

5
Filed June 28th 1867

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but not to be left

301
Chas

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 Diffts 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 Diffts 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.

for Appellans.

O. MILLER,
WM. B. BOND,

Rez, vs. the Mayor of Shrewsbury Hard. cases 150;
Machell vs. the Mayor of Appleby & Ford Baym, 1355;

8th Mitchell, H. 313;

2 Strange 1051;

of Shrewsbury;

6th Burrow's Rep. 2882, Rez vs. Mary Kingston, ex. the Mayor
cases—They refer to

To prevent surprise and fraud in elections and motions of off-

new articles of association of the church, on page 18 of the record.

26 at top 14th Law Lib. and 30th Article of the 9th chap. of the

regulation, page 8 of the record, and 7th Article on con. pages 25 &

13th Sec. of the 17th chap. of the article of association of the con-

Rez vs. the Town of Liverpool, 1781.

2d Bacon's Abridgment 463 and 465

Term, Rep. 366.

They refer to the case of Rez vs. The Company of Fishermen, 8th

meeting was deferred in not stating the object of said meeting.

January 1861, were held on the ground that the notice of the said

On the 2nd question, the Petitioner's counsel will contend that

his Pastors.

1st. That the finding or award of the committee is only ad-

tioner in the manner set forth.

2nd. That the finding or award of the committee is only ad-

tioner in the manner set forth.

1st. That under the President of the Board and the Board it

on the first point.

part of their views. The Counsel for the Petitioner will contend

regulation at their meeting on the 13th January, 1861, and the no-

postulate and official minutes by the proceedings of the said con-

2nd. Whether the Petitioner was lawfully dissolved from the

ington of Pastor of the Rev. Luke W. Stephen's Congregation

light No. 25) was a lawful dissolution. Petitioner from the office and

the President of the Rev. Luke W. Stephen of New York, (see Ditts Ex-

1st. Whether the proceedings of the committee appointed by

Two questions are presented by the record in this case.

Wm. B. Warner & Others

F. J. MARRAS

MARRAS

Special Docket.—No. 25.

COURT OF APPEALS OF MARYLAND.

JUNE TERM, 1864.

WM. H. WEAVER, ET AL.,

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 founded.

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 restoration

3rd. Because the facts pleaded in the answer, are not traversed, are a good bar to the granting of the prayer of the petition.

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

24
288

25
14

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.

WM. H. WEAVER, JR. ATTY.

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

LEONARD FREDERICK NIMMERMAN

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

APPELLANTS' POINTS

The Appellants wish the 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 a case they find a verdict for the

