OPINIONS

BY LEX,

ON THE RIGHTS OF CONSCIENCE AND OF PROPERTY IN THE CORPORATION OF TRINITY CHURCH, TO THE KING'S FARM AND GARDEN, AND THE DOMINIE BOGARDUS BOWERY;

AND ALSO,

ON THE LIKE RIGHTS IN THE COLLEGIATE DUTCH REFORMED CHURCH, TO THE TRUST ESTATES OF STEENWICK & HARPENDING.

Said Paul of old:

"Prove all things:—
"Hold fast that which is good."

Said Jesus Christ:

"No man can serve two masters."
"Ye cannot serve God and Mammon."

And Malachi, the Prophet, thus records his voice.

"Now, oh ye Priests, this commandment is for "you. If ye will not hear, if ye will not lay it "to heart to give glory to my name, saith the Lord "of Hosts, I will even send a curse upon you and "will curse your blessings. Yea, I have cursed "them already, because ye do not lay it to heart."

Now in order to prove all things it is necessary first to settle the principles by which the cause in question may be tried. All agree, directly or indirectly, that the chief good is happiness. For even when the man of prey devours the missionary he desires happiness, at least for himself.

Mankind differ therefore, chiefly as to *means* of happiness. Where wants conflict, men fight, if men of war, or lie and steal, if more disposed to cheat; and hence the arts of war for soldiers, and the arts of trade and Holy Votaries craft in creeds, confessions and the like, to set at naught the words of Jesus Christ, who said, "If thou wouldst be "perfect, sell all that thou hast and give to the poor, and "thou shalt have treasure in Heaven, and come and follow "me."

"Lay not up for yourselves treasures on earth."

"Render unto Cæsar the things that are Cæsar's, and "unto God the things that are God's."

"My son, give me thy heart."

But no class of men have ever been more full of the lust of gain of this world's wealth, or mammon of unrighteousness—none have been more proud, and none have less obeyed the law, than they who preach, "Lay not up for yourselves treasures on earth," and yet by every art of priestcraft and finesse contrive stealthily to set at naught the first principles of Him whom they profess to serve. But, said Lord Coke, perhaps the brightest luminary of the galaxy of British Jurisconsults, ironically:

"The Established Church of England is much to be ap- "plauded, that they always had of their counsel men of the "most discreet and subtle judgment; who, however the "State might enact laws against them, always found means "to circumvent and destroy their force."

No State Legislature has ever yet been able entirely to protect the people against Priestcraft operating against Christianity. By subtle means, as we are taught, the serpent in the garden of Eden tempted first a woman, who then tempted man to steal forbidden fruits. For however highly wrought the oriental style of teaching allegorically and by parables, we still can trace its real meaning.

No man can take the forbidden fruits of other's toil or ingenuity without being called to answer, first or last, unless he yield a fair equivalent.

Now, the mother Church of Trinity has never paid a penny for the large and overgrown estate she holds, as we declare, inequitably. It was hired originally for sixty-three bushels of winter wheat a year of Governor Fletcher, who was called home to England to stand a trial for granting protection, to pirates to cruise in the South Seas, and he desired, of course, to stand well with the Church.

But we have not settled yet the Rules of Law, or Equity, by which she shall be tried. It strikes every one, however, who may have an enlightened conscience, that even if this vast property was given by Queen Anne, to help establish in our land the English Church, ALL of that persuasion in the Parish of New York, according to the Charter of the Parish Church must be entitled to an equal share in the inheritance, unless good reasons to disinherit them as illegitimate.or other cause is shown. *Prima facie*, all have equal rights. But we are ready to allow that neither the New Testament or Old, or even the first dictate of conscience, is the rule of judgment in our Courts of Law or Equity.

For our systems of Jurisprudence are entirely artificial. The doctrine of *cy pres* must govern all old English and Dutch charters. That is to say,—by our treaties of peace and Constitution of 1777, we are required to sustain the English and Dutch Charters as NEARLY TO the original grants as may be consistent with our present form and principles of *Equal Rights* in Government. Our only Rule of Faith in evidence of truth must be consistency, under the Higher Law of absolute necessity. And yet we allow that "as it was in the begining so it is now, and so must it forever be until destroyed." Whoever by his words or deeds contradicts the principle of Equal Rights and Equal Laws, or bears evidence in opposition to first principles, must fail.

The property in question in the hands of the Corporation of the Parish Church of Trinity, was originally purchased by the Dutch West India Company, of the Aboriginal Indians, called Manhattoes. It was subsequently

seized by the British Government, on the bold pretence that it was a part of Virginia. The Dutch Admiral Evertson retook it in the year 1673.

It was then known as the "Farm and Garden of the Director General," and on the north boundary, was the glebe of the first minister from Holland,—Dominie Bogardus.

At the conclusion of peace between Holland and England, in A. D. 1674, the Dutch West India Company concluded to accept of an island nearer the centre of their trade, in place of this settlement; however, Hendrick Hudson, had in fact, been the first to make the discovery of this "Province." But a daughter of the sovereign of England having been conquered by the Prince of Orange, (William III)—a true Hollander—the people of this Parish were content to live as subjects of so wise and good a king and countryman; so that when the Parish Church of Trinity was first established, there was some degree of cordiality between the Dutch and English in the Province of New York. For example, until Trinity Church was built, the Dutch Reformed Church—now the U. S. Post Office—was occupied alternately by its owners and Episcopalians; and as a compliment, the latter made a present to the former of a very splendid organ; indeed, on retiring finally to the new edifice of Trinity, some went over to the Episcopal persuasion. These two communions are perhaps, at this time, the most wealthy of any in North America, excepting the Roman Catholic, whose wealth we do not know. But we are told by a late Senator, (Wadsworth,) in answer to certain charges made by cast off children of the mother Parish Church of Trinity, that the Roman Catholics are building on the main avenue of fashion, a Cathedral whose spires will look down on Trinity by a hundred feet. Indeed, in florid style, he warns the Legislature not to touch the property of Trinity, lest the Church of Rome should yet entirely outshine and eclipse the Protestant. It is an amusing argument in answer to grave charges of misusers and nonusers made against an eleemosynary institution of this nature. We give these charges in the context:

TRINITY CHURCH, NEW YORK.

Mr. Spencer also submitted a lengthy Report from the Select Committee to examine the affairs of Trinity Church, New York. The following is a synopsis of the Report:

The Report embodies the testimony of thirty or forty witnesses, among whom were Assistant Minister, Vestrymen and the Controller of Trinity Church, as well as other clergymen and laymen of the highest standing among the Episcopalians.

The Report first exposes the errors, omissions and misrepresentations of the "Communication" presented by Trinity last year. The list of corporators of the parish seems to have been studiously concealed from all eyes but those of the Rector and Controller. A transcript of the names was at length, however, given by the Controller to the Committee; but is found to contain the names of persons who have long since removed from the city or have been dead for years. The statement of the Corporation that Trinity Chapel was built mainly to increase the number of their corporators is proved to be contrary to the fact.

Trinity is shown never to have built any free church; and to have spent in aiding to build them, during the past five years, only $1,100; Trinity Chapel having, during the same period, cost $237,163 82. No church had been endowed during five years; nor had Trinity ever founded or endowed any institution of charity or benevolence, even for the poor.

The present value of the Corporation estate, deducting debt, and allowing unexpired leases, is given by the Corporation as $1,016,327 53. It seems that they forgot to include their interest in St. John's Park, valued by them at $400,000; and also their church mortgages with interest, amounting to nearly $600,000 more. But, independent of these items, the valuations of lots, as sent in to the Senate, are shown to be astonishingly lower than the prices put upon those same lots by Trinity herself, when selling or re-letting them. It is shown that the real value of this estate, deducting debt, &c., is $5,221,293 47; or, deducting St. John's Park and the church mortgages also, at least $4,249,340 58, which is more than *four times* the amount of *productive* property returned by Trinity as her "net total!"

The Report then shows that this great estate was originally given for the benefit of all the Episcopalians "inhabiting and to inhabit" in the City of New York; and that, before the year 1814, the property had been liberally applied for the benefit of all the Episcopal churches. It then proves that Trinity asked for the law of 1814, upon express representations that she would continue to divide her corporators; that she would build, set off and endow with competent estates, new churches, so as to keep pace with the growing population; and that, by thus endowing new and independent parishes with land, she would gradually "break down" her vast estate. The greater part of the law of 1814 is made of provisions giving fresh powers to Trinity to carry out the policy thus pledged. The Report then shows that not one of these representations had ever been realized The corporators have never since been divided. No chapel has been set off and endowed with competent estate in land. The Episcopal Church has not been made to keep pace with the growing population. The previous policy of giving away land—for which the law of 1814 made express provisions—has been abandoned. Before 1814, no less than 299 lots were given away by

Trinity. Since 1814, only 19. And during the past 20 years she has given no land at all, except five burial plots in the cemetery.

