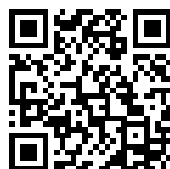

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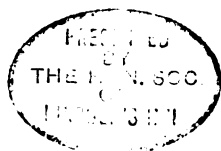
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American Ecclesiastical Law:
THE LAW
OF
RELIGIOUS SOCIETIES,
CHURCH GOVERNMENT AND CREEDS,
DISTURBING RELIGIOUS MEETINGS,
AND THE LAW OF
BURIAL GROUNDS
IN THE
UNITED STATES.
WITH PRACTICAL FORMS.

By R. H. TYLER, COUNSELOR-AT-LAW.

ALBANY:
WILLIAM GOULD, LAW BOOKSELLER AND PUBLISHER.
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1866.



Entered according to act of Congress, in the year one thousand eight hundred
and sixty-six,

By WILLIAM GOULD,

in the Clerks office of the District Court of the Northern District of New York.



C. VAN BENTHUYSEN & SONS,
Printers, Stereotypers and Binders,
407 Broadway, Albany.

TO THE
HONORABLE WILLIAM F. ALLEN,
THE ASTUTE LAWYER, THE SAFE COUNSELOR, THE EMINENT JUDGE,
AND THE CHRISTIAN GENTLEMAN,

THIS VOLUME IS
RESPECTFULLY AND GRATEFULLY INSCRIBED,

AS A
TESTIMONY OF RESPECT

FOR HIS
CHARACTER AND TALENTS, AND AN ACKNOWLEDGMENT OF THE
OBLIGATIONS WHICH I FEEL FOR THE AID OF HIS FRIENDSHIP,
WHICH IT HAS BEEN MY PRIVILEGE TO ENJOY FROM THE
EARLIEST PERIOD OF MY PROFESSIONAL LIFE.

R. H. T.

P R E F A C E .

The design and object of the following pages, is to bring together and exhibit in comprehensive and intelligible form, a clear and distinct digest of all the principles, statutes and adjudged cases, relating to religious societies, disturbing religious meetings and burial-places, and the polity and forms of religious belief of the different Christian denominations in the United States. These subjects, cognate in their character, comprise what may properly be called the Ecclesiastical Law of this country. No work of this kind has heretofore made its appearance, though the want of a book of ready reference upon the subject of American Ecclesiastical Law, has long been felt by the legal profession. The increasing interest felt upon the subject of religion, and the multiplying of religious denominations and churches in all parts of the country, must necessarily increase the demand for such a book. That something of the kind is much needed, cannot be reasonably doubted. In order to get an understanding of the subjects discussed, it has been necessary to examine a multitude of statutes and

judicial decisions, which lie scattered in profusion among the session laws and reports of the several states. We have not in America, it is true, a regular ecclesiastical establishment as they have in the old countries; and yet the importance of religion and religious worship is recognized by the laws of the states, and church organizations are encouraged and protected by statutes and judicial decisions, so that a system peculiar to this country is now quite well established. This system I have endeavored, so far as I could, to bring out and explain. The work is not strictly a treatise, nor a compilation; but it partakes of the nature of both. It has been my design to give a *statement* of the law, in plain and intelligible terms; of course I was obliged to consult the statutes and reported decisions of the states, and where the matter could not be abridged, or the language simplified, I have not hesitated to give the law substantially in the words of the statutes or decisions. In some instances, I have represented not only the *law*, but the *history* of the law, because I believed it would be interesting and profitable; and in all cases I have been less ambitious to be original, than to be accurate and comprehensive.

In the plan which I adopted, I have first given the law of New York, for the reason, not only, that the State is large and influential, but her statutes serve as a model for much of the legislation of many of the other states. After New York, I have taken up the states in the order in which they are usually associated in the geographies of the country. To make the work valuable as an authority, I have given a reference to the statutes and cases containing the

law; and to render the book convenient for practice, accurate precedents are added, when it was thought necessary, at the end of each title. My object has been to make the work valuable in all parts of the Union; and though the book is more especially designed for the use of the legal profession, it is also calculated for the use of ministers and church officers, to guide them in the management of the temporalities of the churches under their care. I cannot but persuade myself that the book will be found useful to both of these classes.

I have devoted one chapter to a concise exposition of church polity and creeds, because I believed that the tenets and forms of church government of the principal religious denominations of the country, grouped together in convenient and compact form, would prove both pleasant and profitable to the several classes for which the work is designed.

It is possible, indeed probable, that the work may not be entirely free from inaccuracies and omissions, but I have endeavored to make it as perfect as practicable, from the materials at hand. I trust therefore that any imperfections which may be discovered, will be met with indulgence, since the greatest care has been taken to avoid them. In these days of legislative activity, special difficulties have to be encountered by the professional writer. The law upon the subjects treated in this volume, may be occasionally changed by local legislation, and yet the law upon these subjects is probably more stable than upon any other contained in the Revised, or Compiled Statutes of the States.

I commit the work to the candor and patronage of the profession, and ministers and office bearers of the churches, in the hope that it will prove a valuable accession to the facilities already in their power, to guide them in the discharge of important duties to the public and the church.

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THE LAW OF RELIGIOUS SOCIETIES.

CHAPTER I.

RELIGION AND ITS ADVANTAGES—AMERICA FIRST SETTLED IN THE INTERESTS OF RELIGION—COLUMBUS—EARLY EXPLORERS AND SETTLERS.

§ 1. RELIGION, as defined by Dr. Doddridge, “consists in the resolution of the will for God, and in a constant care to avoid whatever we are persuaded he would disapprove; to despatch the work he has assigned us in life, and to promote his glory in the happiness of mankind.” According to Dr. Worcester, it is “an acknowledgment of our obligation to God as our Creator, with a feeling of reverence and love, and consequent duty or obedience to Him.” The foundation of all religion rests in the belief of the existence of God, and, in a practical sense, it enjoins duty to God and to His creatures.

§ 2. Religion is a principle implanted in the very nature of a reasonable being, and the religious sentiment is common to all ages and all races of men. No people were ever yet reported who had not some notions of religion, and who did not recognize the obligations of reverence to a Supreme or Superior Being. Though heathens bow down to stocks and stones, and to things of their own making, they are governed, nevertheless, by the religious principle.

[Tr.]

and are moved by the same sentiments that prompt the worship of the true God.

§ 3. The advantages of religion in civil society are obvious to the candid and intelligent observer. Peace and order would not be guaranteed by the principles of human legislation, unprotected by its salutary influence; and human laws would prove insufficient to regulate the conduct of men, if their actions were entirely independent of this universal sentiment. The atheist, even, will admit the importance of the religious principle to the peace and security of men.

§ 4. The continent of America was discovered under the impulse of a religious idea. When Columbus applied to the crowned heads of Europe for means to enable him to discover the new world, he was rejected as a mad visionary, until he made his humble address to the Queen of Spain. She listened to his petition, and then reasoned that *if* there were a continent in the West, as Columbus supposed, it must be inhabited; and *if* inhabited, the people must be eternally lost, without a knowledge of Christ; and so she resolved to give the desired aid. By this means the great navigator was enabled to prosecute his scheme, and the country was discovered.

§ 5. It may also be asserted that this continent has been dedicated to the uses of religion. When discovered, Columbus caused a high cross to be erected on every head-land in the localities he visited, and proclaimed to the nations his faith and belief in the "Holy Mother Church," which had its members in all the world, and spoke to them of the courtesy and nobleness of all Christians, and of the faith they have in the Holy Trinity. (*Select Letters of Columbus.*)

§ 6. It appears that the Admirals of the Church of England were also elaborate in their rites and ceremonies in the countries which they discovered at the north. "After a storm in Hudson's Bay, when each had ripped up their sundry fortunes and perils past, they highly praised God; and altogether, upon their knees, gave due, humble, and hearty thanks. After this, they listened to a godly sermon by Master Wollfall. He, on another occasion, administered the communion after a godly sermon, which celebration of the divine mystery was the first sign, seal and confirmation of Christ's name, death and passion ever known in these quarters." (3 *Hakluyt* 166, *per Probisher* in 1578.)

§ 7. The colonists of Plymouth and Massachusetts Bay also dedicated their land to the uses of religion, by providing at once for the support of the Gospel ministry. In 1679 an ordinance was passed by the General Court, requiring the council or county courts to appoint an "able and discreet committee, at the charge of the people, intending to plant, to view and consider the place; to direct in what form, way and manner such town should be settled; having principal respect to nearness and conveniency of habitation, security against enemies, more comfort for Christian communion, enjoyment of God's worship, and civility with other good ends." (1 *Mass. Records*, 214.) And John White, the minister, accompanying the Massachusetts colonists of 1628, was regarded the most important personage of the expedition, and is called in Fuller's *Worthies*, "the father of the Massachusetts Colony;" and in the list of supplies made out in England for this expedition, the religious instruction of the Colony is first provided for. (1 *Mass. Records* 383, &c., referred to in notes to the case of *Commonwealth v. City of Roxbury*, 9 *Gray's Reports*, 504.) It is quite obvious that the Puritans and Pilgrims came to New England, for the purpose of founding a "plantation reli-

gious," where they might worship God in a manner more simple than was observed in the established Church of England.

§ 8. The Colony of New Haven was established with a prominent view to the interests and ordinances and enjoyments of religion. The leaders were all Puritans of much distinction in England, and came out with all that enthusiasm and religious fervor which was common to that pious and self-sacrificing people. The minister of Christ was ever conspicuous throughout the entire settlements, and the worship of God was uppermost in all the arrangements of the Colonists.

§ 9. There was the same earnest reference to the religious element in the settlement of Maryland. When the expedition which planted the Colony arrived at the Potomac, in 1634, and came to an anchor, a cross was erected and possession taken "in the name of the Saviour of the world, and of the King of England." Religious freedom flourished in the Colony, under Lord Baltimore, for many years, and the Cross of Christ was respected far above everything else.

§ 10. Among the first permanent arrangements of the first Colony in Virginia was the establishment of religion by law, according to the form of the English Church. This was an unfortunate feature in the government of the Colonists, but it is evidence of their persistent adherence to the cause of religion. The early settlements in this district were made, in a good degree, under the auspices of Mr. Richard Hakluyt, prebendary of Westminster, who was the most active and efficient promoter of English settlements in the new world; and it was always a point with him to place in the foreground the interests of the Cross. The patent of 1606, under which the Colony of Virginia was

established, was granted with the hope of inducing the natives to receive Christianity, as well as to encourage and foster religion in the country. (1 *Bancroft's History of the U. S.* 123.)

§ 11. The nomadic march of the Spanish adventurers in the South was accompanied by priests and other ecclesiastics, and every practicable religious rite was observed.

Louisiana was settled and appropriated by the French in the interests of the Roman religion. LaSalle, the explorer of the west and southwest, belonged to the order of the Jesuits, and possessed a sublime magnanimity that always resigned itself to the will of Heaven, in all his deprivations and trials and persecutions, and he left his impress upon the country which he traversed.

Hennepin, the discoverer of the Upper Mississippi, and some of its tributaries, was a Franciscan Missionary of the Recollect type, and always styled himself "Recollect Missionary and Apostolic Notary." He named one of the rivers of the now State of Minnesota, St. Francis, in honor of the founder of his order, and every where he went he gave unmistakable evidence that the one great idea of his life was the inculcation and promulgation of the Christian religion.

It may, therefore, with propriety, be asserted that this continent has been virtually dedicated to the uses of religion, and consequently religion and its observance occupy a prominent place in our customs and laws. Certain it is that the early settlers came here with the leading purpose to build up a State which should be based upon the principles of Divine Revelation.

CHAPTER II.

NO ESTABLISHED RELIGION IN THE UNITED STATES—PROVISION
OF THE FEDERAL CONSTITUTION—STATE CONSTITUTIONS—
NEW ENGLAND STATES.

§ 12. In the United States there is no established religion. Every person is left free to worship God according to the dictates of his own conscience, and to exercise and enjoy religious profession and service without discrimination or preference. Religion is neither prevented nor paid by the State, but is sustained by the regard for public morals, and the convictions of an enlightened faith; and the Christian religion is the recognized religion of the country, and is a part of the common law of many of the States. (*Lindenmuller v. The People*, 21 *Howard's Practice Reports*, 156; *The People v. Ruggles*, 8 *Johnson's Reports*, 291.)

§ 13. By the fundamental law of the land it is provided that "no religious test shall ever be required as a qualification to any civil office or public trust under the United States," and that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." (*Federal Constitution, Article 6, Section 3, and Article 1, of the Amendments of 1789.*)

§ 14. Notwithstanding the foregoing provisions of the Federal Constitution, in several of the States certain religious opinions are requisite to receiving the oath of a witness in courts; and in none of the States is the liberty of conscience guaranteed to be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the community. The idea simply is

that any attempt to regulate religion by law is inconsistent with the genius of a free government; and this sentiment is fully satisfied by free and universal toleration.

§ 15. In the State of Maine it is declared that "all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences;" and it is provided that "no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and seasons agreeable to the dictates of his own conscience, nor for his religious professions or sentiments," upon condition, however, that "he does not disturb the public peace nor obstruct others in their religious worship." (*State Constitution, Art. I, Sec. 3.*)

§ 16. It is further declared by the fundamental law of Maine that "all persons demeaning themselves peaceably as good members of the State shall be equally under the protection of the laws," and that "no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust" under the State; and further, that "all religious societies" in the State "shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance." (*Id.*)

§ 17. In New Hampshire it is asserted that, "every individual has a natural and unalienable right to worship God according to the dictates of his own conscience and reason;" and it is declared that "no subject shall be hurt, molested or restrained in his person, liberty or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments or persuasion; provided he doth not disturb

the public peace, or disturb others in their religious worship." (*State Const., Part 1, Art. V.*)

§ 18. Again, it is premised and declared that, "as morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society by the institution of the public worship of the Deity, and of public instruction in morality and religion; therefore, to promote those important purposes, the people of the State have a right to empower, and do hereby fully empower the legislature to authorize from time to time the several towns, parishes, bodies corporate or religious societies within this State to make adequate provision, at their own expense, for the support and maintenance of public protestant teachers of piety, religion and morality." (*Ib., Art. VI.*)

§ 19. It is further "provided, notwithstanding, that the several towns, parishes, bodies corporate or religious societies shall, at all times, have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance;" and further, that "no person of any one particular religious sect or denomination shall be compelled to pay towards the support of the teacher or teachers of another persuasion, sect or denomination;" and still further, that "every denomination of Christians demeaning themselves quietly, and as good subjects of the State, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law." (*Ib.*)

§ 20. In the State of Vermont it is declared "that all men have a natural and inalienable right to worship

Almighty God according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no man ought to, or of right can, be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister contrary to the dictates of his conscience; nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious worship; and that no authority can or ought to be vested in or assumed by any power whatever, that shall in any case interfere with, or in any manner control, the rights of conscience in the free exercise of religious worship." (*State Constitution, Chap. 1, Art. 3.*)

§ 21. It is nevertheless positively asserted that "every sect or denomination of Christians ought to observe the Sabbath, or Lord's Day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God."

This language would strictly apply only to the members of the Christian church, but it is presumed that the framers of the Constitution designed that the admonition should apply to all the people of the State. (*Ib.*)

§ 22. By the fundamental law of the State of Massachusetts, it is declared to be "the right as well as the duty of all men in society, publicly and at stated seasons to worship the Supreme Being, the Great Creator and Preserver of the Universe," and it is asserted that "no subject shall be hurt, molested or restrained in his person, liberty or estate, for worshiping God in the manner and seasons most agreeable to the dictates of his own conscience, or for his religious profession or sentiment," with the proviso, however, that "he doth not disturb the public peace, or obstruct others

in their religious worship." (*State Constitution, Part 2, Art. II.*)

§ 23. It has been held by the Supreme Judicial Court of Massachusetts that the rejection of a witness as incompetent, by reason of his want of religious belief, is not a violation of the second article of the bill of rights. The court, in their opinion, remarked that all the authorities agree that an atheist, who disbelieves in the existence of a God, who is "the rewarder of truth and avenger of falsehood," can not be permitted to testify. Mr. Justice WILDE said, "in the opinion of the court this article had no reference to atheists, and to their competency as witnesses. It was intended to prevent persecution by punishing any one for his religious opinions, however erroneous they might be. But an atheist is without any religion, true or false. The disbelieving in the existence of any God is not a religious, but an anti-religious, sentiment." (*Thurston v. Whitney*, 2 *Cush.* 104.)

§ 24. But this question as to the religious belief necessary to render a witness competent, so much discussed heretofore by the Massachusetts courts, is now set at rest by the general statutes of 1860, by which "every person, not a believer in any religion, is required to testify truly, under the pains and penalties of perjury; and the evidence of such person's disbelieving in the existence of God may be received to affect his credibility." (*Gen. Stat., Chap. 131, Sec. 12.*)

§ 25. By the Constitution of Rhode Island it is premised that "Almighty God hath created the mind free," and that "all attempts to influence it by temporal punishments or burthens, or by civil incapacities, tend to beget habits of hypocrisy and meanness;" and further, that "a principal object of our venerated ancestors, in their migration to this

country and their settlement of this State, was, as they expressed it, to hold forth a lively experiment that a flourishing state may stand and be best maintained with full liberty in religious concerns." (*State Constitution, Art. I, Sec. 3.*)

§ 26. Upon the premises laid down, the Constitution declares "that no man shall be compelled to frequent or to support any religious worship, place or ministry whatever, except in fulfillment of his own voluntary contract; nor enforced, restrained, molested or burthened in his body or goods, nor disqualified from holding any office, nor otherwise suffer on account of his religious belief; and that every man shall be free to worship God according to the dictates of his own conscience, and to profess and by agreement to maintain his opinion in matters of religion; and that the same shall in no wise diminish, enlarge or affect his civil capacity." (*Ib.*)

§ 27. In the State of Connecticut the Constitutional provision upon the subject is brief and to the point, which is that "the exercise and enjoyment of religious profession and worship shall forever be free to all persons" in the State, "provided that the right" by the Constitution "declared and established shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the State." (*State Constitution, Art. I, Sec. 3.*)

§ 28. It will be observed that there is a similarity in the language of several of the Constitutions of the New England States upon the subject of religious freedom, but in a majority of them the great fact is recognized that the public worship of God, and instruction in morality and religion, are calculated to give the best and greatest security to gov-

ernment: and in one of the Constitutions a preference is given for "the support and maintenance of public *protestant* teachers of piety, religion and morality," while in none of them is it made the duty of the commonwealth to enforce such worship or instruction.

CHAPTER III.

RELIGIOUS LIBERTY—STATE CONSTITUTIONS—THE NORTHERN MIDDLE STATES.

§ 29. In the State of New York it is declared by the fundamental law that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed," in the State, "to all mankind;" and that "no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief." This declaration, however, is made with the express reservation that the liberty of conscience thereby secured "shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety" of the State." (*State Constitution, Article I, Section 3.*)

§ 30. Previous to the Constitution of 1846, no person was competent to testify as a witness unless he believed in the existence of a God, who would punish him if he swore falsely; and the general tenor of judicial decision was that the witness should believe in a state of rewards and punishments in the world to come, though it was sometimes held at the circuits and in the courts of common pleas that if he believed he would be punished by his God, even in this

world, if he perjured himself, there was a binding tie upon his conscience, and that he could be sworn. (*Jackson v. Gridley*, 18 *Johnson*, 98; *Butts v. Swartwood*, 2 *Cow.* 431, and note (a).

§ 31. By the fundamental law of New Jersey it is enjoined that "no person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeably to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment." It is further enjoined that "no person shall be obliged to pay tithes, taxes, or other rates, for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministers, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform." (*State Constitution*, Art. I, Sec. 3.)

§ 32. The Constitution also provides that "there shall be no establishment of any one religious sect in preference to another." And further, that "no religious test shall be required as a qualification for any civil office or public trust;" and that "no person shall be denied the enjoyment of any civil rights, merely on account of his religious principles." (*Ib.*, Sec. 4.)

§ 33. The Constitution of Pennsylvania declares that "all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences." It is further asserted that "no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent," and still further that "no human authority can in any case whatever control or interfere with the rights of conscience." It is then declared that "no preference shall ever be given, by

law, to any religious establishments or modes of worship.”
(*State Constitution, Art. IX, Sec. 3.*)

§ 34. It is also provided by the Constitution that “no person who acknowledges the being of a God, and a future state of rewards and punishments, shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit” under the commonwealth. (*Ib., Sec. 4.*)

§ 35. In the preamble of the Constitution of the State of Delaware it is laid down that “through divine goodness all men have by nature the right of worshiping and serving their Creator according to the dictates of their consciences;” and then, in the article which follows, the doctrine is clearly inculcated that “it is the duty of all men frequently to assemble together for the public worship of the Author of the universe,” and that “purity and morality, on which the prosperity of communities depends, are thereby promoted.” (*State Constitution, Art. I, Sec. 1.*)

§ 36. After laying down these plain propositions, it is declared that “no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent;” and that “no power shall or ought to be vested in or assumed by any magistrate, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship, nor a preference given by law to any religious societies, denominations or modes of worship.” (*Ib.*)

§ 37. It is further declared by the Constitution that “no religious test shall be required as a qualification to any office,

or public trust," under the State. (*State Constitution, Art. I, Sec. 2.*)

§ 38. The fundamental law of Maryland declares "that it is the duty of every man to worship God in such manner as he thinks most acceptable to him," and that "all persons are equally entitled to protection in their religious liberty; wherefore no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless under color of religion, any man shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any place of worship, or any ministry." (*State Constitution, Art. XXXVI.*)

§ 39. It is further declared that no person shall be "deemed incompetent as a witness or juror who believes in the existence of God, and that, under his dispensation, such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or in the world to come." (*Id.*)

§ 40. By the Constitution of the State of West Virginia, it is expressly enjoined that "no man shall be compelled to frequent or support any religious worship, place or ministry whatever; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities." (*State Constitution, Art. XI; Bill of Rights, Sec. 9.*)

§ 41. It is also provided that "the legislature shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district" within the State "to levy on themselves or others any tax for the erection or repair of any house of public worship, or for the support of any church or ministry, but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please." (*Ib.*)

§ 42. In the State of Ohio it is asserted that "all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience;" whereupon it is declared that "no person shall be compelled to attend, erect or support any place of worship, or maintain any form of worship against his consent;" and that "no preference shall be given by law to any religious society; nor shall any interference with the rights of conscience be permitted." (*State Constitution, Art. I, Sec. 7.*)

§ 43. The Constitution also declares that "no religious test shall be required as a qualification for office;" and that no person shall "be incompetent to be a witness on account of his religious belief." It is provided, however, that nothing in the Constitution contained "shall be construed to dispense with oaths and affirmations." (*Ib.*)

§ 44. In view of the fact that "religious morality and knowledge" are "essential to good government," it is declared to be "the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and means of instruction." (*Ib.*)

§ 45. By the Constitution of the State of Michigan, the legislature is prohibited from passing any law to "prevent any person from worshipping Almighty God according to the dictates of his own conscience, or to compel any person to attend, erect or support any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion." (*State Constitution, Art. IV, Sec. 39.*)

§ 46. The Constitution requires all executive, legislative and judicial officers to take an oath or affirmation to support the Constitution of the United States, and the Constitution of the State, and to faithfully discharge the duties of the office, and then asserts that "no other oath, declaration or test shall be required as a qualification for any office or public trust." (*Ib., Art. XVIII, Sec. 1.*)



CHAPTER IV.

RELIGIOUS LIBERTY—STATE CONSTITUTIONS—THE WESTERN STATES.

§ 47. In the State of Indiana it is solemnly declared that "all men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences," and that "no law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience." (*State Const., Art. I, Secs. 2 and 3.*)

§ 48. It is also declared that "no preference shall be given by law to any creed, religious society or mode of

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worship," and that "no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent;" and further, that "no religious test shall be required as a qualification for any office of trust or profit," and also that "no money shall be drawn from the treasury for the benefit of any religious or theological institution;" and that "no person shall be rendered incompetent as a witness in consequence of his opinions on matters of religion." (*Ib.*, *Secs. 4, 5 and 6.*)

§ 49. In Illinois, as in many others of the State Constitutions, it is asserted that "all men have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case whatever control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious establishments or modes of worship," and then it is provided that "no religious test shall be required as a qualification to any office or public trust." (*State Constitution, Art. VIII, Secs. 3 and 4.*)

§ 50. In Wisconsin it is declared that the "right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent;" and that no "control or interference with the rights of conscience" shall be permitted, or "any preference be given by law to any religious establishments or mode of worship," and it is forbidden that any money be drawn from the treasury for the "benefit of religious societies or religious or

theological seminaries." (*State Constitution, Article I, Sec. 18.*)

§ 51. The Constitution also forbids any religious test as a qualification for any office or public trust under the State, and declares that "no person shall be rendered incompetent to give evidence in any court of law or equity in consequence of his opinions on the subject of religion." (*Ib., Sec. 19.*)

§ 52. By the fundamental law of Minnesota, after expressing gratitude to God for civil and religious liberty, it is declared that "the right of man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect or support any places of worship, or to maintain any religious or ecclesiastical ministry against his consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship." It is provided, however, that the "liberty of conscience by the bill of rights secured," shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State;" and further, that no money shall be drawn from the treasury "for the benefit of any religious societies, or religious or theological seminaries." (*State Const., Art. I, Sec. 16.*)

§ 53. It is further declared by the Constitution that "no religious test or amount of property shall ever be required as a qualification for any office of public trust under the State," nor as a "qualification of any vote at any election" in the State; and still further, that no person shall be "rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of

religion." It will be observed that these provisions are almost precisely similar to those of the State of Wisconsin on the same subject. (*Ib.*, *Sec.* 17.)

§ 54. In the State of Iowa, after an expression of gratitude to the "Supreme Being for the blessings hitherto enjoyed," and acknowledging "dependence on Him for a continuation of those blessings," the people, by their Constitution, proceed to ordain, among other things, that "the General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, nor shall any person be compelled to attend any place of worship, pay tithes, taxes or other rates for building or repairing places of worship, or for the maintenance of any minister or ministry." (*State Const.*, *Art.* XI; *Bill of Rights*, *Sec.* 3.)

§ 55. The Constitution further ordains that "no religious test shall be required as a qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion." (*Ib.*, *Sec.* 4.)

§ 56. By the declaration of rights in Missouri it is asserted that "all men have a natural and indefeasible right to worship Almighty God, according to the dictates of their own consciences; that no man can be compelled to erect, support or attend any place of worship, or to maintain any minister of the gospel or teacher of religion; that no human authority can control or interfere with the rights of conscience; that no person can ever be hurt, molested or restrained in his religious professions or sentiments, if he do

not disturb others in their religious worship." (*State Constitution, Art. XI, Sec. 4.*)

§ 57. The Constitution also declares that "no person, on account of his religious opinions, can be rendered ineligible to any office of trust or profit" under the State; that "no preference can ever be given by law to any sect or mode of worship; and that no religious corporation can ever be established" in the State. It is also asserted that "no religious sect or society should be permitted to accumulate or hold in mortmain large bodies of land or other property," and that "all extensive ecclesiastical perpetuities are dangerous to liberty." But it is provided that "any religious society may hold, in any assumed name, so much land as may be necessary for a house and buildings for public worship—for a parsonage, and for a burying-ground;" though "no congregation, for such purposes, shall own more than one acre of land." (*Ib., Sec. 5.*)

§ 58. In the State of Kansas it is declared that "the right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship;" and that "no religious test or property qualification shall be required for any office of public trust, nor for any vote at any election;" and still further, that no person shall be "incompetent to testify on account of religious belief." (*State Const., Bill of Rights, Sec. 7.*)

§ 59. In California it is declared that the "free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed" in

the State, and that "no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief;" but that "the liberty of conscience" by the Constitution "secured, shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace or safety" of the State. (*State Const., Art. I, Sec. 4.*)

§ 60. The provision of the Constitution of the new State of Nevada, upon the subject of religious toleration, is an exact transcript of section four of article one of the State of California, with the further provision that the legislature shall pass no special acts relating to corporate powers, except for municipal purposes, though corporations may be formed under general law which may, from time to time, be altered or repealed. (*State Const., Art. I, Sec. 4, and Art. VIII, Sec. 1.*)

§ 61. By the organic law of Oregon "no person demeaning himself in a peaceable and orderly manner" could ever be "molested upon account of his mode of worship or religious sentiments," though "religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education" should "forever be encouraged." But by the present Constitution of the State, the greatest freedom of conscience is secured, and an effectual barrier is interposed against the institutions of religion ever receiving any patronage from the commonwealth. All men are "secured in their natural right to worship Almighty God according to the dictates of their own consciences;" and no law can in "any case what-ever control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience;" neither can any "religious test" be required as "a qualification for any office of trust or profit." It is also provided that "no

money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the legislative assembly." (*Organic Law, Art. I, Secs. 1 and 3; State Const., Art. I, Secs. 2, 3, 4 and 5.*)

CHAPTER V.

RELIGIOUS LIBERTY—STATE CONSTITUTIONS—THE SOUTHERN STATES—TOLERATION IN THE STATES, AN ISSUE OF PROVIDENCE.

§ 62. By the "Declaration of Rights made by the Representatives of the good people of Virginia, assembled in full and per convention," it is declared, among other things, as the "basis and foundation of government," that religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other." (*State Constitution, Bill of Rights, Sec. 16.*)

§ 63. In North Carolina the Constitution declares that "there shall be no establishment of any one religious church or denomination" in the State, "in preference to any other; neither shall any person, on any pretense whatever, be compelled to attend any place of worship contrary to his own faith or judgment, nor be obliged to pay for the purchase of any glebe, or the building of any house of worship, or

for the maintenance of any minister or ministry, contrary to what he believes right, or has voluntarily and personally engaged to perform; but all persons shall be at liberty to exercise their own mode of worship," provided that nothing contained in that declaration is to be "construed to exempt preachers of treasonable or seditious discourses from legal trial and punishment." (*State Const., Art. XXIV.*)

§ 64. It is also peremptorily declared that "no person who shall deny the being of God, or the truth of the Protestant religion, or the divine authority of either the Old or New Testament, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office, or place of trust or profit, in the civil department" within the State. (*Ib., Article XXII.*)

§ 65. By the Constitution of the State of South Carolina it is provided that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference," shall forever be allowed within the State "to all mankind;" provided, however, that the liberty of conscience thereby declared "shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety" of the State. Rights, privileges, immunities and estates of religious societies are, however, recognized by the Constitution. (*State Const., Art. VIII, Secs. 1 and 2.*)

§ 66. In the Georgia State Constitution it is ordained that "no person within the State shall, upon any pretense, be deprived of the inestimable privilege of worshipping God in a manner agreeable to his own conscience, nor be compelled to attend any place of worship contrary to his own faith and judgment; nor shall he ever be obliged to pay

tithes, taxes or any other rate for the building or repairing any place of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or hath voluntarily engaged to do." It is further provided that "no one religious society shall ever be established" in the State, "in preference to any other; nor shall any person be denied the enjoyment of any civil right merely on account of his religious principles." (*State Constitution, Art. IV, Sec. 10.*)

§ 67. By the Florida Constitution it is declared that "all men have a natural and inalienable right to worship Almighty God according to the dictates of their own conscience; and that no preference shall ever be given by law to any religious establishment or mode of worship," in the State. (*State Const., Art. I, Sec. 3.*)

§ 68. In the State of Alabama it is declared that no person within the State shall, upon any pretense, "be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience, nor be compelled to attend any place of worship; nor shall any one ever be obliged to pay any tithes, taxes or other rates, for the building or repairing any place of worship, or for the maintenance of any minister or ministry." (*State Const., Art. I; Declaration of Rights, Sec. 3.*)

§ 69. It is further declared that "no human authority ought, in any case whatever, to control or interfere with the rights of conscience," and also that "no person shall be hurt, molested or restrained in his religious profession, sentiments or persuasion provided he does not disturb others in their religious worship." (*Ib., Secs. 4 and 5.*)

§ 70. The Constitution also declares that the "civil rights,

privileges or capacities of any citizen shall in no way be diminished or enlarged on account of his religious principles;" and, still further, that "there shall be no establishment of religion by law," and that "no preference shall ever be given by law to any religious sect, society, denomination or mode of worship;" and also that "no religious test shall ever be required as a qualification to any office or public trust" under the State. (*Id.*, *Secs. 6 and 7.*)

§ 71. The Constitution of the State of Kentucky, like that of Illinois, and in similar language, asserts that "all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences: that no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent: that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship." And further, that "the civil rights, privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion." (*State Const., Art. XIII, Secs. 5 and 6.*)

§ 72. So, also, in similar language, the Constitution of Tennessee asserts that "all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience: that no man can, of right, be compelled to attend, erect or support any place of worship, or to maintain any minister against his consent: that no human authority can, in any case whatever, control or interfere with the rights of conscience: and that no preference shall ever be given, by law, to any religious establishment or mode of worship;" and further, that no religious test shall ever be required as a qualification to any office or

public trust under the State. (*State Const., Art. I, Secs. 3 and 4.*)

§ 73. By the Constitution of the State of Mississippi it is declared that "the exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons" in the State, with the proviso, however, that the right thus declared and established "shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State," and also that "no preference shall ever be given by law to any religious sect or mode of worship." (*State Const., Art. I, Secs. 3 and 4.*)

§ 74. By the old Constitution of Louisiana, no special provision is found upon the subject of religious toleration, and of course, therefore, all they have there is the ample guarantee contained in the Constitution of the United States. In fact, it has been judicially determined that in framing the Constitution of the State it was deemed unnecessary to insert any restriction upon the power of the legislature on the subject of religious freedom, as it had already been settled by solemn compact between the original States and the people of the territory, unalterable but by common consent under the act of Congress of March 2, 1805, and in conformity with the ordinance of July 13, 1787, that religious freedom, in its broadest sense should form the basis of all laws, constitutions and governments, which forever after might be passed within said territory. (*Church of St. Louis v. Blanc, 8 Rob. R. 52.*)

§ 75. The provision of the Constitution of the State of Arkansas, upon the subject of religious toleration, is an exact transcript of that contained in the Constitution of the State of Kentucky, and need not be repeated in this section.

(*State Constitution, Art. XI; Declaration of Rights, Secs. 3 and 4.*)

§ 76. The provision of the Constitution of the State of Texas upon the subject is substantially the same as that of the States of Kentucky and Arkansas, with the further provision that "it shall be the duty of the legislature to pass such laws as shall be necessary to protect every religious denomination in the peaceable enjoyment of their own mode of public worship." (*State Constitution, Art. I, Secs. 3, 4 and 5.*)

§ 77. It will be observed that there is a similarity of language and thought running through all the Constitutions of the States upon the subject of religious toleration, and yet the disparity of phraseology and sentiment is sufficient to make it impossible to give a correct idea of the matter without grouping together their various provisions. It is hoped that the subject will not be found without interest and profit, and that the advantage and satisfaction derived may compensate for the limited space occupied.

§ 78. Religious toleration in the United States may be regarded as an issue of Providence, rather than a settled conviction of right. The Colonists had witnessed, and many of them felt, the edge of persecution to its utmost keenness in the mother country, by reason of non-conformity to the national religion; yet, when fully established in the new world, each sect or denomination felt it of vital importance that *they* should be free, but that the miserable miscreants who differed from them might, with the strictest propriety, be deprived of the privileges of society. While the Colonies were independent of each other in respect to their domestic concerns, they had no difficulty in maintaining their distinctive idea, and substantially connecting the civil

power with religious opinions. But the moment they were threatened with dangers from abroad, and a union of the colonies for mutual defense was apparently their only salvation, they began to realize how difficult it would be for the Congregationalists or Independents of New England, and the Presbyterians of New Jersey, the Roman Catholics of Maryland and the Episcopalians of the South to unite upon any common platform of ecclesiastical view. So, in the actual situation of things, the Colonists were obliged to form a union, upon the basis of toleration in all matters of religion and worship; and thus, under the workings of Divine Providence, religious liberty is now universally enjoyed, and the settled theory of the government is, to avoid the slightest interference with the rights of conscience or the functions of religion.

CHAPTER VI.

RELIGIOUS TOLERATION BEFORE THE REVOLUTION—THE COLONIAL CHARTERS AND LAWS.

§ 79. Though the free exercise and enjoyment of religious profession and worship is now regarded as one of the absolute rights of individuals in the United States, and is recognized as such in the Federal and State Constitutions, and secured to them by law; and, though the principle is generally asserted without qualification or limitation, excluding every species of religious test, the fact was far otherwise, as has been before intimated, prior to the American Revolution, and especially in colonial times. This right was greatly restricted by the charters and laws of many of the colonies.

§ 80. By an order of the General Court of Massachusetts in 1631, it was provided that no persons should be admitted to the freedom of the commonwealth, or should have the political rights of freemen, who were not members of some orthodox church in the State. So, also, in that part of Connecticut which, until 1665, constituted the separate New Haven Colony, the early settlers established and enforced by law a uniformity of religious doctrine and worship, and made it requisite that every person holding a civil office should be a church member. (1 *Kent's Com.*, 7th ed., 645; 1 *Trumbull's Hist. of Conn.* 100; See also *Beebe v. Fales*, 16 *Mass. R.* 498.)

§ 81. By the declaratory act of East New Jersey, in 1698, religious liberty was confined to the Protestant professors of the Christian faith. And, in 1693, the legislature of West New Jersey prescribed a confession of faith as a condition of holding office, and that confession contained the declaration of a belief in the doctrine of the Trinity, according to the highest toleration act of 1689. So by the charter of liberties established by the General Assembly of the Province of New York, under the Duke of York, in 1683, complete enjoyment of religious doctrine and worship was granted only to persons who "professed faith in God by Jesus Christ." (1 *Kent's Com.* 647, and authorities cited in notes a and b.)

§ 82. In the code of laws or charter of privileges, prepared by William Penn. for Pennsylvania, in 1701, and adopted by the first Provincial Assembly, it was declared that no persons acknowledging a Deity, and living peaceably and quietly in society, should be molested or prejudiced for their religious persuasion or practice in faith and worship, or be compelled to frequent or maintain any religious ministry or worship. This liberal provision extended to all professing

Christians, both Catholic and Protestant, but it evidently excluded Atheists and Infidels. (*Ib.*)

§ 83. By the Constitution of 1776, of North Carolina, no person denying the divine authority of the Old and New Testaments, or the truth of the Protestant religion, could hold a civil office, and this restriction remained until the Constitution was amended in 1835, when the word Protestant was omitted and the word Christian substituted. The first excluded from office Catholics, as well as Atheists and Infidels. So, also, in Maryland, said to be the first of the American States in which toleration was established by law, it was declared by the Legislature, in 1649, that "no persons professing to believe in Jesus Christ should be molested in respect to their religion, or in the free exercise thereof, or be compelled to the belief of any other religion, against their consent," thereby limiting religious toleration to trinitarian Christians. (*Ib.*, and *Bacon's Laws of 1649, Ch. 1.*)

§ 84. On the other hand, the charter of Rhode Island, of 1663, contained the extraordinary liberal declaration, for that early period, that "no persons within the Colony, at any time thereafter, should be in any wise molested, punished, disquieted or called in question for any differences in opinion in matters of religion, who do not actually disturb the civil peace of the Colony." Roger Williams, the founder of the State, in 1636, unquestionably prepared the way for this unexampled declaration of the rights and sanctity of conscience. (1 *Kent's Com.* 645.)

§ 85. The proprietaries of Carolina, for the better encouragement of settlers, declared, concurrently in point of time with the Rhode Island charter, that all persons settling therein should enjoy the most perfect freedom in religion; and the charter of Charles II, of June 30, 1667, to the pro-

prietaries, authorized them to grant religious liberty of conscience and practice to non-conformists who did not thereby disturb the civil peace of the Province. So, also, Lord Berkeley and Sir George Calvert, the proprietaries of New Jersey, in their concessions to the settlers of 1664, of a charter of civil liberties, secured to them the full and perfect enjoyment of religious liberty, by adopting the same language as that used in the charter of Rhode Island; and the fundamental Constitutions of the twenty-four proprietaries, in 1683, reiterated the right to the same unqualified freedom of religious profession and worship. In the Jerseys and Carolinas, however, a more restricted policy was subsequently adopted. (*Ib.*, 646.)

§ 86. It is quite obvious, therefore, that some of the colonial governments provided for the enjoyment of religious liberty in the largest sense, as allowing every man the free exercise and enjoyment of religious profession and worship, without discrimination or hindrance; and, from the illustrious examples referred to, it appears that "various portions of this country became, even in its infant state, distinguished asylums for the enjoyment of the principles of civil and religious freedom by the persecuted votaries of those principles from all parts of the Old World." (*Ib.*, 647, and *note c.*)

CHAPTER VII.

THE ENGLISH ECCLESIASTICAL LAW—ITS RELATION TO THE COLONIES—ITS NATURE AND ORIGIN—ECCLESIASTICAL COURTS.

§ 87. Among the many other things brought by our forefathers from the mother country, was the English Ecclesiastical Law, and so far as it was adapted to the situation of the colonies, it became the basis of the colonial law. It entered prominently into the policy of the first settlers, and even now has an actual force and operation in the system of the Protestant Episcopal Church, and its influence is more or less felt throughout all the American churches.

§ 88. The English Ecclesiastical Law is the public and general code of rules and regulations of the established church. It covers the entire ecclesiastical polity of the Church of England, taking cognizance not only of ordinary matters of discipline, but of numerous crimes committed against the decrees and ordinances of ecclesiastical authority. The canon law of England has not always been uniform. Many regulations once in full force, have been modified or abrogated. As to the origin of this code, there is a difference of opinion. That, as well as its nature, may be ascertained from the doctrines and decisions of English Jurists.

§ 89. Concurrent with the settlement of England, they had their Ecclesiastical Courts, which took jurisdiction of all matters of an ecclesiastical nature. These courts were sometimes called Courts Christian—"*curiae christianalis*." The first was the Archdeacon's Court, held by the Archdeacon, or in his absence, by a judge appointed by himself, called his official. Next was the Consistory Court of the

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diocesan bishop, for the trial of ecclesiastical cases arising in the diocese. Then came the Court of Arches, which was the court of appeal, belonging to the Archbishop of Canterbury; and the Court of Peculiars, a branch of, and annexed to, the Court of Arches. Next the Prerogative Court, established for the trial of testamentary cases, where the testator left movable property in two dioceses. And then the great Court of Appeal, consisting of delegates appointed by the king's commission under his great seal, and issuing out of chancery, to represent his royal person, to which all ecclesiastical cases could be appealed. And finally, was a Commission of Review sometimes granted, in extraordinary cases, to review or revise the sentence of the Court of Delegates. Besides these, there were certain other Ecclesiastical Courts, having only a *voluntary*, and not a *contentious* jurisdiction, and were merely concerned in doing or selling what no one opposed, but did not concern themselves with administering redress to any injury. (3 *Blackstone's Com.*, 62-68.)

§ 90. In regard to the Ecclesiastical Law, Chief Justice HALE said: "I conceive that when Christianity was first introduced into this land, it came not without some form of external ecclesiastical discipline or coercion, though at first it entered into the world without it; but that external discipline could not bind any man to submit to it, but either by force of the supreme civil power where the governors received it, or by the voluntary submission of the particular persons that did receive it; if the former, then it was the civil power of the kingdom which gave that form of ecclesiastical discipline its life; if the latter, it was but a voluntary pact or submission which could not give its power longer than the party submitting pleased; and then the king allowed, connived at, and did not prohibit it; and thus by degrees, introduced a custom whereby it became equal to

other customs and usages." (2 *Atkyns*, 699, cited by Lord Hardwicke.)

§ 91. Lord COKE says: "So albeit the kings of England derived their ecclesiastical laws from others, yet so many as were proved, approved and allowed herein, and with a general consent, are aptly and rightly called the king's ecclesiastical laws of England;" and Justice WHITLOCK observes: "There is a common law ecclesiastical, as well as our common law, *jus commune ecclesiasticum*, as well as *jus commune laicum*." (*Cowdry's Case*, 5 *Coke's Rep.*, 33.)

§ 92. Chief Justice TINDAL endeavors to show that the law by which the spiritual courts of the kingdom have been governed from the earliest time, "is not the general canon law of Europe, imported as a body" into the kingdom, and "governing those courts *proprio vigore*, but instead thereof, an ecclesiastical law, of which the general canon law is no doubt the basis, but which has been modified and altered from time to time by the ecclesiastical constitutions" of the "Archbishops and Bishops, and by the Legislature of the Realm, and which has been known from early times by the distinguishing title of the King's Ecclesiastical Law. That the canon law of England does not, nor never did, as a body of laws, form part of the law of England, has been long settled and established." (*Queen v. Mills*, 10 *Clarke and Finally*, 678.)

§ 93. Spelman, in his learned treatise, says: "The canon law as adopted here—the national and provincial councils—all these together, as they have been heretofore in use, and are not repugnant to the laws and religion of the kingdom, or repealed by the statutes of Henry VIII, or of later times against papal usurpation, are still in force, as I conceive." (*De Sepultura*, 179.)

§ 94. The ecclesiastical courts of England take, or formerly did take, cognizance of pecuniary cases, which arise, or arose, either from the withholding ecclesiastical dues, or the doing or neglecting some act relating to the church, whereby damage accrues, such as subtraction or withholding of tithes from the parson or vicar, neglect of reparations of the church, church-yard and the like; also in matrimonial cases, and injuries respecting the rights of marriage, including actions for divorce, and for restitution of conjugal rights, and also in testamentary causes, and cases of intestacies. In most of these actions and cases the courts of common law have jurisdiction, but the spiritual courts have, or formerly did have, an undisturbed jurisdiction in them all. (3 *Black. Com.* 87-103.)

§ 95. So long as this country was subject to Great Britain, the colonists were governed by the general laws of the mother country, so far as those laws were applicable to their situation and condition, and they thus became, and were, the unwritten law of the colonies, until altered by common consent, or legislative enactment. This is a natural presumption, and therefore adopted as a rule of law. (*De Ruyter v. The Trustees of St. Peter's Church*, 3 *Barb. Ch. R.* 119.)

§ 96. By the English ecclesiastical law, all persons not prohibited by the law of God as revealed in the eighteenth chapter of Leviticus, have liberty to marry, but their marriage must be contracted and solemnized in the face of the church. The law of marriage in the United States is substantially the same, though the degrees within which marriage is forbidden, are prescribed by legislative enactment. In most of the States, marriage is regarded as a civil contract, and it is valid, though not solemnized in the presence of officer or minister. All that is necessary for its validity

is the deliberate consent of competent parties, entering into a *present* agreement to take each other for husband and wife. (*Clayton v. Wardell*, 4 *Comst.* 230.)

§ 97. The marriage of a man with the daughter of his wife's sister, is unlawful under the statutes of England; so also the marriage of a man with the sister of the mother of the first wife; and so also a marriage by an uncle with a niece, is prohibited by the precept which forbids a nephew to marry his aunt. Though a marriage with the wife of a great uncle was held valid, because not within the fourth degree, the Judge declaring that "but for the provisions of the statute it would be difficult to prove that they were civilly debarred by the Levitical decrees in respect to the lawfulness of marriages, unless the prohibition was also clearly dictated by the natural law." (*Harrison v. Burwell, Vaughan's Rep.* 206.)

§ 98. The statutes and judicial decisions of the several States do not go to the extent of the English authorities in all cases, although the rubrics of the Protestant Episcopal Church, and the rules and regulations of the other American churches on these subjects, agree pretty generally with the rule as established by the English Ecclesiastical Courts. Whether a man shall be permitted to marry his deceased wife's sister, is not fully settled by the ecclesiastical tribunals of England, or of this country, though the better opinion is adverse to such marriage.

§ 99. We have no ecclesiastical establishment in the United States, nor ecclesiastical courts, as in England, but all matters and cases cognizable by the English Spiritual Courts are here conveniently and properly disposed of in the Surrogates', Probate, and common law courts.

CHAPTER VIII.

RELIGIOUS SOCIETIES—WHAT IS A RELIGIOUS SOCIETY—WHAT A RELIGIOUS CORPORATION—WHAT AN ECCLESIASTICAL CORPORATION—HISTORY OF RELIGIOUS CORPORATIONS—HOW CREATED.

§ 100. A religious society is a voluntary association of individuals or families, taking a lively interest in the advancement of religion, united for the purpose of having a common place of worship, and to provide a proper teacher to instruct them in religious doctrines and duties, and to administer the ordinances of the church with which it is connected, or which may be accepted by the members composing the association, and generally to support the cause of morality and religion in the place where the society is formed. Although a church or body of professing Christians, is almost uniformly connected with a religious society, the members of the church have no other or greater rights than any other members of the society, who statedly attend with them for divine worship. (*Baptist Church in Hartford v. Witherell*, 3 *Paige*, 296.)

§ 101. The church is altogether a different body from that of the society, and we have but little to consider with reference to the church in its distinctive capacity, in a treatise upon the law of religious societies, though the matter will be referred to in another place, when the discipline and government of the several churches will be briefly explained. Over the church, as such the legal and temporal tribunals do not in general profess to have any jurisdiction whatever, except so far as is necessary to protect the civil rights of others, and to preserve the public peace. All questions

relating to the faith and practice of the church and its members, belong to the church judicatories themselves. (*Ib.*)

§ 102. The only religious societies recognized in law, are those which are incorporated, and thereby become bodies corporate, by special charters, or under the general incorporating act of a State. It has however been held that property may be granted to individuals for the use of a church not incorporated, in such a way as that when the society may be incorporated, it can take and hold it. It has also been held that trustees *de facto* of a religious society unincorporated, may maintain an action against a *trespasser* for an injury to the meeting house of the society. And in one case it was held that a bequest directly to an unincorporated Roman Catholic Church being of a highly meritorious character, and the objects of it being clearly expressed, should be sustained in a court of equity. The soundness of this doctrine, however, may well be questioned, within the principles enunciated in later cases in the Court of Appeals of the State of New York. But where there is no local statute contravening, property may be held by the trustees for the use and benefit of an unincorporated religious society, under the rule that, at common law, property may be granted to pious uses before there is a grantee in existence, competent to take it, in the meantime the fee being in abeyance. But an unincorporated religious society can neither hold or convey property, and in its collective capacity has no powers or rights whatever. (*Reformed Dutch Church of Schenectady v. Veeder*, 4 Wend. 494; *Green v. Cady*, 9 Wend. 414; *Banks v. Phelan*, 4 Barb. S. C. R. 80.)

§ 103. A religious corporation is an intellectual body politic, created by law, composed of several individuals, whose principal object is, to establish and regulate the congregation of a religious denomination, acting under a common

name, and endowed with perpetual succession, and vested with the capacity of acting in many respects, however numerous the association may be, as a single person. Like other bodies corporate, it is "an artificial being, invisible, intangible, and exists merely in idea, and has neither soul nor body," and cannot be deemed a moral agent, subject to moral obligation or personal suffering. It is reported that Chief Baron Manwood demonstrated that corporations have no souls, by the following curious syllogism: "None can create souls but God; but a corporation is created by the King; therefore a corporation can have no soul." (*Angell & Ames on Corporations*, § 7.)

§ 104. An ecclesiastical corporation in English law is, a body corporate, whose members are spiritual persons; and the object of the institution is also spiritual. The late Chancellor KENT, in his excellent Commentaries on American Law, denominates our religious corporations, ecclesiastical. Notwithstanding the high authority of this remark, technically speaking, it is probably incorrect, and particularly under the laws of New York. The Court of Appeals of this State, in an able and logical opinion, has decided that an incorporated religious society, under the statutes and laws of New York, does not belong to the class of ecclesiastical corporations, in the sense of the English law, but is to be regarded as a civil corporation, and governed by the ordinary rules of the common law. This is an important distinction in determining the powers and functions of the religious corporation. (*Robertson v. Bullions*, 11 N. Y. Rep. 243; 2 Kent's Com. 274.)

§ 105. Although a religious corporation, in some of its objects, embraces matters of a public nature, it is nevertheless regarded in law as a private body, in contradistinction to corporations relating to towns, counties, cities and parishes,

existing for public purposes; and the religious corporation is governed in general by the same rules which control other private civil corporations.

§ 106. Corporations to promote religious objects have existed from a very early period; perhaps as early as corporations of any other character. According to Sir WILLIAM BLACKSTONE, the honor of inventing political associations for the advancement of religion, learning and commerce, belongs to the Romans; BLACKSTONE asserts upon the authority of Plutarch, that they were introduced by Numa, who finding, upon his accession, the city torn to pieces by the two rival factions of Sabines and Romans, thought it a prudent and politic measure to subdivide these two into many smaller ones, by instituting separate societies of every manner of trade and profession. They were afterwards much considered by the civil law, in which they were called *universitates*, as forming one whole out of many individuals; or *collegia*, from being gathered together. They were adopted also by the canon law, for the maintenance of ecclesiastical discipline. (1 *Black. Com.*, 469.)

§ 107. From these ancient societies of the Romans, the English spiritual corporations were undoubtedly derived. though the laws of England have considerably refined and improved upon the original invention, according to the usual genius of the English nation; and there is no doubt that the American idea of religious societies is based upon the principle of the ecclesiastical corporation. Such, at all events, would seem to be the opinion of text writers upon the subject.

§ 108. Corporations, religious and others, by the civil law, according to BLACKSTONE, were created by the mere act and voluntary association of their members, provided the

convention was not contrary to law. If it were contrary to law, it was regarded as *illicitum collegium*—an illegal college or society, and the association was prohibited. The prince's consent was not actually necessary for the foundation of them, although a sharp lookout was exercised, to the end that the founders should not establish any meetings in opposition to the laws of the State. (1 *Black. Com.*, 472.)

§ 109. In England, the consent of the sovereign, express or implied, must in all cases, be given to the religious corporation. The king's implied consent is to be found in such corporations as exist by force of the common law, to which former kings are supposed to have given their concurrence; common law being nothing else but custom, arising from the universal agreement of the whole community. The king's consent is also presumed in cases of such ecclesiastical corporations as have existed as corporations, time whereof the memory of man runneth not to the contrary, and they are therefore looked upon in law to be well created. (*Ib.*, 473.)

§ 110. In the United States, corporations of all kinds, including of course religious corporations, are created by authority of the legislature, and not otherwise. Sometimes religious societies are incorporated here by special charters, but more frequently, under general incorporating laws. There are several religious corporations, however, existing in this country, which owe their origin, under the colony administration, to the English crown; and Chancellor KENT thinks there is no doubt that corporations, as well as other private rights and franchises, may also exist in this country by prescription; which presupposes, and is evidence of a grant, where the acts and proceedings on which the presumption is founded, could not have lawfully proceeded from any other source. There are but few cases here, however, where legislative authority cannot be shown and pro-

duced. Those to the contrary are the exceptions, and are exceedingly limited. (2 *Kent's Com.* 277.)

§ 111. When the corporation is created by act of the legislature, it requires the acceptance of the charter to create the body corporate; for it has been justly remarked, that the government cannot compel persons to become an incorporated body without their consent, or the consent of, at least, the major part of them. The acceptance, however, may be inferred from the acts of the corporators, and no written instrument or vote of acceptance is necessary, unless it is specially made so by the act of incorporation. (*Ib.*)

§ 112. In New York, Ohio, and most others of the United States, statutes have been enacted, providing generally for the incorporation of religious societies, in an easy and popular manner, thus saving the delay, trouble and expense of an application to the law-making power, in each individual case. Care must be exercised in all these cases, to comply with the requisitions of the appropriate statute, in order that the society may acquire the rights of a corporation. The law of each State will be given in a plain and intelligible manner in the course of this work.

CHAPTER IX.

RELIGIOUS SOCIETIES IN THE STATE OF NEW YORK—INCORPORATION OF PROTESTANT EPISCOPAL CHURCHES—ELECTION OF THEIR OFFICERS—FORM OF PROCEEDING.

§ 113. Trinity Church, of the city of New York, and a few other Protestant Episcopal churches of the State, exist under special charters, but most of the churches or societies

of this denomination in the State of New York have been organized under the general incorporating acts passed from time to time by the State legislature. The manner of proceeding is specially pointed out in these acts.

§ 114. A Protestant Episcopal church may be incorporated by the male persons of full age, belonging to any church, congregation or religious society, in which divine worship shall be celebrated according to the rites of the Protestant Episcopal church in the State, at a meeting of such persons assembled pursuant to legal notice, for the purpose of incorporating themselves under the general law of the State, and taking such action as is specified in the act. (*Laws of 1813, Ch. 60, Sec. 1; Laws of 1819, Ch. 33, Sec. 1; 3 Statutes at Large, 687-696.*)

§ 115. Notice of the meeting must be given in the time of morning service, on two Sundays previous to such meeting, by the rector, or if there be no rector, then by any other person belonging to the church or congregation, stating distinctly the time, place and object of the meeting. The meeting should convene pursuant to the notice, and organize by the rector taking the chair, or if there be no rector, or he be necessarily absent, then by one of the church wardens, or vestrymen, or any other person called to the chair, occupying the chair, who will preside over the meeting. The persons entitled to vote, according to the terms of the last preceding section, may then proceed to elect two church wardens and eight vestrymen, and determine on what day of the week called Easter week, the said offices of church wardens and vestrymen shall annually thereafter cease, and their successors in office be chosen; and also agree upon the name or title by which their church or congregation shall be known in law; all of which must be done by a majority of the voices entitled to vote. (*Id.*)

§ 116. The rector or other person presiding at the election, with two other persons present at the meeting, must make a certificate under their hands and seals, stating the names of the church wardens and vestrymen so elected, the day of Easter week so fixed on for the annual election of their successors, and the name or title by which such church or congregation shall be known in law. (*Ib.*)

§ 117. The certificate may be in the following form:—

STATE OF NEW YORK, }
County of Oswego, } ss.

We, the undersigned, the rector (or the person called to the chair and presiding), and two persons present at the meeting and election hereinafter mentioned, do certify that on the day of instant, the male persons, of full age, belonging to a congregation (or church, or religious society) in the town of , in said county of Oswego, and who have not been already incorporated, met at Grace Church (or the place of public worship), heretofore occupied by them, in the town of aforesaid, for the purpose of incorporating themselves, and did then and there elect, by a majority of voices, A. B. and C. D. as church wardens, and E. F., &c., &c., as vestrymen for the then ensuing year; and the said persons did then and there also determine, by the like majority of voices, that the said offices should annually thereafter cease on of Easter week, and that the said church should thereafter be known as "Grace Church" of the town of , county of Oswego and State of New York (or "Zion Church, Fulton").

Witness our hands and seals this day of , 18 .

Signed and sealed }
in presence of }

G. H.

J. O., *Rector (or Chairman)*, [L. S.]
K. L., [L. S.]
M. N., [L. S.]

§ 118. The certificate must be duly acknowledged or proved before some officer authorized to take acknowledg-

ments or proofs of conveyances of real estate, and then recorded by the clerk of the county where the church or place of worship of such congregation may be situated, in a book by him provided for that purpose; whereupon the church wardens and vestrymen so elected, and their successors in office of themselves, but if there be a rector, then together with the rector of such church or congregation, will form a vestry, and be the trustees of such church or congregation; and such trustees, and their successors, thereupon become a body corporate, by the name or title expressed in such certificate. (*Statutes last cited.*)

§ 119. It is advisable that the certificate be quite full, so as to show that all the statutory requirements have been followed, material to the due incorporation of the church or congregation; though the omission of facts not specifically required by the statute to be put in the certificate will not vitiate it, and particularly after the church or congregation have acted under their organization, for any considerable length of time. In such a case, every *general* requisite to the due creation of the corporation will be intended or presumed.

§ 120. In accordance with the doctrine above stated, it has been held that, when the certificate showed that the rector did not preside at the first election, but did not show that he was "necessarily absent," in the language of the statute, the church having gone on for five years, claiming to be a corporation, and holding and enjoying property as such, the omission was immaterial, and that the absence of the rector would be intended, if such were necessary to give validity to the corporation. (*All Saint's Church v. Lovett*, 1 *Hall's Sup. C. R.* 191.)

§ 121. It may be proper to remark that the *record* of the

certificate of incorporation, is not evidence of the fact of incorporation. The statute which directs the mode of proceeding to incorporate religious societies does not make the record evidence, as the record of deeds when recorded is evidence. The certificate must be proved and recorded before the society becomes incorporated, but when necessary to establish the fact of incorporation, the original certificate must be produced, or its non-production accounted for. This, it seems, cannot be dispensed with. (*Jackson v. Leggett*, 7 *Wend.* 377.)

§ 122. The male members of the church or congregation qualified to vote at such election must meet in every year after such first election, on the day in Easter week so fixed for that purpose, and elect the church wardens and vestrymen of the society or church; and, whenever a vacancy shall happen before the stated annual election, by death, removal or otherwise, the trustees must appoint a time for holding an election to supply the vacancy, of which notice must be given in the time of divine service, at least ten days previous to the proposed election. (*Statutes last cited.*)

§ 123. Only the following persons can vote at any election subsequent to the first: the male persons of full age of such church, congregation or society who have belonged to the same for the last twelve months preceding such election, and who have been baptized in the Episcopal church, or have been received therein, either by the rite of confirmation, or by receiving the holy communion, or by purchasing or hiring a pew or seat in said church, or by some joint act of the parties and the rector, whereby they shall have attached themselves to the Protestant Episcopal church. (*Id.*)

§ 124. The stated annual elections, and also those to fill

vacancies, must in every case be holden immediately after the morning service; and at all such elections the rector, or if there be none, or he be absent, one of the church wardens or vestrymen must preside and receive the votes of the electors, and be the returning officer, and must enter the proceedings in the book of the minutes of the vestry, and sign his name thereto, and offer the same to as many of the electors present as he may think proper, to be by them also signed and certified. (*Id.*)

§ 125. The election of these officers would undoubtedly be valid, although the requirements of the statute in respect to the *notice* of such election were not fully complied with, provided the election were fairly conducted, and there was no complaint of want of notice. The certificate of election will be received in evidence in an action brought to test the validity of the election of such officers, although such certificate were not made out until some time after the election. (*The People v. Peck*, 11 *Wend.* 604.)

§ 126. The following form of the certificate of election of church wardens and vestrymen may be used:—

This is to certify, that at the stated annual election of church wardens and vestrymen for "Zion Church, Fulton," held at the church (*or* place of public worship of said church) immediately after the morning service on the day of 18 , the following persons were duly elected by a majority of voices entitled to vote: A. B. and C. D. as church wardens, and E. F., &c., as vestrymen, for the ensuing year.

Witness our hands at Fulton, this day of 18 .

G. H., *Rector.*

I. J., }
K, L., } *Electors.*

[If the election was to fill a vacancy, the certificate can be varied accordingly.]

§ 127. The church wardens and vestrymen chosen at any election, hold their offices respectively, until the expiration of the year for which they are chosen; and they have power, among other things, to call and induct a rector to the church or congregation, as often as a vacancy occurs. (*Laws of 1813, Ch. 60, Sec. 1, &c., before cited.*)

§ 128. No meeting or board of such trustees can be held, unless at least three days' notice thereof be given in writing, under the hand of the rector or one of the church wardens; and no such board is competent to transact any business unless the rector, if there be one, and at least one of the church wardens, and a majority of the vestrymen be present. The rector, if there be one, and if not, then the church warden present, or if both of the church wardens be present, then the church warden who may be called to the chair by a majority of voices, must preside at the meeting or board, and have the casting vote. (*Ib.*)

§ 129. Should the church or congregation omit or neglect, at their stated annual meeting, to elect their church wardens or vestrymen, the church or congregation, or more properly, the religious society, will not thereby be dissolved; but those in office at the time of such omission, will be taken to be the legal officers of the church or congregation until others are elected in their stead, provided that the election to supply the omission be made within one year after its occurrence. (*Laws of 1844, Ch. 158, Sec. 3: 3 Statutes at Large, 702.*)

§ 130. The members of any church, congregation or society, qualified to vote for trustees, wardens or vestrymen, or a majority of them, may, at any stated annual meeting of the said members, appoint and fix any day in the succeeding year as the day on which the election of officers of such church,
[Tr.]

congregation or society shall be held; and the elections held on such day will be as valid to all intents and purposes as if the same had been made on the days formerly appointed for that purpose. (*Laws of 1826, Ch. 47, Sec. 3; 3 Statutes at Large, 699.*)

CHAPTER X.

RELIGIOUS SOCIETIES IN NEW YORK—INCORPORATION OF REFORMED PROTESTANT DUTCH, REFORMED DUTCH, AND REFORMED PRESBYTERIAN CHURCHES—FORM OF PROCEEDING—THE TRUSTEES.

§ 131. The minister or ministers, and elders and deacons, and if during any time there be no minister, the elders and deacons during such time, of every Reformed Protestant Dutch church or congregation established in the State of New York, and elected according to the rules and usages of such churches within the State, are made the trustees for such church or congregation, by the general incorporating act of the State. (*Laws of 1813, Chap. 60, Sec. 2; 3 Stat. at Large, 689.*)

§ 132. According to the rules and usages of the Reformed Protestant Dutch churches within the State of New York, the elders and deacons are elected on the organization of the church or congregation, by the male communicants, and subsequently by the consistory or the male communicants, and in both cases their names are published to the congregation for approval. The consistory, to which the government of the church belongs, is composed of the minister, elders and deacons, and if there be no minister, then to the elders and deacons alone. These are the officers who compose the trus-

tees of the church or congregation, and the manner of their election therefore becomes important. They hold office for two years, at the expiration of which time they may be re-elected.

§ 133. Several of the Reformed Protestant Dutch churches and congregations of the State exist as bodies corporate under special charters granted by the law-making power, but the general law affords a very convenient and economical method for the incorporation of these churches and congregations, and it is now almost invariably resorted to. Indeed, the legislature very seldom grants a special act of incorporation, except in a peculiar and extraordinary case. The constitution of the State actually forbids the creation of corporations by special act, except for municipal purposes, and in cases where in the judgment of the legislature the objects of the corporation cannot be attained under general laws; and this is rarely the case in respect to a religious corporation of any kind. (*State Const., Art. VIII, Sec. 1.*)

§ 134. The trustees of any such Reformed Potestant Dutch church or congregation may assemble together at any time they deem it convenient, and execute, under their hands and seals, a certificate declaring the name or title by which they and their successors, forever, shall be known as a body corporate, under the general incorporating act of the State. This certificate, after being executed, must be duly proved or acknowledged, and recorded in the same manner as in the case of a Protestant Episcopal church or congregation, and thereupon such trustees and their successors become a body corporate, by the name or title expressed in the certificate. (*Statutes last cited.*)

§ 135. The certificate of incorporation may be in the following form:—

church in the United States of America, may incorporate themselves in the mode and manner prescribed for the incorporation of Reformed Protestant Dutch churches, which has been explained in the preceding sections of this chapter, and to which reference is made for specific directions. (*Laws of 1825, Ch. 303, Sec. 1; 3 Stat. at Large, 698.*)

§ 138. The minister or ministers and elders and deacons, and if there be no minister at any time, then the elders and deacons of every Reformed Presbyterian church or congregation, elected according to the rules, constitution and usages of the Reformed Presbyterian churches established in the State of New York, are constituted by statute the trustees for every such church or congregation. (*Laws of 1822, Ch. 187, Sec. 1; 3 Stat. at Large, 697.*)

§ 139. The elders and deacons of the Reformed Presbyterian church or congregation are supposed to be elected in the same way as the elders and deacons of other Presbyterian churches in the United States, which is by the congregation, or, in most cases, by the baptized members of the congregation, and the officers elected must be male members, in full communion with the church in which they are to exercise their functions.

§ 140. The trustees of any Reformed Presbyterian church or congregation, not already incorporated, may become a body corporate by taking the same steps in every respect as are prescribed for the incorporation of Reformed Protestant Dutch and true Reformed Dutch churches in the State, which have been heretofore particularly described in this chapter, and to which it is only necessary that reference be made. (*Laws of 1822, last cited.*)

§ 141. So, also, when any Reformed Presbyterian church

or congregation shall, by resolution duly passed at the meeting of the church or congregation, determine that the deacons of such church or congregation shall be the trustees for such church or congregation alone, it is made lawful for the deacons of every such church or congregation to be trustees of every such church or congregation, provided they shall have been elected according to the rules, constitution and usages of the Reformed Presbyterian church, and are actively engaged in the exercise of their office in said church or congregation, and if such trustees are not already incorporated, they can become so in the mode before prescribed. (*Laws of 1866, Ch. 447.*)

CHAPTER XL

RELIGIOUS SOCIETIES IN NEW YORK—INCORPORATION OF FREE CHURCHES—FORM OF PROCEEDING—CORPORATE POWERS—THE TRUSTEES—VACANCIES, HOW FILLED—THE SEATS AND PEWS.

§ 142. Any seven or more persons, of full age, being citizens of the United States, and a majority of them residents of the State of New York, who shall associate themselves together for the purpose of founding and continuing one or more free churches, may become a body corporate, and enjoy the benefits, and be subject to the obligations of a religious corporation. In order to become incorporated, they must make and sign, and acknowledge before an officer authorized to take the acknowledgment of deeds of land, a certificate, in writing, in which must be stated the name or title by which the society shall be known in law, the purpose of its organization, and the names of seven trustees, of whom

not less than five must be persons who are not ministers of the gospel or priests of any denomination, to manage the same. It would seem that unnaturalized aliens cannot avail themselves of this provision of law, as the corporators are required to be citizens of the United States. (*Laws of 1854, Ch. 218, Sec. 1; 3 Stat. at Large, 704.*)

§ 143. The certificate may be in the following form:

STATE OF NEW YORK, {
County of Oswego, } ss.

We, whose names are hereto subscribed, and all being citizens of the United States, and a majority of us residents of the State aforesaid, do hereby certify that we have associated ourselves together for the purpose of founding and continuing a free church in the town of Volney, in the county and State aforesaid. That the name or title by which the society shall be known in the law, fixed upon by us, is "The First Swedenborgian Society of Volney." That the purpose of the organization of the said society is to sustain religious worship, and the exposition of the Scriptures; and that the following are the names of seven trustees selected to manage the same, of whom at least five are not ministers of the gospel or priests of any denomination, to wit: A. B., C. D., &c., &c.

Dated this day of , 18 .

(Signatures.)

§ 144. The certificate should be in duplicate, that is, twice made, or the original instrument copied, and each signed by all the parties, and acknowledged. It will not do as in the other cases, to prove the certificate as deeds may be proved, for the statute requires it to be *acknowledged*. The certificate of acknowledgment may be in the form of the certificate of acknowledgment of a deed, and the proper officer can readily draw it; but it must be indorsed upon each duplicate copy of the corporators' certificate. (*Laws last cited.*)

§ 145. The duplicate certificates being duly signed and acknowledged, they must then be presented to a justice of the Supreme Court of the district in which the church or society is intended to be established, or if in the city of New York, to a judge of the Superior Court of that city, for his written consent and approbation to be indorsed thereon. This consent must be indorsed upon each duplicate certificate, and signed by the justice or judge to whom it is required to be presented. (*Ib.*)

§ 146. One of the duplicate certificates thus indorsed by the justice or judge, as the case may be, must then be filed in the office of the Secretary of State, and the other duplicate must be filed in the office of the clerk of the county in which the church is to be established; whereupon the persons named in such certificate as trustees, and their successors, being citizens of the United States and residents of the State of New York, become a body politic and corporate. (*Ib.*, *Sec. 2.*)

§ 147. The society thus incorporated and their successors may have and use a common seal, and alter and change the same at pleasure; and may by their corporate name, be capable, in law, of taking, receiving, purchasing and holding real estate, for the purposes of their corporation, but for no other purpose, to an amount not exceeding the sum of fifty thousand dollars in value, and personal estate, for like purposes, to an amount not exceeding the sum of seventy-five thousand dollars; but the clear annual income of such real and personal estate must not exceed the sum of ten thousand dollars. (*Ib. and Laws of 1848, Ch. 319, Sec. 2; 3 Stat. at Large, 706.*)

§ 148. The limitation specified and contained in the last preceding section, of the value of real estate that may be

held by any society in the city or county of New York, incorporated under the foregoing provisions of this chapter, is declared not to be applicable to any church edifice erected or owned by such society, or the lot of ground on which the same may be built. (*Ib.*)

§ 149. The society thus incorporated may also make by-laws for the management of its affairs, not inconsistent with the Constitution and laws of the State, or of the United States; and may also elect and appoint the officers and agents of such society, for the management of its business, and allow them a suitable compensation for their services. (*Ib.*)

§ 150. The trustees of the society have the control and management of the affairs and funds of the said society, a majority of whom are declared to be a quorum for the transaction of business, if not otherwise provided by the by-laws, except that no purchase, lease, or sale of real estate must be made, unless two-thirds of the whole number shall be present at the meeting at which it is ordered. (*Ib.*, and *Sec. 3 of Laws of 1848, Ch. 319, as amended by Laws of 1853, Ch. 487.*)

§ 151. The trustees of the society, present at any meeting authorizing the contraction of any debt, and assenting to, or acquiescing in the passage of any resolution, or even authorizing the same, are made jointly and severally liable for any such debt, provided a suit for the collection of the same shall be brought within one year after the debt may become due and payable. (*Ib.*, and *Sec. 7 of Laws of 1848, Ch. 319, as amended by Ch. 487 of Laws of 1853; 3 Stat. at Large, 707.*)

§ 152. The society may take, hold and receive any pro-

perty, real or personal for the purposes aforesaid, by virtue of any devise or bequest contained in any last will or testament of any person whatsoever, the clear annual income of which devise or bequest shall not exceed the sum of ten thousand dollars, provided, no person leaving a wife or child or parent, shall devise or bequeath to such society more than one-fourth of his or her estate, after the payment of his or her debts; and such devise or bequest will be valid to the extent of such one-fourth; and no such devise or bequest will be valid, in any will which shall not have been made and executed at least two months before the death of the testator. (*Laws of 1854, aforesaid; and Laws of 1848, aforesaid, Sec. 6.*)

§ 153. There would not seem to be any limit to the amount of real and personal property, which the society may hold by virtue of devise and bequest, except that the clear annual income of any one devise or bequest must not exceed the sum of ten thousand dollars. The provision in regard to the proportion of the estate which the testator may devise or bequeath to such society in certain cases, and the date of the execution of the will, was undoubtedly made to guard against improvident testamentary disposition of property by persons *in extremis*, in derogation of the claims of near relatives. (*Willard's Eq. Juris.*, 576.)

§ 154. It would seem that the societies of these free churches, are subject to the visitation and inspection of the justices of the Supreme Court, or by any person or persons who may be appointed by the Supreme Court of the State; and it is made the duty of the trustees of any such society, or a majority of them, in the month of December in each year, to make and file in the county clerk's office where the original certificate of incorporation is filed, a certificate under their hands, stating the names of the trustees and

officers of such society, with an inventory of the property, effects and liabilities thereof, with an affidavit of the truth of such certificate and inventory, and also an affidavit that such society has not been engaged directly or indirectly in any other business than such as is set forth in the original certificate of incorporation on file. (*Laws of 1854, Ch. 218, Sec. 1; and Laws of 1848, Ch. 319, Sec. 8; 3 Stat. at Large, 707.*)

§ 155. Any vacancies which may occur in the board of trustees of such society, must be supplied by the remaining trustees at any legal meeting of the members; but there must always be at least five members of the board, who are not ministers of the gospel, or priests of any denomination. All of the trustees of course should be members of the society. (*Laws of 1854, before cited, Sec. 6; 3 Stat. at Large, 705.*)

§ 156. Additions may undoubtedly be made to the membership of the society, in a mode and manner to be provided for by the by-laws of the society. The statute does not seem expressly to provide for accessions to the society, after the organization, except that it speaks of the trustees named in the certificate of incorporation, and "their successors"; but the power of initiating new members must be incident to the continued existence of the corporation, and such power must therefore exist in the society.

§ 157. The seats and pews in every church, building or edifice owned or occupied by any corporation organized under the act of 1854, in this Chapter referred to, must be forever free for the occupation and use, during public worship, of all persons choosing to occupy the same, and conducting themselves with propriety; and no rent, charge or exaction can ever lawfully be made or demanded for such

occupation or use; nor can any real estate belonging to any such corporation be sold or mortgaged by the trustees thereof, unless by the direction of the Supreme Court of the State, to be given in the same manner and in like cases as provided by law in relation to religious corporations, which will be fully explained in the course of this work. (*Laws of 1854, Chap, 218, Sec. 4; 3 Stat. at Large, 705.*)

CHAPTER XII.

RELIGIOUS SOCIETIES IN NEW YORK—INCORPORATION OF ROMAN CATHOLIC CHURCHES—FORM OF PROCEEDING—THE TRUSTEES—CONVEYANCES TO THE TRUSTEES.

§ 158. It has not been customary in this country for the Roman Catholic churches and congregations to become incorporated. The title to churches and other ecclesiastical property of the denomination was in the bishop of the diocese, and held by him in trust for the use and benefit of the respective churches and congregations in such diocese. The management of the ecclesiastical property was in the hands of the pastors respectively of each congregation, who were required to associate with them one or two reputable and competent laymen to assist in the administration of the temporalities of the church, the title remaining in the bishop. This practice was thought to foster a power in the priesthood inconsistent with the genius of our institutions; and, accordingly, the legislature of the State of New York, in 1855, passed an act which was supposed to make the practice precarious and unsafe. (*Laws of 1855, Ch. 230.*)

§ 159. By this act it was provided in plain terms that no

interest in property, real or personal, should be conveyable or descendible to any ecclesiastic or his successor in any ecclesiastical office; and that no title to any such estate should vest in any successor of such person; that none but legally incorporated religious societies within the State could take grants or devise of real property, dedicated or appropriated, or intended to be consecrated, dedicated or appropriated to the purposes of religious worship; that any real property of that description which had been theretofore granted, devised or demised to any person in any ecclesiastical office, or orders, by the designation of such officer or orders, or otherwise, should be deemed to be held in trust for the benefit of the church or congregation using the same; and unless previously conveyed to a religious society duly incorporated, upon the death of such ecclesiastic, the title to the same should vest in the religious corporation formed by such congregation or religious society, provided one was organized according to the laws of the State; and that in the event that such congregation or society should not become incorporated, the title to such property should vest in the people of the State, to be conveyed to such congregation or society whenever it should subsequently become incorporated. (*Ib.*)

§ 160. The legislature of the State has now made special provision for the incorporation of Roman Catholic congregations and churches. Now, the Roman Catholic archbishop, or bishop of the diocese in which any Roman Catholic church may be erected, or intended to be erected, the vicar-general of such diocese and the pastor of such church for the time being, respectively, or a majority of them, may select and appoint two laymen, members of said church, and may, together with such laymen, sign a certificate in duplicate, showing the name and title by which they and their successors shall be known and distinguished as a body corporate,

by virtue of the act under which they propose to become incorporated; which certificate must be duly acknowledged or proved in the same manner as conveyances of real estate; and one of such certificates must be filed in the office of the Secretary of State, and the other in the office of the clerk of the county in which such church may be erected or intended so to be; whereupon the church or congregation becomes a body corporate by the name or title expressed in the certificate. (*Laws of 1863, Chap. 45, Sec. 1.*)

§ 161. The certificate may be in the following form:

STATE OF NEW YORK, }
County of Oswego, } ss.

We, the undersigned, the Roman Catholic Archbishop (or Bishop) of the Diocese of Albany, the Vicar General of such Diocese, the pastor of a Roman Catholic church or congregation in said diocese, and two laymen, members of said church or congregation, duly selected and appointed, hereby certify that the said church or congregation is hereby incorporated under the act of the legislature entitled "An act supplementary to the act entitled 'An act to provide for the incorporation of religious societies, passed April 5, 1813,' passed March 25, 1863," and that the name or title by which we and our successors shall be known and distinguished as a body corporate by virtue of the said act, is "St. Patrick's Church, Fulton."

Witness our hands this day of 18 .
A. B., Archbishop, &c.

In presence of
C. D.

The certificate must be in duplicate, and each acknowledged the same as deeds, and then filed as stated in the last preceding section. (*Id.*)

§ 162. The persons signing the certificates constitute the trustees of the church or congregation thus incorporated, and the successors of any such Archbishop, Bishop, Vicar

General or pastor respectively, for the time being, is made, by virtue of his office the trustee of such church in place of his predecessor. Such laymen will hold their office respectively for the term of one year, and whenever the office of any such layman becomes vacant by death, removal, resignation or otherwise, his successor must be appointed in the same manner as is provided for his original selection, and which is hereinbefore described in this chapter. (*Id.*)

§ 163. It is probable that a Roman Catholic church or congregation can also proceed and become incorporated, if they choose so to do, under the provisions of section three of the act entitled "An act to provide for the incorporation of religious societies," passed April 5, 1813, and which will be fully explained in the course of this work. In case any such church or congregation should become incorporated under the third section of that act, their officers would be the same, and they would be governed by the same rules as other religious societies organized under the same section.

§ 164. The trustees of every such Roman Catholic church or congregation, and their successors, will possess all the powers and authority granted to the trustees of any church, congregation or society, by the fourth section of the aforesaid act of 1813, which will be hereafter fully described in this work. Such trustees will also have the power to fix or ascertain the salary to be paid to any pastor or assistant pastor of such church. The trustees are also required to exhibit, upon oath, to the Supreme Court, in the judicial district in which the church is situated, once in three years, an inventory of all the estate, real and personal, belonging to such church, and of the annual income thereof. The inventory must be filed in the office of the clerk of the county

in which such building may be situated. (*Laws of 1863, Ch. 45, Secs. 2 and 3.*)

§ 165. Should any such Roman Catholic church, thus incorporated, become dissolved by means of any non-user or neglect to exercise any of the powers necessary for its preservation, or otherwise, the same may be reincorporated in the manner before described, at any time within six years from the date of such dissolution, whereupon all the property, real and personal, belonging to such dissolved corporation at the time of its dissolution, will vest in the new corporation. (*Ib., Sec. 4.*)

§ 166. All conveyances to any church, incorporated under the said act of 1863, of any real estate appropriated, before the passage of that act, to the use of such church or congregation thereof, or intended so to be, are by the said act confirmed and declared valid and effectual. (*Ib., Sec. 5.*)

CHAPTER XIII.

RELIGIOUS SOCIETIES IN NEW YORK—THE SOCIETY OF FRIENDS—
TRUSTS FOR MAY BE CREATED—THE UNITED SOCIETY OF SHAKERS—
TRUSTS FOR MAY BE CREATED.

§ 167. The society of Friends, commonly called Quakers, is a sect of Christian professors founded in England, by George Fox, about the middle of the seventeenth century. Many of them soon thereafter emigrated to America, and they are now found in all parts of the Union. They have no incorporated religious societies, but, in their stead, they have established "meetings," of which all who regularly

attend them, with their families, are members. They have regular monthly, quarterly and yearly "meetings," which embrace large areas of territory, and thus extend fellowship, sympathy and co-operation among isolated societies, and keep alive what they regard the primitive idea of a church. These "meetings" have become an established "institution," and are recognized in the statutes of several of the States.

§ 168. In the State of New York all deeds or declarations of trusts of real or personal estate, executed and delivered to any person or persons in trust or for the use and benefit of any meeting of the religious society of Friends, and the trusts thereby created or declared, are valid, and the legal estates may be transmitted, and the trusts so created or declared may be continued and pursued so long as may be required for the purposes of the trusts, by conveyances from the trustees named in such deeds to other trustees appointed by such meeting, and by conveyances from them to others appointed in like manner or otherwise, according to the directions of such meeting. (*Laws of 1839, Chap. 184, Sec. 1.*)

§ 169. Trusts of real or personal estate, for the benefit of any meeting of the religious society of Friends, may at any time be created for the use of such meeting, according to the regulations and rules of discipline of said society; and the legal estate of any property so held in trust will become vested in the trustees, and in those to whom such property may be conveyed in trust, by the appointment of such meeting, so long as may be required for the objects and purposes of such trusts. (*Ib. Sec. 2.*)

§ 170. The provisions specified in the last two preceding sections are not to be so construed as to impair or diminish
[Tr.]

the rights of any person, meeting or association of persons claiming to be a meeting of the religious society of Friends, which such person, or meeting or association of persons claiming to be a meeting as aforesaid, held either in law or equity to or in any real or personal estate held in trust for the use and benefit of any meeting of the said religious society prior to the division which took place in said religious society at the yearly meeting held in the city of New York, in the month of May, in the year of our Lord one thousand eight hundred and twenty-eight. (*Ib.*)

§ 171. No such real or personal estate can be held in trust for any meeting of such society, the annual value or income of which shall exceed five thousand dollars. (*Ib.*)

§ 172. The Shakers are an offshoot from the Friends or Quakers, who call themselves the "United Society of Believers in Christ's Second Appearing," originating in England about the year 1770, and are now confined mostly, if not entirely, to the United States. In their theological creed, as well as in their practices, they now differ entirely from the Friends. Like the Quakers, however, they have no incorporated religious societies, but hold to the principle of a community of property, and form themselves into families, uniting households or settlements, after the model of the plan of Ann Lee, the foundress of the sect, in the midst of which they have their houses of worship and schools. These societies or settlements are recognized in the statutes of the State of New York.

