

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

In re: )  
Multi-Circuit Episcopal Church ) **Civil Case Numbers:**  
Litigation ) CL 2007-248724,  
) CL 2006-15792,  
) CL 2006-15793,  
) CL 2007-556,  
) CL 2007-1235,  
) CL 2007-1236,  
) CL 2007-1237,  
) CL 2007-1238,  
) CL 2007-1625,  
) CL 2007-5249,  
) CL 2007-5250,  
) CL 2007-5362,  
) CL 2007-5363,  
) CL 2007-5364,  
) CL 2007-5682,  
) CL 2007-5683,  
) CL 2007-5684,  
) CL 2007-5685,  
) CL 2007-5686,  
) CL 2007-5902,  
) CL 2007-5903, and  
) CL 2007-11514

**ST. STEPHEN'S CHURCH OPENING BRIEF RE 1874 DEED**

St. Stephen's Church ("St. Stephen's"), by its counsel, respectfully submits this opening brief addressed to the sole remaining question presented by its §57-9 petition: whether, as a matter of law, the St. Stephen's 1874 Deed contains an enforceable restriction as to the use of the property that takes it out of §57-9.<sup>1</sup> St. Stephen's contends that the Court's prior rulings in the

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<sup>1</sup> The parties previously stipulated: "There is no factual title dispute with respect to the Deed. The issue presented to the Court is whether the Deed creates an enforceable restriction as to who may use the property conveyed thereby. The Court's ruling on whether the Deed creates such a restriction will dispose of the dispute regarding whether the property conveyed by the Deed is covered by St. Stephen's §57-9 Petition" (Stipulations of Fact Regarding St. Stephen's Church 1874 Deed, dated October 3, 2008 ("Initial Stip."), at ¶8).

case, the statutory authority for the 1874 Deed, and the language of the deed itself compel the conclusion that the 1874 Deed parcel is covered by §57-9.

### **STATEMENT OF FACTS**<sup>2</sup>

#### **I. The Statutory Authority for the 1874 Deed: Virginia Code 1873, Chapter 76**

As this Court previously held,<sup>3</sup> churches (both local and general) in pre-1867 Virginia were prohibited by the state constitution from incorporating and, thus, from holding property in corporate form. Voluntary associations such as churches (both local and general) were considered “indefinite” beneficiaries, and conveyances to such entities “could not be enforced” unless authorized by statute. *Brooke v. Shacklett*, 54 Va. 301, 303 (1856). See *Gallego’s Ex’rs v. Attorney General*, 30 Va. 450 (1832). As of 1867, the only statutorily authorized means of conveying property to churches in Virginia was a *deed*, and only a *local congregation* could receive such a conveyance. *Brooke*, 54 Va. at 309; *Seaburn’s Ex’r v. Seaburn*, 56 Va. 423 (1859) (invalidating, as beyond the 1849 church property statute, an attempt to convey property by devise).

Chapter 76 of the 1873 Virginia Code constituted the required statutory authority for the 1874 Deed at issue here. Section 8 of Chapter 76 provided that “[e]very conveyance shall be valid which hereafter shall be made of land for the use or benefit of any religious congregation, as a place for public worship . . . and the land shall be held for such use or benefit, and for such purpose, and not otherwise.” Section 9 of Chapter 76 provided that “[t]he circuit court of the county . . . wherein there may be any parcel of such land . . . may, on application of the proper

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<sup>2</sup> This Statement of Facts is based in part upon the stipulations of fact previously reached by the parties. See Initial Stip., *passim*; Supplemental Stipulation between St. Stephen’s Church and the Protestant Episcopal Church in the Diocese of Virginia and The Episcopal Church Regarding St. Stephen’s Church 1874 Deed, dated October 13, 2008.

<sup>3</sup> Letter Opinion Regarding ECUSA/Diocese’s Assertion that 57-9 is Unconstitutional Because It Violates the Contracts Clause, dated August 19, 2008, at 12-16 (“Aug. 19 Op.”).

authorities of such congregation, from time to time, appoint trustees . . . to effect or promote the purpose of the conveyance . . . and the legal title to such land shall, for that purpose, be vested in the said trustees . . . and their successors.” Significantly, the remainder of Section 9 of Chapter 76 provided:

And whereas divisions have occurred in some churches or religious societies to which such religious congregations have been attached, and such divisions may hereafter occur, it shall, in any such case, be lawful for the communicants and pew holders and pew owners, over twenty-one years of age, by a vote of a majority of the whole number, as soon as practicable after the passage of this act, or whenever such division shall occur, to determine to which branch of the church or society such congregation shall thereafter belong; and which determination shall be reported to the said court, and if approved, shall be so entered on the minutes, and shall be conclusive as to the title to and control of any property held in trust for such congregation, and shall be respected and enforced accordingly, in all the courts of this commonwealth.

