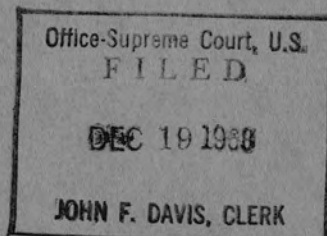


BRARY

COURT, U. S.

162
Supreme Court of the United States



OCTOBER TERM, 1968

In the Matter of:

Docket No. 71

----- X
Presbyterian Church in the
United States, et al.,

Petitioner;

vs.

Mary Elizabeth Blue Hull
Memorial Presbyterian Church,

Respondent;

vs.

Eastern Heights, Presbyterian
Church, et al.,

Respondents.
----- X

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OCTOBER TERM 1968

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4 Atlanta, Georgia,
5 On behalf of Petitioners

6 RICHARD T. COWAN, ESQ., and
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10 On behalf of Respondents

11 OWEN H. PAGE, ESQ.,
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13 Savannah, Georgia,
14 On behalf of Eastern Heights Presbyterian Church, et al.

15 - - -

1 P R O C E E D I N G S

2 THE CLERK: All counsel are present.

3 MR. CHIEF JUSTICE WARREN: Mr. Gowen, you may con-
4 tinue with your argument. Excuse me, Mr. Page, I know you had
5 already started your argument. You may proceed.

6 ORAL ARGUMENT OWEN H. PAGE, ESQ.,

7 ON BEHALF OF EASTERN HEIGHTS PRESBYTERIAN
8 CHURCH, -- Continued

9 MR. PAGE: Mr. Chief Justice, may it please the Court,
10 yesterday counsel for petitioner observed, as I recall, that
11 the respondent churches had ceased to function. I think this
12 was an attempt to bring the situation within that section of
13 -- to put the church on, which has been identified, I think
14 yesterday, as Section 6-3.

15 For a complete explanation of that section, if the
16 Court will refer to page 83 of the Appendix. Let me just sum
17 it up for you. That refers to a situation in which we either
18 have a church which is withered and died on the vine or one
19 which is in the process of withering.

20 Now, the viability of these churches, I think, is
21 not affected by the fact that these cases are before you today.
22 Furthermore, if you examine the action of the Administrative
23 Commission, of which counsel made some input, you find that it
24 is a completely innocuous act. What it did is do nothing more
25 than accept or recognize the removal of the section by their

1 own volition. And then it says in effect for those members of
2 the congregation who still wish to work, we will furnish you a
3 minister.

4 So as to the question as to whether these churches
5 should have appealed the action of the Administrative Commis-
6 sion, there were two reasons they didn't have to. First, with
7 regard to the First Amendment, these people, individually or
8 collectively, have the right to withdraw. Second, the Consti-
9 tution of the Presbyterian Church has no prohibition against
10 a church taking this action in a suit.

11 Q Prohibition against what?

12 A Prohibition against an individual church withdrawing.

13 Q Oh, I see.

14 Q So, are you -- is this argument addressed to the
15 proposition that there was no implied trust?

16 A No, sir. I was just rebutting yesterday that I
17 thought he might have left this impression.

18 Q Well, I want to be clear about one thing -- I thought
19 I was, but I would like to get your view on it. You do not
20 contest the finding or the conclusion of the court below?

21 A No, sir, I do not.

22 Q That there was an implied trust.

23 A No, sir, I do not.

24 Q And that the terms of that implied trust are that
25 this property will be used as part of and subject to the

1 mechanism of the church and the central direction and guidance
2 of the church and the church discipline?

3 A Yes, with one qualification in here, because when we
4 talk about the implied trust, Mr. Justice, we are talking about
5 the imposition of equality, which is the doctrine and discipline
6 of the church, at the time of the acquisition of the property.
7 Now, what the Supreme Court of Georgia found -- and this was
8 on a statutory mandate that the court invoked -- the court
9 found under Section 2822408 of the Georgia Code that when
10 property is devoted to a specific doctrine or trust, the court
11 will intervene to prevent the property being diverted to a
12 doctrine which is contrary to that which existed at the time of
13 the acquisition of the property.

14 Q Well, you have, as I see it, in your case, it comes
15 down to two points: One, assuming that there is an implied
16 trust, which you agree to; two, is that trust dependent upon a
17 maintenance of the church policy at the time the trust was
18 createdly, namely as of the time of the acquisition of the
19 property by the local church.

