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Filed Sept 28th 1867

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Argument on behalf of Appellees

L. F. ZIMMERMAN,
vs.
WM. H. WEBER & OTHERS.

MANDAMUS.

Two questions are presented by the record in this case:

1st. Whether the proceedings of the committee appointed by the President of the Ev. Luth. Synod of Maryland, (see Difts Exhibit No. 5.) was a lawful dismissal of Petitioner from the office and function of Pastor of the Ev. Luth. St. Stephen's Congregation.

2nd. Whether the Petitioner was lawfully dismissed from his pastorate and official functions by the proceedings of the said congregation at their meeting on the 13th January, 1864, and the notice given him in virtue thereof, (see Difts Exhibit No. 3,) in support of their views. The Counsel for the Petitioner will contend on the first point,

1st. That neither the President of the Synod nor the Synod itself had any jurisdiction over the charges made against the Petitioner in the manner set forth.

2nd. That the finding or award of the committee is only advisory, and does not pronounce the dismissal of the Petitioner from his Pastorate.

On the 2nd question, the Petitioner's counsel will content that the proceedings of the meeting of the congregation of the 13th January, 1861, were void on the ground that the notice of the said meeting was defective in not stating the *object* of said meeting.

They refer to the case of Rex *vs.* The Company of Fishermen, 8th Term, Rep 356.

2d Bacon's Abridgment 462 and 463.

Rex *vs.* the Town of Liverpool, 2d Burr. 731.

12th Sec. of the 7th chap. of the article of association of the congregation, page 8 of the record, and Wilcocks on con. pages 25 & 26 at top 14th Law Lib. and 9th Article of the 9th chap., of the new articles of association of the church, on page 18 of the record.

To prevent surprise and fraud in elections and amotions of officers—They refer to

5th Burrow's Rep. 2682, Rex *vs.* Mary Kingston, *vs.* the Mayor of Shrewsbury;

2 Strange 1051;

8th Mitcalf, R. 312;

Machell vs. the Mayor of Appleby 2 Lord Raym, 1355;

Rex, *vs.* the Mayor of Shrewsbury Hard. cases 150;

WM. B. BOND,
O. MILLER,
for Appellees.

F. MADDAMS,

vs.

Wm. H. Wenner & Others. MADDAMS.

Two questions are presented by the record in this case:

1st. Whether the proceedings of the committee appointed by the President of the Eve. Luth. Synod of Maryland, (see Bills Exhibit No. 3,) was a lawful tribunal to Petitioner from the office and function of Pastor of the Eve. Luth. St. Stephen's Congregation.

2nd. Whether the Petitioner was lawfully dismissed from his pastorate and official functions by the proceedings of the said congregation at their meeting on the 13th January, 1861, and the notice given him in virtue thereof, (see Bills Exhibit No. 3,) in support of their views. The Counsel for the Petitioner will contend on the first point,

1st. That neither the President of the Synod nor the Synod itself had any jurisdiction over the charges made against the Petitioner in the manner set forth.

2nd. That the finding or award of the committee is only advisory, and does not pronounce the dismissal of the Petitioner from his Pastorate.

On the 2nd question, the Petitioner's counsel will contend that the proceedings of the meeting of the congregation of the 13th January, 1861, were void on the ground that the notice of the said meeting was defective in not stating the object of said meeting.

They refer to the case of Rex vs. The Company of Fishermen, 8th Term, Rep. 356.

2d Bacon's Abridgment 403 and 404.

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12th Sec. of the 7th chap. of the article of association of the congregation, page 8 of the record, and Wilcocks on con. pages 25 & 26 at top 14th Law Lib. and 9th Article of the 9th chap., of the new articles of association of the church, on page 18 of the record.

To prevent surprise and fraud in elections and emoluments of officers—They refer to

6th Burrow's Rep. 2082, Rex vs. Mary Kingston, vs. the Mayor of Shrewsbury;

2 Strange 1051;

8th Mitcall, R. 312;

Machell vs. the Mayor of Appleby 2 Lord Raym. 1365;

Rex, vs. the Mayor of Shrewsbury Hard. cases 150;

WM. B. BOND,

O. MILLER,

for Appellees.

Special Docket.—No. 25.

COURT OF APPEALS OF MARYLAND.

JUNE TERM, 1864.

WM. H. WEAVER, ET AL.,

vs.

LEONARD FREDERICK ZIMMERMAN.

APPELLANTS' POINTS.

The Appellants will maintain that, under the pleadings and evidence in this case, the Superior Court should have granted the two instructions prayed.

The 2nd instruction is in these words:—

The Defendants pray the Court to instruct the Jury, that upon all the evidence offered in this case they must find a verdict for the Defendants.

