Beatty Vs. Kurtz

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Appeal No. : 27 U.S. 566

Appellant : Beatty

Respondent : Kurtz

Judgement :

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Beatty v. Kurtz

27 U.S. (2 Pet.) 566

APPEAL FROM THE CIRCUIT COURT

OF THE COUNTY OF WASHINGTON

SYLLABUS

A lot of ground had, in the original plan of an addition to Georgetown, been marked "for the Lutheran Church," and by the German Lutherans of the place, had been used as a place of burial from the dedication, and who had erected a

schoolhouse on it, but no church exercising acts of protection and ownership over it at some periods by committees appointed by the German Lutherans, the original owner acquiescing in the same. This may be considered as a dedication of the lot to public and pious uses, and although the German Lutherans were not incorporated, nor were there any persons who, as trustees, could hold the property, the appropriation was also valid under the bill of rights of Maryland. The bill of rights, to this extent at least, recognizes the doctrines of the Statute of Elizabeth for charitable uses, under which it is well known that such uses would be upheld although there was no specific grantee or trustee. This might at all times have been enforced as a charitable and pious use through the intervention of the government as *parens patria* by its attorney general or other law officer. It was originally consecrated for a religious purpose. It has become a depository of the dead, and it cannot now be resumed by the heirs of the donor.

If the complainants in the circuit court were proved to be the regularly appointed committee of a voluntary society of Lutherans in actual possession of the premises, and acting by their direction to prevent a disturbance of that possession, under the circumstances of this case, there does not appear to be a serious objection to their right to maintain a suit for a perpetual injunction against the heirs of the donor, who sought to regain the property and to disturb their possession.

The only difficulty which presents itself upon the question whether the complainants in the circuit court have shown in themselves sufficient authority to maintain their suit is that it is not evidenced by any formal vote or writing. If it were necessary to decide the case on this point, under all the circumstances it might be fairly presumed. But this is not necessary, because this is one of those cases in which certain persons belonging to a voluntary society and having a common interest may sue in behalf of themselves and others having the like interests as part of the same society for purposes common to all and beneficial to all.

The appellees filed their bill in the circuit court against Charles A. Beatty and John T. Ritchie, which states in substance that the late Colonel Charles Beatty and George Frazier Hawkins, in the year 1769, laid out on lands belonging

to them, and adjoining the Town of Georgetown, a certain town known by the name of "Beatty and Hawkins' addition to Georgetown," the lots whereof were laid down and distinguished on a plot and disposed of by lottery. That Beatty, in laying out the said addition, distinguished and set apart a certain lot or portion of ground in the said addition for the sole use and benefit of the German Lutheran Church, declaring the same to be their absolute right and property, to be held by them for religious purposes and the use of said congregation and caused the same to be so entered and designated in the plot of said addition, as now appears by the plot and papers on record in the clerk's office for Washington, to which they beg leave to refer, which plot and papers were recorded under authority of the Act of Maryland, 1796, ch. 54, which lot is described in the said plot of said addition as the German Lutheran Church lot, and also in the general plot of the Town of Georgetown and its additions, deposited in the office of the clerk of the Corporation of Georgetown. That soon after the lots in the said addition were laid off and disposed of as aforesaid, the said lot was taken possession of by the said German Lutherans and was enclosed and a church erected thereon, and hath been kept and held by them ever since during a period, as they believe, of upwards of fifty years, and hath been used by them as a burying ground for the members of the said church, with the avowed intention of building thereon another church or place of worship, the building first erected being decayed, whenever their funds would enable them to do so. That during all this period, neither their possession nor title hath ever been questioned, and the lot has been exempted from taxation at their request by the Corporation of Georgetown as being church property. That Charles Beatty died about sixteen years ago, and without having made any conveyance of the said lot, and that Charles A. Beatty is his heir at law. They therefore pray that he may be made defendant and be compelled to convey the title to the complainants in trust for the German Lutheran Church.

