AN ACCOUNT

OF A

PROSECUTION

INSTITUTED BY

HENRY HAGLE, Esquire,

AGAINST CERTAIN MEMBERS OF THE METHODIST EPISCOPAL CHURCH, FOR AN ALLEDGED TRESPASS IN REMOVING A CHAPEL: AND EMBRACING THE

SPEECHES

OF

JOHN ROLPH, Esquire,

ON THE PART OF THE DEFENDANTS:

AND

W. H. DRAPER, Esquire,

IN REPLY, ON THE PART OF THE PLAINTIFF:

AND THE JUDGE'S CHARGE TO THE JURY:

WITH NOTES.

PUBLISHED BY SEVERAL OF THE DEFENDANTS.

York:

WILLIAM J. COATES, Printer.

1831.

REMARKS

The facts of this case are detailed in Dr. Rolph's eloquent, unanswered, and unanswerable address to the Jury; together with references to the most material evidences adduced in favour of the Defendants. The evidence on which the prosecution rested is stated by Mr. Draper in his reply (so called,) to Dr. Rolph's defence.

Much that is said in Dr. Rolph's address to the jury, deserves the particular attention of Trustees of Chapels. It may be proper here to state a few circumstances connected with this case in order that it may be fully understood, as gross misrepresentations have been circulated respecting it in several public Newspapers. The plot of ground on which the Chapel was built, consists of about half an acre, part of which was given by Mr. Peter Bowman off the North West corner of one of his lots; the othe part was given by Mr. Hagle off the North East corner of his lot adjoining Mr. Bowman's lot on the west side. When the Chapel began to be disturbed in the manner described by Dr. Rolph, (under the pretence that the house belonged to Mr. Hagle, and evidently under his direct or indirect sanction, although the Defendants were not allowed to prove this fact on the trial,) the trustees consulted a Magistrate as to the propriety of removing the Chapel on the other part of the plot. This Magistrate advised them to do so, and promised them the influence of his presence and authority, should they be necessary, to protect them from interrruption. Accordingly 20 or 30 persons were invited to meet on a publicly appointed day for that purpose. They met about 10 o'clock A. M. and removed the Chapel during the day about three rods east, where it is still occupied as formerly for purposes of religious worship. Yet strange to say, certain journalists have represented that the Chapel was removed in the night, in a clandestine manner; and the very Magistrate who promised the protection of his presence and influence in removing the Chapel, afterwards issued Warrants to apprehend the persons who removed it *for riot!!* They were brought before his worship under circumstances too revolting to mention in this place, by a Constable, (specially sworn in) who is known to have escaped from States Prison in a neighbouring Country; they were put to a good deal of trouble and expense, which the Magistrate required them to pay on the spot; and after all no indictment could be obtained against them. Since that time, it is stated that this Magistrate has been appointed Chairman of the Quarter Sessions for the District!!

Another circumstance connected with this affair may here be mentioned. The persons who broke down the door of the Chapel and disturbed the congregation (as stated in Dr. Rolph's address to the jury) were complained of at the Quarter Sessions of the District and indicted for *riot*. But from the feeling manifested by the Magistrates on the occasion, a failure of justice was apprehended from their investigation of the case, and a writ of *certiorari* was issued by one of the Judges of the Court of King's Bench at

York, requiring that the case should be tried before the Assizes for the District. During the Assizes the complainants stated to the Crown Office that they were ready for trial. The Crown Officer excused his not taking up the case by stating that he had forgotten some of the papers (at York) connected with it. What has been the consequence? Why the complainants have been sued before the aforesaid Chairman of the Quarter Sessions and have been compelled to pay the fees of the witnesses and even the expences of the rioters indicted, whom the Crown Officer declined bringing to trial when urged to do so by the complainants themselves. One individual has in this manner been put to the expense of between fifty and a hundred dollars. Such is the protection extended to the Methodists. The administration of justice in the Gore District has heretofore been made a subject of complaint to the Lieut. Governor and the House of Assembly by a large number of the inhabitants; yet no alteration has taken place—and such is its present character, which might justly be exhibited in colours far more vivid by stating a variety of other circumstances which we have not room to mention.

In these remarks relative to the Administration of Justice in the Gore District, it is not intended to include all the Magistrates. There are we believe five or six honourable exceptions—but they are the minority.

It was intended to petition the Lieut. Governor on the subject; but from the manner in which the former complaints of several hundred inhabitants of that District were received, and especially from the recent attack of the Lieut. Governor upon the Methodists and all who are not favourable to the establishment of a dominant Church in this Province, no redress can be expected. The Methodists therefore must suffer patiently the wrongs inflicted upon them, committing their cause in well-doing to Him who judgeth righteously.

An execution has been recently taken out, and the property of one of the Members of the Methodist Society distressed, to pay the costs of the suit—amounting to upwards of £75 currency.

DR. ROLPH'S ADDRESS

TO THE JURY

ON THE PART OF THE DEFENDANTS.

MAY IT PLEASE YOUR LORDSHIP:

Gentlemen of the Jury:

You perceive the art with which they have arranged what may be termed, the day's campaign. A learned Counsel (Mr. M'Nab), whom you have heard so often that you listen to him with the same indifference with which you hear me, opened the case, and informed you that another learned gentleman just by my side, (Mr. Draper), lately imported from York into this Town for the occasion, would wind up the matter, when every other tongue is silenced, with a finishing speech. At this very moment you seem to evince the richness of your expectations. When it falls to my lot to address you, it is as a tale thrice told; some look out at the window speculating upon the weather; others admire the new chandelier, while many are gaping, and all longing for those treasures of eloquence in reserve, presently to come from a tongue you never heard before, and from a head, of the contents of which fame has said so much. It would, indeed, be in vain for me to ask you to be insensible to an imposing address, an ingenious argument and gentlemanly elocution; but it is as much your duty to concede as it is mine to urge, that you should control these unavoidable and delusive influences by the correction and salutary restraints imposed upon you by the office you fill under the obligations and solemnities of an oath. If, therefore, your minds have gleaned from current reports ought that savors of prejudice against either of the litigatery parties, or, if the electric address of my learned friend should spread over you a momentary enchantment, pause for a while; raise up before yourselves the standard of your duty, that it may dissipate every prejudice and dispel his illusory charm.

Gentlemen, you have heard the accuser, Henry Hagle, Esquire, who charges the defendants with removing a Meeting House from the corner of Lot No. 50 to the corner of Lot No. 51, a distance of only a few yards, for which he modestly asks damages £500—and in behalf of the defendants, I have the satisfaction to know, that what they did they had a right to do.

