

No. 3.



REPORT

OF THE CASE OF

JOSHUA STOW vs. SHERMAN CONVERSE,

FOR A

LIBEL;

CONTAINING A HISTORY

OF

TWO TRIALS

BEFORE THE SUPERIOR COURT,

AND

SOME ACCOUNT OF THE PROCEEDINGS BEFORE THE

SUPREME COURT OF ERRORS.



NEW-HAVEN :

PRINTED BY S. CONVERSE.

1822.

THE HISTORY

OF THE

COURT OF THE COMMONS

IN

THE

SEVENTEENTH CENTURY

AND

THE

REIGN OF CHARLES II.

BY

JOHN BURNET, ESQ.

OF THE

BAR

LONDON

1704

Printed

PREFACE.

AFTER some months of unavoidable delay, we are now enabled to present what we deem a fair Report of this important Trial. We wished to give the speeches of the Counsel on both sides, at full length, and applied to the gentlemen for that purpose, but we have found it impracticable. The sketches here furnished, are to be considered only as an attempt at a faithful outline of their speeches,—but even from such materials, those who are familiar with the eloquence of these gentlemen, may perhaps form a tolerably correct idea of the powers which they displayed on this occasion.

Of the motives which caused this prosecution, or which induced Mr. Stow to bring his life and character into the County of New-Haven for examination, rather than try them in the County of Middlesex, the place both of his birth and his residence, the public must judge for themselves.

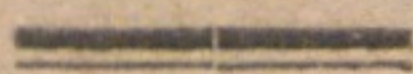
The most prominent grievance complained of in the Plaintiff's *Declaration*, was that the Defendant had holden him out to the world as an Infidel, (see p. 6, 7, 8, 9;) and accordingly, whether this character was justly imputable to him or not, was a principal topic of inquiry on the first trial. The Court suffered Mr. Stow to give in evidence his own declarations that he was an honest believer, but when the Defendant, before the Court of Errors, remonstrated against this as illegal evidence, that Court gave it as their opinion, that the Defendant had no occasion to complain on this point, alleging as their principal reason, that, "*the Plaintiff's Infidelity was never a point in issue between the parties,*" and "*ought never to have been a question at the trial of the case.*" (See p. 119.) It was on this ground, thus taken by the Court of Errors, that Chief Judge Hosmer on the second trial of the case, (p. 157—8,) excluded all evidence offered by the De-

fendant, to prove that Mr. Stow was *in fact* an Infidel; although, merely to the point of mitigating damages on another part of the alleged Libel, his Honour admitted evidence tending to prove that Mr. Stow's general *reputation* was that of an unbeliever.

This case has called forth much animadversion both here, and in the neighbouring States, upon the policy of our Law authorizing the Court to return the Jury to a second and third consideration of their verdicts, especially in cases, like this, brought merely for damages. This is an ancient prerogative of the Courts in this State, and although it may have conduced generally to the furtherance of justice, we think no one will impute blame to the Defendant for complaining of its exercise in the present instance. Two panels have sat upon this case, and ruinous as were the damages which they both assessed in their first verdicts against the Defendant, it was still his misfortune to find, that even those damages were not considered by the Judges as sufficiently vindictive or exemplary. That the Judges honestly differed from the Juries, as to the extent of the injury done to the Plaintiff, or the punishment due to the Defendant, we are bound to admit; but our own opinion, that the case did by no means call for such aggravated damages as were ultimately given, we have a right with all proper decency to maintain.

The political bearing of this case cannot be expected to be so conspicuous in the following pages, as it was to those who attended the Trial, and who were acquainted with the character, and political standing, of many of the principal witnesses. The Plaintiff had long been regarded as one of the most active and distinguished leaders of the present dominant party in the State; he had a large share in accomplishing the late political revolution; he was at the head of those, who in the Convention for forming our Constitution, laboured most strenuously to place Religious Societies upon their present footing; as a reward for his labours he had been recently elected into the Senate; in short, his character was considered,

to a great extent, as identified with the character of a very numerous class of politicians amongst us: and it is not surprising, under these circumstances, that strong political feelings should have been excited at the Trial, notwithstanding the attempts of the Counsel and the Court to repress them. We refer to the testimony of Alexander Wolcott, (p. 58) and to the caution given in the charge of Judge Peters, (p. 105,) and to the arguments of the Counsel, for an illustration of what we have said. We refer also to the fact that the Plaintiff called on so many of our public men of his own party, viz. Pierpont Edwards, Alexander Wolcott, Thomas Lyman, Samuel Hart, Sylvester Wells, John Russ and others, who were not very near neighbours of Mr. Stow, to support his reputation, and prove his christian character. But we forbear. We believe however, notwithstanding the utter impossibility of giving sufficient prominence to many minute features of the Trial, that there is still much of the stamp and impress of the present age on the following pages, and that if the future historian of Connecticut would thoroughly understand the real genius and political spirit of the times in which we live, he will find more of them embodied in this pamphlet than in any other authentic document with which we are acquainted.



☞ The reader may notice an error in the paging of the following sheets after the 92d page. The Trial however, is complete. There are also some verbal inaccuracies.

TRIAL, &c.

New-Haven County, Superior Court, January Term, 1820.

Present, Hon. JOHN T. PETERS, Judge.

JURORS.

*Timothy Stone,
Joel Perry,
Ira Sherman,
Ethel Lounsbury,
William Burr,
Seth N. Wheeler,*

*Joseph Twiss,
Caleb Wilcox,
Amadeus Dibble,
John Bishop,
Amos Griswold,
Samuel F. Loper.*

JOSHUA STOW *vs.* SHERMAN CONVERSE.

COUNSEL.

SMITH, DENISON and INGERSOLL, for Plaintiff.

DAGGETT, STAPLES and WALES, for Defendant.

THIS cause came on for trial, Tuesday afternoon, January 25th, 1820.

The Declaration set forth, that for more than five years previous to the 30th day of April 1819, (*the Plaintiff*) was Collector of the Internal Duties and Taxes of the United States, for the sixth collection district, composed of the County of Middlesex in the State of Connecticut, duly appointed under the authority of the United States; and for more than four years previous to the 30th of April 1819, the Plaintiff was Post-Master for the City of Middletown in said State duly appointed; and for more than one year previous to the 10th day of July 1818, the Plaintiff was a Director of the Office of Discount and Deposit of the Bank of the United States, commonly called the United States' Branch Bank, located in said Middletown; and the Plaintiff now is, and ever has been an honest, just, and faithful citizen of the State of Connecticut, and as such hath always behaved and conducted himself; and having been educated in the Christian Religion, now is and ever has been a Believer that the Christian Religion is true, and that the Holy Scriptures of the Old and New Testament are of Divine Authority. And the Plaintiff hath not ever been guilty, or until the time of the committing of the several grievances by the Defendant hereinafter mentioned, been suspected to have been guilty of deny-

ing the Being of a GOD, or denying the Christian Religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine Authority : and hath never been guilty, or until the time of committing the grievances by the Defendant, hereinafter mentioned, been suspected to have been guilty of unfairness, partiality, extortion, oppression, or corruption as Collector aforesaid, under colour of his said Office of Collector, and hath never been guilty, or until the time of the committing by the Defendant of the grievances hereinafter mentioned been suspected to have been guilty of extortion or illegal exactions in his said Office of Director of the United States' Branch Bank, located in said Middletown ; and hath never been guilty, or until the time of committing the several grievances hereinafter mentioned, been suspected to have been guilty of neglecting his duties to the Public or to the United States in his said Office of Post-Master, or of *farming** said Post-Office to the purpose of a Turnpike Gate, or any other such, or either of the crimes, or illegal acts, aforesaid. By means of which said premises he the Plaintiff, before the committing of the several grievances by the Defendant as hereinafter mentioned, had deservedly obtained the good opinion and credit of his neighbours and other good and worthy citizens of this State. But the Defendant well knowing the premises, but wickedly contriving, and maliciously intending to injure the Plaintiff in his good name, fame, credit and reputation, and to bring him into public scandal, infamy and disgrace with and amongst all his neighbours, and other good and worthy citizens of this State, and to cause it to be suspected and believed that he the Plaintiff having been educated in the Christian Religion had been guilty by writing, teaching or advised speaking, of denying the Being of a GOD and his holy attributes and of denying the Christian Religion to be true and the holy Scriptures of the Old and New Testament to be of Divine authority, and of denying the true GOD and his government of the world, and to subject him the Plaintiff to the pains and penalties by the Laws of this State made and provided against and inflicted upon persons guilty of blasphemously and wilfully denying the true GOD and his government of the world, or having been educated in the Christian Religion denying by writing, teaching, or advised speaking, the being of a GOD and his holy attributes, or denying the Christian Religion to be true, or the holy Scriptures of the Old and New Testament to be of Divine authority ; and to cause it to be suspected and believed that the Plaintiff had been guilty of unfairness, partiality, bribery, oppression, extortion and corruption in his said several Offices of Collector of the Internal Taxes and duties aforesaid and as Director of the Branch Bank of the United States aforesaid located in Middletown aforesaid,

*This word was *forming* in the original publication, and the word *purpose* which is also *purpose* in the original was altered to *keeper*, and both were changed wherever they occurred in the Declaration by consent of the Defendant in order to make out the meaning intended by the author.

and to cause it to be suspected and believed that the Plaintiff had grossly and illegally neglected the duties of the Post-Office aforesaid while he the Plaintiff was Post-Master aforesaid; and to subject the Plaintiff to the prosecutions, damages or penalties provided by the Laws of the United States against each and every Collector of the Internal Taxes and duties aforesaid who shall exercise or be guilty of any extortion, or oppression under colour of his Office, or the act of the United States imposing said internal taxes and duties, or shall under such colour demand other or greater sums than shall be authorized by Law and to subject the Plaintiff to a Public Prosecution and punishment for extortion and oppression. And to cause it to be suspected and believed that the Plaintiff had been guilty of extortion, and exacting illegally, sums of money from various persons in this State under colour of his said office of Director of the Branch Bank aforesaid, and to subject the Plaintiff to prosecution and punishment therefor. And to cause it to be suspected and believed that the Plaintiff had notoriously and shamefully neglected the duties appertaining to said Office of Post-Master and had farmed out said Post-Office to the purpose of a Turnpike Gate, and to vex, harrass, oppress, impoverish and wholly ruin the Plaintiff heretofore, to wit on the 16th day of March 1819, at said City of New-Haven the Defendant did falsely, wickedly and maliciously publish, and cause and procure to be published in a certain newspaper edited and published by the Defendant in said City of New-Haven, called the "Connecticut Journal" a certain false, scandalous, malicious and defamatory *Libel* of and concerning the Plaintiff, containing among other things, the false, scandalous, malicious, defamatory and libellous matter following, to wit, "Let those of his" (meaning the Plaintiff's,) "early companions, who are yet living and who are seduced to join an Infidel Club by him" (meaning the Plaintiff,) "and others set up and supported" (meaning that he the Plaintiff with others had established within this State, and continued to maintain, and now continues to maintain an *Infidel Club* or association in which he the Plaintiff by writing teaching, or advised speaking had denied and continues to deny the true GOD and his government of the world, and had denied and continues to deny the Being of a GOD and his holy attributes, and that the Christian Religion is true, and to teach that the holy Scriptures of the Old and New Testament are not of Divine authority, and that the Plaintiff had seduced and continues constantly to seduce the early companions of his the Plaintiff's youth and others, citizens of this State to join said club, and that he the Plaintiff has taught and inculcated to such persons whom he had thus seduced; and continues to teach them in said club that the Christian Religion, is not true and that the Holy Scriptures aforesaid are not of divine authority) "tell us of his" (meaning the Plaintiff's) "virtues and of the blessings they" (meaning the Plaintiff's early companions and others) "have derived from his" (meaning the Plaintiff's) company?" "Let the parish in which he" (meaning the

Plaintiff) “lives, speak his” (meaning the Plaintiff’s) “virtues”—
 “his” (meaning the Plaintiff’s) “attempts and but too successful,
 to destroy all Religious institutions” (meaning that the Plaintiff had
 attempted and successfully attempted to destroy all the Religious
 institutions of the State of Connecticut;) “his” (meaning the Plain-
 tiff’s) “insults to the Clergy who have offered their services in the
 parish” (meaning, and intending so to be understood that the
 Plaintiff had insulted and abused the reverend clergy who had of-
 fered to officiate as clergymen in the Society or parish to which the
 Plaintiff belongs.) “Let it be remembered that this would be
 Senator,” (meaning the Plaintiff) “while in the Convention”
 (meaning the Convention for devising and forming a Constitution
 of civil government for the State of Connecticut) “openly avowed
 that in his” (meaning the Plaintiff’s) “opinion, the Government
 had no more right to provide by Law for the support of the wor-
 ship of the Supreme Being than for the support of the worship of
 the Devil,” (meaning that the Plaintiff when a member of the
 Convention for forming the present constitution of this State had
 openly and as a member of said Convention declared that it was
 as proper, and as much the right of Government to provide by Law
 for the worship of the Devil, as of the Supreme Being.)

“Let those who have been compelled to pay their Taxes to him,”
 (meaning the Plaintiff,) “as Collector of the National Tax, speak
 of his” (meaning the Plaintiff’s) “fairness, and impartiality in his”
 (meaning the Plaintiff’s) “exactions—of the justness of his”
 (meaning the Plaintiff’s) “demands, and of his” (meaning the Plain-
 tiff’s) “fees of office,” (meaning thereby and intending so to be
 understood, that the Plaintiff, as Collector of the internal Tax and
 duties under the authority of the United States, for the District
 aforesaid, had made illegal, unfair, partial and extortious exactions
 from divers good people of this State, by colour of said Office of
 Collector, and had been guilty of extortion and oppression, and of
 demanding illegally and unjustly divers sums of money from vari-
 ous persons by colour of said Office of Collector.)

“Let the customers of the Bank” (meaning the United States’
 Branch Bank aforesaid) “inform the public what sums he” (mean-
 ing the Plaintiff) “has exacted for lending his” (meaning the Plain-
 tiff’s) “aid as Director, in procuring their notes discounted,”
 (meaning that the Plaintiff had as one of the Directors of said
 Branch Bank, illegally exacted for his services of the customers of
 said Bank, divers sums of money for his services in procuring their
 Notes to be discounted, and had, while a Director as aforesaid of
 said Branch Bank, been bribed to procure Notes to be discounted
 by said Bank.)

“Let the citizens of Middletown say what services he” (mean-
 ing the Plaintiff) “renders for the 8 or 900 dollars a year which
 he” (meaning the Plaintiff) “receives as Post-Master.” “It ought
 to be known by the government of the United States, and particu-
 larly by that class of the community who condemn high salaries

and sinecure places, that Post-Master Stow lives in Middlefield, 3 or 4 miles from the city of Middletown, the place where the office is by law established,"—"that he" (meaning the plaintiff) "pays no other attention to the office than to farm it out"—"that for a part of the time during the year past, the office has been farmed out to the *purpose* of a Turnpike gate," (meaning thereby that the Plaintiff paid no attention to the duties of said office of Post-Master, while he held the same, but notoriously neglected all the duties of said office, and let out the Post-Office aforesaid, to the purpose of a Turnpike Gate.) By means of the committing of all which said several grievances by the Defendant, the Plaintiff has been, and is greatly injured in his good name, fame, credit and reputation, and brought into public scandal, disgrace, and infamy with and amongst his neighbours and other good citizens of this State, both in said City of New-Haven and elsewhere, by whom the innocence and integrity of the Plaintiff in the premises were unknown, and who, since the committing the said several grievances by the Defendant, have in consequence thereof, from thence and hitherto suspected and believed, and still do suspect and believe, that the Plaintiff has in fact been guilty of all the offences and illegal acts charged upon him in said Libel of the Defendant. By means whereof the Plaintiff has been subjected and exposed, and is now subject and exposed to be publicly prosecuted as an Infidel, and as one who has been guilty of denying the true GOD, and his government of the world, or denying by writing, teaching, or advised speaking, the being of a GOD, and his attributes, or denying the Christian Religion to be true, or denying that the Holy Scriptures of the Old and New Testament are of Divine authority. And the Plaintiff has been and now is, in consequence of these premises, exposed to be prosecuted, as one who has been guilty of oppression and extortion, under colour of an office as Collector of the Internal duties and taxes of the United States. And hath been subject to be prosecuted as one who has been guilty of illegal exactions and extortion as a Director of the Branch Bank aforesaid—and is liable to be prosecuted for negligence and total inattention to the duties of the Post-Office aforesaid;" and concludes to the Plaintiff's damage, Five Thousand Dollars.

The Defendant pleaded "Not Guilty," and gave the following Notice. "In this case the Defendant on the Trial, will offer evidence to prove the truth of the charge or charges contained in the publication or publications set forth in the Plaintiff's Declaration, or counted upon in the same."

In opening the cause, the Plaintiff's Counsel read in evidence the publication in the "Connecticut Journal," of March 16th, 1819, which was in the words following to wit :

"Joshua Stow, Senator !!

"From the Office-Seekers Ticket, it appears that at some of the numerous Caucusses, held by the Toleration party at New-Haven

last fall, Joshua Stow procured himself nominated a Senator for the county of Middlesex. Surely those who put him in nomination could not have known his standing in this County. Thro' the State, he is known principally as the *quondam* carrier of the Chief Manager's State Saddle-bags ; but in this county, our fellow-citizens have some knowledge of his talents in other stations. A large majority of the Electors of the County of all parties, reprobate the idea of Joshua Stow's being Senator. His only support will be from a few unprincipled office-seekers, who with him are intriguing for office.

“ Let those of his early companions, who are yet living, and who are seduced to join an infidel club, by him and others set up and supported, tell us of his virtues, and of the blessings they have derived from his company?—Let the parish in which he lives speak his virtues—his attempts, and but too successful, to destroy all religious institutions—his insults to the Clergy, who have offered their services in the parish.

“ Let it be remembered, that this would be Senator, while in the Convention, openly avowed, that in his opinion, the Government had no more right to provide by law for the support of the worship of the Supreme Being, than for the support of the worship of the devil. Where, but in a Toleration Caucus, could such a man have been nominated for one of our rulers ?

“ Let those who have been compelled to pay their Taxes to him, as collector of the national tax, speak of his fairness and impartiality in his exactions—of the justness of his demands, and of his fees of office. Let those who have witnessed his intrigue, his restless and unprincipled ambition to place himself at the head of the the U. S. Branch Bank, located in Middletown, say whether he merits the office of Senator ?

“ Let the Stockholders, whose dividends he received, and whose powers he procured in violation of the charter of the institution, to make himself a director, speak of the difficulties they have experienced—the pretences he has set up, and the trouble they have had in obtaining their stock and dividends, and ask one of these men whether they would again trust Joshua Stow.

“ Let the customers of the bank inform the public what sums he has exacted for lending his aid as director, in procuring their notes discounted.

“ Let the citizens of Middletown say what services he renders for the 3 or 900 dollars a year which he receives as post-master. It ought to be known by the government of the United States, and particularly by that class of the community who condemn high salaries and sinecure places, that post-master Stow lives in Middlefield, 3 or 4 miles from the city of Middletown, the place where the office is by law established—that he pays no other attention to the office than to form it out—that for a part of the time during the year past, the office has been formed out to the purpose of a turnpike-gate ;” and that he is able to procure ordinarily, a substitute to do the duties of the office for

about 200 dollars a year, and the rest of the emoluments of the office he pockets—This is office-seeking for the public good ! this is Toleration ! !

“ The first services the patriot rendered the State, after Toleration took the reins of government, were to *import* and procure the appointment of a Sheriff for the county of Middlesex—Next to displace a worthy officer, the States’ Attorney of the county, and appoint in his place a young Tolerationist, just hatched, with the shell yet on his head.—And now this modest office-seeker, would be Senator, Judge of the Superior Court, Manager of the School Fund, and Lieutenant-Governor.—When will the people cease to be the dupes of demagogues and jacobins.

AN ELECTOR OF MIDDLESEX.”*

which was admitted to have been published by the Defendant, and here they rested their case.

The Counsel for the Defendant then proceeded to make out his justification, and

I. In support of the charge regarding certain Declarations made by the Plaintiff in the Convention holden at Hartford, in August, 1818, for the purpose of forming a Constitution of Government for the State of Connecticut, they offered the Deposition of Deacon *Abner Reed*, of East Windsor, which was as follows, to wit :—“ I Abner Reed, of the Town of East Windsor, in the County of Hartford and State of Connecticut, of lawful age, testify and say, that at Hartford in said county, and in the Chamber of Representatives, during the session of the Convention for the formation of the new Constitution of Connecticut, I heard Joshua Stow, one of the Delegates in said Convention, for the Town of Middletown, in said State, say, that Government had no more right to provide by Law for the worship of the Supreme Being than to provide by Law for the worship of the Devil, as near as I can recollect the words ; and further the Deponent saith not. East Windsor, Jan. 24th A. D. 1820. ABNER REED.”

Dr. *Bela Farnham*, of East-Haven was then introduced, who testified that Mr. Stow stated in Convention, while debating on the 7th Article of the Constitution, regarding Religion, that Government had no more right by Law to compel the support of the worship of the Supreme Being, than they had to compel the worship of the Devil. I was at this time about six feet from him. He said also, Christ’s Kingdom was not of this world—that it was the duty of all men to worship the Supreme Being, but that Government had no right to enforce this worship, and declared his opinion in favour

* On comparing the *Declaration* with the *Publication*, it will be seen that those parts which are in *Italics* are the parts upon which the Plaintiff has chosen to found his action. Of the other parts of the alleged Libel, he makes no complaint.

of the article. In the course of the debate he adverted to the Pagan world, and said that if Government had a right to interfere, every Government would prescribe its own manner of worship.

Question by Plaintiff. Do you know whether I was the draftsman of that article ?

Answer. I do not.

Ques. by the same. Did you vote for that article ?

Ans. No Sir.

Mr. Stow said the Legislature had no right to provide for taxing in any case whatever, and he was so far opposed to the present article ; but had no objection to any body of men associating together and taxing themselves. He also said if Government might prescribe the *form* of worship, they might designate the *Being* to be worshipped.

Benjamin Bull, Esq. of Milford.—Deacon Reed's Deposition coincides exactly with my ideas. I was near Mr. Stow at the time, and think I remember the expressions distinctly. I believe I heard him say also, that Christ's Kingdom was not of this world.

II. The second point in the case regarded Mr. Stow's conduct as Director of the Branch Bank of the United States.

To this point the Defendant introduced *Seth Tibbals*, who testified as follows : Two years ago next April, Ebenezer Robinson and Samuel Meeker had a Note of \$200 in the Bank, on which I was indorser. When it became due they could not pay. They came to me in the morning about it—I got the money to pay the instalment with, and went to the Bank about half past 2 o'clock. I told Mr. Magill, the Cashier, the circumstances. He said there would be a dollar to pay, but I might leave the Note and the money, and it would probably be discounted the next discount day. I left the Note and money and went down stairs, and met Robinson ; he had seen Stow, and came and told me what passed between them. Afterwards I saw Stow and Robinson together. Stow said he would do it for two dollars ; he could not do business for nothing—he had not got the money, but could get it or could borrow it, and Robinson agreed to give the two dollars. Mr. Stow then went to the Bank, and brought back the old Note and the remainder of the money, after deducting two dollars, in about half an hour.

Examined by Defendant's Counsel.

When the Note came round again I indorsed it. On the day the note became due, the Directors had met at 12 o'clock. The Cashier said the Note ought to have been offered before, as the Directors had gone. I don't recollect as he said the Note must be paid in full. My impression about the two dollars is, that Mr. Stow had one dollar for borrowing the money, and that one dollar was to go to the Attorney of the Bank.

Ques. by the Plaintiff's Counsel. Did not Magill tell you the Note had gone into the hands of the Attorney of the Bank ?

Ans. I think he said there would be one dollar to be paid to the Attorney.

Daniel Meeker. I went with Mr. Tibbals to the Bank. Magill said the Note ought to have been offered before, but probably by lying over till next discount day, and paying one dollar, it would be discounted. Mr. Robinson went to see Mr. Stow. Mr. Stow told him it could be done for two dollars—he could not do business for nothing. Mr. Stow went to the Bank, and in a few minutes brought back the old note, with the balance of the money, after deducting the two dollars and the discount. I know this because I was acting for my father, who borrowed the money of Mr. Tibbals. I don't recollect as the Cashier said the Note must be paid in full that day. Our idea was that the new Note was to run, upon paying the instalment, and this is what Stow undertook to do, as I understood it. It was doubtful, from the declarations of Magill, whether the Note would be done. Stow made it certain.

Henry Carrington. I was a Director of the Bank at the time the first Note was due. On that day there was a new Note offered, signed by Robinson and Meeker, and indorsed by Tibbals. It was discounted May 4th, 1818, and bore date April 30th; was presented as a Note of the Indorser, and written so in the offering book, and in the discount book. On the margin of the discount book was the name of J. Stow written by the book-keeper. This Note was, I believe, kept along till it was reduced to fifty dollars. By the Teller's book, the first Note appeared to be paid. If a Note is not paid at 4 o'clock, it must go to the Attorney of the Bank. If on the next Discount day 20 per cent. is paid, the Note is renewed.

Cross examined. I have given my checks to get notes out of the way, and so the Cashier says they are provided for. Then I take back my check. It is however an evasion of the Rules of the Bank. No other person than Seth Tibbals could claim a renewal. If I had paid the money and told the Directors, it was for the accommodation of the persons on the Note, I presume the Note would have been discounted. It is in the nature of a new Loan.

III. The Defendant's Counsel next introduced witnesses to show what had been the *conduct* of the Plaintiff in *the collection of the United States' Tax.*

Amos Miller. My brother was in town, and went to Stow's Office. Mr. Stow spoke to him about the Taxes due from my father, said the time had run out for collection, and he must charge 5 per cent. commission in addition to the Tax. This was the last direct Tax. I went in the next day myself, expecting to pay the Tax without the 5 per cent. which he had advertised that he should take. Stow spoke of 5 per cent. I told him he had let some go, had sometimes taken it and sometimes not. He said he had not, and if the Tax was not paid soon, there would be more per centage. I was disappointed, and went out, doubting whether to pay, but finally returned and paid him the Tax and the 5 per cent. I

took a receipt dated December 17th, 1816, for the Tax on the property of Elisha Miller, which was \$13,85. Stow added *under the receipt* 69 cents, making in the whole \$14,54, which I paid. He did not show any Law for taking this money. I don't know as my father had ever been called on about the Tax. There was no distreint, and Stow made no such pretence. I live within a mile of Middletown—he lives between four and five miles off.

Asa Boardman. My receipt for \$2,37, was dated December 18th, 1816, Stow added 12 cents, making \$2,49, which I paid. I paid four other Taxes besides my own. I said to Mr. Stow, you don't mean to exact 5 per cent. of me? Yes I must. I exact it from all. We make no difference. I paid Thomas and Nathaniel and Eunice Boardman's Taxes, and Capt. Lewis' a non resident. I told him he ought not to exact the 5 per cent. of Capt. Lewis. He said that he always respected Capt. Lewis, knew he had been unfortunate, and he should not exact the whole. I believe he took only 2 1-2 per cent. on Lewis' Tax. On all the rest he took 5 per cent. He had made no distress. I had paid him this Tax long before by a contract for cider, which I was to deliver him, and he was to cancel my Taxes. I should say I carried the cider sometime before this, and told him at this time I had paid the Tax as quick as he required me to bring the cider.

Nathaniel Boardman. My brother paid my Taxes and brought me a receipt for \$3,92. There was an addition of 20 cents under the receipt, making 4,12. The receipt was dated December 18th, 1816.

Jedediah Wilcox. I saw Mr. Stow's advertisement, and three or four days after the time limited, I called to pay my Tax. Stow's Clerk exacted 5 per cent. in addition to the Tax, and said that this was his order. I said I should not pay, but would see Mr. Stow, as I thought I could do better with him. Sometime afterwards I saw Mr. Giles Wilcox—he said he had not paid, but had made a contract with Stow to deliver him cider, and if Stow asked him any per centage, he would charge him interest. I gave Mr. Wilcox my money November 27th, 1816, being \$4,17 without the 5 per cent. which he paid for me. I think the time had been out about four weeks, and I paid him about twenty days after my conversation in his office. There was no 5 per cent. charged.

Ques. by Plaintiff. Did you ever see an advertisement of mine?

Ans. I think I saw your advertisement as I have stated. I am confident that I did. I think I saw it in the Middlesex Gazette. There was a citation or notice left at my house, by a Mr. Kimball, that unless the Tax was paid in twenty days from the notice, there would be an addition of 5 per cent.

Giles Wilcox. Jedediah Wilcox desired me to settle his Tax. I paid his and my own. I paid no 5 per cent.—he did not ask it of me. I also paid Simeon Wilcox's Tax, and paid no 5 per cent. on any of them. My receipt was dated Nov. 27th, 1816.

Samuel Birdseye. My receipt bears date Dec. 2d, 1816. My Tax was \$10,57. There is no addition or memorandum on any part of the receipt. I called at the Collector's Office ; Stow was not there. His clerk, one Gilbert, brought out the books, and said there was 5 per cent. addition, and he could not settle without it was paid—he had such orders from Mr. Stow. I said he had no right to charge it. He said well, if you don't pay, we shall make more cost, and so I paid him \$11,10. This was soon after Kimball had been at my house, perhaps a fortnight after—it was the first time I was in town. I wanted Gilbert to give me a receipt for the money I had paid him. He said he was not obliged to give a receipt for any thing but the Taxes, and he would not.

Hezekiah Miller. I paid three Taxes to Mr. Stow himself, I believe. I think I paid the last after Mr. Stow had advertised that 5 per cent. would be exacted. The time was out on Saturday, but as it stormed that day, I did not go in till Monday. I went to the Office, and Gilbert said he must have 5 per cent. besides the Tax. I objected, and Stow soon came in. I paid him \$8,19, Nov. 25th, 1816, without any per centage.

Ques. by Defendant's Counsel. Did you put in a waggon?

Ans. I owned a waggon which I used on my farm, and to carry things to market in. I told Stow I did not conceive it to be taxable, and thought I ought not to put it in. He said if he knew I carried passengers in it to Middletown, or to the sea, he should tax it. I did not tell him whether I did or not. It had a seat on leather straps, and did sometimes go down to the sea. I think this was the fore part of the time when waggons were taxed. The waggon was not put in. Another man had one just like it which was put in.

William Lyman. My receipt was dated Dec. 2d, 1816, for \$14,14. The Tax was due from the heirs of David Lyman. The clerk, Gilbert, exacted 5 per cent. though I objected to paying it. I told him I wished to see Mr. Stow—he said it would do no good, and he added 70 cents more, and I paid the whole. I think a notice was left at my father's house by a Mr. Kimball to pay the Tax. The notice was to pay, or *distress would be made.*

Benjamin Miller. I was going to Middletown with our waggon, and met Mr. Stow. We had some conversation about the waggon. Stow asked if I had entered it. I told him no, it was not mine. I told him I had just been down to the sea with a load of passengers. He then said I must go and enter it. I told him the waggon was my father's, (Hez. Miller,) and he would not enter it, nor should I.

Stephen Paisley. I had a waggon which I used for the transportation of vegetables, chiefly on my farm ; sometimes to carry my family to meeting—this was at the first of the Tax in 1813. All waggons not entered by a given time, were to be three folded or four folded. This startled me. I went to Mr. Stow's Office, and he was not there, but a Mr. Nichols was there. I entered my waggon, and the people laughed at me for it. I went to Mr. Stow—says I, Mr. Stow, if there is no law to make me enter my waggon,

is there any law for you to keep my money after you have got it? No, said he—they shall all enter their waggons—tell me their names. I told him and the clerk, the description of my waggon. He said all should enter like waggons. I saw him again near Swathel's, talked with him about the business—told him others had not entered their waggons, and I wanted my money back. O la! says he, if I have got your money, it is too late now, I can't do any thing about it.

Ques. by Plaintiff. Was not your waggon used for carrying passengers?

Ans. I told the clerk it was used for husbandry, and was not otherwise used, except to carry luggage, corn, potatoes, hay, &c. to market.

Ques. by same. Did I not tell you that it was difficult to alter entries after they were made?

Ans. No Sir. You said the money was all gone, and you could not help it.

Oliver Prout. My receipt was dated Nov. 1st, 1816, for \$2,85. I paid 5 per cent. but this was not noted in the receipt or in the margin. I also paid two other taxes for my sons, at the same time. I made no objection to paying the 5 per cent. because the time was out. Mr. Rice called at my house for Mr. Stow, and said if I did not pay the Tax in twenty days, there would be a per centage. I offered Mr. Rice the money, but he did not receive it. I calculated to be in town in season; but did not go. Three or four days after, I called at Mr. Stow's, and showed him my money, consisting of bills on the Middletown Bank—he would not take it. I went and changed it with Mr. Gill, for such as he said Mr. Stow would take. He took a part of the money, and said he could not take the rest. I went back to Mr. Gill—he used harsh expressions about it, but he rummaged again, and I went back again with York bills, I think. He would not take all of them; there was now about half a dollar due. I next went to Mr. Berriau's, and asked him for hard money, and he let me have it. I carried it back to Stow, and he took it. I asked him for the change—he said he was not obliged to give change, and he would not. I offered to take any money, but he would not give it. I told him to give me a Receipt for what I had paid him, and I would be off; he said he would not give me a receipt for any thing but the Tax. I hesitated, but finally concluded to take it—and that was the end of it.

