

15194

Nid
(North Branch)
Wem

90-

A

STATEMENT

BY THE

CONSISTORY

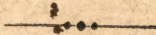
OF THE

REFORMED DUTCH CHURCH,

AT

North Branch, N. J.,

TO THE MEMBERS OF SAID CHURCH AND CONGREGATION.



NEW-BRUNSWICK, N. J.:
PRESS OF J. TERHUNE, 31 ALBANY STREET.
1856.

STAFFORD
COMMISSION

OF THE

REPORTED DUTCH CLAIMS

1850

FOR THE YEAR 1850

NEW-YORK: PUBLISHED BY J. B. BARNHART, 21 NASSAU STREET.

1850

A STATEMENT

BY THE CONSISTORY OF THE

[REFORMED DUTCH CHURCH,

AT

NORTH BRANCH, N. J.,

TO THE MEMBERS OF SAID CHURCH AND CONGREGATION.

DEAR BRETHREN :

The following resolution was passed unanimously by the Consistory, 29th of July :

“Resolved, That a Committee be appointed to publish, in pamphlet form, a history of the whole difficulty and proceedings that have distracted this Congregation.”

This resolution was passed chiefly because of the very incorrect statements that have been circulated, regarding the merits of the dispute between the late James Ten Eyck and the Consistory, regarding the deed for the Grave Yard belonging to the Congregation. In truth, the merits of the case have been altogether disregarded, while passion and prejudice have been excited against individuals apparently for the purpose of misleading you, and those around us who have taken an interest in our welfare. We believe that a simple statement of facts will best meet and correct the false statements that have been put in circulation. It is a bad case that requires to be sustained by unfair means, and must bring discredit upon those who use them. Those who have been

most zealous against the rights of the Church, have been permitted to go through the Congregation and make their own statements, without any contradiction from us, but now, duty demands that we lay before you the whole truth regarding the painful subject. It has been to us a most painful matter. Many hearts have been wounded, and many friendships broken up that should have gone down to the grave with us in all their strength and purity. Religion has been deeply injured, and God alone knows when the cloud that now overshadows us shall be moved away.

The present Consistory, on whom the burden and odium of the dispute has been made to rest, were not, as you know, the party who raised the action against John Ten Eyck. That action was raised by a former Consistory. Nor was this done without long and anxious endeavors to prevent the necessity of such a course, and when all other means failed, the Consistory with the advice of two meetings of the Congregation, and by the advice of the Great Consistory resolved, as the minutes distinctly show, most reluctantly, to apply to the civil law for protection in the possession of the property, for which the Consistory had held a deed from Mr. Ten Eyck for more than *twenty years*.

Many of the very men who gave their advice to the Consistory to defend the property, afterwards turned round and blamed the course which they themselves had recommended. Such conduct was, to say the least of it, very extraordinary, and clearly shows that they had come under some peculiar influence, for until this hour nothing like a rational reason has been given, and beyond suspicion, nothing is known

of the real object which they had in view in acting as they have done. Had we also turned with them, we had no security that they would not have again turned the other way, and we declined following them in their fickle course. Before some of us would accept of our nominations as Elders and Deacons, we insisted that the difficulty should be disposed of. This we did because the brethren about to leave their seats in Consistory had adjourned the consideration of the painful subject, and would have retired from office leaving the matter to be disposed of by us. This we objected to, and accordingly they agreed to dispose of the subject before we should enter on our duties as Consistory men. But scarcely had we taken our seats when some of these very men, forgetting their promise, urged us to undo what they had done, re-open the case and bring back all the trouble from which, by positive pledge, we had been relieved. This we refused to do, deeming it to be our duty to allow the matter to be fairly investigated. There was another strong reason which influenced us. John Ten Eyck, in order to induce us to comply with the demand made in the petitions presented to us, sent a document purporting to be a letter from Judge Howell to his father, reflecting severely on the character of Mr. Quick, and on the memory of the Judge. This, instead of being a reason why we should interfere to withdraw the suit, formed a very powerful reason for continuing it. "Doth our law judge any man before it hear him, and know what he doeth?" (John vii. 51.) The document referred to is as follows :

"AUGUST, 24, 1832.

