ARGUMENT, POINTS, AND AMENDMENTS

TO THE

PROPOSED EDUCATION LAW

BEFORE THE

NEW YORK LEGISLATURE, 1899,

ON BEHALF OF

THE CATHOLIC INTERESTS OF THE STATE OF NEW YORK,

BY

NELSON G. GREEN.

The delivery of the following argument before the joint Committee on Education was interrupted and forbidden by the ruling of Chairman White, of that Committee, at a special hearing, appointed at the request of the Catholic Club of The City of New York, for the afternoon of February 8, 1899, which hearing had been specially granted pursuant to such request.

Mr. Nelson G. Green, representing the Catholic interests of the State, after earnestly protesting against the ruling of the Chairman, obtained permission to submit his Address and Brief to the Committee and the Legislature in writing.

The following argument, therefore, has never been before the Committee, or considered by it, and embodies the earnest protest, on the part of the Roman Catholic citizens of the State of New York, against the passage of the Education Bill in its present form.

Mr. Chairman and Gentlemen: Whenever a legislative body undertakes to pass laws relating to any one of the great departments of State government it at once becomes the right and bounden duty of every citizen to examine and carefully scrutinize each word, each sentence, each sentiment, express or implied, which may in any degree affect or modify the rights and privileges of each individual in that commonwealth.

It is, none the less, the duty of each one of you upon whom devolves the additional privilege of finally passing upon such provisions to weigh and conscientiously pass judgment upon every suggestion, however simple, which may be honestly made, involving these same rights and privileges, the daily duties and burdens of each and every citizen in the State.

When one is called upon to pass judgment upon proposed legislation affecting business interests, the mind at once demands information upon two topics, namely: the source from which such proposed legislation has sprung, and the real scope and purpose of it. What is true in legislation relating to business affairs is pre-eminently true when we are called upon to pass similar judgment upon so important and weighty a topic as that of public education.

In considering, therefore, the proposed measure, known as "The Education Bill," which is before us to-day, it is of the utmost importance that we ascertain the real source from which it has sprung, and minutely examine and understand the full purpose and object of each and every paragraph thereof.

The Education Bill had its birth in a commission, whose existance, powers and limitations have been fixed by law. The Commission of Statutory Revision was first authorized by statute of 1839, having for its object the re-arrangement, revision and

codification of all of the laws of the State, under appropriate titles and paragraphs, so that out of the chaos of statutes existing upon our books, order might be brought, whereby all of the legislation would be made available to the citizens and the State, topically arranged. So long as the powers of this commission were limited to that purpose, and were confined strictly to revision of existing statutes, no serious danger could arise from their operation; but, in 1893, after that commission, and several others, had been created, and had ceased to exist by limitation, new and additional powers were given to the present committee, which constituted it not only a committee of revision upon existing statutes, but has made it the adviser of both bodies of the Legislature and the standing committees thereof, with power to promulgate new legislation and prepare new statutes under the suggestion and advice of the Legislature and the standing committees.

That this power has been deemed broad enough to enable this committee to undertake the introduction of absolutely new legislation upon the question of education, is evident from the scope of the bill that has been presented. When we compare the former revisions upon other subjects, which have emanated from this committee, with the very broad provisions embodied in the Education Bill, one can but be startled at the revolutionary character of the powers exercised by it, for they have not only undertaken to deprive one board of authority, and deposit it it in another; to take rights and privileges from one official and transfer them to another; but they have overturned and subverted the doctrine and ground principle upon which our public school system has been established.

The real danger resulting from the exercise of such extraordinary powers must be apparent to every thoughtful man, because it is a custom of most legislative bodies, and presumably of this, that legislation presented from a revision committee, is

to be considered and believed to be strictly revisionary, and where, as in this case, it may have a two-fold influence behind it, it will be regarded as embodying only those amendments which are essential to the production of a uniform measure, without in any detail amending the true spirit, or overturning the underlying principle, of the existing statutes.

A further custom of legislative bodies accentuates this danger, for it is well known that most revisions are reported from the standing committees upon the suggestion of a revision commission with little or no scrutiny on the part of either the committee or the Legislature and passes both bodies as matter of course.

I venture to say to-day that the provisions of the Education Bill are understood and appreciated by but a small proportion of the citizens of the State interested in the topic of education, while the great mass of the people have no information upon it whatever. As matter of fact, the Ahearn Bill, having for its laudable purpose the increase of salaries of the teachers of the City of New York, has been more thoroughly discussed and exploited by the journals of that city than any portion or provision of the present measure; while, as matter of fact, this Bill has embodied in it more of serious danger to the rights of the citizens at large than any single measure that has been before the Legislature for many years.

In searching, therefore, for the real source of the Education Bill, we find that at its head-waters it divides into two streams, the one, narrow, slow and sluggish, confined within the banks prescribed by the laws of its own creation, finds lodgement in the revision commission; while the other, broader, deeper, swifter, more aggressive, gathering to itself the powers of this Board and the duties of that, taking from the Comptroller, the State Treasurer, and the Governor himself, powers which now are vested in those officials, gathers them all together into that already swollen stream, which finds

its spring in the personality of that individual known upon our statute books as "The State Superintendent of Public Instruction."

This dual source will assist us materially in understanding the real scope and purpose of the Bill. So long as the commission confines its operations to the avowed purpose of revision and codification, no serious criticism will be attempted, although, in the manner in which the whole topic has now been brought before the Legislature, it is fair that every feature of the bill, including both new and the existing laws, should be carefully criticised.

And, it is well to call attention here to the fact that there are provisions upon the statute books today relating to our public education, which should never have been allowed to become a law, every provision of which should be most carefully scrutinized and revised if this Bill should be enacted under any modified form.

(At this point the Speaker was interrupted by Mr. Lincoln, of the Revision Commission; and, thereupon, Senator White, Chairman of the Joint Committee, stated that as the time of his Committee was limited, an exhaustive oral argument upon any feature of the Bill would not be permitted. Under the Rule laid down at the beginning of the hearing, that each Speaker should be limited strictly to fifteen minutes, Mr. Green, protesting earnestly that such ruling was unfair to the three million Roman Catholics of the State of New York, whom he represented, thereupon withdrew from the floor, having obtained permission to subsequently submit the Argument and Brief in writing.)

But, when we come to examine the unacknowledged and unavowed purpose of the Bill, the real object of embodying in the State the complete control of the education of children in con tradistinction to the right of the parent thereto, becomes so apparent that I declare to you now that if this Bill shall become a law, as it lies upon this table, unmodified and unamended, our children can

be taken from us, and the physical, mental, moral and spiritual education of every child will be delivered over absolutely into the control of the hired servants of the State, who, in turn, are responsible solely to a single, irresponsible, autocratic head.

Mr. Chairman and Gentlemen: It is my privilege to-day to stand here, representing over three million Roman Catholics of the State of New York, who, however much they may differ upon questions political and social, are a unit upon the doctrine of the education of their children, and three million tongues concentrated in one now plead with you and pray that you will not permit a law to be placed upon our statute books which will take from the parents the custody of their children, the care and training of their blind, the support and education of their deaf-mutes; that you will not permit an irresponsible officer to enter unbidden, and without consent, into our houses and take these unfortunate defectives from our care, and turn them over into the charge of a single official, whose power for evil, under the provisions of this very bill, are only limited by his ability or his inclination.

As we stand before you, a body of Catholics, it is essential that you should understand and appreciate the underlying principles and doctrines which move us and unite us upon the question of education; and to that end it is necessary that there shall be called to your attention some of the underlying doctrines and principles governing Catholics in the training of their children, and to some facts antedating this proposed legislation.

It is a sound Catholic doctrine that three agencies must be reckoned with in the practical education of our youth. The first may be called the original jurisdiction of the parent over the training and uprearing of his offspring. That is the right that the father has by nature to control and conduct the education of his child. This right is inalienable, and he can be deprived of it

only in two ways—(1) by consent, and (2) by such neglect as will operate as a forfeiture. In this original jurisdiction there is no authority, human or divine, which can against his will, wrest from the parent the right to control the education of his child.

The second agency is that of the Church. It is an unqualified doctrine among Catholics that the Church is the sole repository, by the grace of Almighty God, of the authority to teach in matters of religion and morals. You may not believe this, and, for the purposes of this discussion, you are not obliged to; but, it is necessary that you should understand the doctrine itself that you may appreciate to the full the gravity of the questions involved. The authority which the Roman Catholic Church has over the education of the children of its penitents, is not the natural right of the parent, but is an authority delegated to it by the father, or such person as may stand in parental relation to the child, either by consent, on the one side, or by reason of neglect or failure on his part, on the other, to exercise this natural right, thus resulting in the spiritual degradation of the child. Even the divine authority of the Church to teach morals and religion does not justify it, and will not uphold it, in assuming an authority over the children except by the operation of these two rules.

The third agency is that of the State. The authority of the State in the matter of education is neither the natural right of the parent nor the delegated right of the Church, but is a duty and an authority inherent in its own sovereignty, whereby the State is empowered, and is bound, to furnish to its citizens a means of education whereby all of the children within its boundaries, may be educated at the public expense. The authority of the State is limited to this, and the Legislature can only pass such laws and provisions relating to the system as will best preserve its efficiency and usefulness to the great body of citizens taking advantage thereof.

It is Emerson who says: "No one has yet made a catalogue of the capabilities of man, any more than a bible of his opinions." This is a broad doctrine of human capacity, and, as it is well known that a man's power for good, or for evil, increases or diminishes with his natural and acquired habits of mind, which are the result of mental and moral training, the Church recognizes that underlying these features of human development must be laid a broad ground of ethical training. Ethics underly good morals as correct religious dogma underlies and governs both.

These are the essential ground principles which control us as Catholics in considering and determining all questions of education. The two topics necessary to this discussion are the inalienable right of the parent to control the education of his child, on the one side, and the limited authority and no less important duty of the State to provide means of education, and to supply all deficiencies which the parent either will not, or cannot supply.

One more doctrine is necessary to be understood and clearly defined, and that is the right of the parent to delegate his natural prerogative and the duty on the part of the State to recognize that delegated authority. Whenever a parent transfers his right to control the education of his child to any institution or individual, it is the duty of the State to recognize that delegated authority and to refrain from interfering with its exercise until such delegate has so far failed in the exercise of it as to endanger the good citizenship of the infant.

Prior to 1894, the common school system of the State of New York was dependent entirely upon legislative enactment, and under it the State had the authority to impose upon the public school system any and every condition which might seem appropriate or wise, and it was not within the authority or power of the citizen to criticise or gainsay it.

It is necessary that one should understand this

historically, so that there may be no misapprehension arising from the many decisions that have been rendered by the courts of this State upon questions of public schools arising prior to that date.

The State, at that time, was under no constitutional duty to furnish for its citizens a system of public schools, nor, on the other hand, was there any constitutional right express or implied, in the citizen to exact from the State the establishment of such a system of schools. The state was the donor, and the citizen the recipient. The donor was empowered to fix as a condition precedent to the acceptance of the gift, any condition that might appeal to a giver, while the citizen, being the recipient, was, upon the other hand, bound to respect those conditions, because there was not involved in the proposal on the part of the State the obligation binding upon the citizen to accept.

This will clear away many of the difficulties that have arisen heretofore in the discussion of the common school system of this State, for with the adoption of the Constitution of 1894, a new order of things was introduced. Under the provisions of Section 1, Article IX, of the Constitution, the state was bound to provide, maintain and support a system of free common schools, wherein all of the children of the State might be educated.

Now there is invested in the citizen a right, absolute and inalienable. There is taken from the legislative authority of the State both the necessity and the authority to provide a system of public schools as a gift or favor to the citizens, and the power of the Legislature to impose conditions upon the public school system, also vanishes with the adoption of this provision. That which was right and authorized under the old order of things becomes unconstitutional and impossible under the new order of things.

That is, the Legislature has no authority to impose conditions, or enact laws, relating to our system of education, which will, in any degree,

modify or impair the rights and privileges granted and defined by the Constitution.

Gentlemen, what is good Catholic doctrine is also, under the present constitutional provisions of the State of New York, the constitutional law of this State.

The duty of the State of New York is to furnish to its citizens a means whereby all of the children within its boundaries may be educated at the public cost. The citizen is not bound to take advantage of that system, and the State cannot compel the attendance of its children upon those proposed schools except where the parent, or his authorized delegate, has failed to provide suitable education for any particular child in the State (what is defined as "suitable education" will be taken up under a later topic); but the State may not impose upon this constitutional right of the citizen any condition which will impair or weaken or interfere with any and all of his other constitutional rights and privileges of religious and individual liberty in all matters involving the conscience of each citizen in the State. Under this provision of the constitution, the right of the Legislature to interfere in the matter of education is limited to such practical matters of administration as will best preserve and maintain for the benefit of the citizens a system of public school education which will supply any and all deficiencies resulting either from the failure to maintain private schools or from the neglect or inability of parents to provide, either personally or by delegated authority for the proper education of their children.

Mr. Chairman and Gentlemen: You have examined with us the principles and doctrines governing the Catholic rules of education. You have listened to the constitutional provisions of the State and ascertained the difference between the old and the new conditions before and after the the adoption of the Constitution of 1894. The imposed duty of State authority in the matter of providing a public

school system under the provisions of the Constitution, and the Catholic doctrine of State authority are identical. The good Constitutional Law in this State and sound Catholic doctrine relating to the public school system are one and the same.

