You have dexterously enough endeavoured to propagate the idea, that our juſtification reſts upon the ſingle point of cuſtom: the queſtion too, you propoſed to the *attorney-general*, relates merely to the operative force of cuſtom to eſtabliſh the delegation of the parochical authority into our hands as Veſtrymen. To the query, by what authority we act as Veſtrymen, you are pleaſed to ſay you underſtand our reply is "that "we do not derive it from any written law of the "province, but from antient uſage and cuſtom of the "pariſh beyond the memory of man." This, Sir, was not our reply. Permit us to recal to the publick attention the real and avowed grounds of our defence, which will be beſt done by an inſertion of our own words. As to the queſtion, then, by what authority we act as Veſtrymen? We give you Sir this preciſe anſwer. BY THE AUTHORITY OF THE PARISHIONERS FOUNDED UPON COMMON L.W AND COMMON RIGHT, who choſe, nominated, and e[illegible]us Veſtrymen of St. Anne's pariſh, according to the antient uſage and cuſtom of the pariſh beyond the memory of man. Independently of any cuſtom, we contend, that a power was lodged in the pariſhioners to delegate their authority with reſpect to parochial matters into the hands of a veſtry conſtituted in ſuch manner as the veſtry of St. Anne's pariſh: and we quote cuſtom and uſage as an *additional argument* to prove the fair and legal exerciſe of ſuch power by the pariſhioners in the nomination and election of us as Veſtrymen.

If, Sir, a power was lodged in the pariſhioners themſelves to elect a *temporary* ſelect veſtry, ſuch as the veſtry of St. Anne's pariſh: and alſo to elect Churchwardens: If that power has been exerciſed in the very manner as the Act of 1701-2 meant to enforce, we aſk upon what principle will it be contended, that the Act of 1729, which impowers Veſtrymen and Churchwardens to impoſe a tax, is not evidently gratified both in ſpirit and intention? No imaginary reference of the Act of 1729 to the Act 1701-2, even upon the moſt rigid rules of conſtruction, can be extended further than as a deſcription of the perſons, who ſhou'd have the power of taxation: and if a power exiſted at common law in the pariſhioners themſelves to verify ſuch deſcription independently of the Act of 1701-2, and we and our brethren the Veſtrymen and Churchwardens have been elected in ſuch manner, as to bring ourſelves within every part of ſuch deſcription, what ground is there to charge our conduct as arbitrary and illegal?

We ſhall proceed Sir to make good our poſitions: that by the common law the pariſhioners have the government of the pariſh and are for that purpoſe a body politick: and that by the common law, they may delegate ſuch authority into the hands of Veſtrymen and Churchwardens conſtituted in ſuch manner as the Veſtrymen and Churchwardens of St. Anne's pariſh.

In maintaining theſe points you have an advantage over us: people, in general, have not a competent idea of the common law: their knowledge of law is in great meaſure confined to the *lex ſcripta* or Acts of Aſſembly, ſo frequently in uſe and in almoſt every body's hands: and yet Sir the common law is the baſis of all that is dear to them. My Lord *Coke* ſays the common law is reaſon itſelf promulged by the deciſions of grave and learned men for a ſucceſſion of age. The celebrated *Blackſtone* ſpeaking of the ſcience of the common law ſay: "a ſcience which diſtinguiſhes the criterions of right and wrong: which "employs the nobleſt faculties of the ſoul and exerts "in its practice the cardinal virtues of the heart: a "ſcience which is univerſal in its uſe and extent, "accommodated to each individual yet comprehending the whole community." My Lord Chief Juſtice *Haſe*, who was the light and ornament of his age, ſays: "This is the law, which limits and aſcertains "the bounds of prerogative and declares and aſſerts "the rights, liberties, and properties of the ſubject: "this is the law, which regulates the adminiſtration "of juſtice and gives the rule in all deciſions and determinations upon criminal and civil caſes in the "courts of juſtice, where the *lex ſcripta* is ſilent: and "that this is the law, from whence we derive the *trial "by jury*, the beſt trial in the world." This great judge further remarks, "when at any time through the "errors, diſtempers or iniquities of men or times, the "peace of the kingdom and right order of government "have received interruption, the *common law* has waited "and wrought out thoſe diſtempers and reduced the "kingdom to its juſt ſtate and temperament."