A.—It will be insisted that this prayer is well found.

1st. Because of the want of jurisdiction in the Superior Court to grant the prayer of the Petition.

2nd. Because the Defendants are not shown any were throughout the proceedings, to have the power of restoratio

3rd. Because the facts pleaded in the answer, annot traversed, are a good bar to the granting of the prayer of the etition.

B.—If the Respondents are wrong in their vi, that the 2nd prayer should have been granted, then they will sist that the 1st prayer embodies the law of the case.

1st. Because the Notice read from the pulpit, coupled with the Resolution referred to and embodied therein, is a full compliance with the requirements of the Constitution.

2nd. Because by the 6th reason assigned by the Respondents, and not traversed, it is admitted that the said Notice was sufficient.

3rd. Because no notice was ever given by the Council, or pretended Council, as alleged in the 9th traverse.

ORVILLE HORWITZ,
For Appellants.

Bill made out but not signed by the Pet. Brief

No 25 — 3 sides

#21.0

Abbott & al

Otg

vs

Timmerman

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Petition of

Appellants

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Mr. Earle

Alone for

Appellants

Filed June 13th 1864

Print

Weber et al vs Zimmerman

Mandamus

Appeal from the Superior Court of Baltimore City

Points

The appellants will maintain that, under the pleadings and evidence in this case, the Superior Court should have granted the two instructions prayed.

The 2d instruction is in these words

The defendants pray the Court to instruct the Jury that upon all the evidence offered in this case they must find a verdict for the defendants.

1. It will be insisted that this prayer is well founded.

1st Because of the want of Jurisdiction in the Superior Court to grant the prayer of the petition.

2d. Because the defendants are not shown any where throughout the proceedings to have the power of restoration.

3d. Because the facts pleaded in the answer and not traversed are a good bar to the ~~refusal~~ granting of the prayer of the Petition

~~4°~~.

IV. If the respondents are wrong in their view that the 20 paragr should have been printed, then they were right that the 1st paragr embodies the law of the case.

1. Because the notice read from the precipit, coupled with the regulation referred to and embodied therein is a free compliance with the requirements of the constitution.

2. Because by the 6th reason assigned by the respondents and not traversed, it is admitted that the said notice was sufficient

3. Because no notice was even given by the Counsel or pretended

Counsel, as alledged in the 9th Traverse.

Orville Horwitz
for appellants.

Special Docket.—No. 25.

COURT OF APPEALS OF MARYLAND.

JUNE TERM, 1864.

WM. H. WEAVER, ET AL.,

vs.

LEONARD FREDERICK ZIMMERMAN.

Appeal from the Suyerior Court of Baltimore City.

APPELLANTS' STATEMENT.

For the purposes of this Case the following Statement is deemed sufficient:

The Appellee filed his petition in the Superior Court on the 8th March 1864, alleging that St. Stephen's church is a branch of the Christian church holding the doctrines of Luther according to the Augsburg Confession; that it is governed by a Pastor, four Elders and eight Deacons, as prescribed by the Constitution filed with the petition, and adopted in 1857; that, in the month of November 1861, he was elected and installed as Pastor of the said church, and entered into a contract with the Congregation for the payment of a certain salary, &c., &c.; that he entered upon and performed his duties as Pastor until 7th February 1854, when he was prevented from occupying the pulpit, and expelled from the same by certain persons, the defendants, (sixteen in number,) without authority, &c., &c., and prays for the writ of Mandamus. (Record pp. 1, 2.)

On the same day an order was passed requiring the defendants to shew cause why the writ should not issue. (Record p. 9.)

On 19th March 1864, an Answer was filed by the German Evangelical Lutheran Saint Stephen's Church, and, also, by William H. Weaver and Conrad Dockterman, President and Secretary thereof, assigning the following reasons against the granting of said writ. (Record pp. 9, 10, 11.)

1st. That they are duly incorporated under the provisions of the Act of November Session 1802, ch. 111.

2nd. That no person is by said charter entitled to vote in the affairs of the church, who is not a member, according to the requirements of the Constitution in force at the time.

3rd. That the congregation by its charter belongs to, is under the jurisdiction and control of, and subject, as to its minister, congregation, &c., to the authority of the Lutheran Synod of Maryland.

4th. That the duly elected officers are as follows, naming them, and that the Pastor is at no time an officer.

5th. That the Constitution filed with the petition is not the present Constitution, but that it was abrogated in the month of November preceding, and the Constitution filed with the answer, adopted in its stead.

6th. That by the provisions of the Constitution the pastor was dismissed, and three months' notice given him of such dismissal by direction of the congregation, which the said congregation had a legal right to do.

