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CIVIL STATUS OF THE PRESBYTERIANS IN THE PROVINCE OF NEW YORK

AMONG the questions in debate, under the colonial system of England before the American Revolution, one of the most embarrassing was that touching the relation of the various ecclesiastical bodies, existing in the colonies, to the State. That "remarkable variety and indistinctness of opinion," which prevailed both in Britain and in America, concerning the precise nature of the political bond which united the two countries, extended beyond the sphere of secular interests into that of religion. Indeed it is only within a few years that a solution for the same problem has been found in countries that have retained their connection with Great Britain to the present day. In the colonial time, and in the province of New York, it was a question surrounded with peculiar difficulties, and here, perhaps more than in any other American province, it was productive of serious trouble. Elsewhere the type of religious belief prevailing among the settlers determined the question, so far as it could be determined through the action of colonial legislatures. In Virginia and in Carolina, where the majority of the population adhered to the Church of England, that Church was established by colonial law. The Congregational order prevailed in Massachusetts and in Connecticut, and was recognized and enforced by the civil power. New York, throughout the colonial period, was distinctively a Presbyterian province. What position belonged of right to the Presbyterian churches in this province, and how actually they stood related to the State:—these are the points to be noticed in the present paper.

The period under consideration may be divided approximately into two terms of about seventy-five years each—the one term lying in the seventeenth century, and the other in the eighteenth. From the year 1623, when the permanent colonization of the province was commenced,

until the close of the seventeenth century, liberty of conscience and equal protection under the law were enjoyed by the various denominations of Protestant Christians. This age of religious toleration was introduced by the Dutch West India Company, and it continued throughout the administrations of the first five English Governors. When in 1664 England took possession of New Netherland, the Reformed Church of Holland had occupied the ground for more than forty years as the Church by law established, and the Church representing the religious belief of almost the entire population. By the articles of surrender the Dutch were secured in the enjoyment of their religious privileges, and in the possession of their ecclesiastical property, and for thirty years more these rights remained unimpaired. The laws imposed upon the province by the Duke of York, to whom the territories taken from the Dutch were conveyed by his brother, Charles II., provided for the building of churches and the induction and support of ministers, but gave no advantage to one religious body over another.

The Reformed Dutch Church, however, though no longer in connection with the State, retained a commanding importance. The English Governors themselves occasionally recognized it as a *quasi* establishment. Thus Governor Nicolls in 1665 directed the authorities of the city of New York to levy a tax for the payment of the salaries due to the Dutch ministers. His successor, Lovelace, in 1670 declared that he regarded the Dutch Church, which was "found established" by Nicolls and himself, as in Albany the parish church, entitled to support through taxation or otherwise. The Dutch Church of New York was the very first to obtain from the Governor a charter of incorporation. For generations the population of Dutch birth or descent, largely outnumbering the English both in city and in country, clung to their ancestral faith; and long after Holland had lost her possessions on these shores the flourishing congregations of New York, Albany, Kingston, Schenectady, Poughkeepsie and other places still comprised the bulk of the religious element in the province. In close connection with these churches a few congregations of Huguenot refugees sprang up, the principal one of which, the French Church in New York, was strong and wealthy, when the English-speaking congregations of that city were yet in their infancy. By the end of the century the churches in the province numbered not far from forty. Fifteen of these were Dutch, four were French, thirteen were of New England origin, one was a German Reformed congregation. All but three or four were

Presbyterian. A Lutheran Church had been founded in New York and another in Albany. A service, conducted by the chaplain of the English forces, and held in the Dutch Church in the fort for the benefit of the Governor and the garrison, was the only Anglican service observed in the province until the erection of Trinity Church in the year 1697.

The policy of toleration pursued by the early Governors of New York was approved from the very first by the Colonial Legislature of the province. In 1683 the representatives of the people met for the first time in General Assembly. The Charter of Liberties enacted by this body, and approved by the Governor and his Council, provided that all persons professing faith in God by Jesus Christ should have entire freedom of conscience. It was also expressly declared that the Christian Churches existing in the province should forever be "held and reputed as privileged churches, and enjoy all their former freedoms of their religion in Divine worship and Church discipline." This charter was confirmed by the Duke of York. Three years later the same personage, upon his accession to the throne as King James II., repealed it. The fact remains, however, that the popular branch of the provincial government had pronounced itself from the first in favor of the rights of conscience.

The period of religious freedom closed with the century. A change in the policy of the Governors had been foreshadowed some years earlier. Indications of such a change appeared in connection with a scheme for the better support of ministers in the several towns of the province. The expediency of some provision for this purpose was acknowledged, and the Assembly showed no unwillingness to take action with reference to it. But the growing disposition of the Governors to interfere in matters of religion was calculated to awaken apprehension, and there were grounds for suspecting that they designed to make way for an ecclesiastical establishment. In 1691 Governor Sloughter suggested to the Assembly the passage of an Act for the suitable maintenance of the ministry in every town. Instructions were accordingly given for the drawing up of a bill to provide for the settling of ministers and the raising of a support for them in each place consisting of forty families and upwards. The bill as prepared reflected the views of the Governor, but for some reason it failed to meet the approval of the House, and was rejected. Orders were given for the preparation of another bill, and at the subsequent session the subject came up for consideration, but no definite action was taken until the year 1693, after the

arrival of Governor Fletcher. On the 19th of September in that year a bill was introduced into the House, entitled "An Act for Settling a Ministry, and Raising a Maintenance for them, in the City of New York, County of Richmond, Westchester and Queen's County." This Act was passed on the 22d of September. Its application, as the title shows, was limited, and it contained no reference to a particular religious denomination. It applied to only four of the ten counties of the province. It provided that in each of certain specified localities in these counties—in the city of New York, on Staten Island, and in the towns of Westchester, Rye, Jamaica and Hempstead—ministers should be settled within one year after the publication of the Act; and that for the maintenance of these ministers, as well as for the relief of the poor, a tax should be laid on the respective places. The choice of ministers was left to certain officers, to be elected by the people of each place. At the same time it was declared "that all the former Agreements, made with Ministers throughout this Province," should "continue and remain in their full Force and Virtue; any Thing contained" therein "to the contrary" thereof "in any wise notwithstanding." (Laws of New York, I. 18–20.)

No departure from the course hitherto pursued in the treatment of the various religious bodies appeared in this legislation. It was in the same line of religious toleration with the rules of the Dutch Company and the laws of the Duke of York. Under the Duke's code a minister, desiring to officiate within the government, was required to produce testimonials to the Governor that he had received ordination either from some Protestant bishop *or ministers* within some part of his Majesty's dominions, or the dominions of any foreign prince of the Reformed Religion." "For the making and proportioning the Levies and Assessments for building and repairing the Churches, Provision for the poor, maintenance for the Minister, as well as for the more orderly managing of all Parochiall affairs in other cases exprest, Eight of the most able Men of each Parish" were "by the major part of the Householders of the said Parish, chosen to be Overseers, out of the which Number the Constable and the aforesaid Overseers shall yearly make choice of two of the said number to be Church-wardens."

The Ministry Act of 1693 clearly follows the earlier code in the mention of "church-wardens," and simply substitutes the term "vestrymen" for the term "overseers." Yet Governor Fletcher argued with the Assembly in 1695 against an interpretation of that Act which would allow the Vestry of New York to call a minister dissenting from

the Church of England,—"There is no Protestant Church admits of such officers as Church Wardens and Vestry-men but the Church of England."

Assuredly nothing could have been further from the intention of the Assembly which passed the Act than the establishment of the Church of England in the province. A solitary member of the Assembly was an adherent of the Church of England; and the congregation that met on Sunday after service in the Dutch Church in the fort was the only Anglican congregation in the entire province. "The people," said Lewis Morris, afterwards Chief Justice of the province, "were generally dissenters, and averse to the Religion of the Church of England; and when the Act was past that provided for the Maintenance of Ministers abovesaid, it was to settle an Orthodox Ministry, which words, were a Governor a Dissenter and would induct Dissenters, would be as favourable in favour of them as the Church; and the people, who ne'er could be brought to settle an Episcopal Clergy in direct terms, fancied they had made an effectual provision for Ministers of their own persuasion by this Act." (Correspondence G. P. S.)

