THE

ECCLESIASTICAL AGAINST THE CIVIL POWER!

OR

The General Assembly of the Presbyterian Church,

vs.

The State of South-Carolina.

BEING

A REVIEW OF THE DECREE,

OF THE

EQUITY COURT OF APPEALS.

IN THE CASE OF

H. WILSON, and others,

vs.

The Presbyterian Church of John's Island.

BY ONE OF THE MAJORITY.

CHARLESTON, S. C.
PRINTED BY MILLER & BROWNE,
1846.

EXTRACTS FROM THE CHARTER

Of the Presbyterian Church of John's Island.

[A. A. 26th MARCH 1784, and 17th MARCH 1785.]

By the Act of 1785, the following Churches are incorporated:

John's Island Presbyterian Congregation.

Independent Presbyterian Church in Prince Williams' Parish.

Presbyterian Church of James Island.

Baptist Church at the Welch Neck on Pedee River.

Baptist Church at the Cheraw Hill.

To all of the above, are conveyed the same powers and rights as are conveyed by the Act of 1784, 26th March, to the

Lutheran Church of German Protestants.

Presbyterian Church of the City of Charleston.

Presbyterian Church of Edisto Island.

Presbyterian Church at Wilton in St. Paul's Parish.

Baptist Church at High Hills, Santee.

Presbyterian or Congregational Church on Bulloch's Creek, in Camden District; as follows—

[A. A. 26th MARCH 1784.]

Con. of Sec. 1st.—And to make such Rules and Bye-laws, (not repugnant to the laws of the land,) for the *benefit* and *advantage* of the said Corporations severally, and for the order, rule, and good government and management of each Corporation, and for the *election* of ministers, and their maintenance, out of *any* funds belonging to such respective Societies, for erecting and repairing of Churches, by each Corporation, out of any such funds, and ascertaining the rents which shall be paid by pew-holders, in such manner as shall be from time to time agreed upon by a *majority* of the *members* of each respective Society.

Sec. 2.—And be it, &c., That it may be, and shall be lawful for each *Corporation* hereby erected, severally to take and to hold *to them* and their successors forever, any charitable donations or devises of lands, and personal estates, and to appropriate the same for the benefit of each Corporation, in such manner as may be determined by *a majority* of the *members* thereof; and to appoint and choose, and to *displace*, remove and *supply*

such *ministers*, officers, servants, and other persons, to be employed in the affairs of each Corporation; and to appoint such salaries, perquisites, or other rewards for the labor, or service therein, as each Corporation shall from time to time approve of and think fit.

Sec. 3.—That each Corporation aforesaid, shall be, and each of them is hereby declared able and capable in law, *to have*, *hold*, *receive*, *enjoy*, *possess and retain*, *all such other estates*, *real and personal*, *money*, *goods*, *chattels and effects*, which they *now* possess, and are *entitled* unto, or which have been *already given*, *devised or bequeathed* to either of them, by *whatever name* such devise or bequest may have been made.

A REVIEW, &c.

To undertake a review of, and publicly to call in question, the correctness of a decision, made by three, out of four Judges of the Equity Bench, is perhaps a bold step for a plain citizen in South-Carolina,—for if we are not a *law-loving*, we are certainly a law-reverencing people. The character and attainments of our Judges for the most part, have been of the highest order; their decisions have been of authority, not only in the State, but throughout the Union; and in no community has there been exhibited at all times, more personal respect for the individuals composing the Judiciary than among us. This is chiefly owing to the wise provisions of our Constitution. Once invested with the office, nothing but impeachment for improper conduct, can deprive the individual of it; he is not subject to the influence of popular favor, when to secure a re-election he must court the multitude. Nor has he to retire from office at the approach of old age, but from year to year, ripening in wisdom, and legal experience, he becomes but the better qualified to administer that justice, whose High Priest *he should be*. Never may the tenure of the office be altered, except it be to render a Judge ineligible to any other office, while holding a judgship. Entertaining these opinions, and feeling so high a respect for the Judiciary of the State, it is with great reluctance that the writer of this, enters upon the task of reviewing the late decision of the Equity Court of Appeals, in the case of H. Wilson, et al., *vs.* The Presbyterian Church of John's Island, et al., which reversed Chancellor Harper's Circuit Decree. Nothing could induce him to undertake it, but a sense of the importance of the principles involved; of what is due to the rights of the majority of the John's Island Presbyterian Church, and of the utter sacrifice of chartered rights in the State, and the great danger to the community which must result from such a construction of this case. Before proceeding to notice the points of the Decree, an abstract of the history of the Church, and of this case, will be given.

It has not been questioned, and it cannot be doubted, that the Church now called the Presbyterian Church of John's Island, existed from the first settlement of the country. That particular district, was one of the first portions of the State, settled, and long, previously to 1700, it was thickly inhabited; as may be seen from the dates of the old grants; that it was not settled by Presbyterians chiefly, is also evident from the fact, that the first settlers of the country were Puritans from England, and Huguenots from France. It is certain, that these men, fleeing from their native countries for conscience sake, and remarkable for their piety, did not dwell here long before establishing the ordinances of religion, and building up a Church; and, that this Church was not formed *originally* upon the Scotch Presbyterian model, is evident from the above, as from the fact, that it was not until years after Archibald Stobo's arrival in South-Carolina in 1700, that such Churches were formed. It very likely may have been called a Presbyterian Church, because down to our day, Churches formed on that model, as well as Congregational Churches, are in common language styled "Presbyterian"—the Congregational Church in Charleston, was so entitled at various times during its early history, but no one has ever pretended, that it ever was a Presbyterian Church, on the Scotch model. And here we have another evidence of the mixed or uncertain character of this John's Island Church, in the fact, that in a list of old worshippers in, and subscribers to the erection of the Congregational Church in Charleston, now also known as the "Circular Church," long before, and also after 1735, the date of the Will, made one of the grounds of this suit, are to be found many names of persons resident on John's Island, and doubtless worshippers in this John's Island Church;* and so it has continued down to our day—the persons being residents of Charleston in the summer, and of John's Island in the winter. From the time of Ure's Will, we may concede that its proper and distinctive name was the Presbyterian Church or Congregation of John's Island; but it is clear, that the utmost

