THE

ARGUMENT

OF

WILLIAM CURTIS NOYES, ESQ.,

BEFORE THE

Street Committee of the Board of Aldermen

OF THE

CITY OF NEW YORK,

DELIVERED MARCH 14th, 1854,

IN THE MATTER OF

EXTENDING ALBANY STREET

TO

BROADWAY.

REPORTED BY JAMES THOMAS ROBERTS,

(Reporter to the New York Daily Times.)

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HALL, CLAYTON & CO., BOOK AND JOB PRINTERS,

Corner of Pine and William Streets.

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BROADWAY

AND

EXTENDING NORTH TO YORK STREET

IN THE

CITY OF NEW YORK

SHOWING THE

Street Commissioners Plan of Improvement

AS ADOPTED

BY THE

COMMON COUNCIL

(Reduced from the Map of 1807.)

DELINEATED BY JAMES HOGG.

1824.

ARGUMENT.

The Street Committee of the Board of Aldermen, appointed to report on petitions offered for a repeal of the Ordinance for extending Albany Street to Broadway, met in the Chamber of the Board of Councilmen, on Tuesday, March 14, 1854, at 3 P. M. Present, Aldermen DRAKE, BLUNT and BROWN.

Ald. DRAKE, Chairman of the Committee, called the Meeting to order.

WM. CURTIS NOYES, Esq., counsel for Mr. West, rose to speak.

The CHAIRMAN—For whom do you appear, Mr. Noyes?

Mr. NOYES—For Mr. West, may it please the Committee.

The CHAIRMAN—Where is Mr. West's property situated?

Mr. NOYES—I will state to the Committee in one moment.

The efforts which have been made for the last forty years, and which have eventually triumphed, in carrying through the extension of Albany Street, are resisted by a great variety of persons—all, however, as the Committee will at once see, founding their objections chiefly upon the character of the grounds through which the extension is proposed to be taken. There are none, (at all events not more than one,) as far as I know, on the line of the street, who oppose the improvement.

I appear for Mr. West, who owns three lots on the north-west corner of Albany and Washington streets; being 78 feet on Albany street, and 68 feet on the other; and I appear for him strictly as a property holder, entitled to have his just share in the public benefits that may grow out of the extension and enlargement of the streets in the city of New York.

I shall confine myself as strictly as I may be able, in the remarks which I shall submit to the Committee, to those matters which I regard as fundamental on questions of this description; and I shall not be led off, in any considerable degree, by the foreign matters which I conceive have been brought into the case by Trinity Church, its principal opponent. And, in fact, I regard everything that has been said and introduced in relation to the church-yard itself, as being a matter with which the Committee have really nothing to do in this question of public improvement.

It will be proper, however, for me to submit some observations in reference to the character of the opposition which comes to this measure—a measure which has passed the Common Council, and which this Committee are not called on to originate, but which they are called on to annul. And in doing this, it will be proper for me to consider the character of the opposition which is made to this law of the Common Council. I think it pertinent to inquire, whether it is a fair and honest opposition—I mean an opposition founded on motives designed to protect the public from injury, and to promote the public welfare; or, whether it is factious and revolutionary, and only another phase of the many efforts which have been made by Trinity Church from its earliest history, to oppose the Corporation of New York in providing for the well-being of the city. And if I can show, (as I trust I can,) that it is factious and revolutionary, and that it is only another instance of the opposition which has been invariably made by Trinity Church to improvements in that part of the city, and to other changes and improvements connected with the public welfare, I shall show, I think, an important point in the case.

Now, what is the first objection made by Trinity Church? It is that, during the Revolutionary War, the patriots of the Revolution were buried there. That I utterly deny; and I say, that it is as untrue as any other historical fable. Why, let us look for a single moment at the history of New York during the Revolutionary struggle. The American troops were driven out of the city, at an early period of the war. It was in possession of the British, and under martial law, until the peace of 1783, and the Rector of Trinity Church, (Rev. Charles Inglis,) lived in the city during the whole time, and only left with his family on the evacuation of the city in 1783. There were no regularly constituted legal tribunals; nothing except martial law. The city was in possession of the royalists.

The Rector of Trinity Church had shut up the church against General WASHINGTON ; those who preached in behalf of the Revolutionary arms, and with Revolutionary tendencies, were denied admission; and it is utterly impossible, under such circumstances, that *rebels*—that those who entertained opinions in favor of the war, or who were actually engaged in the struggle—who carried on the war—could, by consent of Trinity Church, have been buried within the so-called sacred grounds. The letter from Mr. Inglis, the Rector, which was read by Mr. Sandford, shows, that every Episcopalian clergyman in the Province, and throughout the whole of the Northern States, was opposed to the war, with a single exception.

It was utterly impossible, therefore, that during the war any Revolutionary soldiers could have been buried in those grounds. The letter already alluded to, also shows that the Presbyterians universally were in favor of the war, and that they met, therefore, the unyielding hostility of the Episcopal Church. It is impossible that, under such circumstances, a Revolutionary patriot—one who had suffered or bled in defence of the cause which the royalists had opposed so energetically, would have been permitted to be buried in that which is now called consecrated ground.

It will not be uninteresting to call the attention of the Committee to another historical fact connected with this period of our annals. This same Rector of Trinity Church was one of the TORIES, attainted of treason, by the act of attainder, passed on June 30, 1778, at Poughkeepsie, (where the Legislature, having been driven out of the Capital by the British troops, held its fugitive sessions,) among others, some of whom were Vestrymen of Trinity Church ; and although thus attainted of treason against the State of New York, and his estate forfeited, he continued in the city until the peace of 1783, because it was in possession of his friends, the British Government. With the permission of the Committee, and as it is a curious document, I will read the preamble of this act of attainder, and one of its sections, to show the feeling then entertained on this subject, and the necessity for adopting the measure. It is in 1st *Greenleaf's* Laws of New York, p. 26 :

"An Act for the Forfeiture and Sale of the Estates of persons who have adhered to the Enemies of this State, and for declaring the Sovereignty of the People of this State, in respect to all property within the same.

Passed 22d October, 1779.

Whereas, during the present unjust and cruel war, waged by the King of

Great Britain, against this State, and the other United States of America, divers persons holding or claiming property within this State, have voluntarily been adherent to the said king, his fleets and armies, enemies to this State, and the said other United States, with intent to subvert the government and liberties of this State, and the said other United States, and to bring the same in subjection to the crown of Great Britain; by reason whereof, the said persons have severally justly forfeited all right to the protection of this state, and to the benefit of the laws under which such property is held or claimed; and whereas the public justice and safety of this state absolutely require, that the most notorious offenders should be immediately hereby convicted and attainted of the offence aforesaid, in order to work a forfeiture of their respective estates, and vest the same in the people of this state:

And whereas the constitution of this state hath authorized the legislature to pass acts of attainder for crimes committed before the termination of the present war:

§ I. Attaints Charles Inglis and others of treason.

§ II. *And be it further enacted*, by the authority aforesaid, That the said several persons hereinbefore particularly named, shall be, and hereby are declared to be forever banished from this state; and each and every of them, who shall at any time hereafter be found in any part of this state, shall be, and are hereby adjudged and declared guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy."