MR. JAMES TEN EYCK :

SIR,—Yesterday, Mr. Quick was in town, and requested me to sign

my name to some erasures in the deed you gave the Consistory. I did so to gratify him. He said the Consistory had resolved not to receive the deed, unless you signed your name to those erasures. The deed is made worthless by these erasures.

Yours &c.,

A. HOWELL."

We never pretended to give an opinion regarding this document. It might be a genuine document, or it might have been a forgery, for anything we knew; but surely before we, as a Court, acted upon it, we should have known whether it was or was not a genuine document. Many of our opponents professed to believe it to be proof positive against the church, but the *opinion* of the Judges of the Supreme Court may probably alter their *opinion*. Had we, on the ground of this document, interfered to stop an investigation, we should have fastened the very grave charges, contained in it, on the character of Mr. Quick and on the memory of Judge Howell, without knowing whether they were just or unjust. This we shrunk from as an atrocious act, and for our determination to do justice to the character of the living and the memory of the dead, have we been persecuted. We surely did no injustice to Mr. Ten Eyck when we simply wished a fair investigation of these charges. Why some felt such terror at the thought of investigation, why they made such efforts to prevent it, they must themselves explain. To prevent this one thing they have desolated our church. We feared nothing, we sincerely wished justice to be done to Mr. Ten Eyck, Mr. Quick, and the late Judge Howell, and guided by this feeling we refused to interfere, but allowed the investigation to take place; and the opinion of the Judges of the Supreme Court convinces us that we did right. Now we are sure that many of you did not understand these facts. They

were not presented to your minds, or you never could have asked us to do to others that which you would not have wished others to have done to you. Surely the elders and deacons of a Christian Church should scrupulously endeavor to do justice between man and man. This is precisely what we have done. Mr. Ten Eyck's family could not justly complain of a fair investigation, and certainly cannot justly blame the Consistory for refusing to prevent such an investigation. Judge then between the Consistory and those brethren in the church and out of it, who have so vigorously labored to stop a just and righteous settlement of this painful subject. God, we think, in his providence, has approved of our course, for you know that those opposed to us have tried every scheme to prevent a fair investigation, but God has frustrated every attempt. Even the laws of the church have been trampled upon, and in the face of plain constitutional requirements, men were ordained as elders and deacons, for the avowed purpose of preventing investigation. But a superior court condemned such procedure, and rendered useless all the plans adopted to defeat the ends of justice. The civil and ecclesiastical courts have alike sustained us in our cause.

The real cause of dispute we know many of you do not and could not understand, we now beg to lay it before you, that you may form a correct opinion regarding it. On the 15th of Sept. 1829, a deed was executed by the late James Ten Eyck, conveying a piece of ground for a grave yard. This was agreeable to an arrangement between John Van Nest and Mr. Ten Eyck, without the knowledge of the Consistory. Mr. Van Nest purchased the ground and

directed that the deed be made out in the name of Consistory. When this deed was presented to the Consistory it was refused, because of two clauses which it contained. The first was as follows :

“Conditioned, nevertheless, that the party of the second part shall, at all times, at their own expense, build, keep and repair the whole fence enclosure of said ground, and in default, after one year’s notice from the said James Ten Eyck, his heirs and assigns, then the said newly-conveyed piece of ground shall revert to the said James Ten-Eyck, his heirs, &c.”

The second was :

“Provided, also, that the said James Ten Eyck shall be allowed for himself, burial, and that of his family, on the said lot of ground.”

These two clauses were erased, and the deed was recorded, and for more than twenty years it stood upon the record unchallenged.

In 1849, Mr. Ten Eyck sent the following letter to Consistory :

“DEAR BRETHREN,

“I wish to make a proposal to you regarding the burying ground. Great difficulty seems to exist about keeping up a fence and managing the arrangements of the ground generally. This appears to me to arise out of the fact, that so few in the congregation take any interest in it, and that, because the greater part have burying places elsewhere. It can scarcely be supposed that those having other burying places will ever take a proper interest in it, and it must, in consequence, be as it has hitherto been, neglected. Now, I will take it from the Consistory, pay for the surveying of it, and sell lots to all in the congregation, and that at a lower rate than that proposed by your committee. This will equally accommodate the congregation, and secure the better keeping of the fence and ground. The deed, too, I consider to have been rendered void by the erasements, *which I did not know of until I lately saw the deed.* My proposal will, if complied with, remove all difficulties now, and probably prevent greater difficulties hereafter. I therefore, brethren, request your prayerful consideration to my proposal.