§ 173. By the laws of New York all deeds of trust in relation to real and personal estate, executed and delivered prior to the first day of January, eighteen hundred and thirty, to any persons in trust for any united society of the people commonly called Shakers, are made valid and effectual to

vest in the trustees the legal estates and interests purported to be conveyed by such deeds, to and for the uses and purposes declared therein, or declared by any declaration of trusts executed by such trustees, in the same manner and to the same effect as before the first day of January, eighteen hundred and thirty; and such legal estates and trusts, and all the legal authority with which the original trustees were vested by virtue of their appointment and conferred powers, are made forever to descend in regular succession to their successors in office and trust, who in conformity to the constitution of said society have been duly chosen and appointed. (*Laws of 1839, Chap. 174, Sec. 1, as amended by the Laws of 1849, Ch. 373.*)

§ 174. Trusts of real and personal property for the benefit of any such united society of Shakers may, since the passage of the said act of 1839, be created for the use of the members of such society, according to the religious constitution of such society; and the legal estates of any property so held in trust is vested in the trustees and in those to whom such property may be transmitted in trust by the appointment of any such society, so long as may be required for the objects and purposes of such trust. (*Laws of 1839, Chap. 174, Sec. 2, as amended by the Laws of 1852, Ch. 203, Sec. 1.*)

§ 175. No such society, however, can become beneficially interested in any real or personal property, or acquire any equitable right or interest in any such property, either directly or indirectly, the annual value or income of which, after deducting necessary expenses, shall exceed twenty-five thousand dollars, on pain of forfeiture of the privileges conferred by the act; nor can any trustee be a trustee of more than one such society at the same time. (*Id.*)

§ 176. The word "society," for the purposes of the pre-

ceding section two of the act of 1839, is declared to be construed and understood to mean and include all persons of the religious belief of the people called Shakers, resident within the same county. (*Laws of 1839, Ch. 174, Sec. 3.*)



CHAPTER XIV.

RELIGIOUS SOCIETIES IN NEW YORK—INCORPORATION OF OTHER RELIGIOUS SOCIETIES—FORM OF PROCEEDING—THE TRUSTEES—QUALIFICATION OF VOTERS—ELECTORS TO BE REGISTERED.

§ 177. The male persons, of full age, belonging to any church, congregation or religious society in the State of New York, other than those already hereinafter noticed, desiring to become incorporated, may assemble at the church, meeting house, or other place where they statedly attend for divine worship, and, by a plurality of voices, elect any number of discreet persons of their church, congregation or society, not less than three nor exceeding nine in number, as trustees, to take the charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof. (*Laws of 1813, Ch. 60, Sec. 9; 3 Stat. at Large, 689.*)

§ 178. Every male person of full age, who has statedly worshiped with such church, congregation or society, and has formerly been considered as belonging thereto, is entitled to vote at this first election. (*Ib.*)

§ 179. The minister of such church, congregation or society, or, in case of his death or absence, one of the elders

or deacons, church wardens or vestrymen, and for want of such officers, any other person, being a member or stated hearer in such church, congregation or society, must publicly notify the congregation of the time when and the place where the said election is to be held, at least fifteen days before the day of such election. This notification must be given for two successive Sabbaths, or days on which such church, congregation or society shall statedly meet for public worship, next preceding the day of such election. This notice is a very simple one, and no form of it need be given. (*Laws of 1813, Ch. 60, Sec. 3; 3 Stat. at Large, 690.*)

§ 180. On the day of such election two of the elders or church wardens, and, if there be no such officers, then two of the members of the said church, congregation or society, to be nominated by a majority of the members present, must preside at such election, receive the votes of the electors, be the judges of the qualifications of such electors, and the officers to return the name of the persons who, by plurality of voices, may be elected to serve as trustees for the said church, congregation or society. (*Ib.*)

§ 181. Immediately after such election the presiding and returning officers must execute an instrument, under their hands and seals, certifying the names of the persons elected to serve as trustees for such church, congregation or society, and the name or title by which the said trustees, and their successors, shall forever thereafter be called and known. This name or title must be determined by the vote of the electors, and particularly mentioned and described in the certificate. (*Ib.*)

§ 182. The certificate may be in the following form:

STATE OF NEW YORK, }
 County of Oswego, } ss.

We, the undersigned, two of the elders (or church wardens, or members) of the church (or congregation, or religious society) hereinafter mentioned, do certify that on the day of , 18 , the male persons, of full age, belonging to a church (or congregation, or religious society) in which divine worship is celebrated according to the rites of the Presbyterian (or, as the case may be) church, and not already incorporated, met at the place of worship heretofore occupied by the said church (or congregation, or society) in the town of Volney in said county, for the purpose of incorporating themselves; and did then and there elect by plurality of voices, A. B., C. D., &c., &c. (not less than three nor more than nine persons), as trustees for the said church (or congregation, or society) and the said persons did then and there also determine, by the like plurality of voices, that the said trustees, and their successors, should forever hereafter be called and known by the name and title of "The First Presbyterian Church of Volney."

Witness our hands and seals this day of , 18 .
 In presence of

E. F.

A. B. [L. s.]
 C. D. [L. s.]

§ 183. This certificate, after being signed and sealed, must be proved or acknowledged and recorded, the same in all respects as in the case of Protestant Episcopal churches, which has been fully explained in a previous chapter of this work, and to which it is only necessary, in this place, to refer for particulars. Upon the certificate being recorded, the said trustees, and their successors, become a body corporate by the name or title expressed in such certificate. (*Statutes last cited.*)

§ 184. The trustees first chosen will continue in office for the term of three years from the day of their election, and immediately after such election the said trustees must be divided by lot into three classes, numbered one, two and

three, and the seats of the members of the first class will be vacated at the expiration of the first year, and the members of the second class at the expiration of the second year, and the members of the third class at the expiration of the third year; so that the third part of the whole number of trustees, as nearly as possible, may be annually chosen. It will be observed that although the statute provides in terms that the trustees first chosen shall continue in office three years, virtually, only one-third of their number hold their office for that term; but the whole provision taken together, plainly indicates the course to be pursued. (*Laws of 1813, Ch. 60, Sec. 6; 3 Stat. at Large, 692.*)

§ 185. The trustees or a majority of them must, at least one month before the expiration of the office of any of the trustees, notify the same in writing to the minister, or in case of his death or absence, to the elders or church wardens, and in case there be no elders or church wardens, to the deacons or vestrymen of the church, congregation or society, specifying the names of the trustees whose terms will expire; and the said minister or other officer, in case of the contingency specified, must notify the members of the church, congregation or society in the same manner as of the first election, of such vacancies, and appoint the time and place for the election of new trustees to fill up the same. The election must be held at least six days before the vacancies happen, and all such subsequent elections must be held and conducted by the same persons, and in the same manner, as directed in § 179. (*Ib.*)

§ 186. The result of such subsequent election must be certified by the persons presiding thereat, and their certificate will entitle the persons elected to act as such trustees; and in case any trustee shall die or refuse to act, or remove away within the year, notice thereof must be given by the remain-

ing trustees, and a new election appointed and held, and another trustee elected in his stead, in the same manner as hereinbefore specified in this chapter. (*Id.*)

§ 187. No person belonging to any church, congregation or society intended by the provisions of the act referred to, and hereinbefore specified in this chapter, is entitled to vote at any election succeeding the first, until he shall have been a stated attendant on divine service or worship in the said church, congregation or society at least one year before such election, and shall have contributed to the support of the said church, congregation or society, according to the usages and customs thereof. (*Laws of 1813, Ch. 60, Sec. 7; 3 Stat. at Large, 692.*)

§ 188. Stated attendance, to qualify a person to become a voter at an election held by a religious society after its first election, must be interpreted to mean the personal presence of the voter statedly at the religious meetings of the society. The regular attendance of the wife or other member of the family is not sufficient. Persons attending the religious meetings of the society but a few times in the course of a year, or only occasionally, though regular contributors to its support, are not voters within the meaning of the seventh section of the act for the incorporation of religious societies. So also the contribution and support must be according to the usages and customs of the society; which implies that the contributions must be of a vital and substantial character. However, an election of trustees will not be set aside and declared void, merely because certain illegal votes were received, which did not change the result of the election. (*People v. Tuthill, 31 N. Y. R. 550.*)

§ 189. The clerk of the board of trustees must keep a register of the names of all persons who may desire to be-

come stated hearers in such church, congregation or society, and must note the time when such request was made, and such clerk must attend all such subsequent elections, in order to test the qualifications of such electors, in case the same be disputed or questioned. (*Laws of 1813, Ch. 60, Sec. 7: 3 Stat. at Large, 693.*)

§ 190. Parol evidence of the number of persons entitled to vote at an election of trustees is admissible, although a regular register of the names of the stated hearers in the church, congregation or society may be kept by the clerk. This fact does not prevent the introduction of parol proof as to the number of the members of the church, congregation or society who are entitled to vote. The object of the register is to test their right to vote, and that seems to be the only use to which it is required to be put. (*The People v. Peck, 11 Wend. 605.*)

§ 191. We have before seen that an election of trustees of the church or society will be good, although the requirements of the statute in respect to the notice of such election may not have been complied with, provided the election was fairly conducted, and there was no just complaint of want of notice. But if omissions were fraudulently made, or the election had been prejudiced by the omission of the statutory requirements, the election would be invalidated by the neglect. The statute must be liberally and reasonably construed for the benefit of the churches. So also the certificate of the election of the trustees, to be given by the presiding officers, is good, although not made out until months after the election. The presiding officers are required to certify the result of the election immediately, but the statute in this respect is directory merely, and the votes of the members cannot be made ineffectual by the neglect of the presiding officers. (*Ib.*)

§ 192. It seems, however, that an election of trustees would be irregular, if the persons specified in the statute to be chosen to preside as inspectors of election were not selected. These persons are, as we have seen, two of the elders or church wardens; and if they are present they must be selected; but if there are no such officers, or being such, they are not present, then two members of the church or society may be nominated by a majority of the members present, to preside. A clergyman or preacher of the Baptist church, though ordinarily called an elder, is not an elder within the meaning of the statute regulating these elections. (*Ib.*)

§ 193. When a person is proceeded against by information in the nature of a *quo warranto*, to oust him from the office of trustee of a religious corporation, and he claims title to the office by virtue of his election for a former term, which had expired, and a failure to choose a successor, whereby he is entitled to hold over, he must show positively in his plea that no one has at any time been chosen to succeed him. A statement that an attempt had been made to choose a new trustee without success, will not be sufficient. (*The People v. Phillips*, 1 *Denio*, 388.)

§ 194. A party who, at an election of trustees of a religious corporation, has a minority only of the votes received by the inspectors, cannot, upon a *quo warranto* information, be declared elected, though it may appear that a number of other legal votes, sufficient to have made up a majority, were offered to be given in his favor and were erroneously rejected. It is doubtful whether a person receiving a majority of the votes given can be ousted by showing that a number of legal votes sufficient to have elected his competitor were offered and illegally rejected; though the question has not been authoritatively decided. (*Ib.*)

CHAPTER XV.

RELIGIOUS SOCIETIES IN NEW YORK—SOCIETY NOT DISSOLVED BY NEGLECT TO APPOINT TRUSTEES—PROCEEDING AFTER SUCH NEGLECT—CERTAIN RELIGIOUS CORPORATIONS CONFIRMED—RE-INCORPORATION OF DISSOLVED SOCIETIES—THE CERTIFICATE—NAME OF SOCIETY, HOW CHANGED.

§ 195. No church, congregation or society incorporated under the provisions of the statute set out and explained in the last preceding chapter, will be deemed to be dissolved because of their neglect, at their stated annual election, to choose any one of the three classes of trustees provided for; but the trustees in office at the time of such neglect will continue to hold their offices until others are chosen in their stead. (*Laws of 1826, Ch. 47, Sec. 1; 3 Stat. at Large, 698.*)

§ 196. If the neglect to choose such trustees happen through defect of due notice or otherwise, the trustees of the church, congregation or society, or a majority of them, must immediately thereafter give notice thereof in writing to the minister, or in case of his death or absence, to the elders or church wardens, and in case there shall be no elders or church wardens, then to the deacons or vestrymen of such church, congregation or society; whereupon the minister or other officers must proceed to notify the members of the church, congregation or society of such neglect or omission, and appoint the time and place for the election of new trustees to remedy the same. At least fifteen days' notice of the election must be given in the manner specified in section 179. (*Ib.*)

§ 197. The election referred to in the last preceding sec-

tion must be held and conducted by the same persons, in the same manner, and the result certified in like manner as is prescribed for the annual election of trustees, which has been fully explained in the last preceding chapter, and will have the same force and effect as annual elections regularly held, and not otherwise. Such election, however, must be held within one year after the omission to choose such trustees actually occurred. (*Laws of 1826, Ch. 47, Sec. 1; Laws of 1844, Ch. 158, Sec. 3; 3 Stat. at Large, 699 and 702.*)

§ 198. Every corporation of any church, congregation or religious society made pursuant to any law of the State prior to the passage of the general incorporating act of 1813, and organized in conformity to the directions contained in the act of 1813, was established and confirmed by an express provision of the said act of 1813, and deemed to have commenced from the time of recording the certificate. (*Laws of 1813, Ch. 60, Sec. 13; 3 Stat. at Large, 694.*)

§ 199. In case of the dissolution of any religious corporation referred to in the last preceding section, or of any corporation formed under the aforesaid act of 1813, by reason of a non-compliance with the directions contained in the last mentioned act, such religious society may be re-incorporated in the manner prescribed in the said act, at any time within six years after such dissolution; and thereupon all the estate, real and personal, formerly belonging to the same, will vest in the new corporation the same as though such religious corporation had not been dissolved. (*Ib.*)

§ 200. Several religious societies in the city of New York, seeking to incorporate themselves under the general incorporating act, by mistake caused their certificate of incorporation to be recorded in the office of the clerk of the city and county of New York instead of the office of the register

of the city, as required by the general act, and therefore the legislature in 1863 passed an act declaring that the recording of every such certificate in the office of such county clerk, prior to the passage of such act, should be regarded and construed, and such recording be of the same validity, force and effect as would have been the recording of such certificate in the office of the register of the city and county of New York; and every act, deed, matter and thing done or performed by every such religious society since the recording of its certificate in the office of said clerk, was by the said act ratified and confirmed, and declared to be as valid in all respects as if said certificate had been recorded in the office of said register. It was, however, declared by the last mentioned act that its provisions should not affect any writ or proceeding already commenced at the time of the passage of said act, arising out of such original mistake. (*Laws of 1863, Ch. 287, Sec. 1.*)

§ 201. The certificate of the first election of trustees for a religious society, referred to in the last preceding chapter, will be valid if it contain the names of the persons elected as trustees, and the corporate name by which the trustees and their successors are thereafter to be known. A compliance with the requirements of the statute in respect to the giving notice of and conducting the election, the qualifications of the electors and returning officers, and generally in all other respects, may be inferred from the record of such certificate and continued user under the same. A statement in the certificate that the presiding officers were elected by a plurality of votes, is sufficient in that regard, if it do not negative the fact that they were chosen by a majority. The latter fact will be inferred in the absence of contrary evidence. (*Methodist Episcopal Union Church v. Pickett*, 19 N. Y. R. 482.)

§ 202. In case the name of any religious society, by reason of the change of its location or place of worship, or of the name of the place in which its place of worship is situated, or any other change of the circumstances with reference to which its name was adopted, has become incongruous or inconvenient, or the location or character of such society may be more correctly or effectually designated by another name, the corporate name of such society may be changed to any other name not previously assumed by any existing religious corporation. (*Laws of 1853, Ch. 323.*)

§ 203. Such change of name of such religious society will and may be effected by a petition on behalf of such society, verified by oath or affidavit, presented to the county judge or a Justice of the Supreme Court, within the county in which the corporation was originally incorporated and may be located, setting out the facts justifying or making desirable such change, upon which the judge or justice, on being satisfied of the truth thereof, may make an order authorizing such corporation to assume the new name proposed. Within ten days after such order may be granted, a copy of it is required to be published in a public newspaper in the county aforesaid; and within twenty days after the granting of such order, the petition and verification thereof, the order and an affidavit of the publication of a copy thereof must be filed in the office of the clerk of the county aforesaid. (*Ib., and also Laws of 1847, Ch. 464.*)

CHAPTER XVI.

RELIGIOUS SOCIETIES IN NEW YORK—POWERS OF CHURCH TRUSTEES—HOW THEIR NUMBER MAY BE REDUCED.

§ 204. The trustees of every church, congregation or society may respectively have and use a common seal, and may renew and alter the same at pleasure, and are authorized and empowered to take into their possession and custody all the temporalities belonging to such church, congregation or society, whether the same consist of real or personal estate, and whether the same shall have been given, granted or devised directly to such church, congregation or society, or to any other person for their use. (*Laws of 1813, Ch. 60, Sec. 4; 3 Stat. at Large, 690.*)

§ 205. The trustees of such church, congregation or society, may also, by their corporate name or title, sue and be sued in all courts of law or equity, and recover and hold and enjoy all the debts, demands, rights and privileges, and all churches, meeting-houses, parsonages and burying places, with the appurtenances, and all estates belonging to the church, congregation or society, in whatsoever manner the same may have been acquired, or in whose name soever the same may be held, as fully and amply as if the right or title thereto had originally been vested in such trustees. They may also purchase and hold other real and personal estate, and demise, lease and improve the same, for the use of their respective church, congregation or society, or other pious uses, so as the whole real and personal estate of such church, congregation or society shall not exceed the annual value or income prescribed by law; and they may also repair and alter their churches or meeting-houses, and erect

others, if necessary, and erect dwelling-houses for the use of their ministers, or school-houses and other buildings, for the use of the church, congregation or society. (*Ib.*)

§ 206. So, also, the trustees have the power to make rules, regulations and orders for managing the temporal affairs of the church, congregation or society, and to dispose of all moneys belonging thereto; and to regulate and order the renting the pews in their churches and meeting-houses, and the perquisites for the breaking of the ground in the cemetery or church yards, and in the said churches and meeting-houses for burying the dead, and all other matters relating to the temporal concerns and revenues of the church, congregation or society. (*Laws of 1813, Chap. 60, Sec. 4; 3 Stat. at Large, 691.*)

§ 207. The trustees have the further power to appoint a clerk and treasurer of their board, and a collector to collect and receive the rents and revenues, and to regulate the fees to be allowed to such clerk, treasurer and collector, and them or either of them to remove at pleasure, and appoint others in their stead. The clerk of such board of trustees is required to enter all rules and orders made by the trustees, and payments ordered by them, in a book to be provided by such trustees for that purpose. (*Ib.*)

§ 208. The trustees have simply the *control* of the temporalities of the church, congregation or society. They are in no sense the owners of the property. The property under their control and in their custody as such trustees, in fact belongs to the corporate body, and the legal possession, for the purposes of an action relating to it, is in the society. And the trustees of a religious society, incorporated under the general act, have no power to alienate or make an absolute sale of the real estate of the corporate body, though

they may lease and improve the same. (*Voorhees v. Presbyterian Church of Amsterdam*, 8 Barb. 135.)

§ 209. As has been observed, the temporalities of the church, congregation or society are committed to the charge, care and custody of the trustees, but it is nevertheless their duty to see that they are fairly and fully devoted to the purposes which the founders had in view when they organized the same. All authority conferred upon them is necessarily subordinate to this great end; and all exercise of it, beyond the legitimate attainment of this end, is usurpation. Should the trustees, however, violate this plain duty, it is doubtful whether the church, congregation or society has any remedy, except to elect others in their places, when the term of their office expires. In one case it was held that this duty might be enforced by *mandamus*, but this has been questioned in a later case. It is doubtful even when a conveyance is made to a religious society, without any declaration of trust, whether the trustees might not apply the property to such religious purposes, for the time being, as they deem proper, without the interference of the court, unless the property had been so long used for a specific purpose as to furnish evidence that it was originally dedicated to that purpose. (*Robertson v. Bullions*, 9 Barb. 64; but see *The People v. Steele*, 2 Barb. 397.)

§ 210. But should the trustees of a religious society attempt to divert the funds and property of the society from the purposes for which they were contributed by the original donors, a court of equity would interfere to prevent it. For instance, where property is conveyed to a religious corporation, or to a religious society which afterwards becomes incorporated, to promote the teaching of particular religious doctrines, and the funds are attempted to be diverted to the support of different doctrines, it is the duty

of a court of equity, under its general jurisdiction over trusts, to interpose for the purpose of carrying the trust into execution according to the intention of the donors. (*Miller v. Gable*, 2 *Denio*, 492.)

§ 211. It seems that the denominational name of a religious corporation or society, to which a donation is made, and the doctrines actually taught therein at the time of the gift, may be resorted to in order to limit and define the trust in respect to doctrines usually considered fundamental, such as those in dispute between trinitarians and unitarians; but not as to lesser shades of doctrine. This proposition, however, has not been authoritatively established by the court, though it has been laid down, *obiter*, by a distinguished judge of the highest court of New York, and is doubtless good law. (*Ib.*)

§ 212. The trustees of an incorporated religious society cannot be divested of the temporalities of the society on the ground that they are used to pay the salary of a minister holding doctrines repugnant to the trusts of the church, but who has been chosen by the body authorized to select the minister, as it is no part of the duty of the trustees to call the minister, but only to pay the salary of the minister regularly called by the proper authority. (*Ib.*)

§ 213. When a church is endowed with property for the support of a particular faith, and is subsequently incorporated, it is not competent for a majority of the church, the congregation or the corporators, or a majority of each combined, to appropriate such property for the maintenance of a different faith. The question of the particular religious faith or belief is not material in such cases, except so far as the court is called upon to execute the trust, and to that end it merely inquires what was the faith or belief, to maintain which the fund was bestowed. The court does not ani-

madvert upon the religious belief of either party, or assume to determine that either is in itself right or wrong. (*Kniskern v. The Lutheran Churches of St. John's and St. Peter's*, 1 *Sand. Ch. R.* 439.)

§ 214. Two of the trustees of any church, congregation or society, except of the Protestant Episcopal church, may at any time call a meeting of such trustees, and a majority of the trustees of any church, congregation or society, incorporated under the general incorporating act, when lawfully convened, are competent to do and perform all matters and things which such trustees are authorized or required to do and perform; and all questions arising at any such meeting must be determined by a majority of the trustees present; and in case of an equal division, the presiding trustee will have the casting vote. (*Laws of 1813, Chap. 60, Sec. 5; 3 Stat. at Large*, 692.)

§ 215. The trustees of a religious society can alone bind the corporate society, and in order to execute this power, the trustees must meet as a board, so that they may have each others' views, and deliberate and decide the questions before them. The separate action of the trustees individually, without consultation, although a majority in number should agree upon a certain act, would not be the act of the constituted body of men clothed with the corporate powers. (*Cornmeyer v. United German Lutheran Churches*, 2 *Sand. Ch. R.* 186.)

§ 216. The trustees have not the power to fix or ascertain the salary to be paid to the minister of their church, congregation or society. Neither can they distribute the property of the society among the individual members, or any class of them; nor can authority be conferred on them to do so by the vote of a majority of the members and the order

of the court. (*Laws of 1813, Ch. 60, Sec. 8; 3 Stat. at Large, 693; Wheaton v. Gates, 18 N. Y. Rep. 395.*)

§ 217. The question often arises with respect to the power to let temporarily the church edifice, or other rooms of a religious society, for lectures and the like, which have no connection with the objects for which the structures were erected. There would seem to be no objection to the exercise of such power, provided it is not carried to the extent of interfering with the rights and convenience of the society, or perverting the legitimate ends for which the property is held. In cases of letting the church edifice for the purposes suggested, it has also been a question whether the trustees, or the body representing the spiritual interests of the church, its government and discipline, should assume to exercise the control; but the better opinion would seem to be that the trustees only have legal authority in the premises. Indeed, the control of the trustees in regard to the church edifice is such that, should they close the church doors against the minister and congregation, and the latter should break and enter the church by force, an indictment, at the instance of the trustees, would lie against them for the forcible entry. (*The People v. Runkle, 9 Johns. R. 147; Petty et al., Trustees, v. Tooker, 21 N. Y. Rep. 267.*)

§ 218. Whenever any religious corporation, other than those organized under special charters, may deem it necessary and for the interest of such religious corporation to reduce their number of trustees, it is made lawful for any such religious corporation to reduce or to increase their number of trustees at any annual meeting, though the reduction or increase cannot be made so as to have a less number than three or a larger number than nine trustees in any one of said religious corporations. Care should be taken that the annual meeting of the society be regularly notified

when a change of this kind is proposed to be made, as difficulty might arise if the act were consummated at an irregular meeting. A notice of at least two weeks must be given at a regular meeting of the society, of the time and place of holding the meeting, at which the reduction or increase may be proposed. (*Laws of 1813, Chap. 60, Sec. 9; 3 Stat. at Large, 693, as amended by Laws of 1866, Ch. 414.*)

CHAPTER XVII.

RELIGIOUS SOCIETIES IN NEW YORK—THE PRIEST OR MINISTER OF THE CHURCH—HOW EMPLOYED—FORM OF PROCEEDING—HOW DISMISSED.

§ 219. The priest is a person set apart for the performance of religious offices and ceremonies. The priestly office is shown by history to be nearly co-extensive with religion itself. Hardly a barbarous tribe has ever been discovered without some sort of priests to guide the people in the worship of their deity. The minister is a person who serves at the altar, or administers the rites of religion; and the clergyman is a man in holy orders, or one who is set apart by ordination for the offices of religion. The rector is the clergyman who has charge of a parish church—literally the governor of a church. The name is usually applied to the priest or minister of the Protestant Episcopal church. The terms priest, minister, clergyman and rector are synonymous as used in the laws of the State of New York.

§ 220. The different denominations have different forms and methods of calling or designating their pastor or minister, but there are certain prerequisites necessary to be observed in all cases, in order that the relation of pastor and people may be recognized in law, and the incumbent be able to obtain his salary from the revenues and resources of

the society. The church, as to its doctrines, government and worship, is to be governed by its own peculiar rules, which, under the laws of New York, cannot be interfered with; but the priest or minister cannot be called and settled by the church or communicants only, or sent by the spiritual head of the church, when the priest or minister expects to preach in the building belonging to the society, or occupy the glebe and parsonage, or receive his support or compensation for his services, from pew rents or from the subscriptions or ordinary contributions of the stated hearers of the congregation. (*Lawyer v. Cipperly*, 7 Paige, 281.)

§ 221. The priest of a Roman Catholic church is appointed by the bishop of the diocese in which the church is located, and his salary is usually paid from the pew rents of the church. This practice is peculiar to that denomination, and is ordinarily attended with no difficulty, from the fact chiefly that the title to the church property is generally vested in the bishop. The Methodist Episcopal preachers are also sent to their people in a similar way, by the bishop who presides at the annual conference, in which they are located. Their appointment, however, must be virtually ratified by the trustees and members of the societies which they are expected to serve, or they might be excluded from the church edifices and parsonages, and be unable to obtain their support from the revenues of the churches. There may be one or two other denominations in which the priest or minister is appointed without consulting the trustees or society, but such cases are exceptions to the general rule, and are not regarded in the law.

§ 222. The rector for a Protestant Episcopal church or congregation is called and inducted by the church wardens and vestrymen, without the voice of the church or congregation being necessarily obtained. Care must be taken, however, when action is to be had upon the question of calling

the rector, that the meeting of the church wardens and vestrymen for that purpose be properly notified and regularly held, as required by the terms of the statute in such cases. (*Laws of 1813, Ch. 60, Sec. 1; 3 Stat. at Large, 688.*)

§ 223. Other churches have their rules and forms for calling their ministers and pastors. By the form of government of the Presbyterian church, when the congregation are prepared to elect a pastor, it is made the duty of the church session to convene the society, if a majority of the persons entitled to vote in the case shall, by a petition, request that such meeting be called. Notice of the contemplated meeting must be publicly given from the pulpit of the church or house of worship, on a Lord's day, immediately after public worship. On the day appointed for the meeting, if expedient, a minister invited for the purpose must preach a sermon, and after the sermon announce to the people that he will proceed to take the votes of the electors of the congregation or society for a pastor, if they so desire. If such desire be expressed by a majority of voices, the minister must then proceed to take the votes accordingly. No person will be entitled to a vote in the election who refuses to submit to the censures of the church regularly administered, or who does not contribute his just proportion, according to his own engagements, or the rules of the congregation or society, to all its necessary expenses. If a majority of the votes cast are in favor of the candidate, and they insist upon their right to call a pastor, the presiding minister must draw up a call in due form, and have it subscribed by the electors; and the proceedings of the meeting, together with the call, must be then laid before the presbytery to which the church belongs. (*Const. of Pres. Church, 383, et sequitur.*)

§ 224. If the presbytery think it expedient to present the call to the candidate, it will be presented accordingly, and

no minister or candidate is allowed to receive a call but through the hands of the presbytery. Should it not be expedient for a minister to moderate the meeting at which the call emanates, then of course one of the elders or other member of the congregation or society may be called to the chair and preside. In case the church session should neglect or refuse to call a meeting of the congregation or society to act upon the question of calling a pastor, upon a proper request, the presbytery would order the meeting, or require the church session to do so themselves. (*Ib.*)

§ 225. Whatever may be the rules and regulations prescribed by the churches for calling their ministers and pastors, except in the case of the Protestant Episcopal church, the call, in law, must be ratified by the congregation or society, in order to give it validity; and it must be done at a regular meeting, duly called according to the custom and usage of the society. When this requisition is essentially complied with, the trustees may apply the revenues of the society to the support of the minister employed. But the moneys of the corporation cannot be reached for the support of the pastor or minister in any other way. (*Robertson v. Bullions*, 9 Barb. 64.)

§ 226. The salary of the rector of a Protestant Episcopal church is fixed by the vestry; and a call made by the church wardens and a majority of the vestrymen, addressing a written invitation to the clergyman to become their rector, and fixing his salary, is all that is required. If the call be accepted by the clergyman within a reasonable time after its receipt, it is binding upon both parties. No formal "induction" or "institution" is necessary, unless such induction or institution is positively required by a rule of the ecclesiastical body to which the clergyman and parish belong. A call to a parish, and its acceptance, and a consequent entry upon the

duties of the office of its minister, are all which we have in this country resembling the presentation, admission and induction of the English church; and neither these terms nor the ceremonies indicated are known to the law, as applicable to any of the churches in the State of New York. (*Youngs v. Ransom*, 31 Barb. 49.)

§ 227. In all other religious societies in the State of New York, excepting the Protestant Episcopal church, the salary of the minister must be ascertained and named by a majority of the persons entitled to vote for and elect trustees, at a meeting called for that purpose. (*Laws of 1813, Ch. 60, Sec. 8; 3 Stat. at Large, 693.*)

§ 228. The persons entitled to vote for the elders and deacons, who, with the minister, are the trustees of a Reformed Protestant Dutch church, are the male communicants of the church. In most other cases the electors are the male members of the church, congregation or society, who have been stated attendants on divine worship in the church, congregation or society at least one year before the election, and have contributed to the support of the church, congregation or society, according to the usages and customs thereof. (*Laws of 1813, Ch. 60, Secs. 3 and 7; 3 Stat. at Large, 689 and 692.*)

§ 229. We have seen in a previous chapter that in "Free Churches" the trustees fill their own vacancies. In those societies, therefore, the trustees act independently in the employment of their minister, and fixing his salary. We have also observed in a previous chapter that the salary of the Roman Catholic ministers is also fixed by the officers who are designated as trustees, entirely independent of the congregation. These churches and societies are organized and incorporated under special provisions, and are therefore outside the general rule. (*Ante* §§ 142, 150, 151, 164.)

§ 230. It is necessary in all cases that the salary of the priest, minister or pastor be ratified by the trustees of the society, or a majority of them, by an instrument in writing, under their common seal, and then such salary can properly be paid by the trustees out of the revenues of the church, congregation or society. (*Laws of 1813, Ch. 60, Sec. 8; 3 Stat. at Large, 693.*)

§ 231. Unless the salary of the minister be regularly and legally fixed in the manner indicated, the trustees would violate their duty by suffering such minister to be employed, and it is the right and duty of the trustees to withhold their assent to the call of the minister, when there is reason to believe that the employment of the individual selected by a majority of the church or society will destroy the peace and harmony of the church or congregation. The trustees are the representatives of the rights of the whole congregation, and they should act in all cases so as best to promote their interest, peace and comfort. (*German Reformed Church v. Buche, 5 Sand. S. C. R. 666; Lawyer v. Cipperly, 7 Paige, 281.*)

§ 232. The instrument by which the minister is called and his salary fixed may be in the following form:—

“The congregation and society of the First Presbyterian Church of Fulton” being, on sufficient grounds, well satisfied of the ministerial qualifications of you, Jacob Faithful, and having good hopes that your ministrations in the gospel will be profitable to our spiritual interests, do earnestly call and desire you to undertake the pastoral office in said congregation and society, promising you, in the discharge of your duty, all proper support, encouragement, and obedience in the Lord. And that you may be free from worldly cares and avocations, we hereby promise and oblige ourselves to pay you the yearly salary of two thousand dollars, in regular quarterly payments, during the time of your being and continuing the regular pastor of such church and congregation.

In testimony whereof, we have respectively subscribed our names hereto, this day of A. D. 18 .

A. B., *Moderator of the meeting.*

C. D., &c., *Committee chosen by the meeting.*

§ 233. The call in the form suggested in the last preceding section, and signed by the moderator and committeemen, does not bind the gentlemen signing it personally to pay the salary of the minister, but would be regarded in law as the act of the congregation or society. And the society, even, would not be liable to the minister who should accept the call, unless the same be ratified by the trustees, as hereinbefore suggested. The call, of itself, relates exclusively to the spiritual concerns of the congregation, having no relation whatever to the temporal affairs of the body corporate. Hence it must be ratified by the trustees to make it legally binding. (*Paddock v. Brown*, 6 *Hill*, 530.)

§ 234. The instrument to be signed by the trustees, ratifying the salary of the minister fixed by the society, may be in the form following:—

Whereas, at a regular meeting of the members of the society of "The First Presbyterian Church of Fulton," who were entitled by law to elect trustees for said society, held on the day of A. D. 18 , called for that purpose, a call was extended in due form to the Rev. Jacob Faithful to become the pastor of said church, and it was then and there determined at said meeting, by a majority of the persons so entitled to elect such trustees, that the salary of the said Rev. Jacob Faithful should be fixed at two thousand dollars per year, payable in regular quarterly installments during the time he should be and continue the regular pastor of said church: Now therefore, we the trustees of said society, believing that the employment of the said Rev. Jacob Faithful will produce peace and harmony in said church and society, do hereby ratify and sanction the said call and salary, and employ the said Rev. Jacob Faithful to be the pastor of said church accordingly, on the terms specified in the said call.

A. B., &c., Trustees.

I, Jacob Faithful, in consideration of the within call and agreement, do hereby undertake the pastoral office in the church, congregation or society within mentioned, and on the terms within specified.

JACOB FAITHFUL. [L. S.]

§ 236. Though the statute provides that the trustees shall pay the salary of the minister, regularly employed, out of the revenues of the church, congregation or society, the minister, doubtless, would have a right of action on his contract, so as to make all of the property of the society liable for the payment of the salary. A contract made in good faith with trustees *de facto* of a religious corporation, in the actual possession of the church edifice, books, records, seal and the temporalities of the church, will bind the society, and will be enforced, even though the election of



such trustees may afterwards be adjudged illegal. (*Ebaugh v. German Reformed Church*, 3 E. D. Smith, 60.)

§ 237. The call of the minister should be in such terms as that the pastoral relation can be amicably terminated whenever the relation may cease to be useful or agreeable to the parties. The form of the call hereinbefore suggested will answer for the purpose of meeting the contingency supposed. If, however, the minister, after he becomes settled, should receive sentence of deprivation, pronounced by the proper ecclesiastical judicatory, he would thereupon cease to be minister, and the temporalities of the church could not be properly or legally applied to his support thereafter. (*Robertson v. Bullions*, 9 Barb. 64.)

§ 238. When a minister is called to and settled in charge of a Protestant Episcopal parish, unless something to the contrary is distinctly expressed in the call and settlement, he cannot be dismissed except by mutual consent or by superior ecclesiastical authority, on the application of one of the parties. It seems to be the rule or regimen of the Episcopal church, as to the tenure of its parish ministers, that when they have once been placed in charge of congregations, they can neither leave nor be dismissed except by mutual consent, without the intervention of the bishop. (*Youngs v. Ransom* 31 Barb. 49.)

§ 239. The Roman Catholic churches have a similar rule with respect to the settlement of their priests to that of the Protestant Episcopal, as stated in the last preceding section. But in all other denominations, unless the terms of the contract between the minister and people make the pastoral relation perpetual, the relation can be terminated at the option of either party. Sometimes the relation is made perpetual by the terms of the call and acceptance. In such

cases the pastoral relation, probably, cannot be severed, except by mutual consent, or the death of the minister, or the existence of some good and legal reason why the same should be terminated.

CHAPTER XVIII.

RELIGIOUS SOCIETIES IN NEW YORK—TITLE TO CHURCH PROPERTY—POWER TO TAKE AND HOLD, AND FOR WHAT PURPOSES.

§ 240. The title to all property acquired by a religious society in the State of New York, whether real or personal, is vested in the corporation. Whatever possession the trustees or officers have is the possession of the corporation. The trustees do not hold the property in trust, as their name or title of office would imply, but their position respecting the corporate property is the same as though they were denominated directors or managers, and their possession of such property is the same which the directors of a bank bear to the banking-house and other property of a banking corporation. The right of the trustees to intermeddle with the property of the society, is an authority, and not an estate. This would be so upon general principles relating to the legal nature of corporations, apart from the particular language of the act concerning religious corporations, which confirms this view. (*The People v. Fulton*, 11 N. Y. Rep. 94.)

§ 241. The title to the property of a religious society being in the corporation, the alienage of one or more of the trustees or corporators will not affect it. The corporation

would not be an alien if all the corporators were. The trustees have no vested rights in the property as *cestuis que trust*; and, if they had, it seems that it would be their rights, and not the legal estate of the corporation, which would suffer the consequences of their alienage. (*Cam-meyer v. United German Lutheran Churches*, 2 Sand. Ch. R. 186.)

§ 242. The principle before stated does not prevent any person or persons from taking and holding any property, real or personal, by grant, conveyance, devise or lease, in trust for the use and benefit of any religious society, when the terms of such trust are prescribed by the grant, conveyance, devise or lease. The legislature of the State passed an act, in the year eighteen hundred and fifty-five, forbidding the creation of any such trust; but that statute has since been unqualifiedly repealed, and the law in this respect now stands precisely as it did before the enactment of eighteen hundred and fifty-three. (*Laws of 1862, Ch. 147.*)

§ 243. Where certain members of an unincorporated religious society take an absolute deed of lands, bought with the funds of the society, upon the subsequent incorporation of the society, the title becomes vested in the corporation, and for the convenience of a recorded title, and for no other reason, a court of equity, on the application of the corporation, will decree a conveyance. If the trust in favor of the society be expressed in the conveyance, the legal title would vest in the corporation by force of the statute, and no proceedings would be necessary to perfect the title of record. (*South Baptist Church v. Yates*, Hoff. 142; *Baptist Church in Hartford v. Witherell*, 3 Paige, 298; *Voorhees v. Presbyterian Church of Amsterdam*, 8 Barb. 135.)

§ 244. An agreement entered into with a religious commu-

nity to convey land to them for the site of a church, may be enforced after the society is regularly incorporated, and the church is built on the premises; and a court of equity will decree a conveyance of the property to the corporation, in conformity to the agreement previously entered into with the individual members of the society. (*The Canajoharie and Palatine Church v. Leiber*, 2 Paige, 43.)

§ 245. A religious corporation organized under the general incorporating act of the State, is authorized to purchase and hold real and personal estate, for the use of the church, congregation or society, or for other pious uses, so that the whole real and personal estate of such church, congregation or society shall not exceed the annual value or income of three thousand dollars. The limit in regard to the annual value or income of the real and personal estate of the corporation of the minister, elders and deacons of the Reformed Protestant Dutch church of the city of New York is nine thousand dollars; of the First Presbyterian church of the city of New York, and of the several Protestant Episcopal churches of the city of New York, is six thousand dollars each; and of the minister, elders and deacons of the Reformed Dutch church of the city of Albany, and of the several free churches of the State, ten thousand dollars each. The free churches of the city of New York do not seem to be limited in the amount of the real and personal property which they may respectively hold. (*Laws of 1813, Ch. 60, Sec. 4; Laws of 1819, Ch. 33, Sec. 3; Laws of 1854, Ch. 218, Sec. 2; 3 Statutes at Large, 690, 696 and 705; Laws of 1863, Ch. 45, Sec. 2.*)

§ 246. Any incorporated religious society within the State is also authorized to purchase, acquire and hold land for the purpose of a burial ground or cemetery, and may erect thereon suitable buildings for purposes connected

with the dead. This privilege and authority was first limited to the acquiring and holding of land in the city and county of New York, or in any neighboring county of the city, but, by subsequent legislation, it was extended to religious corporations in every part of the State. (*Laws of 1842, Ch. 153, Sec. 1; Laws of 1850, Ch. 122, Sec. 3; 3 Stat. at Large, 701 and 703.*)

§ 247. Whenever any religious corporation incorporated under the general incorporating act of the State, or by any special charter, shall deem it necessary or expedient, for the accommodation of its members, in consequence of their number or dispersed habitations, or otherwise, to increase the facilities of public worship, the vestry or trustees of such religious corporation may purchase and hold grounds in the same village, town or city, and may erect thereon suitable associate houses or churches, or convenient chapels, and may also purchase and hold other grounds for the purpose, and erect thereon suitable school-houses for Sunday or parochial schools of the said associate meeting-houses, churches or chapels, or may hire or purchase and hold any such grounds, with suitable buildings already erected thereon for the like purpose. (*Laws of 1850, Ch. 122, Sec. 2; 3 Stat. at Large, 703.*)

§ 248. A religious corporation may take by bequest, real or personal property to the amount limited by statute, for any use necessary for the purposes of the corporation. Such property need not be given, generally, for all the purposes of such corporation, but the donor may limit it to one object; for example, to provide for the support of a minister. (*Williams v. Williams, 4 Selden, 525.*)

§ 249. But the trustees of a religious corporation cannot take a trust for the sole benefit of members of the church,

as distinct from other members of the society, or for the use of a portion of the corporators, to the exclusion of others. Nor can they take a trust limited to the support of a particular faith or a particular class of doctrines. It would not be compatible with the office and duties of the trustees, that they should take and hold and administer the revenues of property from the benefits of which a portion of the corporators must be excluded. This would prove an entering-wedge of division, the force of which even christian charity and forbearance would scarcely be able to resist. Besides, such a trust is not authorized by the statute, and is inconsistent with its general scope and object as well as with its terms. (*Robertson v. Bullions*, 11 *N. Y. Rep.* 243.)

§ 250. When a religious society is organized as a branch or part of an established denomination, and becomes endowed with property given upon the faith of its being so, the trustees at a given time will not be permitted to employ such property in maintaining doctrine and discipline at variance with that of the denomination, even though they might be sustained by a majority of the corporators; and in such a case the intention of the donors is the criterion by which to determine the purposes to which the property of the church has been dedicated. (*The People v. Steele*, 2 *Barb.* 397.)

§ 251. A religious corporation may accept a legacy charged with the payment of its income to a third person for life, and may execute the trust. It may also take property by devise, partly for its own use, and partly for the use of others; and the power to hold the property for its own use carries with it the power to execute that part of the trust which relates to others. (*Matter of Howe*, 1 *Paige*, 214.)

§ 252. No person having a husband, wife, child or parent can, by his last will and testament, devise or bequeath to

any religious society or corporation, in trust or otherwise, more than one-half part of his or her estate, after the payment of his or her debts, although a devise to the contrary would be valid to the extent of one-half, and no more. This restriction, like the one in another case hereinbefore referred to, was made in order to "guard against improvident testamentary disposition of property by persons *in extremis*, in derogation of the claims of near relatives." (*Laws of 1860, Ch. 360, Sec. 1.*)

CHAPTER XIX.

RELIGIOUS SOCIETIES IN NEW YORK—INVENTORY TO BE EXHIBITED BY CERTAIN RELIGIOUS CORPORATIONS—CONSEQUENCES OF NEGLECT.

§ 253. The treasurer, or the trustees or persons entrusted with the care and management of the temporalities of any religious corporation in the cities of New York, Albany and Schenectady, the annual income of whose property shall exceed six thousand dollars, must, between the first day of January and the first day of April, tri-ennially, exhibit on oath to one of the justices of the supreme court, or any of the judges of the court of common pleas, or the county judge of the county in which such religious corporations are respectively situated, an account and inventory of all the estate, both real and personal, belonging, at the time of making such oath, to the church, congregation or society for which they respectively are trustees or managers, together with an account of the annual revenue arising therefrom. (*Laws of 1813, Ch. 60, Sec. 10; Laws of 1850, Ch. 122, Sec. 1; 3 Stat. at Large, 693 and 702.*)

§ 254. In every case where a church or religious society has once exhibited the account and inventory required and specified, it will not be necessary for such church or religious society again to exhibit any account and inventory, unless the church or society subsequently to such exhibition shall have purchased or acquired additional lands, tenements or hereditaments within the State. (*Laws of 1814, Ch. 1, Sec. 6; 3 Stat. at Large, 695.*)

§ 255. If any land purchased or acquired by a religious society for the purpose of a burial place or cemetery, and other purposes connected therewith, shall be subsequently appropriated or applied to any use or purpose other than as above specified, it is declared by statute that every such religious society which shall so otherwise appropriate or apply the same, or suffer it to be so otherwise appropriated or applied, shall thenceforth be subject to the provisions of law requiring the exhibition of the account and inventory hereinbefore referred to. (*Laws of 1842, Chap. 153, Sec. 2; 3 Stat. at Large, 701.*)

§ 256. When it shall appear from the account and inventory, hereinbefore specified and referred to, that the annual revenue of any church, congregation or religious society exceed the sum by virtue of any charter or law they may or can respectively hold and enjoy, the judge before whom the same shall be so exhibited is required to report such fact, together with such account and inventory, to the legislature of the State at their next meeting. (*Laws of 1813, Ch. 60, Sec. 10; 3 Stat. at Large, 694.*)

§ 257. If any religious society required to exhibit the account and inventory specified and required by law, shall neglect to exhibit the same for the space of six years after the expiration of the time in which the same should have

been exhibited, and shall not then exhibit the same, and procure a certificate to be indorsed thereon by the justice of the Supreme Court, or judge of the proper county, that he is satisfied that the annual revenue arising from the real and personal estate of such corporation does not, nor has not for the six preceding years, exceeded the sum which, by law, such religious society is allowed to receive, then such religious society will cease to be a body corporate. (*Ib.*)

CHAPTER XX.

RELIGIOUS SOCIETIES IN NEW YORK—THE PEWS OF A RELIGIOUS SOCIETY—RIGHTS OF PEW-HOLDERS—THEIR INTEREST IN THE PEWS.

§ 258. A pew in a church in the State of New York is an incorporeal hereditament, and something more than an easement. It is not land, but is connected with the realty and relates to it. The right of the pew-holder is not real estate, because it extends only to the use of the pew for the purpose of sitting therein during divine service. This is an incorporeal right, but it is one springing out of the land, and in this respect it has some of the qualities of realty. It is such an incorporeal hereditament as that in case of the death of the owner intestate, passes to the heir-at-law, and not to the personal representatives. In some of the States a pew is real estate by statute, and in others it is personal property, but in the State of New York the common law doctrine prevails, and, accordingly, it is regarded as an incorporeal hereditament. (3 *Kent's Com.* 488; *McNabb v. Pond*, 4 *Brad.* 7.)

§ 259. No order of a judge is necessary to enable the trustees of a religious society to sell the pews of the church, on account of the qualified right which the sale passes. It is not a sale of real estate, though the interest acquired is an interest in real estate, and requires a conveyance in writing to pass a good and valid title. The trustees have no power to execute an absolute deed of a pew in fee, without the reservation of any rent, and their agreement to execute such a deed at a future day would be void. A promissory note given for the purchase money of a pew upon such an agreement could not be collected of the maker, on account of a total failure of consideration. But a provision in an agreement to pay money for the erection of a church that the slips shall be sold at auction, to the highest bidder, upon the completion of the house, and that moneys subscribed may be applied in payment of bids, is not inoperative, so as to render the subscriptions void. The provision for a sale would be construed as meaning such a sale as the trustees are authorized by law to make, that is to say, a demise and lease of the slips. (*Freleigh v. Platt*, 5 Cow. 494; *First Presbyterian Church of Ithaca v. Bigelow*, 16 Wend. 28; *Viele v. Osgood*, 8 Barb. 130; *M. E. Union Church v. Pickett*, 23 Barb. 436.)

§ 260. A pew-holder acquires only a limited usufructuary interest, subject to the general right of the society. He has no title to the edifice or freehold, but a mere right of occupancy during divine worship. He has, however, the exclusive right to the possession and enjoyment of the pew for the purposes of public worship, by virtue of an individual right of property, derived, in theory at least, from the corporation represented by the trustees, who are seized and possessed of the temporalities of the church. The pew-owners hold and possess their seats in severalty, in subordination to the more general right of the trustees in the soil

and freehold. These rights are distinct and separate, and do not necessarily conflict with each other. (*Shaw v. Beveridge*, 3 Hill, 26; *Matter of Reformed Dutch Church*, 16 Barb. 237; *Voorhees v. Presbyterian Church of Amsterdam*, 17 Barb. 103.)

§ 261. A lease in perpetuity of a pew confers only a right to the use of the pew during divine service, and the lessee takes his title in subordination to the more general right of the trustees in the soil and freehold, and subject to the right and power of the trustees to alter and repair the church. If, in making alterations or repairs, the pew is necessarily destroyed, the pew-holder cannot have trespass or ejectment. If the pew should be destroyed for convenience only, or wantonly and maliciously, the only remedy of the pew-holder, even then, against the trustees, would be an action for damages by way of indemnity for the loss. The presumption would be in favor of the good faith of the trustees, as agents or officers of the corporation, in altering the internal arrangements of the church, and yet the pew-owners would not be concluded by the exercise of an arbitrary and despotic will, on the part of the trustees, in determining the question of necessity, expediency and convenience. It is the duty of the trustees to carry out the reasonable and legal will and wishes of the corporation in a matter of this kind, and they will be presumed to have done so, in the absence of evidence to the contrary. (*Voorhees v. Presbyterian Church of Amsterdam*, *supra*; *Cooper v. Presbyterian Church*, *Sandy Hill*, 32 Barb. 222.)

§ 262. The seat or pew in any house or place of public worship, occupied by the owner or his family, is exempt from levy and sale on execution against the pew-owner, and the same cannot be made liable for the debts of the pew-owner, by any legal process, so long as the same is occupied

by the owner or his family as aforesaid. (2 R. S. 307, Sec. 22; 2 Stat. at Large, 380.)

§ 263. An impression has obtained, to a considerable extent, that pew-holders in a church may be assessed by the trustees to defray the salary of the minister and the ordinary expenses of the society. This is erroneous. If the pews have been sold free of rent, the pew-holders are not liable to pay any assessment made upon the pews by the trustees for any purpose. There is occasionally an instance where such assessment is authorized by a special statute; but, without a special enactment, it is in no case allowed. (*Trustees of First Presbyterian Congregation in Hebron v. Cruikshank*, 8 Johns. 217.)

CHAPTER XXI.

RELIGIOUS SOCIETIES IN NEW YORK—SALE OF THE REAL ESTATE OF A RELIGIOUS SOCIETY—CONSENT OF THE COURT NECESSARY—HOW OBTAINED—FORM OF PROCEEDING—DIFFERENT RULE AS TO MORTGAGES.

§ 264. The general common law power of corporations in regard to the disposition of their property, real as well as personal, is co-extensive with that of natural persons. But with regard to religious societies or corporations in the State of New York, this rule does not apply. In this State no religious corporation can sell in fee any real estate, without the order of court. The powers given to religious societies are limited to purchase and hold real estate, and then to demise, lease and improve the same for the use of the con-

gregation. This limitation of the corporate power to sell is peculiar to religious corporations. (2 *Kent's Com.* 282.)

§ 265. By the general incorporating act of the State it was made lawful for the chancellor, upon the application of any religious corporation, in case he might deem it proper, to make an order for the sale of any real estate belonging to such corporation, and to direct the application of the moneys arising therefrom, by the said corporation, to such uses as the same corporation, with the consent and approbation of the chancellor, might conceive to be most for the interest of the society to which the real estate so sold did belong. (*Laws of 1813, Ch. 60, Sec. 11; 3 Stat. at Large, 694.*)

§ 266. This provision of the general incorporating act, however, did not apply or extend to any of the lands granted by the State for the support of the gospel, familiarly known as "Gospel and School Lots." The statute expressly excepted these lands from that provision of the act. No religious corporation can dispose of those lands by the consent of the chancellor or otherwise. (*Ib.*)

§ 267. The constitution of the State, adopted in eighteen hundred and forty-six, abolished the court of Chancery, and superseded the office of chancellor, and vested the powers, duties and functions of that court and officer in the Supreme Court. The consent and order of the Supreme Court may therefore be obtained, under the present arrangement, for the sale of the real estate of such religious corporations, instead of the Chancellor as under the old system. The county courts may also give the consent and grant the order, and exercise the powers in all cases where the real property of the society is situated within the county in which the county judges respectively reside. (*State Const. Art. XXV, Secs. 5 and 6; Code of Procedure, Sec. 30, Sub. 9.*)

§ 268. The application for the order allowing the sale of the real property of a religious society must be made by the corporation. It is not sufficient that the trustees apply for the order, but every member of the congregation entitled to vote for trustees must have an opportunity to be heard; and such preliminary action must be had as shall make the application that of the society. The opinions of the trustees in favor of the sale are of no moment, except as opinions of so many of the corporators.* (*Wyatt v. Benson*, 23 Barb. 327; but see *Matter of St. Ann's Church*, 23 Howard's Pr. Rep. 285; and also *Madison Avenue Baptist Church v. The Baptist Church in Oliver street*, 30 How. Pr. R. 455.)

§ 269. Should a resolution be passed by a majority vote, at a regular meeting of the society, to dispose of the real estate of such society, and it should subsequently appear to the court that the application was contrary to the views and wishes of a majority of the corporators—the regular voting members of the society—the court would undoubtedly withhold its assent to the sale of the church property. So on the contrary, it is probably no objection to the application that it was not authorized by an express vote of the corporators, when neither the good faith of the application nor the propriety of the proposed disposition of the proceeds is questioned. (*Wyatt v. Benson*, *supra*; *Matter of St. Ann's Church*, *supra*.)

* There seems to be a conflict of authority as to the source of the application for the sale of the real property of a religious corporation. The general practice before the Supreme Court at special term, and before the county courts, is in accordance with the rule laid down in the text; and this would seem to be most in keeping with the spirit of the statute. But in the matter of the application of St. Ann's Church in Brooklyn, to mortgage their real estate, Justice Emorr, sitting at special term, expressed the opinion that the vestry or trustees of a church might apply to the court to be allowed to sell the real estate of the church, without the actual concurrence of the society. And in the case of the Madison Avenue Baptist Church v. The Baptist Church in Oliver street, the Superior Court of the city of New York held, *obiter*, that the trustees might make the application for the sale of the real estate of a religious corporation irrespective of any vote of the corporators. The better way undoubtedly is, for the society, in all cases, to direct the application.

§ 270. The court has power to make a provisional order giving a religious corporation leave to sell its real estate; for example, an order that the sale may be made for a certain price and for a certain legitimate purpose. But the court has no power to approve or authorize a sale for the purpose of closing up the existence of the society and distributing its property. The court cannot approve of any plan for the application of the proceeds of the sale of real estate, which does not regard the interests of the society as an organization to continue for the purposes of its creation. The trustees have no power to do this, and their powers cannot be enlarged by the court. (*Matter of Brick Church*, 3 *Edw.* 155; *Wheaton v. Gates*, 18 *N. Y. R.* 395.)

§ 271. The county court cannot appoint a receiver of the effects of a religious corporation, whether such corporation be insolvent or voluntarily dissolved. Even in case of a valid direction to apply the proceeds of real estate ordered to be sold, the court could not execute the duty through the agency of a receiver. The court can only direct the application of the proceeds by the corporation, and the proceeds cannot be legally distributed among the pewholders for one very simple reason, that they have no interest in the land upon which the church stands, and the rights, whatever they are, cease when the edifice is destroyed or becomes permanently unfit for public worship. (*Wheaton v. Gates*, *supra*.)

§ 272. A religious corporation has power to contract for the sale of its real estate, subject to the approval of the court, and, as soon as the sanction of the court is obtained, the corporation is bound by the contract. It is not necessary, and perhaps not desirable, that the sanction of the court should precede the negotiation of the contract. The power of the court in the matter is a regulating power, for the purpose of preventing a violation of the trust for the

particular use to which the property may be dedicated, and to see that the proceeds of sale are invested or used for the like uses; and the order of the court in such cases, authorizing the sale, is permissive only, and not mandatory. An absolute sale and conveyance, and a ratification afterwards, might not be upheld, but an agreement to sell, subject to the approval of the court, will be sustained. (*Bowen v. The Irish Presbyterian Congregation of the City of New York*, 6 Bosw. 245.)

§ 273. The trustees of a religious society have power to remove their house of worship from one lot to another, without any application to the court. No authority which the court could confer would make that power more perfect. The trustees possess this right to remove their house of worship, from the authority given them under the general act for the incorporation of religious societies. An application to the court is necessary only in case the trustees desire to sell the lot from which they propose to remove the building. (*Matter of Second Baptist Society in Canaan*, 20 How. Pr. R. 324.)

§ 274. The trustees may mortgage the real estate of the society, in good faith, to secure an honest debt of the corporate body, without applying to the court for its assent. The executing of a mortgage is not a sale within the provisions of the general act in regard to religious societies, nor in the ordinary and popular acceptance of the term, nor, indeed, in the strict legal sense. A sale embraces the idea of a transfer of the legal title of the property sold, from the vendor to the vendee, for a consideration passing from the latter to the former. A sale, to be complete, requires the delivery of the possession of the thing sold. It was sales in this sense by trustees of religious societies that the statute was designed to restrain and regulate. But

there is nothing in the spirit or policy of the statute which forbids the giving of a mortgage, or creating a lien upon the real estate of a religious society, by the voluntary confession of a judgment, to secure a debt legally contracted.

Manning v. Moscow Presbyterian Society, 27 Barb. 52.)

§ 275. A corporation, whether trading or religious, may, at the common law, assign its property in trust for the payment of its debts, unless restrained by its charter, or by some other statute. It is the duty of the trustees of a religious corporation to cause its debts to be paid, and there is no legal objection to their adopting the form of a general assignment of the corporate property to effect it; though, as to the real estate, the society must obtain the assent of the court. (*DeRuyter v. St. Peter's Church*, 3 Comst. 238.)

§ 276. Under the general act for the incorporation of religious societies, the power to sell the real estate of a religious corporation is vested in the court and not in the trustees. Neither is it a power in the corporation. The court may, therefore, order that the sale be made by a referee or other person duly appointed, and the sale thus made and the conveyance executed by the referee or other person, will be just as valid as though made by the trustees with the assent of the court. (*Ib.*)

§ 277. The petition for leave to sell real estate of a religious corporation may be in the following form:—

To the Honorable the County Court of the County of Oswego:

The petition of the undersigned respectfully shows that they are the trustees of the religious society known as "The First Presbyterian Church, Fulton," a religious incorporation organized under and in accordance with the laws of the State of New York, having no personal property except their church furniture, and no real estate except the

lot on which stands their house of worship, and one other piece or parcel of land situate in the village of Fulton, in the county of Oswego, bounded as follows: (Add description.) That said last mentioned piece or parcel of land is of the value of about one thousand dollars. That the said society has incurred a debt in necessary repairs recently made upon their house of worship of about the sum of eight hundred dollars, and they have not the means of paying the same except by a sale or other disposition of their real estate, and they therefore ask leave of this court to sell the said parcel of land hereinbefore specifically described, and owned by said society, and with the proceeds pay the said indebtedness, and apply the balance in making other necessary improvements in and about their house of worship. And this petition further shows that at the regular annual meeting of the said society, held at their said house of worship on the day of , 18 , at which there were present and voting a majority of the legal voters of the said religious corporation, a resolution was unanimously passed instructing the said trustees to make this application and effect a sale of said parcel of land; and that, at a meeting of your petitioners as a board of trustees, a resolution was unanimously passed to make this application in accordance with the expressed wish of the said religious society.

A. B., &c., Trustees.

§ 278. The petition should be verified by affidavit, which may be in the following form:

County of Oswego, ss.

M. M., being sworn, says that he is the clerk (or president) of the board of trustees of the religious incorporation known as "The First Presbyterian Church, Fulton." That he has read the foregoing petition signed by the said trustees, and knows the contents thereof, and that the same is true of his own knowledge or belief. That he was present at the annual meeting of the society referred to in said petition, and kept the minutes thereof, and that what is stated in said petition in relation thereto is true to his own knowledge, and that the signatures to the foregoing petition are all genuine, and that the signers thereof are all the trustees of said incorporation.

M. M.

Sworn, &c.

§ 279. The order of the court in the matter may be in the following form:

At a term of the county court of the county of Oswego,
held at the court-house, in the city of Oswego, on the
day of , 18 :

Present—Hon. J. C. Churchill, County Judge.

IN THE MATTER OF THE APPLICATION OF
RELIGIOUS SOCIETY KNOWN AS "THE
FIRST PRESBYTERIAN CHURCH, FUL-
TON," FOR LEAVE TO SELL THEIR REAL
ESTATE. }

Application having been made by the trustees of the above named religious society, on behalf of the said society, for leave to sell their real estate or a part thereof, on motion of Mr. C. H. D., of counsel for said petitioners, it is hereby ordered that the said trustees be authorized to sell and convey the parcel of land specifically described in said petition for a sum not less than one thousand dollars, and that they appropriate the proceeds as requested in the said petition.

CHAPTER XXII.

RELIGIOUS SOCIETIES IN NEW YORK—CHANGE OF CHURCH GOVERNMENT—HOW EFFECTED—TRUSTEES CONTROL THE RELIGIOUS EXERCISES—THE RIGHT TO VOTE NOT AFFECTED BY THE DOCTRINES OF THE VOTER—TITLE TO THE OFFICE OF TRUSTEE, HOW TRIED.

§ 280. As has been intimated in a previous chapter, corporations formed under the general act for the incorporation of religious societies in the State of New York have no denominational character, and none can be engrafted upon them. The legal character of the corporation is not affected

by the existence or non-existence, or ecclesiastical connection, doctrines, rites or modes of government of a church or churches formed by the corporators. Religious societies usually maintain public worship according to some specified denominational usage, but the corporation and the church, although one may exist within the pale of the other, are in no respect correlative. The objects and interests of the one are moral and spiritual; and the other deals exclusively with things temporal and material. The existence of the church proper, as an organized body, is not recognized by the municipal law. (*Petty v. Tooker*, 21 *N. Y. Rep.* 267.)

§ 281. The corporators of a religious society may not only select their own officers, and thus control their own property, but they may change their faith and form of worship, or their discipline at their pleasure, and there is no legal power to interfere, or to prevent it. They may pass from a Congregational church to an organization in connection with the Presbyterian body, and *vice versa*. In a word, the society has the entire control of the question as respects the form of religious worship which shall be promoted by the church property. In the strong language of the courts, "it was the intention of the legislature to place the control of the temporal affairs of these societies in the hands of a majority of the corporators, independent of priest, bishop, presbytery or synod, or other ecclesiastical judicatory. This is the inevitable effect of the provision giving to the majority, without regard to their religious sentiments, the right to elect trustees, and to fix the salary of the minister." (*Robertson v. Bullions*, 11 *N. Y. Rep.* 243; *Parish of Bellport v. Tooker*, 29 *Barb.* 256.)

§ 282. The trustees of a religious society can determine, by their control of the corporate property, who shall conduct the religious exercises in the house of worship of the society.

The only restraint is in the power of the society, by vote of its members, to fix the salary of the person employed as their minister. The trustees may also make such regulations in respect to the renting and occupation of pews, as to exclude persons holding obnoxious opinions from becoming attendants upon worship, and thereby obtaining a right to vote. This is the only way that the use of the church property can be restricted to the propagation of any particular form of religious belief, or ecclesiastical organization, unless there be some express condition affecting the grant of the corporate property. (*Petty v. Tooker*, 21 *N. Y. Rep.* 267.)

§ 283. Persons otherwise qualified do not lose their right as corporators to vote at elections, by reason of their having individually or collectively renounced the doctrines and ecclesiastical government professed and recognized by the religious body in whose worship and service the corporate property had always been employed, and the title of trustees to office and to the control of the corporate property is not impaired by any alteration in doctrine or church government on their part, or on the part of those by whom they are elected. (*Id.*)

§ 284. Should a religious society think proper to separate from the church with which it has previously been connected, and form a connection with another denomination, the trustees have the power to employ such minister as they see fit, and to exclude from the pulpit a minister appointed by the ecclesiastical judicatory with which the society was previously connected. And a court of equity has no power to control their action in the employment or payment of a minister. (*Burrel v. Associate Reformed Church of Seneca*, 44 *Barb.* 282.)

§ 285. The remedy for an intrusion into, and usurpation
[Tr.]

of, the office of trustee of a religious society or corporation, is by action, by and in the name of the Attorney General, upon his own relation or upon the relation of a private party, substantially as by information in the nature of a *quo warranto* under the old practice; and the title to the office cannot be tried in any other way. (*Parish of Bellport v. Tooker*, 29 Barb. 256.)

CHAPTER XXIII.

RELIGIOUS SOCIETIES IN NEW YORK—ACTIONS BY AND AGAINST RELIGIOUS SOCIETIES—NAME TO BE PROSECUTED IN—CAUSE OF ACTION—CHARTER NEED NOT BE PROVED UNLESS DENIED IN DEFENDANT'S ANSWER.

§ 286. A religious corporation in the State of New York has a cause of action for damages which it may sustain in its corporate capacity, or upon contracts entered into with it as such corporation, the same as other corporations; and it is also liable to an action in all cases where other corporate bodies would be liable; and all actions must be prosecuted by or against a religious corporation in its corporate name.

§ 287. A religious corporation has an action against a railroad company for a nuisance, in running their cars and engines, ringing their bells, blowing off steam, and making other noises in the neighborhood of a church or meeting-house on the Sabbath, and during public worship, which so annoy and molest the congregation of the house, and render the same unfit for a place of religious worship; and the action for such injury may be brought in the name of the society in its corporate capacity, and need not be brought by the indi-

viduals affected thereby. (*First Baptist Church in Schenectady v. The Troy & Schenectady R. R. Co.* 5 Barb. 79.)

§ 288. The doctrine laid down in the last preceding section may be regarded as not fully settled. Some judges hold that in the case supposed the society cannot sustain an action for the injury, because the damage is too remote. The opinion is entertained that the religious corporation cannot sue for disturbing the congregation while worshipping in the church edifice, by making a noise; that there must be some injury to the property, immediate or consequential. Such judges hold that the congregation or society, in such case, being the persons molested, cannot maintain an action for the injury, even though the noise and confusion might amount to a public nuisance. (*The Same v. The Utica & Schenectady R. R. Co.*, 6 Barb. 313.)

§ 289. Perhaps, if the acts referred to were committed upon a week-day, and not on the Sabbath, or upon the Sabbath, for objects contemplated in the exceptions contained in the statutes of the State, making it unlawful to labor or travel on that day, the action could not be maintained without showing that the acts complained of were unreasonable or willful, wanton or malicious. The law authorizes the running of a railroad upon week-days, and for certain purposes and under certain circumstances upon the Sabbath; but every one is bound to so use his own, and so exercise his rights, as that he shall not injure the property or unreasonably impair the rights of another. Hence acts, sometimes lawful in themselves, sometimes become wrongful and illegal, in consequence of the time or place or manner of performing them. (*The Same v. The Sch. & Troy R. R. Co.*, *supra*.)

§ 290. A religious corporation may maintain an action for rent accruing under a conveyance to individuals for the use

of the church, which at the time of the grant was not incorporated, but subsequently became incorporated and acquired the legal capacity to take and hold real estate, and in bringing the action the corporation need not aver its capacity to take and hold land, because the statute itself gives this capacity to religious incorporations, which renders any such averment unnecessary. (*Reformed Dutch Church of Schenectady v. Veeder*, 4 *Wend.* 494.)

§ 291. A deed of land to trustees *de facto* of an unincorporated religious society, conveys no title to the society, and individuals claiming to be the successors of such trustees cannot maintain an action against persons who are in the actual possession of the land thus conveyed, and the house of worship erected thereon, under a claim that they are trustees of and represent an unincorporated society which owns the same. Such action cannot be maintained by such trustees either for the purpose of having themselves declared to be the legal trustees of the society and the successors in office of the grantees named in the original deed of the land, or for any other purpose connected with such property. The only remedy in such cases is to get the society incorporated and then take measures to compel the conveyance of the property to the society. (*Bundy v. Birdsall*, 29 *Barb.* 31.)

§ 292. A contract made by trustees *de facto* of a religious corporation with an innocent person, before a judgment declaring their election illegal, is binding upon the corporation, and the same may be enforced by action; and, indeed, all the rules applicable to other corporations apply to religious societies, with the exceptions and limitations created by statute. (*Ebaugh v. German Church*, 3 *E. D. Smith*, 60.)

§ 293. In actions brought by religious corporations, as in

other domestic corporations in the State, it is not necessary to prove, on the trial of the cause, the existence of such corporation, unless the defendant shall have pleaded in abatement or in bar that the plaintiff is not a corporation. (3 *Stat. at Large*, 477, *Sec. 3.*)

CHAPTER XXIV.

RELIGIOUS SOCIETIES IN NEW YORK—DATE OF THE PRESENT SYSTEM—SUPPORT AND ORGANIZATION OF CHURCHES IN COLONIAL TIMES—TRINITY CHURCH, CITY OF NEW YORK.

§ 294. The present system of incorporating religious societies in the State of New York, originated in the year 1784. Previous to that date, and in colonial times, the gospel ministry was sustained by public provision and appropriation, or by societies incorporated by special charters granted by the home government or by the acts of the Colonial legislature. In some cases public religious worship was maintained by a direct tax upon the whole people; in others by imposts, customs and penalties, and in others by the voluntary contributions of the members of the regularly organized religious society.

§ 295. By the "freedoms and exemptions" for New Netherlands, granted by the directors of the General Incorporated West India Company, at the Assembly of XIX, with the approbation of the "High and Mighty Lords States General of the United Netherlands," to all "Patroons, Masters and Private persons," who would plant any colonies, or introduce cattle in New Netherlands, exhibited 19th July, 1640, it was provided that no other religion should be pub-

licly admitted in New Netherlands except the Reformed, as it was then preached and practiced by public authority in the United Netherlands; and for that purpose the company were forever to provide and maintain good and suitable preachers, school-masters and comforters of the sick. (1 *Colonial History of New York*, 123.)

§ 296. In the Letter of Instruction for Andris Draeyer, Commander and Schout, dated "Fort Willem Hendrick, 26th 7ber, 1673," it was expressly charged that the pure, true Christian religion, agreeably to the Synod of Dort, should be "taught and maintained in all things as it ought, without suffering any the slightest attempt to be made against it by any other sectaries." This charge was reiterated in the Provincial Instruction for the Schout and Magistrates of the "City of Willems" and "Colonies of Rensselaerwyck," dated 8th November, 1673, and again in the Instruction for the Schout, Burgomasters and Schepers of the city of New Orange, by order of the Gov. General of New Netherland, at Fort Willem Hendrick, 15th January, 1674. (2 *Ib.* 618, 653 and 678.)

§ 297. Oftentimes penalties imposed upon individuals by the courts on conviction of offenses, were divided between the "Fiscal and the Church," whereby considerable revenue was realized for the support of the ministry and the preaching of the gospel, and as late, at least, as 1 March, 1674, a fine imposed upon a person for a criminal offense was remitted by the court, "on condition only of paying to the church the sum of fifty guilders, Wampum value." (*Ib.* 692.)

§ 298. In the year 1664, the English conquered the Province, and the same was surrendered by the Dutch. At this time there had been chartered in the Province four Dutch churches, with the usual powers granted to their ministers,

elders and deacons, and, by one of the articles on the surrender of the Province, the rights of the Dutch church were expressly reserved. For this reason the English government saw fit to favor the Dutch congregations much more than those of other denominations except the Established Church, and a charter was seldom granted to any religious society, and then to one of the Established Church. (7 *Ib.* 586.)

§ 299. In 1667 a whole township of land was laid out and vested in trustees for the use of the ministers of the gospel according to the communion of the Church of England, by the Province of New York. In 1678, Gov. Andros, of New York, reported that there were there religions of all sorts; one Church of England, several Presbyterian and Independent churches, Quakers and Anabaptists, and some Jews, but states that the Presbyterians and Independents were the most numerous and substantial; and, in 1686, Gov. Dongan was instructed that a competent maintenance should be assigned to the ministers of such churches as then existed in the Colony, a convenient house be built at the common charge, for each minister, and a competent proportion of land be assigned such minister, for a glebe for the exercise of his industry. Those, or similar instructions, were given to subsequent governors of the Province, in all cases making it a prominent and exacting duty on the part of the executive of the Province to promote and sustain the gospel ministry and religious worship. (3 *Ib.* 262, 372 and 688.)

§ 300. In the year 1698 Gov. Fletcher granted a charter to a Dutch church in the city of New York, though he was censured very severely for the act by the high functionaries of the Established Church. The Earl of Bellomont, in a letter to the Lords of Trade and Plantations, refers to the chartering of the Dutch church as a very extraordinary

transaction, insisting that it was setting up a petty jurisdiction to "fly in the face of the government," and insinuates that the governor had received a bribe for passing the charter. (4 *Ib.* 426.)

§ 301. In 1697, Trinity church of the city of New York was chartered by the governor of the Province, with the royal assent. At this date a church edifice had been erected, though not yet completed, and the governor of the Province had been petitioned that this church edifice might be made parochial. It was designed for the accommodation of all the inhabitants of the city who were of the communion of the Church of England, then few in number, and a charter of incorporation of the church and inhabitants was asked for, and accordingly granted, which declared that the edifice and certain grounds adjoining should be "the Parish and Church-yard of the Parish of Trinity Church," within the city of New York, and should be forever dedicated to the service of God, and applied for all time to the use and behalf of the inhabitants of the city who were of the Church of England. The charter further declared that this church edifice and ground adjoining should be "the sole and only Parish Church and Church-yard of the city of New York." (*Letter of Hon. D. D. Barnard to the Senate of New York, dated March 23, 1857, page 33.*)

§ 302. From an account of the state of the church in the Province of New York, laid before the clergy, convened October 5, 1704, at the city of New York, by the appointment of His Excellency Edward, Lord Cornbury, and Colonel Nicholson, it appears that at that time Trinity church had been built, and the steeple raised to a considerable height, by the voluntary contributions of several persons, and that the rector of the church was maintained by a tax levied upon all the inhabitants of the city, amounting to one hun-

dred and sixty pounds, one hundred whereof, it was stated, was "entailed forever upon the incumbent for the time being;" and that, for the further encouragement of the rector, His Excellency, "out of his great goodness," had ordered in council twenty-six pounds per annum, to be paid out of the revenue, for the rent of the house of the incumbent. (3 *Doc. Hist. N. Y.* 111 and 112.)

§ 303. By the same account it would also appear that in 1704 there was a church in the parish of Jamaica, on Long Island, built by a tax levied on the inhabitants of the town by an act of the general assembly, which had a "high spire with a bell," but not "furnished with pulpit, pews or utensils," and also a house and some land recorded for a parsonage, which it was stated "was formerly in the possession of the Independent minister," but then "in the possession of the (then) present incumbent by his Excellency Lord Cornbury's favor." There was also at that date a church built in New Town, by a tax levied on the inhabitants by an act of general assembly. In West Chester there was then fifty pounds settled on the minister's salary by an act of assembly, and twenty acres of land given by West Chester division for a glebe; and the few churches then existing in the province were maintained and provided for by acts of general assembly. (*Ib.* 114, &c.)

§ 304. In the instructions issued to Gov. Hunter in 1709, he was required to be careful that the churches already built in the province be well and orderly kept, and that more be built as the colony should, by God's blessing, be improved, and that besides a competent maintenance to be assigned to the minister of each orthodox church, a convenient house be built, at the common charge, for each minister, and a competent proportion of glebe assigned him. (5 *Col. Hist.* 135.)

§ 305. In the commission of Gov. Montgomerie, bearing date at Westminster 24th June, 1720, he was authorized and empowered to collate any person or persons to any churches, chapels or other ecclesiastical benefices within the province, as often as any of them happened to be void. Similar powers were conferred on Gov. George Clinton in 1741; and such powers were exercised to a considerable extent in the province before the time of Gov. Montgomerie and up to and including the administration of Gov. Clinton, and perhaps for some time after Gov. Clinton's administration. (*Ib.* 95, 838, and 6 *ib.* 192.)

§ 306. Lt. Gov. Colden, in a letter to the Lords of Trade, dated 7th December, 1763, refers to the fact that the Lutheran congregation in the city of New York had warmly solicited of the then late Lieut. Gov. DeLancy, a royal charter of incorporation, which he did not like the responsibility of granting without advice from the home government, and that they had renewed the request to him, and he had declined to do anything in the premises more than to lay the matter before the Lords of Trade. He concludes by saying that he is instructed by his Majesty particularly to attend to the interests and advancement of the Church of England, but he finds nothing in his instructions to justify him in extending to other religious denominations, the ample provisions and indulgences which in the province had been theretofore confined to the Church of England, except in the few instances of reserved favors to the Dutch church. (7 *ib.* 586.)

§ 307. Sufficient statements have been made to enunciate the policy under which the institutions of religion were sustained prior to the revolution. For the most part there was a close connection between the church and the state. All religious ministers had to be commissioned by the government, and the government was at all times reluctant to ex-

tend any encouragement to any religious denomination except the national church. After the province was surrendered by Holland to the English by the treaty of Breda, the government always hesitated, especially, to grant charters to the Dutch and Presbyterian churches, ostensibly lest it should have the effect to foster an establishment inconsistent with the principles of the laws of England.

§ 308. In 1784 the policy of incorporating religious societies and sustaining the ministry was changed, and on the 6th day of April, 1784, an act of the legislature was passed for the declared purpose of enabling all the religious denominations in the State to appoint trustees, who should be a body corporate for the purpose of taking care of the temporalities of their respective churches and congregations, and for other purposes in the act mentioned. This act premised that many of the churches, congregations and religious societies in the State, while it was a colony, had been put to great difficulties to support the public worship of God, by reason of the illiberal and partial distribution of charters of incorporation to religious societies, whereby many charitable and well-disposed persons had been prevented from contributing to the support of religion, for want of proper persons authorized by law to take charge of their pious donations; and many estates purchased or given for the support of religious societies were then vested in private hands, to the "great insecurity of the society for whose benefit they were purchased or given, and to the no less disgust of many of the good people of the State"; and it was further premised that it was the duty of all wise, free and virtuous governments to countenance and encourage virtue and religion, and enable every religious denomination to provide for the decent and honorable support of divine worship, agreeable to the dictates of conscience and judgment; whereupon provision was made by general law for the incorporation of reli-

gious societies in theory the same as the laws now in force in the State. (1 *Greenleaf's Laws*, Ch. 18.)

§ 309. The policy adopted in 1784, for the incorporation of religious societies in the State, has been in force ever since, though the act has been amended from time to time, until the same has become well nigh perfect, and has been the model for several others of the States.

CHAPTER XXV.

RELIGIOUS SOCIETIES IN MAINE—THE PARISH OF EARLY TIMES—
THE TERM STILL USED IN MAINE—RELIGIOUS SOCIETIES HOW
INCORPORATED—POWERS OF RELIGIOUS CORPORATIONS—OF-
FICERS THEREOF—PARISH MEETINGS—QUAKERS.

§ 310. In the early settlements of New England there was little or no distinction between the church and congregation. The system of parishes universally prevailed. A parish, according to the English law, is "a circuit of ground committed to the charge of one person or vicar, or other minister having cure of souls"; or, as Brande defines it, "an ecclesiastical division of a town or district, subject to the ministry of one pastor." In a church sense, *parochia* or parish signifies "a competent number of christians dwelling near together, and having one bishop, pastor, &c. or more set over them," and this is in accordance with the sense, custom and platform of the New England churches in early times. (*Baker v. Fales*, 16 *Mass. R.* 499.)

§ 311. The people of the parish met together every Sunday in one place, to celebrate divine service. All of the

residents were permitted to come around the communion table, and receive the sacrament from the bishop. Subsequently the more pious part of the congregation had occasion to withdraw from those they deemed profane and immoral, or who denied some of the doctrines held to be essential, and to establish a distinction by particular covenants or profession between the more serious and devout christian and him who was thought to be such in name only; and this necessity originated the distinction between church and congregation which was afterwards and is now marked and well known. (*Ib.*)

§ 312. In the State of Maine it is now provided that any persons of the age of twenty-one years or more, desirous of becoming an incorporated parish or religious society, may apply to a justice of the peace of the county in which a majority of them reside, who is required to issue his warrant to one of them, directing him to notify the other applicants to meet at some proper place, expressed in such warrant. The person to whom such warrant is directed must give notice of such meeting seven days at least before holding the same, by posting a notification thereof on the outer door of the meeting-house or place of worship of such society, if any, otherwise at such place as the justice appoints. (*Rev. Stat. 1857, Ch. 12, Sec. 1.*)

§ 313. The persons thus applying, being so assembled, may choose a clerk and other needful parish officers, and thereupon they are declared to be a corporation, bearing the name they assume, and possessing all the powers of parishes and religious societies. Every parish may take by gift or purchase any real or personal estate, until the clear annual income thereof amounts to three thousand dollars, and may convey such real or personal estate, and establish by-

laws not repugnant to the laws of the State. (*Ib.*, *Secs. 2 and 3.*)

§ 314. The annual or other meetings of the parish may be called by its assessors, to be held at the time and place in the town where they are usually held, and notified in the same manner as prescribed for the first meeting to organize, or in such manner as agreed on by the votes of the parish. At such meeting the parish or society may choose a clerk (who must take an oath of office), two or more assessors, a collector, treasurer, standing committee, and all other and needful officers. The assessors must manage the prudential concerns of the parish, when no other persons are appointed for that purpose, and they must also be duly sworn. (*Ib. Sec. 4.*)

§ 315. The moderator of any meeting has power to preserve order, manage the business, and administer the oath of office to the clerk and assessors. The moderator of course will be elected by the meeting of the parish, and his election will be valid, though the meeting were called to order and votes were received and declared by a private parishioner who assumed that authority to himself. (*Ib. Sec. 5; and Jones v. Carey*, 6 *Maine R.* 448.)

§ 316. When five members of any parish in writing request the assessors to call a meeting, or insert any particular article in the warrant therefor, they are required to do so; and if they unreasonably refuse to comply with such written request, any justice of the peace in the county, on like application, may issue his warrant to one of the applicants, who must notify such meeting in the same manner as prescribed for the first meeting, or as agreed on by parish vote. (*Ib. Secs. 6 and 7.*)

§ 317. Every parish at a legal meeting may raise money for the support of the public ministry of religion, for building, repairing or removing houses of public worship, and for other necessary parish charges, and the same may be assessed and collected as State taxes are assessed and collected. Parish taxes, however, can be assessed only on the polls and property of the members of the parish. (*Ib. Sec. 8; and Dale v. Kimball*, 6 *Maine R.* 171.)

