

Please address us P. O. Box No. 179, Brooklyn, N. Y.

Brooklyn, July 27, 1917.

DEAR BRETHREN:—

A situation of such seriousness has arisen in the management of the Watch Tower Bible and Tract Society that we, writing to you as a majority of the Board of Directors, have felt it necessary that you should be acquainted with the facts. The point, in brief, is that an effort is being made to change the scheme of government of the Society as Brother Russell himself devised it and desired it to be perpetuated; and, to that end, to declare illegal provisions in the Charter of the Society which Brother Russell himself placed there, and to use this claim of illegality to oust Directors who have held office for many years with the approval of Brother Russell and the Society.

J. D. Wright, who is one of those now writing you, became a Director in 1906; I. F. Hoskins became a Director in 1908; A. I. Ritchie became a Director in 1911, and R. H. Hirsh became a Director on March 29, 1917. We four are a majority of the seven Directors of the Board. A. I. Ritchie was Vice-President of the Society at the time Brother Russell died; and Brother Russell's Will appointed R. H. Hirsh and I. F. Hoskins, with three others, "as possibly amongst the most suitable from which to fill vacancies in the Editorial Committee" of The Watch Tower.

The Charter of the Society, which was procured from the State of Pennsylvania in 1884, and was written by Brother Russell himself with his own hand (as Brother Rutherford said in his funeral oration) provides that:

"The members of the Board of Directors shall hold their respective offices for life, unless removed by two-thirds vote of the shareholders, and vacancies in the Board occasioned by death, resignation, or removal, shall be filled by vote of a majority of the remaining members of the Board, who shall meet for that purpose within twenty days from the time when such vacancy or vacancies shall occur, and in the event of a failure to fill such vacancy or vacancies, in the manner aforesaid, within thirty days from the time when such vacancy or vacancies shall occur, then the said vacancy or vacancies shall be filled by the appointment of the President, and the person or persons so appointed shall hold his or their office or offices until the next annual election of officers of the corporation, when such vacancy or vacancies shall be filled by election, in the same manner as the President, Vice-President and Secretary or Treasurer are elected."

This Charter bears the endorsement, as required by the Laws of Pennsylvania, of an Associate Judge of the Pennsylvania, Court of Common Pleas, certifying that it is "lawful," and that the incorporators were entitled to form a corporation "for the purposes and upon the terms therein stated." The validity of this Charter was again confirmed in 1896 by the Pennsylvania Court, when it approved the petition of Brother Russell, asking that the name of the Society be changed from Zion's Watch Tower Tract Society to its present name. This Charter expressly provides:

"The corporation is to be managed by a Board of Directors consisting of seven members."

In a pamphlet entitled "A Conspiracy Exposed, and Harvest Siftings," April 25, 1894, Brother Russell said, concerning the members of the Board of Directors of the Tract Society:

"Having up to December 1, 1893, thirty-seven hundred and five (3,705) voting shares, out of a total of sixty-three hundred and eighty-three (6,383) voting shares, Sister Russell and myself, of course, elect the officers, and thus control the Society; and this was fully understood by the Directors from the first. *Their usefulness it was understood, would come to the front in the event of our death.*"

And in his Will Brother Russell, further referring to the special reasons for his personal conduct of the affairs of the Society, said:

"However, in view of the fact that in donating the journal, Zion's Watch Tower, the Old Theology Quarterly (now "The Bible Students' Monthly") and the copyrights of the "Millennial Dawn Scripture Studies" books and various other booklets, hymn-books, etc., to the Watch Tower Bible and Tract Society, I did so with the explicit understanding that I should have full control of all the interests of these publications during my lifetime, and that after my decease they should be conducted according to my wishes."

Obviously, these special reasons for Brother Russell's personal conduct of the affairs of the Society do not hold good in the case of any other person.

Since Brother Russell's death, Brother Rutherford has for the first time declared that this scheme of government by Directors who are to hold office for life, is illegal under the Laws of the State of Pennsylvania, and that directors can lawfully hold office only for one year. He has also for the first time declared that under the Laws of the State of Pennsylvania at least three of the Directors must be residents of the State of Pennsylvania. With these claims as a lever, he has undertaken to say that we who are now writing you are not lawfully directors of the Watch Tower Bible and Tract Society, and that he has authority to appoint other directors in our place; and he claims to have done so, naming four brethren, none of whom was a Director of the Society during the life time of Brother Russell. He also undertakes to say that, in view of his assertion that the law of Pennsylvania requires three directors to be residents of that State, the penalties of non-compliance

with such supposed requirements shall fall upon us, rather than upon him and the other Directors, although neither he nor Brother Pierson nor Brother Van Amburgh is a resident of the State of Pennsylvania. On the other hand, the undersigned, Brother Hirsh, has his home in the State of Pennsylvania.