MR. CHAIRMAN: We entered this chamber some moments since, three million Catholics, pleading for recognition. We now cast aside the garb of the church and stand here three million citizens, demanding our constitutional rights, and insisting that you shall place upon these statute books no laws distinguishing or degrading us as a class. We demand why you presume to pass laws effecting or attempting to modify our rights in the matter of education any more than you will undertake to pass any other law affecting or curtailing any other constitutional right of any other body of citizens upon any other topic. It is, therefore, as citizens, discussing our mutual relations and duties to the State, and to each other, that we undertake to examine into and discuss the very broad provisions of the Education Bill.

That there may be no question as to our relations to each other and to the State, it is necessary to define the mutual duties and rights of the citizens and the State—what is the State and what are the relations of the citizens to it. The State is organized as a body politic by an aggregation of individuals, who are endowed by nature with certain inalienable rights of propagation, personal liberty, and the right to accumulate and enjoy such property as may be the result of individual effort.

It is Daniel Webster who so well defined the principle underlying the foundations of our Federal Government. The Government of the United States was founded by the consent of all of the independent sovereignties uniting in the Constitution of 1789. Each took from its own sovereign authority certain inalienable rights and irrevocably ceded them to the

central government, whereby federal authority might be empowered to perform those acts and do those things necessary to a national existence, the levying and collection of taxes, maintenance of armies, the imposing and collecting of import duties, and certain other questions relating to the intercommunication of the states. This authority was ceded absolutely, but was limited and defined by the conditions and wording of the Constitution itself. Those sovereign powers which were not specifically, or by fair implication, delivered over to the Federal Government at the time, remained and still exist in the individual sovereignty of the State.

What was true of the relation between the Federal Government and the State is true of the relation between the State government and its citizens. Man originally was endowed with certain rights, which were his inalienably; some in the earlier history of the world maintained these rights by personal prowess and individual leadership; some by uniting with a number of other individuals of equal power against a common enemy, each conceding such of his natural rights to the whole body so combined as would best preserve the safety and comfort of the whole and would least encroach upon the essential individual rights of each; others conceding some essential rights by reason of individual weakness or insufficient following, placed themselves under strong leadership, content to relinquish personal freedom in a degree for the assurance of safety to person and property.

The State, under the present civilization, stands in the relation of the all-powerful leader to whom each citizen has ceded certain inalienable and inherent rights and privileges, for the purpose of obtaining that protection and freedom of individual action, which would render his reserved rights more available and the accummulations of his individual efforts safer and more enduring.

Those rights and privileges which are ceded by the individual to the State are either express or

evidently implied by the constitution defining the relative rights and privileges of citizens and the State ; those rights and privileges which have not been ceded by express grant to the State continue, and inalienably remain, in the individual citizen.

We are yet to find in the records of constitutional conventions, or the expressions of the constitution itself, a provision whereby the individual citizens of this State have ceded to the government the natural and inalienable right of the parent to maintain, rear and educate his off-spring ; and until it can be proven that such right has been ceded to the State, it must remain in the individual, and, as such, must be recognized in all legislation, involving or affecting the question of education.

The underlying doctrine of State rights is the absolute inviolability of the individual, subject only to those restrictions necessary to health, preservation of life and property or police regulation.

Having defined our relations as citizens, we approach the discussion of the bill in hand, and find under Article I, the doctrine of Bible reading in the public schools.

That there may be no misunderstanding as to the real status of that question in the State to-day, it is wise that its history be placed before you at the outset.

The reading of the Bible in the public schools has never extended beyond the limits of the City of New York in this State. In 1844 it was permitted within the then limits of this city ; again revived in 1851, and again in 1882. Under the charter of our greater city, the following provision was introduced :

" But nothing herein contained shall authorize the Board of Education to exclude the Holy Scriptures without note or comment, or any selections therefrom in any of the schools provided for by this chapter ; but it shall not be competent for the said Board of Education to decide what version, if any, of the Holy Scriptures, without note or comment,

shall be read in any of the schools, provided that nothing herein contained shall be so construed as to violate the rights of conscience as secured by the Constitution of this State and of the United States."

The provision of the present Bill reads as follows (Art. I., Paragraph 5, sub-division 2): "Good Morals; and for this purpose the Bible may be read either as a part of the school exercises or otherwise; such reading may be from any version, but must be without note or comment."

This extends the doctrine of Bible-reading throughout the whole State and is not the provision now permitted under the Charter of the City of New York.

The doctrine of Bible-reading in the public schools must be considered in the light of the constitutional provisions of the United States on the one hand, and the specific provisions of the Constitution of the State of New York, on the other.

The Constitution of the United States provides two things: (1) That no person shall be compelled to adopt or practice any specific religious belief, and (2) that no person shall be deprived of the right to adopt and practice any religious belief. This latter clause has only one limitation, which has grown up from practice and interpretation by the courts, namely, that no person shall practice a religious belief to the impairment of the rights and privileges of the other citizens of the State or to the disturbance of the peace.

In the State of New York this principle has been engrafted into the law and defined clearly in the case of *Lindenmuller* v. *People* *. It was there held that individual conscience might not be enforced, but that every man, and every citizen, might be restrained from acts interfering with Christain worship, or which would tend to revile or bring the same into contempt. That every religious right must be so exercised that it shall not interfere with

* See Points, p. 21.

the other equally important religious and political rights of every other citizen in the State ; that the Christian religion is not the religion of the State, but that in the State of New York and in the United States, possibly with the exception of Utah, that the religion of the inhabitants of the State is Christian, and that must be taken and recognized as a fact.

In other words, this is the attitude of the State of New York upon the question of individual religious liberty. The State has no relgiion. The majority of the inhabitants of the State are Christian, and, therefore, the Christian religion must be recognized as a fact existing in the State ; no person shall be compelled to practice or acknowledge the Christian religion ; no person shall be prevented from practicing and accepting the Christian religion ; and no person or individual in the State shall be compelled or prevented from practicing any religion whatsoever, provided that such acceptance and such practice shall not interfere with the other rights of the citizens of the State or disturb the public peace.

Now, let us apply this principle of individual liberty in matters religious to the doctrine of Bible-reading, as proposed by this Bill. Referring to Article 1, Paragraph 3, "Common Schools," we find that the term "Common Schools" includes not only public schools in all its branches, but schools for the blind, deaf-mutes and other defectives.

Under Paragraph 5, sub-division 2, we find that the Bible may be read either as a part of the school exercises or otherwise, such reading, however, to be from any version, but without note or comment.

There is a further provision of the Constitution of the State, forbidding the teaching of sectarian religion in any of the common schools of the State, and a further provision that no public money shall be devoted to the support of common schools where sectarian religion is taught.

If, under the provisions of this Bill, the reading

of the Bible, as prescribed, shall not be found to be the teaching of sectarian religion under the meaning of the Constitution, then is it within the limits of our Constitution, and not a violation of the rights of the citizens. But, if we find that such reading of the Bible, under the restrictions named, is sectarian teaching, within the provisions of the Constitution, then the introduction of the Bible in our public schools will make it impossible for the authorities to use the public moneys for the support of our common school system, and will thus vitiate and violate those rights which result from the duty of the State to provide a system whereby all the children may be educated at the public expense.

The school authorities, (under sub-division 3, of paragraph 5, article 4), or the superintendent, or the Legislature, would be empowered to choose the Bible, or any version, subject to the restriction that it should be read without note or comment as a text-book, to be used by the scholars of any common schools for any length of time, ordinarily given to any other study prescribed by law.

It is not necessary, for the purposes of this discussion, to go into the effect which the introduction of this principle may have upon the ordinary common day-school throughout the State; but, in view of the legislation proposed, relating to deaf-mutes, and the blind and truant schools, it will be sufficient to point out the dangers and the position in which the State is placed should this portion of the Bill be adopted.

The pupils in the truant schools, and in the schools for deaf-mutes, and the blind, are prisoners, and, as such, their freedom of choice has been taken from them. In these schools it is within the power and authority of the State Superintendent, either through the local boards or by himself in person, to define all of the conditions, and all of the regulations for their conduct and government. This becomes palpably important and essential to the discussion in relation to those children either truant, incorrigibles,

deaf-mutes or blind, who may be committed to institutions by the State Superintendent without consent of the parents. (If sectarian instruction in the public schools is unlawful and the reading of the Bible, under the conditions named in the Bill before us is "sectarian instruction," within the meaning of the Constitution, then the reading of the Bible, though without note or comment, is unlawful.

In the case of *State* v. *District Board* (76 Wis., 192), the Supreme Court of Wisconsin has clearly defined the doctrine of sectarian instruction in so far as it relates to the reading of the Bible, without note or comment, in public schools, and so important is the doctrine enunciated there that we will take your time to read it at this point.

"The courts will take judicial notice of the contents of the Bible, that the religious world is divided into numerous sects, and of the general doctrines maintained by each sect, for these things pertain to general history, and may fairly be presumed to be subjects of common knowledge, 1 Greenl. Ev., §§5, 6, and notes. Thus they will take cognizance, without averment, of the facts that there are numerous religious sects called 'Christians,' respectively maintaining different and conflicting doctrines; that some of these believe the doctrine of predestination, while other do not; some the doctrine of eternal punishment of the wicked, while others repudiate it; some the doctrines of the apostolic succession and the authority of the priesthood, while others reject both; some that the Holy Scriptures are the only sufficient rule of faith and practice, while others believe that the only safe guide to human thought, opinion and action is the illuminating power of the Divine Spirit upon the humble and devout heart; some in the necessity and efficiency of the sacraments of the church, while others reject them entirely; and some in the literal truth of the scriptures, while others believe them to be allegorical, teaching spiritual truths alone or chiefly. * * * That the reading from the Bible in the schools, although unaccompanied by any comment on the part of the teacher, is 'instruction,' seems to us too clear for argument. Some of the most valuable instruction a person can receive may be derived from reading alone, without any extrinsic aid by way of

comment or exposition. The question, therefore, seems to narrow down to this : Is the reading of the Bible in the schools—not merely selected passages therefrom, but the whole of it—sectarian instruction of the pupil ? In view of the fact already mentioned, that the Bible contains numerous doctrinal passages, upon some of which the peculiar creed of almost every religious sect is based, and that such passages may reasonably be understood to inculcate the doctrines predicated upon them, *an affirmative answer to the question seems unavoidable.* Any pupil of ordinary intelligence who listens to the reading of the doctrinal portions of the Bible will be more or less instructed thereby in the doctrines of the divinity of Jesus Christ, the eternal punishment of the wicked, the authority of the priesthood, the binding force and efficacy of the sacraments, and many other conflicting sectarian doctrines. A most forcible demonstration of the accuracy of this statement is found in certain reports of the American Bible Society of its work in Catholic countries (referred to in one of the arguments), in which instances are given of the conversion of several persons from ' Romanism ' through the reading of the Scriptures alone ; that is to say, the reading of the Protestant or King James version of the Bible converted Catholics to Protestants without the aid of comment or exposition. In those cases, the reading of the Bible certainly was sectarian instruction. *We do not know how to frame an argument in support of the proposition that the reading thereof in the district schools is not also sectarian instruction.*"

With this doctrine established, therefore, the reading of the Bible in the common schools of the State, and the breadth of the definition of "common schools" introduced into the Bill, the State school authorities are in a dilemma ; if the permission granted to read the Bible in the public schools be, as it probably will be, interpreted as an actual reading (as permission by statute may be interpreted as an act done,) then the school authorities will be prohibited, and are, by law, so prohibited, from using the public moneys for the support of any school wherein sectarian instruction is given, that is to say, that the passage

of this portion of the bill, in its present condition, will deprive the citizens of the State of their right to a public school system, because it deprives the authorities of the power of using the money furnished by the citizens of the State for the support of a system of free, non-sectarian public schools.

But, we have not yet reached the limit of our troubles in connection with this portion of the bill. Under these same provisions the State undertakes to absorb into its own control the education of all of the children of the State, and in effect to make such education compulsory, not only in the ordinary branches, but in the matter of good behavior and morals.

It is necessary that we should again define at this juncture the relation of a citizen to State authority. As we have found, the authority of the State is limited to the exercise of that portion of the natural rights of the individual which have been specifically ceded and delegated to it by constitutional provision, and the State is limited thereby in the exercise of its supervision over the inhabitants and their offspring.

We have found that the State has imposed upon it the limited duty of providing a means for the education of its children, which would supplement the defects of any educational system adopted by the parents, either from their poverty, ignorance or failure to provide such education.

The State has only the right to insist that the parent shall give to his child an education sufficiently broad to enable him to perform the ordinary proper functions of citizenship, and has no right of control over the higher education of the individual.

In an argument made by Hon. Nathan Matthews, Jr., before the Legislature of the State of Massachusetts, in 1889, upon a somewhat similar bill before that body (which, by the way, failed of passage), he makes the following remark :

"Mr. Chairman and Gentlemen of the Committee:

"I have the honor to appear on behalf of sixteen private Protestant schools, established in the city of Boston, to remonstrate against the passage of any law that shall subordinate the methods and details of education in such schools to the control of State or town authorities, or that shall in any manner prohibit the parent from educating his children as he pleases.

