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RECENT DECISIONS

RELIGIOUS FREEDOM—COURT CAN DETERMINE TRUE LEADER OF CHURCH

Defendant, Kedroff, wrongfully held possession of St. Nicholas Cathedral. The Russian Church in America, a separatist group which had declared its administrative autonomy from the Russian Orthodox Church, brought an action of ejectment. The Moscow appointee of the Russian Church intervened claiming his right to possession. *Held* (4-3): The trial court shall decide if the Moscow Church is functioning free of governmental control and if its appointee will best serve the purposes of the religious trust. *St. Nicholas Cathedral of the Russian Orthodox Church in North America v. Kedroff*, 306 N. Y. 38, 114 N. E. 2d 197 (1953).

In the leading case, a dispute over slavery divided a local Presbyterian Church, each faction seeking use of the church premises. The Supreme Court found for the anti-slavery group as the Presbyterian General Assembly recognized it to be the proper representative. The Court established the principle that in a hierarchical church (such as the Russian Orthodox) the civil courts must accept as binding the decision of the highest church authority on questions of doctrine, discipline, rule or church government, even when property rights hinge on that decision. *Watson v. Jones*, 13 Wall. 679 (U. S. 1871). The case had no Constitutional basis as it was decided long before the Fourteenth Amendment was construed to apply the First Amendment to the States. See *Cantwell v. Connecticut*, 310 U. S. 296 (1940). Because the *Watson* decision relied solely on the federal common law, some state courts have limited its application, *Turbeville v. Morris*, 203 S. C. 287, 26 S. E. 2d 821 (1943); *Pounder v. Ashe*, 36 Neb. 564, 54 N. W. 847 (1893); *Mack v. Kime*, 129 Ga. 1, 22, 58 S. E. 184, 193 (1907); and others have expressly refused to follow the rule, *Watson v. Garvin*, 54 Mo. 353 (1873).

The *Watson* rule has the advantage of simplicity and New York has long adopted it. *Commit v. Protestant Dutch Church of New Prospect*, 54 N. Y. 551 (1874); *Trustees of Presbytery of New York v. Westminister Presbyterian Church of West Twenty Third Street*, 222 N. Y. 305, 118 N. E. 800 (1918); N. Y. REL. CORP. LAW §§ 4, 5.

Prior to the present decision the New York Court of Appeals had found the separatists entitled to possession on the basis of Art. 5-C of the New York Religious Corporations Law which purported to transfer administrative control of the Russian Orthodox Church from the Moscow authorities to the leaders of the North American secessionists. *Cathedral v. Kedroff*, 302 N. Y. 1,

96 N. E. 2d 56 (1950). The statute was upheld as a legislative determination that the Moscow Church was under the influence of the Russian Government and unable to function properly in the interest of the church. The United States Supreme Court reversed this decision, finding a Constitutional basis in the First Amendment for the *Watson* rule. Art. 5-C was held to be unconstitutional as it "directly prohibits the free exercise of an ecclesiastical right, the church's choice of its hierarchy". *Kedroff v. Cathedral*, 344 U. S. 94, 119 (1952).

On the present motion the Court of Appeals reached its decision on common law principles "which are valid although the statute is not." The court recognized the *Watson* rule but found that before it could be applied the church authority must be capable of functioning freely in the interest of the church. It finds that the Supreme Court considered the validity of Art. 5-C upon the assumption that the Moscow Patriarch was the valid head of the American group and reasoned that an inquiry into the status of the Moscow Church and its choice of clergy is not forbidden but implied by the Supreme Court's statement that "Freedom to select the clergy *where no improper methods of choice are proven* . . . has Constitutional protection." [italics added]. *Kedroff v. Cathedral*, 344 U. S. 94, 116 (1952). See *Gonzales v. Roman Catholic Archbishop of Manila*, 280 U. S. 1, 16-17 (1950).

The dissent takes the position that the Supreme Court held that the *Watson* rule gave Constitutional protection to the filling of ecclesiastical offices by the appointive power of the church. The finding of Article 5-C to be violative of that right precludes the same result being reached by common law.

The court has taken a realistic view in a delicate situation and justified it by a rather tenuous distinction between accepting a church authority's decision and determining that authority's freedom to act in the church's interest. However, the result, the judicial appointment of a church leader, violates the basic American belief in separation of church and state and appears to be expressly forbidden by the Supreme Court's prior decision.

Irving Brott