

**THE DUBLIN SUIT: DECIDED IN
THE SUPREME JUDICIAL
COURT OF NEW-HAMPSHIRE,
JUNE 1859. IN CHANCERY**

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The Dublin Suit: Decided in the Supreme Judicial Court of New-Hampshire, June 1859. In Chancery by G. Parker Lyon

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G. PARKER LYON

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THE DUBLIN SUIT:

DECIDED IN THE

SUPREME JUDICIAL COURT

OF

NEW-HAMPSHIRE,

JUNE, 1859.

Edward F. Abbot et al vs. Town of Dublin et

IN CHANCERY.

THE ATTORNEY-GENERAL, at the relation of EDWARD F. ABBOT and another, and EDWARD F. ABBOT and another, v. THE TOWN OF DUBLIN, F. BRIDGE and another.

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1860.

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of
Litchfield, N. H.
Class 1183

This is the same Case that is reported in the 88th volume of the New-Hampshire Reports, and is published in pamphlet form to meet a demand by persons not belonging to the legal profession.

Entered according to an Act of Congress, in the year 1860.

BY G. PARKER LYON,

In the Clerk's Office of the District Court of New-Hampshire.

CONCORD, N. H.:

STEAM PRESS OF MOYLAND & JENKS,
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**THE ATTORNEY-GENERAL, at the relation of ABBOT & a., v.
THE TOWN OF DUBLIN & a.**

A bequest was made in 1817 by the minister of the Congregational church and society in Dublin, to the town, in trust for the support of the Christian religion in that society; the interest to be paid quarterly, forever, to the minister of the Congregational persuasion who should be regularly ordained and statedly preach in that society.—*Held*, as follows:

The term "Congregational persuasion," in the will, has the same meaning as the term Congregational denomination.

The terms Congregational persuasion and Congregational denomination are used in their appropriate senses to signify the Congregational polity, and are not the proper and appropriate terms to designate any creed, or to define any system of doctrines.

Courts will resort to the original and long continued application of a religious charity by the trustees for aid in giving a construction to doubtful terms in the instrument which established the charity.

The individual religious opinions of the donor cannot be received to enlarge or contract the meaning of general terms used in the instrument by which he established the charity.

Where the original trustees appointed by the founder of a religious charity applied the fund to the support of certain religious doctrines, and that application has been long continued and acquiesced in, a court of equity will not interfere with the application, on the ground that the founder intended to limit the benefit of his charity to the support of different doctrines, unless that intention was plainly expressed by the donor.

The general meaning of the term, "minister of the Congregational persuasion," must be determined by the court as matter of law; and the testimony of witnesses to their opinions, derived from the study of books, cannot be received to prove the meaning of the term.

The term, "minister of the Congregational persuasion," has not now, and had not in 1817, any local meaning, peculiar to New-Hampshire; nor any peculiar and conventional sense in the usage of any religious sect or party.

Since 1817 there has been no change in the meaning of that term, or in the opinions and condition of the Congregational denomination, that can affect the construction of this will.

The term, "minister of the Congregational persuasion," as used in this will, is broad enough to include a Unitarian minister, who believes in the Father, Son and Holy Ghost, one in purpose and design but not the

 The Dublin Case.

same in substance, equal in power and glory; in the divinity of Jesus Christ in the sense that he is a divine person, but not in his supreme divinity in any sense in which he can understand the terms; in the resurrection of Jesus Christ from the dead; in the atonement in the sense of reconciliation by Jesus Christ, but not in the vicarious atonement; in the personality of the Holy Ghost; in regeneration by the Holy Spirit, but not in a supernatural regeneration; that the Scriptures contain a divine revelation, given by inspiration of God, and a perfect and the only rule of faith and practice, but in no other sense in the full inspiration of the Scriptures; in the future but not in the eternal punishment of the wicked; in the depravity of man, but not in the total depravity of the entire race; nor in the doctrines of election, predestination, the perseverance of the saints, and justification, as they are set forth in the Assembly's Catechism.

Unitarians, holding such opinions, are to be regarded, in the law of this State, and within the meaning of the term as used in this will, as one of the sects of the Christian religion.

There is no positive rule, nor any settled practice, in the Congregational denomination, which, under all circumstances, makes it necessary to regular ordination that the ordaining council should be called from neighboring churches.

Where, previous to the statute of 1819, authorizing individuals to form themselves into religious societies, a fund was given for the benefit of a voluntary religious society, connected with an organized church, and the members of the society afterwards adopt the provisions of that act, and continue their association in connection with the same church, so that the society associated under the statute is composed substantially of the same members as before, the society, thus associated under the statute, will be entitled to the benefit of the fund.

Seceders from a religious society are not entitled to share in the benefits of a fund held in trust for the society.

Towns in this State may legally hold funds in trust for the support of religion within their limits.