"Among these remonstrants are Chauncey Hall School and the schools of Mr. G. W. C. Noble and other well known teachers.

"We concede, Mr. Chairman, the principle of compulsory education; that is so say, we admit that the Government may, by appropriate penalties, compel the parent or guardian to furnish the children under his care with an elementary education; and we have no fault to find with the catalogue of studies which the Legislature has prescribed for such instruction; that is, with the 'studies required by law,' which are reading, writing, arithmetic, English grammar, geography, United States history, drawing, physiology, and hygiene. But we claim for every citizen the right to determine for himself the methods and details of that instruction which he is bound to furnish to his children; we object to the doctrine that all education in these or any branches of learning should be uniform, the same for all schools and for all scholars, and we deny the right of the Legislature to subject the education of our children to the arbitrary and final dictation of the local school committee."

That there may arise no question here, this limited authority on the part of the State has been well defined and recognized in the Courts of this State in the case of *People* v. *Supervisor of Westchester* (see points at page 13). In that case the Courts declared that the Legislatures of this country were not supreme, and were not the highest recognized authority. This was defined in the discussion just had relative to the authority of the Legislature over the common school system, in 1894. There, in absence of constitutional provision, the Legislature was entitled to offer to the citizen a privilege which was not theirs, by reason of a defect

in the Constitution; but the adoption of that constitutional provision took away from the Legislature its power to further provide in that direction.

Now, the authority in this State, on all matters of legislation, is vested in the Senate and the Assembly, and the Court says:*

"This is the authority under which our Legislature acts, and, under this clause, it has the power of legislation within the fair scope of legislation, except so far as it is restricted by other provisions of the constitution. But it can hardly be said that under this general power of legislation it is omnipotent; that it can pass acts against the natural right and justice, and subversive of decency and good order. Such power is prerogative of despotism—not of free government—to suppose that the people have clothed their representatives with absolute and despotic power under the general grant of legislative authority, is to presume them incapable of self-government and unworthy of the name of freemen."

If, as is apparent, it is the object of this Education Bill to place the absolute control and exercise of all authority to maintain and manage the educational system of the State into the hands of its officials, then the whole Bill is in violation and subversive of the constitutional rights and privileges of the citizens, because it is a direct and unqualified violation of the natural right of the parent to control the education of his child.

All positive law is founded in natural law. So absolute is this principle that the Creator himself will not, and has not, promulgated a direct and revealed law in contravention of or permanent suspension of the natural law. What the Creator will not do, the State cannot do, and when State authority undertakes to deprive the citizen of a natural right which has not been ceded to it, and

* The Committee will find the whole of that opinion in the points printed with the argument.

which still continues inalienably in the control of that citizen, or his delegate, it is undertaking to violate one of those generic laws of God, the overturning of which invariably brings its own punishment.

The right of the parent to educate being inalienable, and there being no evidence of that right having been alienated to the State, the sovereign authority must recognize either the natural right of the parent, inherent in him, or his duly authorized delegate. It is well to say here that his delegated authority carries with it full title, as clearly as the proper transfer of any material title carries with it all of the rights inherent in the original grantor. This natural right of the parent to educate the child has been recognized by Blackstone, who declares that it is the duty of every parent to educate his child for a position suitable to its station in life.

The doctrine of paternalism, which is so apparent in the Bill before you, is one that is absolutely in violation of every American constitutional privilege. In all practical affairs we recognize that the individual so conducts his life as to gain the greatest possible benefit to himself and to his own, without violating the privileges or depriving of their rights the other citizens in the State. The doctrine of paternalism is un-American and no one principle involved in it should be permitted place upon our statute books.

Under this head Chancellor Kent says:

"Several States of antiquity were too solicitous to form the youth for the various duties of civil life, to intrust their education solely to the parents; but this was upon a principal totally inadmissable to the modern civilized world of the absorption of the individual in the body politic and of his entire subjection to the despotism of the State."

Keep in mind now continuously the doctrine of the inviolability of the individual and qualified authority of the State.

Again Kent says:

"The education of children in a manner suitable to their station and calling is another branch of parental duty, *of imperfect obligation in the eyes of the Municipal Law, but of very great importance to the welfare of the State.*"

This defines clearly the qualified authority of the State to interfere with the educational rights of the citizen. It is the duty of the State to furnish only those means of education which will supplement the failure on the part of the citizen to render his imperfect obligation to the State to educate his offspring; and this obligation on the part of the citizen is so meagre, and so limited, as to make the intervention of State authority of minor importance, except in the treatment possibly of truants and incorrigibles.

The attempt, on the part of the State to educate the children of its citizens is a violation of two generic principles of life. A violation of the doctrine of natural right inherent in the parent which is inalienable in him; and a subversion of the inherent right of the child to be educated in accordance with his natural tendencies and mental qualifications—for the State, in becoming an educator (and the provisions of this very bill, undertake to lay down a standard whereby the infant mind shall be developed) absolutely deprives the child of his natural right of such education as will best assist him in the development of those gifts which are a part of his birth-right.

The attention of your Committee is called to paragraphs 17 and 18, known respectively as "duty of school authorities" and "duty of superintendent." These sections both relate to the mandatory provisions which impose upon school authorities the duty of erecting common schools, employing school teachers and furnish text-books in every school district. But, under paragraph 18, the State Superintendent is premitted, in case a city or district fails to comply with these requirements, to enter into

those districts and take possession of the school property, and to employ teachers and other necessary employees, provide text-books and accommodations, and maintain the schools; he may pay the costs of maintaining that school district out of the funds in his possession, or under his control; or he may make out a tax-list, issuing a warrant in his own name to a collector, or may even appoint a new collector if that one does not suit him.

These provisions are beyond all possible necessity on the part of any school authorities, and is only one illustration of the many we will produce of the determined purpose on the part of the framers of this Bill to concentrate the power and authority of the entire school system in one person.

The State Superintendent should not be permitted to interfere in that question at all, except that he might be empowered and authorized, or he might be instructed absolutely by the statute, to bring action against the proper officers of any district failing to provide a system of schools, though probably that is within the scope of his authority at present; this power should be under the authority of individual citizens.

We cannot too earnestly protest against the tendency in this Bill to take authority from the citizens of the State to supervise their own rights, and to prosecute their claims, when aggrieved, in the same general manner provided for the remedying of wrongs, or alleged wrongs, in any other department of life.

Probably it will be better, at this juncture, to call attention to paragraph 249, although that properly should be discussed under the head of compulsory education.

It will be noticed by the provisions of this subdivision that the superintendent is given control over all of the private schools of the State, and special records are to be kept which shall be subject to his inspection, or to that of the school commissioners, school authorities and truant officers of the city or

district. This absolutely subverts the theory of parental authority, and is, in its nature, inquistorial. The State should not be permitted to interfere in any degree with private educational institutions.

Again, I would call your attention to the argument of Mr. Matthews upon this topic:

"We are no enemies of the public school; on the contrary, we are as deeply interested in their succuss, and as willing to contribute our proportion of the taxes that support them, as any section of the people. While declining to accept each and every public school in the Commonwealth as the best possible and best conceivable, or to sink our intelligence in the singular delusion that our common school system, as it exists to-day, is perfect and beyond improvement, and while emphatically refusing to bow down before the annual school committee as the sole repository of the educational wisdom of the people, we yet resent with indignation the suggestion that has been made by some of the witnesses for the petitioners, that parents and teachers interested in private schools, and generally everybody who objects to the petitioners' demands are hostile to the maintenance of free public schools. Nothing could be further from the truth; there are no people more earnestly and honestly devoted to the cause of free elementary education than those who have dedicated their lives to the instruction of the young, though it be in private institutions; and I have never yet seen the parent who was unwilling to pay his share of the cost of our public schools, though he sent his own children elsewhere."

And again:

"Our private schools, Mr. Chairman, are a great and indispensable help to the cause of education, partly because they are in many cases better than the public schools of the same locality, and therefore furnish a better education to children of parents who can afford to pay tuition fees; partly, again, by affording to our public schools that competition which is the indispensable prerequisite to progress in educational matters as in everything else, and partly by furnishing a means of educational experiment which would otherwise be wanting. The public school is not the place for trying experiments, nor would the people be satisfied to have the school fund used for such a purpose. The place for experi-

ments, essential as they are to all advancement, is the private school supported by voluntary contributations. The private school, as Colonel Higginson says, is the 'experimental station of the public school.'"

The attempt on the part of the framers of this bill to deprive parents of the custody of their children under the guise of a doctrine of truancy is as dangerous a feature as any involved therein. The provision of paragraph 243, where a second arrest on the part of a truant officer shall constitute the child an habitual truant, provides that he shall remain in the custody of a truant officer until his case is disposed of.

Should the parent refuse to permit him to be committed, a police magistrate, under paragraph 244, may in his discretion, commit the child as an habitual truant, an insubordinate or disorderly child, to a State institution, either in the district where he is arrested, or, if there be no State truant school therein, to the nearest one.

These provisions should absolutely be stricken out of the Bill as a gross violation of the rights of the parent.

Under paragraph 233, the State Superintendent is empowered to take or hire real property, and erect buildings for the establishment of a State Truant School; and, under that provision, there is no power connected with its administration that is not solely and irrevocably centered in that one official.

It will appear at once to one giving thoughtful consideration to this matter that the denomination of an orphan asylum, or any institution where sectarian religion is taught as a truant school, will, under the provision of Article 1, bring them under the name and title of "common schools," and that any contract after the passage of this Bill made for the support and education of a truant sent to a local asylum, would be void, and that no public moneys could be paid therefor.

The inevitable conclusion then arises and explains the real reason for the embodiment into the Bill of

this extraordinary power, given to the State Superintendent to establish one or eight truant schools as he may deem wise. For the denomination of local truant schools as at present would be impossible under this interpretation of the law, unless the local asylums were willing to support and educate the truants at their own expense.

Just what authority a State has to deprive the truant children of their liberty, and, at the same time, of religious instruction, it is difficult to see. If the State truant schools permit religious instruction of any kind, grave question may be raised as to their being institutions wherein sectarian instruction is given, which is in plain violation of the provisions of law; wherefore, we must conclude that State institutions must be carried on without any reference whatever to the religious and moral education of the children.

Now, if the truant schools of the State are to be penal institutions, then they should not be classed with common schools, for even in those institutions religious instruction is open if the inmates desire it. General inefficiency of truant schools, or any State educational institution, is well illustrated by the condition of the New York City truant school (which, by the way, is a local school, and dependent entirely upon local authority), located at East Twenty-first street. It has been found, upon investigation, that prior to May, 1898, the condition of that school was of a most frightful character. There were about ninety-seven inmates who had been committed there and who were not able to get relief, and about ninety seven day pupils who were coming and going upon some system of parol.

It was found upon inspection, that the children were poorly clad, disgracefully ill-fed, and their bodies covered with vermin and filth. Since that date no man has been found to take the place, but under the kindly and womanly supervision of the present incumbent, order has been brought out of chaos, and a system adopted that seems to work

well ; and it is wise that the recent history of this little institution should be taken into consideration.

As a receiving station, as a place where really indigent truants or incorrigibles might be retained pending a decision of the magistrate in their case, there are excellent reasons to believe that it would be of incalculable benefit to both the children and the department ; but, as a truant school, where children are to be confined, possibly from October to June (the limit of commitment under the present bill in each case, being the remainder of the current school year), it certainly is inefficient.

The principal features of this article relating to truancy that are objectionable are, as has been said, the establishment of State truant schools in each judicial district, coupled with the power to abolish the local truant schools and therefor to deprive the children committed there of any and all religious instruction ; the commitment of the children for long terms, the remainder of any current school year ; the extraordinary and uncalled for power vested in truant officers, who are so often political appointees and unfit to have even the temporary charge of children whereby they may be taken without warrant wherever found, except in the home of the parent, and, upon the second arrest, may be held in the custody of that officer until the case is disposed of by the committing magistrate, and finally the power of parole, which is lodged in the State Superintendent, when a child is committed to a State school.

That you may understand the full danger of this last method, your attention is called for a moment to the practical working of the theory of parol. In the first place, it may be stated, without fear of contradiction, that the real intention of a truant school is to reform and not punish ; and from those who are experienced in the matter, we find that most of the children who are sent to these schools as incorrigibles, have misbehaved or run away from school by reason of some unpleasant or

disagreeable surroundings, often times more the fault of the teacher, or of the school regulations, than that of the child itself.

To assist in bringing the truant to a clear and fair understanding of his offense, there has been adopted in the truant school (to which your attention was called a moment ago) a system of parol cards, good for two weeks, which, after the child has had its bath and has been cleaned up and brought to a full sense of the value of respectability, is issued to him with the promise exacted that he is to return to the school, or to his parents, as the case may be, and each night the teacher or parent in charge is to write opposite the signature the word "bad," "good," "fair" or "excellent," as may best depict the conduct of the child during that day. At the end of the week this card is brought back to the Supervisor of the truant school who will recommit or again send out on parol the truant, in accordance with the actual record found on the card.

The history told of some of these little fellows is interesting and instructive in the extreme, and to the average mind is the strongest possible argument against their confinement in institutions under rigid unbending State control, wherein the morals and the religious ideas of the child are left untrained.

Under the proposed system, with eight districts under his charge, such rules for parole could not be adopted without violating the express provisions of the statutes.