I am yours, in the bonds of the gospel,

Nov. 30th, 1849.

(Signed,)

JAMES TEN EYCK.”

On the receipt of this, a committee was appointed to wait upon Mr. Ten Eyck to converse over the mat-

ter. That committee was John Liddle and Dr. Van Derveer. The Committee reported on the 14th of Dec., that Mr. Ten Eyck was willing to give the Consistory a new deed, *on condition that the erasures be restored.* This the Consistory declined doing, but afterwards expressed a willingness to do so, but dissatisfaction having been expressed, and an injunction threatened, the Consistory reconsidered their offer, and called a meeting of the congregation. That meeting refused to accept of any deed restoring the erasures, and appointed a committee to take evidence, and confirm the deed on record. Another meeting of the congregation was called, at which Mr. Ten Eyck offered a deed drawn by Joseph Thomson; that also the meeting refused to accept, and continued the committee above mentioned to attend to the business for which it was appointed. You will notice that Mr. Ten Eyck says that he *knew nothing of the erasures until he saw them on the face of the deed,* and afterwards produced the letter which we have already placed before you; showing that he did know of the erasures at the time they were made. On this we make no comments, but record the fact only to show you how necessary an investigation was.

Judge Howell testified on the face of the deed, that Mr. Ten Eyck consented to the erasures in the following words :

"From the word 'conditioned,' in the 21st line, to the end of what is erased, abrogated before witness.

(Signed,)

A. HOWELL."

Mr. Howell also, a Judge of the Common Pleas, under oath, testified that the deed so altered, was acknowledged by Mr. Ten Eyck. Under the first acknowledgment fully written out, he wrote :

"And also on the 22d August, 1832.

(Signed,)

A. HOWELL."

Mr. Howell also in his private diary made the following entry :

" August 23d, 1832. James Ten Eyck's deed to Branch congregation, corrected and perfected to the satisfaction of parties, for burying ground. Originally private ground."

To all this is added the testimony of a living witness, Abm. Quick, Sen., who, on oath, testified that he was present, when the erasures were made in the presence of Mr. Ten Eyck, and with his approbation. Now, in the face of all this, the members of the Consistory felt that, as honest men, they could not withdraw the suit, and by doing so condemn all this as being unworthy of credit. We considered it to be our sacred duty to permit the evidence on both sides to be fairly investigated. Justice, honor and truth, in our opinion, demanded such a course. Did we do right? judge ye!

Our brethren, who have treated us so harshly, we can heartily forgive, we know that they were deceived, and trust that they will now see their error, and yet labor to restore the ruined walls of our Zion. We know that advice was received from one in whom confidence might have been reposed, but it has been fatal to the peace of our church. Simon Nevius, an acting Elder, went to the Rev. Dr. Messler, of Somerville, who in an evil hour for us, advised him to get up petitions, go through the congregation, endeavor to get a majority of the people to sign them, and compel the Consistory to withdraw the suit, raised against John Ten Eyck for trespass, (John Ten Eyck, himself, in the Great Consistory, voted for testing the title of the Church to the graveyard.) This lighted up the torch of discord among us. Since that fatal act discord has prevailed, and

misfortunes have fallen heavily upon us. The Dr's. motives in giving this advice, or his interference at all with our affairs are known to himself. The consequences only, do we speak of, and we deeply deplore them. We could conceive no advice better calculated to break up the peace of any congregation than that which Simon Nevius received and so fatally acted upon. He, too, sitting as a judge in Consistory, and acting as a partizan out of it. Did Dr. Messler understand the facts in the case? we hope not, or as a minister of that gospel that teaches peace, justice and love, he never could have given such advice then, nor acted towards us, as he has since done. True, the Particular Synod of New York condemned the action of the Dr. and that of his friends in Classis, in reference to our affairs.* True, the Supreme Court has by its action sustained us, although the Dr. and his friends pronounced our action to be inexpedient, but all cannot restore the peace and harmony of our