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* Luke Stoutenburgh, Joseph Massey, Daniel Townsend, John Simmons, *Solomon Legare*, Benjamin Massey, in 1724. Samuel Jones, *Solomon Legare, Sr.*, *Solomon Legare, Jr.*, Ebenezer Simmons, Luke Stoutenburgh, Daniel Townsend, *Isaac Holmes*, John Simmons, Joseph Massey, Henry Livingston, John Bee, in 1732.—*See Ramsay's History of Congregational Church of Charleston*, pp. 5—7, *and Records of Board of Commissioners for St. John's Colleton.*

research on the part of the Complainants in this Bill, has not been able to discover more than the presumption, that there existed a Presbytery in South-Carolina, previous to 1755—much less, that this Church was connected with one. The first connection with any Presbytery is said to have been with the "Charleston Presbytery," incorporated in 1790, but I do not know upon what evidence this is asserted, nor can I remember of having seen or heard of any proof of a Lay-delegate from this Church being present at its Sessions, and so with the "Harmony Presbytery."* In the year 1823, Mr. Thomas Legare, an Elder of this Church, did take a seat in the Charleston Union Presbytery, and so continued to sit until 1838; but although the acquiescence of the Church in this proceeding, may be considered as sanctioning it, it is but fair to state, that it was never approved of by a portion of the members and corporation. In the year 1823, when the Charleston Union Presbytery was formed, by a union between a part of the Harmony Presbytery, and the Association of Congregational Ministers, a resolution was adopted on the part of the Presbytery, inviting the Independent Presbyterian and Congregational Churches in the low country, to send *delegates* to that Presbytery, to sit as members, and this was done on the motion of the *very man*, who was afterwards chiefly concerned in getting up in the South the excitement which lead to the rupture in the General Assembly in 1838, which was based on this very union of Presbyterians and Congregationalists, and who voted with the minority of the Charleston Union Presbytery, at the time of its schism. He was then stated clerk of that body, and did not put this on the minutes, but it can be proved, by those who were at the time members of the Presbytery. Under this resolution, Mr. Legare took

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* Such a connection could not have existed, for about the year 1793, this Church applied to the "South-Carolina Presbytery,"—comprising the northwest corner of the State, to send them some ministers on trial—this was incompatible with connection with the "Charleston," and the Church was never attached to the South-Carolina Presbytery. From 1806 to 1812, the Rev. Dr. Clarkson, of Pennsylvania, and a member of a Presbytery in that State, was the Pastor of this Church; and in the fact, that he never dissolved his connection with it, to join one in South-Carolina, we have another proof that this Church was not then connected with a Presbytery, as in that case, he would certainly have joined the same, that the Church belonged to.

his seat, and this act has been chiefly relied on to prove, that this was a Presbyterian Church, connected with a Presbytery. In short, it is affirmed without fear of contradiction, that for much the longest period of its history, this Church has not been connected with any Presbytery, and during the rest of the time, has kept up or broke off its connection, just as it pleased. Upon the schism taking place in the "Charleston Union Presbytery" in 1838, in consequence of the tyrannical and unjust proceedings of the General Assembly of that year, the majority of the members of this Church, as well as of the supporters or pewholders, forming the corporation, determined that this Church should not become involved in the controversy, if it could be avoided. And it having been ascertained that the Complainant, one of the Elders of the Church had been canvassing the congregation with a view to obtain a vote, by which the Church should disapprove of the proceedings of Dr. White and Mr. Legare, in the Presbytery; at a semi-annual meeting of the corporation, resolutions were introduced and adopted by a large majority, declaring that the Church would have nothing to do, with either Presbytery, or any other Judicatory, but its own Session. In this course, Mr. Wilson refused to acquiesce, and filed the Bill, which lead to this Decree. Since this period, the Church has not been represented in any Judicatory, although its Pastor, as a Presbyterian Minister, must and does continue a member of the "Charleston Union Presbytery."*

Now let us first inquire, what is a Presbyterian Church? and see whether this is not one, under its *present* organization. It may appear superfluous after the able argument of Judge Harper on this point, to say a word on the subject; but as the Court of Appeals, without rebutting his arguments, or disproving his deductions, has thought proper to take a great deal for granted, I may be pardoned for saying something on this head. A Presbyterian Church then is a body professing the

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* It is proper to state, that of those who united with Mr. Wilson, in the Bill, only himself and son were present at the meeting. Dr. Beckett and Mr. McCants were not,—the former, then only a pewholder, has since become a member of the Church, and withdrawn from all participation in the proceedings on the part of Mr. Wilson. Mr. McCants, a member on certificate from another Church, has since the rupture attended service at the Episcopal Church, of which his family are members; so that Mr. Wilson and his family, with Mr. McCants, compose the minority in this case.

Presbyterian doctrines, and governed in its spiritual affairs by a "Session" composed of a Bench of Elders, elected by the congregation. It is a *perfect* and *complete* body in itself, because it has a *Presbytery in itself—its Session*, so called, *is that body*; it is composed of the Eldership, it is the *Eldership itself*—made up of the same elements, which compose, what is termed a Presbytery, and the words "*Presbytery*" and "*Session*," might, and can be *interchangeably* used with perfect propriety, because the Greek word "Presbuteros," from which "Presbyter" and "Presbytery," means an Elder. A Presbyterian Church then is a body governed in spiritual matters, by the Eldership, and is different from *any* and *every other* ecclesiastical body in this respect.* It is widely differ-

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* Since the above was written, I have seen a history of the Presbyterian Church of the United States, appended to the American edition of Buck's Theological Dictionary, Philadelphia, 1833, by the Rev. Ezra Stiles Ely, D. D., one of the highest authorities in the Presbyterian Church—he having been Clerk to the General Assembly for some time; from this I make the following extracts, in confirmation of the position taken in the text.

1. "Each particular congregation of baptized people associated "for godly living and the worship of Almighty God, may become a "*Presbyterian Church*, by electing one or more Elders, and having "them ordained and installed at their *Session*." p. 618.

2. "The first installation of a Session over any persons who have "elected them, constitutes the Presbyterian organization of a "Church, for in that installation service the Elders enter a covenant "relation, and they and the people are mutually bound to each "other." p. 618.

3. "A Presbytery is a plurality of Presbyters or Elders, (for the "terms are synonymous in the Bible,) convened in the name of "Christ to transact presbyterial business. *The Presbytery of a "particular congregation* is distinguished from all *larger* Presbyte- "ries, by the name of the *Session* of that Church. Thus in the "Church at Antioch, Barnabas, Simeon, Lucius and Manaen, con- "stituted such a meeting of Presbyters, as we denominate the *Ses- "sion* or *Presbytery* of the Church of Antioch." p. 619.

4. "We judge that to Presbyters the Lord Jesus has committed "the spiritual government of each particular congregation, and not "to the whole body of the communicants; and *on this point*, we are "*distinguished* from *Independents* and *Congregationalists*." p. 619.

5. "Thus the *whole* government of the Presbyterian Church, is "by *Presbyterial Judicatories*; from the *lowest*, a *Session*, through "*Presbyteries* of *a second* and *third* gradation, to the *fourth* and "*last*." p. 620.

ent from a Congregational or Independent Church, which governs its spiritual affairs by all the members in communion, and in theory holds that it can ordain its own minister. When such a Church is formed, it is invariably called a Presbyterian Church, although it is not connected with a "Presbytery" so called, until afterwards;—this is abundantly shewn by Chancellor Harper, of a Church in a new country. Now connection with a so called Presbytery, composed of the ministers and representatives of other Churches, is no more requisite than with Synods and General Assemblies. It is *usually* so connected, after a sufficient number of Churches are formed in a neighborhood, to make this convenient, and for the purpose of *joint action;* but this connection can be, and is constantly dissolved. It certainly is not *necessary* for discipline, for each Session is the judge in the case of the members of that Church; and the Pastor, being a member of his own Presbytery, *it* has cognizance of *his* conduct. If the connection is formed by the Church, because it *prefers* that there shall be an appeal from its Session, in cases of discipline, it is a *voluntary* act, and can be dissolved in like manner at the will of the Church; and in relation to its Pastor, whether the Church is or is not attached to the Presbytery, it can prosecute charges against him before it. Now if such a Church is not a Presbyterian Church, what is it? Until this question is answered, the assertion that it is not, is good for nothing.—One of the clerical witnesses* examined on the trial of this case, in the Circuit Court, (an arch actor in the proceedings which lead to it,) could not under cross-examination, define it as *anything else* than a Presbyterian Church, although all the time denying that such a Church could exist without a Presbytery. Such a Church is, and has been the Presbyterian Church of John's Island during the greater portion of its existence. It professes the Westminster Confession of Faith,

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If any evidence, other than common sense, and the nature of things, were wanted to substantiate Judge Harper's position, and refute that of the Appeal Court, it is abundantly furnished in these extracts from the highest authority.