Ques. by Plaintiff. Do you know that this was the Tax of which Rice notified you?

Ans. I am certain of it.

Ques. by the same. Do you know that you paid that tax to me?

Ans. I am sure of it. I know you charged me a per centage on that Tax. You told me I might go and get the money changed, and I said I had been three times, and would not go again without a receipt. I had laid by the Middletown money which Mr. Stow refused, on purpose to pay my Tax. I paid for both of my sons,

one of them living in Massachusetts, the other in Pennsylvania. I took their receipts, and have sent them. I think the per centage and the change which Stow kept, was about 75 cents.

George Geer's receipt was read. I paid a duty, March 25th, 1814, of two dollars on a waggon, not on springs, under Statute 24th July, 1813. The waggon was made to use for lumber and to ride in, as I liked, and to use on my land—had four stakes, and was braced with iron. I laid out to fix a box, so that my family might ride in it sometimes. I saw Stow's first advertisement, and did not conceive my waggon embraced in it, as it did not stand on wooden springs. In March, a neighbour told me that Mr. Stow sometimes taxed such waggons as mine. I said it was not embraced in his advertisement. I went to his office two or three times: Mr. Stow was not there; the last time I went, I told Nichols my business, and that folks advised me not to put it in. Nichols said he rather thought Stow would make me pay the Tax. Capt. Alsop said he would not put it in. I carried apples and corn, &c. in it. Afterwards I rode to Stow's house, and stated to him what I understood the law to mean, and told him what sort of a waggon I had. He said he did not mean to embrace every thing in his advertisement. 'You should come to me for explanation.' He said if I had only four wheels, and a board on the axle, and rode into town in it *once* a year, it would be subject to taxation. Mr. Stow was very accommodating—said he could take more than the Tax, but should not, as I had misunderstood the law. He said he would go in and enter it, and he did. I told him I had not got the money with me, but would go home and get it, and he might ride by my house on his way, and take it. He said no. I said I would meet him at his office if he was going right there. Says he, I will write a receipt here, and have it ready when you bring the money. I went home and got the money, and immediately went to his office, and he was not there. I waited an hour and he did not come; I grew uneasy, and went around the town to look for him, but could find neither him nor his horse. I staid three or four hours, and left word at the Post-Office, that if he would leave a receipt for the money there, I would pay it when I next came into town, or when I met him. Two or three days afterwards, when on foot, I met Stow out of the bounds of the city; he says to me, 'you did not pay that tax according to agreement.' 'I said, I could not, you was not there to receive it:' says he, 'I won't hear a word from you. Pay me that Tax with 50 cents more, or I will attach every thing you have got before the sun goes down, and put you to all the expense I possibly can.' 'I said to him, have you got a receipt with you?' He replied No. 'Well then,' said I, 'I shall not pay you.' Says he, 'are you afraid to trust the United States?' 'Yes, if you are the United States, I am.' Says he, 'if you don't go to the Office and pay the Tax and 50 cents more, I will make you all possible expence,' and repeated it three or four times. I went to the Post-Office and asked

for the receipt ; took out \$2 to pay to the clerk, but he said he would not take it without 50 cents more. I asked him what that meant ; he said those were his orders ; it was nothing to him.

Ques. by Plaintiff. What time did you pay and take the receipt ?

Ans. I should say between five and ten days after the date of the Receipt.

Ques. by same. Did you call at my *Collector's Office* ?

Ans. I did not, because the door was shut, and there was nobody there.

Ques. by same. Did not you go into the office, but Nichols' son said there was nobody there ?

Ans. No Sir.

Ques. by same. Did I not tell you the money ought to have been paid before ?

Ans. No Sir.

Ques. by same. Did I not tell you that the papers were at the office, and all ready for you ?

Ans. No Sir. You told me to go to the *Post-Office*, not to the *Collector's Office*. I paid it there to the clerk of the *Post-Office*, as you directed. The first time Nichols said I had better pay him, but he said he could not give me a receipt, so I declined.

The *Post-Office* and *Collector's Office* are in the same building.

Horace Southmayd. Receipt for S. Bull, read, which was dated Feb. 11th, 1817, and was for \$1,57 ; there was an addition of 8 cents, making the whole \$1,65, which I paid Mr. Stow. Feb. 11th, 1817, \$2,01, and 10 cents in addition, which I paid—\$3,45 for S. Bull, and *ten per cent.* on said Tax.

Ques. by Plaintiff's Counsel. Was not Mr. Bull's personal property taken ?

Ans. I do not recollect whether he had any personal property that could be taken ; there was none taken that I ever knew. Mr. Bull was absent, and I was his agent.

Benjamin Bacon. I paid a Tax to a Mr. Babbitt, and one to Mr. Stow ; he said I was liable to pay 5 per cent. but he should not stand about it. He did not take it. B. Bacon's Receipt, dated Oct. 25th, 1816, for \$30,25, was read ; also another receipt, dated Nov. 28th, 1815. No 5 per cent. was charged on this. I believe this Tax was paid to Kimball.

IV. The next topic of inquiry was Mr. Stow's management of the *Post-Office*.

To this point, the Defendant first introduced the Deposition of Jared Clark, which was as follows :—I, Jared Clark, of Middletown, of lawful age, depose and say, that about August, A. D. 1818, Mr. Joshua Stow agreed with me to keep the *Post-Office* in Middletown, to commence the 1st day of September. The terms were, he was to give me three hundred dollars per year, payable quar-

terly, I think. There was this exception, if Mr. Stow did not hold the Office, my services were to end when his time expired. On the first of September, I took the care of the Office ; he agreed he would furnish assistance until I was sufficiently acquainted to take care of the Office myself. In case of sickness or other misfortune, I was to be aided, and what was right was to be done between us. I staid in the Office about three weeks, at about which time I was taken sick suddenly, and was too unwell to attend the office. I asked Mr. Hubbard, who was at the door, to notify Mr. Stow that I was so unwell as to be obliged to go home, which Mr. Hubbard agreed to do, and to wait on the Office until he could notify Mr. Stow. I was sick about four weeks. I then came to the Office, and found Mr. Stow's son there ; soon after Mr. Joshua Stow came in, and he soon requested me to go with him into his other office in the same building. He wished me to give the reason why I left the care of the Post-Office, without giving him notice ? I attempted to give him the reasons. He was very angry, and checked me, and would not allow me to make any excuse at all. He told me that all I could say would be no more than the squalking or chattering of crows. I then told him I must throw myself on his mercy, and he must act his pleasure. He told me I had done very wrong, as he had hired me to take charge of his Post-Office, as I knew very well the people were dissatisfied with his former clerk. We then returned back into the Post-Office ; there he agreed that I should re-assume the business, and his son should give me assistance. About three days after, Mr. Stow came and said he could get the Office attended for a less sum than he agreed to give me ; he thought it would be for his interest to discharge me, and engage another person. In a day or two after, he called and told me that he had concluded to employ another person. I told him he must do as he pleased about it, but it would injure me very much. About the next day, Mr. Dunning and Mr. Stow came, and began to take down the letter boxes. Towards night I told Mr. Stow, if I had got to leave the Office, I wished to leave it that night ; he told me that his son wished to be absent, and he should like that I should keep the Office until the next day.

I further observed that the weather was cold and uncomfortable, and no fire in the Office, and if I had to go, I wished to go that night. He was anxious that I should stay that night, as his son wished very much to be absent on a meeting of some sort, and on that account he wished me to remain, and I consented to tarry that night. I remained that night and through the next day, when I left the Office. At some convenient time afterwards, Mr. Stow paid me for the time I was there, at the rate of three hundred dollars per year. And further the Deponent saith not.

Ques. by Mr. Storrs,) How long did Mr. Stow and you agree
Attorney for Defendant,) that you should keep the office originally ?

Ans. One year, if he held the Office so long.

Ques. by same. As near as you can recollect, how long was Mr. Stow Post-Master after you left him ?

Ans. I cannot recollect how long.

Ques. by same. Was it not several months ?

Ans. Yes.

Ques. by same. Where was the Post-Office removed to when you left it ?

Ans. To Mr. John B. Dunning's Book-Store.

Ques. by same. Where was it removed from ?

Ans. From the Store of Magill and Williams.

Ques. by same. Where did you live when you kept the Office ?

Ans. I boarded at Mr. Swathel's.

Ques. by same. Did you, or did you not, keep a Gate on the Middlesex Turnpike, when Mr. Stow first applied to you to keep the Office for him ?

Ans. I did.

Ques. by same. How far from the city did you then live ?

Ans. I believe it is called three miles.

Ques. by same. How far from where the Post-Office was kept, did Mr. Stow then live, and has he ever since lived ?

Ans. The distance I don't know. I think I have heard it to be about three miles and a half.

Ques. by same. Has he, or has he not, lived at that distance ever since he was Post-Master ?

Ans. I do not know any thing to the contrary.

Ques. by same. When you returned after your sickness, what did Mr. Stow say to you, as near as you can remember, about the complaint that people made respecting the manner in which the Office had been kept ?

Ans. He said the former clerk was absent too much, and did not attend to the office.

Ques. by same. When speaking to you of the Post-Office, did Mr. Stow state to you that he had expectations of being made a Judge, or to that effect ?

Ans. He did. He said he did not know but I should think it folly in him to mention any thing of the kind. He thought it probable he should be placed in some office in which he could not hold the Post-Office.

Ques. by same. Did he state to you that he probably might be sent to the Legislature or Convention, or to that effect, and what did he say ?

Ans. I cannot say what he did say ; he said something about it.

Ques. by same. Did he not intimate to you, that if he was appointed Judge, you should have his influence to be made Post-Master ?

Ans. I don't recollect as he did.

Ques. by same. Did you not take the whole charge of the Post-Office while you kept it ?

Ans. I did not.

Ques. by same. Can you form a calculation how much the Post-Office was worth a year to Mr. Stow?

Ans. I do not know myself what it was worth to him.

Ques. by same. How much did Mr. Hubbard state to you the Post-Office was worth to Mr. Stow a year, in his opinion?

Ans. I think he said from six to eight hundred dollars.

Ques. by same. Had not Mr. Hubbard been a clerk in the Post-Office before you entered it?

Ans. He had.

Ques. by Judge Stow. Was there any written agreement with you as clerk of the Post-Office?

Ans. No.

Ques. by same. Did you not first apply to me to attend the Post-Office?

Ans. I mentioned to you that I understood that you wanted to get a man to attend to the Office. And you said you did.

Ques. by same. Did I not then inform you that I found your age, and having a family, might render you unfit?

Ans. I do not recollect it.

Ques. by same. Did I not observe to you that a young man, generally speaking, could perform the duty of delivering out letters, &c. better than an old man?

Ans. I recollect that you said a young man would not be so apt to attend to business, and be so faithful as an old man.

Ques. by same. Did I not tell you that I would take you on trial, and if I found that you could perform the duties to acceptance, you might continue?

Ans. I do believe there was something said about it.

Ques. by same. Did I not blame you for leaving the Office, without informing me?

Ans. You did.

Ques. by same. Did I not inform you that no person had a right to enter the Office and tend it, unless he was duly sworn?

Ans. You did, and for that reason I applied to Mr. Hubbard?

Ques. by same. Did I not then tell you that you had no right to place Hubbard there, or any other person, without my knowledge and consent?

Ans. You did. I told you that my situation was such that I could not acquaint you, and requested Mr. Hubbard to do it for me, and he said he would.

Ques. by same. Was I not in town?

Ans. You was at the Court House, the Court sat at that time.

Ques. by same. Did I not tell you, you could have written me a line, and did you not say that you did not think of that?

Ans. Yes. I told you I was taken so strangely, that I had not my thoughts about me.

Ques. by same. When I dismissed you, did I not tell you, that I found you could not perform the duties of the Post-Office to satisfaction?

Ans. I do not recollect any thing of the kind. You told me you had heard no complaint of me. JARED CLARK."

Ebenezer Southmayd. Paschal Hubbard, (while clerk of the Post-Office,) boarded at my father's house, and employed me several times, as he was absent a good deal of the time. He frequently went to ride out of the city; was often gone two or three times a week. People often called at our house after him, so that they might get into the Post-Office. He was absent at times when the mails came in, and then the mail went by, and our mail was left once when I was there. One day when I had the care, the driver on the Hartford road got out of patience, and left the mail. Twice I have known mails to go by, and letters come back the next day. There were frequent complaints about the Post-Office. Hubbard kept it about two years. I opened, and sometimes helped him to make up mails, and occasionally distributed letters, when Hubbard was not there. I told Mr. Gilbert, one of the clerks, one day, that the stage had gone by, and he said damn it, say nothing about it, and threw the mail under the counter. Mr. Stow was seldom at the office; he only came after his letters, and signed the quarterly accounts. I have heard Hubbard say this of Mr. Stow. I believe the daily bills were signed by Hubbard, as assistant Post-Master. I have been in Mr. Hinsdale's buildings at Hubbard's request, several times.

Ques. by Plaintiff. Where was I?

Ans. I don't know.

Ques. by same. When was it?

Ans. While you was in the Collector's Office; but you was hardly ever there when I was.

In answer to other questions, the witness said:—

Hubbard attended to no other business, except to carry the ladies to ride. I know of the stage going by, when the office was locked. I had the key, and did not at the time know of this. I don't know as I informed you. Mr. Hubbard employed me. Mr. Stow never said a word to me. There was a mail every night from New-York, and every day, I believe, from Hartford. I was generally employed by Hubbard, when the mail did not come in, and he paid me. I several times opened the mail, and laid aside bills; don't know as I personally took the account of him. While I was clerk, I was employed by Hubbard at a dollar a day; he six times employed me half a day, at the same wages.

William Southmayd. Mr. Stow lives about four miles from the Post-Office. For two seasons, I called almost every day at the Post-Office; I believe in the winters of 1816 and 1817, and frequently at other times. At one particular time I was very anxious to receive a letter from New-York, respecting a shipment, on which I wished to make insurance. Upson kept the Post-Office at this time. I called from time to time every day, and he told me there were no letters. At last I was informed there was a letter there, and got it. This was eight days after it was post-marked in New-

York. I had a box, and frequently asked Upson besides. I finally found my letter in a bundle, and money or a check in it. I have sometimes received letters by the way of Hartford, which have gone by and returned, and have known other similar instances. Report said they sometimes went the other way. Sometimes there was no mail from New-York in the morning, while Hubbard was in the Office. The regular hour of arrival was 3 o'clock, A. M. At these occurrences there was no impediment in the carriage of the mail. When the mail run regularly on the Meriden road, it came in regularly at nine o'clock—Jared Clark is the keeper of a Turnpike Gate, and was so while in the Post-Office—he lived three miles towards Haddam.

Daniel Harris. My brother arrived at Providence from sea—I heard of it and was anxious to hear from him. I went to the Post-Office every day and inquired of Hubbard, and he would tell me there were no letters, without looking—he did not use to look half the time. I finally sent my boy—told him to tell them to look; they found two letters at one time, dated eleven days apart, and post marked nine days apart. I did not get the letters till my brother sailed out again. He had been gone two years from home on a voyage to the East-Indies.

Timothy Southmayd. In the early part of the time Mr. Stow attended a short time himself—then some young person, perhaps it was his son—then in my opinion the business was not well attended to—it grew better as the young men learned—the changes were too frequent—Mr. Stow was there very seldom. There were two instances in which Hubbard went home and the mail went by, and we got our Southern letters by the Northern mail. There was one young man in the Office by the name of Upson, whom every body thought incompetent—but he was soon removed; there was some dissatisfaction manifested—the business was not properly done as I thought, and I told Mr. Stow I considered it to be badly managed. At the time, I was Cashier of the Bank—After this it was remedied—Clark, the keeper of the Turnpike Gate attended there a little while; but his sickness caused him to leave. Mr. Stow did not keep the Office himself except a little while at the first—he never moved his family into town. At one period I was at the Office twice a day, which was constantly kept by others. Mr. Stow began March 25th, 1816, and ended last May. I should say that during this time, Mr. Stow kept the Collector's Office adjoining the Post-Office, and the Clerks there assisted occasionally at the Post-Office when the Post-Office Clerk was out. I believe there were five changes of Clerks in the Office in that period. Mr. Stow was frequently absent for months. I think he went to New-Connecticut. I should say Clark was not competent. I have but seldom seen Stow in the Office—the business appeared to be done by some other persons except at the changes when he was at the Office a little while. Sometimes he came in about ten o'clock two or three

days in succession—then for a week he would not be there at all. There were no regular Office hours through the season—frequently was there at times almost every day about ten or eleven o'clock. I generally requested the Clerks and he acquiesced in my requests. After my complaints the Clerks were better—but after all there were too frequent changes. The residue of the collections was put into the Clerk of the Post-Office. Dunning had charge of the close of the Collector's business—Stow has not kept Collector's Office within the last two years.

While Dunning kept the Office, about six or eight months, there was no complaint.

V. The remaining subjects of investigation were (1.) the *Plaintiff's Disrespect to the Clergy*. (2.) *His Infidelity, &c.* (3.) *The Establishment of an Infidel Club*, and (4.) *his general character for Infidelity*, to all which several points, the Defendant offered the testimony of many respectable witnesses.

Phineas Augur testified that about four years ago there was a Conference in Middlefield, at the house of a Mr. Joseph Wetmore—a Mr. Davis, a Clergyman, then a Presbyterian, was present. Mr. Stow was also present. In his prayer, Mr. Davis said in amount that we all deserved to be damned, and that God would be just in casting us off forever—this was at a time of awakening, and many were affected. Mr. Stow made some remarks and said, that a man that pretends to be a minister, and gets up and tells the Lord we ought to be damned, deserved to go to Newgate. He said people told about experiencing religion, feeling good—having a little spot as sweet as honey; this was spoken, so as to excite laughter; he said it was the mere effect of sympathy. At this time Mr. Davis had preached for us some weeks. Mr. Stow read a hymn beginning with

“ I hate the tempter and his charms,
“ I hate his flattering breath,” &c.

and changed *flattering* to *loathsome*; he turned to Mr. Davis and read it, as if it reflected ridicule upon him. Mr. Stow took no part in the exercises until he made these remarks. After he had finished, Mr. Davis closed the meeting with prayer, and paid no regard to what Stow had been saying, and the people separated. Previous to this, say four or five years, I conversed with Mr. Stow at Mr. Camp's Blacksmith's shop on Religion—the subject of the influence of the Divine Spirit was up; I believed in it—Mr. Stow said there was nothing in it—it was all a delusion—a work of the imagination—I have had frequent conversations with him—

Plaintiff's counsel objected here.

Question by Plaintiff. At the house of Mr. Wetmore did I not say that I did not wish to be included in the phrase “ we,” in list-

ing up our heads in torment? Did I not say that I did not wish him in Hell? And that it was enough to be in Newgate?*

Question by same. Don't the Clergy frequently invite laymen to speak?

Ans. Yes.

Question by same. Did not Mr. Davis invite?

Ans. He said if any could speak for Christ or the cause of religion he wished them to speak, or they might speak.

To a further inquiry made by Mr. Stow, the witness replied—At Mr. Camp's, he was working while we conversed. We have a number of times talked about Religion, once in your Office, as to the agency of the Holy Spirit.

2. The infidelity of the Plaintiff, and hostility to Religious Institutions.

John Bacon. About twenty-one years ago I lived with Mr. Stow. In our parts he was called a Universalist by some, and a Deist by others. Once he returned from a journey and I talked with him on the subject of religion—He was mild and affable. I asked him some questions, and reasoned with him from the scriptures upon the sufferings of our Saviour. The Virgin Mary, he said, (if women should do so now) would be considered a whore, and the Saviour a Bastard. I asked him if he believed in the being of a God. I believe he made no answer. Being distressed in mind, he said, was gloominess or weakness—he had had a trial of it himself—there was nothing to fear after death. The Resurrection of the Dead was as miraculous as if a turkey were to rise up with its wings and feathers all on, and gobble, after having been eaten and pulled to pieces, by half a dozen men at a dinner-table.

Question by Defendant's Counsel. What did you understand him to mean in his remarks respecting the Virgin Mary and our Saviour.

Ans. I took him to mean that the Virgin was a whore, and the Saviour a bastard. I was much shocked at it. I have heard him tell this turkey story as applicable to the Resurrection.

Ques. by same. Did Mr. Stow request you to assist in any of his designs against the Society?

Ans. I was brought up a strict Congregationalist and certificated to this Society from the Society in Middlefield. I lodged my certificate with Obed Stow, the Clerk of the Society—the Society got into a strife and Joshua Stow said that I ought to take up my certificate to help them vote and pull down this Presbyterian order.

Ques. by same. Have you talked with Mr. Stow, since you lived with him, on these subjects?

Ans. I have talked with him some since.

Ques. By Plaintiff's Counsel. Have you had a controversy with Mr. Stow?

Ans. Something so—a dispute with him for comparing miracles

* The Reporter has no minutes of any answers to these questions; he thinks none was made, or if any, that the Witness said he had already related Mr. Stow's language as nearly as he could recollect.

to a turkey ; and a controversy about a little property—something too in church matters—not in Law, except he opposed a Petition in which I was interested. I do not consider Mr. Stow as professing what he did once. I have had no personal controversy with him about church matters—he was not a church member. I should say the controversy (if any) was all on his side.

Ques. by same. Did he appear against you, and cause you to be excommunicated ?

Ans. Yes.

Ques. by same. Did you become a Methodist ?

Ans. I was a Methodist ten or fifteen years since.

Ques. by same. Have you not heard Mr. S. talk differently on these subjects, since you lived with him ?

Ans. Mr. Stow has talked differently in three or four years. But I have heard Mr. Stow repeatedly within ten years, make the remark about the Turkey, and apply it in the same manner.

Ques. by Deft's. Counsel. Do you now consider Mr. Stow a believer ?

Ans. I should not say Mr. Stow was *now* a believer.

William Lyman. I live in the society of Middlefield. About eleven years ago, one Sunday I was returning from meeting with my father-in-law, and we stopped at Mr. Stow's house. He soon began on Religion and the Bible. The Bible, he said, was called the word of GOD, but it could not be, because there were so many contradictions in it, from the beginning to the end. The Apostles, he said, could not be inspired because they contradicted themselves and each other. He instanced the Resurrection of our Saviour. One says, "while it was yet dark, &c." another at the "rising of the sun," &c. One that he saw "two men," another "two angels." He had the conversation to himself pretty much. He said to Mrs. Coe, you don't love to hear such conversation, but I can't help it, it is true, it is the Bible. This perhaps is not half that he then said. We have had some unhappy occurrences in our society. We have had no Congregation, except a Congregation of different denominations. The Congregation built the House.

Mr. Stow was present five or six years ago at several reading meetings ; a sermon was usually read. On one of these occasions in the afternoon, Deac. Augur led the meeting. After prayer and singing, Mr. Stow introduced a book, which he wished to have read. Deac. Augur said there was a book provided, but if the book was not objectionable, he would not except. It ought, he thought, to be examined and approved by some of the Church. The book was read ; after this Mr. Stow rose, and said it was very extraordinary that Deac. Augur should object to the book being read, without an examination, as others had been read. It seemed to him to be a hypocritical evasion or twisting. Some weeks after this, on a Sunday before Fast, Deac. Augur, at the close of the meeting, gave notice that there would be a Fast that week, and the Church

would meet, and invited others to attend, by request of the members of the Church. It was common for Mr. Stow to bring books at this time, contrary to the wishes of the Church and part of the Congregation, and the Church had an idea that this would be done on Fast. Some disturbance was expected.

Mr. Stow rose and said it was "very extraordinary that a few, a club, I don't care what you call them, should govern, should meet together and invite others to meet with them. Should say "we will meet and invite others." One of the Church said they would meet at Obed Stow's. As Joshua Stow went out on the step, he spoke aloud. "Stand by thyself for I am holier than thou." He was heard fifteen or twenty rods.

Ques. by Plaintiff's Counsel. Why did the Church meet at Obed Stow's?

Ans. It was done by the Church to avoid disturbances which they apprehended. They had met twice under these apprehensions.

Ques. by same. How many members are there in the Church?

Ans. About eight male members now. Sometimes ten or eleven.

The witness proceeded:—

There has been a great deal of disturbance and difficulty and many unpleasant things have arisen in the Society, and in Society meetings. Our Society is composed of all denominations. There are four or five Methodists, three or four Baptists, two or three Episcopalians and about thirty or forty who support the Congregational order, and others upon whom we cannot depend. Preaching was obtained by the Congregation. Methodist ministers sometimes preached for us.

In 1802 a Tax was laid and my father was the Collector of it. Mr. Stow thought it improper and opposed taxes; those who were willing paid, and those who were not, did not pay. Mr. Stow was in favour of free donations. A new Society was formed, and those who were opposed to taxing signed to it, and then after a while those who were in favour of taxing. In two or three years the Constitution of the new Society was lost. Mr. Stow was one of their committee. A Subscription paper was then got up. In this way we had occasional preaching, say six months. The last subscription paper I carried about and got twelve or fifteen Dollars. Sometimes a Methodist preached, sometimes a Baptist, and occasionally Mr. Stow would get in a Universalist. The Church would hear a Methodist or a Baptist, but when a Universalist preached they would meet elsewhere. The subscription papers finally failed, and the members of the Church proposed to raise a Fund. Mr. Stow opposed it, and did not sign to it. He said in Society meeting it was a very wicked way. I told him he contradicted himself. He introduced a vote that it was inexpedient to raise a fund. The Society raised a fund of about 1750 dolls. The Domestic Missionary Society then offered us aid, and assisted us, and we got

in a preacher. Mr. Stow thought it was a wicked thing for that Society to interfere and send a Clergyman to dictate to us. There has been no great dispute on doctrines and no dispute between the Church and Methodists and Baptists and Episcopalians; there has been with what Mr. Stow chooses to call the Society, but this is confined principally to questions respecting the Meeting House. As to doctrines, Mr. Stow has introduced a vote disapproving of the doctrines of the Congregational order.

Ques, By Plaintiff's Counsel. Has not Mr. Stow been liberal in supporting Religion?

Ans. I don't know of his paying a cent except to Methodists, Baptists or Universalists. I don't know as he has otherwise been liberal.

Ques. by same. Has he not paid towards repairs of the Meeting-house?

Ans. Repairs to the Meeting-House have been done by Tax, and Mr. Stow has paid his Tax. When we have had a Tax, Mr. Stow has talked of Subscriptions, and when we have had Subscriptions, then of something else.

Obed Stow. This witness was a brother of the Plaintiff, Joshua Stow, and before he commenced his testimony, asked the Judge if it was proper to go back twenty or thirty years. The Judge replying in the affirmative, he began as follows: From fifteen to twenty-five years ago, I talked largely with my brother on the subject of Religion. I perceived that he had imbibed an unhappy prejudice against the Scriptures. We conversed together occasionally, say ten or fifteen times in a year—sometimes he told how inconsistent the Scriptures were, and often he endeavoured to make them appear ludicrous. The miracles generally, he thought were to be discredited and it was his opinion that in a few years it would show a want of understanding in any man to believe the Scriptures. He said the history of the conception of our Saviour was immoral and indecent—it was strange that a ghost should ravish a Virgin and get her with child, especially as it was a good ghost, and he did not believe that his salvation depended on believing in a Bastard. This has been his language down to about five years past, since which time, he appeared so confirmed in his opinions that I have avoided conversation with him. He has represented the Scriptures as unworthy of belief—the miracles and the requirements of Faith, as too ridiculous—their morality he said was good. I have not had much conversation with my brother on these subjects even for ten years past. I have always understood him to deny the authenticity and inspiration of the Scriptures. He was not friendly to the Church and was constantly ridiculing them. One Sunday, on the stepstones after a meeting which had been led by Deacon Augur, he said it was ridiculous for a few—a little club to get together and usurp the right of conducting meetings—'we horse-turds' said he—'how we horse-turds swim.'

Ques. by Plaintiff. My brother! How long is it since you became a Church member?

Ans. Eight or ten years.

Ques. by same. Did I not call you out and say I had aught against you, after the sermon on that occasion?

Ans. No.

Ques. By Plaintiff's Counsel. Did you not confess to your brother that you had done him injustice?

Ans. No.

Ques. by Plaintiff. Did you not tell me that your conscience would not let you sleep?

Ans. No. I told you the charge was true.

Ques. by Plaintiff's Counsel. Did you ever ask your brother's pardon for any injury done to him on account of the remarks you have now made?

Ans. I presume not; I don't recollect any such thing. He claimed, not that the remarks were untrue, but that they were unnecessary and unfriendly to publish, and that I had injured his character.

Ques. by same. Have you not had a controversy with your brother?

Ans. We have differed in opinion very much. I don't know what you call a controversy.

Ques. by Plaintiff. Did not you confess before our sister that you had done me injustice?

Ans. I presume not.

Lorenzo Hicock. Last spring, in May, I worked for Mr. Stow, and on Saturday I went to settle with him. Mr. Stow or his son said if I would come up on Sunday, he would settle with me. (*Objected to, by Plaintiff's Counsel.*) I afterwards went up, but not on Sunday, and settled with him. Mr. Stow or his son told me that it was his, (Mr. Stow's) usual practice to settle with his workmen on Sunday. I believe it was Mr. Stow that said so. I worked some on the Sabbath, while with him, by his direction. I used to go of errands and do chores for him on Sunday.

Ques. by Plaintiff's Counsel. Can you mention any particular errands or chores?

Ans. I went one Sunday to carry some buttons by his orders, to a woman who was making his pantaloons. His people used to harness horses, &c. to go to meeting.

Ques. by Plaintiff. At what time did you carry the buttons?

Ans. It was before night.

Ques. by same. How long did you live with me?

Ans. About six weeks.

Ques. by Plaintiff's Counsel. Did Mr. Stow use to attend meeting?

Ans. I never knew Mr. Stow go to meeting while I lived with him.

Ques. by same. Did you go to meeting?

Ans. I went to Durham only one Sunday.

3. Infidel Club or ETHOSIAN SOCIETY.

Samuel C. Camp. There was a Society formed in Durham about thirty years since, by the youngerly and middle aged men, which excited considerable anxiety among the people. There were but few members when I was invited to join them. It was considered as a private meeting—its object was instruction, reading and discussing subjects. Mr. Stow was a member. The questions discussed were sometimes political, though most generally religious. A chapter in the Bible was usually read. I remember that this question was there discussed: Is there such a Being or Spirit as the Devil? Mr. Stow asked me in the meeting if I believed it: I told him I did and that he must too, if he believed the Scriptures. He said he did not believe it, for said he, in a very dark night I went alone into the woods, and prayed that if there was such a Being as the Devil, he might appear to me—he did not appear, therefore, he said, he did not believe there was such a Spirit. If there was such an one he wished to see him. There was before the Society dissolved, a Library established, called the Ethosian Library. Soon after this, I with a number of others withdrew. Among the Books contained in the Library were Voltaire's works, Petit Pierre, and some other Infidel works. I have often heard Mr. Stow express his disbelief in the Scriptures, and think this the general tenour of his sentiments. I have heard him advance opinions opposed to the truth of the Scriptures and not according with my own. Besides, he did utter Infidel sentiments in the discussions in the Society.

Ques. by Defendant's Counsel. Did Ethan Allen's Bible belong to the Library?

Ans. No.

Ques. by same. Was Mr. Stow a member of the Society as long as it continued?

Ans. Mr. Stow did not belong to the Society at its commencement. I never supposed that he would deny that he was an Infidel. His conversation induced me to suppose that he did not wish that it should not be known, that he was an Infidel. The Society finally became such that those who believed in the Christian Religion, withdrew themselves. There was a great talk about it at the time. The *professed* object was a good one—There was a great difference in opinion there, respecting the Christian Religion.

Ques. by Plaintiff. Did I attend after you withdrew?

Ans. I don't know.

Ques. by same. Did not members of the church belong to the Society?

Ans. Yes: but withdrew.

Ques. by Defendant's Counsel. Did not Mr. Stow avow his Infidel sentiments in the Society?

Ans. The discussions in the Society had the lead in forming my opinion of his Infidelity. After I withdrew they met on the Sab-

bath at Spelman's, I suppose to read Paine, and such works. I once was there and those books were introduced.

Manoah Camp. This Society was formed as much as twenty-nine years ago, and continued between four and five years. We used frequently to discuss religious questions and sometimes political ones, to accustom us to express our ideas and induce us to read. The Bible was frequently read. *Petit Pierre* was as bad a book—indeed the hardest book that was read there. The object of the Society was to make us bold, and learn to read—to be friends to each other, and friends to the world—to watch with the sick, &c. In our discussions I don't know as we calculated to side according to principle, but to strengthen the mind. Mr. Stow's father was a rigid man—a new-light Presbyterian. Mr. Stow formerly had religious exercises and was affected, and with others wandered about the streets exhorting, &c. I spoke to Mr. Stow about the story of the Devil. I told him what I had heard—he did not deny or own it. One night (I told him I understood) he could not rest, because the Lord would not hear him—and he would not hear him, because he did not pray loud enough—he was ashamed to pray aloud in the house, and he got up in his linen and went to Black-Pond on the mountain, and prayed to the Almighty till he was exhausted. He thought the Lord did not hear him, and if he could not raise one Spirit, he would try another; and then after resting, he turned round and prayed to the Devil, to see if he could rouse him. I told him all this and he smiled, as if it was somehow so. I did not consider Mr. Stow as an Infidel. I have known him thirty-five years—he showed no such idea to me.