**The foregoing quoted provision of Section 9 is the predecessor to §57-9(A) invoked by St. Stephen’s.<sup>4</sup>**

As this Court recognized in ruling that “the Contracts Clause protects only contractual rights that existed prior to the effective date of the 1867 predecessor statute to 57-9,”<sup>5</sup> the 1874

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<sup>4</sup> See Letter Opinion on the Applicability of Va. Code §57-9(A), dated April 3, 2008 (“Apr. 3 Op.”), at 67. For the convenience of the Court, pertinent excerpts from Chapter 76 of the 1873 Virginia Code are attached hereto as Appendix A.

<sup>5</sup> Aug. 19 Op. at 4, 6 (footnote omitted); *Ogden v. Saunders*, 25 U.S. 213, 261, 262 (1827)(the Contracts Clause embodied an “overruling and admitted distinction, between [laws] which operate retrospectively, and those which operate prospectively”; the Contracts Clause “forbid[s] the application of the repealing law to past contracts, and to those only”); *Weaver v. Graham*, 450 U.S. 24, 30 (1981)(the Contracts Clause “solely protect[s] pre-existing entitlements”); see also *Fairfax Hosp. Ass’n v. Sines*, 1989 WL 641952, \*2 (Va. App. 1989) (it is a “fundamental tenet” that the Contracts Clause restricts impairment of only “already existing private contracts”).

Deed is deemed to incorporate the law in effect as of the date of its execution.<sup>6</sup> It is thus settled that, as a matter of fact and law, the 1874 deed incorporates both the provisions of Virginia law pertaining to conveyances to religious congregations in effect at the time and the division statute itself.

## II. The St. Stephen's Church 1874 Deed

On or about October 2, 1874, acting expressly pursuant to Chapter 76, Section 9, of the 1873 Virginia Code, the vestry of the Protestant Episcopal Church in Northumberland County petitioned the Northumberland County, Virginia, Circuit Court to appoint trustees empowered to receive a conveyance of property (Initial Stip. ¶¶1-2; Ex. 1). On October 2, 1874, that Circuit Court entered an Order granting the foregoing petition (*id.* ¶2, Ex. 1).<sup>7</sup>

Just over a month later, by deed dated November 20, 1874 (“1874 Deed”), certain named grantors conveyed legal title to certain property to the trustees identified in the foregoing October

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<sup>6</sup> *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398, 429-30 (1934) (“ ‘the laws which subsist at the time and place of the making of a contract’ ” merely “ ‘enter into and form a part of it’ ”).

<sup>7</sup> The October 2, 1874, Order provided in pertinent part (*id.*, emphasis supplied):

On the motion of James F. Ball, S.A.M. Leland, William Brown, Slater Cowart, William A. Hudnall, Octavius H. Cox and James S. Gilliam, the vestry of the Protestant Episcopal Church in the County of Northumberland and the proper authorities of said Church, It is ordered that the said James F. Ball, William Brown, Slater Cowart, William A. Hudnall, Octavius H. Cox, Sam'l A.M. Leland, Charles Carter, & Jas. S. Gilliam and John S. Davenport and their successors be, and they are hereby appointed Trustees of the said Protestant Episcopal Church, *pursuant to the 9th section of Chapter 76 of the Code of Virginia 1873 (Page 663)*

2, 1874 Order (Initial Stip. ¶3).<sup>8</sup> The 1874 Deed – which also expressly refers to Chapter 76, Virginia Code 1873 -- provides in pertinent part as follows (emphasis supplied):