Yet upon this Act the claim set up afterward for the Church of England, as "by law established" in the province, was based. Colonel Fletcher, the new Governor, had entered upon his office determined to bring this result about. He endeavored to procure the insertion of a clause in the bill, before its passage, giving the Governor the right to approve and collate or induct ministers into the parishes to which they might be called; a provision which would of course have carried with this right that of refusing to approve and collate. The Assembly declined to make this amendment; the bill was passed without it, Fletcher himself signing the Act. But though disappointed with its provisions, he made effectual use of the law by an arbitrary and illegal wresting of its true purpose. For seventy years or more the Governors of the province of New York exercised the power, which the Assembly had expressly denied them, of inducting ministers into the parishes, under this Act for settling a Ministry. Four years after the passage of the bill a charter was granted, creating the parish of Trinity Church in the city of New York, and assigning to the rector of that parish and his successors all the benefit of the Act of 1693; and thenceforward, until the period of the Revolution, the inhabitants of the city were taxed for the support of the rector, precisely as though the Act had been designed for the sole advantage of his particular denomination. In 1704 Lord Cornbury succeeded in procuring the passage of an Act

"for granting sundry Privileges and Powers to the Rector and Inhabitants of the City of New York, of the Communion of the Church of England, as by Law established." This Act provided that the rector and his successors in office should receive the sum of one hundred pounds yearly, raised and levied upon the inhabitants of the said city, for the maintenance of a good, sufficient Protestant Minister, by virtue of an Act entitled An Act for Settling a Ministry.

Lord Bellomont, the next Governor, looked with little favor upon his predecessor's scheme for the setting up of a State Church in a part of the province. Writing to the Lords of Trade, he complained that "the late Governor" had "made advantage to divide the people by supposing a Dutch and English interest to be different here." "Under the notion," he continued, "of a Church of England, to be put in opposition to the Dutch and French churches established here," Fletcher had "supported a few rascally English, who" were "a scandall to their nation and the Protestant religion." This plain-spoken nobleman, however, was not prepared to grant the full measure of religious liberty which the people of his government craved and were disposed to claim. Short as the term of his administration was, there occurred an opportunity for Lord Bellomont to negative such a claim. His own account of the matter is briefly given in a letter to the Lords of Trade, July 22, 1699: "The House of Representatives sent up a Bill to me and the Councill for settling a Dissenting Ministry in that Province, but it being contrary to his Majesty's instructions, and besides having been credibly informed that some of those Ministers do hold strange erronious opinions in matters of Faith and Doctrine, I would not give the Assent to that Bill, but rejected it." (N. Y. Col. Documents, IV. 325, 536.)

The precise form of the bill thus rejected—owing to an unfortunate break in the Journal of the Provincial Assembly—cannot be ascertained, but its general character may be inferred from the context of existing records. A petition of "the civil and military officers of Queen's County" was presented in April, 1699, to the Assembly, and was referred to the Committee "of Grievances," which reported April 13th as follows: "That they examined the Petition, ... and are humbly of Opinion, That every Town or Parish within this Province, consisting of the Number of 40 Families, shall have full Power by the major Part of said Inhabitants, in each Town or Parish, to call and settle a Protestant Minister among them; and all the Inhabitants within the said Town or Parish, shall equally contribute to his Maintenance,

according to Proportion, by Way of Rate." The committee, of which Abraham Gouverneur was chairman, recommended that a bill to this effect be brought in. Such a bill was prepared, and after a second reading, April 28th, was committed to the Committee of Grievances. On the 1st of May that committee reported: "That they have . . . examined the Bill for ye settlement of ministers, &c., & have agreed to ye same, with these amendments: That a proviso be added that this Act nor any clause therein Contained, shall extend to ye hinderance of ye Dutch and French churches establisht in this Province, nor Constraine ye Citty of New York, ye Citty of Albany, ye County of Ulster or Kings county to call any other ministers unless at their pleasure." The proposed amendments were agreed to, and on the 4th of May the "Bill for the settlement and support of ministers & schoolmasters & building & repairing meeting houses within this Province" was passed and sent up for approval. (Journals of Assembly, MSS., Albany.

The report of the Council upon the bill states very clearly the grounds upon which it was rejected. "His Excellency the Governor having been pleased," say they, "to Comunicate unto us his Instructions Relating to the Settlement of Religion in this province, we are humbly of opinion that by the said Instructions your Excellency ought not to passe the said Bill. But we doe humbly offer the Reasonablenesse and our Readynesse to Joyn with the Representatives of this province in an Addresse to your Excellency humbly to Represent to his most Sacred Majtie the State and condition of this province, as to the matters in the said Bill conteined, and that his Majesty of his Great piety and wonted Clemency would be gratiously pleased to allow, *untill some better order* can be in this province had for the Settlement of *a more orthodox Ministry*, That such Ministers of the Presbiterian and Independant Congregation as are allready settled in the several Towns of this Province may be continued and mainteined according to such agreement as hath been made by the major part of the people of such Towns, and that all the Inhabitants within the bounds of such Towns may be equally and justly Assessed according to their several Estates for and towards the payment and Support of such Ministry; and that such other Towns who are well able to maintain a Minister, and have none within this Province, may be encouraged and obliged to Establish and Ascertain a maintenance, and use their Endeavours to get Ministers, that God's word may be preached and His Ordinances practized amongst us, and that Churches, Schools and parsonage houses may be built and Repaired throughout this province." (Journal of Council.)

This language was not suited to inspire confidence with regard to the future; nevertheless the conduct of the Governors for the time being was kindly and tolerant in the main. Though disposed to meddle sometimes officiously in their affairs, they recognized in various ways the rights of ministers and congregations. Both ministers and individual members of churches—Dutch, French, German and English—brought their grievances before the Governor. Orders were issued for the payment of salaries in arrears. Permission was given to collect money for the building of churches. Peiret, the Huguenot pastor of New York, received with Vesey a pension out of the revenues of the province. The Act of 1693, as construed by the people themselves, was in operation. "Dissenting Ministers were settled" under it in various places without let or hindrance. (Doc. Hist. of N. Y., III. 198, etc.; Correspondence G. P. S.)

The second term of our colonial history begins with the eighteenth century. In 1701 the Society for the Propagation of the Gospel in Foreign Parts was formed in England. One principal design of this organization—the only one indicated by its charter—was the providing of ministers for the British Colonies beyond the seas. Representations were at once made to the Society of the great destitutions of this province. There are some Calvinistic congregations on Long Island and elsewhere, but "there is no Church of England in all Long Island, nor in all that great Continent of New York Province, except at New York town." (Collections P. E. Hist. Soc., p. xiii.) Missionaries were accordingly sent over, and it became the care of the Governor to find or to make places for them within the four counties especially to which the Act for Settling a Ministry applied. Nearly all the towns named in that Act already possessed houses of worship; in several of them the inhabitants had set apart lands for glebes, and had built parsonage houses. Lord Cornbury, equally zealous with his predecessor, Fletcher, for the spread of the Church of England, assumed the right that Fletcher had claimed to induct ministers into parishes, and under the color of a law that had no existence put the missionaries of the Society in possession of churches, glebes and parsonages. This was done, or attempted, at Westchester and Eastchester, Rye and Bedford, Jamaica, Newtown and Hempstead. In Rye, only of all these towns, no church had yet been built; but a tax was levied upon the inhabitants for its erection, and meanwhile the house and lands which had been provided for a minister, and held by a succession of pastors, were taken for the missionary.