* Why the Dr. and his friends, in Classis, have pursued such a course as that which they have done, is an interesting question. They ordained certain brethren as Elders and Deacons in February last, in the school-house, in the face of an appeal, thus taking from us the precious right of appeal. But when the appeal came before the Particular Synod, it was sustained, and their action rendered null and void. The right of appeal from the decision of any inferior court is the right of every American citizen, consequently the Synod would not allow it to be trampled upon. But the same unconstitutional act has been repeated. The Dr. and his friends have disregarded the decision of Synod, and again ordained Elders and Deacons in the face of our appeal, and that too without any intimation of their nomination being made. This conduct comes again before the Particular Synod, and we have no doubt that Court will vindicate its own authority. The order of the Church, and the precious rights of its members cannot be disregarded without seriously injuring our beloved Church. Men unconstitutionally ordained cannot act legally. The Dr. and his friends have surely erred in such procedure.

Church, that his advice and action have been so instrumental in destroying. Had the Dr. not interfered there is no reason to suppose that the brethren who have been guided by him would have followed the course they have done, and we might still have been a united and prosperous church.

Some of you we know are but partially acquainted with the anxious efforts that were made to satisfy Mr. Ten Eyck, and prevent any evil from falling on the Church. Every one loved Mr. Ten Eyck, and were anxious to gratify him to the full extent of his wishes. Accordingly on the 2d of July, 1852, the following resolution was passed:

“Resolved, That the President be requested to ask Mr. Ten Eyck if he will accept of a deed for the whole of the reserve for his family burying ground, specified in the deed drawn by Joseph Thomson.”

This included his own family burying, the Van Nests, the graves of his ancestors, and an obligation to keep up the fence forever. Had this been accepted of, all difficulties would have been ended, but Mr. T. deemed it his duty to decline it. Again, on the 24th of the same month, another effort was made to compromise, and with a view to meet Mr. Ten Eyck's objections to the first offer, this resolution was passed:

“Resolved, That the President and John Tenbrook, be a Committee to ask Mr. Ten Eyck, that if a lawyer gives an opinion to the effect that a quit claim from Consistory would secure to him his family burying ground, would he accept of it?”

This was again rejected. But you will see that the Consistory were perfectly willing to do everything that lay within their reach to compromise the difficulty and gratify Mr. Ten Eyck. The Consistory, however, did not know that at this very time Mr. T.

had actually taken possession of the ground, and had deeded away a part of it to the Van Nest family, and is now on record. This may explain why certain individuals, both in the Congregation and out of it, have shown such zeal against the Church. This, too, as a matter of course, rendered all attempts to compromise vain, but all this you were kept ignorant of, and now it becomes our duty to state to you all the facts, that you may fully understand the case. In conformity with the spirit and opinion that gave the deed to the Van Nest family, John Ten Eyck took possession of the ground by locking the gate, and putting the key in his pocket, thus shutting out the Congregation. This act brought matters to a point. Consistory were compelled either to permit your property to be taken from you, or to defend it. The brethren who composed the Consistory at that time, could not reconcile it with their duty to give up your property, and as all their efforts to compromise had failed, they unwillingly resolved to seek the protection of the laws of their country. The Great Consistory was called for advice, and it advised, "defend the property." Accordingly an action was raised against John Ten Eyck for trespass. He admitted the fact, but defended his action on the ground that it belonged to his father, and that he had acted under his fathers orders, thus acknowledging that he had taken possession of the property. The case was tried in Somerville, as you know, and a verdict given against the Church. This verdict was considered to be in the face of the Judge's charge, and the members of Consistory, doing as they would have done had the case been their own, carried it for review to the Supreme Court. The Judges, composed of some of

