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FRIDAY EVENING, JULY 22, 1881.

EPHRATA.

THE SEVEN DAY BAPTISTS.

A NARRATIVE OF THEIR TROUBLES.

A Community of Thirty-three Members Divided into Two Warring Parties.

Our readers have been informed from time to time of the difficulties in the Ephrata association of Seven Day Baptists; how as the society became reduced in its membership and the division of its property became imminent, or its profits were to be divided among comparatively few, dissensions arose in the membership and a disputed election for trustees resulted in two boards being chosen, each claiming to be the lawfully elected one, each attempting to exercise the duties and assume the privileges of the office, each presenting to the orphans' court of this county a bond for confirmation and asking its approval, in accordance with the act of Feb. 10, 1865, which among its provisions reduced the number of trustees from seven to three, their term of office being four years. The two boards resulting from the disputed election, consisted of Lorenz Nolde, Wm. Madlem, Jacob Spangler, on one side, A. F. Madlem, J. J. R. Zerfuss, Timothy Konigmacher on the other. Their contest has been before the local court now for well nigh two years and is as yet far from settled. The legal aspects of the case and the facts of it are clearly set forth in a master's report lately filed by A. Slaymaker, esq., appointed in equity proceedings, in which the Nolde trustees were plaintiffs and the Zerfass party defendants, brought to restrain the latter from exercising the office of trustee. Major Slaymaker says:

At the time of the commencement of the differences from which has sprung the present controversy, and for some years previously, the members of the society in regular attendance at its meetings and habitually observant of its religious ordinances, were in number about thirty, of whom not less than three-fourths appear to have been women. They seem to be an uneducated, or but slightly educated, people, in narrow circumstances as to property—the male members being, in general, mechanics and laboring men, resident in and about the village of Ephrata, in this county—and a considerable proportion of all the members, male as well as female, being dependent for subsistence, either wholly or partially, upon the funds of the society. They do not appear to have formulated specifically articles of faith or rules of discipline, but profess to take for their guidance, simply, the Bible and New Testament, and the distinctive features of their practice are: Their observance of the seventh day of the week instead of the first as the Sabbath; the administration of the right of baptism "by trine immersion, with forward action, in a stream of flowing water;" and by the love feasts held annually at their communion and lasting from Friday evening until Sunday morning, at which food is provided for all members, as well as all strangers who may choose to attend the meeting; and by the washing of each others' feet by the members previously to the breaking of bread at the communion. The right of baptism is performed by the elder or minister (the terms being used interchangeably) in charge of the congregation, in the presence of the members of the society, and is the initiatory step in the admission to membership, which being followed by regular attendance at its meetings and participation in its love feasts and communion, the recipient becomes a member of and is regarded as in full communion and unity with the society. The church at Ephrata, it should be mentioned, is one of four branches (as they are called) of the society of Seventh-Day Baptists, the other three being established, respectively, at Snow Hill, Bedford and Allegheny, in this state, in all of which the same usages and faith prevail, and in each of which the ministers in charge of the other branches *may* administer the rites of the church. For several years past there has been among the members of the society at Ephrata some dissension, caused partly, it would seem, by dissatisfaction with the management of the property of the society, but chiefly, perhaps, by a disposition on the part of some among them to listen to, if not actually to accept, the teachings of David C. Long, formerly a minister of the society in one of its other branches, but now, and for about seven years past, (as the testimony taken before the Master seems conclusively to show) a separatist from it, who has organized a church upon a model in some respects different from that of the four Pennsylvania branches, and not recognized by them as in conformity with their model. Mr. Long has occassionally, since his separation from the society, preached in Ephrata, but not in the "Saal," which has been closed against him by the trustees, and has professed, by the administration of the rite of baptism, to admit into the society new members. Such being the condition of things in this branch of the society, it became necessary to have the quadrennial election for trustees, as provided by the act of incorporation, the day so appointed for that purpose having been on that occasion January 6, 1879. In accordance with established usage, notice of the election was given by writing, signed by the president of the then board of trustees, and affixed to the door of the "Saal" during three successive Sabbaths previously, in which the time specified for holding the election was between the hours of 12 m. and 4 o'clock p. m. on the 6th of January, A. D. 1879. On the day thus specified, at 12 o'clock, m., according to the clock in the "Saal," and the watch of one of those who were present, and the clock of Mrs. Binkley, a neighbor—but it would seem, according to railroad time, about five minutes before 12 o'clock—a number of the members of the society being in attendance, the meeting was organized by the election of one person to be judge, two other persons to be inspectors and one other person to be clerk of the election. To this organization exception was taken by Lorenz Nolde (one of the plaintiffs in this case), partly on grounds personal as to two of the persons so elected and partly because, as he alleged, the time for the commencement of the election had not yet arrived; but the exception seems not to have been regarded, and the business of the meeting proceeded. In the meantime, however, a number of other persons having appeared at it, after several votes had been taken, Jacob S. Spangler, one of the plaintiffs—and, it may be added, who had been but a short time previously baptized by David C. Long—offered a vote, which, having been objected to, was rejected. Immediately upon the rejection of this vote a number of those present moved over to the other side of the same room, and, having elected a judge, an inspector and a clerk, proceeded to hold another election. The board of election officers first organized returned sixteen votes as cast for A. F. Madlem, J. J. R. Zerfass and T. Konigmacher respectively, who, those being all the votes cast, were declared duly elected trustees of the society for the term of four years from date, and the return of the other board shows that all the votes received by them, seventeen in number, were cast for William Madlem, Lorenz Nolde and Jacob S. Spangler, who, therefore were also declared to be elected trustees of the society for the four years then next ensuing. By each of the sets of persons thus returned as elected trustees of the society, bonds were prepared and filed as required by the act of incorporation, and, by or on behalf of each, rules were obtained in the orphans' court of Lancaster county to show cause why the bonds so filed by them respectively should not be approved. These rules were argued together, and the court being of the opinion that they were not authorized to decide which of the persons claiming to be trustees had been properly elected to that office, declined to approve the bonds of either party, and discharged both of the rules, suggesting, however, that, as the second section of the act of incorporation empowers the society to hold an election at any time to fill the vacancy in the office which has occurred through *inability to serve*, they should, after due notice to all the members of the time and place appointed for the purpose, hold another election of persons to serve as trustees for the four years commencing January 6, 1879. Acting apparently upon this suggestion, Lorenz Nolde and William Madlem, two of the persons voted for as trustees at the election of January 6, 1879, procured to be posted on the door of the "Saal" the following notice:

ELECTION NOTICE.

"Notice is hereby given, that an election for three trustees of the Seventh Day Baptists' society of Ephrata will be held on Monday, the 7th day of July, A. D. 1879, in the 'Saal,' between the hours of 12 m. and 2 p. m. of said day. All interested are invited to attend."

[Signed] WM. MADLEM,
LORENZ NOLDE,
Trustees.

June 28, 1879.

At the time mentioned in this notice, a number of persons assembled—not at the "Saal," admission to which they were unable to obtain, but at another convenient building—and having elected a judge, an inspector and a clerk, proceeded to carry out their purpose of electing trustees of the society. The votes of all present—sixteen in number—having been cast in favor of Lorenz Nolde, William Madlem and Jacob S. Spangler, those three persons were declared to be elected trustees of the society of "Seventh Day Baptists of Ephrata," to serve for the period of four years from the 16th of January, 1879.

A certified copy of the proceedings at this election, and also the bonds of the persons then declared to be elected, as required by the act of incorporation, having been filed in the orphans' court for this county, at the instance of those persons a rule was granted in that court on the 16th day of August, 1879, "to show cause why the bond of William Madlem, Lorenz Nolde and Jacob S. Spangler, trustees of the 'Seventh Day Baptists' society of Ephrata,' should not be approved."

This rule was argued at the December argument court for 1879, both of the judges composing the orphans' court being present, and both parties being represented by counsel.

On the 21st of February, 1880, an opinion was delivered by one of the judges, of the orphans' court, in which it being assumed that there was a vacancy in the office of trustee of the society by reason of *inability* on the part of those elected at the election held on the 6th of January, 1879, *to serve*, and the election of July 7th, 1879, having been conducted according to the usage of the society, so far as was practicable under the circumstances, the conclusion was reached, that the bond filed by William Madlem, Lorenz Nolde and Jacob S. Spangler (the persons appearing by the return of the officers of that election to have been elected to serve as trustees of the society) should be approved and the rule made absolute.

From this conclusion, however, the president judge of the court dissented and objected to the approval of the bond.