There is a rather interesting and instructive fact connected with the history of Mr. Inglis, which is proper to be brought to the attention of the Committee, and I state it here—the 3d of Peters' U. S. Reports, p. 99. He left with the British army in 1783, taking with him a little boy, his son and namesake, some four or five years old. I see by the letter which the father wrote, giving an account of the troubles in New York and the Colonies, that he looked to the Episcopacy for his reward when these agitations should subside. He went to Nova Scotia in 1787, (the year that our Constitution was adopted,) and he was made the first Bishop of Nova Scotia. He obtained his reward! I find in addition that, in 1825, this same little boy, who had in the meantime become himself the third Bishop of Nova Scotia, came to the city of New York, and entered a claim against the whole of the property now belonging to the "Sailors' Snug Harbor," as heir of his mother, and undertook to defeat the noblest charity which the city of New York now has, on account of an alleged invalidity in the will of Mr. RANDALL, who bestowed that charity on the city of New York. Happily this inherited hostility to us and our institutions failed in accomplishing its purpose.

More than all that, Trinity Church resisted the Revolution during

its entire progress. After the Revolution it undoubtedly passed into better hands—undoubtedly some of the patriots of the Revolution were members of its Vestry after that time. But the spirit of resistance to the acts of the Colony which led to our independence, and to the acts of the Common Council of the city of New York, in reference to improvements in this part of the city, never slumbered. It exists in all its original vigor to this day. It is in evidence that for more than forty years this single improvement has been in progress, and within that time it has been twice carried through the Common Council. Let me call your attention for a moment to 1823. You all know the desolating Yellow Fever which scourged the city in 1822. What did the Common Council of New York at that time? We have heard from the gentleman who has just addressed you in aid of Trinity Church, that this is a district in which malaria arises to the destruction of the public health; and we are told, as regards this extension, that it will bring these pestilential vapors into Broadway, and therefore ought not to be tolerated! In one word, there is to be no ventilation, no improvement in that part of the city; but the inhabitants living there are to be continually injured, and perhaps have their lives destroyed by this malaria!

What did the Common Council do in 1823? They passed a law forbidding the interment of persons in Trinity churchyard under a penalty of $250. They did it because further interments in the city of New York were prejudicial to the public health. And although the feeling against interments in cities did not prevail to any great extent at that time, yet now it has become universal, and, as a general rule, interments are not permitted in any city in any civilized country. What did Trinity Church do in reference to that great public benefit? Why, they resisted it with all the power they could command. I speak from the book; the cases will be found in 7 Cowen's N. Y. Rep. p. 585. There were three sextons of Trinity Church at that time. Interments were made by all of them in the grounds of Trinity Church with the approbation of its Vestry, and in violation of the law. Actions were brought by the Common Council against them for the penalties—four suits, two against one sexton and one against each of the others; and they pleaded that, under the general grant of 1703 made to them by the corporation, they had the right to make these interments in defiance of the corporation of the city of New York; that the city of New York had no power at all to regulate the public health in respect

of Trinity churchyard, and that their title was exclusive. Recoveries were had, and Trinity Church employed the most able counsel of that day, among whom was the honored father of one of the gentlemen who has argued the case on the other side, to resist that law; but the resistance was unsuccessful; so that the courts decided *that Trinity Church improperly resisted the laws and opposed the welfare of the City of New York*, and imposed the penalties thus wilfully incurred. Since that time, I believe, few interments have been made. If any have, they have been made in violation of law.

Now, then, I insist that we have evidence perfectly clear and convincing, that Trinity Church has throughout not only resisted this public improvement, but that it has resisted every improvement connected with that property, in respect of Trinity Church-yard, and that it has done it factiously, and in opposition to the public good. One word more upon the point, that interments of Revolutionary patriots would have been permitted, during the Revolution, in Trinity Church yard. They were regarded as rebels, and I wish to state an apposite instance on that subject. The committee are aware that during the Revolution in England, and while Cromwell was Lord Protector, what was known as the "Established Church" was, in a certain sense, trodden under foot. The non-conformists had the ascendency. I wish to call your attention to what was done by the Court of Charles II. and the Bishops after the Restoration, with the remains of those who were interred during the Protectorate, and who, by establishing a new and better government, were guilty of what was called treason against Charles I. and his government, and not only with the remains of these, but of innocent women, who could have committed no treason. I read from the 5th volume of the State Trials, in a note to the trial of the Regicides, page 1338, quoting Neal:

"Towards the latter end of this year (1660) the Court and Bishops, not content with their triumphs over the living Presbyterians, descended into the grave and dug up the bodies of those who had been buried in Westminster Abbey, in the late times, *lest their dust should one time or other mingle with the loyalists;* for besides the bodies of CROMWELL and others, his Majesty's warrant to the Dean and Chapter of Westminster, to take up the bodies of such persons as had been unwarrantably buried in Henry 7th Chapel, and in other Chapels and places within the collegiate Church of Westminster since the year 1641. * * * * * *

"Pursuant to these orders, on the 12th and 14th September *they went to work* and took about *twenty*, among which were the body of *Elizabeth Cromwell*, mother of Oliver, daughter of Sir Richard Steward, who died Nov. 18, 1654, and was buried in Henry 7th Chapel.

"The body of Elizabeth Claypole, daughter of Oliver, who died August 7, 1650, and was buried in a vault *made for her* in Henry 7th Chapel.

"The body of Robert Blake, the famous English Admiral, who, after his victorious fight at Santa Cruz, died in Plymouth Sound, Aug. 7th, 1657, and was buried in Henry 7th Chapel ; a man, whose services to the English nation deserved a monument as lasting as time itself."

Among others, were also the bodies of Pym, Constable, Stroud, May, several eminent Presbyterian Divines, Dr. Trip, and Dr. Strong a preacher in the Abbey Church.

The account then proceeds : "These, with some others of lesser note, both men and women, *were thrown together into one pit* in St. Margaret's Churchyard, near the back door of one of the prebendaries; *but the work was so indecent, and carried with it such a popular odium, that a stop was put to further proceedings.*"

Here, then, we have a specimen of the feeling which actuated the Royalists and the Established Church against all those whom they regarded as rebels. This same feeling was entertained during the Revolution by Trinity Church as an off-shoot of the establishment, in relation to Revolutionary patriots, and no honest man can believe that the Rector and Vestry of Trinity Church would have permitted a single Revolutionary patriot to be interred in her grounds during the war.

I have gone into this matter, not for the purpose of casting reproach, but simply in order to show, by historical evidence, that it is utterly impossible that any such event could have occurred. It may be possible that some have been buried there since the Revolution. One of my learned friends mentions that General Lamb was buried there ; but the probability is that he was buried in the South part of the churchyard. The gentleman does not say that he was buried in that part through which the extended street will pass ; but if he was, his remains can be easily removed. Certainly, the remains of so distinguished a patriot as he was, should, and no doubt would, be properly and respectfully removed.

Now, I propose to leave this matter, and not to return to it; and I

leave it with a single observation: that *no matter who are interred there, if the urgent public necessities of the living generation require this improvement, it is the duty of the Committee to affirm the proceedings of their predecessors.*

I will make a single remark here as to the reproach which both of my learned friends on the other side have attempted to cast on the Common Council that preceded you. They commingled their reproach, too, with a kind of sarcastic expression (one of them did, at least) against a body known as the "Reform Committee," and spoke of their proceedings as having no little share in the election of the present Common Council, because of the misdeeds of their predecessors.

Well, I remember a time when my learned friends were, at all events, not unwilling to stand in favor with that committee, and it is not for them now to cast any reproaches. But it is enough for me to say, in relation to the whole of this subject, that the fact that the former Common Council passed this measure (demanded as it was by a great public necessity) against the power—against the potent, silent and almost irresistible power and influence of Trinity Church, is a proof of the integrity of the measure. I want nothing better than that. It is a proof, not only of the integrity of the measure, but of the integrity of the men who adopted it, in accordance with this public necessity.