the best and most intelligent men in the State, examined the evidence produced by both parties, declared the verdict of the Jury to be contrary to evidence, and ordered a new trial. This perfectly convinces us that we did righteously, when, amid the clamor raised against us, and the persecution that we have endured, we refused to interfere and withdraw the suit, but permitted justice to have its course. We trust, brethren, that you have been convinced that the afflictions that have fallen upon our Church have not been the result of any errors on the part of the Consistory, but on the part of those misguided men who sought to drive us from the path of rectitude.* We thank God for his sustaining grace amid the storm that has been raised against us. We thank Him that he has preserved the honor of our Church unsullied. And we thank that christian gentleman, Frederick Frelinghuysen, Esq., of Newark, for the christian and excellent counsel that he has always given us, and for the happy termination to which he has brought the painful dispute. By his advice we compromised when the Olive Branch was held out to us by John Ten Eyck. But for him we doubt if we should have been able to do so. The opinion of the Judges of the Supreme Court gave us such good reason to believe that we should certainly gain the case; but we are far better pleased that, on friendly grounds, the long, the foolish and the lamentable dispute has been ended. We carried out what we believed to be clearly the wish of the Congregation,

* We have been much disappointed in the course pursued by some of our neighboring clergymen, in lending their aid in trying to force us from the path of honor and rectitude in this matter. Surely we might have expected their approbation in resisting injustice and cruelty.

and we trust that we have convinced the family of Mr. Ten Eyck, that while we followed the path of duty, we had the kindest feelings to them, or we never would have compromised with our advantages. We were, in the providence of God, peculiarly situated, and, as honest men, knowing that we must render an account to the Great Head of the Church, we could know no man, but steadily pursue the path of duty through good report and through bad report. We have done so, and have a conscience void of offence. We trust also, that our brethren who have honestly differed in opinion with us, and those who have so harshly treated us, are convinced that we have done righteously. We now cheerfully retire from the government of the Church, and leave it to those who have so strenuously labored to displace us, and our prayer is, that they may enjoy far more comfort in the honorable offices they have been so anxious to obtain, than we have done, and that God may make them instrumental in rebuilding the walls of our Zion, which they and their friends have been so instrumental, in our opinion, in demolishing.

We present to you the opinion of the Supreme Court, and we do so without comment. It speaks for itself: (See next page.)

SUPREME COURT OF NEW-JERSEY.

The Ministers, Elder, and Deacons
of the Reformed Dutch Church,
of North Branch,

vs.

John Ten Eyck.

In Trespass.

To an action of Trespass for breaking the gate of a Burying Ground, the defendant pleaded title in his father, James Ten Eyck, by whose authority the trespass was committed. Upon the trial, the defendant proved that the burying ground was included within the limits of a fence, owned and occupied by James Ten Eyck. To rebut this evidence, the plaintiffs offered in evidence a Deed from James Ten Eyck to the plaintiffs for the premises in question, dated Sept. 12, 1829—recorded Sept. 29, 1832, in the Clerk's Office of the County of Somerset. They also offered evidence to show an adverse possession of the premises, by the plaintiffs, for more than twenty years. The defendant offered evidence upon the question of possession, and insisted that the deed was invalid by reason of an erasure apparent upon its face. A verdict was rendered for the defendant. The plaintiffs ask a new trial because illegal evidence was admitted upon the trial because the verdict is against law, and against evidence, and because of newly discovered evidence.

It was proved upon the trial, that the Lot in question was purchased of James Ten Eyck for the Church, in the year 1829. That the purchase money

was paid. That on the 12th of September, 1829, Ten Eyck executed a deed of the Lot to the Church, for the express purpose of a burying ground. That from that day to this, it has been used as a burying ground, and for no other purpose. That the Consistory of the Church, during that period, have had the oversight of it. That over twenty years ago, they erected a fence around it, which was kept in repair by the Church and Consistory. That recently they erected a second fence around it, and caused the grave yard to be surveyed into burying lots. That on the 12th March, 1849, the Consistory resolved to subscribe \$100 toward erecting a wall around the grave yard. They further resolved that the Sexton should take charge of the ground—that a fixed sum should be paid for each funeral, and that the unoccupied ground should be sold. At a subsequent meeting of the Consistory, on the 24th of April, 1829, they further resolved, that a Committee should be appointed to take charge of the ground, with power to erect a fence to survey the ground into burying lots, and to sell the same. During all this period, James Ten Eyck lived in the immediate neighborhood. He was a member of the Church and the Consistory. He was present at the meetings of the Consistory in March and April, 1829. He made no objection to their proceedings. He neither questioned their title or possession. He was present when the burying ground was surveyed into lots. He subscribed money to aid in building the fences. On the 30th November, 1849, he wrote to the Consistory, as difficulties existed about keeping up the fence and managing the ground, proposing to take it from the Consistory, pay for the survey of it, and sell lots to

