

14429

No. \_\_\_\_\_

# Supreme Court of Illinois

Brunnemeyer et al

---

vs.

Buhre et al

---

71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 2

*Brunner*

75

1863

*Brunner*

14429

Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

JOHN A. BRUNNEMEYER et al }  
vs  
ERNST H. BUHRE et al. }

ARGUMENT AND POINTS FOR PLAINTIFFS IN ERROR.

This was a bill in equity filed to restrain the plaintiffs in error, John Brunnemeyer and Frederick Fickensher, as Trustees of the German Lutheran Church at Aurora, from interfering or intermeddling with the complainants, in convening or worshipping in said church, The bill alleges "that said Brunnemeyer and Fickensher, " Trustees as aforesaid, absolutely refuse to perform and discharge " the duties and trusts of their appointment as the law of the land " and the rules and customs of said Church require, and have, on " the 9th day of February, 1861, with force and against the will " and consent of said Society, fastened up said Church for the purpose of preventing complainants from entering same on the 10th " day of February, being the Sabbath day, &c.

The answer substantially sets up that said bill was filed against the will of the majority of the members of said church, denies that complainants are members of the church, admits that Brunnemeyer and Fickensher, are the legal trustees of said church, denies that they refuse to perform their duties, denies that they fastened up

the church against the wishes of the majority of the members of said church, or in violation of their duty, and in violation of law ; sets up that Buhre before that time, resigned his position as pastor of the church, which resignation was accepted by them as trustees, and also by the congregation ; that at a meeting of said congregation it was unanimously resolved that the church should be closed until the services of another pastor could be procured, that the keys to said church were in the hands of other parties, and that in order to keep said church property safe, they took the lock off said church and put on a new one, which is the supposed fastening up mentioned in the bill of complaint. Which said answer is duly verified by the oath of plaintiffs in error.

March 23d. Plaintiffs in error moved to dissolve the injunction, which motion the Court overruled, and this is the first assignment of error.

The 1st point is, that the bill shows no ground for the issuing of the injunction.

The 1st material allegation in the bill is, " that Brunnemeyer and Fickensher absolutely refuse to perform and discharge the duties and trusts of their appointment, as the law of the land, and the rules and customs of said church requires." In that the defendants in error have mistaken their remedy, which is by *mandamus* or by removal, as provided for by section 47, P. 980 of Blackwell's Statutes.

The next material allegation in the bill is, " that said Brunnemeyer and Fickensher fastened up said church against the rights of the complainants in direct violation of their trust and duties with and for the purpose of preventing complainants from entering the same, on the 10th day of February, being the Sabbath day, or at any other time. for the purpose of *worshipping* as *aforesaid*, &c." In this allegation, the defendants in error have mistaken their remedy. The act which they complain of, is done, it is not an act to be performed in the future, but it is already performed, There is a power or remedy to compel said trustees to remove said fastening or obstruction, so that members can go to such church and worship, and that remedy is by a *mandamus* to compel them to do an act required of them by virtue of their office. Tapping on Mand. P. 238, see notes.

If the bill prayed the restraining of some wrongful act to be done in the future, there a Court of Equity would undoubtedly

interfere, *but in this case the wrongful act is performed*, and if by the consequences of such wrongful acts, the defendants in error are deprived of a right, mandamus lies to remedy such wrongful act. The church is closed, it can only be opened for worship by the legally constituted agents, which are the trustees. If any of the members of the society attempt to remove such obstruction and fastenings, or to break open the church, they are trespassers.— The legal title to the property is in the trustees.

The People vs. Runkle, 9th Johns.  
147, also, 46th sec. Page 380 Black-  
well's Statutes.

But according to practice, the dissolution of the injunction is a matter of course, upon the filing of the answer, unless the bill is sustained by affidavits or exceptions taken to the answer. The answer was sworn to by the plaintiffs in error, and is a complete denial of every material allegation of the bill.

3d Scam. P. 370.

The two last assignments of error, involve the same questions and will be argued and disposed of together, and in discussing the questions involved we must look at the position of the respective parties before the difficulties. On the one side, we find the old members of the church sustaining the trustees, with a majority of the church officers, on the other the Pastor, who by his violent denunciations of other christian denominations had nearly destroyed the society, supported by men who were not members of the church, or were admitted by the Pastor for the occasion, and who paid nothing for the support of the church. Men who were not even admitted in church, but their names were taken at a whiskey shop, (see the evidence of Louis Garmes,) the Pastor walking around the City of Aurora, with his book, taking the signatures of men as members, in direct violation of the regulations and by-laws of the church. At a meeting of the members on the 6th day of January, 1861, Buhre offered his resignation, and announced that in four weeks from that day he should preach his farewell sermon, and then he should preach no more for them. about the 28th of January, 1861, at a meeting of the society his resignation was accepted, and he was informed of such acceptance. After the expiration of the four weeks another meeting was held, and it was resolved to shut up the church until the services of another pastor could be obtained, and the next day a new lock was put upon the door, when this bill was filed. But it is claimed that another meeting was held on the 14th of January, by the other members of the church, whereat said Buhre was requested

to withdraw his resignation, which he did, and claimed the right to continue to preach. These are substantially the facts, and we must look to the law to govern the case, and it is insisted by the plaintiffs in error :

1st. That the trustees are the legal representatives of the society, and that through them alone, the society can act. Blackwell's Statute, P. 980. And as such, they alone can make a contract with a pastor, which is binding and legal.

2d Sandford's Chanc. Rep. 189. *Vol 28*  
8th United States Digest, P. 65.

2d. That the trustees alone can act upon the resignation of said Buhre.

3d. That if the action of said trustees did not suit the wishes or desire of said society, they have a right to dismiss them.

*See particularly Com. vs W.C. Ch. & Society P. 224*

4th. That Buhre could not withdraw his resignation without leave from the trustees, he having repudiated and ended the contract under which he preached for them. The trustees had a right to take him at his word.

5th. That the request of a portion of said society to said Buhre, to continue to preach, and his compliance thereto, was null and void, and not binding upon said society.

Commeyer vs. United Lutheran Churches, 2d Sandf. Ch. Rep. 186, Lawyer et al vs. Cipperly et al, 7th Page Ch. Rep. P. 281. *Uc*

6th. That said trustees have the control of all the property of said society, and as such have the right to fasten the church doors, even as against members except during divine service.

3 Pages Ch. Rep. P. 302.

7th. That said trustees are responsible to the society for the safe keeping of such property.

8th. It is the persons elected trustees under the law, and not the congregation, that constitute the corporation of the church.

Bethel Church vs. Carmack, 2d Md. Chanc. Dec. 143, 13 U. S. Dig. P. 116.

Apply these propositions to the facts in this case, and there can be no doubt that the decree in this case is erroneous. In fact no case can be found in the books, where a Court in Chancery ever interfered in a controversy as shown in this case. In fact the cases found in the books, are all them cases where there were two *distinct corporations*, but such is not the fact in this case. The difficulty in this case, must be settled by a majority of the voters of the congregation, which congregation *has the power under our Statute, to remove the trustees from office for an abuse of their power.*

In States where the Statute does not give the congregation the power to remove trustees, Courts have intimated that Courts of Chancery would remove such trustees from office, *but only in cases of flagrant breach of trust.* The Court in 7th Paiges Chanc. Rep. P. 286, says. "I am not prepared to say this Court would not correct such a flagrant breach of trust by removing them from their office as trustees, and again, it must, however, be a case of a palpable breach of trust, which will authorize this Court to interfere, and it should not be done in any case where the church or congregation were very nearly equally divided.

Again, the decree entered by the Court is entirely inconsistent with the duties of these men as trustees. The decree "orders that said plaintiffs in error be *perpetually restrained and enjoined* from interfering or in any way intermeddling with the complainants and other members of said church, in convening and worshipping in said church according to the usages and customs of said church, as they had heretofore done, &c.

Suppose some of these defendants in error refuse to contribute towards the support of the church, according to the by-laws of the society, they then lose their right to worship in that church, and yet, this decree prevents the trustees from interfering. Suppose some of them by their immoral conduct *compel the trustees to deny* them the right to participate in the holy sacrament, and yet according to this decree, these trustees have no right to deny them such participation. Or, suppose any one of them should renounce the doctrines of the Lutheran Church, yet the trustees would have no right to deny them admittance to the church. The decree denies them the right to expel a member for immoral conduct, or to prevent their voting at the meetings of the society.

In this case, the only difficulty is between the trustees of the society on one side, and the pastor on the other. They have a right to presume that a majority of the members side with the

trustees, otherwise the society would remove them, why should this man who has become obnoxious to a majority of the members of this society, force himself upon them as their pastor, when he thereby destroys the peace and harmony of the society. Ministers of the gospel who profess to be the disciples of Him who taught the religion of peace and good will in all the relations of life, should not suffer themselves to be the means of fanning the flames of discord, or to sow the seeds of strife, in any church or congregation, with which they are connected.

We therefore insist that upon the facts in this case, and the application of the law thereto, this decree must be reversed.

METZNER & WHEATON.

Att'ys for Pl'fs in Error.

52

Brunnermeyer et al

as

Buhr et al

Puffs. argt.

52

Filed April 1863

Second Office

63

W. O. Thompson here that from the first in this case, and the  
obligation of the law, the general rule is to be observed.  
WILKINSON & ALLEN  
V. J. & H. in 1863

United States of America  
State of Illinois  
Stam County  
City of Aurora

88

Present the Honorable  
Benjamin H. Park

The Judge of the Court of Common Pleas  
of the City of Aurora at a regular Term  
of said the Court of Common Pleas of the  
City of Aurora begun and held at the  
Court Room in the City of Aurora in  
said County and State on the Third Mon-  
day (the 17<sup>th</sup> day) of March in the year of Our  
Lord One Thousand Eight Hundred and  
and Sixty Two, and the independence of  
said United States the Eighty Six

Present the Honorable Benjamin H. Park  
The Judge of said Court  
Demaree Clark  
Sheriff of said County

Atties

Charles P. Johnston  
Clark

The Court opened by proclamation

Be it remembered that hereunto  
to wit on the 9<sup>th</sup> day of February A D 1861  
the following Bill for Jurisdiction was filed in  
the office of the clerk of said Court to wit

State of Illinois }  
County of DeWitt } ss  
City of Aurora }

To the Honorable  
Benjamin H. Parks  
Judge of the Court of  
Commons of the City  
of Aurora in vacation  
after the December Term  
A D 1860

Humly complaining show unto your honor  
How Oratus Const. &c. ~~Benjamin Michael Peterson~~  
~~vs Stephen Arnold, John Brugge and~~  
~~Carl Hubner for themselves and also on~~  
behalf of the members of the German Evangel-  
ical Lutheran Saint Pauls Church of Aurora  
Illinois except the members thereof made Defendants  
hereunto residents of the City of Aurora agreeable that  
on or about the first day of January A D 1860  
the said Church was duly organized and incor-  
porated according to the Statute of this State and  
that John W. Bismunmeyer John J. Schae-  
schay and Frederick F. Fischer at the time  
last aforesaid were duly elected and qualify-  
ed as Trustees of said Church also accord-  
ing to the Statute of this State and that

Page 3

they have since that time continued to be  
and still do continue to be the legal trustees  
of said Church and that the said Church  
received a deed of conveyance of one half of  
the following described lot of land situate in  
the City of Amos in Emme County Illinois  
to wit Lot one (1) in Block one (1) in  
Hastings addition to Amos from Benjamin  
-in Hastings and his wife a short time  
-after the said Trustees were elected and qualify  
-ed as aforesaid as a donation and the other  
half by purchase from the said Ernst, &c,  
-both by deed of conveyance which deeds  
were made to the aforesaid Trustees and  
to their successors in office for the sole and  
exclusive use and benefit of the said Church  
and that the said Church erected a Church  
edifice on that half of said lot deeded by  
said Hastings as aforesaid for the exclusive  
purpose of public worship of Almighty God  
according the discipline rules and customs  
of the Evangelical Lutheran Church so known  
and called and the said Church Edifice was  
so built about the year A.D. 1855 by the mem-  
-bers of said Church and the community in gener-  
-al by way of gift and donations to and for  
the exclusive use and benefit of said Church  
By way of amendment your orators further  
show unto your Honor that they were on the

Page 11<sup>th</sup> just day of January A D 1861 and for a long time before and ever since and still a member of the said Church in this Bill of Complaints mentioned

And your orator further shew unto your Honors that the aforesaid Church have since the said organization and still do worship in said Church edifice according to the discipline and customs of the said Lutheran Church

And your orator will suppose that said Parties would have conducted themselves in all things in relation to their said worship according to the laws of the land and the discipline rule and customs of the said Church as in conscience and equity they ought to have done. But now so it may please your Honors that the said John A. Bannerman, Frederick Fickenscher combining and confederating with one William Fickenscher and one Christian Bannerman and one Henry Bannerman also members of the said Church and with diverse other persons at present unknown to your orator whose names when discovered your orator pray they may be at liberty to insert here in with apt words to charge them as parties defendants hereto and continuing notwithstanding and in your orator and others the

Page 5<sup>th</sup>

members of the said Church they the said two defendants, Colm. A. Bannumeyer and Frederick Fierenscher trustees as aforesaid absolutely refuse to perform and discharge the duties and trusts of their appointment as such trustees as the laws of the land and the rules and customs of said Church require and have with the other defendants on this 9<sup>th</sup> day of February A.D. 1861 with force and against the will and consent of the said Church and in direct violation of their trust and duty and against the rights of your orators and other members of said Church fastened up the said Church Edifice with and for the avowed purpose and intent of preventing your orators members of said Church from entering into the same on tomorrow the 10<sup>th</sup> day February 1861 being the Sabbath day or at any other time for the purpose of worshipping as aforesaid according to the rights and privileges of your orators and other members as aforesaid as your orators and said members have heretofore done and still have the right to do all which actions being and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong injury and oppression of your orators in the premises

Page 6<sup>th</sup> In consideration whereof and forasmuch  
as your Orators are entirely wronged in the  
premise according to the strict rules of the Common  
Law and can only have relief in a Court of  
Equity where matters of this nature are cogniz-  
-able and relivable

It is the said Petitioners that the  
said John C. Brimmerman, Frederick H. H.  
-Kinscher, William L. Kinscher, Christian  
Blumman and Henry Brimmerman  
and the rest of the Confederates when discov-  
-ered may without oath (their respective in-  
-sured man oath are fully expressly waived)  
full true direct and perfect answers make  
to all and singular the premises as fully  
and particularly as if the same were here-  
-in after repeated and they themselves distinctly  
interrogate to the best of their knowledge and  
belief and that the said Defendants and  
their Confederates their Agents Attorneys Sol-  
-icitors and servants respectively may  
restrained from interfering or in anywise  
intermeddling with your Orators and members  
of said Church in conveying and worshipping  
according to the usages and customs of said  
Church as they have heretofore done

May it please your Honor to  
grant to your Orators not only the People

Page 7<sup>th</sup>

with or writs of injunction of the State of Illinois issuing out of and under the seal of this Honorable Court directed to the said Defendants their Confederates agents attorneys Solicitors and Servants enjoining them and each of them in the manner aforesaid but also that the Clerk of the said Court on the filing of this bill may issue a summons according to the practice of the Courts of Chancery of this State against the said Defendants directed to the Sheriff of the County of St. Louis in the State of Illinois therein commanding him to summons the said Defendants to be and appear before the Court of Common Pleas of the City of St. Louis in the County and State aforesaid at the next term thereof on the first day of said term and then and there to answer all and singular the premises and to stand to and abide by such order and decree therein as to your Honor shall seem meet and your Obedience shall ever pray

Meantime & Service }  
 Solicitors & Counsel }  
 for Complainants }

C. H. Butler  
 Michael Heabumyer  
 Stephen Finch  
 John Brugg  
 Carl Hubner

State of Illinois  
County of St. Louis  
City of Annua

These deponents first being  
duly sworn on oath say that they have  
heard the foregoing Bill of Complaint read  
and know the contents thereof and that the  
same is true of their own knowledge

Sworn before me this 9<sup>th</sup>

day of February A.D. 1861

Subscribed and sworn to  
before me this 9<sup>th</sup> day of  
February 1861

J. G. Bann  
Clerk

E. H. Butler  
Michael. Babington  
Stephen Smith  
John. Breyer

State of Illinois  
County of St. Louis  
City of Annua

These deponents first being  
duly sworn on oath say that they have heard  
the foregoing bill of Complaint as intended  
above read over and know the contents thereof  
and that the same is true of their own  
knowledge

Subscribed and sworn to  
before me this 2<sup>d</sup> day of April  
A.D. 1861

C. P. Johnston  
Clerk

E. H. Butler

Page 9<sup>th</sup> Endorse on the back as follows to wit

Let an injunction issue pursuant to the prayer  
of the within Bill of Complaint this injunction  
is granted without notice to the Defendant, it  
having been represented that the urgency of  
the case will not admit of such notice being  
given

To James G. Barr Done at Chambers this  
9<sup>th</sup> day of February A.D.  
1861

B. H. Parks

Judge of Court of  
Common Pleas of the City of  
Amherst

Common Pleas Amherst

Ernest. Putnam

et al

vs

John A. Dummermayer

et al

Bill for Injunction

Filed Feb 9<sup>th</sup> 1861

J. G. Barr Clerk

Montgomery & Secor

Cornell col

And also on the same day to wit the  
9<sup>th</sup> day of February A D 1861 the following writ  
of injunction issued out of and under the  
seal of said Court to wit

State of Illinois }  
City of Aurora } 88  
Kane County }

The People of the State of  
Illinois

To John A. Brummeyer, Frederick,  
Fischbacher, William Fischbacher Christian  
Brummens and Amy Brummeyer  
and to your confederate attorneys solicitors  
agents and servants and to each and every  
of them greeting;

Whereas it hath been represented  
to the Honorable Benjamin H. Parks the Judge  
of the Court of Common Pleas of the City of  
Aurora in said City Kane County in the  
State aforesaid on the part of Ernst H.  
Bubner Michael Hebermeyer Stephen  
James John Brugge and Carl  
Heberer for themselves and also on  
behalf of the members of the German Ev-  
angelical Lutheran Saint Pauls Church  
of Aurora Illinois except the Respondents  
 therein Complainants in their certain Bill  
of Complaint exhibited before said Judge

Page 11<sup>th</sup> and filed in said Court against you  
the said John A. Brummemyer  
Friedrich Fickenscher Williams, Fickens-  
cher Christian Bannman and Henry  
Brummemyer to be relieved touching the  
matters therein complained of for which said  
bill it is stated among other things that you  
are combining and confederating with others  
to injure the complainants touching the matters  
set forth in the said bill and that your  
actings and doings in the premises are con-  
trary equity and good conscience And the  
said Judge having under his hand and seal  
upon said bill an order that a writ  
of Injunction issue out of said Court accord-  
ing to the prayer of said bill He therefore in  
consideration thereof and of the particular  
matters in said bill set forth do strictly com-  
mand you the said John A. Brummemyer  
Friedrich Fickenscher Williams  
Fickenscher Christian Bannman and  
Henry Brummemyer and the persons  
before mentioned and each and every of  
you that you Absolutely Desert and be  
rain from interfering or in any manner  
intemmeddling with said Ernst, G. P. Dubne  
Michael Hasenmayer Stephen Farnes  
John Bruggs Carl Heubner and the  
members of said Church in convening

Page 12<sup>th</sup> and worshipping according to the usage  
discipline and customs of said Evangelical  
Lutheran Saint Paul Church of Annua Ill-  
-inois as they have heretofore been done in  
the Church Edifice erected by said Church  
on Lot one (1) in Block one (1) in  
Hickory addition to Annua until this  
Memorable Court in Chancery sitting shall  
make other order to the contrary & they  
fail not under the penalty of what the  
law directs

Seal

Witness James G. Bann Club  
of our said Court and the  
seal thereof at the City of Annua  
Illinois this 9<sup>th</sup> day of February  
A.D. 1861

James G. Bann  
Club

Entered on the back as follows to wit

Court Pleas Annua  
March Term 1861

Ernest H. Burns

et al

vs  
John A. Brimmer  
et al

Injunction writ

Filed April 11<sup>th</sup> 1861

C. P. Johnston  
Clerk

Money & Bonds Comptroler

Served the within writ of Injunction by reading to the within Frederick Fickenscher and John A. Brummage and also send to each of them a true copy of the same Feb 10<sup>th</sup> 1861 and the same served by reading and a true copy given to each of the within named William Fickenscher Christian Blumens and Henry Brummage this 18<sup>th</sup> day of February A.D. 1861

A. A. Dexter

Just \$2.50

And afterwards to wit on the 14<sup>th</sup> of February A.D. 1861 the following Commencement issued out of and the seal of said Court to wit

State of Illinois }  
County of St. Louis } 83  
City of Alton

The People of the State of Illinois to the Sheriff of said County - Greeting:  
We command you that your Commencement

John, A. Baumenmeyer Frederick Fickensow  
 -vs- Christian Bannan William Fickensow  
 and Henry Baumenmeyer if they shall be  
 found in your County to be well appear  
 before the Court of Common Pleas of the City of  
 Anna on the first day of the next term  
 they to be holden at the Court House in the  
 City of Anna in said County on the third day  
 -day of March next to answer unto  
 Ernst H. Buhne Michael Habermeyer  
 Stephen Linnick John Brugg and  
 Carl Hubner in their certain Bill of  
 Complaint for Injunction filed in said  
 Court on the Chancery side thereof

And have you then and then  
 this writ with due diligence there  
 -on in what manner you shall  
 have executed the same

Seal

Witness James V. Bow Clerk of  
 our said Court and the seal  
 thereof at Anna aforesaid this  
 14<sup>th</sup> day of February A D 1861  
 James V. Bow Clerk

Endorsed on the back as follows to wit  
 Court of Common Pleas  
 of the City of Anna  
 March Term 1861

Page 15<sup>th</sup> Ernst. H. Bauer  
was

J. A. Brumminger  
et al

Summons in Chancery  
Filed March 18<sup>th</sup> 1861

J. C. Barr Clerk

Served this writ on the within named  
John A. Brumminger Frederick Fickinger  
Christian Buraan William Fickinger and  
Henry Brumminger by delivering a copy true  
of them the 8<sup>th</sup> day of March 1861

Fees	5 Swicks	2.50
	5 Copy	2.50
	10 mile	7.5
	1 return	1.0

85.50  
D. Clark Sheriff

By J. D. Andrews Deputy  
Montgomery & Charles Solto

And afterwards to wit on the 19<sup>th</sup> day of  
March A D 1861 it being one of the days  
of the regular March Term A D 1861 of said  
Court the following among other proceedings  
were had in this cause and instead of  
verdict in said Court to wit

Page 16<sup>th</sup> Ernst H. Bahr

vs et al  
John A. Barmann  
et al

Injunction

This day came the defendants by Motinger their Solicitor and entered their motion to dissolve the injunction herein for want of equity on the face of the Bill and the Court not being fully advised taking time to consider

And also on the same day to wit the 19<sup>th</sup> day of March A D 1861 the following answers of defendants were filed in the clerk's office of said Court to wit

Ernst H. Bahr  
Michael Habermayer  
Stephen Fink  
John Bruggen  
Carl Hubner for  
themselves and also on behalf  
of the members of the German  
Evangelical Lutheran St. Pauls Church &c  
vs  
John A. Barmann Frederick  
Nicholas Williams F. Stensho  
Christian Barmann & Henry Barmann

Before Hon  
R. H. Parks  
Judge of  
the County  
Commons  
Place of the  
City of  
Cincinnati  
March  
1861

# These defendants deny that said Complainants  
Ernst H. Busch Michael Habermeyer Stephen F. Smith  
John Brugge and Carl Huber #

(This is as the original answer was before amendment)

Page 17<sup>th</sup> The joint and several answers of John  
W. Brummage and Frederick Dickmeyer  
William Dickmeyer Christian Bannard and  
Henry Brummage

These Defendants now  
and for all times hereinafter answering to them-  
selves all rights and benefits of exceptions to the  
many errors and insufficiencies in said Bill  
of Complaint for an answer thereto say

# These Defendants deny that said  
Complainants Stephen Simons and Carl  
Herbner are and have been on the 1<sup>st</sup> day  
of January A.D. 1861 and legal members of  
said Church in said Bill of Complaint #  
have any right or authority whatever from  
the members of the German Evangelical  
Lutheran St Pauls Church of New  
(Except these Defendants) to commence said suit  
but on the contrary that said suit is brought  
by said Complainants against without the  
consent authority or knowledge of the majority  
of the members of said Church and against  
their express will and desire

These Defendants further  
answering say that they admit that on or about  
the 1<sup>st</sup> day of January A.D. 1856 the said Church  
was duly organized and incorporated according  
to the Statute and that John W. Brummage  
John J. Schuching and Frederick Dickmeyer

Page 18<sup>th</sup> at the time aforesaid were elected and qual-  
-ified as trustees of said Church according  
to the Statute in such case made and pro-  
-vided

And these defendants further an-  
-swering say that they admit that ~~an~~ ~~instrument~~  
John A. Brummeneyzer and Frederick  
Fickmohr still continue to be the legal tru-  
-tees of said Church and that the land in  
said Bill of Complaint described was deeded  
to said trustees as alleged in said Bill of  
Complaint and for the purposes in said  
Bill of Complaint set forth

And these defendants further  
answering say that they deny that said Church  
Edifice has been used since the organization  
by said congregation and still is for the purpose  
of worship according to the discipline and  
custom of said Lutheran Church but on the  
contrary said Ernst H. Busch has on above  
and different times as pastor of said Church  
on the Sabbath and from the pulpit of  
said Church and while said congregation  
was then for the purpose of worship indulged  
in violent and injurious denunciations  
of other protestant denominations all of  
which is contrary to the rules and customs  
of said Lutheran Church

And these Defendants further answering say that said John A. Barmannmeyer and Frederick Fickenscher have at all times conducted themselves in relation to their said trust-ship according to the laws of the land and the discipline and customs of said Church

And these Defendants further answering say that they deny that they and each of them combined and confederated as charged in said Complainants Bill of Complaint

And these Defendants further answering say that they deny that said Defendants John A. Barmannmeyer and Frederick Fickenscher trustees aforesaid refuse to perform and discharge the duties and trusts of their appointments as such trustees as the laws of the land and the rules and customs of said Church require

And these Defendants and each of them deny that on the 9<sup>th</sup> Day of February A D 1861 with force and against the will and consent of said Church and against their trusts and duties the said John A. Barmannmeyer and Frederick Fickenscher with their and other Defendants against the rights of said Complainants and the other members of said Church fastened said Church edifice with force and for the purpose of preventing said Complainants

Page 20<sup>th</sup> and the members of said Church to  
worship in said Church Edifice

And these defendants further  
answering say that during the year 1841  
the said Ernst, H. Buhne then and there  
acting as pastor of said Church by the con-  
-sent of the Complainers indulged against the  
rules and regulations of said Lutheran Church  
when preaching in said Church Edifice  
on Sabbath in violent and unchristian de-  
-nunciation against the German Methodist  
society then forming and without cause at-  
-tacked individual members thereof by reason  
of which a great many members of said  
Lutheran Church dissolved their connection  
with said Church and among others three  
of the officers of said Church elected by said  
Lutheran congregation that said defendant  
John A. Bummemyer as trustee of said  
congregation with said Buhne about the  
course so pursued by him and requested him  
to assist because he would break up the con-  
-gregation but said Buhne refused and con-  
-tinued in his trade against said denomination  
by reason whereof a great many of the members  
of said Lutheran Church dissolved their con-  
-nection with said Church and refused to  
participate in worship in said Lutheran Church  
thereafter. All of which things is contra-

Page 21<sup>st</sup> by to the rules and customs of said Lutheran Church

And these defendants further answering say that at a meeting of the members of said Lutheran Church called by said Butne on the 6<sup>th</sup> day of January A. D. 1861 said Butne resigned his position as pastor of said Church and then and there stated that in four weeks from said day he would preach his farewell sermon.