Instead of encouraging the independence of other parishes, the Report shows that she has shaped her whole policy so as to interfere with and override it. Instead of land she gives only pecuniary grants, in two forms, each of which is injurious to independence. She either grants an annual stipend to the rector of a parish, *revocable at pleasure*, or else makes a grant to the parish, *taking a mortgage* on the parish church, drawing interest from date. The interest is not called for, it seems, but is constantly accumulating, and thus increases the amount of which Trinity has the legal power to compel the payment. She has now *thirty-eight clergy* on the annual stipend list, and holds mortgages on *sixty-six churches*, amounting, with accumulated interests to nearly $600,000. Strong partisanship is also proved as marking the mode in which even these appropriations are made ; and though the security is exacted, those grants are not regarded as loans, or as administration, of a trust, but as a "bounty," for which "gratitude" is due. The independence of other parishes is thus said to be greatly impaired rather than promoted, and the estate of Trinity, instead of being "broken down," is rapidly and steadily growing more valuable from year to year.

It was shown that the law of 1814, which thus excluded all Episcopalians in the city (except those belonging to Trinity Parish) from voting for the managers of an estate given for the benefit of all, was of doubtful constitutionality, to say the least ; that the spiritual destitution in parts of the city is now awful ; that in four whole wards mainly inhabited by the working classes, with a population of over 100,000, there was not a single Episcopal Church ; that in each of three others, with a population of over 128,000, there was but one Episcopal Church ; that Trinity employs no clergymen as missionaries at large anywhere in the city ; that three Episcopal Churches in the poorer districts have been sold, shut up or removed within a few years, and Trinity has done nothing to save or replace them ; that noble proposals from private individuals for providing new Episcopal Churches and Schools, had been left wholly unnoticed by Trinity, or, after consideration for years, been rejected, on the score of "want of ability," while nevertheless the ability was really greater than ever before ; that so long as Trinity thus refused to act, wealthy and liberal Episcopalians would not do the work for her at their own expense ; and that Trinity thus actually prevented the growth which she had pledged herself to promote.

In carrying out this policy, it was shown that no less than 1,059 lots have been *sold*—more than half the original property ; yet the rapid rise in real estate has made the aggregate value of the residue to increase continually, instead of being "broken down." It thus appeared that only those sections of the law of 1814 were put in use which gave the Corporation power to defeat the provisions contained in the remainder. All the rest of the law had long since become a dead letter.

It was shown, moreover, that the business of the Vestry is conducted in a very curious way. Few of them seem really to know anything about the Corporation affairs, except the members of the Standing Committee, to whom everything is referred. No annual statement of their affairs is printed ; nor is there even any stated examination of all their books.

The Committee pointed out the singular fact that Trinity, though owing her exclusive control of the property to the law of 1814, yet seems to *ignore its*

existence altogether, never referring to it in any way. They also remark pointedly upon the singular protest made by Trinity, at first, against any power in the Senate to inquire into the affairs of the Corporation—a protest which seemed of late, however, to be suddenly dropped.

The Committee concluded their report by stating that they found no desire among the Episcopalians in the city to stop or withhold the grants made by Trinity to Episcopal Churches in the other parts of the State, but only regret that more was not done by that Corporation both for the country and the city, instead of holding the estate in mass, for steady accumulation.

This important Report was signed by all the members of the Committee, viz. : Senators Spencer, Noxon and Ramsey.

But our purpose is not now to come between such hot belligerents of the Church militant. Our purpose is to represent the interests of the State and City. The State, as *cestui que* USE ; the City parish, as *cestui que* TRUST. The meanings of these terms are technical, as is also the doctrine of *cy pres*, to which we must appeal as governing the whole case. Nor shall the lay reader be left in doubt as to the true meaning of these terms. But first, we are met upon the threshold of inquiry by these strong expressions : addressing the Chairman of the Senatorial Committee, a Rev. "citizen" interrogates, "What action "can you then propose? I can only imagine two issues "as contemplated by those who sought the appointment "of your committee ; [as respectable churchmen as are any in the city of New York, as we verily believe, however they may be denounced by their opponents;] first "are those who desire to see the title to this property, as "amended in 1814, restored. These vote for its division "and subdivision among all the Episcopal churches in "New York! These can have little care for the real in- "terests of the Church; they care more for the fragments "of this broken endowment!"

To this we would answer by a reference to Solomon's wise judgment as to the young child. Rather than see it dissected, its mother gave up the whole to a false claimant. Why might not good mother Trinity have done something so as to prevent "casting in among them such a bone of contention, such an apple of discord?" "Next," adds our righteous judge, "we have those who hope the State will "appropriate to itself what the Church has failed rightly "to use! Among these are a crowd of greedy expectants,

"who look to share, in some way, the spoils." "There are "others, [and this is the class to which all real statesmen always have belonged, and very righteously, as all experience proves, by mortmain laws and Magna Charta,] "who regard with jealousy the wealth which is in the "hands of the Church. Be they who they may, or be their "motives what they will, I pronounce all such enemies of "the State more than of the Church."

But what does the Vice Chancellor (Sandford,) of whose opinion the Church most boasts as against Bogardus' claim, confess upon this point? In the last paragraph of his opinion, he says:—"A rooted dislike to clothing any "eleemosynary institution with either great power or ex- "tensive patronage, and a settled conviction that the posses- "sion by a single Corporation of such overgrown estates "as the one in controversy and the analogous instance of "the Collegiate Dutch Church is pernicious to the cause "of christianity; have disposed me to give an earnest "scrutiny to the defence in this case, as in the instance of "the Dutch Church, they prompted me in my capacity of "counsel to more zealous efforts to overthrow their title "devised by Jan Harpending."

And yet our reverend citizen

> "Assumes the God,—
> "Affects to nod,
> "And fain would shake the spheres."

But the Grand Marshal of the Church militant, more warily replies to the above report:

"I beg to say, further, with perfect respect for the "committee and the Body by whom it was appointed, that "in presenting this statement I have not overlooked the "vital relation which an inquiry instituted by one branch "of the Legislature through the action of the committee "into the administration of the internal affairs of the cor- "poration bears to the rights of *every* ecclesiastical body "in the State. **I do not admit the existence "of such authority as has been exercised "in regard to the Body with which I am "connected;** and I cannot but think when the ques- "tion is deliberately considered, that it will be found to "possess a most important bearing upon the *rights of con-*

"*cience* which it is one of the leading objects of the Consti-
"tution to secure,—a question well worthy under this
"aspect of the most serious public regard."

But the less guarded "citizen of New York" who speaks as one having authority and not as a scribe, (and we presume it was Bishop Onderdonk,) said in answer to the same report of the Senatorial Committee. "When poli-
"ticians think it their duty to call the Church to an ac-
"count for the management of her own affairs, the Church
"may deem it necessary to see what kind of men are en-
"trusted with such dangerous influence. On these grounds,
"as an American citizen jealous of the liberties and rights
"both of the Church and State, I must express profound
"regret that your select Committee ever was appointed."

The Church militant thus civilly throws down the gauntlet and challenges a trial of its strength at the hustings or the Lobby.

The Rev. gentleman allows, however, that had the State bestowed this large property upon the corporation of Trinity, the Legislature would in that case have a right to make inquiry into its administration. But in our humble judgment it would not have affected the true issue—which is the greatest good of the greatest number for the longest time—in any manner. All they desire to make a point of is this, simply. WHICH SHALL RULE—THE CHURCH OR STATE? Shall the State rule, or shall a rich Hierarchy govern in her secret conclaves, and therein conspire to rule the State and thence give out the law? No matter by whom the property was given them, for Trinity has claimed from the first in 1784, as seen in her memorial, a "Political Weight," and we take her at her word and readily allow the corporation of this Parish Church *is* far more political than religious. Indeed, it will be seen that—

By its Charter one body of Wardens and Vestrymen WERE Politicians and non-communicants; the other body all communicants.

See Section IV. This seems not to be generally known and much less are the *consequences* understood. THE POLITICAL WARDENS AND VESTRYMEN WHO WERE NOT EPISCOPALIANS, *PAID THE RECTORS' SALARIES* DOWN TO THE REVOLUTION-

ARY WAR—SIXTY-TWO YEARS; WITH POWER TO MANAGE ALL THE TEMPORALITIES BEYOND AN IMCOME OF £500 PER ANNUM. Moreover the Privy Council in England, to save the *politicians'* rights in the King's Farm and Garden, several times refused emphatically to grant this property in fee to the Corporation of the Church, and finally placed on record a notice of *lis pendens*—suit pending—in Chancery, in an action for rent, reserving forever the sovereign's right of re-entry against all statutes of limitation.