the congregation himself. He adds: "The deed, too, I consider to have been rendered void by the erasure, which I did not know of until I lately saw the deed."

To meet this proof of possession in the plaintiffs, the defendant offered evidence, that prior to 1829, when the burying ground was placed by the Consistory in charge of the sexton, persons desirous of burying in the ground applied to James Ten Eyck to dig the graves, and for permission to bury in the ground. This evidence, if he acted as the sexton or agent of the Church, (as was insisted by plaintiffs,) did not at all conflict with the proof of possession in the plaintiffs. The defendant's plea admits possession in the plaintiffs at the time of commencing the suit. His conduct affords the clearest recognition of the possession in the plaintiffs for some years previous to that time. There is no evidence of a change of possession from the defendant to the plaintiffs, at any time subsequent to the purchase of the property. There is no denial of the purchase of the property by the defendants, and the payment of the purchase money by them in 1829, nor that from the time of the purchase down to the commencement of the suit, a period of more than twenty years, they continued to use the property for the purpose for which it was conveyed to them. The evidence, to say the least, is very persuasive that the plaintiffs entered into possession under an agreement to purchase, with the consent of the owner—that the purchase money was paid, and that they held adversely for a period of over twenty years. If such be the state of facts, independent of the deed, the plaintiffs had acquired legal title.

Brown *vs.* King, 5 Mel. 173.

Angel on Limitations, 437.

In regard to the documentary title, it is not questioned that the deed, as it was originally drawn, without erasure, was executed by James Ten Eyck, to the plaintiff, in the presence of Andrew Howell, as attesting witness, and that it was acknowledged before Andrew Howell, as Judge of the Common Pleas of Somerset, on the 15th of September, 1829. The note of the erasure upon the deed purports also to be signed by Judge Howell, as attesting witness. Under the certificate of acknowledgement the words, "and also on the 22d August, 1832. A. Howell." are written. The plaintiffs further, in support of his title, proved by Abraham Quick, that the Consistory by their committee, refused to accept the deed as it was originally drawn—that thereupon the erasure was made and attested by Judge Howell, in the presence of James Ten Eyck, after consultation with him, without objection upon his part. To meet this case, upon the part of the defendant, two papers were offered in evidence, purporting to be signed by Judge Howell, the attesting witness to the alterations in the deed. The first is a letter directed to James Ten Eyck, dated August 24th, 1832, two days after the in the deed purports to have been made, in which he states that he had signed his name as witness to the erasures in the deed, at Mr. Quick's request, in order to gratify him, and that the deed is made worthless by the erasures. The other is a certificate dated 19th of Sept., 1832, stating that he had signed his name to certain erasures in the deed—that he was told the Consistory had resolved not to receive the deed unless the erasures were made—that they did not know by whom they were made, and that he had every reason to believe that they were made

without James Ten Eyck's consent. Aside from the very remarkable character of these papers, considering the source from which they emanated, it is worthy of notice in estimating their value, that they were both signed before the deed was left at the Clerk's office to be recorded, yet no objection was ever made to the recording of the deed. No notice was ever given to the grantees of the illegality of their title. So far as the evidence shows, the papers were never heard of until more than twenty years after they purport to have been given. James Ten Eyck, himself, to whom those papers purport to have been given, on the 30th of Nov. 1849, more than twenty years after their date, writes to the Consistory that he did not know of the erasure until he lately saw the deed. Admitting the genuineness of these papers and their competency as evidence, it will be observed that the defendant relies alone upon them to destroy the validity of his deed to the plaintiff.