We are advised by our counsel, Messrs. Davies, Auerbach & Cornell, of 34 Nassau Street, New York City, that the claims of Brother Rutherford in these respects are entirely without warrant; that we are lawfully Directors of the Society; that those whom Brother Rutherford has undertaken to appoint in our places have no title to office; and that if the claims of Brother Rutherford were sound in law, he could have no legal title to office either as a director or as president. *We annex a copy of counsel's opinion.*

What concerns us most, however, is not the legal or technical rights of the matter, but rather the sacred necessity of preserving the scheme of government laid down for the Society by Brother Russell himself and of preserving in the Society faithful loyalty to each and all of the provisions of the Charter and of his Will concerning this Society, quite irrespective of legal technicalities. That scheme of government was very simple and has well performed its purposes through the years. It has, without exception, met with approval from the membership of the Society; and no one has heretofore thought or attempted to upset it by raising legal questions.

It seems to us, therefore, to be a matter of the gravest concern that, after Brother Russell's death, one holding a high position in the Society should undertake to expunge from the Charter, on technical grounds, provisions which Brother Russell himself put there, and which the experience of years has justified; and should undertake, through his mere declaration that such provisions are invalid (contrary to the opinion of counsel), to draw to himself complete power in the selection of the members of the Board and to appoint new men of his own choice in the place of those who served for years with the approval and at the wish of Brother Russell.

The extent to which this course is subversive of the constitution of the Society, and the degree in which it is a lately conceived expedient apparently adopted for a special purpose, is shown by the fact that The Watch Tower in its issue of December 15, 1916, shortly after the death of Brother Russell, gave the following accurate and comprehensive account of the organization and purpose of the Society:

ORGANIZATION OF THE WORK

"It is recognized that everything must be done decently and in order; that there must be a regular organization to properly carry on any work. How, then, may the Harvest work be thus conducted since Brother Russell is no longer in our midst? Many of the friends throughout the country are asking this and other questions, and we take pleasure in answering:

"The Watch Tower Bible and Tract Society was organized in the year 1884 as a means of putting forth the Message of the Kingdom in an orderly and systematic manner. *The Corporation is controlled and managed by its Board of Directors and officers. The Board of Directors is composed of seven members. The Charter of the Corporation provides that the Board of Directors shall be self-perpetuating; that is to say, when a vacancy occurs by death or resignation the surviving members are empowered to fill such vacancy. Brother Russell was a member of the Board of Directors. Two days after his death the Board met and elected Brother A. N. Pierson as a member of the Board to fill the vacancy caused by Brother Russell's change. The seven members of the Board as now constituted are A. I. Ritchie, W. E. Van Amburgh, H. C. Rockwell, J. D. Wright, I. F. Hoskins, A. N. Pierson and J. F. Rutherford.*"

At the time when this article was written Brother Rutherford was one of the Editorial Committee and must have passed upon its composition.

We feel it our duty, therefore, to lay all the foregoing facts before you and to ask for your advice and guidance.

We would not willingly, in our own private interests, take even defensive measures; but we are bound to realize that we are in a very high sense fiduciaries who are charged with the duty of preserving, whole and unbroken, the traditions of the Society and the provisions by which Brother Russell desired it to be governed during his life and after his death. Under these circumstances it seems to us clear that the moral influence of all the brethren should immediately be brought to bear, in order that what we conceive to be these injuries to the fabric of our beloved Society may be repaired from within; and that thereby means may be found to avert what otherwise will be the lamentable certainty of litigation in the courts.

If you desire a more detailed statement of the facts, we shall be prepared to furnish it upon request.

Please address us at Post Office Box No. 179, Brooklyn, New York.

Your Brethren in the Service of Our King,

J. D. WRIGHT,
A. I. RITCHIE,
I. F. HOSKINS,
R. H. HIRSH.

Further Note:—On Friday, July 27, Brother Rutherford, representing the Peoples Pulpit Association, ordered the above named brethren to leave the Bethel Home.

Cromwell, Conn., July 26, 1917.