It was declared that this farm and garden should remain at the disposal of the Governor for the time being, to sustain the dignity of the office and the State above the Church, and it was a *fraud* of any Governor on his successor, to divest him of his patronage, and it was so held distinctly, by the privy council of the Sovereign. For this determination was communicated to Governor Belmot, who required the Colonial Legislature to declare, by an enactment dated May 12th, 1699, reciting that as Governor Fletcher had made several "extravagant grants" of Crown-lands, that they should be deemed void as without authority, and no Governor thereafter should lease the King's garden or swamp adjoining, for any longer than his term of office.

The *cestui que* USE was disposed to allow the Church to USE the property in trust, but not to require a fee simple and become independent and set the Sovereign at defiance. But when it was found a pretended grant of queen Anne had been put on file of record, without the signature of any one entitled to make such a grant of the Crown-lands, and no one could tell when or by whom recorded, so as to convict the wrong doer, a suit in chancery was commenced, apparently for no other purpose than to hold the sovereign's title. The Holy Votary was thus foiled. And yet a great error seems to have prevailed *generally*, as to the document entitled a "Recognition of Grant of Queen Anne," with instructions to stop a suit in Chancery for rent in 1714, and signed "by her majesty's command, Bolingbroke," as if *that* document cut off all claims in the Legislature of the State as *cestui que* USE; when in truth it was impossible for the crown lawyers to have taken any better course to save the landlord's rights for ever and for

ever than by filing such a notice of *lis pendens* in the Court of Chancery. Because "NO EX POST FACTO law, or law impairing the obligations of a contract," can be interposed, while any case is in the court awaiting an adjudication. As the *cestui que* USE, the State *must have a right of visitation and inquiry;* for by the memorial and remonstrance of 1784, against confiscation, *the Church admits its tenancy and payment of yearly rents*, and every *lawyer* at least, knows a tenant never can dispute his landlord's title, *without first going out and commencing action in ejectment upon his own superior title, if a superior right the tenant should possess, to become the landlord.* No principle of law is more firmly established than this. To be sure, a private individual may buy his peace for a trifle and cut off claimants, without a suit; but as between a *corporation* and the people's Representatives, the old charters confer no such rights or powers, nor have Legislators any right to sacrifice the rights of all by compromising any claim.

Now the following facts are also indisputable:

In the year 1693, the Colonial Assembly passed an act to raise a fund for the support of Protestant ministers and the poor, which fund was to be assessed on all the people of all sects in proportion to their means. The tax payers were to elect church-wardens and vestrymen, and Justices to assess and collect the funds; and they might call all sexs of ministers successively, of all the sects except Roman Catholics, Jews and Unitarians. Five vestrymen and church-wardens petitioned, as we find it admitted in the reverend Rector Berrian's History of Trinity Church, for information from the Assembly, to learn what was the intent of the law, and it was decided that they might call any dissenting Protestant minister.

While this law was in force a number of persons went around to collect money to build a Parish church, and to this building all sects contributed, not excepting even the Jews, for we have the names of several who assisted.†

The remarks of the pious Rector in a note on page 12, in his history of the Church, betrays the most guileless

† Lewis Gomez, £1.2; Abm. D. Lucena, £1; Rodrigo Racheco, £1; Moses Levy, 11s.; Mordecai Nathan, 11s.; Jacob Franks, £1; Moses Michael, 8s. 3d.

satisfaction that the five vestrymen and church-wardens above referred to, were not members of Trinity Church ; and he quotes the Act of 22d Sept. 1693, for settling a ministry and raising a maintenance for them in the city of New York, County of Richmond, Westchester and Queens Counties, to prove that "there were other persons in New York bearing the titles of church-wardens and vestrymen besides those in Trinity Church." What is remarkable, he admits, pages 328 to 337, that the Rector of Trinity Church, in which he then officiated, looked to these other wardens and vestrymen for his salary, and gives a long account of the contest between them, because Mr. Vesey, the Rector, went to England, without leave, to beg for favors for the Church, and would not inform them what he had been after. The Lord Bishop's authority was appealed to by him, and then the Governor's, to force them to pay him ; and the tone of the quarrel shows that the wardens and vestrymen of the city—elected by all tax payers under said act—felt themselves aggrieved, and that they had some bad men to watch. After the Reverend Mr. Vesey had obtained an order to pay the money, they refused on the ground that they wished to discover, before they paid him, whether he had not obtained the order by false pretences.

Only one of the city wardens and vestry excepted to this determination. He does not deserve to have his name mentioned, but those who resisted on behalf of the people do, and we give them with the debate :

City of New York, ss.

At a meeting of the Justices and Vestrymen at the City Hall of the said city, on Friday, 4th day of February, 1714—Present :

John Johnston,	John Roosevelt,
David Jamison,	Oliver Teller,
Johans Jansen,	Cornelius Clopper,
Jacobus Kip,	——— ———
John Cruger,	Gerret Kettletas,
Jacobus Bayard,	Stephen Buckenhoven,
Abraham Wendall,	Jacob Bennet,
Isaac Decker,	John Meyer,
Henry Vanderspeigel,	Anthony Rutgers.

To show the feeling then existing,—"The Rev. Mr. Talbott, Mr. Holliday and the church-wardens of Trinity Church having signified to this board that they had something to offer, were accordingly called in, and thereupon they communicated a letter from the Bishop of London to Mr. Poyer, and a scheme dated at Somerset House, Sept. 6, 1714, and signed John London, to which the following was the answer as recorded."

"After considering, the following was passed :—

"Resolved.—It is the opinion of this Board that the warrant for the last quarter's salary of Mr. Vesey be not signed by the Justices, till further order, by reason of his not officiating, and having left his cure without liberty ; and ordered, that the Board write a letter to the Bishop of London, in answer to the foregoing, so as to return thanks of this Board for his care of the Church in this city."

"Ordered.—That all warrants for the future, be signed as the law directs, and not otherwise ; pursuant to two Acts of the General Assembly of this Province, one entitled 'an Act for settling a ministry, and raising a maintainance for them in the city of New York, &c.,' and also one other Act entitled 'an Act for the better establishing a maintainance for the ministers in the city of New York,'" as contained in the IV article of the Charter of the Parish Church of Trinity, passed 27th of June, 1704.

But this evident subjection and control of the Church by the State, was bitterly resented even down to the Revolutionary War, as appears by the following extract from the late Dr. Berrian's Church History, p. 146. Mr. Inglis was then Rector, and he writes as follows of the friends of Washington and Jefferson, and Jay and Clinton, home to England, where afterwards he was made a Bishop :

"The Church of England" says the Tory Rector, "has as yet lost *none of its members*, whose departure from it *could be deemed a loss*. He entertains no doubt but with the blessings of Providence, his majesty's arms will be successful. In that case, if the steps are taken which reason, prudence and common sense dictate, the Church will undoubtedly increase ; and these *confusions* will

" terminate in large accessions to its members. Then, said " he, will be the time to make that provision for the " Church which is necessary. He desired an episcopate, " and what he called *full toleration.*"

But without succeeding, his *successors* have acquired what the privy councils of the British sovereigns had denied emphatically over and over again—the complete possession of the King's Farm and Garden and the Dutch Dominie's Bowery, and to throw off all responsibility to the landlords of the city and their representatives, the successors of the wardens and vestrymen herein above named and recorded. For they had their successors down to the Revolutionary war.

What therefore ought to have been done by the Legislature in 1784 to render the Charter of the Parish Church of Trinity more conformable to the constitution?

First, they should have studied the doctrine of *cy pres*, in order to proceed legally. For as we have said, the constitution of 1777 (c. 36,) preserves the old English Charters as *nearly* in consistency with the original as may be compatible with our Republican institutions. Indeed, the law of 1784 *expressly forbids* the exercise of any powers by the Episcopal Church, that any other Church may not exercise. To wit, sec. VI:

" Nothing in this Act contained, shall " be in anywise construed or understood " to give any kind of preeminence or dis- " tinction to the Episcopal mode of re- " ligious worship within this State."

But what really has *been done under this act* against its spirit and intent?

We will quote the words of " a Presbyter" as published by Henry M. Onderdonk, 1847, p. 7. By way of contrast he states: " In Connecticut, and probably in some other " States, wardens and vestrymen are not recognized—are " not indeed known to the laws of the State. In truth, " religious corporations, strictly and technically speaking, " do not there exist. All ecclesiastical matters are con-

"ducted *society-wise;* that is, by the voice of all the legal "voters of any church or congregation duly assembled in "*society meeting.*" (Why could not "his grace" have said more properly, according to the ancient English system of selecting select vestrymen?) "Nor is any measure "legal which has not the sanction of the majority of voters "at such meeting, duly called and properly attested. "True, for the sake of aiding and expediting the manage- "ment of their ecclesiastical affairs, there is usually ap- "pointed what is called a society's committee, to take the "more immediate charge of the concerns of the Church, "but then the powers of this committee are limited "by the express terms of the society's vote, by which "they receive their appointment." (Why could not "his grace" have said—these Holy Votaries, who know each other well, will not trust them in combination in a corporation?) "And although it is the custom in that State to "appoint annually wardens and vestrymen, yet have they "no power to transact any secular business, till they shall "be resolved into a society's committee, and even then "they have no more power than is expressly delegated to "them by the vote of the society. Here are instances "then, in which the offices of a warden and vestryman are "merely nominal."

