

By Charles B. Spence

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THE
Argument
OF
PETER Y. CUTLER, ESQ.,
BEFORE THE
Street Committee of the Board of Aldermen,
OF THE
CITY OF NEW-YORK.

DELIVERED MARCH 1st, 1854.

IN THE MATTER OF
EXTENDING ALBANY STREET
TO
BROADWAY,
THROUGH TRINITY CHURCH YARD.

New-York:

BANKS, GOULD & CO., LAW PUBLISHERS, 144 NASSAU STREET.

1854.

ARGUMENT

OF

MR. CUTLER.

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE:

The question upon which you are deliberating is of such magnitude, that it relieves me from the apology I should otherwise feel to be your due, for taking up any more of your time, in an attempt to speak upon a topic already illustrated by the eloquence of my learned associate. But I do not propose to repeat anything which has been so well said by him.

You must pardon me for directing your attention for a moment, at the outset of my remarks, to an expression of the learned counsel of Mr. Boorman. He tendered me a happy compliment, for which I should have felt all the more grateful, if I were quite sure that it was designed to secure me a more favorable consideration from your committee. In addition to the compliment, he was pleased to allude to my remark, that I appeared for those who had a higher interest in opposing the opening of this street than that represented by mere property; and then he said that he did not know what that "*higher interest*" was; but supposed it to be somewhat akin to the "*higher law*."

Let us for a moment, then, examine the question, whether there be any higher interest than that of property? Is the learned counsel furnishing us with a sound principle of legislation, or an exalted rule of patriotic action, when he thus ignores the existence of any "*higher interest*" than that of mere money-producing property? I had always supposed that the "*rights of person*" were of more appreciation in the light of the law, of reason and of patriotism than the mere "*right of property.*" The "*right of personal liberty*"—the right to the free enjoyment of life while we live—and certainly no less the right to the narrow house to which the hands of affection consign us when we die, involve a "*higher interest*" than that of property. If it be not so, then was our Revolution a vain expenditure of blood and of treasure. Our forefathers fought for liberty—that religious liberty which they were denied in the old world, and which they sought in the forests of the new; liberty of conscience, liberty of speech, freedom of the press, and the right to enjoy their own domestic hearth stones free from molestation: and these liberties they fondly believed they had secured. They sought, in a word, that freedom from oppression and those liberties which secured them the unmolested enjoyment of the inalienable rights of man—" *life, liberty and the pursuit of happiness.*" these were the liberties which our forefathers sought, and for these liberties, and to preserve them as an invaluable treasure for their posterity, the battles of the Revolution were fought. And shall it be said, in these degenerate times, that "*there is no higher interest than that of property.*"

I confess, Mr. Chairman, that I believe that they who cherish the memory and desire to preserve the remains of the men who fought for the triumph of liberty over despotism, and who venerate whatever may be regarded as a memento of that triumph, have a "*higher interest*" than that of property in this question. If, however, the preservation of property be the highest interest which we acknowledge, let it be publicly proclaimed, that in the greatest republic of modern times, personal liberty is discarded—that we have a Venitian oligarchy; and that the idea of property is alone

regarded. And let it be proclaimed, too, that, to determine the precise value of our patriots and the quantum of veneration due to their memory, we employ learned men to make such a chemical analysis of their remains, as the argument here would necessarily suggest, and that we measure out our gratitude in a precise mathematical ratio to the quantum of bones which are found; and, when the horror-stricken audience shall sicken at the recital, let some republican arise and attempt to prove that republics are grateful; or rather let the proud minion of monarchy proclaim the fact as a new instance of the ingratitude—the alleged proverbial ingratitude of republics.

There is one other observation which I desire to make. The course this discussion has taken, forces it irresistibly upon my mind. There is, Mr. Chairman, a wide, very wide difference between solemn argument, and ridicule, witicism, and sarcasm. Is ridicule argument? How much logic is there in a sneer? Everything holy may be turned to ridicule. The infidels of France, in the eighteenth century, ridiculed the doctrines of the Christian religion. Voltaire uttered the most biting satire on the truths of the Bible; and yet his sneers have not induced us to turn infidels, nor have we been disposed to believe that they proved our Bible false, or our religion unfounded. Believe me, sir, that the holy sentiment of respect for the dead is too well founded and too earnestly entertained by this community to be eradicated by a flippant jest. And I am glad to be able to assure you, that if the learned counsel for Mr. Boorman has indulged in any expressions which could be construed by any one into disrespect for the memory of the departed, or for the feelings of their surviving friends, he must have been betrayed into them by his zeal for his client; for I can vouch for it, that he himself entertains a profound reverence for the dead. Not to do so, would be to prove false to his lineage—false to the generous impulses of his heart—false to all those noble sentiments by which I know he means to be guided.

Listen, for a moment, to the voice of his departed brother

—a brother eminent at the bar, exalted upon the bench, and one whose every-day life was an illustration of the truths of the Christian religion: and while I read his sentiments, as expressed in this book, believe me, sir, that I read the sentiments of the learned counsel himself—sentiments which he would freely express in social life, and which nothing but his position as Counsel could lead him even to *seem* to doubt. That brother said, in the case of *Windt v. The German Reformed Church*, (4 Sandford's Chancery Reports, 476:)

“It is painful and deeply abhorrent to the sensibilities of our nature to have the remains of our beloved friends and relatives disturbed in their last homes, and removed by rude and careless hands to a distant cemetery, not hallowed by any of the associations which encircle the consecrated ground where we have deposited them, in sadness and in sorrow. I confess that I have not become so much of a philosopher as to regard the bodies of deceased friends as nothing more nor better than the clods of the valley: and that my sympathies were strongly enlisted in behalf of these complainants vindicating the repose of the bones of their kindred.”

These are the noble sentiments to which every heart in this assembly responds, and none more cordially, I am sure, than that of my learned opponent. As an advocate, he may be earnest in the defence of his client; but, believe me, sir, as a man, for I know him well, you cannot find one impelled by more generous sentiments.

Perhaps nothing more need be said by me, by way of reply to what has dropped from the learned counsel. He has made a great many remarks, foreign to the discussion before your committee, to which no reply is demanded; such, for instance, as that one of the assistant rectors of Trinity Church, at the commencement of the Revolutionary war, and only three months and twenty-seven days after the Declaration of Independence, was opposed to Washington. The letter of this assistant rector, to which the counsel referred, was written one month and seven days after Trinity Church was burnt, and it was not rebuilt until after the close of the war.

The church was burnt on the twenty-first of September, 1776, and of course no services were performed there after that time by the Rev'd. Mr. Inglis, and it is difficult to perceive how he could in any manner have exerted an influence over its affairs. The learned counsel might as well now attempt to prove that Washington, himself, only a few months before, was a kings-man and zealously supported the crown—and from thence infer that he never commanded the Revolutionary forces. If the counsel, in the course of his researches, had looked into the 4th volume of the Documentary History, (p. 1077,) he would have discovered that, at the earliest practicable moment, the church was placed in the hands of a Whig vestry. But it is objected that this is a Tory church. It is a grave argument, put forward with all earnestness, that the street should be opened, because, says the counsel, the political sentiments of the church were adverse to those of Washington. Although I am unable to perceive the logical sequence of the argument, let us for a moment pause to examine the fact. I cannot find that Trinity Church was in any other sense a Tory church than was every other church, in the city of New York, during the war of the Revolution. The Presbyterian Church, Dutch Church, Methodist Church, Baptist Church, were each and every of them, just as much Tory churches, for aught that I can see in the page of history, as was Trinity. When the city was occupied by the British, all the churches were, very probably, under the control of the royalists who remained in the city, and it is fair to presume that a large portion of the inhabitants, who remained in the city after it had been evacuated by the American troops, in 1776, and had fallen into the hands of the British, were adherents to the crown.

It was a time of civil war. The contest raged fiercely. Families were divided; churches were divided; brother fought against brother, father against son; and the divisions on questions of politics depended in no respect, that I can perceive, upon the phase of sect.

I find among the names of the vestry, from 1772 to 1777,

that of the Honorable James Duane, and he was a warden from 1784 to 1794. Mr. Duane was a member of our Continental Congress, and a consistent adherent to the cause of America. Robert R. Livingston, an undoubted Whig, was a vestryman from 1764 to 1775, and a warden from 1784 to 1785. Mr. James Desbrosses was a vestryman from 1774 to 1779, and a warden from 1779 to 1784. Peter Van Schaick, LL. D., an eminent lawyer and accomplished scholar, was a vestryman from 1776 to 1779; and in 1780. William Laight was a vestryman from 1777 to 1784, and from 1788 to 1802. Robert Watts from 1778 to 1783, and a warden in 1783, and from 1790 to 1804. Richard Harrison was a vestryman in 1783. He was recorder of the city from 1797 to 1801: was a fine classical scholar, and was appointed by Washington to the office of District Attorney of the United States. Richard Morris was a vestryman from 1784 to 1785. He was Chief Justice of the Supreme Court of New-York in 1779; and, of course, a staunch Whig. Francis Lewis was a vestryman from 1784 to 1786, and no one can forget that he was one of the signers of the Declaration of Independence. What then becomes of the objection that this was peculiarly a Tory church. That there were Tories in the church, I frankly admit; that there were Tories in all the churches in the City of New-York, my learned friend would be compelled to admit, if indeed he admitted anything; but where is the evidence that Trinity was peculiarly *the* Tory Church in the City of New-York, or any more inclined to Toryism than the Dutch Church for example, or any other church in the city, during its occupation by the British?

