No. 13979

Supreme Court of Illinois

Feraria et al

vs.

Vanconcelles et al

71641

BRIEF.

1st—The vote taken at meeting called by the defendants on the 25th day of April, 1858, as to whether said church should continue their connection with the Old School Presbyterian Church and Presbytery of Sangamon, does not determine that the defendants, and those represented by them, were in the majority.

2d—The records and proceedings of the defendants as trustees of said church, in order to legally entitle them to hold said property, must be according to the laws of the State of Illinois.

Revised Statute of 45, Corporations Division 3d, Sec. 44 and 45.

3d—The complainants, and those represented by them, are entitled to said property, because said complainants are the only legal trustees of said church.

Rev. St. of 45, Cor. Div. 3d, Sec. 44 and 45.

4th—The defendants, and those represented by them, being seceders they have no legal right to or interest in said property.

16th Howard, 288; Smith vs. Swormstead.

5th—When funds are raised and invested for charitable purposes, such as the founding of a school or the building of a church for a congregation subscribing to a particular polity and holding to certain tenants of faith, said money so raised and invested cannot be diverted (even by the majority) from the original purpose.

4th Wheaton Rep., 629 and 660;

Porters case, 1st Co., 22 and 23;

St. Johns College vs. Todington, 1 Bl. Rep., 84.

6th—The church in question is a Presbyterian church, and was builded as a house of worship for a Presbyterian congregation, and the defendants have no legal right to appropriate it for any other purpose.

McCONNEL & KETCHAM.

For Plaintiffs in Error.

Miller vs Gable 2 Dennis 492
Gibson vs Armstrong 7 B Monroe 481
Robinson vs Billions 9 Barb sup Ct 64
Trustees vs Sturgeon 9 Barr 321
Miller vs English 1 New Jersey R 317
Att. Gen'l vs Pearson. 3 Merivale 400

115

Brief

Mathias Geraria & others

vs

John Vasconcelles & others

13979

Filed Jan 5. 60

W. L. Harvey

Clk

Sup. Ct. Ill. Jany Term 1860

Vasconcellos et al

ads

Ferreira et al

Brief.

In case of a division of the local society, each claiming the use, their rights must be decided by the rules of the church, in which no right is perceived in a separating minority to claim the use against the majority maintaining the original organization 7 B. Monroe 491-493.

The minority having by their assent to the vote, & submitting the question to the decision of the majority, acknowledged legitimacy of the mode of determination by a majority, are estopped to deny the authority of the tribunal to which they submitted, & having now separated from the majority, they have no right to the use of the property for any portion of the time for religious purposes Ibid 527.

A minority of a church cannot by claiming to be the Church, exclude the majority, or destroy the identity of the Church, by claiming to be the Church 8 B. Monroe 77-78.

Where a minority of the members of a Church secede or are excluded, they have no right to claim the use of the Church any portion of the time under the Statute of 1814. Ibid 78, 79.

To The Honorable the Judges of the Supreme Court of Illinois

In Re Matthias Ferrari & others

115 vs Error from Morgan

John Vas-concellos & others

As of January Term last I have recently and carefully read the opinion of the Court by Mr Justice Walker giving to the Plaintiffs in error who represent the Minority of the Portuguese Free Church the exclusive right to the Church property for the following reasons.

1st That the certificate of Election of Trustees of the Church in October 1855 and the recording of the same was not in compliance with the Statute in that regard - which I most cheerfully & unreservedly admit.

2nd The vote of the majority of the members in April 1858 to disconnect the Church from the Presbytery of Sangamon was unconstitutional and revolutionary and that as the minority are willing to adhere to the Presbytery they are entitled exclusively to the church property.

This second reason and the relations of the form of government and discipline of the Presbyterian Church were not in evidence before the Court and were not discussed as I recollect in the argument of the case. If not in evidence I suppose it to be true that they are not matters

of such a public nature as that our courts will take Judicial recognition of them. And whether or not the majority of the members of the church by a vote agreed to be taken by the membership of the church can without the consent of their Presbytery withdraw their relations to Presbytery is a question that I have not discussed and have no decided opinion about. I know it to be true as a matter of history that in Scotland (the Fatherland of Presbyterianism) and in our country there are very many Independent Presbyterian Churches that acknowledge no allegiance to any Presbytery. Learned men in this ecclesiastical question differ, some maintaining that all that is essential to Presbyterianism, is a Representative form of Government by a Pastor and Ruling Elders called the Session; while others maintain that it is essential to Presbyterianism that there be a session, Presbytery, Synod, & General Assembly - the Church Court of the last resort. This question deeply involves the principles of religious liberty, and constitutional Forms of Church Government, which I think ought to be thoroughly discussed before the Court decide that the defendants in error have no right whatever to the Church Property. And I most earnestly hope that my life may be spared to be heard in

in regard to it, with the indulgence of the Court, before the case in hand is finally and irrevocably disposed of.

