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REPORT OF THE TRIAL

OF

2/96

M^CLAURIN F. COOKE,

SUB-MASTER OF THE ELIOT SCHOOL, OF THE CITY OF BOSTON,

FOR

AN ASSAULT AND BATTERY UPON THOMAS J. WALL,

A PUPIL OF THAT SCHOOL.

WITH

THE ARGUMENTS OF COUNSEL, AND THE OPINION
OF THE COURT REPORTED IN FULL.

CAREFULLY REVISED AND CORRECTED.

BOSTON:

A. M. LAWRENCE & CO., DAILY LEDGER OFFICE,

18 STATE STREET.

TRIAL OF MCLAURIN F. COOKE,

A TEACHER IN THE ELIOT SCHOOL, OF THE CITY OF BOSTON, FOR
AN ASSAULT AND BATTERY COMMITTED UPON THOMAS
J. WALL, A PUPIL OF THE SCHOOL.

TRIAL IN THE POLICE COURT, BEFORE MAINE, J.

SIDNEY WEBSTER and WILDER DWIGHT, Esquires, for the complainant.
H. F. DURANT, Esquire, for the defendant.

THURSDAY, March 17th.

THE case was called, and the complaint read, and the defendant pleaded not guilty. After some discussion, the trial was postponed, on motion of the defendant, until Friday, March 18th, at 12 o'clock, when it was again taken up.

WILDER DWIGHT, for the complainant, stated that he did not propose to make any formal opening statement, but preferred to present the case to the Court in the simple narrative by the boy, Thomas J. Wall, upon whom the assault was committed. Hereafter, if it became necessary, he should ask leave to discuss the questions of law which might arise.

Thomas J. Wall was then called, and examined by Mr. Dwight, and testified as follows:—I am ten years old; am in the Eliot School, in the class of Miss Shepard. Monday, March 7, I was called upon to repeat the Ten Commandments, but refused, saying that my father would not allow me to say them; the teacher told me that my father had nothing to do with the school, and that I must say them; I said I did not know them. She kept me after school, and said if I did not say them, she would take me to Mr. Cooke. After school I was kept about a quarter of an hour, and still refusing, I was taken to Mr. Mason, who was told of my refusal. Mr. Mason asked why I would not say them; I said my father would not let me. Mr. Mason said, "What has your father to do with the school?" I was then sent to a seat, and asked if I had a book containing the Ten Commandments in my way; I said I had, and would bring it in the afternoon; Miss Shepard said there was not much difference. Miss Shepard then told Mr. Mason that my father was willing to have me discharged; Mr. Mason then asked me if it was true, and I said yes; he then told me that I might be discharged until he saw my father and the committee; took my books then and went home; returned to the school last Wednesday week, by orders from my father; he told me that he had agreed with Mr. Mason that I might say the Commandments in my own way; after school on that day, I was asked by

Miss Shepard to say them, as they were precisely like those read to my father by Mr. Mason; she then said, "Go to your seat and recite one, and that's all I'll ask of you." I did so, and she then asked me if it hurt me. She afterwards told me to take my spelling-book and study the Commandments, to be ready on the next Monday morning. Last Monday morning all the boys below me who were Catholics, refused to say them; there were only two that said them. Miss Shepard skipped by me; then she said, I did not think you were there, and asked me if I had studied them, and I told her that my father had agreed with Mr. Mason that I should not say them; then she said that she would whip every boy down from me who would not say them. She did whip every one down to Rohan, except me; Rohan refused to hold out his hand, and she threatened to send him to Mr. Cooke; he then ran out of school, and she told Mr. Cooke about it. A little while after that a man came in and asked how many boys had refused to say the Commandments.

The defence objected to the admission of any thing this man said or did.

Mr. DWIGHT stated that the prosecution considered it material, in the same view as the other facts already put in, as one of the circumstances surrounding and explaining the assault. This man, whoever he was, had come into the school and addressed the scholars about the Ten Commandments. He thought the testimony material and admissible.

Mr. DURANT said he cared not what other parties who came into the school had said. The defence had not objected to what Miss Shepard may have said, but what outsiders who came in may have said, he deemed not pertinent.

The COURT ruled out the question, as sufficient foundation for such a line of inquiry had not yet been laid, and as the connection of the man with the school had not been established.

The witness resumed. The teacher told the committee man that I was the foundation of the whole trouble; Mr. Cooke soon after came into the room; she delivered me over to Mr. Cooke, who placed me upon the platform in his room; it was recess time then. After the boys came in, he said to the school that "here was a boy who would not repeat the Ten Commandments;" he said he would whip me until I consented, for he had nothing else to do the whole forenoon; he had before this asked me to repeat them, and I told him then that I would do it if my father was willing. He then commenced whipping me with a rattan, stopping at times of about a minute in length, and asking me if I would say them; I replied that I would if my father allowed me to; he whipped me first on one hand and then on the other, for thirty minutes; when he stopped whipping me I said the Commandments in consequence of what "that man" told me. After he got through, he (Mr. Cooke) took me down stairs and put my hands in water; my hands were much swollen; he sent me back to my seat in Miss Shepard's room, but soon after came after me and again put my hands in cold water. My father had told me that "for my life not to say the Ten Commandments." I remained during the rest of Monday morning in Miss Shepard's room; have not been back to the school since; when I told Mr. Cooke I would repeat the Commandments if my father was willing, he said "that wouldn't do;" this was repeated more than once.

Mr. DWIGHT then asked the witness whether, when he went to school that morning, he understood from his father that he was to repeat the Commandments, if called on, according to his own version, and not that in the spelling-book?

Mr. DURANT objected to leading questions to a boy of but ten years. He objected to asking the boy his opinion, or his understanding. He should be asked simply as to what was said or done.

Mr. DWIGHT replied that he had not intended to lead the boy in the least. The boy had told, according to his best recollection, the same story as he had told him in his (the counsel's) office, and this inquiry was material as showing whether the youth was acting conscientiously or not. It was not a matter that could be kept in the dark, and the action of this child was no doubt, to some extent, governed by instructions. He desired to show that the father told the boy to recite the Commandments according to the Catholic version, if recite them he must, and that the boy so understood him.

The COURT ruled that if the boy had not stated all his father told him, or all the answers given by him to his teacher, then he should give them in full, but that the inquiry could go no farther.

The witness resumed. My father told me not to repeat the Protestant Commandments; he told me not to be a coward to my religion, and not to say them.

Cross-examined by Mr. Durant. Have been at the Eliot School for seven years; have been in Miss Shepard's room seven months; the Commandments have been recited every Monday morning by the class, but I never recited them; I never recited them in the other classes I was in; I never joined in the Lord's Prayer or "Old Hundred;" both of which were given every day. McCann sat on the other side of me; he used to sing and recite sometimes, but never did it as often as now; some of the Catholics used to say the Commandments before last Monday, but all didn't. The priest had told the boys not to recite the Commandments, but if they must do so to recite their own. I said I wouldn't do it before I went in Monday morning, and the other boys said they wouldn't. Father Wiget told us not to; he told us on Sunday, in the basement of St. Mary's Church; there were nine hundred children present; Father Wiget needn't have told *me*, for my father had told me since I was four years old to say only my own Commandments. Father Wiget said if we repeated the Protestant Commandments he would read our names to the congregation. I saw Father Wiget last night at his room; he had promised me a medal, and I went there for it; he gave it to me for being a good boy; he promised it a long while ago, about three weeks ago; it was a medal dipped in silver; it was in the basement of the Endicott Street Church he gave it to me. I had asked him for it; nothing was said then about the Ten Commandments; he first spoke to me about the Ten Commandments last Sunday; all he said to me last night was, "Go home and take your supper," that was all he said. I was there only three minutes, and he was writing. During the seven months I was in Miss Shepard's room I never repeated the Ten Commandments. I had learned the first half of them in my spelling-book; Miss Shepard told me to learn them; Mr. Mason asked me why I wouldn't say them; I told him I would say them if my father was willing; didn't tell Miss Shepard or Mr. Mason that I didn't know them. Mr. Mason dismissed me; on Wednesday I went back with my father; Mr. Mason didn't read the first Commandment, and ask my father if he saw any thing objectionable in it; Mr. Mason said if I didn't obey the rules my father had told him to punish me; notwithstanding this, I refused to obey; Mr. Cooke was thirty minutes whipping me; he went out twice during that time, and stopped twice to speak to me.

[A rattan was here shown to the witness, which he said looked like the one he was whipped with.]

I had been whipped a good many times before, and had my hands put in water before this; other boys had also. I didn't like to have my hands put in water, because I wanted them swollen so I could show them to the doctor; nobody told me this. I went to Dr. Salter Monday afternoon; Mr. Murphy and Mr. Mager "fetched it to the doctor." One boy was stamping his feet while the Protestant boys were saying the Commandments; he was a Catholic boy; other boys were making a noise as if studying. I made no noise when they were saying the Lord's Prayer; my father told me not to say the Protestant Commandments last Monday week; the first time a priest ever told me, was last Sunday week.

Direct resumed.— Before Monday, all the boys were called upon to repeat the Commandments together, not separately; some would say them, and some would not. The medal the priest gave me had been blessed; it was customary for the priest to give medals to the boys; I asked him for it; we wear the medals. Mr. Cooke only puts my hands in water when he has whipped me very severely; when he was whipping me I thought I should like to show my hands to the doctor.

The Court then, at quarter to two o'clock, took a recess of twenty minutes.

The Court came in at twenty minutes past two.

James O'Hara called and testified. I attend the Eliot School. I saw the boy Wall brought into Mr. Cooke's room on Wednesday forenoon last; after recess Mr. Cooke said, Here is a boy who has refused to say the Ten Commandments, and I am going to whip him till he does, if it takes all the morning; he then began to whip him on both hands, asking him at the same time if he would recite them. Wall replied that he would if his father was willing; Cooke said his father might rule him at home, but he should rule him at school; he continued to whip him for about thirty minutes; he went out into the entry once while doing it. Mr. Mason came in and said he could take his oath that his father had ordered that the boy should recite or be whipped.

Cross-examined. I have attended the school two years; I have never recited the Commandments; I have recited the Lord's Prayer. I refused to join in recitation of the Lord's Prayer last Monday morning, because I was instructed to do so by my parents; we all refused to recite the Lord's Prayer, because our parents and the priest told us to; the priest instructed us to say nothing out of the Protestant Bible. Sunday last was the first time I had ever been instructed not to say the Lord's Prayer and the Commandments; I saw none of the scholars tear the Commandments out of their spelling-books. I have attended school seven years; I have, occasionally, during that time, recited the Lord's Prayer. The boys have often had their hands dipped in water after being whipped severely; I can't say how many boys have had their hands dipped in water; I have frequently seen the bad boys, and some of the good ones, also.

Dr. Richard H. Salter. I saw the boy Wall's hands on Monday afternoon last; both hands had a swollen, sodden appearance inside, and the skin was slightly broken in two or three places; there were also small livid spots; the boy said the hands were painful. I ordered a soothing dressing, and the next day the swelling had entirely disappeared; I did not think the injuries very severe; the hands indicated that there had been

a smart application of the stick, but of what degree of severity I cannot say. The use of cold water immediately after the whipping would relieve and prevent inflammation.

Cross-examined. The livid marks on the hands were not serious or permanent; I told him to rub his hands in sweet oil and do them up in cotton; I considered such a prescription sufficient. In a child of ten years old the skin is tender, and more tender on the palm than elsewhere.

Thomas McLaughlin. I am thirteen years old; I was in Mr. Cooke's room on Monday forenoon last; after recess I heard Mr. Cooke say that the boy Wall had refused to say the Commandments, and he was going to whip him until he would. He continued to whip him twenty or twenty-five minutes; he would occasionally stop and ask him if he would recite them, and the boy said he would if his father was willing.

Cross-examined. Mr. Cooke asked the boy four or five times while whipping him if he would recite the Commandments; I did not say the Lord's Prayer on Monday morning, because my parents told me not to; the priest told the boys on Sunday last not to say the Commandments. I was forbidden by my parents to sing any hymns; I was not instructed by the priest to refuse to sing the hymns. I knew of sixteen boys in Mr. Cooke's room who refused to say the Lord's Prayer.

The complainant here rested his case.

Mr. DURANT said that he had not as yet heard any statement of the legal ground upon which the complainant proposed to put his case, and that he should, therefore, be compelled to go on with the defence in the dark.

Mr. DWIGHT expressed his willingness to open fully the legal principles involved in the case, and thereupon proceeded substantially as follows:—

OPENING FOR THE COMPLAINANT BY MR. DWIGHT.

This is a case of an assault and battery upon a pupil, by a teacher in one of our public schools, as a punishment for the refusal by the pupil, who is a Roman Catholic, to repeat the Ten Commandments according to the version in the Common English or Protestant Bible. There are two legal grounds on which the assault and whipping complained of must be held to be unlawful and criminal, without reference to the question whether the punishment, if justifiable, was not excessive.

These grounds are indicated in the following questions:—

First, under our constitution and laws, can a Catholic scholar in school be compelled to repeat as the commandments of God, that is, as God's law, the Protestant version of that law, or has he not a right under the constitution, to be protected against a command to repeat that law in a different form from that prescribed by his faith, and commanded by his parent and religious teacher? Must he utter words which his religious faith denies?

Second, waiving the larger question of religious liberty,—ought an infant of ten years of age, in a public school, who refuses to obey a command of the teacher *on the ground* that his father forbids him to do so, and who gives that reason, to be *whipped* into obedience. Is not the proper remedy expulsion? And is the punishment inflicted by the teacher *reasonable*, under the law of this Commonwealth, and the rules of the School Committee for the Boston Public Schools? Is not such punishment cruel and without right or justification?

Before asking your Honor's attention to these two questions, permit me to refer to the recent case of the Commonwealth *v.* Randall, 4 Gray, 36, for the law according to which all punishment of a pupil by a schoolmaster must be regulated. The doctrine of that case may be stated thus: A schoolmaster is criminally liable for punishing his pupil not only when he acts *malo animo*, from vindictive feeling, passion, or ill-will, or inflicts more punishment than is necessary to secure obedience; but, in inflicting corporal punishment, a teacher must exercise reasonable judgment and discretion, and be governed as to the *mode* and *severity* of the punishment by the nature of the offence, the age, size, and apparent powers of endurance of the pupil. The court say "the unreasonable and excessive use of force on the person of another being proved, the wrongful intent is a necessary and legitimate conclusion in all cases where the act was designedly committed."

In the present case, therefore, we need not prove any actual malice and ill-will. It will be enough to show an unreasonable and indiscreet whipping.

The rule of the School Committee upon this subject contains a very sound construction of the law.

"Regulations, Sect. 13. All instructors shall aim at such discipline in their schools as would be exercised by a kind, judicious parent in his family, and shall avoid corporal punishment in all cases where good order can be preserved by milder measures."

With this general statement of the law, I desire first to address myself to the considerations which show that in the present case the defendant had no right to inflict any punishment at all. And whatever dignity or importance the case may lack in other aspects of it, it yields to no question which a court can be called to consider in this view, which I understand to have been the intimation of your Honor when you spoke of the case as one of great public importance. Certainly that is a question of the largest public and political importance, which concerns the relation of a people to their government and their religion. It is my purpose to confine myself closely to a discussion of the law in its precise application to the case before the court; for the general subject of religious liberty and freedom of conscience, is one that has such wide relations, and is, in some respects, so full of difficulty, that I desire to avoid, as far as I can, a general discussion of the use of the Bible in our public schools, and of the differences between Catholics and Protestants. Such a discussion seems to be out of place, and calculated only to divert us from the merits of the case, to kindle our prejudices, and mislead our judgments.

Our constitution, in that part of it called "*A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts*," after that large assertion of freedom and equality, and claim of "certain natural, essential, and unalienable rights," whose authority is so frequently invoked, declares in Art. II:—

"It is the right, as well as the duty, of all men in society, publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments, provided he doth not disturb the public peace, or obstruct others in their religious worship."

The next article, as it stood originally, went on to recite, in substance, that, "As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion, and morality,"

therefore the people of the commonwealth have the right to invest their legislature with power to authorize and require the several towns, parishes, &c., to make provision for the public worship of God, and for the support and maintenance of public *Protestant* teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily. Also to invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend. The article concludes:—

“And every denomination of Christians demeaning themselves peaceably and as good subjects of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another, shall ever be established by law.”

But an amendment, adopted by the legislatures of the political years 1832 and 1833, and approved and ratified by the people in the latter year, was substituted for this article. It is Art. XI. of the Amendments to the Constitution, and the commissioners who revised our statutes in 1835, describe it comprehensively by the title, “Religious Freedom established.” The Amendment, after the same general recital, proceeds: “*Therefore*, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers,” &c. And in the last clause above quoted, the words “all religious sects and denominations” are substituted for “every denomination of Christians,” and the word “citizen” replaces “subject.”

Now this omission of the word *Protestant* is a very significant one. That was the only word in the constitution which could justify the assertion that Protestant Christianity is the state religion. Its omission is a refutation of what seem to be the tacit assumptions of the defendant.

It is under this constitution that our common school system was founded, and now exists. Let us attend, very briefly, to the provisions of the law regulating the system of instruction in those schools.

The 23d chapter of the Revised Statutes, entitled “OF THE PUBLIC SCHOOLS,” in its first section contains an enumeration of the branches to be taught therein, and in sect. 7, declares the general duty of the teachers of youth, in the following impressive language:—

“It shall be the duty of the president, professors, and tutors of the University at Cambridge, and of the several colleges, and of all preceptors and teachers of academies, and all other instructors of youth, to exert their best endeavors to impress on the minds of children and youth, committed to their care and instruction, the principles of piety, justice, and a sacred regard to truth, love to their country, humanity, and universal benevolence, sobriety, industry, and frugality, chastity, moderation, and temperance, and those other virtues which are the ornament of human society, and the basis upon which a republican constitution is founded; and it shall be the duty of such instructors to endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the abovementioned virtues to preserve and perfect a republican constitution, and secure the blessings of liberty, as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices.”

In other words the law says: There shall be taught in our schools all the virtues which form “the basis upon which a republican constitution is founded;” and the pupils shall further be expressly instructed in the tendency of those virtues to secure “the *blessings of liberty*,” &c. Nothing can exceed the clearness with which the whole spirit and purpose of public

instruction is pointed out. If any thing were wanting, the significant silence of this statute upon the subject of religious doctrine and faith would be enough.

But lest this large enumeration should mislead the enthusiast or the bigot, we have the express provision in sect. 23 of the same chapter, as a part of the directions concerning school books, that

“The school committee shall never direct to be purchased or used, in any of the town schools, any school books which are calculated to favor the tenets of any particular sect of Christians.”

And more recently the statute of 1855, ch. 256, provides that

“In determining the qualification of scholars to be admitted into any public school, or any district school in this commonwealth, no distinction shall be made on account of the race, color, or *religious opinions* of the applicant or scholar.”

And gives a right of action for damages to the child excluded for either of these reasons.

Nor is this all. The eighteenth article of amendment to the constitution, adopted and ratified in the same year (1855), gives a higher and more positive sanction to the principle which guided the legislature in framing these laws.

That amendment is as follows : —

“All moneys raised by taxation in the towns or cities for the support of public schools, and all moneys which may be appropriated by the state for the support of common schools, shall be applied to and expended for no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended ; and such money shall never be appropriated to any religious sect, for the maintenance, exclusively, of its own schools.”

The enumeration of the branches to be taught in the public schools in the still more recent statutes of 1857, ch. 206, and of 1858, ch. 5, are in harmony with the provisions of law. The only other law which seems material in this connection is the statute of 1855, ch. 410, which provides that “The school committee of each town and city in this commonwealth shall require the daily reading of some portion of the Bible in the common English version.”

The construction of this law in the Regulations of the School Committee of Boston, sect. 5, is as follows : —

“The morning exercises of all the schools shall commence with reading a portion of Scripture, in each room, by the teacher.”

The rule goes on : —

“And the Board RECOMMEND that the reading be followed with the Lord’s Prayer, repeated by the teacher alone, or chanted by the teacher and children in concert, and that the afternoon session close with appropriate exercises, and also that the pupils learn the Ten Commandments, and repeat them once a week.”

It is enough for the purpose of this argument to say that neither the law itself nor this rule under it, up to the point where recommendation and suggestion commence, were violated by the complainant, and they are therefore not here drawn in question. That the law goes quite as far as the constitution will allow, I hope to show more fully in another connection.

But I desire first to refer to the provisions of law compelling, under penalties of fine and imprisonment, the attendance at school of all the children of this commonwealth during a portion of the year.

The statute of 1852, ch. 240, provides —

“SECT. 1. Every person who shall have any child under his control, between the ages of eight and fourteen years, shall send such child to some public school within the town or city in which he resides, during at least twelve weeks, if the public schools within such town or city shall be so long kept, in each and every year during which such child shall be under his control — six weeks of which shall be consecutive.”

The next two sections provide for penalties for violation of this law, to be recovered by complaint or indictment; and the last section provides what shall excuse a non-compliance with the law. These excuses are attendance at school elsewhere, or being otherwise furnished with means of education, or a bodily or mental condition such as to prevent attendance at school, or poverty.

Neither of these would relieve the Catholic, as such, from attendance at the public schools.

But the penalties do not stop here. The statutes of 1850, ch. 294, and of 1854, ch. 88, denounce severe penalties upon all truant children, and provide that justices of the peace may on complaint sentence children “growing up in ignorance,” “to be committed for not more than two years to the House of Reformation, or to pay a fine, and in default thereof, to the common jail.” In this state of the law we claim that this child and every child is *compelled* to attend the public schools. Every citizen is also taxed for their support, *invests* part of his earnings in them, and is *bound* to.

I am aware that I am discussing very familiar principles. But the clearness and force with which these principles are declared and protected would surprise any one who had not carefully attended to the subject, and the examination is one which cannot be profitless or uninteresting. There is another excuse for detaining your honor so long upon this matter — that in every season of excitement we are apt to lose our hold upon the principles which lie at the basis of our liberty. And there was never, perhaps, a question more calculated to excite our prejudices than the present one. I hope it is not improper or disrespectful to speak of prejudices. We all have them. They become a part of ourselves. We can no more escape their subtle influence than that of the atmosphere in which we live. But it is at once our privilege and our duty in a court of justice to resist that influence; and I know of no aid in that effort like a recurrence to the principles upon which the fabric of the government and the rights of the people depend.

If I have succeeded in my purpose of developing the policy of this Commonwealth, as indicated in her frame of government and her laws, in regard to religious liberty and public instruction, I can ask your honor to follow me in the further steps of the argument with more confidence.

Our ancestors came here in pursuit of religious liberty, and they founded, as the basis of a republican commonwealth, the noble system of free public schools. They intended to secure and enjoy the full measure of both these blessings. Need there be any conflict between them? I think I trace in our frame of government, and our legislation under it, a wise policy of reconciliation and harmony. This policy is the best safeguard of our liberty and intelligence. If this were the place to utter words of warning, I would say, let no argument of prejudice, no impulse of passion, mislead us into a departure from this policy. I recall your honor's suggestion that her common schools are the dearest interest of Massachusetts. They are so. Dear to the state, dearer to every citizen. It is to the public school that

every man, however poor, must look to give him a *practical hold* upon that equality of which we boast. We have no distinction of class or privilege under the law. But there is an aristocracy of education into which every man may enter through the door of the common school. The state gives him an education, and bids him win with it every success or eminence. And it is this hope which fills him, and makes him a freeman. It is this hope, too, which is the best safeguard of our liberties. Will you fetter this great and mutual privilege with a condition? Will you say education is free *only* to those who believe as we do, or who are willing to *say so*?

But I need not pursue this argument. The only question that can arise upon this case must be, Is the enforcement by the teacher of the repetition of the Protestant version of the Ten Commandments by a child whose religion denies the truth of that version, imposing a religious test? If it is so, the act is clearly unconstitutional.

I must here advert very briefly to what your honor must be familiar with as a part of the history of that Protestant faith which so many of us love and cherish; to the fact, namely, that some of the differences between the version of the Ten Commandments used in our public schools and that taught to Catholic children in their churches and homes are differences of importance.

The difference of phraseology in the latter part of the first commandment in the Douay Bible, which becomes the second commandment under the division adopted in the common English version, is one upon which much discussion has arisen. The substitution in the latter translation of "graven image" for graven thing, and of "bow down" for adore, is an *argumentative* translation, aided by the separation of that injunction into a distinct command, against the uniform belief and practice of Catholics, and against one of their most cherished aids to devotion and worship. The difference of division, too, may be considered as of a good deal of practical importance. Any division into ten distinct commands must be an arbitrary one. The Protestant divides the first commandment into two; the Catholic the last. And in both cases the division is defended by different views of the nature of the sins prohibited. Now, this is only important as showing that the distinctions are of a character to be insisted on by Catholic parents and teachers.

I will not speak of the other differences of language. Let them appear to be as slight or trivial as you please. I do not admit that the *amount* of these differences is a proper topic of discussion. It cannot be denied that there are such differences. Their significance or value is not to be measured by the court. If the difference exist, its importance is for that inner tribunal of faith, the conscience, which may be persuaded, but not intimidated or compelled.

A boy or a man has the right, under the constitution, to repeat the Commandments *as he believes them*, and no man in any position, or authority, unless he is above the constitution, has right to direct him to modify a phrase or correct an adjective.

The *recommendation* of the school committee forming a part of the rule (so called) already quoted, suggests that the Ten Commandments be repeated once a week.

This repetition by the pupil of the Ten Commandments is made a part of the *religious exercises* and *devotional* services of the school. The words are not to be repeated merely as an exercise of the memory, an example

of style, or rhetoric, or a gratification of literary taste, nor even as a code of morality, but as a religious exercise. They have no *significance* if used for any other purpose. This also appears clearly from the whole rule taken together, and from the connection in which the exercise of repetition occurs; and this is the important distinction between the present case and the case of *Donahoe v. Richards*, 38 Me. 256, which holds that to *require reading* of the Bible in the public schools is not unconstitutional. Without going into a careful examination of the constitution and laws of Maine, it is enough in this connection to say, that the facts in that case raise the simple question of the use of the Bible as a *reading book*, and for no other purpose. And the decision declaring such use constitutional, treats it as a reading book of a particular version not prohibited by any express language of the constitution, and a model of *idiomatic* English, which teaches lessons of sublime morality, and expressly repudiates the idea that there is "any interference by way of instruction with the views of the scholars, whether derived from *parental* or *sacerdotal* authority."

And the argument of the learned counsel who argued that case contains passages of great power, describing the "noblest monument of style, of thought, of beauty, of sublimity, of moral teaching, of pathetic narrative, the richest treasury of household words, of familiar phrases, of popular illustrations and associations." Upon all this he is eloquent. But he shrinks with the quick sensitiveness of a free, manly, and tolerant nature from the suggestion that the yielding of any controverted question of doctrine, the assent to the genuineness of any text or reading, any act of worship or effort of faith is, under any disguise, to be forced upon the pupil through the use of the Bible in school. Our case is therefore distinguished from the case of *Donahoe v. Richards*, as it is taken out of the operation of st. 1855, ch. 410.

But it is here that the confusion will be attempted, as it has already been. Here that our argument will be said to limp. When I brought the volume containing that case into the court to-day, I could not help noticing the expression of triumph with which the eminent counsel for the defendant, whom I admire so much, borrowed it of me. But I brought it in, as I remember once to have heard Mr. Webster say in the Supreme Court at Washington of a large pile of books on the table before him, not "as ammunition, but as a breastwork to stand behind;" not for purposes of offence, but for those of defence. I do not invoke its authority, but I distinguish it from the case at bar, and the distinction is a clear one, and one which must not be lost sight of. I will add, too, in passing, the action in that case was brought for *illegal expulsion*, not for *whipping*.