And he who in the face of this argues that a Presbytery so called, (the second in grade according to the above,) is *necessary* to the existence of a Presbyterian Church, must also argue that Synods and *General Assemblies are so.* This the Decree denies, and so what becomes of its argument?

* Rev. B. Gildersleeve.

and is governed in spiritual affairs by a Session, composed of Pastor and ruling Elders. Its Pastor has been regularly ordained, and is a member of Presbytery.

I now proceed to the examination of this Decree, and make the preliminary remarks with regret—that no one acquainted with the subject, can read it without perceiving that many things are taken for granted without proof; that inferences are drawn unwarranted by the premises, and without full investigation; portions of a sentence are italicised, leaving others equally or more important neglected; language is inaccurately quoted which should have been exactly given; and in short, like victims on the bed of Procrustes, Prebyterianism, the John's Island Church, and its Charter, are made to suit the Decree. There are signs of haste and carelessness about it, which were not to be expected, if we consider the importance of the case, the character of the Court, and the length of time which elapsed from its promulgation to its being filed; a period of upwards of six weeks. But perhaps, if we are to believe the current report, that the venerable Judge who drew up the Decree, had been gained over to the opinion of the other two, only within a very short time of its being announced from the Bench, all this may be accounted for.

In the remarks which I shall make, I shall take it for granted, that those who read this Review, have before them, *both* of the Decrees, as I shall not always quote at length from them.

In Judge Harper's Decree, will be found the whole clause of Ure's Will, conveying property to the Church, it is thus quoted by Chancellor Johnson, and I italicise after him—"to "the sole use and behoof, and for the maintenance of a *min-* "*ister of the Gospel, according to the Presbyterian profession,* "who is or shall be *thereafter*, from time to time *regularly* "*called*, and subscribe to the Westminster Confession of Faith "as the confession of his faith, and shall *firmly believe and* "*preach the same to the people there committed, or which shall* "*be hereafter committed to his care and pastoral inspection.*"— Now in the above, of the clause commencing with "who," and ending with "thereafter," the *last* word only is marked as of importance; and in his argument great stress is laid upon it, as shewing that Ure intended his donation, for a Church either *not in existence at the time*, or as an *inducement* to it, if already existing, to become Presbyterian, upon Chancellor Johnson's idea of it. Now I contend that the word "is" in that sentence, is of equal importance with "thereafter," and

that the whole sentence implies, that Ure meant to bind the congregation to apply the interest of his bequest, to the use of the person who *was at the time, Pastor* of the Church, *as well as his successors*, and the plain inference, from the use of the word "is," is that there *was* a Church there established *at the time*, and a Pastor *settled*. In the Decree "is" is overlooked, and "thereafter" quoted to show, that Ure was the founder of the Church. Again, the words "there committed, &c.," were evidently also intended in the same sense, as the sentence already noticed, the one bound the use of the funds, to the *then*, as well as all succeeding Pastors, the other required, that the doctrines of the Westminister Confession of Faith, should *always* be preached to *that* congregation, by his beneficiary; he was not to get this support, merely as a Presbyterian minister, and preach to others, but must preach to *them*; the words are only explanatory—they were never intended in any other sense, much less did Ure suppose, or can it now be argued, with the *least* force, that the whole pith of Presbyterianism *lurked in those words*: that nothing short of the system, according to the Scotch model, was *there*. The whole Decree may be said to turn on this simple sentence, the least important in the whole clause, for it is adduced to shew that *besides* a Pastor, there must be a *people* according to that model. Is not every people committed to the care of their Pastor, no matter of what denomination? They are said to be so, in all common language. If the bequest had been made by an Episcopalian, a Congregationalist, or one of any other denomination, for the support of a minister of his own sect, the same language, "there committed &c" would have been perfectly correct and would have conveyed the idea alone, that he was to preach to his own congregation. With what propriety then, can it be argued, that this Will intended to specify, that this congregation should be *committed in a peculiar way*, viz: according to the Presbyterian form, and infer thence, that it must be under a Presbytery. But let the whole import of the clause be considered, and it must strike the mind of every one, that Ure's chief object was to insure the great essentials of Presbyterianism, purity of doctrine, preached by an ordained minister, a member of the Presbytery; he was to be a "minister of the gospel," according to the "Presbyterian profession" he was to be "regularly called," he was to "preach, believe and subscribe the Westminister Confession of Faith," but *not a word* is said of the Church, being connected with a Presbytery, or is there any

ground for supposing it to be implied either in the *language of the Will*, the history of the Church, or of Presbyterianism in South Carolina at the time. How then, as is so forcibly asked by Chancellor Harper, can it be inferred, that Ure intended such connection when *none such could have existed?* He knew that orthodox Presbyterian ministers could be obtained from England or Scotland, who could be subject to their Presbytery, but he knew that the Church could not be connected with any Presbytery for any available purposes of discipline; but to get over this, we have another gratuitous supposition, on the part of the Court; that this Church "*might have been* connected with a Presbytery at home, in the kingdom of Great Britain." With the latter, it could have amounted to nothing, and if by "Home" is meant either South-Carolina, or the United States at large, it was a most unlikely circumstance, for as late as 1741, there was only four Presbyteries known to exist in the whole United States, and these were in Pennsylvania and Maryland,* States, where all forms of religion were tolerated, in all the others some particular demonstration was established by Law, as the Church of England in South-Carolina. But, against this mode of interpretation, I solemnly protest, as a citizens of South-Carolina, and in the name, and in behalf of the Defendants in this suit. This Court of Equity has nothing to do with "might have been." If social and religious rights, guaranteed by a charter from the Legislature of the State of South Carolina, can be taken away upon such gratuitous and ill-founded construction of a Will; then it is time to ask, was this one of the purposes, for which this Court was established. By their own shewing, they are bound to construe Deeds, according to the plain interpretation of the language, and the intention of a donor, where it is requisite to search for such, are to be judged of, by what was *probable, not improbable.* So far from doing so, in this case, they have found what could not have existed, and did not exist for years afterwards; and no school of casuists, could have displayed more sophistry in distorting plain language. The "regular calling" of a Presbyterian minister, through his Presbytery has no connection with *subordination* on the *part of the Church*; he is called by the Church, the call is addressed to him, *he* submits it to *his* Presbytery for their assent, but this applies to *his subordination*, and not to that of the Church, necessari-

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* See Dr. Ely's History of the Presbyterian Church in Buck's Theological Dictionary, already referred to.