They further state that the defendant John T. Ritchie, without any pretense of title, disputes the title of complainants

and their right of possession, and has undertaken to enter on part of the lot and to remove tombstones, &c.;, and they fear that he means to dispossess them, wherefore they pray subpoena, &c.;, and that they may be quieted in their possession of said lot and that the defendant, Ritchie, may be enjoined from disturbing their possession, and for general relief.

The answer of the defendants in the court below admits that Charles Beatty, deceased, did designate a lot in his addition to Georgetown by inscribing on the plot thereof these words, "for the Lutheran Church;" that they always understood and believed that he meant by that inscription to manifest an intention to appropriate that lot to the use of the Lutherans, provided they would build on it within a reasonable time a house of public worship, which would conduce to diffuse piety, to enhance the value of his property, and to adorn his addition to Georgetown. But they deny that this inscription was ever meant or could be interpreted to be a contract with the Lutheran Church to convey to that body the property in question. That the writing itself could not operate as a conveyance, and there was no consideration to sustain it as a contract. They deny that Charles Beatty ever declared the lot in question to be the absolute right and property of the Lutherans, or did in any manner by means thereof hold out inducements to them or the public to purchase tickets in the pretended lottery mentioned in the bill or to purchase and improve lots in that part of the town. They aver that no church had ever been built on it, and that its occupation by graves and a schoolhouse was a use of it by no means beneficial to defendants or him under whom they claimed.

The answer denies the possession averred in the bill and also that there ever was an organized congregation of German Lutherans in Georgetown.

It avers also that the lot in question has remained unenclosed for at least three-fourths of the time since it became a part of Georgetown, and that the enclosures which occasionally surrounded it were not erected by the complainants nor those whom they pretend to represent. The respondents

admit that the lot was used as a burying ground, but aver that it was thus used by Beatty's permission, and not exclusively by the Lutherans, but the public generally. But they further say that if the Lutherans had enjoyed the possession alleged in the complainants' bill, they might and should have enforced the rights thereby acquired at law, and ought not to have come into equity for a remedy. Finally, confessing that they had resumed possession of the property, they deny the authority of the complainants to act in behalf of the pretended German Lutheran Church, and pray the same benefit of these defenses as if they had been urged by plea to the bill.

The plaintiffs amended their bill by stating, the German Lutheran Church mentioned in their bill was composed of the members of the German Lutheran Church in Georgetown, duly organized as such; "that the lot was set apart by C. Beatty," from and out of that "part of the said land, composing said addition," of which he, the said Beatty, was seized.

"The said Beatty, by the said designation, declaration, and setting apart, holding out to the public, and to the German Lutherans particularly, inducements as well to purchase tickets in a lottery, by which the said lots were disposed of, as to purchase and improve that part of the town in other ways. And thereby meaning to transfer to the said German Lutherans, as soon as they should organize themselves into a congregation or church, all his right to said lot in fee, to be used for the religious purpose of such congregation or church, and thereby declaring that intention. That they organized themselves into a congregation or church and erected a church or house of worship on the said lot."

That the complainants and the congregation for whom they act have called upon C. A. Beatty and required a conveyance according to the promise and declared intent of the said Charles Beatty, deceased; that upon organizing the church or congregation aforesaid, certain officers, called a committee, were appointed to take charge of the concerns of the church, which appointments were from time to time made and renewed, and that complainants were appointed in 1824, and have continued to hold such appointment ever since.

To those amendments the defendants answered and denied all the allegations in the amended bill.