We happily live in an age when Christians can, without the awe of authority or the ordeal of punishment, freely entertain their own opinions, and openly worship God according to the dictates of their own conscience. These are rights now never questioned, except possibly by a few infested with a hatred against the civil and religious liberties of mankind; rights obtained by the glorious conduct of our forefathers at too great an expenditure of suffering and of blood to be lightly estimated now, or lightly sacrificed by the corruption and pusillanimity of a succeeding age. But you all know.

that these abstract rights would be of comparatively little value unless we further enjoyed the means of exercising them. It would be a very meagre concession to a body of Christians, that they might engage in worship, but that they should not hold a House in which to do it; that they might possess the naked right, without the necessary means for its enjoyment: and your conduct would be equally unworthy and reprehensible, were it possible for you to recognize the claims of Christian communities to hold places of public worship, and yet deny to them the consequent privilege of exercising over them with impunity the rights of ownership. If, therefore, I prove to you, that the Plaintiff in this cause, upwards of twenty years ago, voluntarily parted with the right of property and the right of possession, and deliberately vested those rights in others, under whose authority we removed the building for the better accommodation of that Christian Church to whose exclusive use the Plaintiff consecrated it in his happier and more conscientious days; I shall feel that I am entitled to your verdict by all that is lawful, just, and honorable, even should I not receive it.

Mr. Hagle, a son of the Plaintiff, called by the father as a witness to sustain his sacrilegious prosecution, stated, that his father had made the premises in question "a free gift." A free gift, to whom? To the Methodist Episcopal Church? Oh, no! that was too bitter a confession to be extorted even by an oath. It was a free gift "to all who should choose to preach and assemble there."

Let us suppose this young man's evidence to be correct. It was a free gift upwards of twenty years ago to all preachers and congregations; or, in our common phraseology, it was intended to represent it as a free gift to the public for a free Church. If he made it public property, by what right does he, beyond any other member of that public, now seek to put into his private pocket a few hundred pounds under pretence of damages for its mere removal to a more convenient spot? Assuming the removal to be contrary to Law, it was a public and not a private wrong; it might be punishable by indictment as an injury to the public; but this Mr. Hagle is not the public, he is not every body, nor does he carry or represent in his single corporation all preachers and congregations in the country. Had he been actuated by honorable feelings moving him to protect the Christian public in their public rights, he might, as a virtuous public prosecutor, by the instrumentality of the Grand Inquest, and the acknowledged learning and assiduity of His Majesty's Attorney General, have readily found certain redress, if such a public wrong existed requiring a public remedy. But of the public you hear nothing; of Mr. Hagle's wrongs we hear a great deal. Incited by a mercenary disposition, often growing more inveterate as men grow in years, he boldly confronts the public to reclaim for his private aggrandisement the very "free gift" which, more than twenty years ago, he devoted to the Christian public, and forever consecrated to the service of his Maker. More than twenty years ago says his own son, he made the ground a "free gift;" and upon

that ground a Church was afterwards completed. Can he feel that he acts the character of an honest man when he seeks by a private suit to put the value of that public building into his private purse? Shame! shame! your hear the Plaintiff and his Ryonites exclaim—shame, to remove the Church, though only a few yards, for the better accommodation of the public and security of the property, receiving thereby no other rewards than scandal from the impious, and vexation from the litigious. But while they thus vociferate, shame, shame, and point to the mote in the defendants' eye, can they be wholly insensible to the beam which distorts the visage of the Ptaintiff? Can they be blind to the greater enormity, not of preserving it where it is, not of removing it back for the public use, but the shameless speculation of prostituting a civil suit, as the means of grasping from the public for his own filthy lucre his own free gift, by realizing the value in the shape of damages, in order to pamper the latter years of his life with sacred plunder? I would rather, were it necessary, stand here as the apologist for men who openly took and converted to their own use such a public building, than stammer out a defence for a more wary plunderer, who, aiming at the same spoliation, artfully endeavors by a verdict to legalize his sacrilege. It has been removed—and out of whose grasp? out of the grasp of a man who would, with as little compunction as he now betrays, have converted it into a stable, or a barn or a house of merchandize—out of the grasp of a man who, disappointed of his prey, seeks in his mortification to realize in money the value of that "free gift" which the vigilance and manliness of my clients rescued from his avaricious gripe, and preserved for those Christian uses to which it has been consecrated for upwards of twenty years.

Such at best are the merits of the case as made out in evidence for the father by the son. But it is still more lamentable to notice, that only a small portion of this young man's testimony is true. It is matter of public notoriety, and of written record, that this "free gift" was made, and this building erected, for the sole and exclusive use of the Methodist Episcopal Church. Here lie before me, fortunately preserved, the original subscription papers* circulated in the years 1810 and 1811. These documents may be said to speak for themselves; their evidence cannot be perverted either from want of memory or want of truth. No doubt, with a charity honorable to yourselves, you hope (and with that hope every spectator sympathises) to find a corroboration of this young man's evidence; you hope to find that the Church was built "for all preachers and congregations that might chuse to assemble there." You will, on the contrary, find that it was built expressly for the very uses to which it has been applied notoriously for upwards of twenty years, viz: for the exclusive use of the Methodist Episcopal Church. Had

* These papers were afterwards shown to the jury; and they expressly stated the house to be for the use of the Methodist Episcopal Church. The Deed stated for the Methodist Episcopal Church and *no other*.

these documents perished from accident or carelessness, young Mr. Hagle's oath might have accomplished its mischief; but how does he now feel with such an unexpected witness as this against him? I do not, gentlemen, blame him for ignorance of the contents of documents which he had excusably forgotten; but he is to be censured in no very measured terms for swearing to facts of which he personally knew nothing, and for swearing that to be in his opinion true, which, I shall presently show, he had every reason to presume to be false.

The witness was born and educated on the very Lot of Land, the North East corner of which formed the premises in dispute. He has seen his own father, while a professor of religion, and a member of the Methodist Episcopal Church, acting with many others of the same persuasion as Trustees, holding these premises in trust for the exclusive use of that Church. During the whole period of possession, the Ministers of all other denominations desiring to preach there invariably applied to the Trustees for their permission according to the rules and discipline of that Society; and when the Plaintiff and some of the original Trustees ceased to be members of the Church, they ceased to be Trustees; they retired and the Plaintiff for nearly the last ten years never presumed to put forward any pretences of authority as Trustee or to interfere with the internal concerns of a church which he had unhappily abandoned. Nevertheless, although the Plaintiff in the year 1810 made the ground a free gift for the exclusive use of the church whose interests I have this day the honor to defend; although he was at that time an active member of that community and assisted in circulating this subscription paper, plainly expressing the particular church to which it was dedicated; although upon the ground of that very exclusive right he acted as a Trustee, and retired as a Trustee upon his excommunication, in further acknowledgment of the same principle; although, as you will presently find, he conferred that very exclusive right by personally assiting in measuring out the ground, and solemnly ratifying it by a deed under his own hand and seal; and although this exclusive right has for upwards of twenty years been uniformly exercised and universally assented to;—Yet does the father call his own son into the witness box with his hand upon the Bible to prove that to be true which he personally knew to be false, in, "that it was equally for all ministers and congregations that might choose to assemble there."