Our argument then is, if a particular version is insisted on by the teacher to be used by the child in expressing the child's statement of what are the words of God, or God's law, and the child says that his religious teacher, his parent, or his faith teach him another statement of that law as the true one, neither teacher nor pupil has the right to force his belief on the other, nor the expression of words which have no significance except as an expression of faith, and which mean that to the child. In this matter both are equal before the law, and in this controversy a blow by one is as unlawful as a blow by the other. And it is an outrage upon the religious sentiment of the people to say that the words may be repeated without *assent*, or that the passage may be learned like that from any other book. It is not *true*. The associations are too sacred to be treated in that way. It is a worse than jesuitical subterfuge. This is the only escape from our

conclusion, and the attempt to escape thus is to outrage every religious and manly sentiment. If those words are taught for any other purpose than instruction in religious doctrine, or inspiring and strengthening Christian faith, they had better not be taught at all.

And the statement is also absurd in the case of boys of the age of ten years. At that time of life when the heart is too strong for the head, when we say what we feel, and *feel* what we say, when the faith has not yet been questioned by the reason, and religion is a father's teaching or a mother's love, the atmosphere and influence of a home, and faith itself a compound of affection, obedience, and duty — to say to a child of this age, "Repeat these words as the words of God, though your faith may disown them; you are welcome to your *mental reservations*;" — to do this, if it were possible, would be to corrupt his religion, his piety, and his life at their source.

I submit, therefore, that the result of the whole argument is this: — Under our law, you must not, under color of authority, as a teacher, and while a boy is under such control, and there, under penalties, compel him by force to repeat any declaration of religious opinion which his own religion disowns, and which is a falsehood to him. For the right to do that to any extent, however apparently trifling, is the right to whip the boy out of all his religious belief, and to torture him into conformity with the dominant sect of the day. The wrong is a radical one, and no infliction of it is slight.

I may, perhaps, be allowed an illustration. It is only a few months since half the civilized world was thrown into a state of excitement by the conduct of the government of Rome in regard to the Mortara boy. Cabinets forgot their statesmanship and diplomacy in their violated sense of justice, and our own government came near abandoning her wise and timid policy of non-intervention. It was a controversy between the Jew and the Catholic, upon which the Protestant might look with comparative impartiality. But what was that case? A child born in Italy of Jewish parents came, perhaps by fraud or deception, within the operation of a law requiring that he should be taken from the religious influences of his home, and brought up and instructed by the government in the religion of the state.

Our case, under the construction of law against which I argue, would be that of a young boy taken by authority, and under penalties of law, from the religious faith and teachings of his parents, and not instructed only, but driven and scourged into the faith of the popular majority of the hour. If there is any difference between the two cases it is one of degree, not of kind.

It remains only to consider, very briefly, the other aspect of the case. The ground is a narrower one, but it equally sustains the position of the complainant in the present case. It is this: When a pupil of ten years of age, rightfully sent to a public school, states to his teacher that his parent, his natural guide and teacher, or his minister or priest, his spiritual teacher, forbids him to do a certain act, and at the same time states his readiness to do it if they will assent, and is commanded by the teacher to obey him notwithstanding such direction of the parent, then the young child is not to be whipped.

Consider the effect upon the child of such a punishment for refusing to *disobey his father*. Here is a bright and intelligent child, and I will venture to say that there is in no sect or community within this Com-

monwealth a boy of his years of better natural capacity and intelligence. And I may suggest that your honor has had an opportunity of knowing this, for you have seen him stand for an hour without faltering under the cross-examination of the learned counsel, which I take to be the last analysis of human nature. He came out of it unscathed. To be sure he fainted immediately after, but that was the tender body, and not the feeble mind. Will you whip disobedience under this flimsy disguise into such a boy? One blow in such a cause is a blow *too much*. Several blows *leaving scars* are outrageous cruelty and a criminal assault. It may be that *expulsion* from school is necessary, to protect the discipline and authority of the teacher, but *beating* cannot be. The parent or priest is the offender, not the boy. He may be *persuaded* or expelled, but not whipped, for he is in no *conscious fault*, and the master *knows* it or is *bound* to do so.

As a reasonable man acting upon these facts, the teacher cannot justify himself, and is guilty of a crime if he punish his scholar.

In conclusion, therefore, I submit —

1st. That the command and its enforcement were unconstitutional.

2d. That the whipping was unreasonable and criminal.

And there remains still another question upon the facts, which I do not discuss, Whether it was not excessive?

OPENING FOR THE DEFENCE.

Mr. DURANT then opened the case for the defendant substantially as follows. He premised by saying that he could not but believe that every good citizen must regret the folly that occasioned the bringing of a case like this before a court in Massachusetts. For years all classes had been living under laws that allowed entire liberty of religious belief; for years have the rules and requirements of our public schools been acquiesced in; acquiesced in at the Eliot School, where a majority of the scholars are Catholics, and without any complaint. But now the matter has assumed a different aspect, and the learned counsel proceeded to narrate the history of the case on trial. On Sunday last one man had the power — the boldness — to place nine hundred children in a hostile position against the laws; to advise them to die rather than obey those requirements under which the fullest liberty had been insured to them.

The religious issue that had been raised in this case by the complainant's counsel could not be avoided; but he would have been pleased, had it been chosen, to try the case to see if the defendant had failed in his duty and committed a criminal act. But the graver question had been brought. The whole — the precise case, is just this; and the issue is a vital one: *Shall the Holy Bible be used in our schools, or is it to be thrown aside, and its pious teachings to pass unheard?* The question was not, Shall toleration be allowed; but, plainly and exactly, Shall the Bible be used, or shall it not? It was not a question of toleration, but whether piety shall hereafter be taught school children from the Bible. It is a demand to yield to tyranny under a guise of toleration. It is not a toleration of Catholicism that is desired, but that we shall not be allowed to use the Bible in our schools. He did not propose to argue the constitutional questions raised by the opposite counsel at this time, but in its appropriate place, when the evidence for the defence was finished.

His client was an experienced, beloved, and valued teacher, bound to act

under the requisitions of the School Committee, and to follow the laws, whatever the consequences might be. He found in his directions a plain command, that the Bible should be read every day, and a recommendation that the Ten Commandments, the Lord's Prayer, and some simple devotional singing be also heard from both teacher and scholars. These were his instructions, and under them he acted. The boy in the case has stated that for seven months he had never joined in the exercises.

He should show that this boy, who had been so highly complimented by the counsel for his aptness and intelligence, was *utterly unworthy of belief*. He would show that the boy, when called upon by his teacher to repeat the Commandments, stated that he did not know them, although before this he had frequently said them. At this time it was not known but this was an exceptional case. The conspiracy to drive the Bible out of the school was not then known. The boy was taken to the head teacher, when, his obstinacy being apparent, he was told to leave school until his father could be seen. His father called three times on the teacher, the Commandments were read to him, and, with a degree of good sense, he told the teacher that his boy should return, and requested that if he again refused obedience, to flog him severely. This was told once, and again on another day repeated, by the parent to the teacher. Thus the matter stood until Monday last, when we see that, in obedience to a dark and dangerous power, an open rebellion broke out all over the school. Without any resort to all the many sources of redress, if any wrong was done, the whole school was in revolt, and the whole authority of the school was set at defiance. At the opening services, a wild confusion and open revolt was seen in every room, and the teachers had but one course to take—they must either support the rules or they must bow down to the boys and the revolt. This boy was seen to be the ringleader and head of the revolt, and he was called forward. He refused obedience, and the master was called upon. He took the boy, and had a right to punish him for his disobedience, and to punish him severely. He had the instructions of the School Committee for so doing, and the request of the parent. He did his painful duty kindly, temperately, and properly; without passion, and in reason. And in this he did just what the boy wanted to have done, and what those who stood behind him and instigated him, wished him to submit to. The boy did not want to have his swollen hands reduced; he wished to become the martyr who was wanted by those behind him; he desired, perhaps, to get that *medal* from the priest.

The counsel considered the question of the right of the teacher to punish his scholars could not be questioned. For the time being he was invested with parental authority in the school-room, and he had yet to learn that a father's commands as to what course the boy shall take while in school are superior to those of the teachers.

Witnesses for the defence were then called.

Samuel W. Mason, principal of the school, was first called. I have held that position two years; on Monday morning last there were nine hundred and thirty scholars in the school. Mr. Cooke is second master, and Miss Shepard is also a teacher; in the school there are ten rooms and eleven divisions; in all the school there are fifteen divisions, but four of them are out of the building. A week ago last Monday I was told by Miss Shepard that she had a scholar who would not obey; he would not read the Ten Commandments. I was busy at the time, and told the boy to take a seat;

soon after, I asked the boy the trouble, and he said he did not wish to say the Ten Commandments. I told him not to come to school again unless his father, mother, or some friend came with him. That forenoon I saw the chairman of the School Committee, and asked him what was to be done with such a boy; the chairman, (Micah Dyer, Jr.,) said no boy could have a seat in the school unless he followed the regulations. Next Wednesday Mr. Wall and another person came to the school and asked why the boy had been turned out of school. Mr. Wall and myself had some talk about the Commandments; I said this was a slight matter to make so much trouble; I said no new thing had been started — that it was a rule of the school for boys to repeat the Ten Commandments every Monday morning. He said his boy should not repeat them; I said his boy had always been in the habit of repeating them; he said something about proselyting, and I said, we want your boys to come to school, and to grow up into good citizens; that no matter of proselyting was ever attempted; that home was the place to teach religion, not the school; I had a right to my religion and he to his; I did not interfere with his boy's religion, and if he would come to school and obey the rules, he would be received. In regard to the Commandments, I said that where a boy had objected, I had never pressed this thing or the other. The other gentleman then said to Mr. Wall, "Send your boy to school; send him to school." Soon after, Mr. Wall came again with his boy. He talked much about these Commandments. I asked him in what we differed in regard to them? I said, "You are an intelligent man, and I want you to tell me where the difference lies." At this time a boy came in with his books, in one of which were the Commandments. I took the book and showed Mr. Wall the Commandments. "Now," said I to him, "I want to know what you are willing your boy should say." I read the first Commandment. "Thou shalt have no other gods before me."

"All right," said he; "did my boy refuse to say that?" I said he refused to say a word; he said, "if my boy refuses to say that, chastise him severely;" the boy was present at the time.

I read all the Commandments, and asked him if he objected to them; he said "all right" to each and all of them; he had no objections; then I said, "If there is any difference in the two versions, it must be very slight indeed; but," said I, "there is *some* difference in our version; it says '*hallowed* the Sabbath day,' yours says '*sanctified* the Sabbath day,' — the difference is merely verbal." He then said he wanted his boy to say his own Commandments; I said boys that wished to say "*sanctified*" instead of "*hallowed*" had always been allowed to say it; I said to the boy, "Wall, go up stairs and obey your teacher, and be a good boy;" his father said, "that's it — that's right," and went off. Next day (Thursday) Mr. Wall came to the school and said, "Has that boy said the Commandments?" I said I presumed not, as there had been no occasion for him to do so since I saw him. He said, "I want that boy to say the Commandments, and if he don't do so I want him chastised severely;" he then went off, and I heard no more of the matter until Monday morning. I was not in my room in the early morning, and got to my room about twenty minutes after nine; about quarter past ten Mr. Cooke came into my room and said Miss Shepard had got into trouble; he said she had twenty boys who refused to say the Commandments. I heard no more of the matter until a quarter before eleven o'clock, when I passed up to Mr. Cooke's room; saw the Wall boy on Cooke's platform; said to Cooke, "O, I've seen that

boy before, and I've seen his father." The boy said his father had told him that morning not to repeat the Commandments; I told him, "your father has told me to make you repeat them, and if you do not to whip you." He replied, "I know he told you so, but this morning he told me not to;" said I, "If he has changed his mind, he ought to have let me know of it." He admitted that his father had ordered me to chastise him if he did not repeat them several times. I then passed out of the room into Miss Shepard's room; from a sliding door in that room I saw Mr. Cooke punishing the boy; heard the boy ask him not to punish him, at the same time holding his hand out willingly; he replied, "I don't want to, but must;" saw three or four blows given very slowly, for he was talking deliberately all the time, telling the boy that order must be had and rules obeyed; fearing that there was difficulty on my floor, I passed down stairs; the blows that I saw given were not so severe as I have often seen administered; the custom of putting the hands of the boys into cold water after whipping is very common; went through all the divisions in the main building on that day.

Question. What was the general state of discipline in the school that day among the Catholic pupils?

Mr. DWIGHT objected to the question. It was irrelevant to this issue, and would call for a trial of the conduct of every boy. Our proposition was that Thomas J. Wall had been unlawfully whipped. This answer could only be admissible as proving by way of defence that *other boys* had behaved badly.

Mr. DURANT said that his purpose was to show that there was a concerted plan made by the Catholic boys to resist the regulations of the school, and not to allow the Bible to be read or the religious exercises to be performed, and that in this conspiracy the boy Wall was a prominent actor.

The COURT ruled that it was admissible to show any concert of action among the pupils of the school to violate the rules, provided the boy Wall was connected with it.

The court then adjourned to Saturday morning at eleven o'clock.

Samuel W. Mason resumed. When I entered Miss Shepard's room I heard an unusual noise; I immediately said, "Position one, boys," which is to have every boy sit in his seat with folded arms; they complied instantly. I asked of the boys what was the trouble; they made no answer, but exchanged defiant looks with each other. I said, "Now, boys, let us act manfully about this — don't be hasty." I then put this distinct question to the boys, "How many of you boys have come here this morning under the deliberate intention of disobeying the rules and regulations of the school?" and before the last words had left my lips, I should say two thirds of the boys jumped to their feet. I told the boys to take their seats, and they did so; I then left and went to see the School Committee. I think I discharged about one hundred boys that day for insubordination.

Cross-examined by Mr. Dwight. I could not give any idea of the force used in the blows administered on the boy's hands, although I have had some experience in the use of the rod. I understood Mr. Wall to say, on the first interview on Wednesday, that he wanted his boy to say the Roman Catholic Commandments; there had been no excitement in the school in regard to the Commandments previous to last Monday. I said in my direct examination that I allowed boys to make slight verbal differences in repeating the Commandments if they desired to; my idea is that the differences between the Commandments in the Protestant Bible and the

Douay Bible are slight; I cannot repeat the Commandments according to the Douay version; I never had occasion to consider the subject of the differences until Monday, the 7th instant.

Question. Had you, up to last Monday week, as Principal of the school, ever insisted upon these verbal distinctions in the Ten Commandments?

Answer. I never had. I had authority to do so, however. I had not compared the two versions of the Commandments previous to last Monday week. When I said the distinction in the Commandments was a mere verbal one, I meant that the words were different but the meaning was substantially the same.

Q. Do you think there is any difference in regard to religious opinion in the two versions of the Commandments?

A. I do, but I am unable to say wherein the difference lies. I should not insist upon any slight difference in the phraseology of the Commandments — “sanctified” and “hallowed,” for instance, or “adored” and “bowed down.” This was my opinion at the time of my interview with the boy’s father.

Q. Then you were willing that the boy should repeat the Commandments according to his own version?

A. No, sir.

Q. You say you did not insist upon any slight verbal differences, and that the only differences which you knew of, at the time of your conversation with the boy’s father, were slight verbal differences. Now, if that is so, I wish to know why you were unwilling the boy should repeat the Commandments in his own way according to his own Catechism.

A. Because I was opposed to the general tenor of the Catholic version, and believed it ought not to be introduced into our schools.

Q. Did you know of any other differences than the two of which you have spoken?

A. No.

Q. You regarded those as trivial and verbal, did you not?

A. I did not think them important.

Q. What then was your objection to having the Catholic version repeated if the boy preferred it?

A. I did not wish it to be introduced into the schools.

Q. When you told the boy he must follow the spelling-book version of the Commandments, did you not do so because you did not wish his *religious opinions* introduced in the school?

A. Yes, sir.

Q. Then when you insisted upon the version of the spelling-book, that is, the version of the Protestant Bible, did you not intend to introduce the Protestant religion into school, and make the Catholic boys conform to it?

A. I intended to have the rules of the school obeyed.

When I talked with Mr. Wall in regard to the different versions, I did not know or inquire whether he could read or not. He had not with him at the time a Roman Catholic version of the Bible; when I read the first Commandment to Mr. Wall, I did not stop to point out the difference between the versions.

Q. You knew of the difference, did you not?

A. Yes.

Q. Why didn’t you point it out?

A. I told him his boy had always repeated the Protestant version, and it would not hurt him.

Q. You knew he was a man of no education, did you not?

A. I thought him an intelligent man.

Q. There is a difference, we all know, between education and intelligence. Did you think him an *educated* man?

A. I think not. At the third interview I had with Mr. Wall he asked if his boy had repeated the Commandments. I understood him to speak of the Commandments we had agreed upon—the Protestant Commandments, which are contained in the spelling-books. I replied that I presumed the boy had not repeated them, as there had been no occasion for him to do so; he then said, “I want you to chastise him if he refuses.”

Q. Were not the Commandments you agreed on with Mr. Wall the spelling-book Commandments with *slight verbal differences*.

A. I understood him to agree to them as they were.

Q. Did you not at the same time tell him that such differences would not be insisted on; that his boy would not be punished for making them?

A. I believe I did. At this interview, Mr. Wall did not say “my boy has been kept on the platform all the afternoon for not saying the Commandments,” nor words of that kind. I have stated all the conversation which passed between us. I am sure there was no complaint made about any punishment which had been inflicted. I had no reason to suppose the father had changed his mind. So far as my discussion with Mr. Wall went, in regard to the Commandments, I understood him, after repeating to him two distinctions which occurred to me, that he was willing his boy should repeat the Commandments according to the Protestant version.

Q. Did you communicate this conversation to Miss Shepard or to Mr. Cooke, at any time before the whipping?

A. I did not.

Q. Why?

A. Because I had already given general directions not to have any boy punished for refusing to repeat the Commandments with such a verbal alteration as “sanctified” and “hallowed;” I considered that the boy was at liberty to say “sanctified” for “hallowed” if he chose to do so.

Direct resumed. No teacher has any authority to alter the books to be used in the school, or in any way change them; the School Committee have given me no power so to do. I understood Miss Shepard to say that the boy refused to say even one of the Commandments. The erasures in the spelling-books shown me were never made by me. Since last Monday I have seen these books mutilated in a manner that I never saw before; never was anxious, or desired to bring up this question of religion, by allowing this Wall boy to be whipped; never taught any sectarianism or religion in the school—only piety. Miss Shepard had authority to ask the pupil if he would abide by the rules.

To Mr. Dwight. Do not know that Mr. Cooke offered the boy the Protestant Bible to read the Commandments from when he was whipping him; do not know whether he did so or not.

Frederick Ballard called. I am a pupil in the Eliot School, in Mr. Cooke’s room; was present on Monday, when the Wall boy was whipped; heard some boys tell him “not to give up” while he was being punished; don’t know who these boys were. Whistling and other noises were kept up while he was being whipped; a good many engaged in it. I knew before school opened what was going to be done. I knew from some of the boys that they were going to refuse to sing, say the Prayer or the Commandments. I knew this from a boy sitting next me.

Q. What did the boy sitting next you tell you?

Mr. WEBSTER, senior counsel for the complainant, objected to this question, because the boy had not been in any way connected with the boy Wall, nor with the case on trial. He argued that upon no recognized rule of evidence could this question be put at this stage of the case. It was absurd to say that there were facts in evidence which made out criminal conspiracy on the part of the boy, which would permit this looseness of examination. What were the facts which the defence assumed to be proven to make out conspiracy? They are, first, that on last Sunday the pastor of a church in this city, having under his charge nine hundred boys, ventured, by way of inspiring them with a religious pride — by way of inspiring them with devotion to their church — which in the pastor's opinion was the one thing necessary — ventured to suggest to these boys not to repeat the Protestant Commandments! Was there any thing criminal in that? The suggestion was to repel proselytism. Was there any thing criminal in such a suggestion? He did not venture to suggest to his boys that they were to proselyte other people. He did not go so far as to say to those boys that they must prevent other boys from saying their version of the Commandments. His next suggestion was that the boys should act together on Monday, and carry out these suggestions as to their religion. Was there any thing criminal in that? Is it not permitted in this Commonwealth for Catholic pastors to repel proselytism? Cannot Protestants repel attempts to convert them by Catholics? It must be remembered that the priest Wiget did not act affirmatively. He did not try to prevent Protestant children from repeating the Commandments as they chose, but only acted negatively, to protect the religious faith of his own flock. Surely there can be nothing unlawful in that.

In the next place, was it criminal for the Catholic boys, who attended church that Sunday morning, and heard the pastor, to consult together, either on that day or the next Monday, to protect their religion? Was it unlawful for them to happen to say to each other that they had determined to obey their parents and religious instructor, and not to repeat in school the Protestant Commandments? Was it in violation of any law for them to express determination not to be proselyted? And that, too, when they indicated no purpose to interfere with the liberties of any body else in the school? Have we come to that in the Commonwealth of Massachusetts, this first landing spot of the oppressed for conscience sake?

But it is said by the defence that there was a concerted combination by these boys to do an unlawful act, which was to resist and disobey the recommendations of the School Committee, and thus a law of the Commonwealth. But that proposition begs the very question which his associate, Mr. Dwight, argued to the Court, which was, whether these recommendations and regulations of the School Committee were not illegal and void because against the Bill of Rights, the Constitution, the Statutes, and the public policy of the Commonwealth. Mr. Webster contended that they were, and that thus were of no binding effect. And so before the Court could find a conspiracy which would open the door to all this now irrelevant testimony, it must venture to decide the regulations which now practically exclude Catholic children from the public schools by reason of their religious opinions, to be constitutional and binding.

Mr. Webster said that Mr. Durant had all along been terming acts criminal which were not criminal. It was a mistake of terms. He would not say it was *cant*, but it was a misapplication of legal terms. In regard to the opening argument of the counsel on the other side, Mr. Webster said

it seemed to him that in that argument Mr. Durant did not address himself to the judgment of the Court, but to the public outside of the Court House, more especially when he intimated that an attempt was being made to force tyranny upon the Commonwealth by expelling the Bible from the public schools. Had it come to this, that a boy of ten years of age — a boy who, by reason of the cross-examination, left the room only to faint and fall down — had it come to this, that a boy no stronger than that was going to make a crusade against the Bible in this Commonwealth? It was part of a plan of the defence to introduce testimony, for sinister objects, which was not pertinent to the question on trial, whether Cooke assaulted and beat young Wall unlawfully. He repelled with earnestness the suggestion thrown out by the opposite counsel that the counsel in this case for the complainant desired to drive the Bible out of the common schools of the Commonwealth.

Mr. DURANT said this was the fourth time this question — whether the facts in the case were to be fairly stated — had been raised and settled by the Court. He believed it was usual for counsel in courts of justice, to acquiesce with one decision; they were usually satisfied with having the point of law once discussed and once settled; but it seemed the counsel in this case had attempted to shut out this evidence of conspiracy by saying it arose from the purest of religious motives, but they were unwilling to show the Court how pure these motives were, or how noble the spirit which incited the pastor. Mr. Durant said he had no desire to talk to the public outside; he cared not for public opinion, but he would say it was open conspiracy for one hundred boys in a public school, to rebel against their master, and in open defiance and against the laws.

Mr. WEBSTER answered by saying that the reply of Mr. Durant made apparent that he had touched, as with a needle, the critical point of the discussion, whether the question should be admitted which was the criminal conspiracy. The Court must now, in fairness, decide that point. He further replied to some of Mr. Durant's insinuations in his opening.

The COURT decided that the point raised was the same as that of Friday night — that is, whether to admit any evidence tending to show a state of insubordination. He was of opinion that any concerted action between these boys which would tend to show a state of insubordination, should be inquired into. But in doing that, he did not intend in the slightest degree to have the sermon of last Sabbath reviewed in Court.

Direct examination of the witness resumed. I knew there was going to be a difficulty before the school commenced; the boy who told me about the resistance said they expected to be whipped and expelled from school; they told each other not to chant the Lord's Prayer that morning.

Cross-examined. The boy next to me said they were not going to say the Commandments or sing the Lord's Prayer; he did not ask me not to.

Micah Dyer, called. I am Chairman of the District Committee, and I have given Mr. Mason instructions to enforce the regulations and recommendations prescribed, and that such boys as refused to comply must leave the school. I went to the Eliot School on Monday afternoon last.

Q. What state of things did you find there?

Mr. DWIGHT objected to this question. He said it was in evidence that the boy Thomas Wall, went home after school on Monday morning, and did not return. The inquiry had been allowed as to the state of the school while he was a member of it, but upon what principle can the conduct of

the scholars after he had ceased to belong to the school, affect him? The conspiracy, so far as he was concerned, was certainly consummated. There is another objection. What happened in the afternoon may very naturally have been the *consequence* of the whipping of which we complain. If the wrong was of the character alleged it might well excite insubordination among boys. And this is the only reasonable explanation of such disturbance. At all events the *morning* whipping cannot have been the *consequence* of the *afternoon* disturbance according to any relation of cause and consequence hitherto received. The evidence has, therefore, no application to this case.

Mr. DURANT said the objection was the same as that already overruled. He purposed to show that a deliberate attempt had been made to exclude entirely the Bible from the schools, and the conduct of the boys in the afternoon was admissible to show that.

The COURT allowed the inquiry.

The witness resumed. Mr. Mason told me that the boys refused to say the Lord's Prayer or repeat the Ten Commandments, and to obey the regulations; I went into the other rooms with a copy of the rules and regulations of 1858, and after reading the whole section to the boys, asked all those who refused to have the Bible read to them, to repeat the Ten Commandments, or to say the Lord's Prayer, to rise; thirty or forty boys rose as soon as I got the words out of my mouth. There was humming, scraping of feet, and other noise. I told the boys to leave the school, and before a third of them had got down stairs, they commenced cheering; in the second room I repeated the questions, and asked the boys if they refused all. There was not so much disturbance in the second, third, and fourth rooms as in the first; the boys made so much noise going out that I sent Mr. Mason for a policeman.

Cross-examined. No one sent for me to go to the school. Mr. Mason sent me a note asking me what I should do. I replied in person, and turned out the boys. I am chairman of the District Committee. I went to Mr. Mason's room first; he said there was some trouble in some of the rooms in regard to reciting the Lord's Prayer and Ten Commandments; and also that the rules and regulations were not carried out; after this I went first to Miss Shattuck's room. I asked all the boys who had in the morning refused to have the Bible read to them, to recite or repeat the Lord's Prayer, or to repeat the Ten Commandments, and who still refused, to leave the city books behind them, and leave the school; it was not a matter about which I took much pains. I intended to get from the boys an answer about the Bible's being read.

Q. Had Mr. Mason told you that the boys refused to have the Bible read to them?

A. I think not.

Q. Did you intend to catch these children by asking them the questions together, and by getting them to jump up from their seats to assent to all the things together, rather than one or either of them?

A. I did not so intend.

My purpose in asking the whole question was simply to do my duty. I intended to find out their position, nothing more and nothing less; don't remember whether I said "and" or "or." I read the section all over, and put it as one proposition. I saw the children in an excited state. I read over all the sentence; I then emphasized the question whether they refused all those requisitions; they jumped up at once; I could not gather from what

Mr. Mason said, or from what I had heard, what the boys had really refused to do. I did not desire to discriminate between the Bible and Ten Commandments; did not desire them to agree to violate a State law before I turned them out.

Q. You knew that the latter part was called a *recommendation*, did you not?

A. Yes.

Q. Did you take any pains to distinguish between the different parts of the rule?

A. No.

Q. Your idea was to enforce the whole regulation, was it not?

A. If there had been a rule that the boys should stand on their heads, I would make them obey it or expel them.

Had heard of the affair in the morning, and went to the school at two o'clock in the afternoon; said nothing to any single boy. I went simply to decide what boys should be turned out, and what should not; did not order any boy to be whipped. Had been whipped there too many times myself to order any boy to be whipped; there was a general stiffening of the neck as well as shaking of the head, &c., when I spoke to the boys; there was a loud humming and scraping of feet; it continued most of the time I was there. I went into six different rooms and asked the questions in five. I went into Miss Shepard's room; she said nothing about a boy having been whipped that morning; nothing was said in my presence about the religion to be taught there.

At this point the further examination was postponed to

WEDNESDAY, March 23.