20 A Yes, sir, that is correct.

21 Q And, three, if that is so, was there such a change
22 in the policy of the church between the time of acquisition
23 and the time of the disaffiliation so as to defeat the implied
24 trust.

25 A Yes.

1 Q Is that an accurate --

2 A That is correct, yes, sir. So we then look at the
3 Constitution to determine what was imposed upon the property
4 at that time, then we look at the charged transgressions,
5 which are set forth in the action, in the resolution of the
6 church. And let me just briefly refer to them. I think --

7 Q Would you mind stating to me first how was this trust
8 created?

9 A This trust, Your Honor, under the --

10 Q Did anybody sign anything?

11 A No, sir, there was no --

12 Q How was it created?

13 A It was created under the -- I would assume under what
14 we call the quality of this particular church government, which
15 is acknowledged to be a representative type church. But it
16 represented a type church, of course, that may have a variation
17 of policy. For example, a representative type church may be
18 representative in its spiritual relationship, as we acknowledge
19 here, but it may have congregational aspects in relation to
20 property. So what we have here under the theory --

21 Q Does the Constitution provide that?

22 A No, sir. This is --

23 Q Where do you get that?

24 A This is an implication, Your Honor, from Watson vs.
25 Jones, that they say in this particular type of church

1 government, where you have a series of ascending adjudicatories,
2 that there is an implied consent absent some particular trans-
3 gression of the Constitution that it is held for the benefit
4 of the church as a whole.

5 Q Is that the only place you get it?

6 A Yes, sir.

7 Q Then its origin is in the secular laws in the sense
8 that either the legislature or a court has said that in these
9 circumstances, a trust or right?

10 A Yes, sir, in the secular law.

11 Q And --

12 A There is no canonical law supporting this in this
13 particular case.

14 Q None at all?

15 A Yes.

16 Q So this is a doctrine of secular law?

17 A Yes, sir.

18 Q You say -- apparently you don't argue that if the
19 terms of the trust which is imposed by the secular law may not
20 be adjudicated by the secular court, that therefore the trust
21 cannot be observed.

22 A In Gonzalez vs. Archbishop, Mr. Justice Brandeis, I
23 think, put this in focus for all of us. He said -- and this
24 came, I think, in about 1929 -- and some years after in Watson
25 vs. Jones -- in which he said "absent evidence of fraud,

1 collusion or arbitrariness, that the secular courts are the
2 findings of an ecclesiastical court in matters involving
3 ecclesiastical law, even though civil rights are involved."
4 This theory has been followed by any number of decisions, both
5 state and federal subsequent to that time.

6 So what, with the knowledge in Watson vs. Jones, you might
7 say it was by absolute deference to the authority of the
8 highest church court, it no longer -- it has been modified and
9 the court may now look beyond the rules formulated as to the
10 types of churches to be acknowledged there.

11 Q Now, absent the doctrine of implied trust, could this
12 case get into court?

13 A No, sir.

14 Q And that is the creation of a court's opinion, do you
15 think, in Watson?

16 A Yes, sir, subject to the complication of Gonzalez.

17 Q It mixes the Court up considerably in connection with
18 the policies of the church of one kind or another?

19 A No, sir. May I take this exception? When we look --
20 you see, when we look at charged transgressions, we do not in-
21 quire into the faith that inspired those particular constitu-
22 tional commandments of the church in its organic law. All we
23 look at is at this organic law, in its doctrine and discipline,
24 and it is purely a factual matter.

25 Q But is it a factual matter?

1 A Well, the factual matter here is that the general
2 assembly made a pronouncement concerning civil disobedience and
3 becoming in civil affairs in direct conflict with the church's
4 constitution. The constitution says you shall not do this.

5 Q Suppose it does that? What does that have to do with
6 the titles of land that some people --

7 A Well, under the theory that we are having to move
8 along on, sir, we have to go on the theory that this constitutes
9 a breach of the trust. And under the law, if there is a breach
10 of the trust on the part of the denominational church at a
11 high level, then the property is restored to -- still honoring
12 the concept, the constitutional concept.

13 Q It goes to the people of far distance?

14 A Sir?

15 Q It goes to the people of far distance from the church?

16 A No, sir.

17 Q Well, who would get it?

18 A Those who are still, in this instance, as the Supreme
19 Court of Georgia found, those who are still occupying the
20 church premises.