And these defendants further answering say that a meeting of the members of said Church held on the 30<sup>th</sup> day of January A. D. 1861 said resignation was unanimously accepted by said congregation and on the 31<sup>st</sup> day of January A. D. 1861 said Butne was informed of the acceptance of his resignation as aforesaid by said trustees of said Church in writing a copy of which said notice is herewith attached marked A.

And these defendants further answering say that on the 8<sup>th</sup> day of February A. D. 1861 at a meeting held by the members of said Lutheran Church pursuant to a call of said trustees it was unanimously resolved by the members of said Church that said Church edifice should be closed until the service another pastor

Page 22<sup>d</sup> could be procured once said meeting  
then and then instructed said trustees af-  
-orsaid to obtain the keys to said Church  
Edifice in whose possession they might be  
found

And these Defendants further  
answering say that one Ernst Schroeder  
had the key to said Church and said  
trustees then and there demanded the key  
of said Church Edifice in behalf of said Cong-  
-regation from said Schroeder comprising with  
said complainants but said Schroeder refused  
to deliver up said key to said trustees

And these Defendants  
further answering say that divers other persons  
had obtained key to said Church Edifice  
and could obtain access to said Church Ed-  
-ifice by the use of such key without the con-  
-sent of said Congregation

And these Defendants  
further answering say that in order to pre-  
-vent the property in said Church from be-  
-ing stolen carried away and injured and  
prevent persons from entering said Church  
Edifice without the right so to do that  
John A. Brummey and Frederick  
Fickenscher trustees as aforesaid in presence  
of their Clerk as such trustees on said 9<sup>th</sup> day  
of February last took the old locks from

the door of said Church Edifice and put another and new locks on the door of said Church Edifice to protect the property in said Church as they lawfully might which is the supposed fastening up of said Church Edifice in said Complainants Bill of Complaint mentioned

And these Defendants further answering say that a large majority of the actual members of said Lutheran Church voted to accept the resignation of said Baber and that Baber still claims the right to hold forth in said Church against the express will and desire of said Congregation

And these Defendants denying every allegation in said Complainants Bill of Complaint contained charging these Defendants and each of them with any thing unlawful or contrary to equity without this that if there is any other matter or thing in said Complainants Bill of Complaint contained material or necessary for these Defendants to make answer thereto and not truly and herein sufficiently answered confessed traversed and avoided or denied is true to the knowledge and believe of these Defendants all of which matters or things these Defendants are ready

Page 24<sup>th</sup> and willing to verify on this Honorable  
-ble Court shall direct and pray to be  
dismissed with their reasonable costs  
and charges by them and each of them  
most wrongfully sustained

Chas. J. Mottyn }  
Sol. for depts }

John Adam Brummenger  
Frederick Fickenscher  
Henry Brummenger  
Christian Brummenger  
William Fickenscher  
by C. J. Mottyn his Sol

Exhibit A.

Mr. Henry Ruben Pastor &c

According to the resolution of yesterday assembled  
congregation of the German Lutheran St. Pauls  
Church we hereby notify said Henry Ruben  
that his offered resignation as Pastor of said  
Church is hereby accepted and whereas accord-  
-ance therof or next Sunday the 3<sup>rd</sup> February 1861  
the time by yourself appointed has past we  
therefore expect of you and especially a  
preacher that he will be true to his word

By order of the Congregation

John Adam Brummenger  
Frederick Fickenscher

Stewards

of the Church's property

Anna 31<sup>st</sup> January 1861

Page 25<sup>th</sup> Enclosed on the back as follows to wit  
Ernst. H. Burkner

vs et al  
John. A. Brummenger  
& et al

Answer

Filed March 19<sup>th</sup> 1861

J. K. Bow Clerk

C. J. Metzger Sol<sup>l</sup> for Defts

And also on the same day to wit the 19<sup>th</sup>  
day of March A D 1861 the following oath  
to <sup>the</sup> answer herein, <sup>was</sup> filed in the Clarks office  
of said Court to, wit

Ernst. H. Burkner & et al } Court of Common  
who sue & c } Pleas of the City

vs } of Anna March  
John. A. Brummenger } Term A D 1861  
& et al } in Chancery

John. A. Brummenger and Frederick  
Hickmsher being each duly sworn upon  
oath say that the answer filed in the above  
cause by said Defendants has been read to  
them that they know the content thereof  
and that the same is true in substance  
and in fact  
Subscribed and sworn

Page 26<sup>th</sup> Sworn and Subscribed }  
to begin me this 19<sup>th</sup> day } Judicia. Piethenshaw  
of March A D 1861 } John. W. Brummenger  
J. G. Ban Clark

Entered on the Back as follows to wit  
Filed March 19<sup>th</sup> 1861  
J. G. Ban Clark

And afterwards to wit on the 23<sup>rd</sup>  
day of March A D 1861 it being one of the  
days of the regular March Term A D 1861  
of said Court the following among other  
proceedings were had in said court and  
entered of record in said Court to wit  
Const. H. B. B. et al

vs }  
John. W. Brummenger } Injunction  
et al }

This day again  
came the defendants by C. J. Mestyn their  
Solicitor and having filed their answers  
herein enter their motion to dissolve the  
Injunction herein

Page 2<sup>th</sup>

And afterwards to wit on the 30<sup>th</sup> day of March A D 1861 it being one of the days of the regular March Term A D 1861 of said Court the following among other proceedings were had in this cause and instead of record in said Court to wit

Const. H. Barnes et al	} Injunction
vs	
John A. Bunnemyer et al	

This day on motion of the Defendants It is ordered by the Court that the complaints exceptions to the Defendants answer be stricken from the file And on Complainants motion leave is given to them to file a Replication herein to the Defendants Answer

And afterwards to wit on the 2<sup>d</sup> day of April A D 1861 the same being one of the days of the regular March Term A D 1861 of said Court the following Replication to the Defendants answer was filed in the clerks office of said Court To wit

Const. H. Barnes et al	} The Court of Common Pleas of the City of Aurora March Term A. D. 1861 in Chancery
vs	
John A. Bunnemyer et al	

August 28<sup>th</sup>

The Replication of Ernst H. Burk et al  
Complainants to the answer of John William Buss  
-Brunnermeyer et al Defendants

These replicants having  
and receiving into themselves all and all manner  
of advantage of exceptions to the manifold  
insufficiency of the said answer of replication  
thereunto say that they will aver and prove their  
said bill to be true certain and sufficient  
in the law to be answered unto and that the  
said answer of the said Defendants is honest  
-ain untrue and insufficient to be replied  
unto by this replicant. Without this that that  
any other matter or thing whatsoever in the  
said answer contained material or effectual  
in the law to be replied unto confessed and  
avoided traversed or denied is true all which  
matters and things these replicants one and will  
be ready to aver and prove as this Honorable  
Court shall direct and humbly prays as in  
and by their said bill they have already  
prayed

Meritony & Sons

Sol - of Counsel for Complainants

Condensed on the basis as follows to wit

Ernst. H. Burk et al

vs

John, W. Brunnermeyer et al

Replication

Filed April 2<sup>d</sup> 1861

Charles P. Johnston

Clubs

Att. & S. Sol. & of Counsel for Comptroller

And also on the same day to wit the 2<sup>d</sup> day of April A D 1861 the same being one of the days of the regular March Term A D 1861 of said Court the following among other proceedings were had in this cause and entered of record in said Court to wit

Ernest H. Buhar Michael  
Koburnyev Stephen Farned  
John Buzget Carl Habner

vs

John A. Bunnunmyer Frederick  
Fickinschew Christian Banner  
William Fickinschew Henry Bunnunmyer

Injunction

This day came the complainants by Montague Scales their solicitor and on this motion leave is given them to amend their Bill of Complaint herein and that the same shall not effect or prejudice the injunction issued herein Therefore came the defendants by Montague their solicitor and on this motion leave is given them to

Thereupon again come the parties hereto and this cause coming on to be heard upon the proofs submitted by the parties and the Court having heard the proofs and allegations of parties &c and not being fully advised by consent of the respective parties made in open Court the Court takes the same under advisement until Saturday next at 2 O'clock P.M. the decision of the Court and the decree to be entered as of the present Term with the right of either party to except and with the same force and effect as if entered in Term time

And afterwards to wit on the 6<sup>th</sup> day of May A.D. 1861 the following decree was filed and entered of record in said cause in said Court to wit

Ernst G. Bismarck  
Habermayer Stephen Arnold  
John Bnyge Carl Heubner  
for themselves and on behalf of the  
members of the German Evangelical  
Lutheran Saint Paul Church  
of America except the members  
thereof made defendants to this suit

The County  
Common Pleas  
of the City of

John A. Bannum	} Answer at the
Fredrick Fickenscher Williams	
Fickenscher Christian Bannan	
& Henry Bannum	
	} Mary Cheney Trust thereof A. D. 1861

This cause coming on to be heard at the March Term of said Court A. D. 1861 upon the Bill Answer replication and proof and the Court not being fully advised in relation to the same took the same under advisement until the said May Term 1861 and it appearing to the Court by the proof taken in this cause that the said Complainants were at the time of the commencement of said suit and for a long time before residents of the said City of Anson and that on or about the 1<sup>st</sup> day of January A. D. 1856 the German Evangelical Lutheran Saint Paul Church of Anson Illinois was duly organized and incorporated according to the Statute of this State that John A. Bannum and John J. Schaefer and Fredrick Fickenscher at the time last aforesaid were duly elected and qualified as trustees of said Church also according to the Statute of this State and that they have since that time continued to be the legal trustees of the said Church and that the said Church received a deed of conveyance of one half of the following

described lot of land situated in said City  
of Annon in Kane County Illinois to wit  
Lot One (1) in Block One (1) in Hackney addi-  
-tion to Annon from Benjamin Hackney and  
his wife at that time after the said trustees  
were elected and qualified as aforesaid donations  
and the other half purchased from said Ernst H.  
Berthel by deed of conveyance which were made  
to the aforesaid trustees and to their successors in  
office for the sole and exclusive use and benefit  
of the said Church and that the said Church  
did erect a Church Edifice on that half of  
said lot deeded by said Hackney as aforesaid  
for the exclusive use of public worship of  
Almighty God according to the Discipline  
rules and customs of the Church aforesaid and  
the Church Edifice was so built about the  
year A.D. 1855 by the members of said Church  
and the community in general by way of  
gift and donations to and for the exclusive  
use and benefit of said Church and that  
the said complements were on the first  
day of January A.D. 1861 and for a long  
time before and ever since and still are  
members of Church so organized as aforesaid and  
the aforesaid Church's organized as aforesaid since  
the said organization and did at the filing  
of the said Bill worship in said Church Edi-  
-fice according to the Discipline and customs

And it also appearing to the Court that the said John, A. Brunnemeyer and Friedrich Hickerosch combined and confederated with William Fickenscher and one Christian Bannan (also member of said Church) to wrong and injure to said complainants and other members of the said Church and the said two defendants John, A. Brunnemeyer and Friedrich Fickenscher trustees as aforesaid refused to perform and discharge the duties and trusts of their appointment as such trustees as the laws of the land and the rules and customs of the said Church required and did with the other defendants on the 9th day of February A.D. 1861 with force and against the will and consent of the said Church and in direct violation of their trust and duty and against the rights of said complainants and others of the said Church pastore of the said Church Ellipse with and for the well-posed and intent of preventing the complainants and other members of said Church from entering into the same on the then following day being the Sabbath day or at any other time for the purpose of worshipping therein as aforesaid according to the rights and privileges of the complainants and other members as aforesaid as they

Page 4<sup>th</sup> ~~Montezano~~ had done and still had the right  
to do

And it appearing <sup>also</sup> to the Court  
that the injunction issued in this case had  
been duly served upon said defendants  
It is therefore ordered, adjudged and decreed  
by the Court that the said John C. Brimmer  
-mayor Frederick Fickenscher William Fick  
-enschel Christian Brimmer and Henry  
Brimmer and their confederates their  
agents attorney solicitors and servants resp  
-ectively be and are hereby perpetually restrained  
and enjoined from interfering or in any wise  
intemmeddling with the complaints and other  
members of said German Evangelical Lutheran  
-an St Pauls Church of Aurora Illinois in  
convening and worshipping in said Church  
Edifice according to the usage discipline and  
customs of the said Church as they had hereto  
fore done and still have the right to do

And it is further ordered  
adjudged and decreed that said complain  
-ants here and each of said defendants their  
costs and charges by them ~~done~~ in this suit  
expended and now execution therefor

B. J. Paris Judge

To which decisions of the Court the defend  
-ants at time excepted and prayer on appe  
-al in this case to the Supreme Court of

Page 3<sup>5</sup> the State of Illinois It is ordered by the Court that the appeal be allowed upon Defendant entering into bonds in the sum of One Thousand Dollars with Frederick Perry as Surety It is further ordered that they have thirty days to file their bond and ninety days to file their Bill of exceptions herein

And afterwards to wit on the 14<sup>th</sup> day of April A.D. 1862 the following Bill of exceptions (with an endorsement on the under the hand of the Judge that the clerk file said Bill of exceptions as of July 12<sup>th</sup> 1861) to wit

State of Illinois }  
County of Kane } ss  
City of Aurora }

The Court of Common  
Pleas of the City of Aurora  
March Term A.D. 1861  
In Chancery Sitting

Ernest H. Ruben }  
Michael Koburney }  
Stephen Linnick }  
John Briggs for themselves and  
on behalf of the members of the German  
Evangelical Lutheran St Pauls Church  
of Aurora (except the members thereof  
made Defendants to this suit)

John A. Brummey  
 Frederick. Dickens  
 William Dickens  
 Christian Barrman  
 Henry Brummey

Injunction

Be it

remembered that on the 19<sup>th</sup> day of March  
 A D 1861 it being one of the days of said  
 Term the Defendants by Charles J. Alden  
 their Solicitor and Counsel then and there  
 moved said Court to dissolve the injunction  
 for want of equity on the face of the Bill  
 of Complaint which said motion after hear-  
 ing the argument of Counsel the Court being  
 fully advised in relation thereto overruled  
 to which decision in overruling said motion  
 the Defendants then and there by their said  
 Counsel excepted And on the 2<sup>nd</sup> day of  
 April A D 1861 it still being one of the Court  
 days of the said March Term A D 1861 of  
 said Court said cause having been called  
 for trial the Complainers in order to sustain  
 their cause introduced the following witnesses  
 and proofs

John Schaefer

being duly sworn testified  
 as follows that he knows the Complainers and

Continuously be correctly translated into English and such translation be introduced in evidence instead of the books which was then and there assented to by the parties and the parties then and there consented that said Ernst, St. B. should prepare such translation which he then did and presented such translated copies of such parts so deemed material or relevant by counsel and the counsel for defendant understanding the German language after inspecting the same and making one or two corrections therein and assented to by said B. then assented to the correctness of such translated copies and then by consent of parties the said translated copies were introduced in evidence by the said complainants instead of the original Books. Jo. Wit

### Church Discipline

The German Evangelical Lutheran St Pauls Church maintained Augsburgs Confession Amara in the State of Illinois

We the undersigned ministers  
elders stewards and trustees and members  
of the above named Church adhere to the  
following Church Discipline  
Chapter First

1 of the ministers only such persons can be  
ministers in this congregation who adhere

Page 40<sup>th</sup> This office until others are elected in their place

- 2 The Church Council holds regular meetings at fixed times may however at any time be called together by the minister
- 3 They shall in brotherly love counsel over the spiritual and general welfare of the society
- 4 In the absence of the minister one of the Elders shall preside
- 5 If the Society is without a pastor then the Church Council shall bring suitable candidates for election before the society

### Chapter 3<sup>d</sup>

#### The Elders

The Elders shall be elected in a regular meeting by a majority of the votes and shall conduct themselves in a Christianlike manner They are the assistants of the pastor in administering the Church Discipline to uphold peace in the society and shall strive for truth and Godliness in general

They shall visit the school and see that order is kept therein and that the children

Page 41<sup>th</sup> One properly taught

## Chapter 4<sup>th</sup>

### The Stewards

They shall be of the same mind as the Elders and be elected in the same manner. It is their duty to see that during public worship order is kept collections taken up and see to the general welfare of the society.

## Chapter 5<sup>th</sup>

### Trustees

The society elects 3 Trustees in the same manner as the Elders and Stewards. They shall likewise lead a Christian life. They shall take the temporary affairs of the Church in safe keeping. It is a duty to keep a record of all their proceedings of which they have to give an account to the society.

They shall collect all money however they have not the power either to buy or sell any property without the consent of the society after the Elders, Stewards and Trustees have been elected. The pastor shall train and -  
-take them in their office. The Church Council shall meet once a year in the month January and give a correct account of the doings and the state of Treasury for the previous year.

# Chapter 6<sup>th</sup>

## The Members

1<sup>st</sup>

All such shall be considered as members who according to the customs of the Lutheran Church have been received by baptism and Confirmation as legal members they must take <sup>Diligent</sup> part in the public worship and according to the usage of the Church give their part to its support they must live in conformity with requirements of the gospel and by signing this Church Discipline declare that they will uphold and sustain the Lutheran Church with its doctrines and usages all such male members who have become of age shall be considered qualified to vote at each election in the society

# Chapter 7<sup>th</sup>

The society may for the explanation of the above named article add such provisions as they see fit however such additions must be in conformity with this Church Discipline generally

Amora January 1<sup>st</sup> 1856

Ernest H. Buntre minister  
of the Lutheran St Pauls Church  
Amora State of Illinois

	1	Ernst. H. Behre minister of the Lutheran St Pauls Church Aurora Illinois		
	2	John Adams Brunnemeyer 28	X	John. Bannan
	3	John. Scharschug 29		Christians Bannan
	4	Frederick. Fickenschu 30		George. Frash
	5	Caspar. Ring 31	(Removed)	Francis. Stute
	6	John. Brugge 32		John. Byw
	7	Henry. Fickenschu 33	X	Matthew Boutw
	8	Leonard. Waldo 34		Williams. Rang
	9	Michael. Habermeyer 35		Comad. Harting
	10	Leonard. Shobertin 36	X	William. Miller
	11	Michael. Shobertin 37		Frederick. Heine
X	12	George. F. Smith 38		Williams. Fickenschu
Removed	13	John. Reuhl 39	X	Peter. Messer
X	14	George. Bannan 40		Christoph. Pinski
X	15	Christian. Sorge 41	(Dead)	George. Haastitw
Dead	16	John. Frederick. Schu 42	(Removed)	Michael. Sorge
X	17	Michael. Zigler 43	(Dead)	George. Cobbleman
X	18	John. Zigler 44		John. Ernst
X	19	William. Bayle 45	X	Leonhard. Reilens
X	20	Frederick. Dutchenman 46		Frederick. Heine
X	21	George. Trautw 47		John. Ciesw
X	22	John. Adams Shobertin 48		John. M. Bonisw
	23	George Brunnemeyer 49		Frederick. Rang
X	24	Henry. Sevasthane 50		John Stimbisw
	25	John Zigler 51		John. H. Halm
	26	Peter. Schu 52		John. Frederick. Neukter
	27	George. Neushlw 53	X	George. Grometw

54	i Francis, Glasow	68
55	George. Muehler	69
56	Friedrich Stromer	70
57	X Henry Brannenmyer	71
58	Deitrick Polyp	70
59	Ernst. Schradew	73
60	Henry. Rang	74
61	X Francis Joseph Hanns	75
62	Carl. Houbner	76
63	Leonard. Gruber	77
64	X August. Hoppe	78
65	John. L. Rang	79
66	Ernst. Broking	80
67	John. A. Smith	81

John. Billw	
Stephen Frense	
Louis. Garmes	
Louis. Hannibal	
Friedrich. Schickel	
Joseph. Wlamyer	
C. Obmawer	
Fred. Bohlig	
Robert. Groets	
John. King	
George. Fack	
John. Wendler	
Christian Uhlig	
Friedrich Schaub	

Page 45 On Cross Examination by Defendants

Cornell the said witness testified as follows this first book was in the possession of the minister and kept by him the men who sign their name in the minister's book are members of the Church. I have heard the minister examine the person who become member I don't know what questions he asked them George Rock signed his name long ago Frederick Bohlig is a member Rubin examined every one Bohlig signed his name in the Church did not see him but guess so Louis Hornibel and Fred Nickels signed their names in Church members signed sometimes with ink and sometimes with pencil (How it was agreed by the parties that all those names on the book as members marked (X) in pencil marked were not members on the 14<sup>th</sup> day of January A.D. 1861)

On Cross examination resumed the witness testified as follows

I saw Frederick Dickinschew and William Dickinschew by the door of the Church one held the door and the other took the lock of the door I don't know which took the lock of the door A Brunnemeyer was in Church Henry Brunnemeyer was keeping watch up and down the street I also saw Christ Brunnemeyer

Page 41<sup>st</sup> watching outside of the Church at the same  
time this was Saturday the same day the  
injunction was issued and before the injunc-  
-tion was issued I saw Frederick Nielsen  
-et hold the door and William Nielsen  
giving the lock I asked Frederick Ni-  
-sen what he was doing he said none  
of your business I told him he ought to  
be ashamed to break up our Church he  
came over the fence after me and I moved  
on he wanted to get hold of me I run  
off as fast as I could I was there the same  
evening they had nailed a piece of wood  
across the key hole and nailed up every door  
I then was preaching there the next day Peter  
preached I opened one of the windows shut-  
-ter and got in the Church and screwed  
the lock off and let the people in the church  
-ed Schrader was sixteen and he kept the  
key Schrader was at the meeting on this  
day they took off the old lock and put  
a new one on so as key would not fit  
none who were there on Saturday attended  
Church the next day (Sunday) but I saw  
Frederick Nielsen this Sunday morning  
going along by the Church as I supposed  
to see what was going on at the Church  
when I was in the Church on the Saturday  
before and the first time it was about a

Page 4<sup>th</sup> The little afternoon we have had preaching  
for 6 years and Baber has been our  
minister since the Church was organized  
It is the German Evangelical Lutheran  
Saint Pauls Church Henry Brummage  
was going up and down the street I expect he  
was watching and know thinks they are watching  
all members

On Cross examination the witness said I saw  
them taking off locks about 12 O'clock <sup>PM</sup> I then  
again about 3 or 4 O'clock PM some day  
then I was on the west side of the Church  
Fickenshaw went around the south east corner  
of the Church to get at me I was then the next  
morning back door was fastened with bolt 18 inches  
long front door had a new lock on

On being re-examined by Puffs Counsel witness  
said there was no Church meeting to authorize  
them (the trustees) to shut up Church if they had  
been I should have known it

On further Cross examination Witness said I don't  
know of my meeting being called to authorize  
trustees to shut up the Church I attend all  
the Church meetings that are called I don't  
know of Fickenshaw and Brummage calling  
a meeting never talk with He asking about the  
Church lot for the last two years

Ernst Schradler on behalf of complainants testified as follows I am a member of the Lutheran Church and have been 2 years been baptised one year and am now I was at the Church on the 8<sup>th</sup> of February 1861 I think it was on that it was on Saturday they closed up the Church I am not sure about the date I was there on the sabbath the day the Church was closed up about 9 o'clock A.M. found new locks and the door and the Church all fastened up I had the key and could not get the key in the key hole a small piece of wood screwed over the key hole so that key would not go in Schradler opened window and went in and all opened the Church without breaking anything there is a back door to the Church back door was fastened on the inside my duty was to make fire ring the bell and show strangers to seats Baber. preached that day in the Church