Mr. Boorman, however, objects that it was "a formerly regal hierarchy." What an argument in favor of opening the street! Is it true? Yes: in the same sense in which it may be said that the Dutch Church was a formerly regal hierarchy. In 1774, every church in New-York was under the protection of the Crown of Great Britain; and, if that be an argument against them, then tear down the churches, and declare a general proscription of Christianity: for if the

argument means anything, it is as good against the observances of religion generally, as it is for the purpose for which it is invoked.

But this is trifling with the great topic before you. Whether Whig or Tory were in the church during the Revolution is a matter which has no relevancy to the present question. We need have nothing now to do with the church; and an argument directed against it necessarily raises a collateral issue which has nothing to do with the People's Burying Ground, as this has emphatically always been, and in which no power could prevent or ever did prevent the interment of the people's friends. It is the poor man's final resting-place which you are now besought to desecrate. They ask you to exhume the remains of the poor of two centuries. Arguments addressed against *the Custodians* of the cemetery have in fact nothing to do with the question. The inference which the learned counsel hangs upon the fact that the Assistant Rector was opposed to the war when the Revolution broke out, is an inference far-fetched, and positively refuted by reliable testimony. If, indeed, the church had been in possession of this Assistant Rector, it would furnish strong confirmatory evidence that the British did inter the bodies of the deceased patriots there. They were the prisoners of the British, and they died in the sugar-houses near the grave-yard. In short, it was the very place of all others where they would be buried if either British or Americans had charge of their interment, and the place where many concurring sources of evidence prove they were in fact interred. Of course the American prisoners were buried by their British captors, and it is most natural to suppose that they buried them in the City Burying Ground; especially when that ground was nearest the place of their captivity and death. J. Barnitz Bacon,* the sexton, and the Hon. F. R. Tillou, your recorder, a man whose name is alone a sufficient guaranty for the truth of any statement he may make; and the affidavit of General

* See petition A at the end of the argument, p. 30.

Haight, the commander-in-chief of the Veterans of the second war of Independence, show that some, at least, of the faithful soldiers of the Revolution lie interred in the line of the proposed street.* The same thing is repeated in the report of a Committee of your Board in March, 1847.† It is stated in the life of General Lamb that he was buried in Trinity Church-yard, and I am informed, by Mr. Bleecker, that he was buried on the north side of the church. See Leakes admirable life of General Lamb, page 356, where it is stated that,—

“General Lamb had been Vice-President of the Cincinnati; once while Baron Steuben was President; and afterwards under George Clinton. *He was borne to the grave in Trinity Church-yard*, followed by the members of that society. He was buried with the military honors which he had so well deserved. And the long array of citizens, as they attended him to the tomb, attested the respect which his virtues, his bravery, and worth had universally commanded.”

The following obituary notice, ascribed at the time to the pen of Dr. Peter Irving, is extracted from Denniston's paper:

“How sleep the brave who sink to rest;
With all their country's wishes blest.”

“On Saturday morning departed for a better world, our much respected fellow-citizen, General John Lamb; who, to the unbending honor and martial spirit of a soldier—to the unshaken integrity of a real patriot, added the humane and benevolent virtues of a philanthropist.

“He distinguished himself throughout our revolutionary struggle. He lost an eye at Quebec, where the gallant but ill-fated Montgomery fell! He was otherwise severely wounded; was captured and suffered the hardships of imprisonment in assisting the cause of freedom and his country.

“General Lamb has from early manhood trod the rugged

* See note B at the end of the argument, p. 31.

† See note C at the end of the argument, p. 33.

paths of life in public view; and though fortune has not smoothed his descent into the vale of years, nor scattered roses in his path; yet he has ever preserved a purity of character, which even the breath of detraction has not dared to sully.

“Peace be to his ashes! He is gone into the presence of that Being who will reward his virtues. The blessings of misfortune’s children waft his spirit onward, while the tears of the veteran patriots who fought and conquered by his side, embalm his memory.”

“*Peace be to his ashes!*” said the voice of his surviving friend as the remains of General Lamb were committed to what that friend fondly supposed was their final resting-place. But those who desire to open Albany Street declare that there is no final resting-place, no “peace to the ashes” of the patriot dead. “*He was buried with the military honors he had so well deserved,*” says the biographer. How strangely would it have sounded in the ears of “the long array of citizens” who gathered round his tomb, if some prophetic voice had declared that those “military honors” should not avail to protect his bones from exhumation.

I have referred to the biography of General Lamb merely to prove that officers of the Revolution have been buried in Trinity Church-yard: that many such were buried there during the war is proved by tradition, as well as the other evidence before your committee; and a tradition so generally believed in by the people would of itself be sufficient to establish any historical fact. But if it were admitted that no such officers or soldiers were interred there *during* the war, it is beyond all controversy that many such were buried there *after* the close of the struggle. This is not denied, and is undeniable.

But the counsel suggests that there is no tombstone bearing an inscription showing that the remains of Revolutionary soldiers were interred there.

Where is the tombstone of the poor soldier? Where is the marble slab that marks the last resting-place of Sir John Moore? Who is there living that can point out the place

where Leonidas and the Spartan band who fell at Thermopylæ were sepultured. What living witness can state that he *saw* the battle of Pharsalia, and can designate the tombs of the Roman Republican soldiers who fell there? By the same course of argument which the counsel pursued, it might be proved that the great battles of antiquity were never fought. It would be difficult to prove, by such a standard of evidence, that George Washington ever lived; that the artillery of the Revolution itself ever flashed upon the midnight of despotism, and harbingered the dawn of liberty; that Waterloo ever trembled beneath the tread of British legions, or resounded with the thunder of Napoleon's cannon. Indeed, the argument would go much further, and prove the non-existence of everything but the present. All the records of the past are but traditions: history itself is but written tradition—and shall we therefore deny its teachings? The unepitaphed heroes of the Revolution, slaughtered by a ruthless enemy, buried in dishonor, will live forever in the hearts of their countrymen:—and the fact that no marble, with its storied inscriptions, marks their final resting-place; that, no pillar rough with sculpture points out the spot where the old veterans' deathless acts were displayed, is a cogent argument against disturbing their remains—remains which consecrate every inch of ground where they lie interred. No power on earth can divest that ground of the hallowed associations with which it is embalmed in the hearts of the people.

But it is objected that this is an avaricious corporation. I deny it, sir. The benefactions of this Church have been almost unbounded. They have contributed towards the spread of the Gospel not only, but towards almost every object embraced within the term, city improvement. They have given to the city—*freely given, lands for streets, piers, markets, ferries, colleges, and churches.* (Vide Dr. Berrien's History of Trinity Church, 367–8—370 to 386.) In 1771 they contributed towards building a market on Hudson river. In 1775, they appropriated two lots on the north side of Vesey street, for a pier and slip. In 1765, two lots were given to the city to establish a ferry from Roosevelt street to Paulus Hook,

which lots are now, I am told, occupied by James Boorman under a claim of title; but I find that the original grant was "for the use of said ferry; but for no other use or purpose whatsoever, upon condition that the ferry is to be established and fixed there forever." And as that condition has not been observed, it may well be doubted whether his title—the title upon which he vaunts himself—and upon which he now makes his ungenerous attack on Trinity Church—is altogether above question.

In 1786, Trinity Church gave three lots of ground for the use of the senior Pastors of the Presbyterian Congregations of the City. These were Lots Nos. 255, 256, 257, Park Place.

But time will not allow me to enumerate all the benefactions of this church. In 1800, they contributed towards a market. In 1810, two lots of ground for a free school—and in 1815, a further grant was made to a free school. In 1742, this church granted the land between Murray and Barclay streets, extending from Church street to the river, for the erection and endowment of a college—and old Columbia still stands there as a proud memorial of their beneficence, not only, but of the early introduction of science and learning into the colony of New York; and its records present a lively history of the humanizing influences which have been exerted by that noble institution upon the sons of this Metropolis. *In a word, the benefactions of this church amount, according to the best estimate which can now be made, rating the lands at their present prices, to the enormous sum of Two Millions of Dollars.* (See Dr. Berrien's History, p. 386.)

This, then, is the use which the church makes of its wealth. And does it present a topic for Mr. Boorman's reproaches?

