THE DAILY EVENING TELEGRAPH .- PHILADELPHIA, MONDAY, MARCH 18, 1867.

ST. PATRICK S DAY.

6

1.30

"The Irish in America"-A Sermon Delivered at St. Patrick's Church by the Very Rev. James O'Connor.

St. Patrick's Day was observed in a becoming manner yesterday, the central point of attract tion being St. Patrick's Church, at Twentieth and Locust streets. Large numbers of people were observed to the street of were obliged to turn away without gaining admission, so great was the interest manifested by our Irish fellow-citizens. The services were commenced by the singing of Pontiúcal High Mass by the Right Rev. Bishop Wood, who closed with the Papsi benediction. The music was under the direction of Professor

Aledo, the choir singing Mozart's Twelfth Mass, the leading parts being taken by Miss Donnelly, Mrs. Janke, Mr. Bourke, and Mr. Keegan. The customary panegyric of the Saint was preached by the Very Rey, James O'Connor, Rector of St. Charles' Theological Seminary, and formerly Bishep of the Diocese of Pittsburg, who selected for his text the following :--

Trust in the Lord, and do good, and dwell in the land, and thou shalt be fed with riches.-Psalm XX.

We are assembled to-day, "by brethren, to relebrate the feast of Ireland's a subtle, On such a day, on such an occasion, our thou are not at all with the present. Now and tacn they revert, very caturally, to the land where we first learned to love and hence the present we first learned to love and honor the name of 81. Patrick. We think of Ireland, and the thought awakens a thousand tender recollections of the time, remote or near, when we celebrated this day on her sacred soil. Memory recalls the simple joys this testival brought us in childhood, and the consolations of faith it inspired in maturer years. The cross and the mystic shamrock fastened on our young breasts by fingers that now are dust ; the happy multitudes that hastened over hill and valley, and through the streets of city and town, to assist at the sacrifice and testify their devotion to the saint; the joy that filled every heart and beamed from every face; the secular festivities, too, that long usage and religion had sanc

tioned, come vividiy before our minds. I shall succes to you on this occasion, not of St. Partek, nor of what Ireland did or suffered for religion in the past, but of what Irish Catholics are expected to do for it here, in America, their adopted home, and the home of their children, and of their children's children after them forever. It is, indeed, right and proper that "Erin remember the days of old," but it is of still greater importance that we be mindful of the duties which the present and the future impose upon us.

It requires no prophetic vision to foresee that there is a glorious destiny in store for this coun-try, if only its people cultivate the virtues that

The population of the United States is at present thurty-two millions. The child is now born who will see it increase to one hundred mil-hons. And, in another century, it will probably exceed that of all Europe at the present The increased and ever-increasing facilities of communication between the most distant parts of this continent, the almost anni hilation of space by the telegraph, will, doubt, go far to remove the physical and local difficulties in the way of moulding those millions into one people, under one general government; but where, my brethren, will be the moral bond that will make their union proof against the bad passions of our nature against the licentiousness, self-interest, and fanaticism that have rent asunder so many great empires in the past, and which have already brought this young republic to the verge of ruin

There is no power but that of the Roman Catholic Church that can enable this country to realize the social and political greatness to which it is destined in the future. The Church is the author of modern civilization. She alone understands it, is able to control and guide it. She alone has the knowledge and the helps that can lead them to the liberty with which Christ hath made us free, and without which social and political, and especially republican, liberty can be but of short duration. The Church is necessary to preserve the unity and the liberties of the country, and guide it to the temporal greatness of which it is susceptible;

plete the work they have begun. Our houses of refuge, reformatories, and homes are crowded of fedge, reformatories, and nomes are crowded with children of this kind. I have no doubt on my mind that thousands of Catholic children are thus lost to the Church every year. This is a burning shame on the Catholics, and especially the Iriah Catholics of the United States. It is a sum on the frish

the United States. It is a stain on the Irish name which no time will be able to wash away. This worse than slaughter of the innocents is a crying sin, for which, as a people, we will have to stone to the living God. I know I address a congregation that has the reputation of doing its duty, its whole duty, towards the poor and the orphan.

Would to God that everywhere in this land tristmen gave the evidence you give at industry, brift, and patient economy! Would to God they rivalled you, not only in your generous support of all religious and charitable enteres-which they everywhere do-but also in the practice of those social and Christian vir-tues for which you have been so long distin-guished in this city! Then the careless, the mprovident, and the victous would be few mongst us.