It has been said, that to carry this street through a churchyard, is a violation of the duties of Christianity; that the Christian religion is a part of the law of the land—and that it is a violation of the fundamental duties of Christianity to interfere with the remains of the dead.

Is this argument to be confined to the regenerated or baptized dead? Or is it to be applied to human remains generally—to the mouldering ashes of any one whose body has been placed below the dust? I have noticed, among some of the very extraordinary publications which have been made to defeat and annul this measure, that it seems to be confined to those who share in the benefits of what is generally known as "*baptismal regeneration*," and that it has been said that "the bodies of thousands who have been baptized are reposing in Trinity Church-yard," and that, therefore, it is a violation of the fundamental duties of Christianity to interfere with them.

But is the doctrine, that we may not, upon proper occasions, and without intentional profanation, interfere with the remains of those who have been buried, to prevail? I say in relation to it, that the duty of non-interference with the dead is a matter which is constantly

talked about, and as constantly broken. Nearly every churchyard in the country has been, or is destined to be, in some sense desecrated, according to the ideas of the opponents of this measure. It must be so, in the nature of things. What kind of regard do we pay to the bones of the aborigines who inhabited this country? What kind of regard does the living age pay to the buried dead in Egypt, in Greece or Rome? Their tombs are constantly violated, for the express purpose of promoting art, of acquiring knowledge of the ancients, or for speculation; and no Christian man raises his voice against it! One of the most curious and extraordinary specimens of antiquity now existing in this city, is the Egyptian Museum, at Stuyvesant Institute; and yet almost every one of the interesting relics there collected have been plundered from the grave, and the remains of the dead themselves have been disentombed, and brought here to gratify the taste or curiosity of the living.

But to come to our own times. In the city of New York, there has been, by the Trustees of churches, by the Corporations of churches, by the city of New York, by the Corporation of Trinity Church itself, an interference, more or less extensive, with the remains of the dead—a proper, respectful, and necessary interference, but nothing more.

I do not advocate, nor would I for a moment stand up to advocate any unnecessary interference—anything not called for by a strong public necessity. But I have a right to insist, as a living man is better than a dead man—as the interests of the living are more important than the interests of the dead, (because the interests of the dead cannot be affected by anything we can do,) that the necessities and wants of the living should prevail over that sympathy and sickly sentimentality which denies a right to remove the dead under circumstances such as exist in the present case. But it is not new. The Committee will recollect that Bryant, in one of his admirable poems, has placed such a lament as is now made by Trinity Church, over the remains of the dead, in the mouth of an Indian, who came back to visit his fathers' graves; and who, finding them turned into pleasant and fruitful gardens, fields, beautiful cheerful streets, and smiling villages, pours out his soul in sorrow at the "desecration." He says:

"It is the spot—I came to seek,—
My Fathers' ancient burial place;
Ere from these vales, ashamed and weak,
Withdrew our wasted race.
It is the spot,--I know it well—
Of which our old traditions tell."

After describing the scene of civilization thus spread out before him, he adds:

"This bank, in which the dead were laid,
Was sacred when its soil was ours;
Hither, the artless Indian maid
Brought wreaths of buds and flowers,
And the gray chief and gifted seer
Worshipped the God of thunders here.

"But now the wheat is green and high
On clods that hid the warrior's breast,
And scattered in the furrows lie
The weapons of his rest;
And there, in the loose sand is thrown
Of his large arm the mouldering bone.

"Ah, little thought the strong and brave,
Who bore their lifeless chieftain forth;
Or the young wife, that weeping gave
Her first born to the earth,
That the pale race, who waste us now,
Amid their bones should guide the plow."

And he says—

"I like it not—I would the plain
Lay in its dark old groves again."

Such is, in effect, the lamentation of Trinity Church.

They are not willing that these graves should give place to the peaceful walks, the needful improvements, and the industrious pursuits of the inhabitants of the city of New York, who require it, and a lamentation might be made precisely with as much force as the lamentation is thus poetically made in behalf of the poor Indian. Now, if the Committee please, this is all sickly sentimentality. It is not worthy to be considered when opposed to the general welfare; and the practice in this city, in relation to the dead in Wall Street Church-yard, in the Garden Street Church-yard, and as to Grace Church, and the practice of the present Trinity Church in extending the present edifice over graves, shows that it is not to be considered. It shows, moreover, that when it comes in competition with the interest or convenience of those who speak of violating what they call the fundamental principles of Christianity, that they themselves don't regard it. Now, I ask the Committee, whether this has not been the burthen of the argument which has been urged against this measure—whether it has not been that Revolutionary Soldiers and "*respectable old citizens*" are interred in this Burying Ground, and that, therefore,

it ought not to be violated? If this be not, substantially, all the argument that has been urged, I am mistaken. My friend, General Haight, who appeared to oppose the ordinance, read an essay devoted almost exclusively to this point, and he spoke of the Revolutionary soldiers as his "clients." I never knew that dead men employed lawyers. I have had some practice, but never was employed by one of thàt description of clients. Dead men have no fees wherewith to pay. The ancients might have done so from their custom of placing a coin in the mouth of the corpse to pay his ferriage across the Styx, but now money is of too great moment with the living to be used in that way for the dead. Another gentleman, whose name I do not know, read a delightful essay upon this subject, and devoted a part of it to personal abuse of one of the promoters of this measure. And so it has been throughout. It has been the exordium and the peroration of all the addresses on the other side. It has been the substance of all that has been written or said in opposition to this great improvement; and if anything upon so serious a topic could disgust an audience, it is what has been so repeatedly thrust upon the Committee. A single word more. One of my friends on the other side has said that this interference with human remains was opposed to the doctrine of the Resurrection of the Dead!

I should like to know how that can be? I suppose there is no limit to the power of Omnipotence, and that although my dust may be mingled with its mother earth, and may nourish a plant, and that plant be devoured by an animal, and that animal die and be devoured in the same mode, and so on in repeated succession—yet the Almighty Power would raise up my dust at the last day without confusion or difficulty. To deny it is to deny the Omnipotent Power of our Heavenly Father. But this, if the Committee please, is idle. It is bringing in an objection here which really has nothing to do with the question, and which has no foundation in reason, in faith, or in Scripture.

It has been said that public opinion is against this measure. What is the standard of public opinion? Who *manufactures* the public opinion of which we have heard so much? I should like to know how many articles with which the public have been regaled in the newspapers for the last three months were written in the office of Trinity Church? I should like to see the bills that have been paid for the publication and republication of these articles, both lay and ecclesiastical, and for the repetition of them in every form which ingenuity could devise.