Ques. by Plaintiff's Counsel. Was it not a dispute between him and Calvinists?

Ans. Such was my idea. He trusted to a God of Love. He said nothing of a Saviour, &c. to me. He said men were inspired by degrees, one above another to write, and every thing was by inspiration. It was so in the Scriptures, as in other books. He held the Scriptures to be a revelation from God. It has been reported that he was a disbeliever for twenty years past.

Ques. by Plaintiff. Did I ever tell you I was a disbeliever?

Ans. You never told me, Sir, that you disbelieved the Scriptures, or the atonement of our Saviour.

Ques. by Plaintiff's Counsel. Was Paine's *Age of Reason* in the Library?

Ans. It was not. The Society was finally dissolved in consequence of some troubles; and it was agreed that Talcott should keep the Records, and we all keep the secrets. Ebenezer Belknap was one of the Founders of the Society. I own a right in the Library now.

Ques. by Plaintiff. Do you know whether I took books out of the Library?

Ans. I don't know whether you have taken books out or not.

Elisha Miller. Some seven or eight years ago, I heard Mr. Stow

say that his mother Coe at his house, requested him to pray in the family : He said he would if she wished. He began " O Lord thou knowest that I do not come in my own name and on my own account, for thou knowest I am well provided for. As for mother Coe I dont know what she wants ; but as she is a pretty worldly woman, I suppose she wants plenty of Beef, Pork, Butter, Corn and Bread-stuff, and some Flax and Wool to spin," &c. &c. He said mother Coe caught hold of him and said stop, stop, Josh. and she never asked him to pray again. I have heard him tell the story repeatedly.

Ques. by Plaintiff's Counsel. How long is it since you last heard this story ?

Ans. I can't say whether within a year or two years past ; nor where it was, nor who was present ; there was however a number present.

Ques. by same. Have you not been in a bitter controversy with Mr. Stow ?

Ans. No, not a bitter one. He sued me once for an acre and an half of land. He and I don't think alike, and he tells some things which I don't believe. I wish him well and pray for him. We have had no quarrel. I never gave him a cross word. I have told only what I recollect clearly. The time mother Coe asked him to pray was sometime before this, but he did not tell when. I should suppose the prayer might have been made twenty years ago.

William Southmayd. I have heard Mr. Stow tell the story about this prayer at Hinsdale's corner, within five or six years past, when there were present from ten to twenty persons. He said mother Coe had talked to him much about praying in his family, and that he undertook, one morning at her request. He prayed that " she might have Beef and Pork in abundance ; Corn, and Rye or Flour, in her garret, Wool and Flax, and that all her children might have these things, and especially her son Seth." After that, he prayed that " she might have a good seat in Heaven, and all her children, and especially her son Seth." All, or nearly all, present laughed, and considered the story as told for amusement, and to make sport. He said mother Coe never asked him to pray again.

Ques. by Plaintiff's Counsel. Do you remember who else were present ?

Ans. I remember Mr. Ephraim Bound was present.

Prosper Augur. I have often heard of this prayer, but never heard Mr. Stow mention it but once. He said mother Coe teased him very much on the subject of prayer, and from the old lady's importunity one evening, he finally consented to pray. He made a ludicrous, mock prayer, much in substance as Mr. Miller has stated. I think Mr. Miller was present with me, and heard the conversation at Mr. Hale's, say seven years ago. He prayed that she might have Flax and Wool, what she wanted to spin and knit, &c. and prayed in particular for her favourite son Sethy. He said

after he had got a little ways, that the old lady jumped up, and said stop, stop, stop!

Benjamin Bacon. Twenty-five years ago, perhaps, Mr. Stow was telling that he was a sober young man, and read the Bible a good deal—that he was much engaged in getting religion, but found no comfort—that he took his Bible and set apart a day of fasting and prayer—that he felt nothing more than common—he went away into the woods, and thought there was no God or Devil. He wished to see the latter—he prayed first to the good Spirit, and he did not answer—he finally prayed that the Devil might appear—but as he felt no influence from any spirit either good or bad, he concluded that there was neither. I don't know as Mr. Stow told this story in my hearing more than once. I have heard him say that his mother Coe asked him to pray one evening, and that he did pray, but I did not hear the particulars.

Ques. by Plaintiff's Counsel. What is Mr. Stow's Religious Creed?

Ans. I don't know what he does believe.

Ques. by same. Was not Mr. Stow at this time partially deranged?

Ans. I don't think telling of concern of mind is being under phrenzy or partial derangement.

Ques. by same. Is not Mr. Stow a believer in the Christian Religion?

Ans. I don't know what you call the Christian Religion. He believes in final restoration: I believe he is a Universalist. I don't think he believes all the Scriptures, and I have always known him intimately. Some call him an Infidel. His general character is, that he does not believe just as common people do.

Ques. by Defendant's Counsel. Does he believe in the Bible?

Ans. I don't know as he believes it to be an inspired work—I don't think he does believe the Scriptures to be the word of God, and the truth.

Ques. by Plaintiff's Counsel. Does not Mr. Stow believe in the atonement?

Ans. He believes all men will be saved by the atonement of the Saviour, if in any way. I never heard him say what he thought of Jesus Christ. I have heard him say that he believed all men would be saved.

Ques. by same. Did you ever hear him deny the authenticity of the Scriptures?

Ans. I don't know as I ever did.

Ques. by same. How far do you live from him?

Ans. About five miles.

4. THE GENERAL CHARACTER OF THE PLAINTIFF FOR INFIDELITY.

The first witness introduced by the Defendant was *Samuel C. Camp* of Durham.

Ques. by Defendant's Counsel. Has not Mr. Stow sustained, and does he not sustain the character of an Infidel?

Ans. I must say that, that has been his general character for twenty years past. He is considered as an unbeliever in the Scriptures among all classes of people, so far as I have had knowledge, ever since my remembrance.

Ques. by same. Have you ever known this belief confined to any one sect of Christians?

Ans. I should say I have not. I live about four miles and a half from Middlefield. I lived in Hartford almost twenty years, and during that time I knew him well.

Charles Coe. I live in Durham, on the Middletown line, and have known Mr. Stow from my youth. His general character is that of an Infidel. I never heard *him* say what his particular tenets were, but the general opinion is, that he is a disbeliever in Divine Revelation. I never heard it claimed that he was a believer.

Daniel Bates. I keep a public house in Durham, about four miles from Middletown. I have known Mr. Stow, from his youth. His character is that of an unbeliever as far as I have ever heard: I never heard it denied or disputed by any body.

Joseph Parsons. Mr. Stow's general character is, that of an Infidel, from what I have been told, and what I have heard myself. I live about three miles from him.

Joseph Hubbard. I don't know much about Mr. Stow, but my impression is, that he is an Infidel—that has been the speech of people ever since I was a boy.

Wedworth Wadsworth. Mr. Stow's general character is that of an unbeliever. I have often heard that he was an unbeliever.

Burrill Newton. I live six or seven miles from Mr. Stow—was acquainted with him formerly, thirty years ago. I belonged to the Society in Durham. His general reputation from information is, that of having denied the Saviour and the truth of the Scriptures, in part or in whole, though he believes in the being of God. His reputation is that of an unbeliever.

William C. Hall. The general report is, that Mr. Stow is an unbeliever. I have known him fifteen years or more.

Oliver Prout. Mr. Stow's general character is that of an unbeliever, as I have always understood it.

Richard Hubbard. I was bred and born and live, in Middletown, and have known Mr. Stow for the last five years. His general character among all denominations of Christians, is that of an Infidel.

Horace Southmayd. Mr. Stow's general character has been that of an unbeliever ever since I was a boy.

Timothy Southmayd. Mr. Stow's general character, I think I must say, is that of an Infidel.

Prosper Augur. Mr. Stow's general character, as far as I know, has been that of an unbeliever in the Christian Religion—it was so formerly. Whether it is so generally considered as his character now, may be questioned.

Phineas Augur. I think Mr. Stow's general character has been that of an Infidel. I never heard it questioned till within a year.

George Geer. As far as I know Mr. Stow's general character, he believes in Universal Salvation and the restoration of all things. He does not believe in the inspiration of the Scriptures, or of the Prophets, or the Apostles.

William Lyman. Mr. Stow's general character among his acquaintances is, that he is not a believer in the Scriptures. It is generally said that he is not a believer. I believe that within two or three years past, he has declared himself a believer in Universal Salvation.

Rev. David Smith. I have lived in Durham twenty, or twenty-one years. It has always been my impression that Mr. Stow's general character was that of an Infidel.

HERE THE DEFENDANT RESTED.

Wednesday Morning, Jan. 26.

The Plaintiff's Counsel proceeded this morning, to introduce their testimony regarding the proceedings in Convention, and read the 7th Article on the subject of Religion as it came from the Committee, remarking at the same time that the article was drawn up by Mr. Stow.

Judge Bristol of New-Haven, testified that Mr. Stow was one of the sub-committee who reported the article on Religion. He was among those added for this purpose, as some had declined.

Thomas Lyman of Durham. Mr. Bristol's statement is correct. Mr. Stow was added to the Sub-Committee, and the article was drawn by him in his hand writing. I was on this Committee. The word "Right" in that article was struck out.

The Report of Mr. Stow's speech as it appeared in the Journal of Sept. 29, 1819, was next offered and was objected to by the Defendant's Counsel, on the ground that Mr. Converse (the Defendant,) did not report it himself, not having been present at the debate.

The Plaintiff's Counsel claimed that it was proper testimony to the Jury to show the confessions and the malice of the Defendant.

By the Court. *The testimony is admissible for all the purposes claimed. It is evidence of confession, and also goes to show the "quo animo."* *The Reporter's minutes were then read.*

Alexander Wolcott of Middletown. I was a member of the Convention and sat at the same table with Mr. Stow, and no doubt heard all that he said, but I can't repeat precisely what he did say. I think he made use of no expression which a rigorous or rigid man could take hold of. His argument was that, if government had a right to interfere to use compulsion, they might of course, decide what religion should be supported. The object of his argument was to defend the article in the Constitution on the subject of Religion. I don't recollect any particular expressions. I don't remember hearing Mr. Stow make use of the word "Devil" at all—the scope of his argument was the same as in the printed

Report. I am confident he did not use the expression naked, as in the Depositions which have been read. I cannot pretend to recollect or state words. In his argument, my impression is that he was very circumspect. I don't recollect that he spoke more than once, unless he was up to explain something which was misapprehended.

Ques. by Plaintiff's Counsel. Did not Mr. Stow claim that government had no right to interfere to compel men to worship the Supreme Being?

Ans. I believe he denied the right of government to interfere to compel men to worship *any* Being—it was not a proper subject of force. Mr. Stow spoke several times on this article. It was gone over with twice.

[*Here the Plaintiff's Counsel read another speech of Mr. Stow's, previous to this, from the Connecticut Journal; to which the same objection was taken as in the first case, but the objection was overruled.*]

I believe I heard all the debate and have no conception that Mr. Stow used any such expression as Mr. Read states in his Deposition.

Thomas Lyman. Ques. by Plaintiff's Counsel. Did you hear any such expression as that which has been mentioned?

Ans. I do not recollect any such. I have no recollection that he used the word "Devil," either in the Convention or in the Committee. I think I should have remembered it; it would not have escaped me. Mr. Stow spoke twice only, except it was a correction, at the last. The scope of his remarks was much as reported, except this word, the "Devil." So indecorous an expression would have been impressed on my mind, and I should have remembered it. Mr. Stow concluded by saying, that government had no right to compel men to worship the Creator or any other Being.

David Tomlinson. I was in the Convention and heard Mr. Stow's speech. I can't relate in particular what he said; but he made a long speech on that article. He considered the right of the Legislature to provide for worship and objected to their taking any course of measures on that subject. I don't know that he made use of the word "Devil," though he might have done it. I paid particular attention. He said a good many things about the mode of worship. I can't tell how many times he spoke.

William Todd. I recollect very little of what Mr. Stow said in the Convention, and cannot distinguish his speech from that of others. I should think the 7th article was under debate several days. I do not remember the particular expression alluded to, nor what Mr. Stow said, nor the substance of his remarks nor the tenor of his argument. He was not altogether orthodox, in my opinion. I was on the Committee, not on the Sub-Committee. I don't know who reported the article, nor do I know how many times Stow spoke.

Judge Bristol. I left the Convention five or six days, and on my return, I understood that the principles of the 7th article were settled by the Convention. There was however a small amendment proposed by Mr. Stow—a merely verbal one—the word 'only.'

II. *The Plaintiff's Counsel next called the attention of the Court and Jury to the conduct of Mr. Stow as a Bank Director; and to this point they introduced the testimony of Arthur W. Magill, the Cashier of the Branch Bank of the United States, located in Middletown.*

Previous to Mr. Magill's testifying, some of the Rules of the Mother Bank were read. One of which was, that if a note was not paid in full when due, it should be protested and no discounts be afterwards made to any of the parties to it.

A. W. Magill. I am Cashier of the Bank, and am knowing to a note called the Robinson note, becoming due April 30th, 1817, signed by Ebenezer Robinson and Samuel Meeker. On the day when it became due and after the Directors had adjourned, Mr. Tibbals, the Indorser, called to renew it. He brought a new note for \$160 and \$50 in cash. I told him the Directors had adjourned and it could not be renewed—that I must send the note to the Attorney of the Bank and it must be protested, and there would be one dollar to be paid to the Notary. Mr. Tibbals called between two and three o'clock—he went away, and before the Bank shut, the note was paid in full and taken away. This is all the knowledge I have about the transaction.

Ques. by Defendant's Counsel. Did you tell Mr. Tibbals that the note must be paid in full?

Ans. I have no doubt that I did, but I don't recollect. This is a Rule that is adhered to almost invariably.

Ques. by same. Was the note left by Tibbals discounted next discount day?

Ans. I can't say, I have not looked at the Books. I have no doubt it was discounted.

Ques. by same. What became of the old note?

Ans. I don't know what became of it, or who paid it, or how it was paid.

Ques. by same. Was it ever sent to the Attorney of the Bank?

Ans. The note was not sent to the Attorney.

Ques. by same. Who presented the note, and to whose credit was it passed? Did it not go to Mr. Stow's credit?

Ans. I don't know who presented the note, or to whose credit it was passed, and I do not know what became of the new note or the \$50; nor whether it applied in payment of the old note or not.

Ques. by same. Did you ever demand or receive a fee for the notary or the attorney of the Bank?

Ans. I never received any fee to pay a notary or any other officer on this note; and none was ever offered.

Ques. by same. To whose credit would a note discounted be placed? If it had been discounted for Mr. Stow, would it not have gone to his credit?

Ans. We sometimes pass a note to the credit of a man who is not an indorser, but the Rule is the other way. We pass a note to the credit of the man who hands it in, sometimes, (if he wishes it,)

charge him the note and take his check. It is a Rule of the Bank that the note shall go to the credit of the Indorser. It is not the Rule to carry it to the credit of the Drawer. We never, as I recollect, carry a note to the credit of a man not an Indorser, though sometimes, to the credit of the Bearer.

Ques. by same. Don't you require the owner of a note to indorse it?

Ans. We don't always require the owner to indorse, though it is the general rule. If the owner brought a note for discount, it would be put to the credit of the Indorser, unless requested to put it to the owner's credit.

Ques. by same. If the note had been discounted for Meeker & Robinson, would it not have been put to their credit?

Ans. If Meeker or Robinson had presented the note, it could, (but not by Rule) go to their credit.

Ques. by same. Has not Mr. Stow had some conversation with you respecting this note since the suit?

Ans. He has not.

Ques. by same. Has not Mr. Stow looked at the Books lately, respecting this note?

Ans. He has not looked at the Books to my knowledge, for the private accounts of individuals.

Ques. by same. Did you not examine the Books before you came here to testify?

Ans. I looked at the dates when paid, not for renewals.

Ques. by same. You have heard Mr. Tibbals testify; has he not stated the facts correctly?

Ans. What Mr. Tibbals stated was undoubtedly correct. I dare say I told him that the note would be discounted next discount day.

III. *The next step on the part of the Plaintiff's Counsel was to show the course of Mr. Stow's conduct as Collector of the Internal Revenue.*

Before proceeding to the examination of witnesses on this part of the case, the Plaintiff's Counsel read the 5th section of the Law of the United States, passed in July, 1813. Also the 26th section of the Law for collecting Taxes, passed January 15th, 1815—Also a letter of instructions from the Commissioner of the Revenue to the Collector, dated August, 1815, directing what Bank Bills he should receive, which was objected to, but was admitted by the Court. In connection with this, they also read the notice or circular issued by Mr. Stow, in consequence of these instructions, dated Oct. 25th, 1815.

Hezekiah Rice. Ques. by Plaintiff's Counsel. Did you ever make a demand on Mr. Prout for his taxes?

Ans. If I ever made a demand on Mr. Prout, it was in 1815; but I don't remember ever having made a demand. I was instructed to note the days of demand.

Ques. by Defendant's Counsel. Are you not related to the Plaintiff?

Ans. I am a Brother in Law of Mr. Stow.

A. W. Magill. Ques. by Plaintiff's Counsel. Was not the Collector's Office kept by Mr. Stow, open at all times ?

Ans. I believe it was. I always found it so. It was next the Post-Office. I have no knowledge of the contrary.

Ques. by Plaintiff's Counsel. Did you not generally find Mr. Stow there ?

Ans. I generally found Mr. Stow there. I cannot tell the hours allotted to this business, as I had little occasion to be there. Mr. Stow lives four or five miles off ; he came in frequently, and generally attended himself.

Ques. by Defendant's Counsel. How often was you there ?

Ans. I was generally once a day at the Office.

Alexander Wolcott. I was daily at the Post-Office, and frequently looked in at Mr. Stow's Collector's Office, and when I found him there went, in. It never occurred to me that the Office was neglected.

Ques. by Defendant's Counsel. Was you there often ?

Ans. I was seldom there.

Justin Lyman. I lived about two miles out in Upper Houses, and went daily down town to the Post-Office after letters. I was frequently at the Collector's Office, but I don't know how much Mr. Stow was there.

Ques. by Defendant's Counsel. Did you live in Middletown during the whole time Mr. Stow was Collector ?

Ans. I did not live there when the Office was kept where Mr. Hotchkiss now keeps his office.

John Alsop. I don't know much about Mr. Stow's attendance at the time when the Office was kept in the wooden building.

Nathan Starr, jun. I don't know much about the Office at the time mentioned. I was seldom there.

Albert G. Stow, (son of the Plaintiff.) I kept the Collector's Office the fore part of the time, and was there almost every day. My father had one or two Clerks every day. The Rule was to open the Office at nine o'clock and keep it open till sun down. I boarded at Southmayd's. Nichols was then Clerk of the Post-Office.

Ques. by Defendant's Counsel. How old was you at that time ?

Ans. I was then eleven or twelve years old, and was there most of the time. This was in the year 1813. I am now eighteen years old.

IV. *The Post-Office next claimed the attention of the Plaintiff's Counsel, and to support the Plaintiff's good conduct in this particular, they introduced*

Justin Lyman, who testified as follows :—After the Office was removed to Hinsdale's brick buildings, I was frequently there. For my own part I never met with any difficulty at the Office. I heard some complaint while Clark was there ; he was taken sick and was soon missing.

Ques. by Plaintiff's Counsel. Was not the business at this time well done ?

Ans. I have no knowledge to the contrary. It was as well done as ever, perhaps, except by Nichols and Mr. Stow's son.

Ques. by Plaintiff's Counsel. Was not Mr. Stow generally there?

Ans. Either Mr. Stow, or his son, or Hubbard, were most always there. I most always found Mr. Stow there. He superintended both Offices, which were adjoining each other, and in the same building.

Ques. by Defendant's Counsel. How often do you go to the Post-Office?

Ans. I generally go every day, in good weather, and when I am in good spirits.

Ques. by same. Can you be positive Mr. Stow was there half of the time?

Ans. I don't know how often Mr. Stow was there; perhaps not half the time. I think he was generally there, and handed me letters, according to my recollection.

Ques. by same. Did Mr. Stow ever deliver a letter to you?

Ans. I won't swear that he ever handed me a letter.

Ques. by same. Did you not reside in New-Haven while Mr. Stow was Post-Master?

Ans. I moved the 17th of May 1817, to New-Haven, and from the 30th of August, I continued there 5 or 6 months in the *United States' service*.*

J. L. Lewis. I was conversant with the Post-Office the last of the year 1816, and the commencement of 1817, and in the spring of 1818. I was frequently at Mr. Stow's Collector's Office in Hinsdale's buildings; the doors were usually open; sometimes I sat there two hours in a day, perhaps. I always found him at the Collector's Office. He was rarely absent. I know no cause of complaint of the Post-Office, except as to Clark, and of him I complained as an improper person.

Ques. by Defendant's Counsel. Has not the Post-Office been often removed?

Ans. The Post-Office has been kept in three places, to my knowledge. First in Hinsdale's building—second in Magill & Williams' store; and then was removed to a store occupied by Mr. Dunning. Mr. Stow was not so often there when Dunning kept the Office.

Ques. by same. Did Mr. Stow ever deliver letters himself?

Ans. I sometimes received letters from Mr. Stow, but not often.

Ques. by Plaintiff's Counsel. Was not Mr. Stow very attentive to his Office?

Ans. I should say he was a very particular man in his attention to the duties of his Office. I used to find him at his Office about 8 or 9 o'clock, and for a part of the year 1819, I used to see him there frequently.

* The witness meant that he was in prison in New-Haven, at the suit of the United States.—*Rep.*

Ques. by Defendant's Counsel. Did Mr. Stow ever open or close the mails?

Ans. I don't think Mr. Stow was there to distribute letters, open and close mails, &c.

Ques. by same. Was Mr. Stow always in town, or did he board in town?

Ans. I don't know as he always staid in town days. Going about town, I should generally see him once, either forenoon or afternoon. He sometimes dined at Swathel's, but did not board there.

Ques. by same. Do you know the income of the Office, or what he gave his Clerks?

Ans. I do not know what he gave Dunning, or what his income was.

Ques. by same. Was not Mr. Stow often absent in New Connecticut and elsewhere, for considerable periods?

Ans. In July, 1818, he was absent a fortnight, on a journey to Philadelphia. Sometimes he was absent a month at a time, and in the heighth of haying, a day or two. He was absent at the Convention four or five weeks.

James Robinson, (Post-Master of Durham.) Letters frequently passed my Office, mailed in Hartford, which came from New-Haven, and so from other places—they had gone up the wrong route. Once in October or November, I expected a letter from my brother. I opened the bag, and found no Southern mail. My son expected to go to the South, and started the next week after, and on Wednesday the Southern mail came back from Hartford. Such circumstances frequently happen. I have often been to Middletown, and seen Mr. Stow in his Office at 9 or 10 o'clock. I live six miles from Middletown.

Wm. H. Jones, (Post-Master of New-Haven.) I have observed as to the Hartford mail, that letters directed to Middletown have come down to New-Haven sometimes. They may, if wrongly distributed, be eight, ten, or twenty days on the road. The Middletown Office, is a correct Office, so far as I have had dealing with it. Much depends on the Distributing Offices. If letters go past our Office, they generally return soon. We have three mails a week from Providence by Middletown. There has been some irregularity in the Providence mail, and some complaints.

Ques. by Defendant's Counsel. Do you not yourself deliver letters at your Office?

Ans. My clerks generally deliver out letters; sometimes I do.

Ques. by same. Did you ever receive at your Office two letters marked nine days apart?

Ans. I never have known a case of two letters post-marked nine days from each other.

Ques. by same. Could a person, calling daily at your Office, fail to receive a letter that had been there eight or nine days?

Ans. I don't recollect such an event. We assort them alphabetically. Cross mails are not generally so correct as the others.

Ques. by same. Do you not yourself attend to the opening and making up of mails?

Ans. I attend to the opening and making up of mails.

Ques. by same. How much do you pay for Clerk hire?

Ans. I pay \$200 or \$300 a year for one clerk.

James Robinson, (called again.) Ques. by Plaintiff's Counsel. Do not letters sometimes arrive out of season at your Office, owing to their being mis-sent?

Ans. I had a brother in Granville, Mass.—a letter was to be sent to me inclosing money—three hundred dollars were ordered to me. The letter did not arrive. Great inquiry was made for it, and it was finally found at Durham, N. Y.

Wm. H. Jones, (called again.) Ques. by Plaintiff's Counsel. Are there not several post-towns in the United States by the name of Middletown?

Ans. There are several Post-Offices by the name of Middletown.

Ques. by Defendant's Counsel. But if letters are mis-sent, are they not always re-post-marked, and additional postage charged?

Ans. Letters mis-sent are to be re-post-marked, and additional postage charged, if the direction is wrong. Such cases are always noted "mis-sent."

Ques. by same. What is the income of Mr. Stow's Office?

Ans. The income of that Post-Office may be from 7 to 800 dollars a year.

Alexander Wolcott. There has been no complaint of the Post-Office as I have ever heard, except when Clark was there for a few days; there was considerable muttering about that. I don't know but I may have heard some person imagine that letters had lain when he had called once and again for them. There has been no complaint of the manner in which the Office is kept, according to my recollection. When the two offices were together, Mr. Stow was generally there; he had the general superintendance, though he was not always there. We had frequent intercourse nearly every day.

Ques. by Defendant's Counsel. Was not the business of the Post-Office almost entirely done by Clerks? and who were the Clerks?

Ans. The business was done principally by clerks. The clerks were, a son of Mr. Stow; Hubbard was the longest there, except perhaps, Nichols. Since Mr. Stow was Post-Master, both Offices have been kept in the same building.

Ques. by same. What is the income of that Office?

Ans. I never heard the income of the Post-Office mentioned.

Ques. by same. Did Mr. Stow do the business of the Office when he was there, or did he merely call there for his own letters and papers?

Ans. Mr. Stow sometimes, when there was no clerk there, delivered letters himself. If there arose any question, it was settled by Mr. Stow. I never knew as Hubbard was a deputy, and as such franked a letter.

Ques. by same. Are not most of your letters, &c. from the South,

and does not that mail arrive and get distributed in the morning before Mr. Stow gets into town ?

Ans. We receive most letters from the Southern mail by far. This mail comes at night or near morning, and the letters are delivered early, no doubt. I don't think Mr. Stow is ever there in the night.

Ques. by Plaintiff's Counsel. Did not Mr. Stow frequently stay in town several days at a time ?

Ans. Frequently, if I mistake not, he has staid several days in town, and boarded at the tavern, or at Southmayd's. Often he was there till 9 or 10 o'clock at night. He was in town more, when pressed by the Collector's business.

Albert G. Stow, (in answer to several questions, testified as follows:) My father always swore his clerks when they came into the Office, and sent on the oath. He swore Hubbard, Upson, and Gilbert. They were of course assistants if sworn—Father was not generally there to make up mails in the night. The net emoluments of the Office were five or six hundred dollars, and clerk hire out of that. Father superintended when I was clerk, if not out of town, and was generally in the Office. Questions were referred to him if any difficulty arose. Father never made up mails—he sometimes assisted me. It was generally 9 or 10 o'clock when he got over ; sometimes noon, in the winter. I don't recollect his staying in the Office over night, or sleeping with me. He rode home just at night—generally boarded at the tavern. Some people made some complaints. I can't state particularly what they were ; some about trusting postage.

A. W. Magill. I have been well accommodated at the Post-Office, since I have been Cashier, as well as before. I can't say how far Mr. Stow had the superintendance of the Office. I have had postage bills made out and receipted by him, and have received letters and papers from him. He was not there himself generally. I generally received my letters from the clerk.

Nathan Starr, jr. I generally go to the Post-Office every day, early in the morning, and at 10 o'clock. I never found any difficulty, and never heard of any. I usually found Mr. Stow there at 10 o'clock.

H. De Koven. I always got my letters, and never heard any complaint, except that the Office was shut up at meal times.

Ques. by Defendant's Counsel. How long have you lived in Middletown ?

Ans. I have been there nearly two years, and heard no complaint in 1817 and part of 1818.

Ques. by same. Have you ever seen Mr. Stow there, or received letters from him ?

Ans. I have seen Mr. Stow there frequently. I don't remember ever receiving letters from him.

John Alsop. I have had very little intercourse with the Post-Office. I have not heard much complaint ; but have, however, known some, in quarters not friendly to Mr. Stow, because the Office was not

open every minute in the day. Some people suppose the Office ought not to be shut at all. The Hartford mail, I think, closed at noon, and opened at 2 o'clock.

V. *The Counsel for the Plaintiff next proceeded to examine the charge of Infidelity, &c. against him, in the alleged Libel.*

Mr. Ingersoll, (previous to the examination of the testimony,) stated that Mr. Stow, for more than ten years past had been chosen Clerk of the Society, Treasurer, Society's Committee, and one of a Committee to procure Clergymen, to select Books, and to superintend the exercises of Public Worship in the Society of Middlefield, with a view of showing that he had not contributed to destroy that Society. Also, that the Society was composed of different denominations of Christians.

The vote of the Society, passed Nov. 16, 1804, was then read, and is in the following words :—“ Voted, that preachers of any and all denominations of Christians, being of a fair and good moral character, be admitted to preach in the Meeting-House in this Society hereafter, and that an appointment once made, and notice given to the Clerk of the Society, shall not be superceded by any subsequent appointment, unless the same be done by vote of the Society. J. STOW, Clerk.”

The next vote read was passed Dec. 31, 1805. “ Voted, That Seth Miller, J. Coe, (and others, whose names the Reporter has not taken down,) with the Society's Committee, heretofore appointed in this meeting, be a committee to invite and procure preaching, agreeably to the vote of the Society, passed Nov. 16, 1804 ; directing notice to be given to the Society's Clerk, &c.”

By the vote of January 1st, 1807, Mr. Stow was appointed a Committee man, Treasurer, and Clerk, and one of a Committee to introduce into the Society Watts' Psalms and Hymns, as revised by Joel Barlow, and to establish a uniformity in their mode of worship.

The vote of Nov. 17, 1807, appointed several persons, (of whom Mr. Stow was one,) to procure preaching, &c. agreeably to the vote of Nov. 16, 1804.

The votes of October, 1808. Dec. 1810, and Nov. 5, 1811, were the same as that of Nov. 16, 1804, with this addition to the vote of 1811 :—“ Also Voted, That Prosper Augur, J. Stow, (and others, whose names the Reporter has not taken down,) be a Committee to procure suitable and proper Books to be read when there shall be no preaching, and that they superintend and direct the public exercises in the Meeting-House on the Lord's day, as they may deem most for the edification of the Congregation.”

The votes of October 31, 1812, and of October 29, 1813, are the same with that of Nov. 16, 1804, and the last vote of Nov. 5, 1811. with this addition :—“ And that an appointment once made by any one or more persons belonging to the Society, who shall invite or procure preaching for one or more days, notice being given to the Clerk, agreeably to said former vote, shall have the same preference as though made by said Committee.”

The votes of December 30, 1814, and October 27, 1815, are the same as the votes of Nov. 16, 1804, and Oct. 29, 1813.

Mr. Denison introduced the two following votes of 1816, by remarking, that great pains had been taken to send men offensive to many of the inhabitants, from the Domestic Missionary Society—that these men were offensive to many of the Parish, and particularly to Mr. Stow, who openly opposed their doctrines in private and in public, in-somuch that a loud cry of irreligion was raised against him; that Mr. Davis came among them at this time, and Mr. Stow rebuked him for these doctrines—that these Votes were passed by the procurement of Mr. Stow, who was hostile to the doctrines, not to say dogmas, of Mr. Davis, &c.

At a meeting of the inhabitants of the society of Middlefield, duly assembled at the public school-room, in said society, December 26th, 1816.

An act for the support of literature and religion having passed the legislature of Connecticut, purporting to appropriate a large sum to various denominations of Christians for the support of the Gospel, by which the civil and religious rights of the citizens of Connecticut are deeply affected—Therefore we deem it proper, in a respectful manner, to express our opinions on the subject.

Resolved, That the claim on the United States, pretended to be appropriated, is of a disputable nature. If it did not originate in opposition to the general government, it was not under their sanction or their authority, but under the sanction and authority and in the particular and private views of this state only, from which circumstance it is probable that little or nothing will be allowed to the state.

Resolved, That a pretended appropriation, under such circumstances, tends to enlist personal feelings, from personal interests, and thereby create an opposition to the government of the United States.

Resolved, That we think any appropriation of a disputed claim, thus circumstanced, is unwise and impolitic, to say the least. But when considered in connexion with the pretended purpose, namely, for the support of the Gospel, we want for words to express our astonishment.

Will the legislature of the enlightened state of Connecticut, under the pretence of supporting the Gospel, through a mistaken zeal aid the secret views of individuals, and promote disaffection, discord, and contention? Will they establish a precedent, whereby some future legislature, not as honest or as candid, might grant a large sum of money to prop up a sinking administration and a sinking establishment of religion. The time may come when a wicked priesthood may connect themselves with the government of the State, and control the legislature. Civil and ecclesiastical hypocrisy may league together, and some future legislature may open the Treasury for the purpose of corruption and iniquity: they may

find themselves sinking into merited disgrace, to prevent which they may seize upon this precedent.

