

POOR PIETY
The Financial Fix of the Church of Our Father

It is Sued for an Old Debt of \$7,000—A Treasurer Who Got Paid and Never
Gave a Receipt—Judge Donohue's Opinion. An Appeal to be Taken.

The Universalist Society of the Church of Our Father, of which the Rev. H.[Henry] B. Nye is pastor, and whose place of worship is in Clermont avenue, near Atlantic, has a law suit on hand, and last evening the members were requested through a notice in the EAGLE to attend a special meeting in the chapel to consider this matter, which is deemed of vital interest to the body. There was just a quorum of the Society present, and at eight o'clock Mr. J. H. Pittinger was chosen Chairman *pro tem*, and Mr. D. P. Gardner Secretary. Mr. Gardner was then called upon and stated briefly the facts in the case, which are these:

This Society (the First Universalist) was united with the Society formerly meeting in Greene avenue [Church of the Restoration] in 1868, and purchased the present site. At that time, Mr. Caleb Barstow was Treasurer of the Society. He was a wealthy man and very liberal. He collected the church pew rents and paid its debts equally as liberally. Unfortunately he speculated, and like many others who indulge in the same slippery business, he failed, and this circumstance led him to resign the Treasurership of the church. Then it naturally followed that he wanted to have refunded the money which in his better days he had expended for the church. He demanded it, and claimed that the sum was about \$1,500. He said that if that amount was paid he would be satisfied, and consider the debt "squared." The Society raised the money and paid Mr. Barstow. Before the year was out, however, he appeared again, and said that there had been a slight mistake; he had not stated the correct amount due him on the former occasion, and had now discovered that the Society should have paid him \$2,700. He said he would give a receipt in full if that sum was paid him. The Society was indignant, but nevertheless a meeting was called on the next Sunday afternoon, and after the case had been stated by Mr. Blanchard, Mr. Barstow got up and said that the facts were as stated, and he would consider the indebtedness cancelled with the payment of the \$2,700. Well, the Society's well to do members put their hands in their pockets and gathered the amount required and Mr. Barstow was paid again, and then they supposed that everything was settled, but it wasn't. They didn't take any receipt from Mr. Barstow for the money he had paid them. They had nothing in black and white to show that they were not still in debt to their former treasurer. Two years ago Mr. Barstow was adjudged a bankrupt. He had been the guardian of some children and during his speculations used up their means. To make himself straight he informed their other guardians,

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Messrs. Brett, Brothers & Son, that he had a claim against the Church of Our Father for \$1,500 or thereabout, and made a transfer of it to the firm, and a Mr. Carhart, another creditor who through their counsel sent a notification of the fact to the Society and requested it to pay up.

The Society thought that the thing was a swindle and resolved to fight. This was the beginning of the suit at law. Messrs. Jesse C. Smith and Woodward are counsel for the Society. The case came up first before the notorious Judge George G. Barnard, in New York, and he sent it to a referee in the person of Rufus F. Andrews, who decided adversely to the Society and in favor of Brett for the full amount and interest, refusing also to take into consideration the fact that the Society had made two payments to Barstow, because there was no written evidence of the fact.

The Society carried the case again to the Supreme Court, and it was sent back to the referee, that he might take new evidence as regards the compromise made by the Society with Barstow. Still, the result was the same—Andrews made the same report again against the Society and Judge Barnard affirmed it.

The Society was, however, in a fighting condition still, and the case was again brought before Judge Donohue, on a motion to have the referee's report set aside. On this motion the Judge rendered an opinion a few days since in favor of the defendants, Brett & Co. The opinion is as follows:

Brett vs. the First Universalist Society.—This case came up on appeal from the judgment entered on the report of a referee. The action is brought by the Bretts as assignees of a part of a claim held by Caleb Barstow against defendants and Carhart, who holds an assignment of the balance of the claim. The claim set up by Barstow was a balance due him as treasurer of the defendants, and the first ground argued on the appeal is as to what the balance was. A careful examination of the facts fails to show any error in the result at which the referee has arrived. As the result is one largely involved in the discussion of figures, it would be no utility to state at length the facts, but it seems to me the report of the referee is fully sustained by the evidence.

The next point set up by the defendants is that there was an accord and satisfaction. On this point, as a matter of fact, the referee has passed, and on the facts the proof fully sustains him.

It is unnecessary to discuss the question how far, if the facts had been found the other way, the matter alleged would in law make out the defense. It is sufficient to say that the facts are properly found in the plaintiff's favor, and that there was no such agreement as the defendant set up. In regard to the alleged error of the referee in refusing to present the introduction of the supplementary proceedings, it seems to me there was no error. All that could result from that would be to, perhaps, make the assignor on that proceeding a party plaintiff. If this would be the effect it would not aid the defendant. It was a matter to be pleaded. (*Kengel vs. Kuk.*) No such defense was set up and no such issue was presented for trial. (4 Boser, 2.) Had the defendant made the issue it might have been shown that these proceedings were ended, or that the present

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suit was for the united benefit of plaintiffs and such assignees. Whatever may be the fact, no such issue existed, and the referee was right in rejecting such evidence. (13 Barb., Code 148.) The only remaining point agued by the appellant is that Carhart was improperly joined, and while no statement of the reason is given, it may be inferred that the claims of Brett and Carhart were not united in interest. In this it seems to me the defendants mistake the principle of law. It is clear that the assignor could not split up this claim, and several suits lie upon such split up assignments. It is equally clear that the real parties in interest in the claim should be united in the complaint. (Vorhis, Code 1870, F. 111, Page 89.) To hold that these parties could not unite would be virtually to hold that debtors having just debts could not protect individual creditors by assignments of such interest in the claim.

The principle seems to me clear that what makes these plaintiffs united in interest is that the debt is one, and that the contract on which it avers is one, and I know of no principle of law which prevents the union of all parties interested in such joint debt. To hold otherwise, would be to make the Code a means not of simplifying, but of hardship in practice under the law as it stood before the Code.

Judgment affirmed.

The meeting, after hearing the facts in the case, voted unanimously to instruct the counsel to carry the suit up to the Court of Appeals, and Messrs. E. W. Crowell and E. M. Sweet became bondsmen on the undertaking. One of the members said that he would rather fight than pay, as it seemed a bitter pill to swallow without a struggle. The sum which the church will have to pay, in case the Court of Appeals decides against it, is \$7,341.25, whereas they claim that, allowing Barstow or his assignees every dollar he paid for the church, and deducting the amount refunded, his just claim is only \$4,000.

In addition to disposing of this business, the society elected Messrs. Crowell and Gardner delegates to the State Convention of Universalists, which meets in Buffalo on the Tuesday before the first Sunday in September.

The Society's building and lots are valued at \$13,000.

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