Then the friendless immigrant would be me at the shere, protected, and cared for, and the seglected children of the poor and the orphan would be saved from the moral death of heresy and isreligion. Then the Irish in America would correspond with the designs of God in their regard, and exercise in time a powerful, p "es induene's in promoting the tempo ral welfare of this courtry, and, what is of vastly more importance, in bringing it to a contron knowledge of the one true thith.

LEGAL INTELLIGENC.E.

Court of Common Pleas.-The following opinio. upon an argument in the Common Pleas, was read by his Honor Judge Brewster in this Court, on Saturday last :--

Court, on Saturday last:-City of Philadelphia vs. Abraham Friday and John Crump. Opinion by Judge Brewster.-This is an action for a special injunction. The bill avers that the defendant Friday is the owner of a lot at the southeast corner of Second and Chesnut streets, in this city, and of a brick building, erected partly on said lot and partly on Second street, a public highway of the city, laid out of the width of fity leet, "long before the erection of said building." That the north wall of the said building encroaches upon second street about two feet nine inches and even-eighths of an inch, and that the south wall also encroaches upon said street about two et three and one-lourth inches, a plan of said lleged encroachment being attached to the bill is Exhibit A. The bill further charges that the telephone that Friday has recently torn down the upper part of sa'd building, intending to erect a new structure upon the first story, and then by emoving the first story, and replacing it in a style to correspond with the upper part, to create an entirely new building, and thus to rpetuate the encroachment. The compla ints then refer to the Act of April 15, 1782, de claring that no length of possession of any part of a public street in this city shall be available to par the removal of any nulsance by buildings which had been, or might thereafter be erected upon any street, lane, or alley in the city. And the bill concludes with the usual pray-

s for special and perpetual injunctions The answer admits the ownership of the lot. and that the building is now in procealteration; but the defendant denies all the "allegations of contrivance" contained in the ull, and he avers that the act of 1782 "has no application to a building crected before 1721." He also alteges that "as appears by a deed in the time of his fitle," the foundations of his building were "faid before 1707, Daniel England having received a proprietary grant in 1693, and having erroted a building on its present site some time thereafter." The defendant, while he asserts that he has no "knowledge of the encroachments stated in the bill," yet admits that "he believes $\operatorname{Exhibit} A$ is true." He, however, contends that prior to the passage of the act of February 14, 1721, regulating party walls, etc., it was impossible to have the line officially run, and be insists that the Commonwealth is a necessary party-that even if she were a complainant, "no court of equity would decree that a "building erected so far back as 1707 should be removed without just compensaon to the owner for his loss, which would be

established by Mr. Shedaker's affidavit, and by the admissions of the respondent Friday, that "he believes Exhibit A to be srue." This exhibit "he believes Exhibit A to be suc." This exhibit contains a drait of the premises, shows the lines of the street, and the intrusion of the building upon the highway. The fact of notice of this nursance to Mr. Friday before his purchase, would seem to to be made out by the affidavit, of Oliver Evans. In the view we have taken of the case, we however do not regard this as of This analysis of the case would appear to lead

the mind irresistibly to the conclusion that the purpresture here complained of should, like all similar nuisances, be abated; but the learned counsel for the detendants has presented cur-tain objections, which he has argued should distinguish this from other cases of encroachment and we will proceed to state and weigh them.

It is insisted for the defendants --Fust. That "Reed's Survey," published in 1770, shows affirmatively that defendant's lot was surveyed in 1683, before Holmes' map was treat and pretared.

Second. That prior to the passage of the act of February 14, 1721, regulating party walls, etc. (Br. Dig., 778, section 7; 1 Smith, 125), there was nothing to guide a builder.

whis notating to guide a builder. Third. That no court of equity will enjoin where a man builds as best he may. And, Lastly, That there can be no abatement of a musance on a public highway unless there is private in last. private injury, except at the suit of the Comnonwealth

These points have been argued on both sides with areat ability, and we have given them careful[consideration.

We have not been able to agree with the respondents as to the sufficiency of the defense thus exhibited, and we will endeavor to state

The survey published in 1770 does not show that this lot was surveyed as extending beyond the "ine of Second street, nor as encroaching upon any highway. It is difficult to understand how the lot Could be surveyed until the street had first been laid out; and if it were in fact surveyed in 1683, this must have been after the regulation of the streets, and would, it is to be regulation of the streets, and would, it is to be picsumed, have conformed thereto. The fact of some survey is clearly immaterial. To enspondents should have shown that the present incs of the lot were laid out in 1683. But all inquiries apon this point, which is, at best, but very uncertain, would seem to be unnecessary in view of the fact that the first patent issued for this lot bears date April 1, 1693.