It was in evidence that soon after this lot was thus set apart for the Lutherans, it was, with Colonel Beatty's permission, taken possession of by certain persons of that sect in Georgetown, who had a log house erected on it, which was called a church and used as such frequently, and also as a schoolhouse by the German Lutherans. That in the year 1796, a German minister came from Philadelphia and was employed by them, and preached in this house for three months, being employed and paid by the German Lutherans of Georgetown, and about the year 1799, the congregation of German Lutherans, of which Travers, the witness in this cause, was one, employed a German minister who officiated in said house for about nine months. Though divine service was frequently administered in that building, there was at no other periods than those just mentioned a stationed preacher who ministered to a congregation in regular attendance there except a Mr. Brooke, who was an Episcopal clergyman and who, Dr. Balch testifies, had possession of that building as a church in 1779. In the same or the following year, a steeple was erected on the said house, in which a bell was hung at the expense and by the direction of the German Lutherans of Georgetown. This building some years afterwards went to decay, and no church has been since rebuilt on the lot, though efforts have been since made for that purpose, and as late as 1823 a considerable subscription was raised, but not sufficient for the object.

During the whole period from 1769 to the bringing of this suit, the lot in question was generally under enclosures, put up at the expense of the Lutherans of Georgetown and under the care and custody of a committee appointed by them. It has been continually so enclosed for more than twenty years before the entry and claim set up by the defendants in this suit. The said lot has been also used by the Germans as a burying ground from the year 1769 till a short time before the bringing this suit, and has been called and known as the Dutch burying ground, and one of the witnesses, Styles, acted as sexton under the orders of the

committee of the

congregation. It does not appear that the German Lutherans in Georgetown ever were incorporated by law as a religious society.

It also appeared from the evidence that from the year 1769 till within a month or two before the bringing this suit, no claim to the possession or property in the lot now in dispute was ever set up by Col. Charles Beatty or by either of the defendants, but on the contrary, Col. Charles Beatty, up to the time of his death, always declared it to be the property of the German Lutherans of Georgetown; his administrator, Abner Ritchie, who, it is stated, sold all his lots in said addition left by him at his death, never claimed or offered to sell the lot in question as part of his property; that his son and heir the defendant, Charles A. Beatty, has repeated the same declarations to a witness, (Mountz) a few years before this suit; he expressed

"his surprise that the Germans had been so indifferent about getting their title to this property, as he was always ready and willing to give them a deed for it."

A witness, Mr. Rhaeffer, testified that in 1823 the defendant Beatty, in his presence, declared, "that the lot aforesaid was the property of the Lutherans, and that he was very anxious to make them a deed." He also confirmed the evidence of the other witnesses.

It also appeared from the evidence that since the year 1769, the said lot has never been assessed for taxes to Col. Beatty or his heirs, nor have any taxes ever been paid by them. That it has always been recognized by the Corporation of Georgetown, since its charter in 1789, as the church property of the Lutherans, and as such has been exempted from taxation with other church property in the town.

It was in evidence that the Lutherans of Georgetown always had a church committee to act for them and to take charge and custody of the lot in question,

and the appellees constituted that committee from 1816 till the bringing this suit and to the present time. In virtue of that appointment, when Ritchie entered on the premises and threw down the fence and tombstones, they filed this bill for a conveyance

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in fee of the lot to complainants as trustees for said church, to be quieted in the possession thereof, and for an injunction to restrain the appellants from disturbing their possession, or trespassing on said lot.

The circuit court decreed a perpetual injunction against the defendants, the appellants, who, by their appeal, brought the case before this Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

Georgetown was erected into a town by an Act of the Legislature of Maryland passed in 1751, ch. 25. By subsequent acts, additions were made to the territorial limits of the town, and the town was created a corporation, with the usual municipal officers, by an Act of the Maryland legislature passed in 1789, ch. 23. The charter of incorporation has been subsequently amended by Congress by various acts passed upon the subject since the cession.

