

St. James the Less Revisited

by Kenneth Stiles, Esq.

A recent issue of Progressive Episcopalians of Pittsburgh's newsletter *PEPtalk* set out the basic facts of the lawsuit involving the Episcopal parish of St. James the Less in Philadelphia (888 A.2d 795 2005). (See "The Saga of St. James the Less: A Cautionary Tale" by Kenneth Stiles, *PEPtalk* 5, 1 (Feb. 2008), p. 4.) The attempt of St. James to leave the Diocese of Pennsylvania and The Episcopal Church with its property triggered four-and-one-half years of litigation that only ended when the Pennsylvania Supreme Court ruled that the congregation could not leave and take the property. This article will explain the law that the court applied in this case. This will be the law used in all future cases involving Episcopal Church property in the Commonwealth of Pennsylvania.

There has been litigation over church property involving all denominations since the beginning of the nation, and courts have struggled to find the best way to deal with it. The Pennsylvania Supreme Court based its decision in *St. James* on the law set out in the 1979 U.S. Supreme Court case of *Jones v. Wolf* (443 U.S. 595 1979). The *Wolf* case concerned the Presbyterian Church, but the constitutional law stated by the Court applies to property disputes of all forms of religious organizations. The reasoning process applied in the case is called the neutral-principles of law approach, and it is completely secular in operation, thereby avoiding conflict with the First Amendment of the Constitution. There was also a strong suggestion by the court that hierarchical denominations, such as The Episcopal Church, should state, in their governing documents, if there is trust on property in favor of the church.

As a result of that prompt, The Episcopal Church asked Bishop Walter Dennis to draft an amendment to church canons that would summarize past practice and philosophy of the church towards property held by parishes and dioceses. The result was the so-called Dennis Canon, which became effective upon adjournment of the 1979 General Convention. This canon, Canon I.7.4, reads as follows:

All 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 existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

In its decision, the Pennsylvania Supreme Court stated that the Commonwealth had adopted the neutral principals of law analysis for resolving church property. This analysis involves examining the parish charter, its bylaws, and deeds; the diocesan constitution and canons; and the constitution and canons of The Episcopal Church. The purpose is to determine whether or not the parish created a trust in favor of the diocese and The Episcopal Church. If the parish deeds and charter are silent on this matter, the court has to look further. If the diocese or church has a statement of a trust in its governing documents (constitution and canons), this may resolve the matter. Two additional criteria must be met before a court will impose a

trust. A member of any voluntary association—this is how the courts characterize a church—is bound by amendments to the rules of the association as long as they are duly enacted and do not deprive the member of vested property rights without the member’s explicit consent. The court held in the St. James case that the Dennis Canon was properly enacted, so it was binding on St. James if the parish had agreed to a trust prior to the adoption of the Dennis Canon.

Finding such a trust is a little more complicated. The deeds for St. James made no mention of any trust to anybody. Its new charter and bylaws—which were drawn up with the intention of leaving The Episcopal Church in mind—definitely do not create a trust; the charter in effect in 1979 did not speak of a trust to the diocese or The Episcopal Church, but St. James was still found to be bound by the Dennis Canon. The reasons are that the charter in effect in 1979 was found by the court to have so totally committed St. James to the diocese and Episcopal Church that a trust on the property was declared. “St. James Charter makes clear that St. James had already agreed to hold its property in trust for the Diocese prior to the enactment of the Dennis Canon.” The pre-1979 charter stated that St. James’ purpose was to serve as a place of worship according to the faith and discipline of The Episcopal Church; any person who disclaims the authority of the church can no longer be a member of St. James; and St. James was required to obtain the approval of the diocese for any changes to its charter. “Accordingly, St. James effectively agreed in these provisions to always accede to the authority of [The Episcopal Church] and the Diocese and to forever serve as a place of worship for those who adhere to that same authority. As such, it plainly held its property for the benefit of [The Episcopal Church] and the Diocese, *i.e.*, in trust for those entities.” The decisive facts were in the documents governing the parish in 1979 when the Dennis Canon was adopted. If there was a trust in favor of the diocese and general church at that time, the parish was bound by a trust, and subsequent attempts to change the charter to remove the trust were of no effect. It is standard trust law that one party to a trust cannot terminate it; all the parties have to agree.

This analysis applies to the parishes in the Diocese of Pittsburgh. If the language in their charters or deeds in 1979 create a trust in favor of The Episcopal Church, the trust is still in effect. The language used for charters appears to be standard language that was to be in a parish charter before it was admitted as a member of the diocese. Attempts to revise the charter and other documents to remove the trust after 1979 are not effective. People can leave parishes, but parishes and dioceses stay as part of the structure of The Episcopal Church.

Kenneth Stiles is a cradle Episcopal who has been a member of Calvary Church since 1978. After arriving in Pittsburgh from Denver, Colorado, he worked in the corporate law departments of Westinghouse and U.S. Steel. He is currently in private practice and serving on the boards of a number nonprofit corporations involved in community development. For recreation, he rows, bikes, and is a member of the Scottish Country Dance Society. In his spare time, he continues the restoration of his house in Friendship, which was a ten-unit boarding house when he bought it. Kenneth Stiles is a vice president of Progressive Episcopalians of Pittsburgh.