

**BOARD OF ASSISTANTS.****REPORT**

*Of the Committee on Laws and Applications to the Legislature, relative to the Appropriation of the Common School Fund.*

THE Committee on Laws and Applications to the Legislature, to whom it was referred, by a resolution of this Board, to report on the Constitutionality of the ordinance, passed by the Board of Aldermen, appropriating the Common School Fund, to the Schools therein named,

**RESPECTFULLY REPORT,**

That they entered upon the examination of the subject, deeply impressed with its importance, and fully determined to give it a careful and dispassionate consideration. The subject of education is at all times interesting, and particularly so in a country like ours, where the government in theory and practice is purely one of public opinion, the stability of which, depends solely on the virtue and intelligence of the people. The constituted authorities of this State impressed with its consequence, took early measures to establish our primary seminaries of learning on a permanent basis, and munificently appropriated a large and liberal share of the public funds, for the establishment and support of Common Schools, and for the diffusion of general information. The Constitution of 1821 provides that "the interest of this fund shall be inviolably appropriated and applied to the support of Common Schools throughout this State."

Each county in the State is compelled to raise a sum equal in amount to that which is apportioned to such county

out of this fund. The City of New-York now receives about ten thousand dollars from the state, which places twenty thousand dollars at the disposal of the Commissioners of the School Fund. The general act regulating School districts and the election of Trustees and School Commissioners, clearly points out what Schools in the country are Common Schools; but as it was inconvenient, if not impracticable, to divide this city into school districts, the Legislature itself designated what Schools should receive a portion of this fund prior to the year 1824. This course frequently gave rise to difficulty and embarrassment, and opened a door for imposition, which was practised to no inconsiderable extent. By an act passed in that year, the Legislature imposed on the Common Council the duty of making such designation, at least once in every three years. That act has been incorporated into the Revised Statutes, and this Board is now called upon to exercise the discretionary power of distributing the interest of the School Fund.

The first question which presented itself to the consideration of your Committee, is, what is meant by the term Common Schools. It is urged by many intelligent gentlemen, whose opinions are entitled to great respect, that every School and Institution, in which children are taught gratuitously, is a Common School. If the term be so broad and comprehensive, then every Free School attached to the Churches of the various religious denominations throughout this State is a Common School. Such however, could not have been the understanding of the early advocates of the establishment of a fund for the support of Common Schools, as no Church Schools have ever participated in this fund except those in this City. A School to be common ought to be open to all, and those branches of education, and those only ought to be taught in it which tend to prepare a child for the ordinary business of life. If religion be taught in a school, it strips it of one of the characteristics of a Common School, as all religious and sectarian studies have a direct reference to a future state, and are not necessary to prepare a child for the mechanical or any other business.

No school can be common, unless parents of all religious sects, Mahometans and Jews, as well as Christians, can send their children to it, to receive the benefits of an education without doing violence to their religious belief. Your Committee cannot, therefore, find a more correct and accurate definition of the term Common School, than to call it a school, in which nothing but the rudiments of an English education are taught to all, who are admitted into it, which is open to every child that applies for admission, and into which all can be admitted without doing violence to their religious opinions, or those of their parents or guardians. Such, in the opinion of your Committee, were the schools, which the founders of our system of education intended to patronize and foster, when they created the School Fund. Such were the schools, which the members of the Convention of 1821 had in view, when they adopted that article of the Constitution, by which the fund, thus set apart by the bounty and munificence of the representatives of an enlightened and liberal people, was inviolably appropriated to the support of Common Schools.

The Schools and Institutions embraced in the Ordinance referred to your Committee, are the Trustees of the Harlem School, the Trustees of the Manhattanville School, the Trustees of the Hamilton School, the Trustees of the Yorkville School, the Trustees of the African Free School, the Public School Society of the City of New-York, the Mechanics' Society, and the Orphan Asylum Society; and it is proposed by the ordinance now under consideration, to add to the list, the Roman Catholic Benevolent Society.

Your Committee, anxious only to arrive at a correct conclusion, feel constrained to examine particularly into the character of these Schools and Institutions, and ascertain what title they have to the appellation of Common Schools, as their claim to a portion of this Fund depends solely on the decision of that question. Acting in their representative capacity, and discarding all private feeling and individual considerations, your Committee will endeavour to test their

claims to a participation in this Fund, by that Constitution which they have sworn to support.