In the meantime there was, and still continues to be, in consequence of the struggles of the two sets of persons claiming to be, respectively, trustees of the society, to obtain control of its funds and property, no little confusion and disturbance—in one instance, at least, reaching the point of personal collision—and each having notified those indebted to the society, that the other was not entitled to receive its dues, there has been difficulty, and in some instances, up the present time, a failure to obtain those dues.

Such being the situation of affairs on the 31st of May, 1880, Lorenz Nolde, William Madlem and Jacob S. Spangler, the persons claiming to have been elected trustees of the society on the 7th of July, 1879, have filed this, their bill in equity, praying, that the defendants, who claim that they are the lawful trustees of the same society, by virtue of the election of January 7th, 1879, be enjoined and restrained from collecting the debts due to the society, or attempting, as trustees, to exercise any control over its property.

On the day of the filing of the bill in the case, an affidavit was also filed, setting forth that the conduct of the defendants as stated in the bill, would, if persisted in, cause irreparable injury to the society; and upon this affidavit the plaintiffs asked and obtained from the assistant law judge, at chambers, without the assent or concurrence of the president judge, an order or decree granting a "*preliminary injunction*, as prayed for by the complainants to restrain and enjoin A. F. Madlem, J. J. R. Zerfass and Timothy Konigmacher from further interference in the affairs of the 'Seventh Day Baptists of Ephrata.'"

This decree was entered and filed June 2, 1880.

The answer of the defendants filed June 30, 1880, denies the right of plaintiffs to the relief prayed for in their bill, or to any relief in a court of equity, as well as all the material allegations of the bill as will, on reference to the transcript of that answer, hereinbefore contained, more fully appear.

In the foregoing narrative are included all the facts in regard to this controversy, a knowledge of which seemed to be necessary for its proper consideration, and as there stated those facts are to be understood *as found by the Master.*

In the case as presented by the pleadings, and the testimony taken before the Master, the questions to be determined are as follows, viz:

1. Is the controversy between the parties in this suit one that can be decided properly upon a bill for an injunction? And 2. Supposing that it is capable of being so decided, have the plaintiffs established such a case as entitles them to have their prayer for an injunction granted?

To both of these questions, in a learned and lucid legal opinion, fortified with the citation of authorities, the master gives an emphatic negative, on the grounds that in accordance with a long line of precedents, established by judicial decisions, the courts of equity will not decide disputed election cases in derogation of the common law processes.

In High on Injunctions, sec. 781 it is said that "courts of equity will neither entertain jurisdiction of corporate elections, nor will they petermine the right to a corporate office, since such questions are properly cognizable only in courts of law, the true remedy being by an action at law in the nature of a quo warranto;" and in entire accord with this statement of the law on the point in question is "Abbot's Digest of the law of corporations," Title Officers, placita 21, 22 and 23, in placitum 22, of which it is stated "that an injunction cannot be granted in an action between individuals to try the right to an office in a religious corporation. The remedy is by action in the nature of quo warranto." And to same effect are Hagner vs. Heyberger, 7 W. & S., 104, (which on this point has not been questioned,) and Updegraff vs. Crans, 11th Wright, 103. And in Meekles vs. The Rochester City Bank, 11 Paige, (N. Y. Chancery Rep.) 118, it was held that a "court of chancery will not interfere to restrain persons claiming to be the rightful trustees from acting as such, on the ground that they had been duly elected, and that the remedy of the corporators to contest the validity of their election is by an application to the supreme court, the Legislature having provided such a remedy by application to that court."

But on behalf of the plaintiffs it is said that, conceding quo warranto to be the proper remedy where there is a question as to the persons elected to office in a private corporation, in this case that question has already been the subject of adjudication, and the orphans' court having approved the bond presented by the plaintiffs subsequently to their election on the 7th day of July, 1876, they are *prima facie* to be regarded as the trustees of the society, and as such entitled to be protected against any interference with their performance of the duties of that office until they shall have been ousted therefrom by a quo warranto, which it rests upon the defendants to institute, if they desire to contest the claim of the plaintiffs to the right to perform these duties.