§ 318. When a house of public worship belongs to a parish, or it and the fee of the land on which it stands is vested in trustees for the use of the parish, such parish may assess any money raised for the purposes specified in the last preceding section, wholly or partly, on the pews or seats, whether owned by members of such parish or religious society or not; and the owners may be present and vote in raising such money. No person has the right to vote in the meetings of any territorial parish who is not either the owner or occupant of a pew in its house of worship, or a contributor to its support, according to the provisions of the twelfth chapter of the Revised Statutes herein referred to. (*Ib., Sec. 9, and Laws of 1858, Ch. 34, Sec. 1.*)

§ 319. While a town constitutes but one parish, it may administer its municipal and parochial affairs under one organization, and, while acting in this double capacity, may appropriate any of its property to objects of a parochial or municipal character, which, after the dissolution of that union by the constitution of a new parish, cannot be changed by one alone. Such appropriation, when distinctly made, is equivalent to a grant of the property to a specific use. And when no such appropriation is made of the whole estate, the residue belongs to the town, and the parish can have title to no more than has been appropriated to its use. (*First Parish in Boothby v. Wylie*, 43 *Maine R.* 387.)

§ 320. When taxes on pews and seats remain unpaid for six months after their assessment, the treasurer of the parish or society is required to sell them at auction, first posting notice thereof at the principal outer door of the house of worship containing such pews or seats, three weeks before the time of sale, stating the numbers, if any, of the pews or seats, and the amount of tax on each, and on such sale the treasurer must execute and deliver a deed of the pew or seat sold, to the purchaser, and pay the owner the overplus after deducting the amount of tax, and the incidental charges. All money paid by any person for the support of public worship by a tax on a pew or seat, must be paid to such teacher of his own religious sect, as he may designate in a written notice left with the clerk of the parish, on or before the annual meeting, unless he uses such pew or seat by himself or others; and it is sufficient if such teacher is ordained or qualified according to the usages of his particular sect or communion. (*R. S., Ch. 12, Secs. 10 and 11.*)

§ 321. A parish in the actual occupancy of a church, meeting-house or other building used for religious purposes, may insure it against loss by fire. And in case of such loss, the company insuring will not be permitted to deny the occupancy of the parish, its legal existence or its right to maintain an action on the policy. The money recovered must be held by the parish in trust for repairing or restoring the building, and be so applied. (*Ib., Sec. 12.*)

§ 322. A person may become a member of a parish or religious society by vote thereof at a legal meeting. So any person of age, residing in a local parish, holding funds derived from the State of Maine or of Massachusetts, is, by law, deemed a member of such parish or religious society until he dissolves the connection; and any such person having

resided in such parish one year after he has arrived to the age of majority, without giving written notice to its clerk of his consent to be a member thereof, or paying a tax or subscription according to whichever of those modes the parish may have adopted to raise money for lawful purposes, will be deemed to have thereby dissolved his connection therewith, and the connection will remain dissolved, and such person will not be taxable until he renews the connection, by giving written notice to its clerk of his consent to be a member of the parish; and any person of age, residing in a local parish, may become a member of such parish, not deriving funds from the State, by giving written notice to its clerk of his intention to do so within one year after he is of age, or removes thereto. (*Ib.*, &c., *Sec. 13 and Sec. 14 as amended by Laws of 1863, Ch. 216.*)

§ 323. The moderator of a parish meeting, who should refuse the vote of a person legally entitled to vote at such meeting, would subject himself to an action in favor of such voter, and the action would be maintainable without proof of malice or intent to oppress. (*Osgood v. Bradley*, 7 *Maine R.* 411.)

§ 324. No person can be a member of a parish or religious society without his consent; and any person may dissolve his connection therewith, by leaving with its clerk a certificate of his intention to do so; and his liability for future expenses ceases thereby; but he may be taxed for money previously raised, except in case of removal from a local parish. The liability of seceding members of a parish to contribute to the payment of its then existing debts, is created for the benefit of the parish alone. (*Ib.*, *Sec. 15*, and *Fernald v. Lewis*, 6 *Maine R.* 264.)

§ 325. The remedy for satisfaction of a judgment against
[Tr.]

a parish, by levy on the property of its members, is to be pursued against those only who were members at the time of the rendition of the judgment, or, at furthest, at the time of the commencement of the action. If all the members of the parish withdraw, and thus dissolve the corporation, probably the creditors of the parish would have a remedy by action on the case, or by bill in chancery against those individuals on whom the liability would have remained had the corporation continued to exist. (*Fernald v. Lewis*, 6 *Maine R.*, 264.)

§ 326. Ceasing to attend the religious and secular meetings of a parish, and attending the worship and supporting the ministers of another denomination, for any length of time, will not alone amount to a renunciation of membership in the parish thus left. The only mode of withdrawing from the parish or society, without a change of residence, is to leave with the clerk a certificate of his intention to do so, as before mentioned. (*Jones v. Carey*, 6 *Maine R.* 448.)

§ 327. No territorial parish has been dissolved by the passage of chapter twelve of the Revised Statutes in this chapter referred to, and it is provided that when one or more parishes are set off from a town, or incorporated therein in the manner hereinbefore specified, the remaining part of the town shall be the first parish. (*R. S.*, Ch. 12, Sec. 16.)

§ 328. The church wardens of Episcopal churches, and the deacons of all other Protestant churches, are so far corporations by statute as to take in succession all grants and donations of real and personal estate made to their churches, or to them and their successors; and if the ministers, elders or vestry are joined with such church wardens or deacons,

in such grants or donations, the two classes of officers are made corporations for that purpose. The deacons of the society of Shakers are capable of taking and holding lands in succession within the meaning of the statute. (*Ib.*, Sec. 17, and *Anderson v. Brock*, 3 *Maine R.* 243.)

§ 329. The grant of land to a town, for the use of the gospel ministry, is to be taken to refer to the town in its parochial and not in its municipal character, and when loans originally granted to a town for the use of the ministry were sold by virtue of a resolve of the legislature, and the money put at interest by the town, the annual increase to be applied to the use of the ministry, and afterwards a number of the inhabitants become incorporated into a separate religious society, the residue become a distinct parish, and succeed to all the parochial rights and duties of the town, and are therefore entitled to the money and interest arising from the sales of the land, and may have an action therefor against the town. (*First Parish of Winthrop v. Town of Winthrop*, 1 *Maine R.* 208; *Richardson v. Brown*, 6 *Ib.* 355.)

§ 330. The minister of a parish settled for life or for a term of years, is seized of an estate of freehold, upon condition, in the ministerial land, and is answerable for waste; and being so answerable for waste, he has his remedy by an action of trespass against a stranger for an injury done to the freehold. Where the proprietors of a township granted lands to the use of the ministry, or for the first settled minister, the right of possession and custody of such lands remains with the proprietors until the person or corporation entitled to take under the grant comes into existence. (*Shapleigh v. Pillsbury*, 1 *Maine R.* 271; *Sewall v. Cargill*, 15 *Ib.* 414; *Same in Error*, 19 *Ib.* 288.)

§ 331. The fee of lands reserved in a town for parsonage or ministerial lands, vests in the minister, when one is settled, and cannot be changed by a vote of the town, even with his assent, and whatever rights the town may acquire in relation to the use or enjoyment of the profits, must be under such minister and in subordination to his legal title. No person, unless settled over a town or parish by its express concurrence or assent, is entitled to hold the lands reserved for the first settled minister in the town. (*Bisbee v. Evans*, 4 *Maine R.* 374; *Cargill v. Sewall*, 15 *Ib.* 288.)

§ 332. Where a town had erected a meeting-house, and voted that it should be the property of the congregational society, and had settled a particular person as their minister, and had abated the taxes which had been assessed on persons of other denominations for the building of the meeting-house or for the payment of the salary of the minister, and afterwards chose a committee to procure an act to incorporate the congregational society, and an act was passed to incorporate certain individuals by name, with their families, having the said minister for their pastor, with their associates, successors and estates into a religious society by the name of such congregational society; this was not the formation of a new society, but only recognized and confirmed the rights of the parish already existing, to the parish lands and funds. (*Parsonsfeld v. Dalton*, 5 *Maine R.* 217.)

§ 333. If a grant of land be made to certain individuals to be by them held "as an entire property never to be divided or severed," for the use of a certain religious society, naming it, to be forever kept for the sole use and support of a minister of a particular denomination, and at the same time there was a society by that name weekly worshiping at a particular place, but which had never been legally organized as a parish; and a society by the same name, and claiming to be

the same, is afterwards incorporated under the statute, this latter society is considered a new society, and not entitled to the grant. (*Cox v. Walker*, 26 *Maine R.* 504.)

§ 334. The minister of a parish or religious society, and the deacons, elders, trustees, stewards, and other presiding officers of a religious society or church, having by its usages no settled minister, may take in succession any estate granted to the minister and his successors, or for the use of the ministry, or poor of the church; and may prosecute and defend all suits respecting it; but they cannot legally so take, while the clear annual income of prior grants is three thousand dollars. No conveyance of such estate by a minister will be valid longer than he is in the ministry; or by such deacons or other officers, longer than they are in office, if made by them without the consent of the church, or by church wardens without the consent of the vestry. (*R. S. Ch.* 12, *Secs.* 18 and 19.)

§ 335. The records of a parish are required to be open to the inspection of its members and to clerks of other parishes; and each clerk must furnish attested copies of such records, on request, for a reasonable compensation. (*Ib.* *Sec.* 20.)

§ 336. When a parish or religious society lawfully raises money by taxation, such parish or religious society may appoint its treasurer a collector of taxes, who will possess the same powers of a town collector; and such parish or religious society may allow a similar discount on taxes paid within the time fixed by it at a legal meeting, and the treasurer must give like public notice thereof; and all other taxes must be collected by him as town taxes are. When the treasurer and collector is qualified, the assessors are required to deposit with him a list of the taxes, with the warrant for their collection. (*Ib.*, *Sec.* 21.)

§ 337. The overseers of each monthly meeting of the Quakers may take and hold, in succession, all grants of real, personal or mixed estate made to them, to or for the use of their monthly meetings, to the preparation meetings constituting them, or to the poor thereof; and also all grants of real estate situated within the limits of their monthly meetings, and donations of personal estate given by persons living within said limits, made to or for the use of any of the quarterly meetings of said Quakers, to said overseers for their use, or to the poor thereof; and may convey and manage such estate according to the terms and conditions on which it was given, and may sue in their own names for any right that has vested in the grantees or donees, though the annual income thereof to one meeting for such uses does not exceed five thousand dollars. (*Ib.* Sec. 22.)

CHAPTER XXVI.

RELIGIOUS SOCIETIES IN MAINE—CORPORATIONS FOR MAINTAINING MEETING-HOUSES—THEIR POWERS—PEW-HOLDERS—MEETINGS—ALTERATION OR SALE OF MEETING-HOUSES—TIME OF OCCUPYING MEETING-HOUSES HOW DIVIDED—MINISTERIAL LANDS.

§ 338. Any persons, for the purpose of erecting a meeting-house, or the majority in interest of the owners of a meeting-house, not a parish, may incorporate themselves the same as parishes may, and choose officers and do all other acts that a parish may lawfully do. A majority of the pew owners or proprietors of a meeting-house present at a legal meeting called for that purpose, may repair, remodel or sell and convey their house, or the land used with it, or remove

or rebuild it. Any meeting relating thereto may be called by an application to a justice of the peace, by such pew-owners or proprietors, who must issue his warrant to one of them, stating the time, place and purpose of the meeting, and directing him to notify said pew-owners or proprietors, by posting up a certified copy of such warrant fourteen days on the principal outer door of their house of worship, and in one or more other public places in the same town; or the warrant may be published in a newspaper printed in the county, at least fourteen days before the meeting, which will dispense with the posting of a certified copy thereof as aforesaid. (*Rev. Stat. of 1857, Ch. 12, Secs. 23 and 24.*)

§ 339. Before such alteration or sale is made, however, an appraisal of the relative value of the pews must be made by three discreet persons, under oath, to be elected by ballot at a legal meeting of said owners or proprietors. If a sale of the house and land is made, it may be private or public, as said meeting determines, and the moneys must be applied to pay the expenses of the sale and the debts and just claims against the property, and the balance must be paid to the pew-owners or proprietors in proportion to their interest by the appraisal. If the meeting-house is altered or rebuilt, the appraisers, after the work is completed, must assign to the former pew-holders, pews to conform as near as practicable to those previously held by them; and the other pews may be sold to defray the expenses of the repairs and alterations, or otherwise disposed of as the proprietors or pew-owners determine. They may choose officers, raise and assess taxes on the pews, and collect them, for the purpose of making such repairs and alterations, and do all things that a parish can lawfully do, and appoint some suitable agent or agents to make such sale and conveyance, or repairs and alterations, and a treasurer or trustees to receive and

distribute the proceeds of sale in manner aforesaid. (*Ib.* Sec. 25.)

§ 340. When it is decided to repair, remodel or rebuild a meeting-house, any owner or proprietor dissenting from the action of the majority, and declining to take any interest in the house as altered, may demand and receive of such majority the appraised value of his interest, after deducting his proportion of debts against the property, to be recovered in an action for money had and received, which cannot legally be commenced till thirty days after such demand, nor after the lapse of a year after notice is posted three successive weeks on the meeting-house door, and some other conspicuous place in its precinct, stating the persons to whom the money is to be paid, the amount to each, and the time limited for payment. If such sums are not demanded within said time, it will be forfeited to the majority, for parish uses. (*Ib.*, Sec. 26.)

§ 341. The owners of a meeting-house or building for public worship, and the pew-owners, may be incorporated, when a majority of them apply to a justice of the peace therefor, who must issue his warrant to one of them, stating the time, place and purpose of the meeting, and directing him to notify said owners by posting up a certified copy of it fourteen days, on the principal outer door of such building, and in one or more other public places in the same town. When so assembled they may choose a moderator and clerk, who must perform the usual duties of such officers; and thereupon such owners are constituted a corporation to be known by such name as they adopt, and they may agree on the mode of calling future meetings. (*Ib.*, Secs. 27 and 28.)

§ 342. Such corporation, by a major vote of its members,

may use and control the meeting-house or building for public worship. But the provisions of law stated in this and the last preceding section are not to affect the rights of owners of houses of worship built by different religious denominations. (*Ib.*, *Sec. 29.*)

§ 343. When a house of public worship is owned by persons of different denominations, and when an organized society, or its members, own five pews therein, one or more of the minority, owning not less than five pews, may apply to a justice of the peace and quorum to obtain a division of the time of occupying the house; and must call a meeting of the owners by posting up a notice, in a public place in or about the meeting-house, thirty days, at least, before the meeting, stating the time, place and object of the meeting. At such meeting the owners, who are not applicants, or if they refuse or neglect, the justice who called the meeting, may designate another justice, and the two may appoint the third person, who is disinterested, and not an inhabitant of the town in which the house is located, or belonging to the denomination of either party interested; and the three will be a board, before which the owners may exhibit the amount they own in the house; and the minority, owning at least five pews, must have their part allotted to them, as nearly as may be in proportion to the amount they own in the house; and the board must designate which weeks in each year the minority, if they please, may occupy the house; if they do not, the majority may. (*Ib.*, *Secs. 30 and 31.*)

§ 344. The board must appraise the value of the minority's proportion of the house, allowing no more for a pew than was actually paid for it by the owner; make a record of their proceedings, and, within ten days, cause it to be transcribed into the records of the town where the house is located. All the reasonable expenses must be paid by the

person or persons who requested the division. This provision in regard to dividing the time of occupying such house is not designed to, and will not, affect any agreement in force between the parties as to the mode of occupying such house. The minority may occupy the house their allotted time, unless the majority purchase their interest by paying the minority the sum at which it was appraised by the board; but if the minority decline so to sell, they will not be permitted to avail themselves of the appraisal and division. (*Ib.*, *Secs. 32, 33 and 34.*)

§ 345. When it may be deemed necessary or expedient by any organized parish for such parish to become the owner of the pews in any church or meeting-house, used as a place of religious worship by such parish, a meeting of the owners and occupants of such pews may be called, and a majority of such pew-owners and occupants, at such meeting, may vote to convey, by deed of sale or gift, the pews by them owned or occupied, to the parish. The meeting must be called by the assessors of the parish, upon the written request of five or more members of the parish, stating the object of the meeting in their warrant for the same. (*Laws of 1859, Ch. 85, Sec. 1.*)

§ 346. Any owner or occupant of a pew in such church or meeting-house, dissenting from the action of the majority at any such meeting, must express his dissent in writing to the clerk of such parish, within one month from the time of such meeting, and his pew must thereupon be appraised by three discreet persons under oath, to be elected by ballot at a legal meeting of such pew-owners or occupants, and the appraised value thereof must be tendered to such owner or occupant, who must thereupon execute and deliver a deed of such pew to said parish. Where no such written dissent

is given, the pews of such owners or occupants will be forfeited to the parish. (*Ib*, *Sec. 2.*)

§ 347. When lands have been granted or reserved for the use of the ministry, or first settled minister, and the fee in the lands has not vested in some particular parish within such town, or in some individual, it will vest in the inhabitants of such town, and not in any particular parish therein for such use; and the municipal officers, town clerk and treasurer of each town, when no other trustees are lawfully appointed for that purpose, are made a corporation and trustees of such ministerial funds forever, with the usual powers granted to similar corporations. (*R. S.*, 1857, *Ch. 12, Secs. 35 and 36.*)

§ 348. The trustees of such funds are required annually to elect a president, clerk and treasurer. The treasurer must give a bond, with sufficient sureties in the opinion of the trustees, for the faithful discharge of his duty, and the clerk must be duly sworn. The trustees are authorized to sell and convey all such ministerial lands belonging to and lying in their town, and the treasurer's deed thereof, duly executed by order of the trustees, will pass the estate. As soon as may be they must place the proceeds of sale at interest, secured by mortgage of real estate of twice the value of the principal, or by a bond or note, with sufficient sureties, or invest the same in bank stock or public securities. The increase of the fund arising from the sale of such lands must be annually applied to the support of public schools in the town, and expended as other school money is. (*Ib.*, *Secs. 37, 38, 39 and 41.*)

§ 349. When such lands are vested in a parish, the assessors, clerk and treasurer, when no other trustees are appointed for that purpose, are made a corporation and trustees of such

ministerial fund forever, with the powers and under like liabilities, as the municipal officers, town clerk and treasurer. They are required to pay the annual income of such lands and of the proceeds of their sale, according to the terms of the grants and reservations by which they were so vested; and at each annual meeting for choice of parish officers they must exhibit an account of their proceedings, and a statement of funds, receipts and expenditures. The first meeting of such trustees may be called by seven days' notice of the time and place thereof, given by one of them to all the others. (*Ib.*, *Secs. 44 and 45.*)

§ 350. It will be observed that, by the laws of the State of Maine, the burthens and expense of maintaining religious worship are as equitably distributed as they well can be, among those who should bear them. The ability of the parishioners is in general the measure of what is required, and this is really the true system for sustaining an institution so important to the well being of a community as the Christian religion. In this way the work is accomplished with little or no friction, and all are blessed in the enjoyment of an institution to which they personally contribute according to the measure of their ability.

§ 351. No forms are given for the different proceedings under the laws of this State, as they are all exceedingly simple, and the most difficult will be readily framed by any justice of the peace to whom application is made.

CHAPTER XXVII.

RELIGIOUS SOCIETIES IN NEW HAMPSHIRE—HOW INCORPORATED—POWERS OF RELIGIOUS CORPORATIONS—MEMBERS THEREOF—MONEY, HOW RAISED—UNINCORPORATED RELIGIOUS SOCIETIES—POWERS OF SUCH SOCIETIES—OFFICERS OF RELIGIOUS SOCIETIES BODIES CORPORATE FOR CERTAIN PURPOSES—MINISTERS AND THEIR POWERS—SALE OF CHURCH PROPERTY—THE QUAKERS—MEETING-HOUSES, THEIR SALE AND PROCEEDS.

§ 352. Any persons in the State of New Hampshire may associate themselves together by written articles, signed by each member, and form a religious society, assume a name, and choose a clerk, who must be duly sworn; and, having done this, they must then record their proceedings and their name and intentions in a book of records to be kept by their clerk, and publish the same in some newspaper, if there be any in the county in which the society is formed, otherwise in some adjoining county; whereupon they are constituted, and become a body politic and corporate, possessing and enjoying all the powers, privileges and immunities, and being subject to all the liabilities incident to corporations of a similar nature in the State. (*Compiled Statutes, Chap. 153, Secs. 1 and 2.*)

§ 353. Such religious corporations may take and possess by purchase, gift, grant, devise or otherwise, any real or personal estate for the purpose of erecting and keeping in repair a house of public worship, a parsonage house and other buildings necessarily connected therewith, and for supporting the ministry in such society; and may improve, sell, convey and dispose of the same for the sole use and benefit of such society. The annual value or income, how-

ever, of all the estate of any single society must in no case exceed two thousand dollars. (*Ib.*, *Sec. 2.*)

§ 354. A religious society thus incorporated may have and use a common seal, and alter and renew the same at pleasure; provide for the calling and holding of meetings and the admission of members; choose all necessary officers, and prescribe their duties, and make all by-laws and regulations not repugnant to the laws of the State, which may be deemed necessary or expedient for the due government of the society and the proper management of its funds. The members of every religious parish may, by vote, appoint one or more agents or attorneys to appear for and represent them in any suit at law, and upon any other occasion. (*Ib.*, *Secs. 3 and 6.*)

§ 355. No person can be compelled to join or support any religious society without his express consent first had and obtained; and any person may separate from any such society by leaving with the clerk thereof a written notice by him signed, of his intention so to separate, and paying all legal assessments and arrearages from him then due to the society. Such society, at any legal meeting notified and holden for that purpose, may assess and raise money by taxes upon the lands and ratable estates of the members thereof, and may collect and appropriate the same for the purposes aforesaid, and the assessors and collectors, in assessing and collecting any such tax, possess the same powers and are subject to the same penalties as similar town officers in like cases. (*Ib.*, *Secs. 4 and 5.*)

§ 356. In case any donation, gift or grant be made to any unincorporated religious society, it is provided that such society shall have the like power to manage, use and employ the same, according to the terms and conditions on which the same are made, as incorporated religious societies pos-

ness by law; and may elect suitable trustees, agents or officers therefor, and prosecute and sue for any right which may vest in such society in consequence of such donation, gift or grant; and such society is made a corporation, so far as may be necessary for the purposes expressed. The income of the donations, gifts or grants to any one of such unincorporated societies cannot exceed the sum of two thousand dollars per year. (*Ib.*, *Sec. 7.*)

§ 357. The trustees, deacons, church wardens or other similar officers of all churches or religious societies, if citizens of the United States, are deemed by statute bodies corporate for the purposes of taking and holding, in succession, all grants and donations, whether of real or personal estate, made either to them and their successors, or to their respective churches, or to the poor of their churches. In all cases where the ministers, elders or vestry of any church shall, in the grants and donations mentioned, have been joined with such deacons or church wardens as donees or grantees, such officers and their successors, together with the deacons or church wardens, are deemed in law the corporation for the purposes of such grants and donations. (*Ib.*, *Secs. 8 and 9.*)

§ 358. The minister of every church or religious society, of whatever denomination, if a citizen of the United States, is made capable in law of taking in succession any parsonage land granted to the minister and his successors, or to the use of the ministry, or granted by any words of like import, and he may prosecute and defend in all actions touching the same. (*Ib.*, *Sec. 10.*)

§ 359. No conveyance of the lands of any church will be effectual to pass the same, if made by the trustees or deacons without the consent of the church or of a committee of the church appointed for that purpose, or if made by the church

wardens without the consent of the vestry. And no conveyance made by any minister, of any lands held by him in succession, will be valid any longer than he shall continue to be such minister, unless such conveyance shall be made with the consent of the town, parish or religious society of which he is minister, or unless he be a minister of an Episcopal church, and shall make the conveyance with the consent of the society. (*Ib.*, *Secs. 11 and 12.*)

§ 360. The several churches in the State, other than those of the Episcopal denomination, are authorized by law to choose committees for the purpose of settling the accounts of the trustees, deacons and other church officers, and, if necessary, to commence and prosecute any suits in the name of the church against such trustees, deacons or other officer touching the same. (*Ib.*, *Sec. 13.*)

§ 361. The income of any grant or donation made to or for the use of any church, must not exceed the sum of two thousand dollars per year, exclusive of the income of any parsonage lands granted to or for the use of the ministry. (*Ib.*, *Sec. 14.*)

§ 362. The overseers of each monthly meeting of the people called Friends or Quakers, are made a body corporate for the purpose of taking and holding in succession all grants and donations of real and personal estate made to the use of such meeting, or to the use of any preparative meeting belonging thereto, and to alien or manage such real and personal estate according to the terms and conditions of the grants and donations, and to prosecute and defend in any action touching the same. The income of the grants and donations to any one of such meetings, for the uses aforesaid, must not exceed the sum of five thousand dollars per year. (*Ib.*, *Sec. 15.*)

§ 363. Whenever any meeting-house in the State ceases to be occupied by the proprietors thereof as a place of public worship for the space of two years, it is made lawful for such proprietors, at a meeting called for that purpose, by a vote of a majority present, to sell said house at public auction, and for this purpose to appoint a committee to make such sale and execute a conveyance to the purchaser, giving such notice of the time and place of sale as shall be reasonable, but in no case less than fifteen days. Such meeting may be called by any three of the proprietors, by publishing a notice thereof three weeks successively in some newspaper in the county in which the meeting-house is located; the last publication to be at least twenty days before the meeting. If there be no such paper published in such county, then such notice must be published in some paper in an adjoining county. (*Ib.*, *Secs. 16 and 17.*)

§ 364. The proceeds arising from the sale of such meeting-house must be paid to the committee, and by the committee divided amongst the proprietors thereof according to their interest. Such interest must be determined by a committee of not less than three, nor more than five disinterested persons chosen by the proprietors for that purpose. (*Ib.*, *Sec. 18.*)

§ 365. It is also provided by statute that, when any building used as a house of public worship shall, in the opinion of the major part in interest of the proprietors thereof, need repairs, any one or more of the proprietors may call a meeting of all the proprietors, at such house of public worship, to consult and agree about repairing the house. Notice must be given of such meeting in substance as follows:—

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To A. B. of in the County of and State of greeting:

You are hereby notified that our house of public worship in needs repairs, in order that the same may be of use to

[Tr.]

the parties concerned; and a meeting of the proprietors thereof will be held at said house on the day of at o'clock in the noon, when and where your attendance is requested. Dated at on the day of

The notification must be signed by one or more of the proprietors, and the same, or a true copy thereof, given to any other proprietor, or left at his last usual place of abode not more than thirty nor less than ten days before the day of meeting; and that the notice was served proof may be had by the testimony of any disinterested witness who gave or left the same, or saw it done. (*Laws of 1856, Ch. 1831, Sec. 1.*)

§ 366. When it may be found impracticable to give any proprietor or proprietors of a house of public worship, the personal notice referred to in the last preceding section, by reason that such proprietor or proprietors' usual place of abode is not known, it is provided that notice may be given, by posting copies in two or more public places in the town where such house of worship is situated, and also by publishing the same in some newspaper printed in the county where the house of worship is situated, if there be such paper in such county; otherwise in some newspaper in some adjoining county, three weeks successively, the last publication to be not less than ten days before such meeting. (*Laws of 1859, Chap. 2248, Sec. 1.*)

§ 367. If any proprietor so notified, or, after such notice, shall neglect to attend such meeting, or, being so met, shall neglect or refuse to agree with the major part in interest of the proprietors of such house or building, to repair the same, the rest of the proprietors, being the major part in interest, may cause the same to be done; and it is provided that they shall be reimbursed or paid such sums as they or any of them shall advance thereon beyond their respective

proportions, with interest on the same, out of the rents of the pews or slips of such non-paying proprietors, or any other source of income to such proprietors in such building, and shall have a lien on such pews or other source of income for the purpose of being reimbursed for such repairs, which lien it is declared shall continue notwithstanding the proprietors so neglecting or refusing may de cease or alienate their interest in such house of public worship, or the same may be reimbursed by a sale at public auction, at such house, of the pew or pews, or any other interest of such non-paying proprietor in such house or estate connected therewith. Such sale must be upon notice for that purpose, signed by the town clerk or some justice of the peace in said town, a copy of which must be posted upon the door of such house, and a like copy published in some newspaper, in the manner provided for the repairs of such house. Should a greater sum be received from the sale than is required to pay the proportion of such delinquent, such surplus must be deposited with the town clerk of the town or place where the house is situated, to be paid when called for to such delinquent. It is provided, however, that no such sale shall be made if the delinquent shall pay or cause to be paid to such person or persons as may be entitled thereto his proportion of such repairs, within one year after such repairs were made. Each individual owner in such building is entitled to one vote at the meeting provided for, and at such meeting a committee of three must be elected by ballot to appraise each interest and establish the proportion each interest shall bear to the whole, and the charges for such repairs must be assessed upon each interest of each proprietor, agreeably to the proportion established by such committee. (*Laws of 1856, Ch. 1831, Secs. 2 and 3, and Laws of 1859, Ch. 2248, Sec. 2.*)

§ 368. It is also provided that where three-fourths of the

pew-owners, in any house of public worship in the State, may desire to repair the house or pews, or modify the interior of such house, or remove the pews and provide for the use of the pew-holders, alter pews or sell the pews in such house, a meeting may be called of the pew-holders in the manner aforesaid, stating in the notice the object of the meeting; and, when assembled, the pew-holders may, by a vote of three-fourths of the pew-owners present and voting thereon, so modify the interior of such house, or remove the pews, or provide slips or alter pews in such house of worship, or sell all the pews therein, in such way and manner as shall then and there be determined; and may appoint such agents or officers, for and in the name of the proprietors of said house, or the pew-owners therein, or corporation, to make and execute a valid deed thereof; and the selectmen of the town in which such house may be situated are empowered to apportion the proceeds of the sale among the pew-owners, unless the pew-owners present, by a unanimous vote of those voting, agree upon a committee for that purpose. It is also provided that no pew-holder shall be held to the payment of any tax or assessment for the repair or alteration of the house, who may offer to the proprietors to convey to them his interest in such house, or in any pew or pews, at a sum mutually agreed upon or determined by the selectmen of the town. (*Laws of 1860, Chap. 2355, Sec. 1.*)

§ 369. Whenever any meeting-house in the State, built by any town or corporation, may have ceased to be used or occupied as a place of public worship, it is made lawful for such town or corporation to sell the same at public auction, and to appoint a committee to make such sale and execute a conveyance to the purchaser. Public notice of the sale must be given by putting up notices thereof, on the door of the meeting-house to be sold, and at two or more public places

in the town where the house is situated, at least fifteen days previous to the day of sale. The proceeds of the sale must be equitably divided among the proprietors, owners and pew-holders of the house, according to the value of their respective interests therein; which interests must be determined by the county commissioners of the county in which the house is situated. Whenever any town shall vote to repair, for town purposes, any such meeting-house, it must cause the pews to be appraised by a committee of three disinterested persons, and pay to the pew-holders the full value of their respective interests, as determined by such appraisal, upon demand. Any pew-holder, dissatisfied with the appraisal of his pew, or such town, may appeal to the next trial term of the supreme judicial court for the county in which such house is situated, where the same proceedings may be had as in the case of appeals from the assessment by selectmen of damages for land taken for highways. (*Laws of 1857, Ch. 2107, Secs. 1 and 2, and Laws of 1860, Ch. 2355, Sec. 2.*)

CHAPTER XXVIII.

RELIGIOUS SOCIETIES IN VERMONT—HOW INCORPORATED—POWERS OF THE CORPORATION—ITS BOOK OF RECORDS—CONVEYANCES AND DEVISES FOR RELIGIOUS PURPOSES—MINISTRY LANDS.

§ 370. In the State of Vermont they have a very simple and convenient method of incorporating a religious society. Any number of persons may associate together and have all the powers of a corporation, for the support of the gospel and the maintenance of public worship, and may procure,

hold and keep in repair a house of public worship, a parsonage and suitable grounds and other conveniences for burying the dead. The use and avails of such parsonage must in all cases be appropriated to the support of public worship. (*Compiled Statutes of 1863, Ch. 90, Sec. 1.*)

§ 371. The association is formed by written articles, subscribed by the members, and specifying the objects of the association, and the condition on which it is formed. The *modus operandi* is precisely similar to that in cases of literary and other associations, and is so simple that no form need be given. The first meeting of the association must be notified, organized and held in the manner prescribed in the articles of association. (*Ib., Secs. 2 and 3.*)

§ 372. The association may adopt a corporate name, either in the original articles or by a vote at the first meeting of its members regularly convened, and may adopt a corporate seal at any regular meeting, and alter the same at pleasure. (*Ib., Sec. 4.*)

§ 373. The corporation, when organized, may adopt all such by-laws and regulations as may be thought expedient to regulate the mode of notifying, and the times and places of holding the meetings; to regulate the number of officers of the corporation, their powers and duties, and the mode of electing them; to provide for the mode of admitting and discharging members; to provide for the mode of selling or forfeiting the shares or rights of the members for non-payment of assessments, and all other matters which may be necessary to promote the object of the association, not inconsistent with the articles of association or the laws of the State. (*Ib., Sec. 5.*)

§ 374. Though the association might declare in their con-

stitution and by-laws that such constitution and by-laws were not to be altered, except in a certain manner, the same may be altered or even abrogated by the same power which created them; and the vote of any subsequent meeting abrogating or altering such constitution or by-laws, though passed only by a majority, has as much efficacy as a previous vote establishing them. (*Smith v. Nelson*, 18 *Vt. R.*, 511.)

§ 375. The corporation may sue and be sued, appear, prosecute and defend to final judgment and execution, in any court of law or equity, or elsewhere, and may purchase and hold all the real and personal estate which may be necessary to promote the object of the association, and the same must be devoted exclusively to that object. The corporation has power also to raise money in any manner agreed upon in the articles of association. (*Compiled Statutes of 1863, Ch. 90, Secs. 6 and 7.*)

§ 376. The corporation may also by its articles of association or by-laws, or by both, divide its stock or corporate property into shares, and determine the terms on which and the manner in which such shares shall be held by the several members; and whenever the stock or corporate property is so divided into shares, the corporation, at any meeting notified for that purpose, may raise money by assessment on the shares or rights of the members in proportion to their several interests; and the payment of such assessments may be enforced by the sale or forfeiture of the estate of any member in the corporation, in such manner as the corporation may provide; but no other estate of the members can be taken or forfeited for the payment of such assessments. (*Ib.*, *Secs. 8 and 9.*)

§ 377. An association for religious purposes in Vermont has no authority, simply by virtue of the statute authorizing

the formation of societies for the support of the gospel, to enforce the collection of its taxes or assessments by a forfeiture or sale of the shares of its delinquent members. The statute simply confers upon the association the power to provide for such sale or forfeiture, and in order to accomplish that end the constitution or by-laws of the association must contain a provision to that effect prescribing the mode of such sale or forfeiture. (*Perrin, adm'r v. Granger*, 30 *Vt. R.*, 595.)

§ 378. The clerk or secretary of the association is required to keep fair records of all the proceedings of the corporation, in a book provided for that purpose; such records are made evidence in any court where the interest of the corporation may be concerned. (*Comp. Stat. of 1863, Ch. 90, Sec. 10.*)

§ 379. Religious societies formed under any law of the State, for the purposes before stated, may have and exercise all the powers conferred by the laws under which they were respectively organized. (*Ib.*, *Sec. 11.*)

§ 380. Where several individuals signed articles of association expressing the purpose to be the building of a meeting-house, and provided for the election of three trustees, a secretary, treasurer and other officers, and no words were used indicating an intention not to form themselves into a body corporate, it was held that they became a body corporate, and that no action lay against the individual members or trustees for labor or materials performed or furnished for the society. (*Rogers v. Danby Universalist Society*, 19 *Vt. R.*, 187.)

§ 381. So where a number of persons associate themselves together, in pursuance of the statute, for the expressed pur-

pose of building a meeting-house, and appoint three of their members a building committee to superintend the erection of the house, the acceptance of the appointment does not amount to a personal undertaking on the part of the committee. The members of the committee are thereby constituted the agents of the society for the purposes expressed, and they may effectually bind the society by a contract made even with one of their own number. (*Sawyer v. Meth. Ep. Society*, 18 *Vt. R.*, 405.)

§ 382. And where the articles of association provide that the whole expense of the house shall be estimated on the whole number of pews, by appraisal, and that the subscribers shall bid for the choice of pews, but that the average price of the pews shall not exceed a certain sum, it was held that this did not limit the amount to be expended by the building committee in erecting the house, and that a member of the committee might recover for services and expenses in erecting the building, notwithstanding the whole expense of the house exceeded the amount which the pews would bring at the average price specified—it not appearing that the committee had departed from the general plan prescribed for the building. (*Ib.*)

§ 383. It has been held that a voluntary association or society, for the purposes of supporting religious worship, may, under the constitution and laws of the State, receive and hold a legacy, and the only inquiry to be made in determining the right of the society to receive the legacy is, whether the society still exists, and has a minister chosen and appointed by the *majority*, and regularly ordained over the society agreeably to the usage of the denomination or church to which the members profess to belong. (*Smith v. Nelson*, 18 *Vt. R.*, 511.)

§ 384. Where a legacy is made to a voluntary religious association, to be placed under the direction of the trustees of the association, and the interest to be annually paid to their minister forever, it was held that this was a gift or grant to the society, and that the treasurer of the association might institute a suit in Chancery, in behalf of the society, to enforce a fulfillment of the bequest. (*Ib.*)

§ 385. The stewards of the several circuits and stations of the Methodist Episcopal church, and their successors in that office, are empowered to hold in trust for such church all lands which shall have been deeded under any law of the State, on which meeting-houses, churches or chapels for religious worship, and parsonage houses are or may be erected, and such other lands appurtenant thereto as may be necessary for the use of such houses of worship or parsonage houses; though the stewards of any one station or circuit may not hold more than two acres for any one parsonage. (*Compiled Laws of 1863, Ch. 90, Sec. 13.*)

§ 386. And the stewards and their successors in office, mentioned in the last preceding section, may convey by deed or otherwise, any real estate which they are authorized by that section to hold; though previous to such conveyance they must obtain the approbation, by a vote of two-thirds of the members, of the union quarterly meeting conference in the circuit or station where such estate is situated. (*Ib., Sec. 14.*)

§ 387. Such stewards and their successors in office are authorized to erect within their respective circuits, upon grounds used and occupied for the purposes of camp-meetings under the usages of their church, boarding-tents for the accommodation of such persons as may attend such meetings,

and furnish therein board and lodging during the holding of said meetings. (*Ib.*, Sec. 15.)

§ 388. It has been held that it is both the right and duty of members of the Presbyterian "Associate church" to secede from the prevailing party, who may obtain a majority in the judicatories, synods and assemblies, when in the opinion of the seceders the majority have departed from the word of God, and the received standards of doctrine, worship, government and discipline of the church; and that when a congregation and their minister thus secede, no violation of any implied contract between the minister and the congregation is involved which will justify a court of Chancery to treat the connection between them as dissolved. (*Smith v. Nelson*, 18 *Vt. R.*, 511.)

§ 389. Where a testator made a bequest in these words: "As a testimony of my gratitude to the giver of every good and perfect gift, I farther will and devise the sum of one hundred and fifty dollars as a donation to the 'Associate Congregation of Rygate,' to be placed under the direction of the trustees of said society, and the interest thereof to be annually paid to their minister forever"; it was held that there was nothing in the terms of the bequest which indicated that the testator had any regard to the connection of the congregation with any other body, or to any future divisions which might occur in the congregation, and that it could therefore have no effect in determining the right to the legacy that the congregation has seceded from the "Associated church" to which it belonged at the time of the testator's decease. (*Ib.*)

§ 390. Nothing can be added by implication to the express terms of the contract between a minister and his people. The parties may make conditions and qualifications, as they

deem necessary. But when a minister ceases to be able to perform his ministerial duties, by reason of immorality or church censure for such immorality, it may afford a sufficient reason for the parties mutually to dissolve the relation, or for one of the parties to treat the contract as forfeited and rescinded by the other. (*Ib.*)

§ 391. An incorporated religious society, like any other incorporated society, is under obligation to appropriate its property for the payment of its debts; and if it neglect to do so, and permit its property to be wasted, the individual members may be liable. (*Bigelow v. Cong. Society of Middletown*, 11 *Vt. R.*, 283.)

§ 392. The meeting house and all lands belonging to a religious society, or which have been and remain sequestered to pious uses, are declared to be exempt from taxes, and the meeting house is held to be exempt from execution. (*Ib.*, and also *Compiled Laws of 1863, Ch. 83, Sec. 6.*)

§ 393. Where the plaintiff and defendant were both members, and the latter was steward of a Methodist Episcopal church, and the defendant, in the discharge of his duties as steward, said to the plaintiff, "I want you to board Mr. Mather," (their clergyman). "If you will do it, I will see you well paid, and have the money for it," the defendant not supposing that he was becoming personally responsible, and the plaintiff not showing that the plaintiff was an officer of the society, it was held that the contract was direct on the part of the defendant, and not within the Statute of Frauds, and that the plaintiff could recover of the defendant for the board of the minister. (*Busher v. Allen*, 31 *Vt. R.*, 631).

§ 394. When a church and congregation are an existing

organized association acting in a collective *quasi-corporate* character, an agreement of compromise of a suit by a majority of the members is binding upon the minority. (*Horton v. Bap. Ch. and Society of Chester*, 34 *Vt. R.* 309.)

§ 395. The legislature has power to make any regulation or alteration, with respect to any religious association formed under the general act in relation to religious societies. (*Compiled Laws of 1863, Ch. 90, Sec. 12.*)

§ 396. No grant, conveyance, devise or lease of personal or real estate to, nor any trust of such personal or real estate for, the benefit of any person and his successor or successors in any ecclesiastical office, will vest any estate or interest in such person or his successor; and no such grant, conveyance, devise or lease to or for any such person, by the designation of any such office, will vest any estate or interest in any successor of such person. (*Ib., Chap. 91, Sec. 1.*)

§ 397. No grant, conveyance, devise or lease of any real estate consecrated, dedicated or appropriated, or intended to be consecrated, dedicated or appropriated, to the purpose of religious worship for the use of any congregation or society, will vest any right, title or interest in any person or persons to whom such grant, conveyance, devise or lease may be made, unless the same be made to a corporation organized for the support of the gospel and the maintenance of public worship, or to procure, hold and keep in repair a house of public worship according to the provisions of the statute hereinbefore referred to. (*Ib., Sec. 2.*)

§ 398. Any real estate of the description named in the last preceding section, which had been granted, devised or demised prior to the enactment of said chapter ninety-one,

in 1856, to any person or persons in any ecclesiastical office or orders by the designation of such office or orders, or otherwise, is deemed to be held in trust for the benefit of the congregation or society using the same, and will, unless previously conveyed to a religious corporation, upon the death of the person or persons to whom the legal title was vested at the time of the passage of said chapter ninety-one, vest in the religious corporation formed by the congregation or religious society occupying and enjoying such real estate as aforesaid, provided such a corporation be in existence at the time of the decease of the person or persons holding the title. If such congregation or society be not incorporated as aforesaid, then and in that case the title of such real estate will vest in the people of the State of Vermont. (*Ib.*, *Secs. 3 and 4.*)

§ 399. Whenever the title to any real estate shall vest in the people of the State under the foregoing provisions of law, it is declared to be under the charge of the governor of the State, who, upon being satisfied that the congregation or society which had used, occupied or enjoyed such real estate for purposes of religious worship, prior to the death of the person or persons on whose decease the title thereto vested in the State, has duly become a corporation under and according to the provisions of the statute, and upon the production to him of a true copy of the articles of association and by-laws, if any there be, of such corporation, certified and sworn to by the presiding and recording officer of said corporation, is required and authorized to grant and convey such real estate, and all the rights, title and interest of the people of the State therein and thereto to said corporation, which will thereupon be vested with all the rights, title and interest therein and thereto, which became vested in the State by the provision of law as aforesaid. (*Ib.* *Sec. 5.*)

§ 400. The selectmen in the several towns have the care of all the lands in such towns granted to the use of the ministry, or the social worship of God, and all lands granted to the first settled minister, and not appropriated according to law; and the same must be appropriated, under the direction of the selectmen, to the organized religious societies in each town for the support of religious worship. If there be more than one such society in any town, the same must be divided between them in proportion to their several members; and if there be no such society in any town, the same must be loaned on interest until such society shall be formed, unless it shall be appropriated to pay for preaching the gospel in such town by vote of such town in town meeting. (*Ib.*, *Ch.* 97, *Secs.* 1 and 5.)

§ 401. The county treasurers of the several counties have the care of all such lands in unorganized towns and gores in their respective counties until such towns or gores may be organized, and they may maintain or defend all actions relating to such lands; and may also lease such lands, and pay the rents received annually into the treasury of the county, and thence over to the prudential committee of such district or districts in the unorganized town or gore where such rents accrued for the support of schools therein. (*Ib.*, *Secs.* 7, 8, 9 and 10.)

CHAPTER XXIX.

RELIGIOUS SOCIETIES IN MASSACHUSETTS—THE OLD PARISH SYSTEM—RELIGIOUS SOCIETIES, HOW INCORPORATED—WHO ARE MEMBERS—THE OFFICERS OF A RELIGIOUS SOCIETY AND THEIR DUTIES—MEETINGS OF THE SOCIETY—MONEY, HOW RAISED—TAXES, HOW ASSESSED AND COLLECTED—UNINCORPORATED RELIGIOUS SOCIETIES—TRUST FUND.

§ 402. In the State of Massachusetts the people from the first settlement have been noted for their devotion to the cause of education and religion. Even in the organization of a town, the general court was careful to incorporate it upon the condition that "they had meeting-houses, and supported learned and pious ministers and schools;" and, in most cases, the general court would appoint a committee with power to grant and lay out the whole of the lands of a township to such persons "as the committee, in their wisdom, think most likely to advance the settlement of the place, provided the committee, within three years, have then at least forty families, with an orthodox minister;" and provided a lot of convenient size and location be laid out to the "first settled minister," and also a lot "for the ministry, and another for the use of schools." This shows the care with which the people, from a very early period, secured the maintenance of the institutions of religion. (*See Shrewsbury v. Smith*, 14 *Pick.* 297.

§ 403. In the earliest colonial times both ecclesiastical and civil boundaries in the State were denoted by the word town. Subsequently the terms parish, precinct and district came into use as ecclesiastical divisions. At the time of the Revolution the terms parish and precinct began to be em-

ployed strictly in an ecclesiastical sense. The parish consisted of a definite tract of land, the metes and bounds of which were very exact, and the poll parish was made up of individuals. The meeting-house and minister, and the parsonage, were all provided for and sustained by a tax on each inhabitant according to his property; and the inhabitants were required to attend the preaching provided for them under penalties prescribed by law. The towns, parishes and precincts were also liable to specified penalties for neglecting to supply good preaching to the people, provided the court of general sessions of the peace should adjudge them of sufficient ability to supply a "public Protestant teacher of piety, religion and morality" for such towns, parishes or precincts. The fines, when collected, were disposed of by order of the court, to the support of the public worship of God, in such religious society in the same county as, in the opinion of said court, stood most in need of it. (*Statute of 1799, Ch. 87, Sec. 2.*)

§ 404. All landholders, resident and non-resident, Christian and unchristian, were taxed, though they never saw the minister or entered the meeting house; and all corporations holding lands within the parish were also taxed, upon the principle that, so far as the community were concerned, public religious and moral instruction was intended for the prevention of *crimes*, and not the salvation of souls. After the year 1811, the non-resident's land-tax went to support the minister of his denomination, if there was one in the town. (*Turner v. Burlington*, 16 *Mass. R.* 208; *Amesbury Nail Factory v. Weed*, 17 *Ib.* 54.)

§ 405. Formerly very important distinctions existed between the parish and the regularly incorporated religious society, but this distinction is now nearly effaced, and by the general statutes of the State, the term "religious society,"

includes the parish in many of its provisions. Previous to the adoption of the policy now prevailing in the State, religious societies, whether mere voluntary associations, or regularly organized bodies corporate, and the territorial parishes, had many important rights, which have been secured to them by the statutes now in force. (*General Statutes* 1860, *Ch.* 60.)

§ 406. Every religious society established or organized by virtue of any statute prior to the act of 1860, it is declared shall be and continue a body corporate, though the powers of taxation enjoyed by any religious society, by virtue of a special law or act of incorporation, were not to be enlarged by the general act, nor are the rights of property of any territorial parish then existing, to be impaired, and all religious societies, whether corporate or unincorporate, continue to have and enjoy the rights, privileges and immunities, which existed at the date aforesaid, except as limited or modified by the general act, and the respective churches connected and associated in public worship, with such religious societies, continue to have, exercise and enjoy all their accustomed privileges and liabilities respecting divine worship, church order and discipline, as before, and are to be encouraged in the practicable and regular enjoyment and practice thereof. (*Ib.*, *Secs.* 1, 2 and 3.)

§ 407. The facilities for organizing and incorporating a religious society in the State are ample and very simple. A religious society that is not incorporated, or which may be unable to assemble in the usual manner, if it contains ten or more qualified voters, may organize and become a corporation, with the powers, privileges, duties, liabilities and requirements of such societies; and may hold so much estate, real and personal, as may be necessary for the objects of such organization, and no more. Five or more of the qualified voters of such society, in order to become incorpo-

rated, may apply in writing to any justice of the peace for the county in which such society may be, who is thereupon authorized to issue his warrant directed to some one of the applicants, stating the objects and requiring him to warn the qualified voters of the society to meet at a time and place appointed in the warrant. The warrant may be served by posting an attested copy thereof on the principal outer door of the meeting-house, or leaving such copy with or at the last and usual place of abode of such voters, seven days, at least, before such meeting; and, upon due return thereof, the same justice, or any other justice of the peace for the county, may preside at the meeting for the choice and qualification of a clerk, who must enter, at large, upon the records of the society, the proceedings had in the organization thereof; and the society may thereupon proceed to choose a moderator, and do such other things as parishes are by law authorized to do at their annual meetings, provided the subject matter thereof be inserted in the warrant. (*Ib.*, Secs. 4 and 5.)

§ 408. No person has a right to vote in the affairs of the society unless he is a member thereof. Persons belonging to a religious society are held to be members until they file with the clerk a written notice declaring the dissolution of their membership; and they are not made liable for any grant or contract thereafter made or entered into by such society. No person can be made a member of such society without his consent in writing. (*Ib.*, Secs. 6 and 8.)

§ 409. Every religious society may make by-laws not repugnant to the laws of the commonwealth, and therein prescribe the manner in which persons may become members. The qualified voters of every parish and incorporated religious society must hold an annual meeting in the month of March or April, or at such other time as they may pre-

scribe by their by-laws, and, if the by-laws do not otherwise determine, at a time and place appointed by their assessors or standing committee, and at such meeting must choose a moderator, clerk, two or more assessors, a treasurer and collector, and such other officers as they think necessary, all of whom, except the moderator, will continue in office until the next annual meeting, and till others are chosen and qualified in their stead. Moderators of meetings held for the choice of officers must be elected by written ballots. Clerks, assessors, treasurers, and collectors must also be elected by written ballot, and must be sworn. Other officers may be elected in such mode as the society may determine. (*Ib.*, Secs. 7, 9 and 10.)

§ 410. The prudential affairs of religious societies must be managed by their assessors, or a standing committee specially appointed for that purpose; and the assessors or committee have the same authority for calling meetings as selectmen have for calling town meetings. If there be no assessors or committee, or if they unreasonably refuse to call a meeting, any justice of the peace for the county, upon the application of not less than five qualified voters, may call one, in the manner provided and specified hereinbefore in this chapter. The assessors or committee must insert, in the next warrant they issue for calling a meeting, any matter which not less than five qualified voters of the society may in writing request; and nothing acted upon will have any legal operation, unless the subject matter thereof was inserted in the warrant. Meetings must be warned in the manner provided by any by-law or vote of the society, and, when no provision is made, in such manner as the assessors or standing committee, in their warrant for such meeting, direct. (*Ib.*, Secs. 11, 12, 13 and 14.)

§ 411. The clerk, or, if there be no clerk, or he be absent,

the assessors or the standing committee, or any one of them, must preside in the choice of a moderator; and a clerk may then be chosen, either *pro tempore* or to fill a vacancy, as the case may require. The moderator may administer the oath of office to the clerk, and the clerk to the assessors and collector, or said oaths may be administered by a justice of the peace; and they must be substantially the same as are required to be taken by the clerk, assessors and collectors of towns. The moderator possesses the same power as the moderator of a town meeting; and persons guilty of disorderly behavior at a meeting are subject to the same penalties and punishments provided for like offenses in town meetings. (*Ib.*, Secs. 15 and 16.)

§ 412. If the person chosen collector be present at the meeting at which he is chosen, and accepts the office, he must forthwith be sworn. If not present, he must be summoned to take the oath by a constable, or any person whom the clerk or assessors may appoint for the purpose. Upon the refusal or neglect of a person present to accept the office at the time, and upon the neglect of a person so summoned for the space of seven days to appear and take the oath, the society must proceed to a new choice; and so, from time to time, until some person accepts and is sworn. Vacancies in any of the annual offices, occurring after the annual meeting, may be filled at any other legal meeting. (*Ib.*, Secs. 17 and 18.)

§ 413. The rector, or one of the wardens, of religious societies belonging to the body of Christians known as the Protestant Episcopal church, organized under the laws of the commonwealth, may, unless it is otherwise provided in some by-law, preside at their meetings with all the powers of a moderator; and the wardens, or wardens and vestry, may exercise all the powers of a standing committee, in

accordance with the usage and discipline of said church. Unless they assess or collect a tax on the polls, estates or pews of the members thereof, such society need not choose a collector or assessors; and they may, in their by-laws, provide that the duties of assessors shall be performed by the wardens. But the officers upon whom the duties of standing committee or assessors may devolve, must in all cases be elected by ballot. (*Ib.*, *Sec.* 19.)

§ 414. The qualified voters of each religious society, at the annual meeting, or at any other meeting regularly notified seven days, at least, before the holding thereof, may grant and vote such sums of money as they judge necessary for the settlement, maintenance and support of ministers or public teachers of religion; for the building or repairing of houses of public worship; for sacred music; for the purchase and preservation of burial grounds, and for all other necessary parish charges; which sums must be assessed on the polls and estates of all the members of the society, in the same manner and proportion as town taxes are by law assessed. The assessors must assess the taxes upon the property, not exempted by law from taxation, of all the members of the society, including their real estate within the State, in whatever part thereof it may be situated, and their personal estate, wherever the same may be; and no citizen is liable to pay a tax for the support of public worship or other parish charges, to a society other than that of which he is a member. No corporation can now be taxed for any parochial purpose. Nor can any person be taxed in a parish or religious society for property held by him as guardian or trustee. (*Ib.*, *Secs.* 20, 21 and 22.)

§ 415. Every society may appoint its treasurer collector of taxes; who will have like powers and must proceed in like manner in enforcing the collection of such taxes after

the expiration of the time fixed by the society for the payment thereof, as provided for the collection of taxes by collectors of towns; and any society may authorize its treasurer and collector to make an abatement of such sum, as it may agree upon at its annual meeting, to those who make voluntary payment of their taxes within such periods as may be determined by the society. (*Ib.*, *Sec.* 23.)

§ 416. All taxes granted for parochial purposes, for any one year, must be assessed by assessors chosen for that year, and upon a valuation to be made for that year; and an assessment made by the assessors, or upon a valuation of the preceding year, would be illegal and invalid. So a tax granted in one parochial year, and assessed the next, cannot be enforced against a person who was a member of the society at the time the tax was voted, but withdraws before the time of the assessment. So, also, if after a parish or religious society has voted a sum of money to defray its expenses for the ensuing parochial year, a member withdraws, before the first day of May in that year, he can not be legally assessed. (*Mason v. Whitney*, 1 *Pick.* 140; *Inglee v. Bosworth*, 5 *Ib.* 501; *Ware v. Sherburne*, 8 *Cush.* 267.)

§ 417. Unincorporated religious societies have, by statute, like power to manage, use and employ any donation, gift or grant made to them according to its terms and conditions as incorporated societies have by law; they may elect suitable trustees, agents or officers therefor, and sue for any right which may vest in them in consequence of such donation, gift or grant; for which purposes they are made corporations. (*General Statutes of 1860, Chap.* 30, *Sec.* 24.)

§ 418. Incorporated and unincorporated religious socie-

ties may appoint trustees, not exceeding five in number, to hold and manage trust funds for their benefit, who must hold their offices five years and until others are appointed in their stead, with power to fill vacancies for an unexpired term occurring in their board. Such societies, at or before the time of the first appointment of the trustees, may establish rules and regulations for their government which are considered of the nature of a contract, and not subject to alteration or amendment except by all the trustees in office at the time, and by a two-thirds vote of the society interested therein. The terms "religious society" and "society," in the preceding sections of this chapter, include parishes. (*Ib.*, Secs. 25 and 26.)

§ 419. In some cases where there is a valid grant or bequest in trust to a religious society, and no trustees are named in the deed or will, a court of equity will appoint the proper trustees, upon the familiar principle that equity will not suffer a trust to fail for want of a trustee. Of course the object of the trust must be reasonably certain, and then the court will see to it that the will of the testator or grantor is respected and carried out. (*Universalist Society v. Fitch*, 8 Gray, 421.)

CHAPTER XXX.

RELIGIOUS SOCIETIES IN MASSACHUSETTS—OTHER PROVISIONS FOR THEIR INCORPORATION—POWERS OF SUCH CORPORATIONS—MONEY, HOW RAISED—WHAT PROPERTY MAY BE HELD BY SUCH CORPORATIONS—THE METHODIST EPISCOPAL AND AFRICAN METHODIST EPISCOPAL CHURCHES—PEWS MAY BE TAXED.

§ 420. Persons owning or proposing to build a house of public worship may organize themselves in the same manner as religious societies are authorized to do by the provisions specified in the last preceding chapter, and will thereupon become a corporation with the usual powers, privileges, restrictions, and liabilities of a religious corporation, though such powers may be revoked by the legislature. Every such corporation may hold so much real and personal estate, in addition to its meeting house, as may be necessary for its objects, and as may have been agreed and determined upon at the meeting held for the purpose of organization, but the annual income thereof must be applied to parochial purposes. (*General Stat. of 1860, Ch. 30, Secs. 27 and 28.*)

§ 421. The clerk of every such corporation must, within ten days after such meeting, leave with the clerk of the town or city in which such house of worship is situated, or is about to be built, a true copy of the record of the proceedings. Should he fail to do so, the organization would be void. The copy aforesaid must be recorded by the clerk receiving it, in a book kept for the purpose, for which he is entitled to a fee equal to that of the registrar of deeds for like services. (*Ib., Sec. 29.*)

§ 422. Where the proprietors deem it expedient to alter, enlarge, repair, rebuild or remove their house, or build a

new one, they may, at a legal meeting called for that purpose, raise such sums of money as they may judge necessary for the purpose, and to purchase land necessary therefor. A meeting of the proprietors for any of the purposes aforesaid, may be called in the manner prescribed in the by-laws or notes of the corporation, or by a warrant granted by a justice of the peace on application in writing by any five of said proprietors, which warrant must be directed to one of the applicants; or such meeting may be called by a notification by the clerk of the proprietors, who must warn a meeting on a like application to him, and in either case the meeting may be warned by notification served by posting an attested copy thereof on the principal outer door of the meeting house, or leaving such copy with or at the last and usual place of abode of such proprietors seven days at least before the meeting. (*Ib.*, Secs. 30 and 31.)

§ 423. Money may be assessed on the pews in such house, and the assessment may be committed to the treasurer of the proprietors, who must forthwith give notice by posting up an advertisement at the principal outer door of the house, stating the completion of such assessment, and the day of delivery thereof to him; and if any part of such taxes remains unpaid for three months afterwards, the treasurer must proceed to collect the same forthwith by sales at public auction of the pews whereon the same remains unpaid. The treasurer must post up a notification of the intended sale of a pew at the principal outer door of such house, at least three weeks before the time of sale, setting forth the number of the pew, if any, the name of the owner or occupant, if known, and the amount of the tax due thereon; and if any part of the said tax remains unpaid at the time, the treasurer must sell the pew at public auction, to the highest bidder, and must execute and deliver to the purchaser a sufficient deed of conveyance. The money arising from the

sale, beyond the taxes and incidental reasonable charges, must be paid by the treasurer to the former owner of the pew, or to his assigns. (*Ib.*, *Secs. 32 and 33.*)

§ 424. An affidavit annexed to an original notification or to a copy thereof, made before a justice of the peace, and recorded on the proprietors' records within six months next after such sale, is allowed as one mode of proof of the posting up of the notifications hereinbefore required. (*Ib.*, *Sec. 34.*)

§ 425. The aforesaid proprietors, for the purpose of building a new house, or of altering, enlarging, repairing, rebuilding, or removing their house of worship already built, may sell their house or take down any pews therein. The pews taken, however, must first be appraised by three or more disinterested persons chosen by the proprietors for that purpose. The pews newly erected must be sold by the treasurer of the proprietors, at public auction, to the highest bidder, and deeds thereof given in like manner as when pews are sold for the payment of taxes. The money arising from such sales must be applied, so far as may be necessary, to paying the appraised value of the pews taken down, and the deficiency, if any, must be paid by the proprietors of such house, within thirty days after the sale. Under this provision, a parish or religious society, whenever it deems it necessary for the purpose of building a new house, or of altering, enlarging, removing or rebuilding its house already built, may take down any pew therein, or sell the house, and no person is entitled to compensation for a pew so taken down, when such house is unfit for the purposes of public worship. (*Ib.*, *Secs. 35, 36 and 37.*)

§ 426. The trustees of any society of the Methodist Episcopal church, or of the African Methodist Episcopal church,

appointed according to the discipline or usages thereof respectively, or as such society chooses, may organize and become a corporation, with the powers, privileges, duties and liabilities of other religious corporations, subject, however, to account to the quarterly meeting of such society, according to such discipline and usages. But all powers derived from such organization may be revoked by the legislature. Such trustees may receive, hold and manage all the property, both real and personal, belonging to such society, and may sell and convey the same, and hold in trust gifts, grants, bequests, or donations, made to such society for the support of public worship and other religious purposes, but the annual income thereof, exclusive of the meeting house, cannot exceed four thousand dollars. (*Ib.*, *Secs. 43 and 44.*)

§ 427. The first meeting of such trustees may be called by a justice of the peace, upon the application of three or more of the trustees, at which they may choose a secretary and other officers, and all of the provisions of this and the last preceding chapters in relation to the warning and organization of meetings of religious societies, so far as the same may be applicable, apply and are in force in regard to meetings for the organization of such trustees. The secretary, before entering upon the duties of his office, must be sworn to the faithful discharge of the same, and a record of such oath must be kept in the record of the proceedings. An attested copy of the record of the proceedings at such organization must be kept with the town or city clerk, and recorded within ten days of such meeting; and if the secretary omits to leave such copy within the time specified, the organization will be void. (*Ib.*, *Sec. 46.*)

§ 428. There is still another provision by which seven or more persons within the State, having associated themselves by agreement in writing for religious purposes, under any

name by them assumed, and complying with certain specified provisions, will, with their successors, be and remain a body politic and corporate. The purpose of such corporation, and the place within which it is established, must be distinctly specified in its articles of association, which articles, and all amendments thereto, must be recorded in the office of the register of deeds for the county or district wherein such place is situated; and such corporation must appropriate its funds to no other purpose. (*Gen. Stat.* 1860, *Ch. 32, Secs. 1 and 2.*)

§ 429. Corporations organized as specified in the last preceding section possess all the powers and privileges, and are subject to the duties, liabilities and restrictions of other religious societies. They may hold real and personal estate for the purposes of their organization to an amount not exceeding one hundred thousand dollars. Their estate is not exempted from taxation in any case when part of their income or profits of their business is divided among members or stockholders, or when any portion of such estate is used or appropriated for other than educational, charitable or religious purposes. (*Ib.*, *Secs. 3, 4 and 5.*)

§ 430. Corporations for religious purposes may assess upon the pews in a church or meeting-house which they have erected or procured for public worship since the 25th day of March, 1845, according to a valuation of said pews, which may first be agreed upon and recorded by the clerk, sums of money for the support of public worship and other parochial charges, and for the repairs of the house. Such assessments may be collected in the manner specified in section four hundred and twenty-two. A corporation which had erected or procured such house prior to the date aforesaid, may avail itself of the provisions of this section, if the consent of all the pew-owners is obtained, or two-thirds of

the members present and voting at a regular meeting called for that purpose so determine. (*Gen. Stat.* 1860, *Chap.* 30, *Secs.* 39 and 40.)

§ 431. A religious society, which votes to avail itself of the provisions specified in the last preceding section, must, upon the application of a person owning one or more pews in its house, within one year after said vote, purchase the same at the appraised value. Such appraisal must be made by three disinterested persons, who may be chosen, one by the pew-owner, one by the society, and the third by the two persons thus chosen. Any religious society complying with these provisions is entitled to the privileges, and is subject to the liabilities incident to those religious societies which have erected or procured a meeting-house for public worship since the twenty-fifth day of March, 1845. (*Ib.*, *Secs.* 41 and 42.)

CHAPTER XXXI.

RELIGIOUS SOCIETIES IN MASSACHUSETTS—MEETINGS—RIGHTS AND LIABILITIES OF RELIGIOUS SOCIETIES AND PARISHES—MEMBERSHIP—RIGHTS AND LIABILITIES OF MEMBERS—VOTING—MEETING-HOUSES AND PEWS—MINISTERS AND COUNCILS—PARSONAGE LANDS.

§ 432. When the record of a parish meeting shows it to have been called by the warrant of a justice of the peace, and to have been regularly warned, no exception to the authority of the magistrate appearing on the record, neither a stranger nor an inhabitant of the parish can question the legality of the meeting on the ground that the application to the magistrate was signed by fewer than the legal number

of persons, or that some of the signers were not qualified voters. But if such irregularities were excepted to by the inhabitants at the meeting, the proceedings of the meeting would be invalid. So a parish meeting, called by persons acting as a committee of the parish, under color of a regular appointment, will be held legal, if no exception to their authority is taken at the meeting. And if persons who are not qualified voters actually vote at a parish meeting without being challenged, no advantage can be taken of such irregularity to vacate the proceedings. (*Sutton v. Cole*, 3 *Pick.* 232.)

§ 433. Voluntary religious associations are not governed by the regulations in relation to calling meetings, the time of holding them, the choice of officers, or the qualifications of voters, which are applicable to other religious corporations. (*Fisher v. Whitman*, 13 *Pick.* 350.)

§ 434. Persons, in the year 1824, forming themselves into an association for religious purposes without any lay organization, but solely under the advice and direction of the minister and elders of their denomination, and entering into an agreement, which they afterwards fulfilled, to support and maintain public worship, constitute a religious society under the statute then in force, and always have been, and now are, competent as such, to take grants or donations, and to prosecute actions of trespass to maintain and defend the possession of real estate granted or leased to them for their use as a religious society. (*Christian Society v. Macumber*, 5 *Met.* 155.)

§ 435. The provisions of the Revised Statutes of the commonwealth in regard to religious societies, apply to a parish that has once been legally organized, but which, for the want of officers, or any other cause, is unable to assemble

in the usual manner. Therefore, when a meeting of such parish, whose assessors had not been sworn, was called and conducted in the manner prescribed by sections twenty-six, twenty-seven and twenty-eight of the Revised Statutes, and a parish committee was chosen at such meeting, they are regarded as the legal committee, in preference to another which may be afterwards chosen at a meeting called under the provisions of section seventeen of the same act. (*Wood v. Cushing*, 6 Met. 448.)

§ 436. When an incorporated religious society, owning a meeting-house, makes no by-laws, nor passes any vote providing for the warning of its meetings, and has no assessors nor committee authorized to issue a warrant for meetings, it can legally call and warn a meeting only in the manner prescribed by law referred to in section four hundred and six; and when a meeting of such religious society was called by its clerk, on the application of less than five of the proprietors of the meeting-house, a vote, passed at such meeting, appointing an agent to convey the real estate of the society, was held invalid, and a conveyance of the estate by him was declared void as against a creditor of the society who subsequently attached the estate, and levied his execution upon it. (*Wiggin v. Lowell*, 8 Met., 301.)

§ 437. The members of an incorporated religious society having accepted their act of incorporation, and organized under the same by the choice of a president and other officers, but never having chosen any assessors or parish committee, or adopted any by-laws directing the manner of calling meetings, five of the qualified voters of such society, signed an application to a justice of the peace, requesting him to call a meeting thereof, at a specified time and place, to fill all vacancies in the offices of the society, to do all acts and things necessary to effect a full and complete organiza-

tion, and to see if the society would confirm their former proceedings and amend their records, so far as might be necessary to render the same valid and effectual in law. The meeting called by such justice, on such application, was proper and legal, as such society is within the provisions of the Revised Statutes, authorizing the calling of a meeting by a justice of the peace, on the application of five or more qualified voters, and the omission to state in the application or recite in the warrant, that there were no assessors or parish committee, would not render the proceedings of the meeting invalid or irregular. (*Ladd v. Clements*, 4 *Cush.*, 476.)

§ 438. Tenants in common of land conveyed to them, "to have and to hold to them, their heirs and assigns, and to each and every person who may become proprietor of a pew in a meeting house to be built on the land, to the use of every such proprietor, and his successors," are authorized by statute to organize themselves as a body corporate according to the provisions of section four hundred and six. (*Howard v. Hayward*, 10 *Met.*, 408.)

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§ 439. The omission of a parish, for one year, to elect parish officers, does not necessarily operate as a dissolution of the parish; and if it did, the parish property would not therefore vest in the town, although the town held the property in its parochial capacity before the parish was separately organized. (*Tobey v. Wareham Bank*, 13 *Met.*, 440.)

§ 440. A parish as well as a town, is capable of taking and holding a devise to be applied to the use of schools, and is also legally capable of making and holding gifts, devises and bequests of real and personal property, for the purpose of

maintaining and supporting schools. (*Sutton v. Cole*, 3 *Pick.*, 232 ; *White v. Braintree*, 13 *Met.*, 506.)

§ 441. A parish cannot maintain an action on the case against its assessor for omitting to take the oath of office. Neither are the assessors of a parish liable to the parish in an action on the case, for neglecting to assess a tax equal in amount to the sum voted by the parish, and for not issuing a warrant to the collector for the collection thereof, provided they acted under the honest belief that they were carrying out the views of the parish. (*Sherburne v. Fiske*, 8 *Cush.*, 264.)

§ 442. In an action against a religious society, described in the writ as "a body corporate for certain purposes," if the defendants would deny their existence or organization as a corporation, they must give notice of their intention to do so in a specification of defense. So if a society has acted for many years as a corporation, a plaintiff is not bound to prove a formal acceptance by them of their act of incorporation, and a legal organization under it, if not denied in the answer. Clerks of religious societies can make copies of papers properly on file or recorded with them, and certify such copies, but they cannot certify facts. (*Townsend v. Lowell*, 6 *Cush.*, 279 ; *Whitmore v. Plymouth*, 2 *Gray*, 306 ; *Oakes v. Hill*, 14 *Pick.*, 442.)

§ 443. Liability to taxation is the criterion of membership so far as relates to voting ; and whoever is a member of a parish has a right to vote, and the officer who refuses the vote of a member is liable to an action. The moderator of a parish meeting can govern himself in receiving votes only by the assessment list. In parish meetings no list of voters is necessary by law ; no officers are authorized to make them ;

the presiding officer must decide at his peril upon the qualifications of those claiming to vote. The clerk must decide during the election for a moderator, and if he reject the vote of a qualified voter he is liable to an action. (*Sparrow v. Wood*, 16 *Mass.*, 457; *Oakes v. Hill*, 10 *Pick.*, 333; *Keith v. Howard*, 24 *Pick.*, 292.)

§ 444. The pews of a church were formerly regarded as real estate, but they are now declared by statute to be personal property. A pew-holder has an exclusive right to occupy his pew, and to maintain trespass, or a writ of entry against any one who may disturb him, and this especially when the meeting-house is used for religious worship. The same rule would apply when the house is used for other purposes than religious worship, if the meeting-house were conveyed to trustees for the use of the church and society for a place of religious worship, and for no other use, intent or purpose whatsoever, and in the deeds of the pews given to individuals, the provisions of the conveyances are referred to and recognized, and the pew-owners in such case have a right to exclude all others from their pews, on all occasions of a secular nature, by fastening the pew doors, or otherwise, in such manner as not to interrupt or annoy those who may occupy other pews. (*Gen. Stat.* 1860, *Ch.* 30, *Sec.* 38; *Gay v. Baker*, 17 *Mass.*, 435; *Jackson v. Rounsville*, 5 *Met.*, 127.)

§ 445. In the nature of the case, a pew is not absolute, but qualified and conditional property, and is held by the owner subject to a right in the parish to pull down and rebuild the meeting-house. But unless a meeting-house is unfit for public worship and so old and ruinous as to render its entire demolition necessary, a pew-holder would be entitled to indemnity for the destruction of his pew. If, however, a parish abandon its meeting-house, as a place of public worship, although it continue fit for that purpose, and

erect a new one on a different site, it does not thereby subject itself to any liability to the proprietor of a pew in the old meeting-house, unless the parish act wantonly, or with the intent to injure such pew-owner. (*Gay v. Baker*, 17 *Mass.*, 435; *Daniel v. Wood*, 1 *Pick.*, 102; *Fassett v. Boylston*, 19 *Ib.*, 361; *Kimball v. Rowley*, 24 *Ib.*, 347; *Gorton v. Hadsell*, 9 *Cush.*, 508.)

§ 446. With respect to the minister, there has always been a high regard for him in the State of Massachusetts, and the courts have ever seemed to entertain a high sense of the dignity and proprieties of the ministerial office. If the minister is settled over a church and congregation, or society, without any limitations as to its continuance, or any express stipulations as to the mode of its dissolution, his settlement is regarded as a contract for life, and is determinable only in the manner and for the causes established by law, which are an essential change of doctrine, a willful neglect of duty, and immoral or criminal conduct. If the offense charged is a substantial and essential change of doctrine, amounting to the adoption of a new system of divinity, the case must come before the court, through the result of an ecclesiastical council. (*Sheldon v. Easton*, 24 *Pick.*, 286.)

§ 447. When the society desires the dissolution of the connection between it and the minister, or *vice versa*, if the parties cannot agree to dissolve the contract, they may call to their assistance a council mutually chosen, and if either party refuse to concur in a mutual choice, the aggrieved party may choose an impartial council. The result of an ecclesiastical council, regularly made, is sufficient evidence of the facts determined upon, and is so far of the nature of an award made by arbitrators, that either party conforming thereto will be justified, and it is not easy to see how it will justify one party and not bind the other. (*Burr v. Sand-*

wick, 9 Mass., 277; *Straus v. Bedford*, 21 Pick., 125; *Sheldon v. Easton*, 24 Pick., 286.)

§ 448. An ex-parte council should be composed of persons presumed to be impartial, and who have not prejudged the case; and where some of the members of a council, called by the society alone, had been members of a previous council, which had decided against the minister upon the same charges, a similar result of the ex-parte council would be of no validity. (*Thompson v. Rehoboth*, 7 Pick. 160.)

§ 449. When a minister has been settled and always ready to perform all the duties growing out of the relation so created, and has performed such parochial duties as they would permit him to perform, he can recover his salary so long as the relation continues. In an action by a minister for his salary after his parish have voted to dismiss him, the defendants cannot introduce evidence of misconduct on the part of the plaintiff, which is not made the ground of charge against him in the vote of dismissal. (*Thompson v. Rehoboth*, *supra*; *Sheldon v. Easton*, *supra*; *Whitmore v. Plymouth*, 2 Gray, 308.)

§ 450. Every minister settled over a parish is a corporation sole, or a corporation composed of one person, and he holds the parsonage lands in fee simple as a sole corporation in the right of his parish or church; and on his resignation, deprivation or death, the fee is in abeyance until there be a successor. (*Brunswick v. Dunning*, 7 Mass. 445; *Brown v. Porter*, 10 Ib. 93; *Cheever v. Pearson*, 16 Pick. 266.)

§ 451. The minister of every church or religious society, of whatever denomination, if a citizen of the commonwealth,

is capable of taking in succession any parsonage land granted to the minister and his successors, or to the use of the ministers, or granted by any words of like import, and may prosecute and defend in all actions touching the same. No conveyance, however, by a minister, of lands held by him in succession, will be valid any longer than he continues to be such minister, unless the conveyance is made with the consent of the town, parish or religious society of which he is minister, or unless he is the minister of an Episcopal church, and makes the conveyance with the consent of the vestry. (*Gen. Stat.* 1860, *Ch.* 31, *Secs.* 3 and 5.)

§ 452. If a minister, or his predecessor, be disseised of the parsonage, he may enter, if his rights of entry be not taken away, and declare upon his own seisin, or upon that of his predecessor, according to the nature of the case. And when a minister was settled in a town, and, upon his decease, a successor of the same denomination was settled, he will succeed to all the rights of the former, and can recover the lands which belong to the parish. A parish, however, may be seized of land for the purpose of supporting a minister out of the proceeds of it, and yet it may not be the property of the minister so as to make it technically a parsonage, and cause the seisin to be in the minister as a sole corporation. (*Brown v. Porter*, 10 *Mass.* 93; *Jewett v. Burroughs*, 15 *Id.* 464; *Emerson v. Wiley*, 10 *Pick.* 317.)

CHAPTER XXXII.

RELIGIOUS SOCIETIES IN MASSACHUSETTS—THE DEACONS AND OTHER SIMILAR CHURCH OFFICERS BODIES CORPORATE FOR CERTAIN PURPOSES—CONVEYANCE OF LANDS BY—THE FRIENDS OR QUAKERS—TRUSTEES HOLDING FUNDS FOR RELIGIOUS PURPOSES—POWER OF PROBATE COURT OVER.

§ 453. The deacons, church-wardens or other similar officers of all churches or religious societies, if citizens of the commonwealth of Massachusetts, are by law deemed bodies corporate, for the purpose of taking and holding in succession all grants and donations, whether of real or personal estate, made either to them and their successors, or to their respective churches, or to the poor of their churches. When the ministers, elders or vestry of a church are, in the grants or donations mentioned, joined with such deacons or church-wardens as donees or grantees, such officers, and their successors, together with the deacons or church-wardens, will be deemed the corporation for the purposes of such grants and donations. (*General Statutes of 1860, Ch. 31, Secs. 1 and 2.*)

§ 454. No conveyance of the lands of a church will be effectual to pass the same, if made by the deacons without the consent of the church, or a committee of the church appointed for that purpose, or, if made by the church-wardens without the consent of the vestry. The several churches, other than those of the Episcopal denomination, may choose committees for the purpose of settling the accounts of the deacons and other church officers, and, if necessary, to commence and prosecute suits in the name of

the church against the deacons or other owners touching the same. (*Ib.*, *Secs. 4 and 6.*)

§ 455. The income of any grant or donation, made to or for the use of a church, cannot exceed the sum of two thousand dollars a year, exclusive of the income of any parsonage lands granted to or for the use of the ministry. (*Ib.*, *Sec. 7.*)

§ 456. The funds of a Congregational church, derived from the voluntary contributions of members on communion days, from other donations not specifically appropriated by the donors, and from accumulations of interest, though invested with other funds specifically appropriated, to which such contributions and donations were added by the donors, are held by the church in their own right, to be appropriated at their discretion, both as to principal and interest, and not by the deacons, in trust for the society connected with the church, or for any purpose of general charity to be enforced by an information filed by the public prosecutor. (*Parker v. May*, 5 *Cush.* 336.)

§ 457. The deacons and other church officers have no power to enter into executory contracts, negotiations or speculation, or give a promissory note, in such a manner as to bind their successors or the church, even though the same were done in good faith, in the hope and expectation that such transactions might prove for the best interests of the church. (*Jefts v. York*, 10 *Cush.* 394, and 12 *Ib.* 196.)

§ 458. The overseers of each monthly meeting of the people called Friends, or Quakers, are made by statute, a body corporate, for the purpose of taking and holding in succession grants and donations of real or personal estate

made to the use of such meeting, or to the use of any preparative meeting belonging thereto; and they may alien or manage such estate according to the terms and conditions of the grants and donations, and prosecute and defend in any action touching the same, provided that the income of the grants and donations to any one of such meetings for the uses aforesaid shall not exceed the sum of five thousand dollars per year. (*Gen. Stat.* 1860, *Ch.* 31, *Sec.* 8.)

§ 459. All trustees, whether incorporated or not, who hold funds given or bequeathed to a city or town for any religious purpose, are required to make an annual exhibit of the condition of such funds to the board of aldermen of the city, or the selectmen of the town, to which such funds have been given or bequeathed; and all transactions by the trustees concerning such funds must be open to inspection by the board of aldermen of the city, or selectmen of the town, to which the returns are made. (*Ib.*, *Sec.* 9.)

§ 460. The probate court of the county in which the city or town is situated, to which funds have been given or bequeathed for religious purposes, may, on the petition of five persons, cite all parties interested to appear before the court to answer all complaints which may then and there be made; and if a trustee has neglected or refused to render his annual exhibit, or is incapable of discharging the trust reposed, or unsuitable to manage the affairs of the same, the court may remove such trustee, and supply the vacancy. (*Ib.*, *Sec.* 10.)

§ 461. No forms are given for the incorporation of religious societies in Massachusetts, and for the various proceedings connected with the operations and workings of such societies, from the fact that they are all very simple, and may be easily framed, without any guide but the law.

CHAPTER XXXIII.

RELIGIOUS SOCIETIES IN CONNECTICUT—SOCIETIES, HOW FORMED—OFFICERS AND TRUSTEES—POWERS OF THE SOCIETY—MEETING-HOUSES AND PEWS—TAXES—EXPENSES OF PUBLIC WORSHIP ENFORCED—SUITS BY AND AGAINST RELIGIOUS SOCIETIES—TITHESMEN TO BE ELECTED—THE SHAKERS.

§ 462. In the State of Connecticut all societies and congregations, instituted for public religious worship, which have been incorporated by law, in local limits or otherwise, or formed by voluntary association, may hold, possess and enjoy all real and personal property, all public buildings and funds belonging to such societies and congregations, appropriated to the use and support of public worship, and have power to take care of, manage and apply the same to such purpose, and are capable to receive any grants or donations, and by voluntary agreement to establish funds for the same object. (*Revised Statutes of 1866, Title VII, Ch. 4, Sec. 201.*)

§ 463. Christians of every denomination not belonging to any particular society or congregation, have power to unite and form societies or congregations, in such manner as they may think proper, and, when so associated, such societies or congregations have all the rights, powers and privileges given by the act to religious societies and congregations. Jews, who may desire to unite and form religious societies, possess and have the same rights, powers and privileges as are given to Christians of every denomination by the laws of the State. (*Ib., Secs. 202 and 203.*)

§ 464. Whenever any person may desire to join any reli-

gious society or congregation, which has been or may be incorporated by law, or formed by voluntary association, he may lodge with the clerk of such society or congregation, or, if there be no clerk, with any other officer thereof, a written declaration, subscribed by himself, expressing his desire and intention of becoming a member of such society or congregation, and thereupon he becomes a member of such society or congregation, and is entitled to all the privileges, and liable to all the duties of a member, unless a majority of such society or congregation shall, at their next lawful meeting, manifest their dissent thereto. (*Ib.*, Sec. 204.)

§ 465. The members of every religious society and congregation may annually meet some time in the month of December, or at any other time they may judge convenient, at the usual place of holding meetings, or at such place as they shall establish, upon warning and notice given at least five days before such meeting, by the committee of the society or congregation, or if there be no committee, by the clerk, and if there be no clerk, by a warrant from a justice of the peace, upon application of five or more members of the society or congregation. A special meeting of any religious society or congregation must be warned by the committee of such society, or if there be no committee, by the clerk, at any time when application in writing for that purpose may be made to such committee or clerk by twenty members of such society or congregation; and when the members of any such society or congregation shall not exceed twenty-five in number, a special meeting shall be warned by the committee, or if there be no committee, by the clerk of such society, at any time when application for that purpose may be made in writing to such committee or clerk by five members of such society or congregation. (*Ib.*, Sec. 205.)

§ 466. If the society or congregation vote to hold their annual meetings upon a certain day in each succeeding year, a meeting held on the day so fixed, without further notice, would not be legal, even though a practice had prevailed of holding such meetings for fifty years. The law prescribing the mode of warning society meetings must be complied with. The power given by statute to an ecclesiastical society to prescribe the mode of warning its meetings, does not enable it to dispense with a warning by its committee. Should the clerk of the society, when there is a committee, affix the names of the committee to a warning, and post such warning upon the public sign post, without either the previous authority or subsequent ratification of the committee, the warning would be ineffectual, and a meeting held in pursuance of such warning would be illegal. (*Hicock v. Hoskins*, 4 *Day's Rep.*, 62; *Congregational Society of Bethany v. Sperry*, 10 *Conn. Rep.*, 200.)