THIS was an Information, filed by the Attorney-General, at the relation of the Trinitarian Congregational Society in Dublin, and the Reverend Edward F. Abbot, and a Bill in Equity, prosecuted by the said Trinitarian Congregational Society and the said Abbot against The Town of Dublin, The First Congregational Society in Dublin, the Reverend Levi W. Leonard, and the Reverend William F. Bridge. The bill was filed December, 1855,

The Dublin Case.

and amended by making the Attorney-General a party, October 15, 1856. The bill and information stated the following facts :

The town of Dublin, on the 6th of August, 1777, made choice of the Reverend Edward Sprague as their gospel minister, and on the 25th of October, in the same year, Mr. Sprague accepted the charge by a letter, which is set out in the bill. The Congregational Church of the town also gave him a call, and on the 12th of November, 1777, he was ordained to the work of the gospel ministry, and the pastoral care of the church, according to Congregational usage ; and that relation continued till December 16, 1817, when he died.

On the 13th of December, 1817, Mr. Sprague made his will, by which he gave to the town of Dublin five thousand dollars, " to be kept at interest by said town forever, for the sole purpose of supporting the Christian religion in the Congregational Society, so called, in said town ; the interest thereof to be paid quarter-yearly to the minister of the Congregational persuasion who shall be regularly ordained and statedly preach in said Society." The town of Dublin was residuary legatee. The will was duly proved, and on the 5th of June, 1820, the five thousand dollars were paid to the town.

In the winter of 1819-1820 Samuel Twitchell and others, inhabitants of Dublin, a part or all of whom had been members of the church or congregation to which Mr. Sprague in his life time ministered, associated themselves into a society for moral and religious purposes, under the name of the First Congregational Society in Dublin, and that society, in connection with the church of which Mr. Sprague had been the pastor, afterward extended a call to Mr. Leonard, the defendant, and thereupon a council of ministers and delegates was convened at Dublin, by the major part of whom Mr. Leonard was, on the 6th of September, 1820, ordained as the pastor and christian teacher of said church

The Dublin Case.

and society, and has remained in that relation till the present time. On the 18th of June, 1855, the defendant, William F. Bridge, was installed as colleague of Mr. Leonard by a council of Unitarian ministers and delegates. From the settlement of Mr. Leonard till the filing of the bill the town has, directly or indirectly, paid the interest of the five thousand dollars to Mr. Leonard or Mr. Bridge.

In September, 1827, Stephen J. Woods, Abijah Richardson, Thomas Hay, Luke Richardson, Martha Woods, Lucy Hardy, Rebekah Hay and Elizabeth Richardson, inhabitants of said town, and residing within and members of what is termed in said will the "Congregational Society" in said town, some of whom had been members of said church while said Sprague was its pastor, and all of whom had been members of his congregation, being dissatisfied with the doctrinal opinions of Mr. Leonard upon fundamental points, withdrew from the church and congregation to which he ministered, and on the 21st of November, 1827, were regularly organized into a Congregational church, and about the same time the said Woods and others formed themselves into a religious association, for the support of the christian religion in said town, in connection with the last mentioned church; in 1836 built a meeting-house, and in April, 1837, organized under the act of 1827, and assumed corporate powers by the name of the "Trinitarian Congregational Society in Dublin."

The members of this last named society reside in Dublin, within the limits of the Congregational Society mentioned in the will, and the church is of the Congregational persuasion, in the sense in which those words were used in the will, and in which they were commonly used when the will was made and took effect; holding to the form of church government and ecclesiastical polity and to the doctrinal opinions commonly held by churches and ministers of the Congregational persuasion at that time. On the 12th of December, 1855, the complainant, Edward

The Dublin Case.

F. Abbot, being a minister of the Congregational persuasion in the sense aforesaid, was regularly ordained as the pastor and religious teacher of the said Trinitarian Congregational Church and Society, and now stately preaches in the meeting-house erected by that society.

Mr. Leonard and Mr. Bridge are not regularly ordained ministers of the Congregational persuasion, in the sense of the terms as used in the will, and in which they were generally used and understood when the will was made and took effect, but, on the contrary, are ministers of the Unitarian persuasion, and differ widely and radically from most or all persons of the Congregational persuasion, upon certain fundamental doctrines, which were held by Mr. Sprague, and which were commonly held, at the time the will was executed, by members of the Congregational persuasion, and which doctrines are in substance those contained in the "Assembly's Catechism," so called, taken as a whole, and in particular the doctrine of the Holy Trinity, of native total depravity, of vicarious atonement by Jesus Christ, of a supernatural regeneration by the Holy Ghost, of the eternal punishment of the wicked, and of the full inspiration and binding authority of the Holy Scriptures; some or all of which are rejected by Mr. Leonard and Mr. Bridge, and by the church and society with which they are connected.

The council by which Mr. Leonard was ordained was mostly composed of Unitarians; and the pastor of the Congregational church in Keene, the Rev. Dr. Barstow, and the delegate from that church, who were originally members of the council, dissented from the settlement of Mr. Leonard on the ground that he was a decided Unitarian, and refused to take any part in his ordination. The council by which Mr. Bridge was installed was wholly composed of ministers and delegates from churches of the Unitarian persuasion, having no ecclesiastical connection and not in fellowship with the Cheshire Conference of