So much has been said already by the State Board of Charities upon the question relating to the new laws for the care and teaching of the blind and deaf mutes, that but little is necessary to add, except our earnest protest against any system that would take these unfortunate defectives from parental love and affection without the full concurrence and complete knowledge, on the part of the parent, as to the institution in which the child is to be committed, and the methods to be adopted for teaching him how to

take his place during years of maturity in the ranks of workers.

Bearing in mind now that under the provisions of Article I, these schools are classed as "common schools," and, bearing further in mind the restriction imposed upon the use of public moneys for the support of any institution where sectarian instruction is given, we find that Section 440 is misleading in the extreme. Under the terms of it, the State Superintendent may make contracts for the instruction of the deaf-mutes with one or more of the following schools or institutions:

New York Institution for the Instruction of the Deaf and Dumb, in New York;

Le Couteulx St. Mary's Institution for the Improved Instruction of Deaf-Mutes, in Buffalo;

The Institution for the Improved Instruction of Deaf-Mutes, in New York;

St. Joseph's Institute for Improved Instruction of Deaf-Mutes, in Fordham;

The Central New York Institution for Deaf-Mutes, in Rome;

Western New York Institution for Deaf-Mutes, in Rochester;

The Northern New York Institution for Deaf-Mutes, in Malone; and

The Albany Home School for the Oral Instruction of the Deaf and Dumb, in Albany.

Many, if not all, of these institutions are charitable; and, as such sectarian instruction is not prohibited, and under the present law a deaf-mute committed by request of the parent is sent to that institution where the religious tenets of the parent are taught; but, so soon as the State Superintendent shall undertake to make contracts for the commitment of the deaf-mutes to any of these institutions, they become, under the provisions of Article 1 Common Schools, and thus subject to the constitutional inhibition. What is the result? The State Superintendent is then empowered, and it seems his only remedy is, to establish State

schools for the deaf-mutes; but, as during the course of this discussion, Judge Lincoln has stated that that portion of the Bill authorizing the establishment of State schools for deaf-mutes and the blind will be withdrawn, it will make the other portions of the Bill, to which your attention will now be called, inoperative, and the whole cumbersome method adopted for getting possession of our defective children of no avail.

Under the proposed Bill, the blind and deaf-mute children may be committed by a local magistrate, having been previously arrested and taken from the custody of the parents themselves from their own homes and without their consent, to any institution within the State named by the Superintendent. If this commitment shall be made to a local contract school, then there is a provision that the child shall be committed to that school or asylum in which the religion of its parent is taught; but such a commitment would be inoperative, because the moment (as has been said) a contract is made with an institution where sectarian instruction is given, the State moneys cannot be paid for the support and education of the child so committed. The law, in its original form provided that a commitment could then be made to a State school; but, accepting the word of the spokesman of the Revision Committee that that feature would be stricken out, it leaves the commitment of the child by a magistrate to a local contract school inoperative and of no effect, as there seems to be no authority for a suggestion that these charitable institutions could be forced to educate and clothe the child without receiving compensation from the State or the county.

Under the provisions of paragraph 441, the State Superintendent may upon thirty days' notice cancel a contract made under the provisions of paragraph 440, wherein such instruction is not given to his satisfaction.

The present law governing the education of the blind and the deaf-mutes operates well, and there is

no cause, and no ground, for the establishment of State schools for the education of these defectives; no cause of complaint has been, or can be, made, except that this is one of the cases in which the State Superintendent has not had absolute unqualified authority over the institution.

We submit that the present control which the State Board of Charities exercises over these institutions has been sufficiently well administered to make a provision, such as that contained in the proposed law, obnoxious and undesirable in the extreme.

The change proposed by the new law governing the term of years necessary to the conferring of a degree by a college is unwise and uncalled for, as it prescribes a time, and not a standard limit for the giving of such degree.

And now, Gentlemen, we come to a consideration of a branch of the whole Bill, which is phenomenal in the powers which it confers and so unusual as to cause in the mind of every honorable man the very serious query, not only as to the propriety, but as to the ulterior design of those who have so far departed from the custom and spirit of American public affairs as to exact or even tolerate the concentration of all the powers of administration and legislation in the hands of a single official.

To those who have examined the existing law, the powers granted to the State Superintendent of Public Instruction have been broad enough and too broad, and evidently the exercise of these powers for so many years has created and fostered the autocratic spirit so unusual in our public affairs and so dangerous and pernicious in its results.

Before discussing in detail the spirit of the powers granted to the Superintendent by this Bill, should it become a law, your attention should especially be directed to a misleading feature which will lead to very serious results in its practical workings. The Bill provides that on all questions of appeal (and a portion of this was embodied in the old law) by an aggrieved person from

any ruling or act of the school authorities of any district, the decision of the State Superintendent shall be final, and no appeal can be taken therefrom to the courts of the State.

For example, if a deaf-mute, confined, under the provisions of this Bill in a State or other school, if it were possible to get him within the doors, should be aggrieved, and an appeal should be taken by the parent for some modification of his instruction upon religious or other grounds, the decision of the Superintendent would be absolutely final, and the ordinary rights of the child would be surrendered by that act. But apparently for the purpose of creating the opinion that this restricted right of appeal only relates to a small number of cases concerning administration and the like, another provision is introduced under paragraph 496, which states that the final acts of the State Superintendent, or refusal to act, not involved in an appeal to him, may be reviewed by the Supreme Court by a writ of certiorari.

Without criticising the nature of the writ hit upon for bringing the delinquent superintendent before the Courts your attention is called specifically to the large number of duties imposed upon the State Superintendent which are discretionary in their character, and the discretionary act of an official, as is well known, cannot be reviewed by a Court. So that, if in his discretion the State Superintendent should undertake to show that the deaf-mute child of any citizen was not receiving proper education at home in his own house and under the care and supervision of his own parents, and should determine that the child should be sent to a State school, is an act of discretion under the provisions of this Bill, and could not be reviewed by the courts. Therefore, notwithstanding the apparent liberality of the provisions of the Bill under this head, the fact remains that there are but a few exceptional cases in

which the acts of the State Superintendent could be reviewed by the courts.

This is an extraordinary provision and one which is seriously inimical to good government, and it is difficult to see how an obnoxious overbearing incumbent of that office could be removed ; and, even should that happen, the same powers remain to be invested in his successor.

Now, under Article I, the State Superintendent is endowed with new powers, for he may add to the list of text-books to be used by the pupils, without let or hindrance on the part of the Legislature or the local boards. In sub-division 3 of paragraph 5, Article I, he becomes absolutely equal to the legislative authority of the State in adding to many of the educational features of the different schools throughout the State.

This is a discretionary power also, and no appeal could be taken from any act of his in reference thereto.

Under Article IX, he is clothed with powers which authorize him to establish, maintain and conduct solely and personally the State truant schools in each district. And it is difficult to see how, under that provision, any efficient remedy could be found against acts of tyranny, bigotry or personal bias. This becomes the more serious when we consider that under the laws proposed the State Superintendent will be the only one who can finally determine the character of the religious instruction of the inmates in the truant schools, or even whether or not they shall have any instruction of that character. This right is not taken away from the criminal, who is confined in our State prison, but the carelessness arising from inattention on the part of a State superintendent to the spiritual welfare of the enforced pupils in the truant schools, would work incalculable harm.

The unusual powers granted him in the determination of the necessity for the commitment of deaf-mutes, whereby he becomes the sole judge and

arbiter of the sufficiency and nature of the instruction which that defective is receiving, is not only an unnecessary authority, but imposes upon him duties which no single man in the commonwealth could possibly execute honestly, intelligently, or with decent regard of the interests of either the citizens or the unfortunates so delivered into his custody.

Nor does this Bill seem to be satisfied with giving to the State Superintendent all of the authority in the administration of the public school system, but undertakes to deprive the Comptroller and Secretary of State of the practical veto power now vested in them, unless they concur with the State Superintendent in contracts made with Indian bands for the use and occupation of their lands for public school purposes.

Under the present law the State Superintendent, in selecting banks of deposit for the funds in his hands and for all paid-up insurance on the school property throughout the State, has been properly subjected to the Comptroller, but under the provisions of this Bill the supervising authority of the Comptroller is taken away and another vast discretionary, unreviewable power is placed in the hands of the State Superintendent of Public Instruction. He is not now satisfied with these powers conferred upon him, even the Governor must be divested of his authority. Heretofore the Governor of the State has had the power of appointment of the Trustees of the Batavia School for the Blind, which appointment must be confirmed by the Senate.

Under the provisions of this Bill, not only is the power of appointment conferred upon the Superintendent instead of the Governor, but the right of confirmation in the Senate is taken away and this protection which is properly and necessarily drawn about appointments to this responsible office is absolutely taken away and vested in the Superintendent. This, too, is a discretionary act and there seems to be no remedy

left whereby the aggrieved citizens may even obtain a hearing.

In leaving this matter in your hands, Gentlemen of the Committee, we desire to call your attention, in addition to the constitutional questions which have been presented, to our attitude towards education in general as Roman Catholics.

We are educators and believers in education in every department of life. We believe in teaching good morals, good behavior, good citizenship. The fact that we ground these qualities in a fixed religious belief should not disqualify us in a Christian community, the foundation and the continuing underlying principles of the prosperity of which have been the worship of God. The education of our young has taken a practical form and in the City of New York itself the great body of Roman Catholics are educating over 40,000 children every year, saving thereby to the public treasury of the State annually the large sum of $3,100,000.

We demand from you our constitutional rights, the same rights demanded by the Protestants in the fight before the Legislature in 1888 in Massachusetts. And what are our constitutional rights?

Personal inviolability. The recognition of the inalienable right of the parent to teach his child. The right to delegate this authority to whom he may see fit. The abolition of all paternalism on the part of the general government as an educator. And finally, we demand that the State furnish to its citizens a system of public education non-sectarian in its character, which shall grant to the children of the State and all of them the opportunity of being educated at public expense, unrestricted by such rules and regulations as will enable any official to enter our homes or our private schools and dictate the methods and grade of education which we give to our little ones.

In the light of the preceding principles, and as a necessary deduction from them, the following amendments are proposed on behalf of the Catholic Interest's Committee:

I.—The rejection of

a. Subdivision 2, Section 3, totally and absolutely; and,

b. As a necessary consequence, the whole of Article XVI, entitled "Instruction of the Blind and Deaf-Mutes."

Because:

The matter therein treated is novel legislation: is based upon no present need of change: has not been called for by those who are intimately connected with these affairs and who, from close and long contact, should best know the wants of these unfortunates:

Because:

The present schools upon which much has already been expended would be eventually destroyed:

Because:

Since the Superintendent of Public Instruction can make contracts (Section 439) under this chapter only for the term of his office, there would be perpetual disorder and uncertainty: for the incoming Superintendent may have quite an opposite personal bias:

Because:

Some of the institutions mentioned (Section 440) with which contracts "may" be made are known to be sectarian: and the moment he tries to pay to them the very contract price agreed upon he will be estopped by Section 4, Article IX. of the Constitution of New York:

Because:

He may contract (Section 439) with "the trustees or managers of a school or institution for the *blind* for

the instruction therein of resident blind children. * * * * * A school or institution with which a contract is made under this section becomes a school for the blind, under this chapter, and subject to all its provisions so far as practicable."

BECAUSE:

What has been said in the preceding paragraph applies alike to the deaf-mutes; "the provisions of this article relating to the instruction of blind children and the powers and jurisdiction of the State Superintendent apply, so far as practicable, to deaf-mutes and schools for their instruction." (Section 444).

REMEDY:

Allow the present law with regard to the blind and the deaf-mutes to stand as now on our statute books.

II.—The rejection of

a. Subdivision 2, Section 5, in toto.

BECAUSE:

"Good morals" are to be taught by the use of the Bible; but the reading of the Bible is sectarian instruction; therefore, according to Section 4, Article IX., Constitution of New York, the "Common Schools" are cutting themselves off from participation in the very moneys set aside for their maintenance.

BECAUSE:

Though the Bible has been allowed hitherto in the schools of The City of New York, this proposed section is not in *pari materia.*

1. Since the present provision applies to The City of New York only, while the proposed provision would extend it to the whole State.

2. (And this especially) because Section 4, Article IX., Constitution of New York, was adopted and ratified

only in 1894; whereas, the present status of the Bible in the Charter of Greater New York has continued more or less the same since 1844.

Therefore, whether sectarian instruction could have been permitted before the insertion of Section 4, Article IX., Constitution of New York, is not now the question: we simply say that since it has been inserted no public moneys can be used in support of sectarian instruction.

BECAUSE:

By comparing the text of the provision in the Greater New York Charter with the text in the proposed measure, a free unrestricted and unqualified use foreshadowed by the use of the word "otherwise" in the latter, compares very unfavorably with the words "if any," contained in the former.

BECAUSE:

The Bible, "without note or comment," is no safe guide to good morals even in the hands of the average man, to say nothing of children.

BECAUSE:

"Morals" cannot be taught without an impression of the teacher's sectarianism, be this instruction with or without the use of the Bible.

b. Subdivision 3, Section 5: wholly.

BECAUSE:

As a necessary consequence to the rejection of Subdivision 2 of the same paragraph, it cannot stand.

BECAUSE:

It would nullify the rejection of Subdivision 2, since it would give to the Superintendent and others the power to reinstate the very matters just thrown out.