§ 467. The members of any religious society or congregation lawfully assembled, have power at their annual meetings to appoint a clerk, who must take the oath provided by law. The clerk must make entries of all the votes and proceedings of the society or congregation, a copy of which, attested by him, will be legal evidence in all courts. Such clerk will continue in office until another shall be chosen and sworn in his room. The members of such society or congregation, at such annual meeting, may also appoint three or more of their number to be a committee to order the affairs of the society for the ensuing year, who must adjust and settle all the claims on the society or congregation, and draw orders on the treasurer for the payment of the same. The society or congregation may also, at their annual meeting, appoint a treasurer, who must receive all the money belonging to the society or congregation, and pay over the same to the order of the society or congregation, and render his account there-

for when required. The committee provided for may hold their places until others are chosen. (*R. S. of 1866, Title VII, Ch. 4, Sec. 206; Congregational Society of Bethany v. Sperry, 10 Conn. Rep., 200.*)

§ 468. Upon the refusal to serve, death or removal of any officer of a religious society or congregation, a meeting may be called in the manner before prescribed, and the vacant place supplied by a new choice. (*R. S. of 1866, Title VII, Ch. 4, Sec. 207.*)

§ 469. The members of every religious society or congregation may hold meetings when their concerns render it necessary, and may adjourn the same from time to time; and in their lawful meetings may, by a major vote, settle ministers according to the usage of the denomination of christians to which they belong, repair their house of worship, make such regulations for the support of religious worship as they may think proper, establish the time and place of holding their meetings and the mode of warming them, and appoint committees or agents to carry into effect the votes and orders of the society or congregation, as may be necessary. (*Ib., Sec. 208.*)

§ 470. Any religious society or congregation may, by a vote of two-thirds of the members present at any legal meeting, agree to build a new house of worship, and establish the place where it shall be erected; or, if they judge it expedient, they may apply to the Superior Court in the county where such society or congregation may be situated, to establish the place where the house of worship shall be erected; and such Superior Court, after hearing all parties concerned, may establish the place where such house of worship shall be erected, and then it will not be lawful to erect the same in any other place. (*Ib., Sec. 209.*)

§ 471. All societies and congregations of christians in the State may, by a major vote of the members present at their annual meeting, lay a tax on the members of such society only to build and repair houses of worship, to provide for the annual support of the ministry, and to defray any other expenses necessarily incurred in the proper business of such society or congregation, which tax may be laid on the assessment list last made out according to law, or on the assessment list which shall next thereafter be completed by the assessors and board of relief, and will be payable in one year after the same is granted, and may appoint a collector or collectors to collect the same; and every collector who shall refuse to serve will forfeit the sum of five dollars to the treasury of the society or congregation, to be recovered by an action brought in the name of the treasurer of such society or congregation. (*Ib.*, Sec. 210.)

§ 472. After the tax is voted and laid as aforesaid, the committee of the society or congregation must make out a rate-bill against the members, containing the proportion of tax for each member to pay, according to the assessment list on which the same shall have been laid, and must apply to a justice of the peace of the county for a warrant, directed to the collector or collectors appointed to collect such tax, authorizing him or them to levy and collect the same; and such collector or collectors must collect such tax, and pay over the same to the treasurer of the society or congregation; and if he or they shall fail or neglect to collect it by the time appointed, the committee of the society or congregation must take out a distress, signed by a justice of the peace, against such negligent collector or collectors, directed to the sheriff of the county, or to any constable of the town, commanding him to collect such part of the tax as remains due and unpaid, from said collector or collectors, and to pay it over to the treasurer of such society or congregation. (*Ib.*)

§ 473. Persons separating themselves from an ecclesiastical society are liable to pay the debts of the society, incurred before their withdrawal from such society, though the members of an ecclesiastical society without local limits, are not individually liable for the debts of the society. (*Marlborough v. Lord*, 1 *Root*, 325; *Lord v. Marvin*, *Ib.*, 330; *Jewett v. Thames Bank*, 16 *C. R.*, 511.)

§ 474. The lawful members of every religious society or congregation, of the age of twenty-one years, have the right to vote in the meetings of such society or congregation; and if any person, not a member of the society or congregation, shall intermeddle or vote in any meeting thereof, he will forfeit the sum of two dollars and fifty cents for every such offense, one-half to him who shall sue therefor and prosecute his suit to effect, and the other half to the treasury of the society or congregation where the offense may be committed. (*R. S. of 1866, Title VII, Ch. 4, Sec. 211.*)

§ 475. Every religious society or congregation has power also to provide for the support of public worship by the rent or sale of the pews or slips in the meeting-house, by the establishment of funds, or in any other mode it may judge expedient. (*Ib.*, *Sec. 212.*)

§ 476. Every religious society or congregation instituted for public religious worship, legally organized, has power to provide for the support of public worship, in whole or in part, by an assessment on the pews or slips of their respective houses of public worship; said assessment to be made by the society's committee, or such other persons as may be appointed by vote of the society; and the payment of such assessment may be enforced by the sale of the use of such slip or pew, for such time as may be necessary, on giving twenty-one days' notice in a paper published in the town

where such church is situated, or, if no paper is published in such town, then by posting a notice on the door of such church or house of public worship, and leaving a copy thereof with the owner of said pew or slip, or at his usual place of abode, if within the State, at least twenty-one days before the sale; but no other estate will be liable to be taken or forfeited for the payment of such assessment. No such assessment can be made upon any pew or slip which is not occupied by its owner, or by some person claiming under such owner, at the stated religious services in such house; and no such sale can be made unless the owner of such pew or slip shall refuse to sell the same to the society at the price which such society originally received therefor. (*Ib.*, Sec. 213.)

§ 477. If the owner of any pew, in any meeting-house or church edifice in the State, shall neglect or refuse to pay his equitable proportion of the expenses of maintaining public worship therein, the religious society or corporation connected with such meeting-house or church edifice, may recover the same of such pew owner, in any proper action, if the owner of such pew shall have occupied the same, either by himself or by any person under him. (*Ib.*, Sec. 214.)

§ 478. Whenever the majority of pew owners, in any meeting-house or church edifice in the State, may desire to sell and transfer to the religious society or corporation connected therewith, their respective pews, to be by such society controlled and rented for the purpose of supporting public worship in such house, and a minority of the pew-holders refuse to sell their respective pews to such society, or if the society and such minority cannot agree upon the price to be paid for such pews, such society may bring its petition to the Superior court, against the person or persons refusing

to sell, or failing to agree upon a price to be paid as aforesaid; and if such court shall find that it will be for the convenience and necessity of such society or corporation to own such pews, for the purposes aforesaid, the court must proceed to ascertain, by a committee or otherwise, the cash value thereof, and may make such order, relative thereto, as to the costs of such proceeding, as shall be deemed just and reasonable; and whenever such society shall have paid to such pew-owners the amounts awarded to them respectively, or, on their refusal to accept the same, shall have deposited the same for their use with the clerk of the court, the title to such pews will be then vested in said society or corporation. (*Ib.*, *Sec.* 215.)

§ 479. Where there are any lands, money or other estate granted, given or registered, according to the ancient custom, usage or practice, or where the same shall be given, granted or registered, for the use and support of the ministry in any society or congregation in the State, a committee appointed by such society or congregation may demand, recover, or receive and take care of all such lands, money or estate, for the use of the ministry, according to the true intent of such grants, donations and registrations, and shall be accountable to such society or congregation for the profits and interest thereof; and the said committee, or the major part of them, may make all necessary contracts, and commence and prosecute to final judgment any suit which may be necessary for the purpose aforesaid; and such committee as shall from time to time be appointed in the room of others, removed by death or otherwise, may enforce any contract, and commence and prosecute any suit for the matters aforesaid, as fully as those whom they succeeded in office could have done if not removed. (*Ib.*, *Sec.* 216.)

§ 480. Where any society is constituted out of two or more
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adjoining towns, so that part of the society in any such town has distinct interests in any grants, donations or sequestrations, for the support of the ministry, such part of the society shall have the same power and authority to manage such interests as is given to societies, and may in the same manner warn meetings of such part of a society; may appoint a clerk, who shall be sworn in the same manner and shall have the same power, and may appoint a committee to manage and take care of the interests aforesaid, who will have the same power and authority as is given to the committees of societies, and will be accountable for the rents and profits in the same manner. (*Ib.*, Sec. 217.)

§ 481. No grant, sale or lease of any pews or any house of worship belonging to any religious society in the State, in fee or for any term of time exceeding one year, will be accounted good and effectual in law to hold such pew against any other person whatsoever but the grantee, lessee and his heirs, unless such grant or lease be in writing, and subscribed by the grantee or lessee, and attested by two subscribing witnesses, acknowledged before some officer authorized to take the acknowledgment of deeds of lands, and recorded at length by the clerk of such society in a book to be kept for that purpose, who is required to record the same, and is entitled to receive the same compensation as town clerks for recording deeds. (*Ib.*, Sec. 218.)

§ 482. The acts which have been done by ecclesiastical societies of the State, organized under the Episcopal order, according to the rules and customs of said society, are declared good and effectual in law; and the wardens and vestrymen of such societies are made a society's committee, and declared to have all the powers in managing the affairs of such societies as are granted to the committees of reli-

gious societies in the State, by statute law of the State. (*Ib.*, Sec. 219.)

§ 483. The acts which have been done by ecclesiastical societies of the State, organized under the Methodist Episcopal order, or under the Protestant Methodist order, according to the rules and discipline of said societies, are also declared good and effectual in law as the acts of societies legally organized under the provisions of the statute law of the State concerning religious societies; and all conveyances of property, made to the trustees of the Methodist Episcopal church in the State, and to their successors in office, according to the usages, rules and discipline of said church, are declared to be good and effectual in law to convey such property to said trustees and their successors in office, for the uses and purposes in such conveyance expressed. (*Ib.*, Secs. 220 and 221.)

§ 484. The trustees of any Methodist Episcopal church in the State, must be elected by ballot by the male members of the church of legal age. The election of such trustees must be on the first Monday of September of each year, at the usual place of worship of said church, of which public notice must be given from the pulpit thereof at least two Sundays preceding, or by posting notice thereof by the clerk of the board of trustees, on the door of the place of worship, at least fifteen days next preceding the time of election. The polls of the election must be open at least one hour after the time designated in the notice thereof, and, in case of failure to elect on the day named above, the election may be held on any subsequent day of the same month, by giving legal notice thereof. Trustees will hold their office until others are elected; and if a vacancy should occur by death, resignation or otherwise, such vacancy may be filled

at any special meeting called for that purpose, by giving the notice above provided. (*Ib.*, *Secs.* 222 and 223.)

§ 485. At each election there must be appointed, by the electors present, a chairman and clerk, who will act jointly as inspectors of election, and who must receive and count the votes for such trustees, and certify under oath who have received the majority of the votes, which certificate must be deposited with and kept on file by the town clerk. The number of trustees must in no case be more than nine nor less than three, which must be decided by a majority of the electors at the first election, and before the votes for trustees are cast, and the number will remain the same, unless changed by two-thirds present and voting at any subsequent election. At the first election the inspectors must determine by lot, and as near as practicable in equal numbers, who of those elected shall serve for one, two or three years, and at each election thereafter the electors must elect trustees for three years to fill the vacancy of those whose term of office has expired; and the same trustees may be re-elected. (*Ib.*, *Secs.* 224, 225 and 226.)

§ 486. At their first meeting after each election, the trustees must elect from their number a president, a treasurer and a clerk, and must meet thereafter at such times as they may designate, make their own by-laws and keep faithful records of their action, signed by the clerk; and they are made a legal corporation in trust to receive, buy, hold, procure and sell and convey, for the benefit of said church, according to the discipline and usages of the Methodist Episcopal church in the United States, any lands, church buildings, houses or other property, and are made capable in law and equity of suing and being sued. (*Ib.*, *Sec.* 227.)

§ 487. The election of trustees of any Methodist Episco-

pal church in the State, prior to the ninth day of June, 1865, according to the discipline and usages of such church, or by the members thereof, is declared valid in law. (*Ib.*, Sec. 228.)

§ 488. All conveyances of property to the trustees of the community in Enfield, in the State, called Shakers, or to the trustees of any such community in said town, and to their successors in office, according to the forms and usages in like cases adopted, are declared to be good and effectual in law to convey such property to said trustees and their successors in office, for the uses and purposes in such conveyances mentioned. And all conveyances of property, made or to be made by the trustees of said community for the time being, duly executed by them in the manner prescribed by law, are declared to be good and effectual to convey the property therein described, to the purchaser thereof, and are made as obligatory upon said trustees, and their successors in office, as similar conveyances are upon the grantors therein named. (*Ib.*, Secs. 229 and 230.)

§ 489. All suits in law and equity, brought by said community to confirm any legal claim or demand, or to recover the possession of any property belonging to it, may be brought and prosecuted to final judgment and execution in the name of the trustees of said community for the time being; and any legal claim or demand against said community may be in like manner enforced by making said trustees, for the time being, defendants in such suits; and in case any or all of said trustees should die or be removed from office during the pendency of any such suit, such suit will not for that cause abate, but such death or removal being suggested upon the record, said suit may be prosecuted to final judgment and execution by or against their successors in office. (*Ib.*, Sec. 231.)

§ 490. All religious societies and congregations, instituted for public religious worship, are required, at their annual meeting, to choose two or more tithingmen, who must be sworn to discharge with fidelity the duties of their office; and such tithingmen are required to act in connection with grand jurors in apprehending transgressors of the law for the due observance of the Sabbath or Lord's day. (*R. S. of 1866, Title LII, Sec. 9.*)

§ 491. All of the proceedings in relation to religious societies in the State of Connecticut are so very simple that no forms are thought necessary to be prescribed, and none are therefore given. The law herein laid down, however, should be consulted in each individual case. By so doing no mistakes will be likely to occur.

CHAPTER XXXIV,

RELIGIOUS SOCIETIES IN NEW JERSEY—SOCIETIES, HOW INCORPORATED—THE TRUSTEES—THEIR POWERS—MAY ELECT A PRESIDENT AND HIS DUTIES—REFORMED DUTCH CHURCHES—GERMAN REFORMED CHURCHES—PROTESTANT EPISCOPAL CHURCHES—EVANGELICAL LUTHERAN CHURCHES AND JEWS.

§ 492. Every religious society or congregation of Christians in the State of New Jersey, entitled to protection in the free exercise of their religion by the Constitution and laws of the State, are authorized to assemble at their usual place of meeting for public worship, at any time by them to be agreed upon, giving at least ten days' notice of the time and purpose of assembling, by an advertisement set up in open view at or near such place of meeting, and, when so

assembled, may, by plurality of voices of such of the said society or congregation as are present, elect any number, not exceeding seven, of the said society or congregation to be trustees of the same; and the said trustees, and their successors in office, are constituted a body politic and corporate in law, by whatever name they shall assume, agreeably to the directions prescribed by the general incorporating act. (*Elmer's Digest of Laws of New Jersey, Title, Religious Societies, Sec. 1.*)

§ 493. The trustees, when they take upon themselves a name, must certify the same under their hands and seals, and transmit such certificate to the clerk of the court of common pleas of the county, whose duty it is made instantly to record the same, for which he is entitled to receive one dollar; and thereupon such trustees will be known and distinguished in law by the name of incorporation so taken, certified and recorded. (*Ib., Sec. 2.*)

§ 494. The said trustees, and their successors, are declared to be able and capable, by their name of incorporation, to acquire, purchase, receive, have and hold any lands, tenements, hereditaments, legacies, donations, moneys, goods and chattels, in trust for the use of the said society or congregation, to an amount in value not exceeding two thousand dollars a year, and the same, or any part thereof, to sell, grant, assign, demise, alien and dispose of; to sue or be sued, implead or be impleaded, in any court of law or equity; to make and use a common seal, and the same to alter and renew at their pleasure. (*Ib., Sec. 3.*)

§ 495. For perpetuating a line of succession in the trustees of every religious society or congregation, it is made lawful for the members of the said society or congregation to assemble at any time they may think proper, giving notice

thereof as directed for the election of the first trustees, or for the election of any other trustee or trustees, in the stead of those, or any of those, before elected, in case they see cause for the removal of any of the said trustees, provided such removal shall not be in less than one year after his or their election into office; and also to fill up any vacancy which may be occasioned by the death or resignation of any trustee, or his moving out of the limits of the said society or congregation. (*Ib.*, Sec. 4.)

§ 496. Such corporation may elect annually, or oftener if necessary or expedient, one of their own members to be their president, who must keep the minutes, and enter the orders, acts and proceedings by the corporation in a book to be kept for that purpose; who must have the custody of the common seal, and the papers, deeds, writings, documents and books of or relating to the said corporation, and who is empowered to convene the said corporation, as occasion may require; and in case of his absence, sickness, death, resignation, refusal to act, or moving out of the limits of the said religious society or congregation, then the said office of president is devolved on the senior trustee for the time being, who must occupy the same until the return or recovery of the president, or the election of another. Upon application to the president, any member of the said religious society or congregation may have free access to all the papers, deeds, writings, minutes, documents and books of or belonging to the said corporation. (*Ib.*, Secs. 5 and 6.)

§ 497. Upon the death, resignation, removal or expiration of the office of president, or election of a new one, the common seal, and all the minutes, papers, deeds, writings, documents and books of or belonging to such corporation, must be delivered to the successor in office, on the oath of the preceding president, or in case of his death, on the oath of

his executors or administrators, under such pecuniary penalty as the said corporation may have previously fixed and ordained to be recovered, with costs, by action of debt in the name and for the use of said corporation. The proceedings, orders and acts of a majority of all the members of the said corporation, and not of a less number, are declared valid and effectual in law. (*Ib.*, *Secs. 7 and 8.*)

§ 498. None of the foregoing provisions are to be construed as extending to or affecting the Reformed Dutch churches in the State. The minister or ministers, elders and deacons, for the time being, of every Reformed Dutch congregation, are made, by statute, trustees of the same, and a body politic and corporate in law, by such name as the said trustees shall assume, which name must be taken, certified, transmitted and recorded the same as is the case of other religious societies; whereupon the said trustees will be known and distinguished in law by the name of incorporation so taken, entered and recorded; and they will possess all the rights, powers and privileges of other religious corporations in the State, except that no deed or instrument of conveyance, in their case, for any lands, tenements, hereditaments or real estate, will be good and effectual in law, unless it be sealed with the common seal, and signed by a majority of the members of the said corporation. (*Ib.*, *Secs. 9, 11, 12 and 13.*)

§ 499. It is made lawful for the trustees of any Reformed Dutch congregation, incorporated by charter or other law of the State, prior to the passage of the general incorporating act, to renounce or forego such charter or act of incorporation, by writing under their hands and seals, and recorded as aforesaid, upon condition that the ministers, elders and deacons, or elders and deacons, as the case may require of such congregation, shall incorporate themselves pursuant to the directions of the act in the last preceding section referred

to and explained. Upon being re-incorporated as aforesaid, their former incorporation and body politic will cease and be dissolved; and all the estate, real and personal, held by virtue of the same, will pass to and be vested in the body politic and corporate last formed as aforesaid, who will be deemed to be the legal successors in office of the former body politic and corporate, and liable to their debts. (*Ib.*, *Sec.* 14.)

§ 500. Where two or more of the said Reformed Dutch congregations, which have been united in one body politic, shall be disunited by renouncing or foregoing their former incorporation, and shall, each or any of them, become incorporated under the provision of law aforesaid, then such lands, tenements, hereditaments, moneys, goods and chattels, as of right belong to each of the said congregations, separately considered, shall be and remain in the peaceable and quiet possession of the body politic and corporate of that particular church to which such real and personal estate of right may belong; and all real and personal property acquired by such congregations during their union of a body politic, must be divided between such congregations in such manner as shall be agreed upon by the trustees of the said corporation. (*Ib.*, *Sec.* 15.)

§ 501. If the trustees of any two or more of the said Reformed Dutch congregations, by whatever name known and distinguished in their respective charters or acts of incorporation, see cause to renounce or forego their separate corporations, and be formed into one joint corporation and body politic, it is made lawful for such trustees, by mutual consent, to renounce or forego their separate charters or acts of incorporation, by writing under their hands and seals, which must signify also their intention to become one joint corporation and body politic, and must be recorded in manner aforesaid, upon condition that the said trustees shall form

themselves into one corporation, agreeably to the directions of the said general incorporating act. Upon recording the said writing, and after such joint incorporation as aforesaid, their former separate corporators and bodies politic will cease and be dissolved, and all the estate, real and personal, held by them separately, will pass to and be vested in the trustees of such joint corporation and body politic, who will be deemed to be the legal successors in office of the former separate bodies politic, and liable to their debts. (*Ib.*, Sec. 16.)

§ 502. For perpetuating a line of succession in the trustees of every Reformed Dutch congregation, the minister or ministers, elders and deacons of such congregation, as shall take and record a name as aforesaid, are declared to be the first trustees of the same, and shall continue in office until others shall be duly elected, appointed or called, according to the manner, usages and customs of the Reformed Dutch church; and every minister, elder or deacon, so constituted a trustee, will continue in office until another person shall, in like manner, be elected, appointed or called in his stead, and so on as often as occasion may require; and if any dispute shall arise respecting the validity of the election, appointment or call of the said trustees, the same must be referred for final decision to the superior church judicature, to which such congregation may be subordinate, according to the customs and constitution of the said Reformed Dutch church. (*Ib.*, Sec. 17.)

§ 503. The person who is, according to the usage and custom of the Reformed Dutch church, ordinarily to preside at the meeting of the minister, elders and deacons of the said congregation, will be president of the said corporation, who is empowered to convene the said corporation as occasion may require, and at the request of any two or more of the

members, it is made his duty to convene the same, in such manner and under such regulations as the said corporation shall from time to time direct. The said corporation may, from time to time, appoint some fit person belonging to the corporation, to have the custody of the common seal and the papers, deeds, writings, documents and books of or relating to the corporation, who must keep the minutes and enter the orders, acts and proceedings of the corporation in a book to be kept for the purpose, and he must deliver such seal and other things, when demanded, to the corporation, under such pecuniary penalty as they may have previously fixed and ordained. (*Ib.*, Secs. 18 and 19.)

§ 504. Every person of the said congregation, who regularly contributes to the support of the gospel in the said congregation, must have free access to all the papers, deeds, writings, minutes, documents and books of or belonging to the said corporation. The proceedings, orders and acts of a majority of all the members of the said corporation, but not of a less number, will be valid and effectual in law; and no member will be allowed to vote in any matter or thing which may immediately affect himself, his private interest or emolument. (*Ib.*, Secs. 20, 21 and 22.)

§ 505. All the provisions of the statute relating as well to the incorporation as to the rights, privileges and duties of the Reformed Dutch churches are extended to all the German Reformed churches constituted in the State, and the wardens and vestrymen, for the time being, of every Protestant Episcopal church, not especially incorporated, are declared trustees of the same, and a body politic in law, by such name as the said trustees shall agree, in the manner mentioned in the second section of this chapter. (*Ib.*, Secs. 23 and 24.)

§ 506. When any congregation of the Protestant Episcopal church in the State, duly organized according to the constitution and usages of said church, desire to form themselves into a body corporate, notice must be given of such intention ten days previously, by an advertisement set up in open view, at or near the place where such congregation usually assemble for divine service, designating the day when and the place where they design to meet for that purpose. The congregation having met at the time and place appointed, the rector or minister, or, if there be no rector or minister, or he be necessarily absent, one of the church wardens or vestrymen must preside at the meeting, and the secretary of the vestry must record the proceedings of the meeting. The congregation must then proceed, by a vote of the majority of those present, to designate the corporate name or title by which the church shall be known, which must be in the manner and form as follows: "The rector, wardens and vestrymen of — church, in —." The congregation must then choose two wardens, and not more than ten nor less than five vestrymen; and also fix the day, annually, on which new elections of officers shall take place. A certificate of these proceedings, under the hands and seals of the president and secretary of the meeting, must be transmitted to the clerk and be recorded as in other cases; whereupon the rector, wardens and vestrymen appointed as aforesaid will be a body corporate and politic, in law and in fact, to have continuance forever under the same restrictions, and with the same rights, powers and privileges as are granted to and imposed on trustees of other religious corporations. If at any time the church be without a minister or rector, it is provided that the same rights and privileges shall be vested in the wardens and vestrymen. (*Ib.*, *Secs.* 26, 27 and 28.)

§ 507. The rector, wardens and vestrymen, and their suc-

cessors, or a majority of them, may make such rules, by-laws and ordinances, and do everything needful and requisite for the good government and support of the church, all of which must be entered in a book to be provided and kept for that purpose, upon condition that such rules, by-laws and ordinances shall not be repugnant to the Constitution and laws of the State or of the United States. (*Ib.*, Sec. 29.)

§ 508. The qualifications of voters at the annual elections must be conformable to the constitution and principles of the Protestant Episcopal church in New Jersey. The rector, wardens and vestrymen must choose a treasurer, who, when called upon for that purpose, must render a true and just account to the corporation of all moneys by him received and expended, and pay over the balance which may remain in his hands at the time of settlement, to his successor in office. (*Ib.*, Secs. 30 and 31.)

§ 509. Whenever a vacancy occurs in the office of minister or rector, by death, removal or otherwise, the wardens and vestrymen, two-thirds of them concurring in the choice, may choose some fit person, duly qualified to act as minister or rector of said church, agreeably to the constitution of the Protestant Episcopal church in the United States of America; and the minister or rector so chosen must preside at all meetings of the wardens and vestrymen, and have a casting vote, except the business or question to be decided has relation to personal interest of such minister or rector, and in the absence of the president, the wardens and vestrymen may choose a president *pro tempore*. (*Ib.*, Sec. 32.)

§ 510. Any Protestant Episcopal church, incorporated before the passage of the general incorporating act of the State, may embrace the privileges of such act by compliance with and adopting its provisions; and every religious corpo-

ration, created by act of the legislature, or by letters patent, may acquire, purchase, receive, have and hold any lands, tenements, hereditaments, legacies, donations, moneys, goods and chattels, of the yearly value of two thousand dollars, although such act or letters patent contain a restrictive clause limiting the annual revenue and income of the said corporation to a less sum. (*Ib.*, *Secs. 33 and 35.*)

§ 511. All of the provisions of the statute relating as well to the incorporation as to the rights, privileges and duties of the Reformed Dutch church, and also of the German Reformed churches, are extended to all the Evangelical Lutheran churches as may now or shall hereafter be constituted within the State. (*Ib.*, *Sec. 37.*)

§ 512. All of the provisions of the act to incorporate trustees of religious societies, except those which expressly relate to the Reformed Dutch church, and the German Reformed churches, are extended to religious societies or congregations of Jews within the State. (*Laws of 1860, Ch. 21.*)

CHAPTER XXXV.

RELIGIOUS SOCIETIES IN NEW JERSEY—SOCIETIES MAY SELL THEIR LANDS IN CERTAIN CASES—HOW EFFECTED—MISCELLANEOUS MATTERS RELATING TO SUCH SOCIETIES—CHURCH MEMBERS.

§ 513. Whenever any incorporated religious society in the State of New Jersey, entitled to lands and tenements granted or devised to them by deed, will, or otherwise, appropriating the rents and issues thereof to specific use, but without power

to sell and convey the same, shall represent to the Chancellor of the State that the interest of the person or persons of such religious society, in the said lands, should be sold or disposed of, the Chancellor may, in a summary manner, proceed to inquire into the merits of the application, and from such time the person or persons interested in the said lands, and the said religious society as the case may be as far forth as relates to such lands, its proceeds and income, will be considered wards in chancery. (*Laws of 1859, Ch. 188, Sec. 1.*)

§ 514. On every such application the Chancellor must, in his discretion, appoint a suitable trustee or trustees, who must give bonds to the State of New Jersey, to be filed with the clerk of the Court of Chancery, in such penalty and with such surety as the Chancellor shall direct, conditioned for the just and faithful performance of the trust reposed in such trustee or trustees, and for the observance of such orders and directions as the Chancellor shall from time to time make in the premises, in relation to such trust, which bond, if forfeited, may be prosecuted by the direction of the Chancellor in any court having cognizance of the same. (*Ib., Sec. 2.*)

§ 515. After the bond shall be given and filed as aforesaid, the Chancellor may proceed, in a summary manner, by reference to a master, to inquire into the merits of such application, and whenever, and as often as it shall satisfactorily appear to the court that the interest of parties interested requires, or will be substantially promoted by a sale of such land, or any part or parts thereof, the Chancellor may direct a sale or sales of such lands, to be made by the trustee or trustees, either in whole or by subdivision, and upon such terms of credit as may be deemed expedient; and all such sales and dispositions made in good faith and in pur-

suance of, and conformation with the directions of the court when confirmed, will be valid and effectual in law. (*Ib.*, *Sec. 3.*)

§ 516. All sales and dispositions made in pursuance of the authority aforesaid, must be reported on the oath or affirmation of the trustee or trustees to the Chancellor, to be approved by him, before a conveyance can be executed; and if such sale or disposition be confirmed by the Chancellor, and a conveyance directed to be executed, he must then make such further order for the application and disposition of the proceeds of the same, and for the investment thereof, as the case may require. (*Ib.*, *Sec. 4.*)

§ 517. The proceeds of such sale must be loaned and invested in good and sufficient bonds of individuals, secured by mortgage on unincumbered real estate in the State of New Jersey, worth without buildings double the amount loaned, payable with interest semi-annually, or invested in the public funded debt of the United States; and upon the payment of the principal sum loaned or invested, or any part thereof, the amount must be again invested as aforesaid, and the interest arising on such loan or investment, as soon as received, must be applied and paid to the person or persons, and for the uses specified in the grant, deed or devise for which the lands were granted or devised, and for no other use or purpose whatsoever. No loan of money received by virtue of the sale of the land aforesaid can be made to any person for a greater sum than one thousand dollars, unless it may be for the consideration of lands sold to such person by the authority aforesaid. (*Ib.*, *Sec. 5.*)

§ 518. The trustee or trustees appointed as aforesaid are made liable to account under order of the Court of Chancery, before such master as the Chancellor may designate from

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time to time, upon the application of any religious society, or any person or persons interested in the funds, and the report of such master made thereupon will be liable to exceptions as in other cases of masters' reports requiring confirmation; and the Chancellor is vested with full power and authority to make all such orders and demands in the premises as may be necessary to give complete relief to the parties. (*Ib.*, *Sec. 6.*)

§ 519. No land upon which a church or place of worship is or may be erected, or granted for that purpose, or burying ground, can be sold by virtue of the authority aforesaid. (*Ib.*, *Sec. 7.*)

§ 520. Upon the settlement of the account of the trustee or trustees made by the Chancellor, he may direct the said trustee or trustees to assign and set over all bonds and mortgages and public stocks remaining in his or their hands to the religious society to which the said lands and tenements sold may have been granted or devised, to be held by such religious society in trust for the uses and purposes prescribed in such grant or devise, and for no other use or purpose whatever. (*Ib.*, *Sec. 8.*)

§ 521. All of the proceedings under the laws of New Jersey, in relation to religious societies, are very plain and simple, and hence it is considered unnecessary to give any forms. Every step, however, should be taken with the law under the eye, and then no difficulty or embarrassment will arise.

§ 522. The rules of each denomination of christians determine who are members of the congregation and entitled to vote for trustees. No one is entitled to vote in a Presbyterian congregation who does not contribute to the necessary expenses of the church; and an election of trustees made by

other persons would be void. (*The State v. Crowell*, 4 Hal., 390.)

§ 523. To constitute a person a member of any church, two points at the least are essential, a profession of its faith and a submission to its government. After persons withdraw from a church, they do not continue members, simply because they hold the same religious faith. Whomsoever the judicatories of any church decide to be the spiritual officers thereof, the courts are bound to respect as such. The formation of a new congregation or church judicatory, must be made with the consent and by the authority of the proper ecclesiastical assembly. A portion of the members of a religious denomination, or converts professing its faith, cannot, by their own act, and without the sanction prescribed by the constitution, form a new judicatory within the pale of the church. (*Den v. Bolton*, 7 Hal., 206.)

§ 524. The courts of New Jersey cannot inquire into the doctrines or opinions of any religious society for the purpose of deciding whether they are right or wrong; but it is their duty to do it whenever civil rights depend thereon, and then it must be done by such evidence as the nature of the case admits of. The party who would avail himself of the doctrines of any particular denomination, must show what they are. If a majority of an ecclesiastical assembly withdraw, however sufficient their reasons may be, that will not deprive those who remain of their ancient name, rights and privileges, if they retain their ancient faith and doctrines, and adhere to their ancient standards. (*Hendrickson v. Decow, Sax, Ch. R.*, 577.)

§ 525. Religious societies in the State of New Jersey, whose trustees are incorporated, present a threefold aspect: First, the congregation; secondly, the church, strictly so

called, composed of those entitled to full church privileges; and lastly, the trustees or corporation. The employment of a pastor may be by the congregation or by the church, according to the rules of the religious society, or by the trustees; unless the trustees as such are parties to the contract, no action will lie against them for the minister's salary. As it is in general the duty of the trustees to provide the stipulated support, it must be presumed they will do so; and when their dissent to the employment of the minister does not appear, it may be presumed that they undertake to pay the salary, and an action can be maintained against them for it. (*Miller v. Baptist Church of Allowaystown*, 1 Harr., 251.)

§ 526. When the society hold a new election of trustees, for the purpose of being incorporated, if the object be to preserve, and not to change or dissolve the corporation, the new corporation will be regarded as a continuance of the old one. When the usual place of meeting has been changed by the society, an election of trustees at the old place would not be valid. (*Miller v. English*, 1 Zab. 317.)

§ 527. Officers of a religious society, lawfully elected and inducted into office, though they afterwards secede, renounce the authority of the governing body, and unite with another ecclesiastical body, do not thereby divest themselves of their offices; they must be regularly removed. If an election cannot be held in the usual place of meeting, it should be held as near to it as circumstances will permit. The trustees of a religious society hold the property subject to its appropriate use, and unless authorized by the rules of the society, have no right to determine when the religious meetings shall be held, or who shall officiate. (*Doremus v. The Dutch Reformed Church*, 2 Gr. C. R. 332.)

§ 528. When property was given in trust for a church not

incorporated, it is competent for any person belonging to that church, on behalf of himself and of all others belonging to that church and entitled to the use of the funds, to come into a court of equity to enforce the execution of the trust. And if the church consists of various congregations, any one or more of such congregations, being incorporated, may in like manner enforce the execution of the trust. (*Associate Reformed Church v. Trustees of Theological Seminary*, 3 Gr. C. R. 77.)

CHAPTER XXXVI.

RELIGIOUS SOCIETIES IN PENNSYLVANIA—RIGHTS PRESERVED—
RELIGIOUS SOCIETIES, HOW INCORPORATED—CHARTERS, HOW
AMENDED—POWERS OF A RELIGIOUS CORPORATION—CONVEY-
ANCES AND BEQUESTS TO—TRUSTEES OF—PROPERTY OF, NOT
SUBJECT TO TAXATION—PROPERTY OF A DIVIDED CONGREGA-
TION—FORM OF CHARTER FOR THE SOCIETY.

§ 529. By the present Constitution of the State of Pennsylvania all the rights, privileges, immunities and estates of religious societies are preserved, and remain the same as though the Constitution of the State had not been altered or amended. (*State Const., Art. VII, Sec. 3.*)

§ 530. In the State of Pennsylvania, when any number of persons, who may be citizens of the commonwealth, are associated, or mean to associate, for any religious purpose, and may desire to become incorporated, they may prepare an instrument in writing, specifying therein the objects, articles, conditions and name, style or title under which they have associated or mean to associate, and exhibit the

same to the attorney-general of the commonwealth, who is required to peruse and examine the same, and then transmit the same, with a certificate thereon indorsed, testifying his opinion touching the lawfulness of the objects, articles and conditions therein set forth and contained, unto the Supreme Court of the commonwealth; and the said court is required thereupon to peruse and examine the said instrument, and to transmit it, with a certificate thereon endorsed, testifying also the opinion of the said court touching the lawfulness of the objects, articles and conditions therein set forth and contained unto the governor of the commonwealth. (*Purdon's Digest of 1862, 194, Sec. 1.*)

§ 531. If the attorney-general and the Supreme Court both certify their opinion as aforesaid to be that the objects, articles and conditions in such instrument set forth and contained are lawful, the governor must transmit the same to the master of the rolls, with an order thereon indorsed requiring him to enroll the same, at the expense of the applicants. Upon the enrollment of such instrument, the persons so associated, or meaning to associate, will, according to the objects, articles and conditions in the said instrument set forth and contained, become and be a corporation and body politic, in law and in fact, to have continuance by the name, style and title in such instrument provided and declared. (*Ib.*)

§ 532. Any such persons desiring to become incorporated for religious purposes and objects, may in like manner prepare such instrument in writing, and present the same to the Court of Common Pleas of the proper county in which such religious corporation is intended to be situated; and the court is required to peruse and examine the same, and if the objects, articles and conditions therein set forth and contained shall appear lawful, and not injurious to the com-

munity, such court must direct said writing to be filed in the office of the prothonotary of said court, and also direct notice to be inserted in one newspaper printed in the proper county, for at least three weeks, setting forth that an application has been made to said court to grant such charter of incorporation; and if no sufficient reason is shown to the contrary, the court may, at the next term thereafter, decree and declare, by an order indorsed on said instrument, attested in the usual manner by the prothonotary, under the seal of said court, that the persons so associated shall, according to the articles and conditions in said instrument set forth and contained, become and be a corporation or body politic; and further direct that said charter of incorporation shall be recorded in the office for the recording of deeds in said county. (*Ib.*, page 196, *Sec.* 11.)

§ 533. On the instrument aforesaid being recorded as aforesaid, the persons so associated, or meaning to associate, will, according to the objects, articles and conditions in such instrument set forth and contained, become and be a corporation or body politic in law and in fact, to have continuance by the name, style and title in such instrument provided and declared. The usual fees allowed by law for equal or similar services may be received by the respective county officers performing such services, and all the expense of procuring such charter of incorporation and recording the same, must be borne by the persons applying for the same. After such charter is recorded, the same must be duly certified to be recorded, and delivered over to the applicants, and a copy of the record, duly certified, is made as good evidence as the original might or could be. (*Ib.* and *Sec.* 12.)

§ 534. In case any religious corporation desires to improve, amend or alter its charter, it can do so by specifying the

improvements, amendments or alterations which are or shall be desired, and the same to exhibit and present to the attorney-general and Supreme Court as aforesaid, who must in like manner successively certify their opinion to the governor of the commonwealth touching the lawfulness of such improvements, amendments or alterations; and the same being certified, as aforesaid, to be lawful, must in like manner be directed by the governor to be enrolled by the master of the rolls at the expense of the applicant; and upon such enrollment the same will be taken and deemed to be a part of the instrument upon which such corporation was formed and established, to all intents and purposes as if the same had originally made a part thereof. (*Ib.* 195, *Sec. 2.*)

§ 535. The application to amend the charter of incorporation must be made by the corporation in its corporate capacity. And the proposed amendments are not to be deemed the act of the corporation, merely because the corporate seal is affixed. In case of question in regard to it, the court will look beyond the seal, and inquire in what manner and by what authority it was affixed. When there are different classes in the society, as in the Roman Catholic, the clerical and the lay, the majority of each class must consent before the charter can be altered, if there be no provision in the original charter respecting alterations. Neither can a charter be amended on the vote of a majority, at a stated meeting, convened without notice of the intended proposition to alter the charter. A notice that an alteration in the constitution will be proposed at a meeting, must be given to all parties interested; otherwise a bare majority will not be held sufficient. (*Case of St. Mary's Ch. 6 Serg. and Rawle*, 498; 7 *Ib.* 517; *National Literary Association*, 30 *Penn. S. R.* 150.)

§ 536. When the original charter of a religious society is procured by application to the Court of Common Pleas as hereinbefore specified, the application for improving, amending or altering such charter will have to be made to the same court, or to the court of quarter sessions of the commonwealth, and similar proceedings had as upon the granting of the original charter. (*Purdon's Digest*, 1862, *page* 197, *Secs.* 18 and 19.)

§ 537. Every religious society duly incorporated, and the successors thereof, possess full power and authority to make, have and use one common seal, with such device and inscription as they may deem proper, and the same to break, alter and renew at their pleasure; and by the name, style and title provided and declared in the charter as aforesaid, will be able and capable in law to sue and be sued, plead and be impleaded, in any court or courts, before any judge or judges, justice or justices, in all manner of suits, complaints, pleas, causes, matters and demands whatsoever, and all and every matter or thing therein to do, in as full and effectual a manner as any other person or persons, bodies politic and corporate, within the commonwealth, may or can do; and will be authorized and empowered to make rules, by-laws and ordinances, and to do everything needful for the good government and support of the affairs of such religious corporation; provided that such rules, by-laws and ordinances, or any of them, be not repugnant to the Constitution and laws of the United States, and of the commonwealth, or to the instrument upon which such corporation was formed and established. (*Ib.* 195, *Sec.* 3.)

§ 538. Every such religious corporation, by the name, style and title by it provided and declared as aforesaid, will also be able and capable in law, according to the terms and conditions of the instrument upon which the corporation

was formed and established, to take, receive and hold all, and all manner of lands, tenements, rents, annuities, franchises and hereditaments, and any sum and sums of money, and any manner and portion of goods and chattels, given and bequeathed unto it, to be employed and disposed of, according to the objects, articles and conditions of the instrument upon which the corporation is as aforesaid formed and established, or according to the articles and by-laws of the corporation, or the will and intention of the donors; provided, however, that the clear yearly value or income of the real and personal estate held by such religious corporation shall not at any time exceed the sum of five thousand dollars, or such other sum as is specified in the charter of such religious society. (*Ib.*, Secs. 4, 6, 7 and 8; also *Ib.* 145, Secs. 2 and 3; also *Ib.* 864, Sec. 2.)

§ 539. In ascertaining the annual value of the real and personal estate of a religious society, all vacant lots will be taken to be of the annual value at which they could be let upon ground-rent, or at the interest of the price at which they would sell for cash, and without sacrifice; and if occupied and yielding rent or income, then as of the annual value of such rent or income, or the valuation as vacant ground in manner aforesaid, whichever shall be of the greater amount; but no edifice used for worship, education, or an hospital, or the unproductive fund contained within the curtilage of such building, must be included in such valuation. (*Ib.*, 146, Sec. 3.)

§ 540. No estate, real or personal, can be bequeathed, devised or conveyed to any body politic, or to any private person, in trust for religious uses, except the same be done by deed or will, attested by two credible and, at the time, disinterested witnesses, at least one calendar month before the decease of the testator or alienor; and all dispositions of

property contrary to this provision are declared void, and the property thus disposed of will go to the residuary legatee or devisee, next of kin or heirs, according to law; provided that if the grantee of such property shall dispose of the same within said period, *bona fide* and upon a fair and valuable consideration, such disposition will not be avoided. (*Ib.*, 866, *Sec.* 10.)

§ 541. No bishop or other ecclesiastic, in any church, can hold any real or personal estate in the commonwealth, with a capacity to transmit the title thereof to his successor in office, otherwise than as any other individual holding the same in his private or natural capacity might do, and whenever any property, real or personal, shall be bequeathed, devised or conveyed to any ecclesiastical corporation, bishop, ecclesiastic or other person, for the use of any church, congregation or religious society, for religious worship or sepulture, or the maintenance of either, the same cannot be otherwise taken and held, or inure, than subject to the control and disposition of the lay members of such church, congregation or religious society, or such constituted officers or representatives thereof as shall be composed of a majority of lay members, citizens of Pennsylvania, having a controlling power, according to the rules, regulations, usages or corporate requirements thereof, so far as consistent herewith, and every charter granted by any court to any church, congregation or religious society, must require such property to be taken, held, and to inure, subject as aforesaid, or it will be void. (*Ib.*, 865 and 866, *Secs.* 8 and 9.)

§ 542. The majority, however, of the male members, of lawful age, of any unincorporated church, congregation or religious society, may choose for their trustee or trustees, any other person or persons than a layman; and whenever not previously declared, they may declare the manner in

which the title to their trust property shall be held and conveyed, and upon due proof of such consent, any court having jurisdiction over trusts, may direct the legal title to be conveyed accordingly. (*Ib.*)

§ 543. No disposition of property made for any religious use, will fail for want of a trustee, or by reason of the objects being indefinite, uncertain, or ceasing or depending upon the discretion of a lost trustee, or being given in perpetuity, or in excess of the annual value limited by law; but it is the duty of any orphan's court, or court having equity jurisdiction in the proper county, to supply a trustee, and by its decree to carry into effect the intent of the donor or testator so far as the same can be ascertained, and carried into effect consistently with law or equity; for which purpose the proceeding must be instituted by leave of the Attorney General on the relation of the society or individual desirous of carrying such disposition into effect, and willing to become responsible for the costs thereof, subject to an appeal as in other cases. (*Ib.*, 145, *Sec.* 1.)

§ 544. If the objects of the trusts last aforesaid be not ascertainable, or have ceased to exist, or such disposition be in excess of the annual value permitted by law, or in perpetuity, such disposition, so far as exceeding the power of the courts to determine the same by the rules of law or equity, will be taken to have been made subject to be further regulated and disposed of by the Legislature, in manner as nearly in conformity with the interest of the donor or testator, and the rules of law against perpetuities, as practicable, or otherwise to accrue to the public treasury for the public use. (*Ib.*)

§ 545. All churches, meeting-houses or other regular places of stated religious worship, with the pews thereto annexed

for the occupancy and better enjoyment of the same, and all burial grounds belonging to any religious society or congregation, are exempt from all and every county, road, city, borough, town and school tax; though such exemption is restricted to five acres of land, together with the improvements thereon, and any excess of that amount of land will be liable to be taxed. (*Ib.*, 942, *Secs. 73 and 74.*)

§ 546. The title to the church property of a divided congregation, is in that part of it which is acting in harmony with its own law; and the ecclesiastical laws, customs, usages and principles which were accepted among them, before the dispute began, are the standard for determining which party is right. (*McGinnis v. Watson*, 41 *Penn. S. R.*, 9.)

§ 547. The charter of a religious society may be in the following form:

"We, the undersigned, citizens of the commonwealth of Pennsylvania, having associated ourselves together for religious purposes, desire to become incorporated as a religious society, and do hereby adopt and agree to be bound by the following articles of association, viz:

First. The name, style or title of the association under which they have associated is and shall be 'The First Presbyterian Church of Pittsburg.'

Second. The objects of the association are and shall be to maintain divine worship according to the rites of the Presbyterian church in the United States.

Third. The location of the house of worship of the society shall be in the city of Pittsburg, in the county of Alleghany.

Fourth. The temporal concerns of the society shall be managed by nine trustees, who shall all be members of the society, and shall hold their office for the term of three years, and shall be divided into three classes, so that three of their number shall be elected every year.

[Here add any other articles or conditions desired.]

Witness our hands at Pittsburg this day of 18 ."
(Signatures.)

CHAPTER XXXVII.

RELIGIOUS SOCIETIES IN OHIO—MODE OF INCORPORATION—TRUSTEES—THEIR POWERS—TITLE TO PROPERTY—MAY DISPOSE OF TRUST ESTATE—MAJORITY OF SOCIETY CONTROL ITS AFFAIRS.

§ 548. In the State of Ohio any religious sect, denomination or association may elect at a meeting of a majority of any organized church, parish or religious association, any number of their members, not less than three, to serve as trustees, and one member as clerk, who will hold their office during the pleasure of the society or association. The clerk so appointed must make a true record of the proceedings of the meeting, and certify and deliver the same to the recorder of the county in which such meeting was held, together with the name by which such church or society shall thereafter desire to be known. It is made the duty of each county recorder, immediately upon the receipt of such certified statement, to record the same in a book of record to be kept by him, provided for that purpose at the expense of his county, for which service he may demand and receive the sum of ten cents for one hundred words. (1 *Revised Statutes of 1860, Ch. 29, Secs. 83 and 84.*)

§ 549. From and after making the record aforesaid by the county recorder, the said trustees, and their associated members and successors, are declared invested with the powers, privileges and immunities incident to aggregate corporations, and a certified transcript of such record, made by the county recorder, is made evidence in all courts and places within the State of the existence of such association and corporation. (*Ib., Sec. 84.*)

§ 550. If by the rules, laws and regulations of any such church, parish or religious association, any members thereof, less than three, have charge of the property and concerns of such church, parish or religious association, the same are declared to be invested with the powers, privileges and immunities granted to trustees and directors of religious and other societies, by the election of such less number of their members as trustees, and the making out of a certificate, by their clerk, of the election of such trustees, and the corporate name adopted by such church, parish or religious association, and the recording thereof, by the county recorder, in the manner aforesaid. (*Ib.*, *Sec. 83.*)

§ 551. It is provided that the trustees appointed in the manner before specified, and their successors in office, shall have perpetual succession by their corporate name, and by such name they are legally capable of contracting, and of prosecuting and defending suits, and have capacity to acquire, hold, enjoy, dispose of and convey all property, real or personal, which they may acquire by purchase, donation or otherwise, for the purpose of carrying out the purposes and intentions of such society or association, but they cannot acquire or hold property for any other purpose. (*Ib.*, *Sec. 85.*)

§ 552. Any such religious society or association when incorporated, may elect such officers and make such rules and regulations as may be necessary and expedient for its own government and the management of its affairs, to effect their proper objects. (*Ib.*, *Sec. 87.*)

§ 553. Whenever any religious society may desire to sell any real estate that may have been conveyed to it, and is held in trust for a specified religious purpose, the trustees, wardens and vestry, or other officers entrusted with the management of the affairs of such society, may file in the Court of

Common Pleas of the county where such real estate may be situate, a petition stating that such society desires to make such sale, for the purpose of investing the same in other real estate, to be held and used for a like purpose; and if, upon the hearing of such case, it shall appear that such sale and investment are desired by the members of such society, and that there is a necessity for the same, the court may authorize the trustees, or other officers holding the title in trust, to sell said real estate, in such manner and upon such terms as the court shall deem reasonable. (*Ib.*, *Ch.* 29, *Sec.* 363.)

§ 554. The trustees or other officers authorized to make such sale, must make return thereof to the court ordering the same, at such time as the court shall order; and, thereupon, if the court shall be satisfied that the same has been in all respects according to its order, and that the proceeds have been invested in other real estate, for the use of such society, in trust for the same objects and purposes as provided in the deed by which the real estate ordered to be sold was conveyed to such society, or that a contract has been made securing such investment, the court must confirm the sale and authorize a deed to be made to the purchaser. (*Ib.*, *Sec.* 364.)

§ 555. The petitioners must cause notice of the pendency and prayer of the petition to be published for four consecutive weeks, in some newspaper of general circulation in the county where the real estate proposed to be sold is situated, before the term of the court at which the order of sale will be asked. (*Ib.*, *Sec.* 365.)

§ 556. No specific forms for these proceedings need be given in this place, and yet some aid may be rendered by consulting the forms hereinbefore prescribed for religious societies in the State of New York. (*Ante*, §§ 117, 126, 135 and 182.)

§ 557. By the act to incorporate the original surveyed townships in the State, the rents of section twenty-nine, in certain townships, are appropriated for the use and benefit of the gospel ministry (*Laws of 1831, page 490*), and it is now provided that each and every denomination of religious societies having members residing in any township in which such section is reserved, after giving themselves a name, must appoint an agent, who must produce to the trustees of such lands a "sworn" or "affirmed" certificate containing a list of their names and members, as contained in the records of such religious society, and who are members at the time such certificate is produced. This agent is required to pay over an equal dividend of the rents paid to him, within three months after the same shall have been received, to be appropriated to the support of religion at the discretion of each society. The trustees of the fund are required to distribute such rents amongst the several religious denominations in proportion to the numbers residing in said township, without regard to the township in which such denomination may regularly assemble for public worship. All members above the age of fifteen years are entitled to have their names enrolled by the society. (*Laws of 1831, as amended by Laws of 1864, page 74.*)

§ 558. In any original surveyed township, or fractional township, wherein section number twenty-nine is reserved, it is made the duty of the trustees of such township to meet on the fourth Monday of April, annually, at the most convenient place nearest the center of such township, or fractional township, and then and there make a dividend of the rents and interest accruing from said section twenty-nine, to each religious society, agreeably to the provisions of the last preceding section, and, in making such dividend, each society is entitled to receive a just proportion of the money

received by the treasurer of such township. (*Laws of 1862, page 30.*)

§ 559. When the land of a religious society is conveyed to individual trustees instead of the religious corporation, the individual grantees are regarded as trustees of the society, and, on sale of such land, they will receive the proceeds in trust for the use of such society. Seceders from a regularly organized church, who have organized themselves into a separate body, are not entitled to any portion of the property of the society from which they seceded. (*M. E. Church of Cincinnati v. Wood, 5 Ohio R. 283.*)

§ 560. When a religious society purchases land, and the title vests in such society in fee, as a corporation, the majority of the society have the right to control the use and occupation of such land, and such majority can not be deprived of such control by any supposed error of doctrine. Such majority, however, cannot exclude their fellow corporators from the benefit of such property in common with themselves. (*Keyser v. Stansifer, 6 Ohio R. 363.*)

§ 561. The beneficiaries of the fund "for the purposes of religion," arising from the rent of section twenty-nine in the Ohio Company's purchase, being designated by statute as "every denomination of religious societies," persons having no system of religious faith, written or traditional, can not be deemed a denomination or sect; and a society having no system of public worship or religious services as a sect or denomination, and being organized for the purpose of maintaining a library, and being in fact a library association merely, is not a religious society within the terms of the statute, though such society has adopted a name implying that it was organized as a religious society for religious purposes. (*The State v. Trustees of Township 9, 7 Ohio R. New Series, 58.*)

CHAPTER XXXVIII.

RELIGIOUS SOCIETIES IN INDIANA—HOW INCORPORATED—ELECTION OF TRUSTEES AND THEIR POWERS—CERTIFICATE OF ELECTION TO BE RECORDED—NAME OF SOCIETY, HOW CHANGED—CHURCHES MAY BE CONSOLIDATED—MANNER OF PROCEEDING.

§ 562. Any church or society for religious purposes in the State of Indiana, may take by purchase, grant or devise, lots or tracts of land, not exceeding one hundred and sixty acres, upon which to erect buildings for religious worship, or for such other purposes as will best attain the objects of such church or society, and for that purpose may elect not less than three nor more than five trustees, who are deemed a body politic and corporate, under such name and style as the church or society may elect, and by that name have power to contract, sue, be contracted with and sued, with like effect as other persons or corporations. (1 *Revised Statutes*, 1852, *Chapter* 101, *Sections* 1 and 9.)

§ 563. Notice of the election for trustees must be given at least ten days previous thereto by publication in a newspaper of the county, if any, otherwise by posting such notice in three public places in the proper township, one of which must be at the place of the proposed election. The notice must state the time, place and object of such election, and the same must be held at the usual place of worship or meeting of the society, if any there be. The society, at the first and every subsequent election, must appoint a clerk thereof, who must take, count and make a poll-list of the votes given for trustees; and within ten days thereafter must deposit in the recorder's office of the county, where the real estate granted is

situate, a certificate, setting forth the notice of such election, the time and place where the same was held, the name of the society, and persons elected as trustees thereof; and the recorder of such county must record the same among the records of deeds in his office. (*Ib.*, *Secs. 3 and 4.*)

§ 564. As between the society, the trustees thereof and all persons claiming under them, and any person granting real estate thereto, and all persons claiming under him, such certificate is declared to be conclusive evidence of the matters and things therein recited; and as between such society, the trustees thereof, and all persons claiming under them, and all other persons, the certificate is declared to be presumptive evidence of such matters. (*Ib.*, *Sec. 5.*)

§ 565. The trustees will severally hold their offices until their successors are duly chosen, according to the rules of the society; and any society, by a majority vote, at a meeting of one-third of the resident members thereof, notice being given as aforesaid, may remove such trustees and elect others in their stead. The society or the trustees thereof, when organized for that purpose, may establish all necessary by-laws to carry out the objects of its organization. Any society may appoint trustees, according to its common usage or custom, if they desire it; but a certificate of such election or appointment, and the record of the same, as in case of their election, must not be dispensed with. (*Ib.*, *Secs. 6, 7, as amended by Laws of 1853, Ch. 54 and Sec. 8.*)

§ 566. The society may at any meeting, by giving ten days notice of the time and purpose thereof, change their corporate name; but the name chosen by the society must not be assumed until a record has first been made of the fact in the recorder's office of the proper county, and then the change will not affect the rights or liabilities of the society

or of other persons or parties. The trustees, after a record of their election or appointment is made in the recorder's office of the proper county, have power and authority as such trustees to receive conveyances of lands, whether the same be by purchase, gift or otherwise, and to hold the same to their successors as such trustees in perpetuity, for the sole and exclusive benefit of such society, and for the uses declared in such conveyance or grant. (*Ib.*, *Secs. 10 and 11.*)

§ 567. The trustees and their successors in office may also acquire and possess, for the use of the society, personal property, not exceeding in value the sum of five thousand dollars, and may appropriate the same and the income or interest thereof, and all other funds and incomes in their hands as such trustees, for the purposes designated by such society, not inconsistent with the trust; and the trustees, to more effectually carry out the objects of their trust, may sell, loan or otherwise dispose of their corporate property; and any conveyance thereof by such trustees, or a majority of them, in behalf of such society, will vest in the purchaser of the same all the right, title and interest thereto, though this provision is not to be construed to affect any gift, bequest or devise to such society, or to trustees for its use, nor to defeat the intentions of the grantor, donor or testator. (*Ib.*, *Secs. 12 and 13.*)

§ 568. When any religious society, organized as aforesaid, shall have been dissolved from any cause, a majority of persons interested therein may revive the same, within five years after such dissolution, by electing a new board of trustees, and making record of such election in the recorder's office of the proper county, as before provided; and whenever, from any cause, a church or religious society, holding and possessing property within the meaning of the foregoing provisions, shall have been dissolved, the annual or quarterly

conference, or other ecclesiastical body to which such church or religious society is directly subordinate, has power to appoint trustees, in accordance with the customs and usages of said church, to take the charge and control of the property of said church or society until it shall be revived as aforesaid. (*Ib.*, *Sec. 14, as amended by the Laws of 1855, Ch. 107.*)

§ 569. The officers of any society, by whatever name such officers may be designated, elected in the manner hereinbefore in this chapter designated, or, according to the rules of any such church or religious society, may, whenever the laws or usages of the same require it, perform the duties of trustees, and in the proper name and title, will possess all the powers and be subject to the same liabilities as trustees, and the certificate of the election of such officers must be recorded the same as in the case of trustees. (*Ib.*, *Sec. 16.*)

§ 570. Any church or religious society holding lands and property not divided into shares, may elect or appoint six or more of its members trustees, according to its rules and usages, which trustees may purchase and hold in trust such property, and other property for such purposes, and to receive gifts and donations for the same, and they will have such power to manage such institution as is conferred on trustees otherwise provided for Theological Institutions and Missionary Boards, and they will be subject to the advice and control of the church or religious society making their appointment or election. When elected, they must, as nearly as practicable, be divided by lot into classes, those drawing the first class will be trustees one year; those of the second class, two years, and those of the third class three years, or until their successors are chosen and qualified. (*Laws of 1859, Ch. 116, Sec. 2, and Laws of 1855, Ch. 70, Sec. 4.*)

§ 571. The wardens and vestrymen of any parish, or congregation of any church in the State, duly chosen according to the provisions hereinafter stated, in accordance with the rules and usages of such church, after a record of such election shall have been made as herein provided, are declared to be deemed a body corporate and politic, under the name of wardens and vestrymen of church, and by such name will have power to contract and be contracted with, sue and be sued, with like effect as other persons and corporations. The number to be elected must not be less than three nor more than nine; but the rector of any parish, church or congregation will be *ex officio* a member of the vestry of the same, according to the rules, regulations and form of government of the church; and the members of the vestry, so elected, will hold their offices until their successors are duly chosen, according to the rules and usages of said church. (*Laws of 1855, Ch. 44, Secs. 1 and 2.*)

§ 572. At the first and every subsequent election, the officers appointed to take, count and make a full list of the votes given, must, within ten days thereafter, deposit in the recorder's office of the proper county, a certificate, setting forth the notice of such election, the time and place where the same was held, and the names of the persons elected; and the recorder must immediately make a proper record of the same. When any person so elected shall refuse to serve, or shall die, resign, or be removed from office, the remaining members of the vestry in which such vacancy may occur, are authorized to appoint another person to fill the vacancy until the next regular election. (*Ib., Secs. 3 and 4.*)

§ 573. The peculiar name of any church, parish or congregation may be altered or changed, as also the number of members of any vestry, so that the number be not made more nor less than the number above specified; but the

name chosen under this provision cannot be assumed until a record has first been made of the fact in the recorder's office of the proper county; and such change is declared not to affect the rights or liabilities of the vestry, parish or congregation, or of other persons or parties. (*Ib.*, *Sec. 5.*)

§ 574. The wardens and vestrymen of any church, parish or congregation may establish by-laws, to carry out the objects of their organization; they have power to receive conveyances of lots or lands, by purchase, gift or otherwise, not exceeding one hundred acres, and to hold the same to their successors, in perpetuity, for the sole and exclusive benefit of such church, parish or congregation, and for the uses declared in such conveyance or grant; they may erect and hold buildings for religious worship, for parsonages or for educational or benevolent purposes; they may lay out and establish suitable grounds for a cemetery, or place for the burial of the dead, and after the plat thereof shall have been duly recorded in the recorder's office of the proper county, they will enjoy all the privileges necessary for the preservation and protection of such cemetery; and they may appoint trustees or committees to take charge of any school, hospital or cemetery which they may establish, and give direction concerning the management of the same, though such appointment will not relieve or release such vestry, parish or congregation from any legal liability to which they may be subject. (*Ib.*, *Sec. 6.*)

§ 575. Such vestry, and their successors in office, may also acquire and possess, for the use of any such parish, church or congregation, personal property not exceeding in value the sum of five thousand dollars, and may appropriate the same, and the income or interest thereof, and all other funds and incomes in their hands as such vestry, to the maintenance of religious worship, schools, libraries or other

purposes not inconsistent with the trust. And such vestry, to more effectually carry out the objects of the trust, may sell, lease or otherwise dispose of their corporate property; and any conveyance thereof by such vestry, or a majority of them, will vest in the purchaser of the same all the right, title and interest thereto; this provision, however, is not to be construed to affect any gift, bequest or devise to such parish, church or congregation, or to the vestry thereof, for its use, nor to defeat the intentions of the grantor, donor or testator. (*Ib.*, *Secs. 7 and 8.*)

§ 576. The certificate of election of the wardens and vestrymen before mentioned is to have the same force and effect as that of the election of trustees hereinbefore in this chapter stated; and whenever any parish, church or congregation, shall have elected a vestry in conformity to the provisions aforesaid, and the same may have been dissolved by the death, resignation or removal of its members, a majority of the members entitled to vote may, within five years after such dissolution, proceed to elect a new vestry in conformity with the foregoing provisions; and such new vestry, after a record of the election shall have been made as herein required, will possess the same powers, and may do and perform all other acts and things which by the foregoing provisions a vestry may do and perform. (*Ib.*, *Secs. 9 and 10.*)

§ 577. When the members of two or more churches desire to form a union, and assume a new name, they are authorized so to do by each church appointing three of its members as trustees, who must, within twenty days after their appointment, meet at a time and place agreed upon, and regularly organize by appointing one of their number chairman, and another secretary of their meeting; and, when so organized, they must agree upon the name that the united churches

shall thereafter assume. The secretary must record the proceedings of the meeting in a record to be kept for that purpose, and must, within ten days thereafter, deposit in the recorder's office of the county where said church shall hold its place of worship, a certificate setting forth the names of the old churches that have united, the name of the new church, and the names of the trustees thereof, and the recorder is required to record the same among the records of deeds in his office. (*Laws of 1858, Ch. 7, Secs. 1 and 2.*)

§ 578. The trustees so appointed will be the trustees of the new church until their successors shall be duly elected and qualified, and will be deemed a body politic and corporate by the name and style of the "Trustees of —," and by that name will have power to contract and be contracted with, sue and be sued, to receive and dispose of real and personal estate, for the sole use and benefit of such new church, in like manner and with like effect as other persons or corporations. After the certificate is recorded as aforesaid, the trustees of the churches that have united may convey by deed to the trustees of the new church, and their successors in office, all the lands belonging to said old churches, which deeds must be recorded in the recorder's office where the lands are situate; and such old trustees may also deliver to the trustees of the new church all articles of personal property belonging to the old churches; a list of the articles of personal property so delivered must be recorded by the secretary of the new church, in the church record, which articles of personal property and real estate will be held by the trustees of the new church, and their successors in office, for the use and benefit of the new church. (*Ib., Secs. 3 and 4.*)

§ 579. As soon as the conveyances of the land, and the delivery of the personal property, are made as aforesaid, the

old churches will be dissolved and cease to exist, and all rights, powers, privileges, and liabilities belonging thereto, will vest in and attach to the new church, with full power to the trustees thereof to sue and be sued, the same as the trustees of the old churches could before they ceased to exist; and the new church may establish all necessary by-laws, and make all needful regulations to carry out the objects of its organization; and may appoint or elect a treasurer, and such other officers as it may see fit to carry on its organization. (*Ib.*, Secs. 5, 6 and 7.)

§ 580. A religious society has the undoubted right to prescribe such rules as they may think proper for preserving order, when met for public worship; and they may use the necessary force to remove a person who is disturbing the society by a willful violation of a rule. Persons who do not approve of the rule prescribed have a simple and easy remedy. They can remain away, or retire when informed of the rule. (*McLain v. Matlock*, 7 *Indiana R.* 525.)

CHAPTER XXXIX.

RELIGIOUS SOCIETIES IN MICHIGAN — HOW ORGANIZED — THE TRUSTEES — THEIR RIGHTS AND POWERS — PROPERTY OF, HOW VESTED AND HOW SOLD — DEVISES TO A RELIGIOUS SOCIETY — OLD RELIGIOUS CORPORATIONS CONFIRMED — FORM OF CERTIFICATE OF INCORPORATION — FORM OF PETITION AND ORDER FOR SALE OF REAL ESTATE OF SOCIETY.

§ 581. In the State of Michigan any number of persons of full age, not less than five, who may be desirous of forming themselves into a church, congregation or religious

society, may sign articles of association for that purpose, and assemble together at such place as they may select, and by a plurality of votes, by ballot, elect any number of discreet persons, being laymen, not less than three nor more than nine in number, as trustees, to take charge of the property belonging to, and transact all the affairs relative to the temporalities of such church, congregation or religious society. (1 *Compiled Laws of 1857*, Ch. 68, Sec. 2.)

§ 582. Any church, congregation or religious society may choose their minister, priest, curate, rector, parson, or officiating clergyman, for the time being, to be the president of their corporation and of their meetings, by a plurality of votes by ballot; and at the first election of trustees every person who shall have signed the articles of association, and at any subsequent elections every person of full age, who has for six months been a stated worshiper with or contributor regularly for one year previous, to the support of such church, congregation or society, will be entitled to vote. (*Ib.*, Sec. 3.)

§ 583. The minister, priest, curate, parson or officiating clergyman of such congregation or society, or if none of them be present, one of the elders or deacons, church wardens or vestrymen thereof, and for want of such officers, any other person, being a member or stated hearer in such church, congregation or society, must publicly notify such congregation of the time when and the place where any election shall be held, at least fifteen days before the day of such election, and such notification must be given for two successive Sabbaths, on which such church, congregation or society stately meet for public worship, next preceding the election. (*Ib.*, Sec. 4.)

§ 584. Any two of the elders, deacons, church wardens or

vestrymen of such church, congregation or society, or if such officers be not present, then any two voters present, to be nominated by a majority of the voters, will act as inspectors of the election, receive the votes and determine the qualifications of voters; and they are required immediately after the election to certify, under their hands and seals, the names of the persons elected to serve as trustees or vestrymen, in which certificate the name by which the said trustees or vestrymen, and their successors in office, shall forever thereafter be known and called, must be particularly mentioned and specified, and such trustees may in said certificate be denominated vestrymen, or church wardens and vestrymen, executive committee, or any other name stated in the certificate, provided they be elected in the manner provided, and have the powers specified in the act under which they are elected. (*Ib.*, *Sec. 5.*)

§ 585. The certificate aforesaid must be acknowledged by the persons making the same, or proved by a subscribing witness thereto before some officer authorized to take acknowledgments of deeds and records, and recorded together with the certificate of such acknowledgment or proof, by the clerk of the county within which the church or place of worship of such congregation shall be situated, who is entitled to a fee of seventy-five cents for such recording; and thereafter it is declared that such trustees and their successors shall be a body corporate, by the name expressed in such certificate. (*Ib.*, *Sec. 6.*)

§ 586. The trustees may have a common seal, and may alter the same at pleasure; and they may take into their possession and custody all the temporalities of such church, congregation or society, whether the same shall consist of real or personal estate, and whether the same may have been given, granted or devised, directly or indirectly, to such

church, congregation or society, or to any other person or persons for their use. They may also, in their corporate name, sue and be sued in all courts and places; and they may recover and hold all the debts, demands, rights and privileges, all churches, buildings, burying places, and all the estate and appurtenances belonging to such church, congregation or society, in whatsoever manner the same may have been acquired, or in whose hands soever the same may be held, as fully and amply as if the right and title thereto had been originally vested in said trustees; and they may hold moneys or personal estate, raised or acquired for the purpose of erecting churches or houses of residence for the minister or priest, or for the purchase of burial grounds, for a period not exceeding one year before the investment thereof, and not exceeding the value or amount of twenty thousand dollars; and they may hold for a period not exceeding three years, any land which may be lawfully conveyed, not exceeding five thousand dollars in value, to be sold for the purpose of raising a fund for erecting, repairing or improving a church or churches, or other building aforesaid, or for the purchase or improvement of any cemetery or burial ground. In case the lands are not disposed of within the time aforesaid, they will revert to the donor or grantor, his or her heirs or assigns. (*Ib.*, *Secs. 7 and 8.*)

§ 587. The trustees or wardens and vestrymen, have authority also, under the direction of the society or congregation, to erect churches and meeting-houses, dwelling houses for their ministers or priests, and other buildings for the direct and legitimate use of their church, congregation or society, and to alter and repair the same, but for no secular purpose. They may also make rules and orders for managing the temporal affairs of such church, congregation or society, and dispose of all moneys belonging thereto, and order and regulate the renting of pews or slips in their meeting-houses and

churches, and the perquisites for the breaking of the ground and burial of the dead in the cemetery or church yard, and in the said churches or meeting houses. (*Ib.*, *Secs. 9 and 10.*)

§ 588. The trustees may appoint a clerk and a treasurer of their board, and a collector to collect their rents and revenues, and may regulate the fees to be allowed such clerk, treasurer and collector, and may remove them and appoint others in their stead at pleasure; and such clerk must enter all rules and orders made by the trustees, and payments ordered by them, in a book to be provided by them for that purpose. Any two of the trustees may at any time call a meeting of the trustees, and a majority of them, being lawfully convened, will be competent to do and perform all matters and things which such trustees are authorized to do and perform. The trustees may also elect their minister, priest, curate, rector, parson or officiating clergyman of the society, for the time being, to preside at such meetings, who will have no vote except in case of a tie of the board, when he may give a casting vote. (*Ib.*, *Secs. 11 and 12.*)

§ 589. The trustees hold their offices for three years; and immediately after their first election, they must be divided by lot into three classes, numbered one, two and three, and the seats of the first class will be vacated at the end of the first year; of the second class, at the end of the second year, and of the third class at the end of the third year, to the end that, as nearly as may be, one-third of the whole number of the trustees may be annually chosen. The persons, however, entering into articles of association as aforesaid, may provide in their articles of association for the election of the whole board of trustees once in each year, at such time as they may appoint, in the manner hereinbefore in this chapter prescribed, and the whole number may be elected in conformity to the provisions aforesaid. (*Ib.*, *Sec. 13.*)

§ 590. It is made the duty of the clerk of the board of trustees, at least one month before the expiration of the office of any of the trustees, to notify the same in writing to the minister, priest, curate, rector, parson or officiating clergyman, or in case of his death or absence, to the elders or church wardens, or if there be no elders or church wardens, then to the deacons or vestrymen of any such church, congregation or society, specifying in such notice the names of the trustees whose office will expire, and the minister, priest, curate, rector, parson or other officer receiving such notice must, in manner aforesaid, notify the members of such church, congregation or society of such vacancies, and appoint the time and place for the election to supply the same. (*Ib.*, *Sec.* 14.)

§ 591. The election must be held at least six days before vacancies shall occur as aforesaid; and all such subsequent elections must be held and conducted by the like persons, and in the same manner as provided for the first election; and, in case any vacancy shall occur by the death of a trustee, his refusal to act, or removal from the society before his term of office expires, or otherwise, notice thereof must be given as aforesaid, and an election held and another trustee chosen in his stead for the remainder of his term. (*Ib.*, *Sec.* 15.)

§ 592. No person belonging to any church, congregation or society incorporated under the provisions aforesaid, will be entitled to vote at any election, after the first, until he shall have been an attendant on public worship in such church, congregation or society, at least six months next before such election, and shall have contributed to the support of such church, congregation or society, according to the usages and customs thereof. It is made the duty of the clerk of the trustees to keep a register of the names of all

such persons as may desire to become stated hearers in the said church, congregation or society, and he must note therein the time when such request was made, and attend all subsequent elections, in order to test the qualifications of such voters in case they may be questioned. (*Ib.*, *Secs. 16 and 17.*)

§ 593. The trustees have no power to fix or ascertain the salary or compensation to be paid to any minister or priest, curate, rector or parson, but such salary or compensation must, in all cases, be ascertained and fixed by a majority of the society entitled to vote at the election of trustees. (*Ib.*, *Sec. 18.*)

§ 594. It is made lawful for the Circuit Court for the county in which any religious corporation may have been constituted, on the application of such corporation, if the court shall deem it proper, to make an order for the sale of any real estate belonging to such corporation, and to direct the application of the moneys arising therefrom to such uses as the said corporation, with the approbation of the said court, may conceive to be for the interest of such corporation. The sale, however, cannot be authorized in any case where it would be inconsistent with the express terms or plain intent of the grant, donation, conveyance or devise, by which the same was conveyed or devised to or for the use of such church, congregation or society. At least thirty days previous notice of any such application to the Circuit Court must be given, by publishing the same in some newspaper published in the county, if one be there published, if not, by posting up notices in three or more public places in such county. (*Ib.*, *Secs. 19 and 20.*)

§ 595. All lands, tenements and hereditaments lawfully conveyed by devise, gift, grant, purchase or otherwise, to
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any persons as trustees in trust, for the use of any church, congregation or religious society, organized within the State, either for a meeting-house, burial ground, or for the residence of a preacher or priest, will vest and descend, with the improvements, in perpetual succession to, and will be held by, the trustees hereinbefore provided in this chapter, in trust for such church, congregation or society. (*Ib.*, *Sec. 21.*)

§ 596. It is declared by statute that no bishop, vicar, rector, parson, curate, priest, deacon or other officer of any church, religious body, order, society or association; no superior or other officer or member, male or female, of any religious order, ecclesiastical or lay, nor of any ecclesiastical, educational or charitable institution or establishment shall, in consequence of such office or membership, or in the character or capacity of such officer or member have, possess or exercise any power, capacity or franchise of a corporation sole, so far as relates to the taking, holding, managing, selling or transmitting property; and every gift, grant, devise, bequest, conveyance or lease of any real estate, or any interest therein, or of use or benefit to arise therefrom, or of money or other property to be invested therein or to arise therefrom, made or attempted to be made, by deed, will or otherwise, to any such officer or member, by his or her name of office or membership, or in the character of such officer or member, will be utterly void to all intents and purposes; and no corporation for religious, ecclesiastical, educational or charitable purposes, will be recognized as existing by the common law, the canon law or by prescription, or in any other manner, except by the express statute of the State. (*Ib.*, *Sec. 22.*)

§ 597. It is further declared that neither the canon law, nor the decrees, nor of any decree or order of any ecclesiastical

council or body, nor any custom or usage founded thereon, nor any custom or usage of any church, congregation or religious society or religious order, shall be recognized or enforced in the State, so far as such law, usage or custom shall relate to the acquisition, the tenure or the control or disposition of any real estate, or any interest therein, or any trust connected or to be connected therewith. (*Ib.*, *Sec.* 23.)

§ 598. Every devise, gift or bequest of real estate, or any interest therein, or money or other property to be invested therein, or to arise from the proceeds thereof, or of any benefit, use or trust to be connected therewith, made or attempted by last will or testament, is declared void, so far as such devise, gift or bequest shall be or purport to be made, directly or indirectly, to or for the use of any church, congregation, religious order or religious society, or to or for the use of any ecclesiastical, educational or eleemosynary institution, connected or to be connected with or under the control or direction of any such church, congregation, order or society, or under the control or direction, or subject to the visitorial power of any officer or officers, or other authority of such church, congregation, order or society in his, her or their official or ecclesiastical capacity, unless such will shall have been duly executed, and shall have remained, for at least two months prior to the death of the testator, without alteration or codicil, on file with the judge of probate of the county in which the testator may reside; and no donation, or gift, or other transfer, by deed, lease or other form of conveyance, not testamentary, without valuable or pecuniary consideration to a reasonable amount, of any lands or real estate, or any interest therein, or money to arise therefrom, or to be invested therein, made or attempted to be made to or for the use of either or any of the parties for any or either of the purposes mentioned, will be valid for any purpose whatever, unless such deed or other convey-

ance shall have been duly executed and acknowledged, and recorded in the office of the register of deeds for the proper county, for at least two months prior to the death of the grantor or donor. (*Ib.*, *Sec. 24.*)

§ 599. Every gift, bequest, legacy or donation of any money or personal property to the amount of one hundred dollars or more, made or attempted to be made by last will or testament, to or for the use of any or either of the parties, or for any or either of the purposes mentioned in the last preceding section, is declared utterly void, if such last will or testament shall be made during the last sickness of the testator or testatrix; and no gift, bequest, legacy or donation of money or personal property, to the amount of one hundred dollars or more, will in any case be valid, if made by last will and testament, unless such last will and testament shall be proven in open court by the testimony of three subscribing witnesses, nor unless it shall clearly appear by the testimony of said witnesses that the whole will was read to or by the person executing the same, in their presence, and fully understood by the testator before the execution thereof, and that the same was executed at the time when it bears date. (*Ib.*, *Sec. 25.*)

§ 600. No grant, conveyance, devise or lease, of any real estate, dedicated or appropriated to the purposes of religious worship, or for any religious or ecclesiastical purposes, or appearing to be intended to be managed or controlled by any congregation or society, or any officer or officers thereof, in his or their official capacity, will vest any right, title or interest in any person or persons to whom such grant, conveyance, devise or lease may be made, unless the same shall be made to a corporation organized under some statute of the State, or of the late territory of Michigan, or under the

provisions of some act amending or altering the same. (*Ib.*, Sec. 26.)

§ 601. All existing religious societies heretofore incorporated in pursuance of any statute of the State, or of the late territory of Michigan, and not since dissolved, are established and confirmed, but subject to the foregoing provisions, without impairing rights legally vested. All vacancies which may occur in the office of trustees of any church or religious society, must be filled by an election, as provided herein for the filling of vacancies in such office; and in case of the dissolution of any religious corporation, for any cause whatever, the same may be incorporated under the provisions of the statute referred to in this chapter, at any time within six years after such dissolution; and thereupon all the estate, real and personal, formerly belonging to the same, and not lawfully disposed of, will vest in such corporation, as if there had been no dissolution; and it is declared that all of the provisions of the statute in this chapter specified, shall apply to all churches, religious congregations, religious societies, religious and ecclesiastical orders, and every association of persons for religious purposes in the State. (*Ib.*, Secs. 27 and 28.)

§ 602. The form of the certificate of incorporation of a religious society in the State of Michigan, may be similar to the one given for the State of New York, to which reference may be had. (*Ante*, Sec. 182.)

§ 603. For the form for a petition for the sale of the lands of a religious society and the order thereon, reference is made to the forms given for the State of New York. (*Ante*, Secs. 277, 279.)

CHAPTER XL.

RELIGIOUS SOCIETIES IN MICHIGAN—ORGANIZATION OF PROTESTANT EPISCOPAL CHURCHES—FORM OF PROCEEDING—APPOINTMENT OF TRUSTEES IN CERTAIN CASES—MEETINGS OF, AND THEIR POWERS—PROPERTY OF, HOW HELD—CERTAIN OTHER SOCIETIES, HOW INCORPORATED—THEIR RIGHTS AND POWERS.

§ 604. It is made lawful in the State of Michigan for any six or more persons, professing attachment to the Protestant Episcopal church, to execute and acknowledge, before any person authorized to take acknowledgment of deeds, one or more duplicate articles of agreement in writing, whereby they shall agree to organize a church according to the Protestant Episcopal church, by the name and style set forth in such articles; and upon the execution and acknowledgment thereof, such church will become a body politic and corporate, by the name set forth in such articles, in accordance with the canons, doctrines, discipline and worship of the Protestant Episcopal church. (1 *Comp. Laws of 1857, Ch. 68, Sec. 2037.*)

§ 605. Such articles of agreement must contain (1), the name of the proposed church; (2,) the township or city and county in which it is located; (3,) the number of vestrymen, not exceeding ten, who will have charge of the affairs of such church, and the time of the annual meeting, which must be in Easter week; and no church can be organized in any township or city bearing the same name with any other Protestant Episcopal church theretofore organized therein. The articles of agreement, when duly signed and acknowledged, must be recorded in the office of the county clerk of the county in which such church is located; and it is not lawful

for any such church to acquire the title to any property until such articles are recorded. (*Ib.*, *Secs.* 2038 and 2039.)

§ 606. Any three or more persons who have signed the articles of agreement, may call the first meeting of such church at such time and place as they may see fit, by publishing notice for ten days previous to the time of such meeting, in some newspaper published in the city or township in which such church is located; and if no newspaper is published therein, then such notice may be given by posting the same in three of the most public places in such city or township; and at the meeting the affidavit of such posting or publishing must be produced and recorded in the minutes. At such meeting, in addition to the signing of such articles, any male person of full age will be entitled to vote, who shall sign a declaration in writing, to be kept in the book of minutes, whereby he shall signify his intention of attaching himself to said church, and accepting the terms of such articles. Vestrymen may be elected at said meeting or any adjournment thereof. (*Ib.*, *Sec.* 2040.)

§ 607. At all subsequent meetings, the right of voting must be confined to the persons who became actually entitled to vote at the first meeting, and to such others, male persons of full age, as have, during the year previous, been sated worshipers in such church, and owned or rented a pew therein, or been stated contributors to its support. The annual meeting must take place at such time in Easter week as shall be in the articles of agreement contained; and at such annual meeting an election of vestrymen must be had, to serve until the next annual meeting, and until their successors shall be chosen. (*Ib.*, *Sec.* 2041.)

§ 608. The vestrymen must choose two of their number to be wardens. They may also appoint a secretary and

treasurer from their own number, and may employ such other agents and servants as they may see fit. Meetings of the vestry may be called by the rector of the church, or by either warden, or by any two other vestrymen, and a majority in number of the vestrymen elected will constitute a quorum for the transaction of business. The rector, when present, must preside at all vestry meetings, but will have no vote, except a casting vote in case of a tie; and, in his absence from a meeting, one of the wardens, if present, must preside. All vacancies in such vestry may be filled by the vestrymen at any meeting, and the persons elected to fill such vacancies may hold for the same period as their predecessor would have done. (*Ib.*, Sec. 2042.)

§ 609. All the temporal affairs of such churches must be managed by the vestrymen thereof, and they have authority to erect, alter, repair, enlarge, and, in case they deem it necessary, to take down, or remove and rebuild any church or other building belonging to such corporation; and no owner of any pew or slip in such church will be held to be the owner of any interest in the land whereon the same is erected. All such corporations may hold such amount of real estate as shall be reasonably necessary for a church and lecture or school room, and dwellings for the ministers thereof, but for no other purpose. (*Ib.*, Sec. 2043.)

§ 610. Whenever, by the constitution, rules or usages of any particular church or religious denomination, trustees are required to be appointed by any officer or officers of such church or denomination, it is the duty of such officer or officers to give to such trustees a certificate of their appointment, under the hand and seal of the person or persons making the same, specifying the name by which such trustees and their successors shall forever thereafter be called and known; which certificate must be acknowledged or proved and

recorded as prescribed in section five hundred and eighty-five; whereupon such trustees and their successors, appointed in accordance with the constitution, rules and usages of such church, will be a body corporate by the name expressed in such certificate, with all the rights, powers and privileges of other religious corporations constituted according to law. (*Ib.*, Sec. 2044.)