21 Q And you say the unanimous vote is there against
22 this thing?

23 A No, sir. They unanimously voted to sever their
24 relationship with the Presbyterian Church, but --

25 Q And to keep that property for their own use?

1 A Which they had financed by their size or pledges.

2 You see, there is a difference here. There is the same thing
3 in Kedroff. In Kedroff there was some evidence, as I recall,
4 in the record that the Russian-based church had money in the
5 cathedral in New York. There is no evidence like that. This
6 is all raised by the local people.

7 Q But does this departure from the original document
8 fall into that phrase, fraud or whatever you referred to?

9 A Yes, sir. And subsequent courts have expanded the
10 word "arbitrariness" to mean an ultra vires unconstitutional
11 act, and these are clearly charged in the initial pleadings on
12 the part of the petitioner -- I mean on the respondent. The
13 reference would be in the appendix, at pages 29 and also 116
14 where these constitutional violations are charged.

15 Q Just what are -- you were about to specify --

16 A Yes, sir.

17 Q This is from the Constitution.

18 A Citizen councils or that which include nothing but
19 that which is ecclesiastical and are not instrumental in civil
20 affairs, with concern to the commonwealth. Well, that is by
21 way of humble petition, in case of extraordinaries by way of
22 advice or satisfaction of conscience, if they be inclined.

23 And then the other violation, that it is the duty of the
24 people to pray for the magistrates, to honor their person,
25 to pay them tribute and other dues, to obey their lawful

1 commands and be subject to their authority for conscience'
2 sake.

3 Q But what are the departures from that?

4 A The decisions are in the resolutions which bring to
5 the Court's attention pronouncements by the highest tribunal,
6 in 1965, in 1966, in which the highest tribunal went on record
7 condoning civil disobedience and embroiling the church in the
8 military and diplomatic affairs of the Vietnam war. Now, these
9 were the bases, the primary basis for the action that is before
10 you, and these are reflected in the judgment of the Supreme
11 Court of Georgia.

12 Q Mr. Page, who do you think would be better able to
13 decide that question, an ecclesiastical court or an ordinary
14 jury in Savanna, Georgia?

15 A Mr. Justice, under the theory that is presented to
16 us, and property rights being involved, it of necessity has to
17 go before the court.

18 Q Before?

19 A That is correct.

20 Q Before the --

21 A The secular court.

22 Q -- before the church courts have had an opportunity
23 to pass upon it?

24 A In this particular instance, of course, we once
25 again ran across a rather unique situation. We have the tribunal

1 of the -- the supreme tribunal of the Presbyterian Church acts
2 both as a legislative agency and also a judicial agency. So
3 we find them pronouncing and then they are going to sit in
4 judgment --

5 Q Is that true when you join -- was that true when you
6 joined?

7 A Yes.

8 Q You submitted to it voluntarily?

9 A Yes. I think when people submit --

10 Q Is that correct?

11 A With this qualification, Mr. Justice: I don't be-
12 lieve you submit absolutely to -- I believe you submit condi-
13 tionally that the people to whom you are submitting are going
14 to honor their constitutional concepts of that government or
15 agency at the time you adhere. I don't believe they have any
16 absolute right to --

17 Q Well, what is the reason you didn't follow through
18 within the church before going to the courts?

19 A Well, there were two reasons: First, I think, this
20 action, as I mentioned, was made on the highest level and I
21 believe it might have been a little exercise in futility to
22 attack the legislative pronouncements before the judicial body
23 which is going to determine its own legislative acts. And,
24 more importantly, if -- and this, I think, is devout -- if the
25 act of the general assembly is an unconstitutional act, in what

1 they did, then I don't believe that it imposes any responsi-
2 bility upon the lesser tribunal, which is the local congrega-
3 tion, to appeal that act. And certain courts where this situ-
4 ation has been presented, where the high tribunal has been
5 accused of an ultra vires or unconstitutional act, they said
6 no appeal is necessary. I don't believe it imposed anything
7 on them.

8 Q So it is in part true, that you referred to mandatory
9 findings on the churches or the statements of views of the
10 hierarchy of the church?

11 A Under the provisions of the church as set forth in
12 the resolution of 1880, there are two types of pronouncements:
13 one is the judicial decision and what is called the impeach
14 act --

15 Q The what?

16 A An impeach act decision, such as this. And it says
17 that the members of the church have to submit to both, with
18 equal dignity and respect less they violate the constitution
19 of the Presbyterian Church.