Who is it that demands that this Street should be opened? James Boorman and his associates. I shall not attempt to dispute the respectability of Mr. Boorman, his wealth, nor his charities. With these considerations neither you nor I have anything to do. He may be rich as Croesus, munificent as a prince, benevolent as Howard, for aught I know; but I have a rule laid down for me

which I deem it always safe to pursue, and that is to consider the act proposed to be done, and from that judge the qualities of the actor, so far as they relate to that very transaction, and to none other; for it would be doing violence to my duty as a man, to my obligations as counsel, to turn aside from the particular act under consideration to consider the general tenor of any man's life, either to bepraise or censure it. Chaucer says:—

“ Loke who is most vertuouſ alway
Prive and apert and moſt entendeth ay
To do the gentle dedes that he can
And take him for the greateſt gentleman.”

If Mr. Boorman comes up to this ſtandard, as his counſel aſſerts, and I do not deny, then he is a true gentleman. But how does that demonſtrate that this ſtreet ſhould be opened. The argument would ſeem to be, “ Mr. Boorman is a gentleman, *therefore* the ſtreet ſhould be opened through the Church-yard.”

Mr. Boorman is, I am told, an Engliſh gentleman, who has been in this country many years, and has, during his ſtay here, amaſſed great wealth. Be it ſo. He is the very man whom I ſhould expect to be foremoſt in ſuch a project as this. He has no relative, I preſume, who diſtinguiſhed himſelf in the battles of the Revolution. No patriot anceſtor of his lies mouldering in that ſacred ground—no wife over whoſe corſe his tears of ſorrow were ſhed,—no brother, no ſiſter, no mother buried there. Nor can it be expected that his boſom ſhould ſwell with patriotic emotions for the remains of the warrior dead. I have yet to learn, that in England, in her cottages or in her palaces, any praiſe was ever yet beſtowed upon the heroes of our Revolution. In all places, there, among high and low, they are alike regarded and often ſpoken of as ſucceſſful rebels. England can never forget that once we were England's colonies, and would have been England's colonies ſtill, but for the efforts of the very men ſome of whom reſt in yonder church-yard. Nurtured where ſuch feelings are prevalent, and ſeek-

ing our shores after the Revolution had been successful, it would not be at all surprising if Mr. Boorman entertains no hallowed feeling for the memory of the patriots whose lives were sacrificed in our struggle for liberty.

What participation, Mr. Chairman, had Mr. Boorman in the proceedings of the Protestant Society to secure the respectful interment of deceased Americans abroad? I ask because I am told that he attended the meeting of that society at the Tabernacle and was particularly solicitous that our government should take measures to procure *a place of sepulture in consecrated ground for Americans who die abroad?* Is he not now soliciting our government to take measures for the accomplishment of that object? What a picture of consistent, disinterested benevolence is presented by this devotion of Mr. Boorman to the accomplishment of so desirable an object as the procurement of a place of sepulture in consecrated ground for our countrymen who die in France, Austria and Italy, while he is at the same time proposing a measure which involves the necessity of digging up the bones of our Revolutionary patriots at home! Is this a fair specimen of Mr. Boorman's benevolence? I hope not. I trust there is some mistake in regard to the matter. Suppose Trinity Church had proposed to erect stores on the ground which is now desired by Mr. Boorman for this street: how clamorous would then have been the objections to the proposed desecration of the sacred remains of the dead. Is it not fair to presume that Mr. Boorman would have employed counsel to appear before a Committee of your Board and protest in thunder tones against the threatened outrage. And then you would have heard the indignant denunciations of his eloquence, demanding that the act should be arrested as one which, if consummated, would outrage all the better sentiments of humanity and do violence to the settled, fixed, unalterable will of the people.

And who are Mr. Boorman's fellow petitioners? I know not. A long list was once presented to me as the names of those who were said to have petitioned for the opening of this street; but, so many of those gentlemen have declared that

their names were either in effect forged to the petition, or, if they had really signed such a document, that it was without a knowledge of its contents, and either false pretences or a suppression of the truth must have been used to procure their signatures, that I know not who are now his associates. A fraud so base as that, is worthy only of another genius than that of Mr. Boorman. I can scarcely believe that the frank, plain spoken old Englishman would do such a thing. It is at war with the traditions by which an English gentleman is governed. Wrong he may be—obstinate he may be; but he never can be otherwise than frank, plain and straight-forward in what he does. He never can stoop to so low a felony as that of procuring signatures by false pretences, or even by a suppression of the truth.

Who opposes the opening of the Street? First, Trinity Church. And here be it remarked that Trinity Church has refused a large sum of money to allow the Street to be opened. If she had been selfish, unprincipled and vile, as she is represented, would she not have accepted \$62,000 in 1834, to allow that to be taken which is of no possible pecuniary value to her, and which in effect belongs to the relatives and friends of those who are interred in 'her vaults. This one fact is a sufficient refutation of all the calumnies uttered against her. She opposes her own pecuniary interests. She refuses a large sum of money, and still proves faithful to her trust. For it is plain enough that if, in 1834, the property of Trinity Church was assessed at \$62,000—it would now, owing to the immense appreciation of lots in that neighborhood, be estimated at \$200,000 at the least. And think you, Mr. Chairman, that the property holders in that neighborhood would be willing to pay such a sum for opening this street? If they objected to the payment of \$62,000 in 1834, as too onerous *then*, think you that they will deem \$200,000 *now*, any less burdensome? *Sir, the property holders will be among the most zealous opponents of the measure, and the expensive proceedings to open this street must ultimately be discontinued, and the costs incurred charged to the City, under the auspices of the Reform Administration.*

In the second place, the application is opposed by such men as the Hon. F. R. Tillou, your Recorder,—the noble, public spirited, patriotic reformer, Tillou ; ever in the van of whatever movement for the public good,—and of such men as Capt. Tillou, General Haight, Mr. Townsend, and many others who have friends and relatives buried there. The Recorder has twenty-two relatives who are buried in the line of the proposed street. These men oppose it on the ground that it would be an unnecessary and ruthless desecration of the dead.

Again, it would cost, according to the estimates made, nearly \$100,000 to disinter and remove the bodies buried there. This, too, whatever it be, must be added to the assessment to be paid by the property holders, or by the City. Will they thank you for such an additional burden?

Having said thus much *negatively* by way of reply to the argument of the learned counsel for the applicants, for the opening of the street, and of the persons who ask for, and those who oppose the measure, permit me now to say a few words by way of *affirmative* argument against that measure.

And now, Mr. Chairman, I propose, in my own humble way, to offer some suggestions, to show—

First, That the proposed opening of Albany street would be an act in derogation of the grant made by the city of New York to Trinity Church in 1703, and that it would be a repudiation of a solemn compact between the city as grantor and the church as grantee.

Second, That it is not demanded by public necessity.

Third, I shall endeavor to show that it would be a violation of the policy of the law to open this street.

Fourth, I shall, in conclusion, urge that Christianity is a part of the law of the land, and that it would be a violation of the precepts and the spirit of Christianity thus to scatter to the four winds of heaven the ashes of the dead.

Nor shall I offer any apology for presenting such considerations to gentlemen selected, as you have so recently been, from the body of your fellow-citizens, to occupy the high and honorable positions you now hold—selected because of your

known probity and true moral worth in the community. Why are we not discussing the question before the Board of Aldermen of 1853? Is it not because the spirit of the honest masses was aroused during the recent election in this city, and because that spirit demanded that honorable men should be selected to fill the places you now hold, in the stead of those in whom they could no longer place confidence. You are not at all embarrassed by the action of the Board of Aldermen, whose places you now fill; any act of theirs, instead of furnishing evidence of the right in this community, is the rather regarded as cogent evidence of the contrary. To prove that any act of theirs was right, requires an argument; to show that it was wrong, but the suggestion that they were its authors. I speak, of course, of the majority of the late Common Council. There were men, in both Boards, of great moral worth—men as highly esteemed as any others in the city, and who have passed through that ordeal, unscathed. But it is needless to pronounce their praises. Their worth has been appreciated by the unerring instincts of their constituents, and they have already assumed important and influential positions in the newly organized government. As well might it be urged, that the resolutions of the late Common Council in favor of a Broadway railroad, and their resolutions taunting the courts, were binding upon their successors, as that the ephemeral expressions of opinion embodied in the resolutions before you, possess any binding force.

Gentlemen, your predecessors, in the full tide of their power, derided all control, threw off all restraint, seized upon things sacred as well as things secular, and at last, as a fitting termination of their ever-memorable labors, like the proud prince of Babylon, they seized upon the appurtenances of God's house; and, while revelling in vain boasts of their power, an unseen hand was writing on the wall with a pen bathed in vivid lightning, in characters of fire, "*Mene, mene, tekul upharsin*,"—"Thou art weighed in the balances and found wanting." Do you wish to complete their designs?—to follow their example? I will not add, to share

their fate ; for I know that consequences to themselves will not be regarded by members of this Common Council, and that they will seek only the good of their constituents, although they will disregard alike the public admonitions and the private interests of busy members of dictatorial, self-constituted committees of interference.