What, then, is the common law? The law of right founded upon reaſon and ripened into perfection by the wiſdom of ages: a ſyſtem of juriſprudence adored by Engliſhmen, as the *palladium* of their rights liberties and properties; and however lightly you may affect to treat the ſolid foundation of our claim to the office and powers of Veſtrymen, the people of this province have before this time ſtrenuouſly contended for the extenſion of the *Engliſh common law* as their birthright, and which was at length yielded to them much againſt the will and in deſtruction of the deſigns of the then government.

Having thus imperfectly ſuggeſted an idea of the common law, we proceed to the firſt propoſition incumbent upon us to eſtabliſh: that by common law and common right, when a pariſh and church are eſtabliſhed, the government devolves upon the pariſhioners and they are for that purpoſe a veſtry and body politic. To prove this poſition we cite the following caſes: 4. Burne. ecc. law. 6. ſect. 1. 10. Viner's ab. ch. ward. 526. pl. 3. 5. Coke. 65. 67. b.—1 mod. 194. 236. 2 mod. 222. 5. mod. 325—Hob. 211. Salk. 165. 166.

But to make good our defence it is equally incumbent upon us to eſtabliſh our next propoſition: That by common law and common right, this authority of the whole may be delegated into the hands of Veſtrymen and Churchwardens conſtituted in ſuch manner as the Veſtrymen and Churchwardens of St. Anne's pariſh.

It is a ſelf-evident propoſition, that what a man may do *by himſelf* he may do *by another*: that is, if a man has an independent authority originating in himſelf, he may delegate it to another. This principle of natural right equally holds with reſpect to a ſociety: and therefore the powers, which every aſſemblage of people poſſeſs as common and natural rights, they may transfer into the hands of a ſelect body of men. But as unanimity of ſentiment upon publick matters cannot be expected, where numbers are intereſted, to prevent the purpoſes of ſociety from being fruſtrated by a partial diſſent the reſolutions of the *majority* bind and conclude the *minority*—when a ſociety is formed, every member tacitly agrees, that the purpoſes of it ſhall be fulfilled and carried into execution: but how could this be effected, where a difference of opinion is entertained upon a ſubject, unleſs the *minority* is concluded by the *majority*? Wherefore, when a man becomes a member of ſociety, as he accedes to the deſigns of the inſtitution, he aſſents to the means to effect ſuch deſigns, and of conſequence ſubmits to be bound by the reſolutions of the *majority*.

Upon the eſtabliſhment of St. Anne's pariſh and the church, we have ſhewn from a number of authorities by the common law the government devolved upon the pariſhioners themſelves, and they had the exerciſe of all parochial authority: upon the principles above ſuggeſted this authority might be, as in fact it was, delegated by the *majority* of the pariſhioners into the hands of particular men under the character of Veſtrymen and Churchwardens. A queſtion may be aſked by what *majority*? an actual *majority* of the whole body or ſuch as attend upon the buſineſs? This queſtion is well ſettled by caſuiſts, among whom we rank Mr. *Rutherforth*: he ſays after notice "ſuch members as "are preſent conclude the whole: becauſe thoſe, that "are abſent, are by their not attending in perſon or by "proxy underſtood to devolve their power of acting "upon thoſe, who do attend"—and this principle of *natural law* is adopted by the *common law* and prevails in the election of members to parliament.

Here, Sir, permit us to diſtinguiſh between a delegation of *temporary* and *perpetual* authority. We find in our books, that *ſelect veſtries* are founded upon cuſtom only: that theſe ſelect veſtries aſſume to themſelves a delegation of parochial authority *for ever*, govern the pariſh without any power in the pariſhioners to check or control them, and arrogate to themſelves an *independent* and *perpetual* exiſtence. As *ſuch veſtries* have the power of taxation and yet are not periodically elected by the voice of the pariſh, the common law looks upon them with a jealous eye and judges will not uphold ſuch encroachments upon the principles of the conſtitution, unleſs a *cuſtom* be proved *time immemorial*, from whence they may infer the general aſſent of the pariſh *originally* to ſuch a delegation of the parochial authority: *cuſtom immemorial* will give ſuch general aſſent the force of a law.