So says the late "suspended" Bishop of this Diocese—whose judgment at least, on this subject, no one will dispute; and so was it with Trinity in a great measure, before the Revolutionary war, when Rector Inglis sighed for "more toleration."

"Widely different however," says the Bishop, "are the "powers of wardens and vestrymen in the State of New "York. Here a practice obtains almost the reverse of "that which prevails in Connecticut. In this State, ecclesi- "astical societies are recognised in the corporate capaci- "ties, and the Church is known in Law, *only* by her war- "dens and vestrymen. The wardens and vestrymen of "each parish, with its rector, form a Board of Trustees, "and are a body corporate, to which, for the time being, "are committed all the secular concerns of the Church. "The parish or society, as such, has no power; all is en- "trusted to the rector, wardens and vestrymen; and further,

"the powers of this Board are unlimited and uncontrolled, "but by their own judgment and the ordinary restraints "of Law."

(In a word, Church and State are thus united very improperly.)

"All the lands, buildings and revenues of the parish, "with the care, control, improvement and management of "the same, are in the power of the Vestry ; in short, all the "secular concerns of the parish are entirely at their dis-"posal. In addition to these secular powers, wardens and "vestrymen have, in this State, a great, if not controlling "influence in spiritual concerns of the Church."

They are also a great power in the State, by wealth and patronage—as they fancy at least.

But the Act of 1784, as hereinbefore quoted, is express, that the Episcopal Church *shall not take precedence* by law over Jews—who contributed to build the first Parish Church—or Roman Catholics, or Unitarians, but all shall be held equal, and this right is *inalienable*. It has been decided that even an old ash-barrel, with only a single hoop remaining, will retain possession for a landlord in his absence, and so well is this generally understood, that daily, in the Rail Cars, a passenger lays down a small parcel on his seat, to hold for him the right to the possession, at least for a short time.

Indeed the only question is *how long* shall such claims to the possession last. For originally, a tuft of grass was given as a token of yielding the possession of a tract of land before witnesses, in place of written deeds of conveyance.

As to this last question, *how long* may vestrymen or corporations hold their rights, the authorities prove at least 150 years in favor of successors in a corporation. See Rex. *v.* Wynne, 2 Barnard, 391. Also King *v.* Jones, 8 Mod. 201. Also, 7 Mod. 198, and the constitution, which holds certain rights "*inalienable*." Natural rights belonging to a people never can be lost forever.

But the Act of 1784, as falsely interpreted, disfranchises one set of vestrymen, and leaves all who, not being bigoted, assisted to build the church, on the simple principle of checking licentiousness, which had begun to prevail to an

alarming extent in the Province. The preamble to the Act for the settlement of a ministry here, refers to no form of worship or doctrine, but requires only a "*good* and sufficient Protestant minister." Good as opposed to such immoral practices as have prevailed in Church Street ever since, under leases—the Church itself, perhaps, allowing the licentiousness, since such licentiousness itself makes void a lease. But not content with cutting off the political wardens and vestrymen, who had charge of the temporalities exceeding in value five hundred pounds per annum, as in 1784, their successors in 1814 made application to the Legislature and cut off their brethren, leaving only about 300 corporators. We declare this also to be illegal, and in violation of an inalienable right, and unconstitutional.

For the first bad act, Aaron Burr, most probably, received a large tract on lease, at 75 cents per lot per *annum*, which is now valued by some at about ten millions of dollars. What was paid for the Act of 1814 we do not know. But Alderman John Brady has declared that for a certain Sanitary Bill, he paid the Legislature $8,000; nor do we believe that any rich corporation has ever wanted of any State Legislature any great favor, at the expense of the equal rights of all the people, that certain lobbymen could not procure it for them in a State where the clergymen of other churches taught it as a right of conscience, that Heaven itself was like a corrupted Legislature, granting monopolies and special previleges to an elect and precious few of chief of sinners, regardless of all human reason and good works, as foolishness and odious as filthy rags before the gods of their corrupt or terrified imaginations. For, in Wisconsin, the La Crosse and Milwaukie Rail Road Company, bribed, all at once, the Legislature, the Judiciary and the Executive, and left the people as so many sheep without a shepherd, and like inducements have in most cases induced the like consequences.

If any should object to our language as implying a suspicion of the kind of "Political Weight" Trinity threatens to use, we point to their uniform success against their own words, and we refer to the remonstrance and memorial of Trinity herself, when she "felt the halter draw" in

1784, in the Confiscation Act, to take the King's Farm and Garden as escheated to the State. The following section is *especially* referred to as indisputable ; however, by the Act of 1814, Trinity now finds herself opposed to all first principles.

"Your memorialists,"—said Trinity in 1784—"not only "as trustees of a respectable religious community, but as "citizens zealously attached to our late glorious revolution, "are constrained with regret to observe that they con- "ceive the mode of this inquiry and the concurrence of "your Honorable Body, not warranted by the spirit of our "happy constitution, whose wise framers have studiously "separated the Legislative, the Judicial and Executive "functions of Government. That it tends, by giving an "undue influence on the public mind, to weaken and render "inefficient the trial by jury, that grand bulwark of the "right of property of the subject, which the constitution "has declared shall remain inviolate forever."

Here is a civil charge against the Assembly, that they had become a Star Chamber and trodden under foot the supreme law—the Constitution.

But when the Legislature did, in effect, the same thing in 1814, by an Act to disfranchise, as churchmen, all of the children of the same mother Parish Church—saving some few of the corporators of Trinity—then the same kind of Star Chamber Legislation, as it was before held by Trinity, became *all right.*

Where millions are at stake, there seldom has been much regard for principles in corporations or in politicans, by profession. A "Ring" is still a "Ring," whether in the Church or State.

But wrongs are more in systems than in individuals. Had the system anciently in use in England, here prevailed, as it has been continued in the Episcopal Church in Connecticut, there might have been no difficulty. But let us notice how the representative system in the Church became customary first in England. For by the doctrine of *cy pres* this must be considered. In England, *formerly, all who paid poor rates—or scot and lot*—were called vestrymen. Those we now term vestrymen, were then termed "select vestrymen."

The change is thus referred to :

"In large and populous Parishes, es-
"pecially in and about the metropolis
"(London), a custom has obtained of
"yearly choosing a select number of the
"chief and most respectable parishioners
"to represent the Parish for that year, and
"this has been held a good and reasona-
"ble custom."

As the charter of Trinity refers to the Parish Laws of London as its guide and authority, and this is from 2 P. Wm. III, it is authority in our present case, as it *conflicts* with no rightful law in our State. See further, Lutw. 1027 ; also, Burns' Ecclesiastical Laws. And it appears further by 2 Geo. 2, c. 10, that :—

"The rector, church-wardens, over-
"seers and ALL OTHER PERSONS who have
"fined or served for the offices shall, so
"long as they continue to be HOUSE HOL-
"DERS within the Parish, or pay poor
"rates, be vestrymen of the said Parish
"for the time being, and have the
"management of the said parish."

So also, in the Parishes of Wapping and Stepney, by Stat. 2 Geo. 2, c. 30 :—

"The rector, church-wardens and
"overseers and all other persons who shall
"pay TWO SHILLINGS A MONTH or more,
"and NO OTHER, shall be vestrymen of
"said Parish."

Here we see, that those only who proved their faith by their good works, and not by "saying Lord ! Lord !" and

doing nothing that the Lord had said—"to feed the hungry, clothe the naked, and thus make peace on earth and good will amongst men," were accounted Christians, even if Jews, and declaring, in the mean time, "they would not work in the Master's vineyard."

But they were not, at heart, in sympathy with our Independence, who diverted the property in the possession of the Church from its original purpose, but precisely the reverse. For it would be an easy task to pay the Rector's salary out of the large property illegally, and in utter violation of the Constitution, now in their possession. For to assume, that because the landlords, who, before the Revolutionary war, were taxed to pay the Rector's salary out of the poor rates, it would be a hardship on the landlords of the city *now, to pay all the charter of Trinity allows* the church-wardens and vestrymen to receive, without forfeiture of charter, is a bald absurdity, betokening the imbecility of old age with only a single passion left—*avarice*—the vice of selfishness, which is the last to die. But young America will hear the cry of the descendants of the patriots who may sing mournfully :

"We're low, we're low, we're very, very low,
Yet from our fingers glide
The silken flow, and the robes that glow
Round the limbs of the sons of pride.
And what we get, and what we give,
We know, and we know our share ;
We're not too low the cloth to weave,
But too low the cloth to wear.