§ 611. It is not thought necessary to give any forms for incorporating religious societies under the provisions of the statute referred to in this chapter, as there will be no difficulty in framing the proper papers, by carefully consulting the directions contained in section six hundred and three.

CHAPTER XLI.

RELIGIOUS SOCIETIES IN ILLINOIS—HOW INCORPORATED—ELECTION, DUTY AND POWER OF TRUSTEES—POWERS OF THE SOCIETY—CAMP GROUNDS—RELIGIOUS USES—CATHOLIC CHURCH—EPISCOPAL CHURCH—CHURCH PROPERTY EXEMPT FROM TAXATION.

§ 612. It is made lawful, in the State of Illinois, for the members of any society or congregation, formed for the purposes of religious worship, to receive, by gift, devise or purchase, a quantity of land, not exceeding ten acres, and to erect or build thereon such houses and buildings as they may deem necessary for the purposes aforesaid, and to make such other use of the same, and make such other improvement thereon, as may be deemed necessary for the benefit and convenience of such society or congregation; and such society or congregation may assume a name and elect or appoint any

number of trustees, not exceeding ten, who will be styled trustees of such society or congregation, by the name aforesaid; and the title to the land purchased, and improvements made, will be vested in the trustees, by the name and style aforesaid. (*2 Compiled Statutes* 1858, 799, *Sec. 44.*)

§ 613. Immediately after the election or appointment of trustees by any society or congregation as aforesaid, the persons elected or appointed must make a certificate, under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and the length of time for which they were elected or appointed, which must be verified by the affidavit of one of the persons making the same, and must be recorded by the recorder of the county in which the society or congregation may be formed; and the trustees will hold their office for and during the period stated in the certificate; and at the expiration of their term of service, and ever after at the expiration of the term of service of any trustee elected or appointed, the said society or congregation must elect or appoint successors, who will, in like manner, continue in office for such period as may be limited by the society or congregation; and a certificate of their election or appointment must be made by the trustees whose term of service shall have expired, which must be verified by affidavit, and recorded as provided in the election or appointment of trustees in the first instance. (*Ib.*, 980, *Sec. 45.*)

§ 614. The trustees elected or appointed as aforesaid, and their successors, are declared to have perpetual succession and existence, and the title to land authorized to be purchased, and to the buildings and improvements thereon, will be vested in said trustees by their assumed name, and their successors forever; and the same must and will be held for the uses and purposes herein named and no other; and such

trustees are made capable in law to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended, in all courts of law and equity whatsoever, in and by the name and style assumed as aforesaid; and will have power, under the direction of the society or congregation, to execute deeds and conveyances of and concerning the estate and property authorized to be held by such society or congregation, and such deeds or conveyances will have the same effect as like deeds or conveyances made by natural persons. No deed or conveyance, however, can be made so as to defeat or destroy the interest or effect of any grant, donation or bequest which may be made to such society or congregation; but all grants, donations and bequests must be appropriated and used as directed by the person or persons making the same. (*Ib.*, *Sec. 46.*)

§ 615. Every society or congregation formed as aforesaid, has power to provide for filling vacancies which may happen in the office of trustee, and also to remove trustees from office, and to adopt such rules and regulations in relation to the duties of trustees, and the management of its estate, as the members may deem proper, not inconsistent with the constitution and laws of the State or the United States. (*Ib.*, *Sec. 47.*)

§ 616. Upon the dissolution of any society or congregation formed as aforesaid, the estate and property of such society or congregation will revert back to the persons, their heirs and assigns, who may have given or contributed to the purchase of or payment for the same, according to their respective rights. A failure to elect or appoint trustees at any time, when, by the foregoing provisions, such election or appointment should be had, will not work a dissolution of the society or congregation, but the trustees last elected or appointed will be considered as in office until another elec-

tion or appointment shall take place. In case of division of a religious corporation, the title to the church property will remain with those in connection with, and continue to conform to the usages and discipline of the organization with which they have been before connected, although they may only constitute a minority. (*Ib.*, 981, *Sec.* 48; *Ferraria v. Vasconcelles*, 23 *Ill. R.*, 456.)

§ 617. Any religious society may purchase, or receive by a donation, and hold any real estate, not exceeding forty acres, for the purpose of camp-meeting ground, and the lots necessary for the same; and the title to such real estate will be held by the trustees appointed by the society, and the same may become incorporated in the same manner as other trustees of religious societies. (*Ib.*, *Secs.* 1 and 2.)

§ 618. The trustees of any religious society may, under the direction of the society or congregation by whom they are elected or appointed, execute mortgages or deeds of trust, in the nature of mortgages, of and concerning the estate and property which any society or congregation are authorized to hold; and such mortgages, deeds and conveyances are declared to have the same effect, and may be enforced by the same remedies and proceedings, as like mortgages, deeds and conveyances made by natural persons. (*Ib.*, *Laws of 1857.*)

§ 619. The law which requires the certificate of the trustees of any religious society, whose term of office expires upon the election of their successors, to be filed and recorded in the recorder's office of the proper county, is made to apply to the officers of any such religious society, of whatever name or title, whose duties correspond with those of trustees. The persons elected, under the law, in the capacity of trustees, whether known by the name of trustees, wardens,

vestrymen, or any other name, may assume and continue to use the name, style or description as a corporation, by which they are known in the discipline or organization of the society to which they belong, or by which they are elected, and they must, by such name, be known and described in all matters pertaining to their said corporation. (*Ib.*, 981 and 982, *Secs. 1 and 2.*)

§ 620. All gifts and grants of land for the purpose of erecting a house of divine worship, must be made to the county commissioners of the proper county, and their successors in office, in trust and for the use of the persons or society therein named, and the same must be held and used by such society or persons, as therein directed, for the sole use of divine worship; and the deed must be recorded in the recorder's office of the proper county, within twelve months after the execution of the same, but in no case can a grant for the erection of a house of divine worship exceed in quantity ten acres of land. (*Ib.*, 982, *Sec. 2*, title "*Religious Uses.*")

§ 621. Should any gift or grant, mentioned in the last preceding section, be perverted or used for any other purpose than contemplated as aforesaid, or be abandoned by the donors, it is declared to become vested in the county where the lands may lie, unless otherwise directed in the gift or grant by the donor, and the same must be sold by the order of the county commissioners of such county, and the proceeds applied for the use of education in such county. (*Ib.*, *Sec. 4.*)

§ 622. In all cases in which any land or lot may be conveyed to the county commissioners, for the use of any religious society, congregation or church, or to the intent that houses should be erected thereon for purposes of divine

worship, and the society, congregation, church or person for whose use the conveyance was made, may desire to sell or otherwise dispose of the premises conveyed, and shall obtain the consent of the donor or grantor, or his heirs, or their legal representatives, to such sale or disposition, it is made the duty of the county commissioners to whom the conveyance was made, or their successors, to execute a conveyance for the same, so as to divest the legal title, and release all claim of the county to the premises conveyed. (*Ib.*, *Sec. 5.*)

§ 623. All gifts, grants, deeds, wills and other conveyances wherein or whereby any lands, tenements or other property within the State have been, or may be given, devised or granted, or in any manner conveyed, by any person or persons whatever, unto any person by the name, style or title of Roman Catholic bishop of Vincennes, or Catholic bishop of Vincennes and his successors, or Catholic bishop of St. Louis, or Roman Catholic bishop of St. Louis and his successors, or to the Roman Catholic bishop of Chicago, or Catholic bishop of Chicago and his successors, or to any other person, upon the trust expressed or implied, to take, hold and receive the same for the use and benefit of any religious corporation of Roman Catholics, or other religious or charitable uses, are declared by statute to be good and valid. (*Ib.*, 984, *Sec. 1.*)

§ 624. All gifts, grants, deeds, wills and other conveyances of any lands, tenements or other property within the State, given, devised or granted, or in any manner conveyed by any person or persons whatever, unto any person by the name, style or title of bishop of the Protestant Episcopal church, in the State or diocese of Illinois, or bishop of Illinois and his successors, or to any other person upon the trust, expressed or implied, to take, hold and receive the same for the use and benefit of any religious corporation of Protestant

Episcopalians, or for the support, aid or maintenance of the Episcopal church, of any hospital, church, parsonage, or other religious or charitable purpose within the State, are declared good and valid, and the same declaration is to apply to both gifts, grants, deeds, wills and other conveyances heretofore or hereafter made. (*Ib.*, 985, *Sec.* 1.)

§ 625. All property owned and used for religious purposes is exempt, by law from taxation in the State. (*Ib.*, 986, *Sec.* 3.)

§ 626. The certificate of incorporation of a religious society may be framed from the one prescribed for certain religious societies for the State of New York, with a trifling variation, which can easily be made by consulting the law as laid down in section six hundred and thirteen. (*Ante*, § 182.)



CHAPTER XLII.

RELIGIOUS SOCIETIES IN WISCONSIN—HOW ORGANIZED—TRUSTEES AND THEIR POWERS—ELECTIONS, AND QUALIFICATIONS OF VOTERS—VACANCIES IN THE OFFICE OF TRUSTEE, HOW FILLED.

§ 627. In the State of Wisconsin, all persons of full age, belonging to any church, congregation or religious society, may assemble at the church or meeting-house, or other place where they stately attend for divine worship, and, by a plurality of votes, elect any number of discreet persons of the church, congregation or society, not less than three nor more than nine in number, as trustees, to take charge of the estate and property belonging thereto, and to transact all

affairs relative to the temporalities thereof. (*Revised Statutes of 1858, Title XIII, Ch. 66, Sec. 1.*)

§ 628. The minister of the congregation or society, or in case of his death or absence, one of the elders or deacons, church wardens or vestrymen thereof, and for the want of such officers, any other person, being a member or stated hearer in such church, congregation or society, must publicly notify the congregation of the time when, and place where the said election shall be held, at least fifteen days before the day of election; and such notification must be given for two successive Sabbaths, on which such church, congregation or society shall statedly meet for public worship, preceding the election. (*Ib., Sec. 3.*)

§ 629. Any two of the elders, deacons, church wardens or vestrymen of such church, congregation or society, or if such officers shall not be present, then any two voters present, to be nominated by a majority of the voters, must preside at the election, receive the votes, and determine the qualifications of voters; and, immediately after the election, they must certify, under their hands and seals, the names of the persons elected to serve as trustees, in which certificate the name by which the said trustees, and their successors in office, shall forever thereafter be called and known, must be particularly mentioned and specified. (*Ib., Sec. 4.*)

§ 630. The form of the certificate may be similar to the one prescribed for a religious society in the State of New York, to which reference need only be made. (*Ante, Sec. 182.*)

§ 631. The certificate must be acknowledged by the persons making the same, or proved by a subscribing witness thereto, before some officer authorized to take the acknow-

ledgment of deeds, and recorded, together with the certificate of such acknowledgment or proof, by the clerk of the board of supervisors of the county within which the church or place of worship of such congregation shall be situated, in a book to be provided by him for that purpose, who is entitled to receive seventy-five cents for such recording; and thereafter such trustees and their successors will be a body corporate, by the name expressed in such certificate. (*R. S., Title XIII, Ch. 66, Sec. 5.*)

§ 632. Any church, congregation or religious society may choose their minister to be the president of the religious corporation and of their meetings, by a plurality of votes at any regular meeting. At the election of trustees, every person of full age, who has steadily worshiped with such church, congregation or society, and has been formerly considered as belonging thereto, will be entitled to a vote. (*Ib., Sec. 2.*)

§ 633. The trustees of such church, congregation or religious society thus incorporated, may have a common seal, and they may alter the same at pleasure; and they may take into their possession and custody all the temporalities of such church, congregation or society, whether the same consists of real or personal estate, or whether the same may have been given, granted or devised, directly or indirectly, to such church, congregation or society, or to any other person or persons for their use. They may also, in their corporate name, sue and be sued in all courts and places, and may recover and hold all the debts, demands, rights and privileges, all churches, buildings, burial places, and all the estate and appurtenances belonging to such church, congregation or society, in whatsoever manner the same may have been acquired, or in whose hands soever the same may be held, as fully and amply as if the right and title thereto had

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been originally vested in the said trustees. They may also hold other real or personal estate, and demise, lease and improve the same; but the whole of such estate, real and personal, cannot exceed the yearly value or income of three thousand dollars. (*Ib.*, *Secs. 7 and 8.*)

§ 634. The said trustees also have authority to alter and repair their churches and meeting-houses, and under the direction of the society or congregation to erect churches and meeting-houses, and dwelling houses for their ministers, and other buildings for the use of their church, congregation or society. They have authority also to make rules and orders for managing the temporal affairs of such church, congregation or society, and to dispose of all moneys belonging thereto, and to order and regulate the renting of pews or slips in their churches and meeting-houses, and the perquisites for the breaking of the ground in the cemetery or church yard, and in the said churches and meeting-houses for burying the dead. (*Ib.*, *Secs. 9 and 10.*)

§ 635. The trustees may also appoint a clerk and treasurer of their board, and a collector to collect and receive their rents and revenues, and may regulate the fees to be allowed to such clerk, treasurer and collector, and may remove them and appoint others in their stead at pleasure. The clerk must enter all the rules and orders made by the trustees, and payments ordered by them, in a book to be provided by them for that purpose. Any two of the trustees may, at any time, call a meeting of the trustees, and a majority of them, being lawfully convened, will be competent to do and perform all matters and things which such trustees are authorized to do and perform. (*Ib.*, *Secs. 11 and 12.*)

§ 636. The trustees hold their offices for three years; and immediately after their first election they must be divided,

by lot, into three classes, numbered one, two and three; and the seats of the first class will be vacated at the end of the first year; of the second class, at the end of the second year, and the third class at the end of the third year, to the end that, as near as may be, one-third part of the whole number of trustees may be annually chosen. The clerk of said trustees, at least one month before the expiration of the office of any of the said trustees, must notify the same, in writing, to the minister, or in case of his death or absence, to the elders or church wardens, and if there be no elders or church wardens, then the deacons or vestrymen of any such church, congregation or society, specifying in such notice the names of the trustees whose office will expire; and the minister or other officers receiving such notice must, in the manner aforesaid, notify the members of such church, congregation or society of such vacancies, and appoint the time and place for the election to supply the same. (*Ib.*; *Secs. 13 and 14.*)

§ 637. The election to supply vacancies in the board of trustees, must be held at least six days before such vacancies shall happen as aforesaid; and all such subsequent elections must be held and conducted by the same persons, and in the same manner as is provided for the first election; and in case any vacancy shall happen by the death of a trustee, his refusal to act, or removal from the society before his term of office expires, or otherwise, notice thereof must be given as aforesaid, and an election must be held and another trustee chosen in his stead for the remainder of such term. No person belonging to any such church, congregation or society, incorporated as aforesaid, will be entitled to vote at any election after the first, until he shall have been an attendant on public worship in such church, congregation or society at least six months before such election, and shall have contributed to the support of such church, congregation or

society, according to the usages and customs thereof. (*Ib.*, *Secs. 15 and 16.*)

§ 638. The clerk of the trustees must keep a register of the names of all such persons as shall desire to become stated hearers in the said church, congregation or society, and must therein note the time when such request was made; and the clerk must attend all subsequent elections, in order to test the qualifications of such voters in case they shall be questioned. The trustees have no power to fix or ascertain the salary or compensation to be paid to any minister; that must be ascertained and fixed by a majority of such society, entitled to vote at the election of trustees. In case of the dissolution of any religious corporation organized as aforesaid, for any cause whatever, the same may be incorporated in the manner aforesaid at any time within six years after such dissolution; and thereupon all the estate, real and personal, belonging to the same, and not lawfully disposed of, will vest in such corporation as if there had been no such dissolution. (*Ib.*, *Secs. 17, 18 and 22.*)

§ 639. Whenever, by the constitution, rules or usages of any particular church or religious denomination, trustees are required to be appointed by any minister, presiding elder, or other officer or officers of such church or denomination, it is made the duty of such minister, presiding elder, or other officer or officers, to give to such trustees a certificate of their appointment, under the hand and seal of the person making the same, specifying the name by which such trustees, and their successors, shall forever thereafter be called and known, which certificate must be acknowledged or proved and recorded as hereinbefore in this chapter directed, whereupon such trustees, and their successors, appointed in the same manner, will be a body corporate, by the name expressed in such certificate, with all the rights, powers and

privileges of other religious corporations constituted under the provisions aforesaid. (*Ib.*, *Sec.* 24.)

§ 640. Whenever, by the constitution, rules and usages of any particular church or religious denomination, the minister or ministers, elders and deacons, or other officers elected by any church or congregation, according to such constitution, rules or usages, are thereby constituted the trustees of such church or congregation, it is made lawful for such minister or ministers, elders and deacons, or other officers, to assemble together and execute, under their hands and seals, a certificate, stating therein the name by which they and their successors in office shall be forever thereafter called and known, which certificate must be acknowledged or proved and recorded, as hereinbefore in this chapter directed; whereupon such persons, and their successors in office, will be a body corporate, by the name expressed in such certificate, with all the rights, powers and privileges of other religious corporations constituted under the provisions aforesaid. (*Ib.*, *Sec.* 25.)

§ 641. For the form for the certificate of incorporation provided for in the last preceding section, reference may be had to the one prescribed for Reformed Dutch churches in the State of New York. (*Ante*, § 135.)

CHAPTER XLIII.

RELIGIOUS SOCIETIES IN WISCONSIN—ANOTHER MODE OF INCORPORATION—POWERS OF THE INCORPORATORS—HOW THE REAL ESTATE OF A RELIGIOUS SOCIETY MAY BE SOLD OR MORTGAGED—PROPERTY OF SUCH RELIGIOUS SOCIETY NOT TAXABLE.

§ 642. In the State of Wisconsin it is also made lawful for any five or more male persons, of lawful age, desirous of forming a society for the promotion of the Christian religion in connection with a church to be associated therewith, according to their own peculiar tenets, to become incorporated and possess, have, hold and enjoy all the rights, privileges and franchises incident to such corporations in the manner hereinafter mentioned. (*Laws of 1860, Chap. 337, Sec. 1.*)

§ 643. Such persons must execute, under their hands and seals, a certificate, substantially in the following form:

“Know all men by these presents that we, (insert the names) whose names are hereto subscribed, have agreed, and by these presents do agree, to become incorporated into a religious society, in pursuance of the laws of this State, by the name and style of the (here insert corporate name), of the (here insert the name of the city, village or town), and we do hereby agree that all persons who may hereafter become associated with us in this organization shall be entitled to equal privileges and rights in the grants and franchises hereby received under and by virtue of the statutes in such cases made and provided.

In witness whereof, we have hereunto set our hands and seals this day of , A. D., .”

(*Ib., Sec. 2.*)

§ 644. The certificate thus executed must be acknowledged before some person authorized to take acknowledgments of deeds, and must be recorded in the office of the Secretary of State, and copies thereof, duly certified by him, will be received as evidence of the fact of incorporation, and for all other proper and lawful purposes in all courts of law and equity. The Secretary of State is entitled to receive fifty cents for recording the certificate, and the like sum for each certified copy thereof. (*Ib.*, Sec. 3.)

§ 645. Upon the recording of such certificate in the office of the Secretary of State, the persons named therein will be deemed and regarded in law as corporators, and they and their associates are declared by statute to be a body corporate and politic, with perpetual succession, by the name and style designated in such certificate, and by such name and style are made competent to contract, and be contracted with, to sue and be sued, to answer and be answered unto, in all courts of law and equity; and they are also competent, in law, to purchase, have, hold and enjoy property, both real and personal, and to sell, dispose of and convey the same; provided, however, that such religious corporation can not deal in property of any kind, except so far as shall be necessary for the legitimate objects of the corporation, which must be to promote the Christian religion in connection with a church; and the real estate to be held by any such religious corporation cannot exceed five lots in any city or village, or five acres in the country, not platted into lots. (*Ib.*, Sec. 4.)

§ 646. Every such corporation, thus created, may have a common seal, and alter and renew the same at pleasure; and may also adopt a constitution and by-laws for their government, not inconsistent with the laws of the State or of the United States, and may alter or amend the same at pleasure;

and may also designate the number and title of their officers, and may also define their powers and duties. A majority of the corporators named in the certificate, may meet at such time and place as to them shall seem fit and proper, for the purpose of perfecting their organization under the incorporation thus secured; and the said corporators will constitute the first board of trustees of the society, and will hold their offices until others are chosen. (*Ib.*, *Secs. 5 and 6.*)

§ 647. All lands, tenements and hereditaments lawfully conveyed by demise, gift, grant, purchase or otherwise, to any persons as trustees, in trust, for the use of any religious society, organized under any law of the State, either for a meeting-house, burying ground, or for the residence of a preacher, will descend, with the improvements, in perpetual succession to, and be held by, such trustees in trust for such society. (*Revised Statutes of 1858, Title XIII, Ch. 66, Sec. 23.*)

§ 648. It is made lawful for the Circuit Court for the county in which any religious corporation shall have been constituted, on the application of such corporation, if such court shall deem it proper, to make an order for the sale or mortgage of any real estate belonging to such corporation, and to direct the application of the moneys arising therefrom to such uses as the said corporation, with the approbation of said court, may conceive to be for the interest of such corporation. At least thirty days previous notice of any such application to the Circuit Court must be given, by publishing the same in some newspaper published in the county, if one be published therein, and if not, by posting up notices in three or more public places in such county. (*Ib.*, *Secs. 19 and 20.*)

§ 649. Every church, parsonage and school house belong-

ing to any religious society, with the land belonging thereto, not to exceed in all three acres in any one town, village or township, or, if in a city, not to exceed one lot for each of the said buildings, are not subject to taxation for any purpose except for its own improvement. (*Ib.*, *Sec.* 26.)

§ 650. For a form for the petition and order of sale of the real estate of a religious society, reference may be had to the same prescribed for the State of New York. (*Ante*, *Secs.* 277, 279.)

CHAPTER XLIV.

RELIGIOUS SOCIETIES IN MINNESOTA—INCORPORATION OF— FORM OF PROCEEDING—THE TRUSTEES AND OTHER OFFICERS —QUALIFICATION OF VOTERS.

§ 651. In the State of Minnesota it is made lawful for all persons of full age, belonging to any church, congregation or religious society, not otherwise incorporated, to assemble at the church or meeting-house, or other place where they statedly attend for divine worship, and, by a plurality of votes, to elect any number of discreet persons of their church, congregation or society, not less than three nor more than nine in number, as trustees to take charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof. (*Compiled Stat.*, *Ch.* 17, *Sec.* 15.)

§ 652. The minister of the church, congregation or society, or in case of his death or absence, one of the elders, church wardens or vestrymen thereof, or, for want of such officers, any other person being a member or stated hearer in such

church, congregation or society, must publicly notify the congregation of the time when, and the place where the election shall be held, at least fifteen days before the day of the election; and such notification must be given for two successive Sabbaths, on which the church, congregation or society stably meet for public worship, preceding the election. (*Ib.*, *Sec. 17.*)

§ 653. Any two of the elders, deacons, church wardens or vestrymen of such church, congregation or society, or, if such officers be not present, then any two voters present, to be nominated by a majority of the voters, must preside at the election, receive the votes and determine the qualification of voters. Immediately after the election the presiding officers, who are the inspectors of election, must certify, under their hands and seals, the names of the persons elected to serve as trustees, and in such certificate the names by which such trustees, and their successors in office, shall forever thereafter be called and known, must also be particularly mentioned and specified. (*Ib.*, *Sec. 18.*)

§ 654. The certificate aforesaid, being signed and sealed by the presiding officers of the election, must be acknowledged by the persons making the same, or proved by a subscribing witness thereto, before some officer authorized to take the acknowledgment of deeds, and then recorded, together with the certificate of such acknowledgment or proof, by the register of deeds of the county within which the church or place of worship of such congregation may be situated, in a book provided by him for that purpose; and thereupon such trustees, and their successors, will become a body corporate, by the name expressed in such certificate. The register will be entitled to receive seventy-five cents for recording the certificate. (*Ib.*, *Sec. 19.*)

§ 655. The certificate aforesaid may be substantially in the form prescribed for certain religious societies in the State of New York, as given in section one hundred and eighty-two of this work, and reference is made to that form as a model for those who may desire one. The certificate of proof or acknowledgment must be in the precise form as of deeds of real estate; and the proper officer who takes the same will have no difficulty in framing one which will answer the purpose.

§ 656. The trustees, upon being incorporated as aforesaid, may have a common seal, and may alter the same at pleasure; and they may take into their possession and custody all the temporalities of such church, congregation or society, whether the same may consist of real or personal estate, and whether the same may have been given, granted or devised directly or indirectly to such church, congregation or society, or to any other person or persons for their use. (*Comp. Stat., Ch. 17, Sec. 20.*)

§ 657. Such trustees may also, in their corporate name, sue and be sued in all courts and places, and they may recover and hold all the debts, demands, rights and privileges, all churches, buildings, burying places, and all the estate and appurtenances belonging to such church, congregation or society, in whatever manner the same may have been acquired, or in whose hands soever the same may be held, as fully and amply as if the right and title thereto had been originally vested in the said trustees; and they may also hold other real or personal estate, and demise, lease and improve the same; but the whole of such estate, real and personal, must not exceed the yearly value or income of three thousand dollars. (*Id.* 21.)

§ 658. The trustees will also have authority to repair and

alter their churches and meeting-houses, and, under the direction of the society or congregation, to erect churches and meeting-houses, and dwelling houses for their ministers, and other buildings for the use of their church, congregation or society. They also have authority to make rules and orders for managing the temporal affairs of such church, congregation or society, and to dispose of all moneys belonging thereto; and to order and regulate the renting of pews or slips in their churches and meeting-houses, and the perquisites for the breaking of the ground in the cemetery or church-yard, and in the said churches or meeting-houses for burying the dead. (*Ib.*, *Secs.* 22 and 23.)

§ 659. The trustees may appoint a clerk and treasurer of their board, and a collector to collect and receive their rents and revenues, and may regulate the fees to be allowed to such clerk, treasurer and collector, and may remove them and appoint others in their stead at pleasure. The clerk must enter all rules and orders made by the trustees, and payments ordered by them, in a book to be procured by them for that purpose. (*Ib.*, *Sec.* 24.)

§ 660. Any two of the trustees may at any time call a meeting of the trustees, and a majority of them being lawfully convened, will be competent to do and perform all matters and things which such trustees are authorized to do and perform. (*Ib.*, *Sec.* 25.)

§ 661. The trustees will hold their offices for three years; and immediately after their first election, they must be divided by lot into three classes, numbered one, two and three; and the seats of the first class will be vacated at the end of the first year, of the second class at the end of the second year, and of the third class at the end of the third year, to the end, so that as near as may be, one-third part of

the whole number of trustees may be annually chosen. (*Ib.*, *Sec.* 26.)

§ 662. The clerk of the board of trustees, at least one month before the expiration of the office of any of the trustees, must notify the same, in writing, to the minister, or, in case of his death or absence, to the elders or church wardens, and, if there be no elders or church wardens, then to the deacons or vestrymen of any such church, congregation or society, specifying in such notice the names of the trustees whose office will expire; and the minister, or other officers receiving such notice, must notify the members of such church, congregation or society of such vacancies, and appoint the time and place for the election to supply the same. This notice must be given in the same manner as of the first election. (*Ib.*, *Sec.* 27.)

§ 663. Every person, of full age, who statedly worshiped with the church, congregation or society, and has been formerly considered as belonging thereto, may vote at the first election; but no such person will be entitled to vote at any election after the first, until he shall have been an attendant on public worship in such church, congregation or society at least six months before such election, and shall have contributed to the support of such church, congregation or society, according to the usages and customs thereof. (*Ib.*, *Secs.* 16 and 29.)

§ 664. The clerk of the trustees is required to keep a register of the names of all such persons as shall desire to become stated hearers in the said church, congregation or society, and must therein note the time when such request was made, and the clerk must attend all subsequent elections, in order to test the qualifications of such voters in case they shall be questioned. (*Ib.*, *Sec.* 30.)

CHAPTER XLV.

RELIGIOUS SOCIETIES IN MINNESOTA—INCORPORATION OF PROTESTANT EPISCOPAL, AND OF CERTAIN OTHER CHURCHES—CERTAIN RELIGIOUS CORPORATIONS CONFIRMED—POWERS OF RELIGIOUS CORPORATIONS.

§ 665. The male persons, of full age, of any church or congregation in communion with the Protestant Episcopal church in the state of Minnesota, who shall have belonged to such church or congregation for the last three months preceding such election, and who shall have been baptized in the Episcopal church, or shall have been received therein, either by rite of confirmation or by receiving the holy communion, or by purchasing or hiring a pew in said church, or by some joint act of the parties and of the rector, whereby they shall have attached themselves to the Protestant Episcopal church, may also meet and elect two church wardens, and not less than four nor more than eight vestrymen, and incorporate themselves in precisely the same manner as a Protestant Episcopal church may become incorporated in the State of New York, and similar proceedings are to be had as in that State, which are given in full in chapter nine of this work, to which reference is made for specific directions. The provisions of the Minnesota statute are in substantially the same terms of the statute of New York, with, perhaps, the exceptions specified in the next section. (*Compiled Stat. Ch. 17, Sec. 38.*)

§ 666. By the Minnesota statute, if the rector be not present at the first election, or there be no rector of the church or congregation, then one of the church wardens or vestrymen, or any other person, may be called to the chair

and preside at the election, and, together with two other persons, make the certificate of incorporation required, under their hands and seals; which certificate must be duly acknowledged or proved, by one or more of the subscribing witnesses, before one of the judges of the Supreme Court, or one of the judges of the court of Common Pleas of the county where the church or place of worship of the congregation may be situated; and the certificate must be recorded, whereupon the society becomes a body corporate in all respects as by the New York statute. (*Ib.*)

§ 667. After the church or society becomes incorporated as aforesaid, it then possesses all the rights, powers and privileges of other religious societies in Minnesota, and the same persons are trustees; vacancies in the offices are filled, and elections are held, substantially, in all respects, as by the statutes of New York, referred to, and which are sufficiently stated in chapter nine of this work, to which reference is made for directions in the manner of proceeding.

§ 668. Whenever, by the constitution, rules or usages of any particular church or religious denomination, trustees are required to be appointed by any ministers, presiding elders or other officer or officers of such church or denomination, it is made the duty of such ministers, presiding elders or other officer or officers to give to such trustees a certificate of their appointment, under the hand and seal of the person making the same, specifying the name by which such trustees and their successors shall forever thereafter be called and known; which certificate must be acknowledged or proved and recorded as the other certificates referred to are required to be acknowledged, or proved and recorded; whereupon such trustees and their successors, appointed in the same manner, will become a body corporate, by the name expressed in such certificate, with all the rights, powers

and privileges of other religious corporations constituted by the general incorporating act. (*Comp. Stat. Ch. 17, Sec. 36.*)

§ 669. Whenever, by the constitution, rules and usages of any particular church or religious denomination, the minister or ministers, elders and deacons, or other officers elected by any church or congregation, according to such constitution, rules or usages, are thereby constituted the trustees of such church or congregation, it is made lawful for such minister or ministers, elders and deacons, or other officers, to assemble together and execute, under their hands and seals, a certificate, stating therein the name by which they and their successors in office shall forever thereafter be called and known; which certificate must be acknowledged or proved and recorded the same as the certificate mentioned in the last preceding section; whereupon such persons and their successors in office, are constituted a body corporate by the name expressed in such certificate, with all the rights, powers and privileges of other religious corporations, constituted according to the provisions of the general incorporating act. (*Ib., Sec. 37.*)

§ 670. Every church, congregation or religious society, incorporated in pursuance of law, previous to the passage of the general incorporating act, and not since dissolved, is established and confirmed by the general act; and, in case of the dissolution of any religious corporation, for any cause whatever, the same may be incorporated under the provisions of the general incorporating act, at any time within six years after such dissolution; and thereupon all the estate, real and personal, formerly belonging to the same, and not lawfully disposed of, will vest in such corporation as if there had been no dissolution. (*Ib., Sec. 34.*)

§ 671. Whenever any church or religious society, organized as a church or congregation, but not incorporated

in pursuance of law, shall comply with the provisions of the general incorporating act, and thereby become a body corporate, all the estate, real and personal, which shall have been lawfully conveyed to the said church or religious society, or to the trustees or vestry thereof, in trust for the use of such church or society, whether by devise, gift, grant, purchase or otherwise, and not lawfully disposed of, will thereupon vest in the said corporation as fully and amply as if the said church had been legally incorporated from the date of its religious organization; provided, always, that the name or title publicly assumed or borne by such church or society from the date of its organization as such, and none other, shall be the title by which it shall forever be known in law, and as a body politic and corporate. (*Ib.*, Sec. 39.)

§ 672. All lands, tenements and hereditaments that have been or may be lawfully conveyed by devise, grant, purchase or otherwise, to any persons as trustees in trust, for the use of any religious society organized or which may be organized within the State, either for a meeting-house, burying ground, or for the residence of a preacher, will descend, with the improvements, in perpetual succession to and will be held by such trustees in trust for such society. (*Ib.*, Sec. 35.)

§ 673. When any real estate may be bequeathed, purchased, donated or otherwise entrusted to any religious society or corporation in the State, or to any of the trustees or officers of any such society or corporation for the use and benefit of such society or corporation, or for any other purpose, and such society or religious corporation shall be desirous to sell, exchange or in any manner to convey or incumber, or otherwise dispose of such real estate by deed, mortgage or other conveyance, it is made lawful for the district court of the county where such real estate is situate,

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upon good cause shown, upon application of such society or religious corporation, or of some person authorized by them, to make an order authorizing the sale or incumbrance or other disposition or transfer of any such real estate as desired by such society or religious corporation. And the court may, in such order, direct the application of the proceeds (if any there be) of such sale or incumbrance, provided that such order be not inconsistent with the original terms upon which such real estate became invested in or entrusted to such religious society or corporation. (*Ib.*, *Sec. 32, as amended by Laws of 1862, Ch. 34.*)

§ 674. At least thirty days' previous notice of any such application to the district court must be given by publishing the same in some newspaper, published in the county, if one be published therein, and if not, by posting up notices in three or more public places in such county. (*Ib.*, *Sec. 33.*)

§ 675. The form of the application, orders and other proceedings may be like those in chapter twenty-one of this work, as the provisions of the New York statute are similar to those of the State of Minnesota; and as there is a great similarity between the laws of New York and of this State, in respect to religious corporations generally, most of the principles stated in treating of those corporations in New York will be found applicable to the same subject in this State.

CHAPTER XLVI.

RELIGIOUS SOCIETIES IN IOWA—HOW INCORPORATED—FORM OF PROCEEDING—THE TRUSTEES—POWERS OF THE CORPORATION—DEVISES AND REQUESTS TO.

§ 676. Corporations for the establishment of churches in the State of Iowa, may be formed in the manner directed for the incorporation of associations for the construction of railways and other works of internal improvement, but the provisions under which such corporations are formed do not necessarily extend to associations organized for religious purposes, and denominated religious societies. (*R. S. of 1860, Ch. 53, Sec. 1187.*)

§ 677. In the State of Iowa, any three or more persons of full age, being citizens of the United States, and a majority of whom are citizens of the State, who may desire to associate themselves for religious purposes, may make, sign and acknowledge before any officer authorized to take the acknowledgment of deeds in the State, a certificate in writing, in which must be stated the name or title by which such society shall be known in law, the particular business and objects of the society, the number of trustees to manage the same, and the names of the trustees of such society for the first year of its existence. (*Ib., Sec. 1193.*)

§ 678. The certificate may be in the following form:

STATE OF IOWA, }
County of Dubuque, } ss.

We, the undersigned, citizens of the United States, and a majority citizens of the State of Iowa, do hereby certify that we have associated ourselves together for religious purposes,

as a religious society. That the name or title by which such society shall be known in law is "The First Presbyterian Church of Dubuque." That the object of the society is to maintain divine worship and the gospel ministry, according to the rites of the Presbyterian Church in the United States. That the number of trustees, to manage the temporal affairs of the society, is fixed at nine; and that the following are the names of the trustees of such society, for the first year of its existence, viz: A. B., C. D., &c. &c.

Witness our hands at Dubuque, this day of 18 .
(Signatures.)

§ 679. The form of acknowledgment will be the same as of a deed of real estate, and need not be given in this place. The certificate must be in duplicate, each copy signed and acknowledged, and then one of the duplicate certificates, thus signed and acknowledged, must be filed in the office of the Secretary of State, and the other duplicate certificate, thus signed and acknowledged, must be filed in the office of the recorder of the county in which the objects of the society are to be carried out. (*Revised Laws of 1860, Ch. 53, Sec. 1193.*)

§ 680. Upon filing the duplicate certificate, in the manner aforesaid, the persons who shall have signed and acknowledged the same, and their associates and successors, will, thereupon, by virtue of the act under which the certificate was made and signed, acknowledged and filed, become a body politic and corporate by the name stated in such certificate, and, by that name, they and their successors shall and may have succession, and be persons in law, capable of suing and being sued, and they and their successors may have and use a common seal, and alter and change the same at pleasure. (*Id.*, *Sec. 1194.*)

§ 681. The persons thus making and acknowledging the certificate as aforesaid, and their successors, by their corpo-

rate name, will be capable in law, of taking, receiving, purchasing and holding real and personal estate, to make by-laws for the management of the affairs of the society, not inconsistent with the constitution and laws of the State or of the United States, and to appoint the officers and agents of such society for the management of its affairs. (*Ib.*)

§ 682. The society so incorporated may annually, or oftener, elect from its members its trustees, at such time and place, in the manner which may be specified in its by-laws, and the trustees will have the control and management of the affairs and funds of the society, a majority of whom are made a quorum for the transaction of business; and whenever any vacancy may happen among such trustees, by death, resignation or neglect to serve, such vacancy may be filled in the manner to be provided by the by-laws of the society. (*Ib.* Sec. 1195.)

§ 683. In case it should at any time happen that an election of trustees for the society was not made on the day designated by the by-laws, the society for that cause will not be dissolved, but it is made lawful for the society, on any other day, to hold an election for trustees, in such manner as may be directed by the by-laws of the society. (*Ib.*, Sec. 1196.)

§ 684. The persons thus incorporating themselves as a religious society must be careful not to select, use or specify in their certificate, a name or style, by which they propose to be known in law as a body corporate, similar to any society which may have been before incorporated and then existing in the State. (*Ib.*, Sec. 1197.)

§ 685. Any society, thus incorporated, is made capable of taking, holding or receiving any property, real or personal,

by virtue of any devise or bequest contained in any last will or testament of any person whatsoever, provided, that no person having a wife or child, or parent, shall devise or bequeath to such society more than one-fourth of his or her estate, after the payment of his or her debts, and such devise or bequest will be valid to the extent of such one-fourth. This provision is precisely similar to the one in the New York statute, referred to in sections one hundred and fifty-two and one hundred and fifty-three of this work, and the object of the provision in both cases is undoubtedly the same. (*Ib.*, Sec. 1198.

§ 686. The foregoing provision of the statute does not limit the *quantity* or *value* of the property that may be held by the religious society, but only restricts the *purposes* for which it may be acquired and applied. A grant to trustees, for the use and benefit of a church to be afterwards organized, with no power to the trustees to create the beneficiary, or to appropriate the land or funds arising therefrom, for any purpose, until such organization, will be upheld so as to pass the title, if such church shall afterwards, within a reasonable time, be so created or brought into existence, as to acquire and hold property, or be the recipient of a charity. But the doctrine of *cy pres*, at least in its original form, as administered in the English courts, is not recognized in the courts of Iowa. (*Miller v. Chittenden*, 2 Iowa Rep., 315.)

§ 687. When property is devised to a charitable or religious use, consistent with law and public policy, and the object is specified, and capable of being carried into effect according to the intention of the donor, and even though no trustees were appointed, and the object of the testator's bounty is incapable of taking the legal title, the terms of the will create a trust in the property in the hands of the heirs

of the testator. So held in a case where the devise was to an unincorporated religious society, for the purpose of aiding in erecting, finishing, repairing, &c., of the house of worship of said unincorporated religious society, and trustees were named by the testator to receive and execute the trust. (*Johnson v. Trustees of M. E. Church*, 4 *Iowa Rep.*, 180.)

§ 688. For the purpose of carrying into effect the intent of the testator, courts will sanction any mode pointed out by him, consistent with the rules of law. Such intent will not be set aside because it cannot take effect as fully as the testator intended, but it will be allowed to work as far as it can. When the devise is present and immediate, there must exist a competent devisee and a present capacity to take; but if there exists in the bequest the least circumstance from which to collect the testator's intention of anything else than an immediate devise, to take effect *in presenti*, then, if confined within legal limits, it is good as an executory devise. (*Miller v. Chittenden*, 4 *Iowa Rep.*, 252.)

§ 689. When, however, the party to whom a devise is made, takes no beneficial interest, and the *cestui que trust* is not sufficiently indicated, the devise will be void. In a devise there is the same necessity for a *cestui que trust*, capable of taking the beneficial interest, and so defined and pointed out as that there shall be no uncertainty, as there is for a properly defined grantee in a deed. If there is such uncertainty, as that it cannot be known who is to take as beneficiary, the trust will be void, and the heir, by operation of law, will take the legal estate, stripped of the trust. (*Lepage v. McNamara*, 5 *Iowa Rep.*, 124.)

§ 690. The trustees of any existing religious corporation, not organized under the provisions of the statute referred to in this chapter, may, by conforming to the requirements of

such provisions, re-incorporate themselves, or continue their existing corporate powers, and all property and effects of such corporation will vest in and belong to the corporation thus re-incorporated or continued. (*Revised Laws of 1860, Chap. 53, Sec. 1199.*)

CHAPTER XLVII.

RELIGIOUS SOCIETIES IN KANSAS—HOW INCORPORATED—MODE OF PROCEEDING—INCORPORATION OF CHURCHES—MODE OF PROCEEDING—BOARD OF TRUSTEES—THEIR POWERS—VACANCIES, HOW FILLED—CORPORATE NAME, HOW CHANGED.

§ 691. In the State of Kansas the legislature is prohibited from passing special acts conferring corporate powers. All religious societies must therefore be incorporated under general laws, which may at any time be amended or repealed. (*State Const., Art. XII, Sec. 1.*)

§ 692. By an act of the legislature of the State it is made lawful for any religious society or denomination to elect, at a meeting of a majority of the members of any organized church called for that purpose, provided ten days' public notice has been given, any number of trustees, not less than three, to serve as trustees or vestrymen, and one member as clerk, who will hold their offices for one year, or during the pleasure of the society. (*Comp. Laws of 1862, Ch. 44, Sec. 38.*)

§ 693. The clerk of the society thus appointed must make a true record of the proceedings of the meeting, certify and deliver the same to the recorder of the county in which the meeting was held, together with the name by which such

church shall thereafter desire to be known. It is made the duty of each county recorder, immediately upon receipt of such certified statement, to record the same in a book to be kept by him, provided for that purpose at the expense of the county, for which service he may demand and receive the sum of ten cents per one hundred words. From and after making such record by the county recorder, the said trustees, and their associated members and successors, will be vested with the powers, privileges and immunities incident to aggregate corporations. A certified transcript of the record made by the county recorder is made evidence in all courts and places of the existence of such society and corporation. (*Ib.*, *Sec. 39.*)

§ 694. It is further provided that the said trustees, directors or vestrymen, and their successors in office, shall have perpetual succession by such name as may be designated as aforesaid, and by such name shall be legally capable of contracting and of prosecuting and defending suits; and shall have capacity to acquire, hold, enjoy, dispose of and convey all property, real and personal, which they may acquire by purchase, donation or otherwise, for the purpose of carrying out the intentions of such society, but they can not acquire or hold property for any other purpose. (*Ib.*, *Sec. 40.*)

§ 695. The congregation or society when thus incorporated, may elect such officers, and make such rules and regulations as may be necessary and expedient for its own government and the management of its fiscal and other affairs, to effect their objects. (*Ib.*, *Sec. 41.*)

§ 696. If the board of trustees or vestrymen shall be vacated, in whole or in part, by death, resignation or otherwise, the same may be revived, or such vacancy or vacancies filled, in the same manner pointed out for the original organ-

ization of such board; and a majority of the trustees or vestrymen, are constituted a quorum for the transaction of business. (*Ib.*, *Sec.* 42.)

§ 697. The society will not be permitted to employ its means, assets or other property, directly or indirectly, for any other purpose whatever than to accomplish the legitimate objects of its creation. (*Ib.* 45.)

§ 698. The name of the society may be changed by the decree of the probate court of the county in which the society is located, upon petition to be filed by such society, and upon good cause shown. Thirty days' notice of the object and prayer of the petition, must be published in a newspaper of general circulation in said county, and the decree must be made at a regular term of the court, after the publication of said notice. Probably one publication of the notice would be sufficient, but it must be at least thirty days prior to the term at which the decree may be granted. If the name of the corporation is changed, a copy of the decree must be filed with the Secretary of State, or in the office of the county recorder. (*Ib.*, *Secs.* 48 and 49.)

§ 699. It has also been provided by an act of the legislature that any three communicant members of any church may call a public meeting of the church members, giving at least eight days' public notice thereof, at which a majority of the members of such church present may, if they see fit, elect any number, from one to five, of such communicant members of the church as a board of trustees, who will thereupon be and become a body corporate, with such corporate name as they may adopt, with perpetual succession, and will hold office until their successors are chosen. (*Ib.*, *Chap.* 45, *Sec.* 1.)

§ 700. The board of trustees, thus incorporated, may sue and be sued in all courts of law or equity, and may (subject to the regulations made by the said church) acquire, hold, convey and dispose of all kinds of property for the use and benefit of such church. The trustees, however, will not be permitted, as such trustees, to usurp or exercise any of the functions of the officers having charge of the spiritual affairs of the church. (*Ib.*)

§ 701. In case of the death of a trustee, the title to, and control of, such property will vest in his associate or associates; and if he have no associate or associates, then the title and control of such property will vest in the church members, until the election of his successor or successors, when such title and control will vest in them. (*Ib.*, Sec. 2.)

§ 702. The trustees thus incorporated are declared to be perpetual, by elections of successors, in the manner named, and at such times as the rules of the church may prescribe; but a trustee may be removed, and his successor chosen, by a vote of two-thirds of the members of the church present at a business meeting. (*Ib.*, Sec. 3.)

§ 703. One of the trustees is required to act as clerk of the board, and must file, within one month after each election, at the office of the register of deeds of the county in which such church is situated, an affidavit setting forth the notice of the election, the election, and the names of the trustees. The affidavit must be recorded in such register's office, and the record of the affidavit is made *prima facie* evidence of the regular election and qualification of such trustees. (*Ib.*, Sec. 4.)

CHAPTER XLVIII.

RELIGIOUS SOCIETIES IN DELAWARE—MODE OF INCORPORATION—
THE TRUSTEES—CORPORATE POWERS—PROTESTANT EPISCO-
PAL CHURCH—MORTMAIN RESTRICTIONS—LIMITATION OF PRO-
PERTY.

§ 704. In the State of Delaware any religious society or congregation of Christians, consisting of fifteen or more persons, may become incorporated by the election of trustees, not less than three nor more than twelve, and the taking a name and certifying the same, under the hands and seals of said trustees, to the recorder of deeds. The trustees must be elected at a public meeting of the society or congregation, held at their usual place of worship, on ten days' notice by advertisement at the front door of such place, and by a plurality of voters of the members present. The proceeding is very simple and no forms are necessary to be given. (*Revised Code of 1852, Ch. 39, Secs. 1 and 2.*)

§ 705. The trustees so elected, and their successors, are declared to be a corporation, by the name so adopted and certified; they will have perpetual succession, with all the incidents and franchises of a corporation aggregate, and with power to purchase, receive, hold and enjoy property, real and personal, for the use of the said society or congregation, their ministers or members, or for schools, alms-houses or burying-grounds. The acts of a majority of the trustees are declared to be valid, and it is provided that all the estate, right and title which any such society or congregation may have in any property, real or personal, in themselves or by trustee, or for their use, before incorporation, shall, upon

incorporation, become vested in the trustees, who may grant, demise or dispose of the same. (*Ib.*, *Secs. 3 and 4.*)

§ 706. Other trustees may be elected, and vacancies filled by election as prescribed for the first election, and the election of a successor to any trustee will remove him from office. (*Ib.*, *Sec. 5.*)

§ 707. The trustees must choose one of their own number chairman. He will have custody of the seal and all books and papers of the corporation; he must make fair entries in the books of all the proceedings of the trustees, and every member of the society or congregation must have access thereto. The registry, kept in any such books, of marriages, births, deaths or burials, is made evidence in all courts; and the copy of any entry, certified under the corporate seal and hand of the chairman, is also made evidence. (*Ib.*, *Secs. 6 and 7.*)

§ 708. The trustees may also choose one of their number treasurer, and may require him to give security. The treasurer must receive and account for all the money of the corporation. If no treasurer be chosen, the chairman must receive and account for such money. It is entirely optional with the trustees whether they shall have a treasurer, or devolve the duties on their chairman. (*Ib.*, *Sec. 8.*)

§ 709. The rector, wardens and vestrymen of any Protestant Episcopal church, on certifying their name or style, as provided by law for other religious societies or congregations, are declared to be a corporation, with the franchises, rights and powers vested in trustees of other religious societies. (*Ib.*, *Sec. 9.*)

§ 710. It is provided, however, that all gifts or grants to

any such corporation, of any real estate, or of money securities, or other thing of value, to be laid out in real estate, must be by deed duly executed, delivered, acknowledged and recorded, at least one year before the death of the donor or grantor, to take effect presently for the use of the corporation, and without any power of revocation, trust, condition or limitation whatever, or the same will be void, unless such grant shall be really and *bona fide* for a full and valuable consideration actually paid, without fraud or collusion, before executing such deed. (*Ib.*, *Sec.* 10.)

§ 711. The yearly rents and profits of the whole real estate held or enjoyed by or for any such corporation, cannot legally exceed three hundred dollars; and the yearly interest or income of all its personal property cannot exceed six hundred dollars; although it is provided that all real estate, *bona fide* given or granted by will, deed or other conveyance to any religious society or congregation, or to any one in trust for them, or to their use, before the twentieth of October, A. D., 1744, shall be for the use of the same, according to the intent of the donor or grantor, and the form and effect of the will, deed or conveyance; provided the said society or congregation shall have been, for twenty years hitherto, in the adverse and quiet possession of the same. (*Ib.*, *Secs.* 11 and 12.)

CHAPTER XLIX.

RELIGIOUS SOCIETIES IN MARYLAND—HOW FORMED—THE TRUSTEES—POWERS OF CORPORATIONS—QUALIFICATION OF VOTERS IN—CORPORATE AGREEMENT TO BE RECORDED—EPISCOPAL CHURCHES, HOW INCORPORATED.

§ 712. In the State of Maryland it is declared by general statute, that in every Christian church, society or congregation, of whatever sect, order or denomination, known and acknowledged in the State, and protected in the free and full exercise of their religion by the constitution and laws thereof, there shall be sufficient power and authority in all the male persons, above twenty-one years of age, belonging to any such church, society or congregation, to elect, at their discretion, certain sober and discreet persons, not less than five nor more than thirteen; which persons, so elected, upon being registered as hereinafter directed, are constituted a body politic or corporate to act as trustees in the name and behalf of the particular church, society or congregation for which they are respectively chosen, and to manage the estate, property, interest and inheritance of the same. (1 *Code of General Laws of 1860, Art. XXVI, Sec. 88.*)

§ 713. The trustees so elected are declared to have perpetual succession by their name of incorporation, and are capable in law to purchase, take and hold, to them and to their successors, in fee or for a less estate, any lands, tenements or hereditaments, rents or annuities, goods or chattels within the State, by the gift, bargain, sale or devise of any person, body politic or corporate, capable of making the same, and to use or lease, mortgage or sell and convey the same in such manner as they may judge most conducive to

the interests of their respective churches, societies or corporations, unless the property so held by such religious corporation be so held under an instrument prohibiting such sale; and, provided the yearly value of the estate of any such church, society or congregation (exclusive of the rents of pews, collections in churches, funeral charges, and the like) shall not exceed the clear yearly value of two thousand dollars. (*Ib.*, Sec. 89.)

§ 714. Every such body politic must be chosen, and the succession kept up, at such times and places as are ordinarily used for public meetings of the said church, society or congregation, and by such persons as are allowed to have a voice in the management and direction of their congregational or temporal concerns, according to the known custom and usage of their respective denominations; or the said body politic or corporate must be chosen, and the succession kept up, according to the rules, regulations and practice that may have been heretofore adopted and agreed upon, or that may be at the first time of electing agreed upon and adopted by any particular church, society or congregation, for directing or managing their congregational or temporal affairs. (*Ib.*, Sec. 90.)

§ 715. Every trustee, or member of any such corporation, must be of the same religious sect or denomination with the church, society or corporation by which he is chosen. The minister for the time being, or senior minister when there are more than one settled in any church, society or congregation, will always, in virtue of his ministry, be a member of the body politic or corporate, belonging to the same, exclusive of the number heretofore prescribed. (*Ib.*, Secs. 91 and 92.)

§ 716. Should any contest arise in any church, society or

congregation, about the right of voting, or whether the election has been fairly conducted, agreeably to the true intent and meaning of the article herein referred to, the parties contending must each of them choose one discreet and reputable person from amongst the members or trustees of some neighboring congregation or society of the same religious persuasion, if any such there be, and, if none such, then to any other christian society, which two persons must choose a third, qualified in like manner; and the said three persons must meet at the place where the difference has arisen and hear and determine upon the matter, and their judgment or award, or the judgment or award of a majority of them, certified under their hands and seals, to the contending parties, is made final. (*Ib.*, *Sec.* 93.)

§ 717. At the first election or appointment of every body politic or corporate aforesaid, every church, society or corporation assembled as already directed, must determine on their plan, agreement or regulation, specifying distinctly the time and manner of electing trustees, and the manner in which the succession shall be perpetuated, and containing an exact description of the qualifications of the persons severally electing and elected, and to elect and to be elected thereafter, and also the name, style or title of the corporation by which it shall thereafter be known, and the name of the church, society or congregation choosing the same. (*Ib.*, *Sec.* 94.)

§ 718. The plan, agreement or regulation must be entered in the book hereinafter directed to be kept by every such corporation, and the same must be acknowledged by the trustees, or a majority of them, before and certified by two justices of the peace of the county in which the said church, congregation or society, or the greatest number of them, shall reside, or the same may be acknowledged before and certified by a judge of the Circuit Court, after being well

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assured by the said trustees, or a majority of them, that the proceedings have been legally and duly conducted. (*Ib.*, Sec. 95.)

§ 719. The plan or agreement so acknowledged and certified must be filed, by the said trustees, with the clerk of the Circuit Court of the county where the said church, society or congregation, or the greater part of them reside, or the clerk of the Superior court of Baltimore city, if they, or the greater part of them, reside in the city of Baltimore, within six months after such acknowledgment shall be made, and the same must be recorded, at the expense of the corporation, in a book to be kept for that especial purpose. If any change should be made in the original plan, by authority of the congregation, such change must, in the same manner, be made known and recorded. (*Ib.*, Secs. 96 and 97.)

§ 720. Every such religious corporation or body politic, their successors, or a majority of them, may appoint the times and places of their meeting, and the number necessary to constitute a quorum, and must provide and keep a good and sufficient record book, and cause to be therein registered all their proceedings, subject at all times to the inspection of the several members of the church, society or congregation; and the same must be laid before a public meeting, when required by any five or more of the same; and the said trustees, or a majority of them, have full power to frame and adopt such rules and ordinances, for conducting their concerns, as may be necessary and convenient for accomplishing the end of their institution. (*Ib.*, Sec. 98.)

§ 721. Whenever any number of persons belonging to any church or congregation, sufficient to build a church or house of worship, and to maintain a minister, shall choose to separate from the church or congregation of which they

have hitherto been a part, and to erect a house of worship and employ a minister for themselves, it is made lawful for them to do so; and they will, by their respective name or style, be entitled to all the benefits of the article relating to their incorporation; provided, only, that all arrearages, debts and engagements contracted, due or becoming due, while members of the former society, shall be punctually and faithfully discharged. (*Ib.*, *Sec.* 99.)

§ 722. The person or persons holding lands, or goods and chattels, in trust for any particular church or society, are required to convey the same to the corporation of such particular church or society, as soon as the same shall be formed under the article relating to religious corporations. (*Ib.*, *Sec.* 100.)

§ 723. Protestant Episcopal churches may incorporate their vestries in the several parishes, according to the usages of the Protestant Episcopal church. (*Ib.*, *Sec.* 101.)

§ 724. The trustees, and not the congregation, constitute the corporation of the church, under the provisions of the article relating to religious corporations. (*Bethel Church v. Carnach*, 2 *Maryland Ch. R.*, 143.)

CHAPTER L.

CHURCHES IN VIRGINIA—NO RELIGIOUS CORPORATIONS—PROPERTY OF CHURCH, HOW ACQUIRED—TRUSTEES OF CHURCH LANDS—SALE OF CHURCH PROPERTY—GLEBE LANDS.

§ 725. They have no regularly incorporated religious societies or churches in the State of Virginia. The constitution prohibits them, though religious societies and churches are recognized and protected by law, and property may be legally acquired, held and disposed of for the use and benefit of religious societies, congregations and churches. (*State Const., Art. IV, Sec. 32.*)

§ 726. Every conveyance, devise or dedication of land for the use or benefit of any religious congregation, as a place for public worship, or as a burial place, or a residence for a minister, is declared valid by act of the general assembly of the State; such land must, however, be held for such use or benefit, and for such purpose and not otherwise. (*Code of Va. of 1849, Ch. 77. Sec. 8.*)

§ 727. The Circuit Court of the county or corporation wherein there may be any parcel of such land or the greater part thereof, may, on the application of the proper authorities of such congregation, from time to time, appoint trustees, either where there were or are none, or in place of former trustees, and change those so appointed, whenever it may seem to the court proper to effect or promote the purpose of the conveyance, devise or dedication; and the legal title to such land, for that purpose, is vested in the said trustees for the time being and their successors. (*Id., Sec. 9.*)

§ 728. When books or furniture shall be given or acquired for the benefit of such religious congregation, to be used on the land aforesaid in the ceremonies of public worship, or at the residence of their minister, the same is declared to stand vested in the trustees having legal title to the land, to be held by them as the land is held, for the benefit of the congregation. (*Ib.*, *Sec. 10.*)

§ 729. The trustees aforesaid may, in their own names, sue for and recover such land or property, and be sued in relation thereto. Such suit, in case of the death of any of the trustees, or the appointment of others, will proceed in the names of the trustees by or against whom it was instituted. (*Ib.*, *Sec. 11.*)

§ 730. The trustees are prohibited from taking or holding, at any one time, more than two acres of land in an incorporated town, nor more than thirty acres out of an incorporated town. (*Ib.*, *Sec. 12.*)

§ 731. Any one or more of the members of any religious congregation may, in his or their names, on behalf of such congregation, commence and prosecute a suit in equity against any such trustee, to compel him to apply such land or property for the use or benefit of the congregation, as his duty shall require. No member of the congregation need be made a defendant to such suit, but, in other respects, the same will be proceeded in, heard and determined as other suits in equity, except that it may be proceeded in notwithstanding the death of the plaintiff, as if he were still living. (*Ib.*, *Sec. 13.*)

§ 732. The real estate used for divine worship is declared exempt from taxation. (*Laws of 1852-3, Ch. 7, Sec. 2.*)

§ 733. Whenever any religious congregation, for whose use a conveyance, devise or dedication of land may have been lawfully made, shall deem their interest will be promoted by a sale of such land, it is made lawful for any member of such congregation, in his name, and on behalf of the other members thereof, to prosecute a suit in equity for the purpose of effecting such sale, in the Circuit Court of the county or corporation in which such land, or the greater part thereof, may lie, against the trustees, or the survivors of them, in whom the legal title may be; and it is made lawful for such court, if a proper case be made, and the court be of the opinion that the rights of others will not be violated thereby, to order the sale of such land, and make such disposition of the proceeds thereof as the congregation may desire. (*Laws of 1852, Chap. 99, Sec. 1, as amended by Laws of 1855-6, Chap. 37.*)

§ 734. No member of the congregation need be made a defendant to such suit, but any member thereof may voluntarily enter himself as such, and contest the same. In other respects the suit must be heard and determined as other suits in equity, except that it may be proceeded in notwithstanding the death of the plaintiff, as if he were living. (*Laws of 1852, Ch. 99, Sec. 2.*)

§ 735. A charity for the benefit of the poor of a parish in Virginia, given in trust to the minister and vestry, when they ceased to be either, was held to be vested in the overseers of the poor of the parish, and they may recover the charity in equity. When the testator leaves the mode of investing the fund to the discretion of the trustees, a court of equity will not interfere by directing the manner of investment. (*Overseers of the Poor of Richmond Co. v. Taylor's Administrators*, 1 Va. Rep. 336.)

§ 736. The code of Virginia does not authorize a devise of land for the use of a religious congregation, but only a conveyance by deed. The reason of the legislature in withholding such authority was the fear of an excessive and inordinate alienation of property to religious uses, which is most jealously guarded against, both by the policy of the law and the provisions of the State Constitution. The law likewise prohibits a bequest of money, to be expended in building a church at a specified place, or for the support of the pastor of such church. (*State Constitution, Art. IV, Sec. 32; Seaburn's Executor v. Seaburn, 15 Gratten's Rep. 423.*)

§ 737. According to the spirit of the act "concerning the glebe lands and churches" within the commonwealth of Virginia, no glebe land will be considered *vacant*, and as such liable to be sold, if there were, on the 12th day of January, 1802, any minister who, in behalf of the Protestant Episcopal church, had been put into possession, and was the incumbent thereof on that day, whether the persons acting as a vestry, by whom he was inducted, had been canonically elected or not. (*Claughton v. McNaughten, 2 Mumf. Rep. 513.*)

§ 738. Freeholders and housekeepers acquire no property in the proceeds of glebe lands sold by the overseers of the poor under the provisions of the code, and they can not maintain an action therefor. They have the bare power and authority to direct the appropriation of such proceeds to other objects than the poor of the parish. (*Cheatham, Administrator, v. Burrfoot, 9 Leigh's Rep. 580.*)

CHAPTER LI.

RELIGIOUS SOCIETIES IN NORTH CAROLINA — PROPERTY OF — TRUSTEES, HOW APPOINTED — THEIR DUTIES — LIMITATION OF PROPERTY HELD BY.

§ 739. In the State of North Carolina, all glebe lands and tenements purchased, given or devised for the support of any particular ministry, or mode of worship; and all churches, and other houses built for the purpose of public worship; and all lands and donations of any kind of property or estate that have been or may be given, granted or devised to any church or religious denomination, religious society or congregation within the State, for their respective use, must be and remain forever to the use and occupancy of that church or denomination, society or congregation, for which the said glebes, lands, tenements, property and estate were so purchased, given, granted or devised, or for which the said churches, chapels or other houses of public worship were built; and the estate therein is deemed and held to be absolutely vested, as between the parties thereto, in the trustees respectively of the said churches, denominations, societies and congregations for their several use, according to the intent expressed in the conveyance, gift, grant or will; and in case there be no such trustees, then in the said churches, denominations, societies and congregations respectively, according to such intent. (*Revised Code, Chap. 97; Sec. 1.*)

§ 740. All houses and edifices, erected for public religious worship on vacant lands, or on lands of the State not for other purposes intended or appropriated, together with two acres adjoining the same, may and must be held and kept

sacred for divine worship, to and for the use of the society by which the same was originally established. (*Ib.*, *Sec. 2.*)

§ 741. The conference, synod, convention or other ecclesiastical body representing any church or religious denomination within the State, as also the religious societies and congregations within the State, may, from time to time, and at any time, appoint in such manner as such body, society or congregation may deem proper, a suitable number of persons as trustees for such church, denomination, religious society or congregation, who, and their successors, have power to receive donations, and to purchase, take and hold property, real and personal, in trust for such church or denomination, religious society or congregation. (*Ib.*, *Sec. 3.*)

§ 742. Besides the lands and lots specially set apart and appropriated to divine worship, no church or denomination can have, to their own use, lands of a greater yearly value than six thousand dollars, and no single congregation or society lands of a greater yearly value than five hundred dollars. Such lands are not subject to taxation. (*Ib.*)

§ 743. The body appointing may remove such trustees, or any of them, and fill all vacancies caused by death or otherwise; and the said trustees, and their successors, may sue and be sued in all proper actions, for or on account of the donations and property so held or claimed by them, and for and on account of any matter relating thereto. And such trustees are made accountable to the said churches, denominations, societies and congregations for the use and management of such property, and they must surrender it to any person authorized to demand it. (*Ib.*, *Sec. 4.*)

§ 744. A conveyance to certain persons, as trustees for

the Methodist Episcopal church, will authorize such persons to bring an action of trespass *quare clausum fregit* against wrong-doers in relation to the property conveyed, though they may have not been appointed trustees according to the act of assembly relating to the appointment of trustees by religious congregations. The title would be vested in such persons individually, and they could recover at law, though in the writ and declaration they should describe themselves as trustees. The latter word would be rejected as surplusage. (*Walker v. Fawcett*, 7 *Iredell's Law R.* 44.)

§ 745. Religious societies, or their trustees, in North Carolina, have not a general capacity of acquisition of property. They can only take for the use of the society. The society is invested with corporate or artificial qualities, but a use or trust not to itself as a religious society, would not be sanctioned or aided by the law. (*The Trustees of the Quaker Society of Contentree v. Dickinson*, 1 *Dev.* 189.)

§ 746. A devise that land should be sold, and the proceeds laid out in building convenient places of worship, free for the use of all Christians who acknowledge the divinity of Christ and the necessity of a spiritual regeneration, would be void for uncertainty; but a devise to a religious congregation would be valid if the court can see, with certainty, what congregation is intended. (*White, Ex'r, v. University*, 4 *Ire. Eq.* 19.)

CHAPTER LII.

RELIGIOUS SOCIETIES IN GEORGIA—HOW INCORPORATED—THEIR POWERS—NAMES, HOW CHANGED—CONVEYANCES TO—TRUSTEES—VACANCIES HOW FILLED—FORM OF PETITION AND ORDER.

§ 747. When the persons interested may desire a church or camp-ground in the State of Georgia, incorporated, they may petition in writing the Superior or Inferior Court of the county where such association may have been formed, setting forth the object of their association and the privilege they desire to exercise, together with the name and style by which they desire to be incorporated; and said court are thereupon required to pass a rule or order directing such petition to be entered of record on the minutes of said court, whereupon such church or camp-ground becomes a body corporate. (*Cobb's Digest of the Laws of Georgia*, 542, Sec. 1.)

§ 748. When such church or camp-ground becomes incorporated as aforesaid, it has power under and by the name designated in the said petition, to have and use a common seal, to contract and be contracted with, to sue and be sued, to answer and be answered unto in any court of law or equity, to appoint such officers as it may deem necessary, and to make such rules and regulations as such corporation may think proper for its own government, not contrary to the laws of the State, but it can make no contracts or purchase, or hold any property of any kind, except such as may be absolutely necessary to carry into effect the objects of the incorporation. (*Ib.*, Sec. 2.)

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expulsion or otherwise; and when any vacancy is filled up, the same must be certified under the hand or hands of the person or persons presiding in the said society, and according to the form of government or discipline practiced by the said church or society; which certificate must express the name of the person appointed to fill the vacancy, and the name of the person in whose place he may be appointed, and on the certificate being recorded in the office of the clerk of the Superior Court of the county in which the land lies, the person so appointed to fill such vacancy becomes as fully vested with such trust, as if a party to and named in the original deed. (*Ib.*, Sec. 2.)

§ 750. The lots or parcels of land on which the churches of the different denominations in the State and the burying grounds attached thereto are situated, are not subject to taxation for any purpose, though the lots or parcels of land claimed by such churches must not exceed five acres. (*Ib.*, 1070, Sec. 94.)

§ 751. The form of the petition to become incorporated as a religious society may be as follows:

To the Honorable the Superior Court of the county of Richmond:

The petition of the undersigned respectfully shows that they are interested in a Christian church association and desire the same to be incorporated. That the said association was formed and is located in the city of Augusta, county of Richmond. That the object of such association is to sustain divine worship, and support the gospel ministry according to the rites of the Presbyterian church in the United States. That they desire to exercise the privileges of a Christian church and religious society, as the same are guaranteed by the statutes of the State of Georgia; and the name and style by which they desire to become incorporated is, "The First Presbyterian Church of Augusta."

Your petitioners therefore pray that said association may

§ 749. No such church or camp-ground can be incorporated in the manner aforesaid for a longer period than fourteen years, though the same may be renewed whenever necessary in the same manner as is provided for the original incorporation. The clerk of the court is entitled to a fee of five dollars for entering the petition and order on the minutes of the court, and furnishing a certified copy thereof; such certified copy is made evidence of the matters therein stated in any court of law or equity in the State. (*Ib.*, Secs. 3 and 5.)

§ 750. All deeds of conveyance made by any person or persons for any lots of land within the State, to any church or religious society, or to trustees for the use of any church or religious society, for the purpose of erecting churches or meeting-houses, are deemed and taken to be good and valid, and available in law, for the interests, uses and purposes contained in such deeds of conveyance; and all lots of land so conveyed are fully and absolutely vested in such church or religious society, or in their respective trustees, for the uses and purposes in the said deed expressed: to be holden to them or their trustees for their use, by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies respectively. (*Ib.*, 899, Sec. 1.)

§ 749. All trustees to whom conveyances are made for the purposes in the last preceding section expressed, are made subject to the authority of the church or religious society for which they hold the same in trust, and may be expelled from the said trust by such church or society, according to the form of government or rules of discipline by which they may be governed. And every such church or religious society are authorized and empowered to fill up all vacancies which may happen in the said trusts, by death, removal,

expulsion or otherwise; and when any vacancy is filled up, the same must be certified under the hand or hands of the person or persons presiding in the said society, and according to the form of government or discipline practiced by the said church or society; which certificate must express the name of the person appointed to fill the vacancy, and the name of the person in whose place he may be appointed, and on the certificate being recorded in the office of the clerk of the Superior Court of the county in which the land lies, the person so appointed to fill such vacancy becomes as fully vested with such trust, as if a party to and named in the original deed. (*Ib.*, *Sec. 2.*)

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To the Honorable the Superior Court of the county of Richmond:

The petition of the undersigned respectfully shows that they are interested in a Christian church association and desire the same to be incorporated. That the said association was formed and is located in the city of Augusta, county of Richmond. That the object of such association is to sustain divine worship, and support the gospel ministry according to the rites of the Presbyterian church in the United States. That they desire to exercise the privileges of a Christian church and religious society, as the same are guaranteed by the statutes of the State of Georgia; and the name and style by which they desire to become incorporated is, "The First Presbyterian Church of Augusta."

Your petitioners therefore pray that said association may

name, and elect or appoint any number of trustees, not exceeding ten, who will be styled trustees of such society or congregation, or wardens or vestrymen of such society or congregation by the name assumed, and the title to the land purchased and improvements made is vested in the trustees, by the name and style assumed as aforesaid. (*Thompson's Digest, Laws of Florida, Title VIII, Chap. 11, Sec. 3, Sub. 1.*)

§ 754. Immediately after the election or appointment of trustees by any such society or congregation, the persons elected or appointed must make a certificate, under their hands and seals, stating the date of their election or appointment, the name of the society or congregation, and the length of time for which they were elected or appointed, which must be verified by the affidavit of some one of the persons making the same, and must be recorded in the office of the public records of the county in which such society or congregation may be formed; and the trustees, by whatever title they may be designated, must hold their office for and during the period stated in such certificate. At the expiration of their term of service, and forever thereafter at the expiration of the term of service of any trustee elected or appointed as aforesaid, the said society or congregation must elect or appoint successors, who in like manner will continue in office for such period as may be limited by the society or congregation; and a certificate of their election or appointment must be made by the trustees whose term of service shall have expired, which must also be verified by affidavit, and recorded as provided in the election or appointment of trustees in the first instance. (*Ib., Sub. 2.*)

§ 755. The trustees elected or appointed as aforesaid, and their successors, will have perpetual succession and existence, and be, to all intents and purposes, a body corporate.

The title to land authorized to be purchased as aforesaid, and to the buildings and improvements thereon, becomes vested in the said trustees by their assumed name, and their successors, forever; and the same must be held for the uses and purposes in this chapter named, and no other; and such trustees are made capable in law to sue and be sued, implead and be impleaded, answer and be answered unto, defend and be defended in all courts of law or equity whatsoever, in and by the name and style assumed as aforesaid; and they have power, under the direction of the society or congregation, to execute deeds and conveyances of and concerning the estate and property authorized to be held by such society or congregation, and such deeds or conveyances will have the same effect as like deeds or conveyances made by natural persons. No deed or conveyance, however, can be made of any estate held as aforesaid, so as to defeat or destroy the interest or effect of any grant, donation or bequest which may be made to any such society or congregation. All grants, donations and bequests to such society or congregation, must be appropriated and used as directed by the person or persons making the same. (*Ib.*, *Sub.* 3.)

§ 756. Every society or congregation formed as in this chapter provided, has power to provide for filling vacancies which may happen in the office of trustee, warden, vestryman or other office of like nature; and also to remove such persons from office, and to adopt such rules and regulations in relation to the duties of trustees, and the management of its estate as to the members may seem proper, not inconsistent with the Constitution and laws of the State or of the United States. (*Ib.*, *Sub.* 4.)

§ 757. Upon the dissolution of any society or congregation, formed under the provisions of this chapter, the estate and property of such society or congregation will revert

back to the persons, their heirs and assigns, who may have given or contributed to the purchase of or payment for the same, according to their respective rights. A failure to elect or appoint trustees or other officers, at any time when by the provisions in this chapter specified such election or appointment should be made, will not work a dissolution of the society or congregation; but the trustees, wardens or vestrymen last elected or appointed will be considered as in office until another election or appointment shall take place. (*Ib.*, *Sub.* 5.)

CHAPTER LIV.

RELIGIOUS SOCIETIES IN ALABAMA—HOW INCORPORATED— POWERS OF SUCH CORPORATIONS—SUITS AGAINST, HOW COM- MENCED.

§ 758. In the State of Alabama the provisions of the statute in relation to religious societies are exceedingly simple and brief. The members of any church or religious society, wishing to become incorporated, must elect trustees not less than three or more than nine. Such trustees must, within thirty days after their election, file in the office of the judge of probate of the county a certificate, stating the corporate name selected, the names of the trustees, the length of time for which they were elected; which certificate must be subscribed by them and recorded in the office of such judge of probate; whereupon the members of such church or society, their associates and successors, become incorporated by the name specified in such certificate. (*Code of Alabama*, 1852, *Title XIV*, *Ch.* 11, *Secs.* 1257, 1258 and 1259.)

§ 759. All certificates filed under the provisions in the last
[Tr.]

preceding section specified, must be recorded in the office of the judge of probate, and a copy thereof, duly certified by such judge, stating the time when the same was filed, is made evidence of the existence of such corporation from that time. The judge of probate is entitled to a fee of two dollars for filing and recording each certificate. (*Ib.*, Secs. 1261 and 1264.)

§ 760. Corporations created as aforesaid may hold real and personal property, not exceeding in value fifty thousand dollars. They may also receive property by gift, will or devise, holding the same in conformity with all lawful conditions imposed by the donor, and may exercise such other powers as are incident to private corporations. (*Ib.*, Sec. 1262.)

§ 761. In all suits or legal proceedings the service of a summons or notice on any trustee of a religious corporation created as aforesaid, is made valid for the purpose of bringing such religious corporation into court, or for the objects of such notice. (*Ib.*, Sec. 1263.)

§ 762. All of the proceedings under the statute in this chapter referred to, are so very simple that no forms are thought necessary to be given. It will be sufficient to consult the law as it is laid down, and the forms will be readily suggested.

CHAPTER LV.

RELIGIOUS SOCIETIES IN KENTUCKY—HOW INCORPORATED—
PROPERTY HELD BY—POWERS OF THE CORPORATION—CHURCH
PROPERTY EXEMPT FROM TAXATION.

§ 763. Any three or more persons in the State of Kentucky may voluntarily associate themselves together for the purpose of erecting and maintaining churches and places for public religious meetings. Every such association must be formed by written articles, specifying the name of the corporation, the objects of the same, and the condition of membership, and must be signed by each member thereof, and will be obligatory on them, their associates, successors and assigns. (2 *R. S.* 553 and 554, *Secs. 1 and 2.*)

§ 764. The members of the society must file their articles of association with the clerk of the county in which their operations are to be carried on, who must record the same, whereupon the society will be a body politic and corporate, by the name stated in the articles of association; will have succession; may have and use a common seal, and be capable of suing and being sued, and of purchasing, taking and holding such property, and of doing such acts, not inconsistent with law, as may be necessary and proper for carrying out the objects authorized. The stock and corporate property of the corporation may be divided into shares, as the members may determine, and the manner of holding and disposing of the same must be regulated by their articles of association. (*Ib.*, *Secs. 3 and 4.*)

§ 765. The clerk or secretary of the society is required to keep a fair record of the proceedings of such society, in

a book to be kept for that purpose; and such records, or copies thereof, duly attested by the clerk or secretary of the society, and copies of the articles of association, certified by the clerk of the court wherein the same shall have been recorded as directed, may be read as evidence when the interests of the society are concerned. (*Ib.*, Sec. 5.)

§ 766. The society can exercise no powers except such as are necessary and proper for carrying out the objects of the society as hereinbefore specified, and particularly is disqualified from discounting or purchasing promissory notes or bills of exchange. The manner of dissolving the corporation may be provided for in the articles of association; but upon the dissolution, all the corporate property and funds must be applied to the payment of any debts or liabilities of the society; and for a failure so to apply them, the members of the society, at the time of such dissolution, are made individually liable for such debts or liabilities. (*Ib.* 555, Sec. 788.)

§ 767. Any person guilty of any injury to or intrusion on the building of a religious society, or the grounds and property attached thereto, is liable to be prosecuted therefor, and fined, at the discretion of a jury, in addition to the civil remedy which the society may have therefor, and the net proceeds of the recovery in any such procedure, civil or penal, are required to be paid over to the trustees of the society. And a civil action for such injuries will not be impeded by the death, resignation or removal of one or more trustees, but the same will proceed as if he or they were still acting. (*Ib.* 223, Arts. IV and V.)

§ 768. Houses of public worship, and lands held under the laws of the State by any denomination of Christians or professors of religion, for devotional purposes, to the extent

of five acres, and all church furniture and books, for the object and uses of religious worship, are exempt from taxation, and may not be listed with the assessor; and the real estate and investments devoted to churches are made exempt from taxation for State, city and town purposes. (*Ib.* 250, *Sec. 3; Laws of 1863-64, Ch. 479, Sec. 10.*)

CHAPTER LVI.

RELIGIOUS SOCIETIES IN TENNESSEE—HOW INCORPORATED—
VOTERS AND OFFICERS—POWERS—SERVICE OF PROCESS ON
RELIGIOUS CORPORATION—PROPERTY, HOW HELD.

§ 769. The members of any church or religious society in the State of Tennessee, desirous of becoming incorporated, may elect trustees, not less than three nor more than nine, who must make and execute a memorandum in writing within thirty days after such election, stating the corporate name selected, the names of the trustees, the length of time for which they were elected, and the purposes of the proposed incorporation. This memorandum must be signed, proved, registered and filed as is provided for other private corporations; and thereupon such members and their successors are created a body corporate for the period specified in such memorandum, not exceeding fifty years. (*Code of 1858, Title 9, Ch. 2, Art. III, Secs. 1467, 1468 and 1469.*)

§ 770. Each member of a religious society thus incorporated is entitled to vote at all elections one vote, and to have an equal voice in all the deliberations of the whole body. The members of the society may fix the number of trustees,

the officers of the association, their terms of service and compensation. (*Ib.*, *Sec.* 1471.)

§ 771. Any religious society thus incorporated may hold real and personal property, not exceeding in value fifty thousand dollars. It may also receive property by gift, will or devise, holding the same for the purposes of its incorporation, with all the lawful conditions imposed by the donor, and may exercise such powers as are incident to private corporations. Such religious corporation may also have succession by its corporate name for the period limited in its charter; and when no period is limited, for the longest time allowed for such incorporation, viz. : fifty years. It also has power to sue and be sued; to use a common seal, and to alter the same at pleasure; to hold, purchase, dispose of, and convey real and personal estate to the extent prescribed by law; to appoint such subordinate officers and agents as may be required, prescribe their duties, and fix their compensation; and to make by-laws for the management of its affairs. (*Ib.*, *Sec.* 1472, and *Art. IV*, *Sec.* 1474.)

§ 772. The corporate powers of a religious society may be exercised by the trustees, and a majority of such trustees form a board for the exercise of such powers. A failure to elect the trustees or other officers at the proper time, does not dissolve the corporation, but their office will hold until the election or appointment and qualification of their successors. The term of office may be fixed by the charter or by-laws of the society, but if none is so fixed, such officer will hold for one year, or until the qualification of his successor. (*Ib.*, *Secs.* 1479, 1481 and 1482.)

§ 773. The members of any religious society, acting as a corporation, will be presumed to be legally incorporated

until the contrary is shown; and no such franchise can be declared actually forfeited or null except in a regular proceeding brought for that purpose. And no church or religious society acting as such corporation will be permitted to set up the want of a legal organization as a defense to an action against it; nor can any person sued on a contract made with such corporation, or sued for an injury to its property, or a wrong done to its interests, be permitted to set up a want of such legal organization in his defense. (*Ib.*, Secs. 1484 and 1485.)

§ 774. In all suits or legal proceedings, the service of a summons or notice on any trustee of the corporation is valid for the purpose of bringing such corporation into court, or for the objects of the notice. A copy of the memorandum of incorporation, registered and filed as required, made and certified by the register or Secretary of State, to be a true copy from his office, is made receivable in evidence in any proceedings for or against the corporation. (*Ib.*, Art. III, Sec. 1473, and Art. IV, Sec. 1486.)

§ 775. Any religious denomination or society, whether incorporated or not, may take, by deed or otherwise, and hold, not exceeding five acres of land at one place for the purposes of public worship. All lands bought, or otherwise acquired, by any religious denomination or society, will be vested in a board of trustees or other persons designated by the members of such denomination or society, for the use and benefit thereof. (*Ib.*, Title 10, Chap. 1, Secs. 1508 and 1509.)

§ 776. The form of the certificate of incorporation of a religious society prescribed for the State of Iowa, will answer for the memorandum of incorporation in this State, with such changes and additions as will readily suggest

themselves by consulting the law as laid down in this chapter. No special form is thought necessary to be given in this place, but the form prescribed for the State of Iowa may be referred to. (*Ante*, Sec. 678.)

CHAPTER LVII.

RELIGIOUS SOCIETIES IN MISSISSIPPI—HOW INCORPORATED— RIGHT TO PROPERTY—POWERS OF THE CORPORATION—MAR- RIAGES BETWEEN MEMBERS OF RELIGIOUS SOCIETIES.

§ 777. Persons desiring to be incorporated as a religious society in the State of Mississippi, may prepare a charter, drawn up on parchment or paper, which must be headed "the charter of incorporation of —," and contain a clear and definite statement of the purposes for which the corporation is created, the names of the persons or designation of the inhabitants incorporated, the corporate name by which it is to be known, the powers to be exercised, the period for which such corporation is to exist, if it is to be limited in duration, together with whatever else may be necessary to be stated. The charter so proposed must be submitted to the governor for his approval, who must take the advice of the attorney-general as to the constitutionality of the provisions of such charter, and if the governor approve it, he must write his approval at the bottom of it, and sign his name thereto, and cause the great seal of the State to be affixed thereto by the Secretary of State. The governor, however, may require amendments or alterations to be made to such proposed charter previous to signing the same, or if deemed expedient by him, he may withhold his

approval entirely. (*Revised Code, 1857, Chap. 35, Sec. 1, Art. I.*)

§ 778. Upon the approval of the charter by the governor, the powers specified in such charter will be vested in the corporation, and the corporation will go into effect and operation at the time and on the terms specified, subject, however, to be repealed by the legislature of the State. In like manner the charter may be amended or renewed. In case of renewal merely, it will be sufficient for the governor to give a certificate that the original charter is renewed, under the great seal of the State. (*Id.*)

§ 779. Every charter so granted, and every amendment and certificate of renewal, must be recorded at length in the office of the Secretary of State, in a well bound book to be kept by him for that purpose; and for making such record he may charge ten cents for every hundred words. The original must be delivered to the parties, and a certified copy is made admissible in evidence in all courts of justice in the State. The Secretary of State is required to furnish such certified copy to any person demanding the same, at a like charge as for recording the original. (*Id.*, *Art. II.*)

§ 780. Every religious corporation has succession for the time limited in the charter, and if no time be limited, then perpetual succession; they may determine the manner of calling and conducting meetings, and the number of members to constitute a quorum; they may elect all necessary officers, and prescribe the salaries and terms of officers; they may sue and be sued, and prosecute and be prosecuted to judgment and satisfaction, before any court of justice in the State; they may each have a corporate seal; they may contract and be contracted with, within the limits of their corporate powers; they may sell and convey their real estate,

under their corporate seal and the signature of the president or presiding officer, and may also sell their personal estate; and they may make all necessary by-laws, not inconsistent with the laws of the State, and impose all necessary duties. (*Ib.*, Sec. 11. Art. IV.)

