ACCOUNT

OF SOME OF THE PROCEEDINGS

OF THE

LEGISLATURES OF THE STATES

OF

KENTUCKY AND NEW-HAMPSHIRE,

—1828 &c.—

IN RELATION TO THE PEOPLE CALLED

SHAKERS.

REPRINTED—NEW-YORK,
1846.

"Be bold for Truth—though all the world despise,
Be strong for Right—though all the world oppose,
Be free in Love—though all men are thy foes,
And God will bless the sacrifice."

INVESTIGATOR, OR

A DEFENCE

OF THE

ORDER, GOVERNMENT AND ECONOMY

OF

THE UNITED SOCIETY

CALLED

SHAKERS,

AGAINST

SUNDRY CHARGES AND LEGISLATIVE PROCEEDINGS.

Addressed to the Political World.

BY THE SOCIETY OF BELIEVERS,
AT PLEASANT HILL, KY.

PRINTED AT LEXINGTON, KY. 1828.

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INTRODUCTION

The design of this small publication is to shed light on a subject which heretofore has been veiled in some obscurity; we mean the form and order of the United Society in a civil or political point of view. By a variety of copious publications, we have exhibited to the religious world almost every thing that relates to our faith and manners as a religious society; but as there is an external form and order in our association as a Church, related to the civil rights established by the civil institutions of our country, in order that our civil rights be not violated either through ignorance or design, it becomes necessary that all such of our social contracts, rules, manners, laws or customs, as are in any respect connected with our civil rights, should be explicitly known and correctly understood.

It is generally known that serious difficulties have, for some time past, existed in this branch of the United Society, owing to the withdrawal of certain members, who through the influence of popular or interested connections, instituted claims on the Society repugnant to all our well known covenants, rules and customs. Various were the means used to interest public sympathy on the side of the withdrawing party, if possible to substantiate those claims, which it seems could not be done under the present system of civil law; hence a petition was presented to the legislature at their last session praying for a special act to aid the party in their intended enterprise.

This act being obtained, almost the first notice we received of its existence was from a display of its authorities on our house of worship, the door being abused in posting up public notices to the Society, of a character

very unsuitable to the place. This, indeed, appeared to us a strange affair, knowing that we had ever observed the greatest punctuality in our dealings with mankind and with each other. We had constituted an office and trusteeship, for the transaction of all matters of trade and commerce abroad, and all our domestic concerns we considered as fully and finally adjusted by our own mutual contracts and articles of agreement: it did, therefore, appear to us a mysterious thing, indeed, for the whole Society to be attacked, in a way so imposing on our religious character and sacred rights, as if the house of God had become a den of thieves, that a subpœna must be stuck up on the door calling us out, in a body, to answer the claims of justice.

From the abundant information contained in our religious publications, we could not have supposed that any respectable body of well informed citizens could have conceived of us, as a political establishment. The well known principles of faith and manner of life which we have adopted sufficiently negative the idea; and how any legislative body could claim a right by special enactment to intrude into the sacred asylum of our church order is to us a mystery, seeing that, even "Congress shall make no law concerning an establishment of religion, or prohibiting the free exercise thereof."

In forming our religious association we have not consulted the civil authorities of men, further than to see that we did not trespass upon their premises. Our faith and forms of devotion were not chartered by any legislative power of a political nature. As a community of Believers we disclaim the right or privilege of suing or being sued, in a body; our main policy is to keep out of the reach of the municipal law, by strictly observing all its just requirements, and so arranging our social concerns as not to interfere with the rights and privileges of others. With this

confidence we shrink not from the scrutiny of the public or the law, on any point relating to our civil economy or social contracts, provided we be not compelled into such scrutiny by illegal and unconstitutional measures, requiring a surrender of our impartial rights, and subjection to an authority not claimed by our National Government.

The singularity of our religious profession has always dictated to us retirement from the contentions of the political world, and the conscious innocence which we labor to maintain, forbids our attention to the absurd and ridiculous charges so often peddled about through the country by those who wrongfully hate us. It is not, therefore, the slanders of a few solitary individuals, nor the popular clamors of a misinformed public that, at present, excites our attention; but the voice of those civil authorities which we ever respect, and which have been roused, by the cry of injustice, in effect, to demand of us a statement of facts with coroborating evidence from which the legality or illegality of our institution might appear, and our claims to equal rights of toleration, as a religious society, be legally decided.

From these considerations we respectfully offer to the political department of our country, whether professors of religion or non-professors, such information relative to the points in question, as we think, will come properly under their cognizance, including—The aforesaid petition to the legislature—The Act of the legislature founded on said petition—Objections to said Petition and Act, with reference to the decision of the legislature of Pennsylvania on a similar case—Various details and statements concerning the laws, customs and character of our Society—The decisions of sundry Courts of Justice on all the important questions that relate to our civil and social rights, &c. &c.

Petition of John Whitbey and others to the Legislature.

TO THE HONORABLE THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF KENTUCKY.

WE, the undersigned petitioners, feeling ourselves much aggrieved by the fraudulent conduct of those who hold the reins of government in a society of people called Shakers, residing at Pleasant Hill, Mercer county, do respectfully implore your honorable body to take our case into consideration, and if it is not inconsistent with the powers confided to you by the Constitution, we humbly pray that you may devise, in your wisdom, some plan whereby our distresses may be alleviated.

Your petitioners do solemnly declare, that some years previous to this, from honest and conscientious views, they were induced to unite themselves to that Society on certain principles which they considered were best calculated to promote their happiness. We were told by them that as the work of their institution was progressive in consequence of its members increasing in knowledge and virtue, they had no creed or articles of faith, neither any written laws by which their Society was governed. That no coercive or arbitrary measures were ever taken in the government of this Society—that conscience was entirely free, that all required of each individual was always to act honestly according to that degree of faith which he or she should at any time possess. And that usurpation of authority over the conscience, among them was never known. That each individual had an indefeasible and equal right to all property belonging to the Society, and that no member was ever expelled from the Society for any cause whatever. The above stated conditions, with others of the same import, we considered to be sufficiently liberal, and when we compared them with their written

publications sent abroad into the world we believed them to be true.

Under these considerations and with these views we continued with the society for some years, and by an active and laborious life, faithfully discharged what we believed to be our duty, by a willing conformity to all the rules and orders of practical life given to us by our leaders, and by these means secured to ourselves much satisfaction, until our leaders began to deviate from those principles on which we had joined them. Your petitioners do further testify, that for no other cause than a private expression of certain opinions relative to moral sentiment, which we most conscientiously believed to be not only true, but the strongest basis of pure morality, that some of us were publicly anathematized, grievously misrepresented and most peremptorily ordered to leave the society or make a recantation of our sentiments; and (to heighten the injustice of their oppression) sentiments too that would not lead to the violation of one moral precept contained in the doctrines of the society, but remove many manifest errors of which the society [i. e. the flesh] complained. The oppressive dealings towards some, and the severe threats of like abusive treatment of others, rendered us so uncomfortable that we could no longer enjoy satisfaction in the society, and were almost forced to leave the place without any compensation for our long and faithful services.

These, with many grievances too tedious to mention, have created a determination in some of us to seek redress at law; but we have been told by our counsellors that as the society of Shakers are a body without any Act of Incorporation, and as many of them stand in a very singular relation to each other in consequence of a form of covenant established among them, redress at law could not easily be obtained, without first, some provision being made, by an Act of your honorable body.

Therefore we humbly submit our case to your consideration, to do, as you in your wisdom, may consider most prudent. That the above statements are in substance true, we have no doubt, can easily be made appear to the full satisfaction of any court of justice in this Commonwealth.

We the undersigned, citizens residing in and near the vicinity of Shakertown, being fully persuaded, according to all the information we are able to collect, that the above stated petition contains an impartial statement of facts, and feeling anxious that some law may pass whereby justice may be administered to the petitioners, do most cordially unite with those aggrieved in subscribing our names.—Floyd Burks, H. T. Deweese, Lambert Banta, James Lillard, Wm. Pherigo, Thos. Wood, Robert P. Steenbergen, jr. Josiah Utley, Abraham A. Brewer, John Rinearson, Aaron Rinearson, W. A. Bridges, Wm. T. Wood, Saml. Eccles, B. Prather, J. Smedley, Thos. Allen, sen., Philip T. Allen, Wm. Tume, B. T. Hall.

Mr. Samuel Banta having stated to me (in which I have the utmost confidence) that in leaving the Shakers he lacks complete remedy to recover the property which he first and subsequently took to them: That they refuse satisfactory accountability, he only demanding the original sums, waiving his pretensions to interest and labor: And thinking this reasonable, if a remedy can be constitutionally devised. My belief of the personal honesty and uprightness of Samuel Banta, and that he would ask nothing improper, induces me to sign his petition.—P. Trapnall, Chr. Chinn, Garret Banta, Wm. Ross, Wm. Edwards, John S. Chenowith, John Eccles, Isaac Westerfield, James Burnett, Abram V. Brewer.

With much difficulty we obtained the foregoing documents; they are without the principal signatures, we

therefore add the following extracts of a private communication from the author and principal instigator of the petition.—"Being called upon by one of the Shaker friends for a copy of the petition drawn by me, and which was presented to the Legislature, containing a part of my grievances upon which a law was passed,—my memory not serving me to gratify their wishes (not having reserved a copy) I, with frankness, give them the substance of my objections or grievances, so as to give them a fair opportunity of explaining to me or the world the reasons for their conduct, which was then and still is considered as oppressive and despotic." [Here he gives the detail of his treatment much as it is in the petition; and in allusion to his being called to an account by the elders, observes] "for the correcting and exposure of which error, I have been disposed to set about an inquiry, and still to prosecute it, not so much for the purpose of gain, but that a fair exposure of it shall be made. The sum total of my objections to the society was the spirit and manner of exercising this despotic oppression, through a secret counsel of the leads and elders, &c."—"The many things to which my soul stands wedded in the Shakers need not nor have time to name.

JOHN WHITBEY."

What a noble subject for legislation! Seventeen names it is said were attached to the main petition, in union with this principal plaintiff, thirteen of whom had never been admitted into the fellowship of the church, and of course could have no cause of complaint except, like their leader, that they were not tacitly permitted to say and do as they pleased. As for those near neighbors of ours whose names went to corroborate the petition, with the exception of three or four (who live within the distance of four miles)

they generally reside from seven to seventeen miles distant. It may also serve as a memorial of the sagacity of the managers of the affair, that no invitation was extended to us, to enter into any investigation before the committee. A trustee of the church, it is true, who happened to be present, presented a *response*, which, it seems, was but little regarded. A plan so artfully constructed was not to be frustrated with trifles. The bill, we are told, was warmly opposed by members of the first respectability. But popular prejudice!! who can penetrate its damps with the torch of reason, or even the blaze of common sense? However, we must check those freedoms of thought; and respectful of the wisdom and talent that graced the political temple of the State, introduce this singular act, and let it speak for itself.

An Act to regulate civil proceedings against certain communities having property in common.

§ 1. Be it enacted by the General Assembly of the Commonwealth of Kentucky, That it shall and may be lawful for any person having any demand exceeding the sum of fifty dollars, founded on any contract implied or expressed, against any of the communities of people called Shakers, living together and holding their property in common, to commence and prosecute suits, obtain decrees, and have execution against any such community by the name or description by which said community is commonly known, without naming or designating the individuals of such community, or serving process on them, except as is hereinafter directed, all such suits shall be by bill in chancery in the circuit court of the county in which such community resides; and it shall and may be lawful to make parties to such suits, all other persons, by name, who may have any interest in the matter in controversy,

or who may hold any property in trust for said community or may be indebted to them.

§ 2. When any subpœna founded on any such bill shall be placed in the hands of any officer to execute, he shall fix a copy of such subpœna on the door of the meeting-house of such community, shall deliver a copy to some known member of the community, and shall read the subpœna aloud at some one of the dwellings of said community at least ten days before the term of the court at which said community are required to answer; and on those facts being returned in substance on the subpœna they shall constitute a good service of process on said community, so as to authorize the court to require and compel an answer agreeable to the rules and usages in chancery.

§ 3. All answers for and in behalf of such community may be filed on the oath or affirmation of one or more individuals of such community, who shall moreover swear or affirm that he or they have been nominated as the agents or attorneys of such community to defend such suit, and thereupon the individual so swearing shall have full power and authority to manage and conduct said suit, on the part of such community, or to settle and adjust the same; and all notices to take depositions against such community may be served on such agents, or left at their place of residence: provided, that for good cause shown, the court may at any time permit such agents to be changed or substituted by others of the community; provided, however, that the agents or defendants shall not be compelled to answer on oath to any charges or allegations which are by the existing rules of law and equity cognizable alone in courts of common law—provided further, that in all such cases as mentioned in the foregoing proviso, the defendants shall be entitled to a jury if they or any one of them shall signify their desire to that effect any time before the trial shall be

gone into: and in such cases as above described either party may require the personal attendance of witnesses, and a viva voce examination as though the suit were at common law, and the court shall direct such process at the request of either party, or summons may issue, as in other cases of the kind.

§ 4. Be it further enacted, that nothing in this act contained shall be so construed as to render the communities aforesaid, or either of them, liable upon contracts entered into by any individual or individuals not authorized by their laws and usages to contract for such community; nor shall it be so *construed* as to give to any person who having been a member of any such community, has heretofore left it, or may hereafter leave it, any right in consequence of such membership, which he or she would not have had if this act had not passed, but such right shall depend upon and be determined by the laws, covenants and usages of such society, and the general laws of the land, except as to the mode of the suit.

§ 5. Be it further enacted that any community which may be sued under the provisions of this act, shall have the same right to a change of venue as other defendants.

Approved, Feb. 11th, 1828.

Having, now, presented, in full, the substance of this singular prosecution; that the public may not imagine that our *Investigation* or *Defence* is offered by a nameless and irresponsible set of beings, such as the foregoing proceedings seem to be directed against, the following names, of a few responsible characters, are hereunto subscribed—in behalf of the society.

Abram Wilhite,	John R. Bryant,
Francis Voris,	James M. Rankin,
Edmund Bryant,	James Congleton,
Jacob Montfort,	William Shields, Jr.

Pleasant Hill, June 10, 1828.

INVESTIGATOR, &c.

"Printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature or any branch of Government—and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty."

Constitution.

OBJECTIONS TO THE PETITION OF J. WHITBEY, &c.

It is objected to said petition, That its contents were not legitimate subjects of legislation—that the supposed facts stated in it are destitute of proof, and that it contains a variety of misrepresentations.

1. To suppose, as this petitioner represents, that we have *no creed* or articles of faith, neither any written laws by which we are governed, is false. We hold out no such character of the society to induce unprincipled men to join us; it is well known that we reject *human creeds* and articles of *sectarian faith;* but our belief in all the essential doctrines of the gospel is no less public. We have no system of laws of our own making, but we have the law of Moses, and the laws of our country and the precepts of our ancestors and elders, which are all written and common in every family, according to the spirit of which our actions are regulated.

2. We hold indeed that conscience is entirely free from human control; but we have never taught that under pretence of freedom of conscience, every member of society might say and do as he pleased, secure from censure or blame: The rules and orders of our institution have ever maintained all necessary control over the words and actions of members, to preserve a respectful conformity to the

principles of truth and virtue established both in civil and religious society.

3. The insinuation, in said petition, that we force people to act beyond or contrary to their faith, is groundless. It is true, we admit of different degrees of faith, and hold each one justified, in always acting honestly according to the degree of faith which he has attained, but we do not approve of any member turning away from the faith and adopting the opinions of Epicurus, Voltaire, or Robert Owen, and usurping authority to disseminate those, or any other opinions repugnant to our common faith, either publicly or privately among the members of our society: and to reprove a disorderly member sharply that he may be sound in the faith, we have not considered a crime worthy of a legal prosecution. Indeed, the authorities of a just internal government adapted to check evil doers and for the praise of them that do well, we rank among our greatest blessings.

4. With regard to coercive or arbitrary measures, our public testimony is, that "in the order and government or regulation of the church, no compulsion or violence is either used, approved, or found necessary," and the petitioner has proved nothing against the church to the contrary. In the junior order where he was located such government is exercised as wisdom and prudence may dictate and the law of the land justify.

5. Respecting the rights of property we are sorry, that the petitioner so greatly erred on a subject of such importance, and that in direct contradiction to his own public statements previously made. Perhaps nothing could be more foreign from the truth than to hold out the idea that each individual ever had an indefeasible and equal right to all the property belonging to the society. This we can prove to be false from his own printed pamphlet.

6. With regard to expelling members. No compulsion

or arbitrary force has ever been used in that case. What the petitioner states, relative to his own case, cannot be construed so as to imply any act of violence. In his book, he details the circumstances at large; in which he shows plainly that he was the first who deviated from the terms of membership,—That he announced his belief in the system of Robert Owen; discarded the doctrine of *praise and blame, rewards and punishments, &c.*—was admonished by the Ministry and Elders not to propagate such doctrine, —refused admonition,—became contumacious and bold,—rejected all authority, and was ordered to retract what the elders called *vile stuff;* or leave the society. Admitting he was treated with some severity as a catechumen, we cannot conceive that a Legislature was the proper tribunal to dictate the means of redress.

OBJECTIONS TO THE FOREGOING ACT.

"Acts of the Legislature that are impossible to be performed are of no validity; and if there arise out of them any absurd consequences manifestly contradictory to common reason, they are with regard to those collateral circumstances void." 1 B. p. 90. Agreeably to this maxim we object to the description of our society in said act, § 1. as "living together and holding our property in common." We know of no public record, act, matter or thing to authorise such a description, beyond the partial and incorrect statements given in the foregoing petition.

2. We object to the idea of prosecuting suits, obtaining decrees, and having execution against the whole society by the name or description by which we are commonly known. All bodies cognizable by law must, in our opinion, have a name or description by which they are

known in law. Vulgar names and descriptions, without any allusion to persons, we must consider a precarious foundation for a legal process.

3. We object to the idea of making parties to such suits, all other persons by name, who may have any interest in the matter, &c., however lawful this may be in common cases, considering the ground on which we are placed, by this mode of forming parties, too great a force may be enlisted against us, to afford us any ground for a legal or just defence.

4. We object to the mode of serving process described at large in sec. 2, as incompatible with our religious rights. A meeting-house known in law as "*a temple or building consecrated to the honor of God and religion,*" we deem an improper place for setting up such public notices, calculated to arrest the attention of the worshippers to improper subjects, and afford spectators occasion of conducting disrespectfully toward us, as a people under such legal impeachments. The British statutes debarred transactions, inconsistent with the place, even from the churchyard; and are our civil laws less respectful of religious rights?

5. We further object to sec. 3, as exercising an authority over our community subversive of our common rights; that is, in either admitting, as defendants in any suit, persons not duly nominated according to our rules, or compelling us to make such nomination, which we could not consistently do, without acknowledging this arbitrary act as constitutional, and the society obliged by it to change their character, conformably to its definitions. The proper persons, among us, for defending all causes actionable in a court of justice, are already nominated and known by name, whether as private individuals or public agents. It does not therefore appear to us consistent with sound policy, that we should, as a religious society, be obliged to

enter into any measure not consistent with our established rules and the constitution and laws of the land.

These things considered, is it not to be regretted that the Legislature did not act with caution similar to that of the Pennsylvania Legislature at their last session in a similar case? We allude to a petition of a number of inhabitants of the county of Beaver, relating to the celebrated society at Economy. This case was so perfectly similar to that before us, that we deem it proper to adduce the report of that committee as a striking evidence of the precipitance and partiality in the enactment against this society, as well as the unconstitutionality of its bearings.

The following extract is copied from the *Waynesburgh Messenger* of Jan. 12th, 1828. "SENATE, Dec. 17th. Mr. Hawkins, from the committee of the judiciary, made report, which was read as follows:—

"The judiciary committee, to whom was referred the petition of a number of the citizens of the county of Beaver, relating to the society at Economy, reported: That they have carefully examined the petitions and documents submitted to them, and have heard the statements of the representatives of the parties interested, from which they have gathered a slight knowledge of the rise, progress and present condition of the society. * * *

"With the objects of the society, or its police or regulations, your committee have derived but a very limited knowledge, except what is communicated in a document accompanying the petition of the complainants, which is altogether *ex parte*, and was unsupported by the oaths of those who signed it. It seems to be admitted, however, and not denied by either party, that the joint labor and property of the society is held, or was originally intended to be held and enjoyed in common; and that George Rapp, the priest and patriarch of the company, has the super-

vision, control and management over all their concerns, both spiritual and temporal.

