

Supreme Court

Appellate Division—Third Department.

MARY DROZDA, MICHAEL ANDREJKO, JR., WILLIAM
BICKSKO, and all others similarly situated,
Plaintiffs-Appellants,
against

NICHOLAS M. BASSOS, JOHN BEZEK, FRANK LISICK, JR.,
MICHAEL FIRDA, FRANK LISICK, JOHN KOST, FRANK
IVANO, MICHAEL CHALACHAN, FRANK HERMAN
and FRANK ZUBAL,
Defendants-Respondents.

CASE ON APPEAL.

Volume III, Pages 1053 to 1576.

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Supreme Court

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**MARY DROZDA, MICHAEL ANDRUSKO, JR., WILLIAM
BICKSO, and others, similarly situated,
Plaintiffs-Appellants,**

**NICHOLAS M. BASSON, JOHN BENJAMIN FRANKLIN, JR.,
MICHAEL FURMAN, and others, similarly situated,
IVANO, MICHAEL CHAIKIN, FRANK BERMAN
and FRANK EIBAL,
Defendants-Respondents.**

**Case No. 1000
Volume 17**

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Defendants' Witness, Dr. Gaius J. Slosser, 5587
Direct

DR. GAIUS J. SLOSSER, called as a witness in behalf of the defendants and, being first duly sworn, testified as follows:

Direct Examination by Mr. Chernin:

Q. Dr. Slosser, how old are you, sir? A. 50 years.

Q. Where do you live? A. Bellevue, Pittsburgh, Pa.

Q. What is your present profession or calling? A. I am a professor of Ecclesiastical History and History of Doctrine in the Western Theological Seminary, Presbyterian, North Side, Pittsburgh, Pa. 5588

Q. Doctor, for the purpose of establishing your qualifications as an expert witness in this case, will you briefly tell us about your early schooling, your early education? A. Born in Northwestern Ohio; educated in the public schools of Hancock County, Ohio, and high school of Rawson, Ohio; teacher in the public schools in Ohio for three years in Hancock County; Superintendent of Schools in Morral, Ohio, for one year; two summer terms in Ohio Northern University, Ada, Ohio. 5589

Q. Will you tell us something of your academic training or academic career in colleges starting at Ohio Wesleyan? A. Ohio Wesleyan University, graduated in 1912.

Q. How many years did you study in that university? A. Four years.

Q. Specializing in what? A. As a Liberal Arts Course at Ohio Wesleyan University.

Q. After that what did you do? A. Three years in Boston University, regular theological

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course, two years of which time I was assistant in Church History of Boston University.

Q. Did you graduate from that university?
A. Yes, sir, 1915.

5391 Q. Where did you go after graduating from Boston University? A. I was the pastor of a Methodist Episcopal Church in Massachusetts. In 1921 I took the Degree of Master of Sacred Theology, S. T. M., Boston University. 1925 to 1927 I made an extended tour around the world, following which in 1928, 1927, rather to 1928, I did resident work in King's College University of London, getting the Degree of Doctor of Philosophy in the King's College University of London.

Q. How many years were you there? A. Two years resident work, the degree being taken in the field of Ecclesiastical History and History of Doctrine.

Q. Did you spend any time doing academic work and study at Harvard University? A. Yes, sir.

5592 Q. When? A. Following my S. T. B. work at Boston University I went one year in the Harvard University Graduate School of Philosophy, 1915 to 1916.

Q. Doctor, in respect to academic or honorary degrees that you received for scholastic work, will you enumerate them starting with the first one at Ohio Wesleyan? **A.** Bachelor of Arts, Cum Lauda, Ohio Wesleyan, 1912; Bachelor of Sacred Theology, S. T. B., Boston University School of Theology, 1915; Master of Sacred Theology, S. T. M., Boston University, 1921; Doctor of Philosophy, King's Col-

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lege University of London, 1928, taken in residence. Then I was elected as a Fellow of the Royal Historical Society of England, of which I have been a member since 1928, Royal Historical Society Fellow.

Q. Can you tell us anything else in respect to your preparation and study in theology, church history, church law and canon law other than what you have stated? Where else have you advanced yourself in such studies? A. After I completed my Liberal Arts Course and theological training, regular theological course, in view of the fact that I was assistant in Church History at Boston University caused me to continue and specialize in that field and then abroad my Doctor of Philosophy work was continued in the same field Ecclesiastical History and History of Doctrine. And the thesis which brought me my Doctor of Philosophy Degree was published abroad and here in America by E. P. Dutton and Keegan Paul of London. This same work was published on both sides. The title is 5594
 "Christian Unity." It is a history of the challenge in all communions or lands. It is a work of about six hundred pages. I have it here if you wish to see it. There is another volume published, if you wish to see that also. 5595

Q. I will refer to that later. A. All right. I might say that for the past four years I have been a member of the American Commission of fifteen men drawn from the United States and Canada preparing and studying courses for the world conference of Faith and Order at Edinburgh, Scotland, for fifteen days.

Q. Did you, in the course of your academic studies over the past twenty some years or so, make any study of the Roman Catholic and the Greek Catholic History, Church Law, Canon Law? A. Yes, sir.

Q. Have you made a study of the languages?
A. Yes, sir.

Q. Are you able to translate efficiently from each of these languages that you studied? A. Well, yes. Not readily but proficiently, yes. I work readily in all those languages.

Q. Were you ordained as a clergyman, Doctor? A. Yes, sir, First Methodist Episcopalian and while an Episcopalian Methodist I was called to this Presbyterian church in Pittsburgh and I am now a clergyman duly ordained in the

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Presbyterian Church of the United States of America.

Q. What positions, Doctor, have you held as a professor, teacher or minister? A. Why, during my days in Boston University I was assistant in Church History for two years, 1913 to 1915. Then from that time on until 1928 I held various pastorates in the Methodist Episcopal Church in New England, Mass. And then abroad I was acting pastor of the London Clapton Congregational Church, London, two years. Then on the completion of my foreign study, I came directly to the Western Theological Seminary, Pittsburgh, as Associate Professor of Ecclesiastical History and History of Doctrine, 1928 to 1929; full Professor of Ecclesiastical History and History of Doctrine, 1929, until the present.

5600

Q. In respect to the books and periodicals that you have written on the subject of Church Law, Church History, Canon Law, Dogma, etc., have you mentioned them all? A. Yes, sir, I have. I entered numerous articles in learned periodicals but you asked me about books. The findings of the World Conference in Edinburgh, Scotland, last summer on the doctrine of the Communion of Saints was written by myself and adopted by this World Conference. It is now published in the findings of that World Conference.

5601

Q. By the way, have you testified before in any case as an expert on church history and church law? A. Yes, sir.

Q. Greek Catholic and Roman Catholic law? A. Yes, sir.

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Q. Where? A. A case in the Common Pleas Court of Allegheny County, Pa., last autumn in respect to a supposedly Greek Catholic Church in McKees Rocks, Pa., I was qualified. I was qualified as an expert witness.

Q. Have you made a study of the Roman Catholic Canon Law? A. Yes, sir.

Q. And feel qualified to discuss the subject?
A. Yes, sir.

5603 Q. Have you made a study of the sources
of the law of the Oriental Churches? A. Yes,
sir.

Q. Including the Greek Catholic Church
United with Rome? A. Yes, sir.

Q. As a result of your education and research and study, do you feel that you are qualified to discuss the church history and the religion of the Greek Catholic people, that is, those that are in union with Rome and those that are not, say for the past five or six hundred years? A. Yes, sir, that happens to be my special field of study. My associations in the past four or five years have been men of this field of producing those study texts, excepting those not recommended to literature on these movements, but in the special study including the local libraries.

Q. Have you read various authors and writers who have written commentaries and other books on the church law and church history of the Greek Catholic Churches, both in union and not in union with Rome? A. Yes, sir.

Q. Doctor, you may refer to your notes, if you wish. A. Yes, I would be glad to do it.

Q. This notebook that you have in front of

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you containing notes, under whose supervision were they written? A. Directly under my own supervision by my dictation and some in my own typewriting.

Q. Doctor, did you read the certificate of incorporation of the St. Michael's Greek Catholic Congregation, that is, the church that is involved in this litigation? A. Yes, sir.

Q. And you are acquainted with the contents thereof? A. Yes, sir.

Q. Doctor, I show you the first volume of the testimony in this case entitled, "Mary Drozda and others against Nicholas Bassos and others," containing the testimony of Rev. Mackov, did you read that entire volume of testimony? A. Yes, sir.

6506

Q. Did you particularly study the testimony of Dr. Mackov? A. Yes, sir.

Q. Especially his testimony on the Canon Law and its applicability to our church? A. St. Michael's Church?

Q. Yes. A. Yes, sir.

Q. And did you then compare that testimony with the Canon Law itself and what the commentaries have said? A. Yes, sir.

5607

Q. On these particular sections that he refers to in his testimony? A. Yes, sir, each and every section referred to.

Q. I now show you Volume 2 of the evidence in the same case which is part of the testimony of the plaintiffs, that is, the testimony of the laymen witnesses. Did you study that? A. Yes, sir.

Q. And are you acquainted with the contents thereof? A. Yes, sir.

Q. I particularly call to your attention, Doctor, Father Mackov's testimony. You recall, I take it, reading the testimony of Father Mackov and the translations by him of the various canons of the Codex Juris Canonici?

A. Yes, sir.

Q. How many parts are there to Canon 455? Do you want the Canon Law? A. Yes. There are two parts here, especially part one from which he quoted and which he did not quote entirely. Paragraph one—

Q. Who is Rev. Charles Augustine? A. Professor of Canon Law, as indicated here. This is a book accepted by the Roman Catholic Church inasmuch as it has the imprimatur of the Roman Catholic Church. This is one of the standard commentaries. It is an eight volume set.

