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## TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1939

No. 690

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MINERSVILLE SCHOOL DISTRICT, BOARD OF  
EDUCATION OF MINERSVILLE SCHOOL DIS-  
TRICT, ET AL., PETITIONERS,

vs.

WALTER GOBITIS, INDIVIDUALLY, AND LILLIAN  
GOBITIS AND WILLIAM GOBITIS, MINORS, BY  
WALTER GOBITIS, THEIR NEXT FRIEND

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR CERTIORARI FILED FEBRUARY 1, 1940.

CERTIORARI GRANTED MARCH 4, 1940.



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IN THE  
**District Court of the United States,**  
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 9727. March Term, 1937.

WALTER GOBITIS, Individually, and LILLIAN GOBITIS and WILLIAM GOBITIS, Minors, by WALTER GOBITIS, Their Next Friend, <p style="text-align: center;"><i>v.</i></p> MINERSVILLE SCHOOL DISTRICT, BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, Consisting of DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. MC- GURL, THOMAS B. EVANS, and WILLIAM ZAPP, and CHARLES E. ROUDABUSH, Superintendent of MINERSVILLE PUBLIC SCHOOLS.	{	H. M. McCaughey, Esq.          John C. McGurl, Esq., Rawle & Hender- son, Esqs.
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**DOCKET ENTRIES.**

May 3, 1937. Bill of Complaint, filed.

May 3, 1937. Subpœna exit—returnable May 24, 1937.

May 12, 1937. Subpœna returned: “on May 7, 1937,  
 served” and filed.

May 18, 1937. Appearance of John C. McGurl, Esq., and  
 Rawle & Henderson, Esqs., for defend-  
 ants filed.

May 27, 1937. Motion to dismiss bill of complaint filed.

Sept. 11, 1937. Præcipe to place case on Argument List  
 filed.

Oct. 18, 1937. Argued sur motion to dismiss bill.

- Dec. 1, 1937. Opinion, Maris, J., denying motion to dismiss bill of complaint filed.
- Dec. 30, 1937. Answer of defendant filed.
- Jan. 6, 1938. Printed copy of Answer filed.
- Feb. 15, 1938. Trial—witnesses sworn.
- Mar. 2, 1938. Testimony filed.
- Apr. 5, 1938. Suggestion of death of Geo. H. Beatty, filed.
- Apr. 5, 1938. Defendant's requests for findings of fact and conclusions of law filed.
- June 18, 1938. Opinion, Maris, J., granting decree for plaintiffs filed.
- June 18, 1938. Plaintiff's requests for findings of fact and conclusions of law and rulings of the Court thereon filed.
- June 18, 1938. Rulings of the Court on defendant's requests for findings filed.
- July 11, 1938. Final Decree granting perpetual injunction with costs filed.
- July 11, 1938. Writ of Perpetual Injunction exit.
- Aug. 2, 1938. Statement of Evidence, Stipulation as to Statement of evidence, and Order approving narrative statement filed.
- Aug. 9, 1938. Stipulation of Counsel that proceedings be discontinued as to George Beatty, defendant, filed.
- Aug. 9, 1938. Præcipe to mark case discontinued as to George Beatty, filed.
- Aug. 9, 1938. In accordance with præcipe filed, this case is marked discontinued as to George Beatty only; Attest: Robert T. Press, Deputy Clerk.

*Docket Entries*

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- Aug. 9, 1938. Petition of defendants for appeal and Order allowing Appeal filed.
- Aug. 9, 1938. Assignments of Error filed.
- Aug. 10, 1938. Copy of Notice of Appeal filed.
- Aug. 10, 1938. Bond sur appeal in \$250., with Aetna Casualty & Surety Co., surety, approved and filed.
- Aug. 12, 1938. Citation returned: "service accepted" and filed.
- Aug. 15, 1938. Præcipe for transcript of record filed.

**BILL IN EQUITY.**

(Filed May 3, 1937.)

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IN THE DISTRICT COURT OF THE UNITED STATES,  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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No. 9727. March Term, 1937.

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IN EQUITY.

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*Walter Gobitis, Individually, and Lillian Gobitis and Wil-*  
*ham Gobitis, Minors, by Walter Gobitis, Their Next*  
*Friend,*

Complainants,

v.

*Minersville School District: Board of Education of Miners-*  
*ville School District, Consisting of David I. Jones, Dr.*  
*E. A. Valibus, Claude L. Price, Dr. T. J. McGurl,*  
*George Beatty, Thomas B. Evans and William Zapf,*  
*and Charles E. Roudabush, Superintendent of Miners-*  
*ville Public Schools,*

Defendants.

---

*To the Honorable Judges of the United States District*  
*Court for the Eastern District of Pennsylvania:*

The petition of Walter Gobitis, of Minersville, in Schuylkill County, Pennsylvania, individually, and as next friend of Lillian Gobitis and William Gobitis, respectfully represents:

I. That Walter Gobitis is the father of Lillian Gobitis and William Gobitis, who are minors, and is a natural-born citizen of the United States and of the Commonwealth of Pennsylvania, and resides at 15-17 Sunbury Street in the City of Minersville, Pennsylvania, and brings this petition individually, and as next friend of Lillian Gobitis and William Gobitis, minors.

*Bill in Equity*

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II. That Lillian Gobitis, age 13 years, and William Gobitis, age 12 years, are minors and residents of Minersville School District of Minersville, Pennsylvania, and have resided there continuously for many years.

III. That the Minersville School District is a public school district embracing the City of Minersville, Schuylkill County, Pennsylvania, and adjacent territory, under and by virtue of the laws of the Commonwealth of Pennsylvania; that the defendants David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans, and William Zapf are now and at all times material hereto, constitute the duly elected, qualified and acting Board of Education of such school district and as such are a body politic and corporate in law and have the management and control of the Minersville Public Schools; that the defendant Charles E. Roudabush, is the superintendent of the Minersville Public Schools and acts as such under the direction, supervision and order of said Board of Education; that all of the defendants are residents of Minersville, Pennsylvania, and citizens of the Commonwealth of Pennsylvania and of the United States.

IV. That the aforesaid Minersville Public Schools were and are free public schools and are under the supervision and jurisdiction of the said Board of Education.

V. The court has jurisdiction of this suit for the following reasons:

1. The suit is to redress the deprivation, under color of a regulation of the Board of Education of the Minersville Public Schools of rights, privileges, and immunities secured to complainants by the Constitution of the United States.

2. The value of the right for which petitioners seek protection, to wit, the right of his children to obtain an education in the public schools of the Commonwealth of Pennsylvania and in the school maintained by the Minersville School District is a valuable personal and property right to the



complainant Walter Gobitis, and the right to obtain and receive such education is a valuable personal and property right to said minor complainants, and the denial to complainants of such right has and is causing them damage in excess of the sum or value of \$3000 exclusive of interest and costs, and the controversy arises under the Constitution of the United States.

VI. The complainant Walter Gobitis is now, and was at all times material hereto, a resident and taxpayer of said Minersville School District, and his said children Lillian Gobitis and William Gobitis, being likewise residents of said district and within school age, are eligible to and have the right to attend said Minersville Public Schools, and are entitled to all of the benefits of education and training taught in and provided by said schools; that being desirous of having his said children obtain an education, complainant Walter Gobitis placed his said children in the said Minersville Public Schools at the beginning of the scholastic year 1935-1936. Complainants further allege that said children at all times during their attendance of said schools conducted themselves in accordance with the rules and regulations applicable to said schools, were not disqualified in any way from attending the same, and were obedient pupils and industrious scholars, applying themselves to their studies to the best of their ability.

VII. Complainants further allege that heretofore, to wit, on the sixth day of November A. D. 1935 at a regular meeting of the said Board of Education of the Minersville Public Schools there was adopted and entered on the minutes of such meeting a school regulation in words and figures as follows, to wit:

“That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly.”

VIII. Complainants allege that they are members of an unincorporated association of Christian people designated as Jehovah's Witnesses; that each and every one of Jehovah's Witnesses has entered into an agreement or covenant with Jehovah God, wherein they have consecrated themselves to do His will and obey His commandments; they accept the Bible as the word of God, and conscientiously believe that a failure to obey the precepts and commandments laid down therein will in due time result in their eternal destruction. Complainants and all of Jehovah's Witnesses sincerely and honestly believe that the act of saluting a flag contravenes the law of God in this, to wit:

1. To salute a flag would be a violation of the divine commandment stated in verses 4 and 5 of the twentieth chapter of Exodus of the Bible, which reads as follows, to wit:

“Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth;

“Thou shalt not bow down thyself to them, nor serve them . . .”,

in that said salute signifies that the flag is an exalted emblem or image of the government and as such entitled to the respect, honor, devotion, obeisance and reverence of the saluter.

2. To salute a flag means in effect that the person saluting the flag ascribes salvation and protection to the thing or power which the flag stands for and represents, and that since the flag and the government which it symbolizes is of the world and not of Jehovah God, it is wrong to salute the flag, and to do so denies the supremacy of God, and contravenes His express command as set forth in Holy Writ.

IX. Complainant Walter Gobitis alleges that he has at all times endeavored to instruct and inform his said chil-

dren in the truths set forth in God's Work, the Bible, desiring to educate them and bring them up as devout and sincere Christian men and women, all as it was his right, privilege and duty so to do; that said children have been so instructed from an early age and are now and have been at all times material hereto sincere believers in the Bible teachings and have faithfully endeavored to obey the commandments of Almighty God as set forth therein.

X. Complainants allege that they are American citizens and that they honor and respect their country and state, and willingly obey its laws, but that they nevertheless believe that their first and highest duty is to their God and His commandments and laws, and that true Christians have no alternative except to obey the Divine commandments and follow their Christian convictions.

XI. That at the meeting of the Board of Education of the Minersville Public Schools held on November 6, 1935, as aforesaid, and immediately after the passage of the regulation set forth in paragraph VII of this complaint, the defendant Charles E. Roudabush, acting under the direction and authority of said Board of Education aforesaid, as complainants are informed and believe, publicly announced, "I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Waslewski for this act of insubordination, to wit, failure to salute the flag in our school exercises."

XII. That the said Lillian Gobitis and William Gobitis did not and were conscientiously unable to salute the flag because their religious beliefs and manner of worship forbade such salute, and the giving of such salute was in contravention of and in conflict with the commands of Almighty God, as they sincerely believed.

XIII. That since the sixth day of November A. D. 1935, the said Lillian Gobitis and William Gobitis, as a result of said order of expulsion, have been unable to attend and

*Bill in Equity*

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have not attended their respective classes in the aforesaid Minersville Public Schools.

XIV. That the sole reason for the said expulsion and their subsequent inability to attend classes at the said school was the alleged refusal by the said Lillian and William Gobitis to salute the flag as required by the regulation of the Board of Education hereinbefore referred to.

XV. That under the school laws of the Commonwealth of Pennsylvania the said Walter Gobitis is required to cause his children, the said Lillian and William Gobitis, regularly to attend the public schools of the school district in which the said Walter Gobitis resides, or to attend a private school in which there is given instruction equivalent to that provided in the public schools for children of similar grades and attainments.

XVI. That the said Walter Gobitis is financially unable to have his said children Lillian and William Gobitis attend a private school in which there is given instruction equivalent to that provided by the public schools for children of similar age and attainments, or to obtain for them equivalent instruction elsewhere than at the said public school.

XVII. Complainants have no adequate remedy at law to prevent the aforesaid injury and damage.

XVIII. The regulation of the Board of Education hereinbefore referred to and set out in full in paragraph VII of this petition is unconstitutional, null and void under the due process clause of the 14th Amendment to the Constitution of the United States for the following reasons, to wit: It denies liberty and rights of property without due process of law; denies to complainants equal protection of the laws; and denies freedom of worship of Almighty God in accordance with the dictates of conscience.

XIX. The regulation aforesaid, if valid on its face, is unconstitutional, null and void as applied to the complain-

ants Lillian Gobitis and William Gobitis under the due process clause of the Fourteenth Amendment of the Constitution of the United States for the following reasons, to wit:

1. It unreasonably restricts the freedom of religious belief and worship and the free exercise thereof, of said complainants.

2. It unreasonably restricts the freedom of speech of said children by subjecting them to the penalties of dismissal from school and of juvenile delinquency, solely because they are conscientiously unwilling and unable to salute the flag.

3. It discriminates against children in the public schools by requiring them to salute the flag whereas it does not make such a requirement of the rest of the population, and thereby denies the said Lillian Gobitis and William Gobitis the equal protection of the laws guaranteed them by the Fourteenth Amendment to the Federal Constitution.

XX. The regulation aforesaid and the proceedings thereunder as applied to the complainants Lillian Gobitis and William Gobitis are unconstitutional, null and void under the Eighth Amendment to the Constitution of the United States in that cruel and unusual punishments are inflicted on said complainants, to wit, excluding them from the Minersville Public Schools and subjecting them to the penalties of juvenile delinquency solely because they are conscientiously unwilling and unable to salute the flag.

XXI. The regulation, if valid on its face, is unconstitutional, null and void as applied to the complainant Walter Gobitis under the due process clause of the Fourteenth Amendment to the Constitution of the United States for the following reasons, to wit:

1. It unreasonably restricts the liberty of Walter Gobitis in his choice and direction that his said children be educated at free public schools.

*Bill in Equity*

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2. It unreasonably restricts the liberty of said Walter Gobitis by subjecting him to penalties of prosecution and punishment under the compulsory school attendance laws of the Commonwealth of Pennsylvania, not for his own conduct, but for the conduct of his children in failing to salute the flag.

3. It unreasonably restricts the liberty of said Walter Gobitis freely to impart to his said children Bible teachings and a manner of worship according to the dictates of his own conscience.

4. It denies the said Walter Gobitis of the property right to have his children, the said Lillian Gobitis and William Gobitis, educated in the free public school of the City of Minersville, without charge.

XXII. Complainants further allege that the acts, conduct and decisions of said defendants aforesaid cannot be justified under the police power in that the failure and refusal to salute the flag on the part of said minor complainants does not and cannot affect the public interest or safety or the rights and welfare of others.

WHEREFORE, your complainants, being without remedy save in a court of equity where such matters are properly cognizable, pray:

1. That the regulation of the Board of Education of Minersville Public Schools set out in the petition be declared and decreed to be null and void as violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States as claimed in the petition.

2. That its application to petitioners be decreed to be violative of the rights of petitioners under the due process clause of the Fourteenth Amendment to the Constitution of the United States, as claimed in this petition.

3. That the said defendants, and each of them, and all persons acting under their authority and direction be enjoined and restrained from doing the following acts:

(a) From continuing in force the expulsion order expelling said minor complainants from school and prohibiting their attendance at said schools.

(b) From requiring and ordering said minor complainants to salute the flag during the course of the patriotic exercises conducted at said schools, or at any other time while in attendance at said schools.

(c) From in anywise hindering or molesting or interfering with the right of said minor complainants to enjoy full religious freedom in the manner dictated by conscience.

(d) That complainants may have such other and further relief as to the Court may seem just and proper.

H. M. McCaughey,  
*Attorney for Complainants.*

O. R. Boyle,  
*Of Counsel.*

EASTERN DISTRICT OF PENNSYLVANIA,	} ss.:
STATE OF PENNSYLVANIA,	
COUNTY OF PHILADELPHIA,	

Personally appeared before me, a notary public in and for said county and State, WALTER GOBITIS, complainant above named, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing bill in equity, so far as stated upon his own knowledge, are true, and so far as stated upon information, he believes them to be true, and expects to be able to prove them to be true upon the trial of this cause.