"They have formed, at different times, two several constitutions, the one at Wabash, the other at Economy, which contain provisions very similar, except that the last one is more favorable to persons disposed to withdraw. It contains in substance, the following conditions, viz. 1. That all holding property, who joined the society, put it into the common stock; and when they leave the society, they get back what they put in, without interest. 2d. Those who put no property into the society, and leave the society without leave, or giving notice to the society of their intention, their services are to be considered voluntary, and entitled to no compensation. 3d. That those who put no property into the common stock, who give notice of their intention to leave the society, and behave well, will be given something to begin the world with, the amount in the discretion of the society. Before signing this, persons having a desire for admission have a probation from six to nine months, during which time, they are instructed in the principles, rules and regulations of the society.

"Jacob Shriver (whose case gives rise to the present application) states, that he entered into this association at the age of seventeen, and remained among them about twenty years, when having made some discoveries, which caused him to be dissatisfied, he left them. When he entered the society, he contributed no property to the common stock; so that his claim is wholly for services rendered.

He states in the petition, "that the inhabitants are now suffering the greatest injustice and imposition, contrary to the spirit of the constitution, &c.—but does not refer to the nature of the offence against the constitution, or to any particular clause in the constitution that is violated. He also sets forth, that numbers, through ignorance have been

drawn into the slavery of George Rapp, through the delusion of being joint partners of the institution; but when they wished to withdraw, they found they were mistaken, and were not allowed one cent for their services. Without presuming to affirm or deny the truth of these allegations, your committee are clearly of opinion, that they are legitimate subjects of judicial inquiry; nor have the petitioners pointed out any definite mode of relief, which could be given by the Legislature. If Mr. Shriver has, voluntarily, entered into a contract with Mr. Rapp individually, there can be no doubt of his obtaining redress in a court of law, if by the terms or nature of his contract, he be entitled to it; but if his agreement was with the society, whether it has been faithfully complied with or not, it is absolutely void. As a society, having no charter of incorporation, they have no legal existence, they can make no binding contract, nor can they sue or be sued.

If Mr. Shriver has made a contract which has turned out to his disadvantage, it is his own fault; that contract can neither be cancelled by the Legislature, nor can they create a new one for him. Besides, a suit at law has been brought, and is now pending, in the court of common pleas of Beaver county; and if no other difficulty was presented, this would seem a sufficient one, at least, for a delay of legislative interference. That he should have spent twenty years in the prime of his life in the service of the society, and then leave it, may perhaps be regarded as a serious evil; but it was one which was brought upon him by his own act. When he entered into it, he entered with a knowledge that the forfeiture of his labor would be the consequence of his withdrawal; and in consideration of his services while there, if he had remained, he was entitled, by the terms of his contract, to shelter, food and other necessaries of life, and to be instructed in the religious opinions of their priest and ruler, Mr. Rapp.

That a society thus formed, should spring up in the bosom of a country, whose constitution and laws are based upon the equal rights of man, may seem novel and extraordinary; but that they have a right to associate in this way, by their own agreement, while they commit no overt acts of transgression against the laws of the country, cannot, perhaps, at this day be questioned. Whether the sum of human happiness is advanced, and the cause of religion and the Commonwealth promoted, by such associations, your Committee deem it improper to inquire. Neither does it seem to your Committee, to be within the scope of legislative duties, to inquire whether the society has been brought together, as has been suggested, either through superstition, ignorance or design. If it be so, the true christian and philanthropist may lament, but no power in this government can shackle the free operations of the mind, in its religious exercises, or prevent any freeman from disposing of his property or services as may seem to him right. * * Upon the whole, your Committee recommend the adoption of the following resolution:

Resolved, That the Committee be discharged from the further consideration of the subject.

The Senate of Pennsylvania have adopted the report delivered by Mr. Hawkins upon the petition, &c., complaining of injustice being done by Mr. George Rapp and his society."

For want of a full understanding of all the circumstances attending those two cases, it may be objected, that they were not similar,—that Shriver had already commenced an action, which was still pending in the court of Common Pleas,—that the petitioners pointed out no definite mode of relief, &c.—To which we reply, that including these circumstances, the cases appear perfectly similar. It is well known that a suit was instituted by the

party, nearly a year ago, which is yet pending. The defendants having obtained a change of venue, it was moved from Mercer county to Anderson, and there tried, at the last November Term, but the jury differing with the judge and council, it was suspended for another trial, and yet remains in suspense. As for the mode of relief dictated to our Legislature we can conceive nothing in it beyond what was suggested in Shriver's complaint. "He also sets forth (says the report) that numbers through ignorance have been drawn into the slavery of George Rapp through the delusion of being joint partners of the institution, &c." By recourse to the Watch Tower of July 7, 1827, complaints of delusion perfectly similar, on the part of our opponents, may be seen in full detail, equally implying that they thought themselves copartners of the institution. "It is true, (say they) we contemplate legislative interference, in reference to the mode and manner of suit against the society, by the adoption of a remedy commensurate to the existing rights of the withdrawing member, which we flatter ourselves can be done without a stretch of legislative power; and this is deemed necessary in consequence of the numbers of the society, say three or four hundred, their peculiar internal regulations that serves to embarrass a direct approach of them by suit, and a speedy judicial decision upon the points in controversy between us."

The learned amanuensis plainly shows that he was equally under the same delusion, in supposing the whole community actually confederated on the principles of a copartnership; and so far carried the delusion into the Legislature as to stretch their power into a confirmation of it, without which no adequate remedy could be hoped for. The question, whether a society having no charter of incorporation, has a legal existence, or can either sue or be sued, was promptly answered (and it appears very

justly) in the negative, by the Judiciary Committee, in the case of the Economy Society; which principle, if generally correct, may well be said to embarrass a direct approach by suit of three or four hundred people, situated as we are, and known only by names and descriptions, palmed upon us by the public. The society at Economy and that at Pleasant Hill are equally based on the mutual agreement of members, ratified by their signatures to a written covenant, which covenant commits the one interest, designed for the common benefit, to the entire control of certain responsible individuals, as trusted property, to be disposed of according to statutes well defined. These are "the peculiar internal regulations" that render a stretch of legislative power so necessary; and if the late act can be so construed, as to nullify these internal regulations, and constitute three or four hundred people a joint stock company capable of suing and being sued, we must either be cited to some maxim in law, of which we are wholly ignorant, or draw the irrefragable conclusion, that the foregoing act resulted from a stretch of legislative power, beyond what the Legislature of Pennsylvania thought to exist in our national government.

But to determine the main inquiry, recourse must be had to facts relating to the proper form, order and character of the society,—whether it is a civil or religious association, and what are its articles of agreement, laws and customs, under which it may be cognizable or otherwise by the civil institutions of the land. In order to commence these general inquries, we shall first introduce the public statements deliberately given, by the scribe and principal instigator of the aforesaid petition, willing, that from his own pen, the grounds of complaint and the general character and order of the society may be construed.

Statements of John Whitbey concerning the Society; extracted from his book entitled—A short account of Shakerism.

"As liberty of the press has become a powerful means of disseminating knowledge, many avail themselves of its wonderful advantages in communicating their thoughts, views and experience to their fellow creatures. And if I, as a free citizen of the American republic, claim this right, it is with no other than an honest intention of communicating my own just, impartial and candid views of a virtuous people, who have long been the object of idle speculation to some, and of serious reflection, wonder and astonishment to others.

"This people is that society known by the name of *Shakers*. A people with whom I once lived in that degree of union and comfortable feelings which language cannot express nor pen describe; and a people for whom I still feel a kind and tender respect.

"Many are the strange views, false notions and erroneous ideas existing in the minds of strangers concerning that society, and many are the ill founded conjectures and mistaken opinions of the nature of their system and their principle of government.—They are, in fact, so completely secluded from the world in all their ways, that it is impossible for strangers to form a correct idea of that principle of government or uniting tie that holds them together. It will also be a very difficult thing to give to the world, in writing, just and correct views of the principles of their system and the influence of their government:—But as I have been well acquainted with them as a member of their community for more than seven years, I hope by a correct statement of a number of well known facts to make myself understood on the subject, and give satisfaction to many who are anxious to know, by what unknown art, this peculiar people are bound together as a distinct body." p. 3, 4.

"I first became acquainted with the Shakers, at Pleasant Hill, Mercer county, Ky. in the spring of the year 1818. On becoming acquainted with them, I found them very different from what they were generally represented. Instead of that superstitious gloom and religious melancholy which I expected to see—cheerfulness, satisfaction, peace and tranquility appeared to reign throughout their delight-

ful dominions.—This was shortly after the division of the society into the first and second orders; this separation being made for the comfort and advantage of both parties —that the first might enter into the practice of such rules and orders as might advance them in the spirit of their system, unmolested by the young and inexperieuced—and that the second might remain a while longer in their inexperienced state, undisturbed by the galling yoke of such orders as they were not prepared as yet to receive.

"The second or (as it was called) young order, at that time consisted of one small family.—There were several larger families in the first or Church order, under the direction of such elders of their own order as were chosen by the Ministry. The Ministry was composed of three of each sex, who were the founders of that society, and were originally from the East; of these there were two, one of each sex, whom the society called Father and Mother, who stood as a centre of influence to the others; but in all their proceedings in government they were completely united. Being a stranger, I was unable to form a correct idea of the principles of government and practical regulations of their community, but the visible effects of their system were very delightful."—p. 24, 25.

So much for the views of this writer, on his first acquaintance with the society; the following contains the result of his seven years' experience and observation relative to the government, order, economy and moral character of each of the different classes or the body collectively.

Government—"Their government is a kind of hierarchal monarchy, the legislative, judicial and executive powers belonging solely to the Priests or Elders. Among these are different degrees of authority, according to their respective offices, rising in gradation from the lowest to the highest or supreme power.

Each society is divided into families, commonly dwelling in large and convenient houses. There are in every well organized family two of each sex called elders, who stand as general directors or instructors to the family in every respect, but more especially in all their moral economy; they are also assisted by one or more of each sex called deacon and deaconess, whose business it is to

superintend all the domestic [or temporal] concerns of the family, according to their instructions from the elders. And as every private member is under the direction of his respective deacon, the deacon under the elders, and the elders under the ministry, they are enabled by that means to preserve a strict uniformity and correct understanding of all general affairs throughout the whole society. The interest of all the members in each distinct order of the society is one (according to the practice of the first christians.)" p. 5.

"After coming into Church order, they live in one united interest, altogether under the control of the ministry, elders, trustees and deacons; securing all their previously acquired wealth to the exclusive use of the church by signing a contract or form of covenant to that amount. The case is something different before entering into church order; for when any person first joins the society, an inventory is made of the amount of his property, and if he leave the society before he sign the church covenant, his property or the amount of it is restored; but compensation for labor is seldom made." p. 20.

Distinction of Classes.—"Almost every society is divided into classes or orders, according to their experience; those who have been gathered together for some years, and have gained a reconciliation and love to their manner of life, are separated from the new beginners; as this class is not prepared, by previous habits, to yield that obedience to good order as is required of the older members. After the commencement of a new society, it requires several years' training of the members to prepare them for what is called *Church* order; but what this order is, I am not able to explain in every respect, having never resided therein; yet I think their rules are similar to those prescribed for the younger class, though far more strict and numerous." p. 11, 12.

Moral Rules.—"The instructions, or rather requisitions of the elders not only embrace the general outlines and principles of action, but descend to the more *minute* or *details* of practice, comprehending their whole economy. These orders certainly contain a collection of the best and purest of morals, including the whole duty of man, and are not excelled by any people on earth." p. 13.

"They are a people of excellent morals, very industrious, and in cleanliness, decency, temperance and good

order unequalled; and as a body, remarkably kind and benevolent; commonly speaking and acting towards each other in the most respectful manner. And though they are a people of deep humility, keen sensibility and modest deportment, yet they are cheerful, affable and uncommonly social." p. 5.

"Every one has his own peculiar place or office assigned him, not only in occupation, but in meeting, at table and in all other respects; the whole presenting a delightful scene of good order and uniformity." p. 19.

Spirit of Government.—"Although the powers of government belong solely to the priests, they generally govern in the mildest manner possible. The elders often meet with great difficulty in training and bringing beginners into proper order. Some are lazy—some are fractious—some are stubborn, &c. &c. These tumultuous scenes of imperfection and counteraction are generally borne by the elders with great patience; but not without the utmost exertions, in the exercise of such means, as they consider best calculated to bring each one into proper order; exhorting them to depend entirely on the gift of God for that power which will subdue all the evils of a depraved mind, and enable them to gain that purity, love and union, in the spirit of holiness that will consummate their happiness. This manner of conduct becomes a powerful incentive to good order; for all must acknowledge, that the orders and requisitions of the elders are generally founded in strict propriety." p. 15. "Thus, by the influence of the elders, and their assistance to each other, they advance from one degree to another, becoming more and more reconciled to their manner of life, as habit renders it agreeable, and better and better prepared to receive and practice more orderly rules. Having cut themselves off from nearly all sociability, friendship and communications with the world, by renouncing its practices, they have no other source of social enjoyment, than the exercise of kind feelings, union and love among themselves; and to this they gradually attain, to a degree (I believe) exceeded by no society on earth." p. 17.

Moral Virtue.—"The common idea among strangers, that the Shakers live in fornication, adultery and debauchery is too absurd and ridiculous, and betrays such ignorance of the nature of their system, that I think it unworthy of notice. The same may be said of their *bondage* and

slavery so much spoken of; as though people of common sense would suffer themselves to be bound in a free country contrary to their own choice." p. 20. "Almost every thing favorable may be said of the Shakers, respecting their moral virtues, the practice of which is productive of great peace, comfort and tranquility." p. 21. "Although the Shakers are a misrepresented and persecuted people, I well know they hold a superior place among the various societies of the world in practical virtue."

Temporal Living.—"Their co-operative industry produces the comforts of animal life in abundance, and they excel any people with whom I have been acquainted in the art of cookery. But as they are by no means satisfied with a mere negative virtue, or the bare removal of the causes of animal sufferings, their greatest exertions are directed to that cultivation of intellect and *purification* of mind which will raise them to the highest state of mental enjoyment." p. 21.

Religious Tenets.—"The Shakers have made several publications of their own faith, ably supported according to their peculiar manner of reasoning." p. 5. "They believe that the Scriptures were written by inspiration; —They believe, that salvation from sin and redemption from misery are to be gained, through and by Christ. They have no faith in the resurrection of the animal body after death, but they consider the *soul* the proper subject of the resurrection. Neither do they eat *bread* and drink *wine* in commemoration of an *absent* Christ, for they declare that Christ has returned, and has taken up his abode in and with them, and of course, is always *present*. As they believe that the forbidden fruit which caused the fall and depravity of man is the *flesh*, they of course believe that it is impossible for any one to be saved from the effects of the fall while living in the flesh. And as they believe that the forgiveness of sins belongs to God in Christ, and in Christ alone, and as Christ, on earth, is no where to be found but in his own church—they think it highly necessary, that all who become members of their community, should honestly confess all their sins to God in his living temple, [the priests] receive forgiveness, and be prepared thereby to enter on the work of regeneration." p. 6 to 12.

The sum of the foregoing statements (which in the main are admitted as correct) is, that the Society in this

place was originally founded by a Ministry from the east, two of whom the society called Father and Mother. That the government introduced was, confessedly, a theocracy or divine government, in which the parentage was first in point of authority and ministerial influence: That Trustees, Elders, and Deacons were appointed to various lots of care, spiritual and temporal. That after the example of the primitive christian church, all that believed came together, disposed of their property, and were confederated and united in one interest, in all things. That the consecration of the property, thus united, was to pious and charitable purposes, and that proper persons were authorized, by mutual agreement, to exercise control over it as trusted property, to be appropriated to the use and benefit of the church. That many years' training is deemed necessary to prepare for entering into such an order. That the grand object of the society is, the promotion of virtue, goodness and mutual happiness. That their rules are founded in strict propriety, and are conducive to peace, love and harmony. That, in a temporal sense, they live well—are industrious, neat and cleanly. That they believe the Scriptures—believe in Christ—in the resurrection—confession of sin—regeneration and other christian doctrines, &c. Now what is there, in all this, so essentially variant in point of form, from other religious communities, or charitable institutions, that it should be declared lawful to prosecute suits, &c., against this particular society, in a manner distinct from all others? Are not the official characters, authorized to make and fulfil contracts sufficiently plain and manifest? No individual is admitted into membership with the society, but in agreement with the spiritual lead; nor is any contract made or implied, relating to property, otherwise than with an agent, or some individual, personally responsible for the same, and against whom an action could be brought, provided the case was,

in itself, actionable. But as the author of the foregoing statements was but a catechumen, admitted, at an advanced period, into the junior class, and never initiated into church order, it will be proper, for the more perfect understanding of all things from the beginning, to give a circumstantial detail of facts, founded on the certain knowledge and experience of those who have been members of the society, from its early commencement to the present date.

THE ORIGIN AND PROGRESS OF THE UNITED SOCIETY AT PLEASANT HILL.

It is sufficiently manifest, in all our public writings, that the people known by the name of Shakers originated from a Testimony opened in Europe about the middle of the last century, and brought over to America, in the year 1774. That, according to said testimony (which is, that Christ has made his second appearance) the church is constituted, in the order it is, and the practical rules and orders thereof adopted, as a bond of union, throughout the different branches of the community, wherever they may be situated. In the year 1805, the *Testimony* was first opened in this part of the country, and received by a few individuals. The year following the number of Believers became considerable, and continued to increase, until the number became sufficient to promise the establishment of a society in the place.

When the people began to gather together in a congregated capacity, at this place, (now Pleasant Hill,) the first thing that was done, by each one, was, to procure and continue a sustenance for himself and family, upon land of his own purchasing, or land rented from the neighbors, according to his choice and ability. Such as purchased

land, took the titles in their own names, and each one, himself, was the freeholder of his lands and whole estate, real and personal.

The first germs of unity of interest commenced, in this stage of things, by young persons and others, of both sexes, who were single, coming and residing in those scattered families, and associating with them, for the benefit of religious society and instruction. These agreed, mutually, to labor together, for their common support, in each separate family, without any expectation of other wages. These scattered families, constituting a religious neighborhood, assembled, statedly, for the purposes of divine worship and the benefit of each other, in their religious experience.

In this stage of things, no difference existed, in the tenures by which they held their property, from the rest of the world. But this was very far short of what was expected by all: accordingly, in a short time, preparations were made to draw into a closer connection, both in respect to things spiritual and temporal; which began by several of the aforesaid families joining together, and residing in one house—selecting such places as were most central and convenient, and leaving some of the places, where they had formerly resided, as vacant and out-tenements.

They now began to assume the form and appearance of a village, and each of these, now large families, cultivated its share of those neighboring farms, from which they derived a part of their support. This state of things rendered it necessary that some change and order should take place, in the management of their property; but nothing like a dedication of property as yet took place. Each one still retained, as formerly, the fee simple of his own real estate; the personal and perishable property of each individual was valued, article by article, and invento-

ried, the use of which, together with the rents, issues and profits of the land, was freely devoted to their general family purposes, including their own support. And for the better regulation of the general concern, managers were appointed, to see to the general distribution and disposal of all temporal matters.

During the continuance of this order, any one who thought proper, could withdraw from the society, and receive again the whole of his or her property, on giving the necessary previous notice of such intention. In this way the whole connection could dissolve their relation, at pleasure, and the tenures and titles of their property be in themselves unimpaired, as those of other men. This, however, by no means satisfied the community. It was viewed by the members as being far short of what they had set out for; a full and entire union in all things, in perfect imitation of the primitive gospel church, had, from the beginning, been contemplated; and to this point they progressed, in the manner they did, for the purposes of gaining experience and knowledge, in matters relating to a final and decisive compact. That such a course of deliberation should be adopted, must be viewed, even by the worst enemies of the society, as an evidence of its uprightness and purity of intention; especially when it is considered that this novitiate state was maintained for the term of six or seven years, during which time persons might come and go, at pleasure, carrying with them their property, as their own, without having either incurred debt or sustained loss or damage.