That this course was not in harmony with the avowed design of the Society at home is very certain, and we may well believe that it was not inspired by the excellent men who were most zealous for the establishment and success of that great benevolent institution. The correspondence of the Society shows that the importance of missionary work among the Indians and heathen, and in settlements where no provision existed for the religious instruction of the people, was urged upon its laborers as their chief work. Archbishop Secker at a later day repelled the charge that the Society had been diverted from this aim—"that we have unwarrantably changed our object, from the propagation of Christianity and Protestantism, to the propagation of one form of it, in opposition to other Protestants; and make the gaining of proselytes from these our Chief business, which was not designed to be any part of it: nor was attempted, they say—I want to know how truly—by our predecessors in the Society for many years after its erection." "We must be extremely cautious," he adds, "how we appoint new Missions where Presbyterians or Independents have Assemblies." (N. Y. Col. Documents, VII. 347.)

It would have been happy for the cause of religion here if such wise caution had been observed; but Lord Cornbury and his advisers were governed by no such considerations. We have the unimpeachable testimony of Colonel Morris, a member and a zealous friend of the Society, as to the methods used and their effects. "I think," he writes to the Secretary about the beginning of the year 1708, "in West Chester, East Chester, Hempstead, New Town, in [and?] Jamaica dissenting Ministers were settled, . . . and being afterwards put out of them by the Missionaries of the Society, supplying those places, made them think themselves unjustly dealt with, and very much increast their prejudices." (Correspondence G. P. S.)

The oppressive nature of these proceedings is better known in some of the cases that have been mentioned than in others. Cornbury's doings at Jamaica, perhaps more than any other occurrences of his disgraceful administration, brought infamy upon his name. Bartow, a missionary of the Society, with the Governor's approval, took summary possession of the church, ousting the Presbyterian pastor from his pulpit, and locking the door upon the people. But the minister still held the parsonage. It was the best house in the town. Cornbury, who had left the city during the prevalence of an epidemic, asked leave to occupy it. Consent was given; and, when the noble lord came to leave, his host was denied admittance, and the parsonage and

glebe were given up to the missionary. Thus by force and by treachery a congregation was deprived of house and lands, their title to which was indisputable. There were peculiar hardships in this case, yet the course pursued elsewhere was substantially the same. Wherever, by an untrue and unscrupulous interpretation of the Act for settling a ministry, it was possible to take the churches and the other ecclesiastical property for the missionaries, the attempt was made, and, thanks to Lord Cornbury, it was generally successful. The only instance of an utter failure was at Bedford, where the people made from the first so determined a resistance that the effort to alienate their church property was abandoned.

A policy so unjust and oppressive could not fail to produce dissatisfaction and trouble. The Governor might be arbitrary and overbearing, but his power was not without limit. Legislative assemblies and courts of justice could not be counted upon to sustain his interpretation of the law. The Assembly had from the first refused to acquiesce in Fletcher's usurpation of the right to collate ministers. The same body in 1695 declared that, under the Act for Settling a Ministry, a minister dissenting from the Church of England might lawfully be called and maintained as the parish minister of the city of New York. In 1705 Lord Cornbury endeavored to procure the enactment of laws that would at once confirm the Society's missionaries in the possession of the privileges claimed for them under the Act of 1693, and provide in a similar way for the support of ministers of the Church of England in places that were not included within the scope of that Act. "The Difficulties which some very worthy Ministers of the Church of England, have met with, in the getting the Maintenance settled upon them, by Act of General Assembly of this Province, passed in the Year 1693, moves me," said his lordship in a speech to the House, "to recommend to you the passing an Act, explanatory of the abovementioned Act, that those worthy good Men, who have ventured to come so far, for the Service of God and his Church, and the Good and Edification of the People, to the Salvation of their Souls; may not for the future be vexed, as some of them have been, but may enjoy in Quiet that Maintenance, which was by a Law provided for them. I further recommend to you the passing an Act, to provide for the Maintenance of some Ministers in some of the Towns at the East End of Long Island, where I do not find any Provision has been yet made for the propagating Religion."

Colonial legislatures had a quiet way of disposing of suggest-

ions like these. The House promptly passed a bill, entitled "An Act for the better explaining, and more effectual putting in Execution" the Act of 1693 for settling a Ministry. It did not meet the Governor's wishes. When submitted to the Council, the bill was amended and returned to the Assembly for its concurrence. The Assembly, however, refused to agree to the amendments; they were withdrawn by the Council, and the bill in its original shape became a law. The new Act was not any more than the old one an Act to establish the Church of England in four counties of the province. As little did it provide for the extension of the former Act to include the east end of Long Island. Five articles were embraced in the bill. The first made it the duty of the Justices of the Peace of each county to lay a tax on the places specified, in case that the persons appointed to this duty in the former Act should fail to perform it. The second provided that payments should be made to the incumbents at these places in the current money of the province, and not in country produce. The third related to the disposition of the fines, penalties and forfeitures that might arise. The fourth empowered the vestrymen and church wardens to "present" a minister in case of the death of an incumbent. The fifth was as follows: "Provided nevertheless, That neither this present Act of General Assembly, nor any Thing herein contained, shall be construed, or understood to extend to abridge, or take away the Indulgence, or Liberty of Conscience granted and allowed to any other Protestant Christians, by any Law, or Statute of the Realm of *England*, or of this Plantation; any Thing in this Act contained to the contrary thereof, in any wise notwithstanding."

An important point, however, had been yielded by the Assembly. The Act of 1705 recognized the right of the Governor—a right which the Act of 1693 did not recognize—to "induct ministers in parishes" within the counties named. (Laws of New York, Chap. CXLVI.)

Subsequent enactments of the Colonial Legislature made provision for the more effectual execution of the law, with reference to the raising of a maintenance for the ministers of the parishes. These enactments were based upon the Act of 1693. No new measure was introduced for the setting up of a State Church; but the interpretation which had been given to the original law in favor of the Anglican ministers, and particularly the rector of Trinity Church in New York, seems to have been acquiesced in by the Assembly.

The courts of justice became and long continued to be the resort of complainants. Suits at law, lasting for many years, grew out of the

seizure of the church at Jamaica. In 1727, a quarter of a century after their dispossession, the Presbyterians gained their cause, recovered the church, and had their title to the glebe lands and the parsonage confirmed. At Hempstead the right of the Anglican party to the church land was hotly disputed, and the missionary was "often threatened with an ejectment." At Rye the Presbyterians pressed their claim from time to time, and finally, toward the middle of the century, brought a suit for the purpose of recovering at least a part of their former glebe. All this litigation, however, was insignificant compared with the strifes and contentions arising out of the attempt to collect the taxes for the support of the Anglican clergy. The vestrymen, as they were called, regarding their office as a purely secular one, refused in some instances to admit the Church of England clergymen to take part in their proceedings, and sometimes they paid over the sums raised by taxation to the Presbyterian ministers instead. (Doc. Hist. N. Y., III. 270.) The churches, built by the towns, continued to be regarded by the mass of the people as town property, and from time to time this theory of ownership was reduced to practice without recourse to the forms of law. While in some places the Presbyterians were successful in retaining or ultimately recovering their houses of worship, as at Bedford, Newtown and Jamaica, in other places they asserted their claim by an occasional or periodical occupation. Thus William Tennent preached for eighteen months in Eastchester church, and at Rye the Presbyterians at one time held possession of the church for nearly three years. Some of these buildings were at a late day secured by charter to the favored denomination, but it was long before they ceased to be regarded by the people as common or "union" houses of worship.

On the whole the scheme for the establishment of the Church of England in four counties of the province, under the provision of a law passed by the Provincial Assembly, was a mistake and a failure. A leading member of that Church spoke of it as an "artifice" (Doc. Hist. N. Y., III. 244), and the language of some who were directly concerned in the scheme is scarcely less candid. "I believe at this day," says Lewis Morris in 1711, "the Church had been in a much better position had there been no Act in her favour." (N. Y. Col. Documents, V. 323.) As well by the fraudulent construction, as by the oppressive enforcement of the law, a deep and lasting resentment was awakened against those who procured and those who profited by the abuse.