Miss Abby M. Marsh called. I am one of the assistant teachers in the Eliot School; been such for five years. I was in Mr. Mason's room week before last, when a father came in to talk with him about his boy; he came in very abruptly and wished to know if his boy had repeated the Commandments. Mr. Mason replied that he had not, as he would not have occasion to till next Monday morning. He then said to Mr. Mason to have the boy recite them, and if he was not willing to obey, to make him. I understood him to wish that his boy should remain, or stay, in school and obey; something was said about chastisement or whipping by him. I am certain it was after Wednesday that the father came; it was either Thursday or Friday.

Cross-examined. Am in the same room with Mr. Mason; the exercises of the school were not going on when this conversation took place; it was after the school session. I think it was between twelve and one o'clock. I can't say what I was doing at the time; don't remember the precise words that were first spoken. I recollect that the word Commandments was used; never saw the father before, to my recollection. I understood him to ask Mr. Mason if his boy had said the Commandments; whether he said *the* Commandments I am unable to say. I fix the time between twelve and one o'clock, because the room is usually vacated at twelve o'clock.

Miss Sophia Shepard called. The boy Wall was a scholar in my division. Mr. Cooke's room adjoins mine. Have been a teacher in the school since September, 1852. On Monday, the 7th inst., I required the boys to repeat the Commandments separately—the first one to the first boy, the second to the second, and so on. I did not ask each boy to repeat all of them; having new scholars at the commencement of this quarter, I had

them recited in this way in order that I might know that each boy knew them. After each boy had learned them thoroughly, it was customary to recite them in concert. On the day alluded to, when it came to the Wall boy to recite them, he refused, saying that he did not know them. I told him that he had known them before, and said he must remain after school and learn them; he had recited them before — all of them, separately. After school he told me that his father did not wish him to say them; kept him till one o'clock, and then took him to Mr. Mason to see if I should retain him. He still refused to recite them, and Mr. Mason discharged him. On Wednesday following, he came again into my room, saying that his father had seen Mr. Mason, and he had sent him back. He did not seem to be well pleased at coming back. I kept him after school, and gave him the Commandments to learn and repeat. He refused to recite them, but finally he said one of them. I then dismissed him, telling him I should require him to recite all of them on Monday. On Saturday, when I dismissed the school, I told all the boys that I should require all the Commandments to be recited on Monday. On Monday quite a number refused to say them — the Wall boy among the number; he told me that the priest had told him not to recite them. I told him what Mr. Mason had said — that his father had ordered him to be whipped if he did not recite them; told him this after he said the priest had told him not to say them. One boy, who was very impudent, I told to go upon the platform. He refused, and ran out; I then went into Mr. Cooke's room and told him of the circumstance. Mr. Cooke came in and I gave over the Wall boy to him to be whipped. I considered him to be the foremost boy in making the trouble. I judged that he was from his actions and conduct, and from having previously refused to say them. He was very stubborn and wilful, and made a noise under his seat by scraping his feet. Other boys scraped their feet; great disorder prevailed, and there were undertone whisperings, studying in a loud tone, &c., entirely contrary to the rules of the school. There was no very loud noise, but disagreeable and troublesome conduct on the part of the scholars; it was so general that it was difficult to ascertain who were the authors of it. There had never been any thing of a similar kind in the school before.

Cross-examined by Mr. Dwight. It is not usual to recite the Commandments separately every Monday morning. The exercise previous to reciting the Commandments was reading of the Scriptures and chanting. After the failure to recite them, I ordered about ten of the boys to remain after school and learn them. The Wall boy has been under my charge since September last. At the last term there were about fifty-five children in the school. The Wall boy sits in the last seat in the first row; when the Commandments are recited I go down each row. I can't say whether he said his father did not wish him to learn or to recite them. I think on the first Monday there were no boys besides Wall that refused to say the Commandments.

Q. Did you tell him at that time that he might repeat his own Commandments?

A. I did not.

Q. Did you tell him he might make slight verbal differences?

A. No.

Q. Did you, as teacher of that school, make any attempt to get at the child's mind and conscience, and find out why he was unwilling to repeat the Commandments?

A. I made no effort to get at the child's mind upon the subject. On Mon-

day, 14th inst., the first thing done was the reading of the Scriptures by myself; the Lord's Prayer was then chanted. Up to this time there was no trouble. I then told the boys to get into position to recite the Commandments separately; each boy was required to say the whole. The first two boys recited them, the third refused, the fourth recited, the fifth, sixth, and seventh refused, the eighth recited, and the ninth, (who was the Wall boy,) refused. He first said that he did not know them, and afterwards that his father did not allow him to say them. I then told him to stop after school and learn them, and passed on to the other scholars down to the boy Rohan. The Rohan boy refused, in an impudent tone, and when I told him to go upon the platform, he ran out of school. I then went to Mr. Cooke and told him of the circumstance. Mr. Cooke sent a boy after him, and he was brought back. Shortly after, Mr. Mason came in and said he had seen Mr. Rohan, and he had behaved like a gentleman; said he did not want the boy whipped. Geography followed the religious exercises. A Mr. Hazelton came into my room about ten o'clock, and asked me if I had had any trouble about the boys reciting the Lord's Prayer. I told him that I had not—but had on the Commandments. He then asked those boys who refused to say them to stand up; about two thirds of the boys rose. In answer to a question from him, they gave as a reason that they were not allowed to say them. He then asked them if they could explain the difference between them. I don't know that any said they could. He called the Wall boy up and asked him to read them out of the Bible. The boy remained silent, and Mr. Hazelton told him he would give him five minutes to think whether he would or not; afterwards said five was too much, and he would give him two minutes. After the expiration of this time, he gave the Bible to Wall, but the boy still refused. Mr. Hazelton did not do anything with him after that. Mr. Cooke came in, and I told him the boys were behaving very badly. He then said I had better turn them over to his rattan. I made no reply, when Mr. Hazelton spoke up and said, "Here's a boy," (meaning Wall,) "that refuses to obey the regulations;" he then gave him into Mr. Cooke's care, and he took him into his room. I don't know that Mr. Hazelton said any thing more than what I have testified to, when the boy was passed over to Mr. Cooke. He might have taken him by the hand and passed him round the chair to Mr. Cooke. I do not know that he took him by the neck. I did not see him touch the boy, as I was busy with the other scholars. He might have taken him by the neck without my seeing him. I knew that the boy was going to be whipped by Mr. Cooke; it was done with my assent. I did not whip any body myself on that day; merely kept them after school. Neither Mr. Hazelton nor myself told the boy that no verbal differences between the two versions of the Commandments would be insisted upon. On Wednesday, 9th inst., Mr. Mason had spoken to me about the differences. I told him that I had always corrected the boys when they said "sanctified" instead of "hallowed"; this was done to preserve uniformity when they recited in concert; this was before Wednesday. I had never known the Catholic Commandments. I supposed there were verbal differences between the two versions, but did not know them. I had observed occasionally that some of the boys added the word "mighty" before God in one instance, so that it read "mighty jealous God." I had always acted solely with a view to have the language of the spelling-book recited. I think the Wall boy told Mr. Hazelton that he could not break his religion. Other boys told him that they understood the Christian religion to be the Roman Catholic.

Q. On the Wednesday that Thomas Wall returned to school, did not you ask him when he had recited the first commandment, whether it "had hurt him?"

A. I might have done so.

Q. What did you mean by it? Did you not intend to taunt him, or to cure him of his prejudices?

A. If I did ask him, it was to let him see that the rules must be obeyed; had no idea of curing him of his prejudices; my whole intent was to secure obedience to the rules of the school.

Q. Do you consider it an imperative rule of the committee that the Commandments shall be repeated? Don't you know the word is "recommend?"

A. I know that the School Committee rules on this subject "recommend" action by the teacher; look upon the recommendation as a desire that such recommendation is expected to be carried out; do not consider it as absolutely binding; I understand by the recommendation that I am expected to have the Commandments recited.

Q. Don't you think that the Committee mean to leave the matter in your discretion?

A. If I find the boys unwilling to recite, I consider it my duty to use some discretion in compelling them to do so. I consider the last resort to be a whipping where all other means fail. I would not have a boy whipped for not complying, but for stubbornness. From the Wall boy's movements I judged that he was scraping his feet; did not see his feet. Never received any direction or any order from any one to whip a boy for not saying the Commandments. I consider the rule of the School Committee respecting corporal punishment to be as binding as the other rules.

Direct examination resumed. No priest or parent has any authority in the school. When a father desires his boy to be punished for continued disobedience in refusing to say the Commandments, I think it proper to inflict corporal punishment.

Q. Would the priest's command weigh in your mind against the father's desire?

A. No, sir. I think a ringleader in a disturbance in school ought to be punished severely.

Q. Have you ever made a difference in the sects of the scholars, as to the way in which they recite these exercises?

A. I never have made any distinction of sect or creed in my class; if the boy Wall had been a Jew it would have made no difference in my conduct. I never intended to injure any boy's conscience by requiring him to say "hallowed" instead of "sanctified;" the boy Wall made no offer to say the Commandments in any version.

Cross-examination resumed. Q. Did Mr. Mason in any way communicate to you the conversation he has testified to with Wall's father which took place after Wednesday?

A. No.

Q. You have spoken of the way in which you would punish a ringleader. Now, will you tell me what you understand by a ringleader?

A. I understand a ringleader to mean a boy who refuses to obey and induces others to disobey.

Q. Have you told us all you saw Thomas Wall say and do?

A. I think I have.

Q. Have you told us of his saying any thing to the other boys to incite them to disobey?

A. I don't think the boy incited others to disobedience by saying any thing to other boys.

Q. If you know of any thing that he said or did, which you have not already stated, that made you think him a ringleader, state it.

A. My opinion was formed that he was a ringleader from what he had done on the previous Monday, he refusing alone to recite the Commandments, and also by his appearance and actions on the day that he was punished.

Q. What was his appearance?

A. The other boys turned round and looked to him for encouragement. He looked determined.

Q. When did the other boys turn and look at him and he at them?

A. When his turn came to recite the Commandments.

Q. He sits on the back seat, does he not?

A. Yes.

Q. Other boys had refused to recite before him, and when his turn came the boys looked at him, to see. Is that all?

A. He looked stubborn.

Q. Have you not a great many older boys in your room than Wall?

A. I have older boys in the class than Wall; none so old as fifteen years. Wall went away quietly with Mr. Cooke, when he took him to whip him. He made no resistance.

Q. Can you tell the difference between the words "sanctified" and "hallowed"?

A. I see none.

Q. Supposing a small boy in your class says he does see a difference in the words, would you force him to drop his understanding and take yours?

A. I should not allow him to change a word without I saw a difference.

Q. You are teaching these Commandments, and make a boy say them, whether he believes in your way or not; now you also teach the Commandment, "Thou shalt not bear false witness," don't you?

A. Yes sir.

Q. Don't you call it bearing false witness to say what they don't believe?

A. I never interfere in any boy's belief, but merely compel him to obey orders.

Daniel McKinley called. Am a pupil in Miss Shepard's room; on Monday, 14th, when the boys recited the Commandments there was a shuffling of feet among the boys from all parts of the room. I heard a noise from the direction where Wall sat. There was a mumbling noise. Three different boys tried to prevent me from reciting the Commandments; they told me if I did recite them I should be shamed on the altar and punished by the priest.

Cross-examined. Sat four seats from the Wall boy. He was not one of those who told me not to recite them. I recited the Commandments.

Direct resumed. Am a Catholic boy.

Lewis R. Veazie called. Am a pupil in Miss Shepard's room. Was told by three boys if I said the Commandments they would kick me; they did kick me. There was scraping of the feet and whistling among the boys.

Cross-examined. The three boys who kicked me were Rohan, Whitney, and Flynn. Mr. Cooke asked me to come to court and testify, after asking me what I knew.

George Ellis called. Am a pupil at the Eliot School; been there five years. As I was passing home from school last week, I heard one among a crowd of boys, who, I think, was Wall, say that he was not going to "say those d—d Yankee prayers." I asked one of them why they were not going to say them, and he replied that the priest had told them not to.

Cross-examined. Mr. Mason asked me to come to court and testify. I can't tell what day it was that I met the boys. I was playing marbles, and one of mine went in among them where they were standing, and I went after it.

James McFarland called. Am a pupil in Mr. Cooke's room. I saw the Wall boy whipped. Mr. Cooke went out into the entry twice while he was being whipped; think he was out, in all, about fifteen minutes. I heard Mr. Cooke ask him to say the Commandments. While Mr. Cooke was out I heard some boys speak to Wall and tell him not to say them. Heard no boy tell him to say them. Have had my hands put in water after being whipped.

Cross-examined. Mr. Cooke asked me to come to court. He asked me how long he whipped the boy and how long he was out during the whipping. I did not look at the clock during the whipping; nobody has suggested to me that Mr. Cooke was out fifteen minutes. When I have had my hands put in water it was after a hard whipping, and one that hurt very much.

Defence here rested, and the prosecution introduced the following evidence, in reply:—

Mr. William Wall called. Am the complainant in this case, and father of the boy whipped. When the boy came home at noon on Monday, 7th, he was crying, and I asked him what he was crying for; he replied, for not saying the Commandments. I told him to remain at home, and I went to see Mr. Mason on Wednesday, at about nine o'clock. I took a Mr. Gill with me to hear what was said; saw Mr. Mason and asked him why the boy was discharged, and he replied, for not saying the Commandments. I asked him if he had refused to say them in his way, and he said he had in that or any other way. I then told him to make the boy say the Roman Catholic Commandments or punish him, and he said he would. I then said I would bring him back, and did shortly after. I left the boy in his charge with the understanding that the boy should say the Commandments in his own way on the Monday following. He read the Commandments over to me, and as long as he divided them I said it was all right. When the boy came home from school I told him not to say the Commandments, for he said Miss Shepard had made him say them in her own way. I went to see Mr. Mason again that afternoon, and told him I thought he had agreed to have him say them in his own way. He asked what was the matter, and I told him that the boy had been kept on the platform all day for not saying the Protestant Commandments. Mr. Mason said this was the first time he had heard of it, and promised to see the matter fixed. I then left, and said nothing more to him until the next Monday, when the boy was whipped. On that day he came home crying, and finding out that he had been whipped for not saying the Protestant Commandments, I told him not to say them if he died for it. I can't read or write; work longshore, and on the wharves as a stevedore.

Cross-examined. My boy has been to school for seven years. I always objected to his reciting the Commandments. I did not know that he ever said them until lately. He always denied to me that he had ever said them at all; has told me often that he had never said them separately. I have

often asked him, for I was afraid he might. I don't know what brought about the refusal to say them on Monday, 7th. I never heard previous to that, that the priest had told the boys not to recite them. I have been told myself not to recite them at least five thousand times by my father and the priest; this was in Ireland, where I got better religion than I ever did here. I was asked in Ireland to say the Protestant Commandments by the tract men who followed me. I knew there was a difference between the two versions. God made my Commandments, and man made yours; there are different words in each. I can't name any difference except the one Mr. Mason told me. I know the second Commandment differs, but can't tell how. I am no scholar. I told Mr. Mason that his Commandments were right, if he would divide them; that's all the difference I know. I did not understand what Mr. Mason read over to me. He agreed that the boy should say them in the Catholic way. I told him to whip the boy if he did not say them in the Roman Catholic way; he did not promise to whip him; he said he would obey my request. He told me to go home, and he would make the boy all right. I was afraid the boy would refuse to say them in his way. I don't think I said to Mr. Mason that the boy had been whipped. I did not tell him that I wanted to have the boy punished if he did not recite the Commandments, or that I wanted to have him remain in school. My boy told me that he was left on the platform all the morning of the day that he was sent back, and allowed no time to get his lessons.

Mr. DURANT here called the boy Wall to the stand, and asked him whether he told his father that he was kept on the platform all the morning of Wednesday.

Mr. DWIGHT objected that his examination could not be interrupted.

Mr. DURANT said the objection was too late.

Mr. DWIGHT said that it was not too late, but he would withdraw it after making a single statement. The counsel for the defendant had sought to get an advantage by this irregularity, and intended to emphasize the difference of recollection between the father and son. Now, he was welcome to make the most of the discrepancy, but he wished it to be understood that it was a piece of stage effect, which the counsel must have known to be improper.

The witness then testified. I don't remember that I told my father that Miss Shepard kept me on the platform all the morning. Miss Shepard did not keep me on the platform. I don't think I told Mr. Dwight that I never told my father so; can't exactly remember.

To Mr. Dwight. Think I told you that Miss Shepard called me upon the platform after school, and asked me to say one Commandment. I recited my lessons that day, the same as previously.

Edward Gill, grocer, testified that on Wednesday, three weeks, he went with Mr. Wall to Mr. Mason at the Eliot School. Mr. Wall asked Mr. Mason if his boy Thomas was discharged from the school. Mr. Mason said he was. Wall asked, "What for?" Mr. Mason answered, "For not reciting the Ten Commandments." Wall then told Mr. Mason that if the boy refused to say them in his own way, to punish him. We then came away. I told him to send his boy back.

Cross-examination. My boy goes to the school, and was discharged from the school because he would not recite the Commandments; and I took him back and said he must comply with the rules of the school, and he remains there now. I never ordered him not to recite the version of the Commandments in use in the school. When the conversation with Mr.

Mason and Mr. Wall, when I was there, took place, Mr. Mason was sitting at his desk.

Richard Wall called. I am brother of Thomas J. Wall. I am in my twentieth year, and my occupation is that of dry pressman in Rand & Avery's establishment; have been in their employ nearly five years. I formerly went to the Eliot School, in Miss Carter's room; it is some six or seven years since I went to the school; was never called upon to say the Ten Commandments in school. On Sunday week, at home after dinner, I heard the boy say to his father that he thought he should be whipped the next day if he did not say the Commandments. I heard my father tell him not to say them, and not be a coward for his religion. I go to St. John's Church.

Cross-examined. Was at the Eliot School about two years. The Bible was then read by the teacher; songs were sung; the Lord's Prayer was repeated by the boys. I can't say that I always joined in with them in saying the whole of it; if I did say the whole, it could not have been often. I joined in reciting the Lord's Prayer at the Primary School; think I changed my course when I went into the Grammar School. I never heard my brother say he "wouldn't repeat the d—d Yankee prayers." I never heard him use any such words.

Thomas Wall re-called. Never asked any boy not to say the Commandments. I did not tell any one not to on the morning of the 14th.

George E. Whitney called. I am a reporter for the *Boston Courier*. I went to see Mr. Cooke on the evening of Monday the 14th, to get from him the facts concerning the difficulty in the Eliot School that day.

Question. Did Mr. Cooke make any statement to you on that subject?

Mr. DURANT objected to this evidence that it was not now admissible, not being in rebuttal.

Mr. DWIGHT said that the evidence was strictly in rebuttal. The complainant's case, as he put it in, was a statement of the assault and battery, the circumstances under which it was committed, and the amount of the injuries. The defendant's answer to that case is, first, that it was done at the request of the complainant, and second, that the boy was whipped as the ringleader of a conspiracy to drive the Bible from the public schools. And we have been compelled to waste two days listening to this defendant uttering, through his counsel, the nonsense and folly of a conspiracy. Now, shall we have an opportunity to meet it, and to answer his defence out of his own mouth?

The objection was then withdrawn, and the witness proceeded.

Mr. Cooke made a statement of the facts to me. I took notes of it at the time, and as soon as I got back to the Courier office I wrote it out; it was printed in the paper, and the next day I showed it to Mr. Cooke. [The witness was here shown the paper and identified the statement.] Mr. Cooke said it was generally correct, and would do with one correction. The correction he made was that the boy's hands were put in water to *prevent* inflammation from occurring, not to soothe it.

Mr. DWIGHT here read the statement to the court as follows:—

“Difficulty in the Eliot School.—One Hundred Scholars expelled.”

“Yesterday a difficulty occurred in the Eliot School for boys, on account of the refusal of a portion of the scholars, whose parents are Catholics, to recite the Ten Commandments and the Lord’s Prayer as they are written in the Protestant version of the Bible. The circumstances are these, as we understood them from Mr. M. F. Cooke, sub-master in the school:—

“A custom prevails in the various schools in the city, under the sanction of the School Committee, of reading from the Bible daily, and of repeating the Ten Commandments and chanting the Lord’s Prayer more or less frequently, in some cases not more often than once a week, as is the case in the Eliot School. In accordance with this usage, on Monday of last week, Miss Shepard, a teacher in the school, was conducting this exercise, when she observed several of the scholars vary the usual form to agree with the Douay, or authorized Catholic version of the Scriptures. Although the difference is very slight, it was sufficient to render the exercise dissonant and confused. On inquiring into the cause of the change, she was told by the scholars that their parents were unwilling they should say the common version, and told them to repeat the Catholic. As the matter was confined to two or three, it was compromised and passed lightly over. Yesterday, in attempting to go through the same exercises, Miss Shepard found, instead of two or three, the majority of her class utterly refused to comply with the general usage in this respect, although they were willing to repeat and chant the Catholic versions. The reason assigned was that thus they had been instructed to do by Father Wiget, of St. Mary’s Church, of whose parish their parents were members. She spoke to Mr. Cooke, the sub-master, whose room is adjoining, concerning the difficulty. Mr. Cooke immediately told the fact to Mr. Mason, the master, by whom he was referred to a member of the School Committee, then present on some business connected with the building. The member of the Committee went to Miss Shepard’s room and inquired into the matter more deeply. He found the boys unyieldingly persistent in their position. Two he called to his side, one of whom, Thomas Wall, a lad of thirteen, took the lead in the difficulty the week previous. After some time Mr. Cooke, on going into the room, found matters entirely unchanged, upon which he remarked that ‘they had better be turned over to his rattan.’ The Committee then gave young Wall into the hands of the sub-master, with direction to enforce obedience. Mr. Cooke says he found it necessary to punish the boy severely, which he did with a common rattan, striking him upon his hand, but that he used no more severity than was absolutely necessary to enforce obedience, knowing that the boy was disobeying his religious instructors in complying with his demands; nevertheless, his hands were so much swollen and inflamed at the end of the punishment, that Mr. Cooke bathed them in cold water, and used other means to soothe the irritation.

“During the chastisement, which was frequently remitted, the boy expressed a willingness to comply, but for the explicit instructions by his father and the priest. He was told by Mr. Mason, who came into the room at this time, that his father had told him he desired that the boy should repeat the common versions. (It appears that there was a misunderstanding in regard to this between Mr. Wall and Mr. Mason.) He at length yielded, however.

“It was thought that this example would deter the others from further disobedience; but they still remained firm. Of course chastisement was

then out of the question and further punishment was abandoned. The Committee had meanwhile found, by going from room to room, that out of 930 scholars in the entire school, upwards of 300 had been instructed in like manner.

“In the afternoon, Mr. Dyer, chairman of the District Committee, came into the school and sent away about 100 who still refused compliance with this rule. Thirty-six were sent away from Miss Shepard’s room, and about thirty each from two other rooms.”

Cross-examined. I intended to be very particular about making my statements. I was not so particular as I should be in recording evidence. He told me that it was the common practice to put the boys’ hands in water. It was my intention to give as full and impartial an account as I could from his statements to me.

At this point the testimony was closed, and further hearing was adjourned until

FRIDAY, March 25th.

The court came in at one o’clock on that day, and Mr. DURANT proceeded with his closing argument as follows:—

ARGUMENT OF MR. DURANT FOR THE DEFENCE.

May it please your Honor:—The spectacle which is presented to-day in this court, is indeed novel and strange. A worthy teacher of one of our principal public schools, who is bound by our wise and benevolent laws to impart the great gifts of free instruction in piety and morality and learning to his pupils, is arraigned as a criminal—arraigned by one of his own pupils at the bar of this court as a criminal, because he has attempted to do his duty—because he has obeyed that ancient, wise and beneficent law, which, in words of simple and familiar beauty, enjoined upon him to “impress upon the minds of the children committed to his care, those principles of piety, justice, love of country, humanity and universal benevolence, which are the basis of a republican government, and tend to secure the blessings of liberty.”

He stands, indeed, before the bar of this court arraigned as a criminal, but he stands there in proud humility, proud of his position, conscious that in the execution of the delicate and important trusts committed to him he has done his duty boldly and manfully,—confident that the laws will protect him,—confident that the hearts and the minds of his fellow-citizens will sustain him gratefully, because in the hour of peril and of duty he was true to the laws.

But this is not the whole picture. In the dark back ground are seen his accusers; the real criminals, who have usurped the place and the name of accusers. And who are they? Some are seen and some are unseen, some are known and some are unknown, some are seen in full view, while some are only seen as doubtful and mysterious shadows; but the brief, strange record of this case tells its own significant story. For years we have enjoyed the highest blessing which even a free government can bestow upon its citizens,—the blessing of education, unbought, unsold,—free to all, common to all, without distinction of birth, or sect, or race.

Under the wise and parental system of our public schools, our children were taught together as one free, and happy, and united family. The chil-

dren of the emigrant and the alien sat side by side with the son of the free-born American, — they learned from the same book, — they shared the same instruction, profited by the same culture, — and they left the school together to enter upon the broad highway of life with the same lights of learning behind them, — the same stars of hope and promise before them, free and equal under the laws. This was the story of yesterday; but to-day we find a sad and mournful and ominous change. Suddenly, — at the absolute will of one man, — by the exercise of a dark and dangerous, — a fearfully dangerous power, hundreds of children of tender years, children who were living in the full enjoyment of liberty and of learning, are not only arrayed in open rebellion against our established regulations, and in open violation of our laws, but are deliberately taught that they are to sacrifice all the benefits and blessings of free education, and are led out by their priest from the protecting roof of the school-house, to the temptations, the dissipations and crimes of the streets. This course is even now justified and persevered in; the same influences are still at work in our schools, and we are told to-day by the advocate of those deluded children, that this dangerous and unscrupulous priest was in the right, — that the laws under which my client justifies himself, were rightly denounced from the altar, were properly set at defiance by the pupils, and are destructive of the liberty of conscience, intolerant, illegal, unconstitutional, and void.

Who is this priest who comes here from a foreign land to instruct us in our laws? For whom, and on whose behalf, is this charge of intolerance, — this charge that we are violating the sacred liberty of conscience, — brought against the people and the laws of Massachusetts? Can it be that one of the Society of Jesuits is the accuser? I wish to discuss this case as calmly as I may. I wish to say nothing to arouse feelings which cannot easily be allayed; but there are *memories* which we can never banish from heart or brain; there are records on earth and in heaven, which can never be blotted out; there are pages of history written in letters of fire, and of blood; and the man who leads forth his flock of children, and boldly arrays them in open defiance of our established laws; who audaciously and ungratefully assails our established regulations as intolerant and unchristian, and as violating the sacred liberty of conscience, would do well to look behind him, as well as before, — would do well to pause and reflect if *he* is in a position which authorizes such grave accusations, or justifies such violence.

But I must discuss this case with more of method and order, and I will not answer this attack upon our laws and our institutions, until I have shown how material it is to the decision of this cause, — how vital and deadly a blow is aimed at our institutions, our liberties, and our laws.

My client is charged with an unlawful assault upon one of his pupils. There was a pretence originally made, that he had been guilty of needless and unreasonable severity in enforcing the established regulation of the school, but that pretence has faded, — and faded away into utter insignificance.

The evidence of the boy himself, and of the physician who saw him, showed that the punishment was neither unusual nor severe.

The evidence of the boy himself showed that it was necessary he should be punished, unless all hopes of obedience and control in that school were to be abandoned forever. But what can be said now, after we have proved by witness upon witness, — that gross violation of the discipline of the school, — the indecent and riotous conduct of the children, — their wilful

and openly concerted rebellion against the masters, — that planned and arranged conspiracy among the scholars, — that they would unite together and overthrow the authority of the teachers, and the regulations of the school?

What justification can be offered for all this, unless, indeed, the novel rule is to be established in Massachusetts that a Jesuit can dictate from Endicott Street as to the management of our public schools? Unless his authority is to be superior to our laws; — unless he can set up his will as supreme; — unless his nod can justify any disobedience, any disrespect, any violence, on the part of the scholars; — then it was the plain duty of the teacher to maintain the discipline of his school; and to enforce those rules which he was as much bound to observe and execute as the scholars were bound to obey.