You perceive gentlemen, that no claim or exclusive right of property and possession not only because this "free gift" was originally made upon those terms, but also because we have held the premises adversely to the plaintiff for twenty years and upwards. It is by virtue of an Act of Parliament that twenty years adverse possession confers a title upon the occupier, and takes away from the claimant not included within certain exceptions specified in the Statute, both the right of entry and the right of possession. It was an act wisely framed "for the quieting men in their estates." A

man may sell and another purchase a Lot of ground; as in the case before you, the grantor may at the time verily believe that he gives, and the grantee that he receives a good title, upon the faith of which he may make extensive and valuable improvements; but after the lapse of twenty years, as in the case before you, the grantor may discover that the documentory title which he gave is of questionable validity, and unless he had somewhat more honor and good faith than the present plaintiff, he would take an unconsionable advantage, by ejecting his own grantee and possessing himself of all his improvements, unless prevented by the very Law under which defendants claim protection and which declares that adverse possession for twenty years shall be a good defence against any possessory action.

We have had adverse possession for twenty years and upwards. Mr. Bowman and Mr. Jacob Smith, both of whom by undeviating sobriety and rectitude, have grown in the confidence and esteem of the country as they have grown in years, are the only remaining Trustees appointed by the Plaintiff himself in the year 1810. Mr. Bowman in addition to his duty of Trustee, has during all the time subsequently to his nomination, also filled the office of Sexton; in which character he has kept the Key of the House for the Methodist Episcopal Church, and for their exclusive use.* The Plaintiff never demanded the Key, never demanded the possession, never pretended any personal exclusive right to himself, but he has on the contrary during the last twenty years, so put up his own fences round his own fields, as to exclude and leave out to common the very piece of ground in question. In the spring of 1810 he accompanied Mr. Bowman to the premises, and in the presence of Elder Case,† an old and distinguished Minister of that Church, prescribed the extent of the ground, of which he then made a free gift, and for which he signed, sealed, and Executed a Deed, declaring it to be good and valid for confering an exclusive right, title and possession for the use of the Methodist Episcopal Church. From that time forward he has lived, as you perhaps all know, within a few hundred yards of the premises he had given away; he has been an eye witness of the exclusive claim and exclusive occupation for the uses of the Methodist Episcopal Church, without objection; he has seen the dead buried there and even followed them to the grave, without pointing to a living being that he ever could or ever would disturb their askes; and more recently when the Rev. Egerton Ryerson called upon him requesting him to give another deed for the premises in question, because the one he had given was not registered within the period prescribed by the act passed by our Provincial Par-

* Mr. Bowman afterwards stated in evidence that he had kept the key of the house upwards of 20 years, without interruption, except a short time that the lock was taken to a blacksmith to be repaired.

† Messrs. Case and Bowman stated in evidence that they were present and assisted to survey, in 1810, the very piece of ground in question, and no attempt was made to deny the correctness of their statements.

liament, for the relief of religious societies, he admitted that he had given a deed, and expressed his willingness to execute another deed, if he could prevail on his sons to do it, to whom he had made a conveyance of the Lot forgetting to reserve the piece of ground in question.—But, added he, you have without it a good title at all events by possession, and referred in confirmation of that opinion to the ejectment case against Jacob Sararas.* It seems scarcely possible, and certainly not necessary, to prove in any case in a more satisfactory manner or by more conclusive circumstances an adverse possession against a plaintiff; and having in this manner acquired all the privileges incident to rights so attained, by what rules of Law or justice does the Plaintiff complain of our availing ourselves of those privileges and exercising those rights?—Or upon what new principle, yet a secret among moralists and Lawyers, can he sustain an action for a trespass upon his own "free gift" by those to whom he gave it?—or recover damages for what he neither owned nor possessed, and with respect to which he could put forward no pretensions of ownership or possession without sacrificing his character as 'a christian and his probity, as a man?'

Gentlemen; it is not a little discreditable to the Plaintiff's case that in prosecuting this action he does it in breach of good faith against his own Deed. The paper I hold in my hand is a deed signed sealed and delivered by the Plaintiff for the purposes therein mentioned. By its terms the premises described in it are to be held by Peter Bowman, Jacob Smith and others and their successors in office forever, "in Trust for the use of the Methodist Episcopal Church, that the Ministers duly ordained according to the rules and discipline of that Church, and *now others*, should preach and expound God's holy word therein." Upon the faith of this deed, he gave us possession; we took possession, and completed the church. During twenty years of undisputed right, this deed remained among the archives of the church without any doubts about its validity till after the question of registry and the necessity of the removal were agitated.—It was then discovered that from their ignorance twenty years ago, of the number of the Lots, the whole Township being new and unsettled, the number of the adjoining Lot was inserted in place of the one intended. By the rules of Law we are forbidden to prove any thing contradicting the plain terms of the deed; a written document cannot be so varied by oral testimony. We shall not therefore, attempt to do what we know His Lordship would interdict—But as this Plaintiff is seeking to recover damages against us, it is competent for us to show that under this deed, admitting all its defects, we were in good faith put into possession of the pre-

* These facts were afterwards stated by Mr. Ryerson in evidence and not denied, or called in question. Mr. Ryerson was the Preacher in charge of Ancaster Circuit at the time the conversation referred to took place, and in that capacity called upon Mr. Hagle to execute a deed that would not render the title to the land liable to be questioned at any future period. Mr. Hagle at that time (1829) did not pretend to prefer any claim either to the chapel or the ground on which it stood.

mises in question by the Plaintiff, and that we have by common consent held them upon the terms contained in that instrument.

It is asking at your hands the smallest measure of justice, that the Plaintiff shall not recover against us damages by taking advantages of an error in his own deed, upon the faith of which we acted. It is a matter of defence to which we are equally intitled whether we suppose he gave the deed as good, knowing it to be bad, or gave it in good faith, for a piece of land it happens not actually to embrace. The learned Counsel on the other side must draw a very bad character of their client if they desire us to assume that he at the time secretly intended the mistake which was dormant for twenty years. He must have intended one of two things, either to convey the piece of land into the possession of which he personally put us at the time avowedly by virtue of this deed, however insufficient for the fulfilment of his honest intentions; or, he must then intended deliberately to convey away a corner of his neighbours Lot, then the property of Mr. Peter Bowman; under pretence of doing a generous act he "robbed neighbour Peter to enrich Paul"—and this piece of his neighbour's Land he pretends to convey as his own, for the honor of religion!—But I fully acquit him of any such intentions at the time; the evil intentions have subsequently arisen. The mistake was of recent detection, and an unhappy dispute having inflamed his temper, it was too golden an opportunity to be lost by a man surrounded by partisans goading him into litigation. He now openly triumphs in the opportunity of availing himself of his own wrong, and endeavours with his enlisted seceders from the Methodist Episcopal Church, to laugh those to scorn for a dilemma out of which a man of honor would promptly extricate them by correcting the error. But in the place of such a proposition you hear them out of doors lavishing away their jeers and taunts—"Hah! hah! hah!—I never intended to convey to you the corner of my Lot No. 50—Hah! hah! hah!—I only intended to convey to you the corner of neighbour Peter's Lot—Hah! hah! hah!—and precious welcome you are to it—Hah! hah!" and then modestly asks damages £500!! For my clients it is a fortunate thing that the Plaintiff is frustrated in his design of taking an injurious advantage of a flaw in his deed, by the title they have acquired by an adverse possession for upwards of twenty years.