But a second and more imposing claim was advanced in the course of time in behalf of a State Church in this province. As the century

went on, it was assumed, more and more distinctly and unhesitatingly, that the ecclesiastical establishment of the mother country extended necessarily to the colonies; that wherever throughout the British Empire the authority of the Crown was exercised, there the Church of England was to be acknowledged as the Church by law established; and those who differed from that Church possessed in the colonies no other rights and immunities than such as were granted at home to Dissenters. Especially, it was held, must the claim be admitted in a province that possessed none of those rights which were peculiar to the "charter governments" of Massachusetts, Connecticut and Rhode Island, but was directly amenable to the Crown, and subject to the laws of England.

The missionaries of the Society for the Propagation of the Gospel appear to have taken this ground from the first. But it became a more serious matter when a Governor, acting upon this theory, undertook to deal with Presbyterian ministers and congregations as Dissenters. The adoption of this course may be said to date from the time when a Presbyterian congregation was gathered in the city of New York. In the broader sense of the name, Presbyterianism, we have seen, had been represented in that city from the first by the Churches of Holland and France. But it was long before the adherents of the Church of Scotland came in any considerable numbers to settle in New York. Early in the eighteenth century we hear of religious services that were held in private houses; and we learn that the congregation of Trinity Church was in large part composed of those who preferred the Presbyterian order, but who worshipped there, "having no other place to go to." (Correspondence G. P. S.) It was not until the year 1715 that a regular church organization was effected by the Presbyterians of New York. (Bellamy Papers.) But in 1707 two Presbyterian ministers from Maryland, Francis Makemie and John Hampton, visited New York, and preached in that city and on Long Island. Lord Cornbury arrested them as strolling preachers. They were thrown into prison, and Makemie was indicted and tried upon the charge of having preached without being qualified or permitted, and of having used other rites and ceremonies than those of the Common Prayer. The trial resulted in his acquittal; and the Governor's course was generally, perhaps universally, condemned. Colonel Morris wrote home, lamenting "a procedure by no means warrantable, and that alarms all mankind here. My Lord's arbitrary conduct with respect to this man, and his example together, have so soured a great many, that subscriptions

are getting to build a Dissenting Meeting House in that City, and a support will be provided for one of their Ministers." (Correspondence G. P. S.)

It has been urged that the exercise of Cornbury's tyranny was not confined to Presbyterians; and it is very true that the outrages committed in the case of Makemie and Hampton were more than equalled by the cruelties inflicted upon two of the Society's own missionaries, Moore and Brookes. But what it concerns us here to notice is the line of argument pursued by the Governor and his apologists in the attempt to justify his action. At Makemie's trial the Attorney-General asserted the Queen's supremacy as Head of the Church, and read her Instructions to the Governor. Cornbury himself, writing to the Lords of Trade, sought to defend his course by reference to the Act of Toleration and to the penal statutes, thinking it "very plain by the Act of Tolleration it was not intended to tollerate or allow strolling preachers, but only that those persons who dissent from the Church of England should be at liberty to serve God after their own way in the several places of their abode, without being liable to the penalties of certain laws." In this, as in his other procedures toward Non-conformists, Cornbury assumed that the Church of England, by law established in the mother country, was equally established in the provinces. None of the succeeding Governors asserted this doctrine so offensively, or enforced it in a manner so arbitrary and illegal. Yet the Presbyterians of the city of New York were subjected throughout the remainder of the colonial period to a treatment which accorded well with the principles avowed and put in practice by Cornbury.

For some years the little congregation kept together, meeting for worship in private houses. They were without a settled minister. "Mr. Vesey hath by his good conduct," wrote Colonel Heathcote in 1716, "frustrated all the designs of dissenting ministers from settling among us; a happiness," he adds, "no city in North America can boast of besides ourselves." Six months later the congregation secured a pastor. The corporation of the city granted them the use of the City Hall for their public services, until in 1719 they built a church on Wall street, near Broadway. In March, 1720, the minister and officers of the congregation presented a petition to the Legislative Council of the colony, praying for a charter of incorporation. The petition was referred to a committee who reported the next day to the President of the Council, in the Governor's absence, giving it as their opinion that the petitioners' prayer might be granted. An unexpected opposition to the measure, how-

ever, influenced the Council to defer action. Representations were made in behalf of the "Rector and Church Wardens of Trinity Church of New York against the Petition." The Council advised that the whole subject be referred to the Lords of Trade for their consideration, and here the matter was dropped.

On the arrival of Governor Burnet soon after, a second application was made to the provincial government in the autumn of the same year. The Governor himself "spoke favourably of the design," but again it was opposed, and no action was taken in the matter. Four years later, the petition having been pressed, the Council referred it to the Lords of Trade for their consideration. The legal adviser of the Board, counsellor West — afterwards Lord Chancellor in Ireland — expressed the opinion that "by law such patent of incorporation may be granted." The request, however, remained unfulfilled. Thwarted in this attempt to obtain a legal recognition, the congregation in 1730 conveyed the fee-simple of their church and ground on Wall street to a committee of the General Assembly of the Church of Scotland, and by that committee the property was held in behalf of the congregation down to the period of the Revoluti

The will of Dr. John Nicoll, an honored member of the Presbyterian Church of New York, and one of its most zealous and efficient supporters, who died in 1743, contains a bequest, which illustrates the awkwardness of this arrangement for the tenure of the church property: "The rest and residue of my Estate, both real and personal, I give and bequeath to the Moderator of the General Assembly of the Church of Scotland, the Moderator of the Presbytery of Edinburgh, the Principal of the College of Edinburgh, the Professor of Divinity therein, and the Procurator and Agent for the Church of Scotland for the time being, and their successors in office for ever, Trustees for the Presbyterian Church of the City of New York, to be by them or their constituents put out to interest upon good security, and the incomes thereof laid out to the best Advantage for the Relief of the poor, especially poor Widows and Orphans belonging to the said Church." (Will in Surrogate's Office, New York, signed 14 June, 1742; proved 4 October, 1743.)

But in 1759 it was thought expedient to apply for the fourth time to the Government for a charter. Serious inconvenience had arisen to the church from a lack of corporate powers. There was reason to hope that the application would meet with a more just and generous consideration on the part of the Council. Mr. De Lancey, the Lieutenant-

Governor, "had frequently expressed his abhorrence of the illiberal and unjust refusal which their former applications had met." But the hopes awakened were disappointed. The petition was referred to a committee, and then quietly set aside.

A fifth application was made in the year 1766. The congregation had greatly increased in numbers. It had been found necessary to enlarge the church on Wall street, and a project was now entertained for the erection of a second house of worship. "The petition of John Rodgers and Joseph Treat, the present Ministers of the Presbyterian Church of the City of New York," dated the 18th of March, 1766, sets forth the reasons for their request. The Presbyterian subjects of the Crown, Dutch and English, in the province of New York, are a great majority of the whole number of the inhabitants. There is no general establishment of rates for the building of churches and the support of ministers. The whole charge of supporting the worship of God is defrayed by voluntary contributions. Every congregation stands in need of some property for sacred uses, and to hold such property needs to be incorporated; and the petitioners are very desirous to secure their church and the cemetery adjoining, and also to acquire a further estate for the better support of the Gospel. Inasmuch as some doubt has arisen with regard to the power of the Governor to grant a charter in such a case, they make their request directly to the King in Council. In urging the expediency of granting it, they represent that the old Statutes of Uniformity do not extend to America, and that the growth and prosperity of the King's dominions in America depend greatly on the enjoyment of liberty of conscience, and an impartial treatment for his Protestant subjects of every denomination, "especially those of the two Communions established in Great Britain."