In the year 1769, Charles Beatty and George F. Hawkins laid out a town, known by the name of Beatty and Hawkins' addition to Georgetown and which is now included within its corporate limits. The lots of this addition were disposed

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of by way of lottery under the direction of commissioners appointed to lay out the same and conduct the drawing of the lottery. The books of the lottery and the plan of the lots and a connected survey thereof were afterwards, by act passed in 1796, ch. 54, ordered to be recorded in the clerk's office for the Territory of Columbia,

and copies thereof to be good evidence in all courts of law and equity in the state. Upon the original plan so recorded one lot was marked out and inscribed with these words, "for the Lutheran Church," and this lot was in fact part of the land of which Charles Beatty was seized.

The bill was brought up by the original plaintiffs, alleging themselves to be trustees and agents for the German Lutheran Church composed of the members of the German Lutheran Church of Georgetown, duly organized as such, in behalf of themselves and the members of the said church. It charges the laying out of the lot in question for the sole use and benefit of the Lutheran Church, to be held by them for religious purposes and the use of the congregation, as above-mentioned. That soon afterwards, the lot was taken possession of by the said German Lutherans in Georgetown, who organized themselves into a church or congregation and erected a church or house of worship thereon, and the lot was enclosed by them and a church erected thereon, and hath been kept and held by them during a period of fifty years, and hath been used as a burying ground for the members of the church with the avowed intention of building thereon another church or place of worship, the first building erected thereon being decayed, whenever their funds would enable them so to do. That during all this period, their possession has never been questioned, and the lot has been exempted from taxation as property set apart for a religious purpose. It further charges that upon the organization of the church or congregation, certain officers, called a committee and trustees, were appointed to take care of the said church, which appointments have been from time to time renewed; that in 1824 the plaintiffs were reappointed as such, having been so appointed at former times. It further charges that Charles Beatty died about sixteen years ago,

without having made any conveyance of the said lot, and that Charles A. Beatty, the defendant, is his heir and has the title by descent, and prays that he may be compelled to convey it to them. It further charges that Ritchie, the other defendant, has unwarrantably disputed their title and has entered upon the lot and removed some of the tombstones erected thereon, and means to dispossess the plaintiffs

and to remove the tombstones and graves. The bill therefore prays that they may be quieted in their possession and that a writ of injunction may issue, and for further relief.

The defendants put in a joint answer. They admitted that the lot was so marked in the plot as the bill states, and that it was Charles Beatty's intention to appropriate the same to the use of the Lutheran congregation, provided they would build thereon within a reasonable time a house of public worship. They deny that the German Lutherans were ever organized, as stated in the bill, or that any such church has been built, or that there has been any such possession or enclosure as the bill asserts, or that Charles Beatty ever made any conveyance of the property to transfer his title. They admit that the lot has been used as a graveyard, but not exclusively appropriated to the use of the Lutheran congregation. They admit that a building was erected thereon, but that it was used as a schoolhouse. They admit that the defendant, Beatty, is heir at law, and as such, that he claims the lot in question, and has authorized the defendant, Ritchie, to take possession thereof. They deny all the equity in the bill, as well as the authority of the plaintiffs to sue, declaring them to be mere volunteers and demanding proof of their authority, &c.;

The general replication was filed, and the cause came on for a hearing upon the bill, answer, exhibits and depositions, and the court decreed a perpetual injunction against the defendants, with costs. The appeal is brought from that decree.

Upon examining the evidence, it appears to us that the material allegations of the bill are satisfactorily established. It is proved that, shortly after the appropriation, and more

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than fifty years ago, the Lutherans of Georgetown proceeded to erect a log house on the lot which was used as a church for public worship by that denomination of Christians, and was also occasionally and at different times since used as a schoolhouse under their direction. That at a much later period, a steeple and bell were added to the building; that the land was used as a churchyard; that a sexton

appointed by Lutherans had the direction of it; that more than half of the lot is covered with graves, and others as well as Lutherans have been buried there; that the Lutherans have caused the lot to be enclosed from time to time as the fences fell into decay, and procured subscriptions for that purpose; that the possession of the Lutherans, in the manner in which it was exercised over the lot by erecting a house, by public worship, by enclosing the ground, and by burials, was never questioned by Charles Beatty in his lifetime or in any manner disturbed until a short period before the commencement of the present suit. That Charles Beatty in his lifetime constantly avowed that the lot was appropriated for the Lutherans and that they were entitled to it.