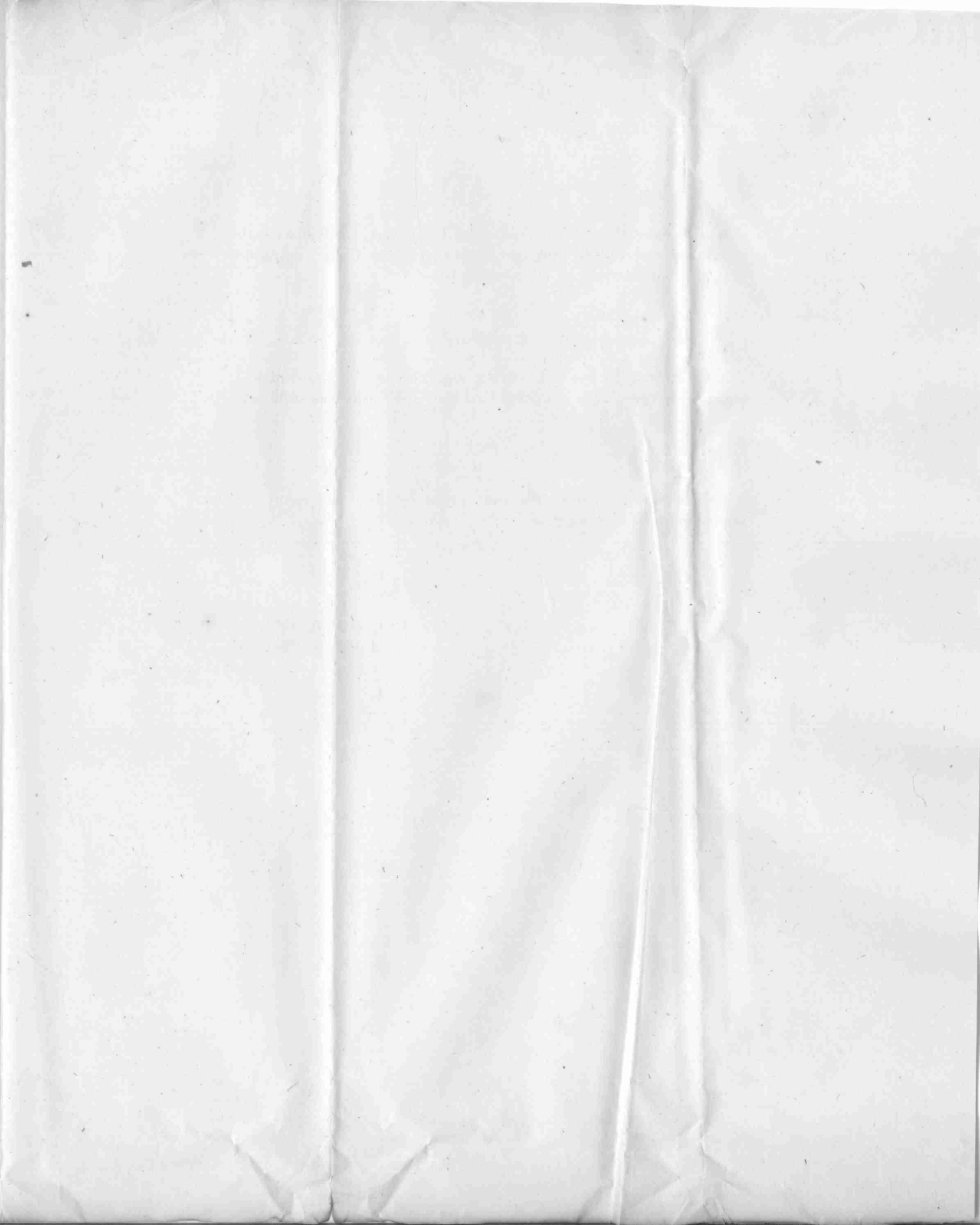
ORVILLE HORWITZ;
For Appellants.