WALTER GOBITIS.

Subscribed and sworn to before me this third day of May, A. D. 1937.

(Seal) KATHRYN L. McHUGH,  
*Notary Public, Philadelphia County.*  
Commission expires February 19, 1941.

**MOTION TO DISMISS BILL OF COMPLAINT.**

(Filed May 27, 1937.)

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Now come Minersville School District: Board of Education of Minersville School District, consisting of David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, superintendent of Minersville Public Schools, defendants, by their attorneys, John B. McGurl, Esquire, and Rawle & Henderson, Esquires, and move the Court to dismiss the bill of complaint filed in the above-entitled case upon grounds and reasons therefor as follows:

1. The matters set forth in plaintiffs' bill of complaint do not involve a dispute or controversy within the jurisdiction of this Court.
2. The plaintiffs failed to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is causing them damage in excess of the sum or value of \$3000 exclusive of interest and costs.
3. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States.
4. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution of the United States.
5. The bill of complaint fails to set forth a good cause of action or to entitle the plaintiffs to the relief prayed for.
6. The alleged rights for which the plaintiffs seek protection are not such rights as entitle them to the relief sought.
7. The bill of complaint fails to show that the plaintiffs have sustained or in the future are likely to sustain any



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loss, damage or injury for which the defendants are liable either at law or in equity.

8. Under the Constitution of the United States and under the Constitution and laws of the State of Pennsylvania the defendants have full power and authority to adopt the regulation complained of and to enforce its provisions as set forth in the bill of complaint.

Therefore the defendants and each of them respectively move the Court to dismiss the bill of complaint with their reasonable costs and charges on their behalf most wrongfully sustained.

MINERSVILLE SCHOOL DISTRICT: BOARD OF  
EDUCATION OF MINERSVILLE SCHOOL DIS-  
TRICT, Consisting of DAVID I. JONES, DR.  
E. A. VALIBUS, CLAUDE L. PRICE, DR.  
T. J. MCGURL, GEORGE BEATTY, THOMAS  
B. EVANS and WILLIAM ZAPF, and  
CHARLES E. ROUDABUSH, SUPERINTEND-  
ENT OF MINERSVILLE PUBLIC SCHOOLS,  
*Defendants,*

By JOHN B. MCGURL,  
RAWLE & HENDERSON,  
By JOSEPH W. HENDERSON,  
*Attorneys for Defendants.*

*Opinion*

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**OPINION****Sur Motion to Dismiss Bill of Complaint.**


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IN THE DISTRICT COURT OF THE UNITED STATES,  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

---

No. 9727. March Term, 1937.

---

IN EQUITY.

---

*Walter Gobitis, Individually, and Lillian Gobitis and  
William Gobitis, Minors, by Walter Gobitis, Their Next  
Friend,*

Complainants,

v.

*Minersville School District: Board of Education of Miners-  
ville School District, Consisting of David I. Jones,  
Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl,  
George Beatty, Thomas B. Evans and William Zapf,  
and Charles E. Roudabush, Superintendent of Miners-  
ville Public Schools,*

Defendants.

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December 1, 1937.

MARIS, J.

The plaintiffs, Walter Gobitis, and his two minor children, Lillian and William, have filed their bill in equity against the School District of the Borough of Minersville, Schuylkill County, Pennsylvania, and against eight individuals, seven of them comprising the Board of School Directors of the School District, and one of them being the superintendent of schools of the district.

The bill avers that the minor plaintiffs, who reside in the Borough of Minersville, attended the public schools conducted by the defendants prior to November 6, 1935. On that day the defendant school directors adopted a school

regulation requiring all teachers and pupils of the schools to salute the American flag as a part of the daily exercises and providing that refusal to salute the flag should be regarded as an act of insubordination and should be dealt with accordingly. Plaintiffs, who are members of a body of Christians known as Jehovah's Witnesses, are conscientiously opposed upon religious grounds to saluting the flag, since they consider such action to be a direct violation of divine commandments laid down in the Bible. The minor plaintiffs, having been conscientiously unable, because of their religious beliefs and manner of worship, to salute the flag as required by the regulation of the defendant school directors, above referred to, they were on November 6, 1935, expelled, by the defendant superintendent of schools, from the public schools conducted by the defendants and by reason thereof have since been unable to attend those schools.

The bill further avers that plaintiff, Walter Gobitis, is financially unable to provide an education for the minor plaintiffs at a private school and that the refusal of the defendants to permit them to remain in the public schools has damaged him in excess of \$3000. Alleging that the defendants' regulation violates the Fourteenth Amendment to the Federal Constitution, in that it unreasonably restricts the freedom of religious belief and worship and the free exercise thereof of the plaintiffs, the bill seeks an injunction restraining the defendants from enforcing the regulation against the plaintiffs. The defendants have moved to dismiss the bill upon the grounds that a good cause of action is not set forth and that, even if it is, this Court has no jurisdiction to entertain it.

In disposing of defendants' motion the facts set forth in the bill and the inferences properly to be drawn therefrom must be taken to be true. Considering them in this light we will first examine the cause of action averred by the bill. It is claimed on behalf of the minor plaintiffs that they have the right to attend the defendants' public schools; indeed that they are required by law to attend them unless

they can secure equivalent education privately. This, however, Walter Gobitis avers he is financially unable to provide. They further contend that the enforcement of defendants' regulation conditions their right upon their participation in what is to them a religious ceremony to which they are conscientiously opposed, thus depriving them of their liberty of conscience without due process of law. They also say that, since they are required by law to attend defendants' public schools, being financially unable to secure an equivalent education privately, they are by reason of the regulation in question placed under legal compulsion to participate in an act of worship contrary to the dictates of their consciences.

Under Section 1414 of the School Code, as recently amended, (24 P. S. Sec. 1421), the minor plaintiffs are required to attend a day school continuously throughout the entire term during which the public elementary schools in their district shall be in session, until they respectively reach eighteen years of age. Sec. 1423 of the School Code (24 P. S. Sec. 1430) provides that every parent of any child of school age who fails to comply with the provisions of the act regarding compulsory attendance is guilty of a misdemeanor. In the light of these statutory provisions and of Section 1 of Article X of the State Constitution which directs the General Assembly to "provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated," we conclude that the minor plaintiffs have a right to attend the public schools and indeed a duty to do so if they are unable to secure an equivalent education privately.

Section 3 of Article I of the Constitution of Pennsylvania provides that "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; . . . no human authority can, in any case whatever, control or interfere with the rights of conscience . . ." This is but the expression of

the full and free right which, as Mr. Justice Miller said in *Watson v. Jones*, 80 U. S. 679, in this country is conceded to all “to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights.”

The right of conscience referred to in the Pennsylvania Constitution was defined by Chief Justice Gibson in *Commonwealth v. Leshner*, 17 S. & R. 155, to be “a right to worship the Supreme Being according to the dictates of the heart; to adopt any creed or hold any opinion whatever on the subject of religion; and to do, or forbear to do, any act for conscience sake, the doing or forbearing of which, is not prejudicial to the public weal.” In these words that eminent jurist clearly stated the principle which underlies the constitutional provisions of all the states and which is one of the fundamental bases upon which our nation was founded, namely, that individuals have the right not only to entertain any religious belief but also to do or refrain from doing any act on conscientious grounds, which does not prejudice the safety, morals, property or personal rights of the people.

In applying this principle it is obvious that the individual concerned must be the judge of the validity of his own religious beliefs. Liberty of conscience means liberty for each individual to decide for himself what is to him religious. If an individual sincerely bases his acts or refusals to act on religious grounds they must be accepted as such and may only be interfered with if it becomes necessary to do so in connection with the exercise of the police power, that is if it appears that the public safety, health or morals or property or personal rights will be prejudiced by them. To permit public officers to determine whether the views of individuals sincerely held and their acts sincerely undertaken on religious grounds are in fact based on convictions religious in character would be to sound the death knell of religious liberty. To such a pernicious and alien doctrine this court cannot subscribe.

In the present case the bill avers that the refusal of the minor plaintiffs to salute the flag is based on conscientious religious grounds. It seems obvious that their refusal to salute the flag in school exercises could not in any way prejudice or imperil the public safety, health or morals or the property or personal rights of their fellow-citizens. Certainly no such suggestion was made by the defendants at the argument. However, in the view we have taken such prejudice or peril, if it exists, is a matter of defense. Consequently we must hold on this motion that the action of the minor defendants in refusing for conscience sake to salute the flag, a ceremony which they deem an act of worship to be rendered to God alone, was within the rights of conscience guaranteed to them by the Pennsylvania Constitution. The conclusion is inescapable that the requirement of that ceremony as a condition of the exercising of their right or the performance of their duty to attend the public schools violated the Pennsylvania Constitution and infringed the liberty guaranteed them by the fourteenth amendment.

We are aware that a number of courts have reached a contrary conclusion. *Hering v. State Board of Education*, 117 N. J. L. 455, 189 A. 629, affirmed N. J. L. ; 194 A. 177; *Leoles v. Landers*, Ga. ; 192 S. E. 218; *Nicholls v. Mayor and School Committee of Lynn*, Mass. ; 7 N. E. (2d) 577. In each of these cases it was held that the salute to the flag could have no religious significance. In so holding, however, it appears to us that the courts which decided these cases overlooked the fundamental principle of religious liberty to which we have referred; namely, that no man, even though he be a school director or a judge, is empowered to censor another's religious convictions or set bounds to the areas of human conduct in which those convictions should be permitted to control his actions, unless compelled to do so by an overriding public necessity which properly requires the exercise of the police power. Furthermore it appears that the

courts in these cases largely relied on *Hamilton v. Regents*, 293 U. S. 245, in which the Supreme Court held that a regulation of the University of California making military training compulsory for all students did not unduly infringe the liberty of students who were opposed to war and military training on religious grounds. That decision, however, was placed upon the ground that although the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students based their objections to military training is included in the religious liberty of the individual, that liberty had not been infringed by the regulation in question since the objecting students were not required by law to attend the University, and in any event the right of the state in the interest of public safety to require its citizens to prepare for its defense by force of arms was paramount to their right to religious liberty. In that case Mr. Justice Butler said:

“There need be no attempt to enumerate or comprehensively to define what is included in the ‘liberty’ protected by the due process clause. Undoubtedly it does include the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students base their objections to the order prescribing military training. *Meyer v. Nebraska*, 262 U. S. 390, 399. *Pierce v. Society of Sisters*, 268 U. S. 510. *Stromberg v. California*, 283 U. S. 359, 368-369. *Near v. Minnesota*, 283 U. S. 697, 707. The fact that they are able to pay their way in this university but not in any other institution in California is without significance upon any constitutional or other question here involved. California has not drafted or called them to attend the university. They are seeking education offered by the State and at the same time insisting that they be excluded from the prescribed course solely upon grounds of their religious beliefs and conscientious objections to war, preparation for war and military education. Taken on the basis of the facts

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alleged in the petition, appellants' contentions amount to no more than an assertion that the due process clause of the Fourteenth Amendment as a safeguard of 'liberty' confers the right to be students in the state university free from obligation to take military training as one of the conditions of attendance.

"Viewed in the light of our decisions that proposition must at once be put aside as untenable.

"Government, federal and state, each in its own sphere owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and to assure the just enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend government against all enemies. *Selective Draft Law Cases*, supra, p. 378. *Minor v. Happersett*, 21 Wall. 162, 166."

In the case before us the attendance of the minor plaintiffs at defendants' schools is, as we have seen, required by law. Furthermore their refusal to salute the flag does not prejudice the public safety. Consequently *Hamilton v. Regents*, supra, does not support the validity of the regulation here involved. On the contrary that regulation, although undoubtedly adopted from patriotic motives, appears to have become in this case a means for the persecution of children for conscience sake. Our beloved flag, the emblem of religious liberty, apparently has been used as an instrument to impose a religious test as a condition of receiving the benefits of public education. And this has been done without any compelling necessity of public safety or welfare. We may well recall that William Penn, the founder of Pennsylvania, was expelled from Oxford University for his refusal for conscience sake to comply with regulations not essentially dissimilar, and suffered, more than once, imprisonment in England because of his religious convictions. The Commonwealth he founded was intended as a haven for all those persecuted for conscience sake. The



provisions of its constitution to which we have referred were undoubtedly intended to secure to its citizens that religious freedom which had been denied their ancestors in the countries from which they came. These constitutional provisions must be construed in the light of that history. *Maxwell v. Dow*, 176 U. S. 581; *People v. Harding*, 53 Mich. 481, 51 Am. R. 95; *Farmers & Mechanics Bank v. Smith*, 3 S. & R. 63. In these days when religious intolerance is again rearing its ugly head in other parts of the world it is of the utmost importance that the liberties guaranteed to our citizens by the fundamental law be preserved from all encroachment. Our conclusion is that the plaintiffs have stated a good cause of action.

The defendants' motion also raised the question of the jurisdiction of this court to entertain the action. This the plaintiff contends is conferred by Subsections (1) and (14) of Section 24 of the Judicial Code (28 U. S. C. Sec. 41).

Subsection (1) of Section 24 of the Judicial Code gives the District Courts jurisdiction "of all suits of a civil nature, at common law or in equity, . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000, and (a) arises under the Constitution or laws of the United States, . . ."

Subsection (14) confers jurisdiction "of all suits . . . in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

The suits referred to in subdivision (14) are those authorized by Section 1979 R. S. (8 U. S. C. Sec. 43), which provides that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citi-

zen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

The question which we must determine is whether the rights which the plaintiffs claim have been invaded arise under the Constitution of the United States within the meaning of Subsection (1) of Section 24 of the Judicial Code, or are secured by the Constitution within the meaning of subsection (14). If they do not, then the case does not fall within either subdivision and this court has no jurisdiction.

It is quite clear that plaintiff's rights are not secured by the Federal Constitution but are secured, if at all, by the Constitution and laws of Pennsylvania. The only provision of the Federal Constitution on the subject is contained in the first amendment and that merely prohibits Congress from making any law “respecting an establishment of religion or prohibiting the free exercise thereof”. It confers no rights upon these plaintiffs; *Permoli v. Municipality No. 1 of the City of New Orleans*, 44 U. S. 589. Nor does the fourteenth amendment, which provides that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of . . . liberty . . . without due process of law” have that effect. The privileges and immunities protected by this amendment are only those that belong to citizens of the United States as distinguished from citizens of the states—those that arise from the Constitution and laws of the United States as contrasted with those that spring from other sources. *Hamilton v. Regents*, *supra*, p. 261. Nor does the due process clause secure to the plaintiffs the rights in question. That clause merely protects existing personal liberties from undue abridgment by the states. It does not itself secure to individuals any new or additional lib-

erties. Subdivision (14) relates only to rights *secured* by the Constitution or laws of the United States. It follows that this court has no jurisdiction of the suit under that subdivision.

Do we, however, have jurisdiction of the suit under subdivision (1) as of a case involving \$3,000 and arising under the Constitution of the United States? So far as the jurisdictional amount is concerned there is a clear averment in the bill that plaintiff, Walter Gobitis, is financially unable to provide an education for the minor plaintiffs at a private school and that the refusal of the defendants to permit them to remain in the public schools has damaged him in excess of \$3,000. We cannot say, as a matter of law, that it will not cost him \$3,000 to complete the education of the minor plaintiffs at private schools. Consequently we must hold that the court has jurisdiction so far as the amount involved is concerned.

