Religious Conftitution OF COLLEGES, Especially of YALE-COLLEGE

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# NEW-HAVEN In the Colony of **CDRRECTJCUT.** By THOMAS CLAP, 'A.M. Prefident of YALE-COLLEGE.





### NEW-LONDON,

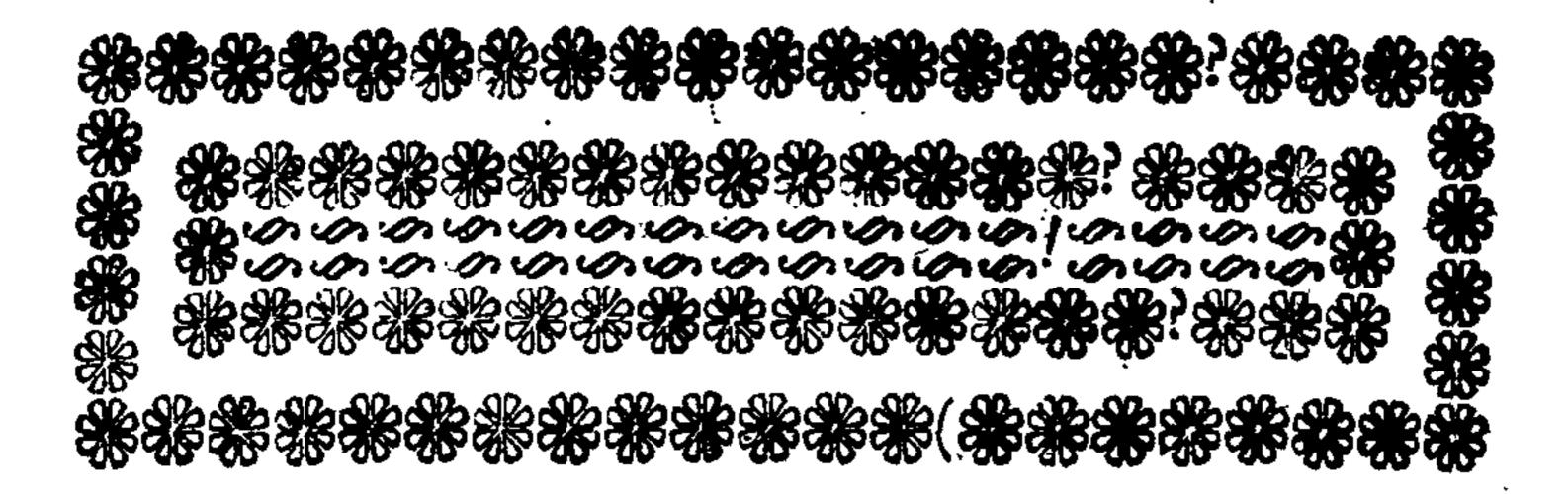
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### Ecclefiaftical Conftitution

OF

# COLLEGES.

HE original End, and Defign of Colleges was to Inftruct, Educate, and Train up Perfons for the Work of the Miniftry. The Council of Cabilone, A. D. 813. Decreed, That the Biscops schoold Constitute Schools, or Colleges, in which the Dowries of Scripture schoold be taught, and such may be Educated, of whom it may be defervedly said, by the Lord, Ye are the Salt of the Earth; and who may teach the People, &c. Harduini Collectio Conciliorum, Vol. 4. P. 1032. A House with the Appendages, in which Students live, and study, under the Instruction and Government of a President, &c. is called a College. And if such a Political State is formed, or even designed to be formed, it is called a College in Re-A 2 putation,

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putation, before the House is actually built. Coke 4. Reports 106, and 10, 33.

