

Now It's 'Official'

The Russian Orthodox Church in the United States has won a major legal victory over the Russian Orthodox Church in Moscow, which this newspaper has frequently described as "an agency of the Soviet government."

In ruling in favor of the Russian Orthodox faction in the United States, which has been seeking control of St. Nicholas Cathedral in New York, the Court of Appeals in Albany, reversing a 1957 court decision, said that American courts have a responsibility to prevent seizure of religious properties within their jurisdiction by agents of a foreign state acting in the name of a church. Among other authorities, the court cited Peter Deriabin, a former Soviet Secret police official who defected to the West.

It is a political fact of life that the Russian Orthodox Church serves the aims, purposes and objectives of the Soviet government. It is encouraging to see that the law now recognizes this fact, too.

If the Patriarchate had announced its conversion to atheistic Communism at that time, no one could rationally contend that the principle of denominational control of property would have required that American churches be turned over for use as antireligious museums as was done in Russia. In that event, the faithful of the North American Diocese would have had the legal right, indeed, the duty, to see to it that such a broad fundamental departure by the "general" or central authority from its essential principles did also not entail the diversion of property from the accustomed use of those adhering to the denominational usage and for whom it was originally dedicated under conditions of implied trust.

What occurred in 1924 was different in degree and clarity, of course, but not in nature. The Patriarchate was being subjected and subordinated to an antireligious civil government. Sergei's capitulation, his so-called *modus vivendi* with the Communists, merely completed a process begun in 1918. What emerged was fundamentally different from what had been before. Was the change permanent? Was the Patriarchate, in its new condition of subservience to antireligious rulers, incapable of fulfilling its prior functions? The North American Diocese did not know for certain but they prudently did not delay action until they were divested of all their property.

Under the circumstances then existing, this court must hold that the Detroit Sobor of 1924 properly and legally established the administratively autonomous Metropolitan District, with provision for local election of its own Archbishop, and for control and use of the properties of the former North American Diocese. The rule of *Watson v. Jones* does not and cannot control in a situation in which the conduct, composition, or action of the governing body is such that, if given effect as to property rights, there would result a real and substantial departure from and a perversion of the implied trust to which the property is subject.

A recent illustration of this principle is found in a case strikingly similar to that at bar. In *Romanian Orthodox Missionary Episcopate of America v. Trutza*, 120 F. Supp. 183, aff'd. 205 F. 2d 107 (6th Circuit), Cert. den. 346 U.S. 915, which involved an action commenced by a Bishop who had been consecrated as such by the Holy Synod and the Patriarch of Romania in Bucharest and sent here to assume jurisdiction over the Romanian Orthodox Church in America. In the action, the appointee of the Patriarchate sought to obtain possession and control of land, buildings, and funds of the American Church.

It was undisputed that bylaws of the American group had been adopted in 1935 providing for the election of the American Bishop by the Holy Synod in Bucharest and

that the Church in America was to be "administered canonically, spiritually, and administratively under the direction" of the Bishop with the approval of the Holy Synod at Bucharest. This, it is clear, presents a picture of a denominational church with a "general" or central authority, almost exactly parallel with the pre-revolutionary condition of the Russian Orthodox Church here.

In 1947, as recited by the Trial Judge in the *Trutza* case, "because of fear of interference and meddling by the Romanian authorities with church affairs in the United States," the American group, through its leadership, the Episcopal Council, "decided to create an autonomous episcopate." This was confirmed by a special Episcopate Congress in Detroit which passed a resolution "restoring complete administrative autonomy to the Episcopate and declaring the right of the Congress henceforth to elect its own bishop" (120 F. Supp. 183, 184-5).

The Circuit Court of Appeals set forth at length a resolution adopted by the American Episcopate Congress (so akin to the resolutions adopted by the Metropolitan District of the Russian Orthodox Church) justifying the declaration of autonomy on the ground that, "following the installation in Romania of a Communist, dictatorial, antichristian and antidemocratic government, the Orthodox Church of Romania:

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"(a) is no longer free to preach the Word of God nor to propagate the true teachings of the Holy Eastern Orthodox Church and her Faith,

"(b) with complete disregard for the organizational Statutes of our Episcopate continues to meddle in problems, the solution of which is the exclusive right of the members of our Episcopate,

"(c) through her present leadership, completely enslaved by the political rulers, propagates among our faithful peoples here ideas which are contrary to the free life conceptions and ideals held and respected by the American citizen,

"Now, therefore, *be it resolved*, that:

"1. The Romanian Orthodox Episcopate of America be and the same is hereby declared to be *completely autonomous* not only in its administrative but also in its canonical (spiritual) affairs, and thus free from all rules, regulations, orders, decrees, etc., emanating from the Patriarch or from the Holy Synod of Romania."

Both the Trial Judge and the Circuit Court held that the American group through its Congress was entitled to revoke the bylaws which gave the Holy Synod and Patriarch in Bucharest the power of appointment of American Bishops and to assume autonomous status, still retaining control, use, and possession of the properties and funds of the Romanian Orthodox Church here. At the time the bylaws were revoked, said the Circuit Court, the American group had "discovered that it was dealing, not with the Holy Synod and Patriarch, but with the Communist Government of Romania, which was dictating the appointment of its bishop in the United States of America and Canada."

The Court continued (205 F. 2d at page 112):

"... We agree with the District Court that under these circumstances the defendants (the American group) were entitled to revoke their previous bylaws and to re-establish the bylaws of 1932. We also think that this conclusion is in accord with the spirit, if not with the letter, of the *Kedroff* case [i.e., the instant *St. Nicholas Cathedral* case on appeal to the Supreme Court, 344 U.S. 94] which declares that 'Freedom to select the clergy, where no improper methods of choice are proven ... must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference.' Since this is true as to protection against the interference of an individual American state, we think it should be equally true as to protection against the domination and interference of a foreign state" (emphasis supplied).