Q. Is that set used in the study of Canon Law? A. It is used as a textbook in many of the theological seminaries in the Roman Catholic Church.

Q. Translate Canon 455, that is, the body of it, the first part of it. A. Paragraph one,

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"The right to nominate and institute pastors belongs to the bishop except for parishes reserved to the Holy See. All contrary customs impairing this right of the bishop are disapproved." To that point Father Mackov quoted.

Q. I call your attention now to his translation, Father Mackov's translation of that particular Canon 455 right here at page 181. A. Yes, sir.

Q. Read into the record exactly what he said. 5612

Mr. McManus: It is already in the record.

Q. It is substantially as you have just translated? A. Yes, identically.

Q. Doctor, will you go back to Augustine? What follows this particular translation of the canon that you have just read into the record and which you say is substantially as Dr. Mackov testified at page 181. Does it then give some subdivision of the same canon? A. 5613
 It is further continued on the same canon, not a subdivision but the remainder. He left a sentence incomplete.

Q. That is the sentence that he left incomplete? A. The sentence in Latin.

The Referee: The Latin isn't necessary. Just give the translation.

Q. The translation is all we want. A. The translation, "Those, however, who have legitimately acquired the right to elect or present the pastor do retain their right." I thought that was a very significant omission.

The Referee: The last line may go out.

Q. It is called to our attention that whereas Augustine says, "Where they have been lawfully acquired," referring to lawfully acquiring the right of Jus Patronatus. Woywood in this Volume 1 uses the word "granted" instead of "acquired," at page 1620 of Woywood. A. Yes, you will find various translations by which various authors. I see no material difference. I am just as willing to accept that or to present, give, granted or acquired.

Mr. McManus: What is the translation of that?

Q. Taken in connection with the entire sentence or paragraph, what does that mean? A. Those unto whom they have acquired, to them it has been presented, to them it has been given, to them it has been granted, those who have acquired it. That is the general sense of it.

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Q. What do these canons deal with? A. The right of patronage, Jus Patronatus.

Q. Do they define the various rights, customs, privileges and obligations under Jus Patronatus? A. Yes, sir; they do.

Q. I won't ask you to go into these in detail but do they recognize under certain conditions the right of patronage or, as we have been calling it, Jus Patronatus? A. Yes, sir; they do.

Q. Particularly calling to your attention Canon 1451, Doctor— A. Yes, sir. 5618

Q. (Continued) you may tell us or you may give the translation of Canon 1451. A. "Local Ordinaries." I am reading here the translation of Augustine of this canon. Where it is presented in Latin, I will translate it into English.

Q. Have you checked Augustine with the original canons? A. Yes, sir.

Q. And found whether or not he gives correct translations? A. Yes, sir.

Q. And are they correct translations? A. This is a very dependable treatise or textbook in the Catholic theological seminaries. 5619

Q. Very well, you may translate 1451. A. "Local Ordinaries should endeavor to induce patrons to abdicate their Jus Patronatus or at least the right of presentation in exchange for spiritual suffrages for themselves and their families. If a patron is unwilling to cede the Jus Patronatus, this can be exercised only in accordance with the following canons."

Mr. Ray: Shouldn't we have the very interpretation of Woywood in connection with that if it isn't unsatisfactory to have them right there?

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The Witness: I think it would be splendid to have it; yes, sir.

Q. Attention is called by counsel for the plaintiffs to the translation or to the commentary by Woywood on Page 1433 of Woywood's Volume 1 as to the same canon 1451. Is there any material difference in the interpretation of that canon by Woywood? A. I have read it briefly. I haven't read it recently but I can't conceive any material difference because both of these books have been passed by Roman Catholic censorship. I will be glad to read it into the record.

The Referee: Read it off the record.

Q. In other words, Augustine says, "Induce" and Woywood says, "Persuade." No substantial difference in the interpretation, is there?

Mr. Ray: Except he has, "To accept," and what do you have?

The Witness: "To abdicate in exchange for spiritual suffrages for themselves and their families."

Q. Augustine's Commentary and translation was written when, Doctor? A. 1921.

Q. And the Canon Law, upon which this is a commentary and upon which this is a translation, was written and promulgated when? A. Available and ready for promulgation 1917; promulgated and published 1918.

Q. So that as late as 1921 Augustine or rather the Code as just translated by you recognizes that there is such an institution or there is such a right or privilege as Jus Patronatus? A. Yes, sir.

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The Referee: There isn't any contention to the contrary.

Mr. McManus: There hasn't been any question about it.

Mr. Chernin: About there being Jus Patronatus?

Mr. McManus: Yes.

The Referee: I thought it had been conceded all along that there was such a principle that was recognized.

Mr. Chernin: Very well.

5624

Q. Did Dr. Mackov testify or allude or hint in any manner to these sections of Canons 1448 to 1471 in his testimony?

Mr. McManus: Just one moment, Doctor, before you go any further. If the Court please, I don't see any point of what Dr. Mackov alluded to or did not allude to. The record itself shows what he said.

The Referee: It is a mere matter of argument. You may call it to my attention any time. I wouldn't add it to the record. It is a mere matter of argument.

5625

Q. I will now ask you, Doctor, as to whether you glanced at the canons which he did discuss in his testimony? A. Yes, sir.

Q. I will ask you as to whether you read every one of them? A. Yes, sir.

Q. And studied them? A. Yes, sir.

Q. Both in his testimony and the canons themselves in the Canon Law? A. Yes, sir.

Q. And the various authorities on it? A. In Woywood, in Augustine and the comments made, also the man cited by Father Mackov.

Q. I will now ask you as to whether these canons that Dr. Mackov selected and testified to and discussed have any applicability to the Greek Catholic Uniat Church?

5627 The Referee: It is pretty general.

The Referee: Let's take it off the record.

Q. I will now ask you, Doctor, as to whether or not these canons which he picked out of the Canon Law or of which he gave purported translations and which he said have applicability to the Greek Catholic Church in Union with Rome and I will ask you as to whether these or any of them have any applicability to such church and, if so, to what degree? A. In a very intent way in the field of faith and morals, yes, but in the field of discipline, no. They don't have any connection whatsoever.

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and then I have gone through the Canon Law with Cicognani, Woywood and Augustine as my guides and have listed those that do have application. And one of the canons that do have direct application for the Oriental Rite which was quoted or referred to by Mackov—

The Referee: Take those that do have some application and refer to them.

Mr. Chernin: That was to be my next question. 5630

The Referee: Let's do it that way rather than the other.

Q. Which canons, as the result of your reading and studying of Canon Law and your knowledge as to its applicability to the Oriental Church or rather the Greek Catholic Church in Union with Rome, do apply to this Greek Catholic Uniat Church in Union with Rome? A. In making my answer I found that I dare not follow my own judgment since I am positive that a man of my training might be biased so I have used Cicognani, his book entitled, "Canon Law." 5631
 He is now the present Apostolic Delegate from the Holy See and a resident of Washington, D. C., Most Rev. Archbishop Cicognani—

A. (Continued) I used him as one guide. Also Rev. Father Duskie. His D. C. L. thesis entitled, "Canonical Status of the Orientals in the United States."

Q. Did you use Augustine? A. Not Augustine. He has the canons but he has in no place separated out and put in a separate list those pertaining to the Oriental Church so my use of Augustine was to use him in an interpretation

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of such canons as are cited by Archbishop Cicognani and by the Rev. Duskie but it is the latter two that have separated out or have designated as such the canons that do have applicability to the Oriental Rite so in the actual formation of the list Archbishop Cicognani and Rev. Duskie were my guides.

5633 Q. And as a result of this research and study what did you find? Just number them, give the canons by number only as to the applicable canons to the Greek Catholic Uniat Church. Interpolate in your answer first just what you said before, that you are relying not only on your judgment. A. That is right.

Q. You may give your answer. A. With these two authors as my guides in the listing of those canons which directly or quoted exactly expressly embrace the Oriental Catholics as follows, indicating these canons by numbers: 98, 106, 257, 366, 542, 622 Paragraph 4, 733, with which must be associated canons 851, Paragraph 2, and 866, that is, in connection with Canon 5634 733. Continuing the list, 756, 782, Paragraph 5, 804, 811, Paragraph 1, 816, 818, 819, 820, 823, Paragraph 2, 849, 851, 866, 881, 904, 905, 930, 955, Paragraph 2, 961, 1004, 1006, Paragraph 5, 1097, Paragraph 2, 1099, Paragraph 1, 1249, 1399, 2314, 2317 and 2335. Now, to these must be added—I wonder if I am correct acting as a witness to say—

Q. That is all right if it is part of your answer. A. To these must be added information which I gathered from this recent book by the Rev. S. Woywood entitled, "Canonical Decisions of the Holy See," which is a study of any changes

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made in canonical interpretation since 1918.

Q. When was that written?

Mr. McManus: That is the same author?

The Witness: Yes, sir.

A. This is published, you are asking, in 1933. Checking on this new study by Woywood as with respect to the canons whose numbers I have just given, I find that Canon 1 is brought into this whole matter in a fresh manner so that now it does have a slightly different reference to the Oriental Rites. 5636

Q. Does he give an interpretation of this? A. The reference which Woywood now says it has, quoting from this book of Woywood's, Page 1, the reference which Canon 1 now has to the Oriental Church would seemingly sound like a disciplinary reference which it does not have as he shows. The reference is, "The Oriental churches are bound to observe the condemnation of books and other publications issued by the Congregation of the Holy Office (see Canon 1396)." Referring to Canon 1396 Woywood writes, "The Holy See has declared that the condemnation of books and other publications of the Sacred Congregation of the Holy Office is to be observed also by the churches of the Oriental Rites because such condemnations are not so much disciplinary measures as rather matters pertaining to the doctrine of the church." 5637

Q. That is, Doctor, Woywood points out in that particular commentary that he has made that in the very limited area or very limited canon or canons which might apply to the Greek Catholic Uniat Church Woywood is care-

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ful to point out that that application has no disciplinary character? A. That's it.