He who first undertakes to Form, Establish and Order a College, and gives something for the Beginning of it, is called the Founder, Woods Institutes, p. 113. Coke 1-. Rep. 33. Who commonly declares fome special Design, and make some Statutes and Orders, for the future Regulation of it; which are always to be inviolably, and facredly observ'd, by the fucceffive Governors. My Lord Chief Juffice Holt fays, That Colleges, and Hospitals, are wholly subject to the Laws, Rules, Statutes, and Ordinances which the Founder ordains; and to the Visitor whom be appoints. Raymonds Reports, Vol. 1. p. 8. Phillips's v, Berry, 1694. And fo says Bishop Stillingfleet, in his Speech in the Houle of Lords. Vol. 3 p. 878 Statutum Templariorum. 17 Edward 2. fays, " That the Godly and Worthy Will of "the Givers, ( i. e. The Founders ) is " always to be observ'd, perform'd and religiously executed." See Ceke 8 Rep. 132. Pultons Statutes.

When King James 2. commanded the Fellows of Magdalene Coll ge, to choose Mr. Farmer, for their Prefident, they refused to do it; because he was not qualified, according to the Statutes of the Founder; which, they say, they were bound in Duty, and Conscience to observe; and this Point of Law is so sacred, that they were justified, even in Disobedience to the King. Complete Hist. of England. Vol. 3. Coke 11 Rep. 73.

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If the Founder of a College, acts in his private Capacity, then *bis Heirs*, and if in a public Capacity, or Body politick, then his or *their Successors* are called Visitors; and have Power to see that the Design, and Statutes of the *Founder*, are observed. Jacob's Law Dist. Woods Instit. p. 115.

A Number of Colleges, together under one common Goverment, by a Chancellor, is called a University. Yet, one large, and well governed College, having no other in the fame City, has the Name, and Privileges of a University; as in Dublin, and Glafgow. Colleges have been Established in the present Form, about 500 Years. Before that Time, Persons were ordinarily trained up for the Ministry, by the Clergy, in the Monasteries; which in some Places, by degrees, grew up into Colleges. They being of a religious Nature, and Defign; were for many Years, established by Powers, and Charters, granted by the Ecclefiastical Authority. Bishop Stillingfieet fays, they were at first set up by the Bissippers; as appears by many Decrees of Councils, about the Time of Charles the great; who was a great Patron of Learning. See Harduiri Collec. Concil. Vol. 5. p. 94, and 499. Stillingfleet's Work, Vol. 3. p. 883.

None were admitted into any Office, of Instruction, or Government, but *Ministers*; and few to be Students, but such as were probably design'd for the Ministry. After some Years, Charters were granted by the civil Authority, with additional to Powers

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Powers, and Privileges. And fince the Reformation, it has been refolv'd, that the Constitution of Colleges, depends on the civil Powers, tho' in the Hands of Ecclesiastical Persons, for Spiritual Purposes. Bishop Stillingseet p. 884, says, a Corporation, takes it's Denomination, from the greater Number; and therefore the Universities, are esteemed, Parts of the Ecclesicstical Body. So Dr. Ayliff Hift. University of Oxford, Vol. 2. p. 52. Every College, or University, is a distinct Corporation, or Government, by it self, under the supreme civil Authority, and hath Power to choose their own Officers, and to make their own Laws, and have Jurisdiction in all Causes Ecclesiastical, and Civil, ( except Felony, Mayhem, and Freehold, ) where any Member of the University is concern'd. Woods Instit. p. 548, Jacobs Law Distionary. Bishop Stilling fleet p. 883. The Vice-Chancellor is vested with an Episcopal Power, over the University; and is Subject, to no Ecclesiastical Authority, but the Arch-Bishop of Canterbury. Woods Inst. 549. Annals of University College, 251.

Colleges, ate Religious Societies, of a Superior Nature to all others. For whereas Parishes, are Societies, for training up the common People; Colleges, are Societies of Ministers, for training up Persons for the Work of the Ministry. And therefore all their Religious Instructions, Worship, and Ordinances, are carried on, within their own Jurisdiction, by their own Officers, and under their own Regulation. As most fully appears, by the Statutes of the University of Oxford, at large, Titulo. 16. containing various Orders, and Regulations, for that Purpose. Facob's

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Jacob's Law Dictionary, under the Word Chappel, fays "That the particular Colleges, in the Uni-"versities, have Chappels belonging to them, which "are confectated, and the Sacraments are admini-"ftred in them, yet they are not Subject to the "Bishop, but to the Founder." See also Fullers Hist. of the University of Cambridge p. 33, 38, 80, 140, 155.