This much being said concerning the society in its preparatory state, for the final adoption of church order, we will now consider the steps taken in constituting the order of the church. After the society became fully satisfied of the practicability of union in all things, having, by long experience, tested its general principles, they determined

to enter into an explicit covenant, to establish a permanent foundation, for the support of all who chose to dedicate and devote themselves to that manner of life, independent of the personal claims of individuals.—Agreeing, that each member should now make an irredeemable sacrifice of his personal or private interest, his time and talents, without any possibility, on his part, of even an equity of redemption in future. Accordingly, an article of agreement was prepared, carrying all these important features and provisions, the signing of which was familiarly called by the members, "*finally shutting the door.*" This transaction produced an important change, in point of titles to the property, which had formerly been held personally by the members now iucluding the order of the Church. The Church covenant, as it was called, was intended and understood to be a firm obligation for the legal conveyance and actual delivery of all and singular the property and estate real and personal of the individuals who signed it; and by the signing of this article, the sole rights, titles and claims, in a legal point of view, were intended to be vested in trustees, who were named in said covenant, to be held by them, in trust, for the use and benefit of this newly constituted body called the Church. And thus the individual titles and claims of members, on the ground of private interest, were forever extinguished, and the whole placed, as trusted property, in the hands of trustees, the execution of whose trust, was directed by the covenant. Accordingly such as held real estate, proceeded without delay, in conformity to the aforesaid covenant, to execute regular deeds of conveyance, by which they set over the entire fee simple of their lands, to the trustees aforesaid; moreover, all goods, chattels, household furniture, and property of every description, specified on the inventories of individuals or otherwise claimed by them, were surrendered, and under the superintendence of the trustees,

distributed and apportioned to the different households and individual members as every one had need; while the members respectively entered into their different lots and employments, improving their time and talents for the mutual benefit of all; and so it has continued to the present date.

It is needless to recapitulate the object of those proceedings. It only remains to inquire into their legality and moral honesty. And first, Was the plan of thus constituting the church a legal one? Ans. It is certainly entitled to the free toleration and protection of the law. "No man shall be compelled to attend, erect or support any place of worship, against his consent," but a voluntary contribution to any society cannot be prohibited. Perhaps this inquiry could not receive a better answer than the following extract of a private letter, written by William Plumer, Governor of New Hampshire, and published in the Intelligencer of Lancaster (Pa.) dated Feb. 28, 1818.

"My sentiments on that subject, (Religious Freedom) have not changed with time, but every revolving season has added new proofs in my mind, to the fitness and propriety of leaving every individual to the full and entire liberty of choosing his own religion, and of giving or withholding his property, as he pleases, for its support. Human laws cannot make men religious, but they may and often have made bad men hypocrites. Civil government was instituted for earth, not for heaven, and it ought never to intermeddle with religion, except to protect men in the free enjoyment of their religious sentiments."

Q. But is it consistent with moral honesty, to hold the property of an individual who has thus conveyed it to the use and benefit of the church, after he has withdrawn from the community?

A. We deem it perfectly so, nor could any thing be more sacrilegious or dishonest, than for any one to attempt

the recovery of property thus solemnly and confidentially devoted, in union with others, to the support of an institution, by which all are generally benefitted.

Q. Provided the withdrawing member has failed in receiving those benefits which he expected. What then? A. The blame is his own; he has to abide the consequence. Q. Would it not consist with moral honesty, at least, to refund the principal, or the amount of what he put in the general fund? A. Not as a debt; because he has no claim, on any just principle: and moreover, by the terms of his covenant, he has put it out of the power of the trustees ever to refund it to him, they being bound to appropriate it to the use and benefit of the church and the poor, and to no personal or private end or purpose whatever. Nevertheless, this does not prevent his receiving any charitable donation which the church may think proper, provided his situation and deportment render him worthy. It never was the design of the church to get away people's property from them, nor is it from any lack of honesty or liberality that any such property is withheld. Every well informed mind must see the path of rectitude in this affair, without any mistake. The contributors to a pious or charitable fund necessarily divest themselves and their heirs, of all private or personal claim to such contributions; but they are not divested of their proper authority, as trustors, to compel an execution of the trust; hence it is repugnant to the plainest principles of both law and equity, for the trustees to dispose of such property, otherwise than as directed by the covenant. It is further inquired, whether the church is not bound in conscience to afford a generous patrimony to the children of withdrawing members. To this we reply, that all, before signing the church covenant, have full liberty to make any reserve of property for their children that they choose. Such reserves are deposited in the church, free from interest, until the

heir becomes of age and demands and receives it, otherwise signs the covenant and becomes a member; in which event all private claims relating to such estate are forever extinguished. Therefore as the execution of the trust relating to all such devoted property is restricted to the benefit of the church and the poor, the child of a contributor can have no stronger claims on the property than other persons in similar situations; if it be an object of charity, a gift can be extended, but not otherwise.

Having considered the claims of withdrawing members and their natural heirs, we shall next consider the claims of those members who maintain a good standing and continue to be held in union with the body. But to enter fully into this subject, embracing every important question that might arise, relating to the different lots and offices of members, may not be necessary. It must, however, be observed, that by virtue of the church covenant, a total transfer of all legal title and claim to the property has been made, from each and every member of the church, to certain individuals as agents or trustees, who are bound to use it for the purposes specified above. Hence the only right or claim remaining in individual members, is to their equal and daily dividends of food, clothing and other necessaries, in sickness, health and old age, according to their respective needs. The trustees, also being members, have a right to manage and dispose of it, as directed, so long as they are held in office, and act in union with the body, and no longer. It might be further inquired, whether the trustees do not, some how or other, hold a personal claim, superior to other members. This, by no means, is implied in the covenant. The property of the trustees, real and personal, is as substantially conveyed and consecrated to the benefit of the community, as the property of any other member, and they are equally subject to the same governing influence with others.

It may also be inquired, whether the control and management of this property is so confided to the trustees, that no private member can trade or speculate upon it, under pretence of an individual right? Ans. As to individual right, that point, we presume, has been fully settled; and should individuals assume a right to make any disposal of it, without authority from the trustees, any such contract would be deemed illegal, and property thus perverted recoverable by law, to its proper use and appropriation.

Now from all that has been said, it is easy to infer the falsity and absurdity of the common charge of dishonesty so frequently cast upon the institution. Does it belong to the character of knaves and swindlers to consecrate and devote all they possess to a common use and benefit? If fraud was intended, would the candidate for church membership be allowed seven years' probation, and afforded every possible privilege of examining the subject to the bottom before he signs the covenant of consecration? It is truly a matter of deep regret when any one enters into the bonds of the covenant, and proves unfaithful to his solemn obligation; no sacrifice of property on the part of the church could repair the incalculable damages that result from the withdrawal of such. We do not mean in personal abuse or private injuries, but in disseminating false reports and accusations, dishonoring the gospel, sowing discord among neighbors, and disturbing the peace and happiness of society. The nature and obligations of the church covenant are so plainly taught among us, and so well understood by all, that we have no reason to believe, that any one ever attempted to give up and consecrate his property with any expectation of ever receiving it again; nor can any church member have the smallest reason to expect wages for his work when it is so well known, that each individual is his own employer, and receives the services of others as freely as he bestows his own.

We the undersigned, having, at an early period, become members of the United Society, in this place, and as such maintained our standing to the present date, do cheerfully subscribe to the foregoing statement of facts as correct, and the reasons offered in support of them consistent with our faith and the well known principles of the institution.

E. Thomas, J. Voris, J. Runyon, B. Burnett, A. Dunlavy, H. Banta, P. Voris, F. Montfort, S. Manire, J. Vanclave, V. Runyon, M. Burnett, J. Congleton, G. R. Runyon, J. Shields, W. Runyon, A. Fite, M. Thomas, J Coony, J. L. Ballance, J. Lineback, D. Woodrum, J. Shane, S. Harris, J Badget, T. Shane, J. Voris, Jr., S. Badget, W. Verbrike, J. Medlock, P. Hooser, P. Lineback, W. Manire, G. D. Runyon, L. Withile.

It has not been uncommon for individuals to withdraw from the junior order of the society, who rarely make any difficulty in settling their accounts, the terms being so well understood. And although there have also been various instances of members withdrawing from the church, there has never, as yet, been a case in this country, in which the legal force of the church covenant has been tested before a court of justice. In other States it has been somewhat different, as will appear from the following documents.

To the United Society of Believers in Kentucky.

Having understood that your rights as citizens, or [illegible] legality of our covenant, is about to be put to the test a[illegible] court of law, and that you wish to know how such cases have been decided in Massachusetts, we are able to assure you, that the covenant, as well as our legal rights, has been several times put to the test before the supreme judicial court (or the court of appeals as you call it) and that our society has been declared from this bench to be a *legal compact*, and our covenant a legal instrument—and

that before this court there never has been a decree given against us, nor has it, in any instance, invalidated the legality of our institution—and that having been an eye and ear witness of these transactions for upwards of thirty years, I hereby certify, that I have heard it pronounced by Francis Dana, Chief Justice of said court, that it was as illegal to trespass on our rights, as on those of any other society whatever; and other judges have decided in the same way. We have always faced those unjust and illegal demands or charges with confidence and perseverance, so that we have never lost a case, and our prayer is that the same success may attend you on these occasions, &c.

ASA BROCKLEBANK.

Among the various communications we have received from different quarters affording light on the subject, three cases in particular seem to merit special notice—two containing the opinion of the supreme judicial court in the State of Maine, the other the report of an action tried in the county of Grafton, State of New Hampshire, in 1810, which cases furnish such special light on almost every point that can come into controversy relating to our civil rights, that we think them worthy of a place in the present publication. The first two may be found at large in 3rd and 4th Greenleaf, Reporter for Maine, and the latter in the New Hampshire law case, published in the National Intelligencer of December 1st, 1827.

State of Maine, Alfred, April Term, 1825.

ANDERSON ET AL. VS. BROCK.

IN trespass quare clausum by the trustees of the society of Shakers for an injury done to their common property. The members of the same society are competent witnesses on releasing, &c.

This was an action for trespass of breaking the close of the plaintiffs. They sued as deacons or overseers of the society of Shakers, and so amended their writ, which was objected to by the defendant, but sustained by the court.

The competency and incompetency of the witnesses were argued at length on both sides. The court decided in favor of their competency.

The plaintiff's counsel then read a deed from Barbara Brown to Gowen Wilson, &c., conveying the *locus in quo* to them and their successors and assigns, in trust for the use of the society, the support of the Gospel among them, &c. and then showed from the book of Records of the society that the plaintiffs were then regular successors.

The defendants contended that no title had passed to the plaintiffs, and therefore they had no right to maintain the action.

The objection was overruled by the court and a verdict under its instructions, was returned for the plaintiffs, subject to the opinion of the Court.

At the succeeding term in Kennebeck, Weston, J. delivered the opinion of the court, in which it holds the doctrine that the trustees of the Shakers have a right to, as such, and can maintain an action against a wrong doer to the common property of the Shakers. The court seems to be under a strong conviction, that the trustees can maintain an action declaring upon their own possession and seisin without setting forth their official character—where a defendant can show no title in himself, he may not rely on the weakness of the trustees' title, and judgment for damages at the suit of the trustees must be rendered against him, declaring upon their own rights.

The doctrine was urged by the counsel for the plaintiff, that where a regular deed of trust was made to the plaintiffs, and their successors, so long as the succession was susceptible of proof, the successors would take at common law. *Newhall vs. Wheeler, 7th Mass. Rep. p.* 179.

The court in giving their opinion hold out the following language: "But religious toleration, which is the vital principle of protestantism, and which is effectually secured by the constitution and laws of our own State, as well as that from which we have separated, has produced and is producing many modifications of discipline and doctrine in bodies associated for spiritual and ecclesiastical purposes. The sect with which the plaintiffs are connected have been for some time known among us, and their peculiar tenets and modes of discipline have been embodied and settled by their teachers in regular and, among them, well established forms. Although once persecuted by the mis-

taken zeal of former days, they are now permitted under more favorable auspices to keep the peaceful tenor of their way unmolested. They are in general quiet, sober and industrious; and the fruits of these commendable qualities are exhibited to the public eye in their beautiful villages and cultivated grounds; and in the apparent comfort and abundance with which they are surrounded. If the persons who acquire authority and influence among them, should be found to abuse these powers, they are answerable both civilly and criminally for their misconduct. Like all other citizens they are amenable to the laws by which they are protected; and from obedience to which their seclusions afford them no immunity or exemption."

After much luminous argument in support of their opinion, the court gave judgment upon the verdict.—See 3d Greenleaf, 243.

WAIT vs. MERRIL AND AL.

Mellen, C. J.

This case presents two questions for consideration. 1. Were John Coffin, Levi Holmes and Elisha Pate properly admitted as witnesses? and 2. Were the instructions of the Judge to the jury correct?

1. The objection to the admission of the above mentioned witnesses, seems to have been effectually removed by the releases given at the trial. A question of the same nature was settled by this court, in the case of Anderson and al. vs. Brock, 3 Greenleaf. The only difference is, in *that* case the witnesses were introduced by the plaintiff, and *they* and the witnesses executed mutual releases. This objection therefore is overruled.

2. The second deserves more consideration. Under the instructions which the jury received, they have found that the plaintiff *knowingly signed the covenant;* and, by the report, it appears that he was a man of common natural abilities and understanding, and sometimes taught and exhorted in the religious meetings of the society; and he was more than twenty-one years of age when he signed it. By thus signing, he assented to all the terms and conditions specified in that covenant, made its stipulations his own, and agreed to conform to the rules and regulations of the society in relation to its spiritual and temporal con-

cerns. By the covenant, it appears, and also from the testimony of the plaintiff's own witnesses, that *community of interest* is an established and distinguishing principle of the association :—that the services of *each* are contributed for the benefit of *all*, and *all* are bound to maintain *each* in health, sickness and old age, from the common or joint-fund, created and preserved by joint industry and exertion—and each one by the express terms of the covenant, engages "never to bring debt or demand against the said "deacons, nor their successors, nor against any member of "the church or community, jointly or severally on account "of any service or property, thus devoted and consecrated "to the aforesaid sacred and charitable use."

Such are the facts, as to the contract, into which the plaintiff entered, when he subscribed the covenant. It is an *express* contract. The plaintiff, in the present action, however, does not profess to found his claim on an *express* promise; but he contends that upon the facts proved, and disclosed in the report before us, the law *implies a promise* on the part of the defendants, to pay him for his services, although they were performed for the *society* of which the defendants are officers, and not for them in their private capacity; and although such an *implied promise* is directly repugnant to the covenant or *written contract*. Besides it is clear, from all the evidence in the cause, that whatever services the plaintiff performed while he was a member of the society, and remained and labored with them, he performed in consequence of his membership and in pursuance of the covenant, and in virtue of which he became a member. Now it is a principle perfectly well settled, that where there is an *express* contract in force, the law does not recognize an *implied* one, and where services have been performed under an *express* contract, the action to recover compensation for such services must be founded on *that* contract, and on *that only*, unless in consequence of the *fault* or *consent* of the defendant. In the present case there is no proof that the covenant has been violated on the part of the society, or that the plaintiff had any right to *waive* the covenant and its special provisions, and resort to a supposed implied promise, on which to maintain his action. But as the covenant refers to the *order* of the church and their peculiarities of faith, and as at the trial both parties, without objection, went into an examination of witnesses, and thus obtained all those facts, in

relation to the society which are detailed in the judge's report, the argument of the counsel has been founded on *all the evidence* in the cause, received in a body; and, of course, in forming our opinion we shall place it on the same broad foundation, without reference to technical objections if any should present themselves. We are perfectly satisfied, that the covenant was properly admitted as proof to the jury, to show on what terms and considerations, the services were performed by the plaintiff, for which he is now seeking compensation. We are also of opinion that the instructions of the judge to the jury were correct, if the covenant signed by the plaintiff, taken in connection with those facts in the cause which are considered on this occasion as a part of it, is a *lawful covenant*, one which the law will sanction, as not being inconsistent with *constitutional rights*, *moral precepts or public policy*. This leads us to the examination of the covenant, the principles it contains and enforces, and the duties it requires of the members of the society. The counsel for the plaintiff contends that the covenant is, for certain reasons, *void*, and to be pronounced by this court a *nullity*. It is said that it is void, because it deprived the plaintiff of the constitutional powers of *acquiring*, *possessing*, *and protecting property*. The answer to this objection is, that the covenant only *changed* the *mode* in which he chose to exercise this right or power. He preferred that the avails of his industry should be placed in the common fund or bank of the society, and to derive his maintenance from the daily dividends which he was sure to receive. If this is a valid objection, it certainly furnishes a new argument against Banks, and is applicable also to partnerships of one description as well as another. It is said that the covenant or contract is contrary to the *genius* and *principles* of a *free government* and therefore void. To this it may be replied, that one of the blessings of a *free government* is, that under its mild influences the citizens are at liberty to pursue that mode of life and species of employment best suited to their inclinations and habits, unembarrassed by too much regulation; and while thus peaceably occupied, and without interfering with the rights or enjoyments of others, they surely are entitled to the protection of so good a government as ours; then, perhaps *all these* privileges and enjoyments might be contrary to the genius and principles of an *arbitrary* government. But in support of this

objection, it is contended that the covenant is a contract on perpetual service and surrender of liberty. Without pausing to inquire whether a man may not legally contract with another to serve him for *ten* years as well as one, receiving an acceptable compensation for his services, we would observe that by the very terms of the fourth and fifth articles, a *secession* of members from the society is contemplated, and its consequences guarded against in the fifth, by the covenantors never to make any claim for their services, against the society ; and the fourth article speaks of a compliance with certain rules, so long as they "remained in obedience to the order and government of the church, and holden in relation as members." Besides, the general understanding and usage for persons to leave the society whenever they inclined so to do, the plaintiff himself has, in this case, given us proof of this right, by withdrawing from their fellowship ; and now, in the character of a stranger to their rules and regulations, demanding damages in consequence of the dissolution of his contract.

It is said the covenant is void, because it is in derogation of the *inalienable right of liberty of conscience.* To this objection the reply is obvious. The very formation and subscription of the covenant is an exercise of the inalienable right of liberty of conscience ; and it is not easy to discern why the society in question may not frame their creed and covenant as well as other societies of christians, and worship God according to the dictates of their own consciences. We must remember that in this land of liberty, civil and religious, conscience is subject to no human law ; its rights are not to be invaded or even questioned, so long as its dictates are obeyed consistently with the harmony, good order and peace of the community. With us modes of faith and worship must always be numerous and variant, and it is not the province of either branch of the government to control or restrain them, when they appear sincere and harmless. Again, it is urged that the *covenant* is void, because its consideration is illegal, that it is against *good morals* and the *policy of the law.* We apprehend that these objections cannot have any foundation in the covenant itself, for that is silent as to many particulars and peculiarities which the counsel for the plaintiff deems objectionable. The covenant only settles certain principles as to the admission of members; commu-

nity of interest; mode of management and support; requisition and use of the property: stipulations in respect to services and claims; professions of a *general nature,* as to the faith of the society, and the solemn renewal of a former covenant and appointment of certain officers. This is the essence of the covenant signed by the plaintiff, and on this the defendants rely as a *written* contract of the plaintiff under his hand and seal, never to make the present claim, and also a complete bar to it. Now what is there illegal in its consideration, or wherein is it against *good morals* and the *policy of the law?* It *does not* contain a *fact* or a *principle* which an honest man ought to condemn; but it *does* contain some provisions which all men ought to approve. It distinctly inculcates the duty of honest industry, contentment with competency, and charity to the poor and suffering.