The Harlaem, Hamilton, Manhattanville, and Yorkville Schools are incorporated Institutions, located in the twelfth ward. They are free Schools to which, parents of any religious denomination may send their children, and in which the ordinary branches of an English education are taught, disconnected with all sectarianism. If parents are desirous that their children should study any catechism in the Hamilton School, they are gratified in that respect, but it is not obligatory on any one to study such catechism, nor is it introduced as a part of the system of instruction adopted by the Trustees of the Institution.

The African Free Schools were established for the special purpose of opening the avenues to a gratuitous education to the descendants of an injured race, who have a strong claim on the humanity and justice of our State. It may be objected that the Schools are not open for the education and instruction of any except coloured children. This, however, is not an insurmountable objection. The blacks are, by common consent, and by the Constitution of the United States, regarded as a distinct race, and "the partition wall" between them and us cannot be broken down without doing violence to those feelings and prejudices that have become a part of our nature. These children must then, be entirely shut out, from all the means of obtaining an education, necessary to make them good members of society, unless Schools are established, into which they can be admitted. Such Institutions we find in the African Free Schools, and it is due to the Trustees of those Schools to remark, that they have been eminently useful, and that they are prepared for the instruction of more scholars than now attend them.

Your Committee are fully convinced that these five Schools, come within the meaning of the term Common Schools. The only remaining Institution, which, in their opinion, is entitled to a portion of this fund, is the Public School Society. This Institution has been the most useful

of all, as its operation is annually felt by more than six thousand of the rising generation, on whom will devolve the sacred duty of preserving and perpetuating our Republican Institutions. This Society was incorporated in 1805, by the name of "The Society for Establishing a Free School in the City of New-York, for the education of such poor children as do not belong to, or are not provided for by any religious society." In 1808, the powers of the Society were extended to any children, who are proper objects of gratuitous education, and its name changed to that of "the Free School Society of New-York;" and in 1826, the name of this Society was changed to that by which it is now known, and its powers further extended, so as to embrace children of all descriptions, whether the objects of gratuitous education or not, and without regard to the religious sect to which such children or their parents may belong. The Public Schools are open to all, the poor as well as the rich, and no particular religious creed is taught to the children who attend them; but a portion of the Scriptures is read in the morning by the teachers without comment, in these as well as some of the other Schools above named. The Schools under the direction of the Trustees of the School Society, may be emphatically called Common Schools, and have a just and legal claim to a portion of the School Fund.

The original charter of the Mechanics' Society did not authorize the appropriation of any of their funds to the support of a School; but by an Act passed January 26, 1821, the Legislature "empowered the Society to appropriate such part of their funds, as may by them be deemed expedient, to the establishment and maintenance of a School for the education of the children of indigent or deceased members of said Society." The Society, in conformity with the power vested in them, established a School, and by one of the School regulations it is provided, that "the legitimate subjects of it shall be children of the members of the Mechanics' Society, or the orphans of deceased members, and the children of respectable mechanics, pursuing some trade or branch of mechanics in this city. The chil-

dren of other respectable citizens may be admitted by a special resolution of the School Committee." It was stated to your Committee, by one of the Trustees of said Society, that none except the children of members, or deceased members of the Society, were gratuitously educated in this School.

If your Committee have been correct in the view which they have already taken, as to the requisites of a Common School, the Mechanics' School cannot receive a portion of the School Fund. It is exclusive in its character, and is calculated to divide society into classes and grades contrary to the spirit of our constitution and government. It has ever been a favourite maxim with American legislators, that "all mankind are born free and equal," and so closely is this principle connected with our political institutions, that to make any discrimination between the different occupations of individuals, would be considered as a departure from first principles, and a violation of the constitution. The division of society into grades, even for the purpose of education, would be productive of the most fatal consequences; an odious distinction will early be instilled into the minds of children, and the division lines of classes of society will be more strongly drawn than they ever have been under the most despotic governments of Europe. Children will then regard themselves as belonging to a particular rank in life, which will give rise to jealousies, calculated to disturb the harmony and the present arrangement of society. It was to obviate these difficulties, that our system of Common School education was adopted. The early associations of children make a deep and lasting impression, and the intimacies formed between the children of the rich and poor at school, will ripen into indissoluble friendships in maturer years.