BECAUSE:

It would seem absolutely useless to carefully designate the studies which are to be pursued in the schools and then add a provision so broad as the present.

BECAUSE:

It is a dangerous and unnecessary power to confer upon any officer.

REMEDY:

Nothing less than the total rejection of subdivisions 2 and 3 of Section 5.

III.—The rejection of Section 18 unconditionally.

BECAUSE:

No necessity for it; as the whole matter is provided for under other sections of this measure.

1st. In Section 60, the trustees *are elected by the district meetings* for the performance of these very duties in so far as they fall within the area of their jurisdiction.

2d. In Section 81 the boards of education of the various Union districts are elected for like purposes with broader jurisdiction.

3d. In Section 460 the Commissioners are elected by the electors of the district for the performance of duties which also cover in part those named in Section 18.

BECAUSE:

It is not to be supposed that any district or city, which must necessarily take pride in everything that tends to local advancement, would be derelict in this matter; and if perchance and at intervals far between such should be the case, each local taxpayer has his remedy in the courts.

BECAUSE:

Section 18 would nullify and stultify other provisions of this very measure.

1st. Section 114, paragraph 4.

2d. Section 81 throughout all of its 12 paragraphs.

BECAUSE:

Every municipalty (*i. e.* county, town, *school district*, village and *city*, Sect. 3, Gen. Corp. L.) has by Sec-

tion 11 of the same law, the "power, though not specified in the law under which it is incorporated,"

4. "To appoint such officers and agents as its business shall require and to fix their compensation, and"

5. "To make by-laws, *not inconsistent* with any *existing law*, for the management of its property, the regulation of its affairs," etc., etc.

Section 18 of the proposed measure is not an existing law; but in the bill is marked "new;" and would jeopardize the broad right of every municipality in its very existence would in fact be tantamount to a repeal of the charters of every county town, school district, village and city in the State.

Because:

No state officer should be vested with the power to perform the duties which the Constitution intends should be performed by local officers. No argument should be needed to show that when the Constitution Art 10, Section 2, provided that local officers should be elected by the electors of their district or appointed by the authorities thereof, it was intended that their functions should never be usurped by the legislature nor conferred upon State officers. The proposed amendment gives the State Superintendent the only power he ought to have, viz.: to pursecute delinquent school authorities and have them removed.

Remedy:

Amend Section 18 so as to read "If a city or district fails to comply with the requirement of the last section the State Superintendent shall prefer charges against the officer, board or other school authorities neglecting the duty imposed by said section to the end that such officer, board or school authorities shall be removed from office and others appointed in his or their places to carry out the provisions of said section."

IV.—The Rejection of

a. Sections 231 and 249 totally, absolutely, and without qualification :

Because :

They establish the doctrine of State control of education, which is un-American and unconstitutional.

Because :

These Sections interfere with the parental duty ; depriving even the intelligent father of the very right to educate his own child if he should see fit, at home without restriction, and in that manner he deems best suited to the child, for whom he alone is responsible.

Because :

These sections give the Superintendent the power to enter the home where the education of the child is being personally conducted.

Because :

The State Superintendent has by these provisions the power of controling and dictating the method of home education, which is a violation of personal rights.

Because :

Subdivision 3 of Section 231 is absurd and presents a physical impossibility. Suppose a child has been ailing to his tenth or eleventh year, and it is proposed to begin his education at home, must he receive " an instruction substantially equivalent to that given to children of *like age* at the public schools ? " The absurdity is apparent ; yet is there any alternative if this section is to stand ?

Because :

Under these two sections, any superintendent, or school authority, who wishes, can, by persistent and systematic interference in the minutest and perhaps most trivial details of discipline, management and instruction, worry out of existence each and every private school in the State, if there should be the

slightest misunderstanding as to the meaning of "equivalent instruction."

BECAUSE:

Above all, and especially these sections have now no standing at law; are overwhelmingly disproportionate to the constitutional proviso, Section 1, Article IX, Constitution of New York.

BECAUSE:

The act from which these features were drawn was passed in May of 1894, and added to the Consolidated School Law as Title XVI thereof before the adoption of Section 1, Article IX, of the Constitution of New York.

b. Section 233 in its entirety.

BECAUSE:

1st Local truant schools as now authorized accomplish all of the requirements;

2d. There is no necessity for State truant schools;

3d. The tendency would be to make prisons of such, and degenerate children to the level of criminals;

4th. They would take away all the saving features of the parole system;

5th. They place a little one whose one "crime" is that he will not go to the "public school," in daily contact, for constructively the whole year, with old and mature incorrigibles.

BECAUSE:

They would reproduce in greater intensity all of those horrible and yet cruelly true conditions that we have called attention to in Article IV. of our brief, as existing but a few years ago in the truant school of New York City. If there, within stone throw of the very homes of the incarcerated children, those things were done, what worse will not be done in a State school?

BECAUSE:

At the discretion of the Superintendent "any local truant school" may be discontinued and thereafter

"children who might otherwise be sent to such school shall be sent to a State school." This is unwarranted; a bureaucratic despotism that no intelligent, or self-respecting citizen will for a moment tolerate.

c. The rejection of Section 243:

Because:

A truant officer, be he of what condition of life, be he of what morals he may, can take an otherwise harmless child into his custody and keep it until he can bring it before a magistrate. Keep it where? What if Saturday night, and Sunday, and Sunday night must intervene before he can bring the child before a magistrate? Cannot the very means taken to suppress truancy,—which is no crime, easily be the child's first lesson therein?

Remedy:

Every child in the State has a right to an education in its common schools or to a proper education elsewhere. Let it be a misdemeanor for any parent to wilfully and arbitrarily deprive his child of this right; but no parent should be forced to use the "public school system" so long as he is able to educate or provide education for his own off-spring.

Points in opposition to proposed Education Law (Senate Bill No. 108, Assembly Bill No. 234), on behalf of the Catholic Club and the Catholic interests of The City of New York.

Our opposition to the Education Bill, as it has come before this Legislature, is based upon the generic principle of constitutional inviolability on the part of the parent in the custody and education of his children so long as he does not forfeit that right, by neglect or vicious instruction.

The Constitution of the State of New York, Article IX, Section 1, embodies the powers and limitations of the State to interfere with the education of our children and the discussion which follows will be based upon the constitutional right of the citizens of this State to retain the custody and conduct the mental, moral and religious education of their offspring, whether they be well-behaved or truant, endowed with all their faculties or blind or deaf mutes.

I.

This bill, while it emanates from the Committee of Statutory Revision, has evidences of the handiwork of the State Board of Education and presumably may be assumed as having been conceived under the supervision of the State educational authorities.

The law which created the Statutory Revision Committee (L. 1889, c. 289) carefully defined its

powers and it was obviously not contemplated by the Legislature that this Commission should do anything except revise existing statutes. The statute, by its terms, provides that the Commission shall "Prepare and report to the Legislature bills for the consolidation and revision of the general statutes of the State," upon certain subjects named. And further, that the Commission should report to the Legislature and in its report should "suggest such omissions, contradictions and other imperfections as may appear in the existing statutes so proposed to be revised and consolidated, with recommendations for the amendment thereof."

The Commission was appointed only for a year in the first instance, but its existence was continued from time to time and it was finally made a permanent Commission and its powers and duties were greatly broadened by Chapter 24 of the Laws of 1893, which added a new section to Chapter 8 of the General Laws (1 R. S., 9th ed., p. 349, Section 23) and provided as follows :

"It shall be the duty of the Commissioners of Statutory Revision, on request of either House of the Legislature or of any Committee, member or officer thereof, to draft or revise bills, to render opinions as to the constitutionality, consistency, or other legal effect of proposed legislation and to report by bill such measures as they deem expedient."

This statute seems to give the Commissioners the broadest imaginable powers in submitting bills to the Legislature.

The danger to be apprehended from the extraordinary powers vested in this Commission consist in the general apathy concerning all bills which are presented through any revision Commission, and their passage as matter of course upon the supposition that they do not contain new matter or what may be termed new legislation. Under such conditions it is the duty of the Committee to give unusual publicity to the bill that the general impression that this is a revision merely may be removed.

II.

The enforcement of the reading of the Bible or the teaching of morals and good behavior in the Public Schools is a violation of Constitutional rights.

Religious liberty, or liberty of conscience, under the United States Constitution has a double aspect, The individual shall not be (1) *compelled* to worship; nor (2) *prevented* from worshipping.

("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U. S. Const., First amendment, Art 1.)

These two bald statements might, perhaps, be amplified thus:

1. No person shall be coerced to recognize, either by outward action or inward conscience, any particular form of religion or any religion whatever.

2. The right to openly and freely worship according to the doctrines of any particular religion is inalienable and shall not be prohibited.

It should be said, at once, that neither of these propositions is absolutely correct. It should be noted here also, that there is nothing in the United States Constitution depriving the various States of the right to deal with this question. But the principles stated above are found in the State Constitutions generally. See Cooley's Constitutional Limitations, 6th ed., page, 571 et seq., chapter on "Religious Liberty."

The defect in the first of the foregoing propositions is due to the principle that the doctrines of Christianity, are, to a limited extent, part of the law of the land. This principle is well stated in *Lindenmuller* v. *People* (33 Barb., 548, at page 560), as follows:

"The constitutionality of the law under which Lindenmuller was indicted and was convicted does not depend upon the question whether or not Christianity is a part of the common law of this state. Were that the only question involved, it would not be difficult to show that it was so, in a qualified sense —not to the extent that would authorize a compulsory conformity in faith and practice, to the creed and formula of worship of any sect or denomination, or even in those matters of doctrine and worship common to all denominations styling themselves Christian, but to the extent that entitles the Christian religion and its ordinances to respect and protection, as the acknowledged religion of the people. Individual conscience may not be enforced; but men of every opinion and creed may be restrained from acts which interfere with Christian worship, and which tend to revile religion and bring it into contempt. The belief of no man can be restrained, and the proper expression of religious belief is guaranteed to all; but this right, like every other right, must be exercised with strict regard to the equal rights of others and when religious belief or unbelief lead to acts which interfere with the religious worship, and rights of conscience of those who represent the religion of the country, as established, not by law, but by the consent and usage of the community, and existing before the organization of the government, their acts may be restrained by legislation, even if they are not indictable at common law. Christianity is not the legal religion of the state as established by law. If it were, it would be a civil or political institution, which it is not; but this is not inconsistent with the idea that it is in fact, and ever has been, the religion of the people. This fact is everywhere prominent in all our civil and political history, and has been, from the first, recognized and acted upon by the people, as well as by constitutional conventions, by legislatures and by courts of justice."

Many cases might be cited to the same effect and all writers on constitutional law recognize this principle. Upon it are founded, to a considerable extent, the various Sunday laws, which have been almost universally upheld in all the States. In the case from which the quotation is taken the proprietor of a theatre had been indicted for giving a performance

on Sunday and it was in affirming his conviction, that the Court used the language to which reference is made.

There is another view that these statutes are merely civil regulations and not connected with religious worship. A case in the Supreme Court of California announces this doctrine, but the discussion shows that the decision was based upon an underlying religious sentiment. The case is interesting also because the same Court at first held that such laws were unconstitutional and later overruled the earlier decision.

That Court, in 1858 (*Ex Parte Newman*, 9 Cal. 502), declared a statute prohibiting all except certain classes of business to be transacted on Sunday as a violation of the State Constitution which provided: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this State." (§ 4.)

And the further provision:

"All men are by nature free and independent and have certain inalienable rights, among which are those of enjoying and defending life and property; acquiring, possessing and protecting property," etc. (§ 1.)

An Israelite engaged in the business of selling clothing had been convicted under the statute mentioned. The Supreme Court discharged him on *habeas corpus* proceedings and held the law unconstitutional. The Court, which was composed of three judges, divided on the question, FIELD, J. writing a strong dissenting opinion. This decision was so far contrary to the settled doctrine of nearly every State in the Union that it was repudiated three years later, by the same Court, though differently constituted (*Ex Parte Andrews*, 18 Cal., 679), and the doctrine of the last mentioned case was re-affirmed in *Ex Parte Burke*, 59 Cal., 19.

In the *Andrews* case the Court remarked, at page 684:

"It is contended with more earnestness that this act is opposed to the fourth section of the first article. The language of that article deserves particular notice. It contains a guarantee for the free exercise and enjoyment of religious profession and worship, without discrimination or preference. We understood this to be an interdict against all legislation which invidiously discriminates in favor of or against any religious system. It does not interdict all legislation upon subjects connected with religion; much less does it make void legislation, the effect of which is to promote religion, or even advance the interests of a sect or class of religionists. On the contrary, the interests and even the rites of sects have been oftentimes protected by law, as by acts of incorporation of churches, exemption from taxation in some States, protection of meetings from interruption and the like acts. While the primary object of legislation, which respects secular affairs, is not the promotion of religion, yet it can be no objection to laws, that while they are immediately aimed at secular interests, they also promote piety. The Act of 1861 does not discriminate in favor of any sect, system, or school in the matter of their religion. It found a particular day of the week recognized by the large majority of the people of the country as a day consecrated to divine worship. It was regarded by all of this large class as a day of rest, but not by all as a day set apart exclusively for divine worship or religious observance. In selecting a day of rest from wordly labor, that day would seem to be the most convenient, which, while it offended the scruples of none to observe, was most familiar to the usage, sense of propriety, and sense of religious obligation of so many. At least, the mere fact as we have intimated, that the closing of shops on that day might be more convenient to Christians, or might advance their religious aims or views, is no reason for holding the law unconstitutional. If Saturday had been chosen, a like objection might have been urged by different sects; and, probably, any other day of the week might have encountered objection from still other sects already existing or to arise. The Act of 1861 requires no man to profess or support any school or system of religious

belief, or even to have any religion at all; it does not require him to contribute money to any sect, or to attend any church or meeting. It simply requires him to refrain from keeping open his place of business on Sunday.

