

other respect except on the last point, in order to bring which to another Discussion the 30 per Poll was withheld from Whitaker and he was driven to bring suit on the Sheriff's Bond, but at length the Jury gave the Matter up, I have been the fuller in relating the circumstances of Whitakers Case, because, as there were some doubts at the time concerning the Propriety of the Courts Determination, perhaps they may be applied to other than the point on which they really arose -

I have understood that the Vestry claim the Right of Patronage, contending that the Church was founded at the Expence of the Parishioners, and endowed in the same manner and that the Vestry as their Representative are therefore the Patrons, it is true that it occurs in many of the Treatises on the Canon Law and what will have more weight in Co. Litt. 119. b. that the Right of Presentation was first gained by such as were Founders, Benefactors, or Maintainers of the Church, viz. *Ratione Fundationis, Donationis, sive Ratione Fundi*, but how, on any of these grounds, the Vestry can support their Pretension is not to be well conceived.

By the Charter of the Province the Patronages and Advowsons of all Churches were expressly granted to Lord Baltimore, this Grant, without doubt, did not authorize his Lordship to lay a Tax upon the People for the support of the Clergy, and the Claims, once set up by Mr. Henderson, that the Clergy were intitled to Tithes before the Act, that the Act was only to be considered as a *Modus decimandi*, that the Canon Law, in their full Extent, obtained here, and the Consequences. He drew in Support of the Jurisdiction of the Bishop of London, and his Authority as his Comensary, have been so effectually exposed, that there is little Danger to the Safety from such strange Notions. By our Act of Assembly a regular support of the Clergy has been provided by a Tax upon the People, they who laid the Tax, without Question, could apply it in what manner, and upon what Terms they thought fit, how therefore it shall be applied must depend upon the Will of those who laid it, and this Will is to be inferred from the words used to signify it, for as it is clear that a Tax could not be laid for the purpose without the Peoples Consent, so is it clear that it must be applied according to the directions of the Act, because an assertion, that the Application may be different from the Legislative will, if at all considered, will be found to be reducible to the absurd Position, that the Tax might be laid without the Legislative Authority, laying therefore aside what is impertinent to the Subject the Consideration of the Canon or ecclesiastical Law, it will appear, on a little calm Reflection, that they on whom the Tax is laid must pay it, and that they and only they to whom the Payment of it is directed will be intitled to receive it, the Patronages and advowsons of all Churches, as has been observed, were granted to Lord Baltimore, but the Charter did not, nor could it confer a Power upon his Lordship to Tax the People without their Consent, on the other Hand it was not in the Power of the People either to deprive His Lordship of what the Charter had granted, or to regulate his Exercise of these Rights without his Consent, when the Government was immediately in the Hands of the Crown, his Lordship being then under a Disability, the Act passed with the Royal Concurrence, by which the Provision for the Clergy was made, for which Purpose the People were with their Consent Taxed, and Terms of the Application of the Tax were settled. His Lordship by assenting to an Act for that purpose, might give up his Advowsons or Patronages, He might bind Himself by restrictions in the Exercise of these Rights, and it cant be doubted but that the Act, which passed with the Concurrence of the Crown, when he was under the Disability of Non conformity, is as binding as any other Act, can be to which his Lordships Assent has been given, the short Question then will be, whether he is to be considered as Incumbent, the fact is that he has been appointed by the Governor in the usual manner, the Act is so explicit and clear that the Recital of it is sufficient, I apprehend to give Satisfaction "the Poll assessment shall be always paid and allowed to the Minister of each Parish having no other Benefice to officiate in presented inducted or appointed by his Excellency the Governor