There remains the question whether the suit is one *arising* under the Constitution of the United States. The liberty protected by the due process clause of the fourteenth amendment undoubtedly includes the liberty to entertain any religious belief, to practice any religious principle and to do any act or refrain from doing any act on conscientious grounds, which does not endanger the public safety, violate the laws of morality or property or infringe on personal rights. *Hamilton v. Regents*, supra, (p. 262). The prohibition of the due process clause is against action by the states and it follows that if the State of Pennsylvania has deprived the plaintiffs of their religious liberty without due process of law the case *arises* under the fourteenth amendment to the Federal Constitution and this court has jurisdiction of the bill under subdivision (1) of Section 24 of the Judicial Code.

This brings us to the final question whether from the averments of the bill it appears that the State of Pennsylvania has done so. As we have already indicated the enforcement against the minor plaintiffs of the regulation in

question appears to deprive the plaintiffs of the liberty of conscience guaranteed them by the Pennsylvania Constitution and protected by the fourteenth amendment to the Federal Constitution. The regulation would consequently run afoul of the due process clause if its adoption and enforcement can be said to be the action of the state.

It is clear that the defendant school district is an arm of the state, *Ford v. School District*, 121 Pa. 543; and that its regulations adopted within the scope of the authority granted to it by the statutes of the state, are the acts of the state within the meaning of the fourteenth amendment. *New Orleans Waterworks Co. v. Louisiana Sugar Refining Co.*, 125 U. S. 18; *North American Cold Storage Co. v. Chicago*, 211 U. S. 306. It is equally clear that if the regulation in question was adopted without statutory authority or in direct violation of a statutory prohibition it is not the act of the state and cannot give rise to a federal question. *Barney v. New York*, 193 U. S. 430; *Memphis v. Cumberland Teleph. & Teleg. Co.*, 218 U. S. 624.

The authority conferred by the Pennsylvania School Code upon the defendant school district is to adopt "and enforce such reasonable rules and regulations as it may deem necessary and proper . . . regarding the conduct and deportment of all pupils attending the public schools in the district." 24 P. S. Sec. 338. It will thus be seen that the power conferred upon the defendant school directors was to adopt such regulations as are reasonable. There is in the present bill, however, no averment that the regulation in question is unreasonable. Relief is not sought upon the ground that the defendants are without power under the School Code to adopt and enforce the regulation or that they are prohibited by it from doing so. Obviously it cannot be said that the regulation is unreasonable per se or that considered generally it is repugnant to the Constitution or laws of the state. It is only in its application to the minor plaintiffs that it violates the constitutional guarantees. What we have here is an action by public officers,

agents of the state, within the scope of the power conferred upon them by statute which when applied to these plaintiffs deprives them of their liberty of conscience in violation of the fourteenth amendment. Such an abuse of power presents a case arising under the Constitution, and this court accordingly has jurisdiction under subsection (1) of Section 24 of the Judicial Code. *Hom. Teleph. & Teleg. Co. v. Los Angeles*, 227 U. S. 278. In the case just cited Chief Justice White said: (pp. 287-289)

“To speak broadly, the difference between the proposition insisted upon and the true meaning of the Amendment is this: that the one assumes that the Amendment virtually contemplates alone wrongs authorized by a state, and gives only power accordingly, while in truth the Amendment contemplates the possibility of state officers abusing the powers lawfully conferred upon them by doing wrongs prohibited by Amendment. In other words, the Amendment, looking to the enforcement of the rights which it guarantees and to the prevention of the wrongs which it prohibits, proceeds not merely upon the assumption that states, acting in their governmental capacity, in a complete sense, may do acts which conflict with its provisions, but, also conceiving, which was more normally to be contemplated, that state powers might be abused by those who possessed them, and as a result might be used as the instrument for doing wrongs, provided against all and every such possible contingency. Thus, the completeness of the Amendment in this regard is but the complement of its comprehensive inclusiveness from the point of view of those to whom its prohibitions are addressed. Under these circumstances it may not be doubted that where a state officer, under an assertion of power from the state, is doing an act which could only be done upon the predicate that there was such power, the inquiry as to the repugnancy of the act to the 14th Amendment cannot be avoided by in-

sisting that there is a want of power. That is to say, a state officer cannot, on the one hand, as a means of doing a wrong forbidden by the Amendment, proceed upon the assumption of the possession of state power, and at the same time, for the purpose of avoiding the application of the Amendment, deny the power, and thus accomplish the wrong. To repeat: for the purpose of enforcing the rights guaranteed by the Amendment when it is alleged that a state officer, in virtue of state power, is doing an act which, if permitted to be done, *prima facie* would violate the Amendment, the subject must be tested by assuming that the officer possessed power if the act be one which there would not be opportunity to perform but for the possession of some state authority.’’

It may be thought, in view of the fact that the plaintiffs’ rights arise under the Pennsylvania Constitution and the defendants’ action, being in violation of that constitution, is unconstitutional and void, that it is therefore not the action of the state within the meaning of the fourteenth amendment but rather a matter to be dealt with first by the state courts. This very question, however, was presented in *Home Teleph. & Teleg. Co. v. Los Angeles*, *supra*, and in disposing of it the court held that the fact that the State Constitution also prohibited the action in question did not deprive the federal court of jurisdiction or require that the matter be first litigated in the state courts.

The motion to dismiss the bill is denied.

**JOINT AND SEVERAL ANSWERS**

**Of Minersville School District: Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valebus (Misnamed in the Above Caption), Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, Superintendent of Minersville Public Schools.**

(Filed December 30, 1937.)

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The answer of Minersville School District: Board of Education of Minersville School District, David I. Jones, Dr. A. E. Valebus (misnamed in the above caption), Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans and William Zapf, and Charles E. Roudabush, superintendent of Minersville Public Schools, defendants in this cause now and at all times saving and reserving to themselves all manner of objections and exceptions to complainants' bill and without in any way waiving the many errors, uncertainties and imperfections of complainants' bill of complaint filed, for answer thereto, or to so much thereof as is necessary to answer, say:

1. The defendants admit the allegations in paragraph one.
2. The defendants admit the allegations in paragraph two.
3. The defendants admit the allegations in paragraph three except the allegation that said school district embraces territory adjacent to Minersville, Pennsylvania. On the contrary, defendants aver that said school district embraces only the Borough of Minersville. Defendants further aver that David I Jones is no longer a member of the Board of Education of Minersville School District, having been succeeded by Dr. E. W. Keith, subsequent to the filing of complainants' bill in equity.
4. The defendants admit the allegations in paragraph four.

5. Defendants deny that this Court has jurisdiction of this proceeding for the reasons set forth in paragraph five or for any other reason. On the contrary, defendants aver under the facts set forth in complainants' bill of complaint that the plaintiffs have not been deprived of any right, privilege or immunity secured to them by the Constitution of the United States, and that, therefore, this Court has no jurisdiction under Subsection 14 of Section 24 of the Judicial Code, as amended (28 U. S. C. A., Section 41 (14)). Defendants further aver that under the facts set forth in complainants' bill of complaint the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States, and that the plaintiffs have failed in said bill to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is costing them damage in excess of the sum or value of three thousand dollars (\$3000), exclusive of interest and costs, and, therefore, this Court has no jurisdiction under Subsection 1 of Section 24 of the Judicial Code, as amended (28 U. S. C. A., Section 41 (1)).

Defendants further aver that they have heretofore filed a motion to dismiss plaintiffs' bill of complaint on the grounds that a good cause of action has not been set forth, and that even if a good cause of action has been set forth, this Court has no jurisdiction to entertain plaintiffs' suit. The defendants further aver that this Court has no jurisdiction for the reasons set forth in said motion to dismiss, which reasons are incorporated into this joint and several answers by reference thereto and raised as an additional defense to the plaintiffs' bill of complaint.

6. Denied. Defendants deny that the minor plaintiffs, Lillian Gobitis and William Gobitis, at all times during their attendance at the Minersville Public Schools conducted themselves in accordance with the rules and regulations applicable to said schools and were not disqualified in any way from attending the same and were obedient pupils. On the contrary, defendants aver that minor plaintiffs, Lillian Go-



bitis and William Gobitis, knowingly and wilfully violated the regulation adopted by the Board of Education of the Minersville Public Schools requiring pupils to salute the American flag as part of the daily exercises, and that by reason thereof said minor plaintiffs were expelled from the Minersville Public Schools for said act of insubordination.

7. Defendants admit the allegations in paragraph seven.

Defendants further aver that said regulation was reasonable, and that the adoption thereof was within the authority of the Board of Education of Minersville Public Schools and did not violate any Federal or State statute or any provision in the Constitution of the United States or the Constitution of the State of Pennsylvania.

Defendants further aver that subsequent to the adoption of said regulation and pursuant to the requirements contained therein, it has been and still is the custom and practice of the teachers and pupils of the Minersville Public Schools at the opening of school to rise, place their right hands on their respective breasts and to speak the following words: "I pledge allegiance to the flag of the United States of America, and the Republic for which it stands; one nation indivisible, with liberty and justice for all." The teachers and pupils, while the aforesaid words are being spoken, extend their respective right hands so as to salute the flag.

8. Defendants aver that they have no knowledge as to whether the plaintiffs are members of an unincorporated association known as Jehovah's Witnesses, and that since the means of proving said allegation are under the exclusive control of plaintiffs, defendants deny the same and demand strict proof at the trial of this cause.

The defendants further aver that they have no knowledge as to whether the plaintiffs have entered into an agreement with Jehovah God or entertained the beliefs referred to in paragraph eight, and since the means of proving said

allegation are under the exclusive control of plaintiffs, defendants demand strict proof at the trial of this cause. Defendants further aver that they have no knowledge concerning the nature or character of the agreement or covenant entered into by members of Jehovah's Witnesses or as to the beliefs of the members of said association as set forth in paragraph eight, and therefore, defendants deny the same, and, if material, demand strict proof thereof at the trial of this cause.

Defendants further specifically deny that the act of saluting the national flag is a violation of the divine commandment stated in verses 4 and 5 of the twentieth chapter of Exodus of the Bible, and that the act of saluting the flag means in effect that the persons saluting the flag ascribe religious salvation to the power for which the flag stands, and that saluting the flag contravenes any express command in the Bible. On the contrary, defendants aver that the act of saluting the national flag is not an act of a religious nature or character whatsoever, but is merely an acknowledgment of the temporal sovereignty of the United States of America, which does not go beyond that which is reasonably due to any government.

9. Defendants aver that they have no knowledge concerning the truth or falsity of the allegations in paragraph nine of plaintiffs' bill of complaint, and that since the means of proving said allegations are under the exclusive control of plaintiffs, defendants deny the same and, if material, demand strict proof thereof at the trial of this cause.

10. Denied. Defendants deny that the complainants honor and respect their country and state and willingly obey its laws. On the contrary, defendants aver that the minor plaintiffs, by failing to salute the national flag at the daily opening of the Minersville Public Schools, and the father plaintiff by his teachings, acquiescence and ratification of said conduct, have knowingly and wilfully dishonored and been disrespectful to their country and state and have violated its laws.

Defendants further aver that they have no knowledge concerning the beliefs of the plaintiffs as set forth in paragraph ten of the bill of complaint, and since the means of proving the same are under the exclusive control of plaintiffs, defendants deny the same and, if material, demand strict proof thereof at the trial of this cause.

11. Defendants admit the allegations in paragraph eleven.

12. Defendants have no knowledge regarding the allegations set forth in paragraph twelve of the bill of complaint, and since the means of proving the same are under the exclusive control of the minor plaintiffs, defendants deny the same and demand strict proof thereof at the trial of this cause.

13. Defendants admit the allegations in paragraph thirteen.

14. Defendants admit the allegations in paragraph fourteen.

15. Defendants aver upon advice of counsel that the allegations in paragraph fifteen are conclusions of law which need be neither admitted nor denied by defendants.

Defendants further aver that in lieu of attending the Minersville Public Schools or a private school the statutory requirement of attendance would be met by the minor plaintiffs attending a public school in an adjoining school district.

16. Defendants have no knowledge as to the financial ability of Walter Gobitis to have his children attend a private school or to obtain for them equivalent instruction elsewhere than at the Minersville Public Schools, and since the means of proving the same are under the exclusive control of Walter Gobitis, defendants deny the same and, if material, demand strict proof thereof at the trial of this cause.

*Joint and Several Answers*

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17. Defendants aver upon advice of counsel that the allegations in paragraph seventeen are conclusions of law which need be neither admitted nor denied by defendants. Defendants further aver, for the reasons as set forth in the within answers, that the plaintiffs have neither sustained nor are sustaining any injury or damage for which the defendants are liable.

18. Defendants aver upon advice of counsel that the allegations in paragraph eighteen are conclusions of law which need be neither admitted nor denied by defendants. Defendants, however, further aver upon advice of counsel that the said regulation of the Board of Education does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States; that said regulation does not deny to the plaintiffs liberty and rights or property without due process of law; that said regulation does not deny to the plaintiffs equal protection of the laws, and that said regulation does not deny to the plaintiffs the freedom to worship Almighty God according to the dictates of their consciences.

19. Defendants aver upon advice of counsel that the allegations in paragraph nineteen are conclusions of law which need be neither admitted nor denied by defendants. Defendants, however, further aver upon advice of counsel that said regulation does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States, so far as it is applicable to the minor plaintiffs; that said regulation does not unreasonably restrict the minor plaintiffs' freedom of religious belief and worship and their free exercise thereof; that it does not unreasonably restrict the freedom of speech of said minor plaintiffs; that said regulation does not discriminate against children in the public schools as distinguished from the rest of the population, nor deny to the minor children protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution.

20. Defendants aver upon advice of counsel that the allegations in paragraph twenty are conclusions of law which need be neither admitted nor denied. Defendants, however, further aver upon advice of counsel that said regulation as applied to the minor plaintiffs does not violate the Eighth Amendment to the Constitution of the United States, and that the adoption and enforcement of said regulation has not inflicted upon the minor plaintiffs any cruel and unusual punishments, but that the minor plaintiffs by their conduct have subjected themselves to the punishment of having been expelled from the Minersville Public Schools and subjected themselves to penalties of juvenile delinquency.

21. Defendants aver upon advice of counsel that the allegations in paragraph twenty-one are conclusions of law which need be neither admitted nor denied. Defendants, however, further aver upon advice of counsel that said regulation as applied to the plaintiff, Walter Gobitis, does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States; that said regulation does not unreasonably restrict the liberty of Walter Gobitis in the education of his children at free public schools; that said regulation does not unreasonably restrict the liberty of Walter Gobitis, and that the adoption and enforcement of said regulation has not unreasonably subjected Walter Gobitis to prosecution and punishment under the laws of this Commonwealth, but that Walter Gobitis by his conduct, as well as the conduct of his children, has subjected himself to possible prosecution under the compulsory school attendance laws of this Commonwealth; that said regulation does not unreasonably restrict the liberty of Walter Gobitis to freely impart to his children Bible teachings and a manner of worship according to the dictates of his conscience, and that said regulation does not deny Walter Gobitis a property right to have his minor children educated in the Minersville Public Schools without charge. Defendants further aver upon advice of

counsel that the privilege to have his children attend the public schools is not a property right which will be protected in this or any other proceeding, but is merely an advantage bestowed upon the plaintiffs by this Commonwealth.