"The operation of the act is secular, just as much as the business on which the acts bear is secular; it enjoins nothing that is not secular, and it commands nothing that is religious; it is purely a civil regulation, and spends its whole force upon matters of civil economy."

This case was cited with approval and a similar doctrine announced in *Commonwealth* v. *Has*, 122 Mass., 40.

The principle found in these decisions has been embodied in the Constitution of this State, which provides:

"The free exercise and enjoyment of religious profession and worship, without descrimination or preference, shall forever he allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to execuse acts of licentiousness, or justify practices inconsistent with the peace and safety of this State."

N. Y. Constitution, 1894, Art. 1, §3.

Therefore, turning to the first proposition it is found that while no person is *compelled* to recognize any particular religion, or any religion whatever. still he must so conduct himself as not to offend the great mass of the people who profess Christianity. To this limited extent, atheists, agnostics and those whose religion is non-Christian, are *compelled* to recognize and respect the doctrine of Christianity.

The second proposition that no one shall be *prevented* from worshiping according to the doctrines of such religion as his conscience dictates, also has limitations. They are expressed in general terms in the New York Constitution. The most conspicuous example of the prohibited practice in this country, is, of course, polygamy. There are others

which are to be found among the older Eastern nations, which are essentially religious. Christians consider them immoral and the *exercise thereof* is therefore prohibited, notwithstanding the broad expression in the Constitution of both the United States and of New York.

The discussion thus far has been for the purpose merely of showing, generally, the limitations and exceptions to the constitutional provision, as broadly stated, that no one is *compelled* to recognize any religion nor *prohibited* from worshiping in the manner dictated by his conscience. And it is worthy of remark that the tendency has been towards liberality as respects Sunday laws. The old so-called Blue Laws of earlier history of the country have been largely modified in the States where they were in force and of the newer States the tendency has been towards an even greater liberality.

We read of people being punished in Colonial times for failing to go to church, in places where there was only one church available. But that is one of the particular immunities which the Constitution of this State at least has secured to its citizens. While the Christian religion must be respected in the manner already pointed out, no one can be compelled to listen to the teaching of its doctrines. No one can be compelled to profess Christianity. Liberty of conscience to this extent is an inalienable right.

Keeping this in view, put some of the features of the proposed school law together and see how they would work out in their practical operation. They may be stated briefly as follows:

1. *Compulsory education* of all children of school age, including the blind and deaf-mutes, in a common school or equivalent instruction elsewhere. (Note that the place for instruction of the blind and the deaf-mutes are made *common schools* by section 3.)

2. *The Bible* (any version thereof) may be read, without note or comment, "as a part of the school exercise or otherwise" (§5).

(The Bible therefore can be adopted as one of the text books by the proper authorities, provided it is used in the manner indicated.)

These provisions are particularly clear and unambiguous. It requires no refined reasoning to demonstrate that children of Protestants, Catholics, Jews and Turks alike must attend school where the Bible is a text-book, provided it has been adopted by the proper authorities in any particular school district, and listen to the reading of "any version thereof."

Omitting for the moment any discussion as to the effect of this law on the public schools generally; attention is called particularly to its operation on truant schools and institutions for the instruction of the blind and deaf-mutes. The pupils in a truant school are prisoners. They are restrained of their liberty and are compelled to attend that particular school designated by the Superintendent and receive the instruction imparted therein. The blind and the deaf-mutes are, by reason of their unfortunate condition, confined to the particular schools to which they are sent. This is essentially true concerning such of the children as are sent to schools designated by the Superintendent, against their parents' wishes.

Again it needs no argument or citation of authority to demonstrate that sectarian instruction in the public schools is unlawful and unconstitutional. Section 4 of Article IX. of the State Constitution makes that point clear.

Assume for a moment that the reading of the Bible in the manner specified in the proposed statute is "sectarian instruction" and it becomes evident that the Constitutional inhibition is violated. If sectarian instruction is unlawful and the reading of the Bible, without note or comment, is sectarian instruction, then the reading of the Bible in the manner proposed is unlawful.

The whole question turns on the correctness of the minor premise—is the reading of the Bible, without note or comment, sectarian instruction?

This question has been carefully and exhaustively discussed by the Supreme Court of Wisconsin, after a litigation which was fought with all the warmth and determination of religious zeal and personal conviction. Each of the three judges wrote a separate opinion, but they all concurred in the conclusion that the reading of the Bible, without note or comment, was "sectarian instruction," and therefore prohibited in the public schools. *State* v. *District Board*, 76 Wis., 177.

In discussing this point the Court said, at pages 191, 194:

"The courts will take judicial notice of the contents of the Bible, that the religious world is divided into numerous sects, and of the general doctrines maintained by each sect, for these things pertain to general history, and may fairly be presumed to be subjects of common knowledge, 1 Greenl. Ev. §§5, 6, and notes. Thus they will take cognizance, without averment, of the facts that there are numerous religious sects called 'Christians,' respectively maintaining different and conflicting doctrines; that some of these believe the doctrine of predestination, while others do not; some the doctrine of eternal punishment of the wicked, while others repudiate it; some the doctrines of the apostolic succession and the authority of the priesthood, while others reject both; some that the Holy Scriptures are the only sufficient rule of faith and practice, while others believe that the only safe guide to human thought, opinion and action is the illuminating power of the divine spirit upon the humble and devout heart; some in the necessity and efficiency of the sacraments of the church, while others reject them entirely; and some in the literal truth of the scriptures, while others believe them to be allegorical, teaching spiritual truths alone or chiefly. * * * That the reading from the Bible in the schools, although unaccompanied by any comment on the part of the teacher, is 'instruction,' seems to us too clear for argument. Some of the most valuable instruction a person can receive may be derived from reading alone, without any extrinsic aid by way of comment or exposition. The question, therefore, seems to narrow down to this: Is the reading of the Bible

in the schools—not merely selected passages therefrom, but the whole of it—sectarian instruction of the pupil? In view of the fact already mentioned, that the Bible contains numerous doctrinal passages, upon some of which the peculiar creed of almost every religious sect is based, and that such passages may reasonably be understood to inculcate the doctrines predicated upon them, *an affirmative answer to the question seems unavoidable.* Any pupil of ordinary intelligence who listens to the reading of the doctrinal portions of the Bible will be more or less instructed thereby in the doctrines of the divinity of Jesus Christ, the eternal punishment of the wicked, the authority of the priesthood, the binding force and efficacy of the sacraments, and many other conflicting sectarian doctrines. A most forcible demonstration of the accuracy of this statement is found in certain reports of the American Bible Society of its work in Catholic countries (referred to in one of the arguments), in which instances are given of the conversion of several persons from 'Romanism' through the reading of the Scriptures alone; that is to say, the reading of the Protestant or King James version of the Bible converted Catholics to Protestants without the aid of comment or exposition. In those cases the reading of the Bible certainly was sectarian instruction. *We do not know how to frame an argument in support of the proposition that the reading thereof in the district schools is not also sectarian instruction.*"

Were this bill to be attacked on sectarian grounds merely, the objections would not, it is apprehended, and perhaps, should not, receive the serious consideration of the Legislature.

The belief of those who oppose the proposed measure is that such fundamental changes have been made in reconstructing the law that the entire common school system, after it has been so carefully built up during more than a century, will be subject to all sorts of attacks, or at least that the way will be opened for such attacks. If the courts declare Bible reading to be "sectarian instruction" the schools where it is permitted can receive no part of the public money. The confusion and em-

barrassment which such a condition of affairs would cause is obvious.

It is true that a statute allowing the Bible to be read in the puplic schools in New York City has been in force since 1844, but it should be remembered that the constitutional prohibition (Art. IX., 4, to which reference has been here made, has only been in force since January 1st, 1895.

If the present provision of the New York City Charter is to be made applicable to the whole State it should be at least with such modifications and restrictions as are found in the present statute.

III.

The right of the State to educate is limited by the Constitution and is subject to the natural right of the parent to provide for the mental or moral training of his offspring.

"The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated." (Section 1, Article IX, Constitution of New York.)

Within the evident purport and manifest intention of these words must all State legislation, in the matter of education, be contained. The present bill, with its general features of classification, codification and revision of the old, together with a generous injection of new matter, places the entire question of education before the Legislature for its action. Many of its features, and indeed, many of its objectionable features, are old; but it is here sought to re-enact them and to perpetuate them by placing thereon a new stamp of authority. Because it has long been the law, makes it none the less dangerous; and deprives us of no right to question it whenever we fully awake to the significance and danger of its existence and of its further perpetuation.

If this measure is to become a law, it must pass, and must receive its interpretation, authority and constitutionality immediately and only from this present section. If it provides less, then the people are being deprived of their due constitutional rights; if it provides more, and antagonizes the intention and meaning of this section of the constitution, then is it an assumption perpetuated in the name of the law, and, hence, most insidious. This bill, in spirit and words, gives into the hands of the State absolute and unlimited control of education; gives it the unqualified direction in matters educational of every child between the ages of seven and fourteen, and a conditional control between the ages of fourteen and sixteen, that if he be not in school, he must work; commands and orders a "system" of education, which shall be the State system, thus logically constituting every other system unlawful; and arbitrarily deprives the parents of all their rights in the matter of educating their children; and, finally, and most disastrously of all, commits this whole system of "paternalism," with all of its compulsory and dictatorial features, to the hands of one man—the State Superintendent—who is paramount dictator, with the right to invade the inviolable privacy of the family, the freedom of all special schools, and even the sanctity and efficiency of the child's very home training, should they not meet his ideas and his interpretation of this State "system of education."

In *People* v. *Supervisors of Westchester*, (4 Barb. 64), the Court says:

"* * * Here (in this country) the legislature is not supreme; it is not the highest authority recognized. 'It is only one of the organs of that absolute sovereignty which resides in the whole body of the people. Like other departments of government, it can only exercise such powers as have been delegated to it; and when it steps beyond that boundary, its acts, like those of the most humble magistrate in the State, who transcends his

jurisdiction, are utterly void.' We have written constitutions which limit and control the legislative power; and although, in the absence of a constitutional inhibition, the legislature may be presumed to have the power it exercises, in most cases, still I apprehend that this is not universally true. The constitution declares that 'the legislative power of this State shall be vested in the Senate and Assembly.' This is the authority under which our legislature acts; and under this clause it has the power of legislation within the fair scope of legislation, except so far as it is restricted by other provisions of the constitution. But it can hardly be said that under this general power of legislation it is omnipotent; that it can pass acts against natural right and justice, and subversive of decency and good order. Such power is the prerogative of despotism—not of free government. To suppose that the people have clothed their representatives with absolute and despotic power, under the general grant of legislative authority, is to presume them incapable of self-government and unworthy the name of freemen.

"Protection to life, liberty, and property, is the great object of human governments. Whatever tends to this end is within the scope of legislative authority; whatever plainly destroys this, is beyond its legitimate scope. The legislature has full power to enact laws for the punishment of crimes; but suppose it should prescribe a uniformity of dress, or the quantity and quality of food for each person, or regulate the hours which every citizen should devote to labor and to sleep; and, attempt to enforce such arbitary interference with individual affairs, by pains and penalties; would such laws be valid? Could any court be found to enforce them? I am aware that these may be called extreme cases; and it cannot be presumed that the representatives of the people will so far forget their position, as to enter upon such fields of unauthorized legislation; still, experience warns us not to be too sanguine even upon this point. The past admonishes us of the necessity of guarding individual right against the encroachments of the law-making power. * * *

"It cannot be denied that *excessive legislation* is the great legal curse of the age. It is the mighty vortex which is drawing everything within its grasp. So long as it keeps within the constitutional bounds and legitimate scope of its authority, it is

our duty to enforce the laws; but when it transcends these, it is equally our duty to declare them null and void. * * * *"

The present measure purports to be a *scientific* codification and arrangement of the School Law, and, logically, the Board would seek a starting place—a germ—constitutional if possible, from which the law must go on enlarging and expanding into all of its finished and minutest ramifications; there must be nothing in "the law" which does not derive its sustenance, and its life, from this one constitutional germ. The Board has made its choice and has planted at the beginning of the bill, as its sufficient *raison d'etre*, section I of Article IX of the Constitution of New York. The choice has been made, therefore, the measure, as a whole, and in its smallest detail, must live or die just as it develops properly and naturally from that germ. If the words in Section I, Article IX, "may be educated" *mean must be educated*, then the legislature has every right to pass the present Education Bill with all of its provisions and with all of the objectionable old laws re-enacted; for, if the people gave the legislature this power, then can they exercise it, and, in fact, must exercise it. If, however, the words are to be understood in their plain English sense, then does the pending bill throw upon this whole section the odium of contravening the natural law. All positive human law has its origin and beginning in the natural law; and so positive and fixed is it that not even will the Omnipotent Creator Himself enact a revealed or direct law in contravention or in perpetual or universal suspension of the law—natural—which He has promulgated from the beginning. If not even He, then how much the more must individuals and societies, dependent completely for existence upon Him, follow and respect the law of nature and of nature's God. So paramount is this principle that it carries within its

very self its own sanction ; for, when violated, the very violation is punishment. Hence, the State will do well to found itself assuredly and firmly upon that from which must necessarily spring its life and perpetuity.