§ 781. The first meeting of such religious corporation, unless otherwise provided for, may be called by a notice published in some convenient newspaper, for at least ten days before the time appointed for the meeting, which notice must be signed by one or more persons named in the charter, and such meeting, when assembled, may proceed to organize the corporation. (*Ib.*)

§ 782. In addition to the foregoing facilities for incorporating religious societies in Mississippi, it is provided that any religious society consisting of the members of any particular denomination or congregation, desiring to act as an organized body, may do so by associating together, and electing or appointing, from their own body, any number of trustees or managers, by whatever name known, for the purpose of managing the affairs of the society. The society or association are required to keep a record of its proceedings, which must show the organization thereof, and the election of the trustees or managers; and any society thus organized at each particular locality, must be a distinct and independent society. Such society may sue and be sued, by their society name or appellation, and process may be served on their presiding or chief officer, or their secretary. (*Ib.*, Sec. 10, Art. LII.)

§ 783. Any religious society or congregation, or ecclesiastical body, may hold, at any one place, a house or tenement for a place of worship, with proper and reasonable ground attached thereto; a house or tenement as a place of residence

for their pastor or minister, with proper and reasonable ground thereto attached; a house or tenement to be appropriated and used as a male school, or seminary of learning, with proper and sufficient ground thereto attached; and another house or tenement, to be appropriated as a female school or seminary of learning; and a cemetery of sufficient dimensions, and no more. Though it is provided that any religious society or denomination may own such colleges or seminaries of learning as it may think proper, if used for such purposes. (*Ib.*, *Art. LIII.*)

§ 784. All lands, tenements or hereditaments, or any interest or benefit therein or therefrom, except for the purposes specified in the last preceding section, which may be given, granted, conveyed, leased or released to any religious society, denomination or congregation, either directly or indirectly, or in trust or confidence for the use or benefit of such society, either express or implied, or secret, or by the judgment of any court, or by way of lien, mortgage or pledge, are declared to be *ipso facto*, by such alienation, forfeited to the State. Nor can such society, denomination or ecclesiastical body, by any act or ingenuity, appropriate or have appropriated to its use, or for its benefit, or to its disposition, any present or future interest in lands, tenements or hereditaments other than to the extent above mentioned; nor can any such society evade this provision, by any device or subterfuge, in taking or holding more land for any of the purposes above mentioned than is necessary. (*Ib.*, *Art. LIV.*)

§ 785. Every devise or bequest of lands, tenements or hereditaments, or any interest therein, of freehold or less than freehold, either present or future, vested or contingent, or of any money directed to be raised by the sale thereof, contained in any last will and testament, or codicil,

or other testamentary writing, in favor of any religious or ecclesiastical corporation, sole or aggregate, or any religious or ecclesiastical society, or to any religious denomination or association of persons, or to any person or body politic, in trust, either express or implied, secret or resulting, either for the use and benefit of such religious corporation, society, denomination or association, or for the purpose of being given or appropriated to charitable uses or purposes, is declared to be null and void, and the heir-at-law will take the same property so devised or bequeathed, as though no testamentary disposition had been made. (*Ib.*, Art. LV.)

§ 786. Every legacy, gift or bequest of money or personal property, or of any interest, benefit or use therein, either direct, implied or otherwise, contained in any last will and testament, or codicil, in favor of any religious or ecclesiastical corporation, sole or aggregate, or any religious or ecclesiastical society, or to any religious denomination or association, either for its own use or benefit, or for the purpose of being given or appropriated to charitable uses, is declared null and void, and the distributors are required to take the same as though no such testamentary disposition had been made. (*Ib.*, Art. LVI.)

§ 787. It is made lawful for a pastor of any religious society in the State, to join together in marriage such persons as are of the society, according to the rules and customs established by the society; and the clerk or keeper of the minutes, proceedings, or other books of the religious society, wherein such marriage may be had and solemnized, is required to make a true and faithful register of all marriages solemnized in the society, in a book kept by him for that purpose, and return a certificate of the same to the clerk of the probate court of the county to be by him recorded, and such books are made evidence. (*Ib.*, Ch. 40, Sec. 1, Arts. II and III.)

CHAPTER LVIII.

RELIGIOUS SOCIETIES IN LOUISIANA—HOW INCORPORATED—
CHARTER HOW AMENDED—POWERS OF SUCH CORPORATIONS—
RESTRICTIONS UPON—LIABLE TO BE SUED—QUALIFICATION
OF TRUSTEES.

§ 788. Whenever any number of persons in the State of Louisiana, exceeding six, may be desirous of forming themselves into a corporation or body politic for religious purposes, and to acquire and enjoy the rights, privileges and powers of a body corporate and politic in law, it is made lawful for such persons to prepare and sign an instrument, either in an authentic form or under private signature, wherein they must declare and specify the purposes and objects of such corporation; the name, style and title thereof; the place chosen for its domicil, the manner in which the managers and officers of such corporation are to be chosen, the officer on whom citations may be served, and the length of time during which the corporation shall exist and continue. See § 678 for a guide for a form for the corporate instrument. (*Revised Statutes, 1856, Tit. Corporations, Sec. 1.*)

§ 789. The act of incorporation above provided, must be handed to the district attorney of the district in which the domicil is fixed, for examination as to its legality, and should he be of the opinion that the purposes and objects of the corporation, as specified in said act, are legal, and that none of the provisions therein contained are contrary to law, he is required to indorse his opinion to that effect thereon. The act, together with the opinion of the district attorney, must then be recorded in the office of the parish recorder,

or other officer performing the duties of parish recorder, which act, when so recorded, will constitute the subscribers to the same, and their associates and successors, a body politic and corporate, for the purposes and objects declared and contained in the act, and will have continuance and succession by the name, style and title as set forth in the act, and a copy of such act, duly certified by the officer in whose office the same is recorded, is made full and complete evidence of the contents of the original act. (*Ib.*)

§ 790. In case the district attorney neglect or refuse to give the certificate required, the applicant may take a rule on him in the district court of the parish in which it is intended for such corporation to have its domicile, to show cause within ten days from the service thereof why the applicants should not be created a corporation according to the terms and conditions set forth in the act of incorporation. Should the district judge be of opinion that the purposes and objects of the corporation, as specified in the acts, are legal, he must give judgment accordingly, a copy of which judgment must be recorded with the act in the office of the recorder of mortgages, or other officer exercising his duties in lieu of the certificate of the district attorney. (*Ib.*, *Sec. 2.*)

§ 791. When any corporation may be desirous of improving, amending or altering the articles and conditions upon which the corporation may be incorporated, it is made lawful for such corporation in like manner to draw up an act specifying and containing the alterations, improvements or amendments which they may desire to make to the original act of incorporation, which act must be handed to the district attorney for his opinion as to the legality of the alterations, amendments or improvements proposed, and he must give his opinion touching the legality of the same; and in

case of the refusal or neglect of the district attorney to give the certificate required, the parties may take rule on him to show cause, as in the last preceding section specified. The certificate of the district attorney, or opinion of the judge, must be recorded in the manner and form in this chapter specified. (*Ib.*, *Sec. 3.*)

§ 792. Such religious corporation will have full power and authority to make, have and use a common seal, with such device and inscription as it shall deem proper, and the same to break, alter and amend at pleasure; and by the name, style and title provided and declared as aforesaid, is made capable in law to sue and be sued, and is authorized and empowered to make rules, by-laws and ordinances, and to do every thing needful for its good government and support, not repugnant to the Constitution and laws of the United States, to the Constitution and laws of the State, or to the instrument upon which the corporation is formed and established. (*Ib.*, *Sec. 4.*)

§ 793. Such corporation is also made capable in law, according to the terms and conditions upon which the same is formed and established, to take, receive and hold all manner of lands, tenements, rents, and hereditaments, and any sum of money, and any manner and portion of goods and chattels, given and bequeathed unto it or acquired by it in any manner, to be employed and disposed of according to the objects, articles and conditions of the instrument upon which such corporation is formed and established, or according to the articles or by-laws of such corporation, or by the will and intention of the donors. (*Ib.*, *Sec. 5.*)

§ 794. No such religious corporation, however, can hold property of a value exceeding three hundred thousand dollars; and no church corporation or minister of the Gospel,

for himself or the benefit of a church corporation, is allowed to accept a bequest made *in articulo mortis*. (*Ib.*, *Sec. 6.*)

§ 795. In all cases where a religious corporation as well as other corporations, shall commit trespass, or do any thing for which an action for damage lies, such religious corporation is made liable to be sued in the parish where such damage may be done or trespass committed. (*Ib.*, *Sec. 42.*)

§ 796. Religious corporations in this State are organized and incorporated in the same manner, and for the most part enjoy the same privileges, and are liable to the same conditions as corporations for literary, scientific and charitable purposes. (*Ib.*, *Sec. 1.*)

§ 797. Whenever the charter of any religious corporation shall be declared forfeited by a competent court, the district attorney of the district is required forthwith to inform the governor of the fact, who must thereupon appoint a liquidator to take charge of and liquidate the affairs of the corporation, as in case of insolvencies of individuals. In case of death, resignation or removal of any liquidator so appointed, the governor must fill the vacancy; and in case of refusal of any person appointed to act as liquidator, the governor must appoint the district attorney of the district, who will not be required to give bond or security. (*Ib.*, *Sec. 48.*)

§ 798. When church membership is a necessary qualification of the trustees who are to manage the affairs of the corporation, a trustee who withdraws himself from the church and joins a church of another denomination, which latter church prohibits a connection by its members with the former, such trustee will be considered as having abandoned his office of trustee, and as having no further interest in the pro-

perty of the church he has left. No act of the board of trustees of a religious society can be done affecting the ownership of property, except by a resolution of the board when regularly constituted and sitting in consultation. (*Ross v. Crockett*, 14 Lou. An. R., 811.)

CHAPTER LIX.

RELIGIOUS SOCIETIES IN ARKANSAS—NO RELIGIOUS CORPORATIONS—SOCIETIES RECOGNIZED—TRUSTEES HAVE POWERS.

§ 799. They have no religious corporations in the State of Arkansas under any general incorporating act, though religious societies and churches are recognized and protected in their rights.

§ 800. All lands and tenements, not exceeding forty acres, which may be conveyed by purchase, to any person or persons as trustee or trustees, in trust for the use of any religious society within the State, either for a meeting-house, burying-ground, camp-ground, or residence for their preacher, are made by statute to descend, with the improvements and appurtenances, in perpetual succession, in trust to such trustees as may from time to time be elected or appointed by any such religious society, according to the rules and regulations of such society. (*Digest of Stat. of 1858, Ch. 144, Sec. 1.*)

§ 801. The trustee or trustees, for the time being, of any religious society, elected or appointed as aforesaid, are declared to have and possess the same power to defend and

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prosecute suits at law or in equity, and do all other acts for the protection, improvement and promotion of such property, as individuals may do in relation to their individual property. (*Ib.*, *Sec. 2.*)

§ 802. If any person shall wilfully and maliciously injure or destroy any church, meeting-house, or camps on any camp-ground used for public worship, or any furniture appertaining thereto, such person is deemed guilty of a misdemeanor, and on conviction, in addition to the penalty prescribed, the jury must assess the damages sustained by any such religious corporation or society, and the court is required to enter judgment against the offender in favor of such congregation or society for double the damages found by the jury. (*Ib.*, *Ch. 51, Art. VI, Sec. 4.*)

CHAPTER LX.

RELIGIOUS SOCIETIES IN TEXAS—HOW INCORPORATED—MODE OF PROCEEDING—TRUSTEES—LANDS OF, EXEMPT FROM TAXATION—TITLE TO CERTAIN PROPERTY CONFIRMED.

§ 803. In the State of Texas religious societies are incorporated by a very plain and simple method. Any denomination of christians, or citizens of any neighborhood, may appoint a board or boards of trustees for meeting-houses, camp-grounds, parsonages and school-houses. (*Digest of Laws of 1859, Art. 2062.*)

§ 804. Each denomination is allowed to adopt its own method of appointing trustees. When any church or deno-

mination of christians shall make an appointment of trustees, a certificate of their appointment must be made out and signed by the proper officer or officers of the church or denomination making the appointment. Within sixty days after such appointment of trustees, the certificate of appointment, signed as aforesaid, must be forwarded to the office of the recorder for the county in which such appointment shall have been made, for the purpose of having it recorded. (*Ib.*, *Art.* 2063.)

§ 805. All vacancies in boards of trustees must be filled by the church or denomination having jurisdiction in the case. If any board of trustees should happen to be dissolved by death, resignation or otherwise, it is made lawful for the church or denomination having jurisdiction in the case to appoint a new board of trustees in the manner hereinbefore indicated in this chapter. (*Ib.*, *Art.* 2064.)

§ 806. When a board of trustees shall be constituted as aforesaid, they are declared to be considered in law and equity, a body politic and corporate, and capable of making contracts, of suing and being sued, of pleading and being impleaded, of receiving and holding (in trust) lands and other property for the purpose of building meeting-houses, camp-grounds or parsonages for the benefit of the church or denomination appointing them; and in all cases such trustees are made accountable to the power appointing them for the faithful performance of their duty; and the church or denomination having jurisdiction may remove them from office at any time for delinquent conduct. (*Ib.*, *Art.* 2065.)

§ 807. All lands, not exceeding ten acres in each case, held by such trustees for any one or all the purposes named, together with the buildings, improvements and furniture

belonging to the same, are declared free from taxation. (*Ib.*, Art. 2066.)

§ 808. All lands or other property conveyed to any church or denomination of christians, for the purposes named, before the passage of the act of the legislature, in this chapter referred to, may be enjoyed with all the benefits given by the said act, except that the amount of land exempt from taxation must not exceed ten acres in each case. (*Ib.*, Art. 2067.)

§ 809. It is made the duty of the president of the trustees of each church or denomination of christians to give in the lands or other property for taxation belonging to such trustees, under oath, except such as may be exempt as aforesaid. (*Ib.*, Art. 2068.)



CHAPTER LXI.

RELIGIOUS SOCIETIES IN CALIFORNIA—HOW INCORPORATED—THE TRUSTEES OR DIRECTORS AND THEIR POWERS—CORPORATE PROPERTY HOW SOLD OR MORTGAGED—CORPORATE ESTATE LIMITED—TRUSTEES TO RENDER ANNUAL ACCOUNT FOR TRUST PROPERTY—THE BISHOP, CHIEF PRIEST, ETC., TO BE SOLE CORPORATION IN CERTAIN CASES—PROOF OF APPOINTMENT.

§ 810. In the State of California it is made lawful for all churches, congregations and religious societies, by such rules or methods as their rules, regulations or discipline may direct, to appoint or elect any number, not less than three nor more than fifteen, as trustees or directors, to take charge of the estate and property belonging thereto, and to transact all affairs relative to the temporalities thereof. (*Wood's Digest of Laws, Chapter VI, Sec. 175.*)

§ 811. Upon the appointment or election of such trustees or directors, a certificate of such appointment or election must be executed by the person or persons making the appointment, or the judges holding the election, stating the names of the trustees or directors, and the name by which the said trustees shall thereafter forever be called and known. The certificate must be acknowledged by the persons making the same, or proved by a subscribing witness thereto, before some officer authorized to take the acknowledgment of deeds, and recorded, together with the certificate of such acknowledgment or proof, by the clerk of the county within which such church, congregation or religious society shall be situated. (*Ib.*, Secs. 176 and 177.)

§ 812. The trustees or directors may have a common seal, and may alter the same at pleasure; they may take into their possession and custody all the temporalities of such corporation, whether the same consist of real or personal estate, and whether given, granted or devised, directly or indirectly, to such society, or to any person or persons for its use; they may sue and be sued; may recover and hold all the debts, demands, rights and privileges, all churches, burying-places, bells, school-houses, hospitals or other buildings, all the estates and appurtenances belonging to such society; they may have, lease and improve the same, erect all houses or buildings that are necessary to carry out the objects of the society, and perform all duties imposed on them by the regulations, rules or discipline of such organization. (*Ib.*, Sec. 178.)

§ 813. It is made lawful for the district court, within and for the county in which any such corporation shall have been constituted, on the application of such corporation, and on its satisfactorily appearing to such court by competent proof, by affidavit or otherwise, that due notice, by personal ser-

vice or by publication in some newspaper, as the said court or judge thereof shall direct, has been given to all persons interested in the matter, and that it will be to the benefit, interest and advantage of such church, congregation or religious society to make an order for the sale or mortgage of any real estate belonging to such corporation, or for the confirmation of any contract under which a valid lien may attach to said property; and it is made lawful for any member of such church, congregation or religious society to oppose, by affidavit or otherwise, the granting of such order; and it is also made lawful for the said court, at the time of making such order directing the execution of a mortgage, also to make a further order, allowing such corporation to make and deliver with such mortgage a bond or promissory note, under the corporate seal, and in the corporate name of such corporation, as evidence of the indebtedness, to recover which such mortgage is directed to be made; and it is made the duty of the court, when granting such order or orders, to direct therein the application of the moneys arising from such sale, or procured under such contract, or upon such security as it shall be made to appear to said court would be for the interest and advantage of such church, congregation or society. (*Ib.*, Sec. 179, as amended by Act of March 7, 1859.)

§ 814. All lands and hereditaments that have been or may be lawfully conveyed by devise, gift, grant, purchase or otherwise, to any persons as trustees in trust for the use of any such organization, are made to descend, with the improvements, in perpetual succession to, and are declared to be held by such trustees, in trust for such organization, provided the amount of real estate held by such society must in no case exceed four whole lots in a town or city, or twenty acres in the country; and the annual income of the real and personal property held in trust for such organiza-

tion must not exceed the sum of twenty thousand dollars. (*Ib.*, *Secs.* 181 and 182.)

§ 815. It is made the duty of such trustees annually to make a full report of all property, real and personal, held in trust by them, and the condition of the corporation, to the society by which they were appointed or elected, a copy of which report must be filed in the county clerk's office, where the original certificate is filed, with an affidavit of the truth of such report, and also that such corporation has not been engaged, directly or indirectly, in any other business than such as is set forth in the original certificate on file. (*Ib.*, *Sec.* 183.)

§ 816. Whenever the rules, regulations and discipline of any religious denomination, society or church require, for the accommodation of the temporalities thereof, and the management of the estate and property thereof, it is made lawful for the bishop, chief priest or presiding elder of such religious denomination, society or church to become a sole corporation, in the manner prescribed in this chapter, as nearly as may be, and with all the powers and duties, and for the uses and purposes in this chapter stated for religious incorporations, and subject to all the conditions, limitations and provisions in this chapter prescribed. For proof of the appointment or election of such bishop, chief priest or presiding elder, it is made sufficient to record with the county clerk of the county in which such bishop, chief priest or presiding elder resides, the original or copy of his commission, or certificate, or letters of election or appointment, duly attested; and all property held by such bishop, chief priest or presiding elder is declared to be in trust for the use, purpose and behalf of his religious denomination, society or church; and the limitations in section eight hundred and fourteen will not apply to such sole corporation.

The district judge of the district in which any religious incorporation is formed, must at all times have access to the books of such incorporation. (*Id*, *Sec.* 184.)

CHAPTER LXII.

RELIGIOUS SOCIETIES IN RHODE ISLAND, WEST VIRGINIA, SOUTH CAROLINA, NEVADA AND OREGON—NO GENERAL ACT FOR INCORPORATING RELIGIOUS SOCIETIES IN THOSE STATES—IN SOME OF THEM RELIGIOUS CORPORATIONS PROHIBITED—IN ALL OF THEM RELIGIOUS SOCIETIES RECOGNIZED AND PROTECTED—THE COMMON LAW OF TRUSTS APPLICABLE—FEW-HOLDERS IN RHODE ISLAND—BOARDS OF TRUSTEES IN OREGON.

§ 817. They have no general laws for the incorporation of religious societies in the States of Rhode Island, West Virginia, South Carolina, and Nevada, and in some of these States the fundamental law actually prohibits the incorporation of religious societies even by the legislature. In all of these States, however, religious societies are recognized, sanctioned and protected, and in some of them statutes are found granting important rights and privileges to unincorporated religious societies and Christian churches of different denominations. In several of these States religious societies are incorporated under special charters granted by the law-making power, and in all of them churches and the institutions of religion may be sustained under the provisions of the common law upholding trusts for pious uses and religious and charitable purposes.

§ 818. The law of charities was, at a very early period in English judicial history, engrafted upon the common law,

the general maxims of which were derived from the civil law, as modified by the ecclesiastical element introduced with Christianity, and the same principles have been adopted, with more or less force, in all of the United States, and regarded as applicable to trusts for pious and religious purposes. Gifts, donations and grants may, therefore, be legally made to trustees for the use and benefit of a Christian church and society, or for the support of the gospel ministry in connection with any particular church. Any person capable of disposing of his property can create a trust for such a purpose, and if the trust is properly created, it will not fail for the want of a trustee, as it is a rule in equity to which there is no exception that a court of equity never wants a trustee. This is an important principle, and is often called into requisition in these States, where the religious churches and gospel ministry must be sustained without the aid of corporate charters. The institutions of religion being regarded as greatly essential to the well-being of a State, these trusts for pious and religious purposes are looked upon with great favor by the courts.

§ 819. It is only necessary that the gift, devise or grant be made to trustees capable of taking the legal estate, and that the objects of the trust be definite and capable of being ascertained; and although conveyances, devises and bequests for charitable and religious uses be defective for want of a grantee or donee capable of taking, they will be supported by a court of equity. This is the well-settled doctrine in England, and is generally recognized by the courts of equity in this country. It has been held, therefore, that a bequest for the benefit of poor ministers of a specified religious denomination is valid, though it does not appoint the trustees of the fund; and it was further held in the same case that it was competent for the testator to empower the executors and trustees of his will to designate

the first trustees of such fund; and that, if it were otherwise, the trust would remain, and the court of chancery would appoint the trustees. (*Shotwell, Executor, v. Mott*, 2 Sand. Ch. R. 46.)

§ 820. It has been also held that when a trust is created by deed, for the use of a congregation of Christians, designating such congregation by the name of a sect or denomination, without any other specification of the religious worship intended, that the intent of the donors or founders in that respect may be implied from their own religious tenets, from the prior and contemporary usage and doctrines of the congregation, and from the usage, tenets and doctrines of the sect or denomination to which such congregation belongs. And further, that in ascertaining the early and contemporary usage and doctrines of such sect, resort may be had to history, and to standard works of theology of an era prior to the existence of the dispute or controversy. (*Kniskern v. The Lutheran Churches of St. John's and St. Peter's*, 1 Sand. Ch. R. 439.)

§ 821. The same doctrines have been enunciated and confirmed in the courts of all or most of the States, and therefore churches are not so destitute of the power of support in those States where religious corporations are not sanctioned as might be imagined. The common law doctrine of trusts for charitable and religious purposes, affords very tolerable facilities to churches and religious societies for the support of divine worship and the gospel ministry. "In every case of charity," said Lord LYNDHURST, "whether the object of the charity be directed to religious purposes or those purely civil, it is the duty of the court to give effect to the intent of the founder, provided this can be done without infringing any known rule of law." (*Attorney-Gen. v. Shore*, 7 Sim. 290.)

§ 822. The extent of the powers of a trustee in the control and management of charities depends upon the terms of the instrument upon which the trust is founded; it is, therefore, of great importance that the instrument creating a trust for religious purposes should be clear, full and explicit in regard to the objects of the trust, and the duties and powers of the trustee concerning it. Should any question, however, arise from the wording of the trust, or from any change in the property, or alteration in the circumstances not clearly defined or provided for by the founder, it is the duty and privilege of the trustee to apply to the court for direction, and it will be cheerfully and authoritatively given. (*Attorney-Gen. v. Norwich*, 16 *Sim.* 225.)

§ 823. The general law of pious and charitable uses is in force, to a greater or less extent, in all of the United States, and should be understood, both in those States where they have incorporated religious societies and where religious incorporations are forbidden. In the State of New York, where ample laws exist for the incorporation of religious societies, it has been held that a conveyance to certain individuals, of the site of a certain church, in trust for the use of the ministers, elders and deacons of such church and their successors, and to have a house of public worship erected thereon and for no other use whatever, was a valid conveyance, at the common law, to a charitable and pious use; and the late Court of Chancery claimed to have original jurisdiction to enforce the performance of the trust. (*Dutch Church in Garden St. v. Mott*, 7 *Paige* 77.)

§ 824. This principle of trusts for charitable and religious purposes is, of course, of much more practical importance in those States where they have no religious corporations, and where they are, therefore, dependent, in a great measure, upon these trusts for the support of the gospel ministry and

religious institutions, than in the large majority of the States, where religious societies may become incorporated and enjoy corporate franchises and privileges, and yet the doctrine is in frequent requisition in all the States and should be well understood.

§ 825. In the State of Rhode Island they have no general act providing for the incorporation of religious societies, although religious societies may be chartered by the General Assembly, and obtain all the powers and benefits of corporations. The rights, powers and privileges, however, of each society must be determined by the provisions of its charter. In that State it has been held that a pew-holder in a church whose deed from the society, before it was incorporated, expressly subjected his pew to all rates and taxes imposed thereon by the trustees, for expenses and repairs, cannot object to the repeal, without his assent, of a clause in the charter, subsequently obtained, which required the assent of a majority of the pew-holders to the imposition, by the trustees, of any pew tax, where the General Assembly expressly reserved the power in the charter to alter, amend or repeal it at pleasure. (*Baily v. Trustees of Power St. M. E. Church*, 6 R. I. Rep., 491.)

§ 826. In the State of Oregon, any church or religious society desiring to incorporate for the purpose of carrying out the objects of such church or society, may do so. Three or more of the officers or trustees of the church or society, chosen, elected or appointed according to its usages and regulations, must make and subscribe written articles of incorporation in triplicate, and acknowledge the same before some officer authorized to take acknowledgment of deeds, and file one of such articles in the office of the Secretary of State, another in the clerk's office of the county where the church or society is located, and retain the third in the

possession of the association; which articles, or a certified copy of the one filed in the office of the Secretary of State or county clerk, will be evidence of the existence of the corporation. The articles of incorporation must specify the name assumed by the corporation, the duration of the same, if limited, the objects of the same, the estimated value of property and money possessed by the church or society, at the time of making such articles, and the sources of revenue or income; the title of the officers or trustees making the articles, and the mode and times of the election of their successors in office, and the location of such church or society. When such articles are made and filed, the church or society will be deemed a body corporate, with the usual powers of religious corporations; though no one religious corporation in the State can ever hold or possess property, including money and assets, amounting in value to more than five hundred thousand dollars. (*General Laws of Oregon, 1845-1864, Ch. 4.*)

CHURCH GOVERNMENT AND CREEDS.

CHAPTER LXIII.

CHURCHES IN THE UNITED STATES — WHAT IS A CHURCH —
WHAT A PARISH — ARTICLES OF FAITH OF THE VARIOUS
CHURCHES — DIFFERENT FORMS OF CHURCH GOVERNMENT.

§ 827. Although the peculiar tenets and polity of the church as a spiritual body, are not necessarily involved in an exposition of the law of religious societies as temporal bodies, it is thought not incongruous, and that it might be agreeable and interesting to have the faith and church government of the various religious denominations grouped together and briefly explained, so that a general knowledge of the subject may be obtained without trouble or labor. Our courts disclaim all right to interfere with the religious beliefs of any person, or to prevent the full enjoyment, by every citizen, of all the rights of conscience secured by the fundamental law of the land; and yet it becomes necessary sometimes to examine into the faith and usages of the church proper, in order to determine legal rights in connection with the temporal concerns of the society.

§ 828. A church is defined to be an association of professors of religion, adopting one creed, and organized under the same ecclesiastical government, and using the same ritual and ceremonies. The Christian church is the society

of those who profess the religion of Jesus Christ, and is the prevailing church of the United States. A particular church consists of professing Christians, with their offspring, voluntarily associated together for divine worship and godly living, agreeably to the Holy Scriptures, and submitting to a certain form of government. To constitute a member of any particular church therefore, there must be a profession of its faith, and a submission to its government. (*Baptist Church in Hartford v. Witherell*, 3 Paige, 296.)

§ 829. Mr. Wise, an early writer on the subject, defines a particular church to be "a society of Christians uniting together in the same place, under their proper pastors, for the performance of religious worship and the exercising of Christian discipline, united together by covenant." *Parochia* or parish, he says, signifies, in a church sense, "a competent number of Christians dwelling near together and having one bishop or pastor or more set over them." Therefore, parish in this sense, is the same with a particular church or congregation; and this, he observes, is plainly agreeable with the use, custom, and platform of the New England churches. Such was the church in the early times of Christianity, and such it is presumed was the church as understood by our ancestors, in the first settlement of this country; for one great object in separating from the established church was, that they might restore the simplicity of the primitive Christian churches. (*Barber v. Fales*, 16 Mass., 498.)

§ 830. As what are familiarly known as the Arminian and Calvinistic doctrines are involved in most of the creeds of the churches of the United States, it will be convenient in the first place to explain what those distinguishing doctrines are. The Calvinistic system has been reduced to five articles or points, which are predestination, particular re-

demption, total depravity, effectual calling and the certain perseverance of the saints. This system maintains that God has chosen a certain number from the foundation of the world unto eternal glory, according to His immutable purpose, and of his free grace and love, without the least foresight of faith, good works, or any conditions performed by the creature; and that the rest of mankind He was pleased to pass by, and ordain to dishonor and wrath for their sins, to the praise of His vindictive justice; that though the death of Christ be a most perfect sacrifice and satisfaction for sins, yet it was the will of God that Christ, by his blood, should efficaciously redeem all those, and those only, who were from all eternity elected to salvation, and given to him by the Father; that mankind are totally depraved in consequence of the fall of the first man, but that all whom God has predestinated unto life, He is pleased in His appointed time effectually to call by His word and spirit out of that state of sin and death in which they are by nature, to grace and salvation by Jesus Christ; and finally, that those whom God has effectually called and sanctified by His spirit, will never ultimately fall from a state of grace. Such is the substance of the distinctive features of this system, though the system embraces in it the doctrine of three co-ordinate persons in the God-head in one nature, and of two natures in Jesus Christ, forming one person; and, also, justification by faith alone, or justification by the imputed righteousness of Christ, form an essential part of the system.

§ 831. The Arminian theory differs from the Calvinistic principally with regard to free will, predestination and grace, and succinctly stated is, that God from all eternity, determined to bestow salvation on those who he foresaw would persevere to the end; and to inflict everlasting punishments on those who should continue in their unbelief and resist His divine succors; that Jesus Christ, by his sufferings

and death, made an atonement for the sins of all mankind in general, and of every individual in particular, although none but those who believe in Him can be partakers of divine benefits; that true faith cannot proceed from the exercise of our natural faculties and powers, nor from the force and operation of free will, and that, therefore, in order to man's conversion and salvation, he must be regenerated and renewed by the operation of the Holy Ghost, which is the gift of God through Jesus Christ; that this divine grace, or energy of the Holy Ghost, begins and perfects everything good in man, and is offered to all, but may be resisted and rendered ineffectual by the perverse will of the impenitent sinner; and finally, that God gives to the truly faithful who are regenerated by his grace the means of preserving themselves in this state, although the regenerate may lose true justifying faith, fall from a state of grace and die in their sins. The Arminian and Calvinistic theories agree in what is familiarly known as the doctrine of the Trinity.

§ 832. The Protestant Episcopal church of the United States is an offshoot from the church of England, and like that, its government is episcopal; which is a form of church government in which diocesan bishops are established as distinct from, and superior to priest, presbyters or other clerical officials. The bishop has the spiritual government of the diocese, sets apart and ordains the presbyters or priests and the deacons, confirms all the members, and consecrates all the churches. The rector of each church may be called by the vestry, though the choice must be nominally approved by the bishop. The rector has the entire superintendency and control of the spiritual affairs of his church, and the discipline of its members, subject in all cases to an appeal to the bishop of the diocese. In each diocese there is an organized convention, consisting of the bishop, the clergy and lay delegates chosen by the people. This

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convention provides for all the details of local and specific legislation. All of the dioceses in the United States are organized into a general convention which meets triennially, and consists of all the bishops in the actual exercise of episcopal jurisdiction, and of clerical and lay delegates chosen from each diocese by its convention. They sit in two houses, and a concurrence of both houses is necessary for the passage of any canon or law of the church, and if it is asked, there must be a concurrence of the three orders, bishops, priests and laity, in order that any measure may become a law and binding on the church.

§ 833. The Episcopalians of this country are for the most part Arminian in doctrine, though many of them are Calvinistic in their tenets, and a considerable number do not agree with either system to the fullest extent, and more especially upon the doctrine of election. These latter believe in individual ecclesiastical election, having no reference to final salvation; that is, that when the individual is legally baptised, he is elected into the privileges of grace, and that is all there is of election. They have a highly cultivated and talented clergy, who are generally fastidious in regard to their church polity and faith. They have a written or printed liturgy, containing their service and manner of performing it, to which they all render obedience in their public devotion.

§ 834. The Presbyterian church is a large and influential denomination, governed by presbyteries, or associations of ministers and ruling elders, possessed of equal powers, with no superiority, either in office or order. The government of each church is administered by the session, consisting of elders chosen by the church, together with the minister. The next judicatory is the presbytery, composed of the ministers and one elder from each church within a given district, wherein there must be at least three churches. This

body licenses, ordains and disciplines ministers, organizes churches, receives appeals from the sessions, and reviews their proceedings. The next judicatory is the synod, consisting of all the ministers, and one elder from each church, in a district embracing at least three presbyteries. The synod reviews the proceedings of the presbyteries and receives appeals from them. The next and highest judicatory is the general assembly, the bond of union over the whole, and the ultimate resort in the way of reference or appeal. In this body the presbyteries are represented by one minister and one ruling elder for every twenty-four ministers belonging to the presbytery. Every presbytery however is entitled to be represented by one minister and one elder. The great Presbyterian family in the United States is somewhat divided, but they are all governed by a similar church polity.

§ 835. Presbyterians are Calvinistic in doctrine, and adopt a confession of faith, which they believe to be taught in the Scriptures, though great liberality is exercised in admitting and retaining their members in communion, so long as they submit to the discipline of the church. There is a diversity of opinion among the ministers and membership, on many points which they deem not materially to affect the system of doctrine which they adopt. Without an exception, however, they hold one system of doctrine in opposition to Deism, Universalism, Unitarianism in all its phases, Antinomianism and Popery. In a word, Presbyterians believe in the guilty and lost condition of all men without a Saviour; the Supreme Deity, Incarnation and Atoning Sacrifice of Jesus Christ, the only Saviour of the world; the necessity of regeneration by the Holy Spirit, repentance, faith and holy obedience, in order to salvation; the immortality of the soul, and the retributions of the judgment in the eternal punishment of the wicked and salvation of the righteous; that there is but one only living and true God, who is infinite

in being and perfection, but that there are three persons in the Godhead, of one substance, power and eternity, the Father, the Son and the Holy Ghost; that God, from all eternity, did ordain whatsoever comes to pass, yet so, as thereby neither is God the author of sin, nor is violence offered to the will of the creature; that all those whom God has predestinated unto life, and those only, he is pleased effectually to call out of the state of sin and death to grace and salvation; and that all who have been effectually called and accepted, can neither totally nor finally fall away from the state of grace, but will certainly persevere therein to the end, and be eternally saved.

§ 836. The Congregationalists or Independents maintain, as a fundamental principle, that every society of believers united for religious fellowship and Christian worship is a perfect church within itself, and possesses full power to regulate its own affairs, and should be independent of all external control. They, therefore, reject all church government except that of a single congregation, under the direction of one pastor, with elders, associates, or managers; councils may be called for the purpose of licensing, ordaining, and installing ministers, and also to advise in matters of difficulty or discipline between members of the same church, or of different churches; and also for advising and acting on the dissolution of the pastoral relation; but Congregationalists insist that all ecclesiastical authority proceeds directly from the church, in its organized capacity, and that all associations, consociations, and councils are only advisory in their nature, and have no power arbitrarily to bind any given church by their action. The religious belief of the orthodox or evangelical Congregationalists is understood to be precisely similar to that of the Presbyterians.

§ 837. The Reformed Protestant Dutch church occupies a

sort of middle ground between high church Presbyterianism and old-fashioned Congregationalism. Its government is fixed by a constitution, to which every member, minister, church, and ecclesiastical body is subject. All communicants are required to pledge their fealty, and all pastors are obliged to subscribe to this constitution. None of the features of the constitution can be changed, except by a vote of two-thirds of all the classis. The officers of the church are the elders and deacons, who compose the consistory, and may be chosen in either one of three ways—by a free ballot, a choice between two sets of candidates, or by an open nomination made by existing officers, to be ratified by the church after three publications. The church may adopt any one of these modes of electing their officers; but, once adopted, it cannot be changed except by consent of classis. The officers serve for a term of two years, when they must be re-elected or superseded by others. The elders are spiritual officers, ordained to be assistants to the pastor in the spiritual care and government of the church. The deacons have charge of the poor and the domestic finances of the church. A classis or presbytery consists of at least three churches, and is partly conventional and partly a delegate body. Each church sends its pastor and one elder, chosen by its consistory, to the classical meeting, which convenes twice a year. Then there is the general synod, composed of the ministers and elders of each classis. This body meets every year, and has supreme legislation and judicial authority over all the churches, boards, and institutions under its care and belonging to the denomination. The articles of faith of the Reformed Protestant Dutch church are precisely similar to those of the Presbyterians.

§ 838. The Methodist Episcopal church is a large denomination in the United States, whose church polity is that of an episcopacy, and only one condition is required of those

seeking admission into the church; and that is, a desire to flee from the wrath to come and be saved from sin; this desire must be evidenced by good works, attending upon the ordinances of God, and a blameless life. They prefer the Episcopal mode of church government, and have an unalterable rule, putting it out of the power of the highest church judicatory to do it away; although episcopacy, as practiced by them, is in a modified form from that which prevails in the Protestant Episcopal church. The supreme legislative power of the church is vested in a general conference, which is composed of delegates from each annual conference, and meets once in four years. The bishops are elected by this body, as also the agents of their "Book Concern," and the editors of their books and periodicals. Next below is the annual conference, which is composed of all the traveling preachers in full connection or on trial. Each annual conference appoints the place of its own sitting, but the time for the meeting is fixed by the bishops; and a bishop, if present, presides; and if not present, a member of the conference, appointed by the bishop, takes the chair. Preachers are received and stationed at the annual conference, though, in the interval of the conference, they may be received by a bishop or the presiding elder of the district until the sitting of the conference; but in no case can a preacher be received, except upon a recommendation from the quarterly conference of his circuit or station. The preachers are all stationed by the bishop at the annual conference, and no preacher must be allowed to remain in the same station more than three years successively, except presiding elders, missionaries, editors, and agents. The presiding elders are appointed by the bishops, and hold their office for four years, unless sooner removed by the appointing power. And lastly, there is the quarterly conference, composed of all the traveling and local preachers, exhorters, stewards, class-leaders, and trustees of the churches in the circuit or station, and the first male

superintendents of their Sunday schools; though they must all be members of the church, and approved by the quarterly conference. The presiding elder presides in this body, if present; if not, the preacher in charge will preside; and the quarterly conference has a general supervision over the spiritual affairs of the churches in the district. Appeals may be taken from the quarterly to the annual, and from the annual to the general conference, in all cases relating to the preachers and membership of the church. The Methodists are Arminian in doctrine; and, as a peculiarity, they generally believe that conversion and sanctification are instantaneous, and that Christians may be perfect in this life or delivered from all sin.

§ 839. The Evangelical Association, or, as it is sometimes called, the German Methodist Church, is an ecclesiastical body, whose confession of faith and church polity are very similar to that of the Methodist Episcopal church. Its members are chiefly, though by no means exclusively, Germans, or of German descent. They have their annual and general conferences. Their ministers are divided into two orders, deacons and elders, and, like the Methodists, they practice itineracy. The highest permanent order in the ministry is the eldership; for, although the society has its bishops and presiding elders, they must be selected every four years in order to be continued; and, if not selected, they hold no higher rank or privilege than that of an elder. They forbid their ministers and members the use of intoxicating liquors as a beverage, and refuse church fellowship to manufacturers and vendors of intoxicating drinks. They are Arminian in doctrine, but are charitable towards other evangelical churches, with whom they aim to cultivate a fraternal spirit.

§ 840. The Methodist Protestant church was formed by a

secession from the Methodist Episcopal church, and holds the same doctrinal views of the parent body, but differs from it in a few points of ecclesiastical government, besides rejecting episcopacy. The denomination has about the same machinery, ministers and officers as the parent church, excepting the bishop. The Wesleyan Methodist connection is also a religious body composed of seceders originally from the Methodist Episcopal communion, holding the same religious tenets as the mother church, but rejecting the episcopacy. They have adopted a church polity of their own, which is purely democratic, each church having power to act for itself, and ministerial equality is a fundamental idea with the denomination. There are one or two other non-Episcopal Methodist bodies in the United States, of more or less influence, differing from the principal denomination in little else but upon the subject of episcopacy.

§ 841. The Baptist denomination differs from other evangelical churches in little else but in certain principles connected with baptism as the initiatory ordinance of Christianity. The Baptists insist that baptism requires the immersion or plunging the whole body in water, and that mere sprinkling or the effusion of water is not baptism. They hold that none but believers are the proper subjects of baptism, and assert the positive unlawfulness of infant baptism. The person who proposes to be baptized must first of all give satisfactory evidence of repentance towards God, and faith in the Lord Jesus Christ. The church polity of the Baptists is strictly Congregational or independent. Each congregation regards itself as a complete church. Nothing that professes the character of ecclesiastical authority is admitted among them. Each church is complete in itself for the management of its internal affairs, such as the choice of officers, declaration of faith, reception, dismissal or discipline of its members. The Baptists recognize no higher

church officers than pastors and deacons. Their churches associate, invite councils for advice, and organize societies for mutual coöperation in any benevolent, educational or missionary enterprise. The general body of Baptists in the United States are Calvinists in principle, and usually unite cheerfully with other evangelical churches in every good word and work; but believing that church communion is not proper before baptism, they do not feel authorized to invite those who are not, in their view, duly baptized, to unite with them at the Lord's table, however highly they esteem them. The Baptist, with one exception, is now the largest denomination of evangelical Christians in the United States.

§ 842. Besides the general body of Baptists in the United States, there are nine smaller bodies, distinguished by peculiarities indicated by their names. The Seventh-Day Baptists differ only in the observance of the Jewish instead of the Christian Sabbath; the Free-Will and the Anti-Mission Baptists are seceders from the general fellowship on account of Arminian and Antinomian tendencies; though the former are devoted Christians, and the latter are changing their views and fast returning to the parent body. The general or six principle Baptists, the Tunkers, the Menonites, the Christian Connection, the Campbellites, or Disciples, and the Winnebrennarians, or Church of God, are union organizations, drawn from various sources, though agreeing with the Baptists generally as to the proper subjects and mode of baptism. The church polity of all these denominations is Congregational or Independent.

§ 843. The Evangelical Lutheran church of the United States differs in several material respects from the Lutherans of the old countries. In this country the Lutherans are generally regarded as Arminian in doctrine, but on many

points in the developed system now known as Arminianism the Lutheran church has no affinity with it, and on those points would sympathize far more with Calvinism. The fundamental doctrine of the denomination, as gathered from their theological writers and their "Book of Concord," is "that we are justified before God, not through any merit of our own, but by his tender mercy, through faith in his Son. The depravity of man is total in its extent, and his will has no positive ability in the work of salvation, but has the negative ability of ceasing its resistance. Jesus Christ offered a proper vicarious and propitiatory sacrifice. Faith in Christ presupposes true penitence. The renewed man co-works with the spirit of God. Sanctification is progressive, and never reaches absolute perfection in this life. The Holy Spirit works through the word and the sacraments, which alone, in the proper sense, are means of grace. Both the word and the sacraments bring a positive grace which is offered to all who receive them outwardly, and which is actually imparted to all who have faith to embrace it." The Lutherans believe in the doctrine of the Trinity, and in the eternal salvation of the righteous, and everlasting punishment of the finally impenitent. Their form of divine worship is similar to the Episcopal church. The clergymen, in their official functions, wear a distinctive dress, usually a black robe, with the bands. Persons are received to the communion of the church by confirmation performed by the pastor. The church polity of the Evangelical Lutheran church in the United States is not entirely well settled. It is neither Episcopal, Presbyterian or Congregational, but has some of the elements of each. The ministry is not an order, but a divinely appointed office, to which man must be rightly called. The government by consistories has been very general. The ultimate source of power is in the congregation; that is, in the pastor and other officers, and the people of the single communions. The people choose

their pastor, either by direct vote or by their delegated representatives. They have their synods, but synods possess only such powers as the congregations delegate to them. The constitutional powers of the general synods are very few; and it is said that the feeling is increasing that a stronger and more centralizing government is needed by the church.

§ 844. The Roman Catholic church in the United States, embraces those professing Christians in communion with the See of Rome, and acknowledge the supremacy of the Pope. The theological doctrines of the denomination are in general quite similar to those of the Protestant Episcopal church. Roman Catholics believe in the Holy Trinity, redemption by Christ, justification by faith, the popular doctrine of the fall of man, original sin, freedom of the human will, the eternal happiness of the righteous in heaven, and the everlasting punishment of the unregenerate in hell; they believe in the infallibility of the church of Rome, and the saving merits of good works, and they also believe in purgatory, where the just expiate certain offenses which do not merit eternal damnation, and where those who die with slight faults, remain for a time from the enjoyment of heaven. They hold that God wishes all men to be saved, and grants graces remotely, if not proximately, sufficient for this end; that everlasting beatitude is the reward promised by God to all who keep his commandments, and that this is bestowed gratuitously on baptised infants or others incapable of personal acts. Their church polity of course is Episcopal, and the See of Rome is regarded as the center of Catholic unity. The whole body of the baptized constitute the visible church, but the local church embraces all the faithful within a limited district. In every full organized church there is an angel or chief, and a body of elders. They also have deacons who are chosen by the people. Like the Episcopalians they have

their bishops and priests; and, with the Presbyterians, they have their pastors elders, and deacons. The general government of the church is carried on at Rome, where the Pope is assisted by the body of cardinals. The Pope appoints the bishops, on the recommendation of the local prelates, with the advice of the cardinals.

§ 845. The Unitarians are not entirely united in their religious tenets, but they all hold to the personal unity of God, in opposition to the doctrine of the Christian Trinity. They confine the glory and attributes of divinity to the Father, and refuse them to the Son and the Holy Spirit. Some of them believe the Saviour to be a man like themselves, while others, though they deny the absolute eternity of the Son, strongly contend for his pre-existence, as the Logos, or the word of God, "by whom the worlds are made," and admit, more or less explicitly, the sacrifice which he offered for sin on the cross. They all confess that Christ is called God in the Holy Scriptures, but contend that it is only a deputed title, investing him with great authority. They generally recognize the Bible as the word of God, though some of them receive portions of it with grains of allowance. They are divided upon the subject of the future punishment of the wicked, though the doctrine is discarded by the majority. Their church government is congregational and they are not over anxious with respect to the religious faith of their members, if so be, they are humane in their feelings, and exemplary in their lives and deportment.

§ 846. The Universalists, as a denomination, are distinguished by their belief in the final holiness and happiness of the whole human family. Their "Profession of Belief," which was adopted in 1803, and never since altered, is, in substance, that the Bible contains a revelation of the character of God, and of the duty, interest and final destination of

mankind. That there is one God, whose nature is love, revealed in one Lord Jesus Christ, by one Holy Spirit of Grace, who will finally restore the whole family of mankind to holiness and happiness. That holiness and happiness are inseparably connected; and that believers ought to be careful to maintain order and practice good works, for these things are good and profitable unto men. They are not particularly concerned as to the process, but are satisfied to believe that all mankind will finally be saved and enjoy unending felicities in heaven. Their church government is congregational.

§ 847. The Quakers, as a sect in the United States, believe in God, the Creator and Preserver of the Universe; in Jesus Christ, the Messiah and Mediator; in the Holy Spirit, the Sanctifier and Comforter, and in the resurrection of the body and the life everlasting; and generally in the doctrines of the evangelical churches of the country; though they have been charged with Unitarianism, which they deny. Compliments, superfluity of apparel and furniture, outward shows of rejoicing and mourning, and the observation of days and times, they esteem incompatible with the simplicity and sincerity of a Christian life; and public diversions, gaming, and other vain amusements by the world they condemn. They have no organized churches and ministry, but all, both male and female belonging to their society, who are moved by the Spirit, may speak and teach in their meetings. They have their monthly, quarterly, and yearly meetings, where all the business of their religious societies is done.

§ 848. There are several other inferior religious denominations in the United States, like the Shakers, Swedenborgians, Adventists, etc., which are not as yet sufficiently numerous to give them importance or interest. Their church polity, however, for the most part, is Congregational or Independent.

DISTURBING RELIGIOUS MEETINGS.

CHAPTER LXIV.

DISTURBING RELIGIOUS MEETINGS—LAWS AND PENALTIES IN NEW YORK—HOW ENFORCED—FORM OF PROCEEDINGS.

§ 849. Ample provisions have been made in the State of New York to protect religious societies in their worship. It is there made unlawful for any person willfully to disturb, interrupt, or disquiet any assemblage of people met for religious worship, by profane discourse, by rude and indecent behavior, or by making a noise, either within the place of worship, or so near it as to disturb the order and solemnity of the meeting. (1 *Revised Statutes*, Part 1, Ch. 20, Sec. 64; 1 *Statutes at Large*, 627.)

§ 850. It is also made unlawful for any person within two miles of the place where any religious society shall be actually assembled for religious worship to expose to sale or gift any ardent or distilled liquors, or keep open any huckster shop in any other place, inn, store, or grocery, than such as shall have been duly licensed, and in which such person shall have usually resided or carried on business. (*Ib.*)

§ 851. It is likewise made unlawful for any person within the distance of two miles of any such religious assemblage to exhibit any shows or plays, unless the same shall have

been duly licensed by the proper authorities; or to promote, aid, or be engaged in any racing of any animals; or in gaming of any description; or to obstruct the free passage of any highway to any place of public worship within the distance aforesaid. (*Ib.*)

§ 852. Any person violating any or either of these provisions of the statute, may be convicted summarily before any justice of the peace of the county, or any mayor, recorder, alderman or other magistrate of any city where the offense shall be committed; and, on such conviction, the guilty person forfeits a sum, not exceeding twenty-five dollars, for the benefit of the poor of the county. (*Ib.*, *Sec. 65.*)

§ 853. It is made the duty of all sheriffs and their deputies, coroners, marshals, constables and other peace officers, who may be present at the meeting of any assembly for religious worship, which shall be interrupted or disturbed in the manner prohibited, to apprehend the offender, and take him before some justice of the peace or other magistrate authorized to act and convict in such cases, to be proceeded against according to law. In these proceedings it is not necessary that process should actually issue against the person complained of. It is competent to a defendant voluntarily to appear and answer the complaint. (*Ib.*, *Sec. 66; Foster v. Smith*, 10 *Wend.* 377.)

§ 854. The statute further provides that all judges, mayors, recorders, aldermen and justices of the peace, within their respective jurisdictions, upon their own view of any person offending against the provisions of the statute, may order the offender into the custody of any of the officers before named, or of any official member of the church or society so assembled or disturbed, for safe keeping until

he shall be let to bail, or trial be had for such offense. (*Ib.*, Sec. 67.)

§ 855. As before stated, no warrant is indispensably necessary in such cases, but a warrant may of course be issued, and, if one should be issued, it is not necessary to state in it the circumstances which gave the magistrate jurisdiction; they may be witnessed by the magistrate, or stated on the oath of the complainant; and in case an action should be brought against the magistrate causing the arrest, for false imprisonment, the circumstances may be shown *aliunde*. If the offense is not committed within the view of the magistrate, or the offender were not taken in the act and brought before the magistrate, a regular complaint should be made on oath, and a warrant issued for the arrest and bringing the person before the court for trial. (*Atchinson v. Spencer*, 9 Wend. 62.)

§ 856. Any person complained of for any or either of the offenses aforesaid, before the court shall proceed to investigate the merits of the cause, may demand of the court that he be tried by a jury; and thereupon it is made the duty of the court to issue a venire to any constable of the county, or marshal of the city where the offense is to be tried, commanding such officer to summon the same number of jurors, and in the same manner, as is prescribed for the summoning of jurors before courts of special sessions, and the jury must be impaneled for the trial of the cause in the same manner, and subject to the same rules and regulations prescribed for trials by jury in courts of special sessions. (*Laws of 1834, Ch. 78, Sec. 1; 4 Stat. at Large, 44.*)

§ 857. Should any person convicted of any of the offenses prohibited not immediately pay the penalty incurred, with the costs of the conviction, or give security to the satisfac-

tion of the officer before whom the conviction may be had, for the payment of the said penalty, and costs, within twenty days thereafter, he must be committed by warrant to the common jail of the county until the same be paid, or for such term, not exceeding thirty days, as shall be specified in the warrant. (1 *R. S.*, Part 1, Chap. XX, Sec. 68; 1 *Stat. at Large*, 628.)

§ 858. In prosecutions for these offenses, the like fees are allowed and taken as in civil cases or suits before justices of the peace, including the costs consequent upon a trial by jury, where a jury trial is had, which must be paid by the party offending, over and above the penalties incurred, except in case of the imprisonment of the offender; and in such case no charges or fees are allowed; and in no case can the costs and fees allowed exceed five dollars over and above the costs of a jury trial. (*Ib.*, Sec. 77; 1 *Stat. at Large*, 630; *Laws of 1854*, Ch. 78, Sec. 2; 4 *Stat. at Large*, 44.)

§ 859. Whenever any of the offenses aforesaid happen in the presence of any officer before whom such offenses are triable, such officer is required to cause the offender to be brought before him, and to proceed summarily to inquire into the facts; and in all cases where the offender is found guilty, a record of conviction must be made and signed by such officer before issuing any process to enforce the same; and the conviction will be final, and can not be re-examined upon the merits in any court. The usual method of getting the offender before the magistrate for trial in such case, is to order such offender into the custody of an officer as hereinbefore specified, for safe keeping until he can be tried. (1 *R. S.*, Part 1, Ch. 20, Sec. 73; 1 *Stat. at Large*, 73; *Farrell v. Warren*, 3 *Wend.* 237, 253.)

§ 860. In a case where a person was convicted before a
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justice of one of the ward courts of the city of New York for the offense of disturbing a religious congregation assembled for divine worship, and fined, it was held that security given by such offender, for the payment of the fine, in the name of the clerk of the court in which the conviction was had, was valid; and that such security need not be in the name of the people; and further, that a misdescription of the title of office of the clerk was not material. Had the penalty incurred been paid instead of the security being given, the payment might have been made to the clerk, whose duty it would have been to take charge of the money. (*Chatfield v. Frye*, 19 *Wend.* 545.)

• § 861. A person arrested by warrant on a charge of having violated any of the provisions of the statute to prevent the disturbance of religious meetings, cannot be taken by the arresting officer before any magistrate other than the one who issued the process. The provisions of the statute authorizing persons arrested under a warrant in certain cases to be brought before the nearest magistrate, do not apply to cases for disturbing religious meetings. (*The People v. Fuller*, 17 *Wend.* 211.)

§ 862. No prosecution can be had for any of the offenses under the statute to prevent the disturbance of religious meetings, unless the same be prosecuted by the actual issuing of process to apprehend the offender, or by his actual appearance to answer the complaint, within twenty days next after the offense was committed. It is competent, as before stated, for the defendant voluntarily to appear and answer the complaint, without process being actually issued. (1 *R. S.*, Part 1, Ch. 20, Sec. 74; 1 *Stat. at Large*, 630; *Foster v. Smith*, 10 *Wend.* 377.)

§ 863. Within thirty days after the conviction is had for

the offense, the magistrate making the same is required to cause to be filed in the office of the clerk of the county a certificate of such conviction and judgment thereon, and if any fine has been collected, the amount thereof, and to whom paid. (*Ib.*, Sec. 76.)

§ 864. The following may be used as a form of the complaint for disturbing a religious meeting:

OSWEGO COUNTY, ss.

To E. S. Pardee, Esquire, Police Justice of the village of Fulton, in said county:

John Makepeace, upon his oath, complains that on the day of _____, at the village of Fulton aforesaid, James Hardcase did willfully disturb, interrupt and disquiet an assemblage of people then and there met for religious worship, in a certain house there situate, to wit, the Methodist Episcopal church, by profane discourse (or rude and indecent behavior, or making a noise in said church, or making a noise so near the said church as to disturb the order and solemnity of the meeting).

(Signed by complainant.)

Sworn to, &c.

§ 865. The following will answer for the form of the complaint against an offender for keeping a huckster shop, etc., within two miles of a religious meeting:

OSWEGO COUNTY, ss.

To H. M. Barrett, Esq., a Justice of the Peace of said county:

Jacob Goodman, upon his oath, complains that on the day of _____, near the house of A. B. in said town, a religious society was actually assembled at a camp-meeting for purposes of religious worship, and that while the said religious society were so assembled for the purposes aforesaid, Richard Outlaw did, on the public highway, near the house of C. D. and within two miles of the place where the said society were assembled as aforesaid, keep open a huckster shop in a place which had not been licensed and in which he

had not usually resided or carried on business, (or insert a statement of any other offense as may be complained of) contrary to the statute in such case made and provided.

Sworn, &c.

(Signed by complainants.)

§ 866. The following may be used as a form of the warrant to arrest the offender:

OSWEGO COUNTY, ss.

To any constable of said county, greeting:

Whereas, complaint has this day been made on oath by John Makepeace, before me, E. S. Pardee, Police Justice of the village of Fulton, in said county, for that on (recite the complaint). These are therefore to command you forthwith to take the said James Hardcase and bring him before me, at my office in said village of Fulton, to be dealt with according to law.

Given under my hand at Fulton, the day of
E. S. PARDEE, *Police Justice.*

§ 867. If the offense was committed in the presence of the magistrate, then the following form may be used: (Commence as in last form.)

Whereas, on the day of , at the village of Fulton in said county, James Hardcase did, in the presence of me, E. S. Pardee, Police Justice of said village, willfully disturb, interrupt and disquiet (as in the complaint for such disturbance to the end of the description of the offense, and conclude as in the last form.)

§ 868. The following form for a venire may be used in case of a jury trial:

OSWEGO COUNTY, ss.

To any constable of said county, greeting:

You are hereby commanded to summon twelve good and lawful men qualified to serve as jurors, and not exempt from

such service, and who are in no wise of kin to James Hardcase, to be and appear before me, E. S. Pardee, Police Justice of the village of Fulton, in said county, at my office, in said village, on the day of (not more than three days from the date) at one o'clock in the afternoon, for the trial of the said James Hardcase, for an alleged violation of the provisions of the revised statutes respecting the disturbance of religious meetings; the said James Hardcase having been charged with said offence on oath, before me, and he having demanded that he be tried by a jury. And have you then and there this precept, together with a panel of the jurors by you summoned.

Given under my hand at Fulton, this day of

E. S. PARDEE, *Police Justice.*

§ 869. The following form for the record of conviction will answer :

Oswego County, ss.

Be it remembered, that on the day of , John Makepeace personally appeared before me, E. S. Pardee, police justice of the village of Fulton, in said county, and on his oath complained that (recite the complaint), Whereupon I issued my warrant to cause the said James Hardcase to be brought before me to answer to said complaint, and to be dealt with in the premises according to law; and afterwards—that is to say, on the day and year aforesaid, at the said village of Fulton, the said James Hardcase having been regularly brought before me by virtue of my said warrant ("and having demanded that he be tried by a jury," if such was the fact), I proceeded in the presence of the said James Hardcase (if a jury was impaneled, insert "and of a jury for that purpose duly summoned, impaneled, and sworn)," summarily to inquire into the facts; and thereupon the said James Hardcase was, on the day and year aforesaid, before me, the said police justice (if a jury was called, insert "by the verdict of the said jury"), duly convicted of the offense aforesaid; and thereupon it was considered and adjudged by me, the said police justice, that, for the offense aforesaid, the said James Hardcase forfeit the sum of dollars, for the benefit of the poor of said county; and the costs of said

conviction are ascertained and adjudged to amount to the sum of dollars.

In witness whereof, I have hereunto set my hand, at Fulton, the day of .

E. S. PARDEE, *Police Justice.*

§ 870. If the offense was committed in the presence of the magistrate, the following form of the record of conviction may be used :

Oswego County, ss.

Be it remembered, that on the day of , at the village of Fulton, in said county, James Hardcase did, in the presence of me, E. S. Pardee, police justice of said village of Fulton, willfully disturb, interrupt, and disquiet (continue as in the complaint for such case to the end of the description of the offense), whereupon, without further proof, I issued my warrant to cause the said James Hardcase to be brought before me, to be dealt with in the premises according to law. (Conclude as in last preceding form.)

§ 871. The following form will answer for the security to be given for the payment of the penalty and costs on conviction :

Whereas, James Hardcase has been this day convicted before E. S. Pardee, Esq., police justice of the village of Fulton, county of Oswego, of willfully disturbing, interrupting, and disquieting an assemblage of people met for religious worship; and upon such conviction has been fined by the said police justice the sum of dollars; and the said police justice has ascertained and adjudged the costs of said conviction to amount to the sum of dollars; we, the said James Hardcase and Peter Paywell, as his surety, do therefore hereby agree to pay the said penalty and costs to the superintendents of the poor of said county of Oswego, within twenty days from the date hereof.

Dated the day of .

(Signed by both parties.)

§ 872. The following form for a warrant of commitment may be used :

OSWEGO COUNTY, ss.

To any constable of said county, and to the keeper of the common jail of said county, greeting :

Whereas, James Hardcase has this day been convicted before me, E. S. Pardee, police justice of the village of Fulton, in said county, of willfully disturbing, interrupting, and disquieting an assemblage of people met for religious worship (or if for a different offense, set it forth as in the complaint.) And whereas, upon such conviction, I did consider and adjudge that for the said offense the said James Hardcase should forfeit the sum of dollars, for the benefit of the poor of said county. And whereas, the costs of said conviction were ascertained and adjudged by me to amount to the sum of dollars. And whereas, the said James Hardcase, although required so to do, has not paid the said penalty and costs, nor given security for the payment thereof within twenty days as required by law.

These are, therefore, to command you, the said constable, forthwith to convey and deliver the said James Hardcase into the custody of the said keeper. And you, the said keeper, are hereby required to receive the said James Hardcase into your custody in the said common jail, and him there safely keep until he shall pay the said penalty and costs, or for the term of days, (not exceeding thirty days.)

Given under my hand at Fulton this day of

E. S. PARDEE, *Police Justice.*

CHAPTER LXV.

DISTURBING RELIGIOUS MEETINGS IN MAINE AND NEW HAMPSHIRE—LAWS AND PENALTIES—HOW ENFORCED—MODE OF PROCEEDING AGAINST OFFENDERS.

§ 873. It is provided by statute in the State of Maine, that whoever, on the Lord's day or any other time, behaves unruly or indecently within the walls of any house of public worship; willfully interrupts or disturbs any assembly of persons for religious worship within the place of such assembly or out of it; sells or exposes to sale within one mile thereof, and during the time of their meeting, any intoxicating liquors, refreshments or merchandise, except in his usual course and place of business; exhibits any shows or plays; engages or aids in any horse race, gaming or other sports, to the disturbance of such assembly; or coming within the neighborhood, refuses, on request, either immediately and peaceably to retire beyond their hearing, or to conform to the established regulations of the meeting, shall be punished by imprisonment not more than thirty days, and by fine not exceeding ten dollars. (*Revised Statutes Maine, Ch. 124, Sec. 17.*)

§ 874. It is further provided that on application of the presiding elder, preachers in charge, or tent masters of a camp-meeting in any town, the municipal officers thereof shall appoint, in writing signed by a majority of them, one or more police officers to preserve the peace during such meeting, who may arrest any person violating any provision of the statute referred to in the last preceding section; detain him till a warrant can be issued; and execute such warrant when directed to them; and the presiding officer or commit-

tée of arrangements of any such religious assembly or meeting, may appoint some suitable person to keep boarders and sell refreshments at such meetings, who must conform therein to such regulations as the officers appointing them may prescribe. (*Id.*, *Sec.* 18.)

§ 875. Every justice of the peace, sheriff, deputy sheriff, constable, grand juror and tithingman, present at any such religious assembly disturbed as aforesaid, are required to arrest or cause to be arrested every such offender, and detain him until the close of such assembly, or until he can be taken before a magistrate; and all persons present at such assembly, on request, are required to assist said officers in the execution of their duty, under the same penalties for neglect or refusal that are provided for neglecting or refusing to aid officers in other cases. (*Id.*, *Sec.* 19.)

§ 876. For forms of proceedings in these cases, those in similar cases in the State of New York may be consulted, to which reference is made. (*Ante*, *Secs.* 866, 872.)

§ 877. It is provided, in the State of New Hampshire, that no person, on the Lord's day, within the walls of any house of public worship, or near the same, shall behave rudely or indecently, either in the time of public service or between the forenoon and afternoon services; and any person offending any of these provisions is declared to forfeit a sum not exceeding six dollars nor less than one dollar, which may be recovered by any selectman or police officer for the use of the town. (*Compiled Statutes N. H.*, *Ch.* 124, *Secs.* 2 and 3.)

§ 878. Power is given by statute to any selectman or police officer to remove any person behaving rudely or indecently in any meeting for public worship from the place of

such meeting, and him to detain until the close of such meeting. Such selectman or police officer is also given the same right to command assistance in such cases as sheriffs have; and such selectman or police officer may also prosecute for all penalties incurred by such offenders. And parents, guardians and masters are respectively made liable for all forfeitures incurred by children, wards or servants under their care. (*Ib.*, *Secs. 4 and 5.*)

§ 879. If any person shall disturb any religious meeting by speaking in the same, so as to interrupt or prevent the stated and orderly proceedings and exercises of such meeting, or shall make such disturbance while the people are assembling at, or leaving, their place of worship, and shall not desist therefrom when requested, he may be removed from such meeting or place of worship by any individual. And it is declared that any person so offending shall be fined not less than one dollar nor more than ten dollars, and may be required to recognize, with sureties, in a sum not less than fifty dollars nor more than one hundred dollars, to appear at the next Court of Common Pleas to be held in the county where the offense occurred, and to abide the order of said court, and in the mean time to be of good behavior. (*Ib.*, *Secs. 6 and 7.*)

§ 880. If the recognizance should be forfeited, the court may require the offender to recognize, with sufficient sureties, in a sum not exceeding two hundred dollars, to appear at the next term of said court, and to abide the order thereof, and in the mean time to be of good behavior, and so from time to time, as may be ordered by said court, so long as such forfeiture shall be incurred. (*Ib.*, *Sec. 8.*)

§ 881. It is further provided by statute that no person shall keep any shop, tent, booth, wagon or carriage for the

sale of, or shall sell, give or expose to sale any spirituous or intoxicating liquors, goods or merchandise of any kind within two miles of any public assembly convened for the purposes of religious worship; provided, however, that this provision must not be construed to prevent any person from selling merchandise at the shop or store where he usually transacts business; nor from selling any liquors in any place where he shall have received a license therefor before the appointment of such religious meeting; nor to prevent any peddler from selling his goods to any person at the usual place of business or residence of such person. And any person guilty of a breach of the provisions specified in this section, upon conviction thereof before any justice of the peace, is required to be fined not exceeding ten dollars, or committed to the house of correction not exceeding thirty days, or he may be sentenced to both such punishments. (*Ib.*, *Secs. 9 and 10.*)

§ 882. If any person be guilty of noisy, rude or indecent behavior, of exhibiting shows or plays, or promoting or engaging in horse-racing or gambling at or near any such religious meeting, so as to interrupt or disturb the same, upon conviction thereof before any justice of the peace, he is subject to be fined not exceeding ten dollars, or, if the offense be of an aggravated nature, he may be held to recognize with sufficient sureties to appear at the Court of Common Pleas next to be holden in the same county; and upon conviction before such court, he must be fined not exceeding fifty dollars, or imprisoned in the county jail not exceeding ninety days. (*Ib.*, *Sec. 11.*)

§ 883. Any person, upon view of any of the aforesaid offenses, may apprehend such offender and bring him before some justice of the peace, who, upon complaint under oath, must issue his warrant, cause such offender to be arrested,

and proceed to a hearing of the complaint. No prosecution for any violation of the provisions of law in this chapter referred to must be noticed, unless commenced within thirty days after the commission of the offense. (*Ib.*, Secs. 12 and 13.)

§ 884. The forms prescribed in similar cases for the State of New York may be used in proceedings in cases of disturbing religious meetings in the State of New Hampshire, with the slight changes which the law will suggest. Reference is therefore made to those forms. *Ante*, Secs. 864, 866 and 872.)

CHAPTER LXVI.

DISTURBING RELIGIOUS MEETINGS IN VERMONT, MASSACHUSETTS, RHODE ISLAND AND CONNECTICUT—LAWS AND PENALTIES— HOW ENFORCED.

§ 885. If any person in the State of Vermont, on the first day of the week, or on any other day or time, shall willfully disturb or interrupt any assembly of people, met together for religious worship or religious instruction, by noisy, rude or indecent behavior, or by profane discourse, either within or about the place where such assembly may be collected for religious worship or instruction, so near as to disturb the order and solemnity of such assembly, the statute provides that he shall be punished by a fine not exceeding forty dollars, nor less than five dollars, to the use of the town in which the meeting may be held. (*Gen. Stat. of Vt.* 1863, Ch. 93, Sec. 5.)

§ 886. Every justice, sheriff and deputy sheriff of the county, and every constable and grand juror in the town in which any such meeting is held, being present, may, without warrant, upon view, arrest any person so making disturbance as aforesaid, and detain such person in custody during the time of such meeting, or until a trial of such offense shall be had; and all such officers have the same power to command assistance in the execution of the aforesaid duties as sheriffs by law have; and all persons being so commanded, who shall refuse to obey such command, are made subject to the same penalties as persons who refuse to assist sheriffs in the discharge of their office and duty. (*Ib.*, *Sec. 6.*)

§ 887. If any person shall, within two miles of any place where any camp-meeting is held for religious worship, and during the continuance of such meeting, sell, or offer for sale any kind of spirits, or spirituous liquors, or exhibit any shows or plays, or shall promote or aid any horse-racing or gaming of any description; or shall, during the continuance of such meetings, sell or offer for sale any victuals, drink or merchandise, within two miles of the place of holding such meeting, the statute makes him punishable by a fine not exceeding forty dollars, nor less than five dollars, to the use of the town in which such meeting is held. Licensed retailers, inn-keepers and others, however, may pursue their ordinary business at their usual place of doing business; and all persons may sell victuals in their own houses, notwithstanding the statute, as these cases are expressly excepted. (*Ib.*, *Sec. 7.*)

§ 888. It is made the duty of grand jurors and constables in their respective towns in Vermont, to make due presentment of all offenders against the provisions of the statute to prevent the disturbing of religious meetings. But it is provided that all prosecutions for the breach of any of the pro-

visions of the statute, must be commenced within thirty days after the commission of the offense, and not after. (*Ib.*, *Secs. 8 and 9.*)

§ 889. In the State of Massachusetts, whoever willfully interrupts or disturbs any assembly of people met for the worship of God, are liable to be punished by imprisonment in the jail not exceeding thirty days, or by fine not exceeding fifty dollars; and whoever, during the time of holding any camp or field meeting for religious purposes, and within one mile of the place of holding such meeting, hawks or peddles goods, wares, merchandise, or, without permission from the authorities having charge of such meeting, establishes any tent or booth, for vending provisions or refreshments, or practices or engages in gaming or horse racing, or exhibits or offers to exhibit shows or plays, it is declared, shall forfeit for each offense a sum not exceeding twenty dollars. It is provided, however, that a person having his regular and usual place of business within such limits, is not required to suspend his business. And whoever, on the Lord's day, within the walls of any house of public worship, behaves rudely or indecently, is liable to be punished by a fine not exceeding ten dollars; and all sheriffs, grand jurors and constables are enjoined by law to inquire into and inform of all such offenses, and cause the provisions of the statute in regard to them to be carried into effect. (*Gen. Stat. Mass.* 1860, *Ch. 84, Secs. 7 and 8, and Ch. 165, Secs. 21 and 22.*)

§ 890. Every person in the State of Rhode Island, who shall be convicted of willfully interrupting or disturbing any assembly or people met for religious worship, either within or without the place where the meeting is held, it is declared by statute, shall be imprisoned not exceeding one year, or fined not exceeding five hundred dollars. (*R. S. of R. I.*, *Ch. 216, Sec. 20.*)

§ 891. In the State of Connecticut, every person who shall keep any huckster's shop, booth, tent, wagon, or other carriage, for the sale of spirituous or other liquors, or any articles of provisions whatever, or shall sell or expose to sale, in such huckster's shop, booth, tent, wagon, carriage or in any other way, any spirituous or other liquors, or any articles of provision whatever, within the distance of two miles from any public assembly convened for religious worship in the field, is required to pay for every such offense a fine of seven dollars to the use of the treasury of the town where the offense is committed. It is declared, however, that this provision of the statute shall not prevent any person who shall be licensed to keep a house of public entertainment at the time the meeting shall be appointed, or any person who, at such time, shall be authorized to keep a victualing-house, according to the provisions of statute law, from pursuing his usual and ordinary business, at the place where such business had been previously carried on; nor the committee of any camp-meeting, or assembly convened for religious worship in the field, from making such arrangements for the sale of such necessary provisions as they may deem expedient for the accommodation of persons attending such meeting. It is also provided that no person selling such necessary provisions, by consent of any such committee, shall be liable to the penalties provided. (*Gen. Stat. Conn. 1866, Tit. 12, Ch. 10, Sec. 211.*)

§ 892. It is further declared by statute that every person who, either on the Lord's day or at any other time, shall willfully interrupt or disturb any assembly of people met for the public worship of God, shall pay a fine, not exceeding thirty-four dollars, nor less than one dollar; and all sheriffs, constables, grand jurors and tithing-men are required upon view, and without warrant, to apprehend every person violating these provisions of the statute, and carry him

before the next justice of the peace, that he may be dealt with according to law; and the justice of the peace, before whom such person is brought, is required, on the oath of the officer apprehending him, to issue a warrant and cause him to be arrested, and thereupon the justice must proceed to a hearing and trial of such matter of complaint. (*Ib.*, *Secs.* 212 and 213.)

§ 893. The forms prescribed for similar cases in the State of New York, can be conveniently used for all cases referred to in this chapter. (*Aute*, *Secs.* 864, 865, 866 and 872.)

CHAPTER LXVII.

DISTURBING RELIGIOUS MEETINGS IN NEW JERSEY, PENNSYLVANIA AND OHIO—LAWS AND PENALTIES—HOW ENFORCED.

§ 894. In the State of New Jersey it is made unlawful for any person or persons to erect, place or have any booth, stall, tent, carriage, boat or vessel, or other place, for the purpose or use of selling, giving, or otherwise disposing of any kind of articles of traffic, spirituous liquors, wine, porter, beer, cider or any other fermented, mixed or strong drink within three miles of any place of religious worship in the State, during the time of holding any meeting for religious worship at such place. (*Revised Statutes of New Jersey*, Title 21, Ch. 16, Sec. 1.)

§ 895. Any person violating the provisions of the statute aforesaid, must first be informed and warned of such violation by a justice of the peace, constable, or two free-holders

of the county where the offense is or shall have been committed, to desist from such offense, and to remove such booth, stall, tent, carriage, boat or vessel, together with all such articles of traffic, spirituous liquors, wine, porter, beer, cider, or other strong drink, belonging to or in the possession of the person or persons so offending; and should the person or persons, on receiving such information and warning, forthwith cease so to offend against the statute, and remove as aforesaid, at least three miles from such place of religious worship, then no further proceeding under the statute must be had against such person or persons; but if such person or persons refuse or neglect immediately to remove as aforesaid, then all the said articles of traffic, spirituous liquors, etc., and all the vessels, chests and other things containing the same, together with such booth, tent, etc., are declared to be forfeited; and it is made lawful for any justice of the peace and constable, with two freeholders of the county, to seize and take possession of any or all of the said forfeited articles and liquors, together with such booth, tent, etc., and at any time within ten days after, to advertise and sell the same; and after deducting and paying the necessary and lawful expenses of such seizure and sale, the residue of the proceeds of such sale or sales must be paid to the overseers of the poor of the township for the use of the poor of the county, where the support of the poor is a county charge, and where it is a township charge, to the poor of the township where such offense shall have been committed. (*Ib.*, Sec. 2.)

§ 896. The statute aforesaid is declared not to affect any licensed tavern-keeper, in his or her ordinary and lawful business, at his or her usual place of residence specified in his or her license; nor any merchant, shop-keeper, farmer, mechanic or other person, in the usual and lawful transaction of his, her or their ordinary concerns and business, in

their usual places of doing such business; nor any person or persons attending any religious meeting, or their property; nor any person or persons having a permit in writing from the person or persons having the oversight, charge and management of any such meeting, to sell bread and other necessary articles of food for man and beast; provided the conduct of persons attending such meeting accord with the lawful rules and regulations of such meeting, and the property of such persons attending such religious meeting be not of the description forbidden as aforesaid. (*Ib.*, Sec. 3.)

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§ 897. If any suit or action be brought against any person or persons for violating any of the aforesaid provisions of the statute of New Jersey, it is provided that the defendant or defendants may plead the general issue, and give the special matter under the act in evidence; and if in such suit or action a verdict and judgment be given for the defendant or defendants, or the plaintiff become non-suit, or discontinue his action, the defendant or defendants will have and recover double costs of suit. (*Ib.*, Sec. 4.)

§ 898. It is further provided by the statutes of New Jersey that if any person or persons whatsoever, either on the first day of the week, called Sunday, or on any other day or time, shall willfully and of purpose disquiet, interrupt or disturb any assembly of people met for religious worship, either by making a noise or by rude and indecent behavior or profane discourse, whether within their place of worship or out of it, so near the same as to disturb the order and solemnity of the meeting, such person so offending, and being thereof legally convicted before any justice of the peace of the county where the offense may be committed, upon the view or personal knowledge of the justice, or confession of the offender, or proof of any witness or witnesses upon oath or affirmation, will forfeit and be made to

pay, to the use of the poor of the township where the offense was committed, the sum of ten dollars, to be levied and recovered by the warrant of said justice, under his hand and seal, directed to some constable of the county, commanding him to levy the said forfeiture by distress and sale of the goods and chattels of such offender, and to pay the money therefrom arising to the overseer of the poor of the township where such offense was committed; and if no such distress can be had, then such offender must, by a warrant under the hand and seal of such justice, be committed to the common jail of the said county, or to the jail of any city or town corporate within the same, for a term not exceeding ten days, to be certainly expressed in said warrant. (*Ib.*, Ch. 23, Secs. 1 and 13.)

§ 899. Any member of any church or religious society disturbed or interrupted in their meetings, or any other person or persons, being citizens of the State of New Jersey, and freeholders within the same, are authorized by the statute to apprehend any person so disturbing and interrupting them, immediately, and take him before a magistrate as soon as conveniently may be, in order that he or they so offending may be dealt with according to law; and such member or citizen, in the performance of such service, is entitled by law to the same assistance and protection, and will be under the same restrictions and liabilities, as a constable would be on the same occasion. (*Ib.*, Sec. 14.)

§ 900. If any person or persons disturb or interrupt any religious meeting as aforesaid, on the first day of the week called Sunday, it is made lawful for any constable or member of the meeting, and a citizen or freeholder as aforesaid, to apprehend such person or persons immediately, and detain him or them until the next day, then to be dealt with according to law, unless said offender or offenders give suffi-

cient security before some magistrate, to appear at any time and place that he may direct; to answer the charge preferred against him or them, in which case it is competent for the magistrate to discharge such offender or offenders. (*Ib.* Sec. 14.)

§ 901. Every justice of the peace is required immediately, on information given upon oath or affirmation, of any constable or police officer, or of any other person whatsoever, to cause the offender and offenders aforesaid to appear before him, and upon such information being proved as aforesaid, to convict such offender and offenders as in the statute prescribed; whereupon the said justice must cause such conviction to be drawn up in the form, or to the effect following:

Hunterdon County (or other county as the case may require),
to wit :

Be it remembered that on the day of , in the year of our Lord one thousand , A. B. was convicted before me, C. D., one of the justices of the peace of said county, of disturbing and interrupting a religious meeting on Sunday, in the township of , in the said county of .

Given under my hand and seal the day and year above stated.

Any such conviction cannot be removed to the Supreme Court by certiorari; but if the person offending think himself aggrieved by any such conviction, he may appeal to the next court of general quarter sessions of the peace of the county where such conviction is had; which last mentioned court is required, in a summary way, to hear and determine the same, and confirm such conviction, with costs, or reverse the same as to said court shall seem right and proper; though such person is not entitled to appeal unless he first pay down to said justice the penalty and costs of prosecution awarded against him, to be returned to such person in case, upon the

appeal, the conviction thereof had, be reversed. (*Ib.*, *Secs.* 16 and 17.)

§ 902. All the costs and charges of the information and conviction of any such offender must be borne and paid by the party offending, if able, over and above the penalties prescribed, and must be settled and ascertained by the justice, not to exceed one dollar; and for the information, summons, conviction and warrant, the justice or his clerk will be entitled to forty cents, and no more; and the forfeitures and costs may be paid to the justice, who is required to pay the forfeitures to the overseers of the poor of the township where such offense was committed, for the use of the poor thereof. And all and every justice and justices of the peace are required to put the law into execution against any offender within their jurisdiction, although no person can be prosecuted or troubled for any such offense, unless the same be proved or prosecuted within thirty days after the commission of such offense. (*Ib.*, *Secs.* 18, 19, 20 and 21.)

§ 903. In every such case the accused, after he has appeared, and before the justice has proceeded to inquire into the merits of the complaint or information, may demand a trial by jury; whereupon a venire must be issued to summon a jury of six men to try whether the person charged be guilty or not; the venire must be issued and proceedings had thereon the same as in other cases of jury trials; provided that all the costs of the jury in such cases must be paid by the party demanding such jury. No jury trial can be had when the justice is authorized to convict on his own view. The mayor, recorder and aldermen of every city or town corporate in the State, are vested in these cases with the power of justices of the peace; and they are required to execute therein all the duties imposed by the law on justices of the peace. No person can be imprisoned in the jail of

any city or town corporate for any such offense not committed within such city or town. (*Ib.*, Secs. 23, 24 and 25.)

§ 904. By the statutes of Pennsylvania it is made unlawful for any person or persons to erect, place or have any booth, stall, tent, etc., for the purpose of selling, giving or otherwise disposing of any kind of articles of traffic, spirituous liquors, wine, porter, beer, cider, or any other fermented, mixed or strong drink within three miles of any place of religious worship in the State, during the time of holding any meeting for religious worship at such place; and in case of violations of the act the offender is to be informed and proceeded against, and his articles, etc., forfeited in all respects as in the State of New Jersey; and the laws of Pennsylvania upon the subject are in all respects similar to those of New Jersey, as stated in sections eight hundred and ninety-five, eight hundred and ninety-six and eight hundred and ninety-seven, and the statement of such laws need not be repeated in this place. It is only necessary to refer to those sections for the exact law, substituting Pennsylvania for New Jersey. (*Purdon's Digest, Ninth Edition, by Brightly, 865, Secs. 4, 5, 6 and 7.*)

§ 905. In addition to the provisions of the statute referred to in the last preceding section, in the State of Pennsylvania, it is also provided that if any person shall willfully and maliciously disturb or interrupt any meeting, society, assembly or congregation convened for the purpose of religious worship, such person shall, on conviction, be sentenced to pay a fine not exceeding fifty dollars, and suffer an imprisonment not exceeding three months, or both, or either, at the discretion of the court. (*Ib.*, 222, Sec. 33.)