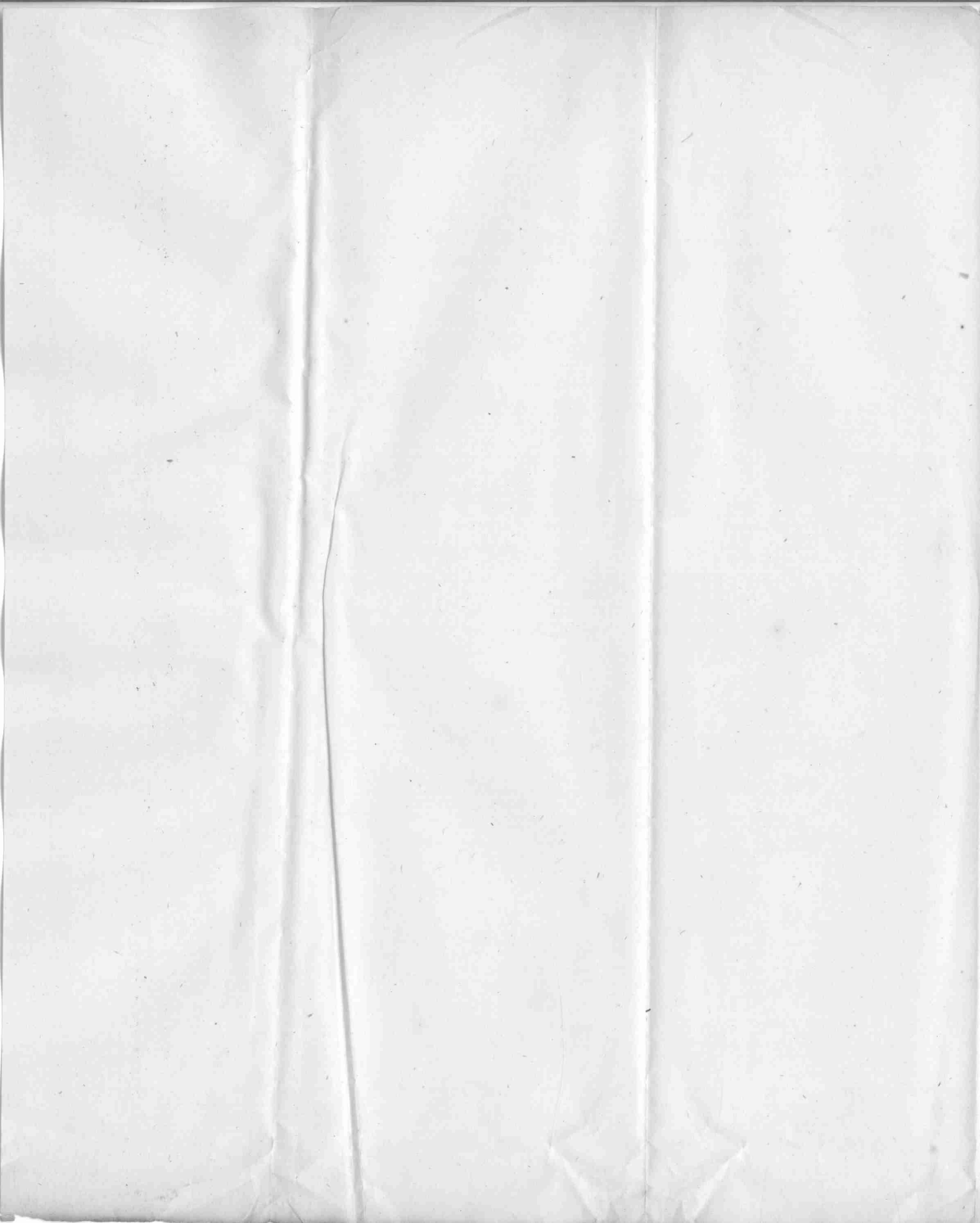
It will be insisted that this prayer is well founded. It is because of the want of jurisdiction in the Superior Court to grant the prayer of the Petition.

2nd. Because the defendants are not shown any who through out the proceedings, to have the power of restoration.

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

If the Respondents are wrong in their view that the said prayer should have been granted, then they will not be bound by the law of the case.





Bill made out
but not closed in
the fee book

No 25-

3 sides

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Wetby raly
Chg 3

Lincoln

=
Pittsburgh of
Appellants

=
W. C. Calk

Phone file

Print by
O.H.

Filed June 13th 1864

Print



Weber et al } Mandamus
 vs }
 Zimmermann } Appeal from The Su-
 } perior 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 2^d 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 founded.

1^o Because of the want of dis-
 diction in the Superior Court to grant the
 prayer of ^{the} petitioner.

My dear Sir,
I have the honor to acknowledge the receipt of your letter of the 10th inst.

Dear Sir,

I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith

I am, Sir, very respectfully,
Your obedient servant,
J. M. Smith

2^o Because the dependants are not shown
any where throughout the proceedings to have
the power of restoration.

3^o Because the facts pleaded in the
answer and not traversed are a good bar
to the ~~refusal~~ ^{granting} of the prayer of the petition.

1850

To the Hon. Secy of the Treasury

Washington

Dear Sir, I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the proposed amendment of the law relating to the duties on spirits.



#.

IB. If the respondents are wrong in their view that the 2^d paper should have been printed, then they will insist that the 1st paper embodies the law of the case.

1^o Because the article read from the precept, coupled with the regulation referred to and embodied therein is a full compliance with the requirements of the Constitution.

2^o Because by the 6th census apportioned by the respondents and with increased, it is admitted that the said notice was sufficient.

3^o Because no notice was ever given by the Council or pretended.

1848

1. The first part of the report is a general statement of the facts of the case.

2. The second part is a statement of the law applicable to the facts.

3. The third part is a statement of the reasons for the conclusions reached.

4. The fourth part is a statement of the conclusions reached.

5. The fifth part is a statement of the law applicable to the facts.

6. The sixth part is a statement of the reasons for the conclusions reached.

7. The seventh part is a statement of the conclusions reached.

8. The eighth part is a statement of the law applicable to the facts.

Council, as alleged in the 9th traverse.