The whole question is at issue in the proposition that the essential duty to educate the child resides in the parent; in other words, that the natural law gives the duty to educate, and, as a consequence, the right, to the parent, as an essential duty ; and that therefore, as a necessary consequence, the essential duty is not within the State. By the very law of nature, must the parents supply the child with the means of earning a decent living, and therefore is it their strict duty to educate the child.

"The last duty of parents to their children is that of giving them an education *suitable to their station in life*, a duty pointed out by reason, and of the greatest importance of any."

Blackstone, Book 1, Chap. 16.

Looking at the question from another side, and going deeper down into nature, do we not find a natural and universal impulse in parents, shared with them by the very animals, which tends to the performance of these very duties; could there be a natural and universal tendency to the performance of such duties unless these duties were built upon nature and upon the laws of nature's Supreme Ruler?

Coming at the question from another side: Who is there so irrational as to choose means for effecting a given and fixed purpose, other than those which have a special and natural aptness for the performance of that very purpose? And, is it not the parents and they only, who have the special and natural fitness for the performance of these duties of maintenance, protection and education? If such is the case, and no one can doubt it, to whom better then must such duties be left?

"Several States of antiquity were too solicitous to form the youth for the various duties of civil life, to intrust their education solely to the parents; but, this was upon principle, totally inadmissable to the modern civilized world, of the absorption of the individual in the body politic and of his entire subjection to the despotism of the State."

Kent, Com., Lec. XXV.

Enough has been said to show that there is in the parents an essential duty,—and if we take it away from them, what other purpose has the family for its existence? It becomes in consequence a creature —an entity without a purpose.

Since, therefore, the essential duty of education is with the parents it necessarily follows that it cannot be elsewhere; or, in other words, in the State; since the very human reason will see clearly the truth of the axiom that "*non sunt multiplicanda entia sine necesitate*"—that two beings, essentially different, cannot have an object or a purpose essentially the same. If, therefore, the State has not the essential right to educate the children, it can only exercise any power whatever in this matter as it is delegated to it by the parents —in other words, no matter what the right in another, in the same subject-matter, it must be in abeyance to the right of him who holds the essential duty, and this is based upon the supposition that the parent perform his whole duty in this respect.

From the distinction that has been made so far between the essential right and right in general, one would infer that the State had some right in this matter—and so it has.

"The education of children in a manner *suitable to their station and calling*, is another branch of parental duty, of *imperfect obligation* in the eyes of the Municipal Law, but of very great importance to the welfare of the State."

Kent, Com.

Herein it is granted, and can be well granted, that the State has an imperfect duty, or an imperfect obligation, which, however, cannot be exercised against the holder of a corresponding essential duty except in certain cases which we shall see hereafter where there is absolute and positive menace to the State's existence. If, then, the State has a duty—and a duty, even though imperfect, is still a duty—let us see just where the line must be drawn.

By State or civil society we mean "a union of the individuals and families under a certain form of government for the purpose of securing those temporal advantages and facilities which individual and domestic efforts alone are unable to secure." Civil society is also based upon the natural law, and is a necessary institution independent of the free will of men and founded upon the sense of universal interdependence which exists in mankind for its perfect development. Therefore, since it has its very existence and being from the individual, and from the family, hence its only object is to promote the temporal welfare of the individual and family, and to protect their natural and acquired rights. It may, indeed, direct its members to temporal prosperity, and it may also protect their rights from unjust aggressors; but, it must not, in so doing, transgress the natural rights of the individual or of the family. But, rather, even from a sense of self-protection, should it guard and defend them and keep inviolate their rights whether personal or domestic. In taking to itself the sole right to educate, the State does destroy the personal right of the child, the domestic right of the family, besides, at the same time, thwarting the intent of the Creator. It violates the personal right of the child because it fixes a standard of education and deprives and hampers him in obtaining that education which his Creator wished for him personally; it violates the domestic rights of the parents, as we have sufficiently proved.

Therefore, the rights and duties of the State are

to promote, and to facilitate, as far as possible, the rights of the individual and of the family, without impugning personal or domestic rights. Then you would deprive the State of all power to legislate in this matter of education? By no means. Cannot the State make law with regard to property? But, does it thereby become a real estate broker? Cannot the State make laws for the protection of the rights of religion, and even of the various denominations? But, does the civil government therefore become an established church? Allow the State to make all the laws it may wish along the lines that the natural law would suggest; but, should it therefore become an educator—the only educator?

What then may the State do? It may and must supply the deficiency of the individual—that is, supply schools in sufficient number for those whose parents cannot, or will not, educate them—encourage the dissemination and increase of knowledge by founding libraries, museums, etc. In other words, it may do, in the matter of educating its people, all that the individual and the family cannot, or will not do.

The State, therefore, may teach—it may, indeed, instruct—any one who chooses to go to it for such instruction as it may give; but, *educate*, that is, train the minds and hearts of its pupils, and teach them morals, religious or Christian, it cannot.

The right to suppress immoral education, the right to promote education by supplying means which private enterprise or family exertion cannot attain; standing in the place of parents when dead or vicious, and where there is no one nearer to assume the charge, are within the rights of the State.

The State must promote the general welfare by social means and not by controlling individual activity nor by invading the family. Parents, alone, are the judges of the natural and intellectual needs of their children; hence, control is due to them in strict justice, and any abridgement thereof is a violation of justice.

But, we may say, cannot the State interfere because the right of the child is being violated? The natural right of the parent to educate is inalienable. The State may not interfere until this natural right has been forfeited. The right which the parent has by the law of Nature to educate his offspring being inalienable includes his right to alienate by consent where the delegated educator of the child has been called upon.

Such delegated authority must be recognized by the State and its right to interfere for the so-called protection of the child does not accrue, until both the natural and the delegated authority have either been exhausted or proven to be inefficient.

At the outset certain dangerous and insidious features were noted, and ascribed to the "Education Law."

Let us see where and in what very words.

Section 5, Article I, says:

"Instruction in Public Schools. — The public schools shall provide instruction in the English language in the following subjects:

1. Reading, writing, spelling, arithmetic, English grammar and composition, geography, drawing, physiology and hygiene, American history, civil government, and good behavior.

2. Good morals; and for this purpose the Bible may be read either as a part of the school exercises or otherwise. Such reading may be from any version, but must be without note or comment.

3. In such other subjects as may be prescribed or permitted by the school authorities, the superintendent or by law."

In the light of the preceding principles, paragraph 2 must be totally rejected.

In paragraph 1 the words "good behavior" may be harmless, but upon the rejection of paragraph 2 they may be contorted into meaning "good morals,"

especially should there be any attempt upon the part of the teacher to instruct in the intrinsic and underlying principles upon which "good behavior" should be based. Replace by "deportment," *i. e.*, "conduct or behavior viewed with reference to the propriety of intercourse."

Again it would seem to be absolutely useless to carefully designate the studies which are to be pursued in the schools and then to add a provision so broad as that contained in subdivision 3 of section 5.

It is a dangerous and unnecessary power to confer upon any officer or set of officers, who have anything to do with the public schools.

IV.

The establishment of State truant schools and the additional powers conferred upon the school authorities is a retrograde movement in violation of paternal rights.

The Commissioners frankly admit that the scope of the compulsory education law has been considerably enlarged in this bill. The old law has been in active operation only a short time and from all reports has not been an unqualified success, although a few features have met with approval in some quarters.

For example, it was not long ago that the condition of one of the truant schools organized pursuant to the power contained in the present statute was an absolute disgrace to the State. It was in a state of disgraceful chaos. The inmates were covered with vermin and were ill from poor food and long confinement. The whole place was filthy, dirty. The children, it was found, had been unjustly committed and were badly treated. It was ascertained that there had been

more truants from this one truant school than there had been from all the other schools in two populous districts. And it was discovered that boys were required to do work unfitted for even a man.

Other things might be mentioned showing that the condition of this school was such that the treatment accorded to Oliver Twist and his unfortunate companions was homelike and cheerful in comparison. This all happened while the schools were few, were still a novelty, and were supposed to be under strict and careful supervision.

The tendency of this bill is to make prisons of such schools and degrade young boys and girls, when in a very large majority of cases their truancy is due to their parents and their teachers. The tendency of confinement in these schools is to harden particularly the boys, and if this proposed law should go into effect, the harm which would be done to these children in making them incorrigibles would be much greater than the good accomplished in a reformatory or an educational way.

It must be admitted that the object of this Article is to compel children who for some reason refuse to be instructed to receive a common school education. The title so declares. It is compulsory education that is sought, not reformation. Of reformatories and reformatory schools there is a great plenty at the present time.

But if it is admitted for a moment that these institutions are to be reformatories, it certainly is a great outrage to mix children who merely stay away from school, often through the fault of their parents or teachers, with those who are really vicious and depraved. The result will be not to reform the vicious but to contaminate the others.

The principal features of this bill which are seriously objectionable and which are not found in the statute now in force may be classed as follows:

1. Establishment of State schools, one in each judicial district.

2. The power to abolish local truant schools.

3. Commitment of children for long terms (the whole school year).

4. The power of truant officers to arrest children without warrants and detain them in their own custody.

5. The power of parol in the State Superintendent where child is committed to a State school.

Those who have had experience with such schools declare it to be of the utmost importance that the children should not remain in these institutions for long periods. It is asserted that if this happens they become hardened, and as one teacher expressed it, institutionalized, so that they are actually prevented from making good citizens.

If the pupils are sent to State schools some distance from their homes a practical system of parols where they are put on their honor, and only taken back to the truant schools in case they break their parols, is impossible. And yet this is the most important feature of the institution so far as it tends to stop truancy.

An application to the State Superintendent for a parol is a cumbersome method. If the plan is carried out on the lines of this bill it will require the assistance of several persons in the Superintendent's office to pass on applications for parols. Those who decide are not so well fitted to determine when they should or should not be granted as the teacher or local superintendent of a particular school. If the action of the Superintendent, on the other hand, depends, as it naturally will, on the recommendation of the teacher, there seems to be no objection whatever to placing the power in the hands of the latter. This is particularly true as an appeal always lies to the Superintendent from any action of the teacher or local school authority.

The provision allowing truant officers to arrest and keep children in their own custody until the

cases are disposed of by the magistrates seems to be so absurd as to need no argument to defeat it. Children are not like stolen goods that the parents may smuggle them away and out of the reach of the law. They may be easily compelled to bring their children to Court, and any possible inconvenience in this direction would not compensate for the dangerous practice of putting young children absolutely in the power of a truant officer, who may have (and undoubtedly will, in many cases) received his appointment through political favor, and whose morality may not always be of the highest standard.

V.

The new provisions relating to the support and education of the deaf-mutes, permit the school authorities to enter the homes and commit the unfortunate to a State institution, under secular control, without the consent of the parent; making contracts with institutions under religious control is thus rendered impossible or inoperative.

The enforced instruction of the blind and the deaf-mutes is somewhat in the nature of novel legislation, to say the least. Considered in its constitutional aspect there seems to be great danger that the present schools will be destroyed to a very large extent, leaving the work of reconstruction in the hands of the State, through the medium of future Legislatures. If this assertion cannot be substantiated, a large portion of the argument against this feature of the bill falls to the ground.

Secs. 439 and 440 provide respectively for the making of contracts by the Superintendent with certain schools now in existence for the education of the blind and the deaf-mutes and that a school with which such a contract is made becomes a school for the blind (439, last sentence) and the pro-

visions of this article "relating to the instruction of blind children and the powers and jurisdiction of the State Superintendent apply so far as practicable to deaf-mutes and *schools for their instruction.*"

Section 3 of the bill provides that "the term 'common schools' includes:

* * * * *

"2. Schools for the blind, deaf-mutes or other defectives under this chapter."

Sec. 440 names several institutions which are known to be sectarian with which the Superintendent may make the contracts and unlimited power is given to him to make contracts with other institutions.

Just as soon, therefore, as these contracts are made with any of these institutions they become "schools" for the purposes of this act and part of the common school system. The very minute this happens, such institutions as are "wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught" (Const., Article IX, Section 4) cannot receive any of the public moneys, and this applies to the very amount which the Superintendent agrees to pay. Not only this, but the very act of the Superintendent in making the contract is unlawful.

Thus while the proposed law seems to favor the institutions mentioned in Section 440, it will really operate as a stab in the back, and will practically destroy them, so far as their usefulness is concerned in educating these poor unfortunates. The years of experience which their teachers have gained in a task where experience must necessarily be invaluable is therefore to be thrown to the winds, without any visible advantage to compensate for the loss.

It has been said that the natural progress of things is for liberty to lose and for government to gain ground. Patrick Henry doubtless had this

tendency in mind when, in his fervent way, he declared that eternal vigilance was the price of liberty. Nothing could demonstrate the truth of both propositions better than this bill and the manner in which it has come before the Legislature. Under the guise of a revision and codification of existing laws, new principles are introduced, new officers with additional powers are authorized and the authority of the old officials is greatly broadened and strengthened.