The petition was duly presented, and was referred by the Royal Council to the Lords of Trade for consideration. Lord Dartmouth, the President of that Board, was known to be friendly to the object. To the Board itself the petitioners' request appeared "in the general and abstracted view of it . . . to be no ways improper or unreasonable." But before reporting upon the case the Lords of Trade saw fit to inquire of the provincial government why it was that the prayer for a charter had not been granted when presented at an earlier day. The answer of the Council of New York to this inquiry was delayed for some months, and failed to throw much light on the subject. They stated that about the same time with the Presbyterians, or shortly after, several other congregations—Lutheran, Dutch, and French—had made

similar requests for incorporation. In the case of the first of these, the Lutheran Church of New York, the committee to whom the petition was referred had reported favorably, advising that a charter be granted. But the Lords of Trade, to whom the petition was transmitted, had not seen it to be necessary or expedient to grant it. The Council now perceive no difference in the circumstances of the present petitioners whereon to ground any preference in their favour. As to the assertion contained in the petition, that "the old English Statutes of Uniformity do not extend to America," the question is one which to them seems "necessary to be determined on the highest authority, previous to any final resolution on the petition, lest such incorporations might be considered as repugnant to the provisions of those Statutes." (N. Y. Col. Documents, VII. 846.—Doc. History of N. Y., III. 503.)

Pending the arrival of this answer from New York, the Lords of Trade had submitted the petition of the Presbyterians to the Bishop of London, who was already informed of the project through his American correspondents. The wise and moderate Archbishop of Canterbury, Dr. Secker, was in turn consulted. Dr. Secker saw nothing very formidable in the request. It is "made only for one Church, not for the Presbyterians in general, as our American correspondents represented it." Some of these had "mentioned the application as a scheme to unite the Presbyterians of those countries with the Church of Scotland;—nothing of that sort appears in it. The connexion of the New York Presbyterians with that Church was occasioned only by their not being a Corporation, and will cease if they are made one." Upon the whole, however, thought Secker, the request might be denied without giving ground of complaint. If to grant it "will assist them to grow upon us and increase their superiority over us, of which in this very petition they boast, leaving them in the present state, which doth them no injury, is surely more prudent than raising them at all higher." (Correspondence G. P. S.)

At length, on the 10th of July, 1767, the Lords of Trade made their report. They concurred with the Council of New York in expressing the doubt whether his Majesty, consistently with his Coronation Oath, could create such an establishment as the petition requested in favor of the Presbyterian Church. But without presuming to decide upon a question of so great importance, they gave it as their opinion that it was "not expedient, upon principles of general policy, to comply with the prayer of this petition, or to give the Presbyterian Church

of New York any other privileges and immunities than it" was "intitled to by the laws of Toleration." (N. Y. Colonial Documents, VII. 943.)

The question whereon so grave a doubt was expressed in both countries at so late a day—only a few years before the period of the Revolution—seems to have been an open question from the first. Was the Church of England, to the securing of which as by law established in the Realm the King was pledged by his coronation oath, possessed of the same superior and exclusive rights in the colonies as at home? Did the Act of Uniformity, made in the thirteenth year of King Charles II., "and all and singular other Acts of Parliament" still "in force for the establishment and preservation of the Church of England," which by the same coronation oath the King was engaged to maintain, apply and extend to the provinces? The Government did not lack advisers, who were ready and anxious to give a categorical answer. "The Church of England being established in America," said Dr. Sherlock, Bishop of London, "the Independents and other Dissenters who went to settle in New England could only have a Toleration." (N. Y. Col. Documents, VII. 365.) The opinion was echoed by humbler voices across the water. "Those who dissent from the National Religion," wrote Dr. Chandler of Elizabeth, New Jersey, "have no natural right to any degree of civil or military power." (Appeal to the Public, 109.) "By indulging the Presbyterians with Royal Charters, they will be put upon an equality with the Established Church of the Nation," said Dr. Auchmuty of New York. "I don't envy them," wrote Wetmore of Rye some years earlier, "any benefits of the Act of Indulgence, but should be sorry to see the propagation of their doctrine and sect dignified with a Royal Charter." (Correspondence G. P. S.)

But what were the "benefits of the Act of Indulgence"? And what were the provisions of the Acts of Religious Uniformity, to the penalties of which in the earlier days of the American Colonies, before the passage of that Act, non-conformists might have been thought obnoxious even in these remote dependencies of England? Until the passage of the Toleration Act in the year 1688, persons failing to repair to the parish church were subject to a fine of one shilling for each offence; or by a later statute, to a fine of twenty pounds per month; or by a still later one, to the forfeiture of all goods and two-thirds of lands and leases. Any person above sixteen years of age frequenting conventicles, or persuading others to do so, was liable to imprisonment until he should conform himself and make submission. Administering

the sacraments in any other form than that prescribed in the Book of Common Prayer, was punishable with a fine of one hundred pounds for each offence. Preachers at conventicles, and every person suffering a conventicle to be held in his house, barn, or yard, were fined twenty pounds.

The Act of Toleration in the first year of William and Mary, exempted Protestants dissenting from the Church of England from the penalties of these laws; but there were other disabilities and restrictions under which they continued to suffer. Non-conformists were still by law denied a place in municipal corporations. Non-conformist schoolmasters were held incapable of keeping schools, and might be committed to the common gaol for three months for so doing. Dissenting ministers were relieved from former penalties only upon taking certain oaths. No dissenting place of worship could be opened until certified to the Bishop of the diocese. The system of tithes, with its "many and grievous mischiefs," was still in force. Church rates and other religious exactions remained. Some of these oppressive requirements have only been repealed in our own day, others still exist in England—all of them existed under the Toleration Act, and down to the time of the Revolution. (History of Church Laws in England, by E. Muscutt.)

Did the laws of religious uniformity, and all the provisions for the establishment of the Church of England, extend to America? Wise men might hesitate to answer positively in the affirmative. The founders of some of the colonies had left Great Britain to escape from the hardships felt under the pressure of those very laws. It was fairly objected to such a theory, that if a doubt had been started at the time of the original emigrations as to the autonomy and equality of all Protestant denominations in the colonies, the movement would have taken a very different shape, and "these immense possessions on the continent of America would not have been subject to the British Crown." It was not so clear to all, even in England, that the ecclesiastical system of that country was established by force of law in America. While one Bishop of London pronounced in favor of the doctrine, another was equally explicit in denying it. "My opinion has always been," wrote Bishop Gibson, Sherlock's predecessor, in 1735, "that the religious state of New England is founded in an equal liberty to all Protestants, none of whom can claim the name of a national establishment, or any kind of superiority over the rest." One of the highest legal authorities in the kingdom had already taken this position.

"Upon consideration of the several Acts of Uniformity that have passed in Great Britain," said counsellor West, afterwards Lord Chancellor in Ireland, "I am of opinion that they do not extend to New York; and consequently an Act of Toleration is of no use in that Province." The Government, from motives of policy, if from no superior considerations, seems to have acted in general upon this presumption. Even the Royal Instructions to the Governors of the province at first indicated such a course. The Instructions, it is true, were without the force of law. They were given, not by virtue of any Act of Parliament, but in that exercise of the royal prerogative by which the sovereign assumed sole jurisdiction over the colonies—a jurisdiction which at a later day Parliament alone was acknowledged to possess.

The commissioners sent by Charles II. in 1664 to the American Plantations were directed to avoid all interference with the religious faith and worship of the colonists. "Since the great and principal ends of all those who first engaged themselves in those Plantations, in which they have spent much time and money, was liberty of conscience, . . . you are to be very careful . . . that nothing be said or done from which the people there may think that there is any purpose in us to make any alteration in the church government, or to introduce any other form of worship among them than what they have chosen;" for "we could not imagine it probable that a confederate number of persons, who separated themselves from their own country and the religion established, principally if not only that they might enjoy another way of worship, declared unto them by their own consciences, could in so short a time be willing to return to that form of service they had forsaken." The Commissioners were enjoined to guard themselves against a class of persons that "pretend to have a great prejudice against the form of religion there professed, and as great a zeal for establishing the Book of Common Prayer, and it may be the Episcopacy itself, and the whole discipline of the Church of England." (N. Y. Col. Documents, III. 58, 59.)

The Instructions given to the succeeding Governors, Andros and Dongan, were of a similar tenor. They were to "permit all persons of what religion soever quietly to inhabit within the precincts of their jurisdiction, without giving them any disturbance or disquiet whatsoever, by reason of their differing opinions in matter of religion."