We're low, we're low, we're very, very low,
And yet when the trumpets ring,
The thrust of a poor man's arm will go
Thro' the heart of the proudest king.
We're low, we're low, our place we know,
We're only the rank and file,
We're not too low to fight the foe,
But too low to touch the spoil."

For the common system of voting is as bad in the State as in the Church. The MEN of PREY take all the LIBERTIES.

It will be perceived that the best children of the mother Church of Trinity are treated as was Hagar by old father Abraham, to his great disgrace. For there is something

like a parallel in this case with that bad precedent of father Abraham. Only, in the present instance, mother Trinity turns out of doors the children also who sustained her and her children for over sixty years, by paying, during all that time, the Rector's salary, and heaping on her favors, even while she acted most ungratefully.

Now, as to the Collegiate Reformed Dutch Church, there is little need to search for instances of violation of *her* charter, the fact being that it is difficult, if not impossible, to find anything in the conduct of the Church, which is not defiant to the purposes of the *cestui que* USE or founders of the trust estate. We will state some of the facts, and then return to Trinity ; as the same principles of law are applicable to both corporations, equally. But the Collegiates have more glaringly offended against the founders of the charity than has Trinity, in not sustaining the philosophy of Christianity, as stated by Archbishop Tillotson. But as to taking a much larger revenue than is by law allowed. both are offending equally, and forfeiting their charters constantly.

To give instances, however, as to the Dutch Collegiate Church corporation—They have converted the revenues of the property from the payment of ministers and schools for the support of the language and literature of Holland, in connection with the doctrines of the Dutch Reformed Church—which consists of a mixture of Lutherism and Calvinism—and have gone over entirely to Scotch or Swiss Calvinism of the worst character, regarding human reason as mere foolishness, and good morals odious as filthy rags in place of faith—" faith" being " the substance of things hoped for, and evidence of things not seen," sure enough.

But the law judges of an eleemosynary institution by its " *works*" only, and these have been bad and in opposition to the wills of its founders, from the beginning of English preaching by the Scotch pastor, Dr. Laidly.

For all the Dutch Reformed Church protocols require that only those who preach in the Dutch language shall share in the revenues of the trust estates of Steenwick and Harpending.

Nor was preaching in the English language allowed in the begining in the Dutch churches, *until the ministers had agreed to look only to the contributions of the congregations for their salaries.* Nor dare they to deny this now. And the founders of this charity had, by law, a perfect right to have the literature and science of Holland thus preserved. It was both lawful and expedient, and seems to have been required by the then condition of society. For while many here were very ignorant at that time, Holland alone had, perhaps, more institutions of learning then, than all of the other States of Europe together. Huygens, her great philosopher, was far in advance of Sir Isaac Newton, some scores of years later in England, in the doctrine of light, which lies at the foundation of physical science, and which neither Newton or his immediate followers could comprehend, but which is now, at length established by experiment, and almost universally admitted. But Newton, by his mathematics, could not test the question ; nor could La Place, in the French academy, wherein he proved his bigotry against Fresnel, who coincided with the Dutch philosopher.

Had the Collegiate Dutch Churches founded a Dutch University to sustain the sciences and literature and reputation of the Hollanders, as Trinity has done by the Columbia College for Old England, instead of building a white marble church in the 5th Avenue, to teach faith without human reason, we should have treated her, at least, as tenderly as we do rich old mother Trinity, which, however childish and avaricious, we desire not to see destroyed.

The founders of the Dutch Church knew, that unless some superstition was connected with a trust estate, it was liable to be neglected by the ignorant. In the present instance, even with this yoking of a horse and ass together, the design of the founders was lost, in so far as the Holland language and Dutch learning and honor were concerned. In truth the last remaining preacher in Dutch—Dr. Kuypers—was refused a great part of his salary, bishop as he was, and cut down to about half price of the interlopers' salaries. And when his heirs had brought their action, they were yet maltreated shamefully. Moreover, as to the Dutch Church doctrines, it is allowed in the

proofs of the action against the German Reformed Church of Forsyth Street, that the Collegiate Churches had became entirely Calvinistic, whereas the doctrine of the Collegiate Reformed Dutch Church founders, was, as was proved by the Rev. Dr. Brownlee's Church History and the Church Articles, as published in the Catechism, partly Lutheran, and holding that it was not wrong to say that the body of Christ was by faith, present in the Eucharist.

Now, according to the Lady Hewley case, in England, and the Dartmouth College case in our country, and the constitution of our State for 1777, this dereliction from the ancient doctrine, works a forfeiture of property and charter.

Indeed, it was on the ground that the Forsyth Street Church had left the ancient faith misapprehended by the Scotch Calvinists and their Dutch followers in the Collegiate Churches, that the latter contributed at once $1,000, to divest the German Reformed Church of their small estate. This is waste. Thus also, on their own acknowledged principles in equity, if not in religion, the Collegiates are now bound to yield up the estates of Steenwick and Harpending to the German Reformed Church, formerly of their consistory. For it was the Calvinistic bull which had gored the Lutheran ox.

But if we understand aright, the Collegiates have in terror crushed out the weaker Church establishment entirely, by mere power of riches, so that now there are none but the poor to take, according to the doctrine of *cy pres* and the various authorities which point thus.

Technically, these are instances, first, of nonuser, and secondly, of misuser. But the Collegiates act upon the maxim that the dead tell no tales.

The extortion also, of a large part of the price of the lands of the mother Church in Garden Street, was an act so dishonorable that we care not to enlarge on it. We desire not to make the charge of simony, or selling the right to remove and preach. Moreover, the Middle Dutch Church has been converted to a U. S. Post [Office, and

in defiance of our protest, sold to the United States Government fraudulently. For there had been filed in Albany, our answer in brief, to the Attorney General of the United States, which was purloined from the Assembly records and destroyed. We herein reproduce a copy. Perhaps "politicians" did it.

ANSWER TO THE ATTORNEY GENERAL OF THE UNITED STATES AS TO THE TITLE TO THE MIDDLE DUTCH CHURCH PROPERTY,

BY THE AUTHOR.

The undersigned, in answer to an inquiry as to his objections in Law and Equity, against the sale of the Middle Dutch Church property, by the present pretenders to the title, who hold the property in question as a Post Office, has had occasion to search the various ancient documents on which they rely, and the laws bearing on the case, and has arrived at the conclusion, that, in equity, the vault owners, who, by their ancestors and relatives, have paid much more than the whole cost of the land, ought to have whatever claim the state may have by escheat, for violations of the Charter and abandonment of the trust, released to them.

As this case has required an examination of the rights of individuals against ecclesiastical bodies generally, who may set up the right of *Eminent Domain* under a late decision, the matter assumes an importance second to no other; since the right thus named is one of the highest attributes of sovereignty. The assumption on the part of this Church Corporation includes setting contracts and solemn covenants at naught, and justifies repudiation of the doctrine of vested rights. It ignores the *Magna Charta*, and also the Constitution of our Union, which declares that "no *ex post facto* laws impairing the obligation of contracts, shall be passed." It, in a word, establishes a hierarchy, or an *imperium in imperio;* the Church is raised above the State; the creature above its creator. The matter thus becomes most important to the public. It is proposed, therefore, to print this reply for the consideration of the Legislature,

to whom an application will be made by the Church, to relinquish its rights to the General Government; to convert the church site and cemetery to the purposes of the United States Post Office.

And, as thoughtful citizens will feel an interest in the question—unless every sentiment of the patriots of the Revolution against civil and ecclesiastical tyranny has died out—some extra copies will be printed for circulation.

The following subjects will be discussed, with reference to authorities, as briefly as circumstances will allow :—

First—As to the rights of individuals to protect by sepulture their deceased relatives against religious corporations, claiming the right of *eminent domain*.

Second—As to the right of Legislatures to alter or annul ancient charters.

Third—As to the rights of corporations generally.

Fourth—As to the rights of the minister, elders and deacons of the Dutch Reformed Church against their constituents, under the Charter and Acts of Assembly and the Church Protocol.

Fifth—As to the obligation of the ministers, elders and deacons to sustain the language of Holland, in connection with the religion of that State, and their breach of trust in that respect. The doctrine *cy pres* applicable.

Sixth—As to the obligation of the Church Corporation to abstain from acts of open violence, and every secret act of fraud and immorality, and their utter contempt of this fundamental requisition in principle as well as practice.

Seventh—Various instances in proof of the foregoing.

Eighth—Question. Who is the minister—who is the regular "successor" of the first, under the Charter of William III., by which the Corporation was to have "perpetual succession?" It will be seen that no minister in that line, however he may divest *himself*, can have the right to cut off the claims of his "successor" regularly elected under the provisions of the Charter.