The practice of stuffing education down the throats of children, whether they or their parents will or no, which it has been proclaimed from the house tops had been abandoned for the more intelligent method of making education attractive, is to be revived in a more odious form than it ever existed; children of tender years, either girls or boys, may be dragged from their homes and put under the care of masters of truant schools, the blind and the deaf-mutes are to be taken from the company of those who affectionately care for them, or from institutions where their education was begun and carried on largely as a labor of love, and locked up in State schools at the tender mercy of paid agents of the government.

The final arbiter as to whether or not any or all of these things are to be done is a magistrate whose training has not fitted him to determine what is and what is not proper education for young children, but whose experience has hardened his nature and made him unsympathetic—the very worst quality a man or woman could possess who has anything to do with the training or education of children.

And why are we asked to try all of these dangerous experiments? Not because they are in the line of enlightened progress, not because there is any popular demand for them, not because the children may receive a better education in the proposed State schools than they are receiving at present, but because here and there, in an isolated case, the

hard necessities of life appear to make a child's earnings more desirable than schooling, or the mother of a blind girl cannot bear to send her daughter away from home to live among strangers, and because the few men who have compiled this revision have come to the conclusion that important features of our educational system, about which we have been in the habit of priding ourselves so highly, are all wrong, we must jump in the dark, enact laws of doubtful validity and extricate ourselves as best we can from the embarrassments when they come.

If Article XVI is to be enacted at all, the following sections should be amended in the manner indicated. The old provisions to be cut out are in italics and the new matter is in parentheses.

SEC. 440. Contracts for the Instruction of deaf-mutes. A contract for the instruction of deaf-mutes *may* (shall) be made by the State Superintendent with one or more of the following schools or institutions: New York Institution for the Instruction of the Deaf and Dumb, in New York; Le Couteuix St. Mary's Institution for the Improved Instruction of Deaf-Mutes, in Buffalo: The Institution for the Improved Instruction of Deaf Mutes in New York; St. Joseph's Institute for Improved Instruction of Deaf-Mutes, in Fordham; The Central New York Institution for Deaf-Mutes, in Rome; Western New York Institution for Deaf-Mutes, in Rochester; The Northern New York Institution for Deaf-Mutes, in Malone, and the Albany Home School for the Oral Instruction of the Deaf and Dumb, in Albany; but such a contract shall not be made unless *the Superintendent is satisfied that* the school or institution has adequate accommodations, and can provide the required instruction, (provided no greater amount shall be paid per capita for instruction in said institution than is paid at present.) The Superintendent shall, so far as

practicable, subject to the limitations herein prescribed, make contracts with schools or institutions so located as to be convenient of access in different parts of the state. A parent, guardian or other person who applies for the admission of a deaf-mute to a school under this article may request the Superintendent to designate a school specified by the applicant, for the instruction of such deaf-mute, if a State school is not available; and the Superintendent shall designate the school so specified, if it is under contract as provided in this article, and has accommodations for such deaf-mute.

SEC. 441. Cancellation of contract. The State Superintendent may cancel a contract under this article, on a notice of not less than thirty days, if it shall appear *to his satisfaction* that the school or institution with which the contract is made neglects or refuses to perform any condition of the contract, or comply with any (reasonable) rule, order or decision of the State Superintendent in relation to children included in such contract, or their instruction or maintenance in such school or institution. The contract shall embody this section, or the substance thereof.

SEC. 444. Instruction of deaf-mutes. The State Superintendent has exclusive supervision and direction of the instruction of deaf-mutes of school age, and shall provide for such instruction in a State School for deaf-mutes or other school or institution (provided the said deaf-mutes are not receiving adequate instruction elsewhere).

Deaf-mutes shall be sent to a State School, or the State Superintendent shall contract with any other school or institution for other instruction therein if in his judgment a state school is not available or has not sufficient accommodations. The provisions of this article relating to the instruction of blind children and the powers and jurisdiction of the State Superintendent apply, so far as prac-

ticable, to deaf mutes and schools for their instruction. School authorities shall report concerning deaf mutes in the same form and manner as herein provided in relation to the blind.

§ 446. Application by school authorities. The application by the school authorities shall be addressed to the State Superintendent of Public Instruction, and shall be substantially in the same form as if made by the parent, guardian or other relative. On such application the State Superintendent shall determine whether instruction can be provided for such blind child or deaf mute in a school under this article, and if so, shall designate the school to which he shall be sent. Such determination shall be under the hand of the State Superintendent and the seal of the Department of Public Instruction, and is conclusive as to the accommodations for instruction. (No blind or deaf mute shall be sent to a school or institution under contract, pursuant to this Article, other than one which represents the religious faith of the parent, unless such parent consents in writing to a commitment elsewhere.)

(Every child sent to the State School for the Blind, or to the State School for Deaf Mutes, shall be afforded facilities for receiving religious instruction, and for the exercise and enjoyment of religious profession and worship, in accordance with the religious faith of the parent.)

VI.

By the provisions embodied in the present bill, the already extraordinary powers of the State Superintendent of Public Instruction have been enlarged to a degree that bestows upon him almost irresponsible and autocratic authority upon all matters relating to the public school system of the State, either by original jurisdiction or by his de-

cisions upon appeal of all persons who may be aggrieved by the decisions of the local authorities.

Under Article I, is conferred upon him the additional power of adding to the number and character of the studies and text books to be used in all of the schools of the State, and there would seem to be no remedy or appeal from his decision on the part of any aggrieved citizen. It will be noted that in all matters of original jurisdiction wherein the State Superintendent is empowered to exercise his discretion, the appeal which the citizen might have to the courts is nullified by the very fact of the exercise of that discretion.

Under Article IX of the bill, the State Superintendent is clothed with additional powers which will authorize him to establish and maintain State truant schools at such location throughout the State as he may determine, to which may be committed all of the truants and incorrigibles without the consent of the parents.

Under this provision, the superintendent will have the authority to either grant or refuse the privilege of religious instruction to the inmates of any one of them during the term of his commit ment. Should it happen that under his instructions such refusal to furnish or permit to be furnished religious instruction out of school hours during the term of the commitment, should be made by a local authority and an aggrieved person should appeal from such decision of such local authority, by the terms of the bill the State Superintendent is empowered to promulgate a final decision from which by the specific terms of the statutes, no appeal will lie.

Under Article XVI, the State Superintendent will be empowered to make all contracts with specified or other institutions for the confinement of the blind and deaf-mutes, during any current school year. Under his authority also the deaf-mute child may be committed to any institution named by him for the current school year without the con-

sent of the parent, and to that end a truant officer may be empowered to enter the home of the parent.

Under the provisions of the proposed law, the State Superintendent has absolutely vested in himself the appointing power of the Trustees of the Batavia School for the Blind, which power has heretofore been vested in the Governor with the consent of the Senate. Under this new provision, therefore, the State Superintendent makes the appointment without confirmation and without responsibility to any authority, and it is therefore impossible to see how that matter, which is a question of discretion, could be reviewable by the courts.

By the provisions of this bill there is vested in the State Superintendent, without supervision on the part of any other official, the choosing of the banks for the depositing of the funds in his hands, and the further depositing of all paid-up insurance on all the school property throughout the State.

Heretofore this has been in the hands of the Comptroller and no reason seems to be given for the transfer from the proper officer to the educational head of the State.

It will be noted that this is also a discretionary power on the part of the Superintendent, which it would be found impossible to have reviewed by the courts of the State, and therefore, like the other powers, is autocratic.

It will be further noted here that the provision, whereby it is specifically stated that all of the acts of the superintendent are open to appeal to the courts of the State, becomes practically a nullity when interpreted in the light of the number of discretionary powers vested in him, which would make such review void.

Under the provisions of this bill, also, a new power is granted to the State Superintendent which has heretofore been vested in him, but with the concurrence of the Comptroller and Secretary of State, namely, the power to contract with an Indian band for the use and occupation of their land for school purposes.

There seems be no reason why these various checks, which have been placed upon this official for sound public reasons, should be removed unless the exigency be so great and so apparent as to meet the approval of the majority of the citizens of the State.

Additional authority is also given to the State Snperintendent where the local authorities shall fail to provide and maintain common schools in any district. These powers conferred are so unusual that the section will be quoted. Section 17 of Article I provides as follows :

"Duty of School Authorities: The School Authorities of each city and district shall maintain common schools therein, and for that purpose shall employ teachers, provide text books when authorized, and adequate accommodations for such schools, and raise and expend necessary funds."

Upon the failure of the school authorities of any district to provide and maintain common schools as provided in § 17, under the new powers conferred by this act, the State Superintendent may take possession of the local property and conduct the local schools, employ teachers, provide text books and accommodations and maintain such schools (§ 18). He may make out a tax list and issue a warrant for the amount therein to the collector of the district, and has even the power conferred upon him to appoint another collector, with all the powers possessed by a collector elected for that district.

Should any citizen or person within that district become aggrieved by any or all of the acts of the local authorities or their failure to provide school facilities, as provided by §17, an appeal can be made by that person to the State Superintendent. It is well to note here that probably the attention of the Superintendent to such local conditions would be called in most instances by such an appeal.

If upon the appeal made by the aggrieved citizen or local person interested, the State Superintendent

should decide not only that his interference in that district was necessary, but that in such interference certain property must be taken charge of, certain text books used, and all of the details necessary to the public instruction be determined upon, no appeal will lie from such decision, and thereupon the State Superintendent becomes absolutely an irresponsible autocrat of that particular district.

VII.

The change proposed by the new law, governing the term of years necessary to the conferring of a degree upon a student, is pernicious in that it does not allow for the difference in capacity among the pupils, but fixes a time rather than a grade standard for the conferring of university degrees.

Under the existing law, no university or college can confer a degree after a four years' course except that has been preceded by a high school course of at least three years.

It is true, however, that the University of the City of New York has arbitrarily ignored that provision and permitted a degree to be conferred upon a four years' course in that institution, preceded by a one-year in the high school, but, so far as we can find, that is the only instance of its kind in the State.

Under the proposed law (Article XXI.) it is provided that no degree shall be conferred by any college in the State except the four years' course in that institution shall be preceded by a four-years' course in a high school, which latter course shall again be preceded by a preliminary course of study of at least eight years.

This will overturn and upset all of the existing customs of the colleges of the State without a corresponding advantage.

It is a well-known fact that students vary in their capacities, and often one pupil will be able to do in one year what another pupil could not do in four, and where another one still could not do at all.

As this is a case of public education in most instances also, attention should be drawn to the fact that the increase of the number of years necessary to a completed course of study, and the conferring of a degree, is of serious moment to an industrious pupil who cannot afford the additional number of years prescribed and which will place him at disadvantage with other college graduates from other institutions.

With the law as it is now, the high-school and university education can be completed in seven years, and still comply with its provisions.

Under the proposed measure, nine years is added to the present requirement, of which, in most instances, five will be superfluous.

In conclusion, therefore, and by reason of the foregoing, we would ask your Committee in reporting this bill back to the respective bodies, to consider carefully the principles and objections that have been raised and in view of the sound legal and moral reasons that have been adduced, to insist, that before the bill shall become a law the following modifications and amendments shall be made:

First. That the following paragraph shall be stricken out, namely, Article I, §5, subdivision 3, as follows:

"In such subjects as may be prescribed or permitted by the school authorities, the Superintendent, or by law."

Second.—That the modifications submitted under Article IX relating to truants shall be stricken out and that no law shall be put upon our statute books that shall not provide for the privilege of religious instruction of the child after the ordinary school hours.

Third.—That no provision shall be permitted to become a law which will defeat the operation of the present statutes relating to the blind and the deaf-mutes, or that will take them from the custody of their parents without their consent.

Fourth.—That in all laws relating to the establishment or conduct of truant schools or schools for the education of the blind and the deaf-mutes, a provision shall always be introduced which will permit the parent of the blind, and deaf-mute, truants or incorrigibles, to insist that the child be sent to a school which is conducted in accordance with the religious persuasion of said parent, and that the child shall have facilities for receiving religious instruction and attending religious services conducted in accordance with the parents' religious persuasion.

Fifth.—That the passage of that portion of the bill relating to deaf-mutes not only impairs the authority of the State Board of Charities, but in case it shall become a law will raise a serious question of conflict of jurisdiction between the school authorities and the said Board, all of which it is submitted will work a permanent injury to the school system of the State.

Sixth.—We further submit that that portion of the bill which increases the number of years of study necessary for the conferring of a degree by any college in the State shall be eliminated, and suggest that a graded standard rather than one of years could be established that would much more effectually tend to promote the efficiency of collegiate scholarship.

Seventh.—That the extraordinary powers lodged in the State Superintendent of Public Instruction should not be permitted to be extended beyond their present limits, and we hereby suggest that the same be curtailed and that authority in so serious

a matter as that of public education shall not be left to the wisdom of any single individual in the State. We submit further that the passage of this bill in its present state, in so far as the rights and authority granted to the State Superintendent are concerned, will tend to reduce the efficiency of our school system if not bring it into serious disrepute.

Respectfully submitted,

NELSON G. GREEN.

On behalf of the Catholic Club and Catholic interests of the City of New York.

Dated, New York, February 8, 1899.