Need I say, in a court of law, that no punishment could be severe in a case like this? Need I allude to the authorities which give to the master in the school room the power and the duty of a father, — the power to enforce obedience, and punish resistance, especially such organized and open resistance as this? Need I remind the Court of the other facts in this case, the authority which the father himself gave to the master to punish his stubborn boy, — the authority never withdrawn, and never revoked? No! may it please your Honor, I pass by all these points, for I wish for time to discuss the only question which requires, or deserves discussion, — the real question in the case. And that is, whether the regulations which have been referred to are illegal and unconstitutional?

The laws with regard to our public schools are so dear to every citizen, so important in our free government, that they are familiar to every one. Free schools are established and maintained at the public charge. The children of all citizens without any distinction whatever, are allowed to attend them, and all receive the same course of instruction, and are governed by the same rules. The general nature of the studies is regulated by positive statutes; but the details of discipline, the selection of teachers, the choice of books, and the general management of the schools, is given to school committees, — which have large legislative, and almost judicial powers delegated to them by the laws. The general law which regulates the course and class of studies in our schools, is found in the Revised Statutes, chapter 23, section 7.

It provides that "*piety*, justice, a sacred regard to truth, love to their country, humanity, and universal benevolence, sobriety, industry, frugality, chastity, moderation, and temperance," should be taught. All these are to be taught, but *first* of all, *piety*.

In the execution of the duty which is imposed upon our school committee, of prescribing the mode and the means by which *piety* shall be taught; in the execution of the statute of 1855, which requires that a portion of the Holy Bible should be read daily in every school; and in the execution, also, of their general duty, to direct the discipline and management of our schools, they have passed the following regulations, which apply to all the public schools in Boston: —

"The morning exercises of all the schools shall commence with reading a portion of Scripture, in each room, by the teacher, and the Board recommend that the reading be followed with the Lord's Prayer, repeated by the teacher alone, or chanted by the teacher and children in concert, and that the afternoon session close with appropriate singing; and also that the pupils learn the Ten Commandments and repeat them once a week."

Substantially similar regulations, embracing a part of the whole of these recommendations, have always existed in our New England schools. These precise regulations have existed in our Boston schools for years. They were published widely, they were read in the schools, they were universally known, and universally acquiesced in. They were established, not for Catholics alone, nor for the Protestants alone, — they were established to favor no particular creed; no one yet has dared to charge that they were established with any sectarian views, — they were established for all, acquiesced in by all, — and no one can doubt that they were useful and beneficial to all.

Had there been any feeling that these regulations were arbitrary or unjust, — had there been any conscience so sensitive that they became a burden, — had any parent, or any child, of any sect of Christians objected to them, there was the fullest opportunity for remonstrance and redress. But it was not so. No teacher was requested to suspend the rules, there was no remonstrance to the School Committee, — no request to modify or abolish these apparently wise and useful regulations, — there was no appeal to the courts, which enforce the laws, nor to the legislature which enacts them. The children obeyed without a murmur, and the parents acquiesced either from indifference, or from satisfaction.

It was in opposition to these regulations so long obeyed, so long acquiesced in, under which year after year our Catholic citizens with pride and satisfaction saw their children receiving and sharing with all others the benefits of a free and liberal education, that it has been found necessary to resort to open violence, to a deliberately planned and arranged rebellion against the discipline and authority of our schools, — a rebellion which might gratify the ambition or aid of the far reaching designs of the priest, but could only end in the ruin of those misguided children, who were at once their tools and their victims. These are the regulations, and this is their history.

And now, since it so plainly appears that my client was justified in punishing this deliberate and wilful rebellion against these rules so long established, so long acquiesced in, so long a part of our invaluable public school system, the counsel for the prosecution are forced to take the ground that these laws and regulations themselves are illegal and unconstitutional.

The Court cannot have forgotten the very able and learned opening argument of the counsel for the prosecution. The issue is plainly made by him, that the regulations which I have read are illegal and unconstitutional, and therefore I cannot avoid it or refuse to meet it, if I would. His general argument, if I understand it correctly, is this: —

Our Constitution declares that every citizen shall have full liberty to worship God according to his own conscience.

The statutes of 1852 required that children should, for at least three months in the year, attend some public school.

All citizens are taxed for the support of public schools, and, therefore, have equal rights in them.

To require the scholars to repeat the Ten Commandments infringes upon their liberty of conscience, and the rule is, therefore, unconstitutional.

Any attempt to enforce an unconstitutional law is illegal, and any punishment whatever, for a refusal to obey such a law, is illegal.

If these arguments are sound and unanswerable, then the Bible must indeed be banished from our schools forever.

If a Catholic child not only has a right, but is bound by law to attend

school; if, because all citizens are taxed, he has the rights which are now claimed, and if what he chooses to call his scruples of conscience, are to be obeyed — then he is not obliged to recite nor to hear the Ten Commandments; he is not obliged to repeat nor to hear the Lord's Prayer; he is not obliged to read the Protestant Bible nor to hear it read; — either would offend his Catholic scruples — all are violations of his liberty of conscience.

This is indeed a great question, — the *greatest* and *gravest* question, in my judgment, which this Court will ever be called upon to determine; and as it is now for the first time presented here, it is fit that it should be seriously and solemnly discussed, and that it should be met and decided upon those broad principles of justice and law which will satisfy all good citizens of every sect and race, all who love and are willing to obey our laws. No one who knows and cherishes the history of our country, — no one who watches now, with fear and hope, the dark and threatening signs of the times, — no one who reflects upon those essential qualities, those cardinal virtues in the citizen, upon which alone a republican government can be founded, and by which alone it can be sustained, — but must feel and know that this is a question, the importance of which cannot be overrated or exaggerated; — a question which must be met boldly, fearlessly, and with entire frankness; — a question which requires very plain dealing, and justifies very plain speaking also.

My own wish is to avoid all extreme grounds, and to avoid all questions which will widen the threatened breach between our citizens. I chiefly desire to speak to the complainant, who has been instigated to bring this case before the court, and to his brethren and friends. I speak to the alien, the emigrant, and the exile, who have found refuge here from the wrongs and oppressions of the Old World. I appeal to them at once, and forever, to abandon as most dangerous and most injurious to the true welfare of their children, the counsels of those who would array them in opposition to the laws, who would teach them to separate their children from those free schools where all meet beneath the same roof, speak the same tongue, learn from the same books, and enter together the great republic of letters.

I appeal to them, to disabuse their minds of the prejudice that their liberty of conscience is to be invaded or violated. No intelligent Catholic parent really believes it or fears it for a moment. I appeal to their own cherished hopes and wishes for the welfare of their children whom they love. I appeal to their experience of past years, and to the bitter lessons of these past few days. I ask every parent to look back upon his own life, upon his own daily sorrows and regrets that a free school was never open to himself, and then to decide whether he will sacrifice his children also — whether he will dare, at the bidding of priest or politician, to leave his offspring in the shadow of that same darkness; and sadden and darken their lives by the same cloud of ignorance which has overshadowed all his own weary, hopeless days.

Unless I can support and sustain these rules as consistent with freedom of conscience — as consistent with the purest spirit of religious toleration — unless I can show our adopted citizens, our adopted brethren, that side by side our children can consistently and properly receive the education which the laws give freely and equally to all — unless they can join their little hands, and lift their young hearts in common prayer to the Father of the fatherless, then these regulations will no longer be defended or justified by me.

Need I deny the unjust charge that the laws of our free Commonwealth are hostile or severe, to our adopted citizens? Need I say that ours are no inhospitable or unfriendly shores?

Every western breeze that finds its unseen path over the wide Atlantic, bears an invitation across the ocean, welcoming the exile and the alien, the poor and oppressed of every clime, to the land of the free. Our freedom is our birthright and our inheritance; broad as our land, free and unfettered as the wind, which sweeps from one ocean to the other. And this our birthright and inheritance which our fathers purchased with their blood, we offer to all and willingly share with all. In the Old World the inheritance of the people is the heavy burden of that feudal system, under which the lands and the titles, the wealth and the power are held by the nobles, and transmitted to their children generation after generation. The sons of the soil are bowed down by labor, and the sweat of their toil drops upon fields they can never hope to win or claim as their own.

Learning there is the inheritance of the rich only, and is not for the poor; they must bend their backs and bow down towards the earth, nor dare to look upwards to the broad sunlight of God's eternal sky; they must bow down their hearts and minds to endless, hopeless toil, nor seek to share in the eternal light of learning and knowledge, which God has given for all his children. The holy stars may shine forever in that far-off sky, but dark clouds are floating there between. They must not look up to that serene sky, must not look up to those far-off stars; their life must be submission and despondency, not aspiration.

What wonder, then, that every white-winged vessel which leaves the Old World bears its band of emigrants and exiles, looking forward towards the promises of the West; towards the hopes and promises of that beautiful clime which they dream of far away beneath the vanishing glory of the sunset, — looking forward to a new home, — to a freer land, — to a brighter sky. And when the long voyage ends at eventide, — when at sunset, the stately ship furls its white sails in our fair harbor, they see before them in the western sky the golden gates of their new world, the golden gates of the new El Dorado, — not the fabulous clime of rivers flowing over golden sands which tempted avarice in earlier days, but the true El Dorado of *men*, — a land where the soil is free, — where the laws are equal, — where the sunshine of liberty and of learning glows for all, blesses all. The emigrants of to-day do not come as conquerors like the adventurers of an earlier time. They do not come the soldiers of a foreign prince, to extend his dominion, or plant his standard on our free shores. They come as friends, as guests; they come as freemen. The emigrants of to-day do not bear the banners of Castile and Aragon. The oriflamme of France does not float above their heads, nor does the meteor flag of England lead them onward now, but in the western sky float the banners of the Almighty, blazoned there in purple and gold of sunset, and inscribed thereon, in letters of light, is the sacred word of *liberty*.

But there is a voice of warning as well as a voice of welcome for the emigrant and the exile who leaves the Old World, with its wrongs and its memories behind him. As he is borne along over the wild wide ocean, he can bury there all memories of the tyranny and oppression which made life a burden. He has left behind the heavy yoke of poverty, the despair of ignorance, the degrading distinctions of birth, the unequal laws which, with every rising and every setting sun, made him feel the bitter truth of the curse, "in sorrow shalt thou eat of it all the days of thy life."

A new life opens before him on our wave-worn shores. Here is a new home where the laws are equal for the poor and for the rich. Here he can win wealth and honor. Here he can be one of the citizens, one of the rulers; here education, and honor, and power, and wealth are open to all; and in the free air, the new life, the loftier aims, the higher aspirations of the New World, all the wrongs and sorrows of the past can be forgotten. But as he buries beneath the dark waves the sad memories of the Old World, let him find a little room there for his chains also.

There is ample room beneath our wide free sky for all races, for all sects, for all churches. The stately towers of the Roman cathedral, and the plain white spires of our New England meeting-houses, pointing from the quiet graves of our fathers heavenward, need never encroach one upon the other. There is room for all beneath our wide blue sky.

We give the widest toleration to all nations, to all creeds, all opinions; but there is one power, one tyranny which cannot cross the ocean, and that is the tyranny of one man, whether his head is encircled with the monarch's crown, or the bishop's mitre. Bury those heavy chains, then, beneath the dark waves, and as the waters close over them, forget the bondage as well as the sorrows of the past.

Ours is a government of the people, — a government of men, but of *free* men, — and that dark and dangerous power, which, under the guise of religion, would grasp the sceptre of the State, can never, *never* be tolerated here. That plant is not native to our clime, — it can never flourish in our free soil, — its breath is poisonous to our laws, and death to our liberties, — the dream must never for one moment be indulged, that one man, whether he speaks from the Vatican or from the altar, is to rule the destinies of our free people, or to dictate their laws.

We received that warning long ago, in the Farewell Address of him, whom we love to name as the father of our country. It was Washington who said to us: "Against the insidious wiles of foreign influence (*I conjure* you to believe me, fellow-citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government." Our liberties are our inheritance, and neither foreign power or foreign influence can lay sacrilegious hands upon them, — sacred alike from the warrior's sword and from the priest's influence. Aliens and exiles are welcome to our shores; we will share our birthright with them, and inscribe their names on the great roll of free citizens; but they must come as men, and as *free* men, not as *priest's* men; and it is no empty form, no meaningless oath which compels them, before they can become citizens, to renounce all allegiance to any foreign power whatever, to all power but the laws. There is a voice of warning, too, which the priests must submit to hear, a voice which is already rising in low mutterings, far and wide over the land, — a warning which, unless they hold back their audacious hands, will gather and swell until it breaks in thunder above their heads. It is now only the little cloud seen afar off over the sea no bigger than a man's hand, but it will widen and roll on until it becomes a storm and a whirlwind, which no power can control or withstand.

I speak, then, to the emigrant and the foreigner, whom we welcome to our shores. I desire to show to them and to all who hear me, that the *use* of the Bible in our schools, — the teaching of the Commandments, — the recital of the Lord's Prayer from it, are consistent with the true principles of religious liberty and toleration. I do not speak of casuistry, or of scru-

ples more intolerant than intolerance itself, or of subtle and specious doubts. I speak of religious liberty in a land of law, and liberty of conscience in a government of freemen.

Let us go back for a moment to first principles; let us endeavor to get clear ideas, and examine briefly what is the meaning of these noble words, — a government of freemen, — freedom of conscience, — liberty under the laws. The truth is, that our people are so wholly free that we hardly realize or appreciate what is meant by government and law. Our consciences are so untrammelled that we are unaccustomed to reason or reflect upon what freedom of conscience is, and in what it consists. We forget that the very essence and foundation of all government is religion; and yet the truth exists, as old as the primal stars, that a government without religion is as impossible as a universe without a God. We must remember that we are not dealing now with questions of fleeting opinion, nor with transitory laws, which change and vary as society changes, suiting themselves to the necessities and wants of social progress and social change. We are reasoning upon those elder and fundamental truths which lie at the very basis of all society, all governments. We are studying the deep bases of the everlasting hills. We are questioning those primeval rocks, more enduring than the mountains which soar above them; which time, nor seasons, nor changes, nor decays, can alter or wear away.

The first great truth, then, which we must reflect upon and appreciate, is this: that religion is the essential foundation of all government, the source and sanction of all power. This is the united voice of all true philosophy, of all true statesmanship, — it is the lesson and warning of history, and the universal experience of the civilized world. Need I remind you, sir, of the latest, the darkest lesson of the eternal truth, — that a government without religion is a hopeless impossibility? Need I remind you of that government without religion, founded only upon pure reason, based upon the laws of man, — that government, inaugurated with more than bridal pomp and festivity, with songs, and feasts, and dances, when the Goddess of Reason was the symbol and the representative of a new era, and in triumph led on the choral dance, which ended in the red dance of death, — in the fearful night and darkness of the “Reign of Terror.”

May it please your Honor, our government is based upon religion, upon the Christian religion, and it is a vital and essential part of the law of the land.

Not the Christianity of any particular sect or creed, but the broad, pure, living Christianity of the Bible; — we cannot open our statutes without meeting with the proof of it. The Bill of Rights, to which the prosecution appeal, commences with a solemn appeal to the Christian’s God, — the observance of the Christian Sabbath is enjoined, and profanation of it is forbidden by numerous statutes. Blasphemy against God and our Saviour are crimes punished by law. The oaths which are the protection of property, recognize it, and all our laws flow from it, and are consistent with it. I might quote from our law books; I might read Blackstone and Story. I might show that all great jurists recognize this grand truth. I might show that all writers upon municipal law acknowledge it; but I have a higher authority to which I wish to refer. Let me ask you, sir, to hear a voice from the dead, the fittest Oracle of this great living truth. I desire to read the profound and eloquent words of that great statesman, who sleeps well after his long labors, with the solemn voice of the ocean he loved, as his requiem, — on the lonely shores of Marshfield: —

“There is nothing that we look for with more certainty than this general principle, that Christianity is part of the law of the land. This was the case among the Puritans of New England, the Episcopalians of the Southern States, the Pennsylvania Quakers, the Baptists, the mass of the followers of Whitefield and Wesley, and the Presbyterians; all brought and all adopted this great truth, and all have sustained it. And where there is any religious sentiment among t men at all, this sentiment incorporates itself with the law. *Every thing declares it.* The massive Cathedral of the Catholic; the Episcopalian Church, with its lofty spire pointing heavenward; the plain Temple of the Quaker; the Log Church of the hardy pioneer of the wilderness; the mementoes and memorials around and about us; the consecrated graveyards, their tombstones and epitaphs, their silent vaults, their mouldering contents — all attest it. *The dead prove it as well as the living.*

“The generations that are gone before speak to it, and pronounce it from the tomb. We *feel* it. All, all proclaim that Christianity, general, tolerant Christianity, Christianity independent of sects and parties, that Christianity to which the sword and the fagot are unknown; general, tolerant Christianity is the law of the land.”

And now, with this lamp to guide our feet, let us inquire what is the meaning of liberty of conscience under the law? Our Constitution declares, that “it is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the *Supreme Being*, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping *God* in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace, or obstruct others in their religious worship.”

What is the meaning of those noble words, in a land of liberty, in a country where Christianity is a part of the law of the land? Does it mean that nothing shall be tolerated by law, nothing shall be sanctioned by the law, nothing shall be paid for by taxation, nothing shall be submitted to, and obeyed by the citizen, excepting what satisfies the scruples of *his* own conscience? The Jew reviles Christianity and the New Testament, and teaches his children that our Saviour was but an impostor. And yet he is taxed for the support and execution of the laws which will punish him with a felon's cell if he dares to reproach the name of Christ, or blaspheme the Holy Scriptures. Nay more, although the Christian Sabbath is a stumbling block and an offence to him, although every Christian Church is hateful to his sight, he is obliged, with certain exceptions, to respect the laws for the observance of the Sabbath, and is obliged to pay taxes for the support and maintenance of that government, of which Christianity is a vital and essential part.

Need I multiply instances? The Hindoo and the Mahomedan, the Pagan and the Atheist, all can be citizens, all are entitled to freedom of conscience; and yet in every transaction of life, in every function of government, in every act of obedience to the laws, they are obliged to submit to and obey the rules of that Christianity which is an offence to their conscience. Is there any inconsistency in this? Is this inconsistent with true religious toleration? By no means. The answer to the question lies plainly before us. Every man may *worship* God according to his own conscience; for his religious *belief* or *disbelief* he is not accountable to any human tribunal. The laws impose no form of faith upon his conscience, he is to subscribe to no articles of belief, he is to surrender his faith to no creed, he is to join no sect. Atheist or Pagan, Catholic or Protestant, he is free to believe or disbelieve according to his conscience; and for his faith or his infidelity there is equal toleration. But apart from this, and beyond this, he must submit to the general laws of the land, and just in

the same manner that while we declare that every citizen, although free, must submit to numerous laws which do interfere with and infringe upon his liberty; so does every citizen find in the operation of general rules, in the compromises of life, in the necessary concessions of a society regulated by general laws, much that is offensive to the scruples of his conscience, much that he must submit to and obey, although no laws compel him to believe.

Many good and virtuous citizens look upon war as a crime against God and religion; and yet they are taxed by their country to supply the very sinews of that war, which they believe to be unholy. Atheists believe that the observance of the "Lord's Day" is an idolatrous superstition, injurious and offensive to morality; yet the disciples of Paine and Volney, however it offends their consciences, must cease from labor, and, in all but worship, must observe and keep it.

I repeat, that it is idle and in vain to say that liberty of conscience in one citizen means the submission to *his* scruples on the part of all others. It is in vain to say that in a country of free but divided opinions, nothing shall exist which is not offensive to the consciences of many.

And here let me pause to say, that the danger to our country to-day does not lie in intolerance, nor in disregard of the liberty of conscience. It lies in an unreflecting and timid fear of intolerance. We forget our watchword, that "eternal vigilance is the price of liberty." We do not study nor reflect upon those essential principles upon which our free government is founded. We are so much in fear of intolerance to Catholicism, that we become intolerant of that pure and true religion which is the sole safeguard of our liberties, without which our loved and cherished republic will vanish away — a beautiful but fleeting dream.

But I must not dwell too long upon the examination of these general principles, which demand more ample illustration than the present discussion will allow. I wish to come more closely to the particular question which is to be decided by the light of these general principles.

My *first* proposition has been that the Christian religion is a part of the law of our ancient Commonwealth.

My *second* proposition was that true liberty of conscience and true toleration of all forms of belief can exist consistently with that law.

My *third* proposition is, that piety and morality are to be taught as a part of education, and that this is not inconsistent with religious toleration, or entire liberty of conscience.

This is a question which involves a wide range of discussion, much wider than can be entered upon here, where it must be decided as a question of authority, of law, and of government, rather than as a question of ethics, or philosophy, or religion.

I am not speaking of private schools, established by any sect, supported for any special object or purpose. I am speaking of those public schools which are established and supported by the government, as great public institutions and charities — institutions for which it is lawful to levy taxes upon the citizen — charities, in the true legal meaning of the word, which are recognized as a part of the institutions of the country, and protected and supported by its laws.

If my first proposition is true, that our government is based upon religion, that Christianity is an acknowledged and recognized part of our law, does it not follow, as of inevitable necessity, that in every school founded by government, established and supported by government, religion should

be recognized, and piety should be taught? I need not repeat, sir, that I speak not of any sect, or church, or creed, nor of any form of faith. I speak of those principles of true piety and religion which have existed from the hour when the morning stars sang together — from the hour when God said, "Let there be light" — piety eternal as the stars, religion pure and holy as the light of Heaven.

One of our most eloquent orators has told me that many years ago he met Mr. Webster in London, and conversed with him upon the future destinies of our country. Mr. Webster spoke despondingly of our future. Have you no hope, sir, in our education? He shook his head sadly, without a reply. Have you no hopes then in the religious education of the people? His whole noble face lighted up, as he acknowledged that this was the one bright star, yet shining for his country; and he then expressed his intention of one day laying before his countrymen his long-treasured thoughts upon that great subject. How well that promise was kept his countrymen well know. Mr. Webster's great oration upon the "Religious Instruction of the Young" remains to-day the noblest monument to his fame, the truest mirror of his character. Those who remember him only in the heat and dust of political strife, or in his great contests at the bar, know nothing of him at all.

I remember it as one of the fortunate occurrences of my life, that I heard Mr. Webster address the Supreme Court shortly after the death of the Hon. Jeremiah Mason. He spoke with earnest feeling of his early friend, of his deep religious belief, of his awful reverence for the living God; and as he dwelt upon that great theme — as he by way of contrast spoke also of a man without religion, a man whom the Scriptures describe in such terse but terrific language as living "without God in the world," — as he declared the great truth that "religion is a necessary and indispensable element in any great human character," it seemed as if the true great soul of the speaker himself was revealed; as if inspired by his theme, he had for once laid open and displayed the profound mysteries of his own consciousness of his inner self and of his own lofty and usually inscrutable being. It seemed as if the clouds which enfolded the lofty summits of the mountain had for a moment rolled away, and the lofty peaks were visible, radiant in their serene and sublime majesty, aspiring forever, soaring forever upward towards the everlasting heavens. I believe that in that one moment I obtained more insight into that great nature than years of familiar intercourse would have given. And I believe, too, that his serious and solemn convictions, his highest hopes, his noblest thoughts, are more fully recorded in the great oration of which I have spoken, than in all the rest of his published works.

Will your Honor allow me to detach two or three thoughts from that powerful argument, which are particularly appropriate to the subject of our discussion? He says, with great emphasis, —

"I do say, and do insist, that there is no such thing in the history of religion, no such thing in the history of human law, as a charity, a school of instruction for children, from which the Christian religion and Christian teachers are excluded as unsafe and unworthy intruders."

Again he says, —

"This scheme of education is derogatory to Christianity, because it proceeds upon the presumption that the Christian religion is not the only true foundation, or any necessary foundation of morals. The ground taken is, that religion is not necessary to morality; that benevolence may be insured by habit, and that all the virtues may

flourish and be safely left to the chance of flourishing, without touching the waters of the living spirit of religious responsibility. With him who thinks thus, what can be the value of the Christian revelation? So the Christian world has not thought; for by the Christian world throughout its broadest extent, it has been and is held as a fundamental truth, that religion is the only solid basis of morals — and that moral instruction, not resting on this basis, is only a building upon sand.”

I might multiply authorities of wise and learned men upon this question; but it is not necessary. Can it be argued for a moment, that in educating a child, to whom God has given an immortal soul, as well as intellectual faculties, it is the duty of the state to cultivate the one and leave the other in darkness? Above all things, in a republic which exists only, which can be maintained only, by the *virtue* of its citizens, — can it be argued that it is the duty of the state to teach every thing but these very *virtues* upon which its existence and well being depend? Will it be said that it is the duty of the state to educate its citizens, but that those very virtues which alone are useful to the state itself; — “those virtues which tend to secure the blessings of liberty,” — shall be a sealed book — shall be forbidden forever, banished forever from the schools? If self-preservation is indeed a law of nature, shall not the state be allowed to preserve itself, not by war, not by proscription, not by force, but by instructing its children in piety, and morality, and pure religion? But I must remember that I cannot discuss this question here, as a question of morality, of philosophy, or of religion. I am here only to defend and justify an ancient law of the Commonwealth, which prescribes, in so many words, “that *piety*, justice, humanity, and universal benevolence shall be taught in our public schools.”

The principles for which I contend would justify laws far more general and comprehensive than this; and I look for the hour when they will be enacted, but this is the law of to-day; and I believe that no one will be bold enough to deny its obligation or its justice.

This law to which I have referred the Court is but a reënactment of a more ancient statute. It was sanctioned anew in the revision of our laws, and is now found in chap. 23, sect. 7, of our Revised Statutes.

May it please your Honor, we have advanced thus far in the argument, and we find that it is a *positive law, which neither teacher nor scholar can evade, that piety shall be taught in our public schools*, and I turn now to my adversaries, to ask the question that terminates this controversy forever, — from what book is *piety* to be taught in a Republic where Christianity is a part of the law of the land? Is it to be taught from Confucius, or from the Vedas and Puranas of the Hindoos? Shall Plato be our instructor in piety, or shall we go back to Zoroaster? No, sir, there is but one answer that can be given. No skill of the opposing counsel can evade it. And I feel that he will not, and dare not attempt to answer it. What course he may take in his argument I cannot anticipate, but this I know, that he will pass this question by in prudent silence. And yet the whole case turns upon this one question, and it *must* and *will* be answered. No craft of the Jesuit can avoid it. No form of words can conceal it. The answer comes from every lip, Catholic as well as Protestant, — it comes from the altar, from the pulpit, and from the statesman’s closet, — from the street and from the fireside, — from the heart of every mother, from the lips of every child. There is but one book from which we dare teach piety, and that book is God’s Holy Bible.

It would seem that by slow steps we are somewhat advanced in this our investigation. We have found that all government is based upon religion.

That the government of our free republic is based upon the Christian religion, and that it is a part of the law of the land — that in all public education given by the state to its citizens, it is essential that morality, religion, and piety should be taught — we have found this principle to be recognized by our laws and enacted as a positive statute; and the only question remaining is from what book are we to seek this instruction, — if that indeed can be called a question which admits of but one answer, — which answers itself. And here I might well pause, if this great point is established, — for when this is settled all the conclusions follow, of necessity, — but there are many points raised, many arguments advanced, which I must attempt to answer.

It will be said, perhaps, we do not object to your use of the Bible — we object only to the common English version of it. I feel constrained to say that I cannot believe this is the true question. Unless I misunderstand wholly a late letter from the Bishop of Boston, if our regulations required the pupils to read the Douay Bible together, to recite the Ten Commandments together, to repeat the Lord's Prayer, or chant the Psalms of David together, even although they were to use the text of the Douay Bible, it would be a "brotherhood in a simulated union of prayer and adoration, which his church expressly forbids"* — but this may not be the ground taken by the counsel here, and I will therefore attempt to answer the suggestion that our common version should give place to the Douay Bible. And the first answer is, that, as *some* version is to be taken, as the Bible in *some* translation is to be used, as there is a difference of opinion as to which is the best, the question must be decided by that tribunal to which the laws have intrusted the decision. The school committee are by law required to select and decide upon the question of the books to be used, and they have determined this question. The common version is by an express statute to be read daily, and the committee have used and adopted the same version for all other purposes.