22. Defendants aver upon advice of counsel that the allegation that the acts, conduct and decisions of the defendants cannot be justified under the police power is a conclusion of law which need be neither admitted nor denied. The defendants, however, deny that the failure and refusal of the minor plaintiffs to salute the national flag does not and cannot affect the public interest or safety or the rights and welfare of others. On the contrary, defendants aver that the adoption of the regulation referred to in plaintiffs' bill of complaint and its enforcement was not in violation of any provision in the state or federal constitutions or of any law of this Commonwealth or of the United States; that said regulation was adopted pursuant to the provision in the School Code, Act of May 16, 1911, P. L. 309, as amended, (24 P. S., Section 1551) requiring that "civics, including loyalty to the state and national government" be taught in every elementary public school; that said regulation was adopted by the Board of Education of Minersville Public Schools as a method of teaching loyalty to the state and national government; that in the opinion of the Board of Education the act of saluting the national flag, as provided in said regulation, is a necessary and reasonable method of teaching loyalty to the state and federal government and of inculcating patriotism and love of country into the young citizens of this nation; that the failure or refusal of any pupil or group of pupils to salute the national flag would be disrespectful to the government of which the flag is a symbol and would tend to promote disrespect for that government and its laws, with the result that the public welfare and safety and well-being of the citizens of the United States would be ultimately harmed and seriously affected thereby.

All of which matters and things these defendants are ready and willing to aver, maintain and prove as your Hon-

orable Court shall direct, and humbly pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

MINERSVILLE SCHOOL DISTRICT,

By DR. A. E. VALIBUS.

BOARD OF EDUCATION OF MINERSVILLE  
SCHOOL DISTRICT,

By DR. A. E. VALIBUS.

DAVID I. JONES

DR. A. E. VALIBUS.

CLAUDE L. PRICE.

DR. T. J. MCGURL.

GEORGE BEATTY.

THOMAS B. EVANS.

WILLIAM ZAPF.

CHARLES E. ROUDABUSH.

JOHN B. MCGURL,

RAWLE & HENDERSON,

By JOSEPH W. HENDERSON,

*Attorneys for Defendants.*

*Joint and Several Answers*

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STATE OF PENNSYLVANIA, }  
COUNTY OF SCHUYLKILL, } ss.:

DR. A. E. VALIBUS, being duly sworn according to law, deposes and says that he is president of Minersville School District, one of the defendants named in the foregoing answers; that he is authorized to and does make this affidavit on its behalf; that he has read the said answers and the facts therein stated as are within the deponent's knowledge are true and correct, and as to the other facts, he is informed of, believes and therefore avers the same to be true and correct, and so expects to be able to prove at the trial of this cause.

DR. A. E. VALIBUS.

Sworn to and subscribed before me this twenty-eighth day of December, A. D. 1937.

DORIS M. TIERNEY,

(Seal) *Notary Public.*

My commission expires March 2, 1941.

STATE OF PENNSYLVANIA, }  
COUNTY OF SCHUYLKILL, } ss.:

DR. A. E. VALIBUS, being duly sworn according to law, deposes and says that he is president of the Board of Education of Minersville School District, one of the defendants named in the foregoing answers; that he is authorized to and does make this affidavit on its behalf; that he has read the said answers and the facts therein stated as are within the deponent's knowledge are true and correct, and as to the other facts, he is informed of, believes and therefore avers the same to be true and correct, and so expects to be able to prove at the trial of this cause.

DR. A. E. VALIBUS.

Sworn to and subscribed before me this twenty-eighth day of December, A. D. 1937.

DORIS M. TIERNEY,

(Seal) *Notary Public.*

My commission expires March 2, 1941.



STATE OF PENNSYLVANIA, }  
 COUNTY OF SCHUYLKILL, } ss.:

DAVID I. JONES, DR A. E. VALEBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, GEORGE BEATTY, THOMAS B EVANS, WILLIAM ZAPF and CHARLES E. ROUDABUSH, being duly sworn according to law, jointly and severally depose and say that they are the defendants named in the above cause; that they have read the foregoing joint and several answers; that each deponent further avers and says that the facts set forth in the foregoing joint and several answers as are within his own knowledge are true and correct, and that as to all other facts, the deponent is informed of, believes and therefore avers the same to be true and correct and so expects to be able to prove at the trial of this cause.

DAVID I. JONES  
 DR. A. E. VALIBUS  
 CLAUDE L. PRICE.  
 DR. T. J. MCGURL.  
 GEORGE BEATTY.  
 THOMAS B. EVANS.  
 WILLIAM ZAPF.  
 CHARLES E. ROUDABUSH.

Sworn to and subscribed before me this twenty-eighth day of December, A. D. 1937.

DORIS M. TIERNEY,  
 (Seal) *Notary Public.*  
 My commission expires March 2, 1941.

*Suggestion—Order*

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**SUGGESTION OF DEATH OF GEORGE H. BEATTY,  
ONE OF THE DEFENDANTS.**

(Filed April 5, 1938.)

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AND NOW, TO WIT, this fifth day of April, A. D. 1938,  
it is suggested of record that George H. Beatty, one of the  
defendants in the above-entitled case, died on the thirtieth  
day of January, A. D. 1938.

JOHN B. MCGURL,  
RAWLE & HENDERSON,  
By JOSEPH W. HENDERSON,  
*Attorneys for Defendants.*

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**ORDER.**

(Filed August 2, 1938 )

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And now, to wit this second day of August A. D. , 1938,  
the attached stipulation of counsel for the respective parties  
in the above-entitled cause having been presented to and  
maturely considered by the Court,

IT IS ORDERED that the statement of evidence taken upon  
the trial of the above-entitled cause, in the condensed narra-  
tive form attached to said stipulation, be and the same  
hereby is approved and the said narrative statement shall  
be filed in the clerk's office and become a part of the record  
for the purposes of appeal.

By THE COURT,

MARIS, J.

**STIPULATION.**(Filed August 2, 1938.)  

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It is hereby stipulated and agreed by and between Harry M. McCaughey, Esquire, attorney for plaintiffs and John B. McGurl, Esquire, and Rawle & Henderson, Esquires, attorneys for defendants, that the statement of testimony and evidence taken upon the trial of the above-entitled cause, in the condensed narrative form thereof attached hereto, may be approved by the Court, and, subject to the approval of the Court, become a part of the transcript of record to be certified to the United States Circuit Court of Appeals for the Third Circuit, and that all formalities regarding preparation, lodgment, notice, presentation, approval and filing of said condensed statement of evidence is hereby expressly waived.

H. M. McCAUGHEY,  
*Attorney for Plaintiffs.*  
JOHN B. MCGURL,  
RAWLE & HENDERSON,  
By JOSEPH W. HENDERSON,  
*Attorneys for Defendants.*

**STATEMENT OF EVIDENCE.**(Filed August 2, 1938.)

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Be it remembered that upon the final hearing of the above-entitled matter on bill, answer and proofs on the fifteenth day of February, A. D. 1938, before the Honorable Albert B. Maris, then District Judge for the Eastern District of Pennsylvania, at Philadelphia, Pennsylvania, the following proceedings were had and evidence introduced which is hereby reduced to narrative form pursuant to Equity Rule 75.

The plaintiffs appeared by O. R. Moyle, Esquire, and Harry M. McCaughey, Esquire, as counsel.

The defendants appeared by John B. McGurl, Esquire, Joseph W. Henderson, Esquire, and George M. Brodhead, Jr., Esquire, as counsel.

Immediately prior to the presentation of plaintiffs' case, counsel for the defendants made the following motion to dismiss plaintiffs' bill of complaint.

MR. HENDERSON: May it please the Court, this matter was first brought before you on a bill in equity filed by the complainants, and then a motion to dismiss filed by the school board, the Minersville School District. Your Honor has ruled upon that and is familiar with the matter.

Since that time we have filed an answer. I now, therefore, wish to file a further motion to dismiss the bill of complaint, and if your Honor desires, I want to set forth the same motion that I did with reference to the motion to dismiss before we filed an answer, and for the purpose of the record it may appear, and I can just ask the stenographer to copy it.

THE COURT: Very well.

MR. HENDERSON: Exactly the same motion that we filed before, a motion to dismiss.

THE COURT: You may submit it to the stenographer.

MR. HENDERSON: From 2 to 6 inclusive, which are exactly the same ones that are in the record already.

“MOTION TO DISMISS BILL OF COMPLAINT.

NOW COME MINERSVILLE SCHOOL DISTRICT: BOARD OF EDUCATION OF MINERSVILLE SCHOOL DISTRICT, consisting of DAVID I. JONES, DR. E. A. VALIBUS, CLAUDE L. PRICE, DR. T. J. MCGURL, GEORGE BEATTY, THOMAS B. EVANS and WILLIAM ZAPF, and CHARLES E. ROUDABUSH, superintendent of Minersville Public Schools, defendants, by their attorneys John B. McGurl, Esquire, and Rawle & Henderson, Esquires, and move the Court to dismiss the bill of complaint filed in the above-entitled case upon grounds and reasons therefor as follows:

1. ....

2. The plaintiffs failed to allege any facts which specifically or inferentially substantiate plaintiffs' allegation that the matter complained of is causing them damage in excess of the sum or value of \$3000.00 exclusive of interest and costs.

3. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs' suit does not involve a controversy arising under the Constitution of the United States.

4. Under the facts set forth in plaintiffs' bill of complaint, the plaintiffs have not been deprived of any right, privilege or immunity secured by the Constitution of the United States.

5. The bill of complaint fails to set forth a good cause of action or to entitle the plaintiffs to the relief prayed for.

6. The alleged rights for which the plaintiffs seek protection are not such rights as entitle them to the relief sought.”

*Plaintiff's Evidence*

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MR. HENDERSON: Therefore, if your Honor please, we object to the taking of any testimony in this case upon the ground set forth in those motions.

THE COURT: For the reasons set forth in the opinion of the Court heretofore filed, the motion to dismiss is overruled, with an exception to the defendants.

## PLAINTIFFS' EVIDENCE.

The plaintiffs introduced into evidence paragraphs 1, 2, 3, 4, 7, 11, 13 and 14 of their bill of complaint together with the specific admissions in the corresponding paragraphs of defendants' answer, as follows:

MR. MOYLE: May it please the Court, the answer filed by the defendant admits certain allegations of the complaint, and we would offer those allegations in evidence at this time.

"1. That Walter Gobitis is the father of Lillian Gobitis and William Gobitis, who are minors, and is a natural-born citizen of the United States and of the Commonwealth of Pennsylvania, and resides at 15-17 Sunbury Street in the City of Minersville, Pennsylvania, and brings this petition individually, and as next friend of Lillian Gobitis and William Gobitis, minors."

And 2——

THE COURT: You better read the answer into the record.

MR. MOYLE: The answer as to paragraph 1:

"1. The defendants admit the allegations in paragraph one," which I have just read.

THE COURT: Very well, then, proceed with the others. I just wanted the record to show the allegation and the answer.

MR. MOYLE:

"2. That Lillian Gobitis, age 13 years, and William Gobitis, age 12 years, are minors and residents of Minersville School District of Minersville, Pennsylvania, and have resided there continuously for many years."

The answer as to paragraph 2 reads:

"2. The defendants admit the allegations in paragraph two."

Paragraph 3 of the bill reads as follows:

"3. That the Minersville School District is a public school district embracing the City of Minersville, Schuylkill County, Pennsylvania, and adjacent territory, under and by virtue of the laws of the Commonwealth of Pennsylvania; that the defendants David I. Jones, Dr. E. A. Valibus, Claude L. Price, Dr. T. J. McGurl, George Beatty, Thomas B. Evans, and William Zapf are now and at all times material hereto, constitute the duly elected, qualified and acting Board of Education of such school district and as such are a body politic and corporate in law and have the management and control of the Minersville Public Schools; that the defendant Charles E. Roudabush, is the superintendent of the Minersville Public Schools and acts as such under the direction, supervision and order of said Board of Education; that all of the defendants are residents of Minersville, Pennsylvania, and citizens of the Commonwealth of Pennsylvania and of the United States."

The answer as to paragraph 3 reads as follows:

"3. The defendants admit the allegations in paragraph three except the allegation that said school district embraces territory adjacent to Minersville, Pennsylvania. On the contrary, defendants aver that

*Plaintiff's Evidence*

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said school district embraces only the Borough of Minersville. Defendants further aver that David I. Jones is no longer a member of the Board of Education of Minersville School District, having been succeeded by Dr. E. W. Keith, subsequent to the filing of Complainants' Bill in Equity."

Paragraph 4 of the bill reads as follows:

"4. That the aforesaid Minersville Public Schools were and are free public schools and are under the supervision and jurisdiction of the said Board of Education."

The answer as to paragraph 4 reads as follows:

"4. The defendants admit the allegations in paragraph four."

Paragraph 7 of the bill reads as follows:

"7. Complainants further allege that heretofore, to wit, on the 6th day of November A. D. 1935 at a regular meeting of the said Board of Education of the Minersville Public Schools there was adopted and entered on the minutes of such meeting a school regulation in words and figures as follows, to wit:

'That the Superintendent of the Minersville Public Schools be required to demand that all teachers and pupils of said schools be required to salute the flag of our country as a part of the daily exercises. That refusal to salute the flag shall be regarded as an act of insubordination and shall be dealt with accordingly.' "

The answer as to paragraph 7 reads as follows:

"7. Defendants admit the allegations in paragraph seven.

Defendants further aver that said regulation was reasonable, and that the adoption thereof was within the authority of the Board of Education of Minersville



Public Schools and did not violate any Federal or State statute or any provision in the Constitution of the United States or the Constitution of the State of Pennsylvania.

Defendants further aver that subsequent to the adoption of said regulation and pursuant to the requirements contained therein, it has been and still is the custom and practice of the teachers and pupils of the Minersville Public Schools at the opening of school to rise, place their right hands on their respective breasts and to speak the following words: 'I pledge allegiance to the flag of the United States of America, and the Republic for which it stands; one nation indivisible, with liberty and justice for all.' The teachers and pupils, while the aforesaid words are being spoken, extend their respective right hands so as to salute the flag."

Paragraph 11 of the bill reads as follows:

"11. That at the meeting of the Board of Education of the Minersville Public Schools held on November 6, 1935, as aforesaid, and immediately after the passage of the regulation set forth in paragraph VII of this complaint, the defendant Charles E. Roudabush, acting under the direction and authority of said Board of Education aforesaid, as complainants are informed and believe, publicly announced, 'I hereby expel from the Minersville Schools Lillian Gobitis, William Gobitis and Edmund Wasliewski for this act of insubordination, to wit, failure to salute the flag in our school exercises.' "

As to paragraph 11, the answer of the defendants reads as follows:

"11. Defendants admit the allegations in paragraph eleven."

Then as to paragraph 13 of the bill, it reads as follows:

“13. That since the 6th day of November A. D. 1935 the said Lillian Gobitis and William Gobitis, as a result of said order of expulsion, have been unable to attend and have not attended their respective classes in the aforesaid Minersville Public Schools.”

As to paragraph 13, the answer of the defendants reads:

“13. Defendants admit the allegations in paragraph 13.”