Resolved, That in our opinion, all mankind have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and that no power can or ought to be vested in any legislature to establish any sectary of religion, or to raise money from the people for the purpose or to appropriate any money raised from the people for the support of any sect or order of religion whatever, and that all laws or grants contravening this principle are unconstitutional, arbitrary, and unjust.

Resolved, That although little or nothing has been granted by the legislature, because little or nothing has been or probably ever will be received, yet we view the principle recognized in the act, as extremely dangerous to the civil and religious liberties of the people of this state, and that it is the duty, as well as the right, of the citizens to express their pointed disapprobation of the measure.

The preceding is a true extract from the original record, copied and examined by me,
J. STOW, *Society's Clerk*.

At a meeting of the inhabitants of the Society of Middlefield, duly assembled at the public school-room in said society, December 26th, 1816.

Resolved, That we are desirous of having the Gospel preached in our meeting-house in this society, and that, according to our understanding of the scriptures, the gospel is good news to mankind, it is "*good tidings of great joy, which shall be to all people.*" If the preachers of this gospel should be sent to us by man, or any order of men, we view them, notwithstanding, as being sent of God, and we feel the importance of listening to their instruction, and we trust we are both able and willing, as may be needed, to contribute for the support of such preaching, according to the precepts of the Gospel. But when we find persons coming amongst us under the sanction of any order of men, proclaiming instead of the Gospel, their discoveries of God's secret decrees, whereby some part of mankind were created for the express purpose of eternal misery, and that, by the decree of God for the manifestation of His glory, some men and angels are predestinated unto everlasting life, and others fore-ordained to everlasting death: we do consider such preachers, not as commissioned of God to preach, but as teaching for doctrines the commandments of men.

Resolved, That we view such doctrines as wicked and ruinous, calculated to do no good, but much mischief. We do fear they have been the cause of much mental derangement, and some consequent suicide: and we cannot bid such preachers God speed; nor can we conceive how those, who profess to believe this doctrine, can employ themselves and their agents in urging mankind to resist this decree so far as it relates to the fore-ordained.

And whereas, such preachers have been sent into this society, by authority we know not from whom, professing and teaching this worst of all doctrines, we deem it proper to express our dislike and abhorrence to the principles, as being totally repugnant to the scriptures, and to our views of the Gospel—

Resolved, That our meeting-house may be open to any and all denominations of Christians, agreeably to our former vote, but that the missionaries of the description herein before mentioned, be considered as having the right to preach in the meeting-house only, at such times as it may not be needed by others.

Resolved, That so far as any individuals of this society may differ from us in the belief of this doctrine of decrees, we are willing that they should enjoy their equal rights in the meeting-house, and that, in proportion to their numbers, they have the same right with us, but that we do disapprove of the interference of the Domestic Missionary Society, who have no right to our meeting-house, or to dictate to us any creed whatever.

The preceding is a true copy of record. Examined by
J. STOW, *Society's Clerk*.

The votes of December 23, 1817, December 1818, and December 1819, were all like the former votes of November 1804 and October 1813.*

Mr. Joseph Wetmore was then called, up, who testified as follows :—

Mr. Davis officiated at my house. I don't think I can recollect the precise words used, nor whether Mr. Davis called on the people that evening to speak. I however think he did. Young people were present, and my daughter was then troubled in mind. Mr. Davis was in the habit of saying, if a person, not a Christian, staid at home, he sinned, if he went to meeting he sinned, if he prayed he sinned, if he did not pray he sinned, and that he sinned in whatever he did. He asked a young woman if she had a hope. She said no. Then, he said, you will be damned, or must be damned, if you don't get a hope. Mr. Stow tried to speak comfort, as I thought, to those young people in that situation, that they might not be distracted.

Ques. by Plaintiff's Counsel. Did not one young woman appear to be on the verge of distraction ?

Ans. I can't say as any woman was bordering on derangement, but two or three were distressed.

Ques by Plaintiff. Did not I say we were rational creatures ?

* The following Vote, of this date, was also on the table, but the Reporter is uncertain whether it was read in this place or not :—“ December 23d, 1817, *Voted*, as the opinion of this Society, that it is not expedient to raise a fund, the interest of which only to be applied for the support of preaching ; but if any individual dissent from the Society in this opinion, we are willing they should create a fund, and with it procure preaching of any particular denomination, provided they do not take up the meeting-house when it is needed by a majority of the Society.”

Ans. I think you said God had made us rational beings, and governed us as such.

Ques. by same. Did not I say that God required nothing more of us than he had fitted us to do?

Ans. I do not remember. Mr. Davis conversed with the people, and called on the audience to speak if they could say any thing for Christ. He did not call on the young women in presence of the audience. The expression, "then you must be damned," in reply to the young woman, who said she had no hope, was before the exercises commenced. I don't remember Mr. Stow's saying any thing about going to New-Gate. I did not see any thing in his manner that could be called disrespectful.

Ques. by Defendant's Counsel. What did you understand by Mr. Davis' expressions, 'if you pray you sin,' &c.?

Ans. I understood him to mean that every person in an unregenerate state, or state of nature, could not do any thing that was good.

I don't know as Mr. Stow was in during these remarks.

I don't remember any thing said by Mr. Davis, or the others, before these words, 'then you will be damned.'

Fairchild Camp. I believe I was at the meeting, but cannot state any thing that was said. I don't think Mr. Stow said any thing disrespectful to Mr. Davis. I don't remember what has been testified to. Nigh the close of the meeting Mr. Stow made some remarks, but I don't now remember them.

Eli Coe. I was at Mr. Wetmore's at that meeting, but can't make a statement of the business. We had a full meeting. Some were under thoughtfulness, and among them two or three young women. One of them lived with me, (a town's poor,)—she was much affected, and I was affected for her. This was about four years ago. After Mr. Stow made his remarks, I felt disagreeable, lest some controversy should arise, but it turned out better than I feared.

Ques. by Plaintiff's Counsel. Are you not a member of the Church in Middlefield?

Ans. I am a member of the Middlefield Church, and a very unworthy one.

Ques. by same. How many members are there in that Church?

Ans. Seven male members, and perhaps twenty female members. My mind was very solemn that evening—it was a very interesting meeting to me. I don't remember hearing any thing from Mr. Davis that evening but what was pious and devotional. Perhaps he sometimes went too far. He used to go very strong on doctrinal points. Mr. Stow interrupted the exercises near the close of the meeting. I believe he did not break in upon Mr. Davis.

Joseph Coe, jr. I was at the Blacksmith's shop, (spoken of,) three or four years ago, about the time Mr. Davis was in Middlefield. Mr. Stow and Mr. Augur came to the shop. One of them spoke concerning Mr. Davis' meeting. Mr. Augur said he thought

it strange that the Society appointed men of no religion to take care of its exercises. Mr. Stow said, I profess to have religion, and think I have got as much as you. Something was said of Mr. Davis' meeting late in the evening, and of the doctrine of Election ; but what it was I don't now recollect.

Elisha Coe. I was at Mr. Stow's when Mr. Lyman and others stopped there on Sunday. I have a distinct recollection that the subject of conversation was Religion, and the Bible. Mr. Stow said there were some imperfections in the Bible, or things not in unison, or contradictory, as Mr. Lyman has stated, and contradictions could not be supposed to be the Bible, or inspired. He did not say the Bible was not inspiration. I don't recollect much that was said. I am not certain that he explained what he meant at that time. The general scope of his remarks respected the apparent contradictions of the Bible. I don't recollect his turning to Mrs. Coe, and saying "You don't believe that." Mr. Stow did not say any thing directly denying the inspiration of the Bible. As to the reading of the book spoken of by Mr. Augur, I gave a certain book to the committee to examine, which was approved by me as one of the committee, and was handed by them to Mr. Stow, and was read. This was deemed improper by some. When out of doors, on the steps, Mr. Stow said he did not like the sentiment "stand by thyself, I am holier than thou," (reeling his body a little.) This was on Fast day, and none had left the house. It was not the Sunday before Fast. I don't remember as my sermon was disapproved of, after it was read. But before it was read, some asked what book it was. I did not hear the notice of the meeting at Obed Stow's, for I was not there on the Sunday before Fast.

Ques. by Plaintiff's Counsel. Did you ever hear Mr. Stow call the Church a Club or Clan ?

Ans. I don't remember ever to have heard Mr. Stow call the Church a club or clan, or intriguing body, or *horse turds*.

The Society and Church have not been very harmonious.

Ques. by Defendant's Counsel. Where did you hear Mr. Stow make the remarks you have testified to, "stand by thyself" &c. ?

Ans. It was on the meeting-house steps, I think at Society's meeting.

Joseph Coe, jr. (called again.) I was present at the meeting, when Mr. Stow went on to the steps and said he did not like the sentiment, that "we apples are holier than thou," "see how we apples swim." "I am holier than thou." It was after a dispute about reading a sermon. I don't know as this was on Sunday, nor do I remember how many years since it was, nor whether Mr. Lyman was there. There was some objection to Mr. Stow's bringing forward books to be read. I should think it was after the close of the exercises, but don't know. I don't recollect Mr. Stow's saying "a little body," "a holy club," &c. I think Deac. Augur was there. Mr. Stow had something to say, and some of the Church replied. One Sunday forenoon, Mr. Stow said he should bring forward a sermon in the afternoon. Eli

sha Miller said he had seen it, and knew what it was. It was a good one, but did not tell what it was; and the Church did not attend. I found it out before noon. In the afternoon he brought in Christ's sermon on the Mount. Mr. Stow has read the Bible, and Sermons, and Christ's Sermon on the Mount, in our meetings.

Ethosian Society, or Infidel Club.

Thomas Lyman. I was a member of the Ethosian Society which was formed about the year 1788, it was chiefly composed of young men, whose object was to obtain information. The members contributed one Dollar each, and bought books, and the Society had the benefit of them. The Society had existed about a year when I joined them. They met at my nephew's, (Noah Talcott's.) They asked me to join them. I did, and attended. Their inquiries were rational. They devoted their attention to grammar, geography, and the first rudiments of literature. They had a President, and Vice-President, and met once a week—chose sides, and discussed questions, and things went on very harmoniously, say three or four years. The meetings were pleasant and instructive. I got rid of many prejudices myself, and imbibed instruction. There was no eating or drinking, but harmony, affection, and brotherly love increased among them. The Society continued till many of the members removed away. There was nothing irreligious among them, and nothing like Infidelity. They read the Bible frequently, and conversed about religious and political subjects. We sided on questions sometimes by lots and sometimes not; but volunteered, and occasionally exchanged sides.

Ques. by Defendant's Counsel. How long was you a member?

Ans. I continued two years or more, and owned a part of the library. I left Mr. Stow a member. He bought into the library. I don't remember as Mr. Stow was one of the committee of the library. I was, and am now, one of that committee. The library was kept in various places. Mr. Belknap was a member of the Society, and also of the library company. Among the books was Voltaire's Philosophy, which I purchased; his Universal History; his History of Charles the 12th, and his Philosophical Dictionary. Paine's Age of Reason is now there. The Fair Circassian, or Solomon's Love, a handsome little poem, is there, which is not more amorous than Solomon's Songs. Petit Pierre, Dr. Huntington's works, and Winchester's Dialogue, were also there. Ethan Allen's Bible or Oracles never was there. There were but few Deistical books. The library dwindled away, because the members got tired of it. There was no division that interrupted the harmony of the Society. None of them turned preachers or *lawyers*. David Lyman and myself had a difficulty, but this did not get into the Society.

Ques. by same. Was the question discussed there, whether there was a Devil?

Ans. I can't say as there was any discussion of the question, who the Devil was, or who created him, but presume we should not catch his Satanic Majesty.

After the Rev. Mr. Smith came to Durham, a number met, say 12 or 15, but not as a Society, and read the Bible and prayers and Sermons. The Society was a political and not a religious one.

Ques. by same. Was Mr. Camp there while you was?

Ans. I think Mr. Camp remained as long as I did. I don't know however, but I left first.

Ques. by same. Was not this an Infidel Society?

Ans. No. They were as far from Infidelity as light is from darkness. Their inquiries were after truth, and their faith increased so that many of them believed in *Universal Salvation* before they left. [*loud laugh.*]

Ques. by same. How long was Mr. Stow a member?

Ans. I rather think Mr. Stow left before I did. Dr. Guernsey belonged to the Society—he was an able man, and had a strong mind. Free inquiry after truth was the object pursued. Soon after I left the Society, they dissolved; but before they had done, Universal Salvation was preached by Barnes and Murray. The first book introduced into the library was *Petit Pierre*, and the next *Winchester's Dialogues*. They were brought into the Society and read and examined there.

Elisha Coe. I was a member two or three years after Mr. Lyman and Mr. Stow. I agree with Mr. Lyman generally. I liked the articles. The object was knowledge and improvement. There was nothing like Infidelity taught or propagated—nothing against Religion or morality—its object was utility. There was a difficulty between two Mr. Lymans, and the Society appointed a committee to settle the differences between them; but they did not succeed. This I think had some tendency towards destroying that Society. It is 26 or 27 years since I became a member. There was a free inquiry after truth. The main object was to inform the mind and mend the manners. We often had a hat to put billets of *faults* in. One member would write to another his faults without making his name known. We had a hat for questions, and a committee for questions.

By the Plaintiff. You retired not from disgust, but from other avocations?

To prove a controversy between the Plaintiff and Obed Stow, (a witness on the part of the Defendant,) the Plaintiff's Counsel introduced

*Mrs. Hezekiah Rice, (a sister of the Plaintiff,) who testified as follows:—*A number of years ago both of my brothers came to our house very early one morning, (I should think it 10 or 12 years since,)—both came in much agitated, and looked as if they had been weeping. I asked what the matter was. It was a cool morning. Joshua sat down by the fire, and Obed walked the room. Joshua said, we have been talking over our difficulties, and concluded to settle them; he said brother Obed felt as though he had wronged him, but he did not wish to have it known. I believe brother Obed was silent, and did not say any thing.

Ques. by Plaintiff. Did I not say he had made an ample confession ?

Ans. I don't remember words, but think you said something had passed to your satisfaction, and you had agreed to be reconciled.

Ques. by Defendant's Counsel. Which of them sought the interview ?

Ans. I understood that Obed called on Joshua to walk, because he lived farthest off. I don't know as I understood the extent of this difficulty, but I believe it related to a piece published in the Middlesex paper, signed "Tom two eyes."

This piece, published Feb. 22, 1790, was here read by the Plaintiff's Counsel, and is as follows:—

"A Liberty Pole !

Mr. Dunning—In a country like ours, where the people choose their own rulers, and consequently have the right to advise them, and even to change them, by electing if they please—I say in such a country, it is not strange that men of candour should view with astonishment an ensign of sedition under the specious name of a liberty pole.

The pole which is erected not far from the town where I live, stands as a testimony of the surprising influence which a sly insidious man may have over the simple. The man who was the chief instigator in setting up this pole, is certainly a person of more than common intrigue, and therefore, those persons who assisted him, may, in some measure, be excused. He removed the doubts of some by telling them it could do no hurt, but might do some good, &c.—If this cunning leader had nothing in view but to influence the national councils, it would certainly appear like a foolish thing, and quite unworthy of his subtle character, for it requires no great sagacity to see that a petition presented to Congress, in a respectful manner, would be more conformable to the principles of our constitution, and consequently more likely to have effect on the national government.

But if we turn our attention to several circumstances connected with the transaction, we shall find something to admire in this arch leader. Unless I have been misinformed, the Society, where the liberty pole stands, (and where this insidious champion lives,) has been somewhat divided in sentiment, as to the mode of supporting the gospel amongst them. This division of the people has given the man, who wished to be the chief object of notice, an opportunity to turn things to his own liking ; for while the people of the parish were contending about sectaries, and modes of supporting the gospel, this champion was busy in propagating Infidelity.

At length party spirit seemed to subside, and by subscription they were likely to maintain preaching, at least a part of the time. This did not bespeak any thing favourable to Infidelity, and consequently, could not fail to excite the attention of a man, who is an inveterate enemy to Christianity : therefore it became a matter of consequence with him to find some subject in which the people of

the parish differed, and on which their passions might be so inflamed against each other, as to make a new division, and thus help his favourite cause of Infidelity. Unhappily for the friends of religion, there was a difference of opinion found on the subject of national affairs; this difference, however, had not essentially interrupted the religious harmony. But here behold the sagacity of this Infidel chief, and then say whether the "children of this world are not wiser in their generation than the children of the light." This known Infidel, with a smooth tongue, goes round to those people who were friends to religion, but were dissatisfied with the direct tax, and persuades them to assist in raising a liberty pole, thus turning their political prejudices to the aid of Infidelity and discord. And so complete was his influence, that he got the pole erected within a stone's throw of the Meeting-house, without having his designs mistrusted by those who assisted. Thus he gained what he wished for, or at least, a promising prospect; for if the federalists cut down the pole, it would be considered by those who erected it, as a violation of civil rights, and would produce the discord which the leader wanted. On the contrary, if the pole was suffered to stand, he knew it would be disagreeable to the federalists, and standing so near the Meeting-house, would at least interrupt their devotions on the Sabbath; besides, if the pole was suffered to stand, it would give him support in his assertions, that a majority of the parish were in favour of the measure, &c.

I believe the wooden image has not as yet had the full effect which was designed, for there has no quarrel yet ensued on that account, and I hope there never will. It ought, however, to be a caution to honest people, not to be led too much by a speculator.

TOM TWO EYES."

The witness continued—They had agreed to settle their differences, as I understood. This was what brother Joshua said. Brother Obed walked the room. Mr. Rice said he thought they appeared like two great children.

Ques. by Plaintiff's Counsel. Did Joshua say that any concessions were made?

Ans. I can't say as the word concession or acknowledgment was used, but Joshua said, that Obed had said that to him, which satisfied him to make up with him, and he was willing to be reconciled?

Ques. How far do you live from Obed?

Ans. About two miles.

Joshua remarked that Obed wished that the piece had not been published.

Ques. by Plaintiff's Counsel. Has not your brother Obed been deranged?

Ans. Obed is a sensible man, but he was deranged many years ago.

Ques. by same. Is he not now at times deranged?

Ans. He has now at times a strange laugh. I have not of latter years been so much acquainted with him.

Ques. by Defendant's Counsel. Have you not had a controversy with Obed?

Ans. There is not and has not been of late, that brotherly or sisterly friendship that we once had. We may, perhaps, watch each other more carefully than we once did.

Ques. by same. What are Joshua's Religious sentiments?

Ans. I have not heard Joshua declare his belief particularly. I have heard him say he had great doubts whether our Scriptures were exactly as they are written. He doubted as to their contradictions, as they appeared to him.

Ques. by Defendant's Counsel. Is he not an Infidel?

Ans. I should not like to say. My impression is he has had some doubts as to divine revelation.

Hezekiah Rice. I think I was present at this conversation, related by my wife, when Obed and Joshua came into the house. One of the children said their uncles were coming down. They first went down by the house very slow, and in fifteen or twenty minutes they came in, and appeared quite agitated, I thought. Mrs. Rice asked what was the matter. Joshua sat down, and Obed walked the room. Joshua said they had been talking over their difficulties, and that they had settled them, and agreed to live in peace; that Obed had made some recantations, something that satisfied his mind, and they meant to live in harmony and peace. I don't know any special difficulty they had besides the newspaper piece, except that they did not agree either as to religious principles or as to politics. Obed was a member of the Congregational Society. I don't know as Joshua made any particular profession as to what he did believe in.

Ques. by Plaintiff's Counsel. Has not Obed been deranged?

Ans. Obed was deranged about twelve or fourteen years ago, and his friends were obliged to confine him. His derangement lasted a month or six weeks. He has never been deranged since he became a member of the Church.

Ques. by Defendant's Counsel. What did Joshua profess?

Ans. I don't know what Joshua did profess. I had an idea that he was inclining to Universalism.

Eli Coe. Obed Stow was deranged for some time, a number of years ago. I know of nothing like derangement now, or for a long time past. The state of his mind is now regular, and has been ever since that time.

Ques. by Defendant's Counsel. How long ago was this?

Ans. It was ten years ago or more, perhaps twelve. He was then sick and very feeble. This derangement continued but a short time, say a month or six weeks.

Ques. by Defendant's Counsel. How far do you live from him?

Ans. We live about a quarter of a mile apart, and are often at each other's houses.

Ques. by same. Do you see any symptoms of derangement *now*?

Ans. He is now regular for any thing that I perceive. I consider him a man of sound mind.

Seth Miller. Seven or eight or ten years ago I heard that Obed Stow was deranged, and that he had a number of people to attend him. I went one Sabbath to see him. He came out of one room and went into another, and looked very different from what he used to. He moved his head one way and t'other. I asked him what was the matter. Says he, you see what ails me. I can't tell what the state of his mind has been since.

Ques. by Plaintiff's Counsel. Has he at all times been regular since?

Ans. I don't love to answer. I think at all times for the last ten years he has not been so regular as before. He once asked me and my wife to come and see him, three or four years ago. I thought he acted different from what he used to; he appeared to me different from what he used to. He mentioned over a number of times *come to see me, come to see me.* I told him, I have come, Mr. Stow. My wife was with me at this time. I thought he talked strange. He asked me as above a number of times, after I got there. He once came to me in the field—seemed agitated in mind, and wept, and walked round a good deal. This was three or four years ago; it may be longer. We were talking about a Mr. Thompson, and a little about the troubles of the Church. I joined that Church for a while.

Ques. by Defendant's Counsel. Does he not manage his affairs well?

Ans. He takes good care of his affairs—he is a tanner and a shoemaker.

Ques. by Plaintiff. Is there not *now* a peculiar *look* of the eyes, and a wildness in him at times?

Ans. I think so. I have seen a wildness in his eyes; but have seen nothing of it yesterday or to-day.

Ebenezer Robinson. After the death of Dr. Goodrich, and about the time of settling Mr. Smith, at Durham, sixteen male members of the Church certificated and withdrew. They used to meet at Spelman's. I lived within sixteen rods, and attended. It was a religious meeting. We used to read a chapter in the Bible.

Ques. by Defendant's Counsel. At what time did you leave Mr. Smith's Society?

Ans. It was after the Ethosian Society broke up. We certificated, and called ourselves Universalists.

Seth Miller, (called again.) It was observed by the Plaintiff's Counsel, that this witness knew the Plaintiff's religious character, having often heard him converse. It was objected, by the Defendant's Counsel, that Mr. Stow's declarations to this witness were not admissible, because it would be making testimony for himself.

Mr. Smith. How are we to ascertain, how to prove a man's religious principles? Suppose Dr. Dwight had been called an Infidel,

might we not resort to his writings to prove his principles and character?

By the Court. These things relate to the life and conversation; the evidence is admissible.

Ques. by Plaintiff's Counsel. Do you consider the general character of Mr. Stow to be that of an Infidel?

Ans. No. I look upon him to be a strong believer, not an Infidel. I lived near him, and sat with him as a Committee man concerning Books, &c. for the good of the Society. He has contributed more than people in general, to the repairs of the meeting-house, &c. I have talked with him a number of times about religion and morality, and I have asked him some pretty important questions. I asked him, do you believe there is a Heaven? He answered, I do. Do you believe there is a Hell? I do.

Ques. by Defendant's Counsel. When did this conversation happen?

This question was repeatedly pressed by Mr. Staples upon the witness in various forms, before he answered explicitly.

Ans. To day. (A general laugh.)

The Judge remarked, that no declarations of Mr. Stow's, subsequent to bringing this suit, could be received as evidence.

Ques. by same. Has he ever selected Infidel Books for your meetings?

By the Court. That question is not admissible.

Ques. by Plaintiff's Counsel. Has he not frequently read the Bible in your meetings?

Ans. I think so; and more than once after sermons.

Ques. by same. Has he not read sermons there?

Ans. Yes. No book was to be read but what was on religious circumstances. I have poor learning on Religious subjects, &c.

Ques. by Defendant's Counsel. Did you ever hear him called an Infidel?

Ans. I believe there has been something like it said, but I think not as a general thing in Middlefield.

Ques. by same. Did you ever hear him doubt the authenticity of the Scriptures?

Ans. I have not.

Ques. by same. Do you consider him a believer in the Scriptures?

Ans. He is a believer, and a strong one, in Universalism. He believes Christ is the Saviour.

Ques. by same. How long has he believed this?

Ans. He has believed thus, say ten or twenty years. I can't recollect exactly. He has been the reader in our meetings till recently, though others have been called upon too. He has been liberal in trying to support the Gospel.

Ques. by same. On what occasion has he shown his liberality?

Ans. There was a contribution six or seven years ago, for the purpose of paying Mr. Phelps or Mr. Preston, and Mr. Stow made

up the deficiency of five dollars, if I am informed right; but this is mere hear say. Mr. Stow is our Treasurer.

Ques. by same. Do you defray your expenses by contributions or by taxes?

Ans. We often give, and I have often been round with the box myself.

Ques. by same. Did you ever know Mr. Stow to put in any thing?

Ans. I have not seen him put in, it is true, but I suppose he did. I never knew him pay any.

Ques. by same. Then you can't tell us the extent of Mr. Stow's liberality?

Ans. I don't know what he paid for charity. There was on some occasion a wantage, say of eight dollars, and Mr. Stow says, I'll put in so much for my part.

Ques. by same. Did you hear his declaration on the meeting-house steps, as testified by Mr. Lyman?

Ans. I never heard him call the Church a club.

Ques. by Plaintiff's Counsel. What is Mr. Stow's general character?

Ans. An honest man.

The Plaintiff next offered the deposition of the Hon. Stephen T. Hosmer, C. J. which was read, and is as follows:—

I, Stephen Titus Hosmer, of Middletown, in Middlesex county, testify and say,—

That for more than thirty years past, I have been well acquainted with Joshua Stow, Esq. of said Middletown. Until I saw a publication in a newspaper, not long since, I had never known any act imputed to him, incompatible with integrity, and always have considered him as sustaining the character of an honest man.

In the course of my acquaintance with Mr. Stow, I have several times heard him speak on religious topics. I have always understood him to admit the authenticity of the Scriptures, and a future state of reward and punishment after death, with this qualification only—that punishment would not be eternal, and that ultimately all mankind would be happy. On this subject, so far as I recollect, his opinion was conformable to that expressed by Elhanan Winchester. The opinion of Mr. Stow I have heard him express more than once a number of years since, as well as recently.

STEPHEN T. HOSMER."

An objection was here taken to that part of the deposition which gives Mr. Stow the character of an honest man, but the testimony was admitted by the Court.

Alexander Wolcott. Ques. by Plaintiff's Counsel. What is Mr. Stow's general character?

Ans. It is difficult to say, and yet I have known him intimately for twenty years. I never dispute with men on religious subjects, since there is no benefit in altercation. I have done disputing on such subjects; within that time I have heard him converse and

argue, and have conversed with him. He is polemically inclined. I don't know what he said; and have had no conversation with him that made any impression. I don't remember the tenets disputed at these times, and cannot say definitely as I have heard him say that he believed in a Saviour. He always expressed a belief in the Scriptures, but I cannot tell precisely what he expressed his belief in, or the language which he made use of. His general character has not been questioned, till since the time when all Jacobins were called Infidels.

(*Mr. Daggett here remarked that no allusions to party feelings had been before made on the trial, and he trusted all such allusions would be discountenanced by the Court. The Court expressed their assent to the justness of the remark.*)

Aside from party, I never heard him called an Infidel. One party called all the other Infidels. I have not considered this as his general character. I always understood there was something peculiar in his religious tenets, but have never considered him as an Infidel, and have known him twenty years. I never heard his character, as an honest man, found fault with in the Collector's and Post-Master's Offices, and I never heard but that he was faithful in both Offices. His general character, as to integrity, is very fair.

Eli Coe, (called again.) Mr. Stow and I were school boys together, and were brought up together. We had no conversation about religious matters at that time. After I was married, I moved about a mile and a half from him. I don't remember as we talked any then on religious subjects. About ten years after, I moved within a half a mile or three quarters of him, and have often talked with him on these subjects since. I have tried to talk solemn to him as to the situation of the Society. The Church has not altogether been agreed with him. He thought we were so small a body, that we presumed too much. I have tried to reconcile him to us, but he don't agree with me on the Scriptures. We got the Bible once two or three months ago. I think within ten years I have understood him to say he believed in a Saviour. I took him to be a *Universalian*. I never heard him called an Infidel but once, I believe. I think that is not his general character at Middlefield; but perhaps he has not talked so free to me as to others. As to his character in the Collector's and Post-Master's Offices, I never inquired. I never heard his character, as an honest and moral man, called in question.

Ques. Defendant's Counsel. Did you ever hear him say that he believed in the divine inspiration of the Scriptures?

Ans. I believe so.

Ques. by same. When? Till within a year?

Ans. I should think I had, but cannot say certain.

Joseph Wetmore. I was Mr. Stow's neighbour about eleven years ago. For a year or two past we have conversed on the Scriptures, and he has told me that he believed there would be a final restoration of all things, through the merits of a Saviour—that he consid-

ered the Bible as the best of books, and that it was of divine inspiration—perhaps not every word. I don't think I ever heard him called an Infidel; that is not his general character in Middlefield. I am a near neighbour to him now. I have heard him talk with Priests. At our contributions I have seen him put in a dollar bill, as I sat in the gallery. His general character is that of a man of integrity. I have heard some complaint about the 5 per cent. which he has taken on the Taxes. I have heard him say that the Divine attributes were infinite—that God was infinite in knowledge, power and goodness. I have heard this for ten years past. I have been to school to him when a boy. I have heard him say that he believed in a Saviour, and that the Scriptures were the word of God, and divinely inspired. I have also heard him say, that there were some things which appeared contradictory, but they were not rightly construed.

Capt. Birdseye. I live about a mile and a half from Mr. Stow, and have been acquainted with him ever since I was a boy. I never conversed with him on religious subjects. I have never heard that his character was that of an Infidel, till I came here. I have heard no complaint of him as Collector.

Ques. by Plaintiff's Counsel. What is Mr. Stow's general character?

Ans. His general character is that of an honest man.

Ques. by Defendant's Counsel. What is his religious character?

Ans. I don't recollect hearing any thing said about his religious character; nor do I know as I ever heard him called a Believer.

Col. Plumb. I have known Mr. Stow ever since he was a young man. About thirty years since, there was a Separate Priest and a Deacon in Middlefield. The Deacon called him an Infidel. Twenty or twenty-two years since, he came to our house and took tea with me, and from some circumstances I was prejudiced against him. We talked on religious subjects: he believed in a Supreme Being, and a Saviour, and said he merited nothing, and did not merit salvation, but through a Redeemer. He expected that himself and all men would go to Heaven through the merits of the Redeemer. I thought him a true believer. He mentioned his enthusiasm when a boy, and that he was awed into desperation by "Hell-fired preaching," I have attended meeting at Middlefield, and he has invited me to his house. He was steady at meeting—believed in the Divinity of Christ, and put money into the hat for all preachers. I have never understood that his character was that of an Infidel. I heard him called so once, when he was a candidate for the Assembly. I have heard some complaint about the per centage which he took, as Collector. His general character is that of an honest man.

Ques. by Plaintiff's Counsel. Is not his character that of a believer?

Ans. I can't say that that is his general character, though a great many consider him as a believer. I have heard him say, compare Scripture with Scripture, and there is no contradiction.

Asher M. Coe. I have been acquainted with Mr. Stow for a number of years, and have known him particularly ten or twelve years. He believed that all men would be finally saved, through a Saviour, and founded his reasons on Scripture. He believed, also, in a God of love, of justice, of mercy, and of truth; and I have never heard him say any thing to the contrary, and this within ten years. Five years ago, I was his nearest neighbour east, Mr. Wetmore the nearest in another direction, and Fairchild Camp in another. I never heard him called an Infidel, except as the body of Universalists are called Infidels. I have heard some complaint about the per centage. His general character is that of an honest man, and a man of integrity. He has been the Collector of our State and Town Taxes. I have heard nothing against him, except from his religious or political opponents.

Fairchild Camp. I have been Mr. Stow's nearest neighbour 18 or 19 years, and have conversed freely with him a good many times. I never heard him express a disbelief of the Scriptures, or of the Saviour. I have heard him frequently read the Scriptures, and explain them, and teach his family to treat the Bible as a rule of life. He believed in the restoration of all things, and that he should be happy here, and hereafter, and never denied that he was a Universalist. As Collector of the Taxes, his character was good, except as to the per centage. I believe him generally an honest man.

Giles Wilcox. I live in another parish: Mr. Stow's general character is not that of an Infidel, but I have heard things mentioned against him by some individuals; I never heard but that he was an honest man.

Elisha Coe. I have known Mr. Stow from my youth up; we were school boys together; he had a pious education; he lives about a mile from me, and lived in my family after I was married about six months—I have often conversed with him on religious subjects; he said he believed in a Saviour. Some years after this he said it was proper to examine into the truth of any thing and every thing; and that nothing was too holy to examine into. Afterwards he said he did not know how to reconcile the attributes of God—how to reconcile the power and goodness of God with final punishment. His general character is not that of an Infidel, but I have known individuals charge it upon him. His general character is that of an honest man, though there may be some exceptions, yet I don't know what—I have heard a partial complaint about the per centage.