The principles we rely upon, that what a man may do himſelf he may do by another, we admit cannot juſtify the delegation of authority into the hands of perpetual veſtries, unleſs a *cuſtom* comes in to aid it: becauſe, ſuch a delegation is unconſtitutional: but this principle may be applied in ſupport of a *temporary* delegation and of conſequence in ſupport of *temporary* Veſtrymen and Churchwardens, without *cuſtom*: becauſe ſuch delegation of authority is not unconſtitutional: originally it was the common practice to elect Veſtrymen and Churchwardens for a limited time: ſuch an adminiſtration of the parochial authority, we find no where, contradicted or objected to: it is maintainable upon the authority of reaſon and therefore upon common law: it is exemplified in the conſtitution of our general aſſembly. Upon the ſame principle Churchwardens who are *temporary* officers are eligible by the pariſhioners. Carth. 118. Hard. 378.

We have now, Sir, we hope ſufficiently evinced, that by the common law the pariſhioners of St. Anne's pariſh had a power of electing us and our brethren Veſtrymen and Churchwardens without any *legiſlative proviſion* or *cuſtom* for that purpoſe: and that we and our brethren are legally and conſtitutionally Veſtrymen and Churchwardens of St. Anne's pariſh. Therefore we retain our opinion, that we and our brethren, in whom the deſcription of the Act of 1729 is verified, were well juſtified in our impoſition of the tax upon St. Anne's pariſh.

We ſhall now conſider the objections which you and the *attorney general* have raiſed to our defence.

You are pleaſed to expreſs your belief, that plain men untainted by politics never till now heard or dreamed of Veſtrymen by common law. Admit for the ſake of argument, that moſt of the people of this province and even *your intelligent ſelf* among them never heard or dreamed of veſtries at common law, does it follow as a conſequence that there can be no veſtries in this province at common law? As truly would it follow, that the ſon, who was ignorant he ſucceeded to his father's lands by the common law, would loſe his inheritance—that the man who was ignorant he was to be tried by a jury by the common law would be ſtripped of that privilege—and that thoſe, who are ignorant murder is puniſhable by the common law, might be murdered: merely becauſe they are ignorant by what law, they are ſecured in their inheritance privilege or life.

You are pleaſed to ſay that "ſhould your opinion "on the ſubject of the common law be right I am "not the only one that ſees that it will do more to"wards the introduction of epiſcopacy—do more for "the clergy than all the united efforts of all the Ame"rican prieſthood have yet been able to accompliſh." Ah! Mr. Boucher, have all the American prieſthood united in any efforts to accompliſh any thing for the clergy? You dreſs up a formidable ſcarecrow! It is the common law that ſhields us againſt the introduction of epiſcopacy, protects us againſt the fury of prieſts and keeps at a diſtance—beyond the ſeas—all their infernal juriſdictions: it is the common law that guards us againſt oppreſſive proclamations and the injurious excurſions of prerogative: it is the common law that prevents extortion by officers and clergy and enforces obedience to that legiſlature which "*we the clergy "of the eſtabliſhed church*" have ſhamefully inſulted.

We ſhall now conſider the objections which the *attorney general* has made. His argument againſt the delegation of the parochial authority without *a cuſtom* demands our attention. He ſays in all corporations, even in ſuch as exiſt by force of the common law, a charter of incorporation is preſumed: *by cuſtom* he admits there may be a delegation of the parochial authority: the antient uſage being preſumptive evidence that this power to delegate was granted by the charter. If Mr. Attorney is right in his law the conſequence is obvious, that the delegation of the parochial authority into our and our brethren's hands as Veſtrymen and Churchwardens cannot be maintained without ſhewing a charter of incorporation or proving a *cuſtom* to juſtify a preſumption of it.

It is with deference we venture to argue a point of law with an *attorney general*: it is with reluctance we engage in a controverſy with Mr. *Jennings*: we ſhall entertain a reſpect for that gentleman notwithſtanding his unkind attempt to add his weight to the atrocious complicated charge which has been brought againſt us. Had Mr. Attorney been attached to Mr. Boucher by any particular connexion, or had he been conſulted upon a difference in point of property, the aſſiſtance of Mr. Attorney would have been a laudable exerciſe of his profeſſion: but when he was apprized of the nature of the controverſy: when he ſaw the vengeance of a prieſt burſting upon us: our integrity wantonly arraigned and our characters publickly ſtabbed; and when in his own opinion of our conduct, the judgment and not the heart was in fault, under ſuch circumſtances to lend a helping hand againſt us was unfriendly.