On that date the title passed out of the Com-monwealth to Humphrey Murray. Second street had been laid out and regulated of the width of 50 feet ten years prior to that date, and if there were at that early day no officer to give to the patentee his lines, it would have been no difficult matter to measure from the line of Front street. Some measurements must have been made by the person occupying the lot, and if made with anything like due regard for the rights of the public, it would have been clear that Second street was not left of the width of 50 feet. If the defendants mean to contest this bill upon the ground that the Commonwealth has inflicted this wrong upon herself, they should distinctly so aver, and they should prove

it. They have not undertaken to assert it. Even then it would be a question whether the mistake or traud of the officer could deprive the State of her highway. The respondents seem, however, to rest their defense upon the ground that when this building was erected there was no officer to run the times. If this is so, and the owner undertook to ascertain the boundaries for himself-upon him and his assigns would rest the responsibility of the error. Of this they have no just reason to complain, for the state-roof house, a very ancient landmark, erected before or about the time of the house in question was, stands-with a very slight variation caused by its age-exactly upor the proper line. Nor can any length of occupation bar the Commonwealth's right to her highway.

The act of April 15, 1782, expressly prohibits us from allowing this detense. The settled maxim of the law is, Nulturn Tempus Occurrit Regi. The instice of this axiom has always been admitted. Mr. Broom (Legal Maxims, 27) says:-"In pursuance of the principle of the sovereign's incapacity of doing wrong, the laws also determines that in the Crown there can be no negligence or laches, * * for the time and

and the defenses suggested appearing clearly and the detenses suggested appearing clearly untenable, we are not at liberty to withhold the remedy prayed for. It is gratifying to know that by act of February 14, 1866 (P. L. 28, Br. Dig. 1427, Sec. 21), the defendants can appeal from our interlocutory decree to the Supreme Court, where any error into which we may have fallen will doubtless find a speedy correction. INSURE YOUR LIFE correction.

And now, March 16, 1867. The motion for special injunction having been agreed by counsel for complainants and defendants, on due consideration thereof

It is ordered that a writ of special injunction issue restraining the detendants and each of them, until further orders, from erecting any structure whatever upon the lot at the south east corner of Second and Chesnut streets, in city, so that any part of said structure shall extend into or encroach upon said Second street.

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but this, after all, is but a part, and, relatively speaking, an unimportant part of her mission.

That mission is primarily and chiefly directed promote the spiritual weblice of the millions that now inhabit it, and of the hundreds of millions that will one day fill it, from the Likes to the Gulf, from the Atlantic to the Pacific She would instruct those millions in the one truth of God, she would unite them in the one worship established by Christ, train them to the practice of the Christian virtues, and thus them to the great end of all rational creatures, the possession of eternal happiness. What a mission! What an enterprise! How does not the Catholic heart and the Catholic imagination warm to this vision of faith in the future of the United States! How consoling, too, to think that the Church is well able to reolize it, and that she will realize it, if not provented by the malice of men !

The United States may achieve the temporal The United States may achieve the temporal greatness of which they are capable, and be brought to Catholic unity by ways of peace and prosperity, or only after long years of strife and persecution of the Church. In either case Irish faith, if not an indispensable, will be a most important element of success. That taith, tried and purified and strengthened as it has been by long suffering is as much model. long suffering, is as much needed to resist the seductions of uninterrupted peace and properity as to withstand the storms of religious persecution.

But how are Irishmen to fulfil the mission But how are tristmen to fulfit the mission which Providence has assigned them in this country? How are they to continue the glo-rious work in which already they have had so large a share? By being true to the failta, by being good Catholics. This is the way, and the only way. You know, my brethren, what it only way. You know, my brethren, what it means to be good Catholics. These words convey to your minds no vague, indefinite theory of morals. They give you a rule of conduct you clearly comprehend-one that is eminently practical, and which you are able to apply for yourselves to all the details of life.

Love your faith; value it above all things earthly; let it be your guide and your consoln-tion in good and evil fortune; preserve it in your children, and there is every reason to hope that you will be the chief instruments in the hands of God in keeping this country free, in keeping it united, in making it prosperous and great above all the natious that have preceded it, in bringing its people to a knowledge of the true faith, and in making your posterity after you sharers in these blessings. "Trust in the Lord and do good, and dwell in the land, and thou shalt be fed with its riches.'