Crop examined by Apts Cornell witness said Friday before the Sunday Fickenscher and Schradler in Rocks and Chris Bannan were at my house after the key to the Church Fickenscher said he wanted the key on reason given why he wanted it I did not give him the key I considered it my duty as sexton to keep the key

On Cross examination witness said I was not there

Page 49<sup>th</sup> when the new lock was put on did not see the new lock put on the door think the bolt on the back door was 6 to 9 inches long

On direct examination witness said I did not give them the key because my time was not out

John Bourising called and sworn on behalf of complainants testified as follows I am a member of the Church I have been for two years I saw from my house the two Fickmachers & John Brown - nonamey & Chris Bannan at the Church on Saturday February 9<sup>th</sup> 1861 I thought they were railing at the Church they were hammering about the Church I was at the Church that day before noon I was there at Church next day (Sunday) and attended service I saw Frederic Fickmachers go by the Church while I was there <sup>that</sup> Sunday morning we went to Church that morning the usual time for service Church was fastened up there was a large meeting that day at Church I saw none at this meeting who fastened up the Church the day before I saw on Saturday at the Church two men walking back and forth and appear to be watching

On Cross examination the witness testified as follows I did not see Bannan or Bannan - nonamey do anything to the Church beside hammer

Page 20<sup>th</sup> = ing but did not know what they were doing  
to the church next morning I asked Hickmocher  
what they were doing to the Church he gave me  
a crop answer I have not yet paid anything for  
the Church

Asa. A. Dexter being called and sworn testified  
on the part of the complainants as follows

I swear the injunction in this suit and the defend-  
ants this Church is in the City of Amore and the  
County of Kane and State of Illinois I was at  
the Church one Sunday when there was a fuss  
in the Church I went at the request of Barber  
the minister to keep order I was constable  
was there one Sunday when Church was fastened  
up I did not see Hickmocher or Brunner  
=meyer that day I was there when they were  
opening the Church on a Sunday

Frank Harris on part of complainants  
testified as follows never was a member if I signed  
the constitution it was merely to pay money to supp-  
=ort the Church my wife being a member I never  
considered myself a member I have had con-  
=versation with John A. Brunnermeyer about  
getting deed of Church lot he told me that  
he could buy Hea's money interest in the lot  
for fifty dollars and if he did not like it in  
a year he could give it back to Hea's money

Page 51<sup>th</sup> and get his money back he (Brunnermeyer) said  
he would not take one thousand dollars for it that  
it was worth that said there was a good building on  
it (meaning the Church) he said this about two  
months ago at Mr. Farlands Store

One Corp examination witness testified as follows  
Brunnermeyer said Scharschky was trying to  
get the property of Hoackney said he (Brunn-  
-ermeyer) would not take one thousand dollars  
for it

John Scharschky being recalled by complainants  
testified as follows New Year Day Brunnermeyer  
charged me with trying to get the lot of Hoackney  
I never did he Brunnermeyer got the deed  
of Hoackney in November before

How the Complainants stated their case

Benjamin Hoackney a witness called and sworn  
on the part of the Defendants testified as follows  
I know John Scharschky and John A. Brun-  
-nermeyer I donated one half acre of land  
to the Lutheran Church I sold my reversionary  
right to this half acre to John A. Brunner-  
-meyer I think Scharschky asked me what I  
would take for my right in this property I  
said I would see Hestines and see if it

Page 2<sup>th</sup> was all right this was in the Spring before  
I sold it to Brummermeyers there was no talk  
between Brummermeyers and I about my  
taking it back

Witness on Cross Examination by complainants  
testifies as follows I cannot say as Scharschky  
said he wanted to buy it Brummermeyers was  
to pay me fifty dollars for my interest in the  
lot I took his note for pay soon after that  
Sunday last year Scharschky asked me what  
I would take for my interest in the Church  
property I told Brummermeyers that Scharsch-  
-ky had inquired of me what I would take  
for my interest in it I told Brummermeyers  
of it he said I must not sell to him I Quit  
Claimed my reversionary interest to Brummermeyers  
Scharschky came to me twice I cannot be  
mistaken

A. Muehler on behalf of Defendants was sworn  
and testifies as follows I am a member of  
this Lutheran Church have been for six years and  
since it was built so has John, A. Brummermeyers  
and Frederick Fickmachers the first Sunday  
in January last I was at a meeting at the  
Church this was Sixth of January Beckel since  
one month after to day I leave you and will  
preach no more for you this was in a meeting

Page 58<sup>th</sup> at the Church. I was at <sup>a</sup> the meeting at Fred  
Fickenschew house when 15 or 18 were present  
Olvis Blomman gave me notice of this meeting  
this meeting was 3 weeks after the 6<sup>th</sup> of January  
-of last at this meeting Fickenschew asked us  
what we had better do we made up our minds  
that we would tell Babne that we would accept  
his resignation we had another meeting this  
meeting was the Friday before the Church was  
shut <sup>at that meeting we decided Fickenschew & Blomman to</sup>  
<sup>bring up the Church the meeting was called by Blomman</sup>  
On Crop Examination this witness testified  
as follows On 6<sup>th</sup> of January Dexter  
was at the Church there was not much fuss we  
met to have a yearly accounting and to  
do the yearly business we figured up acco-  
-unts there was a little noise and some quar-  
-reling which broke up the meeting Blomman  
-meyer was not much noisy. Babne said he  
would preach last time 4 weeks from that day  
no vote was taken on the acceptance of this  
proposed resignation of Babne on that day  
Blommanmeyer & Fickenschew wanted to settle  
up the old business but Babne wanted to  
get new members first we then had a meet-  
-ing at Fickenschew Olvis Blomman told me  
of this meeting some day of the meeting  
cant tell day of the month think Friday pretty  
near 4 weeks from time Babne said he would  
resign

Fred Perry on part of defendant testified as follows I am a member of this Church and also one of the Elders of the Church we had a case in July last about a school house the trouble was about building a new school house Buhne said the members of the Church should vote whether they wanted a new school house or not Buhne met me one day and asked me what I thought about the trouble I said we had better put in some new trustees Buhne said if you want new trustees you must not vote for the old ones Buhne said election day at my house we are going to have new trustees Buhne told me not to go to the meeting of the Church affairs January 6<sup>th</sup> Brunnermeyer wanted Buhne to give a receipt in full for his salary Buhne was willing but Scharschney told him not to give one and he then refused Buhne said he must have his pay if he had to sell the Church I saw Buhne take Brunnermeyer's Book

On Cross Examination witness testified as follows on 6<sup>th</sup> January 1861 I was at the meeting the jury began about new members Brunnermeyer wanted to fix up the old accounts first Buhne said in 4 weeks from date I will preach my farewell sermon I saw Buhne

Page 55 take Book the meeting which Babre told  
me not to go to was to be a meeting about  
school house fees this talk was in the same  
mor or Jan 1860 at the 6<sup>th</sup> of January meet-  
ing Schaeffer said when Bannemeyer  
wanted Babre to give a receipt in full that  
Babre should not give a receipt in full when  
he had not received his full pay

On Direct resumed

I was at meeting at Fickenscher's house 30<sup>th</sup>  
of January it was called by Fickenscher and  
Bannemeyer as trustees of said Church

On Re-examination of witness by Defendants  
he testified as follows I was at two meetings  
at Fickenscher's after Babre said he would  
resign at the last of these meetings the 4 were  
had agreed they appointed a committee at last  
meeting to get the key and shut up the Church  
till they could get a minister

On further cross examination witness said  
I don't know who notified the members at  
Fickenscher's or whether they were notified

On Re-examination of witness by A's Counsel  
Defendants counsel asked witness to state if you  
ever heard Ernest C. Babre from the pulpit

Page 5<sup>th</sup> of said Church denounces the said Barrons  
-meyer and Hickmocher or apply any kind of  
epithets to them if so when and what will  
be say objected to by counsel but complain-  
-ants and objection sustained by the Court  
to which <sup>said</sup> ruling of the Court the Defendants  
by their Counsel then and there accepted

John Crometw being called by the Defendants  
and sworn to testify as follows I was at the  
meeting at Hickmocher's house there were two  
meetings at Hickmocher. At the first meeting  
we did not decide any thing the second meet-  
-ing was the first Friday after the 4 weeks  
from the meeting in which Barne said he  
would resign we voted by yeas and nos  
and we all voted yeas and was unanimous to  
accept Barne's resignation agreed to ask Sch-  
-radew for the key of the Church he refused.  
and we concluded to lock up the Church.  
we informed Barne of acceptance of resignation  
by letter.

Was Examined by Compliments Counsel  
I answered as member of the Church I never  
signed the constitution but I voted at  
Hickmocher's there was fifteen of us at  
Hickmocher at the last meeting

Page 57<sup>th</sup> Frid Newkles called and sworn by def-  
endants testified as follows I was a member  
of the Church I was at the meeting on the  
6<sup>th</sup> of January last my Brother said settle  
up with old members and then take in new  
members Ruben would not give a receipt  
Scharoemy said Ruben did not mean so if  
he said he was satisfied and he should not  
give a receipt I was present at the last  
meeting at Hickenscher we made up our  
minds to accept the resignation of Ruben  
we concluded to shut up the Church until  
we get another preacher

Corp Examination I have been a member  
for about 44 years I was at the last but  
not the first meeting at Hickenscher,  
Brunnenmyer at the meeting of 6<sup>th</sup> of Janua-  
ry wanted Ruben to give a receipt in full  
of all demands he would not because he cla-  
ims more

Michael Schobelin called and sworn by  
defendants testified as follows I was an  
Elder in this Church Brunnenmyer was  
treasurer I was at the meeting on the 6<sup>th</sup>  
of January Brunnenmyer wanted to settle  
up his accounts I was at the last meeting  
at Hickenscher we made up our minds then

to accept the resignation of Baber and sent him a letter the meeting directed Brimmer and Hiestenscher to shut up the Church

Crop Examination by Compliments Council Baber said at the meeting the 6<sup>th</sup> of January that he could get 400 a year in several other places

John Brimmer called and sworn by Defendants testified as follows About 110 of the members have left and formed the German Methodist Church

On Crop Examination testified as follows I am one of those who left and formed the Methodist Church witness was asked why he left the Lutheran Church and joined the Methodist Church and he answered by saying that he could not find the medicine for his poor sick soul that he could find in the Methodist Church and he had no trouble with the Lutheran Church

Here the Defendants rested their Case

Page 59<sup>th</sup> Aca. A. Dexter Recalled as a witness  
for the Complainants testified as follows  
Baker employed me to go to the Church  
the 6<sup>th</sup> day of January last

John Brumming recalled by the Complainants testified as follows I was present  
at the meeting of the 6<sup>th</sup> of January 1861  
meeting was called to order Brumming  
then got up and insulted me about collect-  
ing money from outsiders for Church purposes  
Baker then said to the congregation that those  
who wished to sign the constitution and to  
become members of this Church then to come  
forward and do so Brumming said  
we not till after we elect our Church  
Officers and do our yearly business Brum-  
ming wanted Baker to give a receipt  
in full for his salary at the rate of \$200  
which amount Baker had not then recei-  
ved Baker was at first inclined to give  
the receipt in full but Schaeffly then  
interposed by saying it was not right  
that Baker should give a receipt in  
full for his salary when he had not recei-  
ved it and then Brumming said  
that he Baker he said he would do it  
Schaeffly then said if Baker had said  
so he did not mean so for he had not

Page 60<sup>th</sup> get his Gray and it would not be right  
that he should sign such a receipt as this  
Then Brannenmeyer and his party made  
so much noise and disturbance that no  
business could be done then Mr. Babue said  
to the meeting that four weeks from this day  
I will preach my last sermon to you and  
dismissed the meeting and taking up the  
books from the desk and started to leave  
the Church and he was met at the door  
by some of Brannenmeyer's party who attempt-  
ed to take from him the books by force when  
he Babue handed them to Mr. Dexter the  
constable who was present for safe keeping  
and then passed out and went away

On Sunday January 13<sup>th</sup> 1861 at the usual  
hour there was church service and a large  
attendance at the meeting Babue notified  
the ~~congregation~~ congregation that on the next  
day at 2 O'clock P. M. at the Church there  
would be an election held for trustees and  
do such other business as might properly  
come before the Church and on the next day  
being Sunday 14<sup>th</sup> 1861 at the hour of 2  
O'clock P. M. previously appointed there was  
a meeting held by the members at the Church  
to elect trustees Elders and other officers  
of the Church and Mr. Babue called the

Page 51<sup>th</sup> meeting to order and the members went on and elected trustees Elders and the other Officers of the Church then Ernst Schradw a member got up and asked what they were going to do for a preacher and after some talk with the members Schradw made a motion that Mr Buhne be requested to withdraw his resignation and continue to be the pastor of the Church which motion was seconded and carried then Buhne arose and said he withdrew his resignation and would continue to be their pastor as before Brannenmeyer and Fickenscher and some others of their party 10 or 12 in all were present at the organization of this meeting and Brannenmeyer got up and asked what was the object of this meeting Mr Buhne told him that it was to elect trustees and other Church officers and to such other business as might properly come before the Church and then Brannenmeyer and Fickenscher and the others of his party got up and left the Church leaving about 30 or 31 members of the Church who participated in the election and other business of the Church at this meeting

Cross Examined by Defendants Counsel the witness said those that were not at church

On the 13<sup>th</sup> of January was notified in writing of the meeting to be held on the 14<sup>th</sup> of January and of the time and place and object of the meeting the way I know they told me so at the meeting of 6<sup>th</sup> of January 1861 Brannenmyer insisted that the preacher agreed to take less than \$250 per year on account of the small congregation Babue would have given the receipt if Schaeckny had not insisted that he should not Babue asked Brannenmyer if he had any money for him as the 6 months were up Brannenmyer paid him some money and Babue gave him a receipt for it Brannenmyer was not satisfied with the receipt - At the meeting of the 14<sup>th</sup> of January 1861 Brannenmyer left as soon as he found there were to be trustees elected and the rest of his party about 10 in all

Louis Carme called and sworn by Compliments testified as follows I signed the Constitution after New Year last I counted the members that voted on the 14<sup>th</sup> of January 1861 there were 30

Crop Examined by Defendants Counsel  
 I don't whether I signed my name to  
 the Constitution before or after I acted as  
 secretary on the 14<sup>th</sup> of January but I think  
 before I signed it at my house B. who  
 brought it to my house for me to sign I  
 think none voted at the meeting on the 14<sup>th</sup>  
 of January 1861 but those that were members  
 I was christened and confirmed the members  
 voted at the meeting of the 14<sup>th</sup> as Baber  
 called their names I keep a beer saloon  
 and I signed the constitution at my  
 saloon Baber brought the book to me  
 to sign at my saloon

Ernst Strader Recalled by Compliments  
 Justice as follows I there at the election  
 on the 14<sup>th</sup> of January 1861 and took part  
 in the election and business of the meeting  
 there from 30 to 31 members then present  
 that voted Brugge past the hat none but  
 members voted at the meeting on the  
 14<sup>th</sup> of January 1861 I made a motion  
 that Baber be requested to withdraw  
 his resignation and continue to be the  
 pastor of this Church which motion was  
 seconded and carried then Baber arose  
 and said to the meeting that he withdrew  
 his resignation and would continue to be

Page 64<sup>th</sup> the pastor of this Church as before

Complainants here stated  
their case

Defendants then as rebutting  
evidence called

John Ernest who testified as follows  
I am a member of this Church for 2  
years heard Buthe say if the congregation  
wanted new trustees they must not vote for  
the old ones

Cross Examination by Complainants

I received no notice in writing to attend  
on the 14<sup>th</sup> of January 1861 no one came  
to my house that I know with a notice  
for me.

Ernest being sworn testified as follows

I am a member 3 years 2 weeks before  
New Year I heard Buthe say that they  
used to vote for trustees

Cross Examined by Complainants

Don't know whether old trustees time

Page 65<sup>th</sup> was out or not

John Emmet called by Defendants testified on 13<sup>th</sup> day of January Baber said to the whole congregation that to morrow they would elect new trustees not the old one

Michael Schobertine called by Defendants testified I heard Baber January 13<sup>th</sup> day they were going to elect three new trustees

The above and foregoing is all the evidence introduced either on the part of the Complainants or on the part of the Defendants on the hearing of this cause and inasmuch as this evidence does not otherwise appear of record it is ordered by the Court that the Judge thereof sign and seal this the Complainants bill of Exceptions which is done

R. B. Penno Chief Judge of the  
Court of Common  
Plea of the City  
of Virginia

State of Illinois }  
Franklin County } 88  
City of Amos

J. Charles P. Johnston Clerk  
of the Court of Common Pleas of the City of Amos  
in County and State aforesaid do hereby certify  
that the above and foregoing is a true correct  
and complete copy of the file and the Record in  
a certain case lately pending in said Court of Com-  
mon Pleas of the City of Amos wherein Ernst H. Bube  
Michael Habermeyer Stephen Smith John Bruge  
and Carl Herbrand for themselves and on behalf  
of the members of the German Evangelical Lutheran  
St Pauls Church of Amos (Except the members  
thereof made Defendants in this suit) are plaintiffs and  
John A. Bommersley, Friedrich Fickenscher  
William Fickenscher, Christian Bannow and  
Henry Bommersley are Defendants as appears  
to us of record

Witness my hand and Seal of  
said Court at the City of Amos  
in County & State aforesaid this  
16<sup>th</sup> Day of April A D 1862  
Charles P. Johnston  
Clerk



John A. Pannemeyer & al et  
vs  
Ernst H. Bahne & al et  
Supreme Court  
of the State of  
Illinois April  
term A.D. 1862.

And now comes the said plaintiffs in Error by  
C. J. Metzger their attorney and says there is  
error in the above record in this to wit: 1<sup>st</sup> the  
court erred in not <sup>allowing Plaintiffs in Error motion to</sup> dissolve injunction  
2<sup>d</sup> the court erred in not sustaining plaintiffs  
in Error objection to allowing John Marsden to tes-  
tify, 3<sup>d</sup> the court erred in excluding proper evi-  
dence, 4<sup>th</sup> the court erred in allowing improper  
evidence, 5<sup>th</sup> the court erred in rendering <sup>a decree</sup> ~~judgment~~  
~~verdict~~ for defendants in Error & 6<sup>th</sup> the court  
erred in rendering <sup>a decree</sup> ~~judgment~~ against the plain-  
tiffs in Error and take of them. And this the said  
plaintiffs are ready to verify wherefore they  
pray judgment &c.

C. J. Metzger,

Ernst H. Bahne vs  
ads

Supreme Court  
April Term A.D. 1862  
Third Grand Division

John A. Pannemeyer vs

Afterwards to wit, on the 29<sup>th</sup> day  
of April A.D. 1862, the  
said defendants in error come

by Montony & Seales their attorneys  
and say, that there are  
no such errors in the  
foregoing record as the  
said plaintiffs ~~thereof~~ in  
error, have thereof, alleged  
-and- Wherefore they pray  
that the foregoing decree and  
proceedings in all respect  
be affirmed.

Montony & Seales  
attorneys for defendants  
in error—

208  
Com. Pleas Curia

Cinst. H. B. B. B.  
et. al.

vs

John. A. Brunnenmeyer  
et. al.

Copy of Records

Filed Apr. 23 1862  
L. Island  
Clerk.

Fee

150 Folios \$15.00

Cost of Seal 35

\$15.35

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, 1862.

JOHN A. BRUNNEMEYER et als. }  
Plaintiffs in Error.

vs.

ERNST H. BUIRE, et als. }  
Defendants in Error.

*Error to the Court of Common Pleas of the City of Aurora.*

BRIEF OF POINTS AUTHORITIES AND ARGUMENTS  
BY DEFENDANTS IN ERROR.

The Statute in relation to religious corporations pretty clearly points out the relative rights of the trustees and the members of religious societies :

See Scates, Treat & Blackwell's Statutes p. 679, 980.

Section 44 says: It shall be lawful for the members of these societies to receive by gift, demise or purchase a quantity of LAND not to exceed ten acres and to erect or build thereon such houses

etc., as they may deem necessary for the purposes of religious worship, \* \* \* and the *title* to the land and the improvements thereon shall be vested in the trustees. And the 46th Sec. says: That the trustees \* \* \* shall have perpetual succession and existence, and the *title* to land herein authorized to be purchased and to the buildings and improvements thereon, shall be vested in the said trustees by their assumed name, and their successors forever; and the same shall be held for the uses and purposes of herein named and no other—which is for the purpose of religious worship as specified in the 44 section.

Sec. 47 gives every Society the power (among other things) to adopt such rules and regulations in relation to the duties of trustees and the management of its estates as the members may deem proper.

The Chancellor says in the case of the Baptist Church in Hartford v. Witherall 3 Paige Ch. R. 299, that by referring to the statute relative to the incorporation of religious societies, (3 R. S. 295 § 4,) it will be found that the trustees of a church or society when legally incorporated *are authorized to take into their possession all the property of the Society, &c.*

Our statute does not in terms authorize the trustees to *take possession of the real estate*—But gives the *Society* by the 47th Section the power to adopt such rules and regulations in relation to the duties of trustees and the *management* of its estate as the *members* may deem proper. Here then is an obvious distinction between the statute of Illinois, which vests them with the *title alone* of the real estate, and the New York Statute, by which the trustees are vested not only with the title but are *authorized to take into their possession all the property* by the *very terms* of the Statute.—Whereas under our Statute the *legal title* is vested in the Trustees for the use of the members of the Society, to be used by such members for religious worship—*without any power* in the trustees

as such to *control* or *manage* the property except through the authority given by the regulations of the Society. And in pursuance of this power this Society has passed a bye law or rule that "they (trustees) shall take the *temporary affairs* of the Church in safe keeping. See Record, page 41. Then they are charged with (the safe keeping." See Record page 41. Then they are charged with the safe keeping of the property for the uses and purposes of the Society for religious worship. Then the Society in this case has, perhaps, given to these trustees the same power over this property that the trustees in New York, have, by virtue of their Statute.

Whether it would be their duty and in their power to do the same thing without such or similar rule from the society, authorizing them to do so, is not very material in this case. For the legal title being in the trustees, the *members* of the society are the *cestue que trusts* or *beneficiaries* in this church property and can file their bill of complaint against the trustees for a breach of trust, or an abuse thereof, or for any misconduct in relation to the trust property.— And so the Court say, in the case of *The American Primitive Society vs. Pilling et al.* (4 Zabriskies' R. 661.) It cannot be "doubted, however, that the trustees of all religious societies hold "the property subject to is appropriate use, and have no legal "right to determine when the religious meetings shall be held or "who shall officiate, *unless such power is given* to them by the *rules* "and *discipline* of the denomination to which they belong, and that they may be compelled by proper proceedings at law or in *equity* to *fulfil* their duty." And see *Kniskern vs. The Lutheran Churches of St. John's and St. Peter's and others.* 1 Sandford's Ch. R. 439 ; *Miller vs. Gable,* 2 Denio R 492.

The defendants admit in their answer that the church was organized and incorporated January 1st, 1856, according to the Statute ; that John A. Brunnemeyer and Frederick Fickenscher, two of the defendants in the bill, and John A. Scharschug, at the same time

were elected and qualified as trustees of said Church, according to Statute; that they still continue to be the trustees; that the land described in the bill, was decded to the trustees for religious purposes as stated in the bill.

The bill states that the complainants were, January 1st, 1861, and for a long time before and ever since, and still are *members* of the same church. Their names appear on the list of members. All but one of the complainants are among the oldest members of the church, that was Stephen Funk, whose name is next above the name of Louis Garmes, who swears that he signed the church book as member, before the 14th of January, 1861. The bill, was filed Feb. 9th, 1861; leaving the very obvious inference that he, Funk, was before and and at the time of filing the bill, a member of this church, and so the Court below found. The bill waives the defendant's answer under oath.

Then according to the authorities cited, and the allegations and admissions, and proofs referred to, the complainants have a *status* in Court, and the same authorities and facts show that the proper remedy is by *bill* in equity, for an abuse of the trust. For the Court says in the case of the People vs. Runkle, 9 John. R. cited by plaintiffs in error, "if they (the trustees) have *abused* their trust, the congregation who are their constituents, have ample remedy." This must refer to the usual remedy for an abuse of trust, to wit: a *bill in equity* to restrain the trustees from such abuse.

The counsel for plaintiff in error have cited the case of the People vs. Steele, 2 Bab. S. C. 418, to show that the remedy of the defendants in error, is by mandamus and not by bill in equity. That was a mandamus to compel the trustees to admit to the church and parsonage, a minister that been appointed by a Methodist Conference to preside over that church for the year. And there the Court says that it is well settled that *as to corporations*

*and ministerial officers*, the existence of another and adequate remedy is no objection to awarding this writ ; citing : *The People vs. Mayor, &c.*, 10 Wend. 393 : *McCullough vs. Mayor, &c.*, 23 Wend. 461. But this case is questioned in *People vs. Supervisors of Chenango*, 11 N. Y. (1 Kern.) 563 ; compare *People vs. President, &c.*, of Brooklyn, 1 Wend. 318 ; and see *ex parte Lynch* 2 Hill R. 45, 4 Zabriskie 661, already cited as to another point. The legal remedy, the existence of which precludes a resort to mandamus, is a remedy by civil proceedings *at law*. The fact that the party might have redress in Chancery, that the injury is indictable, is not conclusive against the application *People vs. Mayor, &c.*, of N. Y. 10 Wend. 395. But if a party has a remedy in law or equity, he will not lose the right to pursue that remedy, though the Court should hold also, that he might have a writ of mandamus to redress his injury, or restore him to his rights. And in this case the Minister is also a member of the church, and it is *in that capacity* that he has joined with the other complainants to bring the bill. Therefore he stands here as one of the corporation and beneficiaries in this property

The bill states that Feb. 9th, 1861, the two trustees who were defendants below, with the other defendants, who were assisting them, closed up the church against the consent of the complainants, and in violation of their trust, for the purpose and intent of preventing the complainants as members of the church, from entering into the same on to-morrow, the 10th day of February, 1861, being the Sabbath day, or at any other time for the purpose of worshipping as stated in the bill, according to the rights and privileges of the complainants, and other members as they had done, and had the right to do, and then they ask an injunction, to restrain the defendants from interfering, or in anywise intermeddling with the complainants and members of the church, convening and worshipping according to the usages and customs of the church, as they had before done.