The idea that we may not interfere with the remains of the dead upon proper occasions is, after all, nothing more than an exploded superstition. It has no foundation in justice or right. None whatever. Among enlightened persons of the present day the proposition I have stated is conceded, and my learned friend upon the other side (Mr. Emmet) admitted it, for he said, (and I took down his words,) "*I do not deny but that circumstances may justify such a desecration.*" Now the question is, whether circumstances do, or do not, justify this? There is no peculiarly hallowed character about a human body whosoever it may be. There is nothing sacred in respect of it, and I shall show from the statutes of this state, and from the law as it prevails in England, and has been recognized in this state, that every body after it has been in the earth a sufficient length of time to return to its kindred dust, must, according to law, give place to another body, and that it may be removed in order to give place to another body. Now let us look at the doctrine as found in our statutes in regard to Highways in the country. By those statutes (1 R. S. 514, § 69) Highways may be laid out upon the petition of twelve freeholders; but mark the exception—they cannot be laid out through a *garden*, or an *orchard* of four years' growth, nor through a manufactory, nor fixtures of trade, at all; nor through improved or cultivated ground, without the consent of the owners, but there is no exception of burial grounds—not one; thus showing that you may lay out, and that the legislature has authorized Highways to be laid out, through a burial ground. You cannot do it through a cornfield or an orchard of four years' growth, for they are requisite to the sustenance of the living, and you cannot lay one out through fixtures of trade at all, because those are also essential to the welfare of living humanity. So it is in reference to a private road, (1 R. S. 4th Ed. 1046) which may be laid out for the private convenience of a single individual, when found necessary by twelve persons, the only difference being that in the case of the public the town pays the expenses, and in the case of a private road the individual benefited pays the expenses. And it was in pursuance of this doctrine that the case of Sandy Hill and Hunter was decided. In that case it appears that a road was laid out, under the statute to which I have referred, through an old burying ground in Sandy Hill, which had been used as such from the year 1776, and in which "old soldiers" had been buried. This is the law of this state as found in the statutes. In regard to the law of England,

I will again refer the Committee to the case mentioned on the other side, which is in 3 *Phill.* R. p. 355, and which is cited by Vice Chancellor McCoun, in the third Edw. Ch. R. p. 164–65 with approbation. It is an extract from the opinion of Sir Wm. Scott, who was afterwards Lord Stowell, and who was, as all lawyers know, the greatest Admiralty and Ecclesiastical Lawyer who ever sat upon the English Bench.

It was a question in reference to the right of a dead body to be buried in a public churchyard for the usual fee, in a *metallic* coffin, and it raised the point whether the friends of the deceased had a right to prevent the mouldering of his remains beyond the ordinary period, by means of the metallic coffin. In other words, whether they had the right, until that iron coffin perished, to occupy so much ground as it covered, to the exclusion of those who might wish to have their friends buried there, or others who would have to be buried there, because of the insufficiency of the churchyard.

Sir Wm. Scott, said :

"It being assumed that the Court is justified in holding this opinion upon the fact of comparative duration, the pretension of these coffins to be admitted on equal terms must resort to the other proposition, which declares that the difference of duration ought to make no difference in the terms of admission. Accordingly it has been argued, that the ground once given to the interment of a body is appropriated forever to that body : that it is not only the *domus ultima*, but the *domus æterna* of that tenant, who is never to be disturbed, be the condition of that tenant himself what it may. It is his forever ; and the insertion of any other body into that space, at any other time, however distant, is an unwarrantable intrusion. If these propositions be true, the question of comparative duration sinks into utter insignificance.

"In support of them it seems to be assumed, that the tenant himself is imperishable ; for, surely, there cannot be an inextinguishable title, a perpetuity of possession, belonging to a perishable thing ; but obstructed in a portion of it by public authority, the fact is, that "man" and "forever" are terms quite incompatible in any state of his existence, dead or alive, in this world. The time must come when his posthumous remains must mingle with and compose a part of the soil in which they have been deposited. Precious embalmments and splendid monuments may preserve for centuries the remains of those who have filled the more commanding stations of human life ; but the common lot of mankind furnishes them with no such means of conservation. With reference to men, the *domus æterna* is a mere flourish of rhetoric. The process of nature will resolve them into an intimate mixture with their kindred earth, and will furnish a place of repose for other occupants of the grave in succession. It is objected that no precise time can be fixed at which the mortal remains, and even the chest which contains them, shall undergo the complete process of dissolution ;

and it certainly cannot, being dependent upon circumstances that differ, upon difference of soils, and exposure of climate and seasons; but observation can ascertain it sufficiently for practical use. The experience of not many years is required to furnish a certainty sufficient for such purposes. Founded on these facts and considerations, the legal doctrine certainly is, and remains unaffected, that the common cemetery is not *res unius ætatis*, the exclusive property of one generation now departed; but is likewise the common property of the living, and of generations yet unborn, and subject only to temporary appropriation. There exists a right of succession in the whole, a right which can only be lawfully obstructed in a portion of it by public authority, that of the ecclesiastical magistrate, who gives occasionally an exclusive title in a part of the public cemetery to the succession of a single family, or to an individual who has a claim to such a distinction; but he does not do that without just consideration of its expediency, and a due attention to the objections of those who oppose such an alienation from the common use. Even a brick grave without such authority is an aggression upon the common freehold interest, and carries the pretensions of the dead to an extent that violates the just rights of the living.

"If this view of the matter be just, all contrivances that, whether intentionally or not, prolong the time of dissolution beyond the period at which common local usage has fixed it, are acts of injustice, unless compensated for in one way or other. In country parishes, where the population is small and the cemeteries are large, it is a matter less worthy of consideration. More can be spared, and less is wanting.

"But in populous parishes, in large and crowded cities, the exclusive possession is unavoidedly limited; for, unless limited, evils of formidable magnitude would take place. Churchyards cannot be made commensurate to a large and increasing population; the period of decay and dissolution does not arrive fast, enough in the accustomed mode of depositing bodies in the earth, to evacuate the ground for the use of succeeding demands."

And then he goes on to show that, in case it was claimed that one should be buried in such a way to prolong the existence of the remains in such a manner as to interfere with others who had the right to come there and be buried in succession, an extra price must be paid, and, in fact, the ground must be purchased for that purpose. So that, according to the English law and the American law, and the doctrine contained in our Statutes, it is a right which the living have, as well for the public convenience of the living as for the repose of the dead, to put one dead man where there may have been twelve dead men before, if they have been there long enough to moulder to their kindred dust. What is this period? Let us see how short it is. The Committee will remember that Hamlet asks one of the clowns, "How long will a man lie i' the earth ere he rot?" To which the gravedigger replies: "Faith, if he be not rotten before he die, he will last you some eight year or nine year—a Tanner will last you nine year."

So that the period in which a body that has been buried has a right to occupy the ground is very brief—ten, twelve or fifteen years, as a general rule. There have been extraordinary instances of persons remaining in some grounds for 20, 30 or 40 years undecayed, but this has been owing to extraordinary circumstances, and furnishes no accurate criterion. To show that this doctrine has been maintained by our own courts, and that this "*sickly sentimentality*" has no foundation in law or reason, I refer to the case of the German church which has been spoken of here, and which, in my judgment, has been applied to a use for which it never was intended. Indeed, I doubt very much whether it would have been cited at all, if it had not been as a sort of *argumentum ad hominem* as to my learned friend Mr. Sandford, because he happened to be the brother of the distinguished Judge who pronounced the opinion. In that case there was an effort to restrain an interference with the dead in the German burying ground, by an injunction to prohibit their removal, and Judge SANDFORD, in eloquent language, pays a passing tribute of respect to the dead, and deprecates any *unnecessary* interference with the remains. He says, however, "But I cannot shut my eyes to the clear light of the law as applicable to the case." "The temporary injunction must be dissolved, and the order to shew cause discharged." (4 Sand. Ch. 476.)

What does he do then? Declares the injunction dissolved. What was that injunction? "Forbidding the removal of the remains." And thus, a *religious* corporation was not only left at liberty, but authorized, by one of our highest judicial tribunals, to remove its dead, because they wished to sell the old burying ground.

This shows, if the Committee please, that where the corporation of a church, in pursuance of law, see fit to interfere with the remains of the dead, although judges will regret the necessity which requires it, they will direct it to be done and sanction it. So it has ever been; and there never has been an attempt completely successful, to resist a public improvement of this sort for the reason now assigned, until the present one; and this *has not been successful*, because the ordinance has been passed, and this is an effort to repeal it.