20 Q When you get down to the bottom here, is there any-
21 thing in the dispute at all except who controls this property?

22 A No, sir.

23 Q Nothing in the world?

24 A No, sir.

25 Q Who controls the property.

1 A Who has its possession and use of the property.
2 That is right.
3 Q And they claim that it is gone from the mother church?
4 A That's right.
5 Q And the big church wants to get it so it can do what,
6 use the property?
7 A Yes, sir, so that it can --
8 Q But they have to get some other congregation, don't
9 they?
10 A Right.
11 Q They have no congregation to go there?
12 A That's correct.
13 Q And nothing involved in this dispute except the con-
14 trol of this property that the local people bought?
15 A That's right.
16 Q I suppose there is the question of whether this is
17 a departure from the church, isn't there?
18 A Well, I am wondering, sir, if that assessment hasn't
19 been made.
20 Q By whom?
21 A Has it been made initially in the -- when it was
22 presented in the local court.
23 Q Well, it --
24 A In part, I mean.
25 Q I am asking whether there was anything involved in

1 this case other than property. You said no. But, as I under-
2 stand it, it stands on the premise that this was a departure
3 from the constitution of the church and that the courts shall
4 determine that it is a departure from the dogma of the church.

5 A I understood the question, when he said basically
6 there is no question who is entitled to possession of the
7 property. That is what I thought he said.

8 Q That is exactly what I meant, and I can't see whether
9 the dogma of the church has anything to do with that issue.

10 Q But your point is, as I understand it, that you in
11 effect agree that unless the court properly -- a court properly
12 finds that there has been a departure from the church dogma,
13 church policy, as concerning clergy at the time of the aquisi-
14 tion of the property by the local church -- unless there has
15 been a departure by the central church, the church dogma or
16 policy, then you agree that you're wrong and the central church
17 is right, that the central church is entitled to the property.

18 A That is what it comes down to.

19 Q So your case really depends, as I see it, upon two
20 questions: One, did the court below properly go into the --
21 do they have any business going into the question which you
22 put; and, second, was it properly decided. So when you look
23 at it from that point of view, your whole case depends not on
24 the property law in the common law sense but upon the question
25 of church dogma.

1 A And applying the proper church policy to it. In
2 this instance we find out under the theory there was not a
3 prescribed use in Watson vs. Jones, that the right to dictate
4 this property as far as use, alienation, acquisition, who
5 shall be the minister, who shall finance the church program
6 and discipline all under the church constitution, is given to
7 the local church.

8 Q On that point we did not agree with you two on that
9 issue about the trust, but one thought that a trust of the
10 church couldn't be decided in a court of law to take away
11 property from somebody to whom it belongs on the basis of
12 church dogma. Then the case is quite different?

13 A Yes. Then you would have to look in the record as to
14 the historical position of this church in relation to a church
15 property, and where it has recognized the church control in the
16 local --

17 Q You say on page 18 of your brief that the simple
18 court has power to override the decision of the ecclesiastical
19 authorities, but to enforce its decision first would be offensive
20 to peace and order; second, it would approve it arbitrarily
21 would violate this act; or, third, it would be repugnant to the
22 principle of equity. We have a lot of controversies in
23 churches -- take birth control. How would your theory go
24 about resolving the birth control dispute in the church?

25 A Well, I don't know. I know that is a raging problem.

1 I don't know whether -- I don't know what status that has with-
2 in the Catholic Church, whether it is a canonical situation or
3 not. I couldn't answer that, Mr. Justice.

4 Q You're talking about offense to peace and good order,
5 arbitrary or ultra vires, or repugnant to the principle of
6 equity.

7 A Yes.

8 Q If I have read our prior decisions, I don't see the
9 relevance of those three standards to Watson, to Kedroff.

10 A Well, Watson -- this subsequently modifies Watson.
11 Now, that is subsequent state and federal -- for example, in
12 Kedroff, Kedroff even said "we believe the right to select
13 clergy where no improper methods are shown is given constitu-
14 tional" -- so it gives this Court the right to look in, and
15 that is what we contend, and historically where property has
16 been in dispute, the Court has looked in. But may I suggest
17 this --

18 Q You will agree, won't you, that it is better if
19 possible, in view of the First Amendment, that this Court not
20 to look into anything in connection with dogmas unless it is
21 imperatively required by some law?