§ 906. By the fundamental law of the State of Ohio, it is declared that religion, morality and knowledge are essential

to good government, and it is therefore made the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship. (*State Const. Art. I, Sec. 7.*)

§ 907. In conformity with the constitutional requirement, it has been enacted by the general assembly of Ohio, that if any person or persons shall, at any time, interrupt or molest any religious society or any member thereof; or any persons when meeting or met together for the purpose of worship, or performing any duties enjoined on, or appertaining to them, as members of such society; the person or persons so offending shall be fined in any sum not exceeding twenty dollars; and any judge of the Court of Common Pleas, or justice of the peace, within the proper county, is empowered, authorized and required to proceed against and punish every person offending in such cases; and upon view and hearing, may, or on information given on oath or affirmation, must, if need be, issue his warrant to bring the body of the accused before him, and must inquire into the truth of the accusation; and, if guilty, must enforce the penalty annexed to the offense; and the offender may be detained in custody, if the judge or justice think necessary, and committed until sentence be performed; and any religious society also has the right of laying hands upon the person or persons who may be disturbing the congregation, and turn him or them out of the church or place of worship. (1 *R. S. of Ohio*, 1860, *Ch. 33, Sec. 186.*)

§ 908. It is also provided by the statutes of Ohio that no person shall sell, or expose for sale, give, barter or otherwise dispose of in any way, or at any place, any spirituous or other liquors, or any articles of traffic whatever, at or within the distance of two miles from the place where any religious society or assemblage of people are collected or collecting together for religious worship, in any field or woodland.

Though this provision is declared not to affect tavern keepers exercising their calling, nor distillers, manufacturers or others, in prosecuting their regular trades at their places of business, or of persons disposing of any ordinary articles of provision, excepting spirituous liquors, at their residences, nor any person having a written permit from the trustees or managers of any such religious society or assemblage, to sell provisions for the supply of persons attending such religious worship, their horses or cattle; such persons acting in conformity to the regulations of said religious assembly and to the laws of the State. (*Ib.*, Sec. 216.)

§ 909. Any person found guilty of any such offense is made to forfeit and pay, for every such offense, a fine of not less than ten or more than one hundred dollars, into the township treasury, for the use of the common schools in the township where the offense was committed; and any judge of the common pleas, sheriff, coroner or justice of the peace of the county, or any constable thereof, must, upon view or information, and with or without warrant, apprehend any person so offending, and seize all such liquors or other articles of traffic, and the utensils or furniture containing them, and convey them before a justice of the peace; and the said justice, upon the complaint, under oath or affirmation, of said officer, apprehending such offender, or any person giving information, must issue his warrant of arrest, which must be formally served by the proper officer, and then proceed to inquire into the truth of said accusation, and, if found true, must proceed to bind said offender in such amount, not exceeding five hundred dollars, as he may deem proper, to answer at the next regular term of the common pleas in said county, to be proceeded with by indictment; the fine and costs to be collected as in other criminal cases. If the defendant or defendants plead guilty, the justice must affix the penalty and proceed to judgment; and, in such case,

he must immediately issue an execution against the property and body of the defendant or defendants for the fine and costs, unless paid or secured; and the defendant or defendants must not be discharged until the judgment and costs are fully paid or secured to be paid. (*Ib.*, *Sec.* 217.)

§ 910. In any prosecution against any person or persons for a violation of the foregoing provisions of the statute of Ohio, if the defendant or defendants be acquitted, he or they may recover of the person or persons filing the complaint double the amount of his or their costs, which the justice is required to award. (*Ib.*, *Sec.* 218.)

§ 911. The process and proceedings under the several statutes referred to in this chapter, may be framed from the forms given for similar proceedings in the State of New York, to which reference is made. (*Ante*, *Secs.* 864–872.)



CHAPTER LXVIII.

DISTURBING RELIGIOUS MEETINGS IN INDIANA, MICHIGAN, ILLINOIS, WISCONSIN, MINNESOTA, IOWA, KANSAS — LAWS AND PENALTIES — HOW ENFORCED.

§ 912. In the State of Indiana it is provided that no person shall erect, bring, keep, continue or maintain any booth, tent, wagon, huckster shop or any other place for the sale of intoxicating liquors, cider, beer or other drinks, or for the sale of any other article whatever; nor sell or give away intoxicating liquors; nor sell any cider, beer or other drink, or any other article whatever, within two miles of any collection of any inhabitants of the State, met together for

worship; nor in any way interrupt, molest or disturb any such religious meeting, or any person present thereat, or any person going to or returning from such meeting, and any person offending against either of these provisions is liable to a fine of not more than fifty dollars, nor less than five dollars. (2 *R. S. of Indiana*, 1852, *Chap. 6, Sec. 37, as amended by Laws of 1853, Ch. 67, Sec. 1.*)

§ 913. It is, however, provided that the provisions referred to in the last preceding section shall not be construed to include such persons as may carry on their ordinary and regular business at their regular places of transacting the same; nor to such persons as may have the permission of those having charge of any such meeting to establish suitable places for the purpose of furnishing food for those attending the same, their horses and cattle. (*Laws of 1853, Ch. 67, Sec. 2.*)

§ 914. Willfully disturbing a religious meeting in Indiana is an indictable offense, and the indictment in such case may charge the defendant with disturbing both the religious society and its members; and on the trial, if he is found guilty of either, it is sufficient. It is not necessary to the existence of a society convened for public worship, that it be known by any distinctive or sectarian name; and in the indictment for disturbing such society in their worship, it is not necessary to state the name of the society. (*The State v. Ringer*, 6 *Blackford's R.* 109.)

§ 915. In the State of Michigan no person must willfully disturb, interrupt or disquiet any assembly of people met for religious worship, by profane discourse, by rude and indecent behavior, or by making a noise either within the place of worship, or so near it as to disturb the order and solemnity of the meeting; nor can any person within two

miles of the place where any religious society shall be actually assembled for religious worship, legally expose to sale or gift any ardent or distilled liquors, wine, beer, cider, fruit or any other article of food or merchandise, or keep open any huckster-shop in any other place, inn, stand or grocery than such as shall be or have been duly licensed, or in which such person shall have usually carried on such business; nor can any person within the distance aforesaid legally exhibit any shows or plays, unless the same shall have been duly licensed by the proper authority; nor can any person, within the distance aforesaid, legally promote, aid or be engaged in any racing of any animals, or in any gaming of any description; nor must any person obstruct the free passage of any highway to any place of public worship within the distance aforesaid. And whoever shall be guilty in any of these respects may be convicted summarily before any justice of the peace of the county, or any mayor, recorder, alderman or other magistrate of any city or township where the offense shall be committed, and on such conviction he will forfeit a sum not exceeding twenty-five dollars, for the benefit of the township libraries, in the township in which such conviction is had. (2 *Comp. Laws of Michigan*, 1857, *Ch.* 185, *Secs.* 25 and 26.)

§ 916. There is also an independent provision of the statute of the State of Michigan, declaring that if any person shall, on the first day of the week, by rude and indecent behavior, or in any other way, intentionally interrupt or disturb any assembly of people met for the purpose of worshipping God, he shall be punished by a fine not less than two nor more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days. (1 *Ib.*, *Chap.* 44, *Sec.* 6.)

§ 917. It is made the duty of all sheriffs and their depu-

ties, coroners, marshals, constables and other peace officers who may be present at the meeting of any assembly for religious worship, which shall be interrupted or disturbed in the manner prohibited, on sight to apprehend the offender, and take him before some justice of the peace, or other magistrate authorized to convict as aforesaid, to be proceeded against according to law. And all judges, mayors, aldermen, recorders and justices of the peace, within their respective jurisdictions, upon their own view of any person offending against any of the provisions of the statute referred to, may order the offender into the custody of any of the officers in this section first named, or any official member of the church or society so assembled or disturbed, for safe keeping, until he may be held to bail, or a trial for such offense be had. (2 *Ib.*, Ch. 185, Secs. 27 and 28.)

§ 918. Should any person convicted of any of the offenses prohibited, neglect immediately to pay the penalty incurred, with the costs of conviction, or give security to the satisfaction of the officer before whom the conviction is had, for the payment of the same within twenty days thereafter, he must be committed by warrant to the common jail of the county until the same be paid, or for such term, not exceeding thirty days, as shall be specified in the warrant. (*Ib.*, Sec. 29.)

§ 919. Any person complained of for willfully disturbing a religious meeting in the manner specified, before the court proceeds to investigate the merits of the case, may demand a jury trial; and upon such demand it is made the duty of the court to issue a venire to any constable of the county, or marshal of the city where the case is to be tried, commanding such officer to summon the same number of jurors, and in the same manner as is provided for in the summoning of jurors before courts of justices of the peace; and the court

is required to proceed to impanel a jury for the trial of the case, in the same manner and subject to all the rules and regulations prescribed in the act for the trial by jury in justices' courts; and the costs of the suit must be paid by the party offending, in case of conviction, and such costs will be the same as are allowed by law in civil cases. (*Ib.*, Sec. 30.)

§ 920. The forms prescribed for similar proceedings in the State of New York may be used in like cases in the State of Michigan, to which reference is made. (*Ante*, Secs. 864-872.)

§ 921. It is provided in the State of Illinois that any person who shall, by menace, profane swearing, vulgar language or any disorderly or immoral conduct, interrupt and disturb any congregation or collection of citizens assembled together for the purpose of worshiping Almighty God, or who shall sell or attempt to sell, or otherwise dispose of ardent spirits or liquors, or any articles, which will tend to disturb any worshiping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, will be deemed guilty of a high misdemeanor, and, upon conviction, must be fined, in any sum not exceeding fifty dollars; though this provision is not to be construed to affect any person selling whiskey or any other ardent spirits at his own distillery, store or dwelling-house. (1 *Gen. Laws of Illinois*, Part 2, Div. 11, Sec. 147.)

§ 922. All justices of the peace, in the several counties, are declared to have jurisdiction in these cases, and may, on view or upon information on oath, cause every person offend-

ing to be apprehended and brought before them respectively to answer the charge. If the person accused choose it, his case must be tried by a jury of six lawful jurors, and if he insist on a full jury, by twelve, who must be summoned to try the cause; and if the jury find the accused guilty, they are required to assess and state the amount of the fine, not more than fifty dollars; upon which the justice before whom the trial is had, or in case the person plead guilty, must give judgment for fine and costs, and proceed to collect the same without delay. The officer collecting the same must immediately pay it over to the treasurer of the proper county, taking his receipt therefor, which must be filed with the clerk of the county commissioners' court. The fine when deposited is subject to the control of said court, and must be appropriated to the education of any poor orphan child or children of the proper county. Judgments in these cases are subject to appeal as in cases of assault and battery and affrays, and must be collected in the same manner. (*Ib.*, Secs. 148, 149 and 150.)

§ 923. For forms in these proceedings reference is had to those prescribed for similar cases in the State of New York. (*Ante*, Secs. 864, 872.)

§ 924. In the State of Wisconsin it is enacted that every person who shall, on the Lord's day or at any other time, willfully interrupt or molest any assembly or people met for the worship of God, or any member thereof, or any persons, when meeting or met together for the performance of any duties enjoined on or appertaining to them as members of any religious society, within the place of such meeting, or out of it, shall be punished by fine not exceeding twenty dollars, nor less than five dollars; and all justices of the peace have jurisdiction to try and determine all such cases, though the defendant cannot be deprived of a jury trial nor

of his right of appeal as in other cases. (*Revised Statutes of Wis.* 1858, *Ch.* 183, *Secs.* 6 and 23.)

§ 925. In Minnesota it is provided that every person who on the Lord's day, or at any other time, shall willfully interrupt or disturb any assembly of people met for worship, within the place of meeting or out of it, shall be punished by fine not exceeding twenty-five dollars, nor less than five dollars, or imprisonment in the county jail not exceeding thirty days. (*Statutes of Minnesota*, 1849-1858, *Ch.* 96, *Sec.* 14.)

§ 926. It is further provided that no person shall, on the Lord's day, within the walls of any house of public worship or near the same, behave rudely or indecently, whether in the time of public service or between the forenoon and afternoon services, or if any person or persons shall disturb any religious meeting by speaking in the same, or in any other manner conduct himself or themselves so as to prevent the stated and orderly proceedings and exercises of the meeting, or shall make such disturbance while the people are assembling at or leaving their place of worship, and shall not desist therefrom when requested, he or they may be removed from such meeting or place of worship by any individual; and any person offending against this provision is declared to forfeit a sum not exceeding twenty-five dollars nor less than two dollars, which may be recovered by complaint of any person before any justice of the peace of the town, or adjoining town to that in which the offense was committed. (*Id.*, *Secs.* 23 and 24.)

§ 927. It is also enacted that no person shall keep any shop, tent, booth, wagon or carriage for the sale of, or shall sell, give or expose to sale any spirituous or intoxicating liquors, goods or merchandise of any kind, within two miles

of any public assembly, camp or grove meeting, convened for the purpose of religious worship; though this provision is not to prevent any person from selling merchandise at the shop or store where he actually transacts business; nor from selling liquors in any place where he shall have received a license therefor before the appointment of such religious meeting; nor to prevent any peddler from selling his goods to any person at the usual place of business or residence of such person. And any person guilty of offending against either of these provisions, upon conviction thereof before any justice of the peace, may be fined not exceeding thirty dollars, or imprisoned in the county jail for a term not exceeding thirty days, or may be sentenced to both such punishments. (*Ib.*, *Secs. 25 and 26.*)

§ 928. It is further declared that any person guilty of noisy, rude or indecent behavior, of exhibiting shows or plays, or promoting or engaging in horse racing or gambling at or near any such religious meeting, so as to interrupt or disturb the same, or at any religious meeting of the citizens of the State, of maliciously cutting or otherwise injuring or destroying any lamps or tents, or other property belonging to any tent-holder or other person, upon conviction thereof before any justice of the peace, shall be fined not exceeding fifty dollars, or if the offense be of an aggravated nature, the offender may be held to recognize with sufficient sureties to appear at the district court next to be holden in the same county; and upon conviction before such court, he may be fined in any sum not exceeding one hundred dollars, or imprisoned in the county jail not exceeding ninety days, or by both such fine and imprisonment. Parents and guardians are made respectively liable for forfeitures incurred by children and wards under their care. (*Ib.*, *Secs. 27 and 28.*)

§ 929. Any person guilty of any such offense may be re-

quired to recognize with sureties in a sum not less than one hundred dollars, to appear at the district court next to be holden in the same county, and to abide the order of said court, and in the meantime to be of good behavior; and if the recognizance be forfeited, the court may require such offender to recognize with such sufficient sureties, in a sum not exceeding three hundred dollars, to appear at the next term of such court, and to abide the order thereof, and in the meantime to be of good behavior; and so on, from time to time, as may be ordered by said court, as long as such forfeiture may be incurred. (*Ib.*, *Secs. 29 and 30.*)

§ 930. Any person may, upon view or knowledge of any offense described, go before some justice of the peace of the town, or adjoining town, to that in which the offense was committed, who must, upon complaint under oath, issue his warrant, cause the offender to be arrested, and proceed to a hearing of the complaint. All fines and forfeitures for such offenses that may be collected, must be paid by the justice of the peace, or the court collecting the same, into the county treasury to the credit of the common school fund of the county, within ninety days after collecting the same. It is declared that no prosecution for any such offense can be sustained, unless commenced within sixty days after the commission of the offense. (*Ib.*, *Secs. 31, 32 and 33*)

§ 931. The forms for these proceedings may be found in those prescribed for similar proceedings in the State of New York, to which reference is made. (*Ante*, *Secs. 864, 866, etc.*)

§ 932. In the State of Iowa, it is enacted that if any person willfully disturb or disquiet any assembly of persons met for religious worship, by profane discourse, or rude and indecent behavior, or by making a noise either within the

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place of worship or so near it as to disturb the order and solemnity of the assembly; or within one mile of the place where any religious society is collected together for religious worship in any field or woodland, expose to sale or gift any spirituous or other liquors, or any articles of merchandise, or any provisions or other articles of traffic, he shall be punished by imprisonment in the county jail not more than thirty days, or by fine not exceeding one hundred dollars. Though the provision in regard to exposing to sale, etc., of any liquors, etc., are declared not to apply to tavern or grocery keepers exercising their calling or business in the places mentioned in their licenses, if they have such; nor to any distillers, or manufacturers, or others, in the prosecution of their ordinary calling or business, so as to prevent them from vending or exposing to sale any such articles at their place of residence; nor to any person having a written permit from the person having charge of such religious society, to sell any of such articles, on complying with the regulations of such assembly, and with the laws of the State. (*Iowa Laws, Revision of 1860, Ch. 172, Secs. 4360, 4361 and 4362.*)

§ 933. It is declared by statute in the State of Kansas, that every person who shall willfully, maliciously or contemptuously disquiet or disturb any congregation or assembly of people, met for religious worship, by making a noise, or by rude and indecent behavior, or profane discourse, within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting, or menace or assault any person there being, shall be deemed guilty of a misdemeanor and punished by fine, not exceeding one hundred dollars; and, if unable to pay a fine, by confinement in the county jail, not exceeding three months. (*Compiled Laws of Kansas, 1862, Ch. 33, Sec. 242.*)

§ 934. It is also provided by the statute of Kansas, that any person who shall erect or keep a booth, tent, stall or other contrivance for the purpose of selling, or otherwise disposing of any wine or spirituous or fermented liquors, or any drink of which wine, spirituous or fermented liquors form a part, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine, not exceeding ten dollars. (*Ib.*, *Sec.* 244.)

§ 935. No forms need be given for these cases in the State of Kansas, as they are declared misdemeanors, and may be prosecuted and tried as other misdemeanors are.

CHAPTER LXIX.

DISTURBING RELIGIOUS MEETINGS IN DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA—LAWS AND PENALTIES—HOW ENFORCED.

§ 936. In the State of Delaware, any person who shall willfully interrupt, disturb, or molest any church meeting, congregation or society, assembled for the purpose of religious worship, is deemed by statute guilty of a misdemeanor, and liable to be fined not less than eight, nor more than sixty dollars. (*Revised Code of Delaware*, 1852, *Ch.* 131, *Sec.* 2.)

§ 937. It is also declared by statute that if any person shall make, have, or keep any booth, stall, tent, carriage or place, for the purpose of selling or disposing of, or shall

sell, offer or dispose of any spirituous liquor, wine, porter, beer, cider, bread, food, or other provisions, or articles, within two miles of any camp-meeting held for religious worship, during the continuance of such meeting, or on the day before its commencement, excepting taverns and stores regularly established, such person shall be deemed guilty of a misdemeanor, and fined not less than one, nor more than twenty dollars; though it is made lawful for any three of the managers of such meeting, by license in writing, to authorize such stand or tent, for the sale of food, provisions and provender. (*Ib.*, *Sec. 3.*)

§ 938. In the State of Maryland the provision of law is, that if any person erect, place or have any booth, stall, tent, carriage, boat, vessel or other vehicle or other contrivance whatever, for the purpose or use of selling, giving, or otherwise disposing of any kind of spirituous or fermented liquors, or any other articles of traffic, or sell, give, barter, or otherwise dispose of any spirituous or fermented liquors, or any other articles of traffic within two miles of any camp-meeting, or other place of religious worship, during the time of holding any meeting for religious worship at such place, such person, on conviction before a justice of the peace, for the first offense shall be fined not less than five, nor more than twenty dollars, and stand committed to jail until the fine and costs are paid; and for the second offense shall be fined as aforesaid, and be imprisoned not less than ten nor more than thirty days. (*1 Maryland Code, 1860, Art. XXX, Sec. 164.*)

§ 939. In addition to the penalties for the aforesaid offense, any person guilty, will forfeit all such liquors and articles of traffic, and all the chests and other things containing the same, belonging to and in the possession of the offender, together with the booth, tent, etc., prepared and

used in violation of the statute. And it is made the duty of any sheriff, deputy sheriff or constable, if he sees any person violating the law in this regard, to arrest the offender and carry him before a justice of the peace; and when he arrests the offender, to seize the property declared forfeited, or seize the same on a warrant against the offender, if such offender cannot be found; and the justice before whom such offender is convicted, or before whom the warrant is returned that the offender cannot be found, must enter judgment of condemnation against such property, and issue a *fiery facias* for the sale thereof. The person who has been returned not found, and whose property has been condemned in his absence, may appear at any time before the sale of the property, and have the case tried, as if he had appeared at the return of the warrant. None of these provisions will apply to any licensed tavern-keeper, merchant, shop-keeper, farmer, or other person, in the usual and lawful transaction of his ordinary business, in the usual place of transacting such business; or to any person having permission in writing from the supervisor of such meeting, to sell such articles as may be named in such permission. (*Ib.*, Secs. 165 and 166.)

§ 940. It is further provided that if any person shall disturb any congregation, society or meeting assembled for the purpose of religious worship, by blowing horns or trumpets, firing guns, or by any riotous or disorderly convocation, or by any other means, with intent to interrupt or disturb the worship, devotion or exercises of such congregation, society or meeting, or of any of the persons attending such meeting, such person, on conviction before any justice of the peace in the county where such offense shall be committed, must be fined not less than five, nor more than twenty dollars, and be committed to jail until the fine and costs are paid. All fines imposed and collected for disturbing religious meetings, are

required to be paid to the county; and courts of record may also exercise this common law jurisdiction in all cases for disturbing public worship in the State. Any party convicted under any of the provisions of the statute in regard to disturbing religious meetings, has the right to appeal to the next Circuit Court for the county where the conviction may be had, upon giving bail for his appearance at court; and upon such appeal he will be entitled to a trial by jury. (*Ib.*, Secs. 167 and 169.)

§ 941. In the State of Virginia it is provided that if a free person willfully interrupt or disturb any assembly met for the worship of God, he shall be confined in jail not more than six months, and fined not exceeding one hundred dollars; and a justice may put him under restraint during religious worship, and bind him for not more than one year, to be of good behavior. The stringency of this statute, or the respect paid to religion in the State, has the effect generally to secure the utmost decorum in all meetings assembled for divine worship. (*Code of Virginia*, 1849, Ch. 196, Sec. 18.)

§ 942. By the statutes of North Carolina it is provided that, if any person shall maliciously stop up or obstruct the way leading to any place of public worship, or to any spring or well commonly used by the congregation, he shall, for every such offense, forfeit and pay twenty dollars. (*Revised Code of North Carolina*, 1855, Ch. 97, Sec. 5.)

§ 943. It is also provided that, if any person shall bring, within half a mile of any place where the people are assembled for divine worship, and stop for exhibition any stud-horse or jackass, or shall bring within that distance any natural or artificial curiosities, and there exhibit them, he shall forfeit and pay to any one who will warrant therefor,

the sum of twenty dollars. This provision, however, is not to be construed to prohibit such exhibitions at any time, if made within the limits of any incorporated town; or without such limits, if made before the hour of ten o'clock in the forenoon, or after three o'clock in the afternoon. (*Ib.*, *Sec. 6.*)

§ 944. No person, except licensed keepers of taverns and retailers, selling at their taverns or shops, is permitted to sell any spirituous liquor, or any liquor of which spirituous liquor is a chief ingredient, at any place within the State of North Carolina, where divine service may be then celebrated, during the progress of religious exercises; nor during such time and within that distance of such place, be engaged in the occupation of selling or offering to sell any article of traffic, prepared food and provender only excepted. And any person offending against the provisions specified in this section is made to forfeit and pay, to any one who will warrant therefor twenty dollars. (*Ib.*, *Sec. 7.*)

§ 945. It is further declared that if any person shall be intoxicated, or shall quarrel, fight or be guilty of any other disorderly behavior, at a church or other place appointed for divine worship, during the time the people shall be there assembled for such worship, he shall, for each offense, forfeit and pay twenty dollars. The penalties incurred, when not otherwise provided, are for the use of the poor of the county; and on information of any offense before any justice of the peace of the county wherein the same may be committed, such justice is required to issue a warrant against the offender for the penalty incurred; and in case of an appeal from the judgment thereon, the matter is required to be prosecuted by the proper officer of the State. (*Ib.*, *Secs. 8 and 9.*)

§ 946. For forms in these cases reference is had to the forms prescribed for similar cases in the State of New York. (*Ante*, *Secs.* 864, 865, *etc.*)

§ 947. In the State of South Carolina, it is made unlawful for any person or persons to retail, sell or otherwise dispose of any spirituous or other intoxicating liquors, within one mile of any church, meeting-house or other place set apart for the worship of Almighty God, on the day or days of worship, under the penalty of fifty dollars, to be recovered by action of debt or indictment in any court having jurisdiction thereof, the money to be applied to the use of the poor of the parish or district in which such act shall be committed; licensed retailers of liquors according to law, at their own houses, are excepted from this act. (*Laws of 1809, page 49.*)

CHAPTER LXX.

DISTURBING RELIGIOUS MEETINGS IN FLORIDA, GEORGIA, ALABAMA, MISSISSIPPI, TENNESSEE, KENTUCKY, MISSOURI, LOUISIANA, ARKANSAS, TEXAS, CALIFORNIA, OREGON — LAWS AND PENALTIES—HOW ENFORCED.

§ 948. By the statute of the State of Florida, any person engaged or concerned in vociferation, noise, selling spirituous liquors, or any other act having an immediate tendency to disturb or cause a disturbance of a congregation of white persons, assembled for the purpose of divine worship at a church, chapel, synagogue, camp-meeting or other public place, with intent to disturb or cause disturbance, is subject to be fined not exceeding one hundred dollars, or whipped

not exceeding thirty-nine lashes, or imprisoned not exceeding six months, at the discretion of the jury; though this provision is not to be construed to prevent any person from pursuing his usual avocations, except on Sunday. It will be observed that the law of Florida does not protect colored people in their religious assemblies, but slavery being now abolished, it is to be presumed that the act will soon be extended to them. (*Thompson's Digest of the Laws of Florida, 4th Div., Title 1, Ch. 7, Sec. 1.*)

§ 949. In the State of Georgia if any person or persons whomsoever interrupt or disturb any congregation of white persons assembled at any church, chapel or meeting-house, or any other place for public worship, during the time of divine service, it is made the duty of any justice of the peace, sheriff, constable, or any civil officer of the county, being present when the offense shall be committed, to take the person or persons so offending into custody; or, on complaint made by any person on oath, to issue a warrant against him or them so offending. (*T. R. Cobb's Digest of the Laws of Georgia, 1854, Tit. Penal Laws, Sec. 377.*)

§ 950. It is also made unlawful for any person to sell, or cause to be sold, any wine, cider, beer, whiskey, gin, rum, or brandy, or any other intoxicating liquors, within one mile of any meeting-house, or other place set apart or publicly resorted to for divine worship, during the time appropriated to such worship. Any free white person violating either of these provisions in regard to religious worship, is deemed and held to be guilty of a misdemeanor, and is indictable therefor in the Superior Courts of the State, as in other criminal cases; and it is made the duty of justices of the peace to bind such offenders to be and appear at the Superior Courts of the State, as in other criminal cases; and on conviction the offender is liable to be fined in a sum not exceed-

ing fifty dollars nor less than ten dollars. (*Ib.*, *Secs.* 379, 380 and 381.)

§ 951. In Alabama, any person who willfully interrupts or disturbs any assemblage of people met for religious worship, by noise, profane discourse, rude or indecent behavior, or by any other act at or near the place of worship, must, on conviction, be fined not less than twenty nor more than two hundred dollars, and may be imprisoned not more than six months. (*Code of Alabama*, 1852, *Sec.* 3257.)

§ 952. In the State of Mississippi, any person who shall willfully disturb any congregation or persons lawfully assembled for religious worship, may be immediately arrested by any officer or private person present, without warrant, and taken before any justice of the peace of the county, present or convenient, and required to enter into bond or recognizance for his good behavior, and to keep the peace, and for his appearance at the next term of the circuit court, to answer for the offense, and, on conviction thereof, the offender must be fined not more than five hundred dollars, or imprisoned not more than six months, or both, at the discretion of the court. It is, therefore, a serious matter to disturb a religious meeting, in their worship, in the State of Mississippi. (*Revised Code of Mississippi*, *Ch.* 44, *Sec.* 25.)

§ 953. In Tennessee, any person who obstructs the way to or from a place of public worship, or to the spring or wells used thereat, so as to prevent access, forfeits twenty dollars, one half to the use of the county, and the other half to the person suing therefor; and all justices of the peace, sheriffs, coroners and constables, are required to arrest immediately any person in their knowledge or observation, disturbing a congregation assembled for public worship, or violating any rule or regulation adopted by such denomination for their

own government, or the preservation of good order; and such offender must be fined by the justice before whom brought, not exceeding five dollars, or be bound over for his appearance at court to be proceeded against as a rioter for the offense. (*Code of Tennessee, 1858, Secs. 1510 and 1511.*)

§ 954. It is also provided that any person who carries ardent spirits, or other intoxicating liquors, within one mile of any place of public worship, and offers to sell the same; and any person who sells or offers to sell any article of traffic whatsoever, within view of any worshiping assembly, on the Sabbath day, in such manner as to disturb such assembly, are respectively liable for each offense to pay ten dollars to any person who will sue therefor; and such offender is also declared guilty of a misdemeanor. The first provision, however, does not apply to persons selling or offering to sell ardent spirits, etc., at their usual place of business; nor does the last provision extend to any person selling such articles of traffic as he may lawfully sell on the Sabbath day, and at his usual place of business. (*Ib., Secs. 1512, 1513, 1514 and 1515.*)

§ 955. In the State of Kentucky, if any person shall willfully and maliciously interrupt or disturb a congregation assembled on or at any place of and for religious worship, or misuse or maltreat any person being there, is required to be fined in a sum not less than ten nor more than fifty dollars, or imprisoned not less than five nor more than twenty days, or both so fined and imprisoned, at the discretion of the jury; and a justice of the peace, or any officer who is, by virtue of his office, a conservator of the peace, having knowledge of such offense, or being informed thereof by affidavit, may come with the sheriff or other officer, and call to his aid the power of the county, if need be, and arrest the offender, put him under restraint, or may issue his war-

rant to an officer for that purpose. (1 *R. S. of Kentucky*, 1860, *Ch. 28, Art. 17, Secs. 2 and 3.*)

§ 956. The person offending as aforesaid, when arrested, must be kept in custody, unless he give bond to the commonwealth in the penalty of one hundred dollars, with good surety, that he will appear at a time and place to be fixed by the officer taking the recognizance, and not to depart until discharged by due course of law. On failure to give the bond, the person arrested must be committed to jail for safe keeping until the day fixed by the justice for trial. The time and place fixed for the trial must be within the county, not beyond ten days from the day of arrest. (*Ib.*, *Sec. 4.*)

§ 957. The justice who tries the offender must, if required by the party, cause a jury to be impaneled as often as need be to try the case, and ascertain the penalty and punishment within the limits prescribed; and if the defendant be found guilty, must enforce the judgment by such process or order as may be necessary. If the accused do not demand a jury, the justice must hear and decide the case; and any justice, sheriff or other officer, having knowledge or information of the commission of such offense, who shall willfully neglect and fail to execute the duties required of them respectively, may be severally fined the sum of one hundred dollars for each offense. (*Ib.*, *Secs. 5 and 6.*)

§ 958. In Missouri every person who shall willfully, maliciously or contemptuously disquiet or disturb any congregation or assembly of people met for religious worship, by making a noise, or by rude or indecent behavior, or profane discourse within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting, or menace, threaten or assault any person there being, is

declared guilty of a misdemeanor, and punishable by fine not exceeding one hundred dollars, and, if unable to pay the fine, by confinement in the county jail not exceeding three months. (*Revised Statutes of Missouri*, 1845, Chap. 47, Sec. 28.)

§ 959. Under this statute of Missouri, circuit courts and justices of the peace have concurrent jurisdiction, because the fine for the offense declared is limited to one hundred dollars, the offender may therefore be tried and punished before a justice, or he may be indicted, tried and punished before the proper circuit court. (*Clay v. The State*, 6 *Missouri R.* 603.)

§ 960. In the State of Louisiana whoever shall maliciously disturb, or cause any disturbance to be made, whereby any peaceable assembling of the people for religious worship is disturbed, may, upon conviction, be fined not exceeding one hundred dollars, and imprisoned not exceeding ten days, and for a second conviction the punishment is required to be doubled. (*Rev. Stat. of Louisiana*, 1856, title, *Crimes and Offenses*, Sec. 113.)

§ 961. In the State of Arkansas, if any person shall maliciously or contemptuously disturb or disquiet any congregation or private family assembled in any church or other place for religious worship by profanely swearing, or using indecent gestures, or threatening language, or committing any violence of any kind, to or upon any person so assembled; or if any person shall maliciously or contemptuously disturb any congregation, or private family, or other persons assembled in any church, or other place, for the transaction of church business, by using any language or acting in any manner that is calculated to disquiet, insult or interrupt said congregation, the person so offending, upon con-

viction thereof, is declared and adjudged to be guilty of a misdemeanor, and required to be fined, in any sum not less than twenty dollars nor more than fifty dollars; and any justice of the peace, within any county of the State, is given jurisdiction of every such case, to cause the offender to be brought before him, and, on investigating the charge, he is required to discharge, bail, or commit in default of bail, as the case may require. (*Digest of Statutes of Arkansas*, 1858, Ch. 51, Art. VI, Secs. 1, 2 and 7.)

§ 962. It is further provided that if any person shall contemptuously offer for sale any ardent, vinous or other drinks, within one mile of any camp-ground, during camp meeting, or within one mile of the place of meeting for religious worship of any Christian denomination, the person so offending, upon conviction thereof, is adjudged guilty of a misdemeanor, and may be fined in any sum not less than ten dollars. This prohibition is declared not to extend to any regularly licensed tavern-keeper or grocer previously doing business within one mile of any such camp-ground; and any justice of the peace is given jurisdiction in those cases, the same as in the cases mentioned in the last preceding section. (*Ib.*, Secs. 5, 6 and 7.)

§ 963. In the State of Texas it is enacted, that if any person or persons shall maliciously disturb any congregation assembled for religious worship, and conducting themselves in a peaceable and orderly manner, in and about any church chapel, meeting-house encampment or camp-meeting, enclosure, mosque, synagogue or temple, while attending any protracted or other religious meeting, the person or persons so offending may be put under restraint during religious worship, by any justice or other peace officer present; or, in case no such officer be present, then on information upon oath in writing, before any justice or other peace officer, such person

so offending, may be bound over to keep the peace, and to appear at the next term of the District Court, to answer the charge; and, on conviction before any District Court in the county where the offense was committed, the person or persons so offending, are required to be fined in a sum not less than five nor more than one hundred dollars, and may be imprisoned not more than ten days. (*Hartley's Digest of the Laws of Texas, Art. 481.*)

§ 964. In the State of California, every person who shall willfully disquiet or disturb any congregation or assembly of people met for religious worship, by making a noise, or by rude or indecent behavior, or profane discourse within the place of worship, or so near the same as to disturb the order and solemnity of the meeting, or menace, threaten or assault any person there being, is deemed guilty of a misdemeanor and punishable by fine in any sum not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months; and every person who shall erect or keep a booth, tent, stall, or other contrivance, for the purpose of selling or otherwise disposing of any wine or spirituous or fermented liquors, or any drink of which wine, spirituous or fermented liquors form a part, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, is also deemed guilty of a misdemeanor, and punishable by fine not exceeding five hundred dollars. (*Wood's Digest of the Laws of California, 1850-1860, Arts. 1978 and 1979.*)

§ 965. And, finally, in the State of Oregon, it is declared that if any person shall willfully disturb, interrupt or disquiet any assembly or congregation of people met for religious worship, whether in the house or open air, by uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise within the place where such

meeting is held, or so near it as to disturb the order and solemnity thereof, or by exposing for sale or gift any intoxicating liquors or drinks within two miles of the place where any such assembly or congregation shall be actually convened for religious worship, and in a place other than such as shall have been duly licensed therefor, and in which such person shall have usually resided and carried on such business such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month, nor more than six months, or by fine not less than ten dollars, nor more than two hundred dollars. (*Gen. Laws, 1845-1864, Criminal Code, Ch. 49, Sec. 651.*)

§ 966. They do not appear to have any special enactments in the new States of West Virginia and Nevada, to prevent the disturbance of religious assemblies. A short time will very likely disclose the necessity of such statutes, when they will probably be provided.

§ 967. In all cases referred to in this chapter cognizable before justices of the peace, the process and proceedings may be framed after the forms given for similar cases in the State of New York, to which reference is made. (*Ante, Secs. 864, 865, etc.*)

§ 968. It will be discovered that there is a similarity in the statutes of several of the States to prevent the disturbing of meetings for divine worship; and yet there is by no means a uniformity in these enactments. Acts are made unlawful in some of the States which are tolerated in others; the penalties imposed are severer in some and milder in others; violations of the statutes are made misdemeanors and indictable in some, and only penal and punishable summarily in others; and convictions are appealable in some, and made final in others. One thing is manifest, however, which is,

that there is a universal sentiment in all the States favorable to the public worship of God; and a disposition is apparent on the part of legislatures and courts, to maintain the sanctity and solemnity of religious assemblies. In a few of the late slave States, the colored population have been excluded from the protection of these laws, and, in some cases, forbidden to assemble for religious worship; but slavery having been abolished, those States are fast shaping their institutions in conformity with the present order of things, and, very soon, this odious discrimination will probably cease to exist.

THE LAW OF BURIAL GROUNDS.

CHAPTER LXXI.

BURIAL PLACES—TITLE TO THE GROUNDS—THE ASHES OF THE DEAD—LANDS MAY BE DEDICATED FOR BURIAL PURPOSES.

§ 969. The sepulture of the dead has been regarded in all ages of the world as a religious rite; and the place where the remains of friends have been deposited, is always esteemed as consecrated and hallowed. Diogenes and his followers, it is true, looked upon burial with contempt, and held it unimportant whether their bodies should be burned by fire, or devoured by beasts, birds or worms; and some of the French philosophers of modern days have descanted upon the "glorious nothingness of the grave, and that nameless thing, a dead body;" but the public sentiment, and secular jurisprudence of civilized nations, hold the grave and the dead body in higher and better regard. In France even, the home of this school of modern philosophy, it has been adjudicated by her secular courts, that the land where dead bodies are buried, shall not be profaned by culture until the buried dead have mouldered into dust. (*Merlin's Répertoire, Tit. Sépulture.*)

§ 970. Cemeteries, as sleeping places for the dead, have existed from the remotest periods. The Hebrews had their

public burial grounds, and the Greeks, before they adopted the custom of burning their dead, had their "sleeping fields" for the sepulture of the dead. And indeed in all countries, both ancient and modern, except where incremation is the practice, the first care of a people has always been to select a place for the burial of their dead; and many of these burial places are immense. The practice of burial under and around churches has prevailed to a great extent in all Christian countries, and the place of burial is often consecrated, in form, by ecclesiastical ceremonies. The law of burial, in its relations to the place of interment, and the protection of the dead body, has usually been considered as belonging to that class of topics falling under the consideration of the ecclesiastical courts.

§ 971. The right to bury a corpse and to preserve its remains, is one which the courts of law will recognize and protect, and in the absence of testamentary disposition, belongs exclusively to the next of kin. The right to protect the remains, includes the right to preserve them by separate burial, to select the place of sepulture, and to change it at pleasure. The right to the mere repose of a grave, although intangible or invisible, is nevertheless property. The right to the individuality of a grave, continues as long as the remains of the occupant can be identified. (*Matter of Brick Presbyterian Church*, 4 *Brad. R.* 503.) The bodies of the dead belong to the surviving relations, to be disposed of as they may deem fit, but subject to such burial regulations as are reasonable and proper for the public health and advantage. (*Bogert v. Indianapolis*, 13 *Indiana R.* 134.)

§ 972. The object of a cemetery is to perform the office of sepulture, and the use of the ground for that purpose, is a charitable as well as religious use — a trust which a court,

in the exercise of equity powers, and wholly irrespective of any assumption or resumption of authority ever possessed by any ecclesiastical body, may duly regulate and control. And should it become necessary to take the place of burial for public use, the next of kin of the deceased persons interred there, may claim to be indemnified for the expense of removing and suitably re-interring their remains. (*Ib.*)

§ 973. It is a misdemeanor at common law to enter an unincorporated burial ground and, without the knowledge or consent of the owners of the ground, or authority of any kind, to dig up and carry away a corpse buried therein; although the person committing the act may have been actuated by motives of affection and respect to the deceased, and of religious duty, and have conducted the removal decently. (*Regina v. Sharp*, 50 *Eng. Law and Equity R.* 581.)

§ 974. The fee simple of an estate in land may be acquired for the purposes of sepulture, and when converted to that use, the title may descend, or be again the subject of sale. The common cemetery is subject only to a temporary appropriation, and yet there may be a grant of an exclusive title to a part of the public cemetery from the proper authority; a vault or a grave is simply a place to entomb, a receptacle for the dead, a last resting place, and a grant for such a place may be exclusive and perpetual. We have an instance of this in the case of Abraham's purchase of the cave in the field of Machpelah, which was "for a possession of a burying place," and it inured to the purchaser and his heirs even to the fourth generation. (*In the matter of the Brick Presbyterian Church*, *Edw. Ch. R.* 155.)

§ 975. The right of burial, when confined to a church-yard, as distinguished from a separate independent cemetery, although conveyed with the common formula of "heirs and

assigns forever," will stand upon the same common footing as the right of public worship in a particular pew of the consecrated edifice. It is an easement in, and not a title to the freehold, and must be understood as granted and taken, subject (with compensation, of course), to such changes as the altered circumstances of the congregation or the neighborhood may render necessary. Like the sale of a church pew, which gives the mere right to worship in the particular place while the church stands and is occupied for religious purposes; the sale of a church vault gives the mere right of interment in the particular plat of ground, so long as that and the contiguous ground continues to be occupied as a church-yard. This is the common doctrine, unless there is a local statute to change it. (*Richards v. The Northwest Protestant Dutch Church*, 32 Barb. R. 42.)

§ 976. The heir has a right of property in the monuments and escutcheons of his ancestors, and may maintain an action against any person for defacing them; but he has no property in the ashes of his ancestor, and cannot sustain an action against one who disturbed them. (*In the matter of the Brick Presbyterian Church*, 3 Edw. Ch. R. 155.) It is a criminal offense, however, to violate the peace of the dead; not because it is invading the imaginary right of the dead, but because it outrages the christian sensibilities of the living. It was the special punishment, not of the buried dead, but of the living sinners of unhappy Jerusalem, that spread the bones of her inhabitants "before the sun and the moon and all the host of heaven." (*Ib.* 4 Brad. R. 531.)

§ 977. Land may be dedicated as a grave-yard by the owner, the effect of which is not to deprive a party of title to his land, but to estop him while the dedication continues in force, from asserting that right of exclusive possession and enjoyment, which the owner of the property ordinarily has; and

a long continued use of the land as such grave-yard by the public is cogent evidence of a dedication. And a dedication may be established by acts, unequivocal in their character, on the part of the owner and the public, though occurring on a single day. Ordinarily, some conveyance or written instrument is required to transmit a right to real property; but the law applicable to dedications is different. A dedication may be made without writing, by act *in pais*, as well as by deed. In such case, the owner is not allowed to assert his title, upon the principle that it would be dishonest, immoral, or indecent, and in some instances even sacrilegious, to reclaim at pleasure property which has been solemnly devoted to the use of the public, or in furtherance of some charitable or pious objects. The law, therefore, will not permit any one thus to break his own plighted faith; to disappoint honest expectations thus excited, and upon which reliance has been placed. (*Hunter v. The Trustees of Sandy Hill*, 6 *Hill*, 407.)

§ 978. The foregoing principles and statements, in relation to burying places, are applicable to all parts of the country, where no local statute contravenes, and may therefore be regarded as common to all of the States, except in a State where the principle is changed by an express statute. Common law rights are as sacred and certain as those which are secured by special statute, unless the rule may be changed in a given case by local enactment.

CHAPTER LXXII.

BURIAL GROUNDS IN NEW YORK—GROUNDS, HOW HELD—RELIGIOUS SOCIETIES MAY HOLD SUCH GROUNDS, BUT CANNOT MORTGAGE IN CERTAIN CASES—HUMAN REMAINS NOT TO BE REMOVED WHEN COMPENSATION IS RECEIVED—RURAL CEMETERIES—ASSOCIATIONS, HOW ORGANIZED—FORM OF PROCEEDINGS—POWERS OF THE CORPORATION—MANAGEMENT OF ITS AFFAIRS—OFFICERS OF THE ASSOCIATION—SURVEYS AND MAP—PROCEEDS OF SALES, HOW APPLIED.

§ 979. Lands may be conveyed, in the State of New York, to municipal corporations, and even school districts, for the special use of burial, and the practice of such conveyances in trust was quite prevalent in the early history of the State. So it is competent for a religious society to purchase, acquire and hold land for the purpose of a burial-ground, and to erect thereon suitable buildings for purposes connected with the burial of the dead. (*Laws of 1850, Ch. 122, Sec. 2; 3 Stat. at Large, 703.*)

§ 980. Every person purchasing a grave, in a grave-yard appendant to a church, does so with the full knowledge and implied understanding that the change of circumstances may in time require a change of location, and that the law evoking to such exigency authorizes the corporation, when such exigency arrives, as the representative of all the interests, with the sanction of the court, to sell the soil in absolute fee, discharged of all easements, and to make a more appropriate investment of the proceeds, subject to the duty of making a just and fair compensation, in the form of money or other suitable equivalent, if required, to the owner of the grave. (*Richards v. The Northwest Protestant Dutch Church, 32 Barb. 42.*)

§ 981. No church or religious corporation can legally mortgage any burying-ground used for the interment of human remains, for the use of which they shall have received compensation, without the previous consent, in writing, of three-fourths in number of the congregation or society of such church or corporation, which consent must be proved or acknowledged in the same manner as deeds are required to be proved or acknowledged, and thereupon recorded in the office of the register of the city or clerk of the county in which such burying-ground is situated. (*Laws of 1842, Ch. 215, Sec. 1.*)

§ 982. No person or persons can lawfully remove any dead body or human remains from any burying-ground for the interment of which compensation has been received by any church or religious corporation, or by any officer or officers thereof, and which shall have been used for that purpose during the last three years, with the intent to convert the said burying-ground to any other purpose without having first obtained the consent in writing of three-fourths in number of the congregation or society, which consent must be proved or acknowledged in the manner prescribed in the last preceding section, before any such removal can be commenced or attempted. And any person offending against any of these provisions is made guilty of a misdemeanor, and punishable by imprisonment in a county jail, not exceeding six months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment, in the discretion of the court. (*Ib.*, *Secs. 2 and 3.*)

§ 983. It is provided by statute that the title to every lot or piece of land which shall have been used by the inhabitants of any town in the State, as a cemetery or burying-ground, for the space of fourteen years next and immediately before the act took effect in 1826, should be deemed to be

vested in such town, and be subject in the same manner as other corporate property of towns to the government and direction of the electors in town meeting; and in case of a division of a town, any burying-ground therein will belong to the town within which it may be situated after the division has been made. (1 *Revised Stat.*, Part 1, Chap. 11, Title 1, Sec. 1; *Ib.*, Title 6, Sec. 1; 1 *Statutes at Large*, 311 and 333.)

§ 984. The cemetery established, controlled and improved by a regular association, is an institution in this country of recent origin, though associations for that object are getting quite common, and in the State of New York they are becoming well understood and quite popular. The statutes of the State afford all reasonable facilities to those associations for their organization, operation, protection and practical work.

§ 985. Any number of persons residing in the State, not less than seven, who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery, or place for the burial of the dead, may meet at such time and place as they, or a majority of them, may agree, and appoint a chairman and secretary by the vote of a majority of the persons present at the meeting, and proceed to form an association, by determining on a corporate name by which the association shall be called and known; by determining on the number of trustees to manage the concerns of the association, which number must not be less than six, nor more than twelve; and thereupon may proceed to elect, by ballot, the number of trustees so determined on; and the chairman and secretary must immediately after such election, divide the trustees by lot into three classes; those of the first class to hold their office one year, of the second class two years, and the third three

years. The meeting must also determine on what day in each year the future annual elections of trustees shall occur. (*Laws of 1847, Chap. 133, Sec. 1; 3 Statutes at Large, 745.*)

§ 986. The chairman and secretary of the meeting are required, within three days after such meeting, to make a written certificate, and sign their names thereto, and acknowledge the same before an officer authorized to take the proof and acknowledgment of conveyances in the county where such meeting was held, which certificate must state the names of the associates who attended such meeting, the corporate name of the association determined upon by the majority of the persons who met, the number of trustees fixed on to manage the concerns of the association, the names of the trustees chosen at the meeting, and their classification, and the day fixed on for the annual election of trustees. The chairman and secretary of the meeting must also cause the certificate to be recorded in the clerk's office of the county in which the meeting was held, in a book to be appropriated to the recording of certificates of incorporations. (*Ib., Sec. 2; 3 Stat. at Large, 746.*)

§ 987. The following is a convenient form to be used in framing the certificate of incorporation:

We, A. B., of the village of Fulton, chairman, and C. D., of the same place, secretary, of the meeting hereinafter mentioned, do hereby certify that, in pursuance of the act entitled "An Act authorizing the incorporation of Rural Cemetery Associations," passed April 27, 1847, and the several acts amendatory thereof, a meeting of persons, more than seven in number, residing in the village of Fulton, county of Oswego, and State of New York, desirous of forming an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place for the burial of the dead, was held at the Methodist Episcopal church in

the said village of Fulton, on the day of ; and that the following named associates attended the said meeting viz.: A. B., etc., (names of all who attended to become associated).

We also certify that the said A. B. was duly appointed chairman of the said meeting, and that C. D. was duly appointed secretary thereof by the said above named associates; that it was determined by the said associates, and by a vote of the majority of the persons who met as aforesaid, that the corporate name of the said association be "Mount Adnah Rural Cemetery Association," by which the said association should be called and known; that there shall be nine trustees to manage the concerns of the said association; and that thereupon the said meeting proceeded to elect by ballot nine trustees to manage the concerns of the said association, and the following named persons were duly elected by a majority of the ballots given on such election, and were then and there declared duly elected such trustees, viz.: A. B., etc., (naming the whole nine). That the said chairman and secretary did, immediately after such election, divide the said trustees, by lot, into three classes, those of the first class to hold their office for one year, those of the second class for two years, and those of the third class for three years; and the following of the said above named trustees were, by said division by lot, classified in the first class, viz.: A. B., etc., and the following were classified, by lot, in the second class, viz.: C. D., etc.; and the following were classified, by lot, in the third class, viz.: E. F., etc. The said meeting of said associates, by a unanimous vote, determined that the future annual election of trustees of said association, shall be held on the Monday of April in each year.

In witness whereof, the said A. B., chairman, and the said C. D., secretary, of the said meeting as aforesaid, have hereunto set their hands this day of at Fulton aforesaid.
A. B., *Chairman*.

C. D., *Secretary*.

§ 988. The certificate must be acknowledged or proved the same as conveyances of real estate, and recorded as before stated, whereupon the association will be deemed legally incorporated, and will have and possess the general powers and privileges, and be subject to the liabilities and restrictions

contained in the Revised Statutes of the State, specifying the general powers, privileges and liabilities of corporations. (*Laws of 1847, Ch. 183, Sec. 3; 1 Stat. at Large, 556; 3 Ib., 746.*)

§ 989. Such association when legally organized has the power generally to have succession by its corporate name; to sue and be sued, complain and defend, in any court of law and equity; to make and use a common seal; to appoint such subordinate officers and agents as the business of the corporation may require, and to allow them a suitable compensation; and to make by-laws, not inconsistent with any existing law, for the management of its property, and the regulation of its affairs. (*Ib.*)

§ 990. The affairs and property of the association are managed by the trustees, who must annually appoint from their number a president and vice-president; and also a secretary and treasurer, who will hold their places during the pleasure of the board of trustees. The trustees may require the treasurer to give security for the faithful performance of the duties of his office; and they may also fill any vacancy in the office of president or vice-president, occurring during the year for which they hold their office. (*Ib., and Laws of 1852, Ch. 280, Sec. 2; 3 Stat. at Large, 752.*)

§ 991. Any such association may take by purchase or devise, and hold, within the county in which the certificate of their incorporation is recorded, not exceeding two hundred acres of land, to be held and occupied exclusively for a cemetery for the burial of the dead. Such land or such parts thereof as may from time to time be required for that purpose, must be surveyed and subdivided into lots or plats of such size as the trustees may direct, with such avenues, paths, alleys and walks as the trustees deem proper; and a

map or maps of such surveys must be filed in the office of the clerk of the county in which the land may be situated. (*Laws of 1847, Ch. 133, Sec. 4; 3 Stat. at Large, 746.*)

§ 992. The association may also take and hold any property, real or personal, bequeathed or given upon trust, to apply the income thereof under the direction of the trustees, for the improvement or embellishment of the cemetery of such association, or the erection or preservation of any buildings, structures, fences or walks erected or to be erected upon the lands of such cemetery association, or upon the lots or plats of any of the proprietors; or for the repair, preservation, erection or renewal of any tomb, monument, grave-stone, fence, railing or other erection, in or around any cemetery lot or plat; or for planting and cultivating trees, shrubs, flowers or plants, in or around any such lot or plat, or for improving or embellishing such cemetery, or any of the lots or plats in any other manner or form, according to the terms of such grant, devise or bequest. (*Ib., Sec. 9; 3 Stat. at Large, 748.*)

§ 993. After the map is filed as directed, the trustees may sell and convey the lots or plats designated on such map, upon such terms as may be agreed, and subject to such conditions and restrictions to be inserted in or annexed to the conveyances, as the trustees may prescribe. The conveyances must be executed under the common seal of the association, and signed by the president or vice-president, and the treasurer of the association. (*Ib., Sec. 4; 3 Stat. at Large, 747.*)

§ 994. All lots or plats of ground designated on the maps filed as aforesaid, and numbered thereon as separate lots by the incorporators, must be indivisible, but may be held and owned in undivided shares; any lots or plats, however, so

designated and numbered, remaining unsold, and in which there shall have been no interment, may by order of the trustees, be re-surveyed, enlarged, subdivided or altered in shape or size, and designated by numbers or otherwise, on any map or maps which may be filed as aforesaid; one half, at least, of the proceeds of all sales of lots must be first appropriated to the payment of the purchase money of the lands acquired by the association, until the whole purchase money shall be paid, and the residue thereof to preserving, improving and embellishing the said cemetery grounds and the avenues or roads leading thereto, and to defray the incidental expenses of the cemetery establishment; and after the payment of the purchase money and the debts contracted therefor, and for surveying and laying out the land, the proceeds of all further sales must be applied to the improvement, embellishment, and preservation of such cemetery, and for incidental expenses, and to no other purpose or object whatever. (*Laws of 1847, Ch. 133, Sec. 7, as amended by Laws of 1852, Ch. 280, Sec. 1; 3 Stat. at Large, 751.*)

§ 995. It is made lawful for such associations to agree with the person or persons from whom cemetery lands may be purchased, to pay for such lands, or the purchase price thereof, any specified share or portion, not exceeding one half the proceeds of all sales of lots or plats made from such lands; in which case, the share or portion of such proceeds so agreed upon, not exceeding one-half thereof, must be first appropriated and applied to the payment of the purchase money of the lands so acquired; and the residue thereof must be appropriated to preserving, improving and embellishing the cemetery grounds and the avenues and roads leading thereto, and to defraying the incidental expenses of the cemetery establishment. (*Ib., as amended by Laws of 1853, Ch. 122; 3 Stat. at Large, 753.*)

§ 996. In all cases where cemetery lands are purchased and agreed to be paid for in the manner referred to in the last preceding section, the prices for lots or plats specified in the by-laws, rules and regulations first adopted by any such association, cannot be legally changed without the written consent of a majority in interest of the persons from whom the cemetery lands were purchased, their heirs, representatives or assigns. (*Ib.*)

§ 997. Any such association may hold personal property to an amount not exceeding five thousand dollars, besides what may arise from the sale of lots or plats. (*Laws of 1847, Ch. 133, Sec. 4; 3 Stat. at Large, 747.*) The cemetery lands and property of the association are declared exempt from all public taxes, rates and assessments, and the same are not liable to be held on execution, and cannot be made to apply in payment of debts due from any individual proprietors; but the proprietors of lots or plats in the cemetery, their heirs and devisees, may hold the same exempt therefrom so long as the same shall remain dedicated for the purpose of a cemetery, and during that time no street, road, avenue or thoroughfare can be legally laid through such cemetery, or any part of the land held by the association for cemetery purposes, without the consent of the trustees of the association, except by special permission of the legislature of the State. (*Ib., Sec. 10; 3 Stat. at Large 748.*)

CHAPTER LXXIII.

BURIAL GROUNDS IN NEW YORK—ELECTION OF TRUSTEES OF CEMETERY ASSOCIATIONS—TRUSTEES TO REPORT TO LOT PROPRIETORS—TENURE OF THEIR OFFICE—SALE OF LOTS—LOTS, HOW HELD—INDEBTEDNESS OF THE ASSOCIATION MAY BE FUNDED—CERTIFICATES OF INDEBTEDNESS—HOLDERS MAY VOTE.

§ 998. The annual election for trustees for any cemetery association in the State of New York, to supply the place of those whose term of office expires, must be held on the day mentioned in the certificate of incorporation, and at such hour and place as the trustees may direct, at which election there must be chosen such number of trustees as will supply the places of those whose term expires. The trustees, however, have the power, by resolution of a majority of all of said trustees, to change the time for the annual election of trustees as fixed in their act of incorporation; but no such resolution can take effect until sixty days after the same has been published six successive weeks, once in each week, in some newspaper published in the city or county where the association is situated, and a copy of such resolution, certified by the president and secretary, shall have been filed in the office of the clerk of the county where the certificate of incorporation is recorded. (*Laws of 1847, Chap. 133, Sec. 5, as amended by the Laws of 1860, Chap. 94; 3 Stat. at Large, 747.*)

§ 999. The trustees of any such association, chosen at any election subsequent to the first, hold their places for three years and until others are chosen to succeed them. The election of trustees must be by ballot, and every person of

full age, who may be proprietor of a lot or plat in the cemetery of the association, containing not less than ninety-six square feet of land, or, if there are more than one proprietor of any such lot or plat, then such one of the proprietors as the majority of joint proprietors shall designate to represent such lot or plat, may, either in person or proxy, give one vote for each lot or plat of the dimensions aforesaid, and the persons receiving a majority of all the votes given at such election will be the trustees to succeed those whose term of office expires. In all elections after the first, the trustees must be chosen from among the proprietors of lots or plats; and the trustees may fill any vacancy occurring in their number during the period for which they hold their office. Public notice of the annual elections must be given in such manner as the by-laws of the corporation may prescribe. (*Id.*)

§ 1000. The trustees, at each annual election, are required to make reports to the lot proprietors of their doings, and of the management and condition of the property and concerns of the association. Should the annual election happen not to be held on the day fixed in the certificate of incorporation, the trustees have power to fix or appoint another day, not more than sixty days thereafter, and they must give public notice of the time and place, at which time the election may be held with the like effect as if holden on the day fixed on in the certificate; and the office of the trustees chosen at such time, will expire at the same time as if they had been chosen on the day fixed by the certificate of incorporation. (*Laws of 1847, Chap. 133, Sec. 6; 3 Statutes at Large, 748.*)

§ 1001. The trustees may sell and convey lots and plats of ground within the cemetery limits, as shown on the map of the same, filed in the office of the clerk of the county

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wherein the same may be situated, without previously filing in such clerk's office a map of each lot so intended to be conveyed; though a map is required to be preserved by the association, of each lot and plat conveyed, on which the number thereof must be designated. (*Ib.*, Sec. 11, as amended by Laws of 1853, Ch. 122; 3 Stat. at Large, 753.)

§ 1002. When the land is laid off into lots or plats, and such lots or plats, or any of them, may be transferred to individual holders, and after an interment has been made in a lot or plat so transferred, such lot or plat, from the time of the first interment, will be forever thereafter inalienable, and, upon the death of the holder or proprietor thereof, will descend to the heirs at law of such holder or proprietor, and to their heirs at law forever; any one or more of such heirs, however, may release to any other of the said heirs, his, her or their interest in the same, on such conditions as may be agreed on and specified in the release, a copy of which release is required to be filed with the town clerk of the town, or the register of the city within which the cemetery is situated. No body of any deceased person can be legally interred in such lot or plat, unless it be the body of a person having an interest therein at the time of such decease, or the relation of some person having such interest, or the wife of such person, or her relation, except by the consent of all persons having an interest in such lot or plat. (*Laws of 1847, Chap. 133, Sec. 11; 3 Statutes at Large, 749.*)

§ 1003. The trustees may also fund any outstanding indebtedness of the association, for lands purchased for cemetery purposes, or for moneys actually expended in preserving, improving and embellishing the cemetery grounds, and may provide for the payment of such funded debt. Whenever such trustees, by a vote of two-thirds of all the trustees

elected, may desire to fund such indebtedness, they are required to ascertain the amount of obligations outstanding for the purchase money of the lands acquired by the association, and for preserving, improving and embellishing the cemetery grounds; and thereupon, with the consent of any creditor to whom the indebtedness, or any part of it, may be due and owing, the said trustees may issue certificates for the amount thereof, in sums of one hundred dollars each, payable at such time, and drawing such interest as may be agreed upon, in satisfaction and discharge of such indebtedness, or such part thereof; though no certificate can legally be issued for any fractional part of one hundred dollars, nor drawing any higher rate of interest than seven per cent per annum. The certificates must be sealed with the corporate seal of the association, and signed by the president and treasurer thereof, and are deemed personal property, and transferable by delivery, unless otherwise provided on their face, and an exact and true account of the number and amount thereof, the persons to whom issued, the time of maturity and the rate of interest, must be accurately entered on the books of the association. (*Laws of 1860, Chap. 163, Secs. 1 and 2; 3 Stat. at Large, 756.*)

§ 1004. The trustees are required to keep a distinct and separate account of the certificates issued for the purchase money of lands acquired by the association, and the certificates issued for debts incurred in improving and embellishing the cemetery grounds, in the cemetery books; and it is made their duty, at least twice in each year, to apply the proceeds of all sales of lots and plats, in redemption of such certificates, one half for the redemption of certificates issued for said purchase money until the whole are redeemed, and the residue thereof for the redemption of certificates issued for debts incurred as aforesaid, and, upon such redemption,

the trustees must cancel the certificates on their books, and destroy the certificates returned. (*Ib.*)

§ 1005. Until the certificates are redeemed, the holders of the same are legally entitled to vote at all elections and business meetings of the corporation, one vote for each and every certificate of one hundred dollars held by such voter. None of these provisions are declared to be construed to create a lien upon lots or plats belonging to individual proprietors, within the cemetery limits; nor is any other or greater liability to be created by the certificates against the association or trustees issuing them than may be necessary to enforce the faithful application of the proceeds of sales, in the redemption of such certificates in the manner specified. (*Ib.*, *Secs. 3 and 4.*)

§ 1006. No such cemetery association can take by deed, devise or otherwise, any lands in the counties of Westchester, Kings or Queens, or set apart any ground for cemetery purposes therein, nor can any other corporation or person take or set apart or use any land or ground in either of said counties for cemetery purposes, without the consent of the board of supervisors of said county first had and obtained; and the board of supervisors, in granting consent, may annex thereto such conditions, regulations and restrictions as such board may deem the public health or public good requires. Nothing, in the statute referred to, is to prevent any ecclesiastical incorporation in existence on the fifteenth day of April, one thousand eight hundred and fifty-four, in either of those counties, from using any burial-ground at that date belonging to such ecclesiastical incorporation within such county, as it had been theretofore accustomed. (*Laws of 1852, Ch. 280, Sec. 3, as amended by Laws of 1854, Ch. 238, Secs. 1 and 2; 3 Stat. at Large, 755.*)

§ 1007. Any cemetery association or other incorporation desiring to use any lands for cemetery purposes, in either of said counties, or to take a conveyance thereof, must cause notice to be published in the county in which such lands are situated, of their intention to apply to the board of supervisors of such county, stating the time at which such application will be made for the consent mentioned; such notice must contain a brief description of the lands for which such consent is asked, and also their location and the number of acres. At such meeting, upon due proof of the publication of the notice required, the applicants and remonstrants, if any, may be heard in person and by counsel; and, thereupon, if the board of supervisors grant the consent, it is made lawful for such incorporation to take and hold the lands designated in such consent, not exceeding two hundred and fifty acres in any county. (*Laws of 1852, Ch. 238; 3 Stat. at Large, 756.*)

§ 1008. The board of supervisors of each of the counties of Westchester, Kings and Queens, are authorized to make, from time to time, such regulations as to the mode of burials in any cemetery within their bounds, as they may judge the public health or public decency to require, and such regulations must not be disobeyed. (*Laws of 1854, Ch. 238, Sec. 3; 3 Stat. at Large, 756.*)

CHAPTER LXXIV.

BURIAL GROUNDS IN NEW YORK—VILLAGE CEMETERIES—PROCEEDINGS TO PROCURE LAND FOR—TAX TO PAY FOR LAND—TRUSTEES TO REGULATE GROUNDS BY ORDINANCES—INTERMENT OF STRANGERS—RECORD OF INTERMENTS—TAX TO IMPROVE GROUNDS—PRIVATE AND FAMILY CEMETERIES—CORPORATION, HOW FORMED—THE CERTIFICATE OF INCORPORATION—CEMETERY MUST BE INCLOSED—PENALTIES FOR INJURING FENCES OR STONES—PROPERTY NOT LIABLE TO EXECUTION.

§ 1009. The legal voters of any incorporated village in the State of New York, at any meeting lawfully convened, are authorized by resolution to direct the trustees of such village to purchase suitable land for a burying-ground for such village, or land in addition to any burying-ground already owned by the village, upon such terms and conditions, not inconsistent with certain provisions hereinafter stated, as such meeting may prescribe; but the whole expense of purchasing such ground or additional lands in any village, fencing the same, and putting it in proper condition to be used as a burying-ground, must not exceed twenty-five hundred dollars, unless the population of the village exceed four thousand persons, nor more than four thousand dollars in any case. The title of the burying-ground when purchased, becomes vested in the village by its corporate name, and is inalienable except to individuals for the purpose of interments. (*Laws of 1847, Ch. 209, Sec. 1, as amended by Laws of 1864, Ch. 117; 3 Stat. at Large, 749.*)

§ 1010. The resolution referred to will have no force or effect unless it provides for imposing, levying and collecting a general tax upon the taxable property in such village,

sufficient to pay all the expense of such purchase, and fencing the land purchased, and putting the same in proper condition to be used for a burying-ground, to be levied and collected within one year, or in equal portions within three years from the time of the adoption of the resolution, which, so far as respects the levying and collecting such tax, cannot be abrogated or changed. Every such tax must be collected in the manner and within the time specified, and when collected, must be applied to the purpose specified, and to no other. (*Ib.*, Sec. 2; 3 *Stat. at Large*, 750.)

§ 1011. No resolution for the purchase of a burying-ground, and for imposing, levying and collecting such tax, can be passed at any such village meeting, unless notice of an intention to move for the adoption of such a resolution at such meeting, be given previous to holding the same, by publishing such notice at least once in each week, for four successive weeks, in a newspaper published in the village in which such meeting is to be held, or in case no newspaper be published in such village, by posting up such notice in at least ten public places in such village, at least thirty days before the time of holding the meeting. And before any such resolution is adopted, proof by affidavit, of publishing or posting such notice as required, must be filed with the trustees of the village. (*Ib.*, Sec. 3.)

§ 1012. The trustees of such village are required to make such ordinances, from time to time, as they think proper, not inconsistent with the laws of the State, or the United States, in respect to such burying-ground, the conveyance of lots therein to individuals for the purpose of interments, interments in such lots and portions of such ground not conveyed, and the management of such ground; and they may enforce such ordinances by penalties not exceeding twenty dollars, to be sued for and recovered with costs, in the corporate

name of the village, for its use, in any court having jurisdiction thereof. (*Ib.*, *Sec. 4.*)

§ 1013. Such burying-ground is required to be laid out into suitable lots, pursuant to the ordinances of such trustees, and the trustees may, on such terms and conditions as may be prescribed by such ordinances, and for such prices as may be agreed to by them, on behalf of such village, convey any of such lots to individuals, for the sole purpose of making interments therein, by conveyances which may be acknowledged and recorded as other conveyances of real estate, and which are required to be recorded by the clerk of the village, in a suitable book to be kept by him; but no such conveyance can be executed for any such lot until the price thereof be paid to the village. (*Ib.*, *Sec. 5.*)

§ 1014. It is made the duty of the trustees of every village in which there shall be a burying-ground, purchased by means raised by a general tax upon the taxable property in such village, to reserve a reasonable portion of such ground for the interment of strangers, and other persons who may die in such village under such circumstances that it would be unreasonable to require payment for the privilege of making such interment. (*Ib.*, *Sec. 6.*)

§ 1015. It is also made the duty of the trustees of every village in which there is a burying-ground so purchased, to cause an accurate record to be kept of every interment therein, and the time when made, and the name, age, and place of birth of every person buried therein, where these particulars can be conveniently ascertained; and such record must be so kept as to show the lot and part of the lot in which each interment is made. (*Ib.*, *Sec. 7.*)

§ 1016. The statute provides that a general tax, not exceed-

ing one hundred and fifty dollars in any one year, may be imposed, levied and collected on the taxable property in the village owning a burying-ground, for the purpose of improving the same; the tax must be imposed in the manner prescribed by law for imposing such general taxes in such village, as are authorized by law to be imposed thereon for village purposes; and, when collected, must be applied to improving such burying-ground. (*Ib.*, Sec. 8.)

§ 1017. Private or family cemeteries may also be incorporated under the statutes of the State. Any number of persons desirous of availing themselves of the provisions of the statute, may purchase or set off land to the extent of not more than three acres; and, after inclosing the same, they must cause to be published, in a newspaper printed in the county where the land is situated, or, if there be no newspaper printed in that county, then in one printed in an adjoining county, a notice that a meeting of the proprietors of the land so purchased or set off will be held at the time and place designated; such notice to be published at least once in each week, for six weeks, successively, next previous to the time of meeting. The meeting, when convened, must consist of not less than seven of said proprietors, who must then and there elect not less than three of their number as trustees to manage the affairs of the corporation for a period of five years. (*Laws of 1854, Ch. 112, Secs. 1 and 2; 3 Stat. at Large, 754.*)

§ 1018. The chairman and secretary of the meeting are required to make a written certificate and sign their names thereto, and acknowledge the same before an officer authorized to take the acknowledgment of deeds, containing the names of the trustees and the title of the corporation, and a description of the land, and they must file such certificate in the office of the clerk of the county in which the land so set

apart is situated; and, thereupon, the said proprietors are declared legally incorporated, and will possess the general powers, and be subject to the general liabilities which corporations by law possess and are subject to; a certified copy of the certificate is made evidence, in all courts and places, of the formation of the corporation. (*Id.*, Sec. 2.)

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§ 1019. The following form for the certificate may be used:

STATE OF NEW YORK, }
County of Oswego, } ss.

We, the undersigned, chairman and secretary of the meeting hereinafter mentioned, do hereby certify that on the day of , in pursuance of a notice duly published in the newspaper printed in the county aforesaid, known as the "Fulton Patriot and Gazette," a meeting of the proprietors of a parcel of land purchased and set off for a private cemetery, in the town of Palermo, in said county, convened for the purpose of incorporating themselves, under the act entitled "An Act for the incorporation of private and family cemeteries," passed April 1, 1854, at the house of in said town, which meeting consisted of not less than seven of said proprietors, and did then and there elect A. B., C. D. and E. F., three of said proprietors, trustees to manage the affairs of such corporation, for a period of five years; that the title of said corporation determined upon by said meeting is "The Johnson Cemetery Association," and the land so purchased and set apart is described as follows: (insert description).

In witness whereof we, the said chairman and secretary, have hereunto set our hands this day of

A. B., *Chairman*,
C. D., *Secretary*.

[Add the certificate of acknowledgment, which must be in the same form as in the case of deeds].

§ 1020. In case of the death or resignation of either of the trustees elected, the surviving or remaining trustees are authorized to fill the vacancy, for the residue of the term, from the members of the corporation, and, at the end of the term, new trustees must be elected in the same manner as

the first were chosen. (*Laws of 1854, Ch. 112, Sec. 2; 3 Stat. at Large, 754.*)

§ 1021. No cemetery can be established under the provisions of the statute that is not inclosed by a suitable fence or wall, nor can any such cemetery be located at a less distance than one hundred rods from any dwelling house, without the written consent of the owner or owners thereof. Cemeteries used for private interments prior to the twenty-first day of April, A. D., 1854, may be incorporated in the same way as is provided for private or family cemeteries, subject to the provisions and conditions prescribed for them. (*Ib., Secs. 4 and 6.*)

§ 1022. It is also provided by statute that every person who shall pull down or deface any fence, monument or stone in or about any private cemetery incorporated under the statute, shall forfeit to the corporation a sum not exceeding five hundred dollars for each offense, to be recovered in a court of record, and that such offender shall also be adjudged guilty of a misdemeanor. (*Ib., Sec. 5; 3 Stat. at Large, 755.*)

§ 1023. Land set apart and a portion of which has been actually used for a family or private burying-ground, is exempt by law from levy and sale by any execution or other legal process. This exemption, however, does not extend to more than one-fourth of an acre of land, nor to any building or erection other than a vault or other place of deposit for the dead; nor will any such land be so exempt unless the owner, before the sale, shall have made, certified and acknowledged in the manner required for the acknowledgment of deeds, a description of the land, and procured the same to be recorded in the office of the clerk of the county in which the land is situated; and the clerk is required to record the same in the proper book for recording deeds and in the same manner. (*Laws of 1847, Ch. 85.*)

CHAPTER LXXV.

BURIAL-GROUNDS IN NEW YORK—PROTECTION OF BIRDS IN CEMETERIES—PENALTIES INCURRED—SAME APPLICABLE TO LOCALITY NEAR GREENWOOD—DISTURBING GRAVES A CRIMINAL OFFENSE.

§ 1024. It is made unlawful in the State of New York, for any person to kill or wound, or trap any bird within any cemetery or public burying-ground, or to destroy any bird's nest, or remove any eggs or the young birds therefrom; and any person guilty thereof is deemed guilty of a misdemeanor, punishable by a fine of five dollars for every bird killed, wounded or trapped, and for every bird's nest destroyed, or eggs or young birds removed, recoverable in any justice's court within the county where the offense was committed, to be sued for by any person making the complaint; and the penalty will go toward the support of the poor of the county. (*Laws of 1853, Ch. 629, Sec. 1; 3 Stat. at Large, 753.*)

§ 1025. It is also declared by statute that any person who shall knowingly buy or sell any bird which may have been killed, or trapped, or have such birds on sale, shall be deemed guilty of a misdemeanor, and punishable by a fine of five dollars for every bird bought, sold or on sale, to be recovered and disposed of in like manner, as stated in the last preceding section. (*Ib., Sec. 2.*) These provisions of the statute are made applicable to every place within two miles of the boundaries of the Greenwood Cemetery enclosure, in the county of Kings. (*Laws of 1855, Ch. 564; 3 Stat. at Large, 576.*)

§ 1026. By the statutes of New York it is declared that every person removing the dead body of any human being

from the grave or other place of interment, for the purpose of selling the same, or for the purpose of dissection, or from mere wantonness, shall, upon conviction, be punished by imprisonment in a State prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. (2 *R. S. Part 4, Ch. 1, Sec. 13*; 3 *Stat. at Large*, 710.)

§ 1027. It is further declared that every person who shall purchase or receive the dead body of any human being, knowing the same to have been disinterred contrary to law, shall, upon conviction, be subject to the same punishment as in case of removing the dead body of a human being as in the last preceding section specified; and, finally, every person who shall open a grave or other place of interment, with intent to remove the dead body of any human being, for the purpose of selling the same, or for the purpose of dissection, or with the intent to steal the coffin or any part thereof, or the vestments or other articles interred with any dead body, will, upon conviction, be punished by imprisonment in a State prison not exceeding two years, or in a county jail not exceeding six months, or by both such fine and imprisonment.* (*Ib.*, *Secs. 14 and 15.*)

* It is an offense at common law, and indictable and punishable as a misdemeanor, for any person to dig up and carry away the dead body of a human being from any burying-ground; and the mere selling or disposing of such dead body for gain or profit is, at common law, a misdemeanor. But, by the statute of New York, the offense is made a felony.

CHAPTER LXXVI.

BURIAL-GROUNDS IN MAINE, NEW HAMPSHIRE AND VERMONT—
LAWS RELATING THERETO.

§ 1028. In the State of Maine, it is provided that towns may raise and assess money necessary for purchasing and suitably fencing land for a burying-ground. It is also provided that persons twenty-one years of age or more, may incorporate themselves for the purpose of purchasing land for a burying-ground, in the manner especially pointed out and prescribed by statute. (*Revised Statutes of Maine, Ch. 15. Secs. 1 and 2.*)

§ 1029. Persons desiring to incorporate themselves for the purpose of establishing a burial-ground, may apply in writing to any justice of the peace in the county, and he may issue his warrant, directed to one of the applicants, requiring him to call a meeting of the applicants, at such time and place as the justice appoints. The meeting may be called by reading the warrant in the presence and hearing of each applicant, or by leaving an attested copy of the warrant at his last and usual place of abode, at least fourteen days before the day of meeting, or by publishing an attested copy thereof in some newspaper printed in the county two weeks successively; the first publication to be at least fourteen days before the day of meeting. (*R. S., Ch. 55, Secs. 1 and 2.*)

§ 1030. The applicants, when assembled pursuant to the warrant, may organize themselves into a corporation, with such name as they then adopt; and they and their successors

may have continual succession, have a common seal, elect all managing officers, adopt by-laws, not inconsistent with the laws of the State, and enforce the same by suitable penalties; and have generally the rights, and be subject to the same liabilities as other corporations in the State. Such association, within one year after its organization, is required to make a substantial fence around the burying-ground possessed by it, and keep the same constantly in repair, under a penalty not exceeding one hundred dollars, which must be laid out under the direction of the municipal officers, in keeping the fence in repair. (*Ib.*, *Sec. 3*, and *Ch. 15*, *Sec. 3*.)

§ 1031. Each town, parish or religious society, to which any ancient or public burying-yard belongs, is required to keep a substantial fence around it in good repair, on pain of forfeiting not exceeding one hundred dollars, to be applied in keeping such fence in repair. If the municipal officers of a town, or the treasurer or committee of a parish or religious society, neglect so to apply such fines when recovered under their authority, they are each liable to forfeit the amount thereof, to be recovered by action of debt by any person suing therefor. (*Revised Statutes*, *Chap. 15*, *Secs. 4 and 5*.)

§ 1032. When any person shall appropriate a piece of land for a burying-yard containing not more than half an acre, the same is made exempt from attachment and execution, and unalienable and indivisible by the owners, without the consent of all; and the same must be kept fenced and occupied as a burying-yard; and such persons are required to cause a written description of the ground, under their hands, attested by two disinterested witnesses, to be recorded in the registry of deeds in the county or district where it lies. And where an individual appropriates a piece of land for a family burying-yard containing not more than one-

fourth of an acre, causes a description of it to be recorded in the registry of deeds of the same county, and encloses it with a substantial fence, it is declared to be exempt from attachment and execution, and that no subsequent conveyance of it will be valid while any person is interred therein; but it is to remain to him and his heirs as a burial place forever. (*Ib.*, *Secs. 6 and 7.*)

§ 1033. Any person purchasing a lot in any private cemetery, may have his deed recorded in the office of the clerk of the town in which such cemetery is located, when it is provided that it shall have the same effect as if recorded in the registry of deeds for the county. (*Laws of 1859, Chap. 77, Sec. 1.*) Lands appropriated according to statute as a burying-yard, are exempted from attachment or levy of any execution. (*R. S., Chap. 81, Sec. 37.*) And any person wishing to avail himself of this provision may file in the registry of deeds of the county or district in which the land lies, a certificate signed by him declaring such wish, and describing the land and buildings; and the register is required to record it, on receiving his fees as for recording deeds, in a book by him kept for that purpose. (*Ib.*, *Sec. 38.*)

§ 1034. No officer is permitted to take the body of any deceased person by writ or execution, on pain of a fine not exceeding five hundred dollars, and imprisonment not exceeding six months. (*R. S. Ch. 124, Sec. 25.*) And whoever, without the permission of the board of health, municipal officers, or overseers of the poor of any town therein, willfully digs up or removes any human body or its remains from its place of burial, or aids in so doing, or knowingly receives, conceals, or disposes of the same, or unnecessarily and indecently throws away, or abandons any human body or its remains in any public place, river, stream, or elsewhere, is made punishable by imprisonment, not less than one, nor

more than five years, or by fine not exceeding three thousand dollars; though any physician, surgeon, or medical student may have in his possession or use human bodies, or parts thereof, lawfully obtained, for anatomical or physiological investigation and instruction. (*Ib.*, *Sec. 26.*)

§ 1035. It is also declared that whoever willfully destroys or injures any tomb, grave-stone, monument, or other thing placed or designed as a memorial of the dead, or any fence, railing, or other thing placed about or inclosing the burial place of the dead; or willfully injures, removes, or destroys any tree, shrub, or plant, within such inclosure, shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars. (*Ib.*, *Sec. 27.*)

§ 1036. In the State of New Hampshire, they have no general laws upon the subject of burial-grounds, though cemetery associations are sometimes chartered by the legislature of the State. The statute only provides and declares that, if any person shall wrongfully destroy, mutilate, deface, injure or remove any tomb, monument, grave-stone or other structure in any place used or intended for the burial of the dead, or any fence, railing or curb for the protection of any such structure, or any inclosure for any such place of burial, or shall wrongfully injure, cut, remove or destroy any tree or shrub growing within any such inclosure, he shall be punished by imprisonment in the common jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both of said punishments. (*Compiled Statutes, Ch. 233, Sec. 11.*)

§ 1037. In the State of Vermont the several towns are fully empowered by statute, at a town meeting legally warned and held for that purpose, to grant and vote such sums of money as they may judge necessary for purchasing, holding and keeping in repair suitable grounds and other

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conveniences for burying the dead; and the selectmen are authorized to make all necessary regulations concerning any public burial-grounds, or places for burying the dead, and for fencing and keeping the same in proper order. (*Revised Statutes of 1863, Title 11, Ch. 18, Secs. 1 and 2.*)

§ 1038. Whenever the selectmen of any town shall neglect to repair, or put in repair the fence around any public burial-ground in said town, such town may be indicted for every such neglect, and on conviction, fined not less than fifty dollars, nor more than one hundred dollars, in the discretion of the court; and the fine must be expended in repairing the fences around such public burial-grounds, under the superintendence and direction of a commissioner appointed by the court for that purpose; and any person or persons sustaining any damage by cattle, horses, sheep, or swine breaking into any such public burial-ground, and injuring any grave, grave-stone, monument, shrubbery or flower, by reason of defective fences, he, she, or they may recover of such town double the amount of damage, before any justice of the peace in the county, or before the County Court of the county where such damage is sustained; though no town will be liable to indictment or damage in the cases aforesaid, unless the selectmen thereof shall have been notified twenty days previous, in writing, that the said fence was out of repair. None of these provisions, however, will apply to any burial-ground belonging to any association or corporation, nor to any burial-ground which is by law subject to any other control than that of the selectmen of the town. (*Ib., Secs. 3, 4 and 5.*)

§ 1039. Any person who shall willfully or knowingly turn any horse, cattle, sheep or swine into any burial-ground laid out for the purpose of interring the dead, or knowingly suffers the same to run in any such burying-ground which is

properly inclosed, is liable to a fine of twenty-five dollars, to be recovered in an action on the case, founded on the statute, by any citizen of the State who shall sue for the same; and any person who shall willfully and maliciously mar, deface, soil, injure or take away any miniature, portrait, engraving, or other symbol upon any grave-stone or other monument erected at the grave of any deceased person, is punishable by fine in a sum not exceeding one hundred dollars, or by imprisonment in the State prison, at hard labor, one year, or by both of such punishments, in the discretion of the court. (*Ib.*, Secs. 6 and 7.)