Now, I hope I have given the Committee some reasons why the argument brought forward by the counsel on the other side should not prevail; but there is a further one founded upon the statute in regard to burying grounds, and I want to present the course of legislation

in the State of New York, for the purpose of showing that this interference is not only justified, but commanded, in all cases of public necessity. I understood one of my learned friends to say, that "the policy of the law prohibited it." He had reference to the statute against removing bodies for dissection, and I entirely agree with him that a wanton and heedless violation of the grave is a high moral offence.

Then he says,—"being forbidden, this prohibition can only be overcome by a manifest public necessity, or public convenience, which is the same thing." Now the Act of 1842, ch. 153, passed in regard to burying grounds, authorises the acquisition of lands for purposes of burial by churches, and directs that they be not included in the returns of the property which they are authorised to hold under their charter, because it is property, as a general rule, from which they do not obtain any income; but, in the act which authorises that exemption, there is a clause, that if they appropriate it to other purposes, they shall include it in their annual return; thus authorizing its appropriation to other purposes, whenever the church think it expedient to do so.

So an act passed in the same year (Laws of 1842, Chapter 215,) provides, that no burying ground of a church can be mortgaged unless *three-fourths* of the congregation consent, and that no sale can be made without a like consent, *if it has been used as a Burying Ground within three years*—and I beg the attention of the Committee particularly to this clause—*but the Trustees may sell it if it has not been used within three years, without any consent of the Congregation.* So that any Ecclesiastical Corporation, or any Cemetary Company, may sell its burial ground provided it has NOT been used within three years, and may authorise, in any way they choose, what is now called a desecration of those grounds.

Now I leave this part of the case, and I think I have proved that the common law, as well as the statute law, authorises an interference with the remains of the dead in every case where the public necessities or the public convenience—I mean of course the convenience of a considerable portion of the public—require it.

I have only one word to say in reference to one other objection made on behalf of Trinity Church, and that is as to the amount of damages which must be paid to her in consequence of taking this land, and I regard the statements made upon that subject in a great egree as an exaggeration, founded upon a misapprehension of the

Deed under which Trinity Church holds this property. It is dated in 1703, and the grantors are the Corporation of this City. It gives this burial ground to the church, "they and their successors for ever, hereafter appropriating the same for part of the public churchyard of Trinity Church aforesaid, and a burying place for any of the inhabitants of the said city, and enclosing it and keeping it in repair at their own proper costs and charges," and then prescribes a fee of 3s. for persons over twelve years of age, and a fee for persons under twelve years, of 1s. 6d. What is that a grant of? It is a grant of this land simply for the purpose of a burial ground, and the Supreme Court decided in the case to which I have referred in relation to interments in Trinity Churchyard, in violation of the city ordinances, that the corporation had a right, notwithstanding its grant, to prohibit interments; or in other words, they had the right to defeat every purpose for which the grant was made, because it was called for by the public health, which was a great public necessity. The question then is, has Trinity Church the right to that ground for any other purpose? None whatever. I say as a legal proposition, if the Committee please, that the moment that churchyard ceased to be used for the purposes of burial, the equitable and legal title absolutely ceased in Trinity Church, and if the Corporation of the City of New York were to bring an action of ejectment for it, I do not see how a recovery could be resisted. It is not used as a burying ground. It has not been used rightfully for that purpose, if the law forbids it, for some 25 years. If interments cannot be made in it without violating the law, their title to it has ceased. At all events, it is perfectly clear, that they are not authorised to convert this land to any other purpose whatever, because they have a strictly limited title—for burial purposes only.

It is precisely like the case of grants which were made in many new counties in this and other states, for the purposes of a Jail and Court House. It has been decided, over and over again in those cases, that the moment the county resolve not to use these premises for a Jail and Court House the title reverts to the grantor. It is what the lawyers call "a title defeasible by condition subsequent." This doctrine was held substantially by the Supreme Court, in the matter of this very street, reported in the 11th Wendell's R., p. 149, and I will trouble the committee with an extract from the opinion of Ch. J. Savage, in regard to the damages to which Trinity Church was entitled. The learned Judge said: "The whole of the ground taken for

the street, and the part not taken, but assessed for benefit, is a public cemetery, *and cannot be used for any other purpose by the Church;* for such a purpose every rod of ground is of equal value. Why is it, then, that the part taken is considered of more value to the church than the part which has been assessed for benefit? If it be answered that the part taken is no longer to be used as a cemetery, but for secular purposes, and therefore much more valuable, I answer that it has not now that additional value, *and cannot have it while it remains the property of the Church;* and it is the damage sustained *by the Church* which the Commissioners are to ascertain. If the property in question ever acquires such enhanced value, it will be in consequence of this proceeding, and of the streets being hereafter closed; upon no other contingency can this ground ever be used for building lots. Can it be right, then, to consider it now as building lots, and assess its value as such to the Church, as damage?"

This cause was decided in 1834. The award of damages to Trinity Church was $62.408 96, and they did not oppose *this award*, but Mr. BLEECKER objected in their behalf, that the extension was not demanded by public necessity, and also that a strip of land had been taken which did not form any part of the street. In behalf of *other objectors*, however, he insisted, that the Commissioners had erred in estimating the value of the ground taken for the street, as if the Church might use it for building purposes, and it was principally for this error that the report was sent back. Trinity Church was careful to present no objection, which would have prevented her from receiving this large award, if the report had been confirmed.

It appears from the assessment which I have here, that when the report was sent back, the damages to Trinity Church were reduced to $13.128 62, and then they opposed it successfully in the Common Council.

The idea, then, that their damages upon a new assessment will be $60, or $70,000, or $100,000, is perfectly absurd, and could not stand for a moment in the face of this decision. Their damages would be merely nominal; because they cannot inter any body in it, they cannot receive fees for interments, and the assessment of damages which they are entitled to is a nominal amount of six cents and no more. I shall say nothing in relation to the other items of damage, that of removing the remains of the dead, excepting this, that even suppose it were to cost $20,000 or $30,000, I shall show that this improvement

will save to the city double that amount in a single year, and they might as well pay it at once. I do not wish upon this subject to be understood as contending for a narrow rule of damages in this respect. I desire that it may be liberal, so that there may not be a suggestion that in opening this street, and in making this great thoroughfare demanded by the wants of the public, it has been done in such a manner as to shock the public sense or to offend public decency, as in the times of Charles II. in the instances to which I have referred.

Now let us come to the question of property—to the interests in property which demand this improvement, and I submit that it does, after all, depend upon and must be decided as a question of property only, and as such the argument is cogent and irresistible. What has been said upon the other side about it? Why, that it is only demanded by those who own lots in the rear of Trinity Churchyard, and whose property will be benefited by it. Now, I ask, if that is not conceding the question? My friend, Mr. Storms, does not require it because he is in Pine street, within 70 or 80 feet of Broadway; but what will you say to those who are on the other side of the town, and who have no outlet to Broadway?