In *this* view of the subject these objections vanish in a moment. But if we consider them as founded on the *covenant* and *all the evidence in the cause together,* the result of the examination, will not, in a *legal* point of view, be essentially varied. It is certainly true, that some articles of faith, peculiar to the society, appear to the rest of the world as destitute of all scriptural foundation, and several of their consequent regulations unnatural, whimsical, and in their tendency in some respects, calculated to *weaken* the force of what are termed *imperfect obligations.* Professing to exercise a most perfect command over those passions which *others* are disposed most cheerfully to *obey;* they, perhaps, in so doing, may chill some of the kindest affections of the heart, gradually lessen its sensibility, and to a certain extent, endanger, if not seriously wound, "the tender charities of father, son and brother." Perhaps celibacy, out of the pale of this church, has often the same tendency. It is true the mode of education and government may be too restrictive, and the means used to preserve proper submission to authority, may be deemed artful, severe, and in some particulars highly reprehensible, especially in their pretended knowledge of the secrets of the heart. On the other hand, it appears as before stated, that benevolence and charity are virtues enjoined and practised, and the plaintiff's witnesses, who had formerly belonged to the society for several years, testified, that "all vice and immorality are disallowed in the society, "and integrity, uprightness and purity of life are taught

"and enforced among them; and that the precepts of the "gospel, as they understand and interpret them, constitute, "as they conceive, the foundation of their faith, and the "rules of their practice." As for their *faith*, it would seem, from the volumes which they have published, that it extends to unusual lengths, and leads to what others at once pronounce to be absurdities; but this is not within our control; it is rightfully their own.

But it is contended, that, according to the faith and principles, and usages of the society, which are considered as referred to, in the covenant as a part of it, the covenant amounts to a contract never to *marry*, which *public policy* will not sanction. We have before observed that it is not a *perpetual* one, of course, *at most*, it is a contract not to marry while they continue members of the society; but their faith does not require *so much* as this, their principles condemn marriage in certain cases only; that is, where it is contracted with carnal motives, and not *purely* with a view of complying with the original command "increase and multiply."

'Tis true they do not believe that marriage is contracted, except in some solitary instances, without motives far less worthy and disinterested. As it regards those members of the society, who are married, though they may live separate without cherishing the gentle affections, still such conduct violates no human law; and however lightly they may esteem the blessing of matrimony, their *opinions* do not lessen the *legal* obligations created by marriage. Surely they may agree to live in different houses and without any communication with each other. Contracts of separation between husband and wife are not unfrequent, neither are they *illegal* when made with *third persons*. This objection cannot avail, nor that which refers to the relation between father and son. Their principles require the circle of benevolence and affection to be enlarged, but not that parental or filial tenderness should be destroyed or lessened. We must not overlook the distinction between duties of *perfect* and *imperfect* obligation; the neglect of the former is a violation of law, which will render the delinquent liable in a court of justice to damages, penalties or punishment, but the performance of the latter is never the subject of *legal coercion*. A man may be punished for defrauding his neighbor; but not for indulging feelings of unkindness towards him; or in the hour of sorrow *with-*

holding from him the balm of sympathy, consolation and relief. Though we may disapprove of many of the *sentiments* of this society in respect to the subject of education and discipline; yet as they steadily inculcate purity of morals, such a society has a perfect right to claim and receive, and enjoy the full blessings of legal protection.

But for the sake of the argument, let us suppose that the contract or covenant is *illegal* and *void*, for the reasons which have been urged by the plaintiff's counsel; what, then, will be the legal consequences? Will the action, then, stand on any firmer ground? Though in the present case, the plaintiff does not demand of the defendants, the re-payment of a sum of money paid to them, on the ground that they have no legal right to retain it, yet his demand is, in principle, the same thing; it is a demand of compensation for services rendered, on the ground, that as the contract was unlawful and void, the value of those services may be recovered; that is, if he had increased the funds of the society by a *sum of money* instead of his *personal labors*, and *services*, the right to *recover back the money*, or recover the *value of those services in money*, must be settled by the *same principles* of law in *both* cases. Now what are those principles? Before stating them, let it be again observed, that the jury have found, that the plaintiff knowingly signed this covenant, which we are now considering in the light of an *illegal* and *void* contract, and voluntarily joined the society and remained several years a member, engaged with all the other members in all the transactions of it, and all of them in *pari delicto;* for if the covenant is illegal and void, it is because the society who formed and signed it is an *unlawful society*, and united for purposes which the law condemns.

'If a wager be made on a boxing match, and on the 'event happening, the winner receives the money; it can- 'not be recovered back by the loser, for where one know- 'ingly pays money upon a contract executed which is in 'itself *immoral and illegal*, and where the parties are *equally* 'criminal, the rule is, in pari delicto, potior est conditio 'defendentis.' 2 Com. Con. 120 Bull. n. p. 132, Cowp. 179. Lord Kenyon there says, 'There is no case to be 'found where, when money has been actually paid by *one* 'of two parties to the *other*, on an *illegal contract*, both 'being *particeps criminis*, an action can be maintained to 'recover it back again. Here the money was not paid on

'an *immoral* though *illegal* consideration; and though the 'law would not have *enforced* the payment of it, yet, as 'having paid, it is not against conscience for the defend-'ant to retain it.' Lawrence J. adds "In Smith v. Bromley, Lord Mansfield said, that when *both* parties are equally criminal against the *general laws of public policy* the rule is *potior est conditio defendentis,* better is the condition of the defendant." See Smith v. Bromley, Douglas 696. See, also, Engar and al. v. Fowler 3. Esp. 222, it was determined that an underwriter could not maintain an action against brokers to recover premiums of reassurances declared illegal by statute. Lord Ellenboro' C. J. says, "We will not assist an *illegal transaction* in any respect: we leave matters as we find them, and so an action will not lie to recover back money deposited for the purpose of being paid to one for his interest, and soliciting a pardon for a person under sentence of death."—3 Esp. 253.

"No implied promise rises out of an *illegal transaction,*" Robertson v. Tyler, 2 H. Bl. 37 9. See also Aubert v. Moor, 2 Bos. and Pul. 371. And McDane in his abr. 1 vol. 194, says, "And on the whole, the sound principle is, the law will not raise or imply any promise *in aid* of a transaction *forbidden by the law of the land.*" With these authorities it would seem impossible for us to sustain the present action, even allowing the *covenant* and the *society,* by whom and for whose use it was formed, to be of the reprehensible and illegal character which has been given them. On the whole, we are all of opinion there is a total failure on the part of the plaintiff; and accordingly there must be a judgment on the verdict.

State of Maine, County of York,
Alfred, June, 18, 1827.

The above is the opinion of the Supreme J. Court in the State of Maine, delivered at Portland, in the County of Cumberland, in May, 1826, and will be reported in the next volume of Greenleaf's reports, not yet published.

DANIEL GOODENOW,
Counsellor at Law in said Court.

State of New Hampshire, Sup. Court, Grafton County, October Term, 1810.

JOHN HEATH, vs. NATHANIEL DRAPER.

Assumpsit for $1000 money had and received, &c. and 2d count for labor and service, per account annexed to writ for 13 years and 11 months—on quantum meruit; amount $2016. Labor ended 17th August, 1809—alleged to have been performed at defendant's request and for his benefit. Plea, non assumpsit.

It was admitted that defendant was a deacon, and had the charge of the temporal concerns of the family of Shakers at Enfield in this State; and that the plaintiff's father, Jacob Heath, and his mother, with their children, joined the society in 1784. The plaintiff was then about fourteen years old. The father never was a member of the church, but of the society only.

The plaintiff in 1793—5, after he became of age, joined the church, and signed the covenant. After that time, the father put what he considered as the plaintiff's share of his estate into the hands of the *then* deacons of the society. 8th December, 1798, the deacons (defendant and Lyon) paid the amount to the plaintiff, $175. Plaintiff then returned the money to the deacons, agreeably to the covenant he had entered into with the church in 1793. 26th October, 1801, plaintiff renewed the covenant, as did the other members of the church with some small additions.

It was admitted that the plaintiff had labored faithfully in and for the society, from the time mentioned in the writ, till he withdrew in 1809; and had been clothed and supported out of the joint stock, as others were.

On the part of the plaintiff several witnesses were examined before the jury. The object seemed to be, to prove that the principles and practice of the society were narrow, exclusive, strict, and severe—unfriendly to learning, having little regard to natural ties, and domestic relations;—that professing equality in the members, they were governed by a few, and held to the doctrine of passive obedience, and non resistance, contrary to the constitution.

The defendant gave in evidence the covenant, as it was called, and the renewal of it by plaintiff. The execution was admitted. It was substantially the same as that stated in the book called "The testimony of Christ's second

appearing, &c. p. 505, chapter xiii." They also called several witnesses, who gave a more favorable account of the principles and practice of the society, than that given by plaintiff's witnesses—all agreeing that no coercion was used,—members may go away from the church when they please; but in such case, it has always been considered, they have no claim to the property *given*, and dedicated by them, nor to maintenance *in future*. In such cases the church has, on some occasions given them such sums as they thought proper, but nothing as debt or matter of right.

Admission into the church is treated as a matter of solemn consideration—not done hastily, but on full deliberation, and not while the party is under age. No persuasions are used, much less any misrepresentations, as to terms, principles, consequences, &c. All is set down in writing. Steady, but moderate labor is required, according to the ability of the party. The government and discipline of the society is mild and gentle.

The counsel for the defendant gave an historical account of the society from its origin, a short summary of the doctrines and principles of the sect: in substance, the same as stated in the book called "The Testimony of Christ's second appearing," &c. 2d edition printed at Albany 1810; from which he read various passages. The testimony was not summed up by the counsel on either side; it was thought unnecessary. Defendant's counsel briefly stated the grounds on which, in point of law, a recovery was resisted—That here was no *implied* promise to pay wages, but an express agreement that plaintiff was *not laboring* for *hire* or wages: and as to the money put into the joint stock by the plaintiff, it was *given*, the gift was *complete and effectual*—possession delivered: it was not in the power of the donor to retract or reclaim it: that there was no consideration; if such were in fact the case, would only show that it was a gift,—when there is a consideration it is a *grant*. By our law the owner may freely *give* his property, or he may make a worse use of it—if he so please—waste it in riotous living. He may surely bestow his money and labor in support of charity, and what he thinks religion.

Some suppose a donor has an equity to recover back a gift; but the rule is the same in equity as at law—no bill lies—the party merely has the right to ask for a gift in

return. It is admitted, that to make the gift effectual and binding, the donor must *give freely*, understanding what he is about—must be under no legal incapacity, such as infancy, coverture, insanity, duresse:—there must be no circumvention or fraud practiced upon him: On these points defendant cheerfully submits the cause, on the evidence before the jury. *Even* plaintiff's testimony does not so much as *tend* to prove any such things. As to the labor, it was not done for defendant or at his request; but he is willing to waive all objections to *form* and indeed to substance as it respects this point. He is willing the case should be considered in the same way as if the whole of this church or the society were the defendants on the record. Here was no labor done *for the society*, under an expectation of wages, but the contrary. Labor gratuitously performed gives no cause of action any more than a gift of money or other thing. To make a contract there must be an agreement—*agregatio mentium:* an agreement of both parties, that plaintiff was laboring *for hire*, to be paid by defendants.

The circumstances of the case exclude all implication of contract: *The promise implied by law* is a metaphysical notion—the law in truth *makes* no promise; it is the parties that make *all the contract*. When A says to B labor for me, it is the understanding of both, where the contrary is not expressed, that he is to be paid a reasonable sum, or adequate compensation, where no particular sum is named.

Implied contracts or promises exist only where there is no express stipulation between the parties. Here there was an express stipulation, that plaintiff was *not* to be *paid*. It is a matter of *faith* with this sect not to claim any thing for property bestowed or services done to their community. Each freely gives, and in their belief is bound to give his time and talents, as brethren and sisters for the mutual good, one of another· This action is a breach of faith as well as of contract. When plaintiff agreed to dedicate his property and his services to this society, he did not suppose he was giving beyond what he received. He was admitted a member and entitled to all the privileges annexed to membership. The consideration has not failed through any cause out of himself. He made a contract—defendants have performed and are ready to perform. Plaintiff alone is dissatisfied and wishes to be off on a new contract of his own making. He has proved himself not

so good a man as he professed and they believed him to be. But they are willing still to use their endeavors to reclaim and reform him.

His right in this action to recover is much the same as that of a wife would be, after she had committed adultery and absconded from her husband's family. There might in this case be an equity in plaintiff, if he had been ill used by defendant or the family, and so, as it were, driven away; but the evidence gives no color for this. Going away was his own voluntary act. If he acted under a mistake of fact or law, in joining the society and entering into the covenant, it would be a different thing, but the evidence negatives any such pretence.

It has been hinted, and *only* hinted, that this dedication of property and labor was to superstitious uses, to a false religion and so not binding. No one can see the improvements made in husbandry and manufactures by this sect, and at the same time believe the existence of the sect to be against the policy of the law. Whatever we may think of their faith, their works are good, and charity bids us think well of the tree when the fruits are salutary. We cannot try the question, which religion, theirs or ours, is the better one—Each may prefer his own. Theirs is equally under the protection of the law, as ours. To try this question it would be but fair to empannel a jury de medietate. Suppose this small sect had a court, and our religion, opinions and practice should come on trial before it, what should we think of the correctness of a verdict finding our religion an absurd one and tending to immorality? In matters of faith we are incompetent to judge each other. There certainly are some reasons for saying that the religion of this sect of christians, bears a greater resemblance to that of the primitive church than ours does. Their discipline is more strict, perhaps, than ours, but not more so than that of the first churches of New England, the Presbyterian church of Scotland in former days, or the Methodists a short time ago.

Chief justice Livermore, (Evans and Steele, Justices, agreeing) summed up in favor of defendant, on the grounds stated above, and the jury found accordingly.

W. H. Woodward and D. Webster for plaintiff.

B. J. Gilbert and J. Smith for defendant.

To the foregoing may be added, the following remarks, in the instructions of the judge to the jury, in the case of Wait vs. Merril, in the court below. After making some remarks on the bitter spirit of prejudice that was in circulation, against the Shakers, he cited them to look back on former ages, and see how many innocent people had suffered for the free exercise of faith and conscience. "We will (said he) only go back to the time when christianity was first introduced into the world, by that, then, despised man, Jesus Christ. There were, then, a few, who separated themselves from the common course of the world; these were despised, and all manner of evil spoken of them—treated with the greatest cruelty, by professor and profane. Now all we who profess the christian faith, are obliged to acknowlenge, that they were the people of God.

"Now I warn you to beware what you do against these people called Shakers. God forbid that I should raise my hand or voice against them, as it respects their institution and doctrine of celibacy of which you complain; for it has been proved before us to-day from the highest authority on earth, that the doctrine of celibacy and community of goods, are agreeable to the precepts and example of Christ and the primitive Church.

"This people is not to be crushed: I am not placed on this bench to judge people's consciences, but to see that they are kept free. If any person goes to live with that society, under a profession of their faith, if they never sign any covenant, they cannot recover wages, nor is it right they should. If you let prejudice rule and give this cause against the defendant, it will not avail."

Upon a review of the foregoing matter, it would seem, that every thing worthy of being called an objection against the order, government and economy of the United Society, has been fully obviated. However, should any

professor of either law or gospel, in a spirit of candor, point out any thing illegal or immoral, in the view that has been given of the institution, the society stands ready and willing to pursue the investigation, till reasonable satisfaction is rendered to the candid public: but should persons who acknowledge no test of truth but their own fancy, light up their lantern of criticism, to shed a false light on any thing that has been stated, no attention from the society need be expected. Any thing flowing from malice or self interest, will be treated as charity and forbearance may dictate.

Our object has not been to stimulate but to administer a sedative to the passions of a selfish nature: not, indeed, to protect, but to bring to a rational decision, a disagreeable contest: for this reason we have avoided as much as possible, any controversy on those *moral sentiments*, so highly applauded by our opponents. We are willing that the converts to those sentiments should enjoy their *mental liberty*, only not try to force their sentiments or themselves into an unnatural association with our sentiments and our Society.

That the celebrated compiler of those newly arranged sentiments selected many good ideas from our Testimony, relative to community principles, needs no other proof than his pamphlet on that subject published in England, and presented to the king and parliament: his candor towards our society, manifested in that work, merits respect; but his taking our wine to mix with his water lays us under no obligation to mix his water with our wine, seeing the source from which his water is drawn, is so generally disgusting to civil and religious society, and especially so infatuating to some, who, from certain circumstances, have adopted our name and profession.

With regard to the names subscribed to some of the foregoing articles, they imply nothing more than a simple

attestation of facts and not a formal defence, on the principle of joint tenancy, which, according to law, would require the names of the whole society to be inserted. There are many at Pleasant Hill, whose names are not written in this book, who stand equally ready to give testimony to the truth, and "justify the way of God to man."

Extract from Dr. Holley's Review of Professor Silliman's Journal. Western Review, vol. 3, p. 203.

"The account of the Shakers near New Lebanon in New-York, is written, in the main, with a benevolent and an apologetical spirit. We were however sorry to see the word '*blasphemous*' applied, by so intelligent a casuist as our author, even with the softening note of interrogation that accompanies it. The essence of blasphemy is in the intention, in the state of the mind; and Mr. Silliman can have no design to deny the reality of a sincere Shaker's piety when he is singing his sacred songs. The writer does not appear to us to have read the large work, called Christ's Second Appearing,' or 'Dunlavy's Manifesto,' an octavo volume, when he says in reference to the Shakers, 'They rarely publish any thing respecting their own principles and habits." They have, in fact, given very full statements of their principles, and have labored, like other believers, to fortify their creed, by numerous quotations from the Bible, and even by criticisms on the Hebrew and Greek originals. They do not differ so much, as is supposed, from the other followers of Christ, when we go beyond their *exoterical* faith, and enter fully into the *esoterical*. Their Christ is the redeeming, anointing, and consecrating operation of the spirit of God upon human nature, and is not limited to either sex, nor to any age or country. They believe that the Divine Being imparts this blessing, in greater or less degrees, to all the truly religious; and they worship Christ, apparently with great sincerity and zeal, wherever they find satisfactory manifestations of the Divine Gift or Operation. They do not consider the sex affecting this question, nor do they attempt or wish to justify any of the acknowledged errors or sins of Ann Lee. While she was without the anointing

grace of God, she was like other persons in the flesh, and served the world in the same manner. Her marriage and her children only prove, that she was once the property of Antichrist, but afterwards she was turned to God, and received the First Gift granted, during her life, to any individual on earth. The Divine Spirit is not contaminated by taking any portion of human nature, which it may select, into union with itself. Even unregenerate persons may be used by God as instruments to accomplish his purposes, to convey his truth, to work miracles, to utter prophecies, and to show his power. Those, who were once wicked, may be sanctified, and may furnish a fit residence for a heavenly guest. Ann Lee was thus hallowed and honored. She is called *Mother*, not merely because she was a woman, but because she had the First Gift of the Holy Spirit at the time, and because the Holy Spirit, in its sanctifying influences, as distinguished in the creative or productive power of God the Father, is considered as maternal, as sustaining a character analogous to that of Mother of the faithful. Properly speaking, God as creator is our Father, but as sanctifier and cherisher, is our mother. The Shakers do not appear to believe that God is actually and literally male and female, but that he has the affections and performs the offices both of Father and Mother in regard to his children. Jesus, being a male, and united to God, was a son, while Ann, being a female, and enjoying a similar union, was a daughter. Jesus however, when considered in relation to his disciples whom he has spiritually begotten in his church, may be denominated Father, as Ann, when considered in relation to her disciples, whom she has brought forth in her church, may be denominated Mother. The highest sense, in which a Shaker uses Father, carries him to God as creator, while the highest sense, in which he uses Mother, carries him to God as sanctifier. It is not our duty to defend these ideas and distinctions, but to state them as an article of justice, towards the singular people, to whom they relate. Mr. Silliman seems not to have been perfectly initiated into the esoteric of their faith.