The minister, Mr. Buhre, has a life office in the ministry of the church, see record, pages 38, 39, 40. But the defendants below insist that Buhre's connection with this church had ceased, because he said that four weeks from the 6th of January, 1861, he would resign; or in the language of the witness, Mushler, who was sworn for the defence, "one month after to-day (Jan. 6th, 1861,) "I (Buhre) will leave you and will preach no more for you." On cross examination he says that Buhre said: "He would preach the last time four weeks from that day; no vote was taken on the acceptance of this proposed resignation of Buhre; see record, pages 52, 53. On cross examination Fred. Rang, on page 54 of the record says: "Buhre said in four weeks from date, I will preach my farewell sermon." And John Baurising testifies: "Mr. Buhre said to the meeting that four weeks from this day I will preach my last sermon to you." Whether this language can properly be construed into a mere threat to resign, or into a tender of resignation, it is quite immaterial. It certainly cannot have any further, or other meaning. For until there has been an acceptance of such tendered resignation, by the proper authorities of the church, he continued to be their minister. And he had the right at any time before such acceptance, to withdraw his resignation, which he did do at the meeting held at the church Jan. 14th, 1861. John Bowrising testifies on page 60 of the record: "Ernst Scrorder made a motion that Mr. Buhre be requested to withdraw his resignation, and continue to be the pastor of the church; which motion was seconded and carried;— "then Buhre arose and said he would withdraw his resignation, "and would continue to be their pastor as before. This was done at a meeting of the society, properly called. The same witness testifies that on Sunday January 13th, 1861, at the usual hour, there was church service, and a *large attendance* at the meeting; Buhre notified the congregation that on the next day at the hour of 2 o'clock P. M. at the church, there would be an election held for trustees, and *do such other business* as might properly come before the church; and on the next day January 14th, 1861, at the hour of 2 o'clock P. M., previously appointed, there was a meeting

held by the members of the church. The meeting was called to order, and the members went on and elected trustees, elders and the officers of the church, &c. Though these trustees elect were never qualified as the law requires, the old trustees refusing to make out a certificate of election, as the statute requires and therefore the old ones continue. This meeting was a regular meeting, thirty or thirty-one members participating in the election, &c.—Brunnemeyer and Fickensher, the two trustees, and some ten or twelve others, belonging to their party, withdrew as soon as they found out the object of the meeting. See record, pages 61, 62 Those that were not at the church on the 13th, were notified in writing of the meeting to be held on the 14th. So the tendered resignation was withdrawn before the other party pretended to act upon it.

The Plaintiffs in error claim that all the names in the left hand column on page 43 of the record, after or below that George Grometer were not on there on the 14th of January, 1861, though Garmes testifies that his name was on there before the 14th. Then if the remainder below Garmes' name that is Louis Hannabal, &c., were not on there until after that meeting, then at that time there were about 44 or 45 members of the Church. So all the members were present at the meeting on the 14th of January, until the two trustees and their party left being in all 10 or 12 as appears by the record, page 61. After they left, 30 or 31 remained and participated in the election,—see record page 63. So it is pretty clearly established from the proof that all the members had not only notice of the meeting but were present at the meeting until it was organized and the object of it stated by Mr. Buhre, at the request of Brunnemeyer. So it appears from the proof that everything had been put *in statu quo*, before the Brunnemeyer party attempted to hold hold any meeting to accept of the tendered resignation of Buhre. The Brunnemeyer party held their first meeting three weeks after the 6th of January, which was about the 24th of January—at Frederick Fickenscher's house, where 15 or 18 were present—see record page 53. It does not appear how many of these

15 or 18 were members. John Grometer testifies on page 56 of record, that he was there and voted but says that he was there and voted, but says that he was not a member, and says at the first meeting they did not decide anything, and at the second and last meeting there was 15 of "us" present. So it is altogether probable that at neither of these meetings there were over 8 or 10 of the members of the Church present—showing more than three fourths of all the members attached to Mr. Buhre as their minister, and such too as were the old members. These meetings of the Brunnemeyer party were irregular. It was called, as one of their wit-

nesses testifies, by Fickensher and Brunnemeyer, as trustees. It does not appear that they gave any notice of the meeting to the other trustees, or to any members that were not there—nor to Mr. Buhre, who, according to their rules, is to preside at all their meetings. See record, page 40. Then this meeting should have been at the church, their usual place of meeting to do business. See 4 Zabriskie, 661. So for these reasons the proceedings were void. Again, clearly there was not a majority present or notified to be present; the minority cannot bind the majority in this way. Then it is very evident the *Society as such* never authorized the church to be closed up, or the acceptance of the resignation of Buhre, even if such resignation had not been withdrawn before. So the closing up of the church was a *gross abuse of their trust*.

The law under which these trustees were elected does not prescribe who shall be considered members of the congregation or society; but as was said by Chief Justice Ewing in the case of the State vs. Crowell, 4 Hal. 411, wisely leaves that question to be determined by the rules of each denomination. See 4 Zabriskie, 659. The minister according to the discipline or rules of this church is authorized either to receive or reject those who may wish to become members of this society. See record, page 40. Those who have, according to the custom of the Lutheran Church, been baptised and confirmed may be admitted as members of this society by the min-

ister, and they must sign the church discipline. See Record, p. 42. And none but male members can participate in elections. So if it were so that Mr. Buhre, the minister went to the saloon of Louis Garmes with his book to have him sign it, and if it were an abuse of his trust and office, no *civil judicatory* has any jurisdiction of the wrong; but that belongs to the spiritual judicatories, to whom he is responsible for a faithful discharge of his trust.

See Lawyer vs. Cipperly, 7 Paige Ch. R. page 284, 285.

But the Court must remember that among the Germans it is never considered in the calendar of sins or moral delinquencies to drink beer or keep a beer saloon. The Court must also remember that there is no evidence to show that this saloon was a whiskey saloon, as stated by the counsel for the plaintiffs in error. Then, again, this witness, Louis Garmes, says that he signed *at his house*; the fact is that the house and beer saloon are all in one building as most of these saloons are, kept by Germans. This witness says that he was christened and confirmed. This is done according to the custom of the Lutheran Church while they are infants. See Record, page 63.

The case in the 7th Paige's Ch. Reports cited by plaintiff in error to show that Courts will not interfere to remove the trustees only in palpable breach of trust, in the instance of their refusal obstinately to employ a minister who was not only acceptable to a majority of the church but also of the congregation, because under the law in New York it must be done by the consent of the trustees, as the Court will see by examining this case. There the trustees have a matter of judgment or discretion to exercise as to the fitness of the proposed minister—and Courts will never interfere where a particular officer has a discretion, unless there is a *palpable abuse* in the exercise of this *discretion* conferred upon him. But in this case, at the utmost, they had only the right and duty, to see that the property was safely taken care of, for the use and benefit of the society, to meet there in the church for worship or for business connected with the spiritual or temporal affairs of

church, as organized at the date of that conveyance, and still subsisting, must be entitled to the *exclusive use and enjoyment* of the property *for all the purposes* for which it was at first dedicated, and as that right is in the character of a trust, is it not the duty of a Court of equity to uphold, and secure its full and *undisturbed enjoyment*. This is what is sought in this case by the complainants and nothing else.

The counsel for the plaintiff in error says that if the closing up the church was contrary to the will of a majority of the members then they could remove them from their office of trustees. No doubt the society may remove the trustees if they have been guilty of misconduct. But this remedy is only a *cumulative* one, it cannot operate to divest a court of equity of its accustomed jurisdiction in cases of trust. Again the remedy by removal would in most cases be absolutely inoperative or inadequate. Suppose the old trustees refused to certify to the election of new ones then under the statute, the old trustees would continue to hold their offices until they were compelled by proper proceeding to make the certificate of election of newly elected trustees required by law. Then again, suppose a majority of the members should refuse to vote to remove the old ones, and vote against it; where would be the remedy of the minority, or of individual members? I hardly think that a court of equity would require the party to resort to this remedy of removal first, and then in case it failed to have recourse to a court of equity, in a case where that court has *original jurisdiction*, as in cases of trust. Again it is a well settled principle of law that a statutory remedy is always cumulative to the remedy at common law or in equity, unless the statute in terms took away the remedy at law or in equity.

Then the only remedy the complainants have, is *in equity*, unless it be the one under the statute by the removal of the trustees, which is shown to be but cumulative at the best, and is totally inadequate in the case. Mandamus is already shown not to be

the proper remedy, and for the additional reason that a writ of mandamus can be used only to enforce a legal right where there is no other adequate remedy at law, but never used to enforce an equitable right as in the present case. Neither will trespass nor ejectment lie; for the legal title is in the trustees which is necessary to sustain either. Nor will an action on the case lie, for it requires a legal right also, and an equitable right will not maintain it, and hence it is entirely demonstrated that the only remedy the complainants have is in equity.

This might be likened to the case to the case of the issuing of an injunction to compel the due observance of personal covenants, where there is no effectual remedy at law, and the old case of the parish bell. *Martin v. Nutkin*, 2 page Will 266. 2 Story's Eq. Juris. §958. In that case the agreement was violated in ringing the church bell at 5 o'clock A. M., to the disturbance of the complainants, and thereupon an injunction was granted to prevent the bell the bell from being rung at that hour. So here these trustees, &c., are enjoined from continuing a breach of their duty as such trustees, which it was very obvious they intended to continue, by keeping the church closed up, and thus prevent further religious service by the complainants, in the church, until they saw fit to open the house for that purpose.

The plaintiff in error assigns for error that the Court overruled their motion to dissolve the injunction. The answer is not a full denial of the equity of the bill. They deny that two of the complainants were members at the time of filing the bill; but do not deny but the rest of the complainants were members; therefore, the bill as to them was well brought. Most of the facts set up in the bill are admitted—even the closing up of the church, but they attempt to justify the act by setting up new facts, that is to say that Buhr had resigned, and that the resignation was accepted, and also that the Society had unanimously voted that the

trustees should close the church. This is not such a denial of the equity of the bill as would have authorized the Court to dissolve the injunction. But an injunction is not dissolved, of course, even upon a full denial of the equity of the bill, if the Court can see in the facts disclosed, good reason for retaining it. See *Bank of Monroe vs. Schermerhorn*, 1 Clarke's R. 323; *Hollister v. Barkly*, *ubi supra*; *Shellman vs. R. M. Chatt.* 380, 381; *Chetwood vs. Brittain*, 1 Green Ch., 439. *Poor v. Carleton*, 3 Sumner 75, 76; 3 Daniel Ch. Pr. 1st Am. Ed. from 2d London Ed. p. 18, 32, and notes. And there was sufficient reason for the Court to retain the injunction, in the facts disclosed in the answer. And, again, the bill was an injunction bill—and if it were dissolved the complainants would have been deprived of their right to meet at their church for religious worship until there had been a final hearing of the case and the injunction waived and made perpetual. This would have been great wrong on them. Whereas, if any one had gone there and done any injury to the church, or entered the same to do it any harm, the trustees would have complete remedy by an action of trespass. So the Court did right in refusing to dissolve the injunction for these reasons.

The bill requires defendants to answer without oath—the oath being waived. The defendants filed their answer, March 19th, 1881, without oath; afterwards on the same day they filed an affidavit by which they claimed below and do claim here, that they have made oath to the answer as the law requires. But the affidavit was not entitled in this cause. See Record, pages 24, 26, &c. In the the case of *Watson et al. vs. Reising*, 24th Ill., 281, this Court says this Court and the Court below should not consider an affidavit so entitled. For this reason then that the answer was not sworn, the Court properly overruled the motion to dissolve the injunction.

The defendants, below, objected to John Scharschug testifying for

the *reason* he was one of the trustees of the Church, But the counsel for the plaintiffs in error have made no point upon this ruling of the Court, either in their brief or argument, and therefore it is reasonable to suppose that they have abandoned it. However, we insist that the fact he was trustee could not be any possible objection to his competency as a witness in this case.

This suit was properly instituted as your Honors will see by examining the case of *Lloyd vs. Loring* 6 Ves. 773, [see Sumner ed. note a,] where Lord Eldon held that some of the members of Free masons, or one of the inns of court, or of any other numerous body of persons, might sustain a suit on behalf of themselves, and the other for the delivery of a chattel in which they were all interested. See 1 Daniel Ch. Pr. 1st Am. Ed. of the 2d London Ed. 286, 287, &c. And this may be done where even a majority of the members approved of the act, and disprove of the suit, where the act complained of was necessarily injurious to the common right. See *Bromley vs. Smith* 1 Sim. 8, 1 Daniel Ch. Pr. 289.

The defendants excepted to the ruling of the Court, in refusing to allow them to ask a witness whether Buhre ever denounced Brunnemeyer and Fickensher from the pulpit. But they have made no point upon this ruling in their brief or argument, and it fair to infer that they have abandoned this point also. This testimony would have been clearly irrelevant, for if Mr. Buhre were guilty of any improprieties in the discharge of his duties as a minister of the gospel, he is responsible to the proper spiritual judicatory alone, and not to any civil one, as the cases already referred to clearly show. For it may have been according to the duties of his ministry to have denounced them for some delinquencies of which they were guilty.

I believe I have reviewed all the objections that the counsel

for plaintiffs in error have seen fit to make to the proceedings and  
decree, and I submit that none of these objections are well taken  
and respectfully ask that the proceedings and the decree thereon  
be affirmed in all things, at the costs of the plaintiffs in error.

R. G. MONTONY,  
Att'y for Def't in Error.



Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

JOHN A. BRUNNENMEYER,	}
FREDERICK FICKENSHER,	
WILLIAM FICKENSHER,	
CHRISTIAN BAUMAN, and	
HENRY BRUNNENMEYER,	
<i>Plff's in Error,</i>	
vs.	
ERNST H. BUHRE,	}
MICHAEL HABERMEYER,	
STEPHEN FUNK,	
JOHN BRUGGE, and	
CARL HUBNER, who sue, &c.,	
<i>Def'ts in Error.</i>	

2 Be it remembered that heretofore, to wit: on the 9th day of February, A. D. 1861, the following bill for injunction was filed in the office of the Clerk of the Court of Common Pleas of the City of Aurora, county of Kane and State of Illinois, to wit:

STATE OF ILLINOIS, }  
COUNTY OF KANE, CITY OF AURORA, } ss.

To the Honorable Benjamin F. Parks, Judge of the Court of Common Pleas of the City of Aurora, in vacation after the December term, A. D. 1860:

3 Humbly complaining, show unto your honor, your orators, Ernst H. Buhre, Michael Habermeyer, Stephen Funk, John Brugge and Carl Hubner, for themselves, and also on behalf of the members of the German Evangelical Lutheran Saint Paul's Church of Aurora, Illinois, except the members thereof, made defendants hereto, residents of the city of Aurora aforesaid, that on or about the 1st day of January, A. D. 1856, the said Church was duly organized and incorporated according to the statute of this State, and that John A. Brunnenmeyer, John J. Scharschug and Frederick Fickensher, at the time last aforesaid, were duly elected and qualified as trustees of said Church, also according to the statutes of this state; and that they have since that time continued to be, and still do continue to be the legal trustees of said Church; and that the said Church received a deed of conveyance of one-half of the following described lot of land, situate in Hackney's addition to Aurora, from Benjamin Hackney and his wife, a short time after the said trustees were elected and qual-

ified, as aforesaid, as a donation, and the other half by purchase from the said Ernst H. Buhre, by deed of conveyance, which deeds were made to the aforesaid trustees and to their successors in office, for the sole and exclusive use and benefit of the said Church; and that the said Church erected a church edifice on that half of said lot deeded by said Hackney, as aforesaid, for the exclusive purpose of public worship of Almighty God, according to the discipline, rules and customs of the Evangelical Lutheran Church, so known and called; and the said church edifice was so built about the year A. D., 1855, by the members of said Church, and the community in general, by way of gift and donations, to and for the exclusive use and benefit of said Church. By way of amendment your orators further show unto your honor that they were on the 1st day of January, A. D. 1861, and for a long time before and ever since, and still are members of the said Church in this bill of complaint mentioned.

And your orators further show unto your honor, that the aforesaid Church have, since the said organization, and still do worship in said Church edifice according to the discipline and customs of the said Lutheran Church, and your orators well hoped that said trustees would have conducted themselves in all things in relation to their said trusteeship according to the laws of the land and the discipline, rules and customs of said church, and in conscience and equity they ought to have done. But now so it may please your honor, that the said John A. Brunnenmeyer, Frederick Fickensher, combining and confederating with one William Fickensher, and one Christian Bauman, and one Henry Brunnenmeyer, also members of said Church, and with divers other persons at present unknown to your orators, whose names when discovered your orators pray they may be at liberty to insert herein, with apt words to charge them as parties defendants hereto; and contriving how to wrong and injure your orators and others, the members of the said Church, they, the said two defendants, John A. Brunnenmeyer and Frederick Fickensher, trustees as aforesaid, absolutely refuse to perform and discharge, as the laws of the land and the rules and customs of said Church require, and have with the other defendants on this, the 9th day of February, A. D. 1861, with force, and against the will and consent of the said Church, and in direct violation of their trust and duty, and against the rights of your orators and other members of said Church, fastened up the said Church edifice with and for the avowed purpose and intent of preventing your orators, members of said Church, from entering into the same on to-morrow, the



Page of  
Record.

8 Which said bill of complaint was duly subscribed and sworn to on the 9th day of February, A. D. 1861, before the Clerk of said Court.

9 Injunction writ issued February 9th, A. D. 1861, and returned  
13 duly served on the 11th day of April A. D. 1861.

15 Summons issued on the 14th day of of February, A. D. 1861, and returned duly served March 18th, A. D. 1861.

15 And afterwards, to-wit: on the 19th day of March A. D. 1861, it being one of the days of the regular March term, A. D. 1861, of said Court, the following among other proceedings were had in this cause and entered of record in said cause, to-wit: Defen-  
16 dants moved the Court to dissolve the injunction for want of equity on the face of the bill. Which said motion the Court overruled, and defendant then and there by his solicitor excepted to the said ruling of the Court.

And also on the same day to-wit: the 19th day of March A. D. 1861, the following answers of the defendants were filed in Clerk's office of said Court, to-wit:

ERNST H. BUHRE,  
MICHAEL HABERMAYER,  
STEPHEN FUNK,  
JOHN BRUGGE, and  
CARL HUBNER, for themselves  
and also on behalf of the mem-  
bers of the German Evangelical  
Lutheran St. Paul's Church, &c.,  
vs.  
JOHN A. BRUNNENMEYER,  
FREDERICK FICKENSHER,  
WILLIAM FICKENSHER,  
CHRISTIAN BAUMAN, and  
HENRY BRUNNENMEYER.

Before Hon. B. F. Parks,  
Judge of the Court of Com-  
mon Pleas of the City of  
Aurora, March Term, A.  
D. 1861.

17 The point and several answers of John A. Brunnenmeyer, Fred-  
erick Fickensher, William Fickensher, Christian Bauman and  
Henry Brunnenmeyer:—

These defendants now and for all times hereinafter reserving to themselves all rights and benefits of exceptions to the many errors and insufficiencies in said bill of complaint for an answer thereunto, say: These defendants deny that the said complainants, Stephen Funk and Carl Hubner, are and have been, on the first day of January, A. D. 1861, and before, members of said Church, as alleged in said bill of complaint, nor have they any right or authority whatever, from the members of the German Evangelical Lutheran Saint Paul's Church of Aurora, (except these defendants) to commence said suit; but on the contrary thereof, said

the other members of said Church, fastened such church edifice with force, and for the purpose of preventing said complainants and themembers of said Church from worshipping in said Church edifice.

And these defendants further answering say, that during the year A. D. 1858, said Ernst H. Buhre, then and there acting as pastor of said Church, by the consent of the complainants, indulged against the rules and regulations of said Lutheran Church, when preaching in said Church edifice, on Sabbath, in violent and unchristian denunciations against the German Methodist Society then forming, and without cause attacked individual members thereof, by reason of which a great many members of said Lutheran Church dissolved their connection with said Church, and among others, three of the officers of said Church, elected by said Lutherean Congregation ; that said defendant, John A. Brunnenmeyer, as trustee aforesaid, remonstrated with said Buhre about the course so pursued by him, and requested him to desist because he would break up the Congregation ; but said Buhre refused and continued in his tirade against said denomination, by reason whereof a great many of the members of said Lutheran Church dissolved their connection with said Church, and refused to participate in worship in said Lutheran Church thereafter ; all of which doings is contrary to the rules and customs of said Lutheran Church.

And these defendants further answering, say, that at a meeting of the members of said Lutheran Church, called by said Buhre, on the 6th day of January, A. D. 1861, said Buhre resigned his position as pastor of said Church, and then and there stated that in four weeks from said day, he would preach his farewell sermon.

And these defendants further answering, say, that at a meeting of the members of said Church, held on the 30th day of January, A. D. 1861, said resignation was unanimously accepted by said Congregation, and on the 31st day of January, A. D. 1861, said Buhre was informed of the acceptance of his resignation as aforesaid, by said trustees, of said Church, in writing, a copy of which said notice is hereunto attached, marked (A.)

And the defendants further answering, say, that on the 8th day of February, A. D. 1861, at a meeting held by the members of said Lutheran Church, pursuant to a call of said trustees, it was unanimously resolved by the members of said Church, that said church edifice should be closed until the service of another pastor could be procured, and said meeting then and there instructed said trustees aforesaid to obtain the keys to said church edifice, in whose possession they might be found.

And these defendants further answering, say, that one Ernst Schröder had the key to said Church, and said trustees then and there demanded the key of said church edifice, in behalf of said Congregation, from said Schröder with said complainants, but said Schröder refused to deliver up said key to said trustees.

And these defendants further answering, say, that divers other persons had obtained keys to said church edifice, and could obtain access to said church edifice by the use of such keys, without the consent of said Congregation.

23 And these defendants further answering, say, that in order to prevent the property in said Church from being stolen, carried away and injured, and prevent persons from entering said Church edifice without the right so to do, the said John A. Brunnemeyer and Frederick Fickensher, trustees as aforesaid, in pursuance of their duties as such trustees, on said ninth day of February last, took the old lock from the door of said Church edifice and put another and new lock on the door of said Church edifice to protect the property in said Church, as they lawfully might, which is the supposed fastening up of said Church edifice in said complainants' bill of complaint mentioned.

24 And these defendants, denying every allegation in said complainants' bill of complaint contained, charging these defendants and each of them with any doing unlawful or contrary to equity without this; that if there is any other matter or thing in said complainants' bill of complaint contained, material or necessary for these defendants to make answer thereto, and not truly and hereinafter sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge and belief of these defendants; all of which matters or things these defendants are ready and willing to verify, as this Honorable Court shall direct, and pray to be dismissed with their reasonable costs and charges, by them and each of them most wrongfully sustained.

JOHN A. BRUNNENMEYER,  
FREDERICK FICKENSHER,  
HENRY BRUNNENMEYER,  
CHRISTIAN BAUMAN,  
WILLIAM FICKENSHER.

CHAS. J. METZNER, Solicitor for Deft's.

EXHIBIT A.

Mr. Henry Buhre, Pastor, &c.:

According to the resolution of yesterday, of the assembled

congregation of the German Lutheran St. Paul's Church, we hereby notify said Henry Buhre that his offered resignation as pastor of said Church is hereby accepted; and whereas, in accordance thereof, on next Sunday, the 3d of February, 1861, the time by yourself appointed, has past, we therefore expect of man, and especially a preacher, that he will be true to his word.

By order of the Congregation,

JOHN A. BRUNNENMEYER,  
FREDERICK FICKENSHER,

Stewards of the Church Property.

Aurora, 31st January, 1861.

25 On the 19th day of March, A. D. 1861, the said answer of said defendants was duly subscribed and sworn to.

26 And afterwards, to wit, on the 23d day of March, A. D. 1861, it being one of the days of the March term, A. D. 1861, said defendants moved said Court to dissolve the injunction herein, which said motion the said Court overruled, to which said ruling of said Court the defendant then and there excepted.

27 And afterwards, to wit, on the 2d day of April, A. D. 1861, the same being one of the days of the March term, A. D. 1861, of said Court, the said complainants filed the following replication to defendants' answer, to wit:

ERNST H. BUHRE, et al.,  
vs.  
JOHN A. BRUNNENMEYER, et al. }

Court of Common Pleas of the City of Aurora, } IN CHANCERY.  
March Term, A. D. 1861.

28 The replication of Ernst H. Buhre et al., complainants, to the answers of John A. Brunnenmeyer et al., defendants: These repliants, saving and reserving unto themselves all, and all manner of advantage of exceptions to the manifold insufficiencies of the said answer of replication, thereunto say, that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient, to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, confessed and avoided; traversed or denied, is true—all which matters and things these repliants are and will be ready to aver and prove, as this Honorable Court shall direct, and humbly pray, as in and by their said bill they have already prayed.