It must obviously be very difficult for any man to repel such an accumulation of circumstances and presumptions, against the legality and equity of his suit; and he must have given it up as a hopeless undertaking, had not the Father again called for aid from the prolific memory of his Son. To sustain the action it was necessary for the Plaintiff to prove himself in possession of the property upon which the tresspass is alleged—a difficulty enough to puzzle any man in such a case, except a lawyer. Now the lawyers found that proof of regular payment of taxes on Land is, according to the books, sufficient proof of a possession; and what the lawyers found in the books, young Mr. Hagle found in his noddle—"He had often paid the taxes

for father, and always paid the taxes on the piece of ground in question." His Majesty's learned Attorney General undertook the Herculean task of extracting the truth out of him, and his extracting powers are great indeed—but it was all in vain. Did you pay the taxes on these particular rods of ground? To be sure. Do you mean to swear that at each particular time you paid the taxes generally on your father's land, you intended to pay the taxes on this little spot? To be sure. And you mean to swear that it was at the time passing in your mind and was a distinct part of your purpose? To be sure—Do you think I wanted to cheat the treasury.——Gentlemen, it is your province to decide whether this witness is entitled to credit; I feel it myself impossible to believe him. In almost his first breath he stated that his father had made it a "free gift" to all churches—and in a little while he declares that he paid the taxes to keep adverse possession of what he had given away! With one hand he made a "free gift," and with the other hand he cunningly paid a few cents of annual taxes in order secretly to defeat his own donation, though consecrated to the service of his Maker! Either the Plantiff has been guilty of this kind of almost impious duplicity, or the facts sworn to for the father by the son cannot be true. With scrupilous honesty he swears he paid these few cents of taxes not to cheat the treasury. But while he stretched at the mite he swallowed a Camel; for his honesty did not stretch far enough to pay also the taxes on the House erected on the ground? His honesty constrained him to pay taxes on the burial ground, but not to pay a far heavier tax for the house standing among the tombs! His honesty led him to pay a pitiful, almost incalculable bit of a tax upon the graves of the dead, while to use his own language, he forgot not to cheat the Treasury out of what he might have paid for the existing accommodation for the living—conscience made him pay a small tax for the church yard, but nothing for the church! But let us leave his evidence—his Father would sacrifice all his farm, could he recal the scene he witnessed in the examination of his son—and the son might well sacrifice all his inheritance could he obliterate from his memory what must embitter his recollection until it shall be forgotten.

Let us, gentlemen, pause for a moment before we enquire farther into the facts and merits of the case, and review it as it now appears before you.

On the 30th of April, 1810, the Plantiff made "a free gift" of the premises in trust for the exclusive use of the Methodist Episcopal church, and confirmed that gift in those terms by a deed, upon the faith of which, (however erroneous it has since been discovered to be) the donors entered; and they continued with the knowledge and without the interdiction of the Plaintiff, in the exclusive use, possession and ownership of this "free gift" from the time of the donation up to the removal, a period of upwards of twenty years; after the lapse of which time the defendants by the authority of the owners, to whom the Plaintiff had made it a "free gift" entered and removed the building only the distance of a few yards for the more peaceable

accommodation of christian congregations and the better security of the property—In all this I can see nothing but the proper exercise of a legal right; and yet the Plaintiff asks damages £500—and why? —because he says unblushingly you cannot, I now discover, defend yourselves by my deed on account of a flaw in it!—and he seeks by your instrumentality to make this species of knavery successful and profitable.

The removal of the building from the corner of one lot to the adjoining corner of the adjacent lot, was executed, not for the mere display of a legal right which would, indeed, be ample for a legal defence, but from the pressure of a necessity without the knowledge of which you could only imperfectly understand the substantial merits of the case.

The building in question had been acknowledged from the date of its first occupation up to a recent period, as the exclusive property of the Methodist Episcopal Church; and would have so continued for 20 years longer, had not certain persons who protested against Episcopacy and seceded from this church, enlisted the Plaintiff in a vexatious litigious dispute for the subversion of the right he had conferred, and for the resumpsion of the "free gift" he had so solemnly bestowed— These persons, but few in number, and still less in influence, are called Ryanites, after a reverend gentleman of the name of Ryan, himself a seceder, whose ecclesiastical notions they choose to adopt.—The right of withdrawing from the church was freely conceded; the right of erecting themselves into a new society of christians by any distinguishing peculiarities, is equally their right—But with themselves and their opinions they wished also to carry away the church property, or to enforce their use of it just the same as if it were their own, or they had not ceased to be members of the church to which it belonged. Men who have long enjoyed any property upon certain grounds of right, cannot, unless animated by sentiments of honor and christian integrity, surrender that enjoyment even when the grounds of right have by their own act been utterly forfeited.— These seceders might have continued in communion with the church. and shared its christian privileges and prosperity. When they seceded from that church and erected themselves upon trivial distinctions into an ephemeral sect, after the fashion of hundreds of others before them whose name only remains as a Beacon, glimmerring a caution against a mere idle schism in succeeding times, they surrendered both the right of membership and the right of property. When they abandoned the church, they abandoned its property, and if it would be held an unwarrantable thing for them to supply any other necessities their voluntary secession brought upon themselves, out of the well regulated economy of other christian communities, by what rule of law or justice can they be allowed to sponge upon the very church whose communion they had abused and against whose authority they had protested?

An opposite rule would lead to that confusion of property and undefined partition of it by disputants among themselves which would

be inconsistent with the security of christian communities and the peace of society. No church could tell what was its property, or how long its rights could be preserved. Some men hurried by an irresistable vanity and ambitious after a transcient fame might to-day collect a few weak and deluded followers, and, under pretences easily conjured up when such men want them, seperate from their church and claim a moiety of the property. The same evil example might in another year incline others to do the same act and put forward the same claims; and thus under the baneful influence of these friends of christian dispersion and schism, the best regulated societies might be beggared and plundered by a succession of speculating seceders, dividing and subdividing the property as they managed by intrigues to divide and subdivide the original church into Jacksonites and Ryanites and —'*nites* without end. It is, therefore as much a rule of expediency as it is a rule of law that the rights and property of a church shall be as sacred and inviolable as the rights and property of an individual.