This deed made this the Twentieth day of November in the year of Our Lord one thousand Eight hundred and Seventy four between Peter C. Cox and Sophia Thibodeaus D. Cox his wife of the first part, and James F. Ball, Sam'l A.M. Lealand, William A. Hudnall, William Brown, Slater Cowart, Octavius H. Cox, Charles Carter, James S. Gilliam and John S. Davenport, of the second part, all of the County of Northumberland, State of Virginia, Witnesseth, that the *said parties of the first part* for and in consideration of the sum of Fifty dollars (\$50) to them in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *have bargained and sold* and by these presents do bargain, sell *and convey to the said parties of the second part as trustees duly legalized and appointed by the Circuit Court of said County in pursuance of section 9, chapter LXXVI of the code of Va. 1873 all of that certain lot, parcel or piece of land situate in Heathsville in said County* and included in & bounded by the following courses & distances, beginning at a corner post on the road side leading from Springfield Gate to John D. Betts' house, thence South 33 1/4° East 14,32 poles to a post in front of Mrs. Deshields old kitchen, thence North 61 1/4° East 2,08 poles to a locust tree, thence, North 73 3/4° East 3,32 poles to a corner post of the enclosure around Mrs. Deshields kitchen yard, thence North 66 1/2° East 2,00 poles in said Cox's lot corner to this & side to said Cox, thence North 8 1/2° West 10,80 poles to a post on road leading to John D. Betts' house, corner to this & said Cox, thence South 85° West 13,10 poles to the point of beginning, Containing an area of one hundred and twenty poles or *three quarters of an acre. To have and to hold the said lot, parcel or piece of land with all and singular the privileges & appurtenances thereto belonging unto the said parties of second part their assigns and successors who may be legally appointed from time to time, In trust nevertheless and for the sole use and benefit of the religious society and congregation known as the Protestant Episcopal Church for the purpose of erecting a house for divine worship and such other houses as said congregation may need, And said church or house for divine worship when so built shall be used and enjoyed by said religious society or congregation according to the laws and canons of said church not inconsistent with the laws and constitution of Virginia . . . .*

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<sup>8</sup> For the convenience of the Court, The 1874 Deed is attached hereto as Appendix B. The 1874 Deed also comprises Exhibit 8 to the Stipulation between St. Stephen's Church and the Protestant Episcopal Church in the Diocese of Virginia and The Episcopal Church Regarding Property Subject to St. Stephen's Church Va. Code §57-9 Petition, dated September 9, 2008.

At the time the above vestry petition seeking appointment of trustees was filed, the local congregation envisioned by the statute in question had yet to be formed (Initial Stip. ¶¶3-5). Sometime after the entry of the October 2, 1874, Order, the congregation was formed and, as envisioned by the 1874 Deed, the “house of divine worship” was “erect[ed]” during the approximate period of 1874-1876 (*see* Initial Stip. ¶¶3-5, Ex. 2). The church thus built was first named Emmanuel P.E. Church (*id.*). Thereafter, on April 30, 1881, this same church was consecrated as St. Stephen’s Church (*id.*, Ex. 3), and has been continuously used by St. Stephen’s as its church from the completion of construction to the present (*id.* ¶5).

As noted above, there is no factual dispute about how title has been held since the date of the Deed: since the date of the Deed, legal title has been vested in the trustees of St. Stephen’s Church for the benefit of the congregation (Initial Stip. ¶¶6, 8).

### ARGUMENT

The Court’s prior rulings in this case are dispositive of the sole legal issue before the Court. In particular, the Court previously expressly held that deeds that post-date the February 18, 1867, effective date of §57-9 (or its predecessor statute) are subject to that statute (Aug. 19 Op. at 4, 6).

As it turns out, the language of the 1874 Deed here expressly subjects the use of the property conveyed thereby to uses “not inconsistent with the laws and constitution of Virginia” (Appendix B). Indeed, since the 1874 Deed expressly refers to Chapter 76 of the 1873 Virginia Code -- the predecessor statute to §57-9 -- it is plain that the grantor specifically intended to convey the property to the congregation subject to all of the statutory rights reflected in Chapter 76, including the right of the congregation to vote to disaffiliate from the denomination identified in the deed.