MONTONY & SEARLS,  
Solicitors, and of Counsel for Complainants.

On the second day of April, A. D. 1861, it being one of the days of the March term, A. D. 1861, of said Court, on motion leave is given complainants to answer their bill ; also leave given to defendants to amend their answer herein.

Thereupon again come the parties hereto, and this cause coming on to be heard upon the proofs submitted by the parties, and the Court having heard the proofs and allegations of parties, &c., and not being fully advised by consent of the respective parties, made in open Court, the Court takes the same under advisement until Saturday next, at 2 o'clock P. M., the decision of the Court and the decree to be entered as of the present term, with the rights of either party to except, and with the same force and effect as if entered in term time.

And afterwards, to wit, on the 6th day of May, A. D. 1861, the following decree was filed and entered of record in said cause in said Court, to wit :

ERNST H. BUHRE,  
MICHAEL HABERMAYER,  
STEPHEN FUNK,  
JOHN BRUGGE, and  
CARL HUBNER, for themselves  
and on behalf of the members  
of the German Evangelical Lutheran St. Paul's Church, of Aurora, except the members thereof, made defendants to this suit,  
vs.

The Court of Common Pleas  
of the City of Aurora, and  
at the May Chancery Term  
thereof, A. D. 1861.

JOHN A. BRUNNENMEYER,  
FREDERICK FICKENSHER,  
WILLIAM FICKENSHER.  
CHRISTIAN BAUMAN,  
HENRY BRUNNENMEYER,

This cause coming on to be heard at the March term of said Court, A. D. 1861, upon the bill, answer, replication and proofs, and the Court, not being fully advised in relation to the same, took the same under advisement until this said May term, 1861 ; and it appearing to the Court by the proofs taken in this cause that the said complainants were, at the time of the commencement of said suit, and for a long time before, residents of the said city of Aurora ; and that on or about the first day of January, A. D. 1856, the German Evangelical Lutheran St. Paul's Church, of Aurora, Illinois, was duly organized and incorporated according to the Statute of this State ; that John A. Brunnenmeyer, John J. Scharschug and Frederick Fickensher, at the time last aforesaid, were duly elected and qualified as trustees of said Church, according to the statute of this State, and that they have, since

32

that time, continued to be the legal trustees of the said Church, and that the said Church received a deed of conveyance of one-half of the following described lot of land, situate in said city of Aurora, in Kane county, Illinois, to wit: Lot one, (1) in block one, (1) in Hackney's addition to Aurora, from Benjamin Hackney and his wife, a short time after the said trustees were elected and qualified as aforesaid as a donation, and the other half purchased from the said Ernst H. Buhre, by deed of conveyance, which were made to the aforesaid trustees and to their successors in office for the sole and exclusive use and benefit of the said Church; and that the said Church erected a Church edifice on that half of said lot deeded by said Hackney as aforesaid for the exclusive use of public worship of Almighty God, according to the discipline, rules and customs of the Church aforesaid; and the Church edifice was so built about the year A. D. 1855 by the members of said Church and the community in general, by way of gift and other donations, to and for the exclusive use and benefit of said Church; and that the said complainants were, on the first day of January, A. D. 1861, and for a long time before, and ever since, and still are members of said Church, so organized as aforesaid, had, since the said organization, and did, at the filing of the said bill, worship in said Church edifice, according to the discipline and customs of said Lutheran Church. And it also appearing to the Court that the said John A. Brunnenmeyer and Frederick Fickensher combined and confederated with William Fickensher and Christian Bauman, [also members of said Church] to wrong and injure said complainants and other members of said Church; and the said two defendants, John A. Brunnenmeyer and Frederick Fickensher, trustees as aforesaid, refused to perform and discharge the duties and trusts of their appointment as such trustees, as the laws of the land and the rules and customs of said Church required, and did, with the other defendants, on the 9th day of February, A. D. 1861, with force and against the will and consent of said Church, and in direct violation of their trust and duty, and against the rights of said complainants, and others of the said Church, fastened up the said Church edifice, with and for the avowed purpose and intent of preventing the complainants and other members of said Church from entering into the same on the then following day, being the Sabbath day, or at any other time for the purpose of worshipping therein as aforesaid, according to the rights and privileges of the complainants and other members, as aforesaid, as they heretofore had done and still had the right to do.

33

34

And it appearing also to the Court that the injunctions issued

in this cause have been duly served upon the said defendants, it is therefore ordered, adjudged and decreed by the Court that the said John A. Brunnenmeyer, Frederick Fickensher, William Fickensher, Christian Bauman and Henry Brunnenmeyer, and their confederates, their agents, attorneys, solicitors and servants respectively, be and are hereby perpetually restrained and enjoined from interfering or in anywise intermeddling with the complainants and other members of said German Evangelical Lutheran St. Paul's Church, of Aurora, Illinois, in convening and worshipping in said Church edifice, according to the usages, discipline and customs of the said Church, as they had heretofore done and still have the right to do.

And it is further ordered, adjudged and decreed, that said complainants have and recover of said defendants, their costs and charges by them in this suit expended, and have execution therefor.

B. F. PARKS, Judge, &c.

35 To which decisions of the court, the defendants at the time excepted and made an appeal in this case to the Supreme Court of the State of Illinois.

Which said appeal was granted by the Court.

35 Bill of exceptions filed July 12th, 1861, as follows: Be it remembered that on the 19th day of March, A. D. 1861, defendants moved to dissolve injunction for want of equity on the face of the bill; motion overruled, defendants except.

37 April 12th, 1861, case called for trial. Complainants introduce John Scharschug as a witness, who being duly sworn, says: Know complainants; know defendants; know the Church; was trustee with John A. Brunnenmeyer and Frederick Fickensher five years ago, for three years; Church was erected five or six years ago; have been a member since its organization.

Defendants objected to his testifying, for the reason he was one of the trustees of said Church. Objection overruled, and defendants except.

The complainants were, on the first day of January, members of said Church; know the record of the Church; this book is the record; Buhre kept it; it contains a list of the members of the Church; this book is the record of the Church, kept by the Secretary; I am Secretary of the Church.

38 Complainants introduced both in evidence, which is as follows:

#### CHURCH DISCIPLINE.

The German Evangelical Lutheran St. Paul's Church, (Unal-

tered Augsburgische Confession,) Aurora, in the State of Illinois :  
We, the undersigned, ministers, elders, stewards, and trustees  
and members of the above named Church, adhere to the follow-  
ing Church discipline :

CHAPTER I.

1st. Only such person can be minister who adheres to the  
above named Confession, and who is properly ordained.

2d. In all meetings of the Church council and congregation,  
it shall be his duty to preside.

3d. He shall examine all who shall wish to become members  
of this Society, and he shall either receive or reject them.

4th. He shall continue his office as long as he lives.

CHAPTER II.

1st. The Church Council consists of the minister, elders, stew-  
ards and trustees. The elders, stewards and trustees shall contin-  
ue in office until others are elected in their places.

2d. The Church Council holds regular meetings at fixed  
times; it may, however, at any time be called together by the  
minister.

3d. They shall, in brotherly love, counsel over the spiritual  
and general welfare of the society.

4th. In absence of the minister, one of the elders shall pre-  
side.

41

CHAPTER V.

The society elects three trustees, in the same manner as elders  
and stewards. They shall take the temporary affairs of the  
Church in safe keeping.

CHAPTER VI.

42

All those shall be considered members of the Church who, ac-  
cording to the custom of the Lutheran Church, have been re-  
ceived by baptism and confirmation. As legal members they  
must take part diligently in the public worship, and, according  
to the usage of the Church, give their part to its support; they  
must live in conformity with the requirements of the gospel, and  
by signing the Church discipline, declare that they will uphold  
and sustain the Lutheran Church, with its doctrine and usages.  
All such male members who have become of age shall be

considered qualified to vote at each election in the So-  
ciety.

43

Ernest H. Buhre, Minister of the Lutheran Saint Paul's Church, Aurora, Illinois.	John Stinchizer,
John Adam Brunnenmeyer,	+ Francis <del>Leater</del>
John Scharschug,	George Mushler,
Frederick Fickensher,	Frederick Strouern,
Casher Ring,	Henry Brunnenmeyer,
John Bruegge,	Detrich Kolze,
Henry Fickensher,	Ernst Schrader,
Leonard Waldo,	Henry Rang,
Michael Harbermeyer,	+ Francis Joseph Rang
Leonard Shoberlein,	Carl Hubner'
Michael Shoberlein,	Leonard Gruber,
+ George F. Smith,	+ August Hopper,
+ John Reuhl,	John L. Rang,
+ George Bauman,	Ernst Broking,
+ Christian Sorg,	John A. Smith,
+ John Frederick Lehn,	Wm. Rang,
+ Michael Zeigler,	Conrad Hartung,
+ William Saylos.	+ Wm. Miller,
+ Frederick Dutchman,	Frederick Hiance,
+ George Krauter,	Wm. Fickensher,
John Adam Shoberlein,	+ Peter Messerer,
Geo. Brunnenmeyer,	Christoper Rink,
+ Henry Swartshonce,	+ George Hausterter, (dead)
John Zeigler,	+ Michael Sorgee, (removed)
Peter Lehn,	John H. Hahn,
George Mushler,	John Frederick Mushler,
John Bauman,	+ George Grometer,
Christian Bauman,	John Biller,
Geo. Trash,	Stephen Funk,
+ Thomas States, (removed)	Louis Garmes,
John Burger,	Louis Hannibal,
+ Mathew Sauter,	Frederick Nichols,
+ George Gableman, (dead)	Joseph Telameyer,
John Ernst,	C. Ohlmaker,
+ Leonard Reesleer,	Fred Bolig,
+ Frederick Heun,	Robert Groch,
John Giser,	John Ring,
John M. Bowriser,	George Troch,
Frederick Ring,	John Wendler,
	Christian Uhlig,
	Frederick Thaub.

45

It was agreed by the parties, that all those names on the book  
as members marked (X) in pencil, were not members on the 14th  
of January, 1861.

Witness further testified: Saw Frederick Fickensher and William Fickensher by the door of the church; one held the door and the other took the lock off. John A. Brunnenmeyer was in Church, Henry Brunnenmeyer was keeping watch up street, Christ Bauman was watching outside the Church; this was Saturday, the same day the injunction issued. Saw William Fickensher fix the lock, and Frederick Fickensher hold the door.— Asked Frederick Fickensher what they were going to do; he said none of my business. I told him he had ought to be ashamed to break up our Church; he jumped over the fence after me, and I drove on; he wanted to get hold of me, and I run off as fast as I could. I was there the same evening; they had nailed a piece of wood across the key-hole; there was preaching there next day; Buhre preached. I opened one of the window-shutters, went in, and screwed the lock off to let the people in. Schrader is sexton of the Church; he had the key; they took the old lock off and put on a new one; none who were there Saturday were there on Sunday. Saw Frederick Fickensher go by Church on Saturday when I was there first, about, or little after noon. Buhre has been our minister since its organization; it is the German Evangelical Lutheran St. Paul's Church. Henry Brunnenmeyer was going up and down street; I expect he was watching; don't know; think he was.

47

CROSS-EXAMINED.

See them take lock off about noon; was there again about 3 or 4 o'clock; then I was on the west side of Church; Fickensher went around the south-east corner of the Church to get at me; I was there the next morning; the door was fastened with an eighteen inch bclt.

DIRECT RESUMED.

There was no Church meeting to authorize them to shut up the Church; if there had been I should have known it

CROSS-EXAMINATION RESUMED.

I did not know of any meeting being called to authorize Trustees to shut up the Church; don't know of Fickensher and Brunnenmeyer calling a meeting; never talked with Hackney about the Church lot for the last two years.

48

Ernst Schrader called and sworn by complainant: I am member of the Lutheran Church, and have been for two years; I have been sexton one year; I was at the Church on the 8th of February; it was on Saturday when they shut up the Church; was there on Sunday; Church was closed; a new lock was on

the door ; I had the key, but could not get the key in the key-hole ; a small piece of wood was over the key-hole, so that the key would not go in ; Scharschug opened the window and went in and opened the Church ; there was a back door to the Church ; it was fastened on the inside ; my duty was to make fire, ring the bell and show strangers to seats ; Buhre preached that day in the Church.

CROSS EXAMINED.

Friday before Sunday Fickensher and Schoberlein, Frock and Christ Bauman were at my house after the key to the Church ; Fickensher said they wanted the key ; I did not give them the key, because I considered it my duty to keep the key ; I was not there when the new lock was put on the door ; the bolt to the back door was from 6 to 9 inches long.

49 On direct examination, witness said : I did not give them the key, because my time was not out.

John Baureisen called and sworn : I am a member of the Church ; have been for two years ; saw from my house the two Fickenshers, John Brunnenmeyer and Christ Bauman at the Church on Saturday, Feb. 9th, 1861 ; I thought they were nailing up the Church ; they were hammering about the Church ; I was there on Sunday morning to attend service ; saw Fickensher go by Church while I was there ; we went to Church at the usual hour for service ; Church was fastened up ; there was a large meeting ; saw none there who fastened up the Church the day before ; I saw, Saturday, two men walking back and forth, who appeared to be watching.

CROSS-EXAMINATION.

50 Did not see Bauman or Brunnenmeyer do anything to the Church ; heard hammering, but did not know what they were doing ; I asked Fickensher next morning what they were doing to the Church ; he gave me a cross answer ; I have not paid anything for the Church.

Asa A. Dexter sworn as a witness :

I served the injunction writ on defendants ; this Church is in the city of Aurora, county of Kane and State of Illinois ; I was at the Church on Sunday when there was a fuss ; I went there at the request of Buhre to keep order ; I am a Constable ; there was one Sunday when Church was fastened up ; I did not see Fickensher or Brunnenmeyer that day ; I was there when they were opening the Church on Sunday.

Frank Henn sworn :

preach no more for you; this was in a meeting at the Church; I was at a meeting at Frederick Fickensher's house, where 15 or 18 were present; Christ Bauman gave me notice of this meeting; this meeting was three weeks after the 6th of January last; at this meeting Fickensher asked us what we had better do; we made up our minds that we would tell Buhre that we would accept his resignation; we had another meeting; this meeting was the Friday before the Church was shut up; at that meeting we directed Fickensher and Brunnenmeyer to shut up the Church; the meeting was called by Fickensher and Brunnenmeyer as trustees of the Church.

On cross-examination this witness testified as follows:

On the 6th of January Dexter was at the Church; there was not much fuss; we met to have a yearly accounting, and to do the yearly business; we figured up accounts; there was a little noise and some quarrelling, which broke up the meeting; Brunnenmeyer was not much noisy; Buhre said he would preach last time 4 weeks from that day; no vote was taken on the acceptance of this proposed resignation of Buhre; on that day Brunnenmeyer and Fickensher wanted to settle up the old business, but Buhre wanted to put new members first; we then had a meeting at Fickensher's; Christ Bauman told me of this meeting the same day of the meeting; can't tell the day of the month, think Friday, pretty near 4 weeks from time Buhre said he would resign.

Fred Ring, on part of defendants, testifies as follows:

I am a member of this Church, and also one of the elders of the Church; we had a fuss in July last about a school house; the trouble was about building a new school house; Buhre said the members of the Church should vote whether they wanted a new school house or not; Buhre met me one day and asked me what I thought about the trouble; I said we had better put in some new trustees; Buhre said, if you want new trustees you must not vote for the old ones; Buhre said election day at my house, we are going to have new trustees; Buhre told me not to go to the meeting of the Church affairs, January 6th, Brunnenmeyer wanted Buhre to give a receipt in full for his salary; Buhre was willing, but Scharschug told him not to give one, and he then refused; Buhre said he must have his pay if he had to sell the church; saw Buhre take Brunnenmeyer's books.

On cross examination witness testifies as follows:

On the 6th of January, 1861, I was at the meeting; the fuss began about new members; Brunnenmeyer wanted to fix up the

old accounts first ; Buhre said in four weeks from date I will preach my farewell sermon ; saw Buhre take books ; the meeting which Buhre told me not to go to was to be a meeting about a school-house fuss ; this talk was in the summer or fall of 1860 ; at the 6th of January meeting, Scharschug said when Brunnenmeyer wanted Buhre to give his receipt in full that Buhre should not give his receipt in full when he had not received his full pay.

On Direct resumed :

I was at a meeting at Fickensher's house, 30th of January ; it was called by Fickensher and Brunnenmeyer as trustees of said Church.

On re-examination of witness by defendants, he testified as follows:

I was at two meetings at Fickensher's after Buhre said he would resign ; at the last of these meetings the four weeks had expired ; they appointed a committee at the last meeting to get the key and shut up the Church till they could get a minister.

On further cross examination witness said :

I don't know who notified the members at Fickensher's, or whether they were notified.

On re-examination of witness by defendants' counsel, defendants' counsel asked witness to state if you ever heard Ernst H. Buhre, from the pulpit of said Church, denounce the said Brunnenmeyer and Fickensher or apply any kind of epithets to them ; if so, when, and what did they say. Objected to by counsel for the complainants and objection sustained by the Court, to which said ruling of the Court the defendants then and there excepted.

John Grometer, being called by the defendants and sworn, testified as follows :

I was at the meeting at Fickensher's house ; there were two meetings at Fickensher's ; at the first meeting we did not decide anything ; the second meeting was the first Friday after the four weeks from the meeting in which Buhre said he would resign ; we voted by yes and no, and we all voted yes and were unanimous to accept Buhre's resignation ; agreed to ask Schrader for the key of the Church ; he refused, and we concluded to lock up the Church ; we informed Buhre of acceptance of resignation by letter.

Cross examination by complainants' counsel :

I am not a member of the Church ; I never resigned the constitution, but I voted at Fickensher's ; there were fifteen of us at Fickensher's at the last meeting.

Fred. Mushler, called and sworn by defendants, testified as follows :

I am a member of the Church ; I was at the meeting on the 6th of January last ; my brother said settle up with old members and then take in new members ; Buhre would not give a receipt ; Scharschug said Buhre did not mean so if he said he was satisfied, and he should not give a receipt ; I was present at the last meeting at Fickensher's ; we made up our minds to accept the resignation of Buhre ; we concluded to shut up the Church until we got another preacher.

CROSS-EXAMINATION.

I have been a member for about 4 years ; I was at the last but not at the first meeting at Fickensher's ; Brunnenmeyer, at the meeting of the 6th of January, wanted Buhre to give a receipt in full of all demands ; he would not, because he claims more.

Michael Schoberlin, called and sworn by defendants, testified as follows :

I am an elder in this Church ; Brunnenmeyer was treasurer ; I was at the meeting on the 6th of January ; Brunnenmeyer wanted to settle up his accounts ; I was at the last meeting at Fickensher's ; we made up our minds then to accept the resignation of Buhre, and sent him a letter ; the meeting directed Brunnenmeyer and Fickensher to shut up the Church.

Cross examination by complainants' counsel :

Buhre said at the meeting the 6th of January that he could get \$400 a year in several other places.

John Bauman, called and sworn by defendants, testifies as follows :

About 40 of the members have left and formed the German Methodist Church.

On cross-examination, testifies as follows :

I am one of those who left and formed the Methodist Church.

Witness was asked why he left the Lutheran Church and joined the Methodist Church, and he answered by saying that he could not find the medicine for his poor, sick soul that he could find in the Methodist Church ; said he had no trouble with the Lutheran Church.

Here the defendants rested their case.

Asa A. Dexter, recalled as a witness for the complainants, testified as follows :

Buhre employed me to go to the Church the 6th day of January last.

John Bowrising, recalled by the complainants, testified as follows :

I was present at the meeting of the 6th of January, 1861; meeting was called to order; Brunnenmeyer then got up and insulted me about collecting from outsiders for church purposes; Buhre then said to the congregation that those who wished to sign the constitution and to become members of this Church then to come forward and do so; Brunnenmeyer, "No, not till after we elect our Church officers and do our yearly business;" Brunnenmeyer wanted Buhre to give a receipt in full for his salary at the rate of \$250, which amount Buhre had not then received; Buhre was at first inclined to give the receipt in full, but Scharschug then interfered by saying it was not right that Buhre should give a receipt in full for his salary when he had not received it, and then Brunnenmeyer said that he, Buhre, said he would do it; Scharschug then said if Buhre had said so he did not mean it, for he had not got his pay and it would not be right that he should sign such a receipt as this; Brunnenmeyer and his party made so much noise and disturbance that no business could be done then; Mr. Buhre said to the meeting that four weeks from this day I will preach my last sermon to you, and dismissed the meeting, and taking up two books from the desk started to leave the Church, and he was met at the door by some of Brunnenmeyer's party, who attempted to take from him the books by force, when he, Buhre, handed them to Dexter, the constable, who was present, for safe keeping, and then passed out and went away. On Sunday, January 13th, 1861, at the usual hour, there was church service, and a large attendance at the meeting; Buhre notified the congregation that on the next day, at 2 o'clock P. M., at the Church, there would be an election held for trustees, and do such other business as might properly come before the Church; and on the next day, being Sunday, Jan. 14th, 1861, at the hour of 2 o'clock P. M, previously appointed, there was a meeting held by the members at the Church to elect trustees, elders and other officers of the Church, &c.; Buhre called the meeting to order, and the members went on and elected trustees, elders and the other officers of the Church; then Ernst Schroeder made a motion that Mr. Buhre be requested to withdraw his resignation and continue to be the pastor of the Church, which motion was seconded and carried; then Buhre arose and said he withdrew his resignation, and would continue to be their pastor as before; Brunnenmeyer and Fickensher, and some others of their party,

60

61

10 or 12 in all, were present at the congregation of the meeting, and Brunnenmeyer got up and asked what was the object of this meeting; Mr. Buhre told him that it was to elect trustees and other church officers, and do such other business as might properly come before the Church; and then Brunnenmeyer and Fickensher, and the others of his party, got up and left the Church, leaving about 30 or 31 members of the Church who participated in the election and other business of the Church at this meeting.

Cross-examination by defendants' counsel:

62 The witness said: Those that were not at Church on the 13th of January were notified in writing of the meeting to be held on the 14th of January, and of the time and place and object of the meeting; the way I know, they told me so at the meeting of 6th of January, 1861; Brunnenmeyer insisted that the preacher agreed to take less than \$250 per year, on account of the small congregation; Buhre would have given the receipt if Scharschug had not insisted that he should not; Buhre asked Brunnenmeyer if he had any money for him, as the six months were up; Brunnenmeyer paid him some money, and Buhre gave him a receipt for it; Brunnenmeyer was not satisfied with the receipt at the meeting of the 14th of January, 1861; Brunnenmeyer left as soon as he found there were to be trustees elected, and the rest of the party, about 10 in all.

Louis Garmes, called and sworn by complainants, testified as follows:

I signed the constitution after New Years last; I counted the members that voted on the 14th of January, 1861; there were 30.

63 Cross examination by defendant's counsel:

I don't know whether I signed my name to the constitution before or after I acted as secretary on the 14th of January, but I think before; I signed it at my house; Buhre brought it to my house for me to sign; I think none voted at the meeting on the 14th of January, 1861, but those that were members; I was christened and confirmed; the members voted at the meeting of the 14th as Buhre called their names; I keep a beer saloon and I signed the constitution at my saloon; Buhre brought the book to me to sign at my saloon.

Ernst Shrader, re-called by complainants, testifies as follows:

I was there at the election on the 14th of January, 1861, and took part in the election and business of the meeting; there were from 30 to 31 members there present that voted; Bruges passed the hat; none but members voted at the meeting on the

14th January, 1861 ; I made a motion that Buhre be requested to withdraw his resignation and continue to be the pastor of the Church, which motion was seconded and carried ; Buhre arose and said to the meeting that he withdrew his resignation and would continue to be the pastor of this Church as before.

64

Complainants here rested their case.

Defendants then, as rebutting evidence, called John Ernst, who testified as follows :

I am a member of this Church for two years ; heard Buhre say if the congregation wanted new trustees they must not vote for the old ones.

Cross examination by complainants :

I received no notice in writing to attend on the 14th of January, 1861 ; no one came to my house that I know with a notice for me.

— being sworn, testified as follows : I am a member three years and two weeks before New Years ; I heard Buhre say that they were to vote for trustees.

CROSS-EXAMINATION,

65 By complainants : Don't know whether old trustees' time was out or not.

John Grometer called by defendants, testified : On third day of January, Buhre said to the whole congregation that to-morrow they would elect new trustees ; not the old ones.

Michael Schoberlin called by defendants testified : I heard Buhre, January 13th, say they were going to elect three new trustees.

The above and foregoing is all the evidence introduced either on the part of the complainants, or on the part of the defendants, on the hearing of this cause ; and insomuch as this evidence does not otherwise appear of record, it is ordered by the Court that the Judge thereof sign and seal this the complainants' bill of exceptions, which is done.

B. F. PARKS,

Judge of the Court of Common Pleas of the City of Aurora.

The errors assigned are :—

1st, The Court erred in not allowing plaintiffs in error's motion to dissolve injunction.

2d, The Court erred in not sustaining plaintiffs' in error's objection to allowing John Scharschug to testify.

Page of  
Record.

3d, The Court erred in excluding proper evidence.

4th, The Court erred in allowing improper evidence.

5th, The Court erred in rendering judgment for defendants in error.

6th, The Court erred in rendering judgment against plaintiffs in error; and each of them.