No wonder Mr. Storms opposes it. I was a little surprised to hear him say that he had no regard for the rich, because I was not aware that he had ceased to have regard for himself; but he meant, I suppose, that he entertained no regard for those who have nothing but riches. Now, if there are a respectable number of citizens—if there be as many as twelve—upon whose opinion a highway may be laid out through a burial ground in a country parish,—who require it, whose property will be benefited by this improvement, I should like to know why the same rule does not apply to the city of New York? It does so apply; and it is a question of property, and of property only. In this case, Trinity Church has not one particle of property that may be benefited or injured. What is the condition of Trinity Church? Why, they are simply Trustees of this property. They have no pecuniary interest in it, and when they have discharged their duty faithfully as Trustees, by protesting against this improvement, if they think that it is not demanded, they have fulfilled all their obligations. There is no reason why they should make this a personal question, and assail every man in favor of it. They may have a duty to discharge towards this burying ground as Trustees, and can do so by a simple and honest resistance, but there is no reason why they should spend their money

for the purpose of resisting what the public have imperiously called for for forty years; and the fact that it has been called for so often, and so earnestly, shows that it is demanded by a public necessity, and there is nothing but the power of this rich, and, I think I may say, arrogant Corporation, that has stood in the way of it, or could have stood in the way of it successfully. Now, who demand it, if the Committee please? The persons whose property is situate upon Albany street and in its immediate neighborhood, and which it is conceded will be benefited by the improvement. Now, the law has made them the judges of the necessity of the improvement, and if they are willing to pay for it, and if the Committee are satisfied that their interests in the property will be promoted by it, they are bound to grant it as an original measure. My learned friend, who was formerly the Counsel for the Corporation, knows that in every instance all these improvements have been called for by those whose property has been benefited, and it rests upon the principle, that they, and they alone are the persons whose voice is to be heard in this matter.

Now let us see what public benefits will be advanced by the improvement. In the first place, a much more advantageous use of the property. It is essential, as I have already suggested, to the ventilation in that part of the city, that a new street should be opened. It is essential also to the public health, and when we know, as it has been stated here to-day, that the Yellow Fever originated and was most destructive in that neighborhood in 1822, we see that the removal of so large a mass—if there be so large a mass—of the remains of corpses, will be a public benefit. Besides, this removal must take place at some time or other, and it is better for those who have friends buried there, now while *they* are in existence, to attend to the removal themselves, and to remove their remains, and not leave it to a generation who will have forgotten, or know nothing about them, and until identification is impossible. It is better, much better, to do it now. If they consider their own interests, and consult the feeling which they have so often invoked, they will do it now rather than postpone it.

Now what is the general character of the district which demands this improvement? It is that part of the city which is nearest this locality, through which the street is to be extended, and you may consider it as lying between Cedar street and Battery Place. There are several thousand buildings in that part of the city. It is an important portion of the city in respect of population and numbers, and

the value of the property which it embraces. It is as important, if it can have the public improvements which other parts of the city have had, as any portion of the city of equal size. Mr. Emmett, one of the counsel on the other side, admitted that the opening of the street would be an advantage to Mr. Boorman, but he said that it would not be an advantage to the public. Now I say, if it is an advantage to Mr. Boorman, and to my client, Mr. West, then it is an advantage to all the other owners, and it is an advantage to the public in the sense in which that word is to be understood as applicable to a case of this description; that is, that the portion of the public residing in that neighborhood will be benefited by the improvement. It is not necessary for us to show that the inhabitants of 40th street, or of Pearl street at its intersection with Broadway, would be benefited, but it is necessary to prove, and we do prove, that the large and respectable portion of the public in this neighborhood would be benefited by it. That is all that is required. It is so in case of private roads in the country. It is so in the case of public highways in the country, for 12 men may have them laid out; and the public in this case means any integral part of the public whose interests are affected by the want of proper and ample thoroughfares. I find a rule upon this subject in the case of the interment question, of which I have spoken in regard to Trinity Church. The Corporation of the city have the power to pass all laws which are necessary for the preservation of the public health. The question was, whether it was necessary to pass laws prohibiting interments in Trinity Churchyard. What did Counsel in that case say was the necessity? Mr. Jay said: "necessity is synonymous with expediency, or *what is necessary to the public good.*" The court said, "necessity is synonymous with convenience"—of course, for the public good in that part of the city. And therefore the Court thought it right to prohibit interments in the whole of Trinity Churchyard.

I say, then, that a small city, and the inhabitants of a small city, demand the improvement—a city one-third as large as this city was in the year 1790: for then it contained only 33,000 inhabitants, and now there are more than ten thousand inhabitants dwelling and doing business in the district between Cedar street, and Battery Place, and Hudson River. A city as large as Oswego,—larger than Buffalo was fifteen years ago—larger than Chicago was eight years ago, and larger than most of the small cities in the interior of this country.

Does not such a city as this demand that the improvement should be made? That is a public demand, and it shows the public necessity, within the doctrine to which I have adverted. Let us examine this district a little more particularly, and I will show that it is deficient in streets—that it is deficient in ventilation—that it is deficient in security of the public health—and, above all, that it is in such a condition that the owners of property there, are absolutely injured by improvements which take place in other parts of the city; and, so far from sharing in the public improvements now in progress, they are absolutely injured by improvements elsewhere.

My friend, Mr. Emmett, concedes that the property above Cedar st. has greatly appreciated in value, but ascribes it to the fact that business had left this part of the city, and said there was no means by which business could be forced into it. I say it has been owing to the opposition of Trinity Church and the want of this improvement, and if this shall be made, property will take the same position there which it has in Liberty, Dey, and Courtlandt streets.

Mr. Storms.—Let the ground be raised first, and then go on with your streets.

Mr. Noyes.—If Mr. Storms is right on that subject, open the street, raise the ground, and get rid of this malaria, which will keep his nostrils from being offended.

Mr. Storms.—I do not now go into that neighborhood.

Mr. Noyes.—I have had a measurement of this part of the city taken. It is 1,760 feet from Cedar street, on Broadway, to Battery Place, which is one-third of a mile. I ask the attention of the Committee to these figures for a moment. On the river it is 1950 feet, or 200 feet more, something over one-third of a mile. From Trinity Church to the river it is 800 feet, and if you add Trinity Churchyard, it makes it from 1,000 to 1,100 feet. The river formerly flowed up to the line of Trinity Churchyard, and the ground beyond has chiefly been made since the settlement of the city. West street was not made until 1833, and it was extended, with the bulkheads, 230 feet into the river. Since that time piers have been carried out there 600 feet, and this front of 1,950 feet on the river embraces all the piers from No. 1 to No. 12, inclusive. Now, what is the condition of the streets in that part of the city east of Greenwich street to Broadway? Why, just the same as at the time of the surrender by Governor Stuyvesant in 1664. Substantially the same. There has not been, in nearly two

centuries, a single public improvement of any importance, in this part of the city, in regard to our public ways. Our Dutch ancestors were satisfied with narrow streets, but we are not. The enterprising people, among whom we now live, must have pleasant streets, airy, and light dwelling houses and stores, and will not be content without them.

What is the character of this part of the town now? I ask Trinity Church, with its professions of high regard for the public welfare, and the good order of this community—I ask them, what is now its condition in respect to streets? What is the condition of its population? Why, most of its population are mere birds of passage. It is a sort of Jews' Quarter. It is like that portion of a Continental town, into which travellers go for the purpose of seeing how squalid and wretched people are, and how they can be crowded together, and yet live. What makes it so? It is the want of adequate streets. It cannot be imputed to any other cause whatever.

From Cedar Street to Battery Place there are three streets. Thames Street is 20 feet wide. Let us look at that street: there is no more than a single lamp in it. It has not been deemed of sufficient importance to light it. It is a place for disreputable people to skulk in. It is not prudent for anybody to go there, and nobody will go there if they can avoid it, and certainly not in the night time.

Cedar street itself is only 33 feet wide. Rector street is 30 feet wide, and I believe has one or two lamps only. One of my learned friends says he never saw a loaded cart go up that street; but I saw five or six go up the street at once a few days since; and they got up very conveniently.

Mr. Storms—Were they fully laden?