ly; if it is so, at the time, it is because it has agreed to be so. Presbyterian ministers all over the country, are constantly called by Churches, and installed by Presbyteries, where the Churches are not connected with them. The "regularly called" of Ure, was to insure subordination, on the part of the Pastors of this Church, and this was done, because purity of doctrine and conduct, was what he required in his beneficiary, and he considered a Presbytery, the best means of ensuring this. It is conceeded in the Decree, that Dr. White answers the description of the person, for whom the bequest was intended; but it goes on to assume, that as a Church in connection with a Presbytery was also intended by the Will, and as this Church is not now so connected, therefore, it cannot get such a minister, and the present Pastor cannot enjoy the fund. Then we have a great deal about "ordination to a particular Church," and as ordination must be by Presbyters, it is assumed that this Church is necessarily deprived of the services of a regular Pastor, therefore the funds must be transferred to Mr. Wilson, whom the Presbytery, Synod and General Assembly, have kindly consented to supply *as soon as the salary is ready*. Here again, is plain common sense, violated for gratuitous construction. One would suppose, that as Dr. White is acknowledged to answer Ure's description, as he was regularly called, and installed Pastor of the Church; as he is still a member of a Presbytery, it would have been sufficient so to declare, as Judge Harper has done, and wait until those terms should be violated before taking the fund from him, and giving it to the Complainant; but that would not have answered the purpose of those, who concocted this suit. When was it ever known, that a Church could not get a Pastor, no matter of what denomination, when there was a support ready for him; or when did any association of miniters ever refuse to place one of their number over a Church, where thereby they increased the influence of their own denomination? But there is not one Presbyterian minister in one hundred, in the United States, who is ordained Pastor of a particular Church; they are ordained Presbyters, by a Presbytery; afterwards, when called, are installed; and so long as a Presbytery exists to ordain Presbyters, so long can that Church be perpetuated, if that is called perpetuation. But *it is not requisite* that particular Churches should be *perpetuated*; for if it were, what has become of all the individual Churches, which have ceased to exist. It is the *perpetuation* of the *institution* that is looked to, in the Presbyterian Church. Again, hundreds of Presby-

terian ministers in the United States, are never even installed Pastors—they are only stated supplies, at the pleasure of the congregation. Are these congregations "committed to their care?" What becomes of "perpetuation, of particular Churches," here? But the fact is, while teaching Presbyterianism, this Decree has stumbled into "Independency." This "ordination to a particular Church," and "perpetuation" of a particular "Church," is a principle of the Independents, not of Presbyterianism; and its introduction into this Decree must astonish every one, when it is stated, that this was the very first question upon which the Presbyterians and Independents split in the Westminster Assembly of Divines. The latter contended that the ordination of a minister must be *preceded* by his *election* and *calling to a particular Church*; the former denied this, and, being the majority, proceeded *before* there was any Presbytery established, to appoint a Committee of Ministers to ordain, because they contended that the right to preach, arose from ordination as a Presbyter, by Presbytery.*

**Neal's History of Puritans*, *London* 1822.—"The first point which came upon the carpet was the ordination of ministers," p. 124.

"The committee proposed a temporary provision till the matter "should be settled, and offered these two queries: First, whether "in extraordinary cases, something extraordinary may not be ad- "mitted, till a settled order can be fixed, yet keeping as *near* to the "rules as *possible?* Secondly, whether certain ministers of this "city may not be appointed to ordain ministers in the city, and "neighborhood, for a certain time *jure fraternitatis?* To the last "of which, the Independents objected, unless the ordination was "attended with the *previous election of some church.*"—p. 125.

"It was next debated whether ordination might precede election to a particular cure or charge." The Presbyterians contended that it could, for the following reasons among others: "Because it is a "different thing to ordain to an office, and to appropriate the exer- "cise of that office to any particular place. If election must precede "ordination, then there must be a new ordination upon every new "election. It would then follow that a minister was no minister "out of his own church or congregation."

"It may seem absurd to begin the reformation of the church, with "an ordinance appointing classical presbytery to ordain ministers "within their several districts, when *there was not as yet one classical "presbytery in all England; but the urgency of affairs required it.*"

It cannot but appear absurd, after reading these extracts, that ordination to a "particular church" should have been introduced into the Decree, as a means of "perpetuating" a church, and as a part of the "regularly calling" of Ure.

This is in the teeth of the idea, conveyed in the Decree, of perpetuating a Church, by ordination to it. And if the Westminster Assembly of Divines, could order ministers ordained, without a Presbytery, it is to be hoped that the John's Island Presbyterian Church, may always obtain an ordained minister, without belonging to a Presbytery itself.

But it was sought in the argument of this case, and it is endeavoured in the Decree, to create the impression, that this Church is an "Independent," in the sense in which it is usually applied to a "Congregational" Church, and to effect this we have the theory of such a Church given to us, and in describing the John's Island Church, it is called an "Independent" Church, not "Independent Presbyterian," which is its present character. I will not complain of the want of candor and fairness in this, if the Appeal Court will prove that there is no difference between the former, which believes in its ability to ordain its own Pastor, and rules its spiritual affairs, through the whole body of communicants; and the latter, which is governed by an ordained Eldership, and which acknowledges ordination only by Presbytery. The Chancellor has been by no means able, although it would have assisted his case materially, to reject the idea, that this might have been an Independent Church at the time of Ure's Will; but he assumes what is by no means the fact, that from 1790, it has been connected with a Presbytery. I have already noticed the character of that connection.*

In this Decree, the construction put on the case of the English Presbyterian *Congregation vs.* Johnson; and Gable *vs.* Miller, by the Circuit Court, is denied, on the ground that there are conditions annexed to Ure's bequest, which are not in the others. The only difference is, that in those cases, the money was left to the Church, in this, for the use of the Pastor—which makes the latter case all the stronger. If in any other respect the conditions are different, that difference has been the *creation* of the *Court* and *not* of Ure. By reference

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* The first direct evidence of connexion with a Presbytery, is not until 1814, when it appears by the minutes of the Harmony Presbytery produced in evidence at the trial, there was a minute of an application, from the Elders of this Church, to be received under the care of that Presbytery; but this was entirely unknown to any of the members of the church, nor is there any record showing any thing to that effect, on the minutes of the Church, which are perfect from an earlier date.

to Judge Harper's Decree, it will appear to the simplest mind, that they are parallel cases. The English Presbyterian Congregation was ruled to be a Presbyterian Church, although not connected with any other Judicatory ; it was independent then, but had been so connected. In the other case, an Independent German Reformed Church, was also held to be a German Reformed Church. The former case especially, is exactly in point, and the decision of it was made in conformity to those principles of equity, which it was intended that this Court should be governed by.