You could perceive from the scope and obliquities of the evidence given by the witnesses for the Plaintiff, that all his dissatisfation has been excited by the fact, (the acknowleged fact) that their Preachers and their Leaders cannot now continue to use the Meeting House of the Methodist Episcopal Church with their former facility, and exercise the ecclesiastical privileges which they have forfeited. It is a fact of public notoriety within the knowledge of you all, that the Methodists have with great liberality from the commencement of the Province to the present time readily granted accommodation to such Christian Ministers of other denominations as have from time to time requested it: but, exclaim the Plaintiff and the seceders, they will not admit Mr. Jackson also. Now it might be enough to answer the Plaintiff, that we have the right to exclude him and his abettors, and that we chose to exercise it. The right, however, is exercised not as a mere matter of *power*, but from a sense of *duty*. The moment they seceded, the moment they protested against the Church and its authority, that moment they ceased to be members and became dangerous as intruders. We can fairly judge of what they would do, by what they have done. They have already created a schism; and they complain that they are checked in the further prosecution of it. They have already sown the seeds of dissension and carried off with them from the Church the hitherto welcome fruits of it; and they lament they are thwarted in sowing another crop and reaping from it a more pernicious harvest. During the day they go about calumniating the church and its institutions: at night they approach the fold and say, "pray let us in to tarry a while with the sheep"—to which the shepherd answers—"you would not fulminate your calumnies by day, and seek admission here at night, were you not wolves in sheep's clothing."

This prudent refusal upon the part of them upon whom it was incumbent to preserve peace and harmony and unity of faith in the Church, ought to have been enough to satisfy the Plaintiff, and

induce him at his thoughtful period of life to recognize the wisdom and prudence of the exclusion, and to renounce all participation in the preferment of adverse claims. In order therefore to divide the odium with the Plaintiff and keep up a public prejudice, others were enlisted in the character of original subscribers. On this flimsy ground pretences were put forward subversive of all Church discipline or christian decorum. Says one, I subscribed a dollar, and my friend Timothy Deist shall preach there when and what he pleases. And a third gave the boards for the pulpit which he declares shall be opened by fair means or by foul means for his friend the Atheist to expatiate upon all the wonders of the Earth and of the sky which, he can prove, chance has created! Each subscriber insists upon a right; each has his favorite creed and his favorite expounder of it—and by virtue of these indefinite and clashing claims, the whole economy of the church government is to be wrested from the legitimate hands in which it was placed by the rules and discipline of the Society, and vested in those mighty personages called (it is quite a parliamentary pharse) "Messrs. Tom, Dick and Harry."* To all persons, subscribers or their friends or neighbours, of peaceable deportment, the doors of this Church ever have been and still are open. But when they trespass beyond the acknowledged right of going in as subscribers to receive christian edification from the appointed ordinances, and usurp an authority over the most sacred functions and vital regulations of the Church upon pretence of a petty subscription which they have received back a hundred fold by twenty years accommodation, they manifestly prove themselves as wrong in principle as they are mean in disposition.—Nothing more betrays a little, mean and ungenerous disposition, than first to make a free gift and then to build injurious and extravagant pretensions on it.

The Plaintiff assisted by those who are behind the curtain, and therefore not visible to you by the record, found that these means would not drive the proprietors away in disgust; and they therefore undertook to do it by more violent and outrageous measures. They determined that if they could not enjoy it themselves, the owners should not. For this purpose upon the days appointed for religious exercises the congregation was disturbed with irreverent and noisy deportment. They would gather about the stove, crack nuts on the floor, mock the minister, impertinently mix with the Ladies on the seats appropriated to their use, make indecent remarks within their hearing, and turn up their bonnets with a request to see their pretty faces. The repetition of such conduct demanded a remedy; and it

* These terms were applied by John Willson, Esq. to his constituents and the people of the Province, during the session of 1831, on a motion to defer the consideration of what has been called "The everlasting Salary Bill," until another year, so as to give the people an opportunity of expressing their wishes on the subject. Mr. Willson opposed the motion for consulting the wishes of the people, and asked, what would "Tom, Dick, and Harry," know about the salaries which should be allowed to public officers.

was not surprising that Mr. Justice Hagle, the Plaintiff, could not to the great encouragement of the wrong doers, find any Law against it in his Burn's Justice of the Peace, although he declared he had thumbed over the pages of every volume to make the discovery; and yet amidst the mortification from his disappointment in this book of authority, he was never heard or known to manifest his influence as a Magistrate or as a christian or as a man for the suppression of these disgraceful abuses. On the contrary, I am instructed to prove—and if the opposite Counsel will open the door of inquiry as wide as I now freely open it to them, I will prove the Plaintiff lent these disturbers his contenance and support.

The disturbances in the Meeting House already mentioned, could be only opposed by the importunate solicitations of the minister officiating at the time: but even this course proved itself not without its hazard. On one such occasion the Rev. Mr. Griffis, distressed by the interruption of these disturbers gathering in rude and noisy throng about the stove in the central area while he was exhorting the congregation from the communion table, advanced personally to the scene of misconduct to remonstrate against it. In making his way among them as a crowd, he unavoidably came in contact with many, until reaching the nucleus of the disorder, his presence and appeal procured a temporary silence and decorum. Pleased with the restroration of a transcient quiet, he little thought that the calm was only the prelude to a storm to be gathered, matured and directed under the auspices of Mr. Justice Hagle. One of the throng named Smith was selected to make an oath before this Worshipful keeper of the Peace that the Rev. Mr. Griffis on the occasion aforesaid while making his way through the crowd committed against him an assault and battery! A warrant was forthwith made out and put into the hands of Mr. Constable Winters for very faithful execution. The Rev. Gentleman on Sunday night about 2 o'clock was awakened from his sleep in the Town of Hamilton by a tap on his shoulder informing him that he was "a prisoner in the name of the King." In the custody of the constable he retraced his steps in the night to his place of residence within sight of the Magistrate's domain where he would have been found at breakfast time, had not his arrival been anticipated at Hamilton, a distance of several miles, as an additional source of expence and insult. About 5 o'clock in the morning the constable arrived with his prisoner at Mr. Bowman's, in whose hospitable House I happened to have passed the night. Although sorry for the occasion requiring it, I was happy to tender any advice or assistance in my power. And of course I advised the Rev. Mr. Griffis to accompany Mr. Peter Bowman and Mr. Philip Spaun as two good substantial frecholders, to Mr. Justice Hagle's, a distance of only a few rods, and put in bail before him to answer the complaint. We were not a little surprised to be informed by Mr. Constable Winters that they would do no such thing; that he was instructed by his worship not to bring him there but to take the prisoner to Ancaster, a distance of several miles, where with the as-

sistance of another Magistrate he was about to hold a court upon the matter. And a pretty court it would have been with a group of these disturbers of the peace of both God and man, to insult and mock and triumph over the Rev. prisoner. Finding the Constable, perhaps excusably, determined to carry his orders into execution, I was determined, if possible, to stop this petty oppression. We therefore took the prisoner into our custody, and informed the Constable of our determination to wait upon the Magistrate, to whom he might accompany us. In a few minutes we were at the "Squires" door, and speedily ushering ourselves into his presence we really took him by surprise before he had time and reflection enough to "clear out" at the back door. We found his worship equipped in his best suite of clothes, and his chin betraying evident marks of a recent Razor all ready for a trip to Ancaster. The Rev. Mr Griffis presented himself as the person against whom the complaint was made and tendered the gentlemen I have named for his bail. After a little pause to recover from the panic of his disappointment, clearing his throat and arranging the chairs, he consented with an unwilling countenance to admit the prisoner to bail, only indulging in a little invective against the minister for what he called "demeaning himself as a minister by attempting personally to maintain order." We retired with Mr. Constable Winters after us, clamorous for his fees, and grumbling that the 'Squire after giving him such positive orders should have left him and his *Constable-dignity* in the lurch.