Let us, then, approach the consideration of the question with no feeling of embarrassment, that we are called on to repeal a law—for no law has yet been passed. The matter now stands before you as a new proposition. It has no *prestige* of authority to commend it to your favorable consideration. What, then, is it which is sought on the one hand to be done, and which, on the other hand, we strenuously resist. You are called upon to lend your sanction to a proposition to exhume the bodies of some thirty or forty thousand persons, among whom there are many officers and soldiers of the Revolution, whose ashes lie mouldering with their mother earth. A proposition to do an act, the mere mention of which is so startling, demands careful scrutiny into the rights with which it interferes, and the grounds on which it is urged.

I. The opening of this street would be a violation of a solemn grant and compact. The ground proposed to be taken, was used as a common place of burial for all denominations, for nearly a century before Trinity Church was built. It was set apart by the Dutch, and by them consecrated as a place sacred to the last rites which separate the dead from the living. Here, without the walls of the city, beyond the sound of the active pursuits of life, where no voice of revelry was heard, our Dutch forefathers selected a sequestered spot, in a deep valley, as the last resting-place for the honored dead. The affectionate mother, the honored father, were here placed side by side ; the tender, loving wife and the devoted husband, whose remains were here interred, were deemed safe from Vandal hands ; and their humble graves bespoke at once the poverty of their origin and their devoted regard for the sanctity of the tomb. And here let us not forget, that these were not members of the

Episcopal Church. No sir: their associations were with that glorious band of Hollanders who sought civil and religious liberty on the newly settled shores of New Amsterdam. For these, then, I plead—for the dead, who cannot speak. Not for Trinity Church—not for the vestry of that church—but for those who were alien to its services—nurtured in the faith of our venerated Reformed Dutch Church, and whose mortal remains were committed to their mother earth, consecrated by services performed in a language unknown to the church now called Trinity—and whose tombs were inscribed nearly a century before Trinity Church had an existence. Now, sir, let me remind your honorable committee, that even if Trinity Church were obnoxious to all the objections which have been urged against it here—even if this abusive pamphlet were true as it is false, it would in no respect invalidate the considerations I press upon you. Those who were buried nearly a century before Trinity Church was built, cannot, by any sophistry, be made responsible for its acts or omissions. For the honored dead I speak, and in their name I protest against the threatened exhumation—in the name of the tens of thousands, who, if you could call them from their dark charnel-house, would appear in their white robes and protest against this act. And how would such an objection appear in the face of such an audience? Would an argument that, a century after their interment, another class of men had arisen who had erected a temple near the remains of the dead, and that temple had since then not been in proper hands, be regarded as an answer to their appeal? No, sir: no. But, lest by implication it may be said that I admit the force of the objections urged against Trinity Church, permit me to say, on the contrary, that I think that church worthy of all honor; entitled to unmeasured praise for the firm course it has uniformly taken, no matter at what pecuniary loss, to protect the remains of the dead; and I for one, as a member of the Dutch Church, thank them on behalf of the old Dutch families, whose remains they have guarded with such commendable fidelity. Nor do I perceive, in the long history of the various proceedings to open

an avenue through the bones of our Manhattanesse ancestors, that Trinity Church has pursued any other course than that pointed out by the pole-star of religion.

To resume my history of the ground. After it had been occupied by the Dutch and their successors, as a city burying-ground, for nearly a century, the city of New York, in 1703, granted it, under the broad seal of the corporation of New York, to the corporation of Trinity Church, to be held by the grantees as a perpetual place of sepulture for the people of the city of New York, of all denominations, and irrespective of the condition or circumstances, race or lineage of those whose bodies were to be committed to that consecrated ground. To provide against the possibility of the rejection of the poor, a very small sum was prescribed as a stated burial-fee, upon the payment of which the sexton was bound to commit earth to earth and dust to dust, or the estate of the church in the grounds would have been forfeited. In consequence of the facility for making interments there, and the low rates to be paid for such interments, it became the common and most usual place of burial, and so continued down to 1823, when the ordinance of this city was passed, forbidding further burials. It is generally estimated, that from thirty to forty thousand persons have been interred there. I know that the estimate is disputed by the applicants for this measure, but, so long as I can vouch for my statement, the report of the committee of the Board of Aldermen, made in 1847, and the other evidence before your committee, I may well assume the accuracy of the statement without stopping to prove it. Now let us revert, for a moment, to the grant. The grant of the city to the church expresses, substantially, that the ground shall be held by the church in fee-simple for ever, as a general burying-ground. In derogation of that grant, the same city now seeks to seize the property which it once solemnly granted, and appropriate it to the aid of a private speculation; or, if you please, for the sake of the argument, for the purpose of opening an unnecessary street. In other words, it is proposed to this city to repudiate the grant so solemnly made, and treat it as

though its corporate faith were not irrevocably pledged to the literal fulfilment of all the terms of that grant. To illustrate: Suppose, Mr. Chairman, a gentleman were to convey to you a piece of ground, upon trust that you should hold it for the benefit of the living poor, and apply its proceeds to their support, and afterwards the grantor should himself seek to evade the grant. Would not all the world deem the act dishonorable, and execrate his memory? But that is just what it is now proposed to the corporation of New York to do in this matter; the only difference being, that the corporation created a trust for the benefit of their *dead*, the trust in the case supposed being for the benefit of the *living*. Shall such an act of bad faith receive the sanction of honest men? To repudiate a bond was thought to imply peculiar dishonor in the state of Mississippi, and fastened an indelible blot on her fair escutcheon; and shall we be so illiberal as to pronounce Mississippi infamous for repudiating her bonds, whilst we at the same time repudiate our deeds? Sir, you will not tolerate a distinction between Mississippi and New York. The bonds of Mississippi were issued for contemplated public improvements, the repudiation was placed on grounds of public policy. Such was the shallow pretence; and be assured that no arguments were wanting to show, in quite as specious language as any which can be used here, that when public policy demands repudiation, the people must repudiate. So here it is said, that public policy demands that the city should repudiate its grant for the benefit of this pseudo improvement; but believe me, sir, *that* public policy which demands the sacrifice of the honor of a state or a city, must be more palpable, more urgent, more strikingly imperative than any presented by this application. Public policy, the law and the dictates of morality—I will not add, of common honesty—concur to condemn the proposed act. Sir, this is no ordinary repudiation. It is not merely repudiating a compact with the *living*, but a solemn compact with the *dead*. For the sum paid as a burial-fee, the city, through its custodian Trinity Church, entered into a solemn compact

with eleven generations of men who have now long since ceased to mingle with the affairs of the living, that the remains resting in that ground, should lie there without molestation, and the burial-ground should be forever a sacred place of deposit for their ashes. These parties are the beneficiaries of the trust vested in Trinity Church, and to open this street would be to repudiate that solemn compact between the *living* and the *dead*. Shall such a compact be repudiated with impunity? But it is said, that the great interests of commerce demand it. Believe me, sir,

“It is an impious greatness,
And mixed with too much horror to be envied.”

II. But, sir, I deny that the interests of commerce demand it. The public does not demand it. You are called upon by a few private individuals only. What great public interest demands it? Do the merchants demand it? No, sir; they ask not for it. Do the carmen ask for it? The grade of Thames street and Rector street—and the grade of Albany street would be the same—is so steep as to unfit them for their use, and they ask it not. Our carmen are men who would scorn to travel over the bones of the sacred dead; and if this street were made, they would avoid it as a plague-spot.

Do the people demand it? No, sir. No. A thousand times no! They do not ask a new street within forty feet of another street. And Albany street, if opened, would be within forty feet of Thames street, with a single house between them.

Try this question of utility by another standard: Suppose the ground, proposed to be taken for this street, belonged to any private citizen, Mr. Boorman, for example, and that it had no grave-yard upon it. Would any one then think the public interests could be subserved by taking it for the street? Then, of course, its full value of \$200,000 for building-lots would be placed upon it. And would any one, in such a case, venture to suggest that the public could be so much benefitted as to warrant the payment of such a sum of money? No, sir. It would then be seen that the

opening of the street could not benefit the public, and the price to be paid would be too great to forward the interests of the lot-speculators. Mr. Boorman would then object to the taking of the lots, upon the ground that it would be taking *his* private property for private uses, and the scheme would be frustrated.

The plain truth of the matter is simply this: the persons who claim to open this street, think, what their counsel expresses, that they can take this church-yard for nothing; that it will not cost a cent by way of assessment, and the opening of the street will be a very handsome speculation. It will open an avenue to their lots; give the lots desirable fronts to make them saleable; and that this great object can be accomplished for just nothing. The speculation is certain; the loss, they think, cannot be a penny. Did they not know, when they purchased these lots, that the church stood there? Has the church deceived them by closing an avenue to their property? That is not pretended: all they ask is, that the church will give away its lands; or, rather, they modestly ask, that you should forcibly confiscate the ground of this church—that lots, which have been purchased at low prices, may, in Mr. Boorman's words, "be materially enhanced in value." In other words, you are asked to dig up the bones of our ancestors to aid a city lot-speculation. It is a bold, bad project, for which no excuse, no apology can be offered.