Q. But is is a matter of faith and dogma?

A. That's it.

Q. Therefore, Doctor, what is your conclusion as an expert, from all the study you have made, all the reading that you have done and all the authorities you have reviewed, as to the application of any of the canons of the
5639 Codex Juris Canonici which have disciplinary character, its application to the Greek Catholic Uniat Church? A. I was forced to the conclusion that Father Mackov's testimony—

Q. Your own conclusion first. A. Neither canon which I have indicated that embrace the Oriental Church do have a disciplinary binding effect on the Oriental Rites.

Q. These canons that you have read? A. Yes, sir.

Q. I mean taking the Canon Law as a whole?

A. Except for these it has no disciplinary binding effect on the Oriental Rites.

5640 Q. Do any of these canons that you have just enumerated as having applicability to the Greek Catholic Uniat Church, do they deal with the question of the selection of priests? A. Not a single instance.

Q. Do they deal in any manner with the management of temporal affairs in the Uniat Church? A. With regard to properties?

Q. That's right. A. No, sir.

Q. We will pass on to another subject, that is, the subject of usages and customs of the Uniat Church rather than its original formation or original organization which definitely

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settles its character for all times. Under this subject I will ask you, Doctor, assuming that since the formation of this St. Michael's Greek Catholic Congregation as a membership corporation of the State of New York it has followed practices which would tend to show its union with Rome, including the payment of Cathedraticum, assuming for the sake of answering that this is true, does that establish that it is a bona fide Uniat Church in full, complete and absolute union with Rome? A. No, sir. 5642

Mr. McManus: I would like to object to that question on the ground that it is calling for a conclusion and on the further ground that the witness is not competent to determine a legal question. He isn't qualified as a legal expert. That is the question before the Court.

The Referee: That is the question before the Court and I don't think it is a proper subject for expert opinion. That is a question of law. You can't expect to use an expert to settle the law of your case. An expert can only be used, it seems to me, to help us in the decision of the questions of fact. Let's not get outside of the field of proper expert testimony. 5643

Mr. McManus: If that question was answered, I move to strike it out.

The Referee: That may go out.

Mr. Chernin: Exception.

Q. I will put it this way, does the payment

Mr. McManus: I object to that on the same grounds.

Mr. McManus: I move to strike out the answer.

*Direct Examination of Dr. Slosser continued
by Mr. Chernin:*

5646 Q. As the result of that study and research, what is your expert opinion as to its applicability or non-applicability? A. Indirectly, yes, applicable but directly from a disciplinary standpoint, in view of the comments by various Greek Catholic authorities on the Canon Law which has disciplinary applications, the supreme power of the Pontiff is set up upon the fact that he must be a law-abiding individual even within his church.

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Duskie where they have brought together the canons directly applicable from a disciplinary standpoint, they omit the canon altogether. 218 isn't even mentioned. Then in my further studies in view of Cum Ea Semper, Cum Episcopo and Cum Data I thought, well, surely now they will bring in 218 as having a disciplinary binding force upon the Oriental Church or churches of the Oriental Rite but in Woywood's latest book—I think some of you men have it—that is headed, "Canonical Decisions of the Holy See." 5648

Q. What year? A. 1933. Which, according to the preface, covers all decisions, constitutions, bulls, encyclicals, canons and Canon Law by promulgation issued by the Holy See since 1918 that in any way modify or throw further light upon Volume One on Canon Law and studying this volume and referring to what may be said under 218, the canon in question, Woywood says there is nothing stated in Cum Ea Semper, Cum Episcopo and Cum Data, in the opinion of Woywood, in a book receiving the imprimatur of the Roman Catholic Church, in his opinion those three bulls have in no way changed the disciplinary binding effect of Canon 218 whether it has any effect or not in relation to the Oriental Rite. 5649

Q. And is that your opinion? A. That is my opinion.

Q. And is it your opinion that it has no applicability in respect to the discipline of the Greek Catholic Uniat Church? A. Yes, it has in general. It would be incorrect for anyone to make the statement that Canon 218, which re-

Q. And would you say pacts? A. Pacts, yes.

Q. And customs and practices of the Uniat

Q. And limited to that? A. Yes, sir, the Holy Father is a law-abiding individual and he must be so within his own church though not with respect to all civil law.

Q. Doctor, will you kindly define the phrase, "Greek Catholic Church" or "Greek Catholic Congregation"? A. Speaking out of my studies for many years in the field of general history and the field of special denominational church history, "Greek Catholic Church" is a term of various applications and it is bound to no one meaning. In general church history, historians invariably will refer to the Eastern Orthodox, not invariably but frequently to the Eastern Orthodox as the Greek Catholic Church. The same expression refers to the various groups of the Uniat or the Byzantine Rite. It is used in connection with that in the field of general church history.

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Q. What does the word "Catholic" mean?

A. The word "Catholic" is a word claimed and cherished by numerous great church divisions.

Q. Such as? A. The Anglican Church, especially right now insists that it is a Catholic Church with a capital "C."

Q. What others? A. Presbyterian, my own denomination, with the same pomposity claim the word. So does the Lutheran and so does the Methodist in which I originally held membership. 5654

Q. What about the Orthodox? A. The Orthodox, yes, say that the word "Catholic" doesn't mean union with Rome.

Q. Which Orthodox? I mean the Greek Orthodox Church? A. Yes, they claim it.

Q. They claim what? A. They claim the right to use it.

Q. What about the Russian Orthodox Church? A. The same.

Q. The words "Greek Catholic" is what generic term? What does it definitely mean? A. "Greek Catholic" is so limited. It is limited 5655 or it is a general phrase applying to those of the Greek race or of a certain rite.

Q. Does the phrase "Greek Catholic" or "Greek Catholic Church" or "Greek Catholic Congregation" without any other suffix or affix mean Uniat or in union with Rome? A. No, sir.

Q. You know, of course, that in our certificate of incorporation that the name is "St. Michael's Greek Catholic Congregation of Binghamton" without the words "Uniat" or "In Union with Rome" being affixed anywhere in the name? A. Yes, sir.

Q. What are some of the component characteristics in a Greek Catholic Church in union with Rome, starting with the name? A. Well, to say—to put in the fair answers now—in the field of Ecclesiastical History and the History of Doctrine—I believe I am not qualified as a specialist in the field of Civil Law but in the Canon Law probably so—in the field which I feel I have a right to speak I should seek for the following things for a Greek Catholic Church—is this the question, a Greek Catholic Congregation united with Rome what I would expect?

Q. That's right. A. In the light of this article of incorporation—

Q. In the light of your knowledge? A. Just general?

Q. Just general. A. General—

Q. Starting first with the name?

Mr. McManus: I doubt if it has much relevancy.

5658 Q. The component parts? A. First, I would expect to find that the property of this church was owned in the name of the bishop, the bishop or either one of the trustees or if a corporation such property being in his name, not to be owned by him as an individual but in the name of the church. That is a component part.

Q. And what would be his status in that corporation? A. Not as a personal single trustee as of that which he could buy and sell but in the name of the church.

Q. What is his position? A. His position is controlling, very controlling.

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Q. What should be his position in the incorporation of it? A. He would give the right to incorporate; he would have the final say so after thus incorporating for borrowing money above the sum of \$500 or placing mortgages, securing of loans; a very controlling relation to be a Uniat Church.

Q. In respect to the name of the church as significant of its union with Rome, what should there be in such name? A. There would have to be, for me to say from my angle, the phrase "Uniat" or "In Union with Rome" in the articles of incorporation. 5660

Q. What else, Doctor, what other competent parts or characteristics are necessary for the creation of such a church, that is, a Uniat Church? What would you find or should you find if the church was a Uniat Church? A. As a church historian I am extremely interested in the intent of the founders, what they had in mind when they incorporated. That is of first importance in my mind, speaking from my angle. What did they have in mind? What was the faith of the founders? What were their wishes? In the study of this particular church—I don't know whether I am allowed to say or not but I feel— 5661

Mr. Ray: I object to that, your Honor.
 He hasn't studied this particular church.

The Witness: I have read the articles of incorporation and I have read two volumes of the testimony.

Q. Doctor, assuming that in this certificate

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of incorporation they rule out affiliation with the Russian—

The Referee: Refer to the rest of this certificate.

Q. You have it, Doctor, the certificate? A. Yes, sir.

Q. Assuming that in this certificate of incorporation there is a statement to this effect, "The property, however, is never to be conveyed or acquired either directly or indirectly to the benefit of the Russian Orthodox Schismatic Church or any of its branches or to the benefit of any other church or congregation whatever except that the same or any part thereof may be hereafter deeded or turned over to any Greek Catholic Church which may hereafter be incorporated under the laws of the State of New York or otherwise and have its place of worship within the City of Binghamton, N. Y." Assume that such certificate of incorporation contains these descriptive words and phrases, purely as a theologian—and your answer is based on theological argument and discussion—does that necessarily mean the Greek Catholic Uniat Church?

Mr. McManus: I object to that on the ground that that is a question of law for the Court to determine. That instrument is before the Court for construction and it isn't a matter of expert testimony.

The Referee: Yes, that is a question which I can decide as well as he can. Any jury of intelligence could. I don't think

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it requires an expert. You are asking the effect of that which is a legal conclusion.

Q. What significance, if any, does the ruling out of any connection with the Russian Schismatic Church have? What significance does that have?

Mr. McManus: I object to that as being self-apparent from the paper itself and asking for a legal conclusion upon the paper which is a matter to be determined by the Court. 5666

The Referee: Objection sustained.