Paragraph 14 of the bill reads as follows:

“14. That the sole reason for the said expulsion and their subsequent inability to attend classes at the said school was the alleged refusal by the said Lillian and William Gobitis to salute the flag as required by the regulation of the Board of Education hereinbefore referred to.”

As to paragraph 14, the answer reads:

“14. Defendants admit the allegations in paragraph fourteen.”

I believe that covers all that are to be admitted.

THE COURT: Very well.

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WALTER GOBITIS was the first witness to testify on behalf of the plaintiffs. He testified that he has lived in Minersville, Pennsylvania, all his life except for one year when a little boy; that he owns his own place and is a taxpayer; that his children, William Gobitis and Lillian Gobitis, attended the Minersville Public Schools until November 5, 1935, since which time Lillian Gobitis has attended a private school, called Jones Kingdom School, at Andreas, Pa., thirty miles east of Minersville, and Pottsville Business College, four miles distant from Minersville; and William Gobitis has attended the Jones Kingdom School at Andreas, Pennsylvania; and that prior to their expulsion he had

never received any complaints regarding his children obeying the rules and regulations of the school.

When interrogated as to his religious beliefs, Walter Gobitis testified as follows:

By MR. MOYLE:

Q. What is your religious belief?

A. I am a true and sincere follower of Christ Jesus, the Son of Jehovah God.

By MR. HENDERSON:

Q. Not too fast; I want to get it.

A. I am a true and sincere follower of Christ Jesus, the Son of Jehovah God.

By MR. MOYLE:

Q. What association or group of followers of Christ Jesus are you connected with or a part of?

A. There are many others like myself who belong to——

MR. HENDERSON: We object to that. Just answer the question, if you please.

By THE COURT:

Q. Are you a member of an organized group of Christians? That is the question. What is the name of the group?

A. I am a part of an unincorporated association of Christian people called Jehovah's Witnesses.

By MR. MOYLE:

Q. What is the relationship of Jehovah's Witnesses to their Creator, Jehovah God?

MR. HENDERSON: Just wait on that a moment.

By MR. HENDERSON:

Q. Do you have any written creed or doctrine?

A. Yes, we believe the Bible——

Q. No.

By THE COURT:

Q. Listen to the question and we will get along better. Do you have a written creed or statement of your principles which has been agreed upon by your group as representing your principles of belief?

A. Yes, the Bible is that creed.

Q. You have no other?

A. No.

By MR. MOYLE:

Q. In accordance with the teachings of the Bible, then, what is your relationship to the Creator so far as obeying his commandments is concerned?

MR. HENDERSON: I object to the form of that question, your Honor.

MR. MOYLE: That is proper, that is one of the allegations.

MR. HENDERSON: He can testify what his beliefs are, but I don't believe in accordance with the teachings of the Bible.

MR. MOYLE: All right, we will eliminate that.

THE COURT: Rephrase the question.

By MR. MOYLE:

Q. What is your belief, then, as to your relationship to Jehovah God?

A. As a follower of Christ Jesus, we must obey the commandments of God and preach the gospel of the kingdom.

Q. What agreement or covenant have you as a Christian entered into with Jehovah God?

A. That I would do that to the best of my ability.

MR. HENDERSON: If your Honor please—well, I will reserve that for cross-examination.

By MR. MOYLE:

Q. What is your belief as to the act of saluting a flag?

A. It is contrary to the commandment of God, to the second commandment, as stated in Exodus, 20th chapter, 3d verse and 4th verse.

By THE COURT:

Q. Will you state that? What is that so we will have it here?

By MR. MOYLE:

Q. Can you state that commandment offhand?

A. Yes.

“Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth:

Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me;

And showing mercy unto thousands of them that love me, and keep my commandments.”

Q. You say that you believe that this applies to the act of saluting the flag, is that it?

A. I do.

Q. Is that the reason, if you know, why your children, William and Lillian Gobitis, refused to salute the flag in the Minersville Public Schools?

A. I think so.

Q. Have you talked with them or taught them that belief?

A. Well, I have taught them to believe and study the Bible for a long time, and they were baptized to serve God, too, and as we were talking things over at home, no doubt they got a lot of knowledge in that respect concerning idolatry, we have talked about that.

MR. HENDERSON: Your Honor, I ask the answer be stricken out as not responsive.

THE COURT: I think it is responsive; motion refused.

By MR. MOYLE:

Q. Is there any other reason from the standpoint of your sincere belief why you, as a Christian, would not salute the flag?

A. As the flag is used today, it is an image or likeness of something, and is worshiped, and the commandments of God are that we should not worship images or partake of idolatry.

The witness then testified that from the last week of December, 1935, to the end of May, 1937 (except for holidays and vacation periods), Lillian Gobitis attended the Jones Kingdom School at Andreas, Pennsylvania, and from September, 1937, to the date of hearing, to wit, February 15, 1938 (except for holidays and vacation periods) his daughter, Lillian, attended the Pottsville Business College, and that William Gobitis attended the said Jones Kingdom School from the last week of December, 1935, to the date of hearing, to wit, February 15, 1938, each of which schools are private schools as distinguished from public schools maintained by the State. The witness further testified that the pupils attending the Jones Kingdom School are only members of the sect called "Jehovah's Witnesses" and are only those which have been expelled from the public schools because they refused to salute the flag.

Walter Gobitis next testified regarding the moneys which he had already expended, subsequent to November, 1935, in connection with the education of his two minor children and what he would be required to expend in the future. The witness produced various receipted bills for the years 1935, 1936 and 1937 and testified as follows concerning the same:

By MR. MOYLE:

Q. Will you produce the bill for expense for the first year, 1935 and 1936? I will ask you, first, you have a receipted bill showing what you have paid for, do you?

A. I do.

Q. Will you produce that?

(Papers were produced by the witness.)

. . . . .

By MR. MOYLE:

Q. Will you produce all of your bills, then, of 1935 and 1936? Do you have any bills there for books, heat, light, and so on?

(Papers were produced by the witness.)

Q. Do you have those for transportation?

(Papers were produced by the witness.)

Q. And board?

(Papers were produced by the witness.)

Q. These are all 1935 and 1936?

A. Tax receipts for the borough or not?

Q. Not at this time, I want to get these in. Are these the bills for 1935 and 1936?

A. They are, excepting the first one there for tuition.

By MR. HENDERSON:

Q. That is for 1937, as well?

A. That's right.

By MR. MOYLE:

Q. What other receipts have you got?

MR. HENDERSON: Can we stick to one thing? Are these the school bills?

By MR. MOYLE:

Q. What other expenses do you have besides actual expenses of this school?

A. Well, I have attorneys' fees.

Q. On what?

A. I tried to get in touch with a lot of lawyers; I spent a lot of time and money getting advice what to do in the beginning.

MR. HENDERSON: I object to that, if your Honor please.

MR. MOYLE: That is expense.

MR. HENDERSON: I object to that as improper testimony in this case.

THE COURT: Objection sustained.

By MR. MOYLE:

Q. Any other bills? You mentioned something about a tax bill, is that school tax?

A. Yes, school tax bill, I have 1935, and 1937, and for the 1936 period I have only a cancelled check, I can't find the bill.

Q. Does that cancelled check represent your school tax?

A. That's right.

MR. HENDERSON: Mr. Moyle, if you propose to introduce these checks or any tax bills, I propose to object to them as not being a proper item of expense arising from the jurisdictional question in this case. They are property taxes.

MR. MOYLE: I suppose there might be some question on that, but it seems reasonable to me——

THE COURT: I don't think it possibly can form part of the question here. They are payable, whether he has children or not. He might have no children in school, and pay it just the same.

MR. HENDERSON: Do these represent the bills, otherwise?

MR. MOYLE: For the first year, 1935 and 1936, yes; that doesn't represent all of his bills. Do you want them all?



MR. HENDERSON: I understood him to say they went to a school at Andreas, Pa. I thought it was the Jones School; these bills say on them the Kingdom School. Is that the same thing?

MR. MOYLE: Same thing.

THE WITNESS: Same thing, yes.

MR. MOYLE: No objection to these being offered?

MR. HENDERSON: Yes, I have a very serious objection to their being offered, because, apparently, they have the expenses of his car from 1935 to date. That is the biggest item he has. The others I would like to cross-examine on.

THE COURT: Why don't you have them identified, and then examine the witness as to each one?

MR. MOYLE: All right.

THE COURT: Better have them marked.

MR. MOYLE: Mark all of those separately.

By MR. MOYLE:

Q. This bunch clipped together represents automobile bills, does it?

A. Automobiles, gas, repairs, yes, on that little slip.

Q. And this one represents tuition?

A. Tuition.

MR. MOYLE: I ask that be marked as Exhibit A.

(Tuition bill of the Kingdom School in the amount of \$118 was marked Plaintiffs' Exhibit A.)

By MR. MOYLE:

Q. This one for \$120 represents board and lodging, does it, for the children at the school?

A. That's right.

THE COURT: You are asking what they are; have they been marked?

MR. MOYLE: I was going to ask to have them marked after I ask him about them.

THE COURT: You better have them marked before you ask him.

MR. MOYLE: I ask that that be marked as Exhibit B.

(A bill for board and lodging dated February 11, 1938, was marked Plaintiffs' Exhibit B.)

By MR. MOYLE:

Q. I will show you Exhibit B and ask you if that is the bill representing expenses for board and room for the children in the school?

A. That's right, at the home next door to the school.

Q. And Exhibit A is a bill representing the tuition cost?

A. That's right.

MR. HENDERSON: If your Honor please, I am reserving my objections to those——

THE COURT: They have not been offered yet.

MR. MOYLE: I ask that this be marked Exhibit C.

MR. HENDERSON: That is going to complicate it very much if you mark that batch Exhibit C.

THE COURT: Oh, yes, if it is all of the same class mark them as one exhibit.

MR. HENDERSON: I don't know how that will be, your Honor, but, however, we will see how we get along.

THE COURT: All right.

(A group of bills for automobile and transportation expenses were marked Plaintiffs' Exhibit C.)

By MR. MOYLE:

Q. I present to you Exhibit C; is that the receipted bills representing your automobile and transportation expenses for the children?

A. Yes.

Q. These are for the year 1935 and 1936, the school year?

A. Only one week of 1935.

By THE COURT:

Q. You mean one week of the calendar year 1935?

A. That's right.

Q. But it is for so much of the year of 1936 and 1935 as the children were in the present school?

A. One week of 1935.

Q. Well, I don't think you understand what I am asking you. There is such a thing as a school year, it begins in the fall and ends in the spring. It was the school year 1935-1936, beginning in the fall of 1935 and ending in the spring. The early part of that year they were in public school?

A. That's right.

Q. And some portion of that year they were in private school?

A. That's right.

Q. These bills represent a portion of that school year they were in private school, do they not?

A. That's right.

MR. MOYLE: We will offer these in evidence.

MR. HENDERSON: I object, if your Honor please.

THE COURT: Upon what ground? Which are you offering?

MR. MOYLE: Exhibits A, B and C.

THE COURT: Let's take them one at a time.

MR. MOYLE: I will withdraw that. I will offer Exhibit A, which represents the tuition expense.

MR. HENDERSON: I would like to ask a few questions to see if we want to object to it.

THE COURT: Very well, you may examine the witness.

#### CROSS-EXAMINATION.

By MR. HENDERSON:

Q. Mr. Gobitis, this particular bill has a name on it of Walter C. Knepper, of Tamaqua, Pa.; who was Mr. Knepper?

A. He is treasurer of our school board that we got together to handle the funds to pay the bills.

Q. You wrote up this receipt, did you?

A. No, he sent it to me.

Q. You have "Gobitas paid January 3, 1936," through to October 18, 1937, a total of \$118. How do you arrive at those figures?

A. They were the actual payments I made on the dates I made them. I never kept receipts for every payment I made, and they never issued any.

Q. These are the payments you made to Mr. Knepper?

A. The record as that appeared on their books.

Q. For what purpose?

A. Paying for the teachers, only, and books, and some paraphernalia we have to pay.

Q. This represents the money you actually turned over to this church school?

A. It is not a church school.

Q. I am not trying to confuse you.

A. Private school.

Q. To a private school for the expenses of your two children, or for one child, or for what?

A. For two children, just for the teacher and some books.

By THE COURT:

Q. Was that your share of the expenses?

A. My share, yes.

Q. Computed, I suppose, in proportion because you had two children as related to the total number of children in the school?

A. Yes.

By MR. HENDERSON:

Q. Mr. Gobitas, were both of your children there last fall?

MR. MOYLE: That is objected to.

By MR. HENDERSON:

Q. 1935?

A. 1936 we are talking about, aren't you?

Q. Your bill is through to October, 1937.

A. You can strike out and change the total bill there where it ends at that particular time.

By THE COURT:

Q. Were your children there in 1937?

A. One was not, one already started in the fall of 1937 in the Pottsville Business College.

MR. HENDERSON: That is what I wanted to know.

By THE COURT:

Q. Is the other one still there?

A. The other one is still there in private school.

By MR. HENDERSON:

Q. Mr. Gobitas, why are the payments in the fall of 1937 when you had only one child there so much higher than they were during the winter of 1937 and the fall of 1936?

A. I don't say they are higher.

Q. Yes, they are quite a bit. They run \$6 for two children, and then they run \$8 for one child. Can you answer that?

A. The school term was only from December 29th until April, that's about four months, and the other is an eight-month period.

Q. Do you understand my question?

A. But per month is according to family arrangement.

Q. On September 8, 1937, which, I take it, is when the school opened last fall——

A. I thought you were back in 1936.

Q. I will come back in just a moment. Is that the time your school opened?

A. Yes.

Q. At that time you had one child in the school?

A. That's right.

Q. From September 8, 1937, your next payment is October 18, 1937, is that correct?

A. Yes.

Q. Your first payment was \$8.60?

A. Yes.

Q. Now, there seems to be from January 15, 1937, to February 15, 1937, \$5.30 for two children; from February 15, 1937, to March 22, 1937, was \$6.30. I am only asking what made the great increase in the fall of 1937 over the spring of 1937. At one time you had two children, and then at the other time you had one.

A. It costs still more than that—

Q. Can you answer my question? Now, let's stick right to this one question.

A. According to the paraphernalia that was bought. They needed equipment for the school, and according to the families that were in the school at that time we paid. The rates varied.

Q. I see. That represents the total amount of tuition that you have paid to this private school?

A. That was used for tuition and books.

Q. \$118. Now, Mr. Gobitis, you present here a receipt which apparently you have just procured a couple of days ago, dated February 11, 1938.

A. That's right.

Q. For board and lodging in the sum of \$6 per week for twenty weeks from December 21, 1935, to May 2, 1936. Who wrote up that paper?

A. I did.

Q. For what purpose?

A. I never had any receipts, or never got any, because we didn't just get them, and I went back to that woman and asked her would she give me a written receipt showing how much money I paid out, and we computed it, wrote it down, she read it and signed her name and had the witness to it.

Q. From December 21, 1935, to May 2d, 1936, your school has twenty weeks, is that right?

A. That's right.

Q. During that time your children were in the home of this Verna S. Jones?

A. That's right.

Q. And she charged you \$6 a week; during any of that time did the children come to you at Minersville?

A. Yes, they came home every Friday, and Monday they would go back to school.

Q. Every Friday at what time?

A. About four, five, six o'clock in the evening.

Q. And they would be, then, at your home until—

A. Monday morning, again, at sixty to seven-thirty.

Q. Outside of week-ends, from December, 1935, to May 2d, 1936, they were in the house of this Verna S. Jones, to whom you paid \$120?