To this argument the answer of the defendants is, that the rule to show cause why the bond of the plaintiffs should not be approved, having been argued before both of the judges constituting the orphans' court for this county, and the president judge having expressly dissented from the conclusion of the assistant law judge in favor of the rule, there was in fact, no approval of the bond by the orphans' court, such as is required by the act of incorporation, to warrant persons elected to the office of trustee in proceeding to act as such; and that further, if the bond of the plaintiffs had been approved by the orphans' court, as required by the act of incorporation, that court being wholly without jurisdiction in regard to the election, their approval could have no effect beyond the ascertainment of the sufficiency of the bond for the purpose for which it was offered, and any question as to the validity of their title to the office could be determined only by the court of common law, which is the proper tribunal for the determination of such questions.

To the Master this evidence seems to be conclusive against the *prima facie* title, on the part of the plaintiffs, to the office of trustee of this society: and their position, therefore, in his view is simply that of claimants of a purely *legal right*, whose claim being disputed and as yet undetermined by the appropriate common law method, is not cognizable in equity, which in regard to such rights can intervene for their protection only after they have been definitely ascertained.

With reference to the return of the election of July 6, 1879, and the approval of the bond of the trustees then chosen, by one of the judges [Patterson] of the orphans' court, the master points out that the charter authorizes no election for trustees other than on the first Monday of January in every fourth year, except to fill vacancies caused by absence from the state, resignation, inability, or refusal to serve." The cause of "inability to serve" is the only one claimed in this case and is declared to be "entirely inapplicable in an instance such as this in which there are persons claiming the office of trustee who are unquestionably able to perform its duties and are prevented from doing so only by the supposed invalidity of the election on which their claim is founded."

In the opinion of the Master, therefore, there was no vacancy in the office of trustee of this society *which was capable of being supplied by the election of July 7*, 1879, and the title of the plaintiffs to that office, in so far as it is rested upon that election, is incapable of being sustained. But, supposing this conclusion to be erroneous and that a vacancy in the office of trustee occurring *otherwise* than in one of the modes specified in the 11th section of the charter could have been supplied by this election of July 7, 1879, was there in fact at that time any *such vacancy?* Certainly not, if at the time of the regular charter election on the 6th of January, 1879, there were duly elected three trustees to serve for four years from that date.

Upon this latter question the master, after citing the authorities to show that they are the proper authorities who are elected in accordance with the society's charter and usage of similar bodies says, if the first board organized, which elected the Zerfass trustees, was duly constituted, the second board and its election were irregular and futile. The master then considers the specific and only objection made to the first board that it organized four or five minutes before the proper time (12 o'clock, noon), by railroad time, and on this point he says:

"Conformity to railroad time is, of course, a matter of necessity for those having occasion to use railroads, but, in so far as the Master is informed, there is *neither law nor usage* that requires such conformity in regard to transactions unconnected with railway traffic. In fact, the general business of the community, whether public or private, in town or country, in municipalities, private corporations, with regard to political elections, and in courts of justice, is conducted with reference to no railroad time, but to time as indicated by clocks or watches at hand and used in the current transactions of the community in which it occurs. Thus, for instance, the sessions of court are regulated, as to time by the clock in the court house, and those having busines at such sessions would scarcely be held absolved from the imputation of negligence in appearing ten or fifteen minutes after court had opened, upon their showing that, according to railroad time, their appearance was strictly punctual.

"So, again, in regard to meetings of road viewers, the taking of depositions before country magistrates, the hearings before such magistrates, the township elections and all the multifarious business transacted in the country, the proceedings are commenced at the hour appointed, not according to the railroad time, but as ascertained by clocks or watches at the place where the proceedings are had or in its immediate neighborhood.

"There is, indeed, no reason why railroad time—fixed as it is by a private corporation, with reference solely to its own convenience, never strictly accurate except, perhaps, at a single point on the route to which it is applied, and readily ascertained only by those living in the immediate neighborhood of a railroad depot—should be adopted in regard to transactions in the community at large: and scientific accuracy being in general out of the question, there seems to be on the subject no other rule so reasonable, just and capable of practicable application as that which has, as would seem from the instances given above, hitherto generally prevailed in practice, which may be briefly stated thus, viz: that the time of a transaction is to be determined by the timepieces in use at or about the place in which it occurs, and any slight divergency from true time thus caused must, unless fraudulently so called fall within the principle, "*de minimis lex non curat*"

The conclusion of the master, therefore is that the preliminary injunction granted by Judge Patterson June 2, 1880, should be dissolved, the plaintiffs' bill be dismissed and the costs paid by them To this report the plaintiffs file objections.