But it is not at all probable that the proper person has been designated, as the one qualified to sign, in connection with the Church Seal, to give title to this property, even

if it may be sold. We have not deemed it necessary fully to discuss this point. We claim the *whole* of this property for the vault owners, as the Church has abandoned the trust, and left our vaults to be rifled by sacreligious hands.

But as it would extend the present brochure beyond the limit assigned to it in our mind, we shall sum up all by the truth, that we do not know, although reared in the Collegiate Dutch Church, that it has ever complied in any one particular with its obligations as a Dutch Church. It has therefore forfeited its charter by nonuser, even as much as by misuser, and the State has only to walk in and take possession by its Attorney General, and account thus to the *cestui que* USE, or to those to whom, by the laws of England of the time of the endowment, the estates must pass.

Now, whatever the reader may imagine, our impression is, that the Church government of Trinity has done wrong ignorantly rather than viciously of late years, as to their *real duties in the premises.* We hate none of the vestrymen of Trinity. We are not aware that any one of *them* has ever thrown so much as a straw across our path. On the contrary, the Collegiates, if no better than their master Calvin, would not, in our humble judgment, hesitate a moment to serve us as their predecessors did the Washington of Holland—Barnevelt, who gave them liberty ; or as John Calvin and his syndics did the Unitarian philosopher, for exercising that same right of private judgment on which those most inconsistent of all men declared they protested against, Rome's assertions of Infallibility. But as some deny this just impeachment, we refer now to the History of the Christian Church, by Dr. Hase, who quotes, "Calvini defenso," orth. fidel c. errores Serveti ubi ostenditur hereticus jure gladii Coercendus, esse s. 1, 1554, Corp. Ref. Vol. VIII, p. 362. Stebbing's History of the Church, Vol. II, p. 128. Spirit of the Pilgrims, Vol. III, p. 615. Biblical Repository, Vol. VIII, p. 87. Bezas' Life of Calvin, ed. by Gibson. Henry's Life of Calvin, Vol. II, p. 219. Mosheim's Ecclesiastical History. Edinburgh

Encyclopedia; articles Calvin and Servetus. We have not read all of the above works, but refer to Calvin's friends for his defence, as this is only just and fair. All but the two last authorities are referred to by Dr. Hase, nor have we perfect confidence in any of them, after reading Audien's Life of Calvin, as published by the Roman Catholics, who represent John Calvin as a monster of perfidy, and cruelty, and inconsistency. Even to this day is there not any love lost between these two pious sects of christians. Nor can the Roman Catholics complain, while Calvinists come out against each other, as in our late civil war, the same "household of faith" without good works are found to be pro-slavery South, and anti-slavery North; "all things to all men, hoping to save some"—*green and yellow backs*—"supposing gain is godliness."

But after all, neither human reason or good morals can be set at naught with absolute impunity, if we are to take the Scriptures as a rule of faith, which have delared, 2 Thes. ii, 11 and 12: "For this cause God shall send "them strong delusions, that they shall believe a lie, that "they all might be damned who believed not the truth, "but had *pleasure* in *unrighteousness*"—i. e. Calvinism.

But, as before, we have allowed neither the Scriptures as a Rule of Faith, or consistency, or a healthy conscientiousness, is necessary to sustain a trust estate, since, in Lady Hewley's case, Calvinistic teaching is sustained at present. But on the principle of the law abolishing chantries as a Roman Catholic superstition in England, will all endowments of a Calvinistic character ultimately have to yield. For to teach that God, for his glory, has made myriads to be damned, the inference is demoralizing, inasmuch as imitation is sincerest worship, and the Calvinist becomes a beast of prey on his own principle, that

> There's nothing good or ill, *per se*,
> What's bad in you is good in me.

For some, as we understand, so think, and refer to Calvin's conduct, by Servetus, as a fair example. That which in Luther, Calvin and Melancthon was held good, having been by them held bad in Survetus. So also, in the

massacre of Peasants, these Reformers declared they should be "killed off as so many dogs."

But certainly Servetus had the same right to the exercise of his own private judgment on religious faith and practice as had Calvin; and the Roman Œcumenical Council had at least as fair a right to claim infallibility as had the Synod of Geneva. But, as the Calvinists destroyed Servetus by a slow fire of green wood, and put to death the Washington of Holland, Barnevelt, so would they do again, if allowed, and it is true that "disciples are no better than their masters." It will appear, however, that the law yet gives them equal rights to teach even what we consider blasphemies. In stating the case, says the Vice-Chancellor, (case of the collegiates against the German Reformed, i. e., Miller, et al., *vs.* Gable, et al.) "That the German Reformed Church in Forsyth Street "had united itself with the Reformed Dutch Church of "North America; had become subject to its discipline and "church government, and bound to adhere to its tenets, "canons and constitution. That this union was not tem- "porary and limited to a spiritual counsel and supervision, "but indissoluble, except with the consent of both parties, "and necessarily involving the appropriation of property "of the church to the support of those doctrines and dis- "cipline. That the defendants had violated this obliga- "tion, by calling to the services of the church ministers "who had preached doctrines hostile to those of the Dutch "Church, who refused to obey or recognize its judica- "tories.

"That the defendants, pretending to be the lawful trus- "tees of the church, are in possession of the temporalities, "and the bill prayed for a delivery and surrender of the "estate, property and books of the church, an account of "what the defendants have received, and a perpetual in- "junction against claiming or interfering with the tem- "poral concerns or trusts thereof; also an injunction "against allowing the pulpit to be occupied by any "minister not in connection with the Reformed Dutch "Church."

Says the Vice Chancellor, as the summary of the law:

"I agree entirely in the principles stated by the learned "judges upon which this case must be decided.

"In every case of charity, whether the object be reli-"gious purposes or purposes purely civil, it is the duty of "the court to give effect to the INTENTION OF THE "FOUNDER, provided that can be done without infring-"ing any known rule of law."

AS TO THE DOCTRINES TO BE TAUGHT IN TRINITY.—Now let the reader bear in mind, that, as "Defender of the Faith," and head of the Church of England, William III., formerly Prince of Orange, a Hollander, was upon the British throne when the Parish Church of Trinity was founded, and the farm and garden were his, he must be considered as its first *cestui que* use, and the legislature of New York is his successor.

The legislature of the State of New York, at the time when the church was founded, were not Episcopalians, and the Vestry were divided. Let all these facts be borne in mind.

The Lord Chancellor thus stated the law:

"It is a principle uniformly acted on in equity. If the "terms of the deed of foundation be clear and precise in "the language, and clear and precise in the application, "the course of the court is free from difficulty. If the "terms used are obscure, or doubtful, or equivocal, it be-"comes the duty of the court to ascertain, by *evidence*, "*what was the intent of the founder*. It is a question of "evidence, and that evidence will vary with the *circum-"stances of each particular case*.

"It is a question of fact to be determined, and the mo-"ment the fact is ascertained, then the application of the "case is easy. These principles are founded on common "sense and common justice."

The learned Lord Chancellor adverts to the Lady Hewley case, which had passed through all the courts and been settled in the House of Lords finally.

He adverts to the arguments used by the Attorney General in that case, saying "he did not complain of evi-"dence showing the meaning attached to particular words "at a particular time; nor to usage to show in what sense "the words were used when the deed was executed. "But he did object, that the court below had acted upon

"evidence given with a view to show in what sense Lady "Hewley used particular words."

He adds :

"The objection then was not to the general admissibili- "ty of evidence, but to such as went to construe the deed "by expressions of opinion by Lady Hewley, and I will "not act on evidence of that kind in this case. What I "am prepared to do in such cases, is this :" (And now comes the rules adopted by the Lord Chancellor in the application of the doctrine of *cy pres*, which we intend to follow as to Trinity.) Says the learned juris-consult, "I "will admit, or if *not tendered*, I will *seek* myself, in the "writings of the period, in historical records, acts of Par- "liament, and writings of the persons of different per- "suasions at the date of the deed (charter) in this case, "since the corporation cannot accept or hold property in "trust in opposition to the purposes of its creation,) for "all helps to tell what was the meaning of the words "used ; not to do violence of the deed, (charter,) but to "put such an interpretation upon it as shall be consistent, "as well with what appears on the *face* of the *instrument*, "as with the intention of the founder. I reject all evi- "dence of what the founders thought, but I receive evi- "dence of what their acts were, their circumstances, the "places of worship they resorted to."