Q. What is the definition of the Russian Schismatic Church? A. That phraseology indicates a definition—

Mr. McManus: Just one moment, that question isn't to be answered.

Q. My question is, without your referring to the phraseology of the certificate? A. All right.

Q. I am asking you what is the definition of the Russian Schismatic Church? 5667

The Referee: Confine your answer to that.

A. Speaking from the field of general church history, the Russian Schismatic Church means what is commonly known as in church history as the Russian Orthodox Church, what was then the Synod of Moscow. From the standpoint of the Eastern Orthodox, the Russian Schismatic Church would be such a church as the Greek Catholic Uniat Church or any other Byzantine Rite Uniat Church. I wouldn't say any other

Mr. McManus: Practically the whole Russian Church?

Mr. McManus: It might be well to clear that up. From the standpoint of the Protestant Church doesn't it include all those Greek Churches of the Eastern Rite?

Q. Again referring to the definition of the Russian Schismatic Church or any of its branches, what would be the definition of that from the viewpoint of the Carpatho-Russian Ruthenians?

Q. Assuming it is not? A. Assuming it is not then such a definition is simply the desire of the congregation not to be under the disciplinary rules of the Synod of Russia. It means that and nothing more.

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Q. Doctor, assuming that our church in question was incorporated under the laws of the State of New York "Greek Catholic Congregation of Binghamton" without the descriptive words "In Union with Rome" or "Uniat" attached to the name, and assuming that since this said incorporation over thirty years ago the trustees elected by the people have been the ones who have administered the business affairs of the church without any directions from or instructions or dictations by any bishop; and assuming that in all these years the people of this church have elected their own priests and assuming that the people of this church through their own efforts have collected the money which went into the building of the church and they built it themselves and paid for it themselves through their own dues and other contributions made by members; and assuming that the people and the officers have hired and discharged priests whenever they have felt the situation justified discharging one and hiring another; and assuming that there have been no regular payments of cathedraticum each and every year or period as required by the Codex Juris Canonici but that some payments of cathedraticum have been made; and assuming that there has been no establishment of regular stole fees by any diocesan authority; and assuming that there has been no interference or direction of any kind by the ordinary or bishop or any other similar authority in the matter of the payment of debts of \$500 or more and the matter of buying the property and building the church and placing a mortgage on the church;

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5675 Mr. McManus: Just one minute now. I am not sure how that should be handled. First it is calling for a conclusion. We object to it on the ground it is calling for a conclusion; second, that it is assuming facts not in evidence; and, third, that as a hypothetical question it isn't broad enough to cover the situation so that the witness could express an intelligent answer upon it. After the ruling, I would like to go further on that.

Mr. McManus: The serious part of that question is the last part. It makes a conclusion out of a pure and simple literal hypothetical question.

The Referee: It is asking for an expert opinion with reference to a conclusion of law. The construction of the contract, or of the agreement, or of the charter, the intentions of all the parties at the time is a matter of law for the Court and not questions of fact. There is no great dispute in the testimony. There is no issue of fact with reference to what took place. I should say that the question was not complete with reference to the statement of all facts that might be taken

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into consideration, which really lessens the value of it even if he were to give an answer.

Q. Assuming also, Doctor, all of the facts that you have read from the testimony of the first two volumes of the evidence, the entire evidence of the plaintiff's side of the evidence—

The Referee: You can't, in a hypothetical question, wholesale the testimony.

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Mr. Chernin: Is the objection sustained on the ground that the question is incomplete or on the ground it is not the proper question to be submitted to an expert?

The Referee: My first thought was probably sufficient, that it is not a proper subject for expert testimony and that it is asking the witness to decide the question which can only be decided by the Court.

Q. Doctor, is there such a thing as a Greek Catholic Church having a separate autonomous existence? A. Yes, sir. 5679

Q. A Greek Catholic Church having a separate autonomous existence, would that church be affiliated with Rome? A. No, sir.

Q. Would that church be affiliated with the Russian Orthodox Church? A. No, sir.

Q. Could it exist as a separate autonomous entity? A. Yes, sir.

Q. And still be called Greek Catholic? A. Not like the definition I gave of a Greek Catholic Church.

Q. What are the outstanding characteristics of

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a Greek Catholic Church having a separate autonomous existence? A. Well, first, you don't have there the liturgy, and when I say that I mean not merely the liturgy with respect to the Eucharist as amongst the Churches of the East, the liturgy generally applied to the Eucharist, not that alone but of the whole service with or without the word liturgy, for instance, the liturgy after the Byzantine Rite and it will be in various languages, not merely in Greek.

Q. Can it be in the Slavic language? A. Yes, sir, old Slavonic.

Q. What else? A. Except for expert examination, it will express the same faith, the same general attitude to the councils of the church as what we know the faith of the Eastern Orthodox Church.

5682 Q. Please don't answer this question, because there possibly may be an objection to it. From your study of the organization and the incorporation of St. Michael's Greek Catholic Church of Binghamton, its method of incorporation, its practices and observances since that time and assuming also as part of my question all of the recitals of the previous long hypothetical question, can you express an opinion as an expert as to whether the St. Michael's Greek Catholic Congregation exists as a separate entity unaffiliated with neither Rome nor with the Russian Orthodox Church nor with the Greek Orthodox Church?

Mr. McManus: I object to that on the same grounds as to the other question and on the further ground that it is not within the issues in the action.

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The Referee: Objection sustained on the first ground.

Mr. Chernin: Exception, please.

Mr. Gitlitz: It is stipulated by and between the attorneys for the respective parties that the Canon Law, council proceedings, bulls and any book of recognized authority, from which witnesses for either side have quoted into the record, be considered in evidence in toto, and that any portions thereof may be referred to in the briefs even though such portions have not been actually referred to by any of the witnesses. 5684

Direct Examination of Dr. Slosser continued by Mr. Chernin:

Q. Doctor, are you acquainted with the three bulls or edicts that were sent to the United States of America from Rome to the Ruthenian bishops which had to do with the government of the Ruthenian Uniat Church? A. Yes, sir. They were not just sent to the Ruthenian bishops necessarily, but generally issued out from the Apostolic See and they would naturally come into the hands of whatever Ruthenian bishops there might have been. 5685

Q. They have already been discussed more or less, Doctor. These are *Ea Semper*, *Cum Episcopo* and *Cum Data*? A. Yes, sir.

Q. Particularly referring to *Cum Episcopo*, have you read it? A. Yes, sir.

Q. Have you translated it from Latin? A. Yes, sir.

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Q. Are you acquainted with the contents of Article 5 of Chapter 1 of that particular bull?

A. Yes, sir.

Q. That bull, Cum Episcopo, was promulgated or sent here in what year? A. 1914.

5687 Q. Will you please read a correct translation of that Article 5? A. Yes, sir, this is a translation I believe to be correct, which is as follows: "For the purpose of providing with the utmost diligence for the safety of the temporal possessions of the churches, cemeteries and all things belonging to the church, it will be the duty of the Bishop of the Greek Ruthenian Rite, after seeking advice of men skilled in business and of his own attorney, to possess or have in his possession those forms of the title of ownership, that is the deeds, and to keep all the requirements which are not in conflict with the laws of the civil states and which are propitious for the administration, preservation and safe transmitting to the future of the goods of the church."

5688 Q. Doctor, are you aware that in the case of the property of St. Michael's Greek Catholic Congregation that this was never done by the bishop?

Mr. McManus: How could this witness know anything about that?

The Referee: You can state it to him as an assumption, if you wish.

Q. Doctor, have you Chester Joseph Bartlett here with you? A. Yes, sir.

Q. Will you please tell the Court who Chester Joseph Bartlett is? A. Chester Joseph Bartlett, A. M., L. L. B., D. C. L. As listed here, he is a

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priest of the Diocese of Cleveland and the author of the dissertation for a Doctor of Canon Law thesis entitled, "The Tenure of Parochial Property in the United States of America," published by the Catholic University at Washington, D. C.

Q. I will ask you what is the religious faith of Dr. Chester Joseph Bartlett? A. Roman Catholic.

Q. What are his titles and honorary degrees? 5690
 A. A. M., L. L. B., J. C. L., and then his thesis would give him a D. C. L.

Q. What does J. C. L. mean? A. That is beyond me. That is a non-familiar degree to myself.

Q. Is it Jurist of Canon Law? A. I couldn't say. It would be a guess on my part.

Q. What is the other, Doctor? A. Doctor of Canon Law.

Q. Do you know as to whether or not Dr. Chester Joseph Bartlett is a recognized authority on Canon Law or church law in the Catholic Church? A. This I do know. That this particular thesis received the imprimatur of the Roman Catholic Church, therefore, it is regarded as authoritative. I find it frequently referred to in papers and books that I have read that have been published since this. 5691

Q. Doctor, I call this to your attention, this statement by Dr. Chester Joseph Bartlett, to page 85 of his book, at the bottom of the page, in which he discusses the rights of the church trustee corporations, in which he makes this statement, "Trustees in their corporate capacity have full control over the civil relations of the

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church. A pastor cannot legally take charge of a parish unless appointed or approved by them, and to them he must look for the payment of his salary. If he proves incompetent, it is they and they alone who can depose him. The trustee corporation is so clearly distinct from the church that the trustees may be non-members and even excommunicated persons." Did you read that part of Dr. Bartlett's book? A. Yes, sir.

5693 sir.
Q. Do you agree with that statement?

Mr. McManus: The further objection is on the ground that it was published in 1926. There is no evidence that the author isn't living and available today, and, unless he testifies himself, there wouldn't be any chance to cross examine him and the evidence wouldn't have any weight because his statement might be used to cross examine him if he could be produced and to impeach him or to vary the weight his testimony might receive. Since it doesn't appear whether he is living or dead or available to be called as a witness, then this evidence is incompetent, immaterial and irrelevant.

The Referee: In other words, you are asking for a conclusion of this witness?