Other directions followed that were seemingly in conflict with this liberal policy. From Dongan's administration till that of Governor

Hunter, instructions were given, almost in a stereotype form, relative to the settlement of religion. "You shall take especial care that God Almighty be devoutly and duly served throughout your government, the Book of Common Prayer, as it is now established, read each Sunday and holyday, and the Blessed Sacrament administered according to the rites of the Church of England." Governors were authorized to collate ministers to benefices, to remove them if scandalous, and to supply vacancies made by such removals. No minister shall be preferred to any ecclesiastical benefice without a certificate from the Archbishop of Canterbury, and all countenance and encouragement shall be given to the exercise of the ecclesiastical jurisdiction of the Archbishop, so far as it may conveniently take place. The only material change in these instructions after Dongan's time was the substitution of the name of the Bishop of London for that of the primate. (N. Y. Col. Documents, III. 372, *seq.*)

It is quite likely that these instructions may have been inspired by a spirit which was at times very powerful in the British Court. During the reign of Queen Anne the party holding extreme views with regard to the rights and the authority of the Church—the High Church party, as it then came to be called—possessed a controlling influence with the sovereign. It would have been consistent certainly with these views to affirm the establishment of the Church of England in the colonies, and to seek through the ministers of the Crown to follow those who dissented from that Church with the same repressive measures that were in force in the mother country. Thus we have seen that Lord Cornbury's lawyer referred to the Royal Instructions in justification of his treatment of Makemie, and that Lord Bellomont before him rejected a bill for the Settlement of a "Dissenting Ministry," because "contrary to his Majesty's Instructions." And thus Fletcher, still earlier, had claimed the power, which the Assembly refused to acknowledge, to collate and suspend any minister in his government, "by virtue of their Majesty's letters patent."

On the other hand, it was urged that the Royal Instructions could only relate to ministers of the Established Church who might be settled in the provinces, asserting the Bishop's jurisdiction over them, and over the congregations that observed the ritual of that Church, and committing to the Governor certain powers for the furtherance of that jurisdiction. That such was the intent of the Government seems evident now. The earlier Governors made no attempt to carry out their instructions in the broad sense which would make them apply to

non-conformist ministers and churches. "The Government itself here at home," said the Bishop of Hereford in 1718, "sovereign as it is, and invested doubtless with sufficient anthority there, hath not thought fit to interpose in this matter." . . . "In truth, the whole was left to the wisdom of the first Proprietors, and to the conduct of every private man." (Sermon preached before the Society, etc.)

The language of the Commission given by George II. in 1728 to the Bishop of London, for exercising jurisdiction in the American Colonies, seems conclusive as to the meaning of the Government. The jurisdiction given was "spiritual and ecclesiastical." It extended to "all churches in the Colonies, in which Divine Service, according to the rites of the Church of England, shall have been celebrated," and to "the rectors and incumbents belonging to said churches, and to all presbyters and deacons admitted into the holy orders of the Church of England." The Bishop had power by himself or his commissaries to visit these churches, to cite ministers, to hear and determine appeals, and to pronounce judgment, according to the laws and canons of the Church of England. By the terms of this commission, the authority given is expressly limited to the clergy and the congregations of that spiritual fold. There is no intimation of a more extensive claim. There is nothing to favor the theory of an ecclesiastical establishment by law in the provinces. (N. Y. Col. Documents, V. 849.)

But the failure of the British Government to assert such a doctrine, or to act upon it, appears still more conspicuously in connection with the question of appointing Bishops for the colonies. The Church of England congregations in America were placed at an early day, as we have seen, under the care of the Bishop of London. The inconveniences arising from such an arrangement were many and serious, and the need of a colonial episcopate was manifestly urgent. This need was strongly represented to the Government, not only by the Anglican clergy in America, but also by influential persons at Court. It was supported with arguments, which to us at the present day appear most convincing. The churches of that communion in the colonies were destitute of ministrations which they regarded as vitally important; while the ministers were shut off from the counsel, oversight and discipline which their ecclesiastical system contemplated. The Bishop of London was "a cypher." His jurisdiction amounted to very little. It was confined to the clergy. As for the people, "the Dissenters of all kinds, upon the mere foot of toleration," said Bishop Sherlock, "are in a better case." (N. Y. Col. Documents.) They were deprived

of confirmation for their youth, and, except at the cost and risk of a voyage to England, of ordination for those who felt themselves called to the Holy Ministry. The disadvantages and hardships of this condition of things continued for many years to be the burthen of appeals and remonstrances addressed to the Government. But the Government turned a deaf ear to them. No Bishops were sent, nor does it appear that there was ever a settled purpose to send any.

The refusal of a request so manifestly reasonable and wise in itself, can only be understood in one way. The Government was unprepared to assume or to proclaim the establishment of the Church of England in the colonies. The colonies were violently opposed to any such action, and jealous of any indication of a design to adopt it.

The proposal to send over a bishop would "give a great alarm to the several colonies, as it did in K. Charles y^e^ 2ds time, when there came over Petitions and addresses with all violence imaginable." (Observations of the Bishop of London regarding a Suffragan for America, Dec., 1707.—New York Col. Documents, V. 29.)

"[I] do not think that the ministry have any intention at present of sending a bishop among you," wrote William Gordon to Dr. Bellamy, in 1769. "They will scarce venture upon irritating yet more, especially if they believe a war probable, as they will want troops from the colonies to act against the French & Spaniards in America. I doubt not but they repent heartily of the steps they have taken already, tho' they are ashamed to reverse them." (Bellamy Papers, Mss.)

The appointment of bishops would infallibly be construed as the evidence of such a design. In vain it was urged that nothing of the sort was in contemplation; "nothing," the pious and prudent Archbishop Secker declared, "at which Christians of any denomination have cause to be alarmed; but merely a provision that those of our Communion in the Colonies might have that complete and easy exercise of every branch of their religion which others there have, and would complain bitterly if they had not;" that "we are for sending persons of our own order into America, not to claim the least jurisdiction over them, but merely to ordain Ministers for Episcopal Congregations, without the trouble, expense, and hazard of a voyage to England—a burthen to which if they were subjected they would think insupportable; to confirm from time to time the youth of those congregations—a practice which rightly or wrongly we hold in high esteem; and to exercise such discipline in those congregations only, as they exercise by ordained Presbyters or lay Elders;—which discipline of ours would no more

hurt them than theirs hurts us. To these representations they will pay more regard if we are careful not to give them unnecessary offence in any thing." (N. Y. Col. Documents, VII. 348, 349.)

This was sound reasoning and excellent counsel. But neither the argument nor the advice of the good Archbishop seems to have been greatly heeded in the colonies. The advocates of the plan for bringing bishops to America were hardly judicious in their choice of methods to promote that plan. Their language was often such as to justify the impression that in seeking an American episcopate they were aiming at an ecclesiastical establishment. Changes were rung more loudly than ever upon "Conformity" and "Dissent." Incautious admissions were made. There were hints that the bishops might, without hardship, be supported by "a general Tax laid upon the Country;" and that the government might "see fit hereafter to invest them with some Degree of civil Power worthy of their Acceptance." (Appeal to the Public, 107, 110.)

The application of the Presbyterians of New York for a charter continued to be strenuously opposed; and the opposition was grounded upon the paramount right of the Church of England in the province. Even the excellent Archbishop Secker objected to the request: "That any of the powers and privileges they ask should be greater than the Episcopal churches enjoy, is evidently unreasonable. That any should be equal is derogatory from the just pre-eminence of the established religion." (Correspondence G. P. S.) "By the granting of the petition," wrote a leading clergyman of New York, "the National Religion in this province would have received a most fatal blow." The government was held to be in duty bound to show special favor to the Anglican Communion. Representations were made of the "importance of having good Governors, well attached to the Church, and well disposed to espouse her interest and that of true religion, upon all occasions," sent out to the provinces. Complaint was made of Governor Belcher, of New Jersey, that he had "not shown all that countenance to the Church she had a right to expect, while the Dissenting Meetings there have been highly favored;" and a successor was recommended, a "hearty friend to the establishment of our nation both in Church and State."