The Universities, in Scotland, have as great, or greater Privileges, than those in England. Chamberlain's present State of Great-Britain, p. 14. in the latter End, fays, that they enjoy all the Privileges, Liberties, Immunities, and Exemptions enjoyed by any University what soever; particularly, the Universities of Paris, and Bononia. And that there are Eight Chaplains, to Officiate in the Chappel, of the University of Aberdeen. See also p. 434. Their Worship, is wholly under their own Regulation, and they are not subject, to any particular Parish, or Presbytery; but only to the general Assembly, of the Church of Scotland; to which, they fend a President, or Prosessor, in the Quality of a Minifter, as Presbyteries do. p. 32.

Religious Worship, Preaching, and Instruction on the Sabbath, being one of the most important Parts, of the Education of Ministers; it is more necessary, that it should be under the Conduct, of the Authority, of the College, than any other Part of Education. The Preaching, ought to be adapted, to the superior Capacity, of those, who are to be qualified, to be Instructors of others; and upon all Accounts Superior, to that, which is ordina:

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dinarily to be expected, or indeed requisite, in a common Parish.

There are many different Principles, in Religion, and Kinds of Preaching, which, when they are in any Degree faulty, cannot always be eafily remedied, by Complaint to any other Authority. And therefore, 'every religious Society, naturally choofes, as far as may be, to have, the Nomination of their own Minister. And this is much more neceffary in a College, where the Preaching, is of such general Importance, to a whole Country; and such such fpecial Care, should be taken, that it be, upon all Accounts, of the best Kind. And it cannot be reasonable, nor safe, that any particular Parish, especially, that which happens to be the nearest to a College, should appoint the Minister for it.

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By Statute 3 James 1. C. 5. 1 King William, and 13 Ann, C. 14. The Universities, in some Cases, are impowered, to nominate Ministers, for particular Parisbes; but no Parish hath Power to nominate a Minister, for a University; this being always done, by the University it felf: Unless, perhaps, he may be sometimes nominated, by him, who makes a Donation for his Support, with the Approbation, of the University.

And where, as it generally happens, there are fundry Places of Worlhip, in the City, where a College is; if the Students should difperse to all, and every one of them, this would break up all order in the Society, and defeat the Religious Design, and Instructions of it. The

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The University of Oxford, (as appears by their own Laws,) allow none of their Members, to go from their own Churches, Chappels, or Places of Worship, to any other Church, on Penalty of corporal Punishment, on all Undergraduates; and Three Shillings, and Four-pence Sterling, on all others. Stat. Univers. Oxford. Tit. 16. Sec. 10.

But sometimes, particularly on Easter Sunday, the whole University, does not meet together, but the Members, of each College, meet by themselves; and have a Sermon, and the Sacrament, in their own particular Chappels. Sec. 2.

And not only the Colleges; but all the larger Hospitals, in Great Britain; have their diffinct Chaplains, and Worship. See, present State of Great Britain, in the Lists. It being a Maxim, which runs through all moral Nature; that, every distinct Society, Founded for Religious Purposes; is, or at least may be, a Distinct worshipping Assembly.

YALE-COLLEGE in New-Haven; does not come up, to the Perfection, of the Ancient Established Universities, in Great Britain; yet, would endeavour, to Imitate them, in most things, as far, as its present State, will admit of.

It was FOUNDED, A. D. 1701. By 7en Principal Ministers, in the Colony of CONNECTICUT; upon the Defire, of many other Ministers, and People in it; with the Licence, and Approbation, of the General Assembly. Their main Defign, in that Foundation, was to Educate Persons, for the B Ministry

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Ministry of these Churches, commonly called Presbyterian, or Congregational, according to their own Dottrine, Discipline, and Mode of Worship.