*Finley v. Brent*, 87 Va. 103 (1890), *Brooke v. Shacklett*, 54 Va. 301 (1856), and *Hoskinson v. Pusey*, 73 Va. 428 (1879) require no different result, since each of those cases involved deeds that pre-date the predecessor statute to §57-9. The pre-1867 deed at issue in *Finley v. Brent* contained a provision that restricted the property at issue “for the use and benefit of the religious congregation of the of the Methodist Protestant Church at Heathsville.” The Virginia Supreme Court held that the lower court’s construction of the predecessor to §57-9, by which the lower court allowed the congregation to vote to leave the Methodist Protestant Church and join the Methodist Episcopal Church South Virginia taking the property in question, worked a retroactive impairment of the 1860 deed in violation of the Contracts Clause. But, as this Court observed (*see* Apr. 3 Op. at 69), *Finley* is distinguishable from the present case. Unlike the pre-1867 *Finley* conveyance, the conveyance here reflected by the St. Stephen’s 1874 deed occurred *after* the enactment of the predecessor to §57-9 – Chapter 76 of Virginia Code 1873 -- and was, therefore, subject to that statute. *Home Building & Loan Assn. v. Blaisdell*, *supra*, 290 U.S. at 429-30 (“ ‘the laws which subsist at the time and place of the making of a contract’ ” merely “ ‘enter into and form a part of it’ ”). Indeed, not only does the 1874 Deed expressly state that the property is to be used in a manner “not inconsistent with the laws and constitution of Virginia,” the 1874 Deed and the circuit court order authorizing the conveyance both expressly cited Chapter 76 of the 1873 Virginia Code -- the very statute that authorized disaffiliation votes as a remedy for denominational divisions.

In *Brooke v. Shacklett*, in the face of a deed conveying land to trustees of a local congregation of the Methodist Episcopal Church, the Virginia Supreme Court upheld the vote of the majority of that local congregation to affiliate with a different branch of Methodism. On account of the division of the Methodist Episcopal Church, the *Brooke* court did not construe the deed

language identifying the denominational affiliation of local congregation to constitute an enforceable restriction on the use of the property only by a congregation that continued its original affiliation. The St. Stephen's §57-9 vote calls for the same result.

*Hoskinson v. Pusey* is also not to the contrary. The *Hoskinson* court determined that, in a church property dispute between the majority and the minority factions of a Methodist congregation, the congregational vote by which a local congregation sought to affiliate with the Methodist Church South was unauthorized by the plan of separation adopted by the Methodist Episcopal Church. The *Hoskinson* court also rejected the alternative contention of the congregation that the predecessor to the §57-9 division statute authorized its action, since there was no evidence before the court that the vote complied with that predecessor statute. Although the *Hoskinson* court relied on a provision in one deed stating that the property was conveyed to trustees for the purpose of building "a house or place of worship for the use of the Methodist Episcopal Church," and in the other deed, a provision that the property was conveyed for use as a parsonage for ministers of the Methodist Episcopal Church, both deeds pre-dated the division statute, and, in any event, the congregation appeared to have failed to satisfy that statute's filing requirements. Thus, the *Hoskinson* court had no occasion to determine whether it would have reached the same result had the case involved post-1867 deeds (*see also* Apr. 3 Op. at 66, 67-68, in which this Court noted that *Hoskinson* involved pre-1867 deeds that "contained the exact same language as did the deed in *Brooke*" and that the court there reached no decision regarding the applicability of the division statute itself).

The language in the 1874 Deed referring to the Protestant Episcopal Church is language of identification only, used but once in the deed. As such, this identifier should not be read per-



manently to restrict the use of the property solely to and by those affiliated with a particular denomination, for if it were so construed, it would defeat entirely the purpose of §57-9(A).

**CONCLUSION**

For the reasons set forth above, St. Stephen's Church respectfully urges the Court to rule that the 1874 Deed parcel is covered by St. Stephen's Church §57-9 petition.

October 28, 2008

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28<sup>th</sup> day of October, 2008, a copy of the foregoing St. Stephen's Church Opening Brief Re 1874 Deed was sent by electronic mail and first-class mail, postage prepaid, to:

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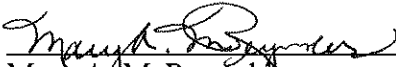
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## Appendix A

THIRD EDITION

OF THE

# CODE OF VIRGINIA:

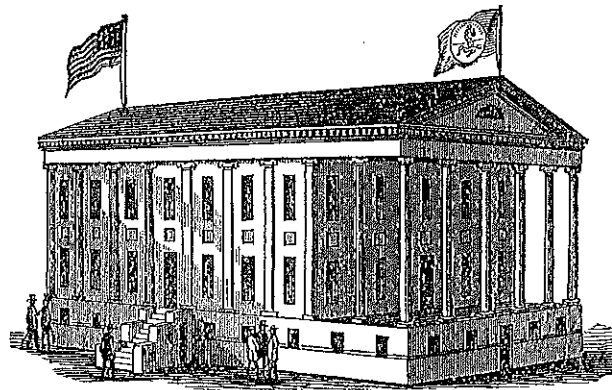
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LEGISLATION TO JANUARY 1, 1874.