I uphold and justify that decision upon many grounds; and I say first to these gentlemen who are so earnest for toleration, who are so fearful of sectarianism, that I object to their Douay Bible because it is avowedly a *sectarian book*, written and published with that acknowledged object. Our Saxon Bible never has been, never can be sectarian. It is quite worthy of remark that at this hour it has no express sanction of any sect or of any church. No creed can claim it as peculiarly its own; it is the common property, the common heritage of all. Nay, more — it is well known there are more real and essential differences of opinion between the various Protestant sects, as to the correct translation of various important texts, than between the Catholics and the Protestants. But for all that, this version is — with one exception only — accepted by all sects of Christians who speak the English tongue, as a translation sufficiently correct, — not for sectarian arguments, — not for disputes upon points of doctrine, — not for creeds or schisms, — but for the common and daily use of Christians for instruction in *piety*, in morality, and in that pure religion which is high above sects and doctrines, as the stars are above the earth; and for this very reason, — because the Christian sects, who differ upon so many points, are with one exception willing to unite upon this version, — is it fitting and proper that this should be adopted. It was the English Bible centuries ago. The descendants of Englishmen still cherish it. It has been the American Bible for centuries also. The Catholics who have emigrated found it here

* Letter from the Bishop of Boston to the School Committee.

when they came, found it here as the people's Bible; found it here in the schools which they came to share with us. These reasons alone should be sufficient, but there are other reasons also for the use of our Bible which will, I am sure, appeal to the heart and the brain of every foreigner who sends his children to our public schools.

I appeal to their gratitude now, to their sense of honor now, as I would appeal to their generosity, if it were necessary, and ask them if they would wish to come here to share our freedom, to ask our hospitality, to enjoy the liberties — the free education — the institutions which our fathers purchased at such a price, and then take our Bible away? It was to read that Bible in safety that our fathers came to this cold and barren shore — that Bible lay in the narrow cabin of the "May Flower" — it was the only star that shone for the Puritan in that long night of toil and strife, and famine, which well nigh ended in despair. It was with hands clasped above that Bible that Washington prayed in his tent, through those seven long years of doubt and distrust, when the "God of Battles" alone sustained him. It has been the household god of the school-room from the infancy of the country. The schools which made us free, which will make worthy and true citizens of your children, have grown up under its influences. And will you take it from us now?

It is difficult to discuss this question calmly. I imagine that feelings which it is best not to express, are aroused in the heart of every American who is told that we must justify or defend the use of our old Saxon Bible. I will not trust myself to express them. I will ask for any reason for rejecting our common familiar version and for substituting another in its place. If this were a fitting time or place, I should be very willing to discuss the comparative merits of the two versions, either as literary productions, or as faithful translations. The Douay Bible has its history too, of which I should be very willing to speak if it were proper to do so, but this is not a suitable occasion.

May it please your Honor, I ask now for a single candid objection to the use of King James's Bible — not the Protestant Bible, but the Christian Bible — the Saxon Bible, which we love. Are the particular portions of it which are used in the schools objectionable? Our children are to learn piety from it, not sectarianism, or creeds; but pure religion, undefiled before God. They are to learn from it piety, a sacred regard to truth, justice, chastity and humanity. Was it from sectarian views that the Lord's Prayer and the Ten Commandments were selected as fit lessons of these cardinal virtues? What sect, Catholic or Protestant, has received the monopoly of these portions of God's Word? What priest or preacher can call them his own? Are they indeed offensive to the tender consciences of children? Is it indeed dangerous that they should hear or repeat them? I am inclined to believe that no one who has heard the evidence of the father or his boy, would be willing to say that it is either unnecessary or very dangerous to repeat to either of them the divine injunction, "Thou shalt not bear false witness." Does bishop or priest dare to say that it would be dangerous to repeat to the children those sacred portions of the Bible?

Can it be that even bigotry and fanaticism would take exception to the prayer which Christ taught us — to the tables of the law which Jehovah himself gave to his children on Mount Sinai? Is it one of that order of priesthood which has assumed to itself the name of the "Society of Jesus," who has found it a necessity of Christian duty to forbid his followers from repeating the Lord's Prayer? Has he forgotten that it was Jesus who said, "*Suffer little children to come unto me and forbid them not*"? Jesus,

who bade his disciples go forth into every land and teach the Gospel to every creature, — that he dictated to his disciples the lofty worship, the simple and pathetic beauty of that miraculous prayer, in which all the nations of the earth might together lift up their hearts to God without remembering any distinction of sect, or race, or creed? Subtle and artful as men have been in raising doubts, untiring as they have been in creating differences of opinion — no sect, no dogma, has yet been founded upon that marvellous, that inspired prayer, which in its divine sweetness and purity embraces in itself the whole Christian religion, and the universal worship of God — that simple but sublime prayer in whose thanksgivings still linger the tender tones of a gentle mother's voice teaching it at eventide; the sweet, natural music of home. Was that priest unwilling that his flock should unite with the children of heretics, and joining their hands and their hearts, say with them, "*Our* Father which art in Heaven, hallowed be thy name?" Was he unwilling that the children of the Huguenots and the Puritans — the children of those Protestants who remembered the mountains of Piedmont and the Waldenses — who remembered the night of St. Bartholomew and the fires of Smithfield — should join with his flock, and say, "Forgive us our trespasses as we forgive those who trespass against us"? But it is said there is a difference between the Catholic and Protestant version of this prayer. I have not forgotten it; it will be very long I think before I shall forget it, or forget that in the book which was produced here in court, the hands of some little fanatic, who had been taught hatred and bigotry under the name of Christianity — or of some priest who feared for the tender consciences of his flock, had carefully and industriously obliterated the closing words of the prayer, "For thine is the kingdom, and the power, and the glory forever. Amen."

Are those reverential ascriptions of praise dangerous and heretical? Is the worship which acknowledges our Heavenly Father as the Source of all power, as the Ruler of the Universe, — is that worship to be denounced and proscribed by one who calls himself the priest of the living God? Was it for this that he gathered the children of his flock together, and by threats of a shameful exposure from God's altar, persuaded them to violate the laws of their country, — persuaded them to rebel against their teachers, — persuaded them to sacrifice the great gifts of education?

How vain and how shallow are such pretences. How trifling and immaterial are the verbal differences which are now insisted upon. Does any one fail to see that this movement is only a settled, and determined, and preconcerted opposition to our Holy Bible? Does any one fail to see that it is because the Prayer is read with Protestants, that the Catholic children are forbidden to join in it, — that the Catholic priests are resolved to banish it from our schools? This is the ground which the Bishop of Boston has openly taken in his letter to the school committee, and although we can see that the counsel for the prosecution will not be bold enough to take it here, we can all very plainly see that it is the great and the real objection. Can there be any more sincere ground of complaint because the children were called upon to repeat the Ten Commandments? Are the lessons of piety and morality which they teach offensive to the conscience or sinful to hear? Have these divine commands lost any thing of their obligations in the progress of civilization? Has their sublime morality lost its virtue? Is there one Commandment which to-day any Christian of any sect dare disavow?

Over three thousand years ago these tables of the law were delivered

from Mount Sinai by our Heavenly Father, — when the “mountain burned with fire into the midst of Heaven, with darkness, clouds, and thick darkness,” — when Jehovah said unto Moses, “Gather me the people together, and I will make them hear my words, that they may learn to fear me all the days that they shall live upon the earth, *and that they may teach their children.*”

Has that divine injunction lost its force? Is it useful at this hour to teach those divine precepts? Would it wound the tender conscience of children to be taught those ancient and holy commands? Is any intelligent Catholic parent really unwilling that his child should repeat them? Who that has watched the signs of the times, — who that has watched the winds, and the waves, and the dark clouds which drift along our stormy sky, fails to see the object and end of all this movement? No, no, there is no fear for the consciences of the children; the real objection is to the Bible itself, for, while that is read daily in our schools, America can never, *never* be Catholic. I am told that the most zealous of English Catholics acknowledge that England can never be Catholic so long as they keep their Saxon Bible. Of its power over the hearts of the people, an Englishman has most truly and eloquently said: “King James’s version lives in the ear of a Briton, ‘like music that can never be forgot; like the sound of church bells, which the convert hardly knows how he can forego. Its felicities seem to be almost things, rather than mere words. It is a part of the national mind, and the anchor of national seriousness. The memory of the dead passes into it. The potent traditions of childhood are stereotyped in its verses. The power of all the griefs and trials of man is hidden beneath its words. It is the representative of his best moments, and all there has been about him of soft, and gentle, and pure, and penitent, and good, speaks to him forever out of his English Bible. It is his sacred thing, which doubt has never dimmed, and controversy never spoiled. In the length and breadth of the land there is not an English Protestant with one spark of religiousness about him whose spiritual biography is not in his Saxon Bible.’” Yes, all that is true! True for Englishmen to-day, but how much more deeply and dearly true for us?

Of all the wealth of happy England, of all their birthright and inheritance this sacred book was all that our ancestors brought with them to these, then barren and unkindly shores. They left behind them their lands, their wealth, their titles, their kin, their country, and the sweet memories of home. It was to read this Bible aright; to learn from it the mysteries of the living God, that they gave up all which man holds sweet and cherished; and does any one dare now to hope that this Book will be driven from our schools? Never! *never!* The sun may turn back in its course, the stars may fall as the leaf falleth from the vine, and the heavens may be rolled together as a scroll, but until we have sold our birthright of freedom, never, *never* will the descendants of Englishmen consent that the Saxon Bible shall be banished from their free American schools. But I may be told that our fears are groundless; that they do not object to our Bible, but to the particular use made of it in this particular case. We are not to be deluded by such specious arguments. We well know the foe with whom we deal; they will be content with any step in advance, if it be but the thousandth part of an inch, and bide their time for the next step.

This is no time for timid concessions, no time for politic compromises; the enemy are to be met at the gates. We see through their plans, and strip off their plausible disguises. I repeat, that their objection is to our

Bible, our whole Saxon Bible, and they cannot consistently stand upon any other ground. Why do you object to the Lord's Prayer, and to the Decalogue, and the reading of the Scriptures? Because you say "it offends our consciences." "We believe it is not the true version of the Word of God;" that version is "used as a means of attack upon our tenets." "The form and words are offensive to the conscience and belief of the Catholics." Be consistent now, gentlemen, if you object to reading that Bible or reciting from it. Is it because it is offensive in form and words to your Catholic consciences? Will you be any better satisfied then if it is daily read to your children by their teachers? Will any bishop, any priest, tell me that he is *willing* to have that *untrue* version of God's word, so offensive to Catholic conscience and belief, read daily to his flock by their heretic teachers? No, if it is intolerant to ask the children to read or recite that Bible, it is intolerant to read it to them; if it is intolerant to ask them to recite the Ten Commandments, it is also intolerant to teach them. If to ask the Catholic children to join in repeating the pure religion, the simple and pathetic supplications of the Lord's Prayer offends their consciences, then any instruction in piety from a Protestant is offensive, and the Bible must be banished forever from our schools.

Concede the first point, that you are bound to excuse Catholic children from reciting from the Bible, and you are bound to concede that they shall not read it. Concede that they shall not read it, and you are bound to concede that it shall not be read to them. No other course is possible if the first false step is taken, and no one sees this so clearly as the priest who has so rashly commenced this attack upon our institutions. I appeal from bishop and priest, to the unfettered intelligence of our adopted citizens; I appeal to the countrymen of Burke, and Sheridan, and Grattan, and Curran. Do you, who wish to become American citizens, you who wish to draw closer the bonds of a common country and a common freedom, fear that your children will suffer because they, with united hands and hearts, lift up their tender voices in common prayer to that God who is the Father of all, whose rain falls alike upon the just and the unjust, who is the God of all nations, of all races, all climes?

I repeat once and forever, that there is not any sectarianism intended or taught by the use of the Bible. We do not ask your children to adopt our translation as the true one. If any point of doctrine arises upon any text of our Bible or theirs, they are free in their faith as we are in ours. They are instructed to interpret the second commandment in one way, and we in another. No one wishes or seeks to disturb their faith; we do not ask them to say or to believe that ours is the true word of God, or the best translation of the tables of the law which God delivered to Moses. Our teachers, in their great duty, teach lessons of piety from the *only* source from which it can be taught, and the children are free to believe or disbelieve them, free to worship God according to the faith of their fathers, free in their faith, free in their consciences.

I repel altogether the specious pretence that our Bible is not *the* Bible, because the translation differs in some particulars from the Douay Bible. Every translation from the original Hebrew and Greek must of necessity vary, — must of necessity be more or less perfect, according to the accuracy and perfection of the language into which it is translated, and the learning and skill of the translator. The Holy Scriptures have been translated into over two hundred different languages; but they are always the Bible. Not the Bible of the Catholic or the Calvinist, —

not the Bible of the Methodist or the Episcopalian, — but the Christian Bible.

As well may we be told that God's eternal sky is not the same. It clothes itself with vanishing, ever-changing beauty from season to season, from hour to hour. It robes itself in the tender violet hues of spring, the deep, cloudless transparency of midsummer, and the dark, steel-blue of a northern winter. It arrays itself equally in the delicate rose and opal hues of dawn, — the imperial purple and gold of sunset, — and at midnight it wears its royal robes of state, all flecked with countless stars; but in all changes, — in all climes, — it is always God's eternal sky, the same sublime image of that wondrous eternity which lies behind us, and before us, — the same holy symbol of the all-embracing love of our Heavenly Father.

And now, may it please the Court, I have but to sum up this part of my argument in a few words.

They say that the regulations of the school committee violate the Constitution, which protects all citizens in their liberty of conscience. I answer that their conscience is left free, — they are not called upon to believe or disbelieve any thing. Their faith is their own, — we do not ask them to yield one iota of it. They may find offence in our laws, and in our customs. That is always the consequence of general laws. They found us with these institutions, — they have accepted the benefits of them, — they must bear with the inconveniences also. And, I say it in all kindness, but it is proper it should be said, there are many causes for offence which Protestant parents also find in the laws which compel their children to mingle with the children of the Catholics. Let us hope for mutual forbearance and mutual submission to the laws.

And now, may it please your Honor, that I have briefly discussed this great question in the cause, there is another issue which it is my duty to meet. This case has been planned and arranged with a great deal of artifice, the snare was very skilfully laid, but I think I shall be able to give Father Wiget good reason to regret that he selected this as the time, or the place, or the manner of taking his first step in the great movement of expelling the Bible from our schools. It is my duty to expose this artifice, and it is an easy task; in doing it, I shall also prove, beyond all possibility of question, that this is not a case of conscience, or of scruples of conscience. The truth is, that a very cunning plan was laid, the object of which was to have a boy whipped for his religion, in order to raise the cry of religious persecution, as I will presently prove.

I cannot admit that the pretended objections raised by the Catholic pupils, are "not mere fetches and pretences devised for the purpose of creating a difficulty."* This case fortunately, very fortunately, is full of conclusive evidence to the contrary, and I beg the attention of the Court to it. No one can fail to remember the manner in which this cause was originally brought before the Court. It was pretended that an intelligent and interesting little boy, religiously educated, was bidden with threats to violate his tender conscience; that in vain he pleaded the commands of his parents, the solemn lessons of his religious instructor. His prayers and appeals were all in vain; he was ruthlessly beaten until his wicked persecutors, frightened and shocked at their own cruelty, ceased their stripes, and endeavored to hide the bleeding evidence of their pitiless tortures. Has

* Letter from the Bishop of Boston to the School Committee.

your Honor forgotten that picture of religious fanaticism and persecution, that touching picture of the infant saint and martyr? I am half inclined to believe that my learned friend, who opened and tried the case so ably and so well, had worked himself up to the faith that this small citizen had the already sprouting wings of a cherub under his waistcoat. He was a saint in embryo, — a small sized martyr in jacket and trousers. I confess that I could not but sympathize with my friends, when all the poetry, all the picturesque charm and color of this picture was banished so rudely, on the last day of the trial. What a shocking blow was given to our sensibilities; what a ludicrous “behind the scenes” appeared when he heard that this small saint, who was willing to be “kilt” for his conscience, — who vowed with infinite pathos that he would never be a coward to his religion; when we heard that this very small and somewhat dirty little martyr was out in the streets where the boys were playing marbles, declaring with the true fervor of a pious Catholic, “Faith and I warn’t agoin to repate thim damned Yankee prayers.” What a very abominable and altogether absurd little cherub to be sure. I would have given *money* for one peep into the breasts of my friends on the other side, at that precise moment. I wonder if, as they heard the poetry of their case, the glory and the beauty of their dream, vanish forever in the irrepressible titter which no one in the court house could resist, when that evidence was given, — I wonder if they did not say to each other that Father Wiget’s bread and butter saint ought to have been whipped once more, and more thoroughly. This, may it please your Honor, is the delicate, the tender, the more than feminine purity of conscience, which cannot submit to say “hallowed” instead of “sanctified,” which does not revolt from the words of our “Ten Commandments,” which accepts them all, acknowledges them all; but flies as from impurity, which shuns as sacrilege the repeating those very words, unless they are *divided** according to the holy dictation of Father Wiget. What volumes of the benignant teaching of the Jesuit, what touching pathos, what sweet infantine love of God, what tender delicacy of conscience, spoke in those words, “Faith and I warn’t agoin to repate thim damned Yankee prayers.” Was it for that pious ejaculation that Father Wiget gave the boy his symbolic medal of brass, whitewashed with silver, in that very memorable interview at the Jesuit’s house, of which the boy, although it took place but the night before he was called as a witness, was really unable to remember a single word excepting the important, the saintly, the pious instruction to “go home to his supper?”

I have a few words to say as to this boy and his father. There is a very material question of veracity to be settled between them and the teachers of the school who have been called as witnesses. If I am able to prove them wilfully false, your Honor will be compelled to admit there was a *great motive* for the falsehood; if they are proved to be wilfully false, no one can dare to say that this is a case of suffering for conscience’ sake; if they are proved to be false, and the teachers are relied upon, then, not only is this case at an end, but a plot is exposed which must excite the indignation of every hearer.

I remember, sir, that I was assailed somewhat rudely by the able and eloquent senior counsel, who told us that after my terrible cross-examination of his rather blasphemous and very profane little saint, he nearly or

* Wall testified that his objections to the Commandments was because they were not *divided* as the Catholics divide them.

perhaps quite fainted away. Perhaps it was the attempt to find out and confess what that very suggestive and significant and quite symbolic white-washed medal was given to him for, which weakened little Saint Tom's tender frame. I remember that it was a question very general, — very pertinent, — very often asked, — never answered, — a question which has been asked a great many times since by persons who take an interest in this trial, — What the priest *did* give that medal for the night before the boy was to be a witness? This was on the first day of the trial. May I ask my eloquent friend if that very interesting and quite painfully honest little martyr fainted away after that other very striking scene in court, on the *last* day of the trial, of which he has not yet spoken? I desire to recall that scene, with somewhat of form and precision, to the mind of the Court, for a flood of light is thrown from it all over the case, — over the manner in which a religious persecution question, — a question of suffering for conscience' sake, — has been gotten up (in a very bungling and stupid manner, I must be allowed to suggest) by the pious Jesuit of St. Mary's. It cannot be forgotten that we had proved by the testimony of the respected principal of the Eliot School, — Mr. Mason; by the young lady assistant in his room, — Miss Marsh, whose intelligence and candor spoke in every line of her fair face, — that the father of the boy, when he had been dismissed, the Monday previous to the day of the rebellion, had brought him back, and heard from Mr. Mason a full explanation of the rules of the school, and of the precise differences between the Catholic version of the Ten Commandments and that which was printed in the boy's books. It was proved that he ordered his boy to say them, and directed his teacher to punish him severely if he did not obey; that he took pains to say that *the boy was not to be sent home*, that he was not to be expelled from school, but was to be made to say the Commandments, and to be punished severely if he did not. I am quite sure that no one who heard these witnesses, no one who heard the very long and elaborate, and very skilful cross-examination to which they were subjected, could doubt for one moment their entire truth. It was with a good deal of surprise, I think, that your Honor heard the boy and his father called to contradict this clear and positive evidence. And yet they had the folly to come upon the stand and wilfully and audaciously to deny it altogether. I believe that no one who heard them, no one who witnessed that scene when, more plainly than I ever before saw it in a court of justice, deliberate perjury was proved out of their own mouths; when the boy, conscious of his falsehood, stood mute, but confessing his crime by his silence, with the fraud and the crime so obvious, so awful, that in those moments of suspense you could hear the very silence in the crowded court room, — no one who heard the boy that day, would say that it is unnecessary or would be useless to repeat weekly or daily to *that* son of *that* father the awful command, "Thou shalt not bear false witness."

I have read some pathetic histories of persecution for conscience' sake. I have read of martyrs whose meek and saintly demeanor drew from their enemies tears of rapturous admiration, — martyrs who died in sublime self-oblivion, died in fiery coronation robes, when the rolling smoke, crimson-tinged, floated far up the sky, vanishing in heaven as the pang and the horror vanished also in the victory that swallows up all strife.

I fear that I am so much of a heretic that I cannot persuade myself that this boy is a martyr, and I do not think he looked like a martyr or a saint when he was so plainly exposed in his falsehood.

I am afraid that I do not appreciate with a sufficiently keen sensibility the religious side of this present persecution for conscience' sake. I am afraid that I am liable to a conviction for holding the very heretical and abominable doctrine, that this very interesting Wall and his very interesting boy, are terribly given to "drawing the long bow," and that their pretended tenderness of conscience is mere moonshine on the water.

This question, — whether Wall and his son are false or not, is very vital to this cause, as I will presently show; and I therefore ask the Court to remember the father's evidence now as well as the boy's. The Court will remember that it was proved that this boy, and the other Catholic boys, had been in the habit for years of repeating the Ten Commandments without objection, — a very material fact bearing upon the same vital question, to which I am presently to ask your Honor's attention. I have not only proved that this boy had done so, but that in particular, since September last up to the week of the rebellion, he had done it constantly; and yet, in the face of this proof, the boy dared to stand up here and swear boldly, under "medal," or other influences, that he had never once repeated them. His father dared to swear to the same thing, and he swore that for the last six years, ever since his boy was four years old, he had forbidden him to say the Protestant Commandments. I was satisfied that Wall was telling a deliberate falsehood, and I desired to make it apparent. I, therefore, in the cross-examination, put the question which I think your Honor will very well remember, —

"Had he really been obliged to tell his son so?"

"Sure he had, and he and the priest both had forbidden his boy to say them, a thousand times."

"What, a thousand times?"

"Yes, faith, and *more* than that, five thousand times over, he forbid him and *me* both."

"Let me remind you that you are on oath, Mr. Wall, before you repeat that."

"Faith, and it was *over* five thousand times."

"What, you yourself have been forbidden five thousand times by your priest, to say the Ten Commandments?"

"Yes, and indeed I have, and more too."

"Well now, Mr. Wall, please to remember that you are upon oath, and tell the Court of even *one* time when any body asked you to say the Ten Commandments, and when it was necessary even *once* for the priest to forbid you?"

Wall was in difficulty. "Oh! that's no matter," said he.

"Pray tell me, Mr. Wall; name *one* time out of the five thousand."

"Oh! I didn't mind when it was," said he.

"Can't you tell *once* out of all the five thousand?"

A light of inspiration suddenly flashed upon him, and then with a cool impudence, and a ready lie — which he enjoyed as much as any one — which no one could hear without a smile:

"Faith, it was in the *ould counthry* they did it," said he. He evidently thought he could get out of the way of cross-examination, if he could but take refuge in his native bogs. But it was all in vain.

"So it was in old Ireland that you were told five thousand times by your priest that you must not say the Ten Commandments, was it?"

"To be sure it was, your Honor; who ever supposed it was any where else?"

“But who asked you to say the Protestant Commandments there?”

“No body asked me to say them; we weren't bothered with thim things there.”

“But the priest told you five thousand times to be sure and never repeat the Protestant Commandments?”

“To be sure he did; ain't I telling you so?”

“But why should he tell you *not to*, if nobody asked you to say them?”

He was evidently stuck in his own native bog. But it was only for a moment. With the same gusto, with the same enjoyment of the lie that helped him, as he thought, out of his difficulty, he said: “Wasn't it thim botherin' tractmin, to be sure?”

“Oh! the tractmen wished you to say the Protestant Commandments, did they?”

“To be sure they did.”

“What, nothing else but the Commandments?”

“To be sure not.”

“And did they really ask you five thousand times to repeat them?”

“And more, too, for the matther of that.”

“And the priest forbid you all of five thousand times to repeat them?”

“That he did, to be sure.”

Poor Wall, no wonder he emigrated, with five thousand Protestant tractmen at one ear shouting the “Ten Commandments,” and five thousand priests, shaven and shorn, at the other, shouting to him: “Be kilt for your religion, man.” No wonder he was obliged to emigrate. That is a specimen of his evidence, and I am forced to say that may be Catholic honesty, but it is what we should call very like downright Protestant lying.

But it was a darker, sadder scene than that when, in narrating what was told him by his boy, he stated what we all know to be false, deliberately, wickedly false. The boy was called to the stand immediately, — and there they stood, father and son, convicted of falsehood, convicted of crime, — without escape, — without excuse, — without any possibility of evasion, even through the readiness of Irish wit. I am sure that no one who witnessed that scene will ever forget it. It was a dark and fearful commentary on this fetch and pretence of a tender conscience which would be violated by the Lord's Prayer, — which would be sullied and stained by God's holy Commandments.

I turn from that dark scene to ask several questions which, as I said, will throw a flood of light upon the darkness of the case. *Why* was it, that on the Sunday before the boy first refused to say the Commandments, a few parents and only a few boys were gathered in a basement room in that Jesuit Church in Endicott Street? Why was it that this boy *alone* on the next day refused to repeat the Commandments which he for months and years had repeated without a murmur? Was it in order that he might be *whipped*? Was it in order that the Jesuits might raise the cry of religious persecution? — might under that cry arouse public feeling, and drive the Bible from the schools?

If so, they were disappointed. The boy was not whipped; he was simply told that he must obey the general regulation, or he must bring his father there and have the matter explained. He was sent home. That was on Monday. He did not return, as his father swears, until Wednesday. Why was that *delay*? Was there any consultation with the *priest* going on? What followed is very strange. The boy is brought back. The teacher is told with great care — and the injunction is repeated —

that the boy must say those very Commandments. He is told that the father wants *the boy kept at school, and not dismissed* if he refuses to respect the commands; but that he must be punished, and punished severely, if he refuses. How did the father know *beforehand* that the boy would refuse? Why did he wish him *punished severely* if he did? No one can fail to see through all this. We see that this was no accidental whim of one parent or one child — it was a deliberate, a concerted plan, in which all were to join, and this strange conduct of the boy and the priest and his father show that their object was to catch the teachers in their snare and compel him to whip the boy.

Do not forget upon this very point the *significant* evidence that the boys said they intended to refuse to repeat the Commandments, and that they *expected* to be whipped and expelled from the school. The rest of the story is soon told. On the following Sabbath, the same priest instigated nine hundred pupils to break into open rebellion. The boys go to school, they stamp on the floor, and make a disturbance by whistling, loud mutterings, and scraping their feet while the Lord's Prayer is repeated. This Wall boy makes himself the *most forward*; he is the ringleader to whom all the other boys turn. He cannot be sent away, for his father earnestly requested that he should be *kept in school and punished severely*.

I think we begin to see the clouds breaking away a little. I think we understand something about the reason of those mysterious visits after dark to the Jesuit's house, the night before the boy was to be a witness. I think we begin to know now how it came to pass that the father should *know* beforehand that the boy would refuse; why the father was so *anxious*, and why he called the *second* time to repeat that he wanted the boy *kept in school and punished severely*.

I think we understand now the meaning of that significant confession which I extorted from the boy, that he was angry because his hands were bathed in cold water, after he was whipped, because he *wanted* to have them all swollen and looking as bad as he could. I think *now* it is no longer our unanswered question, *why* was that medal given by the Jesuit Wiget, to this boy alone, among all the nine hundred boys?

Can any one doubt *now* that it was the deliberate intention of this Father Wiget and his accomplices, to break up the regulations of the school? That it was their wish and expectation that one or more of the boys should be whipped? Can any one fail now to see the reason of the evasions, the quibbling, the falsehoods, and the pretended forgetfulness of the boy and his father?