THE FOLLOWING WILL BE OF SPECIAL INTEREST

Mr. A. I. Ritchie,

My dear Brother Ritchie:

I thank you for your favor of the 21st, received last Monday. Meanwhile I have been waiting on the Lord to know what to say in reply. After reading the letter, the words of the Psalmist came to my mind, recurring many times since: "The meek will He guide in judgment; and the meek will He teach His way." Consequently I have taken time to make this reply:

On entering the meeting room at the Bethel a week ago last Tuesday morning I was very much surprised to find that Brother Rutherford had appointed a new Board, and so expressed myself to those present. Presently we heard the reading of a letter from a Philadelphia law firm, in which were set forth the facts mentioned in the resolution read before the Bethel Family, viz., that the Board of Directors, as constituted, was not a legal one, therefore its members were not legally directors. Thereupon I expressed the thought that if these brethren were not legally members of the Board of Directors—which position some of them had held for many years in the eyes of the friends in general—then the fact remains that the Watch Tower Bible and Tract Society has never had a legal Board. To this Brother Rutherford assented. I further stated that if it was true that the Society's business had been carried on for so many years in a manner not entirely in harmony with the requirements of law, it surely could be continued in the same way for a few more months, until another annual meeting. This was not a motion, but merely a criticism or suggestion, upon which no action was taken.

When the Committee which had drawn up the resolution presented it to me. I told them frankly that, while I had nothing whatever against the brethren chosen, I did object to the appointment of a new Board. After hearing the discussion by the different brethren, including Brother McGee's summing up of the articles of the charter, I came to the conclusion that the statements concerning the legal standing of the members of the Board did not place the situation in its true light; for if four of the seven members of the Board were not legally Directors, then the other three, who had been elected as the Society's officers by the shareholders, would have the same standing so far as membership in the Board of Directors is concerned. While the charter, as published in the little blue-covered booklet we received, makes no provision for the selection of the members of the Board of Directors and specifies that "the members of the Board of Directors shall hold their respective offices for life, unless removed by a two-thirds' vote of the shareholders."

You ask why I signed the resolution that was so detrimental to yourself and the other brethren. I felt that there was a measure of wrong on both sides. Some of you brethren had made statements at Philadelphia and other places which called for an explanation, and a letter of some kind was due the friends who asked for such an explanation. This resolution was drawn up by a Committee, whose original intention was to have it published, to which I objected. While I admire Brother Rutherford's ability and his wisdom in settling many difficult questions for the Society, and while I fully believe that it is the Lord's will that he should be our President, yet I cannot approve of some things he did in connection with this matter.

One of my principal weaknesses, as far as I know myself, is that it is very hard for me to say "No," especially to brethren I love as much as I do all the members of the Board, including the brethren newly appointed; in fact, all who are truly the Lord's. When signing the resolution, I had strong hopes that reconciliation might be made between the two parties who differed, and that neither publication of the resolution nor any other explanation from either side might be necessary. Before I signed, however, a number of statements to which I objected were stricken out. After being thus modified, it was further agreed that copies of this resolution should be sent only to Classes and brethren that had heard of the trouble and requested an explanation. I held out for some hours against a thing I did not believe in, but since the brethren had changed it, eliminating some objectionable paragraphs, and agreeing to send it only to inquiring friends, I finally signed, as a compromise.

When our Secretary showed me a copy of the resolution which had been sent to the Class, I could not help but think that it had been sent far and wide to all Classes; and I felt that I had not taken the proper course in signing even after it had been amended. Now that I have reason to believe a general circulation of this resolution has been made, I want to assure you that had I foreseen this I should never have signed the paper. I feel that this has done you four brethren a decided injury, because, in my opinion, none of you has any desire to do any harm to the Society or bring about a division, but that you simply differ with Brother Rutherford about the control of the Society; that it is your desire to stand by the charter and the principles of Brother Russell, which recognize the Board of Directors as having the power of control. I have now concluded to take a firmer stand for what I believe is the right, viz., that the appointment of the new members to take the place of the four who were not legally members according to the decision of the Philadelphia law firm was not the proper course, and will therefore stand by the old Board.

A copy of this letter goes to Brother Rutherford.

With much Christian love, as ever,

Your brother in Christ,

A. N. PIERSON

P. S. You have my permission to make such use of this letter as you may deem wise.

JULIEN T. DAVIES
JOSEPH S. AUERBACH
EDWARD CORNELL
CHARLES E. HOTCHKISS
BRAINARD TOLLES
CHARLES H. TUTTLE
NICHOLAS F. LENSSEN
WARNER B. MATTESON

DAVIES, AUERBACH & CORNELL
MUTUAL LIFE BUILDING, 34 NASSAU STREET

New York, July 23, 1917.