Mr. Chernin: Yes, a conclusion.

The Referee: It is really calling for a conclusion of law. Objection sustained.

Q. Have you anything directly, Doctor, that you can point to which would be a basis for such an opinion, that is, anything in a theologi-

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cal manner? A. I am not so sure his Honor will admit this, but I have given this book very thorough study, because I found it most interesting just for my particular interest aside from this case. It is a very well written thesis and evidently accepted, judging from his degree Doctor of Civil Law. It is interesting to me, as an historian and theologian, for the reason that, as a general realist, can a church be obedient to the canonical rules of the whole denomination? Can it, really? And this particular book fits it into New York State and he finally draws his conclusion under three heads here in the State of New York, which is most interesting to me: The possibility of the trustee corporation; the possibility of what you call a church congregation corporation; and, third, from the standpoint of the Roman Catholic, Uniat or Greek Ruthenian, for instance, and the Eastern Orthodox, in the special provisions in this state written into the laws of your state, under which these churches, Greek Ruthenian, Roman Catholic and the Eastern Orthodox may incorporate and be solely and wholesomely canonical. He said you have that interesting situation. Then from the standpoint of a theologian—he is restating it again—he says that if a church does organize under the laws of your State of New York by the special provisions written in, I think 1917, that a Roman Catholic Church, a Uniat Church and a Greek Orthodox Church can be incorporated under those provisions and be canonical from top to bottom, but if it is a trustee corporation or if it is a congregation corporation he says it is practically

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impossible for it to be canonical. The implication would be, as I studied this case, that if it is a membership corporation, therefore, it is altogether impossible for it to be canonical and legal.

Q. Is that your opinion? A. Yes, sir.

Mr. McManus: Just one moment, we move to strike it out.

5699 The Witness: I am interested in theology.

Mr. McManus: We move to strike out that answer given by the doctor, on the ground that the question calls for a conclusion of law and the doctor has attempted to state a conclusion of law and decide the issue that is before the Court here, and it applies to the provisions after 1917 under the church law in this case, which was first put on the statute books in this state, and in this particular case this church, St. Michael's, began back before the turn of the century in 1894 or 1900, and it could not have any application to the law here. And in any event it is simply a conclusion and that it is the real issue in this case for the Court to decide.

The Referee: The witness has stated his viewpoint, which is interesting, and I can accept it as argument in any event and I may accept it as more than that. I have your objection stated fully, I think, upon the record and upon the motion to strike it out I will reserve decision and consider your objection and reading the record.

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That is the substance of what you have testified to?

The Witness: Yes, sir, I was interested because I am interested in church history. My own Presbyterian Church is in all sort of lawsuits over the question of how can a church be canonical and be incorporated and I find that different states have readjusted their laws. Then this man says that New York State has gone the furthest of any state in the Union in that matter so that a church may be canonical with special provisions since 1917. 5702

The Referee: It is applicable to any early period to which it applies, of course.

Cross Examination by Mr. McManus:

Q. Doctor, you spoke about a Greek Catholic Church that was not united with Rome. Where is that church located that you know? A. As I understand the question asked me—

Q. Just answer my question and we will get along faster. A. I can't answer that, unless you get my viewpoint. 5703

Q. Just a minute. A. Where?

Q. Yes. A. It is the same as the Catholic Church, you mean?

Q. No, pay attention to my questions. If you will answer my questions, we will get along faster and you will be able to get away. A. I am anxious to get away today.

(Question read.)

Q. If you know? A. It is in every instance such a church.

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Q. Where, what one? A. I am answering your question. I can't answer it with one word, I am sure, Attorney, if you want me to answer it.

Q. Name the institution in the world; where is it; where is its locations; where is that religious group in existence? A. Not the perfect form, but I think, accepted from the standpoint of a general historian, this new schismatic group under Bishop Chornock would be one illustration.

5705 Q. That is what you meant by Greek Catholic? A. Not necessarily, not a perfect illustration, but it would be an illustration.

Q. What do you call that church or what do they call it? A. I haven't any information as to its official title.

Q. Do you know what the official title is? A. I do not.

Q. Do you know that— A. My definition—

Q. Wait a minute. What is the title of that church?

5706 Mr. Mihaly: Greek Catholic Church of the Oriental Rite of the United States.

Mr. McManus: Is that what it is?

Mr. Mihaly: That is the official title.

Q. Did you mean that church that Bishop Chornock is to be the head of, is that the one you meant? A. That is one illustration, but not a perfect illustration. I should say that St. Michael's in Binghamton is another illustration.

Mr. McManus: That is objected to, the latter part, and I move to strike it out.

A. That is where such church exists, in Bing-

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hamton, N. Y., the name St. Michael's Greek Catholic Congregation.

Mr. McManus: I move to strike out the latter part.

The Referee: You asked him for an illustration, and I don't accept it as proof of the fact but only as his illustration.

Q. Was there any church that you know of in Carpatho-Russia back at the beginning of the century other than the Greek Catholic Uniat Church? A. A specific congregation, you mean, Attorney? 5708

Q. Yes. A. I can't designate it, no. That is not within my information.

Q. That is not within your knowledge? A. No.

Q. Do you know that the people who came to Binghamton from Carpatho-Russia and from Galicia that formed St. Michael's Church spoke some particular language? A. Yes, I gather that from the evidence, old Slavonic.

Q. Old Slavonic? A. I so understood.

Q. Do you know what the prevailing religion was of those Greek Catholics in both Galicia and Carpatho-Russia in their own country at that time? A. Yes, I knew that from the knowledge in the field of general or church history. 5709

Q. What was the religion? A. It is very much of a schismatic religion and autonomous; very much so, very much schismatic—

Q. I am speaking—

Mr. Chernin: Let him finish.

A. (Continued) It is just as schismatic from the Eastern Orthodox as from Rome. It is

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equally schismatic from both, in accordance with the general Canon Law. They were very autonomous in their control and are so yet.

Q. Did you know that that Greek Catholic Church in Carpathia united with Rome at one time? A. Yes, sir.

Q. What? A. If I have in mind, as I answered the question, what you have in mind.

Q. Yes. A. I am not so sure we are identical in what we are talking about.

5711 Q. Did you know they were united with Rome? A. First, you want to know whether I have the same church in mind. They were united with Rome and they were not united with Rome. "Yes" and "no" in answer to your question.

Q. "Yes" and "no"? A. Yes.

Q. They were united and were not united? A. Yes, quite irregular.

Q. Who confirmed the bishops of their church and in that country? A. You mean appoint?

Q. Confirmed the appointment of their bishops, who was the high authority that did that? A. Bishops?

5712 Q. Yes. A. In the case of those bishops regularly united with Rome, if you and I have the same group in mind, there is no other way of a bishop being in his office as an ordinary, except by the appointment of the Holy Father in Rome in a regular Uniat Church, that's right.

Q. Did you know of any Greek Catholic Church around 1900 in Carpatho-Russia or in this country where those Carpathians come from that were not united with Rome about that time? A. You mean specific congregations?

Q. Yes. A. No, I do not. I am not familiar enough.

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Q. As a matter of fact, weren't all of the Ruthenian Churches under Rome? A. No.

Q. What? A. No, that is too sweeping a statement. It is not true.

Q. Then the ones who were not united with Rome at the beginning of the 19th century, the 20th century, rather, what name did they use during that time, if you know? A. Well, as I told you, as a pastor—speaking from my own experience—I find that they were quite uninformed. They think of themselves as being Orthodox since they are so addressed in church services. This whole matter of union with Rome is a matter on which 90 per cent are totally in the dark. It doesn't occur to them whether they are or not. 5714

Q. I am not asking you that. A. I am answering you out of my own talks with such folks.

Q. You don't know that yourself? A. Yes, I do know. I do know for a fact that 90 per cent of such folks coming from Carpatho-Russia and Ukrania are quite in the dark as to what it is all about. 5715

Q. I am not asking you what they are in the dark about. I am asking you what they are in the light about. I am asking you— A. My answer is—

Q. Wait until I finish the question. I am asking you if there was any one Greek Catholic Church in Carpatho-Russia at the beginning of the 20th century, that you know of? A. A particular congregation, no, I don't know.

Q. If the people of St. Michael's Church in Binghamton that form that congregation desire to form a congregation such as existed in

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their country, that is, a Greek Catholic Church, what would you expect the Greek Catholic Church to be, of what denomination in the United States?

(Question read.)

A. You would expect them to be with the name "Union with Rome," or with the term "Uniat" following its title.

Q. That's right. A. I do not so find it.

5717 Q. Doctor, I think we can simplify this a good deal. From your talk with Mr. Chernin this morning, in the formation of a religious body of a church and in the organization of what the religious tenets of it are to be and of what its denomination is to be, there are many factors that enter into it in the minds of the people, isn't there? A. That's right.

Q. And in order for you to give any intelligent notion of what was in their minds, you would have to have some notions as to what they did, wouldn't you? A. Yes, that would be part of what I would have to know.

5718 Q. Of course, you know, as a theologian and as a minister in your high church, you know you have certain forms of worship, don't you? A. That's right. Not necessarily in the Protestant group so much so as in the Catholic group.

Q. In the Catholic group you know they have certain forms? A. That's right.

Q. And those certain forms mark the denomination? A. There is most of it doesn't. There is an irreducible minimum that does.

Q. I understand what you mean is that there are some things that particularly mark the religious denominations? A. That's right.

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Q. In this church at Binghamton do you understand that in the Catholic Church united with Rome that they have Mass nearly every day in the year? A. Yes, nearly every day, not necessarily.

Q. Well, they have it every Sunday? A. Supposed to have, yes.

Q. And every holiday? A. Yes.

Q. And in the performance of that Mass, what is the altar in that church supposed to represent?

A. The place for the sacrifice.

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Q. The sacrifice of what? A. The death of the Lord is re-enacted.