PREPARED BY

GEORGE W. MUNFORD.

PUBLISHED FOR THE STATE OF VIRGINIA, PURSUANT TO LAW, UNDER THE DIRECTION  
OF R. F. WALKER, SUPERINTENDENT OF PUBLIC PRINTING.



RICHMOND:

PRINTED BY JAMES E. GOODE.

1873.

hypocrisy and meanness, ly Author of our religion, chose not to propagate it y power to do; that tho s, civil as well as ecclesiast- uninspired men, have as- ng up their own opinions ufallible, and as such, est- ablished and maintained world, and through all utions of money for the is sinful and tyrannical; at teacher of his own re- comfortable liberty of giving e morals he would make e persuasive to righteous- hose temporary rewards ir personal conduct, are utting labors for the in- e no dependence on our in physics or geometry; rworthy the public con- eing called to offices of ource this or that reli- those privileges and ad- citizens, he has a natural des of that religion it is poly of worldly honors fess and conform to it; do not withstand such to lay the bait in their to lay his powers into the or propagation of prin- lengerous fallacy, which y, being of course judge rule of judgment, and nly as they shall square gh for the rightful pur- erfere, when principles od order; and finally, erself; that she is the as nothing to fear from armed of her natural asing to be dangerous

no man shall be com- ship, place or ministry oledsted or burthened, on account of his reli- be free to profess, and atters of religion, and

that the same shall in no wise diminish, enlarge or affect their civil capacities.

"And though we well know that this assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies constituted with powers equal to our own, and that, therefore, to declare this act to be irrevocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind; and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right."

*Rights asserted therein, re-affirmed.*

2. The general assembly doth now again declare, that the rights asserted in the said act are of the natural rights of mankind.

## CHAPTER LXXVI.

### OF CHURCH PROPERTY, BENEVOLENT ASSOCIATIONS AND OBJECTS.

Sec.	Sec.
1. Appropriation of the property held by the Episcopal church before the revolution.	10. How trustees to hold books and furniture.
2. Overseers of the poor to sell globe lands.	11. } Suits by and against trustees; quantity
3. How they may recover by suit, land and its profits.	12. } of land to be held, limited.
4. Limitation to their power.	13. } Religious and benevolent associations;
5. How compelled to execute this law.	14. } provision for sale of their property;
6. How globe and church property appropriated.	15. } power of courts; amount of land limited.
7. Provision as to donations, &c.	16. Books or furniture belonging to benevolent associations, how held.
8. Property acquired since the revolution for a church, burial place or residence of a minister, how held.	17. Benevolent objects; artificial limbs for soldiers maimed in war.
9. Power of circuit courts to appoint trustees to execute trusts for churches; on divisions of churches, how property to be controlled.	18. Appropriation to meet charges.
	19. } Rules and regulations; surgeon; vac-
	20. } cancy in his office, how supplied.
	21. }

*Appropriation of the property held by the Episcopal church before the revolution.*

1. All the laws relative to the former Protestant Episcopal church having been repealed by the act of the twenty-fourth day of January, 1801-2, p. 8, c. 5. 1 R. C., p. 79, c. 32. seventeen hundred and ninety-one,\* and the principle having been