But if the premises of the Court be right, with a candid hearing, I hope and trust I shall succeed in offering to the Court some suggestion that may serve to shake their confidence in the conclusion they have arrived at, as to right of possession and use of the property for purposes of religious worship. With diffidence, this I will now attempt.

The lot on which the Church was erected was conveyed to individuals in 1852 as Trustees of "The Portuguese Free Church" without any reference to denomination, and was shortly afterwards improved, all at the cost of $2741.24, the minority contributing of that sum, only $223.45. The members of the Church, or a majority of them, equitably were entitled to the use of the property for purposes of worship, until the legal title was divested out of said Trustees by a certificate of election of trustees under the statute, by the members, or a majority of them. In April 1858 by agreement of the members of the Church, they submitted (unconstitutionally if you please) the question of their continued connection with the Pres

by ten to vote. and then was a very decided negative majority. In May 1858, the minority seceded, organized another church. a mile or so from the old church, and elected Trustees for their church claiming the original name, and had their election duly certified and recorded. Does that give them the right in any sense of right, to the exclusive use of the old place of worship? That is certainly the question in this case to be settled, if you plead, with just regard to liberty of conscience, christian morals, ecclesiastical law, & the law of the land. The minority having consented to the vote above referred to, as the means of settling the question of adherence to the Presbytery, had no right to secede and organize at another place, and elect Trustees to exercise control of the house of worship of the majority. P " A minority of a church in whom Real Property is vested and the title in Trustees has no right to elect Trustees for the majority Shannon & others vs Frost et al 3rd B Munroe 257. P " A minority of the members of a church, cannot by claiming to be the church, exclude the majority, or destroy the identity of the Church. Paddon et al vs Chew & co 8 B Munroe 77. P " When the minority of the members of a

Church seceds, or are excluded by the majority, they have no right to claim the use of the house for any portion of the time, under the act of 1814 Ibid 78." If the minority were grieved and disappointed at the result of the voting to which they had consented, in law, morality, and good faith, they are estopped from seceding and attempting to take away afterwards, by any means to which they might resort, the house of worship of the majority. To this point, not noticed in the opinion of the Court, I cited authorities in a written brief which I handed to the Court (and which I cannot now refer to ~~I cannot~~ because I have no memorandum, or the books referred to. If the minority were justly aggrieved, after their consent to submit to the test of a vote of the Church, they ought to have abode "in the Ship", and sought redress by moral means, and by complaint or appeal to the Presbytery. And because of the unfavorable result of the unconstitutional expedient that they have consented to, they have no right to secede and claim exclusive use of the church property "Consensus tollit errorem". This erroneous proceeding did not injuriously affect the right of either party to use the church property, all of the members

being under equal obligations of constitutional loyalty to their Presbytery, being the appellate court for the redress of grievances by complaint or appeal. Because these ignorant exiles, may by their common consent, have made a blunder in the niceties and technicalities of ecclesiastical law or usage, I protest against the right or expediency of intervention by any civil courts, to visit on them as the penalty of such blunder, exclusion of any of them from their common right to the use and occupancy of their house of worship. They have such right undeniably, and the majority, as the record shows, are willing that the minority may return to the old place of worship on the basis of principles to which both parties have given their common consent. By way of illustration, I would be allowed in conclusion, to use an analogy involving much higher interests than those in this case. Suppose (which may God forbid.) that in these unhappy times of political excitement, one of our Southern sisters in our confederacy, should by legislative act, submit to the vote of her people, the question of secession from our Union, and they should, in their folly and madness, vote for such a measure. Would any of

them thereby forfeit or evade their constitution-
al rights or liabilities I say - but they
would be bound to constitutional loyalty,
and would be entitled to their rights as cit-
izens of their State, and the United States,
and to that benign protection secured by the
Constitution of the United States. I desire, if
it seem fit to your honors, that you will
by a written order to be forwarded to me,
direct the clerk of the Court (and which I
will promptly forward to him) not to certify
the case down to the court below for further
proceedings, until the case is re-argued.
I suggest this course, because it will be
far less troublesome than reversing by appe-
al, the decree which may be entered in the
Court below, pursuant to the opinion which
has been filed. All of which is very respect
fully submitted.

Jacksonville May 18th 1860.

David A. Smith
atty for defendants.

No 115

Matthias Ferrari & others

vs

John Vascancellos & others.

Petition for re-argument

May 18th 1860

~~1395~~