The plaintiffs had proved the signature of Andrew Howell as attesting witness to the erasure. That fact can not be gainsayed, for the defendant's own evidence affirms it. Both the letter and the certificate state that Judge Howell had signed as attesting witness. The plaintiffs further proved by Mr. Quick that the alteration was made before the delivery of the deed by the attesting witness, in the presence of the grantor, and with his assent. He had made out his case fully. Can the mere declaration, verbal or written, of the subscribing witness, in the absence of other proof of fraud, overcome not only the presumption arising from the signature of the subscribing witness, but the express oath of another witness, who testifies to the fact of the alteration, in the pres-

ence of the attesting witness. The verdict must be set aside as against the weight of evidence.

2. It is objected that illegal evidence was admitted upon the trial, viz: The written statement of Andrew Howell, the subscribing witness to the deed, who was dead, in disparagement of the evidence afforded by his signature. Similar evidence has been repeatedly admitted. In the recent case of *Storbart vs. Dryden*, 1st Melv. & Wels, 615, upon a review of the authorities, the evidence was rejected by the unanimous judgment of the Court. The reasoning and conclusion in this case is adopted by recent elementary writers of the highest character.

1 Phil. & Am. 221.

1 Greenleaf S. 126.

The evidence has, however, been more frequently admitted and approved in Westminster Hall, than appears to have been supposed by the Court of Exchequer, in *Storbart vs. Dryden*, and in this country the practice has been repeatedly assumed and acted upon as law.

Corse vs. Miller, 10 Serg. R. 155.

Loser vs. Loser, 2 Hill, 609.

It would seem that from the necessity of the case, (and in many cases, says Chief Justice Best, necessity forms the law,) and as affording the best substitute for the opportunity of cross examination, which has been lost by the death of the witness, the evidence ought to be received, in support of a charge of fraud or forgery. But standing alone, unsupported by other evidence, it is entitled to but little weight, and should never be suffered to defeat the title.

3. The affidavits disclose the discovery of new and

material evidence since the trial. Upon this ground, also, the verdict should be set aside and a new trial granted.

Let the verdict be set aside and a new trial granted. Costs to abide the event of the suit.

We also feel that you are entitled to know the *terms* of the *compromise*. We therefore lay it before you, and we particularly call your attention to it, because both at home and from a distance, have we again and again been informed that a false account of it has been circulated. The condition which Mr. Ten Eyck insisted on, and which produced all the embarrassment which the Consistory felt, has been dropped, consequently no difficulties lay in the way of a compromise, on the part of the Consistory.

The compromise is as follows :

“ 1st, That John Ten Eyck gives a deed to the above plaintiffs for the burying ground, in fee simple, *without condition*.

“ 2d. That the above plaintiffs thereupon give to the said Ten Eyck a release for the plots that were named in the proposed deed, drawn by Jos. Thomson, and which was to have been given by James Ten Eyck, deceased, to the above plaintiffs, dated the 19th day of Sept. 1850. And also, that they give to John Ryneer and Abraham Van Nest a release for the plots named in the same deed for their benefit.

“ 3d. That each party withdraw from the other all charges of impropriety touching any matters contained in the above suit.

“ Done in open Court.

“ Dated Sept. 7, 1855.”

We have now, brethren, performed the duty assigned us. We have given you a faithful account of the whole difficulty that has so sadly broken down our beloved Church. We are unwilling to lose your good opinion, and the good opinion of our neighbors, and animated with this feeling we have

laid the truth before you that you may judge for yourselves, and not depend on the statement of others. We lament the feeling that some of our clerical brethren have manifested, and the zeal that they have exercised to crush us, and give a party an ascendancy over us. But the Particular Synod of our Church has done us justice. We were striving for the honor of our Church, conscious that she was right. We may be driven away from her, but we can never cease to love her. "If I forget thee, O Jerusalem, let my right hand forget her cunning." (Psl. cxxxvii. 5.)

Yours, &c., &c.

JOHN T. VAN DERVEER, }
 JOHN RUNK, } *Elders.*
 PHILIP VAN DERVEER, }

JAMES C. TUNISON, }
 ANDREW A. TEN EYCK. } *Deacons.*