But it is asserted, that the majority have violated their promise of obedience to their Pastor, *in his ordination*, by seceding from the Presbytery, and they can no longer be regarded as under his care and inspection. This is almost too extravagant to need refutation. "The congregation promises obedience to the Pastor, and the Pastor to the Presbytery" —therefore, what? Why, wonderful result!—the Church is connected with Presbytery. Here again we have "ordination" and "installation" blended. But I have already disposed of this point. I have shewn that the former has nothing to do with the charge of a particular Church, and all the credit of discovering this new and simple process of connecting a Church with a Presbytery, must be given to the Court. But the majority *have not* declared themselves independent of Dr. White, he is still their Pastor, they render him all the obedience which Presbyterians render to their Pastors, they are under his care and inspection, and if any body is, or can be, *he* is Ure's beneficiary. But "the people described in the Will are wanting, therefore, there is no necessity for a minister." There *are no people* described in the Will; *the Pastor is*—and if there were, that people is not described *as belonging to a Presbytery*. We are further told, that the Church "derived its right to a minister from the Presbytery." I rather suppose that it derived its rights to a minister from itself, and its right to pay him out of Ure's money, by its compliance with the terms of Ure's Will ; but we shall see a little more of this "right to a minister," when we come to consider the Charter of the Church. The Deed of Turner is said to be "free of all difficulty," and it is asserted, that "it will not be pretended, that the Defendants fall within the description." Chancellor Harper thinks otherwise, and to his Decree I refer all who wish to ascertain the true construction. Sufficient it is to say, that doubtful as it is, that *Ure* was the founder of this Church, it is as clear as daylight, that *Turner was not.*

The donations of Thomas Hanscome, of the land and money—the former to the Trustees, for the use of the Church, the latter to the corporation itself—the four thousand dollars taken from the John's Island Society, are all, by this Decree, swept under the control of the General Assembly of the Presbyterian Church; and to do this, the Charter of this Church is treated as a nullity, and the Court assumes a jurisdiction, which to our minds savours strongly of usurpation.*

A copy of the Charter is affixed to this Review, and every one can judge of its provisions. Therein it is declared, that the "several and respective Societies above mentioned, and the "several persons who now are, or shall hereafter be members "thereof, respectively, and the successors, officers and mem- "bers of each of them, shall be, and they are hereby declared "to be severally one body corporate, in deed and in name, by "the name and style of the *John's Island Presbyterian Con-* "*gregation*," &c. From this we have the novel assertion of the Decree, that none but "members of the Church," that is to say, members in communion, were incorporated. Now to this, I answer that the language of the Charter, is the same, which is used in every Charter of the day, of Churches; that no one has ever before dreamed, that the corporations of Churches consisted only of communing members. On the contrary, these corporations are always composed of pew-holders and members: these regulate and control the *temporal* affairs of the Church; the *members* are purely a *spiritual* body, *as such unknown* to the laws. Besides, the language of the Charter of this Church, is peculiar, in using the word "congregation" as its designation; and never has it been ever understood as implying the communing members alone; the congregation of a Church are its worshippers, and when such a body is incorporated, those are corporators, who are in law entitled to vote. But there is no disguising the fact, that without such a construction of the Charter as is given by this

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*As the amount received by this Church from the John's Island Society ($4,000), is by this Decree, declared to be forfeited by the corporation, and in fact to belong to a Church attached to a Presbytery, it will be as well for the Episcopal Church of John's Island, to inquire and ascertain whether the like amount received by the corporation of that Church, may not one day or other be decreed to belong, not to that Church as a corporation, but to an ecclesiastical body, attached to the General Convention of the Episcopal Church of the United States.

Decree, it would never have answered the purpose for which it was intended; all these numerous mistakes are but so many steps to the conclusion, which has given so much grief and surprise, not to the members of this congregation only, but to the community in general. It would have availed nothing for the Complainants, so long as this Charter stood in the way. It was a stumbling block which *must be removed*, or the case was lost. The General Assembly by its edict, could not affect the rights of a body holding funds under a charter from the State, *composed in the usual manner*; but once settle it, that only the "members of the Church" are corporators, and it does not look quite so monstrous to carry out the order of the General Assembly, declaring that "minorities shall possess the rights of majorities." Happy day for South-Carolina, when a foreign ecclesiastical body decides who are corporators, under a Charter from the State, and a Court of Equity is ready to execute that Decree. It is impossible to get over this, it may be denied by the Court, but it is a conclusion borne out by the arguments of the Decree itself.—The *Presbyterian General Assembly have decided this case.** After reciting the extract from the Charter given above, it goes on to say—"*Therefore* it was, the *members of the Church*, "and their sucessors, members of the Church, who were in-"corporated, and *the Defendants having seceded from it*, are "no longer corporators, and" &c. Now, was there ever such a "Therefore," since logic was invented,—this Society is incorporated as a Presbyterian *congregation*, the members of it (that is the *congregation*) are declared corporators, "*therefore* it was the *members of the Church* who were incorporated."—But it goes on, "the Defendants having seceded from it, are no longer corporators." Seceded from what? The "John's Island Presbyterian congregation" was incorporated—*this particular Church* was incorporated—*not* the Presbyterian Church of the United States. When and where did the majority secede from this Church? They have not seceded from either the doctrines or form of government of this Church. Did they, by declaring themselves an independent Presbyte-

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* See paragraph on 18th page of the Decree, beginning "The recognition," &c. Those judicators have a right to recognize *any persons* as a Church, who have complied with the usual forms: but none to recognize *those persons*, a minority, as the John's Island Presbyterian Church, entitled to its funds, while there was a majority, recognized as the "corporation" by the Charter.

rian Church, violate their Charter, when, at the *very period at which the Charter was granted*, they were of necessity *just such a Church ?*—for, at the time, they were not in connection with any Presbytery; none existed in the lower part of this State at least. Did they violate their Charter, by not obeying the Presbyterian General Assembly, when at the time, no such body existed? The only "secession" there has been on the part of the majority of this Church, has existed in the imagination of the Appeal Court, when it has been assumed and asserted, to answer the purposes of the Decree, that this was an Independent, or Congregational Church, which *it is not* and *never will be.*

But I have higher ground yet to take, in reference to this Charter, I maintain that it is a position, which even a Court of Equity cannot sustain, and in the teeth of the law of the State, to assert that the communing members of this Church, or of any other, in South-Carolina, alone compose the corporation. If this were so, then farewell to the rights of every incorporated Church in the State, one and all, they have been usurping powers, which do not belong to them, and all their acts are illegal. Let us look at the peculiar position of the Churches in the State, after the Revolution, and then go into a closer examination of the language of this Charter, and all others granted at the same time, and we will see that not only are they at variance with the deductions of the Decree, but that the Charter of this Church, confers powers upon the corporation, directly opposed to that connection with Ecclesiastical Judicatory, which these Judges have declared to be imperative on the part of this Church.