22 A Yes. May I answer it this way: It seems to me
23 that a church can only claim the protection of the First
24 Amendment, free exercise, if it operates within the framework
25 of its own constitution. There is no restraint of this church

1 by action here. As long as it operates within the constitu-
2 tional --

3 Q They are not attempting to interfere with its dogma,
4 are they? They are just simply insisting on withdrawing from
5 it and keeping the church?

6 A That's correct, and they are asking the highest
7 church tribunal the same constitutional counterbuilding that
8 they would impose on the lesser. But let me --

9 Q Let me ask a question, please. One of the issues
10 that was tendered to the jury was your contention that the
11 central church had departed from the original dogma, from the
12 doctrine of coordination. Is that right?

13 A Yes.

14 Q That was one of the issues that you tendered. Now,
15 if the jury disbelieved on everything else, if they disbelieved
16 you on everything else they might still have come in with a
17 verdict on your behalf because they believed that the church,
18 the central church had departed from the doctrine of coordin-
19 ation as it existed as of the time that these properties were
20 acquired. That is the thrust of the instructions under which
21 the jury was operating. Is that correct?

22 A The thrust of the charge encompassed all of them.

23 Q It encompassed all of them. The lower court said in
24 its finding that there has been a departure from the church
25 dogma as of the time of acquisition, then they declared for

1 the plaintiffs. Is that correct?

2 A Yes.

3 Q And the jury might have decided this case on the
4 basis of the crisis by the central church in respect of the
5 doctrine of coordination.

6 A Yes, that's right.

7 Q That was one of your charges and one of the things
8 that you -- on which you submitted proof. Am I correct?

9 A Let me just conclude on this. I believe --

10 Q Let me give you another one of those specifications
11 and see just where we stand. The general assembly -- one of
12 its objections they made to the departure from the dogma is
13 the general assembly's failure to endorse a proposal to amend
14 the U.S. Constitution to overcome this court's school prayer
15 decisions. The respondents characterized this as giving sup-
16 port to the removal of Bible reading and prayer in the public
17 schools. Now, what is there in the Constitution that says
18 that the church as a whole must endorse a constitutional
19 amendment to overcome the decision of this Court?

20 A Mr. Justice, there was no evidence submitted on that.
21 I think --

22 Q There may have been no evidence, but you charged
23 that. And it is one of the things, I suppose, that went into
24 the judgment.

25 A All I know, sir, is the evidence which was introduced

1 which was based on the action of the court.

2 Let me just conclude on this.

3 Q I know, but, as a matter of fact, is that a departure?

4 A Quite frankly, Mr. Justice, I couldn't answer that.

5 I just --

6 Q Why can't you answer it? You don't want to?

7 A For two reasons -- no, sir. For two reasons: First,
8 I am not a Presbyterian, and I was not a member of these church
9 congregations at the time this initial action was taken.

10 Q Well, but, you tell us these other things are depart-
11 tures.

12 A Well, these are matters which have been introduced
13 as a matter of proof. Now, that is the only way I can respond
14 to that.

15 Q Are there any Presbyterian lawyers here on either
16 side?

17 A No, sir, I don't think so.

18 Q Were there any Presbyterians on the jury?

19 A No, sir.

20 (Laughter.)

21 Q These non-Presbyterians decided what was actually
22 the dogma of the Presbyterian Church?

23 A I think that under the --

24 Q Is that statement correct?

25 A That was under the instruction of the court. Let me

1 just conclude the --

2 Q Was the judge a Presbyterian?

3 A No, sir, the judge was not a Presbyterian.

4 Q So everybody --

5 Q Shouldn't the judge be disqualified from the case,
6 do you suppose?

7 A Justice, I assume that is addressed to the judge
8 himself. I certainly wasn't asking him to be disqualified.

9 In conclusion, if you look at the record, there is a
10 fatal federal question before this Court and I submit that
11 this case should be dismissed because there is no federal
12 question before the Court that seems to be raised. And here
13 are the four points that they raise:

14 They said that the federal question was raised in the
15 Supreme Court of Georgia on a motion for rehearing and that
16 there were many question thrust before that court that were
17 entertained, the federal question was -- the motion was
18 entertained and there were many federal questions presented
19 and answered. That is not the record. And, of course, this
20 violates the historical position of this Court that, on a
21 motion for rehearing, when the federal question is raised
22 first, you must entertain and decide.