"Another point in their creed, which it is somewhat interesting to know, is this, that New Lebanon in New-York is destined to be always the Metropolitan See, and its church the Vatican of Shakerism. The head or Pope, the individual or individuals having the First Gift on earth,

enjoying the most intimate union with God, and appointed to give infallible directions to the people of the true faith, must always reside at New Lebanon. This person, when the Gift falls upon one, may be either male or female: when the Gift falls jointly and equally on two, as it may, and they are of different sexes, they are then the Father and Mother of believers. The common idea, that there is always an Elect Lady, who is the lawful successor of Ann Lee, is erroneous. It happens at this time that Lucy Wright of New Lebanon is the Elect Lady, or has, as it may be otherwise expressed, the First Gift. But where the Gift is bestowed jointly and equally upon a male and a female, and the female should die first, the male would then be the Elect, and the will of Christ would be made known, by way of eminence, through him. Christ may be called, *it*, as well as *he*, or *she*; and it depends on the circumstances of the particular application of the term, whether one of these pronouns, or another, shall be used. When the reference is to Jesus, it is proper to use the pronoun *he* for Christ; when to Ann, the pronoun *she*; and when to the operation of the Holy Spirit, without including any individual person as the instrument, the pronoun *it*.

"We do not suppose it to be necessary for us as reviewers to go into further details upon this mystical subject. We only wish to furnish a clue to carry such of our readers through this theological labyrinth as may desire to gratify their curiosity in so great an extent. No faith is more easily misunderstood and misrepresented than that of the Shakers. The metaphysical explanation of it is so different from popular apprehension, that great pains, and some talent in conducting a moral analysis, are necessary to do justice to this remarkable sect. We may be in an error in what we have said, but we have given our impressions fairly, after having read their books and talked much with their teachers. We might easily go on to show that the doctrine of the Trinity is considerably modified by them in comparison with the common form in which it is held, and that several other doctrines of theirs are not strictly orthodox; but we have no time to follow out such a plan of exposition. We can only say that we admire the industry, temperance, neatness, systematic arrangement, and efficiency, of the clusters of Shakers which we have visited."

SPEECH OF ROBERT WICKLIFFE.

IN THE SENATE OF KENTUCKY—JAN. 1831.

On a bill to repeal an act of the General Assembly of the State of Kentucky, entitled, "an act to regulate civil proceedings against certain communities having property in common."

Mr. W. said, that having been a member of the Senate when the obnoxious bill passed, he did not think it due to the Senate upon the former readings of the bill now under consideration, to trouble the Senate with any remarks upon the subject under discussion. And even on to-night, said Mr. W., when the question was about to be taken on the passage of the bill, I thought it only due to the Senate to explain the necessity of the repeal, and to express my hopes that the bill would pass without opposition. But this solicitude, briefly expressed, has drawn forth the Senator from Barren, (Mr. Maupin,) and he has called out the Senator from Nelson, (Mr. Hardin,) and who has shared the hardest fate, the poor Shakers or myself, will be difficult for the Senate to decide. Their crime sir, is, that they have petitioned to be relieved from unconstitutional oppression and outrage, under the form and semblance of Legislative authority; and my offending is, that I have, to-night, expressed the same opinions of that most exceptionable measure of the Legislature, which I did in 1828, when it was on its passage *through this Senate*. Yes sir, I told you then that that bill was unconstitutional, and that the Judges would so pronounce it to be; and I tell you now, that it is not only unconstitutional, but a stain upon your statute book, which this Senate, where it originated, should hasten to wipe off. What I then told you, and what the gentleman from Nelson then denied, has happened—the Judiciary has pronounced the law unconstitutional and *void*.

But that gentleman now tells us, that if the Judge has so pronounced upon the act, it only conduces to convince him of what he has had suspicions of for some time, that is, that the Judge is becoming a dotard. Sir, this is an easy way to meet an argument. When I told the Senate, three years since, that the law violated the Constitution

and the rights of conscience, and that the judge who failed to pronounce it void, would deserve to lose his office for his guilt or his ignorance—that gentleman, and those associated with him in forcing the passage of the bill, treated the idea that any Judge would dare pronounce their bill unconstitutional, as a figment of my fancy; and now, sir, when what was then opinion is fact—when a Judge has dared to do his duty and to sustain the Constitution against your encroachments—why the gentleman has an argument equally potent—the Judge is in his dotage. Does the gentleman believe this! It would not do for the gentleman to say the Judge is no judge of the subject; that his opinion on all subjects is too unimportant and trivial to entitle it to weight on this; nor could its strength be impaired by a reference to the character of the Judge as a jurist. No, sir, the Judge to whom the gentleman has reference, has filled and adorned a seat in your Judiciary for more than a quarter of a century, and if report be true, is about to retire from the bench, to enjoy life in virtuous retirement, whither he takes the just applause of his numerous friends and enlightened contemporaries.

Sir, it did seem to me a little surprising that the gentleman from Nelson should attempt to defeat the passage of this bill, by a personal reference to the distinguished Judge who pronounced his law unconstitutional. I can but think the remark inadvertent, and such as he will on reflection take back. Indeed, sir, were I to judge from the private opinion of the gentleman of the learned Judge, from what I have heard him say, from my knowledge of his capacity to judge of the fitness and ability of a lawyer, I would sooner expect any thing from him than an expression disparaging the opinions of Judge Broadnax upon a point of law, and I will now appeal to that gentleman's sober reflection and demand whether any one Judge does or ever did preside in our Circuit Courts, entitled to more or so much of the gentleman's respect and confidence as a *jurist.*

Indeed, sir, I must protest against my friend the Judge, being so soon consigned to dotage. I saw him a few days since at this place, in all the vigor of bodily health and intellectual strength, for which he has ever been distinguished; and sure I am, a suspicion of his dotage cannot arise from his age: if so, I may also hold my peace. I do

not know the Judge's age, but I have more grey hairs than he has, and judging by another standard of *age*, I am greatly his superior in antiquity: I am a father, and a grandfather, while the Judge is yet in *single blessedness.* Indeed, sir, if the number of grey hairs, or wife and children, and children's children shall make the age of the dotard, the gentleman from Nelson is not free from suspicion of dotage. No, sir, the gentleman will have to give some other answer to the high authority from the Judiciary against this act of tyranny, than a replication that the Judge is *doting*.

Equally objectionable is the attempt of the gentleman to turn a grave subject, a question which involves the rights of personal liberty, and the sacred rights of conscience, into ridicule. The society of religionists called Shaking Quakers, have with becoming dignity, and in decent language, laid before the Legislature their grievances and prayed relief. This they have done, it is true, in little books, having, as the gentleman from Nelson says, *blue covers*, and this it is that is so peculiarly offensive to that gentleman, who states that he has for some time seen Shakers passing from room to room and treading on the heels of members, but for his part he has held no communication with them—that he has not read their *blue book*, and never will read it.

Sir, said Mr. W., I regret extremely that that gentleman has thought it his duty to thus treat these unoffending petitioners. What have they done? As human beings they have a right to petition; for, treat them, sir, as you have done, and may do, they are God's creatures, and, like every creature bearing the image of the Creator, are susceptible of feeling pain, sorrow, and oppression—and by your laws you have oppressed them; yes you have not only oppressed them by your unconstitutional laws, but by such laws you have attempted to deprive them of the rights of conscience, set the pettifoggers to work upon them, and sent constables, sheriffs, and catchpoles to take and carry away from them the bread which they have earned by the sweat of the brow. And it is petitioning against these outrages upon the rights of conscience, the rights of property, and the rights of man, that has provoked the gentleman to apply in such unmeasured *strokes* the keenest edge of his satire, against this humbled and oppressed people. No one, I am sure, could have listened to the arguments

of gentlemen against the repeal, and have imagined that many of the remarks which have fallen from them are applicable to the most inoffensive and unpretending people *under heaven.* Indeed, gentlemen who on other subjects, are exhaustless in metaphors and comparisons, seem on to-night to have exhausted their usual stocks, great as they are. They have, I trust, drawn from other sources some of their figures than their own hearts—some that have at least novelty to recommend them.

One gentleman is extremely distressed for a figure to represent these Shakers; he, however, in the fertility of his imagination, finds out that a society of Shaking Quakers is just like rabbits in a brier patch. [Here Mr. Hardin said he had not said the Shakers were like rabbits in a brier patch.] I know, said Mr. W., that gentleman did not say so, but he knows who did; I did not allude to him, but the gentlemen from Barren, (Mr. Maupin.) That gentleman says you might as well expect to catch rabbits in a brierpatch, without traps, as these Shakers without this bill; and the gentleman from Nelson, (Mr. Hardin,) says that extraordinary cases require extraordinary remedies, that without the bill this society would be insufferable in the country.

To these remarks I am sorry to be compelled to reply, that I do not consider the first a very appropriate one for either the Senator or the subject: and to the latter remark, I can only say, that I feel astonished that the Senator should have spoken in such unqualified terms of the great public nuisance that this society is or would have been but for this famous act: an act that never has been executed and never will be executed, before a competent and upright Judge—an act that has answered no other purpose but to feed the cupidity of pettifoggers and other maintainers of suits, at the expense of the repose of a religious and an unoffending society of Christians, can scarcely have done the wonders ascribed to it by the gentleman.

Sir, is it not a little strange that the gentleman should have hazarded the assertion after he in the outset of his argument, boasted that he held no conferences with these people—that he read none of their "little *blue books?*" Whence, I would ask the gentleman, has he derived his certain knowledge, that the society would, but for this act, be insufferable? I regret, and that sincerely, that the honorable gentlemen has not condescended to read one of

these "blue books." If he had, I think he would not now oppose the passage of this bill. He would there have found, that the causes which had given rise to this bill had been considered by as able and illustrious men as ever presided upon a bench of justice, and had been decided always in favor of the Shakers. He would have seen too, that he has totally misapprehended the nature and objects of these religious people, from whom he apprehends such serious mischief, if the law be repealed. From this book he would have learnt, sir, that some of the lawyers of New York, New Hampshire, Massachusetts, and Maine, as well as some of those of Kentucky, have had a *penchant* for the goods, chattels, lands, and tenements of the poor Shakers—that the Judases among them *there*, as the Judases *here*, have been stirred up to betray and sue this society as communities, on claims for labor or property deposited in the common fund;—and he would have seen, sir, that the learned Judges in those cases, gave to the Lawyers and maintainers *there*, the cold comfort Judge Broadnax has given them *here*. He would have learnt another thing, sir, and that is, that these people have existed in those States, as they do here, for forty years, and that no such acts are found necessary in any State but this. So far from it, sir, most of the learned Judges in the very luminous opinions delivered by them, pass the highest encomiums upon the sobriety, industry and peaceable habits of these people. I tell the gentleman, learned as he is, that if he will only condescend to read the *little book*, it possibly may induce him to reflect upon another book a little more, before he again comes to the rash conclusion that he will not read a petition of any sort, offered to him as a Senator, that is, a book which recommends to us to hear "all things, but to hold fast to that *which* is *good*." I think, sir, that if that gentleman had read that little blue book, he would have spared the Senate his remarks about my heated zeal and sanguine temper upon this occasion; and that instead of that gentleman assisting to break down the rights of conscience, and to oppress and ruin these people, they would have had in his powerful talents, an advocate worthy their defence.

But as the gentleman has chosen not to hear, and can find no better apology for my feeble exertions in behalf of these oppressed people, than a heated imagination and a too sanguine temperament, I can only submit it to that

gentleman to consider if he has not permitted his own imagination, or that of others, greatly to mislead him in the course of this debate.

The gentleman has told us that he was induced to enlist himself with the friends of the bill, to force its passage through this body, because he was informed by a gentleman of high respectability, that this people were traversing the country up and down inveighling proselytes to join them—separating husbands and wives, father and child, brothers, sisters and friends; and after thus seducing and stripping them of their property, had reduced them to the condition of absolute slavery. That they were in the habit of contracting debts, and that they even refused payment for the common articles of marketing. Now sir, that the gentleman was told all these things I have no doubt, and that the honorable gentleman's informers believed what they communicated; but that these tales are highly exaggerated, and most of them wholly untrue, I have as little doubt; and yet sir, I could admit them all to be true, and still prove that they furnish no apology much less a reason for the law, for which they are made the pretext.

But, sir, as I believe that this law passed not only with too little reflection, but that it has its foundations in a spirit of prejudice and religious persecution, wholly unworthy of the age we live in, I will not admit what I do not believe to be the fact, even to hang a prejudice upon my acquaintance with the history of these people in Kentucky, Ohio, and elsewhere; and my personal observations on them strongly negative these rumors collectively and in detail. Our constitution guarantees the right of conscience and the right to not only found, but to preach new doctrines of faith; and if it be lawful for all to do so, unless the gentleman can prove to me that the Shaker is not a human being, the Shaker has this right. Do not Presbyterians, Baptists, Catholics, Episcopalians and Methodists, in the language of the gentleman, range the country up and down, diffusing their creeds, making converts to their respective churches. And dare you, sir, to pass such a law as this to stop their proselyting? A. Campbell has his particular faith. It is not long since I witnessed him passing to and fro in quest of proselytes, and although some *pious christians* in this most *pious* town closed their churches against him, dare they or you to propose such a bill as

this, to stop him from proselyting? No sir, no; we all know too well where Samson's strength lies—we had as soon catch the forked lightning as to attempt such a measure against any other religious society but the Shakers. If one of those other religious societies asks us for a charter to make *patent right preachers*, we have a scuffle for the floor, and he is the most fortunate that can make the first and prettiest speech in behalf of religion and letters *chartered together*.—Yes, sir, your bills incorporating such religious societies as ask for them pass by acclamation. It is who shall first get the floor to obtain leave to bring in the bill, and who shall then be the fortunate mover to dispense with the constitutional readings of the bill. But woe to him that dare to doubt the constitutionality or propriety of permitting a single church at a single point to have corporate existence and powers to sue and to be sued, defend and be defended, and to acquire estates, so that its rent roll does not exceed fifty thousand dollars annually. Sir, can you tell how many patents you have granted to religious communities? How many have you granted this session, by which you authorize them to turn out Preachers, to range up and down, as the gentleman will have it, after converts.

It was once the case, Mr. Speaker, that the authority to preach was declared to be derived from the master of our religion, who when on earth, bid his disciples to preach the gospel to all nations; and since his ascension, we believe that he spiritually commands his disciples to do what he corporally commanded when on earth. Pastors once ordained preachers of the gospel by and under the authority of their heavenly master alone; but now sir, they have your charter to make patent right preachers *for us*. We outdo the yankees two to one. They plough and sow, and make paper for Bank notes under patent rights. We can do all this, and what is more, have our religion taught, and then preached to us by patent right. Sir you know that this is the pitch to which you are bringing the religion of the state, although you have disguised and masked your charters to convents and synods, conferences and associations, under the title of college bills. It is true the Baptists and Methodists have not come up to the full measure of the Presbyterians and Catholics yet, in obtaining charters for theological schools; but they are not far behind them, and a few more short years will place

them side by side with them. This is church and State, sir, in high style for you. What is an established religion but a religion that works or operates under a charter from a state? The charter granted by the act of settlement of the English crown is not more a grant of exclusive religious privileges than your grants to St. Joseph's and Centre Colleges are. The sovereignty of the State is pledged and granted away in every case, and every religious sect that you have set to work under such charters* as you have granted to Centre College and St. Joseph's, will mort main your real and personal estates to such an extent as, at no distant day, will produce a severance between church and State, and give to our descendants a lesson which we were taught by our fathers, but which we have not had spirit to profit by.

One gentleman falls out with the Shakers because they will not ask of you an act of incorporation. He says he will give them one if they will accept of it. Sir, that is what you have no right to do, although you have done the same thing for other religious societies. The Shaker denies that his society is associated for the purpose of accumulating wealth, but contends that they associate for objects of piety and benevolence; that they labor as the early apostles did to sustain nature only, that the food and raiment when provided, is like *Peter's fish* when taken from the net, for common sustenance and the property of no one. If this is the Shaker's faith, well may he scorn your charter to gather church wealth under. But if they are really the mercenary wretches they are represented to be, grant them your charter to accumulate property, give them perpetual succession, give them the right to sue and be sued, defend and be defended, in all courts; and my word for it, they will in time, divide Mercer county with Centre College, if they do not mort main the whole of it. These people, with their habits of industry would, thus chartered, be terrible, and soon threaten the well being of society. And yet, gentlemen wish to force Shakers to become incorporated speculators, patented absorbents of the wealth and substance of the state. This condition the Shaker refuses; and you are attempting to force it upon him—you tell him, that it is not politic and wise for Shakers to hold property in common,

* Charters have already been granted by the Legislature of Kentucky to not less than *eight* Colleges.

and not sue and be sued as a corporation. The Shaker replies, that Shakers have no community of property, or property in common—that like the early Christians, they worship together and have all things in common; but that they do not claim to hold as a community any thing. That as the followers of Christ dwelt together in a leasehold or rented house, and worshipped together, and worked for their daily food and raiment for the use of themselves and such as were added to the church, so do the *Shakers*. He will tell you what you all well know—that as a community they have no rights. That a devise or grant to the society of Shakers is absolutely void. That the lands on which their churches stand, and on which they labor for the common food and raiment of the votaries of religion, are private property, held by individuals as individuals, and not as corporators. Sir, he will tell you that even the food and raiment earned by the labor of the hands of the Shakers, are not the property of the community, nor held by them as such: but that they are provided for the society and such as shall be added to the church, or sojourn among them; a fundamental principle of his faith, he will tell you is, that the society as such, is never to connect itself with the world, but that they are to separate themselves from the world and its concerns, deriving by their labors from the earth, food and raiment.

These are the views and professions of these people; and however strange and absurd, however foolish it may appear to gentlemen, I would remind them that all christianity, was once foolishness to the Greeks. I admit, sir, that as far as I can comprehend the religious faith of these people, my mind rejects it. But what have I to do with their religious faith? Who made me a judge over any man's conscience, that I should say to him, you do not worship your God acceptably or conformably to his word. This a matter between the Shaker and his God.

Let us not attempt, Mr. Speaker, to regulate this matter by our Legislation; but, sir, even on this head, these people have been greatly misrepresented. I sir, once felt shocked at the thought that there was a sect so far sunk in idolatry as to offer supreme worship to *Ann Lee*, and great was my surprise when I recognized among them, some whom I had once known as learned and pious divines in other denominations. But sir, a better acquaintance with these people, satisfies my mind that they offer

worship to God alone—that they only ascribe to the founderess of their sect the inspiration which other christians have done, to distinguished lights in their churches. In their worship they have no barbarous rites or cruel sacrifices. They pray to one supreme God, and sing night and morning, anthems to him and his Christ. With the religion of this people, I again repeat we have nothing to do—over it we have no constitutional control—nor have we a right to regulate the temporal economy of the society, only so far as that may violate some known law of the State.

They do not profess to hold property, real or personal, as a community. They do not profess to exist as a community—but for religious and pious purposes. They deny that they constitute a company or a corporation for any temporal purpose or end; they deny that they have, by their religion or conduct, failed in their allegiance to the commonwealth, and claim the protection from the government, which is due from allegiance. They deny that they have, by their religion or conduct, forfeited any one of their natural rights of sueing or being sued, of defending and being defended, in all courts as other men are, and they complain that you have, by your laws, interfered with their rights of conscience, and deprived them of their natural rights as citizens. They say that no one is authorized by them to contract or be contracted with, so as to charge them as a company or community. That for all crimes, misdemeanors, or contracts, Shakers are responsible as other men are, and by the laws of the land, should, when charged in court, have the same opportunities afforded them of making their defence.

Against these statements, neither of the advocates for disfranchising these people has attempted a refutation. One gentleman says that a man may fraudulently conceal his property by transferring of it to the Shakers or joining their society. The argument founded on these suppositions must be unsound, when the suppositions are not based on fact.

I have already shown that a transfer to the Shakers, as a community, is absolutely *void*, and the property would, notwithstanding such transfer, remain liable to be taken by the sheriff. You may transfer property to natural persons or artificial bodies, provided the artificial bodies are created by charter, with power to hold property. A

transfer to the Shaker society is void; but a transfer to Centre College is good. In the first case the property would not, by the sale, be covered from the sheriff—in the latter case, it would pass to Centre College; because that College can, by its charter, buy and hold property. It is not enough that the law creates or allows of political bodies, to enable such bodies to take by purchase. The charter must enable the body to take and hold property. This was fully proven in Peart's *will.* There F Peart devised his estate to the county of Woodford, for the benefit of a school. The devise and the use were declared by the Supreme Court to be void, for the want of capacity in the county of Woodford to take and hold lands. I appeal to the gentleman from Nelson to bear testimony to the Senate that this is the law. I call upon him in candor to say that the Shakers can neither hold property nor maintain suits as a community—to admit that however great the outrage may be, that shall be committed against the Society, no action in the name of the Society can be brought,—to say, if a band of ruffians were to enter a Shaker village and drive off every cow, hog and horse they found in it, whether any action in the name of the society could be brought for such outrage. The gentleman knows that these people, as a community, have for such outrages no redress. He knows too, that if some swindler should inveigle these people out of their entire property and stores or provision, by executing his bond to the community of Shakers, that the bond will be void, and these people be without redress.