It has been urged upon your Committee, that by the act of 1821, in relation to this Society, they have a perpetual vested right to a portion of the School Fund. The second section of that act directs that the Commissioners of the School Money for the city of New-York, shall pay to the

Mechanic's Society, in pursuance to the fourth section of the act, entitled an act, supplemental to the act, entitled an act, for the establishment of Common Schools, passed March 12th, 1813, a portion of the School Money. The fourth section referred to, merely designated what schools in the city of New-York should receive a portion of the School Fund. As the Mechanics' Society were, subsequently to the passage of that act, authorised to establish a school, in order to entitle them to receive a portion of the School Fund, it was necessary that the Legislature should authorise the Commissioners of the School Fund, to pay a portion of the money to said Society. It was for this purpose that the second section above referred to, was incorporated into the act of January 26, 1821. That section did not confer on the Mechanics' Society any other, or greater right to the School Fund than the fourth section of the act of 1813, did on all the other schools in the city of New-York. The Legislature had the same power to repeal the one as the other, which power was exercised in 1824. Your Committee therefore cannot avoid coming to the conclusion, that the Mechanics' School is not entitled to a portion of the School Fund.

The Orphan Asylum Society heretofore has received a portion of this fund; but it ought, in the opinion of your Committee, to be placed on the same footing with the Roman Catholic Benevolent Society. Your Committee however individually take a deep interest in the welfare of these institutions, and are extremely solicitous for their continued prosperity and success in the work of benevolence. Although they have contributed in an eminent degree, to alleviate the wants and miseries of a helpless class of individuals, who are thrown upon the world, destitute and unprotected, and physically disqualified from procuring the means of subsistence, yet they are very limited in their operations, and the schools attached to them are solely for the education of orphans, who are supported by the bounty of these institutions. The trustees of these institutions have assumed the station and responsibility of the natural guar-

dians of the orphans received into them, and are bound to provide for their support and education. If the funds of these Societies are insufficient to pay for the education of the children, they can be sent to the public schools, where they would be cheerfully received, and their education strictly and justly attended to. As asylums, these institutions appeal to the sympathies of our nature, and the best feelings of the human heart, and although they rank among the most laudable of the institutions, which have sprung up in this age of benevolence, they want the most important characteristics of Common Schools, and are placed beyond the reach of legislative aid, so far as relates to this fund, which has been inviolably appropriated to a specific object.

It has been frequently charged that those Institutions are sectarian. The information before your Committee on this point, is full and satisfactory. Any respectable female may become a member of the Orphan Asylum Society, by paying a specific sum, and the door is open to all who wish to become members of the Institution, without distinction of religion or country; but the recipients of their bounty are instructed in the catechism of the Dutch Reformed Church, and are compelled to attend religious worship, at a Church of that denomination. This renders the Greenwich Asylum sectarian in its character.

The Roman Catholic Benevolent Society also has strong marks of sectarianism about it. None except Catholics can become regular members of the society, although any person, whose piety, dignity and morality will reflect honor on the society, may become honorary members. This feature in the organization of that Institution, will forever keep its government exclusively under the direction of that religious sect. And although it is open for the reception, support and education of destitute and unprotected orphans, without distinction of sex, country or religion yet, all who participate in its bounty, are exclusively instructed in the doctrines of the Catholic religion.

Here another objection presents itself, in which is involved a grave and serious constitutional question, a correct de-