This plot was beautifully arranged. This play of the "Saint's Tragedy" was put upon the stage with a great deal of scenic effect; but now that we are fairly got behind the scenes and see the wire-pulling and the scene-shifting, it looks a little absurd — does it not?

I very respectfully beg to leave this part of the case, with the parting advice to Father Wiget, that the next time he gets up a sacred drama for public exhibition in our courts, he would remember there is an American institution called cross-examination, which sometimes operates as a "free pass" behind the scenes. I would also affectionately caution him to waste no more medals on doubtful saints, or on those precocious but profane little martyrs, who are ready to die for their religion in the school-house, but in the streets "Ain't agoin to repate thim damned Yankee prayers." If any one now believes in the purity of conscience of this boy and his father — if any one really believes that they are any thing but the

willing tools and accomplices of more artful men, I have nothing further to say. I have exhibited now the background of the picture, and I think no one will fail now to see or understand who are the real criminals who have usurped the place of accusers.

There are many points that I wished to touch upon which my brief argument does not allow me the opportunity to discuss, but there are two or three which I must not wholly pass by, although I cannot argue them fully.

It is said that all are taxed for the schools, and all should have equal rights in the schools. All are not taxed equally to be sure, but all do have equal rights here. The same regulations apply to Jew and Christian, Protestant and Catholic — the same benefits are given to all, the same burdens are borne by all.

It is idle to say that the Catholics do not have equal rights because we do not give them *supreme* rights; that they do not have equal rights because they cannot, at the will of their priests, compel us to forbid the use of the Bible in our public schools.

This question, however, has been so fully determined by the authority of the case of *Donahoe v. Richards*, in the 38th volume of the Reports of the State of Maine, that it is no longer necessary to argue it.

Your Honor is familiar with that case; it is an authoritative determination of our courts of law that the Bible can be used in schools without infringing upon the liberty of conscience. I cannot but say, however, that I regret that the decision was not placed upon rather higher grounds. It seems to me that we are to meet this question, not upon the ordinary level of the plain and simple rules for ordinary school discipline and the selection of common school books. It is to be met upon the sunny and serene heights of the law, where the grand principles of the science of jurisprudence soar far above the customs and the usages of a busy mercantile world — where the great primeval truths, which are the foundation of government, of society, of morality, alone are taught — where law and religion walk hand in hand.

It is said that the children are compelled by the statute passed in 1852 to attend school. If I have maintained my proposition, that nothing illegal is exacted of the pupils, if their freedom of worshipping God, in their own manner, is not taken away, then the objection is immaterial. It should be noticed, however, that the law is by no means so strict as has been supposed. It was intended to prevent vagrancy and crime. No child has been obliged to attend school who has already learned the studies commonly taught there; no child need attend school who is taught at home; no child need attend school who is too poor; and above all, any child can attend any school of any kind that his parents may select.

And now in closing, there are few words more to be spoken. It may be said, it has been said, that this question is met with too much of earnestness and zeal. I trust that it will never be met otherwise. It is too great and too vital a question to be passed by lightly. I would wish indeed to avoid all that can give offence, all that can cause heartburnings or alienation to the emigrants who we admit as free citizens; but they must remember that they come to *learn* as well as to enjoy our institutions. They must submit to hear very plain speaking on questions so sacred, so vital to our whole country as this.

They know not what they do, or they would never dare to attempt, as they have done, to violate our household gods. This is no question of politics

or for politicians — the people will never intrust it to them. It is a question for every fireside, for every heart. I know that there is not a mother throughout our land, from one ocean to the other, who did not feel a sudden thrill of indignation and horror when she first heard that the Catholics were attempting to drive our Saxon Bible from our free schools. Little do they know the spirit of American liberty who think that this can ever be accomplished. Timid men may be found to consent to submission, — politicians may be found who wish to conciliate foreign voters — thoughtless men, who do not reflect upon the great interest of their country, — but there is a united will and power of the people, which, if this movement is persevered in, they cannot fail to know, — and I dare to say to all, to bishop, and priest, and emigrant, that until liberty ceases to be any thing but a shadow and a name, that Saxon Bible will be the companion of the American freeman — his pillar of cloud by day, his pillar of fire by night.

The Saxon Bible at the cradle of the new born infant, by the death-bed of the gray-haired father; the Saxon Bible on the mother's knee as she teaches her child to join his little hands in prayer, and lift his heart away from earth, away from its hopes and fears, its joys and sorrows, to his Heavenly Father; the Saxon Bible in the statesman's closet, and at the poor man's hearth; the Saxon Bible in the child's free school, and the child's free heart.

Never, *never* can man or priest put asunder those whom God has joined together. Banish the vain delusion forever that our Saxon Bible can be taken away; neither foreign tyrants nor foreign priests will ever have that power. Until America ceases to be a republic, — until the warnings of Washington and the wisdom of Webster are forgotten, — until the sacred traditions of the past have perished, — until the memories of the dead have passed away like a dream, — until religion and freedom are banished from the land, it will remain as the rule and guide of our faith, the great charter of our liberties.

At the close of Mr. DURANT's argument, the Court took a recess of ten minutes. At the expiration of that time, Mr. WEBSTER commenced his argument for the complainant, as follows: —

ARGUMENT OF MR. WEBSTER FOR THE COMPLAINANT.

May it please the Court: — While the counsel for the defence announced in the commencement of his argument his chief purpose and desire to be to speak to the complainant in this case, to his brethren and friends; to the alien, the emigrant, and the exile who have found refuge here from the wrongs and oppressions of the Old World, it will be my aim, as it is my duty, in the humble words I may say in relation to the case at the bar, to address the intelligence and judgment of your Honor upon the facts proven in the examination.

McLaurin F. Cooke, the respondent in this case, has been arrested and brought before this Court charged with having, on Monday, the 14th of the present month, committed an aggravated assault on Thomas J. Wall. To this complaint he has pleaded not guilty, and thus the question, the precise question for your Honor to determine is, did McLaurin F. Cooke, as then and there set forth, unlawfully whip, beat, and wound Thomas J. Wall.

The pertinent facts which surround this case are not many and not com-

plicated. With your Honor's permission, I will relate them as they have been made apparent in the testimony of the witnesses sworn and examined.

The Eliot School is one of the public schools of the City of Boston, supported by a portion of the public revenues of the city. The respondent is a sub-master in that school, and the second person in authority there. Thomas J. Wall was, on Monday, the 14th inst., one of the pupils, but under the immediate instruction of Miss Sophia Shepard, an assistant in the Eliot School. On Monday morning, the 14th inst., the day of the beating and wounding of which we complain, Thomas J. Wall, the beaten and wounded boy — a child of the tender age of ten years — left his father's home for the school house, arriving there some twenty minutes before the school began, and spent the time, before the opening of the exercises of the school, in playing horse with his little brother of eight years of age. When the school was opened, it is not denied that the boy Wall was quietly and promptly in his place. It is not alleged that he had up to that hour and minute been any thing but the gentle and affectionate child he is. The exercises of the school commenced with reading a portion of the Scriptures by the teacher. It is not intimated that Wall was not attentive and respectful, as he was, during that exercise. After reading from the Scriptures, the teacher next directed the Lord's Prayer to be chanted by the scholars. There is no insinuation, direct or indirect, from witness or counsel for the defence, that the boy Wall was not, in every outward appearance, a devout pupil during that manifestation of religious devotion. After singing the Lord's Prayer — that sweetest, dearest, and best of all attempted forms of imploration to our Divine Master — that prayer made doubly sacred by the teaching of a pious mother, and the memory of an indulgent Christian father — that prayer hallowed to me by all the dear memories of a happy home, and which the counsel for the defence say that I, and my associate, are conspiring to banish forever from the schools and firesides of New England, — after chanting that prayer, I repeat, by the children, Miss Shepard directed the boys to take the position of body prescribed for the solemn religious exercise of repeating the Ten Commandments. The pupils all complied. They were directed, Miss Shepard swears, to recite them separately. She commenced by calling on Mason, a boy at the head of the row of seats on her left hand, and at the foot of which sat Wall. Mason repeated the Commandments. So did the boy next to him. The third boy refused. The fourth repeated the Commandments. The fifth, sixth, and seventh refused; the eighth repeated them; and the ninth and last boy in the row, the boy Wall, also refused, as four boys out of eight had done before him. On inquiry of Wall by the teacher, why he refused to repeat the Commandments, Miss Shepard testifies he replied that he did not know them, and thus could not repeat them; that his father had told him not to repeat them; and that the priest had counselled him not to repeat them. There is no suggestion that Wall refused in an impudent or unbecoming tone, as the teacher is careful to swear another boy (Rohan) did, and, with the thought of impudence thus in her mind, is careful to omit to swear of Wall. A large number of boys in that room of the school, and at that time, refused, for similar reason, to join the religious exercise of repeating the Protestant version of the Ten Commandments, as did Wall.

Shortly after this, a Mr. Hazelton, known to be a member of the school committee of the city of Boston for the Eliot School, a gentleman whose face I have not had the pleasure to see in this court room till to-day, notwith-

standing his extensive knowledge of facts, came into the room, and asked those boys who refused to say the Commandments, to stand up, and Miss Shepard testifies that about two thirds of the school did so. He then called the Wall boy, and asked him to read the Commandments out of the Bible. The boy remained silent, and Mr. Hazelton told him he would give him five minutes to think whether he would or not; afterwards said five was too much, and he would give him two minutes. At the expiration of this time he gave the Bible to Wall, but the boy still refused; Mr. Hazelton did nothing with him after that. Immediately thereafter Mr. Cooke, the respondent here, came into the room, and Miss Shepard swears she addressed him by the salutation that "her boys were behaving badly." Mr. Cooke replied that she "*had better turn them over to his rattan.*" No word of conspiracy or rebellion was uttered. After conversation between the parties, not material to the question on trial, the boy Wall was taken, with perfect submission on his part, into Mr. Cooke's room, and was placed upon the platform. When the boys in Mr. Cooke's room, who were then out for recess, returned to their seats, Mr. Cooke asked Wall to read the Ten Commandments; he said he "would if his father was willing." The respondent then, turning around, addressed the scholars, saying, "Here is a boy who refuses to repeat the Ten Commandments, and I will whip him till he yields, if it takes all the forenoon." Whereupon he proceeds to take a rattan stick, quite three feet long, and nearly as large round as a man's little finger, and, with but two brief intermissions, whips, beats, and scourges the naked hands of this child of the tender age of ten years, for the space of thirty minutes, the boy repeatedly protesting in the mean time, that he would read the Ten Commandments out of the Protestant Bible, if his father would allow him. The whipping and scourging were stopped at the end of thirty minutes, by the boy, Wall, consenting to so read the Commandments, and he consented only when a person came into the room, and falsely said that he had just seen the boy's father, and that the latter said he might repeat the Protestant Commandments.

After this immoderate, hard-hearted whipping, lashing, and scourging of the tender flesh of a child of ten years of age, the effects were seen by the respondent, a physician by education, to be so severe and so dangerous that he twice took the child to the sink, and compelled him, for many minutes, to keep his hands in cold water.

The boy was then sent home; a physician, among the most respectable in the city, was called, who prescribed for the bruised, swollen, and bleeding members. The physician has been before us, and states, upon his oath, that the hands of the boy had a swollen and sodden habit; on the inner surface were livid spots where blood was extravasated; the skin broken in places; there was irritability of muscles; that marks upon the hand were distinct and real; that cold water tended to prevent vesication or raising of blisters. He also explained to your Honor, what we all know, and this respondent by his education as a physician knew, how very tender is the skin of a child like Wall.

It is also in evidence, and not disputed, that both the priest and the father, so late as the Sunday before the Monday of the scourging, instructed the boy not to repeat the Protestant form of the Ten Commandments. It is in evidence also, and not denied, that the father on that same Sunday told the boy "for his life not to say them."

Such, may it please the Court, is the simple record of the events of that fatal Monday which have made so many thousands, as they have read the

details of this long trial spread before them by the gentlemen of the press about us, — which have made so many countless thousands of the wise and good to mourn, not only for the torture and suffering of the poor boy; not only for the anguish of the toiling yet affectionate and loving mother who had reared her child to love and adore his Creator God, and to obey “his father and mother;” not only for the boy, the mother, and the father, but for the cruel recklessness of the teacher. The tones of condemnation of this cruel beating, which have come back to us from the public press outside of this city, are alike honorable to the manhood and the affections of those who guide and control those potent engines of public opinion.

Is not the respondent, upon the state of facts before us, guilty of the offence for which he stands arraigned? It is not possible that your Honor can doubt.

The time occupied by the argument of the counsel for the defence, and the closely approaching hours of evening, will constrain me to present the facts and arguments in the case in a more desultory and brief manner than I had intended.

The assault and battery, the whipping and beating, are not denied by the defence. In the trial of the case and in the argument, the attempt by the defence has been to show that the cruel treatment administered to the child was not unlawful. And to that end the first suggestion of the respondent urged upon your Honor is, that Mr. Wall, the father, on Wednesday, the 16th instant, indicated to Mr. Mason a willingness to have his son learn and repeat the Protestant Commandments.

Now in relation to all that, and in complete, abounding refutation of the argument of defendant's counsel on this point, we have the testimony of the boy Thomas. We have evidence of the conspicuous fact, that Thomas told Miss Shepard and Mr. Mason, both of them, on the first Monday, that his father was not willing to have him repeat the Ten Commandments of the spelling-book. Miss Shepard even goes further, because she cannot say but that the boy used the stronger word *learn*, instead of the word *repeat*. Then Miss Shepard testifies that on Wednesday the boy was unwilling to repeat them. Then on the next Monday the boy again tells Miss Shepard that his father is unwilling to have him repeat them. She also swears that the boy, on that day, told Mr. Hazelton, — this ubiquitous Hazelton, heard every where but on the witness stand, because the defence dared not put him on, — he would not say them “on account of his religion.” The boy also told Mr. Mason, that day, in Mr. Cooke's room, that his father was unwilling to have him say the Protestant Commandments. He also repeatedly expressed to Mr. Cooke, during the castigation, his entire willingness to comply with the rules of the school, and the Protestant version, if his father would allow him. So we have the boy, from the first Monday to the last Monday, on every occasion, and in every form, protesting that his father was unwilling to have him say any Commandments but those of the Catholic Church. Thus much for the boy.

Next, we have testimony of the parent, who, as your Honor saw, is a laboring Irishman, of respectable and tidy habit, but, as he himself testified, unable to read or write, and working from day to day, as he could get work, along the shore, but chiefly on T wharf. He has the impulsiveness and the strong emotional nature which belongs to his race. He has more especially the sensitiveness and pride of opinion which mark an uneducated Irishman. His ignorance, his want of acquaintance with the arts of an accomplished cross-examining attorney, could not and did not save him from slight, but entirely immaterial contradictions.

I enjoyed, may it please your Honor, as much, perhaps, as any right-minded person could, the effort of the counsel upon the other side to burlesque, in a written argument, the testimony of Mr. Wall. I thought, however, there was little, either of generosity or true manhood, in the attempt so to ridicule a laboring man for his ignorance and for the dialect of his native country. I thought it in bad taste, to say the least, to sneer in a court of justice at the expressed conscientious convictions of such a man. It is the blessing of my client, amid the dizzy worldly activities of these times, to have a conscience, although the defence may think such a commodity inconvenient, expensive, and unfashionable. He is antiquated enough to believe it his sacred duty to rear up his children in the discipline and correction of the Lord; and to bequeath to them, in the want of all worldly goods, as the most valuable of legacies, good religious impressions, and a sound religious education. This, in his judgment, "is the one thing necessary."

The vigorous, searching, rude cross-examination of the counsel for the defence would, as it has done before, have perplexed stronger and better educated men. But notwithstanding all that, despite what the counsel for the defence have said of his testimony, one great central fact was, and is now, I am sure, apparent to your Honor, which is, that Mr. Wall is an enthusiastic, sincere, devoted, and, if you please, a bigoted Catholic. It also, I venture to say, stands out clearly to your Honor's view, that he would no more knowingly tell his child to repeat the Protestant form of the Ten Commandments, than he would tell the driver of a loaded truck to drive over him. His answer, that God made his Commandments, and man made yours and mine, is most significant. And Mr. Wall swears again and again, and in every form of language, in answer to the annoying, pressing cross-examination of the respondent's counsel, that he told Mason that he didn't want his boy to say the Protestant Commandments, but to be whipped if he would not repeat the Catholic Commandments. And he was careful to take a witness to his interview with Mason, and the witness corroborates his testimony. Your Honor heard the evidence of Gill, a witness not impeached by the testimony or argument of the opposite side, and marked the honesty of the man, and the deliberation and sobriety of his language. He swears that on Wednesday, three weeks, he went with Mr. Wall to Mr. Mason at the Eliot School; Mr. Wall asked Mr. Mason if his boy Thomas was discharged from the school; Mr. Mason said he was; Wall asked, "What for?" Mr. Mason answered, "For not reciting the Ten Commandments;" Wall told Mr. Mason that if the boy refused to say them in his own, Wall's way, to punish him. He also swears that Wall "went away satisfied," and is it not clear to your Honor's mind that such an ultra-zealous, uneducated Catholic as Mr. Wall is, would never have gone away from that school house "satisfied," if he had supposed he had told Mr. Mason to whip and scourge his young child of ten years into saying our Protestant version of the Ten Commandments? Besides, we have the testimony of Mr. Mason himself, who, on cross-examination, said that Mr. Wall told him on Wednesday that his boy should not repeat the Protestant Commandments. The assumption that Wall would have been "satisfied" is monstrous, and so I will not detain the Court upon the point, but to refer for a moment to the use the opposite counsel have in another way made of the testimony of Mr. Mason in this relation.

The counsel for the defence has found it necessary in the course of his argument to apply dishonoring insinuations to all persons opposed to him in

the present case — not only to the Catholic Church as a body, which is not in this case, but to its individual members, and to none more distinctly and offensively than the members of that Society of Jesus established more than three hundred years ago. Whenever he had occasion to speak of that holy brotherhood, he applied to them qualities of craftiness, deception and falsehood. It occurred to me that if I would follow out the cue thus given me by the counsel, I could fasten upon his witness, Mr. Mason, all the vicious qualities which he applies to the Jesuits. Did your Honor ever hear or look upon more craftiness, more adroit management, than was evinced by Mr. Mason in his management of this ignorant Irishman, Wall, when, on Wednesday, he came to inquire why his son was expelled from school! Observe Mr. Mason's opening speech to Wall, as reported by himself upon the witness stand! See how artfully he seeks to allay all the Catholic apprehensions of the father, who can neither read nor write, but who believes it a sin for his boy to learn and repeat our version of the Decalogue! Let me recall to your Honor Mr. Mason's testimony. He says: —

“I told Mr. Wall this was a slight matter for making trouble; that it was a requirement of the school that boys should repeat the Ten Commandments (not mentioning what version) every Monday. He said his boy should not repeat Protestant Commandments. He said something about proselytism. I said, we want your boy to come to school, and grow up to be a loyal, good citizen. I said that with no regard to Commandments; I had never pressed boys to say this rather than another version. The man with him (Gill) then said, ‘Mr. Wall, send your boy to school,’ and shortly after the two left; soon after Mr. Wall came with his boy; he was continually talking about the Commandments; I said, Mr. Wall, let us know what we differ in in regard to those Commandments — you can doubtless tell where the difference lies; at that time a boy was coming up stairs with his books in his hand; he had the spelling-book containing the Commandments; I showed them to Mr. Wall, and asked him what he was willing his boy should say; I read the first Commandment, ‘Thou shalt have no other gods before me,’ and he said, ‘all right;’ I then read the Commandments one by one, and asked him his objections; at the end of every one he said ‘all right;’ I said, if there is any difference it must be very slight, but undoubtedly there is some little difference, and I mentioned one where it says ‘hallowed’ be the Sabbath day, and stated that in the Catholic version it was ‘sanctified.’ Wall said he wanted his boy to say *his own* Commandments. I said the boys had never been compelled to say ‘hallowed’ instead of ‘sanctified.’ I then said to Thomas, go up stairs and obey your teacher, and grow up to be a good man. His father said, that is it.”

Now, could a speech have been devised better adapted to allay all the religious prejudices of the father? It would do honor to the counsel for the defence.

There is another point of view in which I desire to consider this testimony of Mr. Mason. He swears that he read the first Commandment to Mr. Wall in these words, “Thou shalt have no other gods before me.” Now, in the Catholic version that portion of the first Commandment runs, “Thou shalt have no strange gods before me.” Did not Mr. Mason know this difference? He swears in the first instance that he did know the difference, but did not point it out. Then, when he came to what is the second command in our version, but the second portion of the first in the Catholic version, Mr. Mason swears Mr. Wall said “all right.” Now, in our ver

sion, that portion reads, "Thou shalt not bow down to them nor worship them," while in the Douay Bible the words are, "Thou shalt not adore them nor serve them." And yet, with that glaring difference, Mr. Mason testifies that Mr. Wall said "all right." Again, I ask, why did Mr. Mason allow this ignorant man to say "all right," when Mr. Mason knew it was not "all right"? Did he not intend to betray and deceive him? And betraying and deceiving him, did he not give Mr. Wall to understand that his boy was to repeat the Catholic Commandments? There is jesuitism for you, "pure and undefiled!" That is the man who tells an uneducated Catholic that he does not intend or wish to proselyte! Are there words, may it please your Honor, to express your contempt of such conduct? But in the cross-examination, Mr. Mason being pressed to the wall, on this point, by my associate, attempted to extricate himself from the pitiable condition he was in, by swearing that on the Wednesday he had the conversation with Mr. Wall he didn't know any difference between the two versions of the Decalogue! Didn't know any difference! And he a master of one of the public schools of Boston! And this repeating of the Commandments a religious exercise, too, in his opinion! A teacher to instruct a promiscuous class of Protestant and Catholic children in relation to the Ten Commandments, and don't know that there is a difference of phraseology between them! A teacher to object to the Douay Bible and don't know that King James's version of the inspired Word is different in respect to the Decalogue! I blush for Boston, and for Massachusetts, and for our boasted common schools! How pitiable is this, too, in a man who swears, like Mr. Mason, that he objected to the Catholic Commandments being recited, because they would introduce the Catholic religion into the school, and insisted upon the Protestant version because it kept there the Protestant religion. But Mr. Mason swears he did not know the difference of "hallowed" and "sanctified," and told Mr. Wall that he would not punish his boy if he would recite the Commandments with that difference. He then makes oath three several times that Mr. Wall said, he "wanted his son to repeat *his own* Commandments."

But assuming that the counsel for the respondent is exact in his representation of the conversation between Mr. Wall and Mr. Mason, what of it? Mr. Mason admits, as we have seen, that he held out to Mr. Wall inducements to believe that he would make changes in the words of the Commandments, but there is nowhere a *scintilla of proof that Mr. Mason ever told either Miss Shepard or Mr. Cooke of those inducements he had thus held out to the father, and which moved the parent to bring his boy again to the school.* It cannot be denied that Mr. Mason and Mr. Wall had on Wednesday a consultation, an agreement, over the Commandments, which resulted in a yielding of something, no matter now how much, to the religious convictions of the latter — but there is no evidence that Mr. Mason ever mentioned or suggested the agreement — the compromise, if compromise it was, to either Miss Shepard or Mr. Cooke. So that, as far as this case is concerned, the interview is not material or pertinent to the issue. Of what avail to Mr. Wall was the agreement with Mr. Mason, if the latter would not, and did not communicate it to his assistant, Miss Shepard, and his sub-master, Mr. Cooke. Even when Mr. Mason looked in and saw the beating, he neither then, nor at any other time, spoke of the agreement with Mr. Wall. There was not a word about "hallowed" and "sanctified." So, I repeat, that the case, as far as justification of this respondent is concerned, stands as if Mr. Mason and Mr. Wall had not had any conference.

Further than this, there is no evidence that Mr. Mason ever said to Mr. Cooke, or in his hearing or presence, that Mr. Wall desired to have his son punished. There is evidence of what he told the boy upon the platform; but the defence, I was particular to observe, were careful not to inquire, and Mr. Mason did not say that Mr. Cooke was there, and he was not there. So, finally, the evidence before your Honor, and upon which you must decide this case, does not find that Mr. Cooke ever had from Mr. Mason any knowledge of his interview with Mr. Wall, and so the whipping was not given under that authority. And we have Mr. Cooke's confession to the reporter of the *Courier*, which makes all this so plain that he who runs may read. Thus perishes the first structure of the defence!

Having now removed this monument of false assumption, and more false reasoning, which the defendant's counsel so elaborately and ingeniously raised in relation to the conference of Wednesday, between Mr. Mason and Mr. Wall, I am enabled to present to your Honor, next to the narration of the case, my first formal affirmative proposition, which is:

I. That neither the acts of the boy Thomas, nor the circumstances of his acts, nor his well-being, nor the welfare of the school, nor vindication of the authority of the master, sub-master, or assistants of the school required in fact, or justified in law, a resort to any physical force by Mr. Cooke upon the boy.

The boy had refused to repeat the Commandments because his father had directed him in peril of his life to so refuse. Mr. Mason knew that, Mr. Cooke knew that, Sophia Shepard knew that. Mr. Mason had, on the first Monday, consulted Mr. Dyer, the Chairman of the School Committee, on the point of what was to be done with a scholar who thus refused; and Mr. Dyer swears here that he directed *expulsion*. He is emphatic in declaring that he told Mr. Mason to expel them from the school. He took especial care, and with a directness that did credit to his manhood, to repel the idea that he counselled, or even suggested whipping. So the Chairman of the Committee is my first authority in support of my first point.

What in general is the nature of the authority conferred on a teacher in our public schools?

That question is nowhere considered at length either in treatises upon law, or in the volumes of reports of adjudicated cases. The case of *State vs. Pendergrass* (2 Dev. and Battle, 365) and that of *Commonwealth vs. Randall* (4 Gray, 382) do but touch one incident of the main question. Is there not, however, may it please the Court, a distinction to be drawn between private and public schools? Is it not in the former that the authority of the teacher is more certainly a delegation of a portion of parental authority than in the latter? Leaving that, however, and assuming that the authority of the teacher in our public schools is from the State, and that, as in the case at bar, the authority of the parent, as exercised by him, conflicts with that exercised by the teacher, what is to be done? What, in the consideration of an enlarged statesmanship and devotion to the public interests, is the duty of the School Committee or of the Legislature? Is it not a narrow, a superficial, a reckless view of the matter, to say, as did the counsel for the defence, in his opening, that the authority of the parent is to give way, or to be overridden by the authority of the teacher, the School Committee, or the Legislature. Is that the doctrine of the wisdom of this, our Commonwealth of Massachusetts? Is it true, as Mr. Mason said, that the father has nothing to do with the school? The public heart of the people of the United States has within a few months been shocked by the narration of

an event of recent occurrence in Italy. What were the facts in the case of the Mortara boy which so enlisted popular sympathy! They were first that a Jew parent employed a Catholic nurse to attend his Jew child. There was and is a law in the Papal States forbidding a Jew to employ a Christian servant in his family. The law was passed to prevent attempted proselytism by over-zealous domestic servants. The nurse, thus employed contrary to law, either surreptitiously or otherwise, procured the child, so placed in her charge, to be baptized according to the rites of the church. There is also a law, in those States, that a child thus baptized, shall, by the authorities of that State, be removed from the parents and educated as a Christian, and the Mortara boy was, for that purpose, taken away, much to the sorrow of the bereaved mother. That was the Mortara case, and the legal doctrine of the defence justifies and upholds the act of the Papal authorities. Is that to be the accepted public law of this Commonwealth?

My client concedes that the teacher has, under certain circumstances, a right, nowhere conferred by statute, to use physical force to enforce obedience to his lawful commands. What circumstances permit him to strike and beat a scholar, the teacher must first decide for himself, upon peril of having his judgment revised and set aside by competent judicial tribunals. In the present case the defendant should have *temporarily* excluded the boy from the school till the proper authorities were consulted, and if the boy was still unwilling to comply, and his father was unwilling to have him comply, then the School Committee could have exercised the powers of permanently excluding him.