On another occasion the Sexton in preserving order was opposed by physical force; and it became every week more and more manifest that there was a conspiracy under the auspices of the Plaintiff and his partizans to annoy the congregation so much as to make them abandon the property. In acts of violence for the accomplishment of this end, they were countenanced by the Rev. Mr. Jackson, who is a sort of Chaplain to his worship. Collecting about him a number of these disturbers before the door of the Meeting House in question, he preached from its threshhold the following sermon in the hearing of Mr. Bowman. "Dear beloved brethren—if I build a house, that house is mine, and I may do as I like with it—if you build a house, that house is yours, and you may do as you like with it. If the public built a house, that house, belongs to the public, and the public may do as they like with it."—The Rev. Gentleman then retired for about twenty minutes to his private devotions; and finding the Church door upon his return driven by force from its lock and hinges, he entered with his sons of violence after him—*to prayers*. The little children of this and some of the neighbouring Townships have the Rev. Gentleman's sermon by heart, as a practical Lesson against the worst of all kinds of impiety.

Under such countenance and encouragement they became more and more daring with their nuisance. When the congregation had collected and were engaged in divine service, some persons put into the oven of the heated stove some brimstone, the fumes of which drove every one out, and really were so rapidly diffused as to endanger suffocation before all could in the confusion escape.

Amidst such scenes it became impossible to engage in divine worship; and no present remedy proved of any avail. Thus insulted and disturbed in their long enjoyed peaceable possession of the building, with the Plaintiff at hand as a Magistrate to issue his warrant against whomsoever should lay a little finger upon the rioters, and with his Chaplain to preach the doctrine of breaking down church doors, and with worthless partizans to fume them out with brimstone in the midst of service, it surely is as excusable as it was necessary and lawful for them to determine upon the removal of the building to an adjoining spot of ground, for which they could at once obtain a good deed, with the advantage of putting it on record under the late Statute, and thereby arm the trustees with those legal powers necessary for the protection of the property and their enjoyment of it. It has been done; and from that day up to the present the congregation has exercised their religious duties in it without disturbance, and were it otherwise, the Trustees appointed under a deed duly recorded according to the Statute are now armed with power to pursue any legal remedy; while they still hold the other piece of ground as a burial place. In thus exercising an act of ownership over their own "free gift," they have only exercised a legal right, and in exercising that right for the purpose of preserving to a christian congregation the peaceful occupation of it for the worship of God, they only discharged a moral duty. For which of these acts can the defendants be apprehensive of your verdict? For which of them can the Plaintiff expect your vindictive damages?

Gentlemen; so strong, after much consideration of the subject, is my own conviction that the conduct of the defendants is lawful and right, that I should not have trespassed so long upon your indulgence, were I not aware of the exertions made on the part of the prosecution, and did I not feel the importance to every christian community of the principle involved. When you retire you will have the entire evidence in review before you with the additional advantage of a clear and dispassionate charge from the learned Judge. You have already heard that the premises in question were made a "free gift," and the written documents before me will prove that it was expressly for the exclusive use of the Methodist Episcopal Church; you will find that the Plaintiff put the claimants into possession and assisted in pointing out the abuttments; that afterwards in order further to ratify his "free gift," he signed, sealed and executed a deed of the premises, by virtue of which deed (however erroneous it has to all parties since proved to be) the grantor gave, and the grantee received possession; and that from the date of the deed, the 30th of April 1810, up to the present time, they have continued in the possession, keeping and claiming to hold as of their own right, exercising during all that time continued acts of exclusive ownership adverse to the plaintiff, and to every one else, with the full knowledge, the daily view and without the slightest interdiction of the Plaintiff; that the Plaintiff has moreover repeatedly acknowledged their right, and admitted their title adding his williness to give

another deed, should not his son to whom he had conveyed the whole lot prevent his fulfilling his honest intentions. Thus possessed of the "free gift," by virtue of a Title that would even bar an action of ejectment, the owners in order to relieve the congregation from disturbances which you must acknowledge to be as unlawful and as insufferable as they were unchristian and ungodly, rightfully and peaceably removed it to an adjoining spot where it is still open to the Christian public according to the rules and discipline of the church to whose use it was consecrated, and now further protected by Trustees duly appointed and empowered to prosecute offenders for injuries to the property or for disturbances of the peace of the congregation.

With such a case before you I feel that the Defendants are intitled to your verdict by all that is lawful and just—and I therefore claim it from you in their behalf in the name of that duty which you owe to yourselves, your country and your God.

NOTE.—After Dr. Rolph had concluded his address, several witnesses were called and examined, besides those referred to by the learned gentleman, all of whom testified to the fact, that Mr. Hagle had admitted to them in conversation, at different times, that he had no legal or just claim to the land in question.

ADDRESS OF W. H. DRAPER, ESQUIRE.

TO THE JURY,

ON THE PART OF THE PLAINTIFF, IN REPLY.

My Lord and Gentlemen of the Jury—

It becomes my duty at this stage of the cause, to offer to you a few observations, before you return to consider of your verdict.—My remarks shall be as brief as the nature of the case will permit, consistently with the discharge of my duty to my client; and I will direct your attention to the three following divisions of the subject:

First, the plaintiff's case, and the evidence adduced in support of it.

Second, the defence as stated in the address of the Defendants' Counsel, and the proof brought forward to substantiate it; and

Third, some few general remarks on the action, and the interest, and questions involved in it.