\* In 1776 an act passed for exempting the dissenting society of dissenters from contributing to the support of the church and its ministers.—Hen. Stat., vol. 9, p. 164, c. 2. Former acts, providing salaries for the ministers, which had been suspended, from to time (see Hen. Stat., vol. 9, p. 312, c. 16; p. 387, c. 13; p. 469, c. 18; p. 678, c. 38; vol. 10, p. 111), were in 1779 repealed.—Id. vol. 10, p. 197, c. 36. As to this repealing act, and the previous laws, see Jefferson's Works, vol. 1, p. 31, 2. In 1784, an act passed for incorporating the Protestant Episcopal church.—Hen. Stat., vol. 11, p. 532. Then in 1785 there was an act to authorize the election of certain vestries.—12 Hen. Stat., p. 93, c. 37. In 1786 the act for incorporating the church was repealed.—Id., p. 266, c. 12. And in 1788, there was an act giving certain powers to the trustees of the property of the church.—Id., p. 705, c. 47. The act of the 24th of January, 1799, after reciting that these several laws of 1776, 1779, 1784, 1785, 1786 and 1786, "do admit the church established under the regal government, to have continued so, subsequently to the constitution; have bestowed property upon that church; have asserted a legislative right to establish any religious sect, and have incorporated religious sects, all of which is inconsistent with the principles of the constitution and of religious freedom, and manifestly tends to the establishment of a national church," repealed those laws and declared them to be void. For the judicial decisions as to the constitutionality of the act of 1799, and that of 1802, see Turpin, &c. v. Lockett, &c., 6 Call 113, and Selden, &c., v. The overseers of the poor, 11 Leigh 127.



held by the overseers of any county under the said act of the twelfth of January, eighteen hundred and two, or under this or any other act, which may not have been applied to some particular object under a local statute passed for the purpose, shall be appropriated to such object or objects (other than for a religious purpose) as may be voted for in such county (at such time and place as the county court may prescribe) by a majority of the persons entitled to vote in the county for a delegate therefrom to the general assembly, and, if no such object be so voted for, shall remain vested in the said overseers and be appropriated by them for the benefit of the poor of such county.

*Provision as to donations, &c.\**

7. Where, previous to the thirtieth of January, eighteen hundred and six, any donation was made of money or any other thing, for a charitable purpose, and the donation was to be controlled or managed by a vestry, the overseers of the poor of the county or town in which the said charity was intended by the donor to be exercised, shall exercise the same powers, and perform the same duties, respecting the said donation, that could or ought to have been exercised and performed by the vestry if it had continued to exist and been a corporate body, and shall apply such money or other thing in such manner as may have been directed by the donor.

1805-6, p. 43,  
c. 74, § 1, 2.  
2 R. C., p. 268,  
§ 12.  
Gilm., 336.

*Property acquired since the revolution, for a church, burial place, or residence of a minister, how held.*

8. Every conveyance, devise or dedication, shall be valid, which, since the first day of January, seventeen hundred and seventy-seven, has been made; and every conveyance shall be valid which hereafter shall be made of land for the use or benefit of any religious congregation, as a place for public worship, or as a burial place, or a residence for a minister, or for the use or benefit of any church, or religious society, or a residence for a bishop, or other minister or clergyman, who, though not in special charge of a congregation, is yet an officer of such church or religious society, and employed under its authority and about its business; and the land shall be held for such use or benefit, and for such purpose, and not otherwise.

1806-7, c. 107,  
p. 907.

*Power of circuit courts to appoint trustees to execute trusts for churches; on divisions of churches, how property to be controlled.*

9. The circuit court of the county or corporation wherein there may be any parcel of such land, or the greater part thereof, may, on application of the proper authorities of such congregation, from time to time, appoint trustees, either where there were or are none, or in place of former trustees, and change those so appointed, whenever it may seem to the court proper, to effect or promote the purpose of the conveyance, devise or dedication; and the legal title to such land shall, for that purpose, be vested in the said trustees, for the time being, and their successors. And whereas divisions have occurred in some churches

1806-7, c. 210,  
p. 649, 650.  
See const. of  
Va., art. 11,  
church prop'ty.

\* Amended by legislature at Richmond 1864, c. 71, p. 67. Amendment omitted.

or religious societies to which such religious congregations have been attached, and such divisions may hereafter occur, it shall, in any such case, be lawful for the communicants and pew holders and pew owners, over twenty-one years of age, by a vote of a majority of the whole number, as soon as practicable after the passage of this act, or whenever such division shall occur, to determine to which branch of the church or society such congregation shall thereafter belong; and which determination shall be reported to the said court, and if approved, shall be so entered on the minutes, and shall be conclusive as to the title to and control of any property held in trust for such congregation, and shall be respected and enforced accordingly, in all the courts of this commonwealth. And whereas, there are churches or religious societies which are entirely independent in their organization of any other church, or any general society in which divisions have occurred, or may occur, in case of division in any such independent church or society, a majority of the members thereof, entitled to vote by its constitution, as existing at the time of such division, or where such church or society has no written constitution, entitled to vote by the ordinary practice or custom of such church or society, shall decide the right, title and control of all property held in trust for such church or society, or the religious congregation connected therewith, and their decision shall be reported to such court, and if approved by it, shall be so entered on the minutes, and shall be final as to such right of property so held.