The correspondence of some of these advocates for the scheme of bishops places their views before us in a clearer light perhaps than that in which they were beheld at the time. But the sentiments thus expressed were doubtless betrayed in other ways; or if not, they were shrewdly surmised. Hence the opposition which the scheme awak-

ened; an opposition which at first sight seems unaccountable. The Presbyterian ministry were forward in this opposition. "Our fears would not be so much alarmed," said they, "could any rational method be devised for sending over bishops among us, stripped of every degree of civil power, and confined in the exercise of their ecclesiastical functions to their own society; and could we have sufficient security that the British Parliament that would send them over, thus limited, to gain a peaceable settlement here, would never be induced by their complaints for the want of power, to enlarge it at any future period. But it is very evident that it is not that harmless and inoffensive bishop which is designed for us, or which the missionaries among us request; and therefore we cannot but be apprehensive of danger from the proposed episcopate, however plausible the scheme may be represented."

"There 's a general apprehension among our brethren, that the government will send over some Bishops to settle in America. If it is only in the Episcopal colonies, I can't see that the dissenters will have any right to blame, tho' they will have cause to fear, for when once Episcopacy has got a footing, there's no knowing where it will stop. It will be well, should it not prove a wen to our American territories which tho' at first it may be inconsiderable, & may continue so for many years, may at length increase so fast as to be not only very noxious to the sight but dangerous to the body politick, & render it necessary to attempt cutting it off, though at the hazard of the State." (Rev. William Gordon to Dr. Bellamy; London, 21 Aug., 1764.—Bellamy Papers, Mss.)

Others beside the Presbyterian clergy shared these fears. "A general and just apprehension" existed, said John Adams, "that Bishops, and dioceses, and churches, and priests, and tithes, were to be imposed upon us by Parliament. If Parliament could tax us, they could establish the Church of England, with all its creeds, articles, tests, ceremonies, and tithes, and prohibit all other Churches as conventicles and schism-shops." In the light of history, however, these apprehensions certainly appear to have been exaggerated. The British government showed no zeal for the scheme. The attention of the ministry could not be gained to it. (Bancroft, IV. 427; Life of Dr. S. Johnson, 297, 325.) The friends of the cause complained loudly of the indifference with which it was treated by statesmen.

Yet the right of Parliament to exercise its universal and unlimited power over the colonies, in this direction as in any other, was asserted. The Stamp Act for America, passed in 1765, made mention, among

the papers that were to be stamped, of the several instruments of ecclesiastical law used in the courts of ecclesiastical jurisdiction. "Grenville reasoned, that one day such courts might be established in America." (Bancroft, v., 243.) Much, undoubtedly, of the fear and the hostility engendered, was due to the course pursued on this side of the water, by the earnest advocates of the measure, those most interested in the success of the measure.

But while for prudential reasons the government refrained from any action which might be construed as an attempt to set up a State Church in America, was there foundation in law for the claim that the Church of England existed here of necessity and by right as the National Religion? This question was profoundly discussed by the Presbyterian lawyers of New York, about the middle of the last century. They argued that while CHRISTIANITY was a part of the common law of England, which was in force in every English colony, no one form or system of Christianity in preference to another was recognized or enforced by the common law, as it applied to the colonies. While it was true that every new colony, until capable of making its own laws, remained subject to the laws of the country from which it had sprung, to suppose that all the laws of that country, without distinction, were binding upon the colony, was absurd in itself, and inconsistent with the scheme of colonization. If the planters of every new colony carried with them the established religion of the country from which they migrated, then, had this province been settled when popery was dominant in England, the Romish religion would have been the established religion here. If the subjects of a king were bound to profess the faith of their sovereign, then the province of New York, acquired during the reign of a popish king, should have been from the first a popish province. The King indeed was "supreme head of the Church as by law established in England;" but his prerogative did not extend to the making of law and the establishing of religion in the colonies; nor had he exercised such a right. Royal charters had been granted permitting the colonies of Rhode Island, Connecticut and Massachusetts to make their own religious establishments. Lord Baltimore, under the patent which he obtained from Charles I., established Christianity in Maryland as a part of the old common law of England, without allowing any pre-eminence to any particular form of its exhibition. The charter granted by Charles II. to William Penn, gave "equal privileges to all religions" within his province. And the Duke of York, clothed with the powers of government in this province, under his brother,

James II., proclaimed the free exercise of the Protestant religion, with liberty of conscience to all of every religious name, throughout his territories.

The policy of the British government, however, continued to the last to be characterized by indecision with reference to this subject. "Constitutional questions of great difficulty," in the judgment of the King and his ministry, were raised by the application of the Presbyterians of New York for a charter, when in 1775 their prayer was once more considered by the royal Council. This time the request was not a solitary one. A number of congregations in the provinces had presented similar petitions. Lord Dartmouth, writing to the Governor of New York on the 4th of May in that year, expressed the doubt which had occurred to the King and Council, "whether such Charters would not have the effect to give an establishment inconsistent with the Principles of the Laws of England." "If, however," added the minister, "upon consideration of the several cases in which this privilege is now requested, the Law Servants of the King in the Province, and the Council whom you will consult upon them, shall be of opinion that they are free from any difficulty of such a nature, it is the King's pleasure that you do grant such charter of incorporation." (N. Y. Col. Documents, VIII. 572–4.) The issue of this course of hesitation on the part of the home government was in keeping with its whole tenor. On his return to New York in the summer of 1775, Governor Tryon "imparted the pleasing intelligence to the several petitioners" that he had obtained an order from the King and Council to grant all the charters for which application had been made. In consequence of this, "the ministers, elders, deacons, and trustees of the Presbyterian church in the city, in compliance with a form which they were told was necessary, presented another petition to the Governor and Council, accompanied with a draft of the charter for which they prayed. This petition was favorably received; the charter, as drafted, actually passed the Council, and was put in the hands of Mr. Kemp, the King's attorney, to report thereon. The report of this officer was made necessary by the tenor of the royal order, but was at the same time considered as a mere formality, and a favorable report as a thing of course, after the step which had been taken. In this, however, the persons concerned were deceived. Neither the charter, nor his report upon it, could ever be gotten out of the attorney's hands. On one frivolous pretence or another he delayed from time to time, until the approach of the revolutionary

struggle, which, while it rendered the congregation less solicitous about obtaining a charter, attracted and fixed their attention on other subjects."

But the problem so beset with difficulties, to the minds of British sovereigns and statesmen, was viewed in a very different light by the colonial Governors of New York. "To me," said Governor Tryon, the last of these worthies, "it appears clear . . . that the National Church of England is established within this Colony [and] that the provision by the Ministry Acts . . . was intended and can only be applied for the support of the Clergy of that Church." (Doc. Hist. N. Y., III. 336.) It is a significant fact that some of the worst of the colonial Governors were the most pronounced and unfaltering supporters of the theory of a Church Establishment in the province. The insolence of a Fletcher, a Cornbury, a Tryon, found natural expression in words and acts contemning the religious convictions and rights of the people under their misrule. And undoubtedly the sense of injustice that rankled in the public mind, in view of the perversion of law and abuse of power with reference to liberty of conscience, contributed greatly to the growing dissatisfaction, throughout a large part of the century preceding the Revolution.