C. J. METZNER,  
Attorney for Plaintiffs in Error.

*Barnes*

*Barnes*

*Leitch*

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52. 52  
Brunnimmayer

vs

Buhre

Abstract

Filed Apr. 21 - 1863

G. Gerland

Clerk

Record  
Page of

- in error and each of them.
- 6th) The Court erred in rendering judgment against plaintiffs in error.
  - 7th) The Court erred in rendering judgment for defendants in error.
  - 8th) The Court erred in allowing improper evidence.
  - 9th) The Court erred in excluding proper evidence.

Attorney for Plaintiffs in Error  
G. J. MEINZER

John M. Brunnemeyer }  
vs }  
Ernest H. Kuhne et al }  
Supreme Court of the  
State of Illinois 3<sup>d</sup>  
Grand division.

Reply to Brief and Argument of Defen-  
dants in Error.

The 1<sup>st</sup> point made by the defendants in error is "that there is a distinction between our statute for the incorporation of religious societies and the statute of New York." Although it is true that the wording of the statute of New York is different than ours, yet in the legal construction of them there can be no difference. The statute of New York confers the legal title to the church property on the trustees and authorizes them to take into possession all the church property, while our statute confers the legal title on the trustees without any direction to reduc[e] the property into possession. Possession follows the legal title, and the direction in the New York statute is merely surplusage, both statutes are in effect the same.

The case cited in defendant's brief 4 Zabriske Rep. 661 has no application for according to the rules and statute regulations of that

society the conference appointed the minister, and not the trustees, as under our statute  
te.

The cases cited in <sup>one of</sup> defendants in error / Sandf.  
Ch. N. 439 and 2<sup>d</sup> Denis N. 492. are not in  
point; in these cases the property was applied  
for a different purpose than that intended by  
the donor, but in the last case the reporter  
states, (see note at the end of the case) that the three  
" first propositions of the reporters abstract and sta-  
" ted with some hesitation but are believed to be  
" the reasonable result of the opinions given, but  
" it must be conceded that they are not authori-  
" tatively established by the judgment of the court.

Mandamus and not a bill in Chancery is  
the proper remedy to compel the trustees to  
open the church.

2<sup>d</sup> Barb. S. C. Rep. 418

While it is true that a remedy by manda-  
mus does not preclude them from having  
or maintaining an action for damages in  
as case, and if they possess a prop. trespass  
or ejectment, against the trustees, yet a bill  
in Chancery will not lie, to compel the trust-  
tees to open the church. In all cases, <sup>found</sup> in the  
books, where was a dispute between two

distinct organisations, each claiming title  
to the property, and not a dispute between  
individual members and the trustees.

We deny the proposition that the minister is  
a member of the Church, as stated by the  
defendants in error in their brief. According  
to the bye laws no person can be a member  
unless he pays his share towards the support  
of the Church. He is no more a member  
of that society, than any other person belong-  
ing to the Leatheraw Church, but who never  
joined this particular society.

The course for the defendant in error tra-  
vels out of the record by stating, that new  
trustees were elected, but that the old trust-  
ees refused to sign the certificate of election.  
While the gentleman has made a statement on  
side of the record, it would perhaps not be  
improper to state in addition, that a writ  
of mandamus was issued, to <sup>compel</sup> the  
old trustees to sign the certificate, or show  
cause why they refused. We showed cause  
and the facts stated by our return, were  
so insurmountable, that the relators con-  
cluded, it was best to withdraw their  
proceeding.

It is true as stated in the brief of defendants in error that some 31 persons participated in the election of the trustees, but more than half, were not legal members, and were admitted by Bukke with special reference to that election. Since 18 of the members refused to participate in that meeting and held a separate and distinct meeting, ~~and~~ which a large majority of the church officers participated

But the authority to accept the resignation of Bukke is entirely in the trustees, and it was not necessary to have the society adjourned, D. S. C. Ch. R. P. 186. see that case in particular.

In that case the court says "The trustees of  
" an unincorporated religious society can alone  
" bind the corporation. The action of the vestry  
" has no legal force. And where the act relied  
" on as binding the corporation was adopted  
" at a meeting of the conference or council  
" which consisted of the minister, elders, dea,  
" cons and trustees convened in mass it was  
" held that the congregation was not bound  
" although a majority of the trustees were  
" present"

The above case seems to be conclusive, since that the trustees alone can bind the

society, by their acts, and that they alone  
could bind and upon the resignation of,  
Buhne, and the plea requires to Buhne to  
draw his resignation is not binding on the  
society or valid.

It is insisted that Buhne had a right to with-  
draw his resignation at any time before it  
was accepted. We insist that he can with-  
draw his resignation only by the consent  
of the trustees

The defendants in error say, that mandamus  
"never ~~will not~~ be used only to enforce  
"a legal right; but never to enforce an equitable  
"right"

The court in the 2<sup>d</sup> Barbers S. C. Rep. says  
"A writ of mandamus is the proper remedy  
"to grant a minister of any religious sect the  
"possession of the pulpit to which he is entitled."  
led.

Now it seems that the case cited is in  
point. If any member of this society has  
been deprived of the right to enter the church  
by reason of such fastenings, Mandamus is  
the proper remedy to compel the trustees to  
remove such fastenings, and the right to wor-  
ship there is a legal right; and not a equitable  
me.

It is claimed by the counsel for defen-  
dant in error that the answer was filed  
without oath, and that the affidavit was  
filed afterwards & not entitled in the cause.  
The affidavit was a part of the answer  
the affidavit was in form, the same as any  
affidavit to an answer, referring to the above  
answer. it was not a separate piece of  
paper, but on one and the same piece of  
paper with the answer, a part of it, and  
it seems need not be separately from the  
answer entitled in the cause.

This we think is all the reply necessary  
to the points and authorities cited by the  
defendants in error, the controversy has  
continued to disturb the harmony and pea-  
ce of this society, and nothing is likely to settle  
the difficulties, except an expression of  
a majority of the legal members of this  
society, an expression which cannot be in-  
fluenced by one side, or the other, but an  
expression through their ballot box, accord-  
ing to the laws of the land, and to which we  
incline; it is the duty of the court to refer  
the controversy for adjudication, among them-  
selves, as in the case King v. Sandif. Report  
Meyer & Wheaton for  
Pliffs in Error.

52-15  
James A. B. Brumby,  
Meyer & Co. al  
vs  
Ernst H. Buhne & Co.

52.

Reply to Points &ed  
Arguments of Defendants in  
error.

Filed May 22, 1869  
J. L. Lane  
clerk

52

Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

JOHN A. BRUNNEMEYER et al }  
vs }  
ERNST H. BUHRE et al. }

ARGUMENT AND POINTS FOR PLAINTIFFS IN ERROR.

This was a bill in equity filed to restrain the plaintiffs in error, John Brunnemeyer and Frederich Fickensher, as Trustees of the German Lutheran Church at Aurora, from interfering or intermeddling with the complainants, in convening or worshipping in said church, The bill alleges "that said Brunnemeyer and Fickensher, " Trustees as aforesaid, absolutely refuse to perform and discharge " the duties and trusts of their appointment as the law of the land " and the rules and customs of said Church require, and have, on " the 9th day of February, 1861, with force and against the will " and consent of said Society, fastened up said Church for the purpose of preventing complainants from entering same on the 10th " day of February, being the Sabbath day, &c.

The answer substantially sets up that said bill was filed against the will of the majority of the members of said church, denies that complainants are members of the church, admits that Brunnemeyer and Fickensher, are the legal trustees of said church, denies that they refuse to perform their duties, denies that they fastened up

the church against the wishes of the majority of the members of said church, or in violation of their duty, and in violation of law; sets up that Buhre before that time, resigned his position as pastor of the church, which resignation was accepted by them as trustees, and also by the congregation; that at a meeting of said congregation it was unanimously resolved that the church should be closed until the services of another pastor could be procured, that the keys to said church were in the hands of other parties, and that in order to keep said church property safe, they took the lock off said church and put on a new one, which is the supposed fastening up mentioned in the bill of complaint. Which said answer is duly verified by the oath of plaintiffs in error.

March 23d. Plaintiffs in error moved to dissolve the injunction, which motion the Court overruled, and this is the first assignment of error.

The 1st point is, that the bill shows no ground for the issuing of the injunction.

The 1st material allegation in the bill is, "that Brunnemeyer and Fickensher absolutely refuse to perform and discharge the duties and trusts of their appointment, as the law of the land, and the rules and customs of said church requires." In that the defendants in error have mistaken their remedy, which is by *mandamus* or by removal, as provided for by section 47, P. 980 of Blackwell's Statutes.

The next material allegation in the bill is, "that said Brunnemeyer and Fickensher fastened up said church against the rights of the complainants in direct violation of their trust and duties with and for the purpose of preventing complainants from entering the same, on the 10th day of February, being the Sabbath day, or at any other time. for the purpose of *worshipping* as *aforesaid*, &c." In this allegation, the defendants in error have mistaken their remedy. The act which they complain of, is done, it is not an act to be performed in the future, but it is already performed, There is a power or remedy to compel said trustees to remove said fastening or obstruction, so that members can go to such church and worship, and that remedy is by a *mandamus* to compel them to do an act required of them by virtue of their office. Tapping on Mand. P. 238, see notes.

If the bill prayed the restraining of some wrongful act to be done in the future, there a Court of Equity would undoubtedly

interfere, *but in this case the wrongful act is performed*, and if by the consequences of such wrongful acts, the defendants in error are deprived of a right, mandamus lies to remedy such wrongful act. The church is closed, it can only be opened for worship by the legally constituted agents, which are the trustees. If any of the members of the society attempt to remove such obstruction and fastenings, or to break open the church, they are trespassers.— The legal title to the property is in the trustees.

The People vs. Runkle, 9th Johns. 147, also, 46th sec. Page 680 Blackwell's Statutes.

*2 Sandford - 228*

But according to practice, the dissolution of the injunction is a matter of course, upon the filing of the answer, unless the bill is sustained by affidavits or exceptions taken to the answer. The answer was sworn to by the plaintiffs in error, and is a complete denial of every material allegation of the bill.

3d Scam. P. 370.

The two last assignments of error, involve the same questions and will be argued and disposed of together, and in discussing the questions involved we must look at the position of the respective parties before the difficulties. On the one side, we find the old members of the church sustaining the trustees, with a majority of the church officers, on the other the Pastor, who by his violent denunciations of other christian denominations had nearly destroyed the society, supported by men who were not members of the church, or were admitted by the Pastor for the occasion, and who paid nothing for the support of the church. Men who were not even admitted in church, but their names were taken at a whiskey shop, (see the evidence of Louis Garmes,) the Pastor walking around the City of Aurora, with his book, taking the signatures of men as members, in direct violation of the regulations and by-laws of the church. At a meeting of the members on the 6th day of January, 1861, Buhre offered his resignation, and announced that in four weeks from that day he should preach his farewell sermon, and then he should preach no more for them. about the 28th of January, 1861, at a meeting of the society his resignation was accepted, and he was informed of such acceptance. After the expiration of the four weeks another meeting was held, and it was resolved to shut up the church until the services of another pastor could be obtained, and the next day a new lock was put upon the door, when this bill was filed. But it is claimed that another meeting was held on the 14th of January, by the other members of the church, whereat said Buhre was requested

to withdraw his resignation, which he did, and claimed the right to continue to preach. These are substantially the facts, and we must look to the law to govern the case, and it is insisted by the plaintiffs in error :

1st. That the trustees are the legal representatives of the society, and that through them alone, the society can act. Blackwell's Statute, P. 980. And as such, they alone can make a contract with a pastor, which is binding and legal.

2d Sandford's Chanc. Rep. 189. -228  
8th United States Digest, P. 65.

2d. That the trustees alone can act upon the resignation of said Buhre.

3d. That if the action of said trustees did not suit the wishes or desire of said society, they have a right to dismiss them.

4th. That Buhre could not withdraw his resignation without leave from the trustees, he having repudiated and ended the contract under which he preached for them. The trustees had a right to take him at his word.

5th. That the request of a portion of said society to said Buhre, to continue to preach, and his compliance thereto, was null and void, and not binding upon said society.

Commeyer vs. United Lutheran Churches, 2d Sandf. Ch. Rep. 186, Lawyer et al vs. Cipperly et al, 7th Page Ch. Rep. P. 231.

6th. That said trustees have the control of all the property of said society, and as such have the right to fasten the church doors, even as against members except during divine service.

3 Pages Ch. Rep. P. 302.

7th. That said trustees are responsible to the society for the safe keeping of such property.

8th. It is the persons elected trustees under the law, and not the congregation, that constitute the corporation of the church.

Bethel Church vs. Carmack, 2d Md. Chanc. Dec. 143, 13 U. S. Dig. P. 116.

Apply these propositions to the facts in this case, and there can be no doubt that the decree in this case is erroneous. In fact no case can be found in the books, where a Court in Chancery ever interfered in a controversy as shown in this case. In fact the cases found in the books, are all them cases where there were two *distinct corporations*. But such is not the fact in this case. The difficulty in this case, must be settled by a majority of the voters of the congregation, which congregation *has the power under our Statute, to remove the trustees from office for an abuse of their power.*

In States where the Statute does not give the congregation the power to remove trustees, Courts have intimated that Courts of Chancery would remove such trustees from office, *but only in cases of flagrant breach of trust.* The Court in 7th Paiges Chanc. Rep. P. 286, says. "I am not prepared to say this Court would not correct such a flagrant breach of trust by removing them from their office as trustees, and again, it must, however, be a case of a palpable breach of trust, which will authorize this Court to interfere, and it should not be done in any case where the church or congregation were very nearly equally divided.

Again, the decree entered by the Court is entirely inconsistent with the duties of these men as trustees. The decree "orders that said plaintiffs in error be *perpetually restrained and enjoined* from interfering or in any way intermeddling with the complainants and other members of said church, in convening and worshipping in said church according to the usages and customs of said church, as they had heretofore done, &c.

Suppose some of these defendants in error refuse to contribute towards the support of the church, according to the by-laws of the society, they then lose their right to worship in that church, and yet, this decree prevents the trustees from interfering. Suppose some of them by their immoral conduct compel the trustees to deny them the right to participate in the holy sacrament, and yet according to this decree, these trustees have no right to deny them such participation. Or, suppose any one of them should renounce the doctrines of the Lutheran Church, yet the trustees would have no right to deny them admittance to the church. The decree denies them the right to expel a member for immoral conduct, or to prevent their voting at the meetings of the society.

In this case, the only difficulty is between the trustees of the society on one side, and the pastor on the other. They have a right to presume that a majority of the members side with the

trustees, otherwise the society would remove them, then why should this man who has become obnoxious to a majority of the members of this society, force himself upon them as their pastor, when he thereby destroys the peace and harmony of the society. Ministers of the gospel who profess to be the disciples of Him who taught the religion of peace and good will in all the relations of life, should not suffer themselves to be the means of fanning the flames of discord, or to sow the seeds of strife, in any church or congregation, with which they are connected.

We therefore insist that upon the facts in this case, and the application of the law thereto, this decree must be reversed.

**METZNER & WHEATON.**

Att'ys for Pl'ffs in Error.

J. A. Baummeier et al  
vs

Ernst-He Becke et al

Plaffs Points

Filed Apr 21, 1863

L. Leland  
clerk

Application of the law granted, the decree must be reversed.

MINNENBERG & WINTERBORN

Attorneys for Plaintiff in Error

Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION.

APRIL TERM, 1862.

JOHN A. BRUNNEMEYER et als. }  
Plaintiffs in Error. }  
vs. }  
ERNST H. BUHRE, et als. }  
Defendants in Error. }

*Error to the Court of Common Pleas of the City of Aurora.*

BRIEF OF POINTS AUTHORITIES AND ARGUMENTS  
BY DEFENDANTS IN ERROR.

The Statute in relation to religious corporations pretty clearly points out the relative rights of the trustees and the members of religious societies :

See Scates, Treat & Blackwell's Statutes p. 679, 980.

Section 44 says: It shall be lawful for the *members* of these societies to receive by *gift, demise or purchase* a quantity of LAND not to exceed ten acres and to erect or build thereon such houses

&c., as they may deem necessary for the purposes of religious worship, \* \* \* and the *title* to the land and the improvements thereon shall be vested in the trustees. And the 46th Sec. says: That the trustees \* \* \* shall have perpetual succession and existence, and the *title* to land herein authorized to be purchased and to the buildings and improvements thereon, shall be vested in the said trustees by their assumed name, and their successors forever; and the same shall be held for the uses and purposes of herein named and no other—which is for the purpose of religious worship as specified in the 44 section.

Sec. 47 gives every Society the power (among other things) to adopt such rules and regulations in relation to the duties of trustees and the management of its estates as the members may deem proper.

The Chancellor says in the case of the Baptist Church in Hartford v. Witherall 3 Paige Ch. R. 299, that by referring to the statute relative to the incorporation of religious societies, (3 R. S. 295 § 4,) it will be found that the trustees of a church or society when legally incorporated *are authorized to take into their possession all the property of the Society, &c.*

Our statute does not in terms authorize the trustees to *take possession of the real estate*—But gives the *Society* by the 47th Section the power to adopt such rules and regulations in relation to the duties of trustees and the *management* of its estate as the *members* may deem proper. Here then is an obvious distinction between the statute of Illinois, which vests them with the *title alone* of the real estate, and the New York Statute, by which the trustees are vested not only with the title but are *authorized to take into their possession all the property* by the *very terms* of the Statute.—Whereas under our Statute the *legal title* is vested in the Trustees for the use of the members of the Society, to be used by such members for religious worship—*without any power* in the trustees

as such to *control* or *manage* the property except through the authority given by the regulations of the Society. And in pursuance of this power this Society has passed a bye law or rule that "they (trustees) shall take the *temporary affairs* of the Church in safe keeping. See Record, page 41. Then they are charged with (the safe keeping." See Record page 41. Then they are charged with the safe keeping of the property for the uses and purposes of the Society for religious worship. Then the Society in this case has, perhaps, given to these trustees the same power over this property that the trustees in New York, have, by virtue of their Statute.

Whether it would be their duty and in their power to do the same thing without such or similar rule from the society, *authorizing* them to do so, is not very material in this case. For the legal title being in the trustees, the *members* of the society are the *cestue que trusts* or *beneficiaries* in this church property and can file their bill of complaint against the trustees for a breach of trust, or an abuse thereof, or for any misconduct in relation to the trust property.— And so the Court say, in the case of *The American Primitive Society vs. Filling et al.* (4 Zabriskies' R. 661.) It cannot be "doubted, however, that the trustees of all religious societies hold "the property subject to is appropriate use, and have no legal "right to determine when the religious meetings shall be held or "who shall officiate, *unless such power is given to them by the rules* "and *discipline* of the denomination to which they belong, and that they may be compelled by proper proceedings at law or in *equity* to *fulfil* their duty," And see *Kniskern vs. The Lutheran Churches of St. John's and St. Peter's and others.* 1 Sandford's Ch. R. 439; *Miller vs. Gable,* 2 Denio R 492.

The defendants admit in their answer that the church was organized and incorporated January 1st, 1856, according to the Statute; that John A. Brunnemeyer and Frederick Fickenschler, two of the defendants in the bill, and John A. Scharschug, at the same time

were elected and qualified as trustees of said Church, according to Statute; that they still continue to be the trustees; that the land described in the bill, was deeded to the trustees for religious purposes as stated in the bill.

The bill states that the complainants were, January 1st, 1861, and for a long time before and ever since, and still are *members* of the same church. Their names appear on the list of members. All but one of the complainants are among the oldest members of the church, that was Stephen Funk, whose name is next above the name of Louis Garmes, who swears that he signed the church book as member, before the 14th of January, 1861. The bill, was filed Feb. 9th, 1861; leaving the very obvious inference that he, Funk, was before and at the time of filing the bill, a member of this church, and so the Court below found. The bill waives the defendant's answer under oath.

Then according to the authorities cited, and the allegations and admissions, and proofs referred to, the complainants have a *status* in Court, and the same authorities and facts show that the proper remedy is by *bill* in equity, for an abuse of the trust. For the Court says in the case of the People vs. Runkle, 9 John. R. cited by plaintiffs in error, "if they (the trustees) have *abused* their trust, the congregation who are their constituents, have ample remedy." This must refer to the usual remedy for an abuse of trust, to wit: a *bill in equity* to restrain the trustees from such abuse.

The counsel for plaintiff in error have cited the case of the People vs. Steele, 2 Bab. S. C. 418, to show that the remedy of the defendants in error, is by mandamus and not by *bill in equity*. That was a mandamus to compel the trustees to admit to the church and parsonage, a minister that been appointed by a Methodist Conference to preside over that church for the year. And there the Court says that it is well settled that *as to corporations*

*and ministerial officers*, the existence of another and adequate remedy is no objection to awarding this writ ; citing : *The People vs. Mayor, &c.*, 10 Wend. 393 ; *McCullough vs. Mayor, &c.*, 23 Wend. 461. But this case is questioned in *People vs. Supervisors of Chenango*, 11 N. Y. (1 Kern.) 563 ; compare *People vs. President, &c.*, of Brooklyn, 1 Wend. 318 ; and see *ex parte Lynch* 2 Hill R. 45, 4 *Zabriskie* 661, already cited as to another point. The legal remedy, the existence of which precludes a resort to mandamus, is a remedy by civil proceedings *at law*. The fact that the party might have redress in Chancery, that the injury is indictable, is not conclusive against the application *People vs. Mayor, &c.*, of N. Y. 10 Wend. 395. But if a party has a remedy in law or equity, he will not lose the right to pursue that remedy, though the Court should hold also, that he might have a writ of mandamus to redress his injury, or restore him to his rights. And in this case the Minister is also a member of the church, and it is in that capacity that he has joined with the other complainants to bring the bill. Therefore he stands here as one of the corporation and beneficiaries in this property

The bill states that Feb. 9th, 1861, the two trustees who were defendants below, with the other defendants, who were assisting them, closed up the church against the consent of the complainants, and in violation of their trust, for the purpose and intent of preventing the complainants as members of the church, from entering into the same on to-morrow, the 10th day of February, 1861, being the Sabbath day, or at any other time for the purpose of worshipping as stated in the bill, according to the rights and privileges of the complainants, and other members as they had done, and had the right to do, and then they ask an injunction, to restrain the defendants from interfering, or in anywise intermeddling with the complainants and members of the church, convening and worshipping according to the usages and customs of the church, as they had before done.

The minister, Mr. Buhre, has a life office in the ministry of the church, see record, pages 38, 39, 40. But the defendants below insist that Buhre's connection with this church had ceased, because he said that four weeks from the 6th of January, 1861, he would resign; or in the language of the witness, Mushler, who was sworn for the defence, "one month after to-day (Jan. 6th, 1861,) "I (Buhre) will leave you and will preach no more for you." On cross examination he says that Buhre said: "He would preach "the last time four weeks from that day; no vote was taken on the acceptance of this proposed resignation of Buhre; see record, pages 52, 53. On cross examination Fred. Rang, on page 54 of the record says: "Buhre said in four weeks from date, I will "preach my farewell sermon." And John Baurising testifies: "Mr. Buhre said to the meeting that four weeks from this day I "will preach my last sermon to you." Whether this language can properly be construed into a mere threat to resign, or into a tender of resignation, it is quite immaterial. It certainly cannot have any further, or other meaning. For until there has been an acceptance of such tendered resignation, by the proper authorities of the church, he continued to be their minister. And he had the right at any time before such acceptance, to withdraw his resignation, which he did do at the meeting held at the church Jan. 14th, 1861. John Bowrising testifies on page 60 of the record: "Ernst Scrororder made a motion that Mr. Buhre be requested to withdraw his resignation, and continue to be the pastor of the church; which motion was seconded and carried;—"then Buhre arose and said he would withdraw his resignation, "and would continue to be their pastor as before. This was done at a meeting of the society, properly called. The same witness testifies that on Sunday January 13th, 1861, at the usual hour, there was church service, and a *large attendance* at the meeting; Buhre notified the congregation that on the next day at the hour of 2 o'clock P. M. at the church, there would be an election held for trustees, and *do such other business* as might properly come before the church; and on the next day January 14th, 1861, at the hour of 2 o'clock P. M., previously appointed, there was a meeting

held by the members of the church. The meeting was called to order, and the members went on and elected trustees, elders and the officers of the church, &c. Though these trustees elect were never qualified as the law requires, the old trustees refusing to make out a certificate of election, as the statute requires and therefore the old ones continue. This meeting was a regular meeting; thirty or thirty-one members participating in the election, &c.—Brunnemeyer and Fickensher, the two trustees, and some ten or twelve others, belonging to their party, withdrew as soon as they found out the object of the meeting. See record, pages 61, 62 Those that were not at the church on the 13th, were notified in writing of the meeting to be held on the 14th. So the tendered resignation was withdrawn before the other party pretended to act upon it.