The Lutherans have constituted but a small number in the Town of Georgetown; they have not been able, therefore, to maintain public worship constantly in the house so erected during the whole period, and sometimes it has been intermitted for a considerable length of time. But efforts have been constantly made as far as practicable to keep together a congregation, to use the means of divine worship, and to support public preaching. The house, however, in consequence of inevitable decay, fell down some time ago, the exact period of which, however, does not appear, but it seems to have been more than forty years after its first erection. Efforts have since been made to rebuild it, but hitherto they have not been successful.

The Lutherans in Georgetown, who have possessed the lot in question, are not and never have been incorporated as a religious society. The congregation has consisted of a voluntary society, acting in its general arrangement by committees and trustees chosen from time to time by the Lutherans belonging to it. There do not appear to have been

any formal records kept of their proceedings, and there have been periods of considerable intermission in their appointment and action. There is no other proof that the plaintiffs are a committee of the congregation than what arises from the statement of witnesses that they were so chosen by a meeting of Lutherans and

that their appointment has always been acquiesced in by the Lutherans, and they have assumed to act for them without any question of their authority; that they are themselves Lutherans living in Georgetown, and forming a part of the voluntary society is not disputed.

There is decisive evidence also that the defendant Beatty has, since the decease of his father, repeatedly admitted the claim of the Lutherans to the lot, and his willingness that it should remain for them, as it had been originally appropriated. No assertion of ownership was ever made by him until the acts were committed which form the gravamen of the present bill.

Such are the material facts, and the principal questions arising upon this posture of the case are first, whether the title to the lot in question ever passed from Charles Beatty, so far at least as to amount to a perpetual appropriation of it to the use of the Lutheran Church or to the pious uses to which it has been in fact appropriated, and secondly, if so, whether it is competent for the plaintiffs to maintain the present bill.

As to the first question, it is not disputed that Charles Beatty did originally intend that this lot should be appropriated for the use of a Lutheran church in the town laid off by him. But as there was not at that time any church, either corporate or unincorporated, of that denomination in that town, there was no grantee capable of taking the same immediately by grant. Nor can any presumption of a grant arise from the subsequent lapse of time, since there never has been any such incorporated Lutheran church there capable of taking the donation. If, therefore, it were necessary that there should be a grantee legally capable of taking, in order to support the donation in this case, it would be utterly void at law, and the land might be resumed at

pleasure. To be sure, if an unincorporated society of Lutherans had, upon the faith of such donation, built a church thereon with the consent of Beatty, that might furnish a strong ground why a court of equity should compel him to convey the

same to trustees in perpetuity for their use, or at least to execute a declaration of trust that he and his heirs should hold the same for their use. For such conduct would amount to a contract with the persons so building the church that he would perfect the donation in their favor, and a refusal to do it would be a fraud upon them which a court of equity ought to redress. And if the Town of Georgetown had been capable of holding such a lot for such uses, there would be no difficulty in considering the town as the grantee under such circumstances, since the uses would be of a public and pious nature beneficial to the inhabitants generally. But it does not appear that Georgetown, in 1769, or indeed until its incorporation in 1789, was a corporation so as to be capable of holding lands as an incident to its corporate powers.

If the appropriation, therefore, is to be deemed valid at all, it must be upon other principles than those which ordinarily apply between grantor and grantee. And we think it may be supported as a dedication of the lot to public and pious uses. The bill of rights of Maryland gives validity to

"any sale, gift, lease, or devise of any quantity of land not exceeding two acres for a church, meeting or other house of worship, and for a burying ground, which shall be improved, enjoyed, or used only for such purpose."