Mr. Noyes—I do not know, but they had large boxes on them.—Then, as to Tin-pot alley, that is 11 feet wide. Morris street is 30 feet wide. Now, including Cedar street, that third of a mile of city, with seven or eight thousand inhabitants, and a large number of dwellings, has only 111 feet of street. It has only a little more than every tenth street has up town; for, in the new parts of the city every tenth street is 100 feet in width. In this I do not include Battery Place, for that is no means of resort as to the intermediate portions. If you take out Cedar street, there is only 78 feet devoted to streets. There is only 78 feet of street to get to that portion of the city—for one-third of a mile in length on Broadway, and 200 feet over one-third of a mile on the river front.

You cannot get a street to connect with any of these streets, unless you go through Trinity Churchyard, as in the extension of Albany street ; or you must take a portion of Trinity Churchyard, by way of enlarging Rector street. Then we should hear a repetition of the same terrible idea of disturbing the remains of the distinguished dead ; for, I believe, that General Hamilton was buried in the lower part of the yard. So that this part of the city must remain isolated and cut off from Broadway, and its population and business. It must remain in its present depressed character,—unless you give them more than 78 feet of streets. And yet my learned friend says that this is ample—that it is all that is required, and that it is monstrous for Mr. Boorman and Mr. West, and the owners of the sixty or seventy lots on Albany street, which require an outlet to Broadway, to ask that this public improvement be made for their benefit. Why, the opposition to it deserves to be characterized as pandering simply to a sickly sentimentalism, and as overlooking the best interests of a large part of this community.

Now, to show the contrast, let us look at the space from Cedar street to Fulton street on Broadway, and see how it has been provided for ; and I shall show you, from the acts of the Common Council in regard to that part of the city, that this improvement is demanded by public necessity. From Cedar street to Fulton, the whole distance is 861 feet—not half the distance from Cedar street to Battery Place. I include Cedar street as one of the streets for that portion of the city. Cedar street, then, is 33 feet wide ; Liberty street is 53 feet, having been widened recently from 33 feet. Why widen Liberty street if there was no public necessity for widening streets above Cedar street ?

Mr. Emmett—Because business has gone up there.

Mr. Noyes—And business went up, because it was better accommodated than it was below, and it found streets of some value there.

It did not go there until they widened it ; and the Committee know that persons purchased property there under the expectation that it would be widened, and some men made their fortunes by it. So in regard to Courtlandt street. Dey street is now fifty feet wide : it was 40 feet wide; and it has been widened also because the public wants demanded it.

There are, then, 186 feet of streets above Cedar to 861 feet of territory ; while below, to 1760 feet of territory there are but 78

feet of street. Are not these figures irresistible? Can my friends answer them? I ask them, when it comes their turn to speak again, to answer these figures. They cannot be successfully answered, except by assertion. It can be cyphered out by the simplest rules of arithmetic: If 861 feet of territory on Broadway, above Cedar street, requires 186 feet of streets, 1760 feet of territory below Cedar street must require an equal and a much larger share of streets also.

Mr. EMMETT—Your arithmetic is all right, but we differ from you on what is required by the business there.

Mr. NOYES—Yes; and these figures tell a plain, unvarnished tale, which my learned friends with all their ability and ingenuity cannot answer.

Mr. STORMS—Put the streets where they ought to be.

Mr. NOYES—They ought to be as frequent and as wide below as above Cedar street; and, being so, one of them must, of necessity, go through Trinity Churchyard; and the Corporation has ordered it extended at a place where interments have not been had for a long time, and where the sensibilities to which so much allusion has been made, will be least affected. Suppose it should be asked to widen Rector street. The same hue and cry would be raised. The difficulty in this case is, they always say "you do not do it in the right place," but they point out no place where it can be done. It reminds me of an anecdote which I will repeat:

The great expounder of the Constitution, when a young man, was taken by his father into the field to assist him in mowing; an employment which he did not feel any great relish for. He found fault with the hang of the scythe. It did not suit him at all. His father doctored it, and the men doctored it, and he doctored it himself, but still he could not mow—the hang of the scythe did not suit him. At last his father said to him: "Dan, hang it yourself," and then with that dignity which always afterwards characterized his personal carriage, the son hung it upon a sapling and went home. This is the way with Trinity Church. They always tell us that it is not in the right place, and oppose whatever we do, but they do not furnish us with any means of redressing the evils under which this part of the city suffers.

When the Common Council have determined this question of necessity—when they have, in a constitutional way, passed the law declaring that the improvement shall be made, this Committee surely must come to the opinion that there was some strong and cogent reason why

they did so. The inequality of street accommodation above and below Cedar st. has led to a constant struggle to open this street. Its denial for so long a period has been productive of great damage to the owners of this property. The property all around there has advanced, while this has actually depreciated, and thus they have been deprived of the public benefits in which they are entitled to share as well as their fellow-citizens.

My friend, Mr. Emmett, made an admission in the course of his argument which struck me as being very important. In answer to the suggestion that Thames street required to be opened for the public necessity, he said: "No, not for public necessity, but because a small street is always a nuisance."

Well, if Thames street is a nuisance, how many nuisances are there? Why, there is Thames street, and Rector street, and Tin-pot Alley. They are all nuisances, and they are resorts for everything that is unpleasant and unclean, and dangerous to the peace and welfare of the citizens of New York, resorting to this part of the town, especially at night.

Mr. Emmett.—Then they ought to be reformed.

Mr. Noyes.—He says they ought to be reformed, but they cannot be reformed except by opening and widening them. That is the way in which all these reformations take place. That is the way in which we have acted in regard to every part of the city. It must be done, or the public interests will greatly suffer. These are five dark and dangerous alleys, in which no man is safe to go at night, nor can he go there by day without offending his senses. There is another important consideration. One of my friends, (Mr. Cutler,) who last addressed the Committee, said, "If commerce required this improvement, he would grant it at once." I say commerce does require it. What is commerce in that part of the city? It is the business which naturally concentrates along that 1,900 feet, with its twelve wharves and piers, and the vessels, and individuals, and carts and carriages that resort there for business purposes in the day time, and there is not a single decent or proper thoroughfare to that part of the city for these great purposes of commerce, and unless Albany street is extended, there will be none—unless, indeed, we should go through Trinity Churchyard by widening Rector street. Let us see what is the effect of this depreciated state of this part of the city, arising from the want of adequate streets. I have already alluded to the character of its

population—to the people who live there—to the depreciation of rents in consequence of its being an undesirable part of the city. Above Liberty street, and even above Cedar street, in that respect an entire change has taken place What then? Below Cedar street, not more than two new modern stores have been erected for years. The result is, that that business which is carried on in the modern stores has deserted that part of the city, and it has been left in the condition I have mentioned. There is no conjecture about this. It is clear and positive, and the only cause to which the desertion of business and depreciation of property in that part of the city, can properly be attributed is, that there is, lying in the heart of the Empire City—the Metropolis of the United States—an undesirable and disgusting region.

Now I will call the attention of the Committee to what I understand will be some of the other benefits resulting from this improvement. If the Committee will do me the favor to look at the map while I am doing so, I will promise not to detain them a great while longer. I have designed to show that there are no objections here of a character such as should seriously oppose the carrying out of this improvement; that it is highly beneficial to the city at large, and especially to those persons who have applied for it; and I now propose to show what these benefits will be, both to the inhabitants themselves who are directly affected by the improvement, and to the city at large. It is estimated, and I understand with great accuracy, that 133 lots will be directly benefited by the opening, and a great many more will be remotely benefited. The small lots on the north side of the proposed new street are now worth from $7,000 to $8,000, and those on the south side, which are larger, are worth from $10,000 to $15,000. It is estimated that the former, when the street is opened, will be worth from $15,000 to $20,000, and the latter from $25,000 to $30,000. All the lots in the neighborhood would be greatly enhanced in value. I should like to know if that will not be a great *private* as well as a great *public* benefit?