The first Act, or Charter, of the General Assembly, is predicated, "Upon the Desire of several "well dispos'd Persons, of their sincere Regard "to, and Zeal for, the Upholding, and Propa-" gating, the Christian, Protestant Religion; by a <sup>ss</sup> Succession, of Learned, and Orthodox. Men;

" That Youth, thro' the Bleffing of Gon, might

" be fitted, for Public Imployment, in Church, and sc State ;

"And that, all due Encouragement, might " be given, to fuch pious Refolutions; and that " fo necessary, and Religious an Undertaking, may \* be Forwarded ;

"Full Liberty is given, to the faid Ten Mi-"nisters nominated, ( and to their Succeffors, "chofen by themfelves ) to F O U N D, " Erest, Order, and Govern, a Collegiate-School;

" In all Ways, and Manners; and by fuch Offi-" cers, appointed by them, as shall, according to " their Discretion, be most conducive, to attain the " Ends aforefaid. "

And in the Charter 1745, it is particularly mentioned; "That, they shall have Power to se choose, <sup>66</sup> Professors,



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"And all other Officers, usually appointed in « Colleges, or Universities.

The Act, 1753, has this Preamble; "Whereas, " one principal End, proposed, in Erecting, and "Supporting, Yale Col'ege; was, to Supply the " Churches of this Colony, with a Learned, Pious, " and Orthodox Ministry; to which Purpose, it " is requisite, that the Students of the faid College, " should have the best Instructions, in Divinity; " and the best Patterns of Preaching, set be-" before them."

" And whereas, the Setling, a Learned, Pious, " and Orthodox, Professor of Divinity; would "greatly tend, to promote, that good End, and "Defign, "

The Founders, at their first Meeting, in 1701; make, a Formal Foundation, of the College, by an Express Declaration; and giving, a Number of Books, for a Library; and declare, That, " Their "" End, and Defign in it; is, to propagate, the " bleffed, Reformed, Protestant Religion, in the "" Purity, of it's Order, and Worship. And proceed, to give fundry Rules, and Orders, particularly, "' That the Students, should be well Instructed, " in the Principles, of Religion; and grounded, in " polemical Divinity." Particularly Prefcribing, what Books of Divinity, they should Recite; and no other, but such, as the Trustees should order; and, that special Care, should be taken, in the Education, of the Students, not to suffer them, to be Instructed, in any different Principles, or Doctrines; and that, all · B. 2

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all proper Measures, should be taken, to promote, the Power, and Purity, of Religion; and the Peace, and best Edification, of those Churches. And particularly Order, that the Students, should attend, Morning, and Evening Prayers, and other religious Exercises; and especially, the Worship of God, on the Lord's Day; on Penalty, not exceeding, Six-pence Sterling.

The prefent Governors, of the College; esteem themfelves, bound by Law, and the more facred Ties of Conscience, and Fidelity to their Trust, committed to them, by their Predecess; to pursue, and carry on, the pious Intention, and Defign, of the Founders; and to improve, all the College Estate, descended to them, for that purpose. And therefore, about seven Years ago; began, to lay a Fund, for the Support, of a Professor, of Divinity, in the College; and being, of late Years, more sensible, of the Necessity of it; from, the unhappy, divided Circumstances, of New-Haven; and having receiv'd, some large Donations; from the Honourable Mr. Livingston, and Mr. Clarke, for that Purpole; and Leafed our, fome of the College Lands; have determined, to settle, such a Professor; as son, as, by Leafing more of the faid Land, or other ways, a competent Support, can be obtained.

