The Saga of St. James the Less A Cautionary Tale¹

by Kenneth Stiles, Esq.

The litigation involving the parish property of St. James the Less was not discussed by diocesan representatives at last summer's district meetings, nor was anything about it posted on the Parish Toolbox Web site. This is unfortunate because the Pennsylvania law stated in this case is of utmost importance to parishes in the Diocese of Pittsburgh thinking of leaving The Episcopal Church.

The parish of St. James the Less was a small parish of eighty or so members, located in the Allegheny West area of North Philadelphia, in the Diocese of Pennsylvania. It was founded in 1846, and its church building is recognized as a National Historic Landmark. In the late 1970s, parishioners objected to changes taking place in The Episcopal Church regarding divorce and remarriage, the ordination of women to the priesthood, and what were viewed as major doctrinal changes in the prayer book. Their response was to prevent their bishop from making his visits, inviting a bishop of their choosing instead. In 1997, the newly consecrated diocesan bishop refused to honor this practice, and the parish felt it had to separate from The Episcopal Church.

In 1999, the vestry transferred all church property to a new corporation that was independent of The Episcopal Church. Then followed a year of discussion with the Diocese, during which the parish offered to engage in mediation over ownership of the property. The vestry believed that the parish owned the property because it held title to it and because the deeds and corporate records granted the diocese no rights in it. The parish could, therefore, leave The Episcopal Church and take its property with it.

The parish declared, "The Bishop and Diocese claim that the parishioners did not have the right to withdraw from The Episcopal Church and take their property with them. The parishioners say that they most certainly do have the right to decide what their religious beliefs will be and whether or not their beliefs and personal consciences allow them to be part of the Episcopal Church. The parishioners fully intend to stay in the property they own, continue to serve their neighbors as they always have, and hold the religious views that the members of the parish have held since the parish was first founded." After the litigation began, the parish said, in its press release, "The parishioners are going to court well-prepared to defend themselves. They believe that they are in the right—legally and morally. Many people depend on them—they will not back down. They are confident that they will prevail."

In July of 2001, the diocese sued the parish for possession of the property. The diocese won at the trial court (No. 958 NP of 2001), but the parish appealed. In this litigation, it was represented by two large, well-respected Philadelphia law firms. The lead counsel was a past president of the American Bar Association. However, Commonwealth Court agreed, 5 to 1 with

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the trial court (833 A.2d 319) and held against the parish once again. The parish appealed to the Pennsylvania Supreme Court (888 A.2d 795), where it lost for the third and final time. The litigation process took four-and-one-half years, and the legal costs exhausted the parish's financial reserves.

The Supreme Court based its decision on several points. First, it did not matter that the parish had, over the decades, purchased and built facilities with no help from the diocese, or that the deeds said nothing about a trust interest held by the diocese or The Episcopal Church. Second, the court found that the Dennis Cannon had been properly adopted by The Episcopal Church and was binding on the parish, even though the parish had never agreed to it. The Dennis Cannon (Canon I.7.4) was adopted by the General Convention in 1979 to codify the longstanding understanding that the church had a trust interest in parish property. It provided that "[a]II real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located."

The Supreme Court affirmed that Pennsylvania law required the use of "neutral principles of law" in cases about the ownership of religious properties. Applying these principles to this Episcopal parish, the Supreme Court found, by a 5 to 0 margin, that there was indeed a trust imposed on the property, so that the parish could not leave The Episcopal Church and take the property with it. The Supreme Court also agreed with the trial court and Commonwealth Court that the vestry of St. James the Less had acted in bad faith and breached its fiduciary duties, making vestry members individually liable both for damages suffered by the reconstituted parish for the loss of assets and for expenses incurred by the diocese in pursuing the lawsuit.

In late November, I made a side trip in search of St. James the Less. What I found was an English Gothic church sited in the middle of a medium-sized cemetery. It had been built in the mid-nineteenth century as an exact replica of a small parish church in England. The cemetery was enclosed by a high stone wall that gave a feeling of peace and serenity in an urban setting. All gates but one were chained shut. The open gate was unlocked only because someone from Massachusetts had wanted to visit a particular grave. The church itself was locked, and there was no sign of life save for the bells programmed to toll the hour in the detached bell tower. Across a small lane was another walled cemetery surrounding the rectory and parish hall. All of those gates here were chained shut. The site has stood vacant since early 2006, and the diocese has been unable to reopen it because the endowments necessary to operate the parish are gone. No one knows what will become of the church.

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