A. Yes, sir.

MR. HENDERSON: If your Honor please, I would like to have the stenographer hand up to you what has been marked as Exhibit C and I call your Honor's attention to the fact that that seems to be expenses for a truck.

By MR. HENDERSON:

Q. And do you have a truck?

A. Two trucks and a car.

Q. Well, it is the car that you have the loud speakers on?

A. No, sir, the truck is in my shop.

Q. And your business is what, Mr. Gobitas?

A. Retail meat market, produce, and grocery store.

Q. So, you run a truck; in addition to that, you run an automobile?

A. That's right.

Q. And which is the one that you have the loud speakers on?

A. In the car.

Q. Which one do you have it on?

A. I have it on my trailer attached to my car, my private sedan.

Q. These bills here represent the expense for your truck?

A. They represent all the expenses of all my cars. That small piece of paper is a memorandum taken from my books. My bookkeeper made that for the whole year, and those bills are only presented as proof I have paid out that money on oil, gas and repairs on those cars.

Q. On all those occasions?

A. Yes, sir.

MR. HENDERSON: If your Honor please, I object to that.

THE COURT: What is the relevancy of these automobile bills, truck bills, and so forth?

THE WITNESS: I don't have them separate.

DIRECT EXAMINATION (Continued).

By MR. MOYLE:

Q. What transportation did you furnish for your children? Where did you take them to? This Andreas school, how far is it?

A. Sixty miles every day a trip, and I used any one of the three cars.

By THE COURT:

Q. You didn't go every day?

A. It is only a twenty-week period.

Q. They boarded there from Monday to Friday?

A. For twenty weeks during the real severe weather, the other times I went every day.

MR. HENDERSON: These bills run from December to May; I imagine that is about when the school closed. I object to the bills, if your Honor please.

THE COURT: Objection sustained. You might show the number of times, if you can, that he transported them, and the distance. I think from that we might get a general idea.

By MR. MOYLE:

Q. How many trips did you make to take the children back and forth?



A. Twice a week.

MR. HENDERSON: If your Honor please, I wasn't able to hear that.

THE COURT: He says twice a week.

By THE COURT:

Q. In other words, you brought them home Friday and took them back on Monday, that was two round trips per week?

A. That's right.

By MR. MOYLE:

Q. How far is it?

A. Thirty miles one way.

Q. That is sixty miles, so you had at least two hundred and forty miles a month, each month, is that right?

A. That's right.

THE COURT: Twice that much.

MR. HENDERSON: You are quite correct, if your Honor please, one hundred and twenty miles a week.

MR. MOYLE: That's right.

By MR. MOYLE:

Q. Did you take them back and forth daily some of the time?

A. Sometimes daily.

Q. Do you know how often that was done?

A. In the first year they boarded there nearly all the time except some weeks when you couldn't get there. They stayed there all the time; sometimes we skipped a week or two, I didn't go for them.

Q. You don't have definite figures?

A. No.

Q. But you did make this trip back and forth each week?

A. That's right, every week.

Q. During the period. What car did you use?

A. Any one of the three which was convenient.

Q. Do you know what it costs you a mile to run your car?

A. Yes, sir.

MR. HENDERSON: Now, if your Honor please, I object to this, I think it is purely conjectural. There is nothing definite upon which to base it. He even says during part of this time in the winter he never even made any trips, there were some weeks he didn't even go at all. He doesn't pick up and go every time he wants to see his children; if he does, I don't think it can be put on the school district.

MR. MOYLE: It isn't being put on the school district.

MR. HENDERSON: It is a basis for the damage, which arrives at the same conclusion.

THE COURT: I will overrule the objection.

MR. HENDERSON: Will your Honor grant me an exception?

THE COURT: Exception to the defendants.

By MR. MOYLE:

Q. The question was do you know what it costs a mile to operate the car.

A. Yes, about easily eight cents a mile.

By MR. HENDERSON:

Q. Eight cents a mile?

A. We figure it both ways, four cents one way.

By MR. MOYLE:

Q. That is four cents a mile instead of eight cents?

By THE COURT:

Q. You are speaking of—I was going to say political method—maybe you call it the constable's method of so many miles in a circle?

A. I heard so much difference of opinion on how much it costs to run one; I don't know exactly what it costs, I never kept records of it.

Q. You estimate four cents a mile, as nearly as you can tell?

A. Yes.

MR. HENDERSON: I renew my motion, if your Honor please, to strike out all this testimony as being entirely conjectural and not being based on facts.

THE COURT: I think he has operated a car sufficiently to estimate it. I will overrule the motion, exception for the defendants.

By MR. MOYLE:

Q. That continued through that school year?

A. That's right.

MR. MOYLE: We would offer these other two exhibits, B and A in evidence.

THE COURT: They were offered, weren't they?

MR. MOYLE: Yes, I don't know whether they had been accepted or not.

THE COURT: I am not sure. If you haven't offered them, note the witness examined them, and they are offered in evidence. Any objection?

MR. HENDERSON: No objection.

THE COURT: They will be admitted.

(A copy of Plaintiffs' Exhibit A follows:

"Copy Feb. 10, 1938

KINGDOM SCHOOL

	Year 1936
	& 1937
Gobitas Paid Jan. 3, 1936	16.67
" " Feb. 17, 1936	12.50

<i>Walter Gobitis</i>	65
Gobitas Paid March 6, 1936	13.84
“ “ April 25, 1936	13.19
Total from Jan. to April for 1936	56.20
15 to 30, 1936	
Gobitas Paid Sept. 18, 1936	2.75
“ “ Oct. 2, 1936	5.75
“ “ Nov. 14, 1936	6.00
“ “ Dec. 7, 1936	6.30
“ “ Jan. 15, 1937	6.30
“ “ Feb. 15, 1937	6.30
“ “ Mar. 22, 1937	6.30
“ “ April 6, 1937	6.30
TOTAL FOR 1936 & Part of 1937	\$102.20
for 1937	
Gobitas Paid Sept. 8, 1937	8.60
“ “ Oct. 18, 1937	7.20
TOTAL	\$118.00
Walter C. Knepper, Tamaqua Pa. R # 3 Treasurer.”	

## PLAINTIFFS' EXHIBIT B.

“February 11, 1938  
For Board and Lodging for Lillian and William Gobitas, I received from Walter Gobitas the sum of \$6.00 per week for 20 weeks or total of \$120.00.  
From Dec. 21, 1935 to May 2nd, 1936.

/s/ Verna S. Jones

Witness

/s/ Erma Metzger.”)

By MR. MOYLE:

Q. Now, Mr. Gobitis, as to the school year 1936 and 1937, will you produce receipted bills you have covering tuition?

MR. HENDERSON: And they are all here?

THE WITNESS: They are only on the one year's tuition in 1937 and 1936. 1937 and 1936 is on that Exhibit A. There is another one for the following year, and here are some for the Pottsville Business College in 1937.

By MR. HENDERSON:

Q. Well, Mr. Gobitis——

MR. HENDERSON: May I question him?

MR. MOYLE: Go ahead.

CROSS-EXAMINATION (Continued).

By MR. HENDERSON:

Q. This is another receipt made up February 11, 1938, that Mrs. Jones received \$72 for board for Lillian and William Gobitis, and for lodging for three months, January, February and March, of 1937, is that right?

A. That's right.

Q. And during that time they were there all the time?

A. No, going back and forth, Monday and Friday.

By THE COURT:

Q. They were there during the week?

A. During the week.

By MR. HENDERSON:

Q. This is based upon so much a week, or so much a month?

A. Three dollars a week per child.

Q. Then it is based on a week?

A. Yes.

Q. That bill is \$72?

A. Yes.

Q. Now, Mr. Gobitis on this Pottsville Business College, these represent the bills that you have paid to the Pottsville Business College for your daughter Lillian?

A. That's right.

Q. And they carry through to, as a matter of fact, February 14, 1938, right up to date?

A. You can take one out, there are a few missing.

Q. Just listen to my question, please don't argue with me. I assume if there are any other bills, you have them here. This goes up to February 14, 1938.

A. It does. You can take that out.

Q. I am not interested in taking them out.

A. There are some I don't have; they aren't there; I don't have them.

MR. HENDERSON: You are going to offer these in evidence?

MR. MOYLE: Yes. I ask that be marked as Exhibit D.

(A receipt dated February 11, 1938, of Walter Gobitas, \$72, signed by Verna S. Jones, was marked Plaintiffs' Exhibit D.)

DIRECT EXAMINATION (Continued).

By MR. MOYLE:

Q. I present to you Exhibit D, Mr. Gobitis, and ask you if that is a bill for board for Lillian and Walter at the school for 1936 and 1937, is that right?

A. Lillian and William, it says.

MR. MOYLE: We offer that in evidence.

(A copy of Plaintiff's Exhibit D follows:

“February 11, 1938

Received of Walter Gobitas the sum of \$72 00 for board for Lillian and William Gobitas, and for lodging; for three months, January, February and March of 1937.

/s/ Verna S. Jones

WITNESS

/s/ Erma Metzger.”)

By MR. MOYLE:

Q. Are these bills of the Pottsville Business College for the school year 1936 and 1937?

A. 1937 and 1938. I don't think they are all here, though. There is December missing, and October missing. That would be \$14 each, that is \$28 more.

Q. I am interested just now in 1936 and 1937. Do you have any other receipted bills covering that year?

A. No.

Q. That is all you have on that?

A. Yes.

Q. Was the tuition covered in the previous?

A. Yes.

By THE COURT:

Q. Mr. Gobitis, I believe you offered the bill here, or identified a bill for board for the 1936-1937 school year. What was it, for January, February and March?

A. Just three months.

Q. What happened during the remainder of the year?

A. Took them back and forth after that.

Q. What was the length of the school year?

A. At that time I think it began on Labor Day in September and ended in May.

By MR. HENDERSON:

Q. Until the end of May?

A. Yes.

Q. And three months of that time they boarded, and the rest of the time you took them back and forth every day in your car?

A. Yes, sir.

By MR. MOYLE:

Q. And that is the same distance as you testified previously, is it?

A. That's right.

THE COURT: Same school, isn't it?

MR. MOYLE: Same school.

By MR. MOYLE:

Q. And they are all the items you have, then, for this 1936 and '37 year?

A. Yes, sir.

MR. MOYLE: Was there any objection to that bill?

MR. HENDERSON: No, I didn't object to that bill.

THE COURT: What is that?

MR. MOYLE: That is Exhibit D, the Board for these three months.

THE COURT: It will be admitted.

By MR. MOYLE:

Q. Now, coming down to 1937 and 1938, at this time Lillian Gobitis is with the Pottsville Business College, is that right?

A. That's right.

MR. MOYLE: I think we will mark these separately.

(Bill dated September 27, 1937, of the Pottsville Business College to Lillian Gobitis in the sum of \$18.10 was marked Plaintiffs' Exhibit E.)

(Bill dated November 3, 1937, of the Pottsville Business College to Lillian Gobitis in the sum of \$16.60 was marked Plaintiffs' Exhibit F.)

(Bill dated November 22, 1937, of the Pottsville Business College to Lillian Gobitis in the sum of \$12.85 was marked Plaintiffs' Exhibit G.)

(Bill dated January 17, 1938, of Pottsville Business College to Lillian Gobitis in the sum of \$14.20 was marked Plaintiffs' Exhibit H.)

By MR. MOYLE:

Q. I present to you Exhibits E, F, G and H, Mr. Gobitis, and ask you what they are.

A. Just receipts for the months that they represent there, November, September, January, but there are two months missing.



By MR. MCGURL:

Q. What year?

A. 1937, November, September. The school year started September 23d, and it was \$14 a month, and these are some receipts for it.

By THE COURT:

Q. You are paying \$14 a month?

A. Yes.

Q. How long does the term last?

A. About ten months.

Q. Ten months?

MR. MCGURL: Not from September 23d, ten months, it couldn't be.

THE WITNESS: I thought your Honor said how long is it going to last.

By THE COURT:

Q. How long will your daughter be in the Pottsville Business School?

A. Ten months.

Q. When will it terminate?

A. This is a secretarial-stenographer course, we intended to send her ten months.

Q. I see. You are intending to give her ten months in that school?

A. Yes.

THE COURT: Very well.

MR. HENDERSON: Have you offered these bills in evidence?

MR. MOYLE: I will.

MR. HENDERSON: I am going to object to them.

THE COURT: On what ground?

MR. HENDERSON: Upon the ground they sent the daughter to business school, and that there are other schools available in that community. There is no evi-

*Walter Gobitis*

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dence they have tried to send the child to any other school, and I don't think the expense of sending her to this business college is a proper item.

THE COURT: I don't understand that. They were expelled from the public schools.

MR. HENDERSON: Only one, but there are plenty of schools in that adjacent country around there.

THE COURT: They were private schools as to them; in other words, if they were sent to some other school they would have to pay tuition.

MR. HENDERSON: But they wouldn't have to pay this.

THE COURT: Objection overruled, exception for the defendant.

(A copy of Plaintiffs' Exhibit E follows:

"Pottsville, Pa., Sept. 27,  
1937

Lillian Gobitas

To

	Pottsville Business College	Dr.
4 weeks' Tuition to October 25, 1937		\$14.00
Shorthand Outfit		4.00
Spelling Outfit		1.00
Rapid Calculation Tablet		.50

Paid	19 50
9/27/37	1.40

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\$ 18.10

Pottsville Bus. College  
by F. Taylor")

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(A copy of Plaintiffs' Exhibit F follows:

“Pottsville, Pa.,  
Nov. 3, 1937

Lillian Gobitas

To

Pottsville Business College  
Dr.

4 weeks' Tuition to Nov. 22, 1937	\$14.00
Accounting Set to Start	4.00

Paid	18.00
11/3/37	1.40
	<hr/> \$16.60

Pottsville Bus. College  
by F. Taylor.”)

(A copy of Plaintiffs' Exhibit G follows:

“Pottsville, Pa.  
Nov. 22, 1937.

Lillian Gobitas

To

Pottsville Business College Dr.

4 weeks' Tuition to Dec. 20, 1937	\$12.60
10/25—Note Book & Tpw. Paper	.20
11/9—Lead Pencils	.05

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\$12.85

Paid  
11/24/37  
Pottsville Bus. College  
by F. Taylor”)

*Walter Gobitis*

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(A copy of Plaintiffs' Exhibit H follows:

“Pottsville, Pa.,  
Jan. 17, 1938

Lillian Gobitas

To

Pottsville Business College  
Dr.

4 weeks' Tuition to Feb. 14, 1938	\$12.60
Gregg Speed Study	1.50
Typewriter Paper	.10
	<hr/>
	\$14.20

Paid

(Stamped)

JAN 25 1938

POTTSVILLE BUSINESS COLLEGE

By F. Taylor”)

By MR. MOYLE:

Q. How far is Pottsville from Minersville?

A. Four miles away.

Q. How does she get there?

A. On a bus back and forth every day.

Q. What does it cost her every day?

A. Ten cents a day.

Q. For how many days?

A. Five days.

Q. Five days a week?

A. Yes, sir.

Q. You have receipted bills covering the expense for

William in the Andreas School for 1937 and 1938?

