

the five persons whose names have been mentioned, and Alexander Murray, Robert Ross and Nicholas Sales, had been duly elected trustees for managing the temporal concerns of the corporation, and that they, with the Rev. Daniel A. Payne, pastor of the church, who was, *ex officio*, one of the trustees, and president of their body, were the properly constituted agents for that purpose.

The bill, upon the allegation of fraudulent misconduct on the part of the five defendants whose names have been mentioned, in collecting and misapplying the funds of the church, prayed for the writ of injunction to restrain them for the future, and for an account, &c. An injunction was granted accordingly: and subsequently on the 31st of January following, without having answered the bill, the defendants, Carmack, Harris, Cook, Crooks and Richfield, filed their petition in the cause, in which, after denying the acts of misconduct imputed to them in the bill, they contest the authority of the solicitor by whom it was filed, upon the ground, that the members of the board of trustees who authorised it, constituted a minority; and the petitioners upon this ground pray that it may be dismissed.

The case is brought before the court upon this petition, and the answers thereto of the complainants and counsel have been heard in support of, and in opposition to, this prayer.

The answer of the complainants affirmed that the corporation is composed, not of trustees and pastor, but of the congregation of the church, and that the allegations that the bill was filed without adequate authority is untrue.

The legal position, however, I think is clearly erroneous. The 2d section of the act of 1802, ch. 111, under which this corporation was created, authorizes certain persons, members of the church, society or congregation, proposing to avail themselves of the provisions of the act, to elect certain sober and discreet persons, not less than five nor more than thirteen, which persons so elected, shall be, and are by said act, constituted a body politic or corporate, upon being registered as by said act is directed, to act as trustees in the name and behalf of the particular church, &c. to manage the estate, property, interest and inheritance of the same.