Believe me, sir, popular sentiment is opposed to the opening of this street. A more unpopular measure could not be suggested. Submit the question to the people, and nine-tenths of the whole population would vote against it. This, of itself, is sufficient to show that the public interests do not demand it. I am one of those who believe that the instincts of the people are sure to be right. Hear what the unbiassed expression of the press is in regard to it. And when I speak of the press, allow me to remind you that our newspapers present a true mirror of popular sentiment. The history of the world, for a day, is contained in each issue. I speak not now of cards inserted in the newspapers by the parties interested in this

measure, but of editorial articles, written in newspapers above the taint of suspicion—newspapers which the parties to the controversy cannot influence, much less control; and whose editors are men too pure to listen to anything but the dictates of duty. Such, for example, as the Commercial Advertiser, and the other papers which have contained editorials on this question. An attempt has been made to impart a sectarian character to this controversy, but it is signally out of place. It is not a war of sects. The unanimous expression of whatever sect is against the measure—Catholics, Methodists, Presbyterians and Baptists, members of the Dutch and Episcopal Churches alike protest against it. Hear what the editor of the *Freeman's Journal* says on the subject: "But on the score of human decency, we protest against a needless, and, as far as the public at large are concerned, a profitless outrage upon the mortal remains of multitudes of the honest and respectable dead of this city in its earlier times."—(*Freeman's Journal*, of 22d February, 1854.) And the *Citizen*, with the warmth and earnestness which ever glow in the honest hearts of Irishmen—men illustrious for a self-sacrificing devotion, almost unknown to any other single race—thus utters the sentiment of its large circle of readers: "This attempt to violate the resting-place of the dead has excited general indignation." (*Citizen*, 26th February, 1854.) I have selected these two newspapers, because no man who has any knowledge of the gentlemen by whom they are conducted, will venture to suggest that they could be influenced by any other motive, in penning such articles, than to express an honest indignation at the threatened perpetration of such an outrage against the deep-seated conviction of all classes, of whatever lineage, race or sect.

Nor does this application come commended by a compliance with the rules of law in regard to devoting property to the use of a street. It is not an application to take private property for public uses; to do which it is only necessary to show that public convenience requires it: but it presents itself in a totally different aspect. *Instead of being an application to take private property for public uses, it is an*

attempt to take property already dedicated to public uses, for the purpose of subjecting that public property to forward the interests of a mere private speculation. In other words, to take property already solemnly appropriated to the use of the public, and devote it to the purpose of enhancing the value of city lots, and bringing them into market; and this, too, not at the behest of the public, but upon the application of a few individuals. If, however, this cemetery is to be regarded as private property, then it is equally objectionable; for then it seeks to take private property for *private uses*, in violation of the constitution. "The constitution, by authorizing the appropriation of private property to public use, impliedly declares that, for any other use, private property shall not be taken from one, and applied to the private use of another. It is in violation of natural right. If it is not in violation of the letter of the constitution, it is of its spirit, and cannot be supported." (Opinion of the Supreme Court in the matter of *Albany street*, 11 Wend. 150.)

The right of eminent domain, whatever it may be—and I shall not stop to define it—has no application to such a case as this; for there is no great state or public necessity requiring it, no public convenience to be subserved by it: and the existence of either the necessity or the convenience must be demonstrated to exist to justify its seizure in pursuance of the right of eminent domain. (*American Print Works agt. Lawrence*, Ch. J. Greene's Opinion, p. 270.)

III. It would be a violation of the policy of the law to open the street. (See *Beatty v. Kerrs*, 2 Peters' Rep. 566, 7 Term Rep. 723.) In the case of *Hunter agt. The Trustees of Sandy Hill*, reported in the 6th vol. Hill's Reports, p. 407, Judge Beardsley said:

"Dedication, as the term is used in reference to this subject, is the act of devoting or giving property for some proper object, and in such manner as to *conclude the owner*. The law which governs such cases is anomalous. Under it, rights are parted with and acquired in modes and by means unusual and peculiar. Ordinarily, some conveyance or written instrument is required to transmit a right to real pro-

perty, but the law applicable to dedication is different. A dedication may be made without writing, by act *in pais* as well as by deed. It is not at all necessary that the owner should part with the title which he has; for dedication has respect to the possession, and not to the permanent estate. Its effect is not to deprive a party of title to his lands, but to estop him, while the dedication continues in force, from asserting that right of exclusive possession and enjoyment which the owner of property ordinarily has. (*Cincinnati agt. Lessee of White*, 6 Pet. Rep., 431, 438.) The principle upon which the estoppel rests, is, that it would be dishonest, immoral or indecent, and, in some instances, even sacriligious, to reclaim at pleasure property which has been solemnly devoted to the use of the public, or in furtherance of some charitable or pious object. *The law, therefore, will not permit any one thus to break his own plighted faith to disappoint honest expectations thus excited, and upon which reliance has been placed.* The principle is one of sound morals and of most obvious equity, and is in the strictest sense a part of the law of the land. It is known in all courts, and may as well be enforced at law as in equity.

“The land in question was dedicated as a grave-yard, and the ashes of the dead should be allowed to repose in undisturbed solitude and quiet. The grave is hallowed. This sentiment is deeply seated in the human heart, and is all but universal. It exists with scarcely less intensity of strength in the breast of the savage than in that of civilized man, repelling any rude approach to the resting-place of the dead, and forbidding, as sacriligious, its use for any of the secular and common purposes of life. A just deference to this sentiment, and a proper respect for the feelings of those whose friends have been buried in the ground now in contest, are wholly incompatible with the right to exclusive possession set up by the plaintiff.”

This is the language of one of the ablest jurists of this state. Nothing that I could say would add to its force. Why, does it not emphatically apply to this ground? Has it not been solemnly dedicated and devoted “to the use of the public?” Will the law, therefore, permit any one to break the

plighted faith of the city, and disappoint the honest expectations excited by this pledge of that faith, upon which it has been "used for this pious object"—and should not "the ashes of the dead be allowed to repose in undisturbed solitude and quiet?" Turn, for a moment, from this language of the courts, to the expressions of the legislature. What does our statute say in regard to the removal of dead bodies from their graves? (2 R. S. 683, § 13:) "Every person who shall remove the dead body of any human being from the grave or other place of interment, for the purpose of selling the same, or for the purpose of dissection, or *from mere wantonness*, shall, upon conviction, be punished by imprisonment in a state prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment." Let us mark the language of this section, and we may gather thence the legislative intention and policy of the law. It denounces exhumation as a crime, whether the motive be mere gain by selling, or when the person is even impelled by a desire to promote medical science, or when "*mere wantonness*" actuates him. In each case the act is alike pronounced unlawful, and a penalty declared upon the offender. Think you the law would have been thus strict if the lawgiver had not been persuaded of a deep-seated conviction, that the act denounced was abhorrent to the universal sentiment of mankind? He who, "*from mere wantonness*," removes the dead, is declared by the laws to be a criminal. This application to open Albany street I cannot view in any other light than an attempt to disinter the dead from "*mere wantonness*," or a worse motive, the desire of gain.

Who is it that asks for the opening of Albany street; and for what object? James Boorman, a rich English gentleman, asks that it may be opened, that his property may thereby appreciate in value. In his communication to the *Journal of Commerce*, Mr. Boorman concedes that "it is undoubtedly true" that his property will be materially enhanced in value by opening the proposed street. His counsel here informs us that, if opened, he shall con-

tend that Trinity Church will be entitled to no assessment for the land; because, says the counsel, the ground is dedicated to the purpose of a cemetery, and on the authority of the Albany street case, in the eleventh volume of Wendell's Reports, page 150, he believes this church would not be entitled to a cent of the assessment. Mark this bold project then displayed in its true colors. Mr. James Boorman asks for the graves of our fathers, that his land may be rendered more valuable, and he asks that the land of the church may be taken for nothing, that he may be made all the richer. No gentleman, occupying Mr. Boorman's position in this matter, has a right to assail the motives of Trinity Church, as he certainly has done, directly and indirectly, in his own person and by his representatives.

Try the motives of that body by a very simple standard:

Trinity Church, in 1834, was offered sixty-two thousand dollars for the ground proposed to be taken, to which the church has a merely legal title, as custodian for the sacred dead interred in her vaults. Now, if the church were so wicked, one would suppose that the most natural thing in the world would have been for her to have accepted the offer of \$62,000, prove recreant to her trust, and consent to the opening of the street, which, in no pecuniary sense, could injure her a penny. On the contrary, the church refused the tempting bribe, and preferred, and still prefers to retain, in lieu thereof, the bones of the poor who have been buried in her ground. And, notwithstanding all this, the pamphleteer representing and advocating Mr. Boorman's interest, whoever he may be, charges this church with avarice, pride, and all the deadly sins. To my mind, the self-denying constancy of the church, in refusing that large sum of money, and continuing faithful to her trust, is above praise.