In the mean Time, they have defired, the Prefident; with fome Affiftance, from themfelves, and others; to carry on the Work, of a Profeffor, of Divinity; by Preaching, in the College Hall, every Lord's Day. Being hereunto, fufficiently warranted, from, the original Nature, Defign, and Practice of Colleges,

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Colleges, and Universities ; (which are, superior Societies, for Religious Purposes; ) and, the several special Clauses, in the Acts, of the General Assembly; That so, the Students, may have the Advantage, of such Preaching, and Instruction, as is best adapted, to their Capacity, State, and Design.

The Governors, of the College, cannot, confiitent, with the Truft committed, to them; give up, the ordinary, public Inftruction, of the Students; efperially, in Matters of Divinity; to any, but their own Officers, and Substitutes. For, they can have, no fufficient Security, as fuch Governors, that others, who are not, of their Nomination, and under their Authority, will Teach, or Inftruct, according, to the Defign, of the Founders : and, if they should deviate from it; the Governors, could have, no Authority, to prevent it. And, upon that account, it is more neceffary, that the Governors, of the College, should nominate the Preacher to it, than any other Officer, or Instructor.

Particularly, it cannot be reafonable; that, either of the three, religious Affemblies, in New Haven, thould choofe, a Minister, for the College; or that, the College, should be obliged, to attend upon such Preaching, as they, or either of them, should choofe. They would not allow, that the College, should choose a Minister for them; much less, is it reasonable, that they, should choose a Minister, for the College; which is a religious Society, of a superior, more general, and more important Nature.



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This would be, to subject the College, to a Jurisdiction out of itself; in the most important Point, of it's Institution, and Design. And no Society, or Body Politick, can be *safe*, but only, in it's having, a Principle of self-Preservation; and a Power, of Providing, every thing necessary, for it's own Subsistance, and Defence.

Indeed, as the College, receives it's Charter, and Part, of it's Support, from the Government; it is neceffarily, dependent upon them; and under their Direction; and muft choofe, fuch a Minister as is agreeable to them; or otherwife, they may, withdraw their special Protection, and Support. And it cannot, reasonably, be suppos'd; that, the General Affembly, would neglect, this part, of their Superintendency; and suffer it, to be exercised, by any, particular Parish. For, by this means, it might easily happen, that the College, might be supertion fuch Preaching, as would be contrary, to the Minds, of the Generality, of the Colony; as well, as, the Design, of the Founders.

Some indeed, have supposed, that, the only Design of Colleges, was to teach the Arts, and Sciences; and that Religion, is no part, of a College Education: And therefore, there ought to be, no religious Worship upheld, or enjoined, by the Laws of the College; but every Student, may Worship, where, and how, he

#### pleaseth; or, as his Parents, or Guardian, shall direct.

But, it is probable, that there is not a College, to be found uponEarth, upon fuch a Conftitution; without any Regard, to Religion. And we know, that Religion,

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Religion, and the Religion of these Churches, in particular; both, as to Doctrine, and Discipline, was the main Design, of the Founders, of this College; (agreeable, to the minds, of the Body, of the People;) and, this Design, their Successors, are bound in Duty, to pursue. And indeed, Religion, is a matter, of so great Consequence, and Importance; that, the Knowlege, of the Arts, and Sciencies, how excellent soever, in themselves, are comparatively, worth but little, without it.

It has been also Supposed, that every Student, might be obliged, to attend, upon some Religious Worship, where he shall see cause; or where, his Parents may order, or permit; and that, a Monitor, may be appointed, in each Assembly, in the Town; with Penalties, for non Attendance. But, to those, who understand, and confider, the Nature of College Goverment; fuch a Scheme, plainly appears, Impractible. It is found, by Experience; that no Undergraduate Monitor, can be fully depended upon : and that, it is absolutely Necessary, for the Governors, of the College, to be present; and strictly observe, the Attendence, and Behaviour, of the Students; with their own Eyes. And, when any Parent, puts his Child to School; to Apprentice; or, into any other Family; or Society, whatfoever, he resigns up, the Exercise, of his parental Government; lo far, as relates to, the Conflitution, and

Order, of that Society. And no Parent, can have a Right, to put his Child, to be a Member, of any Society; and then, order him, to break the Laws, and Rules of it: for, this would be destructive,

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to, the very Nature, and Fundamental Constitution, of all Societies.