To this extent at least it recognizes the doctrines of the Statute of Elizabeth for charitable uses, under which it is well known that such leases would be upheld although there were no specific grantee or trustee. In the case of *Town of Pawlet v. Clarke,* 9 Cranch 292, 13 U. S. 331 , this Court considered cases of an appropriation or dedication of property to particular or religious uses as an exception to the general rule requiring a particular grantee, and like the dedication of a highway to the public. [Footnote 1] There

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is no pretense to say that the present appropriation was ever attempted to be withdrawn by Charles Beatty during his lifetime, and he did not die until about sixteen years ago. On the contrary, the original plan and appropriation were

constantly kept in view by all the legislative acts passed on the subject of this addition. The plan was required to be recorded as an evidence of title, and its incorporation into the limits of Georgetown had reference to it. We think then it might at all times have been enforced as a charitable and pious use, through the intervention of the government as *parens patriae* by its attorney general or other law officer. It was originally consecrated for a religious purpose, it has become a depository of the dead, and it cannot now be resumed by the heirs of Charles Beatty.

The next question is as to the competency of the plaintiffs to maintain the present suit. If they were proved to be the regularly appointed committee of a voluntary society of Lutherans, in actual possession of the premises and acting by their direction to prevent a disturbance of that possession under circumstances like those stated in the bill, we do not perceive any serious objection to their right to maintain the suit. It is a case where no action at law, even if one could be brought by the voluntary society (which it would be difficult to maintain) would afford an adequate and complete remedy. This is not the case of a mere private trespass, but a public nuisance, going to the irreparable injury of the Georgetown congregation of Lutherans. The property consecrated to their use by a perpetual servitude or easement is to be taken from them; the sepulchers of the dead are to be violated; the feelings of religion and the sentiment of natural affection of the kindred and friends of the deceased are to be wounded, and the memorials erected by piety or love to the memory of the good are to be removed so as to leave no trace of the last home of their ancestry to those who may visit the spot in future generations. It cannot be that such acts are to be

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redressed by the ordinary process of law. The remedy must be sought, if at all, in the protecting power of a court of chancery, operating by its injunction to preserve the repose of the ashes of the dead and the religious sensibilities of the living.

The only difficulty is whether the plaintiffs have shown in themselves a sufficient authority, since it is not evidenced by any formal vote or writing. If it were

necessary to decide the case on this point, we should incline to think that under all the circumstances it might be fairly presumed. But it is not necessary to decide the case on this point, because we think it one of those cases in which certain persons, belonging to a voluntary society and having a common interest, may sue in behalf of themselves and others having the like interest as part of the same society for purposes common to all and beneficial to all. Thus, some of the parishioners may sue a parson to establish a general modus without joining all, and some of the members of a voluntary society or company, when the parties are very numerous, may sue for an account against others, without joining all. [Footnote 2]

And upon the whole we are of opinion that the decree of the circuit court ought to be

Affirmed with costs. [Footnote 3]

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington and was argued by counsel, on consideration whereof it is considered, ordered, and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.

[Footnote 1]

See also Brown v. Porter, 10 Mass. 93; *Weston v. Hunt,* 2 Mass. 500; *Inhabitants of Shapleigh v. Gilman,* 13 Mass. 190; *Burrard's Case,* 12 Jac.C.B., 2 Mod.Ent. 413b.

[Footnote 2]

Cooper's Eq.Plead. 40, 41; Mitf.Plead. 145.

[Footnote 3]

"If a layman, by the dissolution of monasteries, hath a monastery in which there is a church, part of it, and he suffers the parishioners for a long time to come there to

hear divine service and to use it as a parish church, that shall give a jurisdiction to the ordinary to order the seats, because that now, in fact, it becomes the parish church, which before was not subject to the ordinary."

Adjudged 12 Ja.C.B.; *Buzzard's Vase,* 2 Mod.E. 413. 6.