cision of which, will save us from most of those religious struggles, which have disturbed the peace and repose of Europe, and which have caused so much bloodshed throughout the world. The question is this, can we, without violating the constitution, appropriate any of the public funds to the support of those Schools or Institutions in which children are taught the doctrines and tenets of religious sectarians. The Constitution of this State declares, that the "free exercise and enjoyment of religious profession and worship without discrimination or preference, shall forever be allowed in this State to all mankind." This article of the Constitution recognizes not only religious toleration, but perfect religious freedom, so long as that freedom is exercised in a manner not inconsistent with the peace and safety of the State. Each individual, in religious matters, is left to pursue the bent of his own inclination, and to follow the dictates of his own conscience. If an effort should be made to raise a fund by taxation, for the support of a particular sect, or of every sect of christians, it would unhesitatingly be declared an infringement of the constitution, and a violation of our chartered rights. Your Committee, however, cannot perceive any marked difference in principle, whether a fund be raised for the support of a particular church, or whether it be raised for the support of a school, in which the doctrines of that same church are taught, as a part of the system of education. In the one case, an ordained and regularly constituted ministry, are paid for delivering their lessons from the pulpit, and in the other, a more humble, though not less useful class of teachers, are paid for giving the same instruction in a different manner. Both tend to the same end, and both designedly promote the growth and extension of sectarianism. The one act will be as great a violation of the constitutional rights and conscientious scruples of the people as the other. Jews, Christians of every denomination, Deists, and unbelievers of every description, contribute their due portion to the School Fund, and it ought to be so distributed and disposed of, that all may participate in the benefits flowing from it, without doing violence to their con-

sciences. It would be but a poor consolation to an individual, to know that he may entertain whatever religious opinions he pleases, and attend any church he may select, and at the same time, be legally compelled to contribute a portion of his property to the support of a School, in which religious doctrines diametrically opposed to those he entertains are taught.

Any legislation sanctioning such a principle, would meet with the decided disapprobation of this community. So thoroughly were the founders of our State convinced, that religion in every shape, should be untouched by legislative acts, that they urged and procured the adoption of an article of the Constitution, disqualifying ministers of the gospel and priests of every denomination, from holding any civil or military office, or place within this State. The duties of a spiritual guide and religious instructor, were considered as incompatible with those of a civil or military station. It would be a virtual violation of this article of the Constitution, to appropriate a fund, purely civil in its character and object, to the support of religious Schools, and would not be sanctioned by a people ardently and devotedly attached to the maintenance of civil and religious liberty.

Your Committee are of the opinion, that if the two Asylums are admitted to a receipt of a portion of the School Fund, it will open the door for the admission of every School or Institution in which children are taught gratuitously, notwithstanding it may be sectarian to the fullest extent. Methodist, Episcopalian, Baptist, and other Sectarian Schools, must come in for a share of this fund; and the Common Council cannot stop here, if Charity Schools are founded, in which the doctrine of an Owen and a Wright are taught, or in which the "Age of Reason" or "the Koran" is adopted as a standard work, they will stand on the same footing as other religious Schools. Should such a course be pursued, it will be a violation of the liberal principle established by the Common Council in 1825, of denying admission to all Schools and Institutions which were considered as sectarian. A departure from this salutary precedent

will be productive of incalculable mischief. If all sectarian Schools be admitted to the receipt of a portion of a fund sacredly appropriated to the support of Common Schools, it will give rise to a religious and anti-religious party, which will call into active exercise, the passions and prejudices of men. A fierce and uncompromising hostility will ensue, which will pave the way for the predominance of religion in political contests. The unnatural union of church and state, will then be easily accomplished—an union destructive of human happiness, and subversive of civil liberty. It should ever be borne in mind, that ecclesiastical despotism is the worst and most oppressive species of tyranny; it is unnecessary to inquire why it is so—the fact is well attested by the history of every people who have lived under the government of monarchs and priests. Many of the miseries now endured by the labouring class in England, are attributable to the accumulation of the immense revenues of the bishops and higher clergy, and to the odious and oppressive system of exacting tithes for the support of an established church. It would be an incipient step towards engrafting in our institution, a system not less odious and oppressive, not less fatal in its consequences to the liberties and happiness of our country, to place the interest of the School Fund, at the disposal of sectarians. It is to tax the people for the support of religion contrary to the Constitution, and in violation of their conscientious scruples.

Your Committee are of opinion, that the ordinance referred to them, is unconstitutional, so far as relates to the “Mechanics’ Society,” “the Orphan Asylum Society,” and “the Roman Catholic Benevolent Society,” and therefore recommend that the same be so amended, as to exclude those institutions from any participation in the School Fund,

WM. VAN WYCK,  
ERASTUS BARNES,  
NEHEMIAH BRUSH.