A. No, I do not; I didn't get a receipt for that.

Q. He is still attending there, is he?

A. That's right.

Q. He is there throughout the week?

A. Monday to Friday.

Q. Or do you take him back and forth?

A. Monday and Friday.

Q. What are you paying for board?

A. Three dollars a week.

Q. Have you paid anything for books and such matters?

A. I don't have a receipt from the teacher or from the treasurer for that. I don't think any additional books were taken, that's why they vary.

Q. What are you paying for tuition?

MR. HENDERSON: He has already introduced the bill in evidence.

MR. MOYLE: Oh, is that covered in this? Pardon me.

By THE COURT:

Q. How old is he now?

A. Thirteen now.

By MR. MOYLE:

Q. Did you make an effort to place the children in other public schools?

A. We have.

Q. Were you successful?

A. No.

Q. Do you know what grade William is in?

A. Now he is in eighth.

Q. He is in the eighth grade; Lillian is in the first year in this high school?

A. Business college, yes. I think William is in the seventh grade, though.

By THE COURT:

Q. How far did she go in this school?

A. Eighth, eighth is the last.

Q. Have you made any effort or plans to secure the equivalent of a high school education for these children?

A. I have. I have visited all the surrounding schools around the Borough of Minersville, and all are adamant, they will not admit children who refuse to salute the flag—

Q. Have you investigated any private schools?

A. I have received prices from some; they are higher than the rates we pay just for tuition, and they are so far away they would cost the same thing.

By MR. MOYLE:

Q. What does it cost you a year, then, at this Pottsville Business College?

A. It would cost about \$220 for this first year, because you must buy your books and your equipment with which to operate; \$14 a month for ten months, \$140, and we had to buy equipment, \$80.

Q. Do you think you could get by with \$200 a year following that?

A. I think so.

Q. Is it your intention to send William to the same school?

A. If no public schools accept him, I will have to, even no matter what it costs.

Q. And you have four other children besides William and Lillian?

A. I do.

Q. The other children are not involved here——

MR. HENDERSON: That has nothing to do with this case.

MR. MOYLE: Except under the same stipulation he has to finish the education.

THE COURT: Yes, but I don't think you can bring them in. Objection sustained. I think you are entitled to show, if you can, what it would cost him to provide education for these children until their eighteenth birthday.

MR. MOYLE: For these other children?

THE COURT: No, these two involved. Under the present school laws, as I understand it, they would be required to remain in school until they are eighteen. I don't know whether you have any evidence on that.

By MR. MOYLE:

Q. Lillian is now fourteen years of age?

A. That's right.

Q. So that she is, under the school laws, required to attend the public schools until she is eighteen, so there are four years in which you have to furnish this education?

A. Yes.

Q. Is \$200 a year a reasonable estimate at what you can do that?

A. I think so.

Q. Do you think you can furnish education for that amount?

MR. HENDERSON: He has already answered that.

By MR. MOYLE:

Q. Can you furnish that education to William at \$200 a year?

A. Yes.

Q. And he is now thirteen?

A. Twelve.

MR. HENDERSON: There is something wrong, then.

THE WITNESS: The record, I think, was in error the first time.

MR. HENDERSON: It is written into this testimony as twelve, and this was filed——

MR. MOYLE: The record shows twelve.

THE COURT: You can't make a person older than he is by agreement of counsel.

MR. HENDERSON: Not at all, I want it straight, whichever it is.

THE COURT: Find out.

By THE COURT:

Q. If you can, tell us when was your daughter, Lillian Gobitas, born?

A. I can't tell you. She is here, she can tell. I don't remember.

THE COURT: Can't you find out what the dates of birth of the two children are and stipulate it?

MR. MOYLE: Lillian says she was born November 2, 1923, and William, September 17, 1925.

MR. HENDERSON: Then the girl is fifteen and the boy is thirteen.

THE COURT: At the present moment.

MR. HENDERSON: At the present time.

By THE COURT:

Q. Mr. Gobitis, what I am trying to get at is this, if these children were attending the Minersville School—and I assume they have a high school in Minersville—they would let them go through high school until they were eighteen years of age and get a high school education; in fact, they would be required to under the present rule. Have you made any effort to secure through some private school conveniently located, or at a distance, if necessary, by means of boarding, equivalent, or have you planned to secure equivalent education for them, and if so, have you determined what it would cost?

A. Yes, sir.

Q. Not a mere business course, which is not the equivalent of a whole high school course, although I assume a high school would give the business course.

MR. MCGURL: It may be either, your Honor, the high school—

THE COURT: Yes, but as I understand it, a ten-months' course in a secretarial school is devoted to the studying of typewriting, bookkeeping and things of that kind, and not cultural subjects.

MR. MCGURL: No, but the high school in Minersville and other high schools in Pennsylvania give commercial education.

THE COURT: I understand that, but she wouldn't be getting in business college the cultural subjects she would be getting in high school.



MR. MCGURL: It is my understanding business colleges also give that.

THE COURT: You mean it is the equivalent of a high school? I don't think so; I may be wrong on that.

MR. MCGURL: I wouldn't want to answer that, but I think they do.

By THE COURT:

Q. You have investigated it, Mr. Gobitis?

A. Yes, I have.

Q. What is she getting there in school?

A. Just getting equipment for a commercial job to work at typewriting in some business.

Q. It doesn't take four years, does it? Ten months, you said?

A. I want to educate her and give her advantages; I have investigated, I have visited the private schools, I have gotten mail from them, and the costs are higher than what we pay at the present place.

By MR. MOYLE:

Q. What are the costs?

MR. HENDERSON: I object to that, if your Honor please.

THE COURT: I think we have gotten enough, unless you have something more definite.

By MR. MOYLE:

Q. What is your plan for William after he finishes the grammar school or grade school?

A. He will continue in the same private school until he graduates from it——

By THE COURT:

Q. What grade does that take him to, eighth grade?

A. Eighth grade. When he finishes eighth, if I can't get a cheap outside school before that time, I will send him to this business college to do the same kind of work.

By MR. MOYLE:

Q. And it is your intention to continue him in school during the time required by the state, that is, until he is eighteen years of age?

A. That's right.

Q. And the same with Lillian?

A. That's right.

MR. MOYLE: Cross-examine.

CROSS-EXAMINATION (Continued).

By MR. HENDERSON:

Q. Mr. Gobitis, have you tried any of the parochial schools around Minersville?

A. I have not.

Q. There are some, are there not?

A. There are.

Q. And there are some parochial high schools?

MR. MOYLE: Just a minute. I would object to that; I don't regard that as competent, and he might have a real sincere objection to a parochial school.

THE COURT: I know, but this is cross-examination; he is certainly entitled to be asked whether he has tried, and if not, why not.

THE WITNESS: I have not, because I had good reasons for it.

By MR. HENDERSON:

Q. The parochial schools, you know, do you not, that the cost of going there is very slight?

A. I think it is very high.

Q. You don't know, do you?

A. I don't.

Q. You have not tried any of the parochial schools in Minersville, itself?

A. I have not.

Q. Or anywhere around there?

A. I have reasons to know they would not accept them.

MR. MCGURL: That is objected to.

MR. HENDERSON: I ask that be stricken from the record, please.

By THE COURT:

Q. You didn't ask them?

A. I did not.

THE COURT: Motion granted.

By THE COURT:

Q. You had no contact with those in charge of the Roman Catholic schools in your neighborhood?

A. I have not.

MR. HENDERSON: That's all. If your Honor please, at this time I assume that my friends have nothing further to show on the matter of damage, and the jurisdictional question in order to get into this Court, and I move that the bill be dismissed on the ground that they have not shown the jurisdictional amount as required.

THE COURT: I don't know whether they have or not.

MR. HENDERSON: I have computed it, and I find it comes quite far short.

THE COURT: Well, I will overrule the motion for the present.

MR. HENDERSON: Will your Honor grant me an exception?

THE COURT: Yes, exception.

MR. HENDERSON: At this stage?

THE COURT: Yes.

By MR. HENDERSON:

Q. I meant to ask, Mr. Gobitis, you referred to the Fourth Commandment, did you not, instead of the Second?

A. I beg your pardon?

Q. You referred to the Fourth Commandment instead of the Second?

*William Henry Gobitis*

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A. The Second.

Q. Well, your bill says the Fourth, and I think if you will look at the 20th Chapter of Exodus you will find it is the Fourth.

A. It might be the 4th verse, but it is only the Second Commandment. However, I have a Douay version of the Catholic Bible; it is that way there.

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WILLIAM HENRY GOBITIS was the next witness on behalf of the plaintiffs, who, after having been duly sworn, was examined and testified that he was twelve years of age, that he was one of Jehovah's Witnesses, and that they are people who have consecrated their time to Jehovah in proclaiming His messages and who obey His commandments.

When asked why he did not salute the flag, he testified:

A. Because it is contrary to God's law.

Q. What law of God do you believe it is contrary to?

A. In Exodus, Chapter 20, verses 4 to 7.

Q. What does that say, if you will, or would you rather find it?

A. I can find it.

MR. MCGURL: Which one is that, now? Is that Douay?

MR. MOYLE: No, that is King James.

MR. HENDERSON: I thought his father would rather have a Catholic Bible. Would you rather have him use King James'?

By MR. MOYLE:

Q. What is the statement in the Bible which you believe prohibits saluting the flag?

A. Here I have it:

“Thou shalt not make unto thee any graven image, or any likeness of any thing that is in heaven above, or that is in the earth beneath, or that is in the water under the earth:

Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate me;

And showing mercy unto thousands of them that love me, and keep my commandments."

Q. Have you consecrated yourself to the Lord?

A. Yes.

Q. What do you mean by that?

A. Devoting your time to Him and preaching the gospel.

Q. Do you believe the Bible?

A. Yes.

Q. Do you believe it contains God's law?

A. It is God's law.

Q. And that you should obey His commandments?

A. Yes.

Q. That is why you refuse to salute the flag, is it?

A. Yes.

MR MOYLE: Cross-examine.

There was no cross-examination. The witness, however, was interrogated by the Court as to his love of country and desire to be a good citizen, and the witness said that he was born in this country, loved the country, wanted to be a good citizen and to do everything he could to be a good citizen of the United States.

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LILLIAN GOBITIS next testified on behalf of the plaintiffs. After having been duly sworn, she testified that she was fourteen years of age and that she did not salute the flag in the Minersville School for the following reasons:

A. Because it was contrary to God's law.

Q. What law of God do you believe prohibits you from saluting the flag?

*Frederick William Franz*

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A. Exodus, 20th Chapter, and 5th verse.

Q. It is the same thing?

A. Also 1st John 21, 5: "Little children, keep yourselves from idolatry."

By MR. MOYLE:

Q. Do you believe——

MR. HENDERSON: If your Honor please, I ask that the latter part be stricken from the record; there is nothing in the bill that has anything to do with that.

THE COURT: The motion is refused.

By MR. MOYLE:

Q. Do you believe in being loyal to your country?

A. Yes.

Q. Did you obey the school regulations at Minersville in general?

A. Yes.

Q. That is the only one you had any difficulty with in the school?

A. Yes.

MR. MOYLE: Cross-examine.

There was no cross-examination nor any questions asked by the Court.

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The plaintiffs next produced FREDERICK WILLIAM FRANZ, who, having been duly sworn, testified that he was a resident of Brooklyn, New York, where he was engaged in the editorial department of the Watch Tower Bible and Tract Society, to go over the material that is submitted for the publications of the society and to check up as to their accuracy in every respect. Counsel for the defendants thereupon called for an offer of proof.

MR. HENDERSON: If your Honor please, may I ask for an offer of proof in connection with this witness?

MR. MOYLE: May it please the Court, through this witness I hope to prove, or offer to prove that he is one

of Jehovah's Witnesses, that he has been one of Jehovah's Witnesses for many years and is thoroughly acquainted with the principles and teachings of Jehovah's Witnesses, especially concerning the salute to the flag, and concerning consecration to the Lord, and their obligation to obey His law, and such matters. Those matters are alleged in our bill and are denied by the defense.

MR. HENDERSON: If your Honor please, I object to it as immaterial. It is the belief of the Gobitis and not this gentleman.

THE COURT: Yes, they are members of the group; they have expressed their views. I don't know just what your position is, if your view is they don't hold these beliefs, that may be one thing. It may be immaterial. If, however, you concede that the views expressed by the witnesses are the religious beliefs—

MR. HENDERSON: There was some noise; I didn't hear.

THE COURT: I say if the defendants concede that the views which the plaintiffs have expressed on the stand are the religious beliefs that they hold, then I should say this is immaterial.

MR. HENDERSON: If your Honor please, of course, I am not in a position to concede anything in that connection. I think it is their belief, and it is not for me to state what their belief is, that is a question of fact. This has nothing to do with it.

MR. MOYLE: It would be only explanatory, I suppose.

THE COURT: Will you make your offer a little more fully, Mr. Moyle? Just what is it you are proposing to prove?

MR. MOYLE: We expect to show definitely through this witness that the law of God does prohibit a salute

to the flag, that Jehovah's Witnesses as a group of the Christian Church are definitely bound by that law and must obey it; that refusal to so obey it would result in eternal destruction, and that is a belief which Jehovah's Witnesses hold and sincerely maintain. I think we alleged that quite clearly in our bill. It is corroborative of the testimony offered by the complainants.

MR. HENDERSON: If your Honor please, I object to the offer.

THE COURT: It may go to the question of the sincerity of the religious beliefs which these people alleged that they hold. I will permit the testimony.

MR. HENDERSON: And grant me an exception?

THE COURT: Exception.

Subject to the objection of counsel for the defendants, F. W. Franz testified as follows:

By MR. MOYLE:

Q. Are you one of Jehovah's Witnesses?

A. Yes.

Q. How long have you been one of them?

A. Since the year 1913.

Q. You mentioned your work in the Watch Tower Bible and Tract Society office; what is the connection?

A. Jehovah's Witnesses are not incorporated as such, but they use the Watch Tower Bible and Tract Society as their servant, as their agent in carrying on the work and in supervising the work throughout the earth.

Q. Your full time is spent, is it, in this work of Jehovah's Witnesses and this society?

A. Yes, sir.

Q. How long have you devoted your full time to that, how many years?

A. I have been with the Watch Tower Society's office in Brooklyn since the year 1920, June, but more particularly doing this present work since the year 1927.



Q. Are you familiar, then, with the principles and teachings of Jehovah's Witnesses?

A. Yes, sir.

Q. Are you familiar with the Bible teachings?

A. Yes, sir.

Q. Especially concerning the salute to the flag?

A. Yes, sir.

Q. What is the nature of the agreement or covenant which Jehovah's Witnesses as Christians enter into with their Creator?

A. The Apostle Peter—

MR. HENDERSON: Just wait a minute. We object to that, if your Honor please. I don't see how any covenants entered into with Jehovah, except the opinion of the particular witness, are relative, or whatever organizations he belongs to. The fact that someone gets up here and says it isn't proper and according to their Biblical teachings to salute the flag may be their opinion, but I don't think it is testimony in a case.

MR. MOYLE: The allegation is denied by the defendants, sir, and I think it goes to the sincerity of their beliefs.

THE COURT: That doesn't necessarily mean it is relevant; you might make allegations that are immaterial. I am disposed to grant a reasonable latitude here; I am not sure just whether it is material or not. We will permit it.

MR. HENDERSON: Perhaps, if your Honor please, it is better that we go ahead, and then at the end of the testimony I will move to strike it out.