§ 1040. The selectmen are authorized to remove the remains of the dead from any burial-grounds in all cases where from any cause, it is impracticable to preserve such burial-grounds in proper condition, and a removal of such remains may be required by a proper respect to the memory of the deceased, or when the selectmen, upon proper inquiry, are not able to ascertain that any descendant or relative of such deceased resides in the State, and in such cases the selectmen may also erect such monuments as may be necessary to perpetuate the memory of the deceased. This provision, however, is declared not to extend to any case where, upon proper inquiry, any descendant or relative of such deceased person can be found. (*Ib.*, Sec. 8.)

§ 1041. Whenever it may become necessary to enlarge any public burial-ground, or to establish a new one, for the interment of the dead, and whenever three or more freeholders of the town wherein the same is to be enlarged or established, shall apply in writing to the selectmen of the town, setting forth such necessity with a description of the land necessary for such purpose, such selectmen are required to examine such ground, and, if in their opinion the public good requires it, they must cause the same, or so much thereof as they deem

necessary, to be surveyed; and they must set out and separate the same for that purpose, and thereupon consider and award to the owner or owners of such land, such reasonable damages as may be sustained in consequence of taking such land for that purpose. But before determining on such location or damages, the selectmen must give notice in writing of such petition, and of the time and place of hearing the same, which must be delivered to such owners, or left at their last usual place of abode, at least six days previous to the time of hearing; the hearing may be adjourned, if necessary, and the selectmen are required at the time of making their decision, or as soon as may be thereafter, to make their return in writing upon or annexed to such petition, setting forth the notice given to such owners, and of the hearing and the setting out of such land, and of the survey and award of damages, including a copy of such survey, and cause the same to be recorded in the office of the town clerk, in the record of deeds, and the return, when so recorded, is made conclusive evidence of the facts therein stated; and the selectmen must also, at the time of making the award of damages, or within ten days after the recording of such return, and before entering upon such land, pay or tender to the owner or owners thereof, the amount of damages awarded; and if they refuse or neglect to pay the same within the time limited, the owner or owners may sue for and recover the same from the town, in an action on the case, in any court proper to try the same. (*Ib.*, *Sec. 9.*)

§ 1042. Before those interested, or others acting under them, shall enter on such lands, they are required to pay or tender to the owner or owners the amount of damages awarded; and if any person be dissatisfied with the amount of damages awarded to him for the land so taken, he may, within thirty days after the return of the selectmen may be left for record, make application, by petition in writing, to

the County Court in the same county, at their next stated term, if there should be time for notice, if not, at the next succeeding term; and any number of persons aggrieved may join in the petition; and the petition, together with a citation for that purpose, must be served on the selectmen of the town at least twelve days before the sitting of the court; and thereupon the court must appoint three disinterested commissioners to inquire into the convenience and necessity of such land, as well as the matter of damages. (*Ib.*, *Secs.* 10 and 11.)

§ 1043. The commissioners are required to give notice to one or more of the selectmen of such town, of the time and place, when and where they will make the inquiry and hear the parties; and on report of the commissioners, the court may establish or set aside the survey of such lands or such part thereof as may appear just, and may render judgment for the petitioners to recover against such town such damages as may appear by the report to have been sustained; and the court may tax the costs for either party as shall appear to be just and equitable. (*Ib.*, *Sec.* 12.)

§ 1044. In case of application to the court as aforesaid, the opening of the land surveyed will be stayed until the decision of the court in the premises. The court may also fix the time for opening and occupying the same, and the payment of damages; and unless the damages are paid within the time fixed, the court may award execution for the same. No such land, however, can be taken within twenty rods of any dwelling house, except by the consent of the owner, unless it may become necessary to enlarge a burial-ground situated within twenty rods of any dwelling house or houses, and then the same may be so enlarged, or its portion of said burial-ground which increases its size in a direction from the dwelling house or houses nearest to the same, and does not extend to within

twenty rods of any other dwelling house. (*Ib.*, *Secs.* 13 and 14.)

§ 1045. By the statutes of Vermont, cemetery associations may be formed and incorporated in the same manner and with the same powers, liabilities, and privileges as societies for the support of the gospel, and literary and other associations. (*Gen. Stat.* 1863, *Title* 27, *Chap.* 90, *Secs.* 1-12.)

CHAPTER LXXVII.

BURIAL GROUNDS IN MASSACHUSETTS—HOW CONTROLLED—CEMETERY ASSOCIATIONS—HOW ORGANIZED—THEIR POWERS AND DUTIES—PENALTIES—BURIAL GROUNDS IN RHODE ISLAND—LAWS RELATING TO—BURIAL GROUNDS IN CONNECTICUT—LAWS AND PENALTIES.

§ 1046. In the State of Massachusetts the burial-ground generally belongs to the town. At an early day it was a part of the meeting-house lot, laid out in the immediate vicinity of the house, and almost uniformly belonged to the town, and was subject to its exclusive care and control. In numerous cases the selectmen of the town have been empowered and authorized to make and establish rules, orders and regulations for the interment of the dead, to establish the police of the burying-grounds, appoint and locate the places where the dead may be buried, to make regulations for funerals and appoint all necessary officers and persons to carry the same into effect. (*Austin v. Murray*, 16 *Pick.* 121.) In some instances, this sacred inclosure belongs to the parish or religious society, rather than the town, by reason of the original conveyance being made to the parish, or the precinct, which is equivalent to the parish. (*Sudbury v. Jones*,

8 *Cush.* 184; *Stearns v. Woodbury*, 10 *Met.* 27.) By the statutes of the State, religious societies are authorized to tax their members for the purchase and preservation of burial-grounds. (*Gen. Stat.*, Chap. 30, Sec. 20.) But unless there is something in the grant to contravene, or associations are incorporated to take charge of them, the towns are allowed by statute to take charge of and control them. (*Ib.*, Chap. 18, Sec. 10.)

§ 1047. The statutes of the State also provide that ten or more persons desirous of procuring, establishing and preparing a cemetery or burial-place, or being the majority in interest of the proprietors of an existing cemetery, may organize as a corporation in the manner provided for proprietors holding lands, wharves and other real estate in common, to form themselves into and become a corporation, which is prescribed and set out in chapter sixty-seven of the General Statutes of 1860. But in the case of an existing cemetery, the corporation is not permitted to make sale of, nor impair the right of any proprietor. (*Gen. Stat.* 1860, Ch. 29, Sec. 1.)

§ 1048. The proprietors, in order to become incorporated, must apply to a justice of the peace, who must, upon such application, issue his warrant to one of the applicants, directing him to call a meeting of all the proprietors, expressing in the warrant the time, place, occasion and purpose of the meeting. A notice containing the substance of the warrant, signed by the person to whom the warrant is directed, must be posted up in one or more public places in the town, and published in a newspaper printed in the county where the estate lies, or, if there be no such paper, then in a newspaper printed in an adjoining county, at least fourteen days before the meeting. The proprietors, when assembled, may proceed to organize themselves upon a vote

of a majority in number and interest of the votes which all the proprietors could cast if present, and may thereupon choose a clerk, treasurer, collector and such committees and other officers as they may think necessary for the management of their affairs, and may also agree upon and direct the manner of calling future meetings. All such officers will hold their offices until their successors are chosen and qualified. The clerk must be sworn, and record all votes, orders and proceedings, in books to be kept by him for that purpose. (*Ib.*, and *Ch. 67, Secs. 2, 3, 4, 5 and 6.*)

§ 1049. The corporation, when formed, will possess the general powers of corporations in the State, and will be subject to the duties, restrictions and liabilities of such corporations. Any action brought by the association for trespass on their common property, may be pleaded in abatement or answered in bar of an action brought by the proprietors, or any of them, in their individual capacity. The corporation may make by-laws, not repugnant to the laws of the State, for the orderly conducting of its business, and prescribe penalties, not exceeding three dollars for any one offense, though the by-laws having penalties annexed must be approved by the commissioners in the county where the cemetery is located. The treasurer of the association must demand and receive all money due or belonging to the corporation, and must sue for and recover in his own name to the use of the association, all fines and penalties to which the association may be entitled. (*Ib.*, and *Secs. 7, 8 and 9 of Ch. 67.*)

§ 1050. The moderator presiding at any meeting of the proprietors possesses the same powers as the moderator of a town meeting, except the power of confining or causing any person to be carried out of the meeting; and all persons who resist or disobey his orders are subject to the pecuniary

penalties provided for like offenses at a town meeting. No business can be done or acted upon at a meeting unless it be expressed in the notice of the meeting. Each proprietor is entitled to vote according to the number of his shares or amount of his interest, where the same is known, and when not known, the proprietors must vote equally; absent proprietors may vote by proxy authorized in writing. The proprietors may, by vote, adopt such measures as they think proper for managing, improving or dividing their common property, and for this purpose they may raise money by assessments on the proprietors, in proportion to their respective rights and interests in the property. (*Ib.*, Ch. 67, Secs. 10, 11, 12 and 13.)

§ 1051. Should any proprietor neglect to pay any assessment for the space of six months after demand by the collector or other proper officer, or after a notice of the assessment posted and published in the manner prescribed for the first meeting, the committee of the association, or other officers authorized by the association for that purpose, may sell by public auction so much of the right or share of such proprietor as is sufficient to pay the sum due with all reasonable charges of the sale, and may give a deed to the purchaser for the part sold. The sale cannot take place, however, until notice is given of the time and place, the same as for the first meeting, at least thirty days before the time appointed for the sale. The proprietors may redeem the share or part sold at any time within one year after the sale, by paying to the purchaser or his assigns the sum for which it was sold, with interest at the rate of twelve per cent. per year, from the time of the sale. (*Ib.*, Secs. 14, 15 and 16.)

§ 1052. The corporation may take and hold so much real and personal estate as may be necessary for the objects of its organization, which must be applied exclusively to the

furtherance of such objects: it may lay out such real estate into lots, and upon such terms, conditions and regulations as the corporation may prescribe: and may grant and convey the exclusive right of burial in, and of erecting tombs or cenotaphs upon any lot, and of ornamenting the same. Such corporation will also possess all the powers and privileges, and be subject to the duties, restrictions and liabilities of chapter sixty-eight, and to the provisions of the first sixteen sections of chapter sixty-seven of the general statutes of the State, which it is unnecessary to specify in this place. (*Gen. Stat.* 1860, *Ch.* 28, *Sec.* 2.)

§ 1053. Lots in such cemetery must be held indivisible, and, upon the decease of a proprietor, his heirs at law, or the devisees of such lot, if devised, will succeed to his privileges. If there is more than one heir or devisee, they are required, within nine months from such decease, to designate in writing to the clerk of the corporation, which of their number shall represent the lot; and, on their failing so to designate, the board of trustees or directors of the corporation must enter upon record which of said heirs or devisees shall represent the lot while such failure continues. (*Ib.*, *Sec.* 3.)

§ 1054. Each town and city in the State is required to provide one or more suitable places for the interment of persons dying within its limits. Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, is permitted to be used for the purpose of burial, unless by permission of the town, or of the mayor and aldermen of the city in which the same is situated. (*Ib.*, *Secs.* 4 and 5.)

§ 1055. Boards of health are authorized to make all regu-

lations which they may judge necessary concerning burial-grounds, and interments within their respective limits; they may prohibit the use of the tombs by undertakers as places of deposit for bodies committed to them for burial for the purpose of speculation, and may establish penalties not exceeding one hundred dollars for any breach of such regulations. Notice of such regulations is required to be given by publishing the same in some newspaper of the city or town; or if there is no such newspaper, by posting a copy in some public place therein, which will be deemed legal notice to all persons. (*Ib.*, *Secs. 6 and 7.*)

§ 1056. Before a tomb, burial-ground, or cemetery is closed by order of the board of health for a time longer than one month, all persons interested must have an opportunity to be heard; and personal notice of the time and place of hearing must be given to at least one owner of the tomb, and to three at least, if so many there are, of the proprietors of such burial-ground or cemetery; and notice must also be published two successive weeks at least preceding the hearing in two newspapers, if so many there are published in the county. The owners of a tomb aggrieved by the order of the board of health closing any tomb, burial-ground, or cemetery may appeal therefrom, and at any time within six months from the date of the order enter his appeal in the Superior Court; and the appellant is required to give the board of health fourteen days' notice of his appeal, previous to the entry thereof. The order of the board of health will remain in force until a decision is had on the appeal. (*Ib.*, *Secs. 8 and 9.*)

§ 1057. All such appeals are required to be tried in regular course before a jury; and if the jury find that the tomb, burial-ground, or cemetery so closed was not a nuisance, nor injurious to the public health at the time of the order, the

court must rescind the same so far as it affects such tomb, burial-ground, or cemetery, and execution for costs of the appeal will issue in favor of the appellant against the town or city in which the same was situated. But if the order be sustained, execution may issue for double costs against the appellant in favor of the board of health for the use of the town or city. (*Ib.*, *Sec.* 10.)

§ 1058. For every interment in violation of the statute referred to in § 1054 in a town or city in which the notice of the regulations of the board of health prescribed by the statute referred to in § 1055, has been given, the owner of the land so used will forfeit not less than twenty nor more than one hundred dollars; and whoever wrongfully destroys, impairs, injures, or removes a tomb, grave-stone, building, fence, railing, or other thing lawfully erected in or around a place of burial or cemetery, or a tree, shrub, or plant situate within its limits; or wrongfully injures a walk or path therein; or places rubbish or offensive matter within a place of burial or cemetery; or commits any nuisance therein; or in any way desecrates or disfigures the same, will forfeit for every such offense not less than five nor more than one hundred dollars; and it is declared by statute that, upon the trial of a prosecution for the recovery of such penalty, use, and occupation for the purposes of burial will be deemed sufficient evidence of title. (*Ib.*, *Secs.* 11 and 12.)

§ 1059. However, if an indictment for wrongfully desecrating and disfiguring a public burying-ground contains an accurate description of it by metes and bounds, the proof must correspond with the averment; and it is not sufficient to prove that a part of the lot described was a public burying-ground, although the acts complained of were committed upon that part. A place may be shown to be a public burying-ground in the trial of an indictment for wrongfully

desecrating and disfiguring it by evidence of use and occupation for the purposes of burial by others than the owners of the soil, and as of right; and if it has once acquired that character, it will not cease to have it by mere disuse. It is no defense to an indictment in such a case, to show that the defendant was the owner of the fee of small lots within it, under titles derived from various grantees to whom they had been conveyed "to be used for burial-ground;" and evidence to show such ownership is inadmissible. (*Commonwealth v. Wellington*, 7 *Allen's Rep.* 299.)

§ 1060. In the State of Rhode Island they have no cemetery associations incorporated under general laws, neither have they any special enactments with respect to burial places. They, therefore, depend upon the General Assembly for special charters to cemetery associations, and the common law for protection, in many respects, for their places of burial. Town councils of the several towns have power by statute to prohibit burials in compact or thickly-populated parts of any town, and to make such by-laws and ordinances relating to the same, and the use of grounds for burials in such localities as they may think necessary for preserving the health of such neighborhood, and to enforce such ordinances in the manner provided by law for the abatement of nuisances. (*Revised Statutes*, Chap. 72, Sec. 8.)

§ 1061. In the State of Connecticut any individuals in any town in the State may associate for the purpose of procuring and establishing a burying-ground, or place of sepulture; and being so associated, they must lodge with the Secretary of State a copy of their articles of association, and also cause the same to be recorded in the records of the town where such burying-ground may be situated; whereupon they will be a body politic and corporate; may choose a president and other officers, enact by-laws for regulating the

affairs of the corporation, not inconsistent with the laws of the State, and compel the observance thereof by suitable penalties; may sue and be sued, and do all acts necessary and proper for the well ordering of the affairs of such corporation. (*Gen. Stat., Revision of 1866, Sec. 365.*) An association for the purpose of enlarging an existing burying-ground, may organize under this statute. (*Edwards v. Stonington Cem. Assoc. 20 Conn. R. 466.*)

§ 1062. All real and personal estate, which may be given to any such association, for the maintenance of any monument, the keeping in good order or the embellishment of any lot or grounds situated within the inclosure of such association, must remain forever to the uses to which the same may have been given or granted, according to the true intent of the grantor. And when any part of such burying-ground shall have been designated and appropriated by the proprietors thereof, as the burying-place of any particular person or family, the same will not be liable to be taken or be disposed of by any warrant or execution for any tax or debt whatever, nor will the same be liable to be sold to satisfy the demands of creditors, when the estate of such owner shall be insolvent. (*Gen. Stat., 1866 Secs. 366 and 367.*)

§ 1063. Towns are given power to provide a hearse and pall for the burial of the dead, and to procure and hold lands for burying-grounds, and to make regulations to fence the same, and to preserve the monuments erected therein, and to levy and collect the necessary taxes for that purpose, in the same manner as other taxes are collected; though this provision is declared not to extend to affect the regulations of such incorporated ecclesiastical societies, or other religious societies or congregations, as have separate burying-grounds; and such societies are given the same powers as

are given to towns. All incorporated burying-ground associations are made exempt from taxation. (*Ib.*, Sec. 368.)

§ 1064. Whenever any community or association owning a burying-ground or place of sepulture, wishes to enlarge the limits of the same, and can not agree with the owner or owners of the land proposed to be taken for that purpose, application may be made to the Superior Court of the county, giving twelve days' notice thereof to the owner or owners, by leaving an attested copy with him or them, or at their usual place of abode; and said court must thereupon appoint a committee of three disinterested persons, who, after being sworn, and giving reasonable notice to the owner or owners, must proceed to examine premises, and determine upon the propriety, public necessity and convenience of such enlargement, and upon the quantity, boundaries, damage and value of the land, which they may deem proper to be taken for that purpose, and make report thereof in writing to said Superior Court, and the parties interested may appear before said court and be heard thereon. And if the committee determine that such enlargement is proper, and the court accept the report, the decision of the court thereon will have the effect of a judgment, and execution may be issued thereon accordingly, in favor of the person or persons to whom damages may be assessed, for the amount thereof; but the land must not be taken or inclosed, or used for that purpose, until the damages assessed are paid to such owner or owners, or deposited with the treasurer of the county, for his or their use, which must be done within thirty days after such report is accepted. Petition may be sustained by a corporation, having in its corporate capacity no ownership of the burying-ground sought to be enlarged, if the members of such corporation have an interest in such grounds. (*Ib.*, Sec. 369; *Edwards v. Stonington*, 20 Conn. R. 466.)

§ 1065. Every person who willfully and maliciously destroys, mutilates, defaces, injures or removes any tomb, monument, grave-stone or other structure, placed within any cemetery, grave-yard or place of public burial, or any fences, railing or other work, for the protection or ornament of any tomb, monument or grave-stone, or other structure, or of any cemetery lot within any cemetery, or willfully and maliciously destroys, removes, cuts, breaks, or injures any tree, shrub or plant within any cemetery, or who willfully and maliciously destroys, mutilates, injures or removes and carries away, any flowers, wreaths, vases or other ornaments placed upon or around any grave, tomb, monument or lot within any cemetery, or discharges any gun or other fire-arms within such cemetery, is made punishable by a fine not exceeding one hundred dollars, or by imprisonment in a common jail not exceeding six months; this provision, however, is not to prevent the discharge of guns or other fire-arms by any military company, by order of any commissioned officer of such company, while under arms and in the performance of funeral obsequies. (*Gen. Stat., Sec. 370.*)

§ 1066. The superintendent or keeper of any cemetery, grave-yard or place of public burial, and any constable of the town in which such cemetery, grave-yard or place of public burial is situated, may arrest on view any person violating the law in these respects, and carry such person before the next justice of the peace, or other authority having cognizance of the offense, to be dealt with according to law. And the justice of the peace, or other authority before whom such person is brought, must, on the oath of the superintendent or keeper, or of such constable, issue a warrant, and cause such person to be arrested, and must proceed to a hearing and trial of such matter of complaint. (*Ib., Sec. 371.*)

CHAPTER LXXVIII.

BURIAL-GROUNDS IN NEW JERSEY—CEMETERY ASSOCIATIONS ORGANIZED AS IN NEW YORK—LAWS RELATING TO THE SAME, SIMILAR—BURYING-GROUNDS IN PENNSYLVANIA—LAWS AND PENALTIES.

§ 1067. In the State of New Jersey, cemetery associations are authorized and formed in the same manner, and with similar powers and privileges, and subject to about the same rules as in the State of New York, as specified in sections nine hundred and eighty-five and one thousand and two, inclusive, of this work. There are some exceptions and additions, and these, with a reference to those sections, need only be given to afford a full view of the laws of New Jersey upon the subject.

§ 1068. Ante, sections nine hundred and eighty-five and nine hundred and eighty-six, contain the exact provisions of the New Jersey statute with respect to the organization of the cemetery association, and the form of the certificate of incorporation may be in the precise words as given in ante, section nine hundred and eighty-seven, prescribed for the State of New York. Ante, sections nine hundred and eighty-eight and nine hundred and eighty-nine, are in all respects similar to the New Jersey statute, except that the association when incorporated, is declared by the New Jersey statute, to "possess the general powers and privileges of a corporation," instead of the words in that respect of the New York statute. Ante, section nine hundred and ninety, is the same as the New Jersey statute, omitting the last clause in regard to filling vacancies in the offices of president and vice-president. In ante, section nine hundred and ninety-one, the

business of said cemetery to be held by the association should be changed from two hundred acres to "seventy-five acres of land" in conformity to the New Jersey statute. Ante, sections nine hundred and ninety-two and nine hundred and ninety-three contain the exact provisions of the New Jersey statute.

§ 1069. Instead of ante, section nine hundred and ninety-four and ninety-five and nine hundred and ninety-six it is provided by the New Jersey statute that all lots or plots of ground designated on the maps filed, and numbered as separate lots by the incorporation, must be indivisible, but may be held and owned in undivided shares; that one half at least of the proceeds of all sales of lots or plots must be first appropriated to the payment of the purchase money of the lands acquired by the association, until the whole purchase money is paid, and the residue thereof to preserving, improving and embellishing the cemetery grounds and the avenues or roads leading thereto, and to defraying the incidental expenses of the cemetery establishment; and, after the payment of the purchase money and the debts contracted therefor, and for surveying and laying out the land, the proceeds of all future sales are required to be applied to the improvement, embellishment and preservation of such cemetery, and for incidental expenses, and to no other purpose or object.

§ 1070. The provisions of the New Jersey statute in regard to the cemetery lands and property of the association, and personal property of the association, is contained word for word in ante, section nine hundred and ninety-seven; and instead of ante, sections nine hundred and ninety-eight and nine hundred and ninety-nine, it is provided by the New Jersey statute that, the annual election for trustees, to supply the place of those whose term of office expires, must be

holden on the day mentioned in the certificate of incorporation, and at such hour and place as the trustees may direct; at which election there must be chosen such number of trustees as will supply the places of those whose term expires. The trustees chosen at any election subsequent to the first, will hold their places for three years and until others are chosen to succeed them. The election must be by ballot, and every person of full age, who may be a proprietor of a lot or plat in the cemetery of the association, or if there is more than one proprietor of any lot or plat, then such one of the proprietors as the majority of joint proprietors shall designate to represent such lot or plat; and the persons receiving a majority of all the votes cast will be the trustees to succeed those whose term of office expires. In all elections, after the first, the trustees must be chosen from the lot proprietors. The trustees have power to fill any vacancy in their number, occurring during the period for which they hold their office. Public notice of the annual elections must be given in such manner as the by-laws of the corporation may prescribe.

§ 1071. Ante, section one thousand, is all found in the statute of New Jersey, with the additional provision that, "if for *any* cause the trustees should not be elected on the day fixed in the certificate," the trustees may fix another day for the election, in all respects as prescribed in said section one thousand. Ante, section one thousand and one, is not found in the New Jersey statute. Ante, section one thousand and two, is all in the statute of New Jersey, except that the release referred to in that section is required, in New Jersey, to be recorded in the office of the clerk of the county within which the cemetery is situated, instead of being filed with the town clerk or city register as in New York.

§ 1072. By the laws of New Jersey, all lands lying within

the bounds of any cemetery or burying-ground, belonging to or used by any religious society in the State, must be reserved for the use of the owners thereof, against all causes of action, and are not liable to be seized, taken or sold by virtue of any judgment, decree, order, execution or other process, made or rendered by or issued out of any court of the State, except to satisfy liens existing upon the land before it was converted into a burying-ground or cemetery. The laws of New Jersey upon the subject of burial-grounds are found in *Elmer's Digest*, by Nixon, 1855, Title "Cemeteries," Secs. 1 and 13 inclusive.

§ 1073. By the laws of Pennsylvania, cemetery associations may be incorporated in the same manner as religious societies are incorporated by courts of common pleas, and when incorporated they will possess the same powers and be subject to the same conditions and liabilities as such religious corporations. It is, therefore, only necessary to refer to the law applicable to such religious corporations, which will answer every purpose of a repetition in this place. (*Ante*, Secs. 530-540.) It is also provided that every borough within the commonwealth may prohibit, within such borough, the burial or interment of deceased persons, or within such partial limits within the same as they may from time to time prescribe, and such borough has power also to regulate the depth of the graves in the borough. (*Purdon's Digest*, 1861, 117, Sec. 33.)

CHAPTER LXXIX.

BURIAL-GROUNDS IN OHIO—CEMETERY ASSOCIATIONS, HOW FORMED—THEIR POWERS—LAWS CONCERNING—POWERS OF TOWNSHIPS IN RELATION TO.

§ 1074. In the State of Ohio any number of persons, not less than ten, who are residents of the county in which they desire to form themselves into an association, may form themselves into a cemetery association and elect any number of their members, not less than three, to serve as trustees, and one member as clerk, who will continue in office during the pleasure of the society. All such elections must take place at the meeting of a majority of the members of such association, and after notice, for at least twenty days, in a newspaper, or by posting at least three written notices at public places in the township. (1 *Revised Statutes*, 1860, Ch. 21, Sec. 1.)

§ 1075. The clerk must forthwith make out a true record of the proceedings of the meeting, certify and deliver the same to the recorder of the county, together with the name by which the association desires to be known; and each county recorder is required immediately upon receipt of such certified statement, to record the same in a book to be by him provided for that purpose, at the expense of the county, and the recorder will be entitled to the same fees for this as for other similar services; whereupon the trustees and their associated members and successors, are declared to be invested with the powers, privileges and immunities incident to aggregate corporations. A certified transcript of the record made by the county recorder will be deemed and taken in all courts and places, within the State, as conclusive

evidence of the existence of the association. (*Ib.*, *Sec. 2.*) The certificate may be similar to the one prescribed for the State of New York, altered to conform to the law stated in this section. (*Ante*, *Sec. 987.*)

§ 1076. The trustees are declared to have perpetual succession, and to be capable in law of contracting, and of prosecuting and defending suits at law and in equity; and in suits against the corporation, *mesne* process against it may be served, by leaving an attested copy thereof with one of the trustees at least ten days before the return day thereof. The association has power to prescribe the terms on which members may be admitted, the number of its trustees and other officers, subject to the limitation before specified, and the time and manner of their election or appointment, and the time and place of meeting for the trustees and for the association, and to pass such other by-laws as may be necessary, not inconsistent with the laws or constitution of the State. (1 *R. S.*, *Ch. 21*, *Secs. 3 and 4.*)

§ 1077. The association is also authorized to purchase or take, by gift or devise, and hold land, exempt from execution and from any appropriation to public purposes, for the sole purposes of a cemetery, not exceeding one hundred acres, which is made exempt from taxation, if used exclusively for burial purposes, and in no wise with a view to profit; after paying for such land, all the future receipts and income of the association are required to be applied exclusively to laying out, preserving, protecting and embellishing the cemetery and the avenues leading thereto, and to the erection of such building or buildings as may be necessary for cemetery purposes, and to paying the necessary expenses of the association. The association is prohibited from contracting any debt in anticipation of future receipts, except for originally purchasing, laying out, inclosing and embel-

lishing the grounds and avenues, for which a debt or debts may be contracted, not exceeding ten thousand dollars in the whole, to be paid out of future receipts; and the association has also power to adopt such rules and regulations as it shall see fit for disposing of and for conveying burial lots. (*Ib.*, *Sec. 6*, and *Ch. 114, Sec. 3, Sub. 2.*)

§ 1078. Burial lots sold by the association must be for the sole purpose of interments, and will be exempt from taxation, execution, attachment or any other claim, lien or process, if used exclusively for burial purposes, and in no wise with a view to profit. The association is required to cause a plat of its grounds and of the lots by them laid out, to be made and recorded; the lots are required to be numbered by regular consecutive numbers; and the association has also power to inclose, improve and adorn the grounds and avenues, and erect buildings for the use of the association, and prescribe rules for the inclosing and adorning lots, and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which it deems improper; and an annual exhibit is required to be made of the affairs of the association. (*Ib.*, *Ch. 21, Secs. 6 and 7.*)

§ 1079. Any person who willfully destroys, mutilates, defaces, injures or removes any tomb, monument, grave-stone or other structure in any cemetery, or any fence, railing or other work for the protection or ornament of a cemetery or tomb, monument or grave-stone, or other structure aforesaid, or of any cemetery lot within the cemetery, or willfully cuts, breaks or injures any tree, shrub or plant within the limits of a cemetery, is deemed guilty of a misdemeanor, and punishable by a fine of not less than five dollars nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than one nor more

than thirty days, according to the nature and aggravation of the offense; and the offender will also be liable in an action of trespass, in the name of the association, for all damages occasioned by his unlawful act or acts: the money, when recovered, must be applied to the reparation and restoration of the property destroyed or injured, and in all suits the members of the association are made competent witnesses. (*Ib.*, Sec. 8.)

§ 1080. It is also declared by statute that if any person willfully and maliciously alter, deface, break down or destroy any monument or tomb-stone, erected or set up to perpetuate the memory of any deceased person, such person, on conviction thereof, shall be fined not exceeding two hundred dollars, and be kept in solitary confinement in the cell or dungeon of the county jail, and be fed on bread and water only, not exceeding thirty days, at the discretion of the court. (*Ib.*, Ch. 33, Sec. 103.)

§ 1081. Burial-grounds set apart for public or private use, and so recorded in the recorder's office of the county where the lands are situated, or any burial-yard which has been used as such fifteen years, are not subject to sale on judgment, to taxation, to dower, nor to compulsory partition; though no private burial-ground will be thus exempt for any amount exceeding fifty dollars. (*Ib.*, Chap. 21, Sec. 10.)

§ 1082. It is made lawful for the trustees of any township in which is situated a public burying-ground or cemetery purchased by tax on the taxable property of the township, to lay out or cause the same to be laid out, under the direction of a competent person, in lots, avenues, alleys, paths or other subdivisions, as may in their judgment be most advisable; and the said trustees are required to have the lots

regularly numbered and the avenues named, and cause the same to be platted, so as to exhibit a fair and distinct outline of the premises, which plat is required to be kept in the possession of the town clerk, and carefully preserved by him. (*Ib.*, *Sec. 11.*)

§ 1083. The trustees aforesaid may sell lots in such manner, and at such time, and upon such terms as they deem best, for the purpose of providing, improving and embellishing such cemetery grounds; and the purchasers of such lots will be entitled to deed or deeds on complying with the terms of sale, which the trustees have power to execute, which deed or deeds must be recorded in a book provided for that purpose by the township clerk, at the expense of the person or persons receiving the deed or deeds. No person, not a resident of the township, however, can become the purchaser of any such lot, nor can any owner of any such lot transfer his or her lot to a non-resident of the township, without the written assent of the trustees of the township, or a majority of them. (*Ib.*, *Sec. 12.*)

§ 1084. Such trustees may appropriate the proceeds of the sale of any lots in setting out trees, shrubbery, etc., and improving and embellishing the cemetery grounds, in such manner as the means in their hands will justify; but they are forbidden to enter into any contract exceeding the means within their control. Any lot held by an individual in such cemetery is in no case subject to levy or sale on execution. (*Ib.*, *Secs. 11 and 12.*)

§ 1085. The trustees of any township are also authorized to purchase and protect or improve a cemetery or burying-ground, not exceeding ten acres of land, for the use of the township, and pay for the same and its improvement by levying a tax upon the taxable property of the township,

though the sum raised in any one year must not exceed one thousand dollars, until the whole purchase money, and the interest thereon, shall have been paid; and after the purchase money is paid, they may raise fifty dollars a year, to be applied to the improvement of the grounds. And it is made the duty of the coroner to bury all such dead persons upon whom he may hold inquest, and who have left no means of burial, in the township burial-ground. (*Ib.*, Chap. 118, Sec. 29.)

§ 1086. Before any assessment can be made, however, as aforesaid, it is made necessary to submit the question to the voters of the township, at some regular election; and the clerk is required, on request of the trustees or any six voters of the township, to give at least twenty days' notice before such election, by posting in at least three public places in the township, specifying the amount of tax proposed to be raised, and the object to which the same is to be applied; and if a majority of the voters at any such election deposit ballots having written or printed thereon, "tax for burying-ground," the trustees must immediately notify the county auditor, who is required to enter the same on the tax duplicate against the taxable property of the township, and the same must be collected by the county treasurer, and paid over to the township treasurer, as other taxes are required to be collected and paid over, to be paid out on the order of the trustees for the purposes specified, and for no other purpose, unless after paying all the expenses incurred there should happen to be a surplus, then such surplus may be transferred to the township fund. (*Ib.*, Sec. 30.)

§ 1087. It has been held that the provision of the statute requiring a preliminary vote before any assessment is made, is not in contravention of the twenty-sixth section of the second article of the State constitution; and, further, that by

a reasonable construction of the statute, an election and vote in favor of the tax are preliminary requisites indispensable to authorize the trustees to proceed, under the statute, to purchase a cemetery, and to direct township orders to be issued in payment thereof; and, still further, that where, in such a case, land has been purchased, deed delivered and township orders issued in payment, upon application of the trustees, the contract of purchase should be rescinded, the land reconveyed and the orders surrendered up to be canceled. (*Weaver v. Cherry*, 8 *Ohio St. Rep.* 565.)

§ 1088. It is declared by statute that if the sexton or other person in charge of any township or other cemetery shall suffer the dead to remain in any vault or other receptacle until the same becomes offensive, he shall be liable, on the complaint of any person before any justice of the peace of the township, to a fine of not over twenty dollars, and an additional penalty of five dollars for every day after the fine aforesaid, that the nuisance shall be continued; and, in such cases, the trustees or managers of the cemetery, on complaint of any householder of the township, are required to issue an order forthwith to the sexton or other person in charge to have the dead immediately interred; and in case the interment be neglected for three days after the complaint, any justice of the peace of the township may issue his written order to any householder of the township, to inter the dead at the expense of the said trustees or managers, and he is required to allow a reasonable charge for the service. (*Ib.*, *Secs. 15 and 16.*)

CHAPTER LXXX.

BURIAL-GROUNDS IN MICHIGAN—HOW INCORPORATED—CORPORATE POWERS—OFFICERS, ELECTIONS AND MEETINGS—CERTIFICATES OF RIGHTS OF BURIAL—CEMETERIES IN VILLAGES—TOWNSHIP BURIAL-GROUNDS—BOARD OF HEALTH MAY PURCHASE LAND FOR.

§ 1089. In the State of Michigan any five or more persons of lawful age may organize themselves into a corporation, by such name as they shall adopt, for the purpose of acquiring land for a burial-ground for the dead, to dispose of rights of burial therein, and to fence and improve the same and keep it in suitable condition. The corporation when formed may acquire and hold in fee, in its corporate name, so much land as may be necessary for its burying-ground, and it cannot incumber the same. The purchase price and cost of fencing and improving the same, must be paid out of the funds first realized from the sale of rights of burial. (*1 Compiled Laws 1857, Ch. 57, Secs. 1 and 2.*)

§ 1090. The right of burial, in respect to the corporation, is regarded as the right to bury the dead in and upon a parcel of land of the size specified in the by-laws of the corporation. Any stockholder wishing to dispose of any right of burial owned by him, must procure for the purchaser a grant of such right from the corporation, and, at the same time relinquish to such corporation all claim he may have to the same. Any person owning any right of burial derived from the corporation, will be deemed a stockholder and have the right to vote at all meetings of the stockholders. (*Ib., Secs. 3, 4 and 5.*)

§ 1091. Upon the application in writing of any three of the persons aforesaid, to any justice of the peace of the county in which the burying-ground is to be situated, the justice is required to issue his warrant to either one of the applicants, directing him to call a meeting of the persons wishing to become incorporated, which warrant must contain the substance of the application, and state the time and place of holding the meeting; the meeting must be called in obedience to the warrant, by posting up notice thereof, containing the substance of the warrant, in at least two public places in the township, city or village in which such burying-ground is to be situated, at least ten days before the time of holding the meeting. The person to whom the warrant is directed, after having called the meeting, is required to attach to the warrant a copy of the notice, accompanied by his affidavit showing that it is a true copy of the notice posted up by him, and also showing when and where the notices were posted; and this must be presented to the meeting and filed by the clerk elected thereat. (*Ib.*, Secs. 6 and 7.)

§ 1092. Any five or more persons meeting in pursuance of the notice, may choose a president, clerk, treasurer, sexton and such other officers as they may determine to be necessary, and provide for calling future meetings. The officers who are named herein must be chosen by ballot, and the person having the highest number of votes for any office will be deemed elected. All the other officers of the corporation may be chosen in such manner as shall be prescribed by the by-laws of the corporation. The time and place of holding meetings must also be prescribed by the by-laws. A majority of the officers required to be chosen by ballot, may fill any vacancy in office by appointment. All officers are required to file with the clerk, within ten days after his

election or appointment, a written acceptance of the office, together with a bond, if required, or the office will be vacant. (*Ib.*, Secs. 8, 9, 10 and 11.)

§ 1093. Any person attending a meeting for the election of officers of the corporation, and elected thereat, will be deemed to have been duly notified of his election; the clerk is required, within two days after the election of any person to office who was not present, to notify such person of his election. The treasurer must give a bond to the corporation, with sufficient sureties, to be approved by the president thereof, for the faithful discharge of his duties, which bond is required to be filed with the clerk. The officers must have such reasonable compensation for their services as shall be allowed by the corporation at any regular meeting of the stockholders, and no more. The corporation may make all needful by-laws and regulations as may be necessary to enable them to manage the affairs of the corporation. (*Ib.*, Secs. 12, 13, 14 and 15.)

§ 1094. Within one week after the organization of such association, the clerk is required to make out a certificate of the organization, specifying the corporate name thereof, the officers chosen at the first meeting, which must be signed by the president, forthwith record the same in the office of the clerk of the county in which the burying-ground is or may be situated, in a book to be provided and kept by him for that purpose, who is entitled to seventy-five cents for recording it. Before the corporation can issue certificates of rights of burial, it must cause its burial-ground to be laid out in such form as it may choose, and cause two maps thereof to be made, accurately describing the land belonging to the burying-ground, its boundaries and location, with the lots or subdivisions named or numbered thereon, and also their size,

situation and extent, with the width, extent and location of all the streets, alleys or walks in such burying-ground; which maps must be prepared under the supervision and direction of the president and clerk of the corporation, and certified by them to be a correct map of their burying-ground. One of the maps must be filed with the clerk of the corporation and the other with the county clerk; whereupon such county clerk is required to give the corporation a certificate, under his hand and seal of office, showing that such map has been received and duly filed by him, which certificate must be filed with the clerk of the corporation. (*Ib.*, *Secs. 16 and 17.*)

§ 1095. Such corporations possess the power of suing and being sued, having a common seal, etc., as other corporations. Whenever it may become necessary to vacate any burying-ground, the property of the corporation, such corporation may, by a majority vote of its stockholders present at any regular meeting, direct the president and clerk to petition the Circuit Court for the county in which the burying-ground is situated, for leave to vacate the same; and the court may make such order in the premises as may be just and proper; no order, however, can be made within six months from the time of filing the petition, and due proof of publication of notice of such petition, for twelve successive weeks, in such newspaper as may have been designated by the court for that purpose. (*Ib.*, *Secs. 18 and 21.*)

§ 1096. The corporation may dispose of that part of any forfeited right of burial which has not been actually used as a repository of the dead, the same as though it had never been granted. Any corporation may be authorized by the Circuit or District Court of the county, upon the like petition and notice as in the other case, and after six months

from the filing of such petition, to re-dispose of burial rights on which assessment shall have remained unpaid, for fifty years or more. A majority of the stockholders, at any regular meeting have power, when necessary, to make an assessment upon the stockholders of the corporation. (*Ib.*, Secs. 22, 23 and 24.)

§ 1097. After any such assessment has been made, the corporation must cause a record to be made of such assessment, and showing the day when the same was made, with a list of the names of all the stockholders in the corporation, and the amount assessed to each stockholder; a copy of the assessment must be furnished by the clerk to the treasurer of the corporation. Within one month from the time of making any assessment, the clerk must cause a notice of such assessment to be published, for twelve successive weeks, in the newspaper printed nearest to the burial-ground of the corporation, which notice must state when the assessment was made, with a list of the names of all the stockholders, and the amount assessed to each, and directing each stockholder to pay his assessment to the treasurer of the corporation; and if any stockholder neglect or refuse to pay the same for six months from the time such assessment was made, all rights of such stockholder under such corporation will cease, and all rights of burial owned by him will revert to the corporation. (*Ib.*, Secs. 25 and 26.)

§ 1098. The powers and duties of all officers of the corporation must be defined by the by-laws of the corporation, except so far as they are defined by the statute. The treasurer is required to receive and safely keep all moneys belonging to the corporation, and pay them out on the order of the clerk, countersigned by the president of the corporation. A record is required to be kept by the corporation of the rights of burial disposed of in the following form:

No. . The for to them paid by ,
 of , hereby grant unto right of burial in
 their grounds, and embracing in reference to this map,
 subject, nevertheless, to assessment and forfeiture, as pro-
 vided by law.

Dated

, Clerk.

(Countersigned.)

, President.

(*Ib.*, Secs. 27, 28 and 29.)

§ 1099. Every corporation is required to procure a sufficient number of blanks of the form prescribed, bound in convenient form, with an index, in which must be entered, alphabetically, the names of the purchasers of rights of burial in the grounds of such corporation. The price of rights of burial must be determined by the stockholders present at a regular meeting. Upon payment to the treasurer the price of any right of burial determined as specified, it is made the duty of the treasurer to give the purchaser a receipt therefor, which receipt must accurately describe the premises on which payment has been made. (*Ib.*, Secs. 30, 31 and 32.)

§ 1100. Upon presenting to the clerk of the corporation a receipt from the treasurer, in the form prescribed, it is made the duty of such clerk to issue a certificate of right of burial, signed by such clerk, and countersigned by the president, in the form prescribed. Any corporation has power to set off a part of its burial-ground as a Potter's Field, and, under proper regulations, permit the dead to be buried therein. (*Ib.*, Secs. 33 and 34.)

§ 1101. The board of health of every township are required to make all regulations which they deem necessary for the interment of the dead, and respecting burying-grounds in their township; and it is also made their duty to

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purchase in each surveyed township so much land for burying-grounds as shall be necessary for burying the dead of such township. And such board of health, and their successors in office, will hold the fee of any burying-grounds in their township, in trust for such township, and they are required to keep the same, or so much thereof as may be necessary, surrounded with a good, substantial fence; the expenses of the purchase of such lands, and of fencing and regulating the same to be certified to the town board by the board of health, and by the town board, provided for as a part of the contingent expenses of the township. (*Ib.*, *Ch.* 37, *Secs.* 5 and 6.)

§ 1102. Any person who shall willfully destroy, mutilate, deface, injure or remove any tomb or structure designed as a memorial of the dead, or any fence, railing or other thing intended for the protection or ornament of any tomb or other structure, or of any inclosure for the burial of the dead, or shall willfully destroy, mutilate, remove, cut, break or injure any tree, shrub or plant placed or being within any such inclosure, is punishable by fine not exceeding five hundred dollars, nor less than ten dollars, or by imprisonment in the county jail not more than one year. And any person who shall open any highway or construct any road, turnpike or canal, or any other thing in the nature of a public easement, over, through or upon such part of any such inclosure as may be used or appropriated for the burial of the dead, unless authority be granted by law, or unless consent be given by the proper authority, is punishable by fine not exceeding two thousand dollars, or imprisonment in the county jail not more than one year. (*Ib.*, *Ch.* 185, *Secs.* 22 and 23.)

CHAPTER LXXXI.

BURIAL GROUNDS IN INDIANA—INDIVIDUALS MAY UNITE TO HOLD—CEMETERY ASSOCIATIONS, HOW INCORPORATED—THEIR POWERS—REMOVING DEAD BODIES WITHOUT CONSENT—DESECRATING CEMETERY—BURIAL GROUNDS IN ILLINOIS—CEMETERY ASSOCIATIONS, HOW INCORPORATED—THEIR POWERS AND OFFICERS—LANDS MAY BE DEDICATED FOR CEMETERY.

§ 1103. In the State of Indiana, individuals may unite themselves together for the purpose of receiving donations of lands, or purchasing the same for cemeteries; whereupon they will be deemed bodies corporate, and have corporate powers. In this case they are organized precisely as religious societies are organized, the particulars of which are given in the chapter on religious societies in Indiana. (*Ante*, Ch. 38; 1 R. S. 1862, Ch. 101, Sec. 17.)

§ 1104. So in all cases where the donor or donors of any public burying-ground, shall lay off the same into lots, plainly designated by common stones or posts, and record a plat thereof in the recorder's office, it is declared that persons then interring in such burying-ground shall bury within the lots so designated, and not out of them. And further, it is provided that the donor of a private burying-ground, his heirs and assigns forever, shall have the exclusive right of admitting corpses therein for interment, and may direct where the same shall be buried; and may grant any right of burial in such ground as may not interfere with the graves already there, or the rights of persons who have buried their dead in such ground. (*Ib.*, Secs. 20 and 21.)

§ 1105. So also it is provided by the laws of Indiana that

any persons may voluntarily associate themselves together for the purpose of providing suitable grounds for the burial of the dead, and to ornament the same with shade trees and shrubbery. Such association must be formed by written articles, specifying the objects of the same and the conditions of membership, and must be subscribed by each member. The association may adopt a corporate name, either in the original articles or at the first meeting thereof, and may have a corporate seal. The articles of association must be filed in the office of the clerk of the Circuit Court of the proper county, whereupon the association will be deemed and held to be a corporation. (2 R. S., CH. 100, Secs. 1, 2, 3, 4 and 5.)

§ 1166. The annual value or the income of the property of any such corporation cannot exceed five thousand dollars. The corporation is required to divide its stock or corporate property into shares, not exceeding thirty dollars each, and determine the manner in which the same shall be holden and conveyed. The clerk or secretary of the corporation is required to keep a fair record of the proceedings thereof, in a book provided for that purpose: and such records, or copies duly attested by such clerk or secretary, may be read in evidence when the interests of the corporation are concerned. (*Ib.*, Secs. 6, 7 and 8.)

§ 1167. It is also provided by statute that every person who shall, without the consent of the near relatives of a deceased person, or without the consent of such deceased person being had in his or her life time, or the direction of the coroner, remove the dead body of such deceased person, or any part thereof, from interment in any public or private burying-ground, shall be fined not exceeding one thousand dollars. (*Ib.*, Chap. 7, Sec. 37.) So, likewise, it is declared by statute that if any person shall

willfully disfigure or injure any tombstone, monument, fence, tree or shrubbery around or within any cemetery, or shall use such cemetery for any other purpose than a burying-ground, he shall be fined not exceeding five hundred dollars, or imprisoned not exceeding six months. (2 R. S., Part 3, Ch. 6, Sec. 71.)*

§ 1108. In Illinois the statute provides that where five or more persons shall associate themselves together for the purpose of forming a cemetery association in any incorporated city or town, or any township, precinct, village or neighborhood in the State, such persons may adopt a corporate name, and by that name be known as a body corporate, and have perpetual succession, and be invested with all the powers, rights, privileges, liabilities and immunities incident to corporations. Such persons, thus associated, have power to acquire by gift, grant or purchase, any lot or lots of land, not exceeding fifty acres, and lay out the same for a burial-place for the dead, with convenient aisles, and to sell the same for such purpose and for no other purposes, reserving a sufficient portion thereof for the burial of strangers and indigent persons. They may have a common seal, and alter and change the same at pleasure; they may inclose and ornament their burial-ground, build and erect a hearse-house, and keep the same in proper repair; and they may purchase a hearse or hearses, and do all other necessary acts, to the end that all the appliances, conveniences and benefits of a public and private cemetery which may be desired or obtained, may be had and enjoyed. (1 *Compiled Statutes of Illinois*, 1858, Part 2, Tit. Cemeteries, Sec. 1.)

* Section seventy-one of the statute in regard to desecrating cemeteries was not intended to apply to burial places other than those dedicated in the mode pointed out by sections seventeen to twenty-one, referred to in sections one thousand one hundred and three and one thousand one hundred and four of this work. (*Winters v. The State*, 9 Ind. R. 172.)

§ 1109. The officers of the association are a president, a treasurer, who must act as secretary, and three directors, who must be chosen annually, by ballot, and will hold their offices until their successors are chosen. The first election of officers must be at the time and place designated and agreed upon by a majority of the persons so associating themselves together, and no other than such persons can vote at the election. At each subsequent election of officers, the owner or owners of a lot or lots in the burial-grounds of the corporation, will be entitled to one vote and no more; and by virtue of such membership, be a member of the corporation. (*Ib.*, *Secs. 2, 3 and 4.*)

§ 1110. The corporation must cause the land designed as a burying-ground, to be surveyed and platted, and a plat of such ground so surveyed, is required to be recorded in the recorder's office in the county where the land is situated. Each lot must be duly numbered by the surveyor, and such number must be marked on such plat and recorded as aforesaid. The corporation may establish and change by-laws, and prescribe rules and regulations for its government, and the duties of its officers and the management of its property. (*Ib.*, *Secs. 5 and 6.*)

§ 1111. The proceeds arising from the sale of lots, after deducting all expenses of purchasing and laying out lots, are required to be applied, appropriated and used in improving and ornamenting the burial-ground, or for the other purposes named. The property of the corporation, its grounds, lots and appliances are exempt by law from taxation and sale on execution. (*Ib.*, *Secs. 7 and 8.*) Any lands dedicated and used as a burying-ground and recorded as such, not exceeding ten acres, are exempt from taxes; and where any such lot of ground is laid off and sold in lots for burying the dead, the said lots are not subject to execution or attachment, although

no person can hold more than one-eighth of an acre exempt from execution. (2 R. S., 983, Secs. 1 and 2.)

§ 1112. It is also provided by the Illinois statute, that any person or persons desiring to dedicate any lot of land, not exceeding five acres, as a burying-ground or place of interment of the dead, for the use of any society, association or neighborhood, may, by deed duly executed and recorded, convey such land to the county in which it is situated, by the corporate name of such county, specifying in such deed the society, association or neighborhood for the use of which the dedication is desired to be made, and thereby vest the title to such land in perpetuity, for the uses stated in the deed, and such land is declared exempt from all taxes. (*Ib.*, Act of February 15, 1851, Sec. 1.)

§ 1113. If any person willfully or maliciously cut down, break down, level, demolish or otherwise destroy, injure or damage any railing, fence or other inclosure around or upon any such land, or any gate or post thereon, or remove, break, injure or deface any tomb or other stone, or any post, plank or board, or any inscription thereon, or cut down, destroy, injure or remove any tree or shrub, standing or growing upon such land, such person is liable to indictment, and, upon conviction thereof, to be fined not less than ten dollars nor more than one hundred dollars. (*Ib.*, Sec. 2.)

CHAPTER LXXXII.

BURIAL-GROUNDS IN WISCONSIN—CEMETERY ASSOCIATIONS, HOW INCORPORATED, AND LAWS RELATING THERETO—SAME IN MINNESOTA, IOWA, KANSAS, NEVADA AND CALIFORNIA—DESECRATING BURIAL-GROUNDS IN OREGON.

§ 1113. By the statutes of Wisconsin it is made the duty of the town board of the several towns in the State, on the application of ten freeholders of any such town, in writing, at any regular meeting of such board, provided they shall deem it necessary so to do, to purchase, in the name of the town, suitable grounds, not exceeding twenty acres, for and to be used exclusively as a town cemetery, which said grounds or such portion thereof as may from time to time become necessary for that purpose, must be surveyed, divided and platted into lots of such size and with such avenues, alleys and walks as the town board may direct; and a map of such survey must be filed in the office of the town clerk, and the grounds so purchased must, under and by the direction of the town board, be enclosed by a good and appropriate fence as soon as practicable. (*R. S. of Wis. of 1858, Ch. 67, Sec. 17.*)

§ 1114. After the map is filed, as aforesaid, the town board may, in the name of the town, sell and convey the lots designated on the map, upon such terms and subject to such conditions as such board may prescribe; though the conveyance in every case must be expressly for burial purposes and no other, and must be executed in the name of the town, and signed by the chairman of supervisors and attested by the clerk of the town. The proceeds arising from the sale of lots must be applied, by the town board, to the payment of

any debts incurred by the town in the purchase, fencing and embellishing the grounds, and the avenues leading thereto, and in defraying the necessary expense in the management and care of the same, and for no other purpose. After there shall have been an interment in any lot conveyed by the town board, the lot will forever thereafter be inalienable, and will descend to the heirs of the proprietor on his death, though one heir may release to the other, the same as in cases of cemetery associations. (*Ib.*, *Secs.* 18, 19 and 20.)

§ 1115. It is also made the duty of the board of supervisors of the several towns of the State, when so instructed by a vote of the electors of the town, at any annual town meeting, to purchase, in the name of such town, suitable grounds, not exceeding ten acres, for and to be used exclusively as a town cemetery; which grounds, or such portion thereof as may become necessary, must be surveyed, etc., by the town board, the same as in the other case of town cemeteries; the price per acre for such grounds, however, must in no case exceed a sum which may be fixed by a vote of the electors at such town election. (*Act of 1858, Ch. 54, Sec. 1; R. S. page 426.*)

§ 1116. Cemetery associations may also be incorporated in the State of Wisconsin in the precise manner in which they are organized in the State of New York, and the Wisconsin statutes on the subject are contained substantially in ante, sections nine hundred and eighty-five and one thousand and two, inclusive, except that in Wisconsin the number of trustees of the corporation must be not less than three nor more than nine; the corporations when formed possess the powers of other corporations in the State; the land which the corporation can hold is limited to forty acres, and personal property to one thousand dollars; the personal property may be sold to pay the debts and expenses of the association,

and to improve the cemetery grounds; the proprietors of lots may all vote at the election of trustees, irrespective of the dimensions of their lots. There is nothing in the Wisconsin law as to how the lands purchased by the association are to be paid for. No association will be deemed complete until the certificate of incorporation and the deed of the land held by the association are recorded in the office of the register of deeds of the proper county, nor until the map of the surveys required to be made is filed in the register's office, and all transfers of lots executed by the association to individuals, after being recorded, must be filed in the office of the town clerk, or with the clerk of the city within which the cemetery is situated. By reading, therefore, ante, sections nine hundred and eighty-five and one thousand and two, inclusive, in connection with this section, the Wisconsin statute will be fully understood. (*Revised Statutes of 1858, Ch. 67, Secs. 1-16, and Ch. 108 of acts of a general nature of 1858.*) Religious societies in Wisconsin may also hold and improve burying-grounds and cemeteries, subject to the same rules of their other property. (*Ante, §§ 633, 634, 647.*)

§ 1117. In the State of Minnesota, cemetery associations are also incorporated precisely as in the State of New York, and ante, sections nine hundred and eighty-five and one thousand and two, inclusive, contain the laws of Minnesota on the subject, except that in Minnesota, the associates incorporating themselves must all reside in the county where the cemetery land lies, and their number must be at least seven; the number of trustees must be not less than three nor more than nine; the corporation will possess the powers of other corporations as provided by the laws of the State; the certificate of incorporation is required to be recorded in the register's office of the county where the meeting is held; and the quantity of land held by the association cannot exceed eighty acres. So by reading those sections containing the

New York law in connection with this section, the Minnesota statutes upon the subject will all be found. (*Statutes of Minnesota, 1849-1858, Ch. 17, Secs. 40-55.*) So also in the State of Minnesota, religious societies may hold and improve lands for burial purposes. (*Ante, §§ 657, 658.*)

§ 1118. In the State of Iowa, cemetery associations may be formed, to endure any length of time that may be provided by the articles of incorporation thereof; though such corporation must not own to exceed nine sections of land, and the improvements, and necessary personal property for the management thereof. The articles of association must provide a mode by which any member thereof may at any time withdraw from such incorporation, and also the mode of determining the amount to be received by such member upon withdrawal; and also for the payment thereof to such member, subject only to the rights of creditors of such incorporation. (*Iowa Laws, Revision of 1860, Sec. 1185.*)

§ 1119. These cemetery associations become incorporated in the same manner as other corporations for pecuniary profit in the State, and have the same powers and privileges, and are subject to the same restrictions and liabilities, except as provided in the last preceding section, all which are particularly pointed out and specified in the act. (*Id., Chap. 52.*)

§ 1120. In the State of Iowa it is also provided that if any person, without lawful authority, willfully dig up, disinter, remove or carry away any human body, or the remains thereof, from its place of interment, or aid or assist in so doing, or willfully receive, conceal or dispose of any such human body or remains thereof; or if any person willfully and unnecessarily, and in an improper manner, indecently

expose, throw away or abandon any human body or remains thereof in any public place, or in any river, stream, pond or other place, every such offender must be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both fine and imprisonment. (*Iowa Laws, Revision of 1860, Sec. 4356.*)

§ 1121. It is further declared that if any person willfully destroy or injure any tomb, grave-stone, monument or other thing placed or designated as a memorial of the dead; or any fence, railing or other thing placed about the same; or any place inclosed for the burial of the dead; or willfully destroy, injure or remove any tree, shrub or plant within such inclosure, he must be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or by both fine and imprisonment. (*Ib., Sec. 4357.*)

§ 1122. In Kansas, cemetery associations are incorporated in the same manner as in New York, and the law upon the subject is nearly a transcript of the statute of New York, which is contained in ante, sections nine hundred and eighty-five and one thousand and two inclusive, except that the association may hold three hundred and twenty acres of land; the corporation possesses the general powers of corporations in the State; all lot owners become proprietors and are entitled to vote, and no provision is made requiring the grounds of the association to be paid for by the sale of lots. The certificate is the same as in New York. By carefully examining ante, sections nine hundred and eighty-five and one thousand and two inclusive, in connection with this section, the law of Kansas will be fully obtained. (*Comp. Laws of 1862, Ch. 23, Secs. 1-6.*)

§ 1123. In the new State of Nevada the law relating to cemeteries and burial-places is similar to the laws of New York as stated ante, sections nine hundred and eighty-five and one thousand and two inclusive, except that any number of persons, not less than five, may organize the corporation and the corporation will have power to remove all officers of the association, except that no trustee can be removed from office unless by a vote of two-thirds of the whole number of trustees, or by a vote of a majority of the trustees on a written request signed by one-half of the lot-owners; the corporation may hold for burial or cemetery purposes, not exceeding three hundred and twenty acres of land; when the office of trustee has become vacant for any cause the vacancy may be filled at the annual meeting; every proprietor must own not less than two hundred square feet of land to entitle him to a vote; the map required must be filed with the county recorder; the property of the association, and four-fifths of the lot owners, is exempt, etc., as stated ante, section nine hundred and ninety-seven, and the release referred to in section one thousand and two must be filed with the county recorder, instead of the town clerk or city register as in New York.

§ 1124. Instead of ante, section nine hundred and ninety-four, the statute of Nevada provides that after its formation the corporation must proceed to purchase suitable lands for the proposed cemetery, and it may issue its bonds to the vendor thereof for the amount of the purchase money, bearing interest not exceeding the rate of twelve per cent per annum, but payable out of sixty per cent of the proceeds of the cemetery, as the same shall be realized, and not otherwise; and sixty per cent at least of the proceeds of all sales of lots, plats or graves is required first to be appropriated to the payment of the bonds and interest, payable at least once in three months to the bond-holders, until the

bonds are all paid, and the residue must be appropriated precisely as in New York, as stated ante, section nine hundred and ninety-four.

§ 1125. In case the grounds purchased for cemetery purposes have been used as a cemetery previous to such purchase, those who were lot owners at the time of the purchase will be entitled to all the privileges they would be entitled to by purchase from the corporation in the manner prescribed. (*For Laws of Nevada, see Laws of 1865, Ch. 58, Secs. 1-12.*)

§ 1126. In the State of California, cemetery associations may be formed, organized and incorporated in the same manner, and upon the same terms as in the State of Nevada, and the laws of the two States are nearly identical on the subject. The Nevada statute was probably copied from the California laws. Reference may, therefore, be made to statements in regard to Nevada contained in ante, sections one thousand one hundred and twenty-three, one thousand one hundred and twenty-four and one thousand one hundred and twenty-five, for a clue to the law of California, except that in California the number of persons first meeting to organize the association must be at least seven. (*Wood's Digest of the Laws of California, 1850-1860, Tit. Graveyards, Secs. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11 and 12.*)

§ 1127. By the law of California it is also declared that any person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument, grave-stone, building or other structure, placed in any cemetery of any association incorporated under the act, or any fence, railing or other work for the protection or ornament thereof, or of any tomb, monument or grave-stone, or other structure aforesaid, or of any plat or lot within the limits of such cemetery, will be

deemed guilty of a misdemeanor, and also liable in trespass to the association for all damages, the money recovered to be applied by the trustees in restoring or repairing the property destroyed or injured. (*Ib.*, *Sec. 8.*)

§ 1128. By the laws of California, it is also provided that any person or persons who shall enter or molest the inclosure of a public grave-yard, for agricultural, mining or any other purpose, or shall disinter, mutilate or remove the body of any deceased person, after the same has been interred in any grave-yard, vault, or other place of burial, will be deemed guilty of a misdemeanor, and, upon conviction thereof in a court of competent jurisdiction, will be imprisoned in the State prison not less than two years. This provision, however, is not to be construed to prevent the relatives or their agents from removing the body of a deceased relative or friend. (*Wood's Digest, Laws of Cal.*, 1850-1860, *Ch. 38, Sec. 1.*)

§ 1129. It is also provided that any person who shall tear down or destroy any fence or inclosure around a public burying-ground or grave-yard, or cause the same to be torn down or destroyed, or remove any shade, ornamental or other trees, unless by direction of the proper authorities, shall be adjudged guilty of a public offense, and, upon conviction thereof, before any justice of the peace or recorder of any incorporated city, shall be punished by imprisonment in the county jail, not less than two nor more than six months, or by fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. Grave-yards located on public lands must not contain more than an area of five acres. Where the bodies of six or more persons are buried it is declared a public grave-yard. (*Ib.*, *Secs. 2, 3 and 4.*)

§ 1130. In the State of Oregon, they do not appear to have any laws for the incorporation of cemetery associations, or for the establishing, protecting and regulating burial-places. They will, therefore, be governed by the common law rules upon the subject in that State. It is, however, declared by statute that if any person shall willfully and wrongfully destroy, mutilate, deface, injure or remove any tomb, monument, grave-stone or other structure or thing erected, placed or designed for a memorial of the dead, or any fence, railing, curb or other thing intended for the protection or ornament of any such tomb, monument, grave-stone or other structure, or for the protection or ornament of any enclosure or yard for the burial of the dead, or shall willfully and wrongfully destroy, remove or injure any tree, shrub or plant placed or being within any such inclosure or yard, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty dollars nor more than one thousand dollars. (*Gen. Laws 1845-1864, Ch. 48, Sec. 641.*)

§ 1131. It is also provided that if any person shall, without authority specially granted by law, or without the authority or consent of the proprietor or owner, open or make any highway, street, road or other thing in the nature of a public easement, over, in, through or upon any inclosure or yard used for the burial of the dead, or shall begin to open or make any such public easement, with reference to such inclosure or yard, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months, nor more than one year or by fine not less than one hundred, nor more than five hundred dollars. (*Ib., Sec. 642.*)

CHAPTER LXXXIII.

BURIAL-GROUNDS IN MARYLAND—CORPORATIONS, HOW FORMED—
THEIR POWERS—MANAGERS, AND THEIR ELECTION—PENALTIES
FOR TRESPASS TO—BURIAL-GROUNDS IN VIRGINIA—SAME IN
NORTH CAROLINA, GEORGIA, ALABAMA, MISSISSIPPI, TENNESSEE,
KENTUCKY, MISSOURI, LOUISIANA, ARKANSAS AND TEXAS.

§ 1132. In the State of Maryland it is provided that when any seven or more free white persons, citizens of the United States, and a majority of them citizens of the State, shall associate themselves for the purpose of forming a cemetery company, they may be incorporated and become a body politic, by executing, under their hands and seals, or under the hands and seals of at least seven of such association, an instrument in writing, specifying the name, style and title by which they shall be known in law, the number and names of the managers of such company, the amount of capital stock thereof, the number of acres to be held by said company, and where situated, and by acknowledging such instrument, and procuring the same to be recorded in the office for the recording of deeds in the county or city, in a book provided for the purpose. (1 *Maryland Code*, Art. XXVI, Secs. 11 and 20.)

§ 1133. The corporation thus formed will have power to purchase and hold not exceeding one hundred acres of land, and to receive gifts and bequests for the purpose of ornamenting and improving such cemetery, and to hold such personal property as may be requisite to carry out the purposes for which cemetery companies are formed; no such company, however, is authorized or empowered to purchase or hold or use, for the purposes of burial, any ground that is comprised

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within the limits of any city or town in the State, unless the corporate authorities of such city or town authorize the same. (*Ib. Sec. 21.*)

§ 1134. The corporation may annually elect the managers from its members, by a majority of the votes of the proprietors, at such time and place as its by-laws may specify. The managers have power to fill all vacancies in their body; to lay out and ornament the cemetery grounds; erect necessary buildings, sell and dispose of burial lots; appoint all necessary officers and agents, and fix their respective duties and compensation; and make such regulations as they may deem proper for conducting the affairs of the corporation, for the government of lot holders, visitors of the cemetery, and for the transfer of stock and the evidence thereof. In all elections each proprietor or holder of stock is entitled to one vote for each share of stock held by him. (*Ib., Secs. 22, 23 and 24.*)

§ 1135. No lanes, alleys or streets, roads, canals, or public thoroughfares of any sort, can be opened through the property of such corporation, used or appropriated for the purpose of burial; the corporation is not authorized, however, to obstruct any public road, street or lane, actually opened and used as such at the time of the incorporation, or there laid down in any plat made by authority of any city or town, to be opened as a street or road. (*Ib., Sec. 25.*)

§ 1136. Every burial lot sold or conveyed in such cemetery must be held by the proprietors thereof for the sole purpose of sepulture, and for none other, and will not be subject to attachment or execution for debt, or affected by the insolvent laws of the State; but the estate of the owner or owners in their respective lots will descend as real estate to heirs, and may be devised by will, or disposed of by the owner by sale, with the approval of the president and mana-

gers of the corporation. A certificate, under the seal of the corporation, of the ownership of any lot sold and conveyed, will in all respects have the effect which any conveyance from such corporation of said lot would have if executed, acknowledged and recorded as conveyances of real estate are by the laws of the State required to be. (*Ib.*, *Secs. 26 and 27.*)

§ 1137. The statute declares that any person who shall willfully destroy, mutilate, deface, injure or remove any tomb, monument, grave-stone or other structure placed in such cemetery, or any fence, railing or other work for the protection or ornament of said cemetery, or shall willfully destroy, cut, break or remove any tree, plant or shrub within its limits, or who shall shoot or discharge any fire-arms within said limits, shall be considered guilty of a misdemeanor, and upon conviction thereof, before any justice of the peace, shall be punished by fine, in the discretion of the justice, according to the aggravation of the offense, not less than five nor more than fifty dollars. (*Ib.*, *Sec. 25.*)

§ 1138. The statute further provides that the managers of any such corporation shall be jointly and severally liable for all debts due from such corporation, contracted while they are managers; provided such debts are payable within one year from the time they shall have been contracted, and that suit for the collection of the same shall be brought within one year after the debt shall become due and payable. (*Ib.*, *Sec. 29.*)

§ 1139. By the terms of the law, none but free white citizens of the United States can become incorporated and have the powers and benefits of a cemetery association, but, as slavery is now abolished in the State, it is fair to presume that people of color will soon have all those privileges ex-

tended to them. The certificate of association may be similar to the form prescribed for such associations in the State of New York. (*Ante*, Sec. 987.)

§ 1140. By the laws of the old State of Virginia, lands may be dedicated for burial-grounds, and in such cases the grounds are placed in the charge of trustees to be appointed by the Circuit Court of the county or corporation where the same are situated (*Ante*, Secs. 426, 427 and 429); and no tax can be assessed or collected on any public burying-ground (*Code of 1849, Chap. 35, Sec. 43*); and if a free person unlawfully disinter or displace a dead human body, or any part of a dead human body, which shall have been deposited in any vault or other burial place, he is required to be confined in jail not more than one year, and be fined not exceeding five hundred dollars. (*Ib.*, Ch. 196, Sec. 13.) There is no other provision of a public nature relating to burial-grounds in the State.

§ 1141. In the State of North Carolina no provision is found in relation to burial places, except that if any person, unlawfully and on purpose, remove from its place any monument of marble, stone, brass, wood or other material, erected for the purpose of designating the spot where any dead body is interred; or for the purpose of preserving and perpetuating the memory, name, fame, birth, age or death of any person, whether situated in or out of the common burying-ground; or shall, unlawfully or on purpose, break or deface such monument, or alter the letters, marks or inscription thereof, he is deemed guilty of a misdemeanor. (*Revised Code 1855, Ch. 34, Sec. 102.*)

§ 1142. In the State of Georgia it is provided that whenever any vendor of real estate, upon which there is a burying-ground situate, shall choose to reserve the same

from sale in the deed of conveyance, the purchaser or purchasers under him, shall not be permitted to infringe in any manner upon the same, but shall preserve and, as far as possible, protect the same from both injury and destruction; and should any person or persons, by themselves and servants, mutilate or in any wise injure and destroy the same, he, she or they are made guilty of a trespass; and when found guilty upon an indictment are made subject to a fine of five hundred dollars. And whenever real estate shall be sold by any sheriff, marshal, coroner, administrator or executor, a reservation of the burying-ground must be made; and all trespassers on the same are made liable as in the other case. (*Cobb's Laws of Georgia, title "Burying-Grounds," Secs. 1, 2 and 3.*)

§ 1143. In the State of Alabama any person who removes the dead body of any human being from its place of interment, for the purpose of dissection, or for sale, or from wantonness, must, on conviction, be fined not less than one hundred nor more than five hundred dollars; and may be imprisoned for not more than six months. This provision, however, does not extend to regular physicians, to whom the bodies of criminals executed for capital offenses are delivered pursuant to law; or other persons, by consent of their relatives. And any person who purchases or receives from any other person the dead body of any human being, knowing the same to have been disinterred contrary to law, must, on conviction, be fined not less than one hundred nor more than five hundred dollars. (*Code of 1852, Part 4, Title 1, Ch. 2, Secs. 3236, 3237 and 3238.*)

§ 1144. It is also declared that any person who opens any place of interment, with the intent to remove the dead body of any human being for the purpose of selling the same, or for the purpose of stealing the coffin, or any part

thereof, or of the vestments or other articles interred with any human body, must, on conviction, be fined not more than five hundred dollars, and may be imprisoned not more than one year in jail, or imprisoned in the penitentiary not less than two years, at the discretion of the jury. And any person who wantonly mutilates the dead body of any human being, must, on conviction, be fined not more than five hundred dollars, and may be imprisoned not more than one year; though this does not apply to dissections. (*Ib.*, *Secs.* 3239, 3240 and 3241.)

§ 1145. It is finally provided that any person who willfully or maliciously injures, defaces, removes or destroys any tomb, monument, grave-stone, or any other memorial of the dead; or any fence or inclosure about any tomb, monument, grave-stone or memorial; or willfully destroys, removes, cuts, breaks or injures any tree, shrub or plant within such inclosure, must, on conviction, be fined not less than one hundred or more than five hundred dollars, and may be imprisoned not more than twelve months. (*Ib.*, *Sec.* 3242.)

§ 1146. In the State of Mississippi religious corporations may hold and improve lands of sufficient dimensions for a cemetery. (*Ante*, *Sec.* 783.) It is also provided by statute that every person who shall remove the dead body of any human being from the grave, or other place of interment, for the purpose of selling the same, or for mere wantonness, shall, upon conviction, be imprisoned in the penitentiary not exceeding five years, or in a county jail not more than one year, or by fine not more than five hundred dollars, or by both such fine and imprisonment. (*Revised Code* 1857, *Ch.* 64, *Sec.* 23, *Art.* LXVI.)

§ 1147. It is further provided that every person who shall purchase or receive the dead body of any human being

knowing the same to have been disinterred contrary to law, shall, on conviction, be subject to the same penalties specified in the last preceding section. And, still further, that every person who shall open a grave or other place of interment, with intent to move the dead body of any human being, for the purpose of selling the same, or for the purpose of dissection, or to steal the coffin or any part thereof, or the vestments or other articles interred with the dead body, or any of them, shall, upon conviction, be punished by imprisonment in the penitentiary, not exceeding two years, or in a county jail not more than six months, or by fine not more than three hundred dollars, or by both such fine and imprisonment. (*Ib.*, *Arts. LXVII and LXVIII.*)

§ 1148. By the laws of Tennessee, the proprietors of any place of burial wishing to become incorporated may do so in the same manner, and with the same powers, liabilities and privileges of religious societies in the State. (*Code*, 1858, *Title 9, Ch. 2, Sec. 1469. For the modus operandi see ante, Secs. 769-776.*)

§ 1149. It is declared further that any person who willfully and unnecessarily, and in an improper manner, indecently exposes, throws away or abandons any human body or the remains thereof, in any public place, or in any river, stream, pond or other place, or who removes the dead body of any human being, without lawful authority, from its place of interment, or assists in so doing, or purchases or receives from any other person the dead body of any human being, knowing the same to have been disinterred contrary to law, or who opens any place of interment with intent to steal the coffin or other covering of the corpse, or any part thereof, or anything deposited therewith, or who wantonly mutilates a dead body, is guilty of a misdemeanor. Though these provisions do not apply to regular physicians to whom the

bodies of deceased criminals are delivered pursuant to law; or to the dissections of persons by consent of their relatives. (*Code*, 1858, *Ch.* 8, *Art.* III, *Secs.* 4848-4852.)

§ 1150. In the State of Kentucky, the trustees of each town have the power to purchase, take and hold the title to not exceeding forty acres of land, in or near the town, for a public cemetery, and improve the same and appoint a keeper thereof, and sell small parcels of such grounds to individuals for the purpose of interment, and receive and collect subscriptions to aid in purchasing, improving, taking care of and repairing such ground. (2 *R. S.*, 1860, *Ch.* 100, *Art.* III, *Sec.* 3.)

§ 1151. By the laws of Kentucky, associations may also be formed and incorporated for the purpose of providing suitable grounds for the burial of the dead and ornamenting the same in a suitable manner, which association may be incorporated upon the same terms, and in the same manner as associations to maintain churches and places of public worship, and, when incorporated, will possess the same corporate powers and privileges as the latter associations. (*Ib.*, *Tit.* "*Voluntary Associations*," *Sec.* 1, *Sub.* 3.) The law relating to religious societies in Kentucky and their incorporation, and which is applicable to cemetery associations is given in the proper place. (*Ante*, *Secs.* 763-766.) All chartered cemetery associations in the State are exempted from taxation for State revenue. (2 *R. S.*, *Page* 707, *Tit.* "*Cemeteries*.")

§ 1152. In the State of Missouri, every person who shall remove the dead body or remains of any human being from the grave, or other place of interment or sepulture, for the purpose of selling the same, or for the purpose of dissection, or any surgical or anatomical experiment or preparation, or

from mere wantonness or mischief, upon conviction, is to be adjudged guilty of a misdemeanor and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. And every person who shall receive the dead body or remains of any human being, knowing the same to have been disinterred contrary to these provisions, on conviction, is also to be adjudged guilty of misdemeanor and punished as aforesaid. (*Revised Statutes*, 1845, *Ch. 47, Secs. 11 and 12.*)

§ 1153. It is also declared that every person who shall open the grave or other place of interment or sepulture, with intent to remove the dead body or human remains, for any of the purposes specified in the last preceding section, or to steal the coffin or any vestment or other article, or any part thereof interred with such body, on conviction, is to be adjudged guilty of a misdemeanor, and punished as in the last section specified. None of these provisions, however, are made to extend to any person who shall commit such acts with regard to the body of any deceased person, for the purpose of dissection, or some surgical or anatomical experiment, examination or preparation, with the knowledge and consent of the near relatives of such deceased person, nor to the disinterment or removal, for such purpose, of the body of any criminal executed for crime. (*Ib.*, *Secs. 13 and 14.*)

§ 1154. In the State of Louisiana it is declared by statute that all public cemeteries for the purpose of interment, with the monuments erected thereon, whether owned by religious or charitable corporations or associations, by municipal corporations or by individuals, shall be forever exempt from taxation and from seizure and sale for debt, and shall never be susceptible of mortgage, whether legal or conventional. (*Revised Statutes* 1856, *Tit. "Cemetery," Sec. 1.*)

§ 1155. It is also provided that all religious denominations and congregations which may own any portion of land destined as a place for the interment of the dead, shall have the right to sell, convey and transfer such parts, fractions or lots of the same as may be necessary and proper for interments; and the acts of sale, conveyance and transfer will be passed under such forms as may be prescribed by the by-laws or special resolutions of the religious denominations and congregations or other associations; and acts of sale so made are declared to be equally authentic and impart full proof as if they had been passed before a notary public and two witnesses. It is not made necessary to record the deeds of conveyance in any public office, and it is unlawful for the recorder of mortgages of any city or parish of the State, to record or certify the existence of any privilege or mortgage bearing on said lots. The lots are declared to be forever free from taxation and from seizure, attachment or sequestration for debts of any owner, whether belonging to the successions of deceased persons or to surviving friends. (*Ib.*, Sec. 2.)

§ 1156. In the State of Arkansas, lands may be conveyed to and be held by trustees for a burying-ground the same as for purposes of religious worship. (*Ante*, Sec. 800.) Besides it is made a misdemeanor for any person to remove the dead body of any human being from the grave or place of interment, for the purpose of stealing the same, or for the purpose of dissection, or for mere wantonness, or to purchase such dead body knowing the same to have been disinterred contrary to law, or to open a grave or other place of interment, with intent to remove such dead body for the purpose of selling the same, or stealing the coffin or any articles interred with such dead body; and, upon conviction, the offender may be fined in any sum not less than one hundred dollars, and be imprisoned not less than six months. But

these penal provisions do not extend to bodies of persons executed under the criminal laws of the State. (*Digest of Statutes*, 1858, *Ch. 51, Art. VII, Secs. 1-5.*)

§ 1157. By the laws of Texas, if any person wrongfully destroy, mutilate, deface, injure or remove any tomb, monument, grave-stone or other structure in any place used or intended for the burial of the dead, or any fence, railing or curb, for the protection of such structure, or any enclosure for any such place of burial, or injure, cut, remove or destroy any tree or shrub growing within any such inclosure, he must be punished by imprisonment in jail, not exceeding six months, or by fine not exceeding five hundred dollars; and, if any person not authorized by law, or by a relative or friend, for the purpose of re-interment, shall disinter, remove or carry away any human body, or the remains thereof, or shall conceal the same, knowing it to be so illegally disinterred, he must be punished by fine not exceeding two hundred dollars. (*Digest of Laws*, 1859; *Penal Code*, *Tit. 12, Ch. 5, Art. 399. a and b.*)

CHAPTER LXXXIV.

BURIAL-GROUNDS IN DELAWARE, WEST VIRGINIA, SOUTH CAROLINA AND FLORIDA—THE COMMON LAW UPON THE SUBJECT IN FORCE IN THESE STATES—CONCLUSION.

§ 1158. In the State of Delaware they have no statutes regulating burial-grounds, or providing for their protection and preservation, except that power is given to religious societies to hold and improve lands for the purposes of the interment and sepulture of the dead. (*Ante*, *Sec. 704.*) In

the States of West Virginia, South Carolina and Florida, no general statutes are found relating to cemeteries or burial-places in any particular. There seems to have been a few instances of local legislation upon the subject, but nothing of a general nature is found.

§ 1159. In these States, therefore, the subject rests principally upon the ample provisions of the common law, which affords very tolerable facilities for establishing, preserving and protecting burial-grounds, and for punishing offenders who may be guilty of desecrating these sacred places. And here it is interesting to reflect how very extensively the common law, in a general point of view, regulates our conduct and determines our rights. Our civil duties and liabilities depend much more upon this code than upon positive enactment. That *lex non scripta*, which rests in the decisions of the courts and general customs of the people, is the code which must fill up every wide space which the statute law cannot occupy. It is the application of the dictates of natural justice and of cultivated reason to particular cases. In fact, "we live in the midst of the common law; we inhale it at every breath, imbibe it at every pore; we meet it when we wake and when we lie down to sleep; when we travel and when we stay at home; it is interwoven with the very idiom that we speak; and we cannot learn another system of laws without learning, at the same time, another language." In the words of the eminent STORY, "its highest praise is, that its principles receive an almost universal homage, not as the positive dictates of authority, but as the persuasive and irresistible influence of reason. *Valent pro ratione, non pro introducto jure.*" With this admirable code in full force in these States, it is quite obvious that, in the absence of positive statutes, they are not destitute of legal provisions for christian sepulture.

§ 1160. We have heretofore seen that the general law of pious and charitable uses is in force in the United States to the extent that gifts and devises for the benefit of unincorporated religious societies are sustained in all cases, when the same are made to trustees capable of taking the legal estate, and the objects of the trust are definite and reasonably certain. (*Ante*, Secs. 818, 819 and 823.) Upon the same principle gifts, donations and bequests for the support of burial-grounds will be upheld and sustained. (*Doe v. Pitcher*, 6 *Taunt. R.* 363.) Land dedicated as a place of burial is regarded as a dedication to public and pious uses, and the dedication may be established by the same evidence as in other cases of the kind. (*Beatty v. Kurtz*, 2 *Peters R.* 566.) The doctrine which is applicable to trusts for the support of religious worship and the Christian ministry, applies with equal force to trusts for the support of a depository of the dead. (*Beatty v. Kurtz*, *supra*.)

§ 1161. We have also seen that desecrating the grave, digging up dead bodies or selling them, is a misdemeanor at common law, and indictable and punishable as such. (*Sec. 1027, note*.) So it has been held that stealing dead bodies, though for the improvement of the science of anatomy, is an indictable offense at common law, it being considered a practice contrary to common decency, and shocking to the general sentiments and feelings of mankind. (*The King v. Lynn*, 2 *Term. R.* 733; *Ib.* 1 *Leach's Crown Cases*, 497.) So, also, it is an offense at common law to disinter dead bodies, even for the purpose of dissection. (*Commonwealth v. Cooley*, 10 *Pick. R.* 37.) These well established provisions of the common law will enable every civilized community to provide and maintain suitable depositories for the dead, independent of any statutory enactment.

§ 1162. But however much the common law may afford

facilities for establishing and protecting the depositories of the dead, these sacred places are seldom cultivated and adorned, and made pleasant and attractive, without legislative interposition and aid. The propriety and importance of the statutory provisions existing in most of the States are, therefore, obvious to the reflecting mind. Legislation upon the subject is becoming more and more common. Among the first acts of legislation in the recently admitted States, are found those providing for the organization of cemetery associations, and for the protection of the graves of their dead. In every part of the country we find beautiful rural cemeteries, of greater or less extent, abounding with walks and shrubbery, laid out in good taste and excellent design, containing costly and elegant tombs, and are advancing in beauty and refinement. All this goes to show the religious care which the people of this country take of the ashes of their dead.

§ 1163. And here this unpretending volume, according to its original design, may appropriately be brought to a close. It is supposed that the subjects of the work are nearly, if not entirely, exhausted. The law of religious societies, church government and creeds, the law for preserving order and decorum in religious assemblies, and the laws for establishing and protecting the sacred depositories of the dead in the United States, all cognate in their nature, constitute what may be called the ecclesiastical law of this country; and the design has been to give the whole system, with all practicable accuracy and fullness. In reviewing the entire subject, it cannot escape the attention of the careful observer, how very intimately associated with the civilization and genius of the country, is the Christian religion and the gospel ministry. And it is a matter of pleasing reflection to all lovers of high social refinement and virtue, to contemplate the hold which the subjects of religion and Christian

institutions have upon the hearts and the consciences of the people, and how generally it enters into the calculations and arrangements of the community at large. The subject is becoming more and more identical with the spirit and the policy of the age, and is more and more engaging the attention of the people in all parts of the land. The great truth is becoming more and more heeded, that in no case can the end of public happiness be so essentially promoted, as by cultivating the principles of moral duty and religious faith.

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