Previously to the Revolution, the Episcopal Churches in South-Carolina, were a part of the Established Church of Great-Britain, and were under the control of the Bishop of London, through his Ordinary. Presbyterian Churches, and those of all other denominations not being recognized by law, were under such government as they chose to establish, and whatever that was, it was entirely voluntary. Up to 1755, it is almost certain that there was no Presbytery in the State; after that period there appeared to have been such a body, but the connection of the Churches with it, must have been of an unsettled and indefinite character, for it is known that some of the Churches, supposed to have been connected with it, received their ministry from Scotch Presbyteries, which ministry never dissolved their connection with them. But what-

ever may have been the character of the Presbyterian Churches in South-Carolina, *previous* to the Revolution, it is certain, that at its close a *new state of things arose*—all ecclesiastical connection with foreign bodies ceased, and every Church was reduced to its original simple elements.* And the State having passed a law, tolerating all forms of religion, and authorizing every congregation in which there were fifteen male worshippers, to apply for a charter, a number of Churches of all denominations hastened to avail themselves of the privilege, and within a few years after the peace, were incorporated. The general characteristics of all the charters are the same, and it will be evident to every impartial mind, on a perusal of them, that it was intended that each Church should be a *complete body in itself*, and be invested with all the powers appertaining to corporations, viz:—That the *majority of each body* should be the corporation; that in that corporation, should be vested all funds held by each, *from whatever source derived*, and that each should possess the right *to call and dismiss its own Pastor*, and other officers. Now, as will be seen by reference to the Charter prefixed to this Review, all of these powers are granted to this "John's Island Presbyterian Congregation;" and I maintain, that all of them are directly opposed to the idea of connection with ecclesiastical judicatories, or control of its funds by them. The *last* especially is irreconcileable with the ground assumed in this Decree. If this Church was intended when chartered to be connected with the Presbyteries, Synods and General Assemblies of the Presbyterian Church of the United States, it could not have had the absolute right of dismissing its Pastor, for Churches so connected, abandon that right during the connection, being compelled in case of disagreement with their Pastor, to refer the matter to the Presbytery, and if that body chooses to disregard the wishes of the Church, it must keep its Pastor, so long as it acknowledges the authority of the Presbytery, and

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* As all the Churches in the low country were shut up during the time that it was in possession of the British, as all the Presbyterian ministers at that period were Scotchmen, and as most of them are known to have left the country at the commencement of the Revolution, it is inferred that whatever Presbytery existed previous to that event, became suspended or extinct, and if the "Charleston Presbytery," incorporated in 1790, was a revival of one existing before, it must have been with entirely new members; and in fact, the language of the Charter of 1785, is proof sufficient, that when that was granted, there was no connection with a Presbytery.

he does not choose to resign. This right of calling and dismissing its Pastor, this Presbyterian Church of John's Island has always exercised without dispute from any one. And now, what becomes of the assertion of the Decree, that this Church derived its right to a Pastor from the Presbytery? When this Church was incorporated there was no Presbytery, no Synod, no General Assembly. No one could say, that such bodies would ever exist in the State, or the country; it was chartered with powers opposed to such connection. How then could it be controlled *at any time* afterwards, in its temporal affairs, and a moment longer in its ecclesiastical, than it choose, by a Presbytery, Synod and General Assembly formed *afterwards?* Is it pretended, that having been chartered independent, and afterwards connecting itself with these bodies, this Church lost forever the right of dissolving that connection, and all the powers conferred by its Charter? If this is so, then I deny that there is any thing like religious liberty in South-Carolina, for Presbyterians at least. But this is contrary to reason. If it had the right of forming the connection, it has equally that of dissolving it. But more, its rights under its Charter are unalienable, they were conferred on that body, which usually composes the corporation of a Church—its members and supporters, jointly—its after connection with a Presbytery, &c., was but the act of the ecclesiastical part of the Church. The members, or the Session, had no right to convey to any Judicatory, a control over the funds of the Church, or to do any act which would deprive the rest of the corporation of their rights as corporators; its voluntary connection, imposed by no obligations of law, no requisitions of Presbyterianism, could be in like manner dissolved, as it has been again and again. The Charter invests in the *majority* of the *corporation*, all funds which it held at the time, including, of course, Ure's and Turner's bequests, if they were in existence, which has not been proved; and, although not denied, may be considered doubtful, if we reflect upon the loss and depreciation which accrued during the Revolution, to both public and private property, from the confusion of the times. The majority of the corporation hold this fund, for the purposes of the Will, and this Court cannot remove them from the trust, for not being connected with a Presbytery, unless they can *prove* (not surmise) that this was a condition of the Will. This I defy them to do, and it has been already shewn, that the contrary was probable. Again; as when the Church was chartered, no Presbytery existed, (1785) does

the Court mean to say, that the State had no right to vest these funds in the Church? Or, supposing that no connection with Presbytery had ever been formed *after the Charter was granted*, is it not clear that these funds (on the supposition of the Decree that connection was requisite,) would have long since have been forfeited; and then the Complainant could not found a shadow of right to them at this day. But these funds *were* vested in the corporation, when there *was no connection*, and for the greater portion of the time since, there has been *no connection*—the *prior* "*usage*" of the Church, and for *much the longest period*, has been against such a connection, and its present position is a resort to "usage," sanctioned by the state of the Church at the date of Ure's Will, for the greater portion, if not all of the time, from that to the date of the Charter, by the circumstances of the Church when that was granted, and for most of the time since.

I come now to another position, which is, that no matter what Presbyterianism is, in the abstract, according to the "Scotch model," or the "form of government," in South-Carolina, ever since the Revolution, it has existed under the form assumed by this Church, under the sanction of the State. Independent Presbyterian Churches are recognized by the laws of South-Carolina, are so created; and, it is not in the power of the Court of Equity to destroy them. The "First Presbyterian Church of Charleston,"—the "Presbyterian Church of Edisto Island,"—the "Presbyterian Church at Wilton,"—and the "Presbyterian Church of James Island"—all chartered by these Acts of 1784 and 1785, have existed for years; unconnected with any Presbytery, or other ecclesiastical body; governed in ecclesiastical affairs by a Session, *never* represented in Presbytery, but their ministers, members of, and subject to some Presbytery. If this John's Island Church is no Presbyterian Church, these are not. If the majority of the worshippers of this Church, are not corporators, then all the acts of these other Churches for years past are void. *They* have also forfeited *their* charters, for the *same* language conveys the *same* rights to all. Let them look to it, and with all diligence return to their allegiance to a Presbytery, Synod and General Assembly, *not in existence* when they were incorporated. Let them learn for the first time, that they are purely ecclesiastical bodies, with no civil rights—not their own masters, but subject to the General Assembly, a foreign body, chartered by the State of Pennsylvania. *That* is the *centre* of *their* system, around *it* must they move in obedience to its

behests, or prepare for annihilation. Especially, let the "First Presbyterian Church of Charleston" answer, how it dares to control, by a corporation composed of members and *pew-holders*, funds currently reported to be the lapsed legacy of a defunct Presbytery, (a body, by the by, which should have been "*perpetuated.*") How dare they use Presbyterian funds, when they are not a Presbyterian Church? Can they suppose an "*Independent*" Church has any right to such funds? If we are to believe this Decree, its own minister has testified against it. We are told "the Rev. Mr. Forrest was right when he said, there could be no Presbyterian Church without a Presbytery." If Mr. Forrest meant to say this, the name of the Church is a misnomer, its Charter a farce, its corporation, trespassers and usurpers. But whatever becomes of the John's Island Church, the First Presbyterian Church of Charleston, may safely rest its Presbyterianism on the arguments of Chancellor Harper's Decree, in noticing Mr. Forrest's testimony. But enough of this.