*How trustees to hold books and furniture.*

1866-7, c. 107,  
p. 907.

10. When books or furniture shall be given or acquired for the benefit of such congregation, church or religious society, to be used on the said land in the ceremonies of public worship, or at the residence of the minister, the same shall stand vested in the trustees having the legal title to the land, to be held by them as the land is held, and upon the same trusts.

*Suits by and against trustees; quantity of land to be held limited.*

1841-2, p. 60,  
c. 102.

11. The said trustees may, in their own names, sue for and recover such land or property, and be sued in relation thereto. Such suit, notwithstanding the death of any of the said trustees, or the appointment of others, shall proceed in the names of the trustees by or against whom it was instituted.

Id. and 1805-6,  
c. 45, p. 161.  
See const. of  
Va., art. 11,  
church prop'ty.

12. Such trustees shall not take or hold at any one time more than two acres of land in an incorporated town, nor more than seventy-five acres out of such a town.\*

*Religious and benevolent associations; provision for sale of their property; power of courts; amount of land limited.*

1852, p. 80, c. 90,  
§ 1, 2.  
1855-6, p. 34,  
c. 37.

13. Whenever any religious congregation, benevolent or literary association, for whose use a conveyance, devise or dedication of land has been lawfully made, shall deem their interest will be promoted by a sale of such land, it shall be lawful for any member of such congrega-

\*Amended by legislature at Richmond 1861-2, c. 68, p. 82. Amendment omitted.



## Appendix B

and admitted to records.

Rec'd  
Wm. Lovell

That Deed made this the twentieth day of November in the year of our Lord one thousand eight hundred and seventy four between Peter L box and Sophia Theodoreas B box his wife of the first part, and James F. Ball, Saml A Mc Lealand, William A. Hudson, William Brown, Slater Corran, Octavius H box Charles Barber, James S Gilliam and John S Gaven part of the second part all of the County of Northumberland, State of Virginia, Withwithe, that the said parties of the first part for and in consideration of the sum of fifty dollars (\$50.) to them in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold and by these presents do bargain, sell and convey to the said parties of the second part as trustees duly legalized and appointed by the Circuit Court of said County in pursuance of section 9, chapter LXXVI of the code of Va. 1873 all of that certain lot parcel or piece of land situate in Heathsville in said County and made in & bounded by the following courses & distances, beginning at a corner post on the road side leading from Springfields gate to John S. Bate's house, thence South 33 1/4 East 14,32 poles to a post in front of Mrs. Deshields old kitchen, thence North 61 1/4 East 2,08 poles to a locust tree, thence North 73 3/4 East 3,32 poles to a corner post of the enclosure around Mrs. Deshields kitchen yard, thence North 66 1/4 East 2,00 poles in said lot's lot corner to this & side to

said Loax, thence north 87° West 190 poles to a post on road leading to John  
 D. Betts house, corner to Thers & said Loax, thence south 85° West 130 poles to the  
 point of beginning, containing an area of one hundred and twenty poles or  
 three quarters of an acre. To have and to hold the said lot, parcel or  
 piece of land with all and singular the privileges & appurtenances thereto  
 belonging unto the said parties of second part their assigns and successors  
 who may be legally appointed from time to time, in trust nevertheless and  
 for the sole use and benefit of the religious society and congregation known  
 as the Protestant Episcopal Church for the purpose of erecting a house for divine  
 worship and such other houses as said congregation may need, and said  
 church or house for divine worship when so build shall be used and enjoyed  
 by said religious society or congregation according to the laws and customs  
 of said church not inconsistent with the laws and constitution of Virginia.  
 In testimony whereof the parties hereto have set their names and affixed  
 their seals this the day and year first above written

*J. B. Loax*  
*L. J. D. Loax*

*Seal*  
*Seal*

State of Virginia  
 Northumberland County to wit.

I William S. Gralle clerk of  
 the County Court of Northumberland County in the State of Virginia do certify  
 that L. J. D. Loax the wife of J. B. Loax whose names are signed to this  
 instrument were on the 20<sup>th</sup> day of November AD 1874, personally