When your laws do not allow this society to take and hold property as a community, when the law does not allow them the privilege of suing as a community for any contract, however fair on their part, or any outrage committed against their rights, however flagrant—is it not too cruel to be borne with, that you disable them to defend as individuals in courts of justice, and allow suits to be brought against them as a community, and allow judgments upon such suits to pass, on which not only the joint labor of the men, women and children may be seized and sold, but the individual property of both adults and helpless infancy. Yes sir, your law, if it amounts to any thing, entails upon women and children, born and to be born, debts to the extent of their joint interests in the common stock, and when that fails, to the extent of their

property, which they may acquire by descent or purchase as individuals, in any period of their existence.

There is another feature in the bill, sir, of still deeper and blacker malignity, from which it manifestly appears, that its draftsman feared that the court of appeals would get hold of his measure, in which he most warily attempts to exclude the Shakers from prosecuting an appeal or writ of error against any judgment obtained under this act. Do not understand me as saying, that because a right to prosecute a writ of error or an appeal is not given to the Shakers by this act, that they will be without remedy for outrages committed upon them under cover of this law. I refer to the fact, to test the motives which are displayed on the face of the bill, and to expose its context to the indignant frown of the Senate and the whole people of the State.

I will, Mr. Speaker, that the Senate may have a full view of this fact, read it: (here Mr. W. read the act, and continued.) The first section, sir, provides that a bill in chancery may be filed by any person having a demand above $50 upon any contract express or implied against any of the communities of people called Shakers, &c. Now, sir, here is a plain and obvious deprivation of common right, by our law on most contracts expressed or implied. The remedy is at law, and not in chancery, where the defendant is not made a witness against himself, and where he hath the benefit of all legal pleas—and our boasted trial by Jury—of these invaluable rights, dear to every freeman the first section of this act deprives the Shaker. The 2d section is, if possible, still more insulting and degrading to the feelings of freemen. The process upon this bill is to be served by sticking a copy of it to the door of the meeting house, and delivering another copy to some known member and reading it aloud at some one of the dwellings of the community. If this is done, ten days before court, it is to be a good service upon every man, woman and child, if there be five thousand belonging to the society; and will authorise a decree by default against all and each on a bill *taken pro confesso.* But the iniquity of this law is yet to be unfolded in another provision. It provides that all answers for and in behalf of the community may be filed on the oath or affirmation of one or more individuals of such community, who shall moreover swear that he or they have been nominated as agent or attorneys

for such community. Now, sir, contrast the condition of these Shakers with all other religious sects, and see if you find a parallel for this act *any where*.

By our law, by the universal law of nature, no man can be condemned unheard, and no man can be brought before the Judge but by and through personal summons, or its equivalent. This, sir, is common law. If two men are sued on their joint bond, or ten men on their joint assumpsit or contract, personal service is required on all, and if some be infants, guardians are necessary *also*, before judgment can be rendered; and if it be rendered without service, it is, as to all on whom process is not served, void, and as to those on whom it is served voidable—because all proper parties were not before the court. But this act makes a service on any member, male or female, adult or infant, service on all, on which a decree passes against all infants, feme coverts, and adults, in every other case, even where a free negro shall be a party, the right of infancy is so far respected as to appoint a guardian *ad litem* to defend. This law allows no such right to the infant Shaker.

But the language of the act is still more insulting to humanity and the rights of man. In the third section the act prescribes the only possible mode of defence to these people when attacked with this famous bill in chancery. And what is that? Why that the bill may be answered by agents or attorneys, provided such agents or attorneys shall do what the draftsman of the bill—what this Senate know it is morally impossible for them, with truth, to do; —that is swear that he or they have been nominated by the Society to answer. Now it is obvious if no answer is put in that the bill is to be taken for confessed, and the debt claimed decreed as matter of course. To produce this state of case for the Shakers the draftsman has carefully forbid an answer in the usual way, and has required that none but an agent or attorney shall be permitted to answer, and that such agent or attorney shall first swear, before the answer is received, that he or they have been nominated by the Society. Sir, I would ask how is this nomination to be made? Must it be by each individual man, woman and child signing, sealing, and delivering a power, or will a majority do? Is it to be done by writing or parol? Ought not your act to prescribe some mode—some rule by which the Society can act and these agents swear, so as to avoid a prosecution for perjury, or a decree

pro confesso? Surely it should. But your act blazes the way plain and obvious, by which the creditor and champerning lawyer are to reach the goods and chattels, lands and tenements of the Shakers, and leaves the Shakers in utter ignorance of what you mean when you speak of agents and attorneys answering for them *by nomination*. Sir, you use terms wholly unknown to the law, or the vocabulary of the Shaker, appointed by the community. Who made them a community? Not your charter, not your constitution, not the Shakers, for they have no power if they had the wish, to establish a separate community from the mass of the people. Civilly and politically, they are no community—religiously they are a society of Christians. Sir, no one will pretend to say, that the decree is against the Shakers corporally or as a civil body. Indeed I understand the gentleman to admit that it is against them individually, and reaches their individual property and partnership property, as a decree against partners in trade in ordinary cases does. Sir, what is the right of every partner when the firm is sued? Is it not to defend for himself, to plead, answer, or demur, jointly with his other partners, or separately for himself? And yet your act, although it proceeds on the idea of a partnership, refuses the partners collectively or individually to appear and defend. It provides that no defence be received for them but from sworn agents or attorneys, who are, before they can in safety take the oath, to have a power from every living partner, infant as well as adult.

Sir, I will not trouble the Senate with further remarks upon this act, to show that it is in its letter and design without its parallel in error or iniquity—that it is nothing less than a warrant and a cover to champerners and maintainers to harass, rob, and ruin these unoffending people. I have shown that it takes from them their natural rights; I have shown that it attempts to make them corporators against their consent—that it subjects them to suit and judgment without giving them remedy for their rights, and that it attempts to deprive them of a writ of error or appeal against the errors or oppressions of ignorant or prejudiced Judges, practiced under the cover of this law. I have shown you beyond contradiction, that not only adults but that even helpless infants, are deprived of the privileges extended to every other class of citizens, by this law, for no other cause, for no other crime but that it

has been their choice to profess the religion of a Shaker, or the lot of infancy to derive its existence of Shaker parents. If any doubt that I have shown all these things, I would ask them, if this act apply to any but Shakers, would they consider themselves free and independent citizens, with their rights fritted down, nay sir, taken from them as these people have theirs?

Sir, with this view of this act, does a just and high minded Senator need any other rule than his own breast—does any friend to the equal rights of man, require a constitution to incline him to restore these people to their equal rights as free men and free women? If there be any such, I will now show him that he is bound to restore the Shakers to their rights, by the oath he has solemnly taken to support the constitution. In the 3d section of the tenth art. of your constitution it is among other things provided, that no human authority ought in any case whatever, to control or interfere with the rights of conscience, and by the 4th section it is provided that the civil privileges or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion. How dare any Senator to stand forth, and in presence of his God, say you have not diminished the civil rights and capacities of the Shaker on account of his religion? None has pretended to do so—but the effort, the feeble effort, is made to draw a distinction between the body of the church and the individuals of the church. Sir, does not this exist with all sects as plainly as it does with the Shakers? The society of Presbyterians constitute a body of christians, not a civil body—so does that of the Methodist; as individuals, and not as a church, they are sueable and able to sue. This privilege is what you take from the Shaker, in express violation of the 1st section of the 10 article of the constitution. O, but says the gentleman, these Shakers hold their property in common. This I deny—and he on reflec tion must see his error. They can by law hold but as individuals; although as christians they may partake in common, and this partaking in common as christians or religionists of the food and raiment of the church is perceivable in every church that names the name of Christ. In some they partake more, and in some less in common. And no one ever until now thought of making them corporators or partners. To illustrate this difference between a common of property civilly, and a partaking in common,

you have only to recur to the Lord's Table, where all commune or partake, but none have either a joint or separate property in the bread and wine. In the days of the disciples, not only did the christians partake in common of the Lord's Supper, but in all things necessary to sustain nature. The gentleman from Nelson, however, seems to rely on the right to deprive these religionists of their civil rights, upon the fact that, their common stock goes beyond provisions, and that apparel, manufactures and beasts of burden are used in common, and that these people make for themselves the civil disabilities of which they complain. Very good, sir. If they are so disabled, why pass your law? The answer is, that the very fact that you have attempted to disfranchise them by your law, proves that they have not disfranchised themselves. The gentleman thinks that the privilege of thus acquiring and using property ought not to be tolerated. I answer, the law does not recognize this plan of life, but it does not forbid it, and therefore leaves the votary to pursue it or not. If the gentleman, or any other in the Senate, is for putting down this primitive mode of life among Christians, why not come out on principle? Why not make the law general, to embrace all societies or communities that use property in common? Why nail the poor Shaker with your bill?

Does not the gentleman know that even in his own county, and in other counties in the State, there have existed convents and nunneries, societies and communities of christians in the Roman Catholic church, not only working and accumulating and partaking in common but that many of the pious members of these societies or churches have made vows which exclude them from holding civilly any property whatever? And yet sir, let any Senator attempt to force such a bill as this on that portion of that gentleman's constituents, and we would then see the difference between that gentlemans's vote on a bill to disable Roman Catholics having property in common, and Shakers having property in common. I know the gentleman's constituents holding property in common have in some instances obtained *charters;* but that they have done in every instance but one, since the disfranchising law passed against the Shakers, and convents and nunneries existed long before and at the time the bill passed, where the votaries held, as far as I understand the matter, precisely as these Shakers do. But they were parts of a

persuasion of christians, powerful in numbers, wealth and talents, zealous of their civil rights, who would have chastised through their right of suffrage, any who had the temerity to propose a law so degrading to them and violatory of their rights as citizens. The Shakers are the poor and despised.—They exercise no right of suffrage—they have no member here to vindicate their rights—there is no proud aspirant after popularity, dreads their resentment; and hence it is that we take from them their civil rights with as little apprehensions of punishment, as we consign our free negroes to the whipping post for keeping a ferry boat or striking a white man.

If these Shakers would only *vote* sir, it would be amusing to see what wonderment, what concernment our would-be members of Congress and Governors would express that such a bill as this ever passed. Nay sir, the worthy chief who signed the bill would have sooner cut off his hand, than have committed such violence against the rights of man, of religion, and against his own tender conscience.

Mr. Speaker, I will not further attempt to prove that this bill is against the rights of man—against the constitution. I think the majority of the Senate must feel convinced that it grossly violates both. I can only then beg of gentlemen not to let a desire to banish this sect—not to let their own pride of consistency, to vote as they have heretofore done, prevent them this night from recording their votes on the side of justice, in favor of the rights of conscience.

Let those who vote against the repeal not expect to escape. The people will know and shall know, that a spirit of persecution, in its most hideous form, has manifested itself in the Senate, and that that persecution is persevered in, in despite of the constitution, which declares that no citizen's rights shall be diminished on account of his religion. After any Senator shall vote to sustain this bill, I trust he will never exclaim against the persecutions of the established churches elsewhere. Sir, if the object of any gentleman is to put down this religion because he believes it to be idolatrous or fanatical, I beseech him to take history for his guide. When did persecution, when did the contempt or cruelty of Legislation, ever banish religious error? Do not be misled by the popular feelings that may now exist against these people. They are less than that of the Jews against the Savior. They are less

than that which within half a century raged against Anabaptists and Methodists.—How long since poor old Craig, now scarcely cold in his grave, was incarcerated in the jails of Virginia, for shocking religious sensibility with the doctrines of the Anabaptists? How long since the Methodists were driven from their meeting houses to private houses, and from private houses to the woods, in a State that would now shudder to pass such a bill as the one you have passed against Shakers. Do you believe that the Methodist, Baptist, nay sir, that any of the great body of christians, will allow of this encroachment upon religious freedom with impunity? If you do, I think you greatly deceive yourself. There is no one sect safe if this bill be tolerated—and our country may yet be like Smithfield, smoking with human victims for religion's sake. Every Roman Catholic, Episcopalian, Presbyterian, Baptist and Methodist have a deep interest in this matter, and surely they will not be silent spectators of a crusade against the rights of conscience, which, after sacrificing one religion because it is the weakest, will follow up its successes until the Legislature will give to christianity itself creeds or rules of faith. Until the passage of this bill I treated all fears about established religions and religious persecutions as idle dreams.

Under this constitution, now violated on the subject of religion, I have seen the Catholic and the Protestant enjoy equal civil and religious rights, and their ancient prejudices disappear, until they mix and mingle as christians should do. In fact among all the sects there seemed to be only a laudable ambition to extend and diffuse a knowledge of religious truths throughout the world, when this bill first made its appearance. That it should have passed, at a time of the greatest religious freedom and harmony, will be a subject of curious history. All former persecutions have had their beginning with the churches, but in this the churches have had no hand. No, sir, I admit with a blush, that this persecution began with the bar. Yes, sir, whatever there is in disgrace, and I admit there is enough of it in this bill, attaches to the profession. A disgraceful spirit of champerty and maintenance has, in the passage of this bill triumphed over all the generous and patriotic feelings which in other times and on other occasions have been manifested by the profession for the feeble and defenceless

against the march of tyranny and the venom of persecution.

Sir, the Shakers have by their trustees, acquired lands, and have laid them out with their own hands in beautiful cultivated fields, with peculiar care and skill. They have built beautiful edifices and flouring and other manufacturing mills—their warehouses and barns overflow with plenty, and their pastures are whitened with their flocks—all the reward of their sober industry. These fields and these herds have been to a portion of the profession what the conventicles of the Jesuits were to Louis the 14th. There were already Judases among these people ready to sell them for a price. But the champerner wanted this bill, and you know, that it was worded to answer his purpose fully as it passed the Senate. The 4th section of the bill was, according to my recollection, added after it passed the Senate, in the lower house; that section arrested the main design of the authors of this bill out of the Legislature; they intended by giving actions against the society to its discontented members, without reserve, to strip it of every vestige of support, and divide snacks with the discontented. That section has given them trouble, but they are still pressing their schemes, and to be relieved from their grip the society pray the repeal—pray to stand in courts of justice as other men do, to be sued as individuals of other religions are. And pray, sir, why not afford them this request? Because say gentleman, they will make proselytes. They will seduce wives and children into their society contrary to the wishes of husbands and parents. Well, now sir, will the learned gentleman tell this Senate that this bill provides remedies for these evils specifically? He certainly will not. By depriving them of food and raiment it does; by exposing them to sharpers and swindlers, and depriving them of the means of defence in courts, it does, because without the means of subsistence the society must dissolve, must leave their fair and pleasant fields, and those beautiful edifices. The monuments of their art must be desolate or pass to the champerners.

But gentlemen deny that the object of the law was to break up the Shakers by seizing their property. If the object was to punish the crimes of seduction which is now avowed, why does the bill only embrace contracts express or implied? The man who has had his wife or child se-

duced can't sue upon a contract expressed or implied. This view of the bill and the contest between the Lawyers and the Shakers, ought to satisfy the gentleman from Nelson that the bill was intended for plunder, not to prevent crime. If a Shaker, or if Shakers, seduce my wife or child to leave me, does not the law give me ample remedy by an action for seduction, and the further remdy by indictment ? If a Shaker swindle me of my property does not the common law give me remedy by action for the fraud, and the commonwealth redress by indictment also ? And pray what more does your act do, as it regards frauds and crimes ?—Nothing sir. But it seems to involve in the same measure of retributive justice the guilty and the guiltless. If your laws against seductions, frauds and swindling are not sufficiently penal, make them more so. This will be right—it will be just. But do not say in your bill, if a Shaker swindle he shall be punished—the whole society of Shakers shall be punished, This will be unjust—it will be unconstitutional. You have no right to punish a Shaker because he is a Shaker. This is extending to other religions exemptions, and disprivileging Shakers on account of religious opinions, contrary to the 10th article of the constitution. The constitution and sound policy require that your laws shall never take notice of religious creeds and divisions.—That you shall never say in your acts a religious society shall have the right to sue and be sued, plead and be impleaded, hold, possess and enjoy in perpetual succession, lands, tenements, &c. as you have done on the one hand, and that another religious community or society shall not have the common privileges of freemen, as you have said on the other hand.

But gentlemen tell you that I made too much of a small matter; that if the judges have decided the law unconstitutional, why, there is an end of it—why not leave the Shakers where they ought to be in the courts of justice ? Mr. Speaker, (said Mr. W.) I do not pretend to measure things by myself. If the measure does not strike me as pregnant of great good or evil, in my brief time and action, I am not like some gentlemen, who deem it but a small matter. I have learned from history the dreadful effects of church and state joined together—the pernicious consequences resulting to the well being of society from a government mingling church and state together. I have, thank God, lived in an age and under a constitution, that has fritted down asperi-

ties, until sects not only mingle in the ordinary concerns of life in friendly intercourse, but many hold religious intercommunication. I therefore dread, if not for myself, for my children and country, a course of legislation which is to set the sects at war, and which invites to a spirit of cruel persecution. Sir, I experience enough daily of political persecution and fanaticism, or proscription, to make my soul sicken at the prospect of a like state of feeling generated among the religious denominations. Yet I think I see that to an absolute certainty your theological charters and Shaker bills will produce it.

Sir, as the gentleman from Nelson has been kind enough to advise me not to make too much of a little matter, I will in turn advise my friend to ponder well his course this night. Yes, and if I had the assembled people of my country, I would put one question to him, and that is, how many generations does he think will pass over before the people will have to break down these theological charters and reclaim the church lands? And yet sir, this branch of the subject is as yet but a small matter: all mischiefs are small in their commencement, compared with their results. This is, to be sure, a small matter: nothing but the rights of conscience, the rights of property, and the rights of persons are involved—why therefore make a fuss about it? We do not strip the Shaker naked and send him to the stake because he will not renounce his faith, but we in mercy spare his life, if we do strip him of all he has.

Mr. Speaker, I have shown that the Shakers are not a civil community; that they do not as such act. I have shown that any contract made with them as such is absolutely null and void; that they can only contract and be contracted with as individuals, and that each and every individual is liable upon each and every contract as other men are; that Shakerism gives them no claims to exemption from their contracts, and ought not to deprive them of a single advantage or civil privilege enjoyed by every other citizen of the commonwealth. But gentlemen seem to think that there is something in their business that calls for a separate code of laws from that of other people. Sir, what temporal business do they follow? Their great business is agriculture, mechanics and manufactures: they are a body of farmers, mechanics and manufaturers, and are divided into families of men, women and children, in separate and distinct buildings, at convenient distances—have com-

mon schools, and one or more common places of worship. In agriculture they excel every other portion of your State; and in architecture and *neatness*, are exceeded by no people upon the earth. Sir, your towns and villages bear testimony every where of their skill in the mechanic and manufacturing arts. The whole society live in unexampled neatness, if not elegance—not a pauper among them—all alike independent, and as happy as that independence and innocence can make them (except for your persecuting act.) Who has visited one of the Shaker villages, that has not experienced emotions of delight at the peaceful, harmonious, but industrious movements of the villagers? Who can look upon the splendid edifices, the green pastures and golden fields, the produce of their industry and art—who can look upon their flocks of fat cattle and extensive herds, and not admit that the blessing of a kind Providence rewards their innocent labors? None Sir, none. Let a stranger visit your country, and enquire at Danville, Harrodsburgh or Lexington, for your best specimens of agriculture, mechanics and architecture, and sir, he is directed to visit the society of Shakers at Pleasant Hill.