Meanwhile, during the quarter of a century immediately preceding the Revolution, a discussion of the whole subject of religious rights, important for its effect upon the popular mind, as well as for the ability displayed in its prosecution, was conducted through the public press by the leading men of the Presbyterian Church in New York. Three of these were eminent lawyers. A fourth was the young pastor of the Wall Street Church, Alexander Cumming, whose spirited appeals and cogent arguments contributed not a little to the force and weight of the pamphlet and newspaper publications of the day. But the names of his parishioners, William Smith, William Livingston, John Morin Scott, are better known in connection with this debate. The battle for religious liberty was well fought, at a time when the great struggle for civil freedom was beginning, by "the Presbyterian lawyers" of New York; and not only for their own religious communion, but equally for other Christian bodies. It is certainly to the credit of these advocates of the rights of conscience, that representing a Church which in Great Britain was a Church by law established—one of "the two Communions" in alliance with the State, the National Church of Scotland—they pleaded the common cause of the Protestant denominations not conforming to the Church of England. By the prominent part they took in this con-

troversy, as well as by their activity in the political discussions of the day, Livingston and his associates incurred suspicion and odium as dangerous men. But their arguments and appeals carried the judgment and the sympathies of the people. The partisans of a Church Establishment were no match for the men who stood forth in defence of the rights of conscience and the freedom of the land from an oppressive ecclesiastical rule. "The Presbyterians in America," wrote one of their opponents in 1766, "have ever been an encroaching and restless sect, and there is great reason to think they ever will be so. Since my first settling in this City, which is now upwards of seventeen years, they have at times been extremely troublesome, and have exerted all their cunning and interest to prevent the increase and prosperity of the Established Church." "The Province is unhappily ruled," wrote another, "by a set of lawyers of that persuasion who take every opportunity of doing the Church all the mischief in their power." (Correspondence G. P. S.)

It was at a late day in the colonial period that the Provincial Legislature of New York sought to provide by law for the redress of the grievances which had arisen out of a misconstruction of earlier laws, and to assert the principle, now fearlessly proclaimed by the Liberal party, of entire freedom and equality in matters of religion. Persistent efforts in this direction were made in the year 1769 and the two following years by the General Assembly of the province; but each measure, emanating from the popular branch of the Government, was either rejected in the Council, or defeated as effectually by the refusal of the Council to act upon it.

The discussion of this subject in the Assembly appears to have been introduced on the 6th of April, 1769, by Colonel Morris, in a speech thus reported in the proceedings of that body:

"Mr. Speaker: As the preservation of religious liberty is essential to the growth and tranquility of this colony; and a taxation of protestants of all denominations indiscriminately, for the support of the ministers of any one sect in particular, is most palpably partial and unjust; and great discontents have long been occasioned by the ministry acts in the counties of Westchester, New York, Queens and Richmond, in consequence whereof the Episcopal ministers are maintained by taxes upon other persuasions, not even excepting their clergy: I therefore move for leave to bring in a bill to exempt protestants of all denominations in the said counties from the payment of any taxes raised for the support of ministers of a religious persuasion to which they do not belong."

Leave was granted accordingly, and two days later Colonel Morris presented to the House a bill, entitled "An Act to exempt all protestants in the counties of Westchester, New York, Queens and Richmond from any taxation for the support of the ministers of the Episcopal denomination." After a second and a third reading, this bill was passed on the 15th of May. Meanwhile, on the 26th of April, another motion was made in the Assembly by Colonel Schuyler, whose address is likewise reported in the legislative proceedings:

"Mr. Speaker: I move, as the cultivation of the extensive territory in the county of Albany will be highly beneficial to the crown and colony, and as one of the best means to invite settlers will be to encourage the worship of God upon generous principles of equal indulgence to loyal protestants of every persuasion, and as proprietors of large tracts are willing to give small parcels of land for the support of ministers and schoolmasters to aid the new settlers, provided the same can be secured to the pious purposes of the donors; that leave be given me to bring in a bill to enable every church or congregation of reformed protestants in the county of Albany, without discrimination, to take and hold real estates, to the value of [——] per annum, given to them for the support of the gospel amongst them."

A bill to this effect having been introduced, it was passed on the 11th of May, with amendments, which appear in the title. It is "An Act to enable every church or congregation of reformed protestants, that are or hereafter may be set up in that part of this colony which lies to the northward of the counties of Dutchess and Ulster, without discrimination, to take and hold real estates to the value of one hundred pounds sterling per annum, given to them for the support of the gospel, and for the use of schools for the instruction of youth." Both of these bills were defeated in the Council on the 19th of May, a single member, William Smith, Junior, dissenting.

The subject, however, was again introduced in the Assembly in the autumn of the same year. On the 29th of November, 1769, Mr. Thomas asked leave to bring in a bill, which was accordingly submitted on the next day. It was entitled, "an Act to exempt protestants of all denominations from paying any clergyman by compulsory taxation." On the same occasion Mr. DeWitt presented a bill, entitled, "an Act to exempt the inhabitants of the counties of Westchester, New York, Queens and Richmond, from any taxation for the support of the ministers of the churches to which they do not belong." Each of these bills was admitted to a second reading, and then referred to a committee of

he whole House; and the former of the two was passed with amendments, January 16, 1770. The latter bill was subjected to various modifications. As finally passed, it provided "that all such persons as" were "not in communion with the Church of England," should, "from and after the publication of this act, be exempt from paying any part of the said tax; and that such proportions of said tax as" had "been annually paid by persons not being in communion with the Church of England," should "not in future be raised in any of the said Counties, or on any part of the inhabitants thereof."

Both of these bills were still under consideration, when Mr. De Noyellis obtained leave, on the 12th of December, 1769, to present to the Assembly a proposed Act, identical, if we may judge by the title, with that which Colonel Schuyler had introduced in the preceding session, having reference to congregations in the county of Albany. And on the 8th of January, 1770, the case of the inhabitants of the four lower counties of the province came up again for discussion, in a different shape. "A petition of several of the freeholders, in behalf of themselves and others, in the county of Albany, was presented to the house, and read, praying that a bill may be brought in to repeal the act, which compels persons of all denominations in the counties of Westchester, New York, Queens and Richmond, to pay to the clergymen of churches to which they do not belong, and for other purposes."

Before the Assembly had taken final action upon these four bills, a proposition of a very different nature was brought to its notice. On the 11th of January, 1770, Captain DeLancey moved for leave to bring in a bill to amend the Act of 1693 for Settling a Ministry, so far as it related to the city and county of New York. The amendment consisted in an alteration of the time for electing vestrymen for each of the city wards. Such a bill was introduced, and was passed by the House on the 25th of January; and on the following day it was passed without amendment by the Council. Nothing could more plainly indicate the spirit of that body than the fact that, while acceding without hesitation to this insignificant measure, it rejected every one of the important bills above recited, as in turn they were passed by the Assembly and sent up for its consideration.

The subject appears to have been brought up for the last time in the Assembly on the 24th of January, 1771, when Mr. Ten Broeck brought in a bill identical with the proposed acts introduced by Colonel Schuyler and Mr. De Noyellis. It was admitted to a second and a third reading, and was passed on the 26th of January. The Council, however, took no action upon it.

The discussion of this subject was cut short by the Revolution. Time, however, has vindicated the position taken by the Presbyterians of New York. The conclusions they reached have been fully recognized under the British government itself in the colonies that have remained attached to the mother country. The separation of Church and State is as complete to-day in Canada and Australia as in the United States. At one time or another the Church of England had been established by law in each of those dependencies of the British crown. But this establishment was by virtue of special laws enacted in the colonial legislatures; and by the same authority the connection between the Church and the provincial government has been terminated. In New York, as we have seen, no such legislation ever occurred.

Already, before the outbreak of the Revolution, the great principle for which the Presbyterian lawyers of this province contended had received the highest legal authority of the day. Among the laws of the mother country not extending to English plantations in the colonies, said Sir William Blackstone, those relating to "the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force." (Commentaries, I. 107.) And the Revolution had scarcely begun when that principle was embodied in the first Constitution of the State of New York, prepared in the year 1777. After confirming such parts of the English Common Law, the Statutes, and the Colonial Acts, as together formed the law of the province on the 19th of April, 1775, the 35th section of that constitution provides: "That all such parts of the Common Law, and all such of the said Statutes, and Acts aforesaid, or parts thereof, as *may be construed* to establish any particular denomination of Christians or their ministers, . . . be, and they hereby are, abrogated and *rejected*."

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