23 The other question was that an overruling in Mack vs.
24 Kahn, they violated the rule of -- again, the Georgia Court
25 has adopted a federal rule in which you do not have a vested

1 right in a prior decision, and the Supreme Court of Georgia so
2 ruled.

3 Looking again at the other, that in overruling Mack vs.
4 Kahn, violated the First and Fourteenth Amendments; the ap-
5 plication of Watson vs. Jones, this is not the case. Mack
6 vs. Kahn specifically stated that on the proper showing of a
7 complete abandonment of the dogma and doctrine, that the court
8 would then protect the rights of the local property -- the
9 local church, who were adhering to the dogma and disciplines.
10 This comes to absolutely no surprise to us. All the Supreme
11 Court of Georgia did was to modify a substance of law, which
12 it had the right to do, to change the complete -- to that is
13 substantiall.

14 And, finally, they contend that the federal question was
15 properly raised on the local -- at the initial level in the
16 trial court by the general allegations that this act -- that
17 the act of appropriating the property violated the laws of
18 the United States of America. This lacked the required
19 specificity of the state court and also the federal court, and
20 there was no motion or other appropriate action taken in the
21 trial court to bring this federal question to the state court
22 and thus to this court.

23 Thank you so much.

24 Q Does the record show how much this land on which
25 this church is located is worth?

1 A Yes, sir.

2 Q What is it?

3 A It would run together approximately \$170,000.

4 Q \$170,000.

5 Q Could I ask you, to make sure -- as I understand it,
6 there really isn't much question in this case but what the
7 church dogma was involved and the distribution of the case in
8 the lower courts required interpretation of church dogma.

9 A The application of it.

10 Q Yes.

11 A Yes.

12 Q Now --

13 A The final determination.

14 Q -- let's assume for the moment that this Court held
15 that the First Amendment forbade the civil court from adjudicat-
16 ing church dogma as granted. I take it that as a rule you
17 would then say that the implied trust imposed by the secular
18 law would still prevail?

19 A That's right.

20 Q You wouldn't challenge that at all, on the First
21 Amendment grounds?

22 A That's right.

23 Q Then the property would go to the mother church.

24 A Unless there was a violation of the trust.

25 Q Well, but let's assume that the First Amendment

1 forbids the civil court from adjudicating whether or not there
2 has been a breach of trust and forbids it because adjudicating
3 the breach requires an interpretation of church dogma.

4 A But the federal courts haven't held that, Mr. Justice.

5 Q Let's assume that we held it, though?

6 A Well --

7 Q Then what would you say about the implied trust?

8 A Well --

9 Q The breach may not be your claim -- may not be
10 adjudicated because of the First Amendment.

11 A I guess I would be in the position of a tennis
12 player whose matched parts would add out.

13 (Laughter.)

14 Q What would you say, though?

15 A I would say --

16 Q I know you would say we were wrong, and I would im-
17 plore you not to do that.

18 (Laughter.)

19 Q The issue here that has been argued is that the
20 First Amendment forbids that kind of thing.

21 A I take exception to that under the precedents that
22 have preceded this case here.

23 Q It seems to me that, instead of that you might be in
24 the position of a tennis player who had just won his game.

25 A Well, sir, I certainly welcome that. I play a little

1 tennis, and it is nice to win.

2 MR. CHIEF JUSTICE WARREN: Mr. Gowen?

3 ORAL ARGUMENT OF CHARLES L. GOWEN, ESQ.,

4 ON BEHALF OF PETITIONERS

5 MR. GOWEN: Mr. Chief Justice, may it please the
6 Court, I think in this question of property you must consider
7 that the Presbyterian Church is a great church, composed of
8 many thousands of people who have joined it over the years.
9 These local churches, when they join, when they became members
10 of the Presbyterian Church, this great church, when they
11 joined it, they placed their property under the policy and
12 control of this church and, therefore -- they didn't have to
13 do this. They could have remained with the congregation of
14 the church. They could have kept that property but it was
15 because they wanted to do this, just as I did, and I happen
16 to be a Presbyterian -- just as I did when I joined that church.
17 I put myself under the policies and control of the church and
18 therefore these local churches did with their property at that
19 time.