And, if Parents, have a Right, to order, what Worship, their Children shall attend, at College; it would take, the Power, wholly out, of the Hands, of the Authority, of College, as to matters of Religion; and there may be, as many Kinds, of Religious Worship, at College; as there are, different Opinions, of Parents.

And, if Parents, give the Law; they must also, affix the Penalty; and indeed, inflict it themselves. But Parents, at a Diftance, cannot, Govern their Children, at College; neither, is it practicable, that, they should give, fuch, a just System of Rules, as the Authority, of College can, or ought, to put in Execution.

For, we may suppose, for Instance; that, there may be, an Assembly, of Jews, or Arrians, in New Haven; and then, the Authority, of College, may be obliged, to punish, the Students, for not attending, such a Worship, as they esteem, to be worse than none; and such, as they are oblig'd, by the Statutes, of the Founders, not to permit, the Students, to attend upon.

It has been said; that, Liberty of Conscience, ought, to be allowed to all; to Worship, as they pleafe.

Upon which, it has been confidered; that, the College acts, upon the Principles, of Liberty, of Conscience,

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'Conscience, in the fullest Sense; and suppose, that any Man, under the Limitations of the Law; may Found a College, or School, for fuch Ends, and Purposes; and upon such Conditions, and Limitations, with Respect to those, who are allow'd, the Benefit of it, as be in his Conscience, shall think best. And that his Conscience, who has the Property, of a Thing; or gives it, upon Conditions; ought to Govern, in all Matters, relating to the Use, of that thing; and not, bis Conscience, who is allowed, to take the Benefit; who, has no Right to it, but according to the Will, and Conditions of the Proprietor, or Donor. And Liberty of Confcience in, him, who is allow'd, to take the Benefit, extends no further, than to determine, whether he will accept it upon those Conditions. And to challenge the Benefit, without complying with the Conditions, would be, to rob the Proprietor, (or Feoffee in Trust,) of his Property; and Right of Disposal.

The great Defign, of Founding this School, was, to Educate Minifters in our own Way; and in order to attain this End; the Founders, and their Succeffors, apprehend it to be neceffary, that the Students, should ordinarily attend, upon the fame Way of Worfbip: and should they give up, that Law, and Order; the College would ferve Defigns, and Purpofes, contrary to that, for which it was originally Founded: which, in Point of Confcience, and Fidelity, to their Trust; they cannot permit. And in this Point, the College, Exercises, no kind of Power, or Authority; but only that, which Refults, from the natural Liberties, and Privileges of all

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all free, and Voluntary Societies of Men; which is to determine, their own Design, amongst themselves; and the Conditions, of their own Favours, and Benefits to others.

Yet the Governors of the College, have always freely admitted, Protestants, of all Denominations, to enjoy the Benefit, of an Education in it; they attending upon; (as they always have done, ) our Way of Worship; while they are there.

It has also been faid; that, all the Students, ought to attend, the Worship, of the Church of *England*; or so many of them, as shall see Cause; or, as their Parents shall order, or permit.

That, the Church of England, is the *Established*. Religion, of this Colony; and that those, who do, not conform to it, a re Schismaticks.

Upon which, it has been confider'd, that the Act of Parliament, in the Common Prayer Book, for the Establishment, of the Church of England; is expressly limitted, to England, and Wales, and the Town of Berwick, upon Tweed. And, it is, a well known Maxim in the Law; that the Statutes of England, do not extend to the Plantations; unless, they are Expressly mentioned.

About the Reign of Henry the Eighth, we find fundry Statutes, relating to Religion, Navigation, &c: where, the Extent of them, is declared in those Words; the Realm of England, and the Dominions, or Territories, thereunto belonging. And so it is, in:

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the Act of Union. But these Words, were designed, only, to comprehend, the Isle of Man, Jersie, and those small Islands, near England; but were never Extended so far Ireland; much less to the Plantations.