The principles of this Decree must be applied to Churches of other denominations, as well as Presbyterian. If they are to stand, the charters of all other Churches are mere waste paper. Let us apply it to Episcopal Churches: their charters are to the same effect, as that of this Church. Now, at any moment they may be placed in the same position; they were charted *independent;* they have afterwards connected themselves with the "General Convention;" have placed themselves as ecclesiastical bodies, under a Bishop, and adopted "a form of government," the Canons. Now, let the General Convention become divided upon any of the questions of the day; let the majority declare themselves "the Convention," and "the Church," as was done by the General Assembly; let that majority be either of the high or low Church party, and let it in like manner declare, that minorities of State Conventions and Churches "adhering," shall be recognized as "the State Convention," and "the Church." When this is brought down to Churches, let there be but a single individual in some Church, (which is no improbable supposition,) who thinks with the majority of the General Convention; let him carry this question into the Court of Equity; is there anything to prevent the Court deciding exactly in the same way, in such a case?—Nay! Must not this Decree be held up as a precedent, and its principles applied to it? And is it not clear that, that single individual may turn out the Rector, and every

member of the corporation, have the funds of the Church transferred to his control, and place in the ministry of it, the creature of his choice alone? It would be so; the charter of such a Church would become useless, its corporation declared to consist of the communicants alone, its funds held to be subject to the control of the General Convention. I hold the cases of the two denominations to be perfectly analogous.—Let those Churches look to it, and in time interpose, to keep the evil from their own doors. This is now a Presbyterian case, ere long it may be theirs. There never was an encroachment upon the rights of men, which had not its origin in a small beginning, perhaps in an individual case; a noxious plant is far more easily destroyed when young, than when it has attained the maturity of its growth.

The last ground of objection to this Decree, which I shall notice, is the claim set up on the part of the Court, of a right to inquire into the orthodoxy of Dr. White. We have a general disclaimer of the authority of the Court to inquire into the religious faith of any one, while, in the same sentence, we are led to infer, that Judge Harper was wrong in rejecting testimony as to Dr. White's opinions. This is the more strange on the part of Chancellor Johnson, because when a motion was made in the earlier stage of proceedings in this case, before the Master in Equity to require Dr. White to amend his answer on the subject of his belief, an appeal was taken before the Chancellor, who sustained the master on the grounds of his refusal, which were the same as those since, so ably set forth in Chancellor Harper's Decree. How are we to account for this? Does the Court of Equity in South-Carolina, gather jurisdiction as it goes? Is what was without its control five or six years since, now within it? Dr. White has been for nearly twenty-five years the Pastor of this Church; for nearly twenty of this time, the Complainant Mr. Wilson, sat under his preaching, with the utmost approbation of it; no whisper of unsoundness of doctrine was ever heard, until this controversy arose in the Presbyterian Church—then because he, and the Church of which he is Pastor, refused to *approve* of proceedings, which posterity will stamp with reprobation, a Bill is filed to bring the Church under the jurisdiction of the General Assembly, and to *help out the case*, a false charge of heresy is brought against the Pastor, and not being able to prove that he ever preached doctrines incompatible with the "Confession of Faith," it is charged that he uttered sentiments in a *speech delivered in Synod*, which were not or-

thodox, in the opinion of Messrs. Thornwell and Smith! and a Court of Equity in South-Carolina, affirms that it has a right to inquire into the charge! Pity, that it did not at the same time give us, *its* interpretation of the Confession of Faith, and the rules by which it would decide whose views were most in conformity to it; those of Dr. White, or of Messrs. Thornwell and Smyth. It might have saved succeeding Judges some trouble *in hunting for them.* But this Court has forgotten the extent of its jurisdiction, as well as the age and community in which we live.

The questions involved in this case are of the highest importance; they are no less than those of religious liberty. It is not to be disguised, that this is a Decree, to *enforce* the edict of the Presbyterian General Assembly*—and it adds not a little to the enormity of it, that, that edict was of the most *arbitrary*, *unjust* and *revolutionary* character. The proceedings which lead to it, were *begun* by the exercise of the most *odious machinery*, they were consummated in the utmost violence and disregard of the rights of a part of the Church, and the Church of Rome in its worst days never committed

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* It is clear from the reasoning of this Decree, that there was but one way for this Church to escape a suit in Equity, and that would have been, by annexing itself to the minority (Messrs. Smyth and Gildersleeve) of the Charleston Union Presbytery; if it had adhered to the majority of that body, the same course would have been taken by the Complainant—he, then as now, would have been reoognized as *the Church*, by the Synod and General Assembly; he would have brought this suit to enforce obedience and to claim the funds, and the argument would have been, the same in that case, as this. For the burden of the song in the Decree is, not so much that the Church has declered itself independent of Presbytery, but that it has quit the Presbyterian Church; we should have then been told, that recognizing the authority of the General Assembly and Synod, we were bound to obey it. The fact of there being no Presbytery in South Carolina in 1735, and of the Church being chartered independent in 1785, have offered no dfficulty to the Court's declaring that Ure's fund was given to a Church in connection with a Presbytery, and to its declaring the Charter in effect void, in this case. And after this, I shall never suppose, that there is anything impossible with a Court of Equity. Thus it is settled by this Decree, that a Presbyterian Church, once connected with a Presbytery, Synod and General Assembly, is forever connected, and has nothing to do but *obey*, no matter how unjust, tyrannical, or revolutionary, the measures adopted may be. If this is religious liberty, save me from it!

greater violence upon the consciences of its followers, than has been attempted in this matter. To enforce such proceedings upon the Churches in this State, to assist the General Assembly, not in carrying out the principles of Presbyterianism, according to the book of discipline, but in establishing a *new test of orthodoxy*, approval of its proceedings, and *adherence to it*, this Court has been called in, and what has it done? While acknowledging that the Will of Ure, established a beneficiary, whose description Dr. White answers, it has declared that there must be also a Church connected with a Presbytery, although it has not been able to shew the existence of a Presbytery at the date of the Will, or the *necessity* for one, under any circumstances. It has *set aside* the acknowledged conditions of what it considers the deed of foundation, and set up other conditions in violation of the usage of Presbyterian Churches in the State, and in face of a Charter, which found and left this, an Independent Presbyterian Church. It has exceeded its jurisdiction, in taking away the corporate rights of the majority of the Church, and has sacrificed them without a trial at law, at the *bidding* of a *foreign ecclesiastical body*; and, in doing so, has in fact abrogated the charters of all other Churches, of various denominations, which were chartered at the same time. Now, by the Constitution of South-Carolina, no one can be deprived of his rights, but by trial and conviction *before a jury in a court of law*. It was therefore a plain obligation on this Court, if it found that the Charter of this Church, was in its way, in framing a Decree, to suit its views of the case, to order the questions arising under the Charter, down to a court of law to try them. This was the course adopted by the Legislature, in the case of the Banks, and although no lawyers, we are informed upon authority entitled to great respect, that there is no way for removing a corporation, but by a trial and conviction in a court of law, under an information in the nature of a "*quo warranto*." At all events, the importance of the principles at issue, and the doubtful jurisdiction of the Court of Equity, rendered it but proper, to reserve this case for the opinion of the Court of Errors. The neglect to do this, and the evident effect of the Decree, to strengthen the ecclesiastical, at the expense of the civil power, will not add to the popularity of the Court.

