LETTER TO THE HON. LEWIS H. SANDFORD, ASSISTANT VICE CHANCELOR. REVIEW OF THE OPINION OF THE ASSISTANT VICE CHANCELLOR IN THE CASE OF PHILIP KNISKERN AND OTHERS

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JOHN D. LAWYER

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Trieste

LETTER

TO THE

HON. LEWIS H. SANDFORD,

ASSISTANT VICE CHANCELLOR.

REVIEW

OF THE

OPINION OF THE ASSISTANT VICE CHANCELLOR

IN THE CASE OF

PHILIP KNISKERN AND OTHERS
vs.
PHILIP WIETING, THE EVANGELICAL LUTHERAN CHURCHES OF ST. JOHN'S AT DURLACH, AND ST. PETER'S AT NEW RHINEBECK IN SHARON; AND OTHERS.

BY JOHN D. LAWYER,
Pastor of the Evangelic Lutheran Churches of Sharon Springs District, N. Y.

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TO THE

HON. LEWIS H. SANDFORD,

ASSISTANT VICE CHANCELLOR.

SIR—In addressing to you personally the following letter, I presume, I shall not transgress against any rule of propriety. As an eminent jurist, you command my esteem and respect. You occupy a high and responsible station in the judiciary of our State; and you have already distinguished yourself for your legal attainments and knowledge of jurisprudence. May you long enjoy the satisfaction of being instrumental in dispensing justice and exerting a salutary influence to disenthrall our judicial proceedings from the confused errors of ancient precedents and venerated decisions of the dark ages.

I thank you for the pamphlet, you did me the honor to send me; containing the "Opinion" delivered by you, in the Chancery case of *Philip Kniskern and others*, vs. *Philip Wieting, the Evangelical Lutheran Church of St. John's at Durlach and St. Peter's at New Rhinebeck in Sharon; and others.* Although it is a long and very elaborate opinion, I have perused it with great care and much attention. I am induced to examine your arguments and positions, by way of review. Refutation is not so much my object, as the pursuit of truth and justice. Truth and justice must always harmonize and can never be at variance.

The points decided by you, are stated—"*Charitable uses, for religious tenets; the Augsburg Confession of Faith as the creed of the Lutheran Church; and the departures therefrom in the Declaration of Faith of the Franckean Synod.*"

I shall pass over your first division, which contains the history of the Churches in question; and also the second, stating the "principles which govern courts of equity" in cases of charitable uses. On the latter point, I would merely remark, that I disagree materially with your Honor, in regard to some important points which you take; but I am relieved from entering upon the discussion of them, as your *errors* have been *corrected* by the highest judicial tribunal of our State, in the case of the German Reformed Church in Forsyth Street in the city of New York, entitled *Miller and others* vs., *Gable and others*. That decision meets my entire approbation, and I regard it as worthy the learned judges and an evidence of the progress of legal science in this enlightened age.

My remarks shall be confined, at present, to your third and fourth divisions, having referrence to that venerated instrument the *Augsburg Confession* and the alleged departures therefrom in the *Declation of Faith* of the Evangelic Lutherans of the Franckean Synod. It is for this reason that I address you, and I state it here, that my object may be distinctly known. It is in theology and in the defence of the doctrines and principles of the Franckean Evangelic Lutheran Synod; and not on points of jurisprudence, that has drawn me into this discussion. However unenviable my situation, my sense of duty will not permit me to decline the task.

Before I enter upon the review of your Honor's opinion, I must submit a few preliminary observations, which I cannot omit in justice to my ministerial brethren and our associated Evangelic Churches, as well as to myself. The impropriety of the course, to which I allude, I think your Honor upon mature reflection will acknowledge. Whatever you may think of us, or however you may feel toward us, on account of the high and holy principles we maintain; we are notwithstanding *Evangelic Lutherans*—our Churches are *Evangelic Lutheran Churches*, and our ministers *Evangelic Lutheran Ministers*. But when your Honor, speaks of us, in your very learned and elaborate opinion, you have undertaken to denominate us by a name of your own invention; and call us "Franckeans," —"Franckean Lutherans"—"Franckean Ministers;"—and our Declaration the "Franckean Declaration."

We have been sorely persecuted ever since our organization; and I am much grieved to have such high judicial authority, voluntarily

enter the list of our opponents; and stigmatize us with what may be deemed opprobious epithets. I appeal to your Honor's sense of justice, is it right? The name *Lutheran*, as you state yourself, was originally applied as a term of reproach; why then should you follow the example? If we have not numbers on our side, we believe we have the truth, and the God of heaven to approve us. What then if we *do* believe the Bible, and not the Augsburg Confession, are we not on this account *Lutherans?* And because we maintain the fundamental principle of Lutheranism, the Bible our only standard; are we therefore Franckeans! Franckean Lutherans! Franckean Ministers! We should at least be treated with respect, since our hearts have been so deeply afflicted by unrelentless and unrighteous persecution.