Question by Defendant's Counsel. Is not Mr. Stow a relation of your's?

Ans. Mr. Stow married my cousin.

Ques. by the same. Have you not heard him deny the Scriptures?

Ans. I believe I have heard him question the Scriptures, to argue whether this or that doctrine was true—he said there were some things not so clear or plain in the Scriptures. Thirty years ago there was a controversy in Noah Webster's magazine. I don't

know as I have ever heard Mr. Stow deny the authenticity of the Scriptures except when errors crept in, or there were things apparently contradictory—I have heard him say the grace of God which leadeth all men to repentance, and bringeth salvation, hath appeared to all men.

Thomas Lyman. Mr. Stow is an imperfect man—it is a long time since I have conversed with him on religious subjects I have heard many accusations against him—but as Collector and Post Master I never heard any thing about him. His general character is that of a believer, at least I know nothing to the contrary.

James Robinson. I have been acquainted with Mr. Stow about 35 years. I have considered him a believer in the Christian Religion; I never heard him deny the authenticity of the Scriptures; he believed in the Saviour as coming to save all men—I never heard his character as an honest man impeached—I know nothing about the Post Office and have heard no complaint about him as Collector, but have heard him called persevering, faithful and correct.

Richard Robinson. Ques. by Plaintiff's Counsel. What is Mr. Stow's general character?

Ans. I have heard that he was an Infidel, but this is not his general character—he is a believer and an honest man.

John Swathel. I have heard but very few people to my knowledge call Mr. Stow an Infidel, and that has been within two years. The general opinion as far as I have heard is, that he is a *Universalist*—I have heard him talk about religion and the Scriptures, and passages referring to the Saviour, and never understood that he disbelieved in a Saviour—he is an honest man and a faithful Collector.

Justin Lyman. I have known Mr. Stow about twenty years. I have not talked much with him on religion, but have talked some on Calvinism and foreordination. He believed that Jesus Christ died for all, as Winchester did—that he was the Saviour, and that in and through him we shall all be saved. I never heard him called an Infidel till he was appointed a Delegate to the Convention, and that was at Clark's tavern. I always considered him as a *Universalist*—and never heard but that he was a believer; I heard some complaints of him as Collector last spring, and that he took more fees than he ought: His general character is that of an honest man.

Ques. by Defendant's Counsel. How long have you lived in Middletown?

Ans. I moved to Middletown in the year 1817.

Arthur W. Magill. I have been acquainted with Mr. Stow about twenty years and never heard that he was an Infidel till the publication which was the origin of this suit. I never heard his character as an honest man called in question; it is fair in that respect, and also as Collector and Post Master—I never talked with him on religion, but have often seen him at the Episcopal Church.

Capt. DeKoven. I have heard it said that Mr. Stow was an Infidel, but never except from one or two heard him called a believer;

I have seen him in the Episcopal Church—I believe he is an honest man, and know nothing against his integrity.

Nathan Starr, Jr. In conversation with Mr. Stow within six or eight years, I have heard him say he believed the Bible to be the word of God, and that it was inspired; also that he believed in a Saviour—no man's general character is more fair.

John L. Lewis. I have known Mr. Stow about eighteen years—he is a distant connexion of my wife, and has visited my house often; I have had frequent conversations with him on the subject of religion. At the office of Chief Justice Hosmer some years since I heard him and Mr. Stow talk on religion; Mr. Stow stated his belief in the authenticity of the Scriptures; also that he believed in the atonement of our Saviour; in a state of future rewards and punishments, and in the final restoration of all men.

Ques. by Defendant's Counsel. When have you heard Mr. Stow say this?

Ans. Not till within a year, but often since then.

Mr. Stow does not sustain the character of a disbeliever in the Bible, with a few exceptions of persons of a certain class; he is an unbeliever in certain doctrines, and has been called heterodox—His general character is good for aught that I know; I know nothing against him as Collector, or Post Master, or as an honest man.

Frederick Lee. Mr. Stow has the general reputation of an honest man. I never heard his honesty questioned; I have never heard him called an infidel or a believer, and never heard much said about his religious character—I talked with him on religion a year ago last May—he expressed a belief in the Saviour, and in the Scriptures.

Ques. by Defendant's Counsel. Which of you began this conversation?

Ans. I don't know which began the conversation.

Manoah Camp. I have been acquainted with Mr. Stow about thirty years: he is an honest man; he never had the character of an unbeliever to my knowledge; I have heard him called a believer, but some doubt it however.

HERE THE PLAINTIFF RESTED AGAIN.

Thursday Morning, 27th.

The Defendant's Counsel called—

William Lyman. Two clergymen Lester and Flagg, both Universalists were invited by Mr. Stow to preach.

Obed Stow (being requested by the Defendant's Counsel to relate what took place at the interview mentioned by Mrs. Rice) testified as follows: I had not made any confessions at the time spoken of by Mrs. Rice, to my brother Joshua. As I stated I had repeated opportunities and conversations with him, and tho't I knew his mind well. He made objections to my communing with the church, for he had *aught* against me and therefore said I ought not to go to the communion. I was under no obligation not to commune as he was not a professor and I knew he had no authority under the rule, yet I wished to satisfy his mind and convince him that there was a better morality than

worldly wisdom—on that principle in a few days after he objected to my communing, I went early one morning and called on him to walk ; not because I was under any obligations ; I told him I was sensible he felt dissatisfied, and wished to converse with him. He said he was dissatisfied, and took this ground that I had not acted according to Christian principles, though I had done no more than was consistent with worldly honor and policy ; that I had done no more than he practised ; that I had done the same as to Adams' administration. He claimed that he paid his equal proportion of the enrolled Society tax. I asked if he could sincerely pay for the support of that religion which he believed to be wrong and injurious for mankind to believe in ? he thought I ought to answer *him* as I had heard his arguments ; says he, can *you* do it ? Do you believe in religion ? Says I, if I did not, I should not have come to you. Said he, I did not mean to hurt your feelings ; he was affected and wept ; so did I. We talked long ; I gave him my views of the Christian Religion, and its superior morality ; I made not the least concession that it was false that he was a disbeliever, but he was aware that I continued to believe that he was a disbeliever. We went into brother Rice's—he or I, told sister Rice we had settled our difficulties, and we did not feel as we used to ; he did not at that time tell me that he was a believer, or claim that I misunderstood him.

Ques. by Plaintiff's Counsel. How long ago was this ?

Ans. Ten or twelve years.

Ques. by same. Did you not tell your brother that you had stood it out, and had a stubborn heart ?

Ans. I did not tell him that I had stood out or that my heart had been stubborn, but I told him as I have stated.

Ques. by same. When you boarded with Joshua did you not disbelieve the immortality of the soul and did he not try to convince you of it ?

Ans. I lived with my brother Joshua thirty years ago or more ; we talked freely from that time till this time I have been stating ; we probably discussed the question of the immortality of the soul when I boarded there, perhaps ; but I can't say as I denied it, or that he attempted to convince me of it.

Ques. by same. Did you not differ as to the resurrection of the body, and did not he contend for it ?

Ans. I don't remember as we disagreed about that ; I don't remember as I denied the resurrection of the body, or as he contended for it.

Ques. by same. Did he not try to convince you of the soul's immortality from the resurrection of our Saviour ?

Ans. I do not think, from the general strain of his conversation, that he urged the resurrection of the Saviour as evidence of the soul's immortality.

Ques. by same. Have you had much conversation with him of late years ?

Ans. I don't know as we have had much conversation in ten or

eleven years, but we certainly have had considerable conversation since I have had a family, at almost every place where we were together—it is twenty seven or eight years since I lived with him.

The Defendant's Counsel next called several witnesses to testify as to Mr. Stow's general character.

Henry Carrington. I have been acquainted with Mr. Stow 15 or 20 years. He has sustained the general character of a disbeliever so far as I have known? I have known him personally.

Ques. by Plaintiff's Counsel. Has not his character been that of a Universalist?

Ans. I don't know as he was a Universalist in particular; I have always understood him to be a disbeliever in the Scriptures.

Ques. by same. Have you had any controversy with Mr. Stow?

Ans. There has been no quarrel or misunderstanding between us.

William Van Deursen. So far as my knowledge extends Mr. Stow is a disbeliever in the Christian Religion; I have known him well for thirty six years.

Ques. by Plaintiff's Counsel. Have you had any controversy with Mr. Stow?

Ans. We have had no controversy, nor have we ever been unfriendly—I have had no personal enmity towards him, but did not want to load him with offices.

Samuel Gill. I have always lived in Middletown—I think Mr. Stow's general character has been always that of a disbeliever; I have known him 30 years.

Seth Tibbals. For a few years past I have known Mr. Stow called a Universalist, and an Infidel; his general character is that of a disbeliever so far as I know.

Samuel D. Hubbard. I have always considered Mr. Stow's general character that of a disbeliever.

Thomas Hubbard. Mr. Stow's general character is that of a disbeliever; it is so considered in that part of Connecticut where we live.

Stephen Paisley. Mr. Stow has been considered by the generality of men as a disbeliever; I have known him about ten years.

Manoah Camp (called again by Plaintiff's Counsel.) I lived at Mr. Stow's 30 years ago or more, Obed and I boarded there together; both of them talked and read a great deal, and used many arguments for and against materialism such as are used by Price and Priestly. Obed said spirit and matter could not unite—Joshua contended for a resurrection, and illustrated his ideas by referring to the changes in worms and butterflies.

Here the witness to exhibit Mr. Stow's sentiments, recited a long quotation from Akenside's Pleasures of the Imagination, B. II. l. 305 to 364, as follows:

“ Know then, the sovereign spirit of the world,
 Though self-collected from etherial time,
 Within his own deep essence he beheld
 The circling bounds of happiness unite;
 Yet by immense benignity inclin'd
 To spread around him that primeval joy

Which fill'd himself, he rais'd his plastic arm,
 And sounded through the hollow depth of space
 The strong, creative mandate. Strait arose
 These heavenly orbs, the glad abodes of life
 Effusive kindled by his breath divine
 Thro' endless forms of being. Each inhal'd
 From him its portion of the vital flame,
 In measure such, that from the wide complex
 Of co-existent orders, one might rise,
 One order, all involving and entire.
 He too beholding in the sacred light
 Of his essential reason, all the shapes
 Of swift contingence, all successive ties
 Of action propagated through the sum
 Of possible existencē, he at once,
 Down the long series of eventful time,
 So fix'd the dates of beings, so dispos'd
 To every living soul of every kind,
 The field of motion and the hour of rest,
 That all conspir'd to his supreme design,
 To universal good ; with full accord,
 Answ'ring the mighty model he had chose,
 The best and fairest of unnumber'd worlds
 That lay from everlasting in the store
 Of his divine conceptions. Nor content
 By one exertion of creating pow'r
 His goodness to reveal ; thro' every age,
 Thro' every moment up the tract of time,
 His parent hand with ever new increase
 Of happiness and virtue, has adorn'd
 The vast harmonious frame : his parent hand
 From the mute shell-fish gasping on the shore,
 To men, to angels, and celestial minds,
 Forever leads the generation on
 To higher scenes of being : while supplied
 From day to day by his enlivning breath,
 Inferior orders in succession rise
 To fill the void below. As flame ascends
 As bodies to their proper centre move,
 As the pois'd ocean to the attracting moon
 Obedient swells, and every headlong stream
 Devolves its winding waters to the main ;
 So all things, which have life aspire to God
 The sun of being, boundless, unimpair'd,
 Centre of souls !"

(Mr. Smith here remarked in an under tone, that this witness had given a pretty good specimen of the improvement acquired in the Ethosian Society.)

Joshua said these were his ideas.

Ques. by Plaintiff's Counsel. Did Joshua tell his brother that the resurrection of the Saviour was evidence of the resurrection of all men?

Ans. I believe so—Obed was a materialist; Joshua believed in the light of nature and revelation mixed together.

The Defendant's Counsel next called—

Eunice Stow. I have heard my brother at various times for a length of years make observations on religious subjects which I cannot now recollect. About 14 or 15 years ago, we journeyed together to the western country; and had a conversation on religion; he talked much on the subject, told me his experiences about the close of the Revolutionary war, tending not to a full belief in the Christian Religion. I asked the cause of his objecting to it; he said it tended to ignorance and was like believing in ghosts and hobgoblins, and that a belief in what was not true, was injurious. I asked the greatest reason why he wished to have me not believe; and he answered as above. He did not say expressly that religion was not true. Since then I have at different times conversed with him, and once at his house 6 or 7 years ago; he asked me some questions relative to a certain passage in the Old Testament; I evaded an answer; he then asked me some direct question; how I answered I don't recollect exactly; I told him I once doubted but now believed in religion, and did not wish to disbelieve in it, tho' he had tried to make me disbelieve; he said he had not. There was a question about miracles before the journey I spoke of. What should you think, said he, if a person should testify that a plough ascended a tree, should you believe it? This was said as applicable to miracles—I told him I wished no more conversation on politics, or religion. Since that time I have had no particular conversation with him on religion; I was at a conference where he was, within 3 or 4 years past; there was a full meeting, and people were affected; this was at Mr. Joseph Wetmore's, Mr. Davis was there. Joshua said on that occasion that weeping was catching; people wept by sympathy; he had experienced that distress or the operations of the Spirit, and 'twas no more than that—(*snapping his finger.*) At other times I have heard him advocate Universal salvation and quote passages of Scripture in favor of it; I have heard this more or less for ten or fifteen years. I don't know as I have heard him say that he was a disbeliever. At a methodist meeting once he rose and said, *that* preaching suited him, it was agreeable to the Scriptures, and to what he believed in. I don't remember the whole of the conversation about the plough; but it related to the inconsistencies or impropriety of what was recorded in the Bible.

Ques. by Plaintiff's Counsel. Did he not argue on the subject of the resurrection, and the soul's immortality?

Ans. I don't remember his arguing with me on the resurrection of the body or the immortality of the soul.

Ques. by Plaintiff's Counsel. Are you not at variance with your brother?

Ans. For five or six years there have been some circumstances

not so uniting between us. I think he has told me he was as friendly as ever, but I can't say as I have told him the same—I can't say I have felt the same friendship latterly—I believe our religious belief has made some difference. *The Plaintiff's Counsel then called,*

Moses Robinson. I never heard Mr. Stow's general character as a believer called in question—I never heard him called an Infidel. I have lived in his neighbourhood about eighteen months—Eight or ten years ago, one day in January, he and Luke Camp were together, and soon began to converse on religion; when Mr. Stow was going out he said, we think considerably alike; he also said the Bible was one of the best books he ever read, and he had taken much consolation in reading it; he is an honest man.

Joseph Coe, Jr. Mr. Stow's general character is good in all respects—I know nothing to the contrary.

The testimony being closed, Mr. Ingersoll on the part of the Plaintiff addressed the Court and Jury as follows:

May it please the Court, and you Gentlemen of the Jury—

The examination of this case has been lengthy, and the inquiry extended: you must of course perceive that it is of *unspeakable* consequence to the Plaintiff, and the interest you see it has excited, shows it to be a case of importance to the public; I hope therefore, you will still indulge me in a patient and cool examination of the facts of which we have accused the Defendant. The libel consists of five distinct charges; I will enumerate them in the order in which they are enumerated by the Defendant in his justification. The first charge regards the *Declarations* of the Plaintiff as a member of the Convention. The second, respects his being bribed as a Director of the Branch Bank. The third charge is, that he paid no other attention to the duties of the office of Post Master than to farm it out. The fourth, that he was guilty of unfairness and partiality in the office of Collector; and the fifth, that he established an Infidel club, and seduced others to join it and destroyed the religious institutions of the state. The first charge, treats the Plaintiff with unfairness as a public officer; the others, as a man. No man's character from infancy to manhood has been more searched as with candles. Is the charge supported as to the Infidel Club? We might have taken legal exceptions to the testimony on that point; but we disdain a shelter of that kind. We trust in the integrity, vigour, and promptness with which he has discharged his public duties—I appeal to you as christian men, with confidence, that he is a believer in the Scriptures.

I will now turn the attention of the Court to what constitutes a libel, and for this purpose will read from 3. Bac. Abr. 490. "A libel is a malicious defamation in printing or writing to expose a man to ridicule and punishment." 3. Bac. Abr. 491.—Holt's Law of Libel chap. 31. p. 213. It is not necessary to accuse a man in *direct* words. Any insinuations understood, whether ironical or allegorical, as to a man in public office, you must say are libellous.—

It is no excuse that a libel is made under guarded language—I introduce these ideas to explain the innuendoes in the Declaration.

As to Mr. Stow's sentiments in the Convention; we say in the first place, that no such expressions ever escaped him, and in the second, that he meant to be understood that it would be as right and as proper to support the worship of God as of the devil. As to the Bank—telling the public that he had been bribed and repeatedly as a Director, to get notes discounted, is a libel and cannot be denied to be so. As Collector of the taxes he was entitled to the fifty cents which he took on a certain occasion. It was his right and his duty to exact it. Must he prove a demand, or may you not presume it? The business of a Collector is an odious business—He assumes the responsibility and he has the same right to take the 5 per cent, by the acts of Jan. 9, 1815, as if property had been distrained—it is better for the payer. This is in analogy to our statute regarding the collection of taxes. It has been the uniform practice in Connecticut to take a percentage under this statute; so also under our statute respecting the fees of Sheriffs. This right was never questioned in a court of justice. But suppose the law did not warrant it, still if this was an *honest* construction of the law, he is not to be called unjust, or charged with extortion. An Attorney takes a fee for writing a letter which is not allowed by *law*—Is he to be held up in the columns of a smutty newspaper? I will read the words of the libel as published. (*Here Mr. I. read the publication.*) The meaning of this is, that Mr. Stow is accused of being unfair, partial, extortious, making unjust demands and taking unjust fees of office. Has the Defendant published this libel? This is admitted—he tells this audience that what he has published is true; if this is a fact, he has declared it. This man Gentlemen, must have your verdict—unless the Defendant proves the whole and justifies the whole, your verdict must be for the Plaintiff, and if he fails in one point your verdict must still be for the Plaintiff. The first Deposition introduced on this trial was taken at a distance where no one could be present to open the way. Remark—Gentlemen, the guarded manner of that testimony. The second witness Mr. Farnham tells the same story; but a little examination puts a different complexion on his testimony. Mr. Stow's sentiments are no more or less than what are embodied in the 17th article of the Constitution. Another gentleman who has been introduced testifies in an uncommon way. Mr. Bull swears that he don't recollect what went before or came after the words to which he testifies—just as if he had been dreaming, and awoke, and went to sleep again. If men are to be put down on such testimony, who can stand? It reminds us of the man who proved there was no God. The Plaintiff's witnesses testify with one voice that they heard no such expression.—(*And here Mr. I. recapitulated some of the testimony on this point.*) Such is the testimony of the Plaintiff.—What is the testimony of the Defendant?—what shuts his mouth? His own Report of the Speech—Mark Gentlemen, the anxiety of

his Counsel to suppress it—this forever puts the matter at rest.— He was there on the spot—had a seat assigned him and took the speech as it came from the mouth of the Plaintiff. Mr. Converse neither on this, or any other occasion, would represent the thing more favourable than it was—it is not his *usual* custom.— The sentiments uttered by Mr. Stow on that occasion, are the sentiments of a large portion of Christians in the United States, of most of those South of us, and we may safely say of a majority in the state of Connecticut. The same sentiments that the most eminent statesmen have contended for, and which are incorporated in the constitutions of most States in the Country. Will you charge the framers of the constitution of the United States with the sentiments charged upon Mr. Stow? Mr. Wolcott, David Tomlinson and Thomas Lyman, support the Plaintiff on this point. If Mr. Stow had used such expressions as are attributed to him, they would certainly have marked it. It may be said perhaps that Mr. Stow made these remarks on some other occasion. But will it be said if he had, that this Reporter would not have put them down at that time? Is it not a natural remark? and does it not necessarily follow? With regard to *that* charge then the Defendant is unequivocally guilty. It shows the *malice* of the man; he *knew* better. He has directed his shaft against Mr. Stow's reputation, in every capacity.

We come next to the conduct of the Plaintiff as Director of the Bank. What testimony is there worthy of remark in the course of his conduct as Director? What have they proved? a solitary instance, after ransacking that County. If that note was paid and the rules of the Bank required it to be paid, all parade on this subject must fall to the ground. This cannot affect his character as Director. If that transaction had any connection with discounting paper, I have entirely mistaken the testimony. Four days after the first note was due another note was discounted. It is not pretended that it went to help that discount.

It is said that Mr. Stow paid no attention to the duties of the Post Office—the expression in the libel is that he “pays no other attention but to farm it out.” Mr. Stow had a perfect right to appoint a clerk. It is not expected that a Post Master or any other officer will attend in *person*. It is enough if he is responsible. What is the general current of the testimony on this subject. You have seen every corner ransacked and have found that the mail went by *twice* in two or three years; and a Mr. Harris got two letters post marked *nine* days apart. These, Gentlemen, are the only facts which they can put their fingers on. Is this that flagrant neglect charged upon Mr. Stow? What is the testimony of the Plaintiff? Although it is true that Mr. Stow's house is 3 or 4 miles from the City, it is no less true that he has kept a clerk. When he was present, and the clerk absent, he delivered the letters. Would the Collector of this port be charged with neglect because he was not at his office at all times? It is well known he employs a clerk there. The Counsel

for the Defendant have pursued a very ingenious course in putting questions to Clark, the person who kept the office a short time. I however trust, Gentlemen, you will say that Mr. Stow's conduct in this business, was the same as that of any government officer, and that you will not be deceived by the mode of examination which these ingenious gentlemen have adopted. As to that part of the libel you must say it is false, and that the charge of paying no attention to the duties of the office is untrue.

It is said again that Mr. Stow has been guilty of unfairness, partiality &c. as Collector of the Internal taxes. He is charged with *extortion* in the office of Collector. The gentlemen have produced *six* instances according to their own story where Mr. Stow had no right to take five per cent commission. The amount of it is, you Mr. Stow have got \$4 79 cents for doing business to the amount of a million of dollars. He had a right, Gentlemen of the Jury, to claim all that he has demanded. Look at the case of Mr. Geer, Gentlemen; and here I will read the law of the United States to this point. (*Read the law.*) This man having entered a waggon and not paid the duty became liable by law to pay 25 per cent; Mr. Stow had a right to take it. Mr. Geer tells you he wanted to pay the money before, but you can't get at every fact in the case, it can't be supposed you should. It was not only right in Mr. Stow, but it was his duty to exact the 25 per cent. Perhaps gentlemen will say we were unfair, and did not go to the office. (*Here Mr. I. went into some remarks upon Taxgatherers, the odious nature of their office, and how much they were cursed, which the Reporter did not take down.*) This man has been faithful, vigilant and honest in the service of the government. It is said he has charged 5 per cent and on this part of the case I will read the law to the Court, though it is doubtless familiar to your Honour. It is found in the 26th section of the act of Congress passed Jan. 9, 1815. By this act *after notification* was given, the Collector had a right, nay it was his *duty* to seize the property and sell it. Where the Collector assumes the responsibility of taxes, he ought to receive the fees allowed by law. Let us read *our* law relative to rates and compare it with this act of Congress. I take it to be the uniform practice under our statute whenever the notice is given, for the Collector :o take the 16 per cent commission allowed by the statute. Will the gentlemen justify the publisher of a newspaper in making charges like this on a Collector of *state* taxes in Connecticut? Look also at our statute regarding Sheriff's fees. According to the construction of this statute by learned officers, every Collector and Sheriff is liable to be posted on every whipping post in the State. But suppose the law did not warrant Mr. Stow in taking this commission, and Constables, Sheriffs and Collectors had taken fees in this way; if this is an *honest* construction, though the Plaintiff might have erred in judgment he cannot be charged with extortion.— (*Here Mr. I. put the case of an Attorney's taking more fees for writing a letter than he was entitled to, and asked;*) is this extortion? Is it so

that the flood gates of defamation are to be opened on all these officers. Is Mr. Stow to be *singled* out and his character condemned? Is he the only man to be hung up? If the law *warrants* him in the taking of five per cent commission it is better for the community. But if the law does *not* warrant it, yet if he has acted *honestly*, it will be a precedent never before heard of, if he is to be branded with infamy. But, Gentlemen, when we show you Mr. Stow's original instructions, all mystery on that subject is put at rest. We do not expect to shield ourselves under pitiful technical objections. Was there any thing in the fact that Mr. Stow did not change the money that Mr. Prout gave him? Did Mr. Stow ever refuse to give up the half dollar? No. But gentlemen say, "you was partial and unfair." The cases which have been testified to, are all the cases which these industrious gentlemen have been able to collect. They cite two instances of partiality, one was Jedidiah Wilcox's case. (*Here Mr. I. made some comments upon it.*) Where is the Collector of any tax that could stand the test, if he were to be tried by the rules for which these gentlemen contend? I expected to have found some *evidence* of extortion; but to my surprise none has been found, and the Defendant's counsel have resorted to the *pitiful* business of citing *two* cases in which Mr. Stow had remitted the 5 per cent commission.

The Constitution and laws of the United States Gentlemen, require no *religious test*; and I might stop here, and claim damages. But let us examine the religious character of Mr. Stow. He has been accused of establishing an Infidel Club; this was in itself a libel. The gentlemen will labour in vain to find that he did.— They have introduced Samuel C. Camp who belonged to that Society, to support the charge. What! accuse a man of *establishing an Infidel Club* merely because he has *joined* a society, whose object was to discuss questions on such subjects as presented themselves. Should I allude to the societies in College I could say that questions of that kind are often discussed there. The Divine authenticity of the Scriptures I remember in one instance was discussed, and I hold in my hand a list of questions of a similar kind which were discussed in that College while I was a member of it. Who have been the men that were engaged in those discussions? Some of them have paid the debt of nature, and are enjoying the fruition of their hopes here. Some of the ablest Divines in Christendom have believed there was no such Being as the Devil. I have it second handed that the late Dr. Strong thought the Devil was sin personified. Infidelity, Gentlemen, is one thing; and orthodoxy another. The Quakers reject all ordinances, and the Roman Catholics have a variety of sacraments. In this case Gentlemen, attempts have been made to prove Mr. Stow an Infidel from the history of his life, from his boyhood. How few men could stand a test like this? The testimony on this point comes from Obed Stow and John Bacon, both bitter enemies of Joshua Stow, and at a time too when no body was present. Mr. Converse might hang

up Obed Stow with the same propriety that he has slandered my client.

There is no subject among Divines more closely disputed than the *translation* of the Bible. In proof of this observe the different opinions regarding the three first verses of St. John's Gospel. It has been disputed whether the Revelation of St. John was a part of the original Scriptures, and disputed too by many eminent clergymen. The late Chief Justice Parsons was a *Socinian*. Saml. Dexter, John Adams, and even Timothy Pickering himself hold to the doctrine of *Universal Salvation*. Judge Story often disputes on the subject of translations; he is a Universalist. And even in Connecticut, Gentlemen, we talk of the Socinianism of Boston, being infidelity.— We have not charity enough for each other on these subjects. We are all to be shielded under the same Scriptures. (*The Counsel here alluded to the conference meeting which is claimed as a proof of insulting the clergy.*) Some denominations hold the influence of the Spirit in such a manner as to be ridiculed by others. But ridicule, Gentlemen, is not the test of truth. There is no subject on which sectarians differ more than on the influence and operations of the Holy Spirit, and there is no other way but to *agree* to differ.— We rely on the fact that the votes of that Society for twenty or thirty years show that Mr. Stow is not an Infidel and has not been considered as such. He has been their Clerk, Treasurer and Committee-man during a great part of this period. You can never get nearer to a man's real character than to go to his neighbors for it. Has Mr. Stow introduced or broached Infidelity at any time since he was appointed one of the Committee of that society to select books? No; that society embraces Baptists, Episcopalians, Methodists, Universalists and Presbyterians. He has always selected good books and has been liberal to the clergy and opened the house to one denomination when not needed by another. Rely upon it, Gentlemen, that the general character of Mr. Stow on this subject is fair and good. His neighbours with undivided voice tell you they do not consider him an Infidel. The *votes* of the Society show that the mass of that people look on him as a Christian. His character for fifteen or twenty years back shows him to have been a believer in the Bible. Some of the best of men have been charged with Infidelity. This might have been proved of the late Gov. Griswold. This charge if proved must be in mitigation of damages only; it is not a justification. Mr. Stow's prayer for Mother Coe does not prove Infidelity upon him; he prayed to be sure in a way to which people are not accustomed, but still this does not show Infidelity. (*Samuel C. Camp's story about the devil commented upon.*) Pious men frequently tell ludicrous stories (*here Mr. I. told a story of a minister in N. Y. which the Reporter has not related, not knowing whether it was true,*) but such facts are not to be taken as proof of Infidelity.

You are bound to say that with regard to Mr. Stow's religious character it is as good as that of men in general, and as to the oth-

er points we trust you cannot hesitate a moment in saying that his character is fair and upright.

And now Gentlemen, what damages are we entitled to? The defendant has attacked every part of my client's character, but I trust he has sustained the charge uninjured. This libel, Gentlemen, is different from the common run of political matter. It stabs at Mr. Stow's *official* reputation. We call upon you therefore to give such sum in damages as shall teach this Defendant not to repeat his attacks. In the case of Huntington and Landon at Litchfield, the Jury gave one thousand dollars damages. (*Here the Counsel for the Defendant objected, and the Court declared that no allusion ought to be made to any case without showing the particular circumstances of it.*) But I am not suffered to go on. The Court say this *squints at party*. A two or three hundred dollar verdict would be laughed out of Court. I trust Gentlemen, you will lay a heavy hand on this man.

Mr. Staples opened the argument for the Defendant as follows :

May it please your Honour and you Gentlemen of the Jury—

This is an action of Slander brought by Joshua Stow against Sherman Converse as the publisher of a public paper called the "Connecticut Journal." In his Declaration the Plaintiff alleges that for several years he had been a Collector of the internal tax under the law of the United States—a Post Master in the city of Middletown; a Director of the Branch Bank of the United States located in that place; that he was educated in, and a believer of the christian religion, and of the truth and Divinity of the Holy Scriptures, and that he never denied either; and that he has ever been an honest man and a good citizen; and that the Defendant, with a view of injuring his character and lowering his standing in society, published the libel set forth in the Declaration. The whole publication has been read, and is before you. It is worthy of remark that the *whole* publication is not complained of. Certain parts are selected, as being false and malicious; the *rest* seem to be admitted, as the Plaintiff has not *dared* to put them in issue.

To these allegations the Defendant replies, that he made the publication in the course of his duty as the Editor and publisher of a public Journal, and not *maliciously* or *falsely*—that the Plaintiff was then a candidate for the important office of senator in the State legislature; that as a candidate for that office, the Defendant had not only a right but it was his duty, as the editor of a public journal, to investigate his character, and make known his pretensions, and that whatever is contained in that publication is substantially true; and was published without malice. The nature and structure of our government, the statute and common law secure to every man the right of freely examining the character of every candidate for office. It is fit and proper that the people should know the characters of persons held up for office. They have a

right to know, and ought to be made acquainted with all those, who hold themselves out as candidates for public office. Every candidate's character thus becomes public property, and is offered for examination. The rules governing such enquiries are liberal; they allow a free and full investigation. If what is published be *substantially*, tho' not *literally* true, it is sufficient to repel all malice. The benefits derived from the investigation, justify a free enquiry. In the construction of words the fair import of every expression is to be given. If the allegations in the publication are *substantially* true, by our law they cannot be malicious, nor libellous. No judge or lawyer has ventured, in our government, to deny the correctness, or application of these rules. But the danger is that in *party* times, the substance may be sacrificed to the letter of the rule, that while the rule is admitted, it may be held so strict as to be useless in practice. That is the danger on the present occasion.— To prevent a just application of these rules all your sectarian and political and party prejudices, and all your angry passions have been appealed to. But you will remember, gentlemen, that this is the sanctuary of justice, at the threshold of which you have sworn, to leave all your unallowed passions. Whatever storms or tempests beat around this temple, all within should be calm and serene. You are not called here as sectarians to make proselytes, nor as politicians to make partisans; but as honest, enlightened jurors, to investigate truth and dispense justice. Guided by these rules, I ask your attention to the proof adduced in support of the charges contained in the publication which the Plaintiff has seen fit to put in issue. I shall first call your attention to the charges made against the Plaintiff as Post Master.

The charges against the Plaintiff as Post Master, are that he receives 800 or 900 dollars a year as Post Master for which he renders little service—that he lives in Middlefield 3 or 4 miles from the office.—that he pays no attention to the office except to farm it out, and that he had farmed it out to the keeper of a turnpike gate. The point of the charge is that the Plaintiff holds the office of Post Master as a sinecure; receives a handsome salary; renders no valuable *service*, and the duties of the office are neglected. If this is the fact, surely the people ought to know it. The proof is that the Plaintiff receives about 800 dollars a year; it is admitted that he lives in Middlefield more than four miles from the office; that he let it out to one Clark, the keeper of a turnpike gate, at a salary of three hundred dollars a year; and it is abundantly proved that he was wholly unfit to attend a Post Office. The proof on this point is full to show that Stow held this office as a sinecure.— He received about eight hundred dollars a year, and procured another to keep the office in the manner it was kept, for less than half the money. Is not this farming out an office within the meaning of the charge? How many offices may not a man hold if he can in this manner receive the salaries, and do the duties of them by proxy? If offices may thus be accumulated, no wonder there

is such a scramble for them. Are these ardent rapacious office seekers the characters that our freemen would understandingly elevate to office? Is not the charge thus far substantially proved? Is not the office farmed out, in the sense used by the writer complained of? Is not the man a keeper of a turnpike gate? Does not Stow live 3 or 4 miles from the place where the office is kept? But it is said that we have charged the Plaintiff with neglecting the office. We have, and how is it proved?