But to conſider Mr. Attorney's argument. We conceive he has too haſtily adopted the expreſſions in the books without attentively conſidering all the modes of incorporation. We aſſert in contradiction to his conception of the law, that the political capacity of a pariſh is not created by *preſcription charter* or *act of parliament*: it is a *being* propagated by *operation of law* and introduced upon the principles of publick utility.

Our books indeed ſay a corporation can be erected three ways only: by preſcription charter or act of parliament: but this is to be underſtood of corporations created *in fact* and not of ſuch, whoſe political exiſtence is founded upon *operation of law*.

That the political capacity of a pariſh is not derived from preſcription charter or act of parliament, the following caſes are expreſſly in point: 1 Hob. 211. 5. Cok. 63. 67.—8 mod. 351.

Upon the ſame grounds Churchwardens are a corporation: they are eligible by the pariſhioners by the common law and common right: which excludes the idea of their political conſtitution by preſcription charter or act of parliament. To this purpoſe Carth. 118 March. 67. 2 Salk. 547. Viner's ab. ch. ward. 525. 2 pr. Wms. 126. Vid. Brook. Corporation: pl. 84. Which is expreſs that Churchwardens are incorporated by operation of law.

The poſition therefore of the attorney general is laid down too largely and cannot extend to corporations *by operation of law*. When indeed a body politic is created by charter, ſuch *inſtrumentality* of creation limits and aſcertains the extent of their authority, and every exerciſe of power which is proved *time immemorial* is preſumed to flow from ſome enabling clauſe in ſuch charter; and therefore if in fact pariſhes were incorporated by *charter* and a *cuſtom* exiſted beyond memory for *ſelect veſtries* to exerciſe the parochial authority, the preſumption would be that ſuch charter authorized the delegation of it to them.

But how ſtands the caſe with reſpect to the political exiſtence of a pariſh by *operation of law*? Permit us to conſider this queſtion upon the principles of reaſon and of conſequence common law. A deputy cannot exceed the authority given him, nor a body politic created by charter its granted powers: a deputy, therefore, cannot delegate his authority without leave of his principal, nor a body politic by charter their authority without ſome enabling clauſe. But what ſhall check or control the political capacity of a pariſh, which is created by *operation of law*? Or what ſuperior power ſhall prevent a delegation of their authority into the hands of *temporary* Veſtrymen and Churchwardens? Churchwardens indeed cannot tranſfer their authority, becauſe they are the deputies of the pariſhioners, in the department they act, and cannot go beyond the bounds preſcribed to them: upon the ſame principle members of parliament cannot commit their truſt into the hands of others; but the corporate body of a pariſh is compoſed of the people themſelves, who have no principal or charter to impower or prevent a delegation of the parochial authority veſted in them.

But there are ſuch things as perpetual veſtries: we have already refuted the notion, that the pariſhioners are incorporated by *preſcription charter* or *act of parliament*. What then was the origin of *perpetual veſtries*? A delegation doubtleſs of the parochial authority by the politic body itſelf. If then the pariſhioners by powers derived from the common law could originally as a politic body commit their whole authority into the hands of a *perpetual veſtry*, ſurely and *a fortiori* they may appoint *temporary* Veſtrymen and inveſt them with the parochial authority. The body politic of a pariſh created by *operation of law* is in fact nothing more than a ſociety or aſſemblage of people collected together for the government of themſelves and therefore what they can do by themſelves they may do by others.

Mr. Attorney takes up our argument in another point of view: and contends that independently of the Act of 1701-2 there can be no Veſtrymen and Churchwardens: his argument is this: without a pariſh there can be no church: without a church, no incumbent: without an incumbent, no Veſtrymen and Churchwardens. He urges there can be no church in *legal underſtanding* without an *eſtabliſhment* for the incumbent. We cannot comprehend this and ſhould