THE COURT: Yes, because there is no jury here.

MR. HENDERSON: Yes, and there is no use to take the time.

THE COURT: Yes.

MR. MOYLE: Read the question, Mr. Stenographer.

(The question was repeated by the Reporter as follows:

“Q. What is the nature of the agreement or covenant which Jehovah’s Witnesses as Christians enter into with their Creator?”)

A. First Peter, 2, verse 21, says that Christ has left us an example, that we should follow his steps. The Scriptures definitely mark the steps that Christ took. Before His birth, it was prophesied He would make an agreement or contract to do the will of His God, Jehovah, and His Father, who is Jehovah.

Psalm 40, verse 8, prophetically says, and puts the words into Christ’s mouth, “Lo, I come to do Thy will, O My God.” We are not left in doubt as to whom those words apply, because the Apostle Paul in Hebrews, the 10th chapter, definitely states that Christ undertook this covenant to do God’s will, and he fulfilled this prophecy.

Hence, the covenant which Jehovah’s Witnesses must make with God, according to the example of Christ, is this agreement to do God’s will as it is written in the Book, the Bible. When Jesus was on trial for His life and appeared before the highest Roman court having jurisdiction in the land in which Jesus preached the Gospel, He said to the Roman Governor, Pontius Pilate:

“To this end was I born, and for this cause came I into the world, that I should bear witness to the truth. Everyone that is of the truth heareth My voice.”

He also stated, “I am not come in My own name, but in My Father’s name.”

His Father is Jehovah. Hence, Jesus’ own testimony bears witness to the truth that He was a witness for Jehovah, or Jehovah’s Witness, and, hence, an example to all His disciples in this respect. Hence, anyone who covenants to do God’s will, to follow after Christ, must be a witness for Jehovah. Every Christian must be such, and

he must, of course, keep all the commandments of God which relate to the bearing of testimony to the name of Jehovah and to the Government which he has prophesied and prepared to establish on the earth.

By MR. MOYLE:

Q. Now, Mr. Franz, what are the Commandments of God as revealed in His word, the Bible, relative to saluting a flag?

A. The Commandments are stated in numerous places in the Bible. You have a statement of this commandment in the 5th Chapter of Deuteronomy, but the first statement thereof is found in Exodus, Chapter 20, verses 4 and 5, as before referred to in this trial. The statement is that "Thou shalt not make unto Thee——"

MR. HENDERSON: If your Honor please, can't we eliminate it? It has been in two or three times.

THE COURT: Yes, I don't think it is necessary to repeat it again.

By MR. MOYLE:

Q. How do you understand that refers to saluting the flag, this Exodus 20th Chapter, verses 4 and 5?

A. The Commandment says that there shall be no image or any likeness of anything in Creation. A flag is a proper thing in its place. The Bible shows that the Israelites had flags, or standards, or banners. You read the Book of Numbers, Chapter 1, verse 52; Chapter 2, verses 2 and 3, and other verses in the same chapter; Chapter 10, also; all these show that the Israelites had flags. But these were merely markers showing the location of the various tribes to which the members of the Nation of Israel belonged, so that they could locate their position and their relation to the rest of the people of Israel.

However, these flags were not to be saluted, nor any signs or motions or acts of worship be made toward them. So, flags have a definite purpose and use which is legiti-

mate. But when one makes them a symbol or an emblem toward which one renders any cult or worship, adoration or service, then he definitely makes this an image or a likeness and his course of conduct thereto comes within the purview of this commandment and is a violation of the commandment.

The flag of any country, in particular, is a symbol. It is an emblem of certain principles toward which the country adheres. It is also a symbol of the Government. The American flag, from an account as presented in the *Encyclopedia Americana*, shows that every feature thereof has a significance, the number of stripes, the stars, the blue field, the colors, all have a symbolic meaning. The flag also represents the Government.

Now, it might be objected that saluting a flag does not violate this commandment because it is not bowing down to the flag, but bowing down to the flag is merely expressive of the Creator's feeling, or attitude, or belief with respect to the flag, and this expression, "Bow down to and serve," as stated in the commandment, covers all attitudes, postures, motions, acts which an individual may make toward the flag which makes the flag an idol or a thing of worship and of adoration.

For instance, the Bible not only speaks of bowing down to a symbol or a likeness of something in Creation, but to quote First Kings, Chapter 19, verse 18, the Lord God there shows that the Israelites might kiss an image, or they might wave or throw a kiss with a hand to an image. This was a violation of the commandment.

This same kissing, or throwing a kiss to an image, or to an object of nature as the sun, moon or stars, is also stated in Job, Chapter 31, verses 25, 26 and 27; also Hosea, Chapter 13, verse 2. The statement is, "Let the men that sacrifice kiss the calves," the calf idol, which was worshiped in those days.

We know that a kiss or throwing a kiss with the hand is a salutation, or a form of salutation. This is definitely

forbidden by the law of God with respect to any image or likeness, and, hence, is a violation of the spirit and purport of the Second Commandment.

Q. Now, Mr. Franz, what would be the penalty, if any, to a Christian, or one of Jehovah's Witnesses, who disobey such commandments?

A. Eternal annihilation, destruction. In Deuteronomy the 18th Chapter, verses 15, 18 and 19, Jehovah God states, through the Prophet Moses, that He would raise up His great Prophet or Spokesman, Christ Jesus, and that it should come to pass that every soul which would not hear the words which this Prophet spoke in Jehovah's name, God would require it of him.

The Apostle Paul in Acts, Chapter 3, verses 22 and 23, quotes this promise of God, and he says, "It shall come to pass, that every soul, which will not hear that Prophet shall be destroyed from among the people."

MR. MOYLE: Cross-examine.

There was no cross-examination, but counsel for the defendants moved to strike out the testimony of F. W. Franz, which motion was overruled by the Court, as follows:

MR. HENDERSON: If your Honor please, I now wish to renew my motion to strike out the testimony of this witness as immaterial in connection with this case. It is based, of course, upon opinion, and it has no particular bearing, so far as I can see it, in the case. The plaintiffs are the Gobitis'; if there is any religious belief that is involved, it is their religious belief. They belong to Jehovah's Witnesses; we do not know that they believe any of these things that this gentleman is speaking about. We only know what they testified to on the stand, themselves.

THE COURT: Of course, this Court is not concerned with the validity of the religious beliefs held by these persons; it is only concerned, if at all, with the sin-

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cerity of them, and whether they are held by the individuals as religious beliefs. It seems to me this testimony may have some bearing on that question; therefore, I will overrule your motion and grant you an exception.

The plaintiffs then rested.

#### DEFENDANTS' EVIDENCE.

The defendants produced only one witness, CHARLES EDWARD ROUDABUSH, who, after having been duly sworn, testified that he has been superintendent of schools in Minersville for the past twenty-three years. When his attention was called to the provision in the School Code set forth in 24 Purdon's Statutes, Section 1551, wherein schools in Pennsylvania are required to teach "civics, including loyalty to the State and National Government," and was asked what part the salute to the flag plays in that teaching, the witness testified concerning the same and also demonstrated the salute as used in the school in which the Gobitis children had been pupils.

A. We feel that every citizen and every child in the public schools should have the proper regard for the emblem of the country, the flag. We have never required the salute of the flag, yet everyone in our school system for twenty-three years, and even longer, has given the salute voluntarily, willingly. The salute of the flag, we believe, is a means of helping to inculcate in the children a love for country, the institutions of the country, and for that reason we have expected the salute from the teachers and the children.

Q. Doctor, would you kindly explain to us just exactly what you do in connection with this salute? It has been admitted, practically, in the pleadings, but it might be amplified just a little, if you please.

A. In some of the schools——

Q. Just this school in which were the Gobitis children, exactly what occurred?

A. Sometimes I believe in our school where these children were enrolled they sing the salute, they rise and sing, "I pledge allegiance to my flag and the Republic for which it stands, one nation indivisible, with liberty and justice for all."

Q. Doctor, exactly what is the nature of the salute? Would you mind demonstrating it to us?

A. Standing——

Q. Right hand over the chest?

A. Yes. "I pledge allegiance to my flag——"

Thereafter, the witness testified as follows regarding the effect of the failure or refusal of pupils to salute the flag, the arrangements which were made for those who refused to salute for alleged religious reasons, and the nature and character of the ceremony or exercise.

Q. When you say, "my flag," extending your right hand towards the flag with the palm upraised. Doctor, in your opinion, what is the effect when a few children do not salute the flag and others do, so far as your school system is concerned?

A. It would be demoralizing on the whole group.

Q. Why?

A. The tendency would be to spread. In our mixed population where we have foreigners of every variety, it would be no time until they would form a dislike, a disregard for our flag and country. May I say that the thing that goes hard with us when someone refuses to salute the flag is to refuse to pledge allegiance to the country for which it stands.

Now, I believe when we make a citizen out of an alien the first thing that we require is they have to denounce their allegiance to the foreign country, and it would be reasonable to suppose that they would be required to pledge allegiance to the country in which they want to become citizens.

By THE COURT:

Q. Just a minute. Is there any arrangement, Doctor, for any children who explain that they refuse to salute the

flag because of religious reasons, to pledge their allegiance separate from the salute?

A. No, we have never made any provisions; we feel it is not a religious exercise in any way and has nothing to do with anybody's religion.

Q. Do you feel that these views to the contrary here held by these two pupils are not sincerely held?

A. I feel that they were indoctrinated.

Q. Do you feel their parents' views were not sincerely held?

A. I believe they are probably sincerely held, but misled; they are perverted views.

Q. I suppose you would say the same thing about a Mohammedan, wouldn't you, or a Hindu?

A. No, that is a whole——

Q. In other words, anyone who didn't agree with your religious views and mine would be indoctrinated, or hold perverted views, because he doesn't believe with you?

A. As I see it, your Honor, I feel that this is not a matter of religion at all, it has nothing to do with religion, and I think the objection taken by the Jehovah's Witnesses is uncalled for.

By MR. HENDERSON:

Q. Well, that is something you don't have to get into now, Doctor Roudabush. In the matter of teaching civics and loyalty, do you or do you not have any opinion or feeling with reference to the fact that a sufficient number of students fail to salute the flag, whether or not in time that will lead to any breakdown of government from the standpoint of the safety of the public?

A. I do, I feel so.

Q. Why, Doctor?

A. Take the matter of loyalty to country. If our citizens do not have loyalty to the country——

THE COURT: You were asked about the salute to the flag.



THE WITNESS: I am coming to that.

MR. HENDERSON: He is coming around to that, where the salute plays its part, I am sure, your Honor.

THE WITNESS: In order to establish this loyalty to country, and things of that nature, I think the salute to the flag does contribute a large part.

By THE COURT:

Q. Is it your daily experience or not that this daily exercise repeated every day tends to become somewhat of a formalistic matter, a matter of form with a lot of children?

A. I believe it does, just the same as going to church, or anything else, I think it would be just the same, some people would regard it that way. But there comes a time when there will be a thinking back to the lessons that were inculcated in the public schools.

By MR. HENDERSON:

Q. Doctor, of course, the flag of the United States is a symbol thereof. Do you or do you not feel that disrespect to the flag is disrespect to the Government, to its institutions and ideals?

A. I do feel it is.

Q. Of course, those who reside within the Commonwealth receive the protection and benefits afforded to them, and, naturally, must obey its laws, and should show due respect to the Government, its institutions and ideals. In your opinion, is the failure to salute the flag any disrespect?

A. I think it is; yes, sir.

Q. And, following that, is it——

By THE COURT:

Q. Would you say that if the declination to salute the flag was based on sincere religious grounds that that is disrespect?

A. I can't admit——

Q. Without admitting it, admitting that a misguided person sincerely feels he must weaken his whole religious

conscience to do it, would you say that is disrespect to our flag?

A. I would. I feel he should be put right. They should show the proper reverence of the country and the flag.

Q. Do I understand you to mean the public schools should see their religious beliefs are changed?

A. Try to correct the thing that exists and that is wrong.

By MR. HENDERSON:

Q. Doctor, is or is not your opinion that a proper salute of the flag of your country is just part of a patriotic ceremony, an act of respect to the institutions and ideals of the land, and affording a safe place to live in?

A. That is my opinion.

Q. In other words, I gathered from what you stated you did not consider that a religious right is involved at all; that is your opinion?

A. That is my opinion, sir.

By THE COURT:

Q. What you mean, I suppose, is that it has no religious significance to you; in your mind, it has no religious significance; isn't that really what you mean?

A. Yes.

Q. You are not prepared to get into someone else's mind and to say what is in their mind with respect to it?

A. No.

In concluding this testimony, Dr. Roudabush testified regarding the number and qualifications of parochial schools in the vicinity of Minersville and as to the requirements for non-catholic pupils attending the same.

By MR. HENDERSON:

Q. Doctor, are you familiar with the parochial schools around Minersville?

A. I am; yes, sir.

Q. And there are parochial schools there?

A. We have four parochial schools in Minersville furnishing grade education up to and including the eighth grade and in Pottsville four miles away, we have a parochial high school that is equivalent to any in the country.

Q. Doctor, do you know of your own knowledge that they take Protestants in those schools?

A. They do.

MR. MOYLE: May it please the Court, this is all objected to as immaterial and irrelevant.

THE COURT: Objection overruled.

By MR. HENDERSON:

Q. Doctor, are you familiar at all with the expenses of going to those schools?

A. I am not—I couldn't give you the exact figures, but I know that many of them go by just mere subscription, wherever they are able to pay. Many go for nothing.

Q. It is a fact, is it not, that the parochial schools certainly do take in Protestants?

A. Yes.

Q. We all understand that?

A. Yes.

Q. Mr. Gobitis stated he never appealed to any of these parochial schools—

By THE COURT:

Q. Do they have a compulsory flag salute ceremony?

A. Indeed, I am not able to say.

Q. You don't know?

A. I don't know.

MR. HENDERSON: Cross-examine.

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Dr. Roudabush then submitted to the following cross-examination.

#### CROSS-EXAMINATION.

By MR. MOYLE:

Q. You believe, Doctor, in the principles of religious freedom as set forth in the Pennsylvania Constitution?

A. I do, sir.

Q. Do you believe in the statement in that constitution, Section 3, Article 1, that no human authority can in any case control or interfere with the rights of conscience?

A. I do.

Q. Doesn't your regulation flag salute as applied to these two children interfere with their rights and their consciences?

A. They say so.

Q. I am asking you.

A. I don't know, I couldn't answer the question.

Q. You wouldn't say whether it does or does not?

A. No.

Q. If they sincerely believe——

THE COURT: Perhaps it is a legal question as to what those rights are.

MR. MCGURL: That is it, exactly.

THE COURT: I think it is a question of law.

MR. MCGURL: That is where this case will get to, I think, your Honor, that very question.

By MR. MOYLE:

Q. You have set forth in the answer filed by you, Doctor, that the act of saluting the national flag is a necessary and reasonable method of teaching loyalty to the state, and so on. You believe that, do you?

A. Yes, sir.

Q. And it is absolutely necessary to salute the flag in order to teach loyalty?

A. Oh, no, one of the means, it is one of the means of teaching loyalty.

Q. Then you admit that loyalty could be taught——

A. It is taught otherwise.

Q. —without saluting the flag?

MR. MCGURL: We object to that, if your Honor please, because the manner of teaching loyalty, or any