Sir, if this society were idle vagabonds, without houses or homes, living by lying or stealing, which they cloaked under the garb of religion, you might tax your brains with ways and means to avoid the 10th section of your constitution, to break them up. But it is not so with them: they are better off, live better, and wear better, and pay better, than most of their persecutors. To talk of a Shaker's debt, to prate about their failing to pay for marketing, is worse than mockery. You know otherwise; the whole people know otherwise; your very wives depend on them for brooms and vessels for their dairies. Other societies have their preachers passing from place to place, subsisting upon the hospitality of the friends of religion; not so with the Shakers; when they leave home they carry their food or buy it—they lodge in their own vehicles or pay for their lodging; nothing from your missionary societies, nothing from your charity funds, nothing from your tract societies, goes to aid Shakerism. No sir, no; the Shaker by the blessing of heaven and the strength of his own sinews, needs no such aids; but his town is the refuge of hundreds of the poor and naked of your land. No man ever entered his town hungry and he gave him not meat—naked and he clothed him not. How many poor, helpless women, when

cast off by drunken and worthless husbands, have entered the village with their famished and naked children, where they have been cherished, fed and clothed, and the children educated and raised, free of expense to the State. Go to Pleasant Hill sir, and there see how many human beings have found shelter from the blighting effects of your divorce laws, and you perhaps will agree that the beginning of a political error is not as great as its ending.

Sir, suppose to ascertain the extent of this nuisance, that gentlemen are so anxious to get rid of, you raise a committee to inquire how much Pleasant Hill was worth when owned by old Samuel Woods, how much revenue he paid for it, and then to ascertain how much it is now worth, and what the trustees of the Shakers now pay into the treasury and in county levies. I presume the gentlemen would hardly consent to test the merits of their bill by experiment.

Sir, I have, I think, fairly put the Shaker upon trial, I have before this Senate exposed his life and conversation; I have interrogated his accusers, and wherever they have alleged ought against him before this Senate, I have refuted the charge. I do not say sir, that you ought to say as Pilate said, I find no fault against this man. No sir, who but that divine prisoner was ever without his faults. If his frailties are great, greater if you please than his accusers, yet he has violated no law; no sir, not even violated the peace of the sanctuary, as was alleged against the Saviour of the world. The Shaker is no disputer in the temple, no brawler in your streets. He has not asked you for your capitol, or the sects of Frankfort for their churches, to make proselytes, to diffuse his doctrines in. He has never begged charters to build churches or schools *of any*—but in humble meekness he renders to Cæsar the things which are his, and industriously pursues the noiseless path of duty in the even tenor of his way. And this is the kind of a man chosen for a victim; this is the sect you have selected as the object of your persecution.

Mr. Speaker, if I could have anticipated the opposition to the repeal from the quarter it has come, I would not have pressed the discussion at this late day in the session, much less at this late hour of the night. I have no interest in the question but what every friend to the rights of conscience should feel. It may pass as a light affair and be treated as such. If the Senate however do not retrace its steps this

time, I shall sincerely deplore it; and I think that I hazard little in saying that some who hear me will live to repent it.

There is one further subject, that (late as it is) I will not forbear to call the attention of the Senate to. It is the high penalty imposed on those that join the society of Shakers by the act of 1812. At that early period of this society the spirit ef persecutlon against them seems to have aroused. By that act you make it cause of instant divorce of man and wife, if either party should join the Shaker society, conferring an ability of a second marriage on the party who does not join them.

Against this act, in the very teeth of your constitution, the Shaker has not complained. and however unjust and unconstitutional he may have viewed it to be, he has left it to the legislature and the persons desirous of adopting Shakerism to settle. Sir, suppose you only look a little into the principles of this act, while you are retrospecting your course of legislation in relation to these people. By this act you make the membership in the society a greater crime than simple adultery, drunkenness, and total abandonment: you place the proselyte upon the footing of a convicted fellon, sentenced and serving in your penitentiary. A man can abandon his wife for any period less than two years, and a woman her husband, any period less than three whole years, and either may practice drunkenness or adultry their whole lives, and your laws give no dissolution of the marriage rights of the injured party; but if a poor, wretched and abandoned woman shall find shelter for herself and her naked children from a drunken and worthless husband, but for a day, among the Shakers, she is placed upon the footing of an open adulteress, who shamelessly avows her adultery by living with her paramour; she is treated as the convicted fellon of your penitentiary—and so of an afflicted husband, who seeks repose in the Christian consolation held out to him for the treachery of a wife to his bed; your law places him upon the footing of the convicted highwayman or horse thief. In fact sir, you endeavor by your bill to render a Shaker village as odious as your penitentiary.

Sir, if a man abandons his wife to hunger and nakedness, you give him two years to reflect, repent and return; so, if a female abandon her husband, you, in consideration of the weakness of her sex, allow her three years to think of her husband and children, before you grant a divorce. But if she or he for conscience sake, but enter the thresh-

hold of a Shaker church, although the party without the church is nurtured and guarded by the party entering and the whole society, during the membership, you allow no time for reflection and repentance. The crime committed is more pregnant than that of horse stealing; for in the one case the criminal may avoid a divorce by flying from pursuit—the divorce depends on conviction; but with the Shaker, membership without conviction, is a good foundation for a divorce. Sir, suppose you were to attempt such a bill against the Methodists, Presbyterians or Baptists—say by your law that any who shall join either of these societies shall forfeit all the marriage rights—who dare propose such a measure?—None. And yet sir, this act is, as it regards your constitution, and as it regards the rights of conscience, as palpable a violation as such an act would be.

Sir, I cannot but see the parallel in your legislation between these people and the free people of color. If you attempt to put down the vice of gaming, to punish blacklegs and swindlers, your very words and thoughts are weighed in scruples. These nuisances, say gentlemen, have their rights—take care of your constitution, take care of the rights of persons. But only introduce a bill to punish a poor negro, and it would seem as if we had neither mercy nor constitution. Sir, there is something so debasing in the thought of oppressing the weak, that my very soul revolts at it. These people are few in numbers; they do not vote; and hence it is that you trample upon them.

Sir, the charters you have granted to theological seminaries and schools are a blending of church and state together, against the mandates of the constitution and the solemn warnings of all history. I mean to draw no invidious distinctions or irritating comparisons; none of those venerable religious communities that have obtained them, who know me, will believe that I can ever feel otherwise than the deepest solicitude for their welfare and usefulness in diffusing light and life to a sinful world, as it was taught by the divine author of their religion.

But see how different is the condition of all the church property owned by these religious societies from that of the poor Shakers. Their houses of God are common property, and instead of the Legislature torturing their ingenuity

how to have them seized and sold to pay debts, they are sacred from the profane touch of lawyers, sheriffs and constables; no tax or levy is paid for their church property: the laws guard their worship by penal enactions from all intrusions. Not so with the Shaker: his house of God is valued for taxation, and the tax is paid to the last cent upon it; and his time and his house of worship made by the odious law before me the place and the time for lawful intrusions by the sheriff and constables. The gentleman from Nelson says that he sees no harm in serving process on their house of worship. Need I appeal to all who feel as Christians, to duly appreciate this feature in this bill. It is especially levelled at the Shaker's religion and worship. Sir, when we go into the house of God, to worship where our fathers worshipped, and reflect that when we have passed off the stage of life our children's children will worship the same God at the same altar that we and our fathers have, free from worldly and sinful intrusion, we justly appreciate our condition in life, and feel gratitude to heaven that our lot of life is cast in a land where the law interferes with religion no farther than to protect its votaries from insult and intrusion by rendering sacred their rights and places of worship.

But what share in this reflection, so consoling to frail humanity, has the Shaker? His worship is taxed to support the government—the house he has consecrated to God you throw open to the intrusion of the Sheriff. In your bill of rights he reads that all men are born equal, but your Legislation tells him that this does not include Shakers. Whence, Mr. Speaker, arises this strange inconsistency in the action of the Legislature upon these religious communities? Sir, I am sorry to declare that it arises from cowardice. The strength of Samson is in his locks—free suffrage is this terrible Samson. The Catholics, Presbyterians, Baptists, Episcopalians and Methodists vote at all your elections, and this is the Samson that you fear; and hence it is, that you have so repeatedly violated by your acts of incorporation that portion of the first section of the 10th article of the constitution, which declares, that no preference shall ever be given by law to any religious societies or mode of worship.

I again repeat, that I have not referred to this delicate and appalling question, with unfriendly motives to any

religious society, but with the sole view of pointing out to the Senate its inconsistencies, and obtaining for an unfortunate and oppressed people a restoration of their rights as freemen. No, I trust that the day is not distant, when the enlightened votaries of Christianity will voluntarily restore to the State those charters, as inconsistent with both the constitution of the State and the religion of the Savior. If this is not done, let all have charters that ask for them, and the evils resulting from the practice will soon be too manifest to be borne with. They will in a few centuries call forth such *acts* as those of Henry the 8th and Louis the 14th, and revive the ancient statutes against mortmain.

But sir, there is another evil, still more to be dreaded. These charters will divide your State into castes and clans, as hostile to each other as bordering tribes. You are, by chartering religion and letters together, instilling sectarianism and bigotry into your very children. The child of the Baptist is educated to consider the child of the Presbyterian its enemy and rival in letters and religion. Sir, persevere in your untoward course, and you revive the old war of Protestant and Catholic. I therefore call upon you this night, as you regard the repose of society, and the sacred cause of religion and letters, to retrace your steps.

The following is an extract from the opinion of the Court, referred to by Mr. Wickliffe.

"One great object of civil government is equal rights and equal privileges: and the constitution prohibits the enactment of laws, which are unequal in their operations. I say then, that any statute which bears unequally is void, for its unconstitutionality.

"Whenever a legislative act involves certain great natural rights, which are the birthright of every citizen; if it impugn that right, it is a violation of the constitution;—It is contended, that this law is unconstitutional in another point of view. This community of Shakers have no legal existence; and it seems evident that they have no legal

existence, because not recognized by some law.—I have, then, come to the conclusion that if the society have no legal existence, they can neither sue nor be sued; both of which could be done, if they had.

"All laws, to be constitutional, must be equal, and to be equal, there must be a mutual reciprocity; Therfeore, waiving all other objections and difficulties, there is no reciprocity in this Act, and consequently it is unconstitutional; because, if the whole society can be sued under this Act, it ought also to enable them to sue. I am, therefore, fully persuaded, that for want of reciprocity this law is unequal, and therefore unconstitutional."

SOME ACCOUNT OF

THE PROCEEDINGS OF THE LEGISLATURE OF NEW HAMPSHIRE

IN RELATION TO THE PEOPLE CALLED

SHAKERS,

IN 1828.

From the New Hampshire Patriot.

THE SHAKERS.

AT the session of the Legislature in June last, Mr. Goodall of Bath presented to the House of Representatives the petition of James Wallace and 124 others, praying legislative aid for the wives and children of such as join the Shakers. This petition was referred to the committee on the Judiciary, and on their report the consideration thereof was postponed to the next session.

Early in the November session, the petitions of Amasa Sargent and fifty-six others, and Lemuel Dow and others, nearly in the same words, with the petition of Wallace and others, were also presented to the House; and the whole were referred to a select committee consisting of Messrs. Wilcox, Betton, Dudley of Raymond, Chapman of Milton, Moody, Rice and Wason.

The remonstrance of Nathaniel Draper and others in behalf of the society of Shakers, was subsequently presented and referred to the same committee.

At a meeting of the committee on the 3d of December, the petitioners requested a postponement of the hearing to the 16th, and it was granted.

On the 16th, the committee met, and the parties appeared. Philip Carrigain, Esq., of Epsom, was the petitioners' counsel, and Joel Parker, Esq., of Keene, appeared in behalf of the remonstrants.

The petition was read by Mr. Carrigain, and is as follows :—

To the Honorable Legislature of the State of New Hampshire in general court convened. We whose names are undersigned, being inhabitants, freeholders, and householders in the town of Enfield in New Hampshire, and the towns in the vicinity of said Enfield, would respectfully represent,

That in our opinion the course pursued by the Society of people in Enfield called Shakers, has been for a long time past, and still continues to be, highly injurious to the best interests of the community at large, in several particulars: and that the evils arising from their peculiar management are such as to call for legislative interference, and legislative enactment of some law, or laws to prevent, as far as may be, without violating the constitution of the State, the evils of which we complain.

We would represent, *first,* that the course pursued by the said Shakers has had and still has a most injurious tendency in society at large, as it leads many heads of families to violate the marriage contract and its obligations, either directly or indirectly, by such a disposition of their property that their wives must either immerse themselves among the Shakers, shut out from those privileges previously enjoyed in society, or else have to provide for themselves by their own industry, or be dependent on their relations and friends.

We would state that there have been instances in which husbands have been prevailed upon to join the Shakers, and that these men have sooner or later taken all their property to the Shakers, and when confirmed in Shaker faith have signed their church covenant, and deprived themselves, their wives and their children of any personal right to the property ever after; so that in case of the husband's death their widows and children are cast upon the world penniless and dependent, for in case of the children leaving the Shakers they have no claim to the property in their hands.

We believe that it is a great evil to community to have children thus disinherited by the peculiar management of the Shakers, and that this evil has a direct tendency to increase pauperism.

One grievous and almost insupportable trial to wives and children placed in such circumstances as above alluded to,

is that husbands are taught by Shaker doctrine to hate their wives, and trample under foot all the endearing ties of life and of natural affection. Hence arises a course of hard, unkind, and even cruel treatment, which loudly demands a separate establishment for women, whose husbands join the Shakers.

Secondly. We believe that the course pursued by the Shakers to keep their children contented to live with them and continue in their society after they become of age, is such as tends to disqualify young minds for making a sober and rational choice, after becoming of age, whether to continue with the Shakers or to leave them. We think it capable of proof that the Shakers labor to instil into the minds of the children under their care that the people of the World, or all out of their Society, live like cattle, indulging promiscuously in sexual intercourse at pleasure, and in many abominable practices without prohibition or rebuke. That to persuade young people to sign their church covenant, or continue in their society, after they become of age, they say that all who leave their society and die in the world, will go to hell and be miserable forever.

That although children under their control are taught to read, write, and other elementary parts of common education, yet the ideas which are instilled into their minds are such as to disqualify them for making a proper choice for the direction of their course of life, and, in a measure, unfit them for becoming useful members of the community at large. This fact induces us to believe that when a man leaves his wife to join the Shakers, she, his children and his property ought to be under the guardianship of the civil officers of the town where they reside, or where their estate is located.

Thirdly. We believe that the Shakers, as a distinct class of people, enjoy privileges and immunities in some respects superior to any other class of citizens without paying any proper equivalent.—That they are exempt from military duty, which is a heavy burthen upon others, who must equip themselves and bear arms or pay fines, while the Shakers pay none.

In view of these matters of grievance as already enumerated, and many others proceeding from the same sources, we are convinced that duty to the State, and to the best interests of society, imperiously requires us to lay these

complaints before your Honorable Body, and request your attention to these subjects.

And we cannot but hope that some course will be adopted by the supreme authority of the State, which may in future prevent such evils to suffering individuals and to society. We feel it a duty which we owe to ourselves and to the Shakers to say that we have no personal pique or quarrel against them on any account whatever, and we are perfectly willing the Shakers should enjoy undisturbed their religious opinions so far as they do not operate to the injury of the community at large, or distress unoffending, virtuous females, heads of families and helpless children.

And we trust that you in your wisdom as fathers and guardians of the people in general, and of the oppressed in particular, will pay that attention to this subject which its importance demands.—And as in duty bound will ever pray.

AMASA SARGENT, and 56 others.

Mr. Carrigain, not having seen the remonstrance, requested that it might be read, and it was read by Mr. Parker, as follows :—

To the Honorable, the Legislature of New-Hampshire, now in session.

WHEREAS certain evil disposed persons, have for a number of years past strove, and still continue to strive, either directly or indirectly, to molest the peace of the United Society called Shakers, of Enfield, New-Hampshire, and have by their false statements and deceptious insinuations, deluded many well disposed people in this town and vicinity, (who perhaps are entirely ignorant of the principles of our institution,) to put their names to a petition for a redress of grievances, which never have existed since the organization of said Society; it would be proper to remark, that some of said petitioners have been, and still are dependent on said Socieiy for assistance in the comforts of life.

Therefore, we, the undersigned, members of said United Society, feel it our duty, as friends of justice and truth, to remonstrate against the aforesaid false statements and deceptious insinuations contained in said petition; and all documents contributing to their support; as a public

slander on the Society, and its institution, as an open attack upon our civil and religious rights.

Although we do not make a practice of answering or even refuting the vague and inconsistent reports that are circulated against us, yet, when our religious creed (so called) and conduct in general, are taken under examination by men in office, and our institution publicly proscribed as being injurious to the community at large; and when Legislative interference is invoked to decree our punishment for crimes of which we are *not* guilty, we feel bound to contradict their deceptious statements, and to represent those things in their true colors for which we are called in question.

Therefore, in answer to the charges set forth in said petition:—

Firstly; They state "that the course pursued by the Shakers, leads heads of families to violate the marriage contract, by such a disposition of their property as to disinherit wives, children, &c."

Answer, Firstly; As respects the marriage contract: If a man or woman join the aforesaid Society, being bound by the marriage contract, they are required by the institution of the Society to fulfil every obligation of said contract, both moral and religious.—They are bound to take care of each other with christian kindness and charity. But if they cannot live together in peace, they may separate by mutual agreement, and divide their property according to justice and equity. And the Society does not admit a separation on any other condition, unless the conduct of the unbelieving party be such, that the believer, after having faithfully fulfilled all moral obligations, can be fully justified both by the laws of God and man in a final separation. In the foregoing separation, there is no rule in the Society that dictates how their property shall be divided, only to require the believer to act according to the principles of justice and equity as above.

Secondly; As to the disposition of property: A husband and wife, being both of the faith of said Society, and having paid all just demands; and, after becoming fully established in themselves, by an experimental knowledge of the correctness of the institution and principles of said Society, and feel it a conscientious duty and privilege, to come into a joint interest, they may inventory their property by a mutual agreement, and make an equitable divi-

sion according to the following proportions, viz: eight shares to the man, four to his wife, two to each son, and one to each daughter. After making the division as above, the husband and wife, if they choose, may dedicate their own shares to the joint interest; and their heirs, if of lawful age, have their respective shares delivered to them by their father, to be for their own use and disposal. But if under age, whether they belong to the Society or not, their shares are deposited in the hands of the trustees of the joint interest, to be delivered to them when they become of lawful age; which will then be for their own use and disposal. The foregoing disposition of property has been the abiding rule in the Society ever since its first organization in a joint interest.

And further, they seem to insinuate "that the management of the Shakers has a direct tendency to increase pauperism," &c.

Answer; It is truly wonderful indeed, that these wise men should be so alarmed about pauperism at so late a period; whereas it cannot be found, after the experience of forty years of the management of the Shakers, that there has ever been one person chargeable upon the town as a pauper, who does, or ever has held any connexion with them, since the organization of said Society; neither can it be made to appear, that any person has ever been any expense to the town, on account of wives or children being disinherited by their husbands or parents joining said society, within the above mentioned period.

The following will show what the management of the Shakers has been; and also whether it leads to increase pauperism or otherwise.

In the year 1782, at the commencement of the denomination of the people called Shakers, in Enfield, we took into our community a poor family, on account of the faith of the father and mother, by the name of Howard, who were residents of the town of Enfield. He being very poor, was not able to support himself, much less his family. Two of his children being idiots could not be considered members of any society; therefore must consequently belong to the town as paupers. Yet notwithstanding, we have supported them for more than forty years, without their being any expense to the town, with the exception of fifty dollars, which the town paid in 1808, in part for their support that year. These two paupers have been a great

expense to the Society, particularly for the last twenty-four years; as they had to be watched day and night, and waited upon on all occasions, not being capable even to dress or undress themselves.

Therefore, allowing the moderate sum of seventy-five dollars for each, yearly, for the twenty-four years above-mentioned, after deducting the fifty dollars paid by the town, amounts to $3550,00.