In the absence of organization, much could and ought to be done by local associations and by individuals for the good of the immigrant, Why, for instance, might not Irish women in every city along the seaboard form societies which would send their agents to every immigrant ship that arrived, to offer at least tempo-rary shelter to such of their sex as come friend. less and unprotected among us? Shame on us that such societies were not established long agol

There is in every country, and in almost every community, a helpless, improvident, vicious class of poor, who are such from natural indelence, the force of circumstances, the long in-dulgence of evil habits, or all these causes com-It is not wonderfol that many such should be found among a people persecuted and crushed as the Irish have been. Such unfortunates cannot, or will not, help themselves or have a care of their unhappy families. The children of such persons, as also the orphan children of the industrious, virtuous poor, are in constant danger of perversion in this country.

Protestantism, in our day, despairing of being able to make any impression on the adult mind, able to make any impression on the authority in a seems to have directed all its proselytizing energies to the kidanapping, the stealing of the children of the Catholic poor. It is an ignoble enterprise, truly, but one in which Protestants have met with signal success. Under various pretexts of charity and philanthropy they have sought and continue to seek to gain the legal control of such children, in order to destroy in their young hearts the seeds of faith, and then bind them out to masters who will com

in this case very grievou

Upon the hearing, the complainants read the affidavits of D. Ludson Shedaker and Oliver Evans. These were received without objection, because a case of nuisance is an exception to the rule forbidding the reading of affidavits in opposition to the answer. Lord Eldon, who said in Clapham vs. White (8 Vesey 3. 6), that not one of five hundred affidavits could be admitted after answer, in the later case of Peacock vs. Peacock (6 Vesey, 50) allowed such affida-vits to be read in a partnership suit. And the exceptions have been extended to cases of waste and auisance. (See a full collection of cases in the very learned note by Mr. Perkins to the last editions of Daniel's Ch. Pr., 17, 68.)

Mr. Shedaker is the Surveyor and Regulator of the Third District of this city. He has had large experience in his profession, and he qualihes with great clearness to the fact of the al-leged encroachment, and gives the data and tests of his measurements, and the results, from which it would appear that he proceeded in this matter with great care and skill,

The affidavit of Oliver Evans is to the effect that the defendant Friday has been an occupant of the store in the third house below this cor-ner, as tenant to Mr. Evans, for several years past: that Mr. Evans was compelled, when he put up a new ouilding, to recede to the line of the sirect; and that when Mr. Friday was in treaty with Mr. Evans for a lease of the new building, he spoke of putting up a frame and such on the line of the adjoining build-ings, and that he was then informed of the encroachment of Mr. Evans' old house, and that his proposed extensions would be at his cost and risk. The complainants also gave in cost and risk. The complainants also gave in evidence Holmes' map, and read from William Penn's latter to the Free Society of Traders, dated August 16, 1683, and from the city char-ter of October 25, 1701. The first patent for this lot, issued April 1, 1693, to Humphrey Mur-ray, was also referred to as recorded in Exem-ulification book 3, p. 58.

plifeation book 3, p. 58. The averment that the defendant's present alteration is "a device and contrivance" is emphatically denied by the answer-is not, in our opinion, sustained by the contract between the two defendants exhibited to us, and may therefore be dismissed from the case, Looking at the pleadings and affidavits, we

may regard the following facts as established by admissions or by uncontradicted proof:--First, That Second street, in this city, was haid out of its present width of 50 feet, at least as far back as 1683, and that the first patent for this lot was issued to Humphrey Murray, April 1.1693

Second. That the de'endant Friday's building encroaches up on this highway, so that, at that part, it is less than 48 teet in width.

Third. That before Mr. Friday purchased this property he was advised of this encroachment. The first point is clearly proved by Holmes' Map, the aomissibility and reliability of which were the subject of much discussion in the case of the Commonwealth vs. Alburger, 1 Wh., 469, It was there received by Chief Justice Gibson, and his ruling was sustained by the whole Court. Sergeant, J., in a very able opinion, gives an interesting history of Penn's original design of a city of 10,000 acres, of his change of plan, the grant of the liberty lands, and the preparation of this Man et the city of the preparation

of this Map of the city. He cites all the decisions as to ancient records from the case in 1 Salk, 281 (where, to prove a forgery of a deed, chronicles were admitted to show the time of the surrender of Charles V), and as to this map, says "it was undoubtedly evi-dence," and that it "lays down the streets of the dence," and that it "inys down the streets of the city, and the five public squares lying across the streets, so as not to be misiaken or confounded with the rest of the ground assigned for lots or left vacant." That this map existed in 1683 would seem to be very clear from the note to Smith's Laws, vol. 2, p. 107, quoting from Proud, from the letter of William Penn to the Free Society of Traders, and also from Reed's expla-nation of the map of the City and Libertes. It was not denied upon the argument that the first patent for this lot was issued April 1, 1693. This is the earliest trace of title averred in the is the earliest trace of title averred in the answer.