The Committee can make these estimates for themselves, and can then judge how accurate I have been in my statements. If this is so, is anybody injured by it? Not a soul. Some tender and susceptible being, like this lady who has attended here several days, may feel shocked at the thought of removing the dust of her friends—somebody may pour a lament like the Indian over what he calls the desecration of his father's burying ground. But when you consider

the question of real interest—when you consider the individuals to be affected, and the benefits to be derived to the citizens by this improvement, all these matters sink into utter insignificance. The statute law and the common law show that these are not to stand at all in competition with a great public necessity, for a district even much smaller than that which demanded this improvement and which you are asked to repeal. This large increase in the value of property, which is admitted by the counsel upon the other side, will result in enlarging the taxable property of the city of New York half a million of dollars; and estimating $1.23 per cent. as the amount of tax for the last year, it will add to the funds of the city for public improvements and for the payment of expenses the moment it is done, $62,000 a year.

Mr. Emmett.—Which we have got to pay for?

Mr. Noyes.—No, the gentleman and his clients do not pay a cent. It is an increase in the *value* of property belonging to these persons who demand the improvement; and they are willing to pay in consideration of that improvement, not only the immediate expense of opening, but they are also willing to pay this increased tax of $62,000 a year to the city because of the benefits to their property. Why? Because it will send rents up, bring a new kind and a better class of population, and they can afford to pay it. Thus $62,000 a year for all future time will be added to the revenues of the city, and yet Trinity Church, contending as they say for a principle, opposes this addition to the wealth and income of the city, as they did interments in 1823 when the corporation prohibited them. This shows the same factious and revolutionary spirit of which I have spoken, and a total disregard of the acts of the corporation, and of the wishes of the city, as well as a settled hostility to the pecuniary prosperity of individuals.

Now, what is the expense, exaggerated and bloated as it has been, including large damages to Trinity Church, which it is said this improvement will occasion? I have not heard it placed by the most fanciful above a quarter of a million of dollars. Mr. Storms thought it would be that; one of the counsel upon the other side, Mr. Emmett—and counsel are generally never less in their estimates than their clients—stated that the cost would be $150,000, and moving the remains of the dead $50,000 more. That would be $200,000, but in four years that sum would be repaid to the city by the increased taxation, and $48,000 over, besides making that part of the city healthy, beau-

tiful, and most desirable; indeed, so much so, that Mr. Storms may return to his birthplace in the First Ward, and live there for the remainder of his honorable days.

Mr. STORMS.—Not until it is raised ten feet. Then you may talk of improving the street as much as you please.

Mr. NOYES—We will open the street and raise it at the same time. Now, if the Committee please, I want to look into this subject of damages. I have the assessment made in 1834, twenty years ago, when this street was first directed to be opened. The first assessment which Trinity Church opposed, was not on account of its giving them too much—(for I apprehend that they never opposed anything upon that account,)—was $107,708\frac{96}{100}$. The award to Trinity Church was $62,428\frac{96}{100}$. It was sent back, because they had taken some property not for the street, and because they had proceeded upon an erroneous estimated in paying Trinity Church for the churchyard to which they were not entitled to. Then a new assessment was made—the large damages to Trinity Church were stricken out, and the whole damages reduced to $57,928 62, and the award to Trinity Church was only $13,128 62. Then they opposed it before the Common Council with other property owners, and defeated the project. I do not know what their motive was, but we have the fact, and every one can draw his own conclusions from it. Their objection to the first award did not relate to the question of damages; this I have shown from a report of the case, in the 11th of Wendell, which states with accuracy, and upon the authority of a gentleman now in my eye, whose reports are usually accurate, and who was the Reporter upon that occasion—and who now appears on the same side with Trinity Church. One of their objections then was, that it was not demanded by any public necessity, and Chief JUSTICE SAVAGE said, "we have nothing to do with that. It has been decided by the Common Council, and it is for them and not for us." Now, as to assessment made at that time for benefits, I have also before me that assessment. The lots which my friend, Mr. Storms, owns now were assessed for benefits at $1280; they were then owned by other parties. They were assessed at $1280 when Trinity Church was to be paid $62,000, but when it came to the second assessment, they were assessed at $325 50 only.

The lots which Mr. Boorman now represents, are also assessed at that time. I single him out, because he is a party who will be largely benefited by this improvement, and whose property has been depre-

ciating by the want of it. When Trinity Church was allowed damages to the amount of $62,000, Mr. Boorman's lots were assessed for benefits, $10,266 67 only. When the damages to Trinity Church were reduced, the assessment for benefits to those lots was reduced to $9,641 49. If the Committee will look at this assessment for benefits they will see that it was made by some of the most reputable men in this city, men who were not extravagant in their notions, nor much imbued with the progressive spirit of the age, but men of prudence and forecast. They assessed 198 lots in all, as being actually benefited by this improvement—the first time upwards of $100,000, and the second upwards of $60,000. This is the strongest possible evidence that this improvement was demanded by the public necessity and convenience. This was twenty years ago, and it is more imperatively demanded now.

Who were these men? John Leonard, George W. Strong and Peter I. Nevius made the first assessment. I have the pleasure of knowing two of them, and more prudent, cautious men could not be selected for such a duty.

The second was made by Charles Dusenbury, George C. Morgan and William P. Hallett, and entire confidence can be placed in the accuracy of their estimates.

Now if the Committee please, I have nearly done with the case. I have endeavored, in the latter part of my argument especially, to strip it of all considerations, other than those demanded by a proper regard for the public convenience, for the welfare of the city and its commerce, for the good order and comfort of its inhabitants, and for the proper and just increase of the value of the property of individuals, by giving them their just share of new public improvements, and I call upon the Committee to say that the party whom I represent, and the other persons who stand in the same interest, are entitled to have, at their own expense, proper thoroughfares, and proper accommodations, for the improvement and enjoyment of the property which they possess. That government is negligent in its duty which omits to secure to them these results. What is the first great requisite in a city of this description? Well ventilated, wide and accessible streets, so that a population like our own, active and industrious, may secure their health, comfort and convenience; certainly as many of these blessings as are now enjoyed by the districts above Cedar street, and in other parts of the city.

These considerations have induced the former Common Council, after an importunity of forty years, to declare that this street shall be opened. It is not, therefore, an original question, but one that has been decided by your predecessors, and which must stand unless you annul it. But the question is this, are there such strong and convincing reasons against the measure, that you are bound in conscience and upon your oaths, to reverse the decision which your predecessors have made, and to pronounce that they have been in error? I humbly submit that no such reasons exist, and that, if this were an original question, and you were not called upon to reverse anything, that you would decide precisely as those who have preceded you, and would direct the improvement to be made. But you should do more. The opposition to this measure has been conducted with a virulence, personal—and I may add, malignant in its character. The private reputations of individuals have been assailed in a multitude of ways, and I think you are called upon to pronounce by the decision that you will make in this case, that when reputable citizens come before you to sustain a public improvement in the modes pointed out by law, that they are not to be treated in this unjustifiable manner; and that, from whatever quarter the assaults may come—no matter from how high or arrogant a source—you will rebuke them, by affirming the action of your predecessors, and by declaring that this street shall be opened; that that part of the city shall no longer be cursed with such avenues as have hitherto led to it, and that you will give to it as healthy, as accessible, and as comfortable streets as other parts of the city, by the wise and just legislation of its authorities, have obtained and are obtaining.