7th. That the dismissal was a matter of necessity, resulting from the open violation, on the part of the petitioner, of the Constitution and Articles passed in pursuance thereof.

8th. That the petitioner abused his position as Pastor, called illegal meetings, and with the view of ousting the duly constituted officers, held a sham election of officers, and brought them into the church on the following Sunday, and in defiance of the protest of the President, used the said church for the performance of a pretended ceremony of installation.

9th. That the said petitioner having abused his office and violated, in various ways, the Constitution, *the Defendants gave him the Notice of Dismissal* filed with the answer, *which they had a right to do.*

10th. That certain charges against the relator were investigated by a committee duly appointed by the Synod, in the presence of the said relator, and the said committee vacated the pulpit, and advised the selection of another Pastor, as appears by their decision in writing filed with this cause, for refusal.

11th. That the action of said committee is final and conclusive, and that this Court has no power to revise the same.

12th. That they deny that the petitioner has fulfilled his duties as Pastor, &c., &c.; but allege that since 7th February the Synod has supplied ministers, &c.

To this answer twelve traverses were filed, of which ten were withdrawn, leaving only the 3rd & 9th remaining, which are in these words:

Third. He denies that the President of the Evangelical Lutheran Synod of Maryland, or any committee appointed by him, has any authority to investigate the charges made against him, and denies that said committee, (partial, unjust and illegal as its proceedings were,) has vacated the pulpit, and removed said petitioner from the exercise of his functions as pastor of said congregation.

Ninth. He denies that the said pretended Council had any authority to give him the notice of his dismissal as Pastor of the said congregation.

By *examining carefully the answer and traverses it will appear, that the following causes for refusing the Mandamus are not denied, viz: Nos.* 1, 2, 3, 4, 5, 6, 7, 8, 9, 12.

With the answer were filed a copy of the charter, (p. 12,) a copy of the Constitution, admitted by the pleadings to be the true one, (pp. 14 to 24,) a copy of the decision of the committee of the Synod, (pp. 25, 26,) and a copy of the notice of the dismissal, signed by the President and Secretary of St. Stephens Congregation, on behalf of the congregation. (Record, p. 25.)

On page 29 of record will be found the Notice read from the pulpit, on 27th December 1863, of the meeting to be held on 13th January 1864, in these words:

"According to a resolution passed by the congregation on 16th December 1863, there will take place on this day ten days, (*i. e.*, ten days from this day,) that is to say, on Wednesday, 13th January 1864, a congregational meeting of the male members entitled to vote, of the Evangelical Lutheran St. Stephen's congregation, at 7½ o'clock, here in our church: and thereto are politely invited all members of the congregation entitled to vote, to be present very numerously.

W. H. Weber, Pres't."

The following, to be found on page 30 of Record, is the resolution passed on 16th December 1863:

"It was resolved, That the Rev. Pastor, C. F. Zimmerman, should in writing inform the Ev. Luth. St. Stephen's Congregation within fourteen days, that is on or before 30th December 1863, whether he is willing or not to submit to the ordinances and laws of the Congregation. Resolved, That the Secretary transmit the foregoing resotion in writing to the Pastor, C. F. Zimmerman. Resolved, That if the Pastor gives the Vestry an unfavorable answer, or none at all, that it is the duty of the Presicent to call a congregational meeting and lay this before the congregation."

In this state of the pleadings and evidence the Defendant prayed the Court to grant the two instructions, to be found on page 30 of

the Record, which the Court refused to grant, but gave to the jury the instruction to be found on same page.

To this refusal and instruction the Defendants excepted. This exception forms the Defendants' 3rd Bill of Exceptions.

The verdict being against the defendants under said instruction, they appealed to this Court.

In the progress of the trial two exceptions to evidence were taken by the Defendants, and those exceptions form the Defendants' 1st & 2nd Bills of Exceptions.

ORVILLE HORWITZ,
For Appellants.

Bill made out but not charged in fee Book

No 25 — 14 pies

$19.80

Weber et al

Chg

vs

Zimmerman

215
5
985
12.05

Statement

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Mr Earle:

Please file

& print & r

OK

Filed June 13th 1864

Print

Weaver & others
vs
Zimmerman

Appeal from the Superior Court of Baltimore City.

Appellants' Statement

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For the purposes of this case the following Statement is deemed sufficient.