IV. There is another source of law to which I must beg to call your attention. It is found in a book of paramount authority—the Bible. But some may say, that the Bible is not the law of the land. Hear what Lord Chief Justice Best says on the subject. I read from the case of *Bird v. Holbrook*, (4 Bing., 638.) “It has been argued,” (says that emi-

ment judge,) "it has been argued that the law does not compel every line of conduct which humanity or religion may require; but, there is no act which Christianity forbids, that the law will not reach. If it were otherwise, Christianity would not be, as it has always been held to be, part of the law of England." And I would remind you, sir, that, by our constitution of 1777, the common law of England was adopted and made part of the law of the state of New York, and has ever continued to be, and now is, the law of this state, constantly acted upon in our courts.

That Christianity forbids the desecration of the dead, requires no argument. Ever since the introduction of Christianity, the remains of the dead have been held sacred. The advent of religion marked an entire revolution in the mode of disposing of the dead.

The Romans kindled the funeral pyre under the remains of deceased friends, but when Paul preached to them, in thrilling tones, the resurrection of the body and the life everlasting, the converts to the new faith were carefully placed in the Tufa, in subterraneous caverns, where the solemn rites of sepulture were performed by the primitive Christians over their martyred brethren in days of persecution and of danger. These caverns still remain, as the catacombs near Rome bear witness. The elaborately-wrought sarcophigi, the proud mausoleums, which meet the eye of the beholder on every hand in the old world, all bear silent evidence of the universality of this sentiment. In a word, he who can exclaim, "I know that my Redeemer liveth, and that he shall stand at the latter day upon the earth: and though, after my skin, worms destroy this body, *yet in my flesh* shall I see God,"—he who believes this momentous truth must respect the remains of the dead. But this branch of the subject more appropriately belongs to the pulpit than the forum. Permit me, therefore, to dismiss it with the remark, that the eloquent sermon of the learned divine, Mr. Weston, has developed all that is necessary to be said on that subject, in its true light. His very text is sufficient without a sermon, and is peculiarly apposite to the present occasion. Abraham, the venerable

patriarch, purchased land from the children of Heth, for a perpetual burying-place. It received the mortal remains of his wife not only, but of Abraham, Isaac, Jacob and Joseph. The children of Heth were true to their grant, observed it faithfully, and to this day the burial-place is kept sacred. Our forefathers have also purchased a perpetual burial-place in Trinity church-yard, and it is now sought to be taken from us, not by one of ourselves, but by a stranger. One, to whom all the glorious associations of our land are unknown, bids us yield up the bones of our fathers to aid him as a legitimate source of profit. Shall we yield? No sir, never! I appeal to you, then, not to allow this street to be opened. By all the glorious memories of the past, by all your brilliant hopes for the future of our country, do not destroy the graves of our revolutionary patriots—by every consideration of public utility, let that one green spot remain. Let old Trinity stand intact, and teach the sublime truths of our holy religion to the two hundred thousand inhabitants within its precincts; and may the daily sermons preached there be continued, and may her dead repose in peace beneath the shadows of her lofty spire, till the mighty archangel shall come down from heaven, and shall open the books, and shall set his right foot upon the sea, and his left foot upon the land, and swear, by Him that liveth for ever and ever, that time shall be no longer.

HISTORY OF TRINITY CHURCH, IN A PETITION FROM A DESCENDANT OF A REVOLUTIONARY OFFICER.

To the Honorable, the Common Council of the City of New York:

The undersigned respectfully joins in the prayer of many of his fellow-citizens to your honorable body, asking for the repeal of the ordinance of the late Common Council relative to the extension of Albany street through Trinity Church-yard.

In support of his petition, the undersigned begs leave to present the following facts connected with our Revolutionary history:

Among the earliest of the patriotic spirits who marched from their homes to defend the city of New York against the armies of Great Britain in 1776, were the regiments contributed by the counties of York and Lancaster, in Pennsylvania. They were composed almost entirely of young men, the majority of them of German descent, and animated by the hatred of oppression, and enthusiasm in the cause of freedom, which distinguish their race at the present day.

Five regiments marched from the county of York to New Jersey in July, 1776, and, of these, two were detached to form part of the "flying camp"—a corps of 10,000 men, voted by Congress on June 3, 1776. These two regiments were stationed in the vicinity of the city of New York. A portion of them were killed, or taken prisoners, at the battle of Brooklyn Heights, and the balance either fell on the field of battle at the taking of Fort Washington on the 16th of November, 1776, or were captured on that disastrous occasion and marched down to the city. Here they, in common with thousands of their fellow patriots, suffered unheard-of cruelties in the prisons and sugar-houses of New York.

The regiment of Col. Michael Swope, consisting of eight companies, suffered severely at Fort Washington. Death on the field, or by wounds, or from the horrors of the prisons, left but few to return to the green hills of the Codorns.

Ensign and Adjutant Barnitz, of this regiment, then but 18 years old, fell at Fort Washington, with a musket ball in each leg. Being carried to the city prisons with the survivors of his regiment, he was soon afterwards removed to more comfortable quarters in the old house formerly standing at No. 9 Bowery, in consequence of the severity of his wounds, and at the intercession of an old family friend, Major-General William Alexander—Lord Stirling, who was then also a prisoner, having been shortly before captured on Long Island. Adjutant Barnitz here lay with unhealed wounds for fifteen months; but during that time he was not insensible to the still greater sufferings of his companions in arms, and, with the help of the noble-hearted officer just mentioned, he was enabled to alleviate their captivity, and to care for their remains when dead.

Being generally of the Lutheran faith, the grave-yard of that denomination, adjoining Trinity Church, (subsequently the site of Grace Church,) would have been their appropriate place of burial, but the church had been destroyed in the conflagration which occurred shortly after the occupation of the city by the British army, and the burial ground was unprotected.

A successful effort was, therefore, made to obtain a place of sepulture in Trinity Church-yard. Adjutant Barnitz was attached to Captain Christian Stake's company, of Swope's regiment, composed of young men of the best families of the town of York. To these more particularly, as being his more immediate comrades, such care as he could afford was given.

Of this company the following were buried in the north-western portion of the grounds, at that time bordering on the water, viz: Sergeant Peter Haak, Sergeant John Hinks, privates, Hugh Dobbins, Henry Hoff, David Parker, and probably one or two others. Captain McCarter (of Col. Richard McMaster's regiment, from the same county,) died of wounds received at Fort Washington, and was also buried at Trinity yard.

It may be proper to state that these facts are derived partly from the History of the County of York, by A. J. Glossbrenner, Esq., (now sergeant-at-arms of the Sen-

ate of the United States,) and partly from the papers and reminiscences of the old veteran, who, in the early days of the writer, was wont to relate the story of his battles, and "to shoulder his staff and show how fields were won."

To the soldier, the last resting place of his comrade is consecrated by the memory of the trials, the conflicts, the sacrifices and the sufferings which they have, shoulder to shoulder, encountered. He feels that his honor rests by that mound of earth, and must guard it from violation while life shall last. He bequeaths its care to his countrymen, as a place of sacred memories, and never for a moment dreams that future years may bring spoilers of the tomb, who will forget their duty to the blood which cemented the foundations of the republic.

The Mexican war was prolific in instances where those who fell were exhumed by committees sent by their surviving comrades, and received a soldier's burial at home.

Permit me to relate a fact in this connection.

At the call for volunteers for the Mexican war, William Eurich marched with his company from the town of York, and joined the Pennsylvania Regiment. In the battle which occurred before the walls of Puebla, Eurich, with others of his company, having charged close up to the Mexican lines, saw his friend and comrade shot dead by his side. A superior force compelled them to retreat, but Eurich paused, and, shouldering his friend's body, was bearing it off to a place of safe sepulture, when a ball struck him, and the brave fellow sank in death by the body of his much loved friend. Eurich was the grandson of Michael Eurich, one of the captured soldiers of Fort Washington.

Shall the stern heart and rough nature of a soldier beat with so hallowed a feeling, and shall the citizen, the merchant, and the legislator repudiate it?

Shall it be said that the city of New York desecrates the graves of her defenders, and, at the bidding of the money-god, scatters to the winds the ashes of the soldiers of liberty?

These patriot soldiers, who now repose in the church-yard of Trinity, died far from friends and home. They laid down their lives in their youth. They left no sons to speak for them. Their silent dust cannot plead to you for rest.

It, therefore, becomes my duty and privilege to address you.

I was born where they were born. Their friends were my friends, and my early days were familiar with the green hills which they last looked upon when they marched to defend your city.

My earnest petition to the Common Council of the city of New York is, that the remains of these martyrs of our Independence may be left in peace in the graves where their comrades laid them.

Respectfully,

J. BARNITZ BACON.

No. 167 Broadway, Feb. 9, 1854.