Gentlemen:

You have requested our opinion concerning your present title to office as Directors of the Watch Tower Bible and Tract Society, and concerning the views as to the law expressed by Mr. Rutherford in his "Statements of Facts and Points," a copy of which you have received.

As to the proposition which is so much emphasized in Mr. Rutherford's "Statements" that even if his course of conduct in ousting, as he claims, you four gentlemen, a majority of the Board, from your Directorships, was wrongful and in violation of law, the matter cannot be redressed in the New York courts, it is enough to point out that he, in his own statement, says:

"In 1909 said Watch Tower Bible and Tract Society removed its activities from the State of Pennsylvania to the State of New York; and since that time it has transacted no business of consequence in the State of Pennsylvania, and never had a meeting of its Board of Directors in said State during that time."

If this be so, it goes without saying that the courts of the State of New York have ample jurisdiction to see to it that the affairs of the corporation, which, according to Mr. Rutherford's own admission, are being conducted almost entirely within the State of New York, are not

taken out of the hands of a majority of its Board of Directors and turned over to other men whom the President chooses to appoint and regard as Directors. No lawyer familiar with the New York law would have any difficulty in finding legal methods of preventing the usurpers from exercising control over the affairs of the corporation in this State.

The second proposition in Mr. Rutherford's "Statements," to-wit, that the affairs of the corporation could not be brought before the courts of the State of New York, because it is not registered in this State, would involve, if true, very disastrous consequences for the corporation, in view of Mr. Rutherford's own admission that all of its affairs are being substantially transacted in this State. If, in truth, it be an outlaw here—if, in truth, its affairs are not under the protection of the State of New York—it is easy to see that the corollary of the proposition that it is not competent to be sued in the courts of this State, is that for the same reason it is not competent to sue, and that in consequence its affairs, its property and its good name are at the mercy of any individual who seeks to disregard its rights or who undertakes to seize control of its affairs in disregard of the constituted Board of Directors, whose presence in office had expressed the will of Pastor Russell and of the membership of the corporation for years.

As a matter of law, however, it is utterly fallacious to say that because the statutes of this State provide no means for registering a foreign membership corporation, that therefore such corporation in transacting affairs here is not subject to the courts of this State. All corporations may lawfully carry out within this State the purposes of their charters and may exercise such powers incidental thereto as may be fairly necessary, unless otherwise forbidden by the laws of this State; and the requirements of the statutes of this State for registry apply only to foreign stock corporations. (*Demarest vs. Flack*, 128 N. Y. 205.) That the Watch Tower Bible and Tract Society is not a foreign stock corporation within the meaning of the statutes of this State is shown by the following definition in Section 3 of the General Corporation Law:

"A stock corporation is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus profits of the corporation. A corporation is not a stock corporation because of having issued certificates called certificates of stock, but which are in fact merely certificates of membership, and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation."

Pastor Russell, therefore, was not so ill advised as to the law, that in conducting the affairs of the corporation in this State since 1909 (as Mr. Rutherford himself says) he committed the mistake of placing those affairs outside of the protection of courts of justice.

The third proposition made by Mr. Rutherford is that the provision in the charter of the Watch Tower Bible and Tract Society, approved in 1884 and still incorporated in the said charter, that "the members of the Board of Directors shall hold their respective offices for life," is invalid, since the statute of the State of Pennsylvania, providing that Directors shall be chosen annually by the stockholders or members, is said to be applicable to this corporation. It is a little surprising that one who for years was connected with the management of this corporation should not have discovered this alleged illegality until after the death of Pastor Russell, and then for the first time should bring forward a claim which is well calculated to subvert the whole scheme of government as planned and desired by Pastor Russell, and should use that claim to justify the possession of power in himself alone to oust a majority of the Board of Directors and to fill their places notwithstanding that a number of the persons whom he thus seeks to exclude held that office for years with the acquiescence and approval both of Pastor Russell and of the membership of the corporation. In this connection it is significant that the charter of the Society is endorsed, as required by Pennsylvania law, with a certificate of an Associate Judge of the Common Pleas that such judge had examined the charter and found the same "to be lawful and not injurious to the community," and that therefore the incorporators and their associates were entitled to have leave to be a corporation for the purposes and upon the terms therein stated.