Orville Borwick
for appellants

[Faint, illegible handwritten text, possibly bleed-through from the reverse side of the page]



Special Docket.—No. 25.

COURT OF APPEALS OF MARYLAND.

JUNE TERM, 1864.

WM. H. WEAVER, ET AL.,

vs.

LEONARD FREDERICK ZIMMERMAN.

Appeal from the Superior 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 resolution 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 President 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.

With the answer were filed a copy of the charter, (p. 13) a copy of the Constitution, admitted by the plaintiff to be the first 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 disqualification, signed by the President and Secretary of St. Stephen's 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 1883, of the meeting to be held on 13th January 1884, in these words:

"According to a resolution passed by the congregation on 13th December 1883, there will take place on this day, (Wednesday, 13th January 1884, a congregational meeting of the main members entitled to vote of the Evangelical Lutheran St. Stephen's congregation, at 7 1/2 o'clock, here in our church and therein are invited all members of the congregation entitled to vote to be present very unanimously.

W. H. Warner, Clerk.

The following, to be found on page 29 of Record, is the resolution passed on 13th December 1883:

"It was resolved: That the Rev. Pastor, C. T. Zimmerman, should in writing inform the Ev. Luth. St. Stephen's Congregation within fourteen days, that is on or before 30th December 1883, whether he is willing or not to submit to the ordinances and laws of the Congregation. Resolved: That the Secretary transmit the foregoing resolution in writing to the Pastor, C. T. Zimmerman. Resolved: That if the Pastor gives the Vestry an unfavorable answer, or none at all, that it is the duty of the President to call a congregational meeting and lay this before the congregation.

In this state of the pleadings and evidence the Defendants moved the Court to grant the two instructions to be found on pages 29 and 30 of

Bill made out
but not charged
in fine print

N 25- 14 sides

7
\$9.80

Wells et al

Chg vs

Zimmerman

215-

5-

985-

12.05-

Statement

McCall:

Please file

Print to be

OK
Filed June 13 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 Chris-
tian 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 to do and prays for the writ
of mandamus. (Record p. 1-2)

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

On 19th March 1861, an answer was filed
by the German Evangelical Lutheran Saint Stephens
Church, and also, by William H. Weaver & Conrad
Doehner, President and Secretary thereof, assigning
the following reasons against the granting of said
writ, (Record p. 91-11)

1^o. That they are duly incorporated under the Provi-
sions of Act of November Session 1802 ch III.

2^o. That no person is by said Charter entitled to vote
in the affairs of the Church, who is not a member, ac-
cording to the requirements of the Constitution in force at the
time

3^o. That the Congregation by its charter belongs to, is
under the jurisdiction & control of, & subject, as to its ministerial
Congregation to, to the authority of the ^{Lutheran} Synod of the Maryland.

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

5^o. 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.

6^o. That by the provisions of the Constitution the pastor
was dismissed & three months notice given him of such dis-

1. That the Commission of the Government of the United States
has the honor to acknowledge the receipt of your letter of the 10th
inst. in relation to the proposed amendments to the Constitution
of the United States, and to inform you that the same have been
forwarded to the proper authorities for their consideration.
2. That the Commission has the honor to inform you that the
proposed amendments to the Constitution of the United States
have been referred to the proper authorities for their
consideration, and that the same will be reported to the
Congress of the United States at its next session.
3. That the Commission has the honor to inform you that the
proposed amendments to the Constitution of the United States
have been referred to the proper authorities for their
consideration, and that the same will be reported to the
Congress of the United States at its next session.
4. That the Commission has the honor to inform you that the
proposed amendments to the Constitution of the United States
have been referred to the proper authorities for their
consideration, and that the same will be reported to the
Congress of the United States at its next session.
5. That the Commission has the honor to inform you that the
proposed amendments to the Constitution of the United States
have been referred to the proper authorities for their
consideration, and that the same will be reported to the
Congress of the United States at its next session.

3.

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

7^o. That the Disposal was a matter of necessity, resulting from the open violation, on the part of the petitioner, of the Constitution & Articles passed or pursued thereof.