The appellee filed his petition in the Superior Court on 8th March 1864 alleging that St. Stephens Church is a branch of the Christian Church holding the doctrines of Luther according to the Augsburg Confession; that it is governed by a Pastor, four elders & eight deacons, as prescribed by the constitution filed with the petition & adopted in 1857; that, in the month of November 1861 he was elected and installed as Pastor of the said Church & entered into a contract with the congregation for the payment of a certain salary &c &c; that he entered upon & performed his duties as Pastor until 7th February 1864, when he was prevented from occupying the pulpit & expelled from the same by certain persons, the defendants, (sixteen in number)

without authority &c &c and prays for the writ of Mandamus. (Record p 1-2)

On the same day an order was passed requiring the defendants to show cause why the writ should not issue. (Record p. 92)

On 19th March 1821, an answer was filed by the German Evangelical Lutheran Saint Stephens Church, and, also, by William H. Weaver & Conrad Dochterman, President and Secretary thereof, assigning the following reasons against the granting of said writ, (Record p. 9 to 11)

1st That they are duly incorporated under the provisions of Act of November Session 1802 Ch 111.

2d That no person is by said Charter entitled to vote in the affairs of the Church, who is not a member, according to the requirements of the Constitution in force at the time

3d That the Congregation by its charter belongs to, is under the jurisdiction & control of, & subject, as & its Minister & Congregation &c, to the authority of the Lutheran Synod of ~~the~~ Maryland.

4d That the only elected officers are as follows, naming them and that the pastor is at no time an officer.

5d That the Constitution filed with the petition is not the present Constitution, but that it was abrogated in the month of November preceding & the Constitution filed with the answer adopted in its stead.

6d That by the provisions of the Constitution the Pastor was dismissed & three months notice given him of such dis-

Synod, by direction of the Congregation, which the said Congregation had a legal right to do.

7°. That the disinfeoff was a matter of necessity, resulting from the open violation, on the part of the petitioner, of the Constitution & Articles passed in pursuance thereof.

8°. That the petitioner abused his position as Pastor, called illegal meetings, & with the view of ousting the duly constituted officers, held a sham election of officers & brought them into the Church on the following Sunday & to defraud of the protest of the President, used the said Church for the performance of a pretended ceremony of installation.

9°. That the said petitioner having abused his office & violated in various ways the Constitution, the respondents gave him the notice of disinfeoff filed with the answer which they had a right to do.

10°. That certain charges against the ~~petitioner~~ relator were investigated by a Committee duly appointed by the Synod, in the presence of the said relator, & the said Committee vacated the pulpit & advised the selection of another pastor, as appears by their decision in writing filed with this cause for refusal.

11°. That the action of said Committee is final & conclusive and that this Court has no power to revise the same.

12°. That they deny that the petitioner has fulfilled his duties as pastor &c &c; but allege that since 7th February the Synod has supplied ministers &c

To this answer ~~two~~ twelve traverses were filed, ~~the~~ of which ten were withdrawn, leaving only the 3d and 9th remaining, which are in these words,

Third. He denies that the President of the Evangelical Lutheran Synod of Maryland or any Committee appointed by him has any authority to investigate the charges made against him and denies that said Committee (partial, unjust and illegal as its proceedings were) has vacated the Pulpit and removed said petitioner from the exercise of his functions as Pastor of said Congregation.

Ninth. He denies that the said pretended Council had any authority to give him the notice of his dismissal as Pastor of the said Congregation.

By examining carefully the answer and traverses it will appear, that the following causes for refusing the Mandamus are not denied, viz, Nos 1, 2, 3, 4, 5, 6, 7, 8, 9, 12.

With the answer were filed a copy of the Charter (p) a copy of the Constitution, admitted by the pleadings to be the true one, (p) a copy of the ~~proceedings~~ decision of the Committee of the Synod (p) and a copy of the notice of the dismissal, signed by the President and Secretary of the St. Stephens ~~Church~~ Congregation on behalf of the Congregation. (Record p.)

On page of Record will be found the Notice read from the pulpit on 27th December 1863 of the meeting to be held on 13th January 1864, ~~which notice~~ in these words,

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W. H. Weber, Preat"

The following to be found on p. of Record is the resolution passed on 16th December 1863,

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Opt p. of Record which be found the notice served on defendant.

In this state of the pleadings and evidence the defendants prayed the Court to ~~instruct~~ grant the two instructions to be found on pages of the Record, which the Court refused to grant. But ~~noted~~ gave to the Jury the instruction to be found ~~on page~~ To this refusal & the verdict instructions the defendants excepted: this exception forms being against the defendants, under seal the defendants 3d Bill of Exceptions. instruction, they appealed to this Court.

In the progress of the trial, two exceptions to evidence were taken by the defendants and those exceptions form the defendants' 1st & 2d Bill of Exceptions.

Orville Horwitz
for appellants