The Plaintiff's own witnesses shew that he is there very little more than he would be if he was not Post Master. He, indeed, gets in town commonly about 10 o'clock; goes to the office; gets his own papers, hears the news, perhaps writes his letter and is off, either on business as a Collector or more probably as a politician, or manager of the State concerns. Are there not a dozen loungers in the city of Middletown, each of whom would spend more hours in the Post Office every day, if allowed, than Senator Stow has done? Who ever saw him open or make up a mail? It is confidently said by some of the witnesses that he cannot do it. The most important mails arrive in the night when it is admitted on all hands that the Plaintiff is never there. As to his attending the office personally it is out of the question. He was not there—is he too large a man to keep a Post Office, then let him resign it? He is unfit for it. But it is said he had clerks there. He had indeed! a succession of them so rapid that they had time to learn nothing, and that was all they knew when they came. He had clerks from 12 years old to 35—from a boy just able to read, to the keeper of a turnpike gate, all inexperienced and ignorant of the duties of a Post Office; and to make the farce more solemn, it seems some of them were sworn. But how were the duties of the office in fact performed? Just as we should expect. Mails repeatedly lie over, sometimes are carried by, because no one is at hand to open the office: letters are missent, or lie in the office weeks, tho' frequently called for, and persons are suffered to tumble over the papers and pick out their own letters. The Plaintiff's own witnesses prove that a number of the clerks were negligent or incompetent. And because certain friends of the Plaintiff have commonly found their papers and letters at the office when called for; and have not often seen the duties of the office neglected, does this destroy or even weaken the direct proof offered by the Defendant? From the course adopted on this trial, it would seem, as if the Plaintiff expected to recover, if he paid *any* attention to the duties of his office, or even if his services, on the whole, overbalanced his negligences. This is not the issue. If the Plaintiff has grossly neglected the duties of his office, or conducted improperly in it, and this is proved by the Defendant, he stands justified—the charge is *substantially* proved; and if the Plaintiff neglects this office or makes a *sinecure* of it, it is a good reason why he should not be promoted to other offices in the gift of the people.

We will next examine the Plaintiff's conduct as a Director of the U. S. Branch Bank.

The charge is that the Plaintiff fraudulently took money for services rendered as Director of the Bank. The charge is not that he more frequently acted fraudulently than honestly; it is not a charge that a balance would be for or against him on summing up the account. If we prove that he has been guilty of fraud, in taking money, as an officer of the Bank, it is enough. We are not called on, nor are we authorized, to offset his good deeds against his evil deeds, and see how the account stands. The facts admitted and proved are, that the Plaintiff was a Director of the Bank—that the hours of business are from 10 to 4 o'clock; that the Directors on discount day meet at 12 o'clock; that Meeker, and Tibbals and Robinson on a particular day when their note fell due, came to the Bank just after the Directors had separated, with their new note and an instalment in cash to meet the note due and payable that day; that the Cashier informed them they were too late; that they applied to the Plaintiff whom they found at the Bank, and requested his aid; that the Plaintiff took their new note and money and agreed to take up the note that was then due; and having done it, returned to them with the old note, the balance of change, and asked and received two dollars, one as he said for his trouble, and one for the officer of the Bank as a fee on the old note. It is further proved by the Cashier, the Plaintiff's own witness, that the note was paid before 4 o'clock; that no fee could be or ever was due, or paid to him or any one, on said note; and that the new note was discounted and had the usual run in the Bank. Do not these facts prove, beyond all question, that Stow took two dollars for his aid and services in doing this business at the Bank, one dollar under the name of compensation for his services, and the other dollar under a false and fraudulent pretence that it was due to the officers of the Bank as a fee on the note? He does not *now* pretend that he ever paid any thing to any of the officers of the Bank. Is not this taking money for lending his aid and rendering his services as Director of a Bank? Is it not taking money under the false and fraudulent pretence that it was due to the officers of the Bank, when he knew it was not, and pocketing the money?—What is the answer which the Plaintiff makes to this proof? He says the sum is a small one. Be it so, was the *fraud* a small one. Is there not more meanness attached to it in proportion as the sum is small. If he, as an officer of the Bank, would tell a pitiful falsehood that a dollar was due to the Notary of the Bank as a fee on the note, when he knew nothing was due, and that the note had not been, and could not be before 4 o'clock protested, in order to put that sum into his own pocket, what meanness, let me ask, or what fraud would he not be guilty of? Shall such a man recover damages because his fair character as a Director has been injured? But it is said the sum of two dollars was not more than a fair compensation for his trouble, as he may have borrowed the money. How high a price Directors set on their services we know not; the sum wanted was at most 150 dollars for three days. But no such sum

was borrowed ; there is no evidence of it ; no pretence of it by the Plaintiff till, pressed by this evidence. We know how the business was done ; the evidence shows that the new note was regularly discounted. Let the Plaintiff show of whom he borrowed the money, or that he, of his *own* money, paid a dollar, and we will give up the charge. He did not at the time *pretend* it ; did not set up that pretence for taking the money ; but asked one dollar for his trouble and another for another officer of the Bank ; and pocketed both sums. It is said, however, that this is a single solitary instance, and that the charge is general. Be it so ; is it not sufficient to show that the Plaintiff cannot recover. If a man is charged with adultery and sues for slander, will not proof of *one* instance be sufficient to justify the Defendant. If not, how many instances must he prove ? Must he show that all his intercourse with the other sex is criminal ? If A say of B that he is a thief, is it not sufficient to prove that B stole a horse, or was guilty of stealing in one instance. Must A prove that B is *habitually* a thief ? If so how many times may a man steal, commit fraud, or adultery or fornication before he will forfeit the right to recover damages for slandering his character in those respects,

We will next proceed to examine the charge made against the Plaintiff as Collector of the direct tax under the law of the United States. The charge is plain and simple, no one can mistake it. It is that the Plaintiff was *unfair* and *partial* in his conduct, and *unjust* in his exactions of fees of office. I stop not to enquire whether this charge is libellous ; whether the people have not in the Plaintiff's District the poor and humble privilege of complaining when they think they are wronged ; for if a fact can be established in a court of justice by human testimony, every part of this charge is supported : First, was the Plaintiff unfair and partial in his conduct ? turn to the testimony of Mr. Paisley, Mr. Geer, and Mr. Miller. Mark his conduct on the subject of *entering waggons* ; when he finds it will do, he requires that they should enter their waggons ; in other instances, he makes no such requisition. Did he ever pay back to Mr. Paisley his money, or make *others* enter waggons like his ? No proof of it ; no pretence of such proof. Look at his conduct in exacting his five per cent. In some instances he exacts it ; of others under precisely *similar* circumstances, he does not exact it. The whole course of the evidence, and that which is not contradicted, shows his conduct to be *unfair* and *partial*, *mean* and *shuffling*. Secondly, the five per cent was *extortion*, the Plaintiff never had a *colour* of right to it.

Every *free* government has a jealous and watchful eye upon its *Tax Gatherers* ; the authority they possess to make demands for money, in the name and for the use of the government, is clearly defined, and its limits exactly fixed, that no dispute may arise as to the amount the Collector has a right to demand and receive. This is essential in every free government. As there is

commonly no witness to the demands of the Collector, and as the citizens are, necessarily, in a measure, in his power, the law makes it the duty of the Collector to give a receipt specifying *every cent* he receives; and if the Collector refuses to give such a receipt he is liable to a *severe punishment*; such is the law of the United States. It is clearly provided by the collection law that no Collector has any claim to the five per cent, unless he takes out and levies a *distress*; there is no pretence that a distress was taken out, or *levied* in any one instance. The instances are, however, numerous where the five per cent was demanded and received. For this the law gave no authority. Is it not *extortion* to exact a fee where none is due? But it is said the sums received were small; is this any *less* extortion; the tax due from each person was small; the per centage, therefore, could not be great. The men who paid were poor and had small taxable estates; does it follow that therefore the exaction was not extortion? Of a rich man he would not have *dared* to make such an exaction. But it is said this was a mere *mistake* in construing the law; and tho' the Plaintiff had *no right* to exact the money, taking it was not extortion. Who may not set up this plea for the violation of any law? Can any man plead *ignorance* of the law? Can an officer exact an illegal fee, sue for slander, admit that he took the fee unlawfully, and recover damages *because he mistook the law*? But Mr. Stow has not this *poor plea* of ignorance of the law. He *knew* that the exaction was illegal, for he in all instances *refused* to put it into the receipt, and in some instances he would not add it to the sum in the margin of the receipt; and in no instance has he given a receipt for the five per cent. Why is the Plaintiff so shy of putting the five per cent into the receipt? The inference is obvious; he knew it was *illegal*, and that is the reason he would not put it into the receipt. He could not be, no man was ever so stupid, as to suppose for a moment, that a Collector had a right to the five per cent until he had duly taken out and levied a distress. But it is said that we have proved but very few instances; we have proved fifteen or twenty. Is not this sufficient? How often may a man be guilty of extortion before he loses a right to recover damages in slander for having been called an extortioner? Have we not, then, proved that the Plaintiff made illegal exactions?—And is not that the very charge made by the Defendant? Of what avail then is it for the Plaintiff to say that you do not prove that I made these exactions in all instances? This only proves the other part of the charge that the Plaintiff was unfair and partial.

But it has also been proved that the Plaintiff in several instances refused to give receipts when they were requested; and, in other instances, would not give receipts for the *full amount* paid. By the collection law this is made highly *criminal*; and if the Plaintiff had had his dues, instead of being here, he would have been *in prison* for his offences committed against this statute. Has

not the Plaintiff then conducted *illegally*? If proof is a shield, the Defendant cannot be censured for making this charge.

We will next examine whether the Plaintiff's character as a *Christian* and a *Believer* has been injured. And first, I will enquire concerning what was said in the *Convention*. The charge is that the Plaintiff *openly* in the *Convention*, avowed it as his opinion that the government had no more right to provide by law for the worship of the Supreme Being, than of the devil. And what is it that the Plaintiff *now* avows? Is it not that the government have no right to provide by law for *any religious worship*: Because if they have, they may not only prescribe the *Being* that shall be worshipped, but the *form* of worship, and the *place* where it shall be performed. Has he not now avowed it, on this trial; and do not his own witnesses prove that these are his opinions; and that, in the *Convention*, he avowed them. What is meant by the expression that Christ's kingdom is not of this world, so often repeated? Is it not that religion is to be supported by free donations only? That there ought to be no law compelling men to pay taxes? That Religion will take care of itself; and that the Supreme being does not need the aid of the civil arm to secure the success of his cause. Is it libellous, I would ask, to say or publish of a man that he entertains and avows the opinion that no human legislature has a right to provide by law for the support of Religion? This is all that has been published of the Plaintiff and nearly the words. The innuendo is that the Defendant thereby charged the Plaintiff with avowing the opinion that it was *as proper* for government to make laws for the support of the worship of the devil, as the Supreme Being. The words do not support the innuendo; and it must stand for nothing.

But it is said the language in which the opinion is said to have been expressed is offensive, indecorous, calculated to render the Plaintiff odious, and was never used by him. Let us see how the proof stands on this point. Here are three witnesses, members of the *Convention*, Messrs. Reed, Farnham and Bull, who all testify that they have each a clear and distinct recollection that the Plaintiff used the very words imputed to him.— They swear they were particular in noticing the expressions and *know* they heard the expressions. It made an impression which is not yet effaced. Have we not then proved the truth of the words, and do we not stand justified? Has any one doubted the intelligence or honesty of these witnesses. If Stow used no such expressions, these three men, living in different parts of the state, have, without concert, perjured themselves on this point. But no men in our community possess a purer character, they are above every suspicion.

But Alexander Wolcott, Thomas Lyman, David Tomlinson and Wm. Todd did not hear this expression. And is this *negative* evidence to have any weight against the positive evidence introduced by the Defendant? Common sense, as well as all the rules of evi-

dence, tells us that it is of no weight. Mr. Wolcott says expressly he don't recollect any particular expression ; Mr. Lyman that he did not hear that expression ; Mr. Tomlinson says he does not know that he used the word devil, tho' he might have done ; and that he said a great deal, spoke often and talked long on the subject.—Judge Bristol was not there as he tells you. Mr. Todd says the Plaintiff spoke often and on several days, and as this subject lay so near his heart I believe no one will doubt it. But he does not remember Mr. Stow's expressions, nor the *tenor* of his argument. Does such evidence weaken the effect of the Defendant's evidence ?

But much parade has been made of the fact that Mr. Stow *drew* the article of our constitution on the subject of religion.— And suppose he did, how does that weaken the evidence of the Defendant ? In drawing this article Mr. Stow would be guided by what he tho't the Convention would *bear*, not by his own *private* views. In debating the article he might, and would very naturally throw out his opinions to see how far he might go in *abolishing* all law on the subject of religion and its support. After all what is this famous article that Mr. Stow, it seems was put upon a sub-committee to take care of ? It is more decent in its language ; but carries much the same sentiment with that attributed to Mr. Stow and by him so often avowed. By this article if men agree to pay for the support of any worship, be it Pagan, Mahometan, Jewish or Christian, be it of idols or beasts, the law compels them to fulfil their agreement, and pay accordingly. But by this article it is expressly provided that no man shall be *compelled* to contribute to the support of any religious worship whatever. Whether the Constitution is right or wrong is not now a subject of inquiry, but what is it ? If the article means any thing it means that a man may worship Jove or Jehovah or no God at all, as he pleases ; and that he cannot by law be compelled to contribute to the worship of any Being, one any more than another.

But it is said Mr. Converse was the Reporter of the Convention ; and that in the Reports published by him this expression does not appear. It appears from the evidence that Mr. Converse was *absent* a part of the time. Besides, did any one ever suppose that a Reporter, giving amere *summary* view of what passed, for a weekly paper, gave the very words of the Speakers and *all* they said.— Mr. Stow alone, while the article on Religion was under consideration, said enough daily, such as it was, to *fill* a daily paper. But it is said such an expression as this could not have escaped the Reporter, and Mr. Converse's *malice* towards Mr. Stow would have led him to have reported it. Here is betrayed the fallacy which attends most of our opponent's arguments. They assert that this publication is libellous ; and for proof refer us to the Defendant's *supposed* malice. When asked for the *proof* of this malice they refer us to the publication. The publication is *libellous* because it

is malicious, and it is *malicious* because it is libellous. Before this suit the parties were strangers. There is no evidence that they knew each other even *by sight*; nor a particle of testimony to shew that either entertained the *least* malice towards the other, except what is derived from the publication; and whether *that* is malicious is the very point under examination.

Second, as connected with his religious character, the Plaintiff further complains that the Defendant has charged him with insulting the Clergy. And has he not insulted the Clergy? Examine the testimony of Deacon Augur. Observe the questions put by the Plaintiff himself. Was not the clergyman who officiated at the conference at Mr. Wetmore's grossly insulted, and abused. At whose instance was this religious meeting called? had the Plaintiff any thing to do with it. He knew well the sentiments and feelings of these persons who were assembled in that meeting to be entirely opposed to his: For what purpose did he go there? To do good, or to do evil? It seems the clergyman tho't differently on religious subjects from Mr. Stow. And had he not a right to? No! If he differed from Mr. Stow and dared avow his opinions he deserved to be punished by confinement in New Gate. And was it no insult for Mr. Stow to follow the Clergyman round to the various places of worship in order to tell his audience that their preacher deserved New Gate for uttering false doctrines, that is, doctrines different from Mr. Stow's. It is said, however, that the Plaintiff treated some clergymen well. And who were they? It would be improper here to name them. It is enough that they preached Joshua Stow's doctrines rather than the Gospel. He could do no less than be *civil* to such complaisant preachers. It was not proper, nor did the opponents of Mr. Stow offer any insult to *even* these clergymen. All were treated with respect by *them*. Not so by Mr. Stow.

Thirdly, the Plaintiff complains that the Defendant has charged him with having successfully attempted to destroy all religious institutions. It is not a charge that the Plaintiff *has* destroyed all religious institutions, as has been claimed. The plain meaning of the sentence selected as libellous is that the Plaintiff has formed and put in practice such measures as, if universally adopted would destroy all religious institutions, of which, their success, it is claimed so far as they have been adopted, affords ample proof.

Look at the votes which the Plaintiff has had the folly to introduce as proof of his wisdom in the management of the *spiritual* concerns of the ecclesiastical society in which he lives. This society was a *religious* institution; the church formed and established in the society, was a *religious* institution. The ordinances of the Gospel here established were *religious* institutions. What effects were these votes, connected with the conduct of the Plaintiff calculated to have on these religious institutions? They were designed, and well calculated to have the very effect they have produced. Confusion and every evil work has been introduced; divisions have been fomented and perpetuated; vital piety has been mocked and

branded with every *odious* epithet. The serious, in their worship, have been ridiculed and their feelings outraged. By these votes a door has been opened for *every kind* of preaching, for every wind of doctrine. The young have been unsettled in their opinions and turned aside from the paths of truth; the more advanced have had their faith shaken and their conduct questioned till they have hardly known what to do or what to believe. The church, with the more serious part of the congregation, finding it impossible to hold their meetings in peace in their usual place of worship have at length retired, and sought an asylum in private houses, hoping thereby to escape the endless vexation and interruption produced by the Plaintiff and his votes. In this hope they have been deceived. Even these meetings have not escaped the Plaintiff's vigilance. He has frequently intruded among them, insulted their Clergyman; ridiculed some as weak and enthusiastic, and stigmatized others as hypocrites. Under the eye of the Plaintiff the mischief has *prospered* until it has nearly completed its work. The peace of the Society is destroyed, its members are harrassed with endless disputes, and the regular preaching of the Gospel is suspended. What *more*, I ask, is wanting to break down the religious institutions of the Society?

The Plaintiff next claims to recover damages because his *Christian* character has been attacked; and he is charged with being an Infidel. See the declaration, and innuendoes.

If it can be shewn either that the Plaintiff is an Infidel, or sustains the *character* of an Infidel, the Defendant stands justified.—The *substance* of the charge is Infidelity; and in the present case, if it be shown that the Defendant sustained the character of an Infidel *before* the publication, it is of no importance to the Defendant *how* the Plaintiff came by it. Whether the Plaintiff has acquired this character by establishing Infidel clubs, or by propagating Infidelity in any other way, is a matter of no sort of importance on this trial. But it is said that this is not a mere charge of Infidelity, but of *attempts to propagate* Infidelity. Of what consequence is this distinction in this case? If a man admits that he is an Infidel, but denies any attempt to *propagate* Infidelity, what damages can he recover? What effect can attempts to propagate Infidelity have upon the character of a man *except* to cause it to be believed that he is an Infidel—the very character which he admits he sustains; and, if honest, is always ready to avow? In this case, this distinction can be of no importance; because, if our testimony proves any thing, or if a fact can be established in a Court of Justice by human testimony, it is abundantly proved in this case that Joshua Stow not only sustains the character, but *embraces* the faith and is an active, zealous apostle of Infidelity.

An Infidel by our law, before the late revolution, was one who, having professed, or been educated in, the Christian Religion, denied the being of a God, or any of the persons in the Holy Trinity to be God, or asserted that there were more Gods than one; or denied

the Christian Religion to be true, or that the holy scriptures of the Old and New Testaments were of divine authority. To propagate Infidelity, or any other opinion, is to *assert* it to others, *adduce* arguments in support of it, to *teach* it and *urge* them to adopt it. This may be to persons singly and individually, or to companies, or societies collected or formed for that purpose. Let us enquire whether Mr. Stow is not an Infidel and a propagator of Infidelity within the definitions above given.

To Capt. John Bacon and to his brother Obed Stow, the Plaintiff has repeatedly declared for more than twenty years, and down to quite a late period, that our Saviour was a bastard, the virgin Mary a whore—the miraculous conception a falsehood—the resurrection ridiculous, and that there was nothing to fear after death. This testimony is too shocking to dwell on. Are not these competent and credible witnesses? No attempt has been made to impeach them, nor have their characters been questioned. Capt. Bacon is a respectable man, and no man sustains a fairer character for integrity and intelligence than Obed Stow. His examination, on this trial, though to him extremely painful, fully evinces his candour and intelligence. What shall we say to this evidence? Is it contradicted? Are not two witnesses *sufficient* to prove a fact? If such testimony will not command the assent of a Court and Jury, what testimony will? Admitting these expressions *proved*, what are we to think of the plaintiff? It is not only avowing, but propagating Infidelity. The only object of this conversation must have been to induce the hearers to think as he thought—to adopt his sentiments—to propagate Infidelity.

That the Plaintiff *disbelieved* the scriptures, is clearly proved by Wm. Lyman, Obed Stow, Eunice Stow, and Samuel C. Camp. The same witnesses also proved beyond all dispute, his attempts to inculcate this belief in others. This appears to have been his main object in these conversations, and particularly with Mr. Lyman. These conversations were held down to quite a late period.

That the Plaintiff *denies* the *existence* of the Holy Spirit, His *agency* and *offices*, is proved by Deacon Augur and a number of other witnesses. Many of the Plaintiff's own witnesses prove that he is a disbeliever. But it is said that the Plaintiff *now* believes in one grand universal restoration of all things, and in universal salvation. How lately has the Plaintiff thought it best to put on this cloak? For what purpose has the Plaintiff held himself out as a believer in these opinions? The political views of the Plaintiff could be better answered in this way than in any other. The open and avowed contempt of all religion, he found, rendered him unpopular. As the least inconvenient, he has chosen to profess universal salvation, in some general vague future restoration of all things.

It is not proved, I admit, that Mr. Stow was the actual first founder of the Infidel Society that has been spoken of. It does appear, however, by incontrovertible testimony, that he was a very

early, zealous and active member of a society whose avowed object was that of literary improvement; but whose *real* object was the propagation of Infidel sentiments. And what Infidel Society ever was so weak as to avow that their object was the overthrow of the Christian Religion? Free enquiry after truth, improvement in literature, and sometimes in morals, have been the avowed objects of Infidel associations. Not all the members have usually at first been made acquainted with the real objects of these Societies. If the testimony in this case, which has been given by a number of most respectable men, is to be credited, there cannot be a question in any unprejudiced mind, what was the *real* object of the Ethosian Society. Mr. Thomas Lyman, than whom none understood better the objects of this Society, says that their enquiries were after truth, and that their faith increased so that many of the members, before they left, believed in *Universal Salvation!* Indeed! what then was their faith at their entrance? Were *Infidels* associated for the purpose of seeking after truth? If so, it was an Infidel society, or if you please, club. Were they Christians and believers when they entered the Society; and did their faith increase till they believed in *Universal Salvation*? Mr. Stow while a member of the society did not arrive to even this degree of faith; for we find him avowing and propagating the most abominable Infidel opinions until long after the Society was dissolved; and until quite lately he never set up the *pretence* to a belief in even *Universal Salvation*.

There are many circumstances which have appeared in evidence during the course of this trial, which will readily occur to you, decisive of the true character of the Plaintiff, but which it would be equally tedious and unnecessary to comment upon particularly, I proceed to the last, and most decisive testimony shewing the true character of the Plaintiff. From the testimony of Mr. Southmayd it appears that Mr. Stow within three or four years past, at the corner of the streets in Middletown in the presence of a number collected around him, gave an account of a *mock* prayer he made in his family, at the request of his Mother Coe. This account was given for the *amusement* of his auditors. On another occasion Mr. Miller testifies that he heard Mr. Stow give a similar account. Several others have testified to much the same facts. No one on the part of Mr. Stow is produced to contradict this evidence. Mr. Stow does not deny the facts. From the evidence it appears that Mr. Stow was by his Mother-in-Law, Mrs. Coe, requested to make a prayer in his family; that at her request he began, and informed the Lord that he did not come on his own account, but on account of Mother Coe; that he prayed that Mother Coe might have wool and flax enough to spin; that she might have plenty of beef, pork and butter, corn and bread stuff in abundance; and that all her children might have these things, and especially her son Seth; and that she might have a good seat in Heaven and all her children, and especially her son Seth; and that the old lady patted him on the shoulder and said stop, stop, Josh you have done enough.

This is the account which Mr. Stow gives of himself. How impious! How profane! He does not come on his *own account*! No; he has no prayers to put up; he feels no reverence, no gratitude towards the Supreme Being. He feels no anxiety on account of his sins. His hands are *clean*; his heart is *pure*. He dares venture into the presence of his Maker to *ridicule* the performance of a duty equally enjoined by reason and revelation. A man a Christian, claim a christian character, and make a mock at prayer!—Where are we? in a christian land, and before a christian tribunal, and debating the question whether that man is a Christian who makes a mock of prayer! It is the very breath of the Christian; the Mahometan and Heathen also pray. Who but an Infidel casts off fear and restrains prayer, nay *scoffs* at it? What sect or denomination of Christians deny the duty of prayer; what man of decency ever ridiculed it? Show me the denomination of Christians, or the professor of any religion who ridicule or deny the duty of prayer, and Mr. Stow shall belong to it. That breath which was given Mr. Stow that he might *praise* his Maker is employed in *insulting* him. What injuries can the *christian* character of such a man suffer? Can he complain because the world call him an Infidel?

We are not now enquiring after the errors of this man's youth. We are viewing his whole life. He has maintained one uniform character and pursued one uniform course look where you may.—Such a man is not only not a *Christian*, but he is not a *Heathen*; he would not be indured even in a heathen land. He has had the hardihood to publish to the world his own utter contempt of every thing like religion. He has hardened his conscience and by denying the Holy Spirit, ridiculing his agency, and mocking prayer, he is delivered over to “a fearful looking for of judgment and fiery indignation.” It is said that this was in the delusion of youth, in the hour of fanaticism: be it so; what has been his conduct *since*? Did any Christian ever pray to the evil Being to appear to him? This man first prayed to the *good* Spirit, and then to the *evil* Spirit. And are we to hear gentlemen talk about *speculative* differences with such testimony before us? Show me the denomination that *don't* pray and Mr. Stow shall belong to it; show me the denomination that *mocks* at prayer and Mr. Stow shall belong to it and have damages for the injury done to his christian character. I ask not for the Mahometan or the Heathen whose breath is spent in prayer: I ask for the man who *ridicules* prayer. Show me such a man and I will show you a man that is not a Christian. Mr. Stow not only ridicules *prayer*, but *Christians* also. Look at this little flock, this Church with eight or ten males and twenty or thirty females and see the abuse and ridicule that he has heaped upon them, and you will need no further proof of his character. Even a Heathen,

though he might bear the question whether his principles were correct, will not bear to be *ridiculed*.

A few words, Gentlemen, as to the *general character* of the Plaintiff, and I have done.

Twenty four witnesses introduced by the Defendant have sworn *directly* that this man was an Infidel. Others say that within a few years he has pretended to believe in Universal Salvation. Some even of the Plaintiff's own witnesses call him a Universalist, and many of them say they have heard nothing *for or against* his religious character. A Universalist *may* be a Christian and he may not. I will not stop here to inquire whether a Universalist is a Christian, but will only ask whether Universalists do not *pray*?—This man, Gentlemen, if he believes in any thing, believes in some unknown, mysterious, restoration beyond the grave. We have summoned here, men from Mr. Stow's own neighbourhood, who have known him from his youth, and who testify *unhesitatingly* that he has sustained the character of an Infidel for thirty years. Who have *they* called upon? Men who have sworn that when they left the Ethosian Society, most of them became Universalists. For heaven's sake! what were they when they entered it? I reproach not any man for his sentiments, let him but act conscientiously.—And now what *damages* is this man entitled to? I think you must say he is entitled to none at all, for if ever there was a case proved in a Court of justice this case has been; if ever a complete and triumphant justification was made out in any case, it has been done by the Defendant on this trial. I trust therefore, Gentlemen, that you will find a verdict for the Defendant.

*Mr. Daggett in summing up the argument on the part of the Defendant, remarked—*That the first thing which he should notice in the Plaintiff's case, was that in the declaration certain parts of a publication are selected, and made the ground of this action, while other parts equally libellous, if false, are not relied on. The Plaintiff has cautiously avoided presenting himself to a jury of his fellow citizens for damages on account of being publicly charged with having “by intrigue and restless and unprincipled ambition endeavoured to place himself at the head of the United States Branch Bank located at Middletown, or for having in violation of the charter of that institution, caused himself to be made a director, and then dishonestly withholding the stock and dividends of the owners; or for procuring a substitute to do the duties of the Post-Office for two hundred dollars a year, and pocketing the rest of the emoluments of the office. It would seem that the Plaintiff is willing to remain under these reproaches, but insists that he is entitled to exemplary damages for being charged with certain other acts as a public man.

Doubtless he was wise in adopting this course, and must experience much self-gratification in evading enquiries which might not redound to his honour. No inference however, is to be drawn in favour of the Defendant, that the other facts charged are not false, because the Plaintiff thus virtually admits that these are true.

The first enquiry is, has the Plaintiff been *falsely* accused in matters relating to the Post-Office? The alleged libel charges that he receives eight or nine hundred dollars a year as Post-Master—that he lives three or four miles from Middletown where the Post-Office is established—that he pays no other attention to the office than to farm it out, and that for part of the year past, the office has been farmed out to the keeper of a turnpike gate. The Plaintiff admits his place of residence to be as stated.—He does not allege that the emoluments are over-rated—indeed both facts are proved substantially. It is also proved that he has hired a man to keep the office and perform its duties for about two hundred dollars a year, and that the keeper of a turnpike gate has been employed as such substitute, for a part of the time. Has not the Defendant then shewn that this part of the publication is, in substance, if not literally, true? And it will not be said if the substance of the charge is true, the Plaintiff can be entitled to damages.—The Counsel for the Plaintiff have indeed laid much stress on the words “to farm out,” as though there was something magical in them. To farm out a Post-Office, say they is *criminal conduct*. What is it to farm out a Post-Office or any thing else? Why undoubtedly to let it on certain terms? Has not the Plaintiff let this Post-Office on certain terms? Such is the proof. Such is the charge and nothing more. It is strange that when this Post-Master, whose commission shows that it was given to him, relying on his capacity and fidelity, chooses to stay at home on his farm, or travel to Ohio, or Philadelphia on his own business, or to be absent at a Convention for the formation of a Constitution for four weeks, employments none of which were *forced* upon him, is charged with permitting a substitute to do the duties while he receives, by far the greatest portion of the emoluments, should feel that his *reputation* is injured by the charge—If there be wrong any where it consists in the fact, clearly proved, that he neglected the duties of an office by him sought—that he took large sums of money for services performed by others, and thus made the office a *sinecure*. Here is the improper or criminal conduct, and not *in announcing* it to the public whose money he thus received. The liberty of the press so carefully guarded by our constitution, and by the general principles of all free governments, is of little value if such publications are to be deemed libellous, and if a printer is to be responsible in damages therefor at the suit of a warm partizan of any political sect or creed.—Such a partizan had better rely on a character which all

sound men will approve, than attempt to sell that which is justly *blasted*, at the price of a good one.

If Mr. Stow however, is still desirous of getting money for an injury done to his good name as Post-Master, it might be well to suggest to him that, in future, he would do well to demean himself in any office which he may obtain either by merit or demerit, so that he shall *honour* the office, rather than look to a suit for slander to remunerate him for a conscious loss of popularity.

The next point to which the attention of the jury is called, is the charge respecting his conduct as director of the Branch Bank of the United States. The matter charged as libellous, is in these words: "Let the customers of the bank inform the public what sums he has exacted for lending his aid as director in procuring their notes discounted." The evidence on this part of the case is derived *wholly* from the testimony of Seth Tibbals, Daniel Meeker and Henry Carrington, introduced by the Defendant, and Arthur W. Magill, introduced by the Plaintiff. Now all that is requested on this subject is that this testimony which is not disputed may be duly considered. It is believed that the facts will then appear to be simply these, that the Plaintiff undertook to get a note through the bank, of which he was a director, contrary to rule, for the sum of two dollars. This was the reward for his services, and he now claims damages because this mean and pitiful trick is published. It remains with the jury to reward him.

But again, the Plaintiff is charged with having said in the Convention which formed our Constitution, that "the government had no more right to provide by law for the support of the worship of the supreme Being, than for the support of the worship of the Devil." The first question which arises on this part of the case, is, did the Plaintiff make use of those expressions? On this point several witnesses, to-wit, Deacon Reed, Mr. Bull, Mr. Farnham, all of whom were members of the Convention, testify that these words were used by the Plaintiff. They say that they were in a situation to hear, were attentive to what was said, and are not mistaken. On the other side many gentlemen, also members, say that they did not hear them. How then stands the *proof*? If the ordinary rules of weighing testimony are to prevail, there can be but one opinion on this point. Those who swear *affirmatively* on a question like this, are to be credited.—Their testimony must controul.