Upon the first point, my task is comparatively easy; for the case, which was clearly and distinctly stated to you by my learned friend, Mr. McNab, was clearly and distinctly sustained by the evidence.—We proved a title sufficiently to enable us to recover in an action of ejectment; tracing it from the Patent down to the Plaintiff. In doing so, we were unnecessarily particular for proof of possession; a bare possession, even without title would have compelled the opposite party to set up title in order to their defence. Our title, however, was proved; and, in addition, a circumstance easily capable of con-

tradiction, if untrue, and which is, I think, one of the most unequivocal proofs of possession and *claim* of ownership, was also established—namely, that for upwards of twenty years, the Plaintiff has paid the taxes on this lot, including the identical portion of it now in dispute. Great pains were taken by the learned Attorney General, to shake this evidence, and failing in that, equal ingenuity was exerted in endeavouring to turn it into ridicule, on account of the smallness of the tax actually paid. It is fortunate for us, gentlemen, that our taxes are light, and I think it hardly fair to endeavour to weaken our cause, by asserting that the payment of taxes so light is not a matter worthy of consideration, as shewing an act of ownership and a claim of possession. Light as are our taxes, I have never found those who were willing to pay more than the law required for their own property, still less those who were willing to pay for that which they had no claim to whatever. Indeed the earnestness which was shewn to make this act appear trifling and indifferent, shews strongly that the Defendants' Counsel viewed it as of much consequence, or, they must admit, that they wasted much time in remarking on it. If it had been indeed only the shadow of a shade, the straw at which a drowning man caught to save himself, I scarce think the learned Counsel who addressed you, would have labored so hard to destroy the character and testimony of the witness who proved it? or have asserted that whatever credit others might give to that witness, "*he did not believe him?*" Surely the learned Counsel could not feel his duty imperatively calling on him to charge an apparently respectable witness with wilful perjury if the fact sworn to was of no consequence to the cause? And if the importance of the fact was felt something more strong than the opinion of that learned gentleman, however forcibly expressed, is necessary, ere you, or any jury, will arrive at the conclusion wished for. The evidence shewing the trespass committed was equally clear and satisfactory; so much so indeed, that the opposite party, after we had fully proved it, with a generosity peculiar to themselves, and for which I beg to tender the thanks equally sincere, candidly admitted it. The admission does them vast honor, and is of a piece with the whole tenor of their conduct in the cause. They will admit the truth when we have driven them from every subterfuge, as they will doubtless give us satisfaction when your verdict and the judgment of the Court compel them. We proved as founding a claim to damages—the value of the building taken away.

On the general question of damages I desire the liberty of offering some observations before I conclude. Our case thus established, let us next enquire what answer they make. And here I must remark that the grounds of defence taken by the Defendants' Counsel, and the evidence which they have been advised to offer, differ materially. It is far from my intention, and for your sake, gentlemen, I am happy that I do not feel it necessary, to follow the learned Counsel throughout his eloquent address. The polished irony which was aimed at myself, I feel it unnecessary to answer, as I am quite sure, you will try and determine this case by the immutable principles of truth and

justice, and not by the respective talents of the Counsel on either side; and were it otherwise, gentlemen, I should only be displaying my own inferiority in a contest with him on that ground. But there is another point on which I do not feel equally scrupulous; there is another branch of that learned gentleman's address on which I shall, however fool-hardy it may appear, venture to submit a few observations. I allude to that large part of it which was made up of matter to support which he did not offer one tittle of evidence, and as to a large part of which he well knew evidence was inadmissible. I hesitated to interrupt the learned Counsel, because first his length of practice and experience at the bar, (at least three times as great as mine) made me think that his observations were merely the necessary introdu tion, much of which would be found important to the question in issue—and next, because I really did think him superior to that—shall I call it, trick of trade, of making statements to a jury, which he well knew he was not prepared, and would not be allowed to prove. The hard necessity of the case must, I suppose, excuse him for the course which he pursued, and of which I really believe he is ashamed; and I am quite disposed to view it not as a deviation from the steep path of honor, but as an unavoidable aberation occasioned solely by the heavy load which was strapped on his back. Even my learned friend, with all his talent, could scarce be expected to walk very straight, with a stolen chapel on his shoulders.

It may not however, be amiss before proceeding to reply more particularly to these portions of the learned Counsel's address—to advert to the evidence called in support of the defence. (Here Mr. D. entered into a particular investigation of the evidence, and remarked that the possession set up was a possession acquired under a deed produced, which deed was for no part of the lot on which the trespass proved was committed—that the Plaintiff never meant to contest the right of possession to the land conveyed by that deed—that the admissions of the Plaintiff, on which so much stress was laid, evidently referred to the land mentioned in the deed, though interested persons who went for the express purpose of *pumping* him, sought to give them a different colouring—and then proceeded as follows:)

I cannot overlook the charge which was made by the learned Counsel, on those whom he termed the Seceders from the Methodist Episcopal Church, and on whom he indirectly made so many attacks, as the cause not only of the present action, but of the circumstances which gave rise to it. To enter into a defence of these parties is unnecessary, and indeed would be improper on the present occasion, for two reasons:—first, that they are not before the Court on this record; and next, that not one fact has been given in evidence, in the slightest degree attaching blame to them. But it would, in my mind, be equally wrong to let these assertions go forth to the world unanswered, as thereby an impression might be created in the minds of those who have no opportunity of learning the truth, unfavorable to the falsely called Seceders—the Canadian Wesleyan Methodists. In the course of the cross-examination of the witness

es for the defence, some matters were elicited which, coupled with the terms of the Deed produced by the Defendants, gave us a tolerably fair insight into the grounds of difference and division. The reference and submission to the Conference in the United States, to which the saintly advisers and inciters of these present Defendants seem to have clung, for what reason they best know, and which I can scarce believe, notwithstanding their assertions to the contrary, is yet dissolved, (or why has the Canadian Conference no Bishop) has been the ground work of difficulty; and because the Canadian Wesleyan Methodists, with a truly British feeling, repudiated the right of a Foreign priesthood in their Church, and denied that a Bishop, the subject of and dweller in another land, should exercise control and influence over them, they have been reviled, persecuted, shut out from the very places of public worship which they helped to build, and to which they had at least equal right with their opponents, and treated as if, instead of holding the same faith, believing in the same Saviour, and worshipping the same God, they had been heathens and atheists. History tells us that there was but one Monarch who filled the British throne—the cowardly and tyrannical John—who even submitted to such a principle, or even recognized such an interference; and it is equally well known that his subjects were against him, and that none of his successors have ever yielded as he did. Yet because so anti-British a feeling and principle, was not agreed in, and a change on that point was urged and supported with mildness, though with firmness, have those who ought to be the Defendants in this cause, if their cunning had not kept them out of sight, with the true spirit of dominant bigotry, advised the outrage which forms the subject of this action, and instructed the Counsel who addressed you on the defence, to make a covert but virulent attack on innocent and unoffending men. It is useless to say, at this stage of the cause, that nothing but the question of trespass or no trespass, between the parties on the record, is at issue. There is more; the Defendants have disclosed that they are seeking to try the question between these secret advisers and pastors, and those whom they have assailed—that they are endeavoring to establish by your verdict, gentlemen, that they may, with impunity, take the law into their own hands, and not confining themselves to this particular case, assert a right by force to every Methodist meeting house in the country! Think, gentlemen, what might, nay must have been the result, had they been met in the same spirit which they came! Think that if instead of a mere verbal prohibition, expressed in a tone and dictated in a spirit far more consistent with christianity than that of these saintly hypocrites, force had been opposed to force, and strength to strength! If so, who can doubt but that the most disastrous consequences must have followed, and that instead of trying an action for damages occasioned by the conduct of the defendants, you might have been even now impanneled to try these men as prisoners in yonder dock arraigned for human bloodshed! And yet, though the very gentleness and moderation of the Plaintiff prevented all this, they have with a sophistry, (I had almost called devilish,) sought to avail themselves of the spirit of peace in which he acted, as a proof of their own moderation. Yes, they have had the impu-

dence, the frontless impudence, to assert that you are to draw a favorable inference to them, because there was no battle—no force exerted beyond that necessary to remove a building of the size and weight of that taken.—Why was this? Was it that the mild and temperate manner in which they acted, disarmed resistance, and their truly Christian spirit and moderation silenced opposition?—Away with the flimsy pretext. They were quiet because unresisted, and committed no violence because no excuse was afforded for it. Yet judge of the motives by one act, and from that one act say how they would have acted if opposed. One individual, a son of the Plaintiff's, began to take down their names, and an attempt was made to prevent him, by driving a yoke of Oxen over him, in which they failed only because the animals who were driven had more genness and mercy than the Brutes who urged them.*