attention of the Sovereign must be supposed to be occupied by the cares of government; nor is there any reason that he should suger by the negligence of his officers, or by their fraudulent collusion with the adverse party." And he cites the English cases in support of this doctrine. In Pennsylvania the decisions speak with great clearness and unbroken uniformity. Vide Johnston vs. Irwin (3 S. and R., 291); McCoy vs. Dickinson College (4 S. and R., 302); Bagley vs. Wallace (16 S. and R., 245); Comm. vs. Baldwin (1 Watts, 54); Comm vs. Miltonberger Watts, 450); McKeehan vs. Comm. (3 Barr, 151); Troutman vs. May (9 Casey, 455); Magee s. Comm. (10 Wr., 359). The reasons assigned in these cases for hold

ing firmly to this principle of the law are too well known to need repetition. They conclu-sively show the force of Sir James Mackintosh's declaration that "maxims are the condensed good sense of nations." In Comm. vs. Milton-berger (7 Watts, 450) the defendant was acquitted because he was able to show that "in 1809 the constituted authorities of the city (of tisburg) made a regulation in conformity to 'Wood's plan,' as nearly as the same could b ascertained, and in accordance and upon the faith of which houses had been built and occu-pied ever since." Judge Grier held that this must be taken as the true regulation, "and that the act of 183e, establishing and confirming it was both constitutional and wise," Here, how er, the defendant has failed to show that he has built upon a line established by any regula tion. His difficulty is that his walt extends more than two feet beyond the line of any plan that can be found.

These remarks would seem to dispose of the first three points which have been urged by the

The fourth and last objection is that the Com-

In England bills similar to the present have been entertained, and relief granted upon the complaint both of municipal corporations and relief and the second secon individuals: vide Mayor of London vs. Bolt Ves, Jr., 129; Sampson v. Smith, 8 Simons, 2: Spencer vs. London Railway, 8 Simons, 3: and the recent case of Hepburn v. Lordan,

¹³ J. B., N. S. (Chancery), 293. The same ruling has obtained in the United States. See Trustees vs. Cowen, 4 Paige Ch., 514: Hart vs. Mayor of Albany, 9 Wend., 571. And our Persenthenia Conducts and 9 And our Pennsylvania cases-Biddle vs. Asb. Asb., 220; Moyamensing vs. Long, 1 Parsons Borough of Frankford vs. Lennig, 2 Phila ep., 403; Pennsylvania Railroad Co. vs. Grain

Elevator Co., 14 Wr., 490. The right of the city and her citizens to re-strain bulsances on the public highways that been frequently sustained in cases against the Passenger Railway Companies. Vide Faust vs. Passenger Railway Company, 3 Phil. Rep., 164: Clark vs. Second and Third Streets Railroad Company, 3 Phil. Rep., 259; City vs. Lombard and South Streets, Cr. Leg. Int., May 20, 1853, p. 173-3 Grant, 403; Id. vs. Navy Yard and Fairmount Company, C. P. Dec. Term., 1862. Fairmount Company, C. P., Dec. Term, 1862, No. 2, M. S.; Ibid vs. Lombard and South Streets Company, Supreme Court, January Term, 1866, No. 17, Per Strong J Per Strong, J.

To these many other citations might be added. The language of Woodward, C. J., in 3 Grant, 04, is so forcible and so directly to the point as to settle the question if he stood unsustained by any other authority. He says "one of the by any other authority. He says "one of the most obvious purposes for which the city was chartered was the police of the streats. To maintain and preserve them as public high-ways, the power of taxation was conferred upon the municipality, and it has been largely ex-creded. Every property-holder has a direct and vested interest in the maintenance of this municipal authority over the streats." nunicipal authority over the streets,"

The power of a court of equipater interfere in pases of this kind is abunda bown by the decisions already referred to, <u>in those cited</u> by Mr. Justice Story in his "Equity Jurispru-dence" (Sec. 921), where he says that this juris-diction "has been distinctly traced back to the reign of Queen Elizabeth." Were there a could as to the fact of the encroachment, we s' and denor it to be our duty to small the result of a The encroachment would appear to be clearly deem it to be our duty to swalt the result of a trial at law, but the purprestore being admitted,

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