If the parent had not counselled and sustained the conduct of the boy, the case might have been different.

What is the problem now presented by this school trouble to the City of Boston for solution? It is this: we have among us, I suppose, eight thousand Catholic children, who are taught by their parents that the Protestant version of the Ten Commandments is not the version pronounced by inspiration or sanctioned by the church. How are you to educate these children, and so keep them from ignorance and crime, and not to infringe upon their religious convictions, prejudices, if you please? This talk about driving the Bible out of the schools, so enlarged and amplified by the opposing counsel, is an absurdity, and nobody knows it better than himself! The real question is a practical business question. The great purpose of this city is, among other things, to educate these children so that they will grow up to be intelligent, loyal citizens. The whole theory of republicanism reposes on education of the masses. The whole theory of our public law takes start from that. So we have established schools, and what should be their aim? Why, just to teach boys and girls arithmetic, geography, grammar, and those other secular branches, useful and prudent. Perhaps in this Commonwealth we have pushed the matter full far enough in the matter of branches of study. But let that pass. Our schools are maintained, or should be maintained, to teach secular branches. We have provisions elsewhere to instruct the young in those matters which concern another, and we fondly hope, a better world. We have the church, the Sunday school, and better than all, the mother's knee, where the future sovereigns of America are taught to lisp the name of a crucified and Divine Redeemer. We do not send children to public schools to learn biblical doctrines.

But I am told that there is a case of conflicting authority here. Supposing there is? What then? That is nothing new in public affairs.

The great business of legislators and of courts consists in reconciling and carrying on conflicting or concurrent authorities, and making each complete in its sphere. The acts of the government of the City of Boston would, if not regulated by wise laws, conflict with the acts of the sovereignty of the State. So would that of each of the several States of the United States conflict with that of the Federal Government, and more especially in the judicial department. What makes our political institutions superior to those of Europe, but the great fact that we do, better than they, reconcile and adjust the authority of the people and of the government? The true, the wise policy is to uphold the authority both of the parent and of the teacher by compromises, which will look to the welfare of all, no matter what the race or the religious faith.

The counsel for the defence says that five of these boys expelled from the Eliot School have been arrested for theft. That is the strongest argument we can have to urge abolition of this requirement regarding the Ten Commandments. Drive these eight thousand children out of the schools, and you have not only to increase your police, you will have to increase the men who administer justice, you will have to increase your prisons and jails, you will have to increase your taxes. My opponent could not have given me a better argument than he has for the very thing for which I contend, which is, that you give the children of the City of Boston that for which our forefathers left the Old World, crossed the Atlantic, landed upon the beach of Plymouth, peopled these shores with happy towns and smiling villages, pressed on over the Alleghanies, filled up the valley of the Mississippi, passed the Rocky Mountains, and now stand, with New England principles and New England education, upon the shores of the Pacific. That is what has been done by this great policy of religious freedom.

The opposing counsel has, in his argument to-day, not to your Honor, but to "the aliens, the emigrants, and the exiles," as he himself was careful to announce, quoted and dwelt at much length, in an argument of striking felicity of diction, upon the seventh section of the twenty-third chapter of our Revised Statutes, which, he says, regulates the course and class of studies in our schools. It provides that "*piety*, justice, a sacred regard for truth, love to their country, humanity and universal benevolence, sobriety, industry, frugality, chastity, moderation and temperance, should be taught." All these are to be taught, he adds, but *first* of all *piety*.

He gave such emphatic distinction to the word *piety* throughout his elaborate and carefully prepared argument, to which I am compelled to reply without deliberation or preparation, that my able and astute associate who conducted the case for the complainant by putting in testimony, making the opening presentation of the case to your Honor, and examining the witnesses for the defence, was led to consult authorities for the definition of the word *piety*. He has placed on the table a number of dictionaries, from which, with your Honor's permission, I will read.

Webster defines *piety* to be "Reverence of parents or friends, accompanied with affection and devotion to their honor and happiness."

Worcester says it is, "The filial sentiment felt by man to the Father of all; duty to parents and those in superior relation."

Sam Johnson, "Discharge of duty to God; duty to parents or those in superior authority."

And Dr. Jamieson defines it to be, "Pity; compassion; clemency."

Now, if the other side will only have such *piety*, such devotion to parental authority, carried into practical operation in the public schools, neither my client nor any just man like him will ever complain.

But we are told that there was a conspiracy, a rebellion; that this ten years old boy, who fell fainting under the cross-examination of the defence, is the ringleader, the head of it, and that he was whipped to beat out of him that criminal conspiracy and rebellion, and not to make him repeat the Ten Commandments. The counsel for the defence was very persistent about conspiracy during the trial, in order to get in certain testimony not otherwise admissible, but gave it less prominence in his argument to which I am now replying. This conspiracy suggestion is an afterthought, a fetch, a pretence. It is the falsehood which oftentimes, yes, generally follows a mean act. The deed was bad enough, but the lie is worse. The boy, Sir, was not called up by Miss Shepard for conspiracy. He was not called out by the ubiquitous Hazelton for conspiracy. He was not sent into Mr. Cooke's room for conspiracy. He was not scourged by Mr. Cooke for half an hour for conspiracy. Mr. Cooke, in his confession, tells us why he whipped the little fellow. He told the boys at the time that "Here is a boy who wouldn't say the Ten Commandments, and I shall whip him till he yields, if it takes all the forenoon." Mr. Cooke didn't say, "Here's a boy engaged in a criminal rebellion, a conspiracy, and I shall whip him till he represses the rebellion." No, not that! There was no intimation of conspiracy on the first Monday. Mr. Mason, on Wednesday, said to Mr. Wall that his son was expelled for not repeating the Commandments, not for conspiracy. Mr. Gill heard nothing about conspiracy. Mr. Dyer, on Monday, was not consulted about conspiracy. Miss Shepard said nothing about conspiracy. Nobody, till this case came to trial, thought, dreamed or spoke of conspiracy. Your Honor saw how the defence labored to fix up in the school appearance of rebellion, and what a complete break down it was. Mr. Dyer says the boys' necks were stiffened, which indicated rebellious aims. Miss Shepard imagined rebellion in the fact that, when Wall refused to repeat the Decalogue, some of the other boys turned round and looked at him. Mr. Mason saw rebellion in the "flushed face" of Miss Shepard. Now, if the necks of the boys were so stiff, how did they turn to look at Wall? And if a "flushed face" in Miss Shepard is any indication that she snuffs rebellion, it must have been apparent to your Honor, that all the while she was in this Court Room, she was in daily, hourly, momentarily, apprehension of a terrible outbreak here.

If it is insisted that the purpose of this flogging was that of an "example" to prevent the other boys from refusing to repeat the Ten Commandments and the Lord's Prayer, then why was it not done in the presence of those boys who refused to repeat the Ten Commandments? Why was the boy taken away and whipped in another room? If they wanted an "example," if they wanted to inflict vicarious punishment, one boy to be chastised for twenty, it would seem to have been proper to punish him where these other boys could see him. How absurd is all this suggestion about conspiracy! How trifling! How puerile! How unworthy of presentation to a wise Judge! And then a conspiracy to drive the Bible out of this Commonwealth, led by a little boy ten years old, who spends the twenty minutes before school time in playing horse with his little brother of eight years! And that within a moment of time when he was to sound the key note which was to signal the war cry of destruction to our liberties! *Pro pudor!*

Your Honor heard how, on the previous Sunday, the boy cried for fear he should be compelled to say the Commandments on the following Monday; *how there is not one scintilla of evidence that he ever spoke to a single boy to inspire him to disobey the rules of the school*; how he was quiet and

respectful during the reading of the Bible and chanting the Lord's Prayer; how the teacher skipped him by accident, not at first seeing him in his place — an act of sublime disregard of one who was to be the destroyer of liberty; how Wall was not the first, but the fifth, on that fatal Monday, to refuse; how he did not answer impudently, as Rohan did; how he protested during the cruel beating that he would repeat the Commandments if his parent would allow! Your Honor heard and made note of that, and I need not consume the flying hours of twilight to dwell upon it. They might as well contend that they whipped this child for the breaking of the Atlantic Cable as for either conspiracy or rebellion.

Therefore, I submit that your Honor must rule that no circumstances existed to warrant a resort by the teacher to any physical force.

II. Assuming, what we deny, that the circumstances did justify a resort by Mr. Cooke to physical force, then the force used was unlawful, because immoderate, excessive and cruel, and therefore the respondent is guilty, and should be punished.

I need not enlarge on this proposition. Your Honor heard the testimony of the two boys, O'Hara and McLaughlin, for the complainant, as to duration of whipping, and the evidence of Dr. Salter. Your Honor saw the hands of the boy, still marked by the blows of the respondent, inflicted as we charge. You saw the rattan with which the scourging was done, and observed how it was nearly as long as the boy Wall is high. You observed how the defence failed utterly to show that the time was less than half an hour. You heard the confession of the respondent to the *Courier* reporter that the punishment was severe. You remember how the little hands were put twice in cold water to subdue inflammation, prevent swelling and vesication, and to wash away blood. I thought when I heard that testimony, that I could see how the respondent was so earnest to make attempt to remove the marks of his cruelty. But all the waters of the green ocean could have availed nothing. The damning spots would not away.

It is said by the defence that other boys have had their hands put in water for like purposes by Mr. Cooke. If that be so, it is clearly apparent that it is high time the whipping by the respondent should be stopped. And then there is no boy who swears that he ever had his hand in water, for that reason, twice, which shows that this punishment of Wall was excessive in the estimation of the respondent, who is a physician by education. And besides, Mr. Cooke in his confession explains the purpose of the bathing.

I do not propose to dwell upon it further, because I am conscious that I am addressing an intelligent Court, that has heard all the facts of the case, except to suggest, that under no circumstances, in my opinion, is it justifiable for a teacher to whip so young a child with a rattan nearly three feet long on the bare hand. The hand is too important a member to be endangered in that way. Under the practice in England it never happens that the scholar is punished upon the naked hand — other parts of the person there are, where punishment may be inflicted.

In my view, and in consideration that this teacher is an educated physician, it makes no difference whether he put the hands of the boy in water before or after the swelling; because, if he put them in before, it shows that he knew that the punishment had been so severe that the hands would swell; and if he put them in afterwards, it shows that the punishment was so bad that he did not wish the boy to go out of the school house in that condition. But the counsel say that the boy did not want his hands put in water, for he wanted to show them! Is not that very natural for a boy

whipped as he was? Would he not very much desire to show to his mother and father how he had been treated by an imprudent teacher? Is not that another of the hundred other facts which make apparent the honesty of the boy?

As for myself, may it please the Court, if it is to be decided that a teacher may whip a boy as this boy was whipped, and that that is moderate punishment, rather than undertake to teach a school in the Commonwealth of Massachusetts, and to whip a little boy ten years old, with a rattan stick, for thirty minutes, to make him say the Decalogue, I would beg my bread in narrow streets. I have no respect — I will not say for the humanity — but I have no respect for the consideration of any man who can tell a little fellow to hold out his hand, and then pound it half an hour. If I were a teacher, and any committee told me that that was a part of my duty, I would throw up the situation, and say that so long as I had humanity and manhood I would never consent to inflict that torture upon a child.

Again, may it please your Honor, has it not occurred to you that if this boy had been the child of some person less humble than this complainant; if he had been your son, — if your Honor will pardon the personality of the appeal, — and he had stated, as did this boy, that his father did not desire him to repeat the Commandments, that the punishment would have been postponed for conference with you? But no time, no delay, no respite, could be afforded to this humble laboring man! There was no self-willed personal disobedience by the boy Wall. He was willing to repeat either version if his father would say so. If any one was morally culpable, it was the father and priest, and they should have been whipped, and perhaps Mason, Cooke, and Company would have better success in beating out their heresies than our forefathers had with the Quakers. Let me suppose a case in illustration of my line of thought. Suppose the manufacturing interests of Lawrence, in this Commonwealth, were in full prosperity; suppose that fact gave the municipal government to citizens belonging to the Catholic Church, and then that the School Committees were Catholics, and the teachers of the public schools. Suppose then that those Catholic authorities should recommend that the pupils learn the Ten Commandments and repeat them once a week, and the Ten Commandments should be construed to mean the Catholic version, and a pupil, a son of a Protestant clergyman, refused, by command of his parent, to learn and repeat the Catholic version, and that thereupon, without inquiry or with it, the teacher should beat that boy thirty minutes! would there not be a popular indignation in this State that would shake the Commonwealth from end to end.

III. If your Honor decides, — what is not to be supposed, — that this punishment is not immoderate and cruel, then, we say, even assuming that it is not, that still the defendant is guilty, because, in inflicting it, he acted not for the welfare of the child, but was inspired by malice, and thus beat the boy to gratify bad motives, and so his purpose being an unlawful one, no matter whether the whipping was moderate or immoderate.

The opposing counsel in his argument has laid much emphasis upon section five, chapter eight, of the rules of "the School Committee, and regulations of public schools of the City of Boston," and characterizes it as passed in execution of the statute of 1855, which requires the School Committee of each town and city in this Commonwealth to require daily reading of the Bible in the common English version. The section of School Committee regulations is as follows: —

“The morning exercises of all the schools shall commence with reading a portion of Scripture, in each room, by the teacher, and the Board RECOMMEND that the reading be followed with the Lord’s Prayer, repeated by the teacher and children in concert, and that the afternoon session close with appropriate singing; and also, that the pupils learn the Ten Commandments, and repeat them once a week.”

Now, your Honor will perceive that this regulation is drawn with care and circumspection. It was inspired or drawn, I venture to say, by a wise man and a good man — by a man whose purpose and hope was to reconcile differences and enable all creeds to meet in our public schools as around a common altar of education. Note its phraseology. It is *directory* only in the point commanded by the Legislature; it is advisory in all else. It evidently intends to give teachers an opportunity to exercise discretion for the good of all; to adapt their requirements to religious prejudices of child and parent. If Miss Shepard had acted with the discretion of a just woman, not inflamed by sectarian wrath as she is, and had not made a *rule*, to be enforced by whipping, out of what is a mere recommendation, there would not have been trouble to this day in the Eliot School. There was no difficulty about the reading of the Bible, and is none now. There was no difficulty about Old Hundred, and is none now. Miss Shepard may chant that old war song of the Puritans, if she pleases, till every wall of the school house is vocal with its notes! The trouble, and the only trouble, is about the Decalogue.

From this let me ask your Honor’s attention to my first proposition in regard to those recommendations of the School Committee. We say, —

I. That the recommendation of the School Committee, that the pupils learn the Ten Commandments in the Protestant version, and repeat them once a week, when interpreted as they are by the teachers of the Eliot School, to be enforced at all events, even by whipping and beating a pupil who refuses to learn and repeat them, by reason of the religious convictions of himself or his parents, is unjust, intolerant, unlawful, and void.

That this reciting of the Commandments is done as a religious exercise, no one doubts. The Committee intended it as such. Its place in the order of proceedings of the school makes that clear, as does the position required of pupils at the time.

Besides, Mr. Mason swore directly to that point, when he said that he excluded the Catholic version of the Decalogue to keep out the Catholic religion. Taking this as a premise, let me invite attention to the Bill of Rights, the Constitution, the statutes of this Commonwealth.

The first article of the Bill of Rights declares that “All men are born free and equal, have certain natural, essential, and unalienable rights.”

“It is the right, as well as the duty, of all men in society publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and seasons most agreeable to the dictates of his own conscience; or for his religious professions or sentiments, provided he doth not disturb the public peace, or obstruct others in their religious worship.” — *Massachusetts Declaration of Rights. Art. II.*

“All religious sects and denominations demeaning themselves peaceably and as good citizens of this Commonwealth shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.” — *Amendments to the Constitution of Massachusetts. Art. II.*

“All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to and expended for no other schools than those which are conducted according to law, under the order and superintendence of the

authorities of the town or city in which the money is to be expended; and such money shall never be appropriated to any religious sect for the maintenance, exclusively, of its own schools." — *Const. Mass., 18th Art. Amend.*

"The School Committee shall never direct to be purchased or used, in any of the town schools, any school books which are calculated to favor the tenets of any particular sect of Christians." — *Rev. St., ch. 23, sec. 23.*

"Sec. 1. In determining the qualification of scholars to be admitted into any public school, or any district school in this Commonwealth, no distinction shall be made on account of the race, color, or RELIGIOUS OPINIONS of the applicant or scholar."

"Sec. 11. Any child, who, on account of his race, color, or RELIGIOUS OPINIONS, shall be excluded from any public or district school in this Commonwealth, for admission to which he may be otherwise qualified, shall recover damages therefor, in an action of tort, to be brought in the name of said child by guardian or next friend, and in Court of competent jurisdiction, to try the same, against the city or town by which the said school is supported." — *Stat. 1855, ch. 256.*

I do not propose to enlarge upon these provisions of our fundamental law. My associate (Mr. Wilder Dwight) has done it in a manner so clear, so able, so statesmanlike, that I am sure it rests in your Honor's memory.

I only say now that no Legislature, no School Committee, no master, and no sub-master has, under the Constitution of the Commonwealth of Massachusetts, right to require of a pupil in a public school to learn and repeat the Ten Commandments as part of a religious exercise or service, providing such learning and repeating offends the religious opinions of the pupil.

If they do, *all the boys together*, or any one of them alone, has a constitutional right to refuse, and the teacher or the School Committee who strikes upon him a blow for refusing is guilty of criminal assault. And that point, if sound, is conclusive of this whole case.

The other side have referred your Honor to the case of *Donahoe v. Richards*, (38 Maine, 379.) In relation to that case, I submit first, that this a case of expulsion by the Committee, and not of whipping by a teacher. Next, as to all those general remarks in the opinion of the Court upon which my brother on the other side relies, they each and every one repel the very conclusion he would draw from the case. Let me call attention to the following from page 398: —

"The Common Schools are not for the purpose of instruction in the theological doctrines of any religion or of any sect. The State regards no sect as superior to any other, and no theological views as peculiarly entitled to precedence. It is no part of the duty of the instructor to give a theological instruction; and if the peculiar tenets of any particular sect were so taught, it would furnish a well-grounded cause of complaint on the part of those who entertained different or opposing religious sentiments.

"But the instruction here given is not, in fact, and is not alleged to have been, in articles of faith. No theological doctrines were taught. The creed of no sect was affirmed or denied. The truth or falsehood of the book in which the scholars were required to read, was not asserted. No interference, by way of instruction, with the views of the scholars, whether derived from parental or sacerdotal authority, is shown.

"The Bible was used merely as a book in which instruction in reading was given. But reading the Bible is no more an interference with religious belief, than would reading the mythology of Greece or Rome be regarded as interfering with religious belief, or an affirming of the pagan creeds. A chapter in the Koran might be read, yet it would not be an affirmation of the truth of Mahomedanism, or an interference with religious faith. The Bible was used merely as a reading book, and for the information contained in it, as the Koran might be, and not for religious instruction; if suitable for that, it was suitable for the purpose for which it was selected. No one was required to believe or be punished for disbelief, either in its inspiration or want of inspiration — in the fidelity of the translation or its inaccuracy — or in any set of doctrines deducible therefrom."

How different is this case when Mason swears that he excluded Catholic and insisted upon Protestant Commandments, to keep out or keep in different religious faiths!

The Court will observe how the word "read" runs through this Maine case; how it turned upon the point that the Bible was used merely as a *reading* book. Observe on page 404 —

"It would be a novel doctrine that learning to read out of one book rather than another, or out of one translation rather than another, of a book conceded to be proper, was a legislative preference of one sect to another, when all that is alleged is, that the art of reading only was taught, and that without the slightest indication of or instruction in theological doctrines."

Again, on page 408, the Court say —

"The real inquiry is, whether any book opposed to the real or asserted conscientious views of a scholar can be legally directed to be used as a school book, in which such scholar can be required to read."

II. Such a recommendation which compels a Catholic child to learn and repeat Protestant commandments as a religious exercise and duty, is a contradiction and falsehood in morals, and absurd upon its face.

We have a commandment reading, "Thou shalt not take the name of the Lord thy God in vain." And what is compelling a child to repeat the Ten Commandments as a religious exercise when he believes it a sin so to do, and thus makes the repetition a mere lip service, but taking the name of God in vain?

Again, you require a child to say in one breath, "Honor thy father and thy mother, that their days may be long in the land which the Lord thy God giveth thee." And then when the child refuses to repeat the Commandments because his father has forbidden him to repeat them, you say, "What has your father got to do with this school?" You teach him one moment to obey his parents, and the next whip him thirty minutes with a rattan because he will not disobey them! *O the folly and the crime of it!*

III. The compelling of boys thus to repeat the Ten Commandments is, when taken in connection with another statute in the Commonwealth, a hardship which no religious government could ever tolerate. I desire to call attention in vindication of my third point to chapter 240 of Supplement to Revised Statutes. It is as follows:—

"SEC. 1. Every person who shall have any child under his control, between the ages of eight and fourteen years, shall send such child to some public school within the town or city in which he resides, during at least twelve weeks, if the public schools within such town or city shall be so long kept, in each and every year during which such child shall be under his control; six weeks of which shall be consecutive.

"SEC. 2. Every person who shall violate the provisions of the first section of this act shall forfeit, to the use of such town or city, a sum not exceeding twenty dollars, to be recovered by complaint or indictment.

"SEC. 3. It shall be the duty of the School Committee in the several towns or cities to inquire into all cases of violation of the first section of this act, and to ascertain of the persons violating the same the reasons, if any, for such violation, and they shall report such cases, together with such reasons, if any, to the town or city in their annual report; but they shall not report any cases such as are provided for by the fourth section of this act.

"SEC. 4. If, upon inquiry by the School Committee, it shall appear, or if upon the trial of any complaint or indictment under this act it shall appear, that such child has attended some school not in the town or city in which he resides, for the time required by this act, or has been otherwise furnished with the means of education for a like period of time, or has already acquired those branches of learning which are taught in common schools, or if it shall appear that his bodily or mental condition has been

such as to prevent his attendance at school, or his acquisition of learning for such a period of time, or that the person having the control of such child is not able, by reason of poverty, to send such child to school, or to furnish him with the means of education, then such person shall be held not to have violated the provisions of this act.

“SEC. 5. It shall be the duty of the town or city to prosecute all violations of this act.”

So if parents do not send their children to school there is authority by this, and a subsequent statute, to send them to Deer Island, or to any other place of confinement. Now, with that compulsion upon a parent to send a child to school, there is another regulation providing that if a child like Wall goes to school, and obeys his father, he shall be whipped thirty minutes. If he does not go to school he goes to Deer Island. So a Catholic boy has Deer Island on one side, and a rattaning on the other.

The counsel who has argued this case so elaborately for the defence, came late in the course of his remarks to consider the Ten Commandments, and to lay great stress upon the assumed triviality of the suggestion that Catholics could have conscientious convictions in that relation. Now, may it please your Honor, this matter of conscience is not a matter for philosophers or for astute lawyers to judge. Conscientious convictions inhere alike to educated and to uneducated people. And the more uneducated the person, the still more dangerous and more likely to be wrong is his conscience. For there is, of all things on earth, nothing so bad, nothing so deleterious to public or private welfare, as an uneducated conscience. The counsel suggests that there is no material difference between the Protestant version of the Ten Commandments and the Catholic version. Now, I venture to reply that there is a substantial difference, and to state what I understand to be the difficulties which Catholic priests and Catholic parents have with the Protestant form of the Ten Commandments.

First. In reciting the Commandments they mean to recite them as the word of God. Now, Catholics do not recognize the common English version, King James's version, of the Bible as the word of God. They recognize no version of the Scriptures as the word of God, unless certain, by the approbation and authority of the Church, that the version is faithful; therefore they cannot, they say, conscientiously recite the Ten Commandments in the English Protestant version.

Second. It is an article of faith decreed by various councils, e. g., of Nicæa and Trent, that Catholics may venerate the image of Christ and of the Saints, kiss them, uncover their heads and prostrate themselves before them, referring these actions to Christ and the Saints themselves, whose prototypes they consider the images to be. (Council of Trent, Sess. XXV.) Now, the phraseology of the Protestant version obviously conveys the idea forbidding the veneration of images: “Thou shalt not BOW DOWN before them.” Catholics believe they may BOW DOWN, PROSTRATE themselves before them, but they cannot adore them. Therefore they must object to the Protestant version, as obviously contrary to their faith.

Third. Catholics object to the division of the first Commandment, as it is contained in the Catholic Catechism, into a first and second Commandment, as it is made in the Protestant Ten Commandments, as strengthening the idea of forbidding the veneration of images. “Thou shalt not make graven images unto thyself,” means either in order to adore them, or in order to venerate them. Now, if it only means that they should not be ADORED, then it is a mere explanation of “Thou shalt have no strange gods before me,” and forms no separate Commandment. Therefore the

Protestant says the Catholic dividing it into a separate Commandment, wants to convey the idea that also the VENERATION of images is forbidden.

In the rest of the Commandments there is perhaps no important difference between the Protestant and Catholic version.

This division of the Protestant tenth Commandment into the ninth and tenth, made by the Catholics, is natural, as the objects forbidden in the ninth and tenth are different—the ninth referring to the sixth, and the tenth to the seventh of the Catholics.

I do not know how it impressed your Honor, but to me it was an unpleasant spectacle to see the opposite counsel endeavor to ridicule the convictions of so large a body of Christians as those bound together by that Church which, Macaulay tells us, has seen the beginning of all governments, and may see the end; an organization with a faith its members believe to have been once delivered to the saints, and with a worship consecrated by a long line of saints and martyrs; a religion that is a reality, and is making its voice heard in every part of the habitable globe, and working out its destinies in every phase of outward manifestation. I would not have arraigned for triviality the religious convictions of the members of that church. This question of what shall be or what shall not be a matter of conscientious conviction, may it please your Honor, is a question which, in this country of all others, every man must and will decide for himself. Indeed, when we draw back the folded curtains of Time, and look upon ages long gone by, and come thence, from point to point, to our own day, we see that it is those questions of conscience, which in our judgment are the most trifling, which have established, and then convulsed and upturned empires.

Take for example the reformation in England, and we have a striking example that it is often the symbol of a doctrine itself, upon which the controversy turns, and which is made its critical point; just as in this case the repeating the Ten Commandments is made the symbol of a great principle of religious faith. The Ten Commandments are not doctrines in the opinions of Mr. Mason; they are symbols of doctrines. Now, the assumed great truths which underlaid the separation of the Church of England from the Catholic Church had doubtless for years been seething in the brain of the reformers; but how strange, how apparently trifling was the issue which the great movement at last presented! I remember to have read in a very interesting book entitled the "Chief of the Pilgrims," a life of Brewster, by Steele, and to have been struck by a statement that in the year 1562, or fourth of Elizabeth's reign, the matter of separation was regularly and ably discussed in the National Convention of Clergy, and that these were the points debated and insisted on by the reformers:—

I. The discontinuance of holidays except Sundays and the feasts that related to Christ.

II. That the minister in officiating should always turn his face to his people.

III. That the ceremony of the cross be omitted in baptism.

IV. That kneeling at communion be left at the discretion of the ordinary.

V. That the minister in ministering wear only the surplice.

VI. That the use of organs be removed.

Now, could any thing be more trifling, in our opinion, than these six points? What if the minister did now and then get his back to the audience, what of it? And of what consequence to the reformers could have

been in principle the cross in baptism? Do we not now insist upon the administration of water, in some way, in that ceremony, and is not that a form and symbol as bad as the cross? And then the kneeling and the surplice, and last of all the organs! Why, if I would allow myself to devote half the effort to a burlesque of those points which the opposite counsel has to the different versions of the Ten Commandments, I could make the contrast very marked. The point of kneeling affords a good illustration of how far a symbol may be a manifestation of religious conviction. The Anglican Church objects to the Catholic Church because it allows prostration before images. The Low Episcopal Church objects to the High Church because its members bow at the name of Jesus in the Creed. The rigid Puritan objects because the Low Church Episcopalian kneels in prayer. The Quaker thinks it proper to worship with his hat on his head. Thus we see how far we Protestants carry these mere symbolic representations. Observe, too, how in the early days of the Puritans, they persistently expelled the word "church" from use as a word to describe a place of worship, and adopted "meeting house;" how the Quaker clings to "thee" and "thou."