If however it is not proved that the Plaintiff used those words, or words of substantially the same import, it is asked, how this charge is libellous? Might not the Plaintiff consistently with the provisions of the Constitution, and in perfect accordance with what he did say, as detailed by his own witnesses, have declared what is charged, without reproach? The Defendant alleges that the Plaintiff declared that the Government had no more right to provide by

law for the support of the public worship of the Supreme Being than for the support of the worship of the Devil. Well, is not this sentiment fully justified by the Constitution, and is it not exactly conformable to the Plaintiff's declarations in Convention as stated by his own witnesses? This Constitution carefully guards against the power of the Legislature to provide *by law* for the support of public worship, and it virtually declares that no such provision ought to be made. It does indeed allow men to associate together, and tax themselves for such support, and withdraw from the association whenever they please, but this is very far from *providing by law* for such support. Doubtless the members of a Turnpike Company might be permitted by the Legislature to tax themselves to reimburse expenditures, but who ever thought that this was providing by law for the support of a Turnpike Company?—The Plaintiff according to all the testimony, denied the right of compelling the people to support any kind of worship—this is one of his favorite doctrines—it is *now* his avowed opinion. It is then to be admitted that the Plaintiff *did avow* in the Convention that the government had no right to provide by law for the support of the public worship of the Supreme Being, and that the Constitution sanctions this idea. It is then asked, is it slander of the Plaintiff, to ascribe to him the sentiment and language used in this publication? If a Government have *no right to provide by law*, for the support of the public worship of the Supreme Being, can it be in any sense *false* to say that they have *no more* right to provide by law for the support of the worship of the Supreme Being than for the support of the worship of the Devil. It becomes those who maintain an opposite opinion to sustain it by something else than bare assertion. The Plaintiff's conscience must be tender indeed if it discriminates with such wonderful accuracy between sentiments so much alike.

Another ground on which the Plaintiff seeks to recover damages for slander to his character, is that he is charged in the alleged libel with unfairness, partiality and injustice in his office of Collector of the national tax. This he says in his declaration is charging him with extortion. Doubtless this interpretation of the sentence is correct.—Now what is the proof? It is to this effect, that in numerous cases, he *demand*ed and *received* five per cent. on the amount of the tax without either distress or sale of goods therefor. The 26th sect. of the act of 1815, under which he acted, is so plain that comment is unnecessary. There is not room for a doubt as to the sound construction. A commission of five per cent. is allowed only in case of distress and sale. No man but this Plaintiff can read the statute and pretend to justify this exaction. Indeed the proof is full that he did not demand it in all instances. This shews that he knew he had no right. He also refused to insert it in his receipts where he did re-

ceive it—this shews that he was unwilling to furnish evidence that he had taken it.

The conduct of the Plaintiff as proved by the witnesses was *partial*, by exacting it of *some* and *not* of others—It was unjust and oppressive in *demanding* and *receiving* it of any. This is extortion according to all approved definitions of it. Co. Litt. 168. 1 Haw. Pleas of the Crown 316. and Black. Com. 141.

Is not then the charge of the Defendant in the alleged libel, entirely justified so far as respects the Plaintiff's conduct as Collector?—It is however urged by the Plaintiff's Counsel that he was *ignorant of the law*—he verily supposed that he had a right to demand this commission, and therefore it is defaming him to ascribe to him injustice or extortion. This is a novel doctrine. The principle that ignorance of the law would exculpate from crime, would go far to repeal every penal statute. It is a necessary and fundamental principle that no man can allege ignorance of the law as a reason why he should not fulfil a contract, answer in damages for an injury, or suffer for an offence. It is an excuse so easily made, so often false, and so unsafe as a directory to those who administer justice, that by universal consent it is exploded. Once, permit Sheriffs, Collectors and other executive officers to plead in defence of their oppression and extortion ignorance of the law, and it is to be feared that few, very few would be found sufficiently *learned in the law*, to be responsible for their violations of duty. Beside in the case under consideration, the facts disclosed shew that the Plaintiff *knew* that he was making unjust and illegal demands. He intended to prey upon those who were in his power, and to receive fees which he well understood were not allowed by law. And shall such a man recover damages of a printer for disclosing to his readers—to the people who pay taxes, such *iniquitous* exactions in a Collector?

The great ground of damages however remains to be considered. The Plaintiff in his declaration dwells much on the injury done to his *Christian* character. This lies very near his heart. From the declaration it would appear, that he avers, in the strongest terms, that he not only was *educated* in the belief of the Christian religion, but that he is a most *steadfast believer*, and that such is his character. When therefore he is charged as he certainly is, in this publication with holding opinions, and pursuing measures subversive of this religion, his sensibilities are all awakened, and he calls upon all good men to sympathize with him under his weight of woe, and upon the jury to award to him exemplary damages for this mighty injury.

1. He is charged with disrespect to the Clergy. The Defendant in proof of this charge, shows by the testimony of Phineas Augur, and others that he had, in violation of all the rules which prevail among *decent* men, openly attacked a Mr. Davis, a Presbyterian clergy-

man while officiating as a preacher—had virtually said that he ought to be sent to New Gate, on account of certain sentiments uttered in his prayer—and had mutilated a hymn which he read for the purpose of pouring contempt on him. The votes of the society penned by Joshua Stow, shew clearly his opinion of those preachers who maintain the commonly received doctrines of Christianity, and his attempt to cast reproach upon them and their sentiments.

2. He is charged with establishing an Infidel Club, and by that means propagating Infidelity. On this part of the case Mr. Samuel C. Camp and other witnesses have given testimony as to the nature and proceedings of a certain Ethosian Society, of which the Plaintiff was a leading member, and of the manner in which religious opinions were there canvassed. It remains for the jury to say whether the charge be not satisfactorily proved.

3. He is charged with attempting to *destroy* religious institutions. It is not here supposed that the Defendant is bound, in order to justify this charge, to prove that the Plaintiff has burnt meeting houses, overturned altars, or murdered their ministers. If he has by a series of *acts*, by public declarations and by his example endeavoured to break down the order and peace, and to degrade the institutions of religion and its professors, then the charge is *sufficiently* proved. Now, let this man's conduct as stated by the various testimony in relation to this subject be examined, and what must be the result? If the insidious nature of the *resolutions* by him procured, to be adopted by the society of which he was a member, and in which his influence was always great, and greatly pernicious—if his low and vulgar abuse to the members of the Church, as related by his brother and others—if his impudent and profane speeches at conferences—if his solicitation to a Mr. Bacon to aid in destroying the Presbyterian order—if his introduction of Universalists as preachers into the pulpit, and an example always savouring of indignation and impiety, do *not prove* his attempts to destroy the institutions of Christianity, it will be difficult to imagine proof on such a subject in any given case.

4. He is also charged with being an *Infidel*. On this point many of the facts already noticed directly bear. Let it be also remembered, that undoubted testimony has been given by those intimately connected and acquainted with him, of his repeated declarations for many years, of opinions utterly opposed to the Divinity of the Saviour, and the truth of the Scriptures, and that too in language too vulgar, too obscene, too blasphemous to be reiterated. Let it suffice to advert to his story of the turkey—to his declarations to his brother respecting the conception and birth of the Saviour—to his own story as related by him in the streets of Middletown, about his

impious and horrid *mockery* of prayer. In the view of the undoubted testimony on this subject, it is difficult to imagine a more finished and vulgar Infidel.

It is however said, that many of the declarations of the Plaintiff of this infidel character were made *many* years ago. Be it so,—is there any proof of a change of opinion? Does he show any evident contrition and consequent amendment? But his abominable and vulgar attempt to ridicule religion in his mockery of prayer, he has within five or six years *boasted of* in the streets of Middletown, in presence of twenty or thirty persons to excite the broad grin of laughter.

It is again said that in various conversations with witnesses he has expressed his *faith* in Christianity. This may be, but did any genuine believer ever utter sentiments like those uttered by the Plaintiff, as is proved by the Defendant?

The Defendant also supposes that he has shewed by a great many witnesses that the Plaintiff has no character as a *Christian* to lose, for that he sustains *generally* the reputation of an *Infidel*. The testimony on this point is before the jury. The witnesses on the part of the Defendant, unite in this opinion. Many witnesses on the part of the Plaintiff declare that such is *not* his character, but that he is a very strong believer in Universal Salvation. It seems somewhat difficult to reconcile this creed, valuable as Mr. Stow considers it, being his only creed, with his remarks to Mr. Bacon about the resurrection of the body.

In view of this part of the subject, can a court and jury, professing the doctrines, and practising the duties of the Christian religion, give damages to a man like this Plaintiff for an injury to his religious character? Judges in England declare that the Christian religion is a part of the law of the land. Without enquiring whether this remark be entirely correct, it certainly evinces a laudable disposition to reverence protect and defend it. It is to be hoped that a disposition equally favourable to it will be shewn by our judges, in this community, where this religion has been cherished with so much affection from the earliest days of our history, and where it has been productive of so much good. Can any act tend more to injure and degrade it than giving damages to one of its open revilers, because a newspaper has disclosed his hostility to it?

As noted on page 3 of this pamphlet

“The reader may notice an error in the paging of the following sheets after the 92d page. The Trial however, is complete.”

Page 97 comes immediately after page 92.

Nothing was skipped during the digitization process.

Nathan Smith Esq. on the part of the Plaintiff, closed the argument of the case.

May it please your Honor, and you Gentlemen of the Jury—

The Plaintiff has felt under the necessity of appealing to a Court of justice for the redress of an injury which he considers great.—His *reputation* has been assailed, which is more dear to him than life itself—he has been attacked in a most pointed and deadly manner. This Defendant, the Editor of a public newspaper, which circulates in all parts of the country, with a boldness unparallelled, unless parallelled in the defence, has declared that my client made an open and public avowal that government had no more right to provide by law for the support of the worship of the Supreme Being, than for the support of the worship of the Devil; that he had formed, in early life, and established an Infidel Club; that he had broken down the religious institutions of the Parish in which he lived and had insulted the reverend clergy; that as an officer of the Bank he had received money as a bribe; had sold his office and influence as Director, and as Post Master had farmed out his office; and that as Collector of the Internal Tax, he was partial and unjust, and had taken unlawful fees. If so, how *infamous* is my client? How important is this trial to him? How necessary to appeal to a Jury of his country in defence of his character? The gentlemen say that religious and political principles ought not to be stirred up on this trial. I perfectly accord with this sentiment, and God forbid that bigotry in *religion* or *party politics* should ever infest the sanctuary of justice. When we enter this place let us pull our shoes from off our feet. When the Gentleman expressed this hope I felt astonished that he departed from it entirely, and attempted to excite prejudices against Mr. Stow that never should operate.—This sanctuary of justice is not to be polluted by *religious* or *political* differences. The Gentlemen have attempted to prejudice your minds; but I know, Gentlemen of the Jury, that they will be elevated above little prejudices. Let us now examine the case. Gentlemen, the charges are various. It is admitted that the Defendant is Editor of the Connecticut Journal, and that he published the piece in question. The Gentlemen take the *burden* of proof, and say that it is true. If Mr. Stow possesses the character ascribed to him in one part of the piece, and not in another, the judgment must be for us. *Every* part of the libel must be *proved*; and if the Defendant has *not* proved every part of the libel, the judgment must be against him. This Mr. Converse has scattered firebrands, arrows, and death; he has aimed a fatal dart at the bosom of my client.

We will begin and take into consideration Mr. Stow's conduct as Director of the Bank. This charge is nothing less than that he has received a sum of money to lend his influence as Director of a Bank. How does the fact turn out? Not one word of it is true. Seth Tibbals, on a certain occasion applied with a note after Bank

hours had expired. Does he apply to Mr. Stow as *Director* of the Bank? not at all. He applies to him as an individual. Mr. Stow took one or two dollars for his trouble. Do you suppose that Mr. Stow charged more than an adequate compensation for his trouble? Did he do this business as a *Director*? no pretence of it; there is not a word of truth in it. Look Gentlemen, at the testimony of Mr. Magill; I need not recapitulate it. Look at it, and away with the story of Mr. Stow's selling his influence as Director of the Bank. With what propriety have they charged Mr. Stow with this libel? There never was a greater falsehood in the universe. After searching as with candles, they have in *one* instance discovered that he has taken a compensation. Who could stand? Who would be safe in a Court of justice? Ah you brand him! what a miserable wretch! His character is not worth one cent: He is branded before an enlightened and virtuous community as selling his influence as a Director of the Bank, and the Defendant with a boldness, I will not say *impudence*, appears before you and makes this charge. The mighty charge is that in *one* instance a man came to Mr. Stow to beg the privilege of a sum of money; and we are called upon to vindicate a man's character for such an outrage as this.

We will now proceed to the other parts of the libel, published with *no better* foundation and with the *foulest* motives.

The Plaintiff was Collector of the Internal Tax. Of the difficulties of this office I will not speak; the office was an odious one and was exercised at a time when *party spirit* raged high. A Collector is a most unwelcome guest in the house of any *political partizan*. How many people had Mr. Stow to do with? His district was extensive and wealthy. It led him into the houses of the rich and the poor; of political friends, and political enemies. A Mr. Paisley undertook to dog Mr. Stow to get back the money that he had paid him; Mr. Stow was not to blame for the entry. Paisley came *voluntarily*, and it was Mr. Stow's duty to watch the interests of the government. In the instance of Mr. Geer, *he* entered his waggon voluntarily. Mr. Miller did not enter *his*. Mr. Stow could not give back the money which he had credited to the United States. Mr. Geer tells a story that leaves *some little* impression of *unfairness* on the part of Mr. Stow. Suppose that the Collector should be *mistaken*. He has no possible interest in it.—Mr. Geer has not *dared* to say that there was any thing improper in the entry. Mr. Stow perhaps was more hasty in his treatment of Mr. Geer than he ought to have been. The man shows, however, that he was pushing Mr. Stow a little. The law of the United States provides that Mr. Stow should be entitled to the 25 per cent that he took. Mr. Stow had a *legal* right to the money, and shall he here be held up to the community after all that has been said? It is all noise with respect to the carriage that has been spoken of. One case has been brought where Mr. Stow took fifty cents to which he was *confessedly* entitled by the laws of the United States. The Counsel for the Defendant have brought a few instances in

which he *has* taken five per cent; two or three instances in which he did *not* take five per cent, and the Gentlemen say that he is partial. They have brought *whole* districts here to say that he has taken five per cent. What an *extortion*! We should suppose that Mr. Stow had ground them to powder, and had drawn the last cent from them. We hear of *Exactions*. This is the very word that *grinds*. If he has done all this, hold him up to the community, let him not have a name or a being among men. The Defendant must prove *every* charge, or pay damages. But such is the extraordinary malice of this Defendant that this publication was made without the *least* foundation. What were these *mighty* exactions? The whole extortion is Three Dollars and twenty one cents! There is no law question here. The question is, has Mr. Stow been guilty of *illegal exactions*? If he has made a *mistake once*, is he to be held up to the community? Is he to be posted as a man who has made illegal exactions? The charges have been sufficiently malicious, and I believe the Gentlemen in their attempts to substantiate them have been sufficiently industrious. There might have been a difference of construction, but this is not extortion nor oppression.— Examine for a moment our laws concerning Sheriffs &c. (*Here Mr. S. read the statute on that subject.*) On what ground do lawyers stand in collecting debts? The law points out that upon a *levy* the Collector shall be entitled to a commission of five per cent.— There is no law question in this case that I know of: If Mr. Stow has made a *mistake in construction*, this is no extortion. General Hull's construction is the same I believe with Mr. Stow's. Sheriff's fees if taken by mistake are not extortion. The Court will submit to you whether these few instances make extortion: Though you were of opinion that Mr. Stow took this out of accommodation, *to save the levy*, yet you ought never to hold him up to the community as an extortioner. Say not that because Mr. Stow did not put this per centage into the receipt, that therefore he intended a concealment of it. In every instance but *one* he put it into the receipt *below*, and this Gentlemen, is the miserable defence; that by *mistake* he has taken *three dollars and twenty one cents!* and is he to be held up and branded as an *extortioner*? It never fell to the lot of mortal man exercising an office to be more scrupulous and exact. No mortal ever could stand if Mr. Stow cannot. His reputation is destroyed forever if he cannot stand.

We will next consider Mr. Stow's character, and conduct as *Post Master*.

The Defendant, envying the happy condition of the Plaintiff, and the respect in which he was held by the community; while enjoying the confidence of the general government, and about to be elevated to public stations in this state; attacks by this piece both his *official* and *private* character. What is the charge? In the first place that he has totally neglected the duties of the office and in the second that he has paid no other attention to the office but to farm it out. These are the two facts charged; serious in this

country and pretty odious. Let us examine both parts of this charge. Does not Mr. Stow *superintend* the office? is it necessary that he should be there *himself*? How has he done? He has kept his two offices in one building and has been there ready to receive all complaints and decide upon them. We have introduced ten witnesses who swear that he has taken the general superintendance. What have they done on the *other* side? They have produced two or three instances of neglect. The mail has gone by in *one* or *two* instances. What is required of a man?—That his clerks should be as correct as angels? If not may he be posted in the columns of every *unprincipled newspaper* in the community? Accidents have happened in one or two instances, and where is the office to which they have not happened? This is nothing more than is common to other offices, nor so much.—Was it proper for the Defendant to say that Mr. Stow paid *no* attention to the business of the office? How false! how wicked! This Gentleman has had the unblushing impudence to publish to the world that he has *farmed* out the office; it is as false as the Alcoran. There is not one word of truth in that charge and that you, Gentlemen of the Jury, know from the testimony. How untrue! how base the charge that he has let out the office for money! If the Defendant does not prove the truth of *every* charge, he must fail. Where does Mr. Stow stand? Where is the man that could withstand a shock like this as well as Mr. Stow? Where is there a man that stands higher? What more have we got to say? This whole community, friends and foes, say that he bears the character of a faithful, astute and upright collector. As an *honest* man he is above all impeachment. The witnesses, notwithstanding they are stirred up by religious and party feelings, tell you he sustains the character of an upright and honest citizen. Is not such a character a sufficient shield? His life and character have been that of an honest man, “the noblest work of God.” In all the various offices which he has held, he has withstood the shock, and every attempt to impeach his character has proved abortive. All the witnesses who have been brought into Court, say that he is an honest and upright character, and never defrauded any man. These things ought to shield him against some *little* charges.

If the Plaintiff has not been as *unjustly*, he has been as *impudently* assailed on his *religion*, as on the other points.

The Defendant speaks of him in the Convention. What do the gentlemen say? Why, that Mr. Stow said that Government had no more right to provide by law for the support of the worship of the Supreme Being than for the support of the worship of the Devil. There is a kind of impiety in this; not to say hardihood and blasphemy. What was the point? The Gentlemen have introduced Mr. Bull who recollects this expression. But Gentlemen, what was in debate? This is a *total misrepresentation* of the spirit of the remarks made by Mr. Stow. It is placing him in an unpleasant light: The remarks are *garbled*. This *Infidel*,

as the gentlemen call him, happened to be the draftsman of the 7th article of the Constitution. Look Gentlemen, at the article.— (*Here Mr. S. read the 7th article of the Constitution.*) Mr. Stow contended manfully against opposition. The Constitution is different on this point from what was represented by Mr. Daggett.— He says it takes away the power from Government to provide for worship. It is not so. I never thought of such a thing before; the meaning is you shall not *compel* a man to worship. How different from the Constitution, is the idea suggested by the Gentleman. What was the scope of Mr. Stow's argument? Precisely as I have stated. He says if you *compel* a man to worship, you may say on which *mountain* he shall worship, you may compel him to worship the Devil. Is this right? Mr. Stow never did in Convention advance the sentiment advanced in this libel. It is untrue and the Defendant *knew* it. I think this short exhibition sufficient. When you hear the witnesses and look at the report of the Defendant himself, you will see that Mr. Stow uttered no such sentiment. There were many pious and good people in the Convention that accorded with Mr. Stow. We are not now on the question whether they are right or wrong; we have different ideas. I am no fiery zealot on this subject. This pious class of community are to be protected in their sentiments. When you consider the question of *damages*, you will remember that Mr. Converse was present; that he garbled Mr. Stow's speech; that it was unjust, and that he knew it.

It is said that Mr. Stow *insults* the *Clergy*, that he *breaks down* the *Religious institutions* in the Society of Middlefield. We shall examine his *religious creed* by and by. What clergyman has he insulted? He has abused a Mr. Davis only, and this *once* in the whole course of his life. When? a number of years ago. Where? at a conference. Who testifies? Phineas Augur. There is a dreadful hostility between them. He and Phineas Augur don't think alike upon religion or politics. What is it? a *single instance*. Upon whom? a little *Spartan band* that brother Daggett speaks of. Phineas Augur put a wrong construction upon it. I don't want to reproach Mr. Davis and would venerate his opinions right or wrong. I however think it unfortunate for ministers to express themselves so. Have you not a hope? No. Then you must be damned. I do not mention this to excite *laughter*, a minister has no right to say this; he is not allowed to take this ground; Mr. Davis was a very imprudent man, monstrous indiscreet! And a single remark upon this authorizes every Journal to publish it to the world. Who could stand before such an investigation, tried by such rules? Has Mr. Stow broken the institutions of religion in that Society? He has been appointed an officer in that Society for twenty nine years, and be it remembered an officer *before* the formation of that church: The church was formed only ten or twelve years ago. All denominations united in repairing and supporting the meeting house by a vote. Long after this vote Deacon Augur

and a church to the amount of six or seven sprung into being. It was very proper for them to be a church. But with what face do they make this charge? They have passed a variety of votes.—Are all Infidels? Mr. Stow was one of a committee to superintend the worship. He was no more responsible than the other gentlemen were. All concurred in this vote. The vote of 1816 seems to be *particularly* hostile. The gentlemen see *Infidelity* in it. I am sorry after all their professions to hear gentlemen quote *particular texts* of Scripture, line upon line, to support particular tenets. What is that vote? It must be read, after all the parade that has been made about it; Mr. Staples read only a *part* of the vote. (*Here Mr. S. read the vote.*) Is it insulting the Clergy, not to hold to the *decrees*, not to believe the *strong* doctrines of Calvinism? Is this breaking up the institutions of religion in that Parish? How insulting to Deacon Augur! I don't like the principle, says he, that you should bring a book to be read without examination. A word derogating from Deacon Augur is destroying the religious institutions of the Parish? Who can stand?

It is said that Mr. Stow was a member of an *Infidel Club*. The charge is a gross one. It goes to the *vitals* of his character. It is not charging him with Infidelity, but with establishing an Infidel club. This charge must be *justified*. It is a great one. If *true*, it ought to drive him from society. Was there ever any Infidel club? No, gentlemen, there was no Infidel club at all. The Defendant has asserted it for the *base* purpose of destroying the reputation of this man. This Society was formed for discussing questions, such as are discussed in College. It was a beneficial Society, as is owned by both sides. It was a useful institution, established for a laudable and useful purpose, and though an Infidel book might now and then get into Durham, *an antidote* came with it. There never was a greater fabrication, than to charge this man with having established an Infidel club. It is crying mad dog. It was a useful establishment for laudable purposes. Had Mr. Stow any thing to do with the formation of this Society? No, gentlemen. What do you think of the man who has formed an Infidel club? Mr. Stow joined a useful Society; but never used his influence to urge anybody else to join it. *Every* part of this libel is utterly false, and without pretence. This Editor has had the impudence and audacity to publish, that Mr. Stow established an Infidel club, and to publish it too, in the face of the world, for the foul purpose of destroying his character. Might I not stop here? Here ends the Libel and here ends the case. All the declarations of the *life* and *conduct* of this man are out of the question; they have nothing to do with it. Why are we to be launched into such an ocean? Why is the life of this man to be laid open to view? With these heavy charges, we have not availed ourselves even of our rights. We would not object to foolish prayers and conversations with others. The Defendant has *totally failed* in every point. Suppose such a publication had been made of Dr. Franklin. (*Here Mr. S. alluded to the*

letter written by Dr. Stiles to Dr. Franklin.) Though these things are brought up to influence your minds and passions, we *shrink* not from the investigation. By what rule are you to try a man? The gentlemen have laid this man bare, from his mother's womb, on the subject of religion. Where is the man that could stand before such a trial? The question is, Is this man an *Infidel*? If he is a *Presbyterian*, is he to recover *less* damages than an *Episcopalian*? No. Be he *Methodist*, *Baptist*, or *Universalist*, we all stand on one footing *here*. Is every unprincipled scribbler, every newspaper publisher, to utter charges against this man's early life? The question is, *was* he an *Infidel* at the time of the publication of this Libel? What was the state of this College when Dr. Dwight came to this place? (*Here Mr. S. read several passages from the Biography of Dr. Dwight, in which the writer speaks of the situation of the College at that time, and the prevalence of Infidelity in it.*) Where are those pupils now? I cast my eyes on some of them yesterday. They are our ministers, scattered through the land. Turn your eyes back on this State, and among our pious ancestors. There were many disputes between the *old* and *new* lights, who persecuted each other, even to strange cities. Were they *Infidels*? Yes, Devils, almost. Take this John Bacon. Who is he? A man in a bitter controversy with Mr. Stow; and his personal enmity has engendered malice and hatred against him which can *never* be satisfied. I trust the Jury will not adopt a principle to damn my reputation, by bringing up my *bitterest* enemy to testify against me.

(*Mr. S. next adverted to Mr. Lyman's testimony, remarking, we have removed this out of the way.*)

But, gentlemen, you have heard the testimony of Obed Stow. He is a brother of the Plaintiff, and a *bitter* brother too. He admits that he published a Libel against his brother in 1799. Family controversies are always very bitter.—If there is any question about *my* religious principles, I have one request to make. Let it not be done by my *enemy*—but if it must be done by my enemy, let not that enemy be my *brother*. This man is as hostile and deadly, as ever a witness was. Eunice Stow, the sister, has too, a deadly family hostility. Her answer may show her *integrity*; but I think it shows her *hardness of heart*. Thus much with respect to every word that has come from the *enemies* of Mr. Stow. Where is the man that could stand the shock; And they have produced two circumstances now—one that he told a story when a boy, about a Black Pond prayer, and his garbled conversations about the Scriptures. Miserable! What will not *party malice* do? He made a foolish prayer when young. How many stories like this might be told of young men in College. He indulged in light conversation and foolish—nay, if you please, indecorous. This community has been industriously searched, as with candles, for the purpose of exhibiting before you the *garbled* conversations of the Plaintiff, and his expressions in early life, com-

ing from men *as vindictive as Hell*. We have brought in by *house row*, thirty-three men, to bear testimony to the Plaintiff's good character. Chief Justice Hosmer tells you that he has known him more than *thirty* years, and tells you what his character is. But perhaps he is in an error. Perhaps Calvin's doctrines are right, and perhaps not. Joshua has contended with Obed Stow. Who would believe that he would rise up to destroy the religious character of his brother Joshua? Were I in that box, gentlemen, I would give him the same damages, as if he had been a *believer* from his mother's womb. I will not trouble you with enumerating the testimony of all the witnesses introduced on our part, with regard to this point. We have produced a host of witnesses. They do not relate a single garbled conversation. All the members of that Church say that he has read and taught his family from the Scriptures—that his belief in them has been uniform—that he has believed in the Babe of Bethlehem, and given greater effect to the sufferings of the Saviour, than many of other denominations. He holds, and has uniformly holden, to a state of final salvation of all men—that Christ tasted death for every man. This is well known to all his neighbours. With respect to his *general reputation*, they never heard it called in question, until they came here. *Party* may conjure up every thing. Mr. Stow has, for more than thirty years, believed in the *resurrection, ascension, and atonement* of our Saviour, as exhibited in the Scriptures; he places himself for salvation at the foot of the Cross, and there he fixes his hopes. He takes a low seat, and humble, if you please. I regret that gentlemen should have introduced texts of Scripture to support particular doctrines, and inflame the passions of the Jury. I really thought at one time, that my brother Daggett was *preaching a Christmas Sermon*; at another, that he was *haranguing a mob*; and again, that he was *discussing the particular doctrines of John Calvin*. Mr. Stow does not believe in *secret decrees*, or the *doctrine of Election*. He does not believe that a person in distress at a conference, is under the influence of the Holy Spirit. He does not believe that the Missionary Society have a right to *their* meeting-house. Unhappy man! Unfortunate! not to believe in these doctrines. The cry of Infidelity is set up. Oh! he has ridiculed Deacon Augur! *He is Divinity* itself! He has not believed in the *infallibility of Deacon Augur*! Here the miserable wretch, with seared conscience, stands as a monument, forsaken of God. Here my client has stood. What must be the *malice* of the man who finds Mr. Stow enjoying honourable and lucrative offices, and with a view of all these things, comes before the public, and charges him with these crimes? How little regard must he have to the feelings of Mr. Stow and his family, or to public decency? If you regard his malice, what *damages* would you give? This Libel is intended to destroy his reputation, and disgrace him in office. My client was compelled to come here, and has been obliged to expend vast sums. Is this nothing? Will you discard it? All the gold in the

Universe is nothing compared with *character*. This Libel has been put into *writing*, with a view to descend as a legacy to his children. Is he to sit here and have his character abused for three hours, nay for a whole day? Shall the polluted columns of a newspaper be devoted to the destruction of private character? Where are we to have protection, if we can't find it here? Ought not *party* papers in these times, to be managed with caution? Who will protect the peace of the fire-side? Is domestic harmony to be broken up? Is brother to be arrayed against brother, and sister against sister? We have a melancholy instance before us. These are thy trophies *thou polluted and corrupt paper!* Are neighbourhoods to be disturbed? Who is there to restrain such mighty evils, but an intelligent and enlightened jury? Every evil proceeds from a corrupt press. If the affections of the people are alienated from the government, they are arrayed into parties hostile to each other—Demagogues will arise—the government will tumble into ruins. Discord, bloodshed, and anarchy will ensue. All this is done through the polluted columns of a newspaper. What mighty interests are committed to you this day? Not this man's reputation, but your's and mine; every thing is committed to you.

God grant you elevation of mind to discharge this important duty, and to shut the flood-gates of Defamation. If, gentlemen of the Jury, you will attend to these considerations, you will discharge your duty to the parties, to the public, and to yourselves.

After the arguments were closed, the Judge charged the jury as follows:

Gentlemen of the Jury—

Though I have no reason to apprehend that your verdict may be influenced by allusions made during this trial, to party names and party principles by which our country is unhappily divided, I trust I shall be pardoned for reminding you of the solemn obligation we are under to do "equal and exact justice" between all men, and to decide every case that comes before us according to law and the evidence given us in court, and that it is our bounden duty to lay aside every bias arising from party views, and party feelings, which seems to be the sin that most easily besets us at the present day; always remembering that we are accountable creatures, and that the place where we stand is "holy ground."

This, Gentlemen, is an action of trespass on the case for making and publishing a libel or written slander of the Plaintiff, the essence of which is *falsehood* and malice, indeed falsehood implies malice which in legal understanding is wilfulness or the doing a wrong act wilfully. The publication complained of is admitted to have been made by the Defendant, and he has attempted to prove it true, with what success you are now to decide. The Plaintiff's declaration contains five specifications of libellous matter in this publication, and construes them by *innuendoes* or explanations of their meaning according to his views. The three first may be

resolved into the general charge of being an Infidel, attempting to propagare infidelity, and destroy the religious institutions of the state.

By an Infidel is to be understood a person educated a christian “who denies the being of a God, or any one of the persons in the holy Trinity to be God, or asserts that there are more Gods than one, or denies the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of Divine authority” which are crimes punishable by Statute.

The three other specifications are for malconduct in the offices of Collector, Post Master and Bank Director. By the laws of the United States, a Collector of internal revenue and direct taxes is entitled to a commission on those taxes, *only* in case of an actual distress and sale. But if the Plaintiff has honestly taken this commission by *mistake*, or a *mistaken* construction of the law, he cannot be said to be unfair, partial or unjust.

As the publication is *admitted* you have only to inquire whether it is true or false, and whether the innuendoes or explanations of its meaning by the Plaintiff, are substantially correct or not: “Judges and Jurors are to understand this publication as others do.”

You will then take this case into consideration and if you find that the fair import of the publication is, as explained by the Plaintiff, and that the Defendant has failed to prove the specifications thereof, as alledged in the Declaration, or any of them to be true, your verdict will be for the Plaintiff to recover of the Defendant such sum in damages as you may think just and reasonable; otherwise your verdict will be for the Defendant.

The cause was committed to the Jury in the afternoon of Friday and on Saturday morning they found a verdict for the Plaintiff, of Five hundred Dollars damages, which the Court refused to accept. The Judge then addressed the Jury to this effect:

Gentlemen of the Jury—

You have found the right way. This libel is a wanton attack upon the Plaintiff's character. In estimating the *damages* you are to take into consideration the time, place and provocation. Altho' a man's character is as white as snow, yet a wanton attack upon it is not justifiable. The Plaintiff holds high and responsible offices. This publication is calculated to destroy the public confidence in him. I think it your duty to take into consideration the *motives* which induced this publication; also take into consideration the defence, for to my mind the *defence* set up by the Defendant on this trial, is a *repetition of the libel with a thousand fold more malice than the libel itself.*

You will take the case once more, Gentlemen, into consideration.

The Jury again retired and soon returned with a verdict of One thousand Dollars damages, which was accepted by the Court.