Nothing that I can say, can add anything to the opinion which must be entertained of Judge Harper's Decree, it is worthy to be compared with his best efforts. Its principles

are those upon which our government is based, and it needed but his master-hand, to display them with that force of reasoning, and eloquence of language, which must carry conviction to every impartial mind.

In conclusion, I take the following positions, and challenge their disproval:—

That the Presbyterian Church, or "Congregation" of John's Island, in all probability existed long before the date of Ure's Will, (1735) and I maintain this, from the language of the Will itself, as well as from the fact of the settlement of the country long previously.

That this Church was before, and long after Ure's Will, an "Independent Presbyterian Church," and this is shewn from the absence of all evidence of the existence of a Presbytery in the State, until about 1755.

That from 1755 to 1775, this Church may have been connected with some Presbytery, although this has not been proved; but that from the latter year, until after the date of the Charter, the Church was *not* connected with any.

That from 1790 to 1814, there is not the *least* evidence of any connection, and that the application to the Harmony Presbytery in the last mentioned year, was never acted upon in any manner, and was entirely unknown to the Church.

That the true connection of the Church with a Presbytery, commenced in the year 1823, with the Charleston Union Presbytery, and that this was upon an invitation extended to Congregational and Independent Presbyterian Churches, to send delegates to it—upon which an Elder from this Church took his seat---but that this step was never approved of by a portion of the corporation.

That whatever connection may have existed, it was formed *voluntarily* on the part of the Church, as is *always* the case, and can be dissolved at is pleasure.

That a Presbyterian Church can, and does exist independently of any connection with a Presbytery, and is acknowledged to be a complete body in itself, by Presbyterian writers.

That such a Church is governed in ecclesiastical matters by a Session, composed of ruling and a preaching Elder, the latter of whom must be ordained by a Presbytery, and be a member of one, and that his creed, as well as that of the Church, must be in accordance with the Westminster Confession of Faith, and I maintain, that such a Church is not an independent Church, in the sense in which it is applied to

Congregational Churches, which may and do profess different creeds, are governed by the whole body of communicants in spiritual affairs, and in theory claim the right of ordaining their own Pastor; each Church for itself.

That Independent Presbyterian Churches do exist in South Carolina, and elsewhere at this time,* have so existed for many years, and that it is impossible to prove that they are anything else than Presbyterian Churches, and have been recognized as such by the General Assembly of the Presbyterian Church, as was shewn by their minutes produced in evidence in Court.

That the Presbyterian Church of John's Island was in 1785, the date of its Charter, an Independent Presbyterian Church, that it was chartered such with the right of calling and dismissing its own Pastor, the latter of which powers is especially, incompatible with connection, with any Presbytery, according to the form of government of the Presbyterian Church of the United States.

That all funds in possession of this Church at the date of its Charter, was vested in the *majority* of the "congregation," and that congregation consisted of all the male pew-holders and members in communion, as in the case with all Churches in the State.

That it is a violation of the Constitution to take away the privileges of the members of this congregation, as a corparate body, without a trial and conviction in a court of law, and a violation of the law of the land, to declare that none but "members of the Church," were incorporated.

That the *beneficiary* of Ure's Will is a "minister of the gos-"pel according to the Presbyterian Confession, who shall be "regularly called, and shall subscribe to the Westminster "Confession of Faith, and shall firmly believe and preach the "the same;" and that Dr. White answers this description, and consequently he is entitled to the benefit of the fund.

That the concluding words of the sentence, "to the people committed" &c. as quoted by the Decree, are words of explanation, to point out to whom these doctrines should be preached.

That the calling of a Presbyterian minister, has reference to *his* subordination only, and *not* that of the *Church*.

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* Such a Church has existed and *flourished* for many years past in Savannah, Georgia.

That as this fund was left to the Church, when it was actually an "Independent Presbyterian Church" as the majority of the corporation have so declared it now to be, *they* have the best right to it, nor does the acceptance of the fund, make any difference, inasmuch, as it has not been shewn, nor is it likely that there was a Presbytery in the State for twenty years after, and consequently the use of the fund in that interval, was under the same circumstance, and must have been so understood by the original Trustees and their successors.

That these funds have been by the Charter, vested in the corporation, that a majority of the pew-holders and members have always acted as that corporation, that the Complainant filed this Bill as a "Trustee," that he is not a Trustee under Ure's Will, having been elected by the corporation, which is the only Trustee; Ure's Trustees having been merged in it, at the time of the Charter. That the present "Trustees," so called, are but a Committee of Finance, and consequently, the Complainant ought not to recover under this suit.

That the corporation could not forfeit Ure's fund, *unless* it had been *expressly stated in the Will, as a condition of its acceptance, that the Church must be connected with a Presbytery.*

That at the date of Turner's Deed, there is still no evidence of a Presbytery in the State, and that in any case, *his* bequest cannot regulate the character of the Church.

That the land given by Mr. Hanscome, was confessedly given with no *intention* or *condition* of connection with a Presbytery, that the Church and Parsonage were built by subscription, and out of the fund, left by Mr. Hanscome's Will to the corporation; that it is equally notorious that this corporation was *by him* known at the time to consist of the pew-holders and members *jointly*; that *he himself* acted and voted as one of the corporation, although a member in no other sense than as a contributor.

That the $4,000 taken from the funds of the John's Island Society, was taken for the use of the corporation, and that those worshippers of this Church, not "members" of it, who were members of that Society, (Mr. Hanscome among others) would never have assented to such an appropriation of them, if they had supposed that *they* would possess no voice in controling their application.

That *this Church of John's Island*, was incorporated by the State, and *not the* Presbyterian Church of the United States; that the majority of this Church have never "seceded" from

the former, and the latter never had any claims upon the former a moment longer, than the corporation were pleased to permit it, and therefore the majority of the corporation of *this* Church are entitled to the funds vested in it by the State.

That this is a Decree to *enforce ecclesiastical obedience* for which purpose, the Court of Equity in South-Carolina was never instituted; that the evident deduction from it is, that a foreign ecclesiastical body has a right to control a corporation created by the State; that the existence of this Church is made to depend, not upon performance of the purposes from which it was created and chartered, but upon its approval, and of the measures of obedience and adherence to the General Assembly of the Presbyterian Church.

That, in a word, the Decree gives to the Presbyterian Church of the United States, all the advantages of an establishment, without exacting from it the responsibility of one. It does not create Churches, but they are founded and endowed by the religious zeal of individuals and communities, and chartered by the State; and, as soon as this is done, the Presbyterian Church of the United States steps in and says, "this is a Presbyterian Church and belongs to us," and whatever odious and oppressive *test*, that body chooses to adopt, is forced upon it, and the application of its funds, controlled to the last farthing. For, from the argument of the Decree, it can be just as clearly inferred, that every Presbyterian Church must be connected with the General Church of that name, as that *this Church* must be. Hence there is no option left to individual Churches, but to consent to be involved in every controversy which agitates the Presbyterian Church, or to adopt some other model.

That the pew-holders of this Church, and of the others incorporated in the same Act, cannot acquiese in the forfeiture of their rights as corporators, in their respective Churches, without a dereliction of duty as citizens, and an acknowledgement that the ecclesiastical mandate of the Presbyterian Church, is paramount to the civil authority of the State, and it becomes them to look to their rights, under their respective charters.