If you run through the history of the world you will find that nearly all the martyrdoms have been upon these trivial matters. We have had within a short time a most significant example. The adoption by the English of the Minie rifle in India compelled soldiers to bite the end of the cartridge in loading. The Hindoo troops objected because they said the cartridges were greased with fat from beef, and the beef was with them a sacred animal; and so they revolted. The Mahomedans objected because they said their cartridges were greased with pork; and so they revolted. And that matter of greased cartridges nearly cost the English government the loss of one hundred and fifty millions of subjects in the East.

So there is an instance of a regiment of troops revolting in China because required to wear a stock about their necks made of leather tanned from the skin of oxen. They were Hindoos, and the animals were sacred to them.

Or to go back a little farther, to a case bearing exactly upon this Catholic point. I remember to have read that when, many, very many years ago, Jesuit missionaries were in Japan, and the authorities of Japan had directed that they be expelled from the country or burned, and had placed the fagots, and when out in the harbor was the ship which might carry these Jesuits away in safety, and the authorities said to them, "There is the ship, and there is the cross; you must either go to the ship stepping upon that cross, or go to the fagots," — every one of them went to the fagots and was consumed by them.

All the martyrdoms of the time of Henry VIII. and Mary were for what may appear, to those of us not interested especially, to be trivial things. So all those of the Roman empire. And now, when these things, so slight to us, have taken such hold of the hearts and consciences of men as to change the destinies of empires, shall not we of this Commonwealth, at least, look with respect and consideration upon what is avowed here in relation to the Protestant and Catholic versions of the Decalogue? Is it not a case for mutual sacrifice and mutual gain? Is not the public good to be preferred over our own prejudices, and by our own — I mean the prejudices both of Catholic and Protestant.

The counsel upon the other side has endeavored to have it understood

that the boy Wall had said that he would not say the "damned Yankee prayers." The defence put a witness upon the stand, brought here by Mr. Cooke, — and the only wonder is, that holding the terror of the rattan over their heads, he had not suborned the whole forty of his school here, — who swears that he was playing marbles in the street, that his marble ran into a crowd of boys, that he ran along to pick it up, and while he was there he heard some boy say that he would not say their "damned Yankee prayers," and he thinks it was Wall, but cannot say certainly upon that point.

I have now passed over hurriedly the main facts in this case, and here would have been glad to leave it to the decision of the Court.

I had hoped that this case at the bar, which is but a complaint of assault and battery, under circumstances, to be sure, of aggravation, might have been adjudged without manifestation of sectarian contention. I regret exceedingly that the defendant and his counsel have deemed it necessary for their protection to evoke the aid of so dangerous an element in public affairs. The complainant and his counsel have, from the first, striven to keep down and out of the case every thing which pointed to a strife of race or of religion. Thus it was that my colleague, on the first day, resisted the motion of the opposite side for continuance, but asked that the question might at once be speedily and justly disposed of, and in that manner popular emotion allayed. The defendant has, by his mode of defence, given to this case an aspect of religious controversy, most unfortunate, I fear, for the public welfare of Boston, and more especially for the interests of the public schools of Boston. To him and his counsel, then, belongs the responsibility — whether it be honor or dishonor — of the consequences which may ensue.

I wish to say, once for all, that it was the determination and purpose of my associate and myself, when this case commenced, to treat it purely as a case of assault and battery. We supposed it would be a case which, like other cases before your Honor, would be disposed of justly, but speedily. Mr. Wall desired that the respondent should be brought up, and dealt with according to law. But so far did I suppose that this case was to be disposed of in a short time, that on the first day of the trial only my associate appeared for the complainant. But when the defence claimed that it was a case involving civil and religious liberty, I felt that it was important to meet it, and place it properly before your Honor. It would have been my wish to have left out altogether this sectarian emotion. So far was that the case, that it was agreed by my brother and myself not to open the case, but to put on the boy Wall, the other two boys, and the physician, and there to rest. But when we had done that, the opposing counsel rose, and, in a tone of complaint, said, "We do not know upon what ground the prosecution intends to stand." My associate then explained to your Honor the points of law upon which we relied, and in words not one of which was directed to the inflammation of sectarian emotion.

It was not consonant with my own feelings, nor those of my associate, to go into a discussion of the constitutional questions raised — chiefly because we did not feel ourselves competent to them — by reason of not having the time to devote to the long research which a proper discussion of those large questions of civil and religious liberty would require. If any evil consequences, then, grow out of this case, I repeat to your Honor, as a matter of good faith to the Court, that they will not spring from the conduct, either of Wall, senior, the boy Wall, his counsel, or furthermore, from the conduct of this priest, Father Wiget himself.

Let me suppose a case. Father Wiget had in his church, on that Sunday, 900 scholars. Suppose that 500 of those scholars went to another school, and that school happened to be the Mayhew School. Suppose that 400 of these scholars went to the Eliot School. Suppose that in that Mayhew School, where there are 500 boys who listened to the same teaching from Father Wiget, that the boy Wall did, there has been nothing but peace and harmony from the beginning. May I be allowed to state to your Honor, as a matter of fact, that this is the precise case here?

Of the 900 boys who heard Father Wiget's teaching, 500 are in the Mayhew School, and there has not been one act of disturbance or disobedience in that school. Does the disturbance come there from "this dark and dangerous power"? There is no dark and dangerous power there, but there is a great deal of indiscretion in the teachers of the Eliot School. The master and assistants of the Mayhew School, as I happen to know, do not taunt the boys there about their religion. There is not a "schoolmarm" there, who, when a Catholic boy has repeated the first verse of the Protestant version of the Ten Commandments, turns round and says to him, "Does it hurt you?" What was the purpose of Miss Shepard when she said that to the boy Wall? Did she intend to inquire about his physical system, his vocal organs? No; she intended to insult him, and insult his religion. That was the purpose she had, and there you see the intent cropping out, which has made this whole difficulty.

My brother has had a great deal to say about Irishmen. He has had a great deal to say about people who came from Europe. He has had a great deal to say about the glories and imperial destinies of our own country. He has told us what these people receive when they come to this land. They do receive much; but when they came here they had reason to think they came to a land of civil and religious liberty. There is a book, written some years ago, by Mr. Joseph Kay, an Englishman and a Protestant, sent to Western Europe, as travelling Bachelor of Cambridge, to make examination of the condition of the poorer classes, and of the schools in Catholic countries, in which he makes this significant report: that, taking all the countries of Europe, and considering the number of the school houses to the inhabitants, the number of the teachers to the inhabitants, and the advantages of education, Catholic France is first, while Protestant England is last on the list. Then he goes on and makes it apparent that in Catholic Austria Protestants have entire freedom of religious education. It is a conspicuous fact in public history, about which my brother could have known if he had spent a little time in examining the question, that in Catholic Austria there are schools where Protestants are allowed to have their own Protestant clergymen to teach their children in religious exercises. We have announced by the last steamer, even, this fact: that the Emperor of Austria, the sovereign of the most ultra Catholic country of all Europe, has presented the Protestants of the country a lot of land upon which to build a Protestant school house. While here, in the Protestant Commonwealth of Massachusetts, we not only will not give Catholics a piece of ground to build a school house upon, but we will not let them respect and reverence their own religion in the school houses which they help to build.

The counsel for the defence, in his elaborate argument, saw fit to enlarge upon the advantages to this Commonwealth, and to every Christian community, of the Bible. I take it that nobody denies that, and that nobody thinks of denying it. He went on to enlarge upon the Protestant Bible,

and to compare it with the Douay version of the Bible. He averred that there was the purpose, not to introduce the Douay Bible into the schools of the Commonwealth, but to drive out every Bible. I wish to answer the suggestion, so far as I am concerned, by a word which is expressed in a monosyllable.

There is intimation in his argument that the Catholic Church had no belief in the Bible; that they do not want the Bible preserved. Where, may it please your Honor, where did we get our Protestant Bible? Where did we get this King James version of the Bible? Where would have been the sacred manuscripts from which it is made, if it had not been for the Roman Catholic Church? Where would have been those priceless treasures, had it not been for the pious monks, who spent years in copying them for preservation? Before the Protestant Bible was translated or brought into circulation, there were hundreds of versions of the Bible already in existence.

Cuvier, the great naturalist, says that whatever else may be said of the Catholic Church, it preserved the Christian Scriptures during the darkness of the middle ages. My brother talks as though there was a conspiracy among the Catholics to drive the Bible away, when their missal, their whole service, are made up from the Bible. They would have no worship were it not for that Bible. If the counsel will go to any of the Catholic bookstores and make inquiry, he will find that the Catholic booksellers publish and sell in the United States, in proportion to the population of Catholics and Protestants, as many Bibles as Protestant booksellers. And yet we are told there is a dark power endeavoring to drive the Bible from the Commonwealth! The Bible is the foundation of that church. I happen to have in my hand an article in "The Christian Examiner," an ultra Protestant magazine, written by Mr. George Livermore of this city, a Protestant by birth and education, who has devoted much time to the subject of different editions of the Bible, and who makes abounding refutation of the absurd assumptions of the counsel upon the other side. It is unjust to say that the Catholic Church does not recognize and protect the Bible, that holy and sublime word of God, over which saints have meditated in cells, around which her scholars have wreathed commentaries of priceless value, and from which virgins and monks have chanted in the breathless hours of midnight; the Bible, that gem of matchless price, reflecting the might, the sweetness, the anger, the love of God; the Bible, that noblest, greatest, dearest of all books!

My brother, in the course of his argument, had a great deal to say, commencing with George Washington and coming down to the day of the Know-nothing organization—had a great deal to say about opinions of some of the great men of the Republic who have passed the narrow gateway which separates the known from the unknown. He laid much stress upon the undying words of the great statesman who sleeps by the side of the Pilgrims upon the sounding shores of Marshfield.

If the counsel intended to adduce his great name in this case, by way of any rebuke to the ground which we have taken, it was not only ill-judged, but illogical. I can only say that every word I ever read that Mr. Webster ever uttered in relation to the Bible, I would have written in letters of living light, all over the Commonwealth of Massachusetts, and I am ready to assent to them, line by line. A suggestion is made in connection with the Girard Will case, and although Mr. Webster uttered those sentiments quoted by my brother, he lost his case. The Supreme Court decided the

case against him, and perhaps his remarks were not pertinent to the case before the Court. So the remarks of the gentleman here are not pertinent. The question is this simple question, whether the respondent did unlawfully beat the boy Wall.

May it please your Honor, I love the strong, noble, manly, generous faith of my Protestant fathers, and by reason of my confidence in its strength I am not afraid of that other faith of which mine is but an offshoot, and which starts from the same foundation stone: I am not afraid to see in our busy streets, nor upon the boundless domain of the United States beyond the Mississippi, those Catholic churches rise, which bear upon the topmost spires and towers that symbol of a living God and of an undying faith. If my brother will but pass into that Indian country, which has been the field of the Jesuits' labors, untrodden by the foot of other white men, unvisited by Protestant missionaries, he will find there among the Indians the little chapel with the cross: he will find the impressive ceremonies of the Catholic Church: he will find that intelligent, educated members of the Society of Jesus have been distributing this blessed Bible of inspiration, and laboring there for years to convert the red men to the Gospel of Christ. If I had time I would like to discuss the subject of how successful have been the care and culture of the Jesuits over the Indians.

The counsel for the defence alludes to Father Wiget as a foreigner — a man unaccustomed to republican institutions. Now, it is proper to say that this reverend father in the church has been in the United States these many years, and that he comes from a canton in Switzerland, which has been a republic for five hundred years.

When the counsel makes so dishonoring remarks about the Jesuits and the dark power at St. Mary's, does he happen to know who is the head of that parish of St. Mary's; that venerable, pious, painstaking man, one of the most estimable that it has ever been my fortune to meet; who has attested his devotion to the United States in every manner in which patriotism can be put to the test. When my brother arraigns that man, does he know that Father McElroy, when our arms were contending upon a foreign field, left his church and volunteered as a humble minister of the Gospel to follow our victorious troops, and bestow upon them the blessings of that Bible which my brother now says the Catholics would drive out of Massachusetts. Sir, is this Father McElroy, who so followed the flag of his country, with the Bible in one hand and the cross in the other, to be brought into a court room and arraigned for want of patriotism and fealty to our Great Republic?

In conclusion, I desire to say that we may have proven the assault and battery, by Cooke, beyond possibility of question. There is no denial of the fact of the beating, whipping, wounding, and scourging; and the question is whether, as McLaurin F. Cooke did beat Thomas J. Wall with a rattan stick, as set forth in the complaint, that beating was lawful or unlawful.

I submit to your Honor that the case is one which calls for the highest punishment which can be inflicted for that kind of an assault, — I mean for an assault not with a dangerous weapon. If there is a question of race or sect in this case, as the other side suggest, it is whether this humble Irishman is not to have the rights guaranteed to a Protestant under like circumstances, by reason of the fact that he happens to be an Irishman and a Catholic.

I submit to your Honor another point, and because the case has taken a

relation which lifts it a little out of the routine of judicial determination, and makes it a public question. It is suggested that there is to be a commotion growing out of this case in the city of Boston. If, then, the welfare of the city is at stake, what is the surest and best way of protecting it — not only to satisfy persons who may be interested in the fortunes of Mr. Wall — who is to have the protection and advantages which the law gives to the most humble citizens, but to conciliate all interests.

I have the right to demand that the highest punishment known to the law be inflicted on this respondent, and do demand it. The facts and circumstances of the case, and public justice, demand it. If your Honor should, however, — which we will not anticipate, — feel that he cannot sentence the respondent in that extreme manner, but must abate the punishment somewhat from the extreme limit, then I suggest to your Honor, whether as a matter of public policy — whether as a matter of the welfare of the schools of Boston — whether as a matter for the consideration of all of us — it is not the duty of your Honor to decline to take final jurisdiction of the case, and to send the respondent to the proper tribunal for trial, so that he and the complainant alike may have the benefit of investigation by a jury of his townsmen. I respectfully submit whether, in the complicated questions which have arisen — large questions of constitutional law — whether by reason of the multitude of avocations pressing upon your Honor, it would not be better, upon the whole, in case this large punishment cannot be inflicted, that the case be sent where all parties may be appeased and satisfied by the finding of a jury.

The case was then adjourned to WEDNESDAY, April 6th.

DECISION OF JUDGE MAINE.

Commonwealth, on complaint of William Wall, vs. McLaurin F. Cooke.

WEDNESDAY, April 6.

The complaint in this case was made on the 16th day of March last, and charges that "McLaurin F. Cooke, teacher, on the 14th day of March, 1859, committed an assault and battery on Thomas J. Wall, son of the complainant, under circumstances of aggravation; that Thomas was eleven years of age, a pupil in the Eliot School, and defendant a teacher, and that defendant struck, beat and wounded Thomas with a stick for the space of thirty minutes, inflicting serious wounds."

Upon this complaint a warrant was issued by order of Court, the defendant, Cooke, arrested, and in open Court pleaded not guilty to the complaint.

Upon this issue, evidence was introduced on the part of the Commonwealth to prove the assault, and by the defendant explanatory of the matter, and from the evidence so introduced the following facts appeared:—

That the defendant was the First Assistant Teacher in the Eliot School, Samuel W. Mason, Principal; that Thomas J. Wall was a scholar in said school, and had been for six or seven years last past. That during his attendance the Bible in the common English version was read in the school, and that the scholars sufficiently advanced were required to read or commit to memory the Lord's Prayer and the Ten Commandments.

That by the rules and regulations of the school, the Commandments were repeated by the scholars every Monday morning, and that the boy Wall had repeated them without objection until Monday, March the 7th, when he refused, and was discharged from the school. That an interview was had between the father of the boy and the Principal of the school, and the boy returned to the school.

That on Monday, the 14th of March, he refused again to read or repeat the Commandments, giving as reasons for so doing, that his father had agreed with Mr. Mason that he should not say them. That his father had told him for his life not to say them, and that his priest had also told him not to say them, and that on the Sunday previous to the 14th the priest, (Father Wiget,) while addressing nine hundred children of St. Mary's Church, of whom Wall was one, told them not to be cowards to their religion, and not to read or repeat the Commandments in school, that if they did he would read their names from the altar.

That Wall came to the school on Monday with the determination not to read or repeat them.

That before the 14th Father Wiget had promised to give him a medal, *blessed*, and that since the 14th he had given it to him; that he had given them to other boys, and he knew no reason for his giving it to him; that Father Wiget said at the time he was a good boy.

It further appeared, from the evidence, that there was a concerted plan of action on Monday, the 14th, between many of the boys to refuse to obey the orders of the school, if required to read or repeat the Lord's Prayer or the Commandments, and that two-thirds of the scholars composing the school where Wall attended, and numbering about sixty, declared their intention not to comply with the rules of the school in that particular. And from all the evidence it was manifest that Wall was one of, if not the principal actor.

He refused to repeat the Commandments for the reasons given.

He was told by Mr. Mason that his father had requested him to make him repeat them, and that if he did not, to punish him severely. Wall still refusing, was punished by the defendant with a rattan stick, some three feet in length, and three-eighths of an inch thick, by whipping upon his hands.

From the time when the punishment commenced to the time when it ended, repeated inquiries were made of Wall if he would comply with the requirements of the school. Some thirty minutes time was occupied in the whole. During this time there were several intervals, at two of which the defendant was absent from the room some little time.

The blows were not given in quick succession, but with deliberation. During the chastisement Wall was encouraged by others, who told him not to give up. This was while defendant was absent from the room.

The master ceased to punish when Wall submitted to the requirements of the school.

From the effect of the punishment Wall's hands were swollen, and taken to the sink by the defendant twice, and his hands held in water.

The physician who saw his hands in the afternoon of Monday, described for them, after describing their appearance, says that I think the injury very severe; that at the time he thought he would not recover from it in twenty-four hours.

Now, was the punishment so inflicted without justification, and in violation of the constitutional rights of Wall? and was the punishment excessive?

Before considering the constitutional rights of the pupil while in school, it may be proper to see by what right or authority the schools themselves exist.

The constitution recognizes the existence of schools, and declares that "all moneys raised by taxation in the towns and cities for the support of public schools, and all moneys that may be appropriated by the State for the support of common schools, shall be applied to and expended to no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect, for the maintenance, exclusively, of its own schools." The schools recognized by the constitution are those which are to be conducted according to law, under the order and superintendence of the authorities of the town or city where the moneys are to be expended.

The statutes by which our schools are established and governed, provide "that it shall be the duty of the President, Professors, and Tutors of the University at Cambridge, and of the several colleges, and of all preceptors and teachers of academies, and of all other instructors of youth, to exert their best endeavors to impress on the minds of children and youth, committed to their care and instruction, the principles of piety, justice, and a sacred regard to truth, love to their country, humanity and universal benevolence, sobriety, industry, and frugality, chastity, moderation, and temperance, and those other virtues which are the ornament of human society, and the basis upon which a republican constitution is founded."

By statute it is also provided, "that the School Committee of each town and city in this Commonwealth, shall require *the daily reading of some portion of the Bible in the common English version*, and shall direct what other books shall be used in the public schools."

The School Committee for the city of Boston, in their published regulations, direct and recommend as follows:—

“The morning exercises of all the schools shall commence with reading a portion of the Scripture in each room by the teacher, and the Board recommend that the reading be followed with the Lord’s Prayer repeated by the teacher alone, or chanted by the teacher and the children in concert, and that the afternoon session close with appropriate singing, and also *that the pupils learn the Ten Commandments, and repeat them once a week.*”

Do these laws and regulations, when carried out, conflict with the constitutional rights of any pupil? It is claimed that they do, and the Constitution is cited, or that portion of it supposed to apply to the case, which is as follows:—

“That it is the right as well as the duty of all men in society publicly and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner and seasons most agreeable to the dictates of his own conscience, or for his religious professions or sentiments, provided he doth not disturb the public peace, or obstruct others in their religious worship.

Can the position assumed be a correct one? Our schools are the granite foundation on which our republican form of government rests. They were created and are now sustained by our constitution and laws, and the almost unanimous voice of the people.

But a pupil in one of them has religious scruples of conscience, and cannot read or repeat the Commandments, unless from that version of the Bible which his parent may approve.

Now what is to be done in such a case? If he has a constitutional right to refuse to read or to repeat them from books furnished for the school by statute law, then to punish him in any way would be a great wrong. He could not be expelled from school for standing upon his constitutional rights. Neither could he be punished by corporal punishment; and if the plea of conscience and his constitutional rights would protect him from reading the Bible, is it not equally clear that he could not be compelled to hear it read?

If, then, these are constitutional rights, secured to the children in our common schools, at any time when one pupil can be found in each public school in the Commonwealth with conscientious scruples against reading the Bible, or hearing it read, the Bible may be banished from them, and so the matter of education may be taken from the State government and placed in the hands of a few children.

Not Roman Catholic children alone. For if the plea of conscience is good for one form of sectarian religion, it is good for another. The child of a Protestant may say, “I am a conscientious believer in the doctrine of universal salvation. There are portions of the Bible read in school which it is claimed by others tend to prove a different doctrine; my conscience will not allow me to hear it read, or to read it.”

Another objects as a believer in baptism by sprinkling. “There are passages in the Bible which are believed by some to teach a different doctrine. I cannot read it, conscience is in the way.”

Still another objects as a believer in one God. “The Bible, it is claimed by some, teaches a different doctrine; my conscience will not allow me to read it or to hear it read.” And so, every denomination may object for conscience sake, and war upon the Bible and its use in common schools.

Those who drafted and adopted our Constitution, could never have intended it to meet such narrow and sectarian views. That section of the

Constitution was clearly intended for higher and nobler purposes. It was for the protection of all religions — the Buddhist and the Brahmin, the Pagan and the Jew, the Christian and the Turk, that all might enjoy an unrestricted liberty in their religion, and feel an assurance that for their religion alone, they should never, by legislative enactments, be subjected to fines, cast into prisons, starved in dungeons, burned at the stake, or made to feel the power of the Inquisition.

It was intended to prevent persecution by punishing for religious opinions. The Bible has long been in our common schools. It was placed there by our fathers, not for the purpose of teaching sectarian religion, but a knowledge of God and of His will, whose practice is religion. It was placed there as the book best adapted from which to “teach children and youth the principles of piety, justice, and a sacred regard to truth, love to their country, humanity, and a universal benevolence, sobriety, moderation and temperance, and those other virtues which are the ornaments of human society, and the basis upon which a republican constitution is founded.”

But, in doing this, no scholar is requested to believe it, none to receive it as the only true version of the laws of God. The teacher enters into no argument to prove its correctness, and gives no instructions in theology from it. To read the Bible in school for these and like purposes, or to require it to be read without sectarian explanations, is no interference with religious liberty.

If the plea of conscience is good against the reading or use of the Bible, why is it not equally good against any other book, or the language in which the book may be printed?

The Jew, for conscience sake, will only read the Scriptures from the Torah,* and why may not the pupils in our schools refuse to read the Bible, until they are sufficiently learned to read it in the original Hebrew?

If tender consciences may rightfully claim such unlimited power, what constitutional injustice is daily done in our courts of law, by swearing the Protestant by the uplifted hand, the Roman Catholic upon the Evangelists, the Jew upon the Pentateuch, while facing the East, with his head covered, and refusing to admit the Infidel as a witness at all!

There is another part of the case, which should here be considered. It is the argument, that in disobeying the commands of the school, Wall was acting under the lawful authority of his father.

Can the authority of the parent, and that of the teacher, over the pupil, exist at the same time, in and during the hours of school?

That school approaches nearest to perfection that most resembles a well-governed family, where nothing is required excepting that which is believed to be for the best interest of every member, and where all requirements are obeyed, and where all are subject to one head.

If “a house be divided against itself, that house cannot stand;” so will it ever be with our schools, if the authority of the master and that of the parent enter the school-room together.

The master is there by authority of law. He is also there by the implied authority and consent of the parent, who sends his child to him for instruction, knowing at the same time the duties of both master and pupil.

By sending his child to school he surrenders so much of his parental rights over the child as would, if exercised, conflict with the reasonable rules and regulations of the school.

* Parchments upon which are written in Hebrew the laws of Moses.

If this is not so, why may not the parent command his child while in school to read from one book and to reject another? And what are the rights and what the authority of the master in such a case? What becomes of the power of the School Committee, whose business it is to direct what books shall be used in the public schools?

From the argument it is understood that in this case there are conflicting rights — the rights of conscience of the scholar, the rights of the parent over him, and the rights of the defendant as master — and that these rights are to be upheld by compromises. What the compromise is to be, the Court is not informed.

Can it be that those pupils whose *religion* teaches them that the Douay version of the Bible is the only true record of the Scriptures, shall be permitted to read and repeat the Lord's Prayer and the Ten Commandments from their own Bible? Grant the request, and what follows?

It is enacted by the statute "that the School Committee shall never direct to be purchased *or used in any of the town schools* any school books which are calculated to favor the tenets of any particular sect of Christians."

So by such a compromise, we see the very thing would be done which is now complained of, that of favoring the tenets of a particular religion.

Is the compromise to be that of a division of the school moneys, allowing separate schools to be carried on in accordance with *religious views*?

Our Constitution declares *that no money raised by taxation for the support of schools shall ever be appropriated to any religious sect for the maintenance, exclusively, of its own schools.*

The last point for the consideration of the Court is, was the offence one which required punishment? Had the master the right to inflict corporal punishment? and, if he had, was the punishment excessive, or inflicted through malice?

The apparent magnitude of the offence depends somewhat upon the standpoint from which it is viewed. From one aspect, it appears to be of the most innocent and simple nature.

A child desired the privilege in school of reading the Commandments from *his Bible, the only one that his religion would allow him to read.* It would seem to a generous mind tyrannical, to deny so simple and innocent a request; and it would indeed be so, were that the whole of the matter.

That most wonderful specimen of human skill and human invention, the Suspension Bridge, that spans the dark, deep waters at Niagara, with strength to support the heaviest engines with cars laden with their freight, and defying the whirlwind and the tempest, is but the perfection of strength from the most feeble beginning. A tiny thread was put safely secure across the abyss, and final success became certain. Thread after thread were interchanged, until iron cables bound opposite shores together.

May not the innocent pleading of a little child for its *religion in school*, if granted, be used like a silken thread, to first pass that heretofore impassible gulf which lies between *Church and State*, and when once secure, may not stronger cords be passed over it, until cables which human hands cannot sever shall have bound *Church and State together forever*?

As for the right of inflicting punishment in schools by the teacher, it has been conceded ever since our schools were established, if in severity it does not exceed the nature and magnitude of the offence, and is not inflicted in haste, or with malice on the part of the teacher. The case finds that the father of Wall had requested that he should be kept in school and

made to repeat the Commandments, and that he should be punished severely if he refused.

It was not necessary that the father should give his consent for the inflicting of reasonable punishment, neither can the teacher justify an excessive punishment by authority from the father.

The parent cannot delegate a power that he does not possess, and as he could not punish his child severely without a sufficient cause, neither could the teacher do it without sufficient cause. The nature and extent of the punishment have already been considered. It now becomes necessary to look at the provocation.

The mind and the will of Wall had been prepared for insubordination and revolt by his father and the priest. His refusal to obey the commands of the school was deliberate. His offence became the more aggravated by reason of many others acting in concert with him, to put down the authority of the school. The extent of the punishment was left as it were to his own choice. From the first blow that fell upon his hand from the master's rattan, to the last that was given, it was in his power to make every one the last.

He was punished for insubordination, and a determination to stand out against the lawful commands of the school. Every blow given was for a continued resistance and a new offence. The offence and the punishment went hand in hand together. The punishment ceased when the offence ceased.

By this the Court is not to be understood as justifying the inflicting of punishment upon a scholar so long as he holds out against the commands of the school. The punishment must not be extended beyond the limits of sound discretion, and this every master must decide at his peril.

In this case the punishment inflicted, when compared with the offence committed, and all the attendant circumstances as they appeared upon the trial, was neither excessive, nor inflicted through malice by the defendant.

The defendant was thereupon discharged, and in company with several friends—including many teachers of the city—left the court room.