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[*Note B.*]

DESECRATION OF TRINITY CHURCH-YARD.

Copy of a Letter from His Honor the Recorder to Alderman Francis.

Dated, New York, May 28, 1853.

DEAR SIR:—I did not receive your note mentioning a meeting of the Committee of your Board, in relation to Trinity church-yard, until after the time designated. It is painful to me to discover that renewed efforts are making to desecrate that holy ground; for there lie multitudes of the dead, including relatives, connexions, friends and ancestors of almost every family of long standing in our city, including, too, many of those who died in that struggle, the success of which established those mighty principles and institutions of human liberty from which flow the happiness, the blessings and prosperity of this country and its people.

I have not examined the papers connected with the present application, but should like to do so the moment I can obtain sufficient time from my other duties. I understand that it is the same, and, with some few exceptions, by the same leading persons who took an active part in the applications made in 1846 and 1847, which, I believe, in effect, was to make a street in continuation of Pine street opposite to it, through Trinity church-yard—the north part 58 feet 11 inches wide on Broadway, and 55 feet 8 inches on Trinity-place, and to be continued to Greenwich street, opposite Albany street, 50 feet wide. The street proposed, on its northerly side on Broadway, would approach to within 40 feet of Thames street which is 20 feet 1 inch wide on Broadway, and 21 feet 2 inches on Greenwich street, and, by a diagonal line, would be within 58 feet 8 inches of Thames street at Greenwich street.

The ground, as I understand, has been employed as a cemetery since 1676—the north part for all denominations—confirmed by deed from the city in 1703. Originally, that part was a gully about *16 feet deep; and successive surfaces from the original one, by successive filling to the present surface, have been used for interments, until, in truth, the land chiefly for the whole depth is now composed of human ashes.

To accomplish the desire of the applicants it would be necessary to remove the remains of a vast number of persons.

I see no advantage in recapitulating the arguments used on the former occasions in this letter, but solicit you to have the kindness to read the message or veto of Mr. Havemeyer, the Mayor in 1846, made on the 11th of May of that year, and received in the Board of Assistants, and the report of the Committee of the same Board, made on the 22d of March, 1847. (Doc. 33 of that year.)

The truth of the views of that Committee we are now, I think, in some respects realizing. The sale of the grave-yards and churches and removal of the dead in various parts of the city, and the closing up of those green and venerated spots by covering them with buildings have deprived us, to a large extent, of what may be regarded as necessary openings for ventilation; nay, more, have removed so much of the moral influence which religious worship carries with it, that vice and crime in the lower wards of the city have been deprived of one of their material preventives. The idea, no doubt, has its opponents, but I think examination will prove its truth.

Besides, I am interested in the measure, because I have twenty-two relatives and connections lying in that portion of the yard. Some of them were interred previous to and some since the revolution. A headstone of one who died in 1762 is yet extant.

We are a family of Huguenots. Our ancestors, to escape persecution and oppression, fled from comfort and good condition to this country—when here it was almost a wilderness—and met loneliness and poverty. They did this for conscience's sake; and, to worship the Deity, according to their tenets, would walk on Saturday night from New Rochelle to this city to their church, and return on Monday morning.

The French church in Pine street, to which they once went, and its grave-yard, have, as well as others, been sold for money, and the remains of the congregation there interred, been taken up and carried away.

Generations of this family lie in Trinity church-yard, and it is now impracticable to separate their ashes from the earth which surrounds them. Such is the case with thousands of others.

One of the family is Peter V. Tilyou, who died in 1846, at the age of 91—the individual of the body-guard of Washington, who, it is said, on the entrance of the American army into this city, at the close of the war, took down the British and run up the American colors, at the spot where is now the corner of Grand street and the Bowery. He, when he heard of the application in 1846, before his death, to open the street through the cemetery, remonstrated against the act in the newspapers of the day, and exclaimed that when he and his comrades were fighting the battles of their country, he little thought he would ever live to see their bones so scattered, and that he had a father, a mother, and wife, and ten brothers and sisters, lying there.

* The Report of the Committee of the Board of Assistant Aldermen says "30 feet." The Recorder, probably, takes the average depth.

The disturbance of the dead is a revolting act, only excusable by extreme necessity. The instincts of nature and the behests of the Almighty forbid it. The abode of the dead is consecrated—is sacred in the eye of all nations, and linked, as this home of a mighty nation of the past is, by tradition, relationship and recollection, to nearly all the older families of this city—beautiful, though solemn in its appearance and inspirations—can it be, that any considerations short of vital necessity can warrant its being broken into?

But enough; excuse these remarks: they are involuntarily drawn from me on thinking over the matter. If you will inform me when you shall have your next meeting, I will endeavor, though I may not be able, to be there. Should I not, I pray you take the grounds of my opposition into consideration. Very respectfully yours, &c.

F. R. TILLOU.

Alderman FRANCIS.

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[Note C.]

TRINITY CHURCH-YARD.

Report of the Special Committee in the Board of Assistant Aldermen, March, 1847, to whom was referred the resolution in relation to opening an extension of Albany street to Broadway, through Trinity Church-Yard, adverse to the same:

The Special Committee to whom was referred the resolution in regard to the extension of Albany street to Broadway, through Trinity Church-Yard, respectfully report, that they have examined the matter in all its various bearings, and in order to obtain the opinion of those interested therein, the applicants and remonstrants, as well as the people at large, many of the latter of whom regard the ground through which it is intended the street shall be opened, as sacred, your Committee have held public meetings, and given audience to all who might come forward to speak in favor of, or in opposition to the measure. The subject has been ably and thoroughly discussed at such meetings, and your Committee have derived great information from the different discussions held before them, and have maturely considered all the arguments advanced on both sides. Your Committee have also examined all the documents which have been referred to, or placed before them—have personally inspected the ground through which the proposed opening or extension would pass, and have made all such other examination, inquiry and research, as appeared to be material or useful to the end above mentioned.

The street proposed commences on Broadway, partly in a line with Pine street, forty feet south of Thames street,—is fifty-eight feet eleven inches wide on Broadway, and is continued until it strikes Trinity Place, forty-six feet one inch south of Thames street, where it becomes gradually diminished in width to fifty-three feet eight inches. It is then continued,—commencing on the west side of Trinity Place, fifty-three feet four inches south of Thames street, and is there fifty feet in width, and is continued to Greenwich street, which it strikes partly in a line with Albany street, fifty-seven feet eight inches south of Thames street, where the width is diminished to forty-nine feet ten inches. The block from Broadway to Trinity Place is in length about two-hundred and fifty-six feet, and the block from Trinity Place to Greenwich street about two hundred and thirty-five feet.

The Petitioners in this matter complain that they have no thoroughfare from the north to the east river, and that for the want of one they suffer much in the winter time, and are obliged, on account of the steepness of ascent in Rector and Thames streets, and the narrowness of the latter, to cart their goods through Marketfield street or Battery Place to Broadway, in order to reach the east side of the City; but it appears strange to your Committee that the merchants and others doing business on the east side of Broadway, and who carry on the chief part of the business which is done below Liberty street, make no demand whatever for such an opening! Many of our European Packet Ships have their berths in the North river, above,

below, and about the dock at the foot of Albany street, in which ships, large cargoes of goods are imported by merchants in Pine, Wall, Cedar, Water, Front, Pearl, South, Broad, and Liberty streets; and many transient ships also land their cargoes in the region afore-mentioned: but your Committee have not heard of any person doing business as an importer on the east side of Broadway, who desires or is in favor of the proposed extension of Albany street. Moreover there are more streets running from Broadway to the North river than to the East river already: for instance, on the east side there are Maiden Lane, Wall, Pine, and Liberty streets; and on the west within the space there are Rector, Thames, Cedar, Liberty, and Courtlandt streets. From which it appears there are *five* openings from Broadway to the North river, and only *four* from that great thoroughfare to the East river; and yet we hear no complaint from those engaged in business on the east side about the want of a passage from one river to the other, though they are in number as twenty to one compared with those on the West side. The actual necessity, therefore, of extending Albany street in the manner proposed, is a matter of doubt; and to run it through the time-honored cemetery which stands as a barrier to the completion of the project, the Petitioners must prove that the necessity is extreme—that the contemplated opening would be a great public benefit, and that they are actuated by *no other motive than the promotion of the public good.*

That section of Trinity Church-yard through which the contemplated street must pass, is the most ancient cemetery in this City, and probably in this country. *It was established by the Dutch on their first settlement, and as a burial-ground it is nearly a century older than the other sections of the yard.* It was originally a valley about thirty feet lower at its extreme depth than the present surface, and has undergone successive fillings, as the density of interments rendered it necessary, to raise the land until it reached the present surface; so that the earth now, *to a depth of several feet below the original, and thence to the present time of interment, is in truth filled with human remains, or rather composed of human ashes.* The bodies buried there were those of many thousand persons of several generations, and of all ages, sects, and conditions, including *a large number of the officers and soldiers of the revolutionary war, who died whilst in British captivity,* and almost every old family that is or ever was in this city has friends, relatives, or connexions lying there.