Q. The death of Our Lord Jesus Christ upon the cross? A. Supposedly re-enacted.

Q. What is the altar itself supposed to represent? A. Well, the altar itself is generally the scene of that.

Q. Let me bring it to your mind. Doesn't it represent Calvary itself, the altar? A. Yes, I would say that is a fair representation.

Q. If it developed in this church— A. I want to qualify that last answer.

Q. That is what we term it? A. Not necessarily. That is the reason I want to qualify it. In the Eastern Churches it represents also the scene of the Incarnation. That is also happening. Not the death, the Incarnation.

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Q. It represents most of those things? A. Yes.

Q. One of the things is the crucifixion of Christ on the cross? A. Yes, that's right.

Q. If, in this congregation in Binghamton, each day and each Sunday since the day that they started worshipping in Binghamton, in that recital of the Mass on the altar they had

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prayers for the Pope of Rome, the Supreme Pontiff, the head of that church, would that in your mind indicate to you anything in relation to the religious denomination under which they were worshipping? A. Something, yes, certainly.

Q. That would be a mark of their religious profession, wouldn't it? A. Not a mark which would absolutely bind them.

Q. No, no, but it is a mark? A. Yes, absolutely.

5723 Q. They don't do that in your church? A. Yes, I have prayed for the Pope audibly.

Q. I understand that, but it isn't a part of your religious services? A. It certainly is with me. I pray for the Pope. He needs them and I do.

Q. If, in this church at Binghamton, when they had the cornerstone of that church laid, it was laid by a high dignitary of the church united with Rome, would you consider that an indication as to the religious profession of those people? A. Something, yes; not wholly conclusive.

5724 Q. None of them are absolutely and wholly conclusive, but when they had those churches erected and the bishop of that church was sent for by the congregation to come and dedicate those churches, would you consider that a mark? A. Not a conclusive mark. It depends in what capacity he was there, as accepted by the congregation.

Q. If the congregation sent for him to come to dedicate the church? A. He might have been there and be present—

Q. Just answer my question. If they sent for him to come and dedicate their church and he

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came and dedicated it at their request, would you consider that a mark of their religious denomination? A. Yes, a certain mark, no doubt about that.

Q. If the priests who officiated in St. Michael's Congregation during those years from the turn of the century down to the present day were all priests of the Greek Catholic Church united with Rome, would you consider that a strong mark of their religious affiliation? A. I don't know what you mean by the word "strong." 5726

Q. Would you— A. So many things enter into it.

Q. Supposing I put it this way— A. I should say it showed association, certainly.

Q. It would be pretty strong? A. It is a very strong association.

Q. You don't, in your Methodist or Episcopal Churches, you don't send for ministers and people outside to render or conduct services in your church, do you? A. A greater share of my own life was spent as a Methodist minister preaching in a Congregational Church.

Q. I mean in its entirety? A. I preached in a Congregational Church for three years and it still is a Congregational Church although I was a Methodist. 5727

Q. Assuming that in this congregation in Binghamton that all of their religious services rendered in that church and for that congregation from the day it started before the turn of the century down to the present day were rendered by priests of the Greek Catholic Church united with Rome, would you consider that strong evidence as to their religious affiliation? A. Yes, it would seem to be.

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Q. And baptisms— A. Notice you say religious affiliation. I insist on this, not organic union.

Q. No, not what you like. You understand there are certain sacraments in the Catholic Church, don't you? A. Yes.

Q. Are there any in your church, too? A. Yes.

Q. How many sacraments in your church? A. Two, generally.

5729 Q. Do you know how many there are in the Catholic Church? A. Seven.

Q. Do you know that some of the sacraments of the Catholic Church must be performed by a priest of the Catholic Church, that is, the church united with Rome? A. Oh, yes, except possibly baptism which may be performed by a heretic if properly maintained.

Q. But there are certain sacraments of the Catholic Church which must be performed by a priest united with Rome? A. Quite so.

5730 Q. Do you know what they are? A. Well, I should say that except for baptism there would be no general recognition on the part of the church, a bona fide Uniat Church except as performed by a priest in union with Rome.

Q. There are seven sacraments in the Catholic Church? A. Yes.

Q. One of them is baptism, which you were right about, which can be performed by anyone, under certain conditions? A. Yes.

Q. Let's take them all. For instance, marriage, that must be performed, if the parties are members of the Greek Catholic Uniat Church, by a Catholic Uniat priest? A. Speaking from the standpoint of Rome, that's right.

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Q. Penance must be given by that same priest?

A. Yes.

Q. Extreme unction is the last sacrament given at time of death or when death is expected? A. Yes.

Q. Then Holy Eucharist, that is what you call communion, I guess, in your church? A. Yes.

Q. And those other sacraments must be administered by a priest of the Greek Catholic Church united with Rome? A. Yes.

5732

Q. If those sacraments have been administered in that church, St. Michael's Greek Catholic Congregation, from its beginning down to the present time by a priest of the Greek Catholic Church united with Rome, would that be evidence of their religious affiliation? A. What do you mean by "their"?

Q. Of their, meaning those people in Binghamton belonging to that congregation? A. The worshipping congregation and not the church corporation?

Q. I am speaking about the people? A. But I would insist on whether you mean either worshipping or members of the church corporation. There are three different divisions of the church. In the first is the ecclesiastical, then civil law—

5733

Mr. McManus: I move to strike that out. That is a matter of law for the Court to decide.

A. I say, "No," if you insist on belonging to the congregation in the way of church membership. The worshipping congregation, the answer would be "Yes."

Q. You mean on the spiritual side? Is that

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the way you mean it? A. I mean the worshipping congregation, the folks who are actually members of the church and not the church corporation. The persons who ruled wouldn't prove anything. The worshipping congregation very evidently—that is a supposition by some—the worshipping congregation certainly must have a very strong affiliation with Rome.

5735 Q. Then from the fact that the first church and the first person or the man that established that church, the priest that established that church there was a Greek Catholic priest united with Rome, wouldn't the natural assumption be that he would establish a Greek Catholic Church united with Rome? A. That would be the natural assumption.

Q. And he is still a Greek Catholic priest united with Rome and he is still living today. A. You are telling me that? I don't know.

Q. Well, he is. A. Thank you for the information. I didn't know that.

5736 Q. Would the fact also that it was necessary for the priest who established that congregation, from the fact that he secured the right to establish it from the Roman Catholic Bishop of Syracuse, would that indicate the kind of a church he was establishing?

Mr. Chernin: I object to that, if the Court please, on the ground that there is no such evidence in the case.

Mr. McManus: Yes, there is. Father Jascovitch said he procured the faculties from Bishop Ludin of Syracuse.

Mr. Chernin: I object to it on the further ground that the question of faculties

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is not the controlling factor. They must obtain something more than faculties in the erection of a church in order to have that church considered a Greek Catholic Uniat Church.

The Referee: Yes, that is what he is trying to get from the witness, which requires an answer to it. He isn't asking whether this fully determines it, but whether it is one of the things that might have a tendency to prove it.

5738

The Witness: Yes, it would have a tendency to prove it, but it wouldn't prove it.

Q. If, prior to the erection of the physical properties such as the church or a place to meet in Binghamton, those people, who later attended St. Michael's churches after they were erected, worshipped in St. Patrick's Roman Catholic Church in Binghamton, would that indicate to you that their religious affiliation was that of Greek Catholic Uniat united with Rome? A. Your question is "if," if that were so?

Q. Yes.

5739

Mr. Chernin: If they worshipped in a Roman Catholic Church.

A. Yes, I should say there is a certain indication there, yes.

Q. Do you know what the antimension is in the Greek Catholic Church? A. It is supposedly that which, being placed beneath the altar cloth, indicates that here is a bona fide church.

Q. If the altar cloth used or antimension used in this St. Michael's Church in Binghamton was given by a Greek Catholic Uniat bishop to that

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church and it has been used there all those years, would that indicate to you that the form of religious worship was that of the Greek Catholic united with Rome? A. That indicates that is the religion of the priest. That doesn't prove the religion of the people because it is the religion of the man that put it there. It is the same as a Latin Church will have a altarstone.

Q. That is, a Greek Catholic Uniat priest couldn't officiate there without that antimension?

5741 A. That gives him the right.

Q. If that was there, it would indicate that was the religion of the people that worshipped there? A. No, sir, it doesn't. A great many things enter into it to answer "yes" to that question.

Q. You have undertaken to make some distinctions in this case. You say that in 1917 the State of New York provided a law for the organization of Ruthenian Uniat societies? A. Yes, made that form which is to preserve jointly.

5742 Q. Yes, as a matter of fact, it is true. A. Yes.

Q. That was after this Greek Catholic Church was started in Binghamton, wasn't it? A. It is my understanding it was in 1907.

Q. 1917, wasn't it? A. The church in Binghamton was in 1907.

Q. One of the churches, but the congregation was there before but that is close enough. A. Yes.

Q. Doctor, do you know that when this Greek Catholic Church in Binghamton, St. Michael's, was organized that there wasn't any Greek Catholic bishop in the United States? A. Reg-

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ularly appointed as bishop of the Greek Ruthenian Rite?

Q. Yes. A. Yes, I understand that was the situation but there was a bishop of the Latin Rite.

Q. But no bishop of the Ruthenian Rite? A. That's right.

Q. And no law of the State of New York under which it provided for the organization— A. Oh, yes.

Q. I mean for the Ruthenians there was no such law, no such Ruthenian law? A. Yes, but nevertheless they must go to some bishop of the Latin Rite. 5744

Q. They must go to some bishop of the Latin Rite to build their church? A. Yes.

Q. We have already gone over that? A. Yes.

Q. I mean there was no law such as this Ruthenian law of 1917? A. They told the people they were—

Q. I understand, but there was no specific Ruthenian Law in New York State prior to 1917? A. In the statutes of New York State? 5745

Q. Yes. A. No, not in so far as prior to 1917, no. In other words, the law for the organization of ecclesiastical churches was way back in 1890.