After the Plantations were Settled; when any Act, was defigned for them, these Words were used, viz Plantations in America, Dominions in America, or beyond Seas, or some such extensive Terms. And no Statute, has yet been produced, which has been actually extended to, and executed in, the Plantations, by Virtue of those Words, Dominions, or Territories thereunts belonging : And, it is presum'd, that no such Act, can be produced.

It has also been said; that, Governor Yale, and Bishop Berkley, who were Church Men, made large Donations, to this College.

Upon which, it has been confider'd; that, when any Donation is given, after the Foundation is laid, the Law prefumes, that it was the Intention, of the Donors, that their Donations, should be improved, according, to the Design, of the Founders. The Law prefumes, that every Man, knows the Law, in that thing, wherein he Acts : \* And since, by Law, the Statutes of the Founders, cannot be

#### altered, † it presumes, that the Donor, had not any Design to do it. And there is not, the least

### \* Jacobs Dift. † Woods, 113. C2. Reason

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Reason to suppose, that the Governor, or Bishop, intended, or Expected, that, upon their Donations, any alteration should be made, in the Laws of the College; or any Deviation, from the Design, of the Founders, towards the Church of England, or any other way.

If it was fo; it feems, as if they intended, to Buy the College, rather than, to make a Donation, to it. And if there was Evidence, that they made their Donations, upon that Condition; the College, would Refign them back again.

And since, there is not, the least Reason to suppose that, they, expected, or defired, that, upon their Donations, any Alteration should be made, in the Laws of College; we see no Obligation to do it, in Point of Gratitude.

But the Incomes, of the Farm, at *Rhode-*Illand, given by the Bilhop; were appropriated, (not bely, to any religious Ule,) but to the best Scholars in Latin, and Greek; which Appropriation, (being accepted of, upon that Condition,) ought to be facredly, and inviolably observed; as well as, the Design of the Founders.

Yet, we have a just Sense, of the Generosity, of those Gentlemen; and for that, and many other Reasons, are Willing to do, all that we can, to gratify, the Gentlemen, of the Church of England; consistant with the Design, and Statutes, of the Founders; and particularly, have given Libercy

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berty, to those Students, who have been educated, in the Worship, of the Church of England; and are, of that Communion; to be absent, at those Times, when the Sacrament is Administred, in that Church; and upon Christmas; and, at some such other Times, as will not be, an Infraction upon, the general, and *standing Rules*, of College.

It has been further faid, that there are, a Number of Church Men, in this Colony; who, in the annual public Taxes, contribute fomething, towards the Support, of the College.

Upon which, it has been confider'd; that, when a Community, are jointly, at fome public Charge; it is equitable, that the Benefit, of each Individual, fhould be confulted, fo far, as it is confiftant, with the general Defign, and Good of the whole, or the Majority. And tho' it is impossible, that fuch a Benefit, fhould be Mathematically proportioned, to each Individual; yet this College, has educated, as many Episcopal Ministers, and others, as they defired, or flood in need of; which has been a fufficient Compensation, for their Paying, about, a Half Peny Sterling, per Man; in the annual Support, of the College.

And, it may slil continue to be, as serviceable, to the Church of England, as it has been, if they

#### please; for the Orders of it, remain in Substance, just the same.

### It may further be consider'd, that this College, was Founded, and in a good measure, Indowed,

n anys:

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many Years, before there were any Donations made, by Church-Men; or fo much, as one Epifcopal Minifter, in the Colony. And if Mens contributing, fomething, towards the Support of the College; gives, them a Right, to order, what Worship, their Children shall attend upon, while at College; it gives, the fame Right, to Parents, of all other Denominations; which to admit, as was before Obferv'd, would defeat the Design of the Founders; and destroy, the religious Order, of the College; which ought, facredly, to be observed.