Your Committee are of the opinion that this burial-place is peculiarly entitled to the protection of our authorities, and they cannot but think that if it be invaded and desecrated, not another cemetery in the city is safe from the spade of the innovator. Its claims to respect are as follows:

First. For its antiquity: this portion of it being nearly a century older than Trinity Church itself, and the burial-place of the city when first founded by the Dutch, and laid out by them just beyond the City Wall.

Second. It has always been emphatically *the City* burying-ground, without reference to religious sect or condition, and was deeded by the Common Council of the city to Trinity Church, April 22d, 1703, conditioned that it should continue to be used forever, as a general burying-ground, (the price of interment being fixed at five shillings for an adult, and two shillings and sixpence for a child under twelve years of age, shows it to be the poor man's resting-place,) and Trinity Church bound to keep it in good fence, repair and condition. In fact it belongs to the people generally of the city, the church aforesaid being merely its guardian, and absolutely and inevitably bound in conscience to protect it.

Third. The immense number of interments, particularly in that part of the city now sought to be turned into a highway, which alone is estimated to contain the remains of between thirty and forty thousand human beings; embracing, as aforesaid, many of our most distinguished citizens and patriots of other days.

Fourth. The parties who were interred in this spot:—*During the time this city was in possession of the British troops, the American prisoners who perished by thousands were all thrown in trenches into this very ground, and as soon as the city was evacuated, were, by Trinity Church, given in that place a decent sepulture, where tomb-stone and tablet still mark the spot in which many a Revolutionary officer lies buried.* Your Committee, therefore, feel assured that *hardly an American citizen can be found who would hesitate a moment to declare that it must be an urgent, nay a dire necessity, that*

would justify the scattering of the ashes of those so deservedly dear to us, who are now enjoying the liberty and happiness, which they laid down their lives to secure.

Fifth. When the Common Council on the 22nd of April, 1703, as before mentioned, conveyed this piece of land to Trinity Church, describing it *then* as an ancient burial place of the city, and conditioning that it should continue to be so used for that purpose to the end of time, did they not guarantee under the solemnity of the city seal, to all who were subsequently interred there, that they should there continue to repose for ever? A question here arises, as to whether or not the Common Council can, by their own act, *legally* take away those rights which they have so solemnly declared should never be infringed, and on the faith of which declaration and assurance so many paid for that ground in which they now repose in the deep sleep of death; but it is a question which requires not much ingenuity nor the aid of counsel to answer in a manner satisfactory to all who are not pecuniarily interested in the extension of Albany street. Apart from "the question" however, do we not take great pride in our magnificent city, *and in THE INTEGRITY OF HER SEAL*, which has never yet been violated? And shall we not continue to preserve it as pure and unsullied as the ermine of Justice itself? As servants of the people, it is our bounden duty, to keep the faith of the city inviolate, and that alone should prompt us to deny the prayer of the petitioners; but your Committee have other reasons to offer why their prayer should not be granted.

It appears that the application now under consideration is supported by one hundred and twenty-three persons; of whom fifty-three are represented as owners of property interested, and the remainder as lessees, packet-owners, and persons who do not define the position and capacity in which they apply: That is opposed by upwards of sixteen hundred persons; that is to say one hundred and thirty, including Trinity Church as owners of the property in interest, and the residue as relatives of the dead: That such of the *applicants* as appear to be *owners*, represent altogether, about, but not exceeding, seventy-one lots; that such of the opposers, including Trinity Church, as appear to be *owners*, represent altogether, about, but not exceeding, twenty-nine acres; or, at twelve lots per acre, three hundred and forty-eight lots; and, at sixteen lots per acre, (which is the correct estimate, as the land is exclusive of streets,) four hundred and sixty-four lots: in addition to which are the large numbers of the dead lying there, whose interest is not only represented by the church aforesaid, but by the immense number of their relatives and friends.

Your committee, although it is rather beyond their duty, seeing the opening or extension of Albany street to Broadway through Trinity Church-yard, is the subject of their labors, begs leave respectfully to suggest that the widening of Thames street from Broadway to Greenwich street would make a much better thoroughfare than the one desired by the applicants, inasmuch as the street, proposed by them, does not average fifty feet in width from Trinity Place to Greenwich street, whereas the widening of Thames street would give a width on Broadway of sixty feet one inch, and on Greenwich street, gradually widening from Broadway down, *seventy-eight feet ten inches*. This would not only make a handsome street, but would obviate the necessity, and quell the desire of having another cut through and running parallel with it only forty feet distant. The petitioners allege that this would be too expensive; but your committee are of the opinion, that if *it be absolutely necessary for the public good that a new street be opened in that quarter*, those interested would rather pay double the amount of their own estimates, than disturb the ashes of the patriotic dead entombed in Trinity Church-yard. The widening of Thames street would, in the opinion of your committee, answer a better purpose than the extension of Albany street, inasmuch as it would be a great deal wider, and, of course, much easier of ascent from Greenwich street to Broadway. Your committee might also suggest the opening and extension of Albany street to Trinity Place, and the widening of Thames street between Broadway and Trinity Place by the removal of those buildings on Thames street opposite the City Hotel; by which means Albany street could be brought within the gorge of an inlet to Broadway, and the necessity of cutting through the chambers of the dead be entirely obviated. However, as

your committee are not empowered to report in more than one case, it is proper that they confine themselves to their legitimate duty.

Your committee are of the opinion that the prayer of the petitioners ought not to be granted: 1. Because it is manifest that a large majority in amount of those who will be interested by assessment for benefit and award for injury are opposed to it. By the law of 1839,* it is in substance declared, that on the application to the Supreme Court to confirm the report of commissioners of estimate and assessment being made, in case such *majority* shall appear and *object* to further proceedings, the proceedings shall be *discontinued*—and your committee have no doubt that the Common Council, in considering this application, are bound to be governed by the same rule; for otherwise they would wilfully subject parties to certain though useless and unjust expense and injury.

2. Because the contemplated street would be a deformed one of different widths, while Thames street, widened as herein before recommended, will expand gradually and by regular lines on both sides to Greenwich st., where its width should be the greatest, as it will be, and would present an elegant improvement.

3. Because the law of the 11th of April, 1842,† in effect, *declares the act* by a church or religious corporation or its officers, of removing any human body or remains from any burying-ground, for the interment of which compensation shall have been received, *with intent to convert the ground to any other purpose, without the consent in writing of three-fourths of the congregation or society, a misdemeanor, and subjects the offender to fine and imprisonment.* The spirit of these laws cannot be mistaken, and none will doubt, who have examined the subject, that it is in accordance with the feelings and sentiments of the whole community, and of the whole nation; and the Common Council cannot give their official sanction to an act so broadly a violation of the statutes and of the rights and feelings of the community, because it would be aiding men to commit, in the name of the public, an act which the public have, by its laws, declared to be criminal. *The demoralizing effect of these desecrations is plainly disclosed in the bold assertions made before your Committee during the discussion of the subject,* by those in favor of the proposed extension, that the feeling against the breaking up and appropriating of Cemeteries to secular purposes, is “an obsolete idea;” and your Committee believe that a compliance with the application now under consideration, will, upon the same principle of reason, give a firm ratification to the revolting sentiment. As conservators of the public morals, the Common Council are bound to refuse their sanction to such a monstrous doctrine.

4. Because the extension applied for is against public policy; inasmuch as it would contract the open space which Trinity Church-yard affords, *now* not more than sufficient for the necessary ventilation of that part of the city. Besides that spot, the Bowling Green and the Battery are the only places of the kind in the First Ward. How necessary, then, to the public health it is to preserve Trinity Church-yard entire, and how injurious to contract or diminish it! That ground is susceptible of high and exquisite embellishment as an elegant ornament. Linked with so many endearing associations, so many interesting memorials, rich in its evergreens of memory as well as of fact and reality, attached to the magnificent Cathedral that stands within it, what can be more healthful or beautiful.

Your Committee consider that sound policy and regard for the public health forbid that the proposed opening should be made; and that the ultimate failure of the several previous applications to former Common Councils proves that the design of the applicants is radically objectionable. Your Committee will close their report by recommending for adoption the following resolution:

Resolved, That it is inexpedient, improper, and unnecessary to extend Albany street to Broadway through Trinity Church-yard, or that any street whatever should be opened through or over that ground; and that the prayer of the Petitioners be, and is hereby denied.

All of which is respectfully submitted.
New York, 1847.

CHARLES WEBB,
ISAAC B. SMITH.

* Laws of the State of New-York, page 182, chap. 209.

† Laws of the State of New York, page 259, Chap. 215.

I cannot adopt all the reasoning of the foregoing report, but from the evidence presented to me that the opening of Thames street would afford the necessary facilities to the public, I concur in the resolution that it is inexpedient to open Albany street.

THOMAS McELRATH,
MOSES W. S. JACKSON,
Committee.