Q. You speak about some canons here. There are some of the canons that apply to the Greek Catholic Uniat Church? A. Yes, sir, especially *ex natura rei* in the field of theology and doctrine.

Q. Theology and doctrine? A. That is it, not in the field of discipline.

Q. Not in the field of discipline? A. That's right.

5746 *Defendants' Witness, Dr. Gaius J. Slosser, Cross*

Q. By discipline you mean the discipline of the people and the priests? A. That's right, the appointment of the priests and the general exercise of all the things outside of the field of faith and morals.

Q. You say, though, that any Greek Catholic Congregation that is united with Rome is united with it in faith and morals? A. That's right, *ex natura rei* or it wouldn't be united with Rome.

5747 Q. Supposing a priest of that church united with Rome refused to comply with the moral doctrine as promulgated by Rome, what would happen? A. Of the Uniat Church?

Q. Yes. A. Well, of course, if it was generally known to the authorities higher up, of course, they would give him a trial to qualify him one way or another.

Q. They would exercise discipline, wouldn't they? A. That is right.

Q. Isn't that discipline? A. Yes, sir.

Q. So they have discipline? A. Yes, all have discipline.

5748 Q. They have discipline as well as faith and morals in the control over the Greek Uniats? A. Yes, but that discipline over the Greek Ruthenians really arises in the matters in which the Greek Ruthenian Rite is expressly named and designated.

Q. Nevertheless, it is discipline, isn't it? A. Oh, yes.

Q. And who has the right to exercise it? A. Well, you have the chapter within the diocese, the bishop or those associated with him. It depends on how well the diocese is organized.

Q. What is that? A. It depends on how well

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the diocese is organized as to how a trial would be carried out.

Q. Doctor, if the St. Michael's Congregation at Binghamton paid at times the collection known as the Cathedraticum collection to the bishop, would that indicate their religious affiliation to you? A. Yes, the affiliation.

Q. What? A. Yes, it would. To a certain extent it certainly would.

Q. You understand what the Cathedraticum is, don't you? A. Yes.

5750

Q. Doctor, I take it from the fact that you have appeared in this case as an expert and also in the case at McKees Rocks as an expert, you have gone into this matter of the so-called Union of Ungvar and those other unions, haven't you? A. So far as I have had time, I did.

Q. What? A. It is a most difficult matter.

Q. Don't you know that at the time of the union that there was exacted by Rome a profession of faith on the part of the Greek Catholics who were returning to Rome? A. Yes, with respect to the Papacy, yes. Yes, allegiance to the Papacy but not the surrender of the very substance of the faith which to them is the Orthodox faith.

5751

Q. If Dr. Rockwell, who was a former witness and an expert in this case, said that at the time of the return of some of those people, the bishops who represented the people and the people themselves made this profession of faith or among other things made this profession, "Likewise that the Holy Apostolic See and the Roman Pontiff holds the primacy over the whole world and that the Roman Pon-

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tiff, himself, is the successor of Blessed Peter, Prince of the Apostles and the true Vicar of Christ and the head of the whole Church and the father and teacher of all Christians and to him through Blessed Peter has been given by Our Lord, Jesus Christ, full power of shepherding, ruling and governing the Universal Church as also is contained in the Acts of the Ecumenical Councils and the Holy Canons," if they took that profession of faith, what would you say the power of the Roman Pontiff was as to ruling and governing them?

5753

Mr. Chernin: I object to that question, if the Court please, upon the ground that counsel has taken not the exact profession of faith or an exact translation of it, but he is quoting from another witness.

The Referee: He is assuming that the translation which your witness gave was a true and correct translation.

5754 A. I subscribe to what Dr. Rockwell said in substance to that matter. I can't say as to the correctness of the translation. I can't see how a Greek Church could do any less than subscribe to that. The Roman Catholic Church is a Papacy. No doubt about that. It centers in the Pope. Nobody questions that.

Q. They have full power? A. That is right.

Q. Of ruling and governing the Universal Church? A. That is right, the Pope, the Holy Father has that.

Q. If this church in Binghamton is a Greek Catholic Uniat Church, his power extends to that church also? A. His power expressed through lawful channels.

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Q. I mean, of course, through lawful channels? A. Yes, that is exactly so.

Q. Doctor, I am not sure that I understand your definition of schismatics, as understood by the different churches. I think we ought to have it clear here. Let's see if you agree with this, that in the Roman Catholic Church or under the Papacy as you call it or the Holy See, what church do they consider schismatic?

A. Any other church except their own.

Q. Any other church except their own? A. 5756
That is right, all are schismatic.

Q. I have that clear? A. Yes.

Q. What churches does your church consider as being schismatic? You term it the Protestant church? A. Yes.

Q. Do you mean all other Christian churches except the Roman Catholic Church? A. That is pretty hard to answer that certain Protestant denominations would be known as Protestants.

Q. By Christian churches you mean the people who follow the belief in Christ, the religion of Christ, is that what you mean? A. Yes, 5757
sir.

Q. Do you include all churches that believe in the religion of Christ as the Protestant Church in addition to the Catholic Church? I want to get your definition on this. A. Oh, yes, I think all of the churches are in schism. I do myself. That is my attitude. We are all, all of us are out of step.

Q. That is not what I want, what you think of it. I want to get it as to how your church classes them. A. The point is, Attorney, Protestants have so many viewpoints. The only

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viewpoint I can express is my own. These tribunals of Protestantism have not agreed.

Q. I had that notion when you were talking.

A. Yes.

Q. You seem, to put it another way, to think that the Protestant churches—I think that is the way you put it and, if I am wrong, correct me—the Protestant churches consider the Greek Orthodox and some Eastern churches as schismatic? A. Schismatic, yes.

5759 Q. Let's get that cleared up. A. Amongst those whom I move, we Protestants think of ourselves also as being in schism. The Holy Catholic Church is not quite ideal. We are all out of step. We are all in schism.

Q. Was the statement you made in your direct examination that the Protestant churches and by the Protestant church I mean—I don't know what you mean—I mean all churches that believe in the religion of Christ except the Catholic Church, does the Protestant churches consider or who do they consider schismatic? I understand from what you said they consider those Eastern churches schismatic? A. Yes, that is right.

5760 Q. Is that right? A. That is right, Roman Catholics are schismatic; Eastern Orthodox are schismatic; all other groups are schismatic. Amongst those whom I move my own church is schismatic, the Presbyterian Church is schismatic.

Q. They are all schismatic? A. That is right, we are all out of step.

Q. I don't know as you understand me, Witness, or not. Let's discuss it off the record.

(Discussion off the record.)

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Q. Doctor, in your direct examination you read Canon 1451? A. On Jus Patronatus?

Q. Yes, in relation to Jus Patronatus. A. That is right.

Q. You consider that canon refers to the Greek Catholic Uniat Church? A. The only interpretation I place on it is that there is in existence the right of patronage but technically and strictly, no, it doesn't.

Q. It doesn't apply? A. Only those canons in which the Oriental Rite is specifically named has reference to them. In that case it doesn't, that is right. 5762

Q. Doctor, I notice in this book, "Christian Unity," written by you and published in 1929, at page 105 you have this to say but first there is a statement of Dr. B. J. Kidd, writing as to the origin of the Uniat Church which says, "For the most part they owe their formation to Latin missionaries of the sixteenth and seventeenth centuries and, except in one or two cases such as the Malabar Uniats, whose succession is that of the ancient Malabar Church brought over in the Synod of Diamper of 1599, there is no continuity between Uniats of the present day and the ancient churches of the East." A. Is that the end of the quotation? 5763

Q. Yes, that is the end of the sentence. There is a little more in the quotation. It doesn't seem to refer to this part but I will read the rest so that you will have it all in. "They have been given patriarchs and bishops of their own," that is, meaning Uniats, "with the exception of the Maronites. They represent sections detached from those ancient churches, sometimes by Protestantism, sometimes in con-

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sequence of native schisms and united to the See of Rome." Doctor, before you wrote that statement did you make a complete investigation of that treaty there? A. Not necessarily as I have since. I can certainly testify to that.

Q. Do you agree with that statement as set forth there in your book? A. No, I should say I should rewrite it with certain qualifications. I gave that as the Catholic view but that would not be my own personal view in every detail. There are two, I should say, Malabar groups.

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Q. I mean in relation to the Greek Catholic Uniates? A. Yes.

Q. Is that statement still your opinion, Doctor? A. I don't know just how to answer you or what that question would involve if I should say "yes" or "no." Maybe this answers your question, Mr. McManus, that is, that there are two of the Uniat groups that very likely never were in schism. They were weaned away. The Maronites and the Italo-Greeks probably never were in full schism from Rome, therefore, they are different types. I think he only included the Maronites but I include the Italo-Greeks.

5766

Q. Aside from the Italo-Greeks that statement is your understanding of the situation today? A. I should like to have it freshly reread before I say "yes" or "no."

Q. Supposing you reread it. A. As it looks here that is not in accord with my present day view as a result of my study.

Q. No, just look over that paragraph and see if you have any corrections to make since the time of its publication? A. The last paragraph?

Q. It is the last of the chapter. (Witness

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reads chapter designated.) A. Yes, I subscribe to that in general.

Q. In the statement, Doctor, there is no continuity between Uniats of the present day and the ancient Eastern churches or churches of the East, I expect you meant by that, that the churches from which they came, isn't that right?

A. It is what Kidd meant. I am quoting from Kidd. My general supposition is that I understand what Kidd meant but I may be dead wrong as to what Kidd may have meant.

