think, is a misapprehension, for I cannot see how such a decision could be made, without the consent and approbation of each and every one of them the subject of the grant cannot be diverted from the original purpose. Hence it is a great misconception of the terms and effect of the grant, in this case, to suppose that it was left to any portion of the beneficiaries to apply the gift to such pious uses as they should think

fit; and certainly an equally great error to suppose, because subjection, on the part of the beneficiaries, to the Government of the Presbyterian Church, as it then existed, is not formally and expressly mentioned as a condition, upon which the gift is made, that, therefore, the lot was given subject to the direction of a majority of the congregation as long as they claimed to retain the name of Presbyterians, although they had renounced all subjection to the Government of that Church, with which they were connected at the time of the grant. This would be contrary to all that Lord Eldon has said upon the subject: The substance of which is this "That if it appears from the face of the deed declaring the trust, which form or species of religious worship was intended; or where this is not the case, and it can be ascertained from the usage of the congregation in respect to it, the result of the court to administer the trust in the first case, so as to promote and maintain the form of religious worship mentioned, and in the latter case, so as to establish the usage which had obtained in regard to it: because, in the first case, it is matter of expressed contract that it should be so, and in the second case, the result of the court to administer the trust in the first case, so as to promote and maintain the form of religious worship mentioned, and in the latter case, so as to establish the usage which had obtained in regard to it: because, in the first case, it is matter of expressed contract that it should be so, and in the 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