Says our Assistant Vice Chancellor :

"The equity tribunals of England have often passed "upon these questions. Their doctrines may be substan- "tially stated thus : *They disclaim all power to canvas or "determine the Scriptural truth of any tenet held by indivi- "duals or congregations. They have steadily adhered to the* "PRINCIPLE *that they can only inquire into tenets promul- "gated in a church connected with a right of property*, or a "*trust to be administered.*"

Again, (p. 400) he says :

"Where a congregation becomes dissentient among "themselves, THE NATURE OF THE ORIGINAL "INSTITUTION MUST ALONE BE LOOKED TO "AS THE GUIDE FOR THE DECISION OF THE "COURT."

Such are the principles of the doctrine of *cy pres*, as applicable to our case :

For the doctrine of *cy pres* requires that not only the doctrines of the founders of the church establishment, but also the management of all the church's temporalities, shall be properly administered consistently therewith.

Nor with the best intentions possible, is it practicable to properly administer this trust estate without understanding all these subjects of investigation fully.

But this parish church had, as we have shown, two sets of wardens and vestrymen, communicants and non-communicants ; the non-communicants being four years in advance of the communicants, although paying the rector's salary from 1697 down to the opening of the Revolutionary War, were not at all harmonious in belief or action.

It were hard to draw an *average of faith* between these two discordant elements. In truth, it is impossible, nor is it necessary, for William III. was the *cestui que* use, as we repeat.

We must, accordingly, gather from history what was the *animus* or will of Wm. III., as the "Head of the Church," and "Defender of the Faith," whose governors leased the property in question, called then and since, the King's Farm and Garden.

Now, in our recollections of the history of the times of William and Mary, we discover Mary as the heir of the throne of a Roman Catholic king, who had forfeited the crown by his attempts to carry over the nation to the Papacy. He had been obliged to flee to France ; but he had been ostensibly an Episcopalian; and so was his successor, Wm. III. But Wm. III. was a philosopher and statesman, not a superstitious bigot. English statesmen have ranked him with our Washington. His views were uncommonly enlarged. In the preceding reign, the ignorant vulgar sometimes were crushed to death in seeking for the royal touch to heal the king's evil ; something like

£10,000 had been spent in a single year for amulets or charms, to help the royal idiot in his laying on of hands in order to work miracles. Once only did William, to silence clamor, touch for the disease, and then he prayed not for health only for the patient, but "more sense in future." Before his time, the Common Prayer Book had contained a form of prayer in recognition of this superstition. These facts show how much superior he was to all the childish nonsense yet prevailing in his age.

The next and most important fact is, that he set aside a member of a noble house, who certainly expected much at his hands, and calculated confidently on the primacy. But William, the good king, chose a tradesman's son for the Archbishopric, because he was one of the most truly philosophical of christians at the time, whose writings have come down to us—*Tillotson.*

We give his views upon the incarnation, which, as we conceive, is a test question between the advocates of rationality and superstition—the *experimentum crusis.* For amongst christians, as well as all other sects, there are two classes. The one, and most ancient class, believe it is necessary to keep the vulgar in ignorance, in order to keep them submissive. Bishop Burnet, who lived in the time referred to, in England, published a work in Latin, for the clergy only, entitled "*De Statu Mortuorum*"—On the State of the Dead—in which he requires them to preach up everlasting punishment, whether they believed in it themselves or not, saying "too much light is hurtful to weak eyes." Many considered it a "right of conscience" to cover up the truth, believing really that thereby they were doing God a service. *But the Master never advocated lying.*

Opposed to these was also Archbishop Tillotson, whose maxim seems to have been that of many noble martyrs: "Speak the truth and leave the rest to God." This is surely the best maxim, come what may; and he is but a coward after all, even if in epaulettes, who acts not on this principle.

But what is now the testimony of the most truly noble of all of the Archbishops and superior to all Bishops whose works we have ever read on this *experimentum crusis* of

christianity. In the 4 Vol. 8vo. of Woodhouse's edition, published A. D. 1744, page 144, is the sermon of the Archbishop as preached in the church of St. Lawrence Jewry, Dec. 29th, 1680, "Concerning the Incarnation of our blessed Saviour."

His Grace declares that "the true reason of publish-"ing these discourses is not the importunity of friends, but "the importunate clamors and malicious calumnies of "others, whom he heartily prays God to forgive, and give "them better minds." On the Incarnation he thus explains the doctrine :

"The third and last thing which I proposed upon this "argument of the Incarnation of the Son of God, was to "give some account of his dispensation, and to show that "the wisdom of God thought fit thus to order things, in "great condescension to the weakness and common preju-"dices of mankind.

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"And as in some of the laws given by Moses, God was "pleased particularly to consider the *hardness of the heart* "of that people ; so he seems likewise to have very much "suited the dispensation of the gospel, and the method of "our salvation, by the incarnation and sufferings of his son, "to the *common prejudices* of mankind, especially of the "heathen world, whose minds were less prepared for this "dispensation than the Jews.

"That God hath done this in the dispensations of the "gospel, will, I think, very plainly appear in the following "instances (p. 147):

"1st.—The world was much given to admire mysteries, "most of which were either very odd and fantastical, or "very lewd and impure, or very inhuman and cruel. But "the great mystery of the Incarnation of the Son of God "was such a mystery as did obscure and swallow up all "the other mysteries. Since the world had such an admi-"ration for mysteries, *that* was a mystery indeed—a mys-"tery beyond all dispute, and beyond all comparison (p. 48).

"Secondly.—There was likewise a great inclination in "mankind to worship a visible Deity, so God was pleased "to appear in our nature, that they who were so fond of

"a visible Deity might have one, even a true and natural "image of God the Father, the express image of his per- "son.

"Thirdly,—Another *notion* which has generally obtain- "ed among mankind, was concerning the expiation of the "sins of men, and appeasing the offended Deity by sacri- "fice—upon which they supposed the punishment due to "the sinner was transferred—to exempt him from it, "especially by the sacrifice of men (p. 148). And with "this general notion of mankind, God was pleased so far "to comply, as once for all to have a general atonement "for sins of all mankind by the sacrifice of His only Son, "whom His wise Providence did permit by wicked hands "to be crucified and slain."

The ground taken by the philosophical Archbishop, is that a kind of moral Homœopathy is necessary for the cure of unreasonable superstitions. *Similia similibus curanter.* Like cures like. For even in Carthage human sacrifices continued to be offered, even when comparatively enlightened and refined. It was customary, on any great calamity, to offer up the most noble youths to appease what they supposed to be the author of their misery. And even down to the time of Sir Walter Scott, people in the rural districts were accustomed to leave tracts of lands, which they called the "Good man's croft," on which to grow thorns and thistles; in a word, for the devil's use; lest he should destroy their crops by hail-storms and lightning. Even in the early history of this city, as we have read in Noah's Weekly Messenger of an old date, we remember an instance of a like barbarity as having been committed even here: on the occasion of a murder having taken place, and no trace of the felon having been discovered, the unreasoning vulgar seized an innocent, defenceless creature and burnt her, that no crime might pass unpunished. Had these awfully mistaken men been christians, they, too, would have been satisfied with the one sacrifice of God's own Son, as in every case where christianity prevails entirely, human sacrifices cease. So also, thousands and tens of thousands have died happily in the belief that all their sins have been atoned for in the one great "sacrifice for all, that whosoever be-

"lieveth in Him shall not perish, but have everlasting "life."

If "not many wise, not many mighty, not many noble, "are called, but God hath chosen the foolish things of "the world to confound the wise; and God hath chosen "the weak things of the world to confound the things which "are mighty; and base things of the world, and things "which are despised, hath God chosen, *yea*, and things "which are not, to bring to naught things that are."— 1 Cor., 1 : 27, 28.

We can only answer, that the Jesuits, after all, have done much good, and have done wrong chiefly in not allowing, as did Archbishop Tillotson, that the doctrines he preached originally, came from superstitious, barbarous men, whose hard hearts required a hard doctrine. But, as we have seen, the Courts of Equity regard not the reasonableness of any doctrine, but only, if not positively hurtful to the state by overt acts, that the doctrine connected with a trust estate shall be sustained with the estate. Accordingly, that inasmuch as Wm. III., the real owner of the King's Farm and Garden, with his wife Mary, was on the throne of England and endowed the Parish Church of Trinity, if really endowed, and associated in its Charter the Bishop of London as a corporator, the doctrine of *cy pres* requires that the Church shall preach according to the principles of its founder, as exhibited in his favorite minister, the Archbishop Tillotson.*

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* It may indeed be said, that the appointment of the Jesuit Bishop Burnet by Wm. III. and Mary, tells against the appointment of the more frank and honest Archbishop. But we give this explanation : Wm. III. used to speak contemptuously of Burnet as a tattler, "a *fine* tattler," and Mary, his queen, counselled him not to act unworthily of his appointment. But she felt grateful to him for good offices, in having, in a case of temporary coldness between herself and husband, when Prince of Orange, reconciled them by an explanation. We term Burnet a *Jesuit* only on his work recommending men to preach hell fire up, whether they believed in it themselves or not, knowing very well that this enlarges very greatly the numbers who may claim the title. Indeed, how many are there who believe literally all the texts herein quoted? St. Paul answers truly, as we think, "not many wise, not many noble." For our own part, we quote scripture homœopathically only, being "*weak in the faith.*"

But if this is denied, or if it has not been the doctrine taught in this Parish Church, its seals are forfeited for nonuser or misuser.