Let me make another observation. In attempting to establish the faith and doctrines of those who were the founders in 1789, your Honor speaks of them as the "donors of this property," that is, of the land and temporalities in question. But it should be remembered, that whatever may have been the faith and doctrines of those who conveyed the land in question, they were not *donors*, but *grantors*. This is evident from your own statement. In 1789, as your Honor says, the Society was designated by the name of "*The Lutheran Congregation of Cobleskill and New Durlach*," and on the 9th of March of said year, one hundred and fifty acres of land at New Durlach, were "conveyed in fee," to three Trustees of the Church, and expressed in the deed, "*for the common use and benefit of the said Lutheran Congregation forever.*" The land was conveyed and granted for a valuable consideration and on no other restriction than that just mentioned.

Now, what is a donor? Webster says, a donor is, "a giver bestower, benefactor." But when a person recieves a valuable consideration for property, he certainly is no *donor*. The religious faith of the grantors, could not control the property forever thereafter, especially since the trust was in general terms, "for the common use and benefit of the said Lutheran Congregation forever." It does not express, that it is for the use of inculcating and teaching the doctrines of the Augsburg Confession or of any other creed.

The Church or Congregation, whenever it was formed and as it existed in 1789, was an independent Lutheran Church. It is not

necessary in order to found or organize a Lutheran Church, to obtain the consent and approbation of a higher eclesiastical judicatory; or that it should be in connection with, or in subjection to any ecclesiastical tribunal. At the organization of said church, there was no Synod existing in this State, and not until 1796, when the New York Ministerium was formed. But these Lutheran Churches remained independent of said Ministerium long after it was formed; and they united with it, and again withdrew from it, before the New York Ministerium connected itself with the general Synod. Consequently, these Lutheran Churches were independent and owed subjection to no Synod; except when they should voluntarily form a connection by a vote of the majority of the members; and which connection they might at any time dissolve by a like vote. These churches, in their separate and independent capacity would be Evangelical Lutheran Churches, to all intents and purposes. The land and property, therefore, belongs to the churches and not to the Augsburg Confession; or any other creed, even should the grantors believe its doctrines.

One more observation. Your Honor also states the fact, that in 1837, when the Franckean Synod was formed; and when the Evangelic Lutheran Churches in question dissolved their connection with the Hartwick Synod, and thus with the General Synod; Mr. Wieting acted with "a majority of the Congregation in both churches, and also with a majority of the vestry and Trustees of each church." This is an important fact in my opinion. The dissolution in the one case and connection in the other was effected by a *vote of the majority* and it did not in the least affect their existence and character as Evangelic Lutheran Churches, than it did in 1789, when independent of any ecclesiastical body.

The above is in accordance with a decision of Vice Chancellor Gridley, of the fifth circuit, in the case of *Jessup* vs. *The Trustees of the first Presbyterian Congregation, Florida, and others;* made in 1840. The Church was organized in 1741, independent of any ecclesiastical jurisdiction, and land was conveyed to it, in the same year, "for the only proper use and privilege of a Presbyterian Meeting-House for ever." It was held, that it was not necessary for the church to be in connection with either the old or new School *Presbyterian General Assembly*, to maintain its *Presbyterian* charac-

ter and existence. And as "a majority of the Congregation and church in Florida and of the session and all the Trustees adhere to the New School General Assembly," it is not a *misapplication* or *perversion* of the trust property, to apply it to the support of a pastor of the New School Presbyterians, regularly elected by a majority of the congregation.

His Honor, Vice Chancellor Gridley says: "The Trustees as *such*, have had no agency (other than that of any other members of the Congregation) in *calling* and *settling* the present incumbent, nor in fixing the amount of his salary, but are in their capacity of trustees *bound* to discharge the pecuniary obligations of the congregation to their minister, by appropriating the funds of the society to the payment of his Salary. The defendants are the *agents* of said congregation in carrying out this contract on their part, by furnishing the house to preach in and by paying the minister his salary."

In the calling and settling a minister or pastor of a church or religious society, there is no statute provision, and there ought to be none; but the choice and election of the pastor is left to the church or communicants *only*; and when there is no other rule adopted, it is decided by a majority of the regular electors. The trustees have no vote on the election of the pastor, or of fixing his salary, but as members of the Church or Congregation. But the statute declares, that the salary of the minister or pastor, "shall be ascertained by a majority of persons entitled to elect trustees, at a meeting to be called for the purpose." And when the minister or pastor is thus elected and the salary fixed and ascertained by a majority of the members and electors; the trustees as agents of the congregation are bound to pay the salary out of the funds and revenues, and carry out the provisions of the contract on the part of the church or society. The statute is express on this point, that "such salaries, when fixed, *shall be ratified by the said trustees, or a major of them*, by an instrument in writing under their common seal," etc. The trustees as such, have no *veto* upon the voice of the majority of the members and electors of the church; and refuse to furnish the House to the pastor to preach in or pay his salary, or permit him to occupy the property of the church; although such has been the decision of his Honor the Chancellor, in opposition to the express provisions of the statute.