

MACMAHON, J.

OCTOBER 22ND, 1904.

TRIAL.

PINKE v. BORNHOLD.

Church—Expulsion of Member—Voluntary Association—Previous Withdrawal of Member—Absence of Property Rights—Ecclesiastical Privileges—Refusal of Injunction.

Plaintiff was for 23 years a member of St. Peter's Evangelical Lutheran church in the town of Berlin, and defendants were the trustees of that church. The church was a self-governing body, having a constitution or book of ordinances. Plaintiff contributed towards the erection of the church building and the cost of a pipe-organ and chime of bells, and to the funds for the salary of the pastor and other expenses of the church. The conveyance of the land on which the church was built was made in 1860 to 7 persons described as "trustees of the Evangelical Lutheran St. Peter's Church at Berlin of the unaltered Augsburg Confession contained in the Book of Concord of 1580." The habendum was to them and their successors in office, "seven in number, to be elected by the congregation or members of said church only on the first Sabbath in the month of November in each and every year." At the annual meeting of the members of the church in November, 1903, plaintiff was elected a trustee, and later on was elected an elder and also treasurer of the church.

In February, 1904, a disruption took place in the church, and a large number of the members and adherents seceded and formed a separate congregation, adopting the name of the Evangelical Lutheran St. Matthew's church, and purchasing church premises on the same street and immediately opposite to St. Peter's church.

In March, 1904, plaintiff resigned his office as elder, and about 1st May resigned his offices as trustee and treasurer. His wife and one of his children left St. Peter's church early in May and became members of St. Matthew's. Plaintiff did not attend St. Peter's church after 1st May, but went to St. Matthew's, or to the Baptist church, or to a church in the village of Waterloo.

Clause B. of the constitution, relating to church discipline, was as follows: "In case any one be guilty of crimes, scandal, or sins which are not generally known, it will suffice