And thus endeth the first lesson. Having given the general principles and facts of history, we leave others now to add thereto, or take therefrom; and judge, as each will do, according to his powers and perceptions, and his sense of right and wrong, his prejudices and his passions.

The next principle to be considered now, must be the following: As to the Rights of Corporations in regard to property. Allowing we have discovered the true *animus* of Wm. III. as founder of Trinity and Head of the Church, we have now only to carry out his will, according to the common rules of equity, as follows:

Says Mr. Webster: "The language of Chief Justice Thompson, in the case of the People *vs.* the Utica Insurance Company, is the text in our courts." (18 Johns., 382).

Incorporated companies, says the learned Chief Justice, have no rights except such as are specially granted.

"The specification of certain rights operates as a certain restraint to such objects only, and is an implied *prohibition* of other powers."

This doctrine of our courts has been sanctioned further in the case of the Firemen's Insurance Company, by Chief Justice Savage. (2 Cowan, 709.)

Also by Chief Justice Nelson, in the case of the People *vs.* The Manhattan Company. (9 Wend., 384.)

Says Nelson, J., "A corporation can do no act or make any contracts, except such as are authorized by its charter and these acts also must be done by such officers or agents, and in such a manner as the charter authorizes."

The books abound with decisions to the same effect.

But let us add a few others: "Corporations, created by statute, must depend for their *powers* and the *mode of exercising them*, upon the true construction of the statute." (Runyon *vs.* Carter, 14 Peters, 122.)

The case of Willard *vs.* The Wardens, &c., of Killingworth. (8 Conn. Rep., 247.)

"The Borough and the Town are confessedly inferior corporations. They act not by any inherent right of legis-

lation, like a legislature of a state, but their authority is *delegated*." Mark the word "*delegated*."

"Within the limits of their charter their acts are valid; without it their acts are void." (5 Conn. R., 391.)

"The case of the Attorney General *vs.* The Dublin Corporation, (9 Bligh, 395,) is a striking example of the rule that corporations must be restrained within the limits of the statute giving them power. The case of the Attorney General *vs.* Galway, is similar." (Beatty, 29–8.)

"A second rule, equally inflexible, is this: That which divests an owner (or vestryman, we add,) of his property, without his consent, must be strictly construed and rigidly pursued. In the case of Van Horn, lessee, *vs.* Dorrence (2 Dallas, 316,) Patterson, J., said, "A statute should never have an equitable (discretionary) construction, in order to overthrow or divert an estate; and every statute derogatory to the right of property, or that tends to take away the estate of a citizen, should be strictly construed."

It will appear that a chartered corporation loses its power, or rather commits suicide, unless it walk steadily forward over the rushing tide of events, without stepping aside to the right hand or left. Nor can it plead, for any misstep, that it was an "*accident*." For, as with an individual, whose giddy head allows him to fall in the rushing torrent, drowns, all the same as if he threw himself in the flood, so is it with a corporation. It is their duty to act by advice of counsel in all doubtful cases, and TAKE HEED THAT HE IS SOUND. For there is a law of absolute necessity, higher than all human laws, that what a man or corporation, or a nation, will not value sufficiently to gain or guard, when gained, that shall not be enjoyed by the party so neglecting. Even a fish, neglecting the blessed light of heaven to swim in subterranean rivers and dark caves, loses, at length, from nonuser or misuser, all but the rudiments of eyes. Indeed, it appears as if an allwise Providence had made for every class of animated creatures, some to be disposed to prey upon the negligent, the halt, ignorant, and blind, and imbecile, in order to preserve, in absolute perfection, the most perfect, and destroy the miserable, the superstitious, and ignorant, and careless.

After centuries of sufferings from the holy votaries, and

others pretending to be charitable, the astute counsellors of English law have held, with Professor Christian, the commentator, that "precedents and rules shall be followed, even if flatly absurd and unjust," at least until the legislature shall interfere and rectify the law if unfit for use. Take, for example, the instance of the Blue Coat school in London. As the doctrine applied to corporations is, that what is not expressly provided, is forbidden; the founder of that charity, not having provided hats for the beneficiaries of the institution, while, naming other articles to wear, they dress finely, without hats, fearing a forfeiture of all the trust estate.

So, also, in our city of New York, the Manhattan Company, having been chartered by the state, with banking powers and perpetual succession, while supplying the city with pure and wholesome water, they support an ancient steam engine of the sun and planet pattern, to pump up water for a boiler from below the streets, however the Corporation of the city has brought in the Croton River. For the Manhattan Company holds its charter only on the ground that it is *ready* to supply the water first required by the charter, and no one will accept it.

A system of jurisprudence which is so entirely artificial, seems absurd to the lay reader. But there is reason on the side of most ancient laws. For a charter is a creature of the legislature. The body corporate is a great beast, without a soul, always ready to break out of its enclosure and trample on the equal rights of individual citizens. It must therefore keep within the boundary and enclosure of the law which gives it life, or it must be held as dead in law when it breaks out. It is a suicidal act to violate its charter. But the legislature is most cautious as to religious corporations, from a long and sad experience.

There is no excuse to be discovered, in the law of corporations, for the Church in violating any law, and least of all, for violations of the law of Mortmain, which forbids churches to accumulate vast possessions.

When William I., conqueror of England, had taken the whole realm by a single battle, he inquired of the Abbot of St. Albans, how it happened that he had met with so

little difficulty, when the Danes had been resisted formerly so persistently. The Abbot replied very frankly, that the lands of the kingdom had been given to Holy Votaries, so that few had been reared for soldiers to oppose him. On this the conqueror replied, that, for the future, he should help the realm. He therefore confiscated a large share of their ill gotten gains.

This tendency to grant property to holy hands, has been opposed in *Magna Charta*, (c. 36,) whereon is founded all the laws of *Mortmain* or *De religiosis*. And the *Magna Charta* has been very frequently confirmed by even awful ceremonies, as a lesson never to be set aside.

Nor should we, as a young republic, forget now all the warnings of the history of near a thousand years.

To make the principle that we desire to inculcate the more emphatic, let us for a moment rest the argument in order to repeat the warning of the ceremony. But first: The provision in *Magna Charta* is as follows:

"That it shall not be lawful for any to give his lands to "a religious house and take the same again to hold of the "same house, upon pain that the gift shall be void, and "the land should accrue to the lord of the fee."

And by the statute of Mortmain or *De religiosis* of 7 Ed. I, "No person, religious or others, whatsoever, "shall buy or sell any lands or tenements, or under any "color of any gift or lease, [Queen Anne's grant to Trinity is thus described,] or by reason of any other title, receive "the same, or by any other craft shall appropriate lands "in anywise to come in Mortmain, upon pain of forfeiture," &c., &c.

But the struggles of the Church against the State have been constant, and severe, and bitter. At length, the device of purchasing large tracts in the way of a city's growth has been resorted to, as by Trinity, in purchasing a cemetery upon the island of New York, rather than in an adjoining county. But this has also been forbidden by statute of 15 R. II. c. 5, as against the law of Mortmain, and a consecration of such tracts for churchyards is called a "subtle imagination" and forbiddon.

Now, as to the ceremonies intended to prevent all parties, kings and bishops, State and Church, from violating

Magna Charta, the following took place in the 37th year of the reign of Henry III.

"In that year Henry came to Westminster Hall, and in "the presence of the nobility and bishops, with lighted "candles in their hands, when *Magna Charta* was read, the "king, all the while laying his hand upon his breast, and at "last solemnly swearing faithfully inviolably to observe all "things therein contained, as he was a man, a christian "and a king. Then the bishops extinguished their can- "dles and threw them on the ground, and every one said: "Thus let him who violates this charter stink in hell; upon "which the bells were all set on ringing, and all persons, "by their rejoicing, approved of what was done."

Coke on Lit., 81. See also Stat. Book, 25 and 29 of Edw. I.

What, then, is the conclusion? The *chief good* being *happiness* for all the worthy, who regard the truth: Under the Higher Law of absolute necessity, CONSISTENCY, with the experience of the *sages of the law of ages*, who, in time, constitute the grand democracy of all eternity, must rule, upon the principle that, "as it was in the beginning, so is it now, and so shall it forever be;" or, to express the same idea philosophically,—*like causes always must induce like consequences.*

The church which sets at naught Christianity, the *Magna Charta*, the Constitution and the law of Mortmain, comes to naught. But let none condemn until their answer shall be heard.—*Audite alteram partem.*