8^o. That the petitioner abused his position as Pastor, called illegal meetings, & with the view of ousting the only constituted officers, held a sham election ^{of officers} & brought them into the Church on the following Sunday & in defiance of the protest of the President, used the said Church for the performance of a pretended ceremony of installation.

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

10^o. That certain charges against the ^{Relator} petitioner were investigated by a Committee only appointed by the Synod, in the presence of the said Relator, & the said Committee vacated the pews & advised the selection of another pastor, as appears by their decision in writing filed with this Cause for refusal.

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

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

1. The first object of the Commission is to inquire into the
state of the country and to report thereon to the
Government. It is to be a permanent body and
to be empowered to call for such information as it
may require from any person or authority in the
country.

2. The Commission shall have power to hold public
hearings and to receive evidence from any person
who may be called upon to give evidence. It shall
also have power to send its members to any part
of the country for the purpose of holding
hearings or for the purpose of collecting
information.

3. The Commission shall have power to make
recommendations to the Government with
regard to any matter which it may be
called upon to inquire into. It shall also
have power to make such reports as it may
think fit to the Government.

4. The Commission shall have power to make
such recommendations as it may think fit
to the Government with regard to the
improvement of the country. It shall also
have power to make such reports as it may
think fit to the Government.

To this answer ^{Twelve} ~~Two~~ Traverses were filed, ~~the~~ of which ten were withdrawn, leaving only the 3rd and 9th remaining, which are in these words,

Third. He denied 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) had treated the Petitioner and removed said petitioner from the exercise of his functions as pastor of said congregation.

Fourth. 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 ^{decision} ~~proceedings~~ of the Committee of the Synod (p) and a copy of the notice of the dismissal, signed by the President and secretary of the Stephens Church congregation on behalf of the congregation. (Record p.)

On page of Record will be found The notice
 read from The Pulpit ^{on 27.th December 1863} of The meeting to be held
 on 13.th January 1864, ~~which notice~~ in these words,

"According to a resolution passed by The congregation
 on 16.th December 1863, There will take place on this
 day ten days, (i.e. ten days from this day), that
 is to say, on Wednesday 13.th Janry 1864 a Congrega-
 tional meeting of The male members, entitled to vote
 of The Evangelical Lutheran St. Stephens Congregation
 at 7 1/2 O'clock, here in our Church; and therefore
 are politely invited all members of The Congregation
 entitled to vote, to be present very numerously.

W. H. Weber, Pres't"

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

It was resolved, That The Reverend Pastor
 C. F. Luinerman should in writing inform The Ev.
 Lutheran St. Stephens Congregation within 14 days, that is on or
 before 30.th December 1863, whether he is willing a vote
 to submit to The ordinances & laws of The Congregation.
 Resolved That The Secretary transmit The foregoing resolution
 in writing to The Pastor C. F. Luinerman. Resolved
 That if the Pastor gives The Vestry an unfavorable an-
 swer, or none at all, that it is The duty of The President
 to call a congregational meeting and lay this before The
 congregation.

The first of these is the fact that the
and for the purpose of the survey, a
a 10" diameter hole was bored in the
the ground a distance of 10 feet from the

the surface of the ground. The hole was
drilled to a depth of 10 feet, and the
water level was observed at intervals of
10 minutes during the first hour after the

drilling. The water level was found to
be 1.5 feet below the surface of the
ground. This is a very low water table
for a well in this locality.

The second of the factors mentioned
is the fact that the water table is
very low. This is due to the fact that
the ground is very dry and the water
table is very low.

The third of the factors mentioned
is the fact that the water table is
very low. This is due to the fact that
the ground is very dry and the water
table is very low.

The fourth of the factors mentioned
is the fact that the water table is
very low. This is due to the fact that
the ground is very dry and the water
table is very low.

O.S.B. of Records will 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~~ ^{gave to} The Derry the instruction
to be found ~~on page~~ ^{to this refusal to} The Berdick
instruction the defendants excepted: This exception forms
being against the defendants, under said
the defendants 3^d 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 & 2^d
Bill of exceptions.

Orville Horwitz
for appellants