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DAVIDSON v. BAKER.

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passed upon his and approved it, and put his name upon the roll of delegates; that thereafter a motion, supported by affidavits, was made by a lay delegate, that the name of petitioner should be struck off the roll, and the name of Baker substituted for it; that the chairman ruled this to be out of order; but, upon an appeal from the chair, the majority of the Synod maintained the motion, and Baker then and there was admitted and the petitioner excluded from the Synod, &c. The defendant, Baker, by his answer, defends the action of the Synod, and claims that at the vestry meeting at Sweetsburg, he (Baker) was elected; that he had the majority of votes, and the chairman so declared at the time, but afterwards acted to the contrary, and gave petitioner, his son, the certificate; that at the Synod the chairman could not prevent the Synod disposing of the question as to whether Davidson or Baker had the right to sit; that clause number two, of the Synod constitution, relating to qualification of electors, was illegal and void, &c.

The 19 & 20 Vic. cap. 121, and 22 Vic. cap. 139, enable the members of the Church of England and Ireland to meet in Synod. The meeting of Synod, and the adoption by it of a constitution, &c., followed this 22 Vic.; and the second clause of such constitution states who may be lay representatives, and how elected.

2. The lay representatives shall be male communicants of at least one year's standing, of the full age of twenty-one years, and shall be elected annually at the Easter meetings, or at any vestry meeting (specially called for such purpose by incumbents, after due notice on two Sundays), held by each minister having a separate cure of souls, and all laymen within the cure, of twenty-one years or upwards, entitled within such cure to vote at vestry meetings, or who hold pews or sittings in the church, though not entitled so to vote, who shall have declared themselves in writing to be "members of the United Church of England and Ireland, and to belong to no other religious denomination," shall have the right of voting at the election.

And in clause 5 the certificate of election is given as follows:

"This is to certify that at a meeting held this day for the purpose of electing delegates to represent this congregation or parish in Synod, being the parish or mission of _____, a communicant of one year's standing, and of the full age of twenty-one years, was elected by the laymen of this congregation, who have a right to vote at such election, by virtue of their having, in accordance with the second clause of the constitution of the Synod of this Diocese, declared themselves in writing, in a book kept for that purpose, to be members of the United Church of England and Ireland, and to belong to no other denomination, and being qualified otherwise under the provisions of said clause.

"And such certificate of election shall be considered and taken as sufficient proof of the election; and such lay delegate shall continue in office till his successor is appointed."

And article 3 of the rules and order of proceedings reads as follows:

8. After this prayer the clerical secretary shall call over the roll of the clergy, to be furnished

by the Bishop, and mark the names of those in attendance; and the secretary shall call over the names of the several parishes, missions or cures, when the certificates of the representatives having been presented, shall be examined by the secretary and a committee of two, to be named by the chairman for that purpose; and where found satisfactory, the names shall be recorded and read by the secretary.

The petitioner received the formal certificate of election from the incumbent of Sweetsburg. Much should be presumed in favour of such certificate, and the Returning Officer's Act ought to be presumed true and honest. That certificate was such presumptive evidence of Davidson's right to the office of lay delegate, that upon it, approved 11th of May, 1869, by the committee, and his name being recorded by the secretary, he ought to have been admitted to the Synod. The certificate, so approved, ought to have been held by the Synod then and there sufficient proof of Davidson's election. The decision of the chairman of the Synod was right; the overruling of it was wrong, and so was the erasing petitioner's name from the roll of delegates, and the inserting of Baker's instead of it.

The case has been presented not only on what was done in the Synod, but petitioner and defendant have also gone upon the merits of the election at Sweetsburg, and petitioner has to succeed upon this. We see exactly all that passed there 29th March, 1869. The meeting was a curious one, and the incumbent presiding at it became perplexed by what took place, and was unsettled a little as to what to judge and do. Six at the meeting voted for Baker (if we include himself); three voted for Davidson. Baker was qualified to vote or to be elected; so were the three who voted for Davidson. The other five were not holders of pews or sittings, and had no title to pews or sittings, and had no vote. The church is a proprietary one, and has a title. Shufeldt explains it in his evidence in rebuttal. How different it is with Abraham Pickle and the others! As to these, could any of them maintain action against anybody as for disturbance to their possession thereof—i. e., of any pew or sitting (under the Temporalities Act)? I think not.

The chairman at the election registered Thomas Cotton as a delegate to the Synod, and Baker as "elected by those who had no right to vote," and Davidson elected by those entitled to vote. (Two delegates were to be elected.) No proclamation or declaration of the result was made at the meeting, and none was necessary.

The certificate granted to Davidson by the chairman was so granted upon what he believed to be required by the constitution, article 2, above quoted. This article is said by defendant to be contrary to 22 Vic. cap. 139, and therefore illegal. But this must not control absolutely; it is to be taken with the 19 & 20 Vic. cap. 121. Following the 22 Vic. is the constitution of the Synod, and these three taken together control. The Temporalities Act 14 & 15 Vic. cap. 176, has also to be considered to a certain extent, and it makes against defendant and his voters in a way, e. g., as settling what is meant by holding a pew or sitting. The second section of this act enacts as follows: "That all pew-holders in such churches or chapels whatever, holding the same