20 All that the Savannah Presbytery is asking you is to put
21 a minister who is a Presbyterian minister because these
22 churches no longer have Presbyterian ministers. They renounced
23 the church and all they have to do is put a Presbyterian
24 minister in the church to hold services for any members of
25 this church who might want one. And the vote was unanimous by

1 those who were there. I think the court will take judicial
2 cognizance that there are very few churches who have all their
3 members there at any one given day. And it was a --

4 Q It was a pretty good vote, then?

5 A It was a good vote. But, on the other hand, one
6 member of the clergy refused to follow the actions, according
7 to the records in the case. It says all members of the pro-
8 fession save one. And there was only one member of that
9 church who wanted a Presbyterian service held in it, I say he
10 has a right under the constitution and law to have that.

11 We think Watson vs. Jones and Kedroff have decided every
12 issue in this case in favor of the respondents. We think
13 Watson vs. Jones and this case are very similar on the facts.
14 Both involve Presbyterian churches. Watson involved the state-
15 ment by the church on the question of slavery. This case in-
16 volves the statement of the church on civil rights, because
17 the evidence is that the witness for the plaintiff says that
18 was the main reason that they withdrew. And in each case the
19 case is brought to trial on ecclesiastical issues in a civil
20 court which this court says could not be done.

21 The churches of this country have lived under Watson vs.
22 Jones for a hundred years and we have been fifteen years with
23 no injury to our religious life.

24 Q What will be the situation in the case if it is de-
25 termined here, for example -- I am not suggesting it would be,

1 but just assume that the court determines that adjudication of
2 church dogma is contrary to the First Amendment and that the
3 lower courts' adjudication must be set aside. Where does the
4 case stand, then?

5 A Well, then this court, if it reaches that conclusion,
6 should instruct the Georgia Supreme Court to deny us of the
7 relief sought by the plaintiff and give the relief sought by
8 the defense, which would give them possession of the church
9 property for the purposes of conducting services --

10 Q On what basis would your claim then rest?

11 A My claim would rest on the implied trust that is
12 recognized in the similar Presbyterian Church in Watson vs.
13 Jones.

14 Q This would be a trust implied by the secular law?

15 A Yes. But both in Kedroff and Watson vs. Jones,
16 after the church tribunal has made its determination, it is the
17 duty of the civil court to close properly in the direction of
18 the ecclesiastical community.

19 Q What would be your remedy to give possession of the
20 church?

21 A This principle, of course, of the court to issue an
22 order to the Presbyterian Church, that the Presbytery of
23 Savanna should have possession of the church for purposes of
24 holding --

25 Q For the court to enforce the ecclesiastical decision?

1 A Yes. In fact, all the courts have held that it is
2 the duty of the civil court to enforce the rights of the --
3 of the civil court to enforce the ecclesiastical rights.

4 Q Mr. Gorman, you were going to give us citations --

5 A There is nothing on the church law that deals
6 directly with the disposition of property or ownership of the
7 central church.

8 Q There is just one other thing I would like to know.
9 I understood from your brief that most of these specifications
10 of departure from dogma of the church were not binding on any
11 of the local churches except to one --

12 A The business of making women eligible to hold church
13 office, and that was an amendment to the constitution of the
14 church and was regularly voted by the Presbyterians and there
15 was no attack upon the adoption of that constitutional amend-
16 ment. All of the rest of them are merely statements of posi-
17 tion and there is nothing in the Book of the Church Order and
18 nothing in the evidence of this case, there is nothing in the
19 case to say that I as a Presbyterian have to believe any one
20 of those to remain a member of this thing, of this church.

21 Q Now I understood counsel a few moments ago to say
22 that there were two kinds of pronouncements that would come from
23 the general assembly, and both of them were binding on the
24 churches.

25 A I don't think this is in the -- this is merely -- if

1 you will read the statements, and they are all in the record,
2 that are complained of, if you will read the statements you
3 will find there is nothing more than a statement of the posi-
4 tion of this general assembly. The next general assembly
5 could have an entirely different position, and there is nothing
6 in it that says that any member of the church has to believe
7 it or past actions. It simply is no more than a deliverance
8 of a minister in a church who might preach a sermon which --
9 with which they didn't agree.

10 Q Why would he do that?

11 (Laughter.)

12 A Thank you.

13 (Whereupon, the above-entitled oral argument was concluded.)

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