I regret, however, gentlemen, that it is against the present Defendants your verdict is to be given. I am truly sorry that on their heads is to be visited the punishment of this act, instead of upon those priestly advisers who, (reminding us of the fable of the monkey using the cat's paw,) have put them forward to commit an act, all the evil of which is suffered by the actors, while the counsellors and instigators reap all the benefit. Would that, then, the real offenders were here to-day, that we might punish the really guilty. They whose sacred office has been the sheep's clothing to ravenous wolves—they in whose mouth is peace, while their hands carry a naked sword—they who forgetful of the mild and submissive spirit of Christianity, have neglected the duty of obedience to the powers that be, and in place of appeal to the tribunals of the land, have enforced their claims by open violence instead of by established remedies, and regardless of decorum, and careless of human feeling, have made the burying place of the dead the scene of unhallowed outrage; and yet, I will hope, gentlemen, that your verdict may reach them; for I trust they are not so lost to every feeling of honor and propriety, as to suffer these tools to pay the penalty of the act advised by themselves. This charter fund, of which we have heard—the subscription purse under their control—the joint stock, collected I know not and care not how, may be laid under contribution, to satisfy your verdict; and, I trust, you will draw liberally upon these resources. If the reverend priests and saintly clowns, fare a little less sumptuously, the penalty will not be too severe for those who have in spirit though not in actual fact, broken the law of the land, invaded the private rights of individuals—trampled under foot the feelings of those who mourned the dead buried in that place where this outrage was committed, and insulted the holy religion of which they are ministers, by making it the pretext for the gratification of their malice, hatred and revenge. In the name of the broken law, in defence of violated rights—in behalf of the injured feelings of the mourners—by your respect for the last resting place of the dead, and by your veneration for religion—I call on you for an exemplary verdict;—shall the appeal be made in vain?

SUBSTANCE OF MR. JUSTICE SHERWOOD'S CHARGE TO THE JURY.

GENTLEMEN OF THE JURY:

This is an action of trespass. The Plaintiff, in his declaration, alleges that the Defendants, with force and arms, broke and entered the close of the Plaintiff and forcibly took away a building or house belonging to him. To this the Defendants plead the general issue, that is, they did not commit the trespass stated on the Record. You have heard from their

* For the whole of this raphsody of Mr. Draper, there was not the shadow of evidence or authority. Such rant, however, suited Mr. Draper's taste and circumstances; and knowing that "every other tongue was now silenced," he indulged his spleen without restraint. It was easier to declaim in this way, than to answer Dr. Rolph's arguments. It was easier to deal in unfounded and slanderous assertions against a body of people, than to argue the merits of the case. The stale rant about foreign connexion, &c. &c. has become too contemptible to notice.

Counsel the grounds of their defence. They admit the fee simple of the land on which the building stood was at one time in the Plaintiff, by virtue of a Deed from one Bowman, the grantee of the Crown; but they say the Plaintiff afterwards conveyed it to certain Trustees for the use of the Methodist Episcopal Church in this Province, which Trustees entered and possessed the premises; and that the present Trustees, claiming from the first Trustees, directed the Defendants to remove the building. I certainly think the Plaintiff originally intended to convey the land in question to the first Trustees, but the Deed filed on the part of the Defendants does not support the allegation. The Plaintiff, it seems, has conveyed to the first Trustees a part of the adjoining lot, which he did not own. This, I dare say, was a mistake, but this Court cannot rectify it; and, viewing the conveyance according to its literal contents, it is quite clear the defendants have failed to establish the legal property of the first Trustees in the *locus in quo*. This ground of their defence is therefore untenable. There is another ground, however, on which they strongly insist, and which is this, that the first Trustees, thinking the Deed was for the right parcel of land, entered into possession with the full assent and approval of the Plaintiff, and caused the building to be erected with monies subscribed for the use of the Methodist Episcopal Church, and that the building has been used as a place of public worship ever since. They further assert, the first Trustees, and those claiming under them, have had uninterrupted possession of the premises and building for more than twenty years before the bringing of the present suit. It is not alleged by the Plaintiff, that he ever made a formal entry on the premises for the purpose of enabling him to bring this action, but he asserts he always continued in possession after the conveyance from Bowman up to the time he conveyed to his son, and after that time by virtue of the Lease from his son, which you have heard read. With respect to that Lease, I will merely remark, that if the Plaintiff did in fact give up the entire possession of the premises to the first Trustees, he did not regain the possession by that Lease. You will, therefore, consider the evidence, the substance of which I have read from my notes; and if you should be satisfied the first Trustees, and those claiming under them, have held uninterrupted possession of the house and land, with the assent of the Plaintiff, for twenty years or more before the bringing of this suit; claiming title adverse to the title of the Plaintiff; and that the Defendants, at the request of the present Trustees, entered and removed the building to another site, still intending it for the uses to which it was first dedicated; you will, in such case, find a verdict for the Defendants. I consider continuous possession, under such circumstances, and for such a length of time, a conclusive answer to this action.

On the other hand, if you find the possession has remained in the Plaintiff, you will bring a verdict for him; and, in that case, the last consideration will be the amount of damages. To enable you to form a just estimate of their measure, you should look at the intention of the Defendants. If, from the evidence, you are convinced the Defendants maliciously intended to injure the Plaintiff, instead of doing a public service, as they assert, you are not, in such case, limited to the mere amount of damages occasioned by the entry on the premises and the removal of the building, but you may give exemplary damages to prevent the recurrence of malicious acts. Should you find the motives of the Defendants were conscientious, and their intentions honest, although the act was illegal if the Plaintiff had the possession, you ought not to give large damages, because there is no pretence for saying the Plaintiff is entitled to the value of the building erected at the expense of the subscribers for religious uses, and it is quite clear the actual damages done is rather inconsiderable. If your verdict should be for the defendants, damages will be out of the question; if for the Plaintiff, the amount should be regulated according to the real facts of the case.

NOTE.—The Jury retired about 7 o'clock, P.M., and returned a verdict [illegible] morning—£5 for the Plaintiff!! The reader will make his own comment