Even if, however, an election or appointment "for life" could not lawfully be made, your right to office would not be in any way affected, since no successors to you have been chosen by the members of the corporation. Assuming, for the sake of argument, that as Mr. Rutherford claims, the Pennsylvania statutory provision that "Directors shall be chosen annually by the stockholders or members," has some application to this corporation, there would then come into play the very next clause in the statute, to-wit, that such Directors or Trustees "shall hold their office until others are chosen and qualified in their stead." As the members of the corporation have never chosen anyone in your place, your terms of office would (if the statute cited by Mr. Rutherford were applicable) be extended beyond the expiration of one year until such time as successors chosen, not by Mr. Rutherford, but by the members of the corporation, should qualify. Even if the term for which you had been elected were longer than the law allowed, you would not thereby be disqualified from holding office during the lawful period.

Furthermore, this provision of statute, that Directors do not lose office solely because of the failure of the members of the corporation to appoint their successors, but continue until such time as the successors have been appointed and qualify, is merely expressive of the common law rule on the subject, and hence would be applicable to your case, even though the statute which we have been discussing be not applicable to the corporation.

As to the claim that at least three Directors must be residents of the State of Pennsylvania, it would seem to be enough to reply that if this be so, the defect in title to office would apply to the entire Board of Directors and not merely to such individual members thereof as Mr. Rutherford (not himself a resident of Pennsylvania) might choose to consider affected by such disqualification. We are, however, unable to find any provision of Pennsylvania law enacted when this charter was adopted or which affects this charter which makes it mandatory that a certain number of Directors in a membership corporation (as is this one) shall be residents of the State of Pennsylvania.

As to the claim that Mr. Rutherford, as President, is "the executive officer and General Manager" of the corporation, and as such "has the legal right to manage the corporation," we cannot but feel that the conclusion which is sought to be reached from the development of this claim, to-wit, that as "Manager" he may fill the Board of Directors with his own appointees, is founded on the use of the word "Manager" in a double sense. The term "Manager" of a corporation is the title of an office thoroughly well known to the law and in the business community; and it has never been thought before that this office was in any way connected with the appointing of Directors. It has to do solely with the executive management, and the Manager is the representative and executive officer of the Directors and not their overlord or source of power. The argument that the incumbent of the office of Manager has the "legal right to manage the corporation" is of course unsound, if the word "manage" is meant to imply the exercise of all the powers of the corporation, including the right to appoint Directors.

As to the filling of vacancies, it is enough to say that if Mr. Rutherford is right in his contention that certain portions of the charter are invalid because of the statute laws of Pennsylvania as to corporations, then he is wrong in his contention that as President or Manager of the Society he has the right to fill vacancies, because this very statute expressly provides that "in case of the death, removal or resignation of the President or any of the Directors, Treasurer or other officer of any such company, the remaining Directors may supply the vacancy thus created, until the next election." Furthermore, even aside from this statute and taking the charter solely by itself, he has no right to fill your places, since "vacancies" have not occurred in your respective offices, and also because in the event of any such vacancy it would have been his duty, or the duty of any other president, to call the Board together in special meeting, and he could not deprive the Board of such power and obtain it for himself merely by failing to call a special meeting for such purpose.

But, even if for any reason your original title to office might have legal defects, you, or at least three of you, have been in office so long and your title to office has been so long recognized by the entire membership of the corporation and by its late President, that you are now *de facto* Directors, even if not *de jure* Directors.

Finally, it is important to observe that if the provision of the Pennsylvania statute that directors shall be chosen annually, had the effect which Mr. Rutherford claims, to-wit: as rendering vacant the office of every director at the end of one year, he himself would have no title to his office as director or as President, for the charter requires that the President "shall be chosen from among the members of the Board annually." Mr. Rutherford claims that because he was elected by the members of the corporation to be President, such election constituted impliedly an election of him as a director, although he was not expressly so elected. This claim has been overruled by our Court of Appeals in a similar case. (*People ex rel Nicholl vs. New York Infant Asylum*, 122 N. Y. 190.) If he were not in fact a director, the mistake of the members of the corporation in supposing that he was already a director and therefore eligible to be President, would not render him eligible in law to be president or constitute him a lawfully elected director. For this and other reasons, we are of the opinion that the propositions of law advanced by Mr. Rutherford, would, if sound and pushed to their logical conclusion, defeat his own title to office as director and president.

Very truly yours,

DAVIES, AUERBACH AND CORNELL.

To:

MESSRS. A. I. RITCHIE,
J. D. WRIGHT,
I. F. HOSKINS,
R. H. HIRSH.