Q. I just want to get your notion. A. My general impression is that these various Uniat groups correspond with all the groups that Rome lists as schismatic, except those Maronite and Italo-Greek groups were never in full schism. Every Uniat church corresponds in Rome's mind to schismatic groups.

Q. Are you speaking as a class? A. That is a general statement.

Q. As a general class? A. Yes.

Q. This statement here goes further and says there is no further continuity between Uniats of the present day and the ancient churches of the East. That is, I take it from that statement, he meant and you meant the churches from which they came, the ancient churches of the East? A. Yes, but I must confess here before the Court that I cannot say that I fully value what Dr. Kidd may have meant but I included that in the book like some authors include material in their books quoting somebody else.

Q. I took it that you considered that from writing the book? A. As I say, from further study I should say I would like to qualify that

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because there is an immense bit of continuity there one way or another.

Q. Doctor, have you made much of a study of this Jus Patronatus that you speak about and referred to in the canons? A. Yes, a considerable amount but it isn't for me to say much. A whole lifetime could be given to that alone.

Q. Do you have it in your religion? A. Yes, it is in general church history.

5771 Q. You understand what the real doctrine consists of, what is necessary to create it? A. In the field of general church history the consistories in such groups comes over and becomes a Uniat church. There will be no question about the absolute allegiance to the Pope. That is understood. On the other hand, they will now use and will have the liturgy in their own language. That is generally.

Q. I am speaking about Jus Patronatus. A. I have studied some with regard to that in the field of general history. That is all I can speak. I have never gone so far as to inquire
5772 as to any original pact. I can't speak of that but in the field of general history we have always been taught in the texts I have read of it that the Uniats have to deal with local ordinances.

Q. I am speaking of the Uniats now. A. I am answering as to Jus Patronatus. That involves Jus Patronatus.

Q. What do you mean by Jus Patronatus? A. The right of the church to present the one whom it wishes for its priest.

Q. How is that right created? A. In various ways. In some countries where it is, for

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instance, for the church it is by concordats. The states have entered into concordats with Rome with a certain amount of voice to name whoever will be the priest or person in such church. In other countries it is largely, the Jus Patronatus, is in the hands of a wealthy family. This man and his successors through the years, whoever his living successors are then, is the patron with the right.

Q. Anything further? A. In other sections of the Roman Church the congregation as a whole elects—that is even true in the Latin Rite, especially in Switzerland—the whole congregation elects the priests even in the Latin Rite. 5774

Q. Doctor, where did you say they elect priests in the Latin Church? A. Yes, in Switzerland.

Q. What church is that? A. A particular church in Switzerland?

Q. Can you name one church? A. You'll find that in Augustine. Augustine states that in his comment on the canon law.

Q. Where would they get that right, Doctor, where would it come from? A. Through long customs. 5775

Q. Wasn't it granted by the bishops? A. Evidently not. In the later years concerning late times it would amount to that. If you go back to the dark years, the exact origin is very likely in custom. The local people erected their churches and have always done that for those years so that the Roman Church with a lot of good sense said, "Let them keep it there. Why force them off?"

Q. Have you read the canons of the Roman

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Catholic Church on the constitution of Jus Patronatus? A. Yes, sir.

Q. Is one of the provisions that it provides there that the patron must first contribute the land for the building of a church? A. If he must complete the property of the church.

Q. First, he must give the land? A. Not necessarily. That would be a case in certain instances. It certainly would be the land or the building and having done that they give him the right.

5777

Q. But he must do something first to procure that right? A. Something, it may not be property.

Q. In the Roman Catholic Church it provides how this right of Jus Patronatus is set up? A. Yes.

Q. That is, the ecclesiastical law of the church provides how it is set up? A. That is right.

Q. After the patron does his part then the church makes the grant to the patron of the right of Jus Patronatus? A. That is certainly true in many instances, undoubtedly, but it

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doesn't account for all of them.

Q. After that has been accomplished the patron has a right to suggest to the bishop certain persons for a pastor, hasn't he? A. I can think of a situation. That wouldn't cover all situations. Yes, that would certainly be done in some situations.

Q. Isn't that the ordinary thing that would occur? A. Something like that, yes.

Q. If that church was a Roman Catholic Church or a Greek Catholic Uniat Church, would the priest suggested by the patron necessarily have to be of the Roman Catholic religion

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Re-direct

or the Greek Catholic Uniat religion? A. Oh, yes, he would have to have necessary canonical orders.

Q. He would have to be a priest of that particular church? A. Oh, yes, no doubt about that.

Q. And if he was a priest of some other denomination, that would be in violation of the grant, wouldn't it? A. Yes, if the authorities knew it they certainly would reject it.

5780

Re-direct Examination by Mr. Chernin:

Q. You told Mr. McManus on cross examination that only those canons, which are specifically named as having applicability to the Greek Catholic Uniats, are applicable and no other. I will now ask you as to whether any of the authorities, Cicognani, Duskie, Augustine or any of the other authorities that you have read, sustain you in that viewpoint? A. Yes, sir.

Q. Who does? A. Well, here is Augustine, 5781 for instance.

Q. Which volume and page? A. It is the commentary on canon law.

Q. Which volume and page? A. By Charles Augustine, Volume 1, Page 72, his comment with respect to Canon 1. "Though the discipline of the Oriental Church is expressly referred to in the code of Canon Law, the code itself regards only the Latin church and does not bind the Oriental church except in matters which of their very nature concern also the latter." In other words, the new code

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 Re-direct

binds the Oriental church only in so far as its discipline is expressly mentioned therein.

Q. You have now quoted right from Augustine? A. That is right.

Q. According to Augustine the new canon law would not be applicable? A. Except where they are expressly mentioned.

5783 Q. Doctor, in the cross examination by Mr. McManus you made the statement that there was no organic union between St. Michael's Church and the Catholic Church, that is, and Rome. Just what did you mean by organic union? How do you distinguish it from any other kind of union? A. I mean by that, for instance, the property of St. Michael's will be in the name of the bishop according to the laws of the state. In accordance with Cum Episcopo, since 1914 there is no such thing as a Greek Uniat Church. For instance, here in the State of New York—

5784 Mr. McManus: This is objected to as stating a law of the State of New York.

A. (Continued) Leave the name New York out and not name the state. In accordance with this state Cum Episcopo orders the bishop in 1914 to have the property in his name in accordance with the laws of this state so since 1914 St. Michaels Church is anything but being an organic union.

Mr. McManus: I object to that and move to strike it out as a conclusion.

The Referee: I will leave it in only as his own opinion.

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Re-direct

Q. What particular factors would have to be present in order to constitute an organic union between St. Michael's Greek Catholic Congregation and Rome?

Mr. McManus: Same objection.

The Referee: Read the question, please.

(Question read.)

The Referee: I will let him state for the purpose of explaining his testimony.

A. Well, first, would be what I have referred to, namely, the property. 5786

Q. Next? A. Having transferred in accordance with Cum Episcopo which, as I understand the evidence I read and studied, has not taken place; for the second place, I would expect that since 1914 to this time, that is for 23 years all priests would have been withheld consistently from this church until they meet that requirement. Instead of that they have been tactly sanctioned, indicating to me principally from a theological standpoint and a canon law standpoint—I don't know about your civil law—indicating to me principally that St. Michael's Church is anything but a regular Uniat Church. 5787

Q. Any other factors, Doctor, other than these two? A. We expect regular payment of Cathedralicum, no years excepted.

Q. Any other factors? A. You would expect no countenancing of the policies—I am speaking now having in mind Cum Data—of the election of priests or securing a priest for St. Michael's in order for it to be a regular Uniat church.

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 Re-direct

Q. What about the factor of the expending of money over \$500 or more? A. If that were proven to me that they have spent such sums or had taken unto themselves mortgages or had built churches or cemeteries, etc.

Q. Or given mortgages in excess of \$500?

A. Yes, sir.

Q. Then what does that indicate? A. It indicates that they are not in organic union, neither Uniat nor union with Rome.

5789

Q. Anything else, any other factors that you would take into consideration? A. I should examine carefully also into what goes on with regular church services, if everything that happened there comes out of books that are in accordance with Roman Catholic censorship. If anything is used in this church that has not the Roman Catholic imprimatur, it isn't a regular church in union with Rome.

Q. Assuming that books called the Epistle and the Psalter which appear to have been books in use in this church, books that don't show the stamp or which did not have the imprimatur of the proper Catholic authorities, would that be a factor of any significance with reference to non-organic union with Rome? A. It would have significance but not binding one way or another.

5790

Q. Significance which way? A. To the effect that this is quite an irregular church.

The Referee: You would distinguish, Doctor, wouldn't you, between the fundamental character of the church as against its regularity?

The Witness: It can't be separated, your

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Re-cross

Honor, in the definition of the Uniat church. The fundamental character of the church is inseparable from what you mentioned. They must go together to make it regular.

The Referee: That's it. The regularity of today might be something that could be readily remedied by getting back to a recognition of all the requirements but when you talk about the essential character of the church, its original aims and purposes, that would be entirely different. 5792

The Witness: That might be so. I would have to hear all the circumstances. I have to see how they made the corporation.

The Referee: We have involved in this case not only the original intention but we have the present situation with which to deal?

The Witness: Yes.

Re-cross Examination by Mr. McManus:

Q. Doctor, you entered this matter of Jus Patronatus. Did you investigate to see if the Russian Orthodox Church had any such doctrine as Jus Patronatus? A. Not in that name. The name Jus Patronatus has originated in later centuries. Some authorities say from the Council of Toledo 590. That phrase, Jus Patronatus, is a phrase confined to the Western church, not the Eastern church. It is a Latin phrase. 5793

Q. It is a Latin phrase and a Latin custom?
 A. When you tie it up to a certain phrase, yes, but in many places it is found in use in the East but not under that name because that is a Latin name.