After this verdict was accepted the Defendant's Counsel filed a motion in arrest of judgment, and a motion for a new trial, which last motion prevailed; and will appear at large in the proceedings before the Supreme Court of Errors.

MOTION FOR NEW TRIAL.



Supreme Court of Errors July Term 1820.

PRESENT.

HON. STEPHEN T. HOSMER, *Chief Judge.*

HON. JOHN T. PETERS,

HON. JEREMIAH G. BRAINARD,

HON. ASA CHAPMAN,

HON. WILLIAM BRISTOL.

On the Trial before the Supreme Court of Errors, Mr. Staples read the Motion for a New Trial which is as follows:

STOW
vs.
CONVERSE. }

BE it remembered, that on the trial of the aforesaid issue, the Defendant offered to prove and claimed that he had proved, by Bela Farnham and others, that the Plaintiff, as a member of the Convention for forming the present Constitution, in Convention while debating on the 7th article of said Constitution, uttered the language and sentiment attributed to him in the publication claimed to be libellous, marked A.* to rebut which, the Plaintiff introduced Alexander Wolcott and others to prove, and claimed he had proved, that he did not utter the aforesaid language and sentiment and to prove that the Defendant well knew the same, and that said publication was *maliciously* made by the Defendant, the Plaintiff offered to prove, and claimed he had proved that the Defendant was Reporter of the debates and proceedings of said Convention, and the Plaintiff offered to read in evidence to said Court and Jury, the following account of the debates in said Convention, on the 7th article aforesaid, as reported and published by the Defendant in the Connecticut Journal, No. 2157, dated Sept. 29, 1818, and hereunto annexed marked B.* to which the Defendant objected, but the Court over ruled said objection, and admitted said testimony for the purpose of shewing the malice of the Defendant in the alledged *libel*.

And the Defendant in order to justify that part of the alledged libel which relates to the Plaintiff's conduct as Collector of the United States' Tax, offered proof and claimed that he had proved, that the Plaintiff in November, 1815, had refused to receive in payment of a tax, from Oliver Prout, bills or notes of the Middletown Bank; to rebut which, the Plaintiff offered to read in evidence a circular letter of instructions from S. H. Smith, Commissioner of the Revenue, dated August 18, 1815, a copy of which is hereunto annexed, marked C.* to which the Defendant objected, but the Court

over-ruled the objection and said instructions were read to the Jury to prove that the Plaintiff had not acted unfairly or partially in refusing said Middletown bills,—and the Defendant in proof and justification of that part of the alleged libel which relates to the infidelity of the Plaintiff, and his conduct as an Infidel, introduced many witnesses to prove both from the conduct and declarations of the Plaintiff for about thirty years next before the publication complained of, that the said publication was justified, and the Plaintiff to rebut said testimony offered a large number of witnesses who had been acquainted with the Plaintiff, to prove by his uniform professions, conduct and conversation, that from his youth up to the time of the publication, he was and ever had been a *believer* in the Christian Religion, and in the Divine authority of the Scriptures, and in the Divinity and atonement of the Saviour, to all which the Defendant objected, and contended that the Plaintiff could not thus by his own declarations make evidence for himself, but said objection was over-ruled and said testimony given in to said Jury, and after all said testimony on both sides had been received, the Plaintiff claimed that the whole thereof was irrelevant to the issue, and that the Court ought so to charge the Jury, but the Court charged the Jury as herein after set forth—and the Defendant in further justification of that part of the alleged libel, which relates to the conduct of the Plaintiff as Collector of the United States' Tax, as aforesaid, claimed that he had proved by the testimony of many witnesses, that he had demanded and received of several persons, five per cent on the amount of said Taxes, as commissions, without ever having distrained or sold property for such taxes—and the Plaintiff offered to prove and claimed he had proved that all the persons aforesaid were delinquents, and had not paid their respective taxes, within the time prescribed by law, and that previous to the demand by the Plaintiff, and receipt of said five per cent, every step had been taken by the Plaintiff as Collector, required by law, previous and preparatory to levying and distraining on the property, and that therefore the aforesaid proof of the Defendant was no justification of said charges against the Plaintiff, and at any rate it was only a mistake or mistaken construction of the law, in demanding and receiving said five per cent, and therefore not unfair, partial or unjust. But the Defendant contended that the Court should instruct the Jury that if the Plaintiff had demanded and received the said five per cent commissions *without* distress and sale then the Defendant had justified that part of the alleged libel. But the Court charged the Jury as is herein after set forth. And the Defendant further claimed that the Court should instruct the Jury that those parts of the alleged libel which related to the Plaintiff's conduct as Post Master, and to his declarations in the Convention, were not actionable when taken in connection with the whole publication as aforesaid but the Court charged the Jury as herein after set forth.

And the Plaintiff, in order to rebut the proof introduced on the

part of the Defendant, to justify those parts of the publication relating to the PLAINTIFF'S conduct as Collector and Bank Director, offered proof that the Plaintiff had ever sustained the character of an honest man, to which the Defendant objected, and said objection was overruled and the testimony introduced. And the Court charged the Jury as follows :

“ Gentlemen of the Jury,

“ Though I have no reason to apprehend that your verdict may
 “ be influenced by allusions made during this trial to party names
 “ and party principles, by which our country is unhappily divi-
 “ ded, I trust I shall be pardoned for reminding you of the solemn
 “ obligation we are under, to do equal and exact justice between
 “ all men, and to decide every case that comes before us, accor-
 “ ding to law and the evidence given us in Court; and that it is
 “ our bounden duty to lay aside every bias arising from party
 “ views and party feelings, which seems to be the sin that most
 “ easily besets us at the present day : always remembering that
 “ we are accountable creatures, and that the place whereon we
 “ stand is “ holy ground.”

“ This, gentlemen, is an Action of Trespass on the case for
 “ making and publishing a libel or written slander of the Plaintiff,
 “ the essence of which is falsehood and malice ; indeed, falsehood
 “ implies malice, which in legal understanding is wilfulness, or the
 “ doing of a wrong act wilfully. The publication complained of,
 “ is admitted to have been made by the Defendant, and he has
 “ attempted to prove it true, with what success you are now to
 “ decide. The Plaintiff's declaration contains five specifications
 “ of libellous matter in this publication, and construes them by *in-*
 “ *nuendoes* or explanations of their meaning, according to his views.
 “ The three first may be resolved into the general charge of being
 “ an Infidel, attempting to propagate Infidelity, and destroy the
 “ religious institutions of this State.

“ By an Infidel is to be understood a person educated a
 “ Christian “ who denies the being of a God, or any one of the
 “ persons in the Holy Trinity to be God, or asserts that there are
 “ more Gods than one, or denies the Christian Religion to be true,
 “ or the Holy Scriptures of the Old and New-Testament to be of
 “ divine authority,” which are crimes punishable by Statute.

“ The three other specifications are for misconduct in the offi-
 “ ces of Collector, Post Master, and Bank Director. By the laws
 “ of the United States, a Collector of internal revenue and direct
 “ taxes is entitled to a commission on those taxes *only* in case of an
 “ actual distress and sale. But if the Plaintiff has honestly taken
 “ this commission by mistake, or a mistaken construction of the
 “ law, he cannot be said to be unfair, partial, or unjust.

“ As the publication is admitted, you have only to enquire whether
 “ it be true or false, and whether the innuendoes or explanations of
 “ its meaning by the Plaintiff, are substantially correct or not.

“ Judges and Jurors are to understand this publication as others do.”

“ You will then take this case into consideration, and if you find that the fair import of this publication is as explained by the Plaintiff, and that the Defendant has failed to prove the specifications thereof, as alledged in the declaration, or any of them, to be true, your verdict will be for the Plaintiff, to recover of the Defendant such sum in damages as you may think just and reasonable, otherwise your verdict will be for the Defendant.”

Whereupon the Defendant moves that the aforesaid questions of law may be reserved for the advice of the Supreme Court of Errors, with stay of execution, and that a new trial may be granted

DAGGETT & STAPLES, *for Defendant.*”

Mr. S. then read the original Declaration, and claimed a new Trial on the following grounds :

I. The Court ought not to have admitted the evidence to show that the Defendant was a Reporter of the proceedings of the Convention, and that the expression complained of was not in those reports. This was claimed by the Plaintiff’s counsel as evidence to show that the Plaintiff uttered no such expression, and to shew *malice* in the Defendant. It could be no evidence to prove either of these facts, unless the Plaintiff first proved that the Reporter was present and heard the speech in which the expression is claimed to have been uttered, and that the Reporter professed in his weekly paper to report *all* that every member said. No such claim was, or could be made by the Plaintiff with truth ; and the evidence ought to have been rejected.

II. The Court ought not to have admitted as evidence to the Jury the letter from S. H. Smith, the Commissioner of the Revenue to the Plaintiff—as between the Plaintiff and the Defendant, the law, and not executive letters, is the rule by which conduct is to be judged. If the law forbid or authorized the Plaintiff to take Middletown Bank bills, his conduct ought to be accordingly. Whether he held letters of instruction from the Commissioner of the Revenue or not, was nothing to the Defendant, nor to the person who offered the money in question. Such letters would not render the conduct of the Plaintiff fair or unfair, legal or illegal.

III. The declarations of the Plaintiff unconnected with any act, and down to the date of the publication were admitted by the Court to shew that the Plaintiff was a Believer and a Christian.—This was erroneous—A party’s own declarations against himself are evidence ; but not such as he makes at different times in his favour. This rule is universal ; no exception can be found. A man one day declares that he disbelieves the Scriptures—on another that he believes in them. May he do away the effect of the first declaration by proving the second ?

IV. The Court charged the Jury that although the taking of the five per cent was illegal yet the Plaintiff might have taken it *honest-*

ly and therefore was not guilty of extortion. This was clearly erroneous—a violation of all settled principles. It assumes that a man may be ignorant of the law he is called to execute, and plead that as his excuse. Demanding and receiving fees which the law will not allow, is extortion. But here is a new kind of extortion, namely, *honest* extortion. A man may make illegal exactions, and thus give occasion for complaint against him; sue in an action of slander, admit the illegality of his exactions, and yet claim damages because he was ignorant of the law.

V. The Court erred in admitting evidence to show that the general character of the Plaintiff was that of an *honest* man. It was wholly inadmissible. It was offered to rebut the charges of extortion and taking money as Bank Director. There was no claim that it could be admitted for any other purpose. Could the Plaintiff rebut this evidence by showing his general character for honesty? The Defendant could show his general character to be bad, but until the Defendant offered such proof the Plaintiff could not offer evidence to show it good. He could not say, though I am an extortioner and unjust, yet I sustain the *general character* of being honest.

Peak. Ev. 8. 2. B. & P. 532. 1. Camp. 460. 3. Esp. Ca. 116. Phil. Ev. 139. 1. John. Rep. 46.

VI. What the Defendant published, as said by the Plaintiff in the Convention is not actionable, and the Court ought so to have instructed the Jury. The sentiment attributed to Mr. Stow is that government have no right to *compel* any citizen to contribute to the support of any religious worship; and this is precisely the principle of the Constitution contained in the article said to have been drawn by the Plaintiff. An innuendo can make neither *more* nor *less* of the meaning. And is it libellous to charge a man with entertaining and avowing the sentiments and principles of the Constitution?

VII. The Judge charged the Jury in the language of the statute—that to charge a person with being a disbeliever as there set forth was a crime. This statute was by the Constitution repealed, and it was no crime—This was erroneous and must make an end of the case.

Mr. Ingersoll in opposition to the Motion.

There are six points raised on the Record. I shall take them in the order in which they appear on the motion.

I. It is claimed that the Court erred in admitting the newspaper account of the debates in Convention printed by the Defendant, as evidence on the Trial below. This paper was introduced by the Plaintiff to show the *malice* of the Defendant. We are asked, how does it show it? It shows it in this way. We proved on the Trial that Mr. Converse was Reporter to the Convention, and took down the debates from the mouth of the Plaintiff, and attributed to

him in that Report, sentiments different from those charged upon him in the Libel. Does not this show malice ?

II. It is charged in the Libel that Mr. Stow was guilty of unfairness partiality and injustice in refusing to take Middletown Bills ; and it is said that the Court erred in admitting the letter of instructions from the Commissioner of the Revenue to repel this charge and to show that he acted fairly and honestly. Mr. Smith the Commissioner could by the laws of the United States control the collection of the Taxes, and order such money to be taken as he pleased, and Mr. Stow as Collector, was bound to obey his instructions. The testimony was therefore properly admitted.—See 4th vol. U. S. Laws, 568.

III. It is said that we have no right to prove a man's religious character by his professions, conduct and conversation ; and therefore the Court erred in admitting the *Declarations* of the Plaintiff to show that he was a Believer, and a Christian. If we are not permitted to resort to this kind of evidence, how can we get at a man's religious character ? In what way are we to prove it?—particular acts proved will not support the charge. Bac. Abr. old Edn. 517. 6. Bac. 261. 5. Com. 604. Pl. 2. L. 5. Holt's Law of Libel, 283. See also 4. Day. 51. Curtiss, vs. Strong.

IV. The fourth point regards the taking of the *five* per cent commission. Mr. Stow has been charged with being unfair, partial and unjust in collecting the Taxes. On this subject I would refer your Honors to the 4th vol. United States' Laws, 452. This commission of *five* per cent is allowed to the Collector for the steps taken by him *previous* to the levy and sale of the property. This law is in analogy to our statutes regarding the collection of Rates and Executions. For taking this commission Mr. Stow has been charged with the crime of extortion which is an odious crime and accompanied with perjury. 4. Com. 154. Mass. Dig. 308. 1. Mass. T. R. 227.

V. It is claimed that the Court erred in admitting evidence to show that the general character of the Plaintiff was that of an *honest* man. But it has been decided in Connecticut that the Plaintiff may produce evidence of his *general* good character to rebut *particular* charges of dishonesty. The testimony is clearly admissible. Sw. Ev. 140. Phil. 139.

VI. It is said that that part of the Declaration which attributes Infidel sentiments to the Plaintiff is not actionable. We claim that it is ; and also claim that the charge of the Judge on that point was not erroneous.

Mr. Smith.—The Gentlemen claim a New Trial on seven distinct grounds ; and say there is one continued error from the commencement to the close of the Trial.

I. The first point regards the conduct of the Plaintiff in the Convention. The Defendant was there present and took down the debates from Mr. Stow's lips ; and his Counsel now tell a different

story and ascribe to the Plaintiff sentiments, which (if uttered) would drive a man from the community. The question is not, is this testimony *conclusive*, but does it *conduce* to prove *malice*?—The Defendant *knew* better, than to ascribe such sentiments to the Plaintiff—he had the means of knowledge in his power, for he was the Reporter of the debates.

II. In the next place the Gentlemen say, that the letter of instructions from Samuel H. Smith, the Commissioner of the Revenue, was inadmissible. They charge in their declaration that Mr. Stow acted unfairly, partially and unjustly. In answer and explanation, Mr. Stow says, I acted under the authority from the Commissioner of the Revenue.” Unfairness implies a *wrong act*, a *wrong intention*. Mr. Stow’s *motives* in this thing were *pure*. This letter conduced to prove that Mr. Stow acted fairly and uprightly. It is said that Mr. Smith had no authority to direct Mr. Stow to take *particular bills* in exclusion of all others. (*Here Mr. S. made an allusion to the case of an Attorney collecting money, and remarked,*) I am justified by the orders of my principal, and ought to be permitted to shew them. Of course that letter furnishes no evidence of partiality and unfairness, but is proof of *obedience* to orders.

III. The third point respects the Plaintiff’s Religious character. This objection is in every point of view as large as life. The Defendant has attempted to justify this part of the libel. It is said the Defendant may offer the Declarations and professions of the Plaintiff to prove his character : but the the Plaintiff cannot offer his own declarations and professions to rebut what is said by the Defendant. What is the question in issue ? That you Mr. Stow are an Infidel of the rankest kind—and prove it from your declarations professions and conduct. To what other source can you resort ? This is the only source. In proof of this, see the case of Curtiss vs. Strong. 4. Day, 51. This evidence was offered by the Plaintiff to rebut the Defendant’s evidence respecting his Infidelity. We say that the Defendant’s testimony was inadmissible, and that we offered to rebut it. A few plain principles will settle the point. The Defendant to justify, must *prove* the words charged, that is substantially. The rule was formerly more strict.

IV. This point relates to the charge of 5 per cent commission. Let us advert to the Libel and see what the charge is. (*Mr. S. read that part of the Libel.*) We admitted on the Trial below that Mr. Stow *took* the commission. If he had a *right* by law to take it, there is an end of this part of the case. On this point see 1. Mass. T. R. 227.

V. The next point includes the charges made concerning Mr. Stow’s conduct as Collector, Bank Director, Post Master, &c.—The testimony regarding general character is admissible on the part of the Plaintiff. It has been again and again so decided in Connecticut. We have not adopted the English rule here. See Sw. Ev. 140. The Defendant in England may not introduce evi-

dence of general character *unless* in case of corporal punishment. It is not so in Connecticut or Massachusetts. See 3. Esp. Ca. 116. This testimony is admissible on the strictest principles of the English law. See 3. Caines 123.

VI. It is said that Mr. Stow's declarations as a member of the Convention, as charged by the Defendant are not actionable. They are as clearly actionable as any part of the libel.

VII. The charge of the Judge respecting the Plaintiff's Infidelity.

The Gentlemen have here introduced a *constitutional* objection. The Constitution has nothing to do with it. It might as well be introduced in an action of assumpsit. On these grounds thus concisely stated we claim that a New Trial ought not to be granted.

Mr. Daggett in support of the motion.—I propose to speak particularly with regard to five of the seven points raised in the motion. With regard to the two first I propose to make a few remarks applicable to the first point.

I. The Court erred because they admitted the subsequent publication to show *malice*. It was proper for the Court to admit the declarations of Mr. Converse which tended to show that what he published was not true. My brother Smith has placed the law on the true ground, on that subject. The only ground on which I urge this objection to the Court, is, that it was essential before you introduced that *former publication*, that Mr. Converse was present the whole time, otherwise nothing is proved. It should appear that the conversation was the *same*, when you introduce witnesses to contradict what has been said by a person on a given occasion. It is a *sine qua non*. A man is not *permitted* to swear, to contradict a conversation, unless it appears to be the same.

II. The Judge erred in admitting the letter of Samuel H. Smith. I make no remarks upon it. I have no doubt it was improperly admitted.

III. Whether the admission of testimony relative to the character of Mr. Stow was a *legal opinion*. This is so clearly stated in the motion that it cannot be mistaken. It is objected that it is not stated in the motion *what* evidence was introduced by us. It is as plain as language can make it. It was introduced to *justify*. If we proved that Mr. Stow took the money, we claimed that it was unfair, partial, and unjust. I stop not to analyze his unfairness, partiality, and injustice. (*Allusion to the case in Bank—libel on this point was cited.*) This conduct they say is so criminal, that if published it would be libellous; but I trust they will not say it in any other point of view but to recover back the money. The Gentlemen should cite authorities from the Court of King's Bench, from the neighboring states or our own. From the labour and ingenuity of the Counsel the Court have a right to expect it. I call for a *single adjudged* case in which the doctrine claimed by the gentlemen is holden. Every case which they have alluded to,

denies it wholly in terms, or impliedly. In Phillips 139, a case has been referred to in which the doctrine is directly denied. Swift 140, negatives their position in every part of it. Buller's Nisi Prius 296. & 8. the same doctrine is laid down. In 2. Bos. & Puller, 532. Chief Justice Eyre laid down the same position. I have found only two or three cases in Connecticut—Kirby 62.—1. Root 312. I ask for the case in Connecticut to rebut proof like that in the present case by allowing the Defendant to give proof of general character. It has been *hinted* and *more than hinted*, that proof of this kind is constantly introduced in this State.—Never. It has been admitted to enhance *damages* and merely for that purpose. This doctrine has never been extended except to life, and to cases of infamous punishment. The 3. Esp. Ca. 116. was read by Mr. Staples to support the principles contended for by us, and is a case directly in our favour.

IV. The Judge admitted Mr. Stow's declarations made *out of Court*, for the purpose of proving that he was a Christian, and not an Infidel. (*Here Mr. D. read that part of the Declaration relating to this point.*) The Gentlemen say if we had introduced testimony to show that Mr. Stow was an Infidel, they might show that he was a Christian. I shall attempt to remove this objection, and for this purpose I will refer your Honours to the case of Curtiss vs. Strong.—4. Day, 51. Mr. Stow cannot prove that he is a Christian by his declarations. It is the *worst* source of evidence. Those men who declare themselves sinless, are usually preeminently vile and sinful. Can such testimony be admitted? Can the testimony of ten witnesses to a conversation in which Mr. Stow declared himself to be an Infidel, be rebutted by the testimony of ten witnesses who heard him say that he was a Christian?

V. The charge was erroneous in declaring the nature of our allegations respecting Mr. Stow's Infidelity. The statute on this subject has been repealed by an act of the Legislature, as well as by the Constitution. If the Constitution of 1818 provided differently from a law in existence, it does away the law. The Constitution provides that all laws inconsistent with it, are repealed. (*Mr. D. here read the law from the Statutes of Connecticut.* The law is repealed when the *penalty* is taken away. (*Here Mr. D. read various parts of the Constitution.*) I had no great affection for the law as it stood *before* the Constitution. It was a dead letter.—Since the Constitution Mr. Stow could not be punished under the law, "*Crimes punishable by statute.*" No other statute is pretended in this case.

VI. The gentlemen say we have said that Mr. Stow declared in Convention that Government had no more right to provide by law for the support of the worship of the Supreme Being than for the support of the worship of the Devil. Judges are to form their opinion from the legal operation of the words. The sentiment ascribed to Mr. Stow is consistent with the Constitution, with purity of intention, and with sound Theology. A large portion of the

community believe that the Legislature have no right to make laws on this subject. The *seventh article* of the Constitution contains an abstract truth. It lends no countenance to the idea that Government have a right to *establish* and *support* worship. The Constitution is perfectly correct on this subject, "*no person, &c.*" It is strictly true that nothing reproachful is said of Mr. Stow in the publication on this point.

VII. The charge respecting the injustice, unfairness and partiality of Mr. Stow was erroneous. We justified fully: look at the declaration and the charge of the Court. What means unfairness, partiality, and injustice? Admit for argument's sake that we have charged him with extortion. Partiality is not so high an offence. Injustice is the most comprehensive term. For definitions on this subject, see 4. Com. Dig. 151. 4. Bl. 141. 2. Bac. 453. 1. Hawk. Pl. C. 316. Co. L. 368. It is utterly impossible that the *views* with which Mr. Stow took the money should be known to any one but himself. We have proved that he took it and that is enough.

On these various grounds we claim that a new trial ought to be granted.

OPINION OF THE COURT PRONOUNCED BY C. J. HOSMER.

STOW
vs.
CONVERSE.

In the opinion which I am now to express on this case, I shall waive considering the objection made to that part of the charge, which after mentioning what is understood by being an Infidel declares that "they are crimes punishable by statute." Whether there is such a repugnance between the Constitution and the law referred to, as necessarily to imply a negative of it and amount to an implicit repeal, I have not had leisure to examine. The result to which I shall come renders it unnecessary to determine the question, and for that reason I shall pass it by, without the expression of an opinion.

In the brief suggestion which at this time I intend to make, I shall pursue an order different from that which was adopted at the Bar. Those objections to the proceedings below, which I consider untenable I shall first attend to; and then recur to the other, which in my judgment are of a different description. By way of preliminary I will state what it is that constitutes a libel. It is defined by Hawkins in his pleas of the Crown to be "a malicious defamation expressed either in printing or writing, and tending either to blacken the memory of the dead, or the reputation of one who is alive, and to expose him to *public hatred, contempt, or ridicule.*"—1. Black. cap. 73, p. 193.

On this principle it has been adjudged *that a writing* which declares that a person *stunk of brimstone and had the itch*, was libellous.—2nd. Wilson 403.—because it might be the means of excluding him from society. A letter calling a man *a villain* is libel-

vous, and has been so determined.—1. Bos. & Pul. 331. In *Steele vs. Southwick*, 9th Johns. 214. which was an action for a libel for saying of the Plaintiff, he is no slouch at swearing to an old story. The words were deemed actionable, and for this reason; that altho' they did not import perjury in the legal sense, they held the Plaintiff up to *contempt* and *ridicule*, as being so thoughtless or immoral as to be regardless of the obligations becoming a witness, and therefore to be utterly *unworthy of credit*. And a *written representation* imputing *improper motives* to a District Attorney, in the performance of his *official* duty,, has been considered a libel. It is because the imputations are *written* and may circulate extensively and never be forgotten, that the law respecting libels is so different as it is from mere verbal slander.

After reflecting on these principles I am prepared to give an opinion on the *omission* of the Judge to charge the Jury, that the words spoken in the Convention were not actionable. When the Convention was devising and forming a Constitution for the State, it was said of the Plaintiff, and after verdict it must be considered as having been said falsely and maliciously, that he openly avowed the opinion that *the government had no more right to provide by law for the support of the worship of the Supreme Being, than for the support of the worship of the Devil*. A sentiment so irreverent towards the Creator and Governor of the world and so analagous to the modes of thinking habitual to malicious and profligate men, would disgrace any man who was not a professed Infidel. Taking it for granted, as we are bound to do on the falsification of this charge by the Jury, that the Plaintiff is a Christian, the injury arising to him necessarily, must be great, if the imputation is believed. It must deprive him of the esteem of mankind; exclude him from intercourse with men of piety and virtue, and render him odious and detestable. The evidence of this need not be labored; it is intuitive; and every man who has a common share of intellect and reputation *knows*, that a charge against him of this description, would awaken his resentment and deprive him of peace, until he had successfully repelled it.

I shall next consider the objection to the account of the debates in Convention reported by the Defendant; and admitted to show that the publication of the preceding words was false and malicious.

To the impertinency of the testimony proceeding from the lips of the Defendant no objection has been or can be made. It is equally clear that it was relevant. It stands on the same grounds as a verbal representation made by the Defendant of what occurred in the Convention, or of a letter written to a friend. In either of these cases it would conduce to prove the malice and falsity of the publication on this subject, if the Defendant was silent relative to the obnoxious expressions which he afterwards thought fit to impute to the Plaintiff. I cannot but think that the deliberate report of the debates in the Convention by a person, who it must be presumed,

meant to publish them faithfully and completely, is higher evidence that he omitted nothing material, than a mere verbal conversation would be. And when it is considered that the sentiment said to be expressed by the Plaintiff, was by the Defendant deemed so derogatory to his character as to be published to the world among other weighty imputations, it is not to be believed that he would have omitted it in the publication of the debates, had the fact existed. It is true that the opinion might have been expressed by the Plaintiff when the Defendant was not present, but of this, if there was proof, he might take benefit of it before the Jury. In the absence of testimony it is a fair and reasonable presumption that the reporter of the Conventional debates was present without intermission, as he ought to have been to perform the duty he assumed, and it is no hardship to place on him the burden of showing, that he was *absent* at the time, when the words published were supposed to have been spoken, and in pointing out the *source*, from which he derived his information. The letter of the Commissioner of Revenue, to repel the charge of unfairness and partiality in refusing to receive the pay of a tax in Middletown Bank Bills was duly admitted in evidence. Acting pursuant to instructions derived from the superintendant of the department for the collection of taxes, decisively rebutted the charge made against the Plaintiff.— And the objection rests on no higher ground than this; that when a person is calumniated and rendered odious he may not advance the most apposite evidence to show the impartiality and integrity of his conduct.

The *uniform* professions, conduct and conversation of the Plaintiff, from his youth up, was proper testimony to repel the charge of Infidelity. This precise point was decided by the Superior Court in Curtiss vs. Strong, as will be apparent to every one on consulting the treatise on Evidence, by the late C. J. Swift. The propriety of the evidence is too obvious to be questioned. It is the best evidence the nature of the case admits of. From the life and conversation of a man viewed conjointly, we form an opinion of his character in private life; and Courts and Jurors must form their opinion in the same manner. True it is a man may act the hypocrite, and he may and often does it more successfully by his *actions* than by his *words*. But it is not therefore to be inferred, that his actions are no evidence in his favour when the inquiry is as to the regularity and piety of his life. The conversation of a man for successive years on the enquiry concerning his faith and the operations of his heart, is *fact*; it is part of the *res gesta* and by the fireside every man has recurred to it to ascertain the integrity of his fellow man, whether the conversation is *for* him or *against* him. The same manner and for the same reason must be had in a Court of Justice; or we must reject both *actions* and *words* when we are in search after character. If the words and actions harmonize they form a united whole; and every man who exhibits a good conversa-

tion out of his lips, as well as a fair example in his life, is entitled to the benefit of both of them at all times and all places.

But if the observations made are unfounded, the testimony was admitted merely to rebut evidence of the *Plaintiff's Infidelity* which was never a point in issue between the parties. If this is correct, the Defendant has no cause of complaint, as the Plaintiff's evidence alone destroyed testimony on his the Defendant's part, *which should never have been heard*. To decide what matters were in issue, we must first ascertain what were the false and calumnious charges of which the Plaintiff complained.

The Defendant charged on the Plaintiff the following misconduct, *That he seduced his early companions to join an Infidel club, by him and others set up and supported; that he had attempted to destroy all the religious institutions of the state; that he had insulted the Clergy who had offered their services in the Parish where he resided*. Now suppose the Defendant had plead a special justification and it cannot be denied, that in his proof he is holden to the same rules, as if the plea had been made; what would have been his plea? That the Plaintiff was an Infidel? No. It would not meet a *single* charge that he had made. Every man will perceive that the Plaintiff must have been an Infidel if the facts stated were true; but infidelity was not directly charged in form. It was something worse than infidelity itself. It was the charge not of want of faith, but of bad practice; *not of opinion*, but of *conduct*.

A man may in his opinions be an Infidel, but for the most part, he may keep his sentiments to himself; or he may converse freely in all companies and avow his principles; or he may with a zeal worthy of a better cause establish clubs, and seduce the young and unwary to become members of them. To be called an Infidel is to be highly reproached; but it is worse to be charged with free and open conversation in support of infidel principles, and worst of all, to be represented as making efforts by schools and other institutions to propagate irreligious tenets. Now he who makes the latter charge, must justify by proof coextensive both in substance and in the manner of speaking, and it is of no avail, when he has imputed to a man bad conduct, to offer proof of incorrect principles. I am clear, then, that the Infidelity of the Plaintiff ought never to have been a question at the trial of this case, and that no complaint can legally arise, from having in any manner defeated the evidence of the Defendant on this point.

There remain to be considered two objections, the order of which, I shall invert. To rebut the proof introduced on the part of the Defendant, adduced to prove the truth of his charges against the Plaintiff's conduct as Collector of the Revenue and Bank Director, evidence was admitted on the part of the Plaintiff to show that he had ever sustained the character of an *honest* man. The matter in issue here, was *conduct*, not character. The charge on the Plaintiff was for having exacted money in violation of his offi-

cial duty, and to this point alone should the testimony have been received. There is no pretext for the assertion that such evidence was ever before admitted. The decisions in Westminster-Hall, in the neighboring states, and in our own state, all harmonize on this subject. In ordinary cases [Sw Ev. 140.] where the Defendant's character is not called in question otherwise than by charging him with misconduct, it is not admissible to produce any proof to support, or impeach his character. And as the Plaintiff derives no support from adjudged cases, as little is derivable from principle. It is not only in contradiction of the fundamental rule, that evidence shall be confined to the issue to admit such testimony, but it would be infinitely dangerous to the administration of justice. Instead of meeting a charge of misconduct by testimony evincive of not having misconducted, general character would become the principal evidence in most cases; and he who could throng the court with witnesses to establish his reputation in general, would shelter himself from the wrongs he had perpetrated.

In criminal cases by way of exception, the prisoner is permitted to adduce his general character in opposition to a specific charge. But the rule has not been, and ought not to be, extended further. Had the Plaintiff offered general character in evidence on the points in which the charges were made against him, the long practice of our courts would have sanctioned the admission of such testimony to *enhance* damages. But it could not be received for any other purpose. The Plaintiff received five per cent commission in instances where there had been no actual distress and sale; and that he had legal authority for this, his counsel have contended. I have critically examined the 9th section of the act referred to, and am satisfied, that the law did not authorise the commission collected. After having designated the mode of proceeding against the property of a person who has omitted to pay his tax, the law provides, that in cases of *distress*, the goods distrained shall be restored to the owner *prior* to the sale, on payment or tender of the full amount demanded, with the levying fee, and reasonable expenses for the custody. Even at this period *after the distraint*, no commissions are payable. But if the property *is sold*, then five per centum is allowed to the officer, charged with the collection of the tax, for his own use. The charge of the judge was correct when he "declared that the Collector was entitled to a commission on those taxes only in case of *an actual distress and sale*."

The *intent* of Mr. Stow formed no part of the inquiry whether he had violated the law; the law *implies* the intent.

It only remains to consider, whether the residue of the charge on this point, viz. that if the Plaintiff has "*honestly* taken his commission by *mistake*, he cannot be said to be unfair, partial or unjust" is legally correct. The mistake alluded to was a supposed misconstruction of the law. The charge made against the Plaintiff was that of *unfairness* and *partiality* in exacting a *greater sum* than the law authorized. On this subject I am of opinion,

that the charge of the Judge