The Plaintiffs in error claim that all the names in the left hand column on page 43 of the record, after or below that George Gro-meter were not on there on the 14th of January, 1861, though Garmes testifies that his name was on there before the 14th. Then if the remainder below Garmes' name that is Louis Hannabal, &c., were not on there until after that meeting, then at that time there were about 44 or 45 members of the Church. So all the members were present at the meeting on the 14th of January, until the two trustees and their party left being in all 10 or 12 as appears by the record, page 61. After they left, 30 or 31 remained and participated in the election,—see record page 63. So it is pretty clearly established from the proof that all the members had not only notice of the meeting but were present at the meeting until it was organized and the object of it stated by Mr. Buhre, at the request of Brunnemeyer. So it appears from the proof that everything had been put *in statu quo*, before the Brunnemeyer party attempted to hold any meeting to accept of the tendered resignation of Buhre. The Brunnemeyer party held their first meeting three weeks after the 6th of January, which was about the 24th of January—at Frederick Fickenscher's house, where 15 or 18 were present—see record page 53. It does not appear how many of these

15 or 18 were members. John Grometer testifies on page 56 of record, that he was there and voted but says that he was there and voted, but says that he was not a member, and says at the first meeting they did not decide anything, and at the second and last meeting there was 15 of "us" present. So it is altogether probable that at neither of these meetings there were over 8 or 10 of the members of the Church present—showing more than three fourths of all the members attached to Mr. Buhre as their minister, and such too as were the old members. These meetings of the Brunnemeyer party were irregular. It was called, as one of their wit-

nesses testifies, by Fickensher and Brunnemeyer, as trustees. It does not appear that they gave any notice of the meeting to the other trustees, or to any members that were not there—nor to Mr. Buhre, who, according to their rules, is to preside at all their meetings. See record, page 40. Then this meeting should have been at the church, their usual place of meeting to do business. See 4 Zabriskie, 661. So for these reasons the proceedings were void. Again, clearly there was not a majority present or notified to be present; the minority cannot bind the majority in this way. Then it is very evident the *Society as such* never authorized the church to be closed up, or the acceptance of the resignation of Buhre, even if such resignation had not been withdrawn before. So the closing up of the church was a *gross abuse of their trust*.

The law under which these trustees were elected does not prescribe who shall be considered members of the congregation or society; but as was said by Chief Justice Ewing in the case of the State vs. Crowell, 4 Hal. 411, wisely leaves that question to be determined by the rules of each denomination. See 4 Zabriskie, 659. The minister according to the discipline or rules of this church is authorized either to receive or reject those who may wish to become members of this society. See record, page 40. Those who have, according to the custom of the Lutheran Church, been baptised and confirmed may be admitted as members of this society by the min-

ister, and they must sign the church discipline. See Record, p. 42. And none but male members can participate in elections. So if it were so that Mr. Buhre, the minister went to the saloon of Louis Garmes with his book to have him sign it, and if it were an abuse of his trust and office, no *civil judicatory* has any jurisdiction of the wrong; but that belongs to the spiritual judicatories, to whom he is responsible for a faithful discharge of his trust.

See Lawyer vs. Cipperly, 7 Paige Ch. R. page 284, 285.

But the Court must remember that among the Germans it is never considered in the calendar of sins or moral delinquencies to drink beer or keep a beer saloon. The Court must also remember that there is no evidence to show that this saloon was a whiskey saloon, as stated by the counsel for the plaintiffs in error. Then, again, this witness, Louis Garmes, says that he signed at his house; the fact is that the house and beer saloon are all in one building as most of these saloons are, kept by Germans. This witness says that he was christened and confirmed. This is done according to the custom of the Lutheran Church while they are infants. See Record, page 63.

The case in the 7th Paige's Ch. Reports cited by plaintiff in error to show that Courts will not interfere to remove the trustees only in palpable breach of trust, in the instance of their refusal obstinately to employ a minister who was not only acceptable to a majority of the church but also of the congregation, because under the law in New York it must be done by the consent of the trustees, as the Court will see by examining this case. There the trustees have a matter of judgment or discretion to exercise as to the fitness of the proposed minister—and Courts will never interfere where a particular officer has a discretion, unless there is a *palpable abuse* in the exercise of this *discretion* conferred upon him. But in this case, at the utmost, they had only the right and duty, to see that the property was safely taken care of, for the use and benefit of the society, to meet there in the church for worship or for business connected with the spiritual or temporal affairs of

the Church, and they had not the least color of power to close up the church, and stop the society or any of its members from meeting there as they were accustomed to do.

The counsel for plaintiff in error says that the act complained of has been done and is not to be performed in future, and therefore a injunction is not the proper remedy. Now it is true they had fastened up the church, but this is of no consequence to the members only as it is intended to affect and did affect them in the future by preventing them in congregating from time to time, for worship at the church. The fastening up was a continued bar to their entering, as much so as if those two trustees with the other defendants stood holding the door to prevent the members of the society from gaining admission inside the church. It is not the past injury against which relief is sought, but it is the obvious injury which the trustees are seeking to inflict upon the complainants in preventing them in using the church house for the purpose of religious worship. Each member has a right to go there in peace, and ought not to be compelled to meet resistance or incur the risk of a prosecution for breaking open the church. It was decided in 9th Johns R. 147, that if any of the members broke open the church after it has been fastened up by the trustees, they are liable to action for trespass, because the legal title is in the trustees. See the case of Ferraria et al vs. Vasconelles et al 23 Ill. R. page 461, where the Court says: "Every member of the church had a *beneficial* interest in the property of the church, so long as he or she continued to be a member." That it is only as a constituent element of the organized body or church, that any person can acquire, or hold, as *cestui que trust* any interest in the property. See Shannon vs. Frost, 3 B. Mon. 253; Card vs. Wallace, 7 Dana 195, in support of this doctrine. And in the case of Gibson vs. Armstrong, 7 B. Mon. 481, the Court says: "That the use belongs in subordination to the rules of discipline, to the local society and to individuals as members of it." Ann in the case cited, in 3 B. Mon. 253, the Court further says: "The old

church, as organized at the date of that conveyance, and still subsisting, must be entitled to the *exclusive use and enjoyment* of the property *for all the purposes* for which it was at first dedicated, and as that right is in the character of a trust, is it not the duty of a Court of equity to uphold, and secure its full and *undisturbed enjoyment*. This is what is sought in this case by the complainants and nothing else.

The counsel for the plaintiff in error says that if the closing up the church was contrary to the will of a majority of the members then they could remove them from their office of trustees. No doubt the society may remove the trustees if they have been guilty of misconduct. But this remedy is only a *cumulative* one, it cannot operate to divest a court of equity of its accustomed jurisdiction in cases of trust. Again the remedy by removal would in most cases be absolutely inoperative or inadequate. Suppose the old trustees refused to certify to the election of new ones then under the statute, the old trustees would continue to hold their offices until they were compelled by proper proceeding to make the certificate of election of newly elected trustees required by law. Then again, suppose a majority of the members should refuse to vote to remove the old ones, and vote against it; where would be the remedy of the minority, or of individual members? I hardly think that a court of equity would require the party to resort to this remedy of removal first, and then in case it failed to have recourse to a court of equity, in a case where that court has *original jurisdiction*, as in cases of trust. Again it is a well settled principle of law that a statutory remedy is always cumulative to the remedy at common law or in equity, unless the statute in terms took away the remedy at law or in equity.

Then the only remedy the complainants have, is *in equity*, unless it be the one under the statute by the removal of the trustees, which is shown to be but cumulative at the best, and is totally inadequate in the case. Mandamus is already shown not to be

the proper remedy, and for the additional reason that a writ of mandamus can be used only to enforce a legal right where there is no other adequate remedy at law, but never used to enforce an equitable right as in the present case. Neither will trespass nor ejectment lie; for the legal title is in the trustees which is necessary to sustain either. Nor will an action on the case lie, for it requires a legal right also, and an equitable right will not maintain it, and hence it is entirely demonstrated that the only remedy the complainants have is in equity.

This might be likened to the case to the case of the issuing of an injunction to compel the due observance of personal covenants, where there is no effectual remedy at law, and the old case of the parish bell. *Martin v. Nutkin*, 2 page Will 266. 2 Story's Eq. Juris. §958. In that case the agreement was violated in ringing the church bell at 5 o'clock A. M., to the disturbance of the complainants, and thereupon an injunction was granted to prevent the bell from being rung at that hour. So here these trustees, &c., are enjoined from continuing a breach of their duty as such trustees, which it was very obvious they intended to continue, by keeping the church closed up, and thus prevent further religious service by the complainants, in the church, until they saw fit to open the house for that purpose.

The plaintiff in error assigns for error that the Court overruled their motion to dissolve the injunction. The answer is not a full denial of the equity of the bill. They deny that two of the complainants were members at the time of filing the bill; but do not deny but the rest of the complainants were members; therefore, the bill as to them was well brought. Most of the facts set up in the bill are admitted—even the closing up of the church, but they attempt to justify the act by setting up new facts, that is to say that Buhr had resigned, and that the resignation was accepted, and also that the Society had unanimously voted that the

trustees should close the church. This is not such a denial of the equity of the bill as would have authorized the Court to dissolve the injunction. But an injunction is not dissolved, of course, even upon a full denial of the equity of the bill, if the Court can see in the facts disclosed, good reason for retaining it. See *Bank of Monroe vs. Schermerhorn*, 1 Clarke's R. 323; *Holilster v. Barkly*, *ubi supra*; *Shellman vs. R. M. Chatt.* 380, 381; *Chetwood vs. Brittain*, 1 Green Ch., 439. *Poor v. Carleton*, 3 Sumner 75, 76; 3 Daniel Ch. Pr. 1st Am. Ed. from 2d London Ed. p. 18, 32, and notes. And there was sufficient reason for the Court to retain the injunction, in the facts disclosed in the answer. And, again, the bill was an injunction bill—and if it were dissolved the complainants would have been deprived of their right to meet at their church for religious worship until there had been a final hearing of the case and the injunction waived and made perpetual. This would have been great wrong on them. Whereas, if any one had gone there and done any injury to the church, or entered the same to do it any harm, the trustees would have complete remedy by an action of trespass. So the Court did right in refusing to dissolve the injunction for these reasons.

The bill requires defendants to answer without oath—the oath being waived. The defendants filed their answer, March 19th, 1881, without oath; afterwards on the same day they filed an affidavit by which they claimed below and do claim here, that they have made oath to the answer as the law requires. But the affidavit was not entitled in this cause. See Record, pages 24, 26, &c. In the the case of *Watson et al. vs. Reising*, 24th Ill., 281, this Court says this Court and the Court below should not consider an affidavit so entitled. For this reason then that the answer was not sworn, the Court properly overruled the motion to dissolve the injunction.

The defendants, below, objected to John Scharschug testifying for

the *reason* he was one of the trustees of the Church, But the counsel for the plaintiffs in error have made no point upon this ruling of the Court, either in their brief or argument, and therefore it is reasonable to suppose that they have abandoned it. However, we insist that the fact he was trustee could not be any possible objection to his competency as a witness in this case.

This suit was properly instituted as your Honors will see by examining the case of *Lloyd vs. Loring* 6 Ves. 773, [see Sumner ed. note a,] where Lord Eldon held that some of the members of Free masons, or one of the inns of court, or of any other numerous body of persons, might sustain a suit on behalf of themselves, and the other for the delivery of a chattel in which they were all interested. See 1 *Daniel Ch. Pr.* 1st Am. Ed. of the 2d London Ed. 286, 287, &c. And this may be done where even a majority of the members approved of the act, and disprove of the suit, where the act complained of was necessarily injurious to the common right. See *Bromley vs. Smith* 1 Sim. 8, 1 *Daniel Ch. Pr.* 289.

The defendants excepted to the ruling of the Court, in refusing to allow them to ask a witness whether Buhre ever denounced Brunnemeyer and Fickensher from the pulpit. But they have made no point upon this ruling in their brief or argument, and it fair to infer that they have abandoned this point also. This testimony would have been clearly irrelevant, for if Mr. Buhre were guilty of any improprieties in the discharge of his duties as a minister of the gospel, he is responsible to the proper spiritual judicatory alone, and not to any civil one, as the cases already referred to clearly show. For it may have been according to the duties of his ministry to have denounced them for some delinquencies of which they were guilty.

I believe I have reviewed all the objections that the counsel

for plaintiffs in error have seen fit to make to the proceedings and decree, and I submit that none of these objections are well taken and respectfully ask that the proceedings and the decree thereon, be affirmed in all things, at the costs of the plaintiffs in error.

R. G. MONTONY,  
Att'y for Def't in Error.

John A. Beaumais  
at als plffs in error

et

Ort H. Baker  
at als def in error

Receipt & argument  
by def in error

Dated May 7, 1813

J. Leland

et

no affidavit in all things, at the case of the plaintiffs in error.  
and the court, for that the process is good, and the decree is con-  
firmed, and I submit that the case of the plaintiffs in error is  
for the plaintiffs in error, that they are not liable to the proceedings and

R. C. MONROE,

Attorney for Defendants in Error.

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

JOHN A. BRUNNENMEYER,  
FREDERICK FICKENSHER,  
WILLIAM FICKENSHER,  
CHRISTIAN BAUMAN, and  
HENRY BRUNNENMEYER,  
*Plff's in Error,*

vs.

ERNST H. BUHRE,  
MICHAEL HABERMAYER,  
STEPHEN FUNK,  
JOHN BRUGGE, and  
CARL HUBNER, who sue, &c.,  
*Def'ts in Error.*

2 Be it remembered that heretofore, to wit: on the 9th day of February, A. D. 1861, the following bill for injunction was filed in the office of the Clerk of the Court of Common Pleas of the City of Aurora, county of Kane and State of Illinois, to wit:

STATE OF ILLINOIS, }  
COUNTY OF KANE, CITY OF AURORA, } ss.

To the Honorable Benjamin F. Parks, Judge of the Court of Common Pleas of the City of Aurora, in vacation after the December term, A. D. 1860:

3 Humbly complaining, show unto your honor, your orators, Ernst H. Buhre, Michael Habermeyer, Stephen Funk, John Brugge and Carl Hubner, for themselves, and also on behalf of the members of the German Evangelical Lutheran Saint Paul's Church of Aurora, Illinois, except the members thereof, made defendants hereto, residents of the city of Aurora aforesaid, that on or about the 1st day of January, A. D. 1856, the said Church was duly organized and incorporated according to the statute of this State, and that John A. Brunnenmeyer, John J. Scharschug and Frederick Fickensher, at the time last aforesaid, were duly elected and qualified as trustees of said Church, also according to the statutes of this state; and that they have since that time continued to be, and still do continue to be the legal trustees of said Church; and that the said Church received a deed of conveyance of one-half of the following described lot of land, situate in Hackney's addition to Aurora, from Benjamin Hackney and his wife, a short time after the said trustees were elected and qual-

ified, as aforesaid, as a donation, and the other half by purchase from the said Ernst H. Buhre, by deed of conveyance, which deeds were made to the aforesaid trustees and to their successors in office, for the sole and exclusive use and benefit of the said Church; and that the said Church erected a church edifice on that half of said lot deeded by said Hackney, as aforesaid, for the exclusive purpose of public worship of Almighty God, according to the discipline, rules and customs of the Evangelical Lutheran Church, so known and called; and the said church edifice was so built about the year A. D., 1855, by the members of said Church, and the community in general, by way of gift and donations, to and for the exclusive use and benefit of said Church. By way of amendment your orators further show unto your honor that they were on the 1st day of January, A. D. 1861, and for a long time before and ever since, and still are members of the said Church in this bill of complaint mentioned.

4

And your orators further show unto your honor, that the aforesaid Church have, since the said organization, and still do worship in said Church edifice according to the discipline and customs of the said Lutheran Church, and your orators well hoped that said trustees would have conducted themselves in all things in relation to their said trusteeship according to the laws of the land and the discipline, rules and customs of said church, and in conscience and equity they ought to have done. But now so it may please your honor, that the said John A. Brunnenmeyer, Frederick Fickensher, combining and confederating with one William Fickensher, and one Christian Bauman, and one Henry Brunnenmeyer, also members of said Church, and with divers other persons at present unknown to your orators, whose names when discovered your orators pray they may be at liberty to insert herein, with apt words to charge them as parties defendants hereto; and contriving how to wrong and injure your orators and others, the members of the said Church, they, the said two defendants, John A. Brunnenmeyer and Frederick Fickensher, trustees as aforesaid, absolutely refuse to perform and discharge the duties and trusts of their appointment as such trustees, as the laws of the land and the rules and customs of said Church require, and have with the other defendants on this, the 9th day of February, A. D. 1861, with force, and against the will and consent of the said Church, and in direct violation of their trust and duty, and against the rights of your orators and other members of said Church, fastened up the said Church edifice with and for the avowed purpose and intent of preventing your orators, members of said Church, from entering into the same on to-morrow, the

5

tenth day of February, A. D. 1861, being the Sabbath day, or at any other time for the purpose of worshipping as aforesaid, according to the rights and privileges of your orators and other members, as aforesaid, as your orators and said members have heretofore done and still have the right to do, all which actions, doings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orators in the premises.

6 In consideration whereof, and for as much as your orators are entirely remindless in the premises according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are cognizable and reliable—to the end, therefore, that the said John A. Brunnenmeyer, Frederick Fickensher, William Fickensber, Christian Bauman and Henry Brunnenmeyer, and the rest of the confederates, when discovered, may, without oath, (their respective answers are hereby expressly waived) full, true, direct and perfect answers, make to all and singular the premises as fully and particularly as if the same were hereinafter repeated; and they thereunto distinctly interrogate to the best of their knowledge and belief, and that the said defendants and their confederates, their agents, attorneys, solicitors and servants, respectively, may be restrained from interfering or in anywise intermeddling with your orators and members of said Church, in convening and worshipping according to the usages and customs of said Church, as they have heretofore done.

7 May it please your Honor to grant to your orators, not only the people's writ or writs of injunction of the State of Illinois issuing out of and under the seal of this Honorable Court, directed to the said defendants, their confederates, agents, attorneys, solicitors and servants, enjoining them and each of them in the manner aforesaid; but also that the Clerk of the said Court, on the filing of this bill, may issue a summons, according to the practice of the courts of chancery of this State, against the said defendants, directed to the sheriff of the county of Kane, in the State of Illinois, commanding him to summons the said defendants to be and appear before the Court of Common Pleas of the City of Aurora, in the county and State aforesaid, at the next term thereof, on the first day of said term, and then and there to answer all and singular the premises, and to stand to and abide by such order and decree therein as to your Honor shall seem meet, and your orators shall ever pray.

E. H. BUHRE,

MICHAEL HABERMEYER,

CARL HUBNER.

STEPHEN FUNK,

JOHN BRUGGE,

MONTONY & SEARLS,

Solicitors and Counsel for Complainants.

Page of Record. 8 Which said bill of complaint was duly subscribed and sworn to on the 9th day of February, A. D. 1861, before the Clerk of said Court.

9 Injunction writ issued February 9th, A. D. 1861, and returned  
13 duly served on the 11th day of April A. D. 1861.

15 Summons issued on the 14th day of of February, A. D. 1861, and returned duly served March 18th, A. D. 1861.

15 And afterwards, to-wit: on the 19th day of March A. D. 1861, it being one of the days of the regular March term, A. D. 1861, of said Court, the following among other proceedings were had in this cause and entered of record in said cause, to-wit: Defen-  
16 dants moved the Court to dissolve the injunction for want of equity on the face of the bill. Which said motion the Court over-ruled, and defendant then and there by his solicitor excepted to the said ruling of the Court.

And also on the same day to-wit: the 19th day of March A. D. 1861, the following answers of the defendants were filed in Clerk's office of said Court, to-wit:

ERNST H. BUHRE,  
MICHAEL HABERMAYER,  
STEPHEN FUNK,  
JOHN BRUGGE, and  
CARL HUBNER, for themselves  
and also on behalf of the mem-  
bers of the German Evangelical  
Lutheran St. Paul's Church, &c.,  
vs.  
JOHN A. BRUNNENMEYER,  
FREDERICK FICKENSHER,  
WILLIAM FICKENSHER,  
CHRISTIAN BAUMAN, and  
HENRY BRUNNENMEYER.

Before Hon. B. F. Parks,  
Judge of the Court of Com-  
mon Pleas of the City of  
Aurora, March Term, A.  
D. 1861.

17 The point and several answers of John A. Brunnenmeyer, Fred-erick Fickensher, William Fickensher, Christian Bauman and Henry Brunnenmeyer:—

These defendants now and for all times hereinafter reserving to themselves all rights and benefits of exceptions to the many errors and insufficiencies in said bill of complaint for an answer there-unto, say: These defendants deny that the said complainants, Ste-phen Funk and Carl Hubner, are and have been, on the first day of January, A. D. 1861, and before, members of said Church, as al-leged in said bill of complaint, nor have they any right or author-ity whatever, from the members of the German Evangelical Lutheran Saint Paul's Church of Aurora, (except these defend-ants) to commence said suit; but on the contrary thereof, said

suit is brought by said complainants aforesaid, without the consent, authority, or knowledge of the majority of the members of said Church, and against their express will and desire.

18 These defendants further answering say : that they admit that on or about the 1st day of January, A. D. 1856, the said Church was duly organized and incorporated according to the statute, and that John A. Brunnenmeyer, John J. Scharschug and Frederick Fickensher, at the time aforesaid, were elected and qualified as trustees of said Church, according to the statute in such case made and provided.

And these defendants further answering, say : that they admit that John A. Brunnenmeyer, and Frederick Fickensher, still continue to be the legal trustees of said Church, and that the land in said bill of complaint described, was deeded to said trustees as alleged in said bill of complaint and for the purposes in said bill of complaint set forth.

19 And these defendants further answering, say : That they deny that said Church edifice has been used since the organization by said congregation and still is for the purpose of worship, according to the discipline and custom of said Lutheran Church, but on the contrary said Ernst H. Buhre has, on divers and different times, as pastor of said Church, on the Sabbath, and from the pulpit of said Church, and while said congregation was there for the purpose of worshipping, indulged in violent and injurious denunciations of other protestant denominations, all of which is contrary to the rules and customs of the said Lutheran Church.

And these defendants further answering say, that said John A. Brunnenmeyer and Frederick Fickensber have at all times conducted themselves in relation to their said trusteeship, according to the laws of the land and the discipline and customs of said Church.

And these defendants further answering say, that they deny that they and each of them combined and confederated as charged in said complainants' bill of complaint.

And these defendants further answering say, that they deny that said defendants, John A. Brunnenmeyer and Frederick Fickensher, trustees aforesaid, refuse to perform and discharge the duties and trusts of their appointment as such trustees, as the laws of the land and the rules and customs of said church require.

And these defendants, and each of them, deny that on the 9th day of February, A. D. 1861, with force and against the will and consent of said Church, and against their trusts and duties, the said John A. Brunnenmeyer and Frederick Fickensher, with these and other defendants, against the rights of said complainants and

the other members of said Church, fastened such church edifice with force, and for the purpose of preventing said complainants and themembers of said Church from worshipping in said Church edifice.

And these defendants further answering say, that during the year A. D. 1858, said Ernst H. Buhre, then and there acting as pastor of said Church, by the consent of the complainants, indulged against the rules and regulations of said Lutheran Church, when preaching in said Church edifice, on Sabbath, in violent and unchristian denunciations against the German Metholist Society then forming, and without cause attacked individual members thereof, by reason of which a great many members of said Lutheran Church dissolved their connection with said Church, and among others, three of the officers of said Church, elected by said Lutheran Congregation; that said defendant, John A. Brunnenmeyer, as trustee aforesaid, remonstrated with said Buhre about the course so pursued by him, and requested him to desist because he would break up the Congregation; but said Buhre refused and continued in his tirade against said denomination, by reason whereof a great many of the members of said Lutheran Church dissolved their connection with said Church, and refused to participate in worship in said Lutheran Church thereafter; all of which doings is contrary to the rules and customs of said Lutheran Church.

And these defendants further answering, say, that at a meeting of the members of said Lutheran Church, called by said Buhre, on the 6th day of January, A. D. 1861, said Buhre resigned his position as pastor of said Church, and then and there stated that in four weeks from said day, he would preach his farewell sermon.

And these defendants further answering, say, that at a meeting of the members of said Church, held on the 30th day of January, A. D. 1861, said resignation was unanimously accepted by said Congregation, and on the 31st day of January, A. D. 1861, said Buhre was informed of the acceptance of his resignation as aforesaid, by said trustees, of said Church, in writing, a copy of which said notice is hereunto attached, marked (A.)

And the defendants further answering, say, that on the 8th day of February, A. D. 1861, at a meeting held by the members of said Lutheran Church, pursuant to a call of said trustees, it was unanimously resolved by the members of said Church, that said church edifice should be closed until the service of another pastor could be procured, and said meeting then and there instructed said trustees aforesaid to obtain the keys to said church edifice, in whose possession they might be found.

And these defendants further answering, say, that one Ernst Schröder had the key to said Church, and said trustees then and there demanded the key of said church edifice, in behalf of said Congregation, from said Schröder with said complainants, but said Schröder refused to deliver up said key to said trustees.

And these defendants further answering, say, that divers other persons had obtained keys to said church edifice, and could obtain access to said church edifice by the use of such keys, without the consent of said Congregation.

23 And these defendants further answering, say, that in order to prevent the property in said Church from being stolen, carried away and injured, and prevent persons from entering said Church edifice without the right so to do, the said John A. Brunnemeyer and Frederick Fickensher, trustees as aforesaid, in pursuance of their duties as such trustees, on said ninth day of February last, took the old lock from the door of said Church edifice and put another and new lock on the door of said Church edifice to protect the property in said Church, as they lawfully might, which is the supposed fastening up of said Church edifice in said complainants' bill of complaint mentioned.

24 And these defendants, denying every allegation in said complainants' bill of complaint contained, charging these defendants and each of them with any doing unlawful or contrary to equity without this; that if there is any other matter or thing in said complainants' bill of complaint contained, material or necessary for these defendants to make answer thereto, and not truly and hereinafter sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge and belief of these defendants; all of which matters or things these defendants are ready and willing to verify, as this Honorable Court shall direct, and pray to be dismissed with their reasonable costs and charges, by them and each of them most wrongfully sustained.

JOHN A. BRUNNENMEYER,  
FREDERICK FICKENSHER,  
HENRY BRUNNENMEYER,  
CHRISTIAN BAUMAN,  
WILLIAM FICKENSHER.