It is ascertained from the records of the town of Enfield, that the sum expended of the town tax for the support of paupers, during twenty-four years past, does not exceed - - - $3245,50

The Society have paid of this tax about one-seventh, which is - - $463,64

And this subtracted shows that the rest of the town have paid - - $2781,86

The Society's expense for the idiots brought down - - $3550,00

The above one-seventh paid by the Society brought down - - $463,64

Which being added amounts to - $4013,64
wholly sustained by the Society.

Now it can be seen, at what expense the Society have been more than all the rest of the town, for the support of paupers.

The Society's expense, exclusive of the town, $4013,64

The town's expense exclusive of the Society, $2781,86

Expense of the Society more than all the rest of the town, - - $1231,78

Exclusive of the above expense, we have supported the poor of our own Society without receiving one cent of the town's money.

From the records of the town as above, it appears that the said Society have paid of school taxes in the above 24 years, - - $1546,37

And have received for the benefit of their own district, - - 796,50

Leaving of our tax for the other districts in town, - - $749,87

Thus, from the above it will appear whether the great alarm about pauperism was founded on any thing really

existing; and whether we have enjoyed the superior priviliges of which your petitioners so loudly complain; as it is manifest that the Society has not been any expense to the town for more than forty years.

Secondly; They state that "husbands are taught by Shaker doctrines to hate their wives," &c.

As this charge stands in a religious point of view, we have no other appeal than to the doctrine of Jesus Christ as recorded in the sacred scriptures of the new testament; which is considered the test for all christians. There we find that Christ inculcated the principles of humanity, love, and good will to all mankind; to this we strictly adhere, as before stated, with regard to married people, who are required to treat each other with christian kindness. But as Christ said "a man's foes should be those of his own household;" should this be the case, and unkind and cruel treatment arise in consequence of any receiving the faith of said United Society, as complained of in the aforesaid petition, it is always on the side of the unbeliever; for there have been several instances that husbands have disinherited their wives, and parents their children, in consequence of their religious faith, leaving them wholly dependent upon the charity of said Society, for their support. But it was never known that husbands or parents belonging to said Society, ever disinherited their wives or children, on account of their religious faith.

Thirdly; They think it capable of proof, "that the Shakers labor to instil into the minds of the children under their care, that many people out of their Society, live in criminal practices at pleasure," &c.

Answer; By this they would insinuate that it disqualified young minds from making a sober and rational choice whether to continue *with* or to *leave* our Society. This we positively deny; for we consider there could be nothing that would have a more direct tendency to prepare them to leave our Society, than to instil into their minds, that they, or any others, could live in promiscuous lewdness or criminal pleasure without prohibition or rebuke.

For it is evident that the minds of children are naturally enough inclined to evil, without any additional persuasion being instilled into them, or the idea that they can live in it with impunity.

We have too much regard for the present and future happiness of our youth and children, to fill their minds with

the corruptions that are in the world. It is our labor to lead them out of all evil into good and virtuous practices in all things.

Yet, that there are many people out of our Society, who live as pernicious lives as your petitioners have stated, we do not deny; nor will it be contested by any persons of candor and morality. These characters are plenty enough in this part of the country, to give our youth a fair opportunity to choose whether to follow their example, in a life of drinking, rioting, gambling and other pernicious practices, or to lead a life of piety and steady habits, taught by our Society. Therefore, if a life of piety and steady habits unfit youth and children for becoming useful members of society, it will be no hard task to discover for what society it unfits them. And furthermore, we merely state, that if the education and deportment of our youth and children, were compared with those of the children of some of the aforesaid petitioners, it would at once appear that they were not competent judges how children ought to be educated.

It is alleged in said petition, that we " persuade young people to sign the church covenant," &c

Answer; We deny the allegation. We never persuade any person to sign the covenant; it must be an act of their own choice; without being excited by fear or any compulsory means, for no one is permitted to sign it, until they first manifest it to be their own free and voluntary choice, and if any have signed it on any other condition, they have acted the part of a dissembler, and consequently will receive the portion of the hypocrite.

From the aforesaid petition, it appears that if a man receives faith, and joins with a particular religious sect, his wife, children and property, with all his natural and civil rights must be wrested from him, and placed under the civil officers of the town.

Answer; Could there such a law exist in this far famed land for its religious freedom? That a man must be stripped not only of his wife, children and property, but also of his natural rights, as an equivalent for the privilege of worshipping God agreeable to the dictates of his own conscience? How would it appear under the Monarchical Government of England, where a man can enjoy the same liberty to worship God, by paying only one tenth of the proceeds of his property?

Should there be such a law enacted, that would extend

to all religious sects in this land, we presume that even the petitioners themselves, (had they common sense) would disgust it.

It would be unnecessary to trouble the Legislature with any remarks concerning our aversion to bearing arms, as we have heretofore given our reasons on that subject; which are the same now. They can be found in a Memorial presented to the House, June Session, year 1818.

We would merely state, that there are several now living in our Society, who are legal pensioners; and for whom we might have received thousands of dollars—and the same reasons that induce us to abstain from bearing arms induce us to decline receiving pensions for that service.

Thus we have noticed the most prominent allegations contained in the aforesaid petition, which is predicated on statements manifestly false. Therefore we think it unnecessary to enter into a minute discussion of the whole; but what is stated may serve as a key to the rest.

Therefore, as the subjects of a just moral government, we individually hold ourselves accountable for our moral conduct; and as we have violated no existing law, nor the principles of humanity, we have no apprehensions that the wise Legislature of this State will give themselves the unnecessary trouble of forming laws for us, in distinction from other religious sects. But should it be thought proper, for the satisfaction of all concerned, to enter into an investigation of our institution, there is nothing relating to it, but shall be laid open for examination.

Therefore, confiding in that wisdom, candor and patriotic zeal, with which Almighty God hath inspired the rulers of this great nation; and with expressions of our grateful thanks for the blessings which we have long enjoyed under just and equal administrations; we subscribe ourselves the obedient subjects of the constituted authorities of the United States, and of this State, and the friends of justice, peace and truth.

In behalf of said United Society, Enfield, Nov. 27th 1828.

NATHANIEL DRAPER,
TRUEWORTHY HEATH,
CALEB M. DYER,
JOHN LYON,
JOHN BARKER,
SAMUEL BARKER.

Mr. Carrigain said, he was under the necessity of moving the committee to recommend the postponement of the hearing on these petitions to the next session of the Legislature. The petitioners, he said, were numerous and respectable—they had no private object in view—no personal pique to gratify—no personal interests to secure. They lay before the Legislature the grievances of the helpless and oppressed, and ask for redress. Their cause of complaint is of a public nature; the injuries complained of affect the community. Although extensively known and widely felt, it is still necessary, by living and intelligent witnesses, to make them correctly understood by the committee and the legislature. These witnesses we have not here for examination. At the commencement of this session, it was not known what direction would be given to the petitions, and seasonable preparation was not made for a public hearing. At a former meeting of the committee, the petitioners supposed they might be prepared by this time, and agreed to be heard this afternoon. Mr. Willis however who is one of the petitioners, and is agent for the petitioners, having other and public duties to attend to, soon found that he should be unable to collect the evidence which it would be desirable to offer at the present session, and he gave immediate notice to the remonstrants that he should not be able to go into a public hearing at this time. He supposed the Shakers could have no objection to a postponement, as it would be more convenient and less expensive for the parties and witnesses to attend here in June than in December. This is not like the trial of an individual in a court of law; and it is not necessary to support this application for a postponement in the same way, and by the same evidence which a judicial tribunal might require on a motion for continuance. Here the public interest is concerned. A powerful society is complained of—a society against which causes of complaint have existed for many years. It is time they should be investigated—fairly and fully investigated. The public require it, and will not be satisfied till a thorough investigation is had.—Should the petitioners be now driven out of the Legislature, other petitions will be presented and the Society will gain nothing by getting rid of a hearing on these complaints at this time. It will then be for the interest of all concerned to postpone the consideration of the whole subject to the next session, and then go into a full examination of it.

If however the committee should think it advisable now to take any step towards an investigation, he suggested the expediency of appointing a committee to meet at Enfield, and there have a full hearing of the petitioners and remonstrants. He thought such a committee by a personal examination on the ground would more probably ascertain the facts and obtain a correct view of the case than could reasonably be expected here. To this measure he believed the Shakers themselves ought not to object, and if they were indeed desirous of an investigation, they would not object. Such a course would be satisfactory to the petitioners and to the public, and he hoped the committee would be induced to recommend its adoption to the House.

Mr. Parker, in behalf of the remonstrants, said it certainly was not their wish to shun any investigation of their concerns, their character or their conduct either towards each other, or towards the world; but they do not think that they should be kept from day to day and from year to year in attendance upon the legislature, or any other tribunal, to answer and disprove the unfounded charges of those who knew nothing about them, and nothing of the matters of which they complain.

The committee has been told, with an emphasis, that the petitioners are numerous and respectable, and that there are fifty-six names attached to one of the petitions. I care not said he, whether there are fifty-six or fifty-six hundred.—Nothing in this case, is proved by numbers. As many might be procured to sign a petition that the devil should be appointed the keeper of men's consciences, or for any other purpose equally absurd. These petitions are often got up without cause, and signed without consideration.

It is well known that this is not the first time of exhibiting complaints to the legislature against the Shakers. A few years ago Mary Dyer called them here to answer to the charges of high crimes and misdemeanors, which she brought against them. It was then thought proper that a full investigation of their internal police should be made; and it was made. A Committee was appointed, and Mary was heard. The result was the acquittal of the Society, and their triumph over the slanderer. But the slanders are revived, and are the ground work of the petitions which are referred to you. These petitions contain nothing new.

It is complained that the Shakers are exempted from military duty. This exemption is not of recent origin. His

memory extended not back to the period when, if ever military services were required of them, or of any who were conscientiously scrupulous of performing such services. The laws regulating the militia have been frequently revised since 1808, and the attempt has been made to subject the Shakers to fines and penalties on account of their scruples. On this subject they have been heard by the Legislature, and the rights and the exemptions which the constitution gave them the Legislative power has never been prevailed upon to wrest from them. Prosecuted and persecuted as they have been, it would seem that they might now be permitted to live in peace, and that none should be allowed to disturb them on account of their religious opinions, or hold them to answer again and again to charges which have again and again been considered and refuted. It is certainly unjust and cruel to compel them year after year to attend on the Legislature to answer to charges which originated in prejudice, and altogether unsupported by evidence. In June last one of the petitions on your table was presented to the House of Representatives setting forth that the public was much aggrieved by the doctrines and practices of the Shakers, and that the public good required Legislative interference. It is, by the way, somewhat strange, if the public were so much interested in this as is represented, that the petitioners should find it necessary to become public informers. The Shakers live in the face of day—they are not so much in the dark as to escape the notice of the representatives of the people and the guardians of the public interests. If their sins are so heinous, and their practices so destructive to the best interests of society, it would not have required the complaining petition of fifty-six citizens of Enfield and its vicinity to call the attention of the Legislature to the subject. But the petition was presented and committed, and considered, and postponed to the present session. The ground work was thus laid for proceedings against the Society. The petitioners knew it; and knew their duty to prepare for a hearing. The Society by its agents are before you, and ask no delay. They are at all times ready to meet the charges which are made against them. They shrink from no investigation and wish for no concealment. Early this session the time and place of trial was agreed upon by the parties, and approved by the committee. This is the day and this the hour, and, punctual as usual to their engagements, the Shakers are be-

fore you to answer for themselves; to meet the evidence which may be adduced against them, and await the decision of the committee and the House. But the petitioners are not prepared to support their allegations. They have no witnesses to produce—no evidence of any sort to lay before you, and yet they ask for delay. Why are they not ready? If the evils of which they complained existed, it could not be difficult to prove them. They are of a public nature—affecting not merely individuals, but the community. Can it require weeks and months and years to prove their existence? If the Shakers were guilty as is alleged against them, there would be no lack of evidence to prove their guilt. The witnesses would be all around, and a week would not be wanted to bring them before you. Canterbury is an adjoining town, and but a few steps from you. The Shakers there are of the same society—the same in principle and in practice, with those of Enfield; and the same causes of complaint exist in the one town as in the other. Why are not the petitioners' witnesses, if they have any, upon the ground? It is not stated to you that they are sick or at sea, or in other climes or other countries.—No excuse is offered for their absence—it is not known that any attempt has been made to procure their attendance;—and yet you are urged to postpone the hearing and require the attendance of the Shakers at another session to answer to charges without foundation and without a shadow of evidence to support them or justify the delay. After the frequent investigations which have been had—after the delay which has already taken place—and after the acknowledged agreement of the petitioners on this day to have a hearing—the petitioners are justified in asking the committee to dispose of the petition and detain them no longer. It may be sport to the agent of the complainants to have this case pending before the Legislature from session to session and from year to year. He is a member of your House, paid by the State, and can attend here without inconvenience and without expense. This agency for the petitioners may secure him another election, and give him an opportunity to ask at the next session for still further delay. But it is not so with the accused. Their towns do not send them here, and the State does not pay them for their attendance. They attend at no trifling expense, with much inconvenience to themselves, and great detriment to their interests. But however painful to their

feelings, and injurious to their interests, they ask no favor on that account. They will at all times and at any expense yield submission to the constituted authorities, and obey their call; but they do expect to be protected from persecution and shielded from oppression.

The petitioners request if a postponement can be had on no other terms, that you would recommend the appointment of a committee to visit the Shakers at Enfield, and there go into an examination and hearing of these complaints. What can be the object of this proposal? It is simply delay. No good could be effected by the measure proposed. A committee might view their well cultivated farms and their neat and peaceful habitations, without seeing in either any evidence to support these complaints, or prove the guilt of the respondents. If the charges are to be proved at all, they must be proved, as has been stated to you by living and intelligent witnesses, and these witnesses may as well be examined here before a committee of the Legislature, and in the presence of the members, as in any other place.

The Shakers are desirous that the hearing may proceed. Although not so well prepared as they wish, to repel the accusations of their enemies, they have no doubt of being able to satisfy you that these accusations are unfounded, and that there is nothing in their peculiar opinions, doctrines or practices which can justify or induce the Legislature to become the keepers of their consciences or the special guardians of their property.

Mr. Willis gave to the committee a brief history of the origin and progress of the petitions and of the reasons which had prevented the petitioners attending at this time to prove their complaints. He said that although there had for many years been causes of complaint against the Shakers, they would not probably at this time have been laid before the Legislature, had not new cases recently occurred to excite the public mind and deepen the feeling upon this subject. The petitioners were not such men as would lend their names to any applicant or any petition without cause or consideration. They expressed the sentiment of the public, and were entitled, as he believed, to a fair hearing. On the petition which was presented last June no order of notice had issued, and at the commencement of this session it was altogether uncertain what direction would be given to that and the other petitions. After

the committee first met and agreed on this as the day of hearing, he soon found it would be impossible to prepare for it, and understanding from Mr. Winkley, one of the elders of the Society, that they were willing for an investigation, he gave him notice by letter that it could not be had at this time—supposing that the Shakers could as conveniently attend in June as now, he did not suppose there would be any objection on their part to the postponement. There were some material witnesses who are now out of the State, and others so old or infirm that they could not attend here at this season of the year. He hoped the consideration of the subject might be postponed, or that a committee might be appointed to go on the ground, and not only hear of, but see something of, the evils which were complained of. The petitioners would not be satisfied without a hearing, and if thrust out of doors without it now, they would apply again at the next session, so that the Society could in fact gain nothing by insisting on an exparte hearing.

Mr. Winkley said the Society had been called upon to answer for themselves before the civil government, and they acknowledged themselves bound to obey the call. The Legislature have appointed a committee to hear them, and they were now ready to be heard according to the agreement of the petitioners and the order of the committee. He knew no reason why they should not proceed. He had indeed a day or two since received notice from Esquire Willis, that the petitioners would not be ready to prove their complaints; but the Society did not think it prudent to rely on that notice, as an excuse for not attending to their defence. He knew that the enemies of the Society might again petition and complain, and that the Society might again be put to trouble and expense, but it was no reason why this prosecution should not be ended, because another might be begun. The Society must submit to whatever might befal them. They were now ready to be heard; and were satisfied with the men who had been appointed to hear them. They asked only for an impartial hearing and a just decision, and doubted not that the committee would give them the one, and the Legislature come to the other.

The Chairman of the committee inquired of the petitioners if they purposed putting in any evidence at this

time if the committee should not see fit to recommend a postponement to June.

Mr. Carrigain said they should not offer a particle of evidence, and that therefore a decision made under such circumstances could not be expected to be final, or to afford the Society any ground of triumph.

Mr. Winkley intimated that the Society were not contending for a triumph, but were only defending themselves, as they were required to do, against unfounded accusations; and although the petitioners had offered no evidence against them, they wished to prove that the accusations were unfounded, and that the government under which they lived had no cause of complaint against them; but that in all things they had demeaned themselves as peaceable citizens—not only obeying the laws of the land, but strictly observing the principles of justice and equity in their dealings with each other and with all mankind.

The committee did not consider it necessary that they should defend themselves against charges, in support of which no evidence was adduced; and they dismissed the parties.

The next morning Mr. Wilcox presented the report of the committee; and the resolution which accompanied it was adopted by the House without any opposition.

REPORT.

The committee, to whom was referred the petitions of Lemuel Dow and others—of Amasa Sargent and others—and of James Wallace and others; and the remonstrance of Nathaniel Draper and others, have had the same under consideration, and now ask leave to report as follows:

Upon considering the nature of the grievances complained of, and the measures indicated for the redress, the committee were not without strong doubts as to the policy or right of interfering in the manner prayed for by the petitioners. The committee, however, readily yielded to the wish of the petitioners, that an investigation should be had of the charges made by the one party and controverted by the other. At a meeting of the committee on the 3d inst. it was accordingly ordered on the motion of the petitioners and with the consent of the remonstrants, that there should be a public hearing of the parties before the committee on the 16th instant. The parties

attended at the time appointed; when it appeared that the petitioners were not prepared to submit any testimony to the committee, but were desirous that the subject should be postponed to the next session of the Legislature, and that in the mean time a select committee should be appointed who should repair to Enfield and there go into an investigation of the charges and allegations contained in said petitions.

Upon the other hand, the remonstrants avowed their readiness to proceed in the inquiry according to the agreement of the parties and the order of the committee, and objected to any further postponement of the subject. In the opinion of the committee no sufficient reasons were assigned, why the petitioners were not ready for the hearing at the time fixed upon, in the first instance, by themselves. Nor does it seem to us consonant either with justice or equity, that the remonstrants should be bound over to a further attendance at the next session of the legislature.

As it regards the appointment of a select committee to meet at Enfield, the committee are of opinion that such a procedure is not expedient. The subject under consideration is of great importance to the community and to individuals. The facts alleged as the ground of Legislative interference are not in their nature local—but must be proved or disproved by the testimony of witnesses. It is believed, therefore, that a much more correct understanding of the subject can be had from a public hearing in this place, at which the members of the Legislature may attend, than from the report of any committee however judiciously selected. The only argument in favor of the appointment of a select committee is, that it may save the petitioners some expense: but in a case like the present—where the petitioners propose to take from the members of a religious society the control and possession of their property—from fathers the custody and education of their children,—the expense of a public hearing before the Legislature sinks into comparative insignificance. The committee therefore report the accompanying resolution.

Resolved, That the petitioners and remonstrants have leave to withdraw their respective papers.

L. WILCOX, *for the Committee.*

December 16, 1828.

TAXATION OF QUAKERS AND SHAKERS.

In the House of Representatives of New-Hampshire, Dec. 31, 1828, on the second reading of the bill imposing fines, &c., for the neglect of military duty, Mr. Willis moved an amendment subjecting Shakers and Quakers to the payment of two dollars annually as conditional exempts.

Mr. Doe opposed the amendment. He was opposed to including men in the militia, who have consciencious scruples about bearing arms. He believed those people called Shakers and Quakers now paid their full proportion of the burthens of the community, in their voluntary taxes for the support of the poor, and their charities to the unfortunate.

Mr. Willis defended his motion on the ground of justice and equity. He thought, if these people were exempted, they should at least pay something in the nature of an equivalent.

Messrs. Colby of Weare, and Quimby of Sandwich, also opposed the amendment—which was rejected by a vote of 142 to 19—and the bill passed.