CHAS. J. METZNER, Solicitor for Deft's.

EXHIBIT A.

Mr. Henry Buhre, Pastor, &c.:

According to the resolution of yesterday, of the assembled

congregation of the German Lutheran St. Paul's Church, we hereby notify said Henry Buhre that his offered resignation as pastor of said Church is hereby accepted; and whereas, in accordance thereof, on next Sunday, the 3d of February, 1861, the time by yourself appointed, has past, we therefore expect of man, and especially a preacher, that he will be true to his word.

By order of the Congregation,

JOHN A. BRUNNENMEYER,  
FREDERICK FICKENSHER,  
Stewards of the Church Property.

Aurora, 31st January, 1861.

25 On the 19th day of March, A. D. 1861, the said answer of said defendants was duly subscribed and sworn to.

26 And afterwards, to wit, on the 23d day of March, A. D. 1861, it being one of the days of the March term, A. D. 1861, said defendants moved said Court to dissolve the injunction herein, which said motion the said Court overruled, to which said ruling of said Court the defendant then and there excepted:

27 And afterwards, to wit, on the 2d day of April, A. D. 1861, the same being one of the days of the March term, A. D. 1861, of said Court, the said complainants filed the following replication to defendants' answer, to wit:

ERNST H. BUHRE, et al.,  
vs.  
JOHN A. BRUNNENMEYER, et al. }

Court of Common Pleas of the City of Aurora, } IN CHANCERY.  
March Term, A. D. 1861.

28 The replication of Ernst H. Buhre et al., complainants, to the answers of John A. Brunnenmeyer et al., defendants: These repliants, saving and reserving unto themselves all, and all manner of advantage of exceptions to the manifold insufficiencies of the said answer of replication, thereunto say, that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient, to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, confessed and avoided, traversed or denied, is true—all which matters and things these repliants are and will be ready to aver and prove, as this Honorable Court shall direct, and humbly pray, as in and by their said bill they have already prayed.

MONTONY & SEARLS,  
Solicitors, and of Counsel for Complainants.

On the second day of April, A. D. 1861, it being one of the days of the March term, A. D. 1861, of said Court, on motion leave is given complainants to answer their bill ; also leave given to defendants to amend their answer herein.

Thereupon again come the parties hereto, and this cause coming on to be heard upon the proofs submitted by the parties, and the Court having heard the proofs and allegations of parties, &c., and not being fully advised by consent of the respective parties, made in open Court, the Court takes the same under advisement until Saturday next, at 2 o'clock P. M., the decision of the Court and the decree to be entered as of the present term, with the rights of either party to except, and with the same force and effect as if entered in term time.

And afterwards, to wit, on the 6th day of May, A. D. 1861, the following decree was filed and entered of record in said cause in said Court, to wit :

ERNST H. BUHRE,  
MICHAEL HABERMEYER,  
STEPHEN FUNK,  
JOHN BRUGGE, and  
CARL HUBNER, for themselves  
and on behalf of the members  
of the German Evangelical Lutheran St. Paul's Church, of Aurora, except the members thereof, made defendants to this suit,

vs.

JOHN A. BRUNNENMEYER,  
FREDERICK FICKENSHER,  
WILLIAM FICKENSHER.  
CHRISTIAN BAUMAN,  
HENRY BRUNNENMEYER,

The Court of Common Pleas  
of the City of Aurora, and  
at the May Chancery Term  
thereof, A. D. 1861.

This cause coming on to be heard at the March term of said Court, A. D. 1861, upon the bill, answer, replication and proofs, and the Court, not being fully advised in relation to the same, took the same under advisement until this said May term, 1861 ; and it appearing to the Court by the proofs taken in this cause that the said complainants were, at the time of the commencement of said suit, and for a long time before, residents of the said city of Aurora ; and that on or about the first day of January, A. D. 1856, the German Evangelical Lutheran St. Paul's Church, of Aurora, Illinois, was duly organized and incorporated according to the Statute of this State ; that John A. Brunnenmeyer, John J. Scharschug and Frederick Fickensher, at the time last aforesaid, were duly elected and qualified as trustees of said Church, according to the statute of this State, and that they have, since

that time, continued to be the legal trustees of the said Church, and that the said Church received a deed of conveyance of one-half of the following described lot of land, situate in said city of Aurora, in Kane county, Illinois, to wit: Lot one, (1) in block one, (1) in Hackney's addition to Aurora, from Benjamin Hackney and his wife, a short time after the said trustees were elected and qualified as aforesaid as a donation, and the other half purchased from the said Ernst H. Buhre, by deed of conveyance, which were made to the aforesaid trustees and to their successors in office for the sole and exclusive use and benefit of the said Church; and that the said Church erected a Church edifice on that half of said lot deeded by said Hackney as aforesaid for the exclusive use of public worship of Almighty God, according to the discipline, rules and customs of the Church aforesaid; and the Church edifice was so built about the year A. D. 1855 by the members of said Church and the community in general, by way of gift and other donations, to and for the exclusive use and benefit of said Church; and that the said complainants were, on the first day of January, A. D. 1861, and for a long time before, and ever since, and still are members of said Church, so organized as aforesaid, had, since the said organization, and did, at the filing of the said bill, worship in said Church edifice, according to the discipline and customs of said Lutheran Church. And it also appearing to the Court that the said John A. Brunnenmeyer and Frederick Fickensher combined and confederated with William Fickensher and Christian Bauman, [also members of said Church] to wrong and injure said complainants and other members of said Church; and the said two defendants, John A. Brunnenmeyer and Frederick Fickensher, trustees as aforesaid, refused to perform and discharge the duties and trusts of their appointment as such trustees, as the laws of the land and the rules and customs of said Church required, and did, with the other defendants, on the 9th day of February, A. D. 1861, with force and against the will and consent of said Church, and in direct violation of their trust and duty, and against the rights of said complainants, and others of the said Church, fastened up the said Church edifice, with and for the avowed purpose and intent of preventing the complainants and other members of said Church from entering into the same on the then following day, being the Sabbath day, or at any other time for the purpose of worshipping therein as aforesaid, according to the rights and privileges of the complainants and other members, as aforesaid, as they heretofore had done and still had the right to do.

And it appearing also to the Court that the injunctions issued

in this cause have been duly served upon the said defendants, it is therefore ordered, adjudged and decreed by the Court that the said John A. Brunnenmeyer, Frederick Fickensher, William Fickensher, Christian Bauman and Henry Brunnenmeyer, and their confederates, their agents, attorneys, solicitors and servants respectively, be and are hereby perpetually restrained and enjoined from interfering or in anywise intermeddling with the complainants and other members of said German Evangelical Lutheran St. Paul's Church, of Aurora, Illinois, in convening and worshipping in said Church edifice, according to the usages, discipline and customs of the said Church, as they had heretofore done and still have the right to do.

And it is further ordered, adjudged and decreed, that said complainants have and recover of said defendants, their costs and charges by them in this suit expended, and have execution therefor.

B. F. PARKS, Judge, &c.

35 To which decisions of the court, the defendants at the time excepted and made an appeal in this case to the Supreme Court of the State of Illinois.

Which said appeal was granted by the Court.

35 Bill of exceptions filed July 12th, 1861, as follows: Be it remembered that on the 19th day of March, A. D. 1861, defendants moved to dissolve injunction for want of equity on the face of the bill; motion overruled, defendants except.

37 April 12th, 1861, case called for trial. Complainants introduce John Scharschug as a witness, who being duly sworn, says: Know complainants; know defendants; know the Church; was trustee with John A. Brunnenmeyer and Frederick Fickensher five years ago, for three years; Church was erected five or six years ago; have been a member since its organization.

Defendants objected to his testifying, for the reason he was one of the trustees of said Church. Objection overruled, and defendants except.

The complainants were, on the first day of January, members of said Church; know the record of the Church; this book is the record; Buhre kept it; it contains a list of the members of the Church; this book is the record of the Church, kept by the Secretary; I am Secretary of the Church.

38 Complainants introduced both in evidence, which is as follows:

43

Ernest H. Buhre, Minister of the Lutheran Saint Paul's Church, Aurora, Illinois.	John Stinchizer,
John Adam Brunnenmeyer,	+ Francis <del>Lea</del>
John Schatschug,	George Mushler,
Frederick Fickensher,	Frederick Strouern,
Casher Ring,	Henry Brunnenmeyer,
John Bruegge,	Detrich Kolze,
Henry Fickensher,	Ernst Schrader,
Leonard Waldo,	Henry Rang,
Michael Harbermeyer,	+ Francis Joseph Rang
Leonard Shoberlein,	Carl Hubner'
Michael Shoberlein,	Leonard Gruber,
+ George F. Smith,	+ August Hopper,
+ John Reuhl,	John L. Rang,
+ George Bauman,	Ernst Broking,
+ Christian Sorg,	John A. Smith,
+ John Frederick Lehn,	Wm. Rang,
+ Michael Zeigler,	Conrad Hartung,
+ William Sayles,	+ Wm. Miller,
+ Frederick Dutchman,	Frederick Hiance,
+ George Krauter,	Wm. Fickensher,
John Adam Shoberlein,	+ Peter Messerer,
Geo. Brunnenmeyer,	Christoper Rink,
+ Henry Swartshonce,	+ George Hausterter, (dead)
John Zeigler,	+ Michael Sorgee, (removed)
Peter Lehn,	John H. Hahn,
George Mushler,	John Frederick Mushler,
John Bauman,	+ George Grometer,
Christian Bauman,	John Biller,
Geo. Trash,	Stephen Funk,
+ Thomas States, (removed)	Louis Garmes,
John Burger,	Louis Hannibal,
+ Mathew Sauter,	Frederick Nichols,
+ George Gableman, (dead)	Joseph Telameyer,
John Ernst,	C. Ohlmaker,
+ Leonard Reesleer,	Fred Bolig,
+ Frederick Heun,	Robert Groch,
John Giser,	John Ring,
John M. Bowriser,	George Troch,
Frederick Ring,	John Wendler,
	Christian Uhlig,
	Frederick Thaub.

*admitted 1861  
Jan. 14th 1861*

45

It was agreed by the parties, that all those names on the book as members marked (X) in pencil, were not members on the 14th of January, 1861.

Witness further testified : Saw Frederick Fickensher and William Fickensher by the door of the church ; one held the door and the other took the lock off. John A. Brunnenmeyer was in Church, Henry Brunnenmeyer was keeping watch up street, Christ Bauman was watching outside the Church ; this was Saturday, the same day the injunction issued. Saw William Fickensher fix the lock, and Frederick Fickensher hold the door.— Asked Frederick Fickensher what they were going to do ; he said none of my business. I told him he had ought to be ashamed to break up our Church ; he jumped over the fence after me, and I drove on ; he wanted to get hold of me, and I run off as fast as I could. I was there the same evening ; they had nailed a piece of wood across the key-hole ; there was preaching there next day ; Buhre preached. I opened one of the window-shutters, went in, and screwed the lock off to let the people in. Schrader is sexton of the Church ; he had the key ; they took the old lock off and put on a new one ; none who were there Saturday were there on Sunday. Saw Frederick Fickensher go by Church on Saturday when I was there first, about, or little after noon. Buhre has  
47 been our minister since its organization ; it is the German Evangelical Lutheran St. Paul's Church. Henry Brunnenmeyer was going up and down street ; I expect he was watching ; don't know ; think he was.

CROSS-EXAMINED.

See them take lock off about noon ; was there again about 3 or 4 o'clock ; then I was on the west side of Church ; Fickensher went around the south-east corner of the Church to get at me ; I was there the next morning ; the door was fastened with an eighteen inch bolt.

DIRECT RESUMED.

There was no Church meeting to authorize them to shut up the Church ; if there had been I should have known it

CROSS-EXAMINATION RESUMED.

I did not know of any meeting being called to authorize Trustees to shut up the Church ; don't know of Fickensher and Brunnenmeyer calling a meeting ; never talked with Hackney about the Church lot for the last two years.

48 Ernst Schrader called and sworn by complainant: I am member of the Lutheran Church, and have been for two years ; I have been sexton one year ; I was at the Church on the 8th of February ; it was on Saturday when they shut up the Church ; was there on Sunday ; Church was closed ; a new lock was on

the door ; I had the key, but could not get the key in the key-hole ; a small piece of wood was over the key-hole, so that the key would not go in ; Scharschug opened the window and went in and opened the Church ; there was a back door to the Church ; it was fastened on the inside ; my duty was to make fire, ring the bell and show strangers to seats ; Buhre preached that day in the Church.

CROSS EXAMINED.

Friday before Sunday Fickensher and Schoberlein, Frock and Christ Bauman were at my house after the key to the Church ; Fickensher said they wanted the key ; I did not give them the key, because I considered it my duty to keep the key ; I was not there when the new lock was put on the door ; the bolt to the back door was from 6 to 9 inches long.

49 On direct examination, witness said : I did not give them the key, because my time was not out.

John Baureisen called and sworn : I am a member of the Church ; have been for two years ; saw from my house the two Fickenshers, John Brunnenmeyer and Christ Bauman at the Church on Saturday, Feb. 9th, 1861 ; I thought they were nailing up the Church ; they were hammering about the Church ; I was there on Sunday morning to attend service ; saw Fickensher go by Church while I was there ; we went to Church at the usual hour for service ; Church was fastened up ; there was a large meeting ; saw none there who fastened up the Church the day before ; I saw, Saturday, two men walking back and forth, who appeared to be watching.

CROSS-EXAMINATION.

50 Did not see Bauman or Brunnenmeyer do anything to the Church ; heard hammering, but did not know what they were doing ; I asked Fickensher next morning what they were doing to the Church ; he gave me a cross answer ; I have not paid anything for the Church.

Asa A. Dexter sworn as a witness :

I served the injunction writ on defendants ; this Church is in the city of Aurora, county of Kane and State of Illinois ; I was at the Church on Sunday when there was a fuss ; I went there at the request of Buhre to keep order ; I am a Constable ; there was one Sunday when Church was fastened up ; I did not see Fickensher or Brunnenmeyer that day ; I was there when they were opening the Church on Sunday.

Frank Henn sworn :

51 I never was a member of this Church ; if I signed the constitution it was merely to pay money to support the Church ; my wife is a member ; I never considered myself such ; heard John A. Brunnenmeyer say about getting deed for Church lot ; he told me he could buy Hackney's interest in the lot for \$50, and if he did not like it in a year he could give it back to Hackney, and get his money back ; he said he would not take a thousand dollars for it ; there was a good building on it ; he said this about two months ago at McFarland's store.

CROSS EXAMINED.

Brunnenmeyer said Scharschug was trying to get the property of Hackney.

John Scharschug recalled :

New Year's, Brunnenmeyer charged me with trying to get the lot of Hackney ; I never did ; Brunnenmeyer got the deed of Hackney the November before.

Complainants rest.

Benjamin Hackney, called by defendants :

52 I know John Scharschug and John A. Brunnenmeyer ; I donated one-half acre of land to the Lutheran Church ; I sold my reversionary right to John A. Brunnenmeyer ; I think Scharschug asked me what I would take for my right in the property ; I said I would see Metzner and see if it was all right ; this was in the spring before I sold it to Brunnenmeyer ; there was no talk between Brunnenmeyer and me about my taking it back.

CROSS EXAMINED.

I cannot say as Scharschug said he wanted to buy it ; Brunnenmeyer was to pay me \$50 for my interest in the lot ; soon after Whit-Sunday last year Scharschug asked me what I would take for my interest in the Church property ; I told Brunnenmeyer that Scharschug had inquired of me what I would take for my interest in it ; he said you must not sell it to him ; I quit-claimed my reversionary interest to Brunnenmeyer ; Scharschug came to me twice ; I cannot be mistaken.

A. Mushler, on behalf of defendants, was sworn, and testified as follows :

I am a member of the Lutheran Church, have been for six years and since it was built ; so has John A. Brunnenmeyer and Frederick Fickensher ; the first Sunday in January last I was at a meeting of the Church ; this was the sixth of January ; Buhre said, one month after to-day I will leave you, and will

preach no more for you; this was in a meeting at the Church; I was at a meeting at Frederick Fickensher's house, where 15 or 18 were present; Christ Bauman gave me notice of this meeting; this meeting was three weeks after the 6th of January last; at this meeting Fickensher asked us what we had better do; we made up our minds that we would tell Buhre that we would accept his resignation; we had another meeting; this meeting was the Friday before the Church was shut up; at that meeting we directed Fickensher and Brunnenmeyer to shut up the Church; the meeting was called by Fickensher and Brunnenmeyer as trustees of the Church.

On cross-examination this witness testified as follows:

On the 6th of January Dexter was at the Church; there was not much fuss; we met to have a yearly accounting, and to do the yearly business; we figured up accounts; there was a little noise and some quarrelling, which broke up the meeting; Brunnenmeyer was not much noisy; Buhre said he would preach last time 4 weeks from that day; no vote was taken on the acceptance of this proposed resignation of Buhre; on that day Brunnenmeyer and Fickensher wanted to settle up the old business, but Buhre wanted to put new members first; we then had a meeting at Fickensher's; Christ Bauman told me of this meeting the same day of the meeting; can't tell the day of the month, think Friday, pretty near 4 weeks from time Buhre said he would resign.

Fred Ring, on part of defendants, testifies as follows:

I am a member of this Church, and also one of the elders of the Church; we had a fuss in July last about a school house; the trouble was about building a new school house; Buhre said the members of the Church should vote whether they wanted a new school house or not; Buhre met me one day and asked me what I thought about the trouble; I said we had better put in some new trustees; Buhre said, if you want new trustees you must not vote for the old ones; Buhre said election day at my house, we are going to have new trustees; Buhre told me not to go to the meeting of the Church affairs, January 6th, Brunnenmeyer wanted Buhre to give a receipt in full for his salary; Buhre was willing, but Scharschug told him not to give one, and he then refused; Buhre said he must have his pay if he had to sell the church; saw Buhre take Brunnenmeyer's books.

On cross examination witness testifies as follows:

On the 6th of January, 1861, I was at the meeting; the fuss began about new members; Brunnenmeyer wanted to fix up the

old accounts first ; Buhre said in four weeks from date I will preach my farewell sermon ; saw Buhre take books ; the meeting which Buhre told me not to go to was to be a meeting about a school-house fuss ; this talk was in the summer or fall of 1860 ; at the 6th of January meeting, Scharschug said when Brunnenmeyer wanted Buhre to give his receipt in full that Buhre should not give his receipt in full when he had not received his full pay.

On Direct resumed :

I was at a meeting at Fickensher's house, 30th of January ; it was called by Fickensher and Brunnenmeyer as trustees of said Church.

On re-examination of witness by defendants, he testified as follows:

I was at two meetings at Fickensher's after Buhre said he would resign ; at the last of these meetings the four weeks had expired ; they appointed a committee at the last meeting to get the key and shut up the Church till they could get a minister.

On further cross examination witness said :

I don't know who notified the members at Fickensher's, or whether they were notified.

On re-examination of witness by defendants' counsel, defendants' counsel asked witness to state if you ever heard Ernst II. Buhre, from the pulpit of said Church, denounce the said Brunnenmeyer and Fickensher or apply any kind of epithets to them; if so, when, and what did they say. Objected to by counsel for the complainants and objection sustained by the Court, to which said ruling of the Court the defendants then and there excepted.

John Grometer, being called by the defendants and sworn, testified as follows :

I was at the meeting at Fickensher's house ; there were two meetings at Fickensher's ; at the first meeting we did not decide anything ; the second meeting was the first Friday after the four weeks from the meeting in which Buhre said he would resign ; we voted by yes and no, and we all voted yes and were unanimous to accept Buhre's resignation ; agreed to ask Schrader for the key of the Church ; he refused, and we concluded to lock up the Church ; we informed Buhre of acceptance of resignation by letter.

Cross examination by complainants' counsel :

I am not a member of the Church ; I never resigned the constitution, but I voted at Fickensher's ; there were fifteen of us at Fickensher's at the last meeting.

Fred. Mushler, called and sworn by defendants, testified as follows :

I am a member of the Church ; I was at the meeting on the 6th of January last ; my brother said settle up with old members and then take in new members ; Buhre would not give a receipt ; Scharschug said Buhre did not mean so if he said he was satisfied, and he should not give a receipt ; I was present at the last meeting at Fickensher's ; we made up our minds to accept the resignation of Buhre ; we concluded to shut up the Church until we got another preacher.

CROSS-EXAMINATION.

I have been a member for about 4 years ; I was at the last but not at the first meeting at Fickensher's ; Brunnenmeyer, at the meeting of the 6th of January, wanted Buhre to give a receipt in full of all demands ; he would not, because he claims more.

58 Michael Schoberlin, called and sworn by defendants, testified as follows :

I am an elder in this Church ; Brunnenmeyer was treasurer ; I was at the meeting on the 6th of January ; Brunnenmeyer wanted to settle up his accounts ; I was at the last meeting at Fickensher's ; we made up our minds then to accept the resignation of Buhre, and sent him a letter ; the meeting directed Brunnenmeyer and Fickensher to shut up the Church.

Cross examination by complainants' counsel :

Buhre said at the meeting the 6th of January that he could get \$400 a year in several other places.

John Bauman, called and sworn by defendants, testifies as follows :

About 40 of the members have left and formed the German Methodist Church.

On cross-examination, testifies as follows :

I am one of those who left and formed the Methodist Church.

Witness was asked why he left the Lutheran Church and joined the Methodist Church, and he answered by saying that he could not find the medicine for his poor, sick soul that he could find in the Methodist Church ; said he had no trouble with the Lutheran Church.

Here the defendants rested their case.

59 Asa A. Dexter, recalled as a witness for the complainants, testified as follows :

Buhre employed me to go to the Church the 6th day of January last.

John Bowrising, recalled by the complainants, testified as follows :

I was present at the meeting of the 6th of January, 1861 ; meeting was called to order ; Brunnenmeyer then got up and insulted me about collecting from outsiders for church purposes ; Buhre then said to the congregation that those who wished to sign the constitution and to become members of this Church then to come forward and do so ; Brunnenmeyer, " No, not till after we elect our Church officers and do our yearly business ; " Brunnenmeyer wanted Buhre to give a receipt in full for his salary at the rate of \$250, which amount Buhre had not then received ; Buhre was at first inclined to give the receipt in full, but Scharschug then interfered by saying it was not right that Buhre should give a receipt in full for his salary when he had not received it, and then Brunnenmeyer said that he, Buhre, said he would do it ; Scharschug then said if Buhre had said so he did not mean it, for  
60 he had not got his pay and it would not be right that he should sign such a receipt as this ; Brunnenmeyer and his party made so much noise and disturbance that no business could be done then ; Mr. Buhre said to the meeting that four weeks from this day I will preach my last sermon to you, and dismissed the meeting, and taking up two books from the desk started to leave the Church, and he was met at the door by some of Brunnenmeyer's party, who attempted to take from him the books by force, when he, Buhre, handed them to Dexter, the constable, who was present, for safe keeping, and then passed out and went away. On Sunday, January 13th, 1861, at the usual hour, there was church service, and a large attendance at the meeting ; Buhre notified the congregation that on the next day, at 2 o'clock P. M., at the Church, there would be an election held for trustees, and do such other business as might properly come before the Church ; and on the next day, being Sunday, Jan. 14th, 1861, at the hour 14th of January, 1861, but those that were members ; I was christened and confirmed ; the members voted at the meeting of the 14th as Buhre called their names ; I keep a beer saloon and I signed the constitution at my saloon ; Buhre brought the book to me to sign at my saloon.

Ernst Shrader, recalled by complainants, testifies as follows :

I was there at the election on the 14th of January, 1861, and took part in the election and business of the meeting ; there were from 30 to 31 members there present that voted ; Brugge passed the hat ; none but members voted at the meeting on the

14th January, 1861 ; I made a motion that Buhre be requested to withdraw his resignation and continue to be the pastor of the Church, which motion was seconded and carried ; Buhre arose and said to the meeting that he withdrew his resignation and would continue to be the pastor of this Church as before.

64

Complainants here rested their case.

Defendants then, as rebutting evidence, called John Ernst, who testified as follows :

I am a member of this Church for two years ; heard Buhre say if the congregation wanted new trustees they must not vote for the old ones.

Cross examination by complainants :

I received no notice in writing to attend on the 14th of January, 1861 ; no one came to my house that I know with a notice for me.

————— being sworn, testified as follows : I am a member three years and two weeks before New Years ; I heard Buhre say that they were to vote for trustees.

CROSS-EXAMINATION,

65

By complainants : Don't know whether old trustees' time was out or not.

John Grometer called by defendants, testified : On third day of January, Buhre said to the whole congregation that to-morrow they would elect new trustees ; not the old ones.

Michael Schoberlin called by defendants testified : I heard Buhre, January 13th, say they were going to elect three new trustees.

The above and foregoing is all the evidence introduced either on the part of the complainants, or on the part of the defendants, on the hearing of this cause ; and insomuch as this evidence does not otherwise appear of record, it is ordered by the Court that the Judge thereof sign and seal this the complainants' bill of exceptions, which is done.

B. F. PARKS,

Judge of the Court of Common Pleas of the City of Aurora.

The errors assigned are :—

1st, The Court erred in not allowing plaintiffs in error's motion to dissolve injunction.

2d, The Court erred in not sustaining plaintiffs' in error's objection to allowing John Scharschug to testify.

Page of  
Record.

3d, The Court erred in excluding proper evidence.

4th, The Court erred in allowing improper evidence.

5th, The Court erred in rendering judgment for defendants in error.

6th, The Court erred in rendering judgment against plaintiffs in error, and each of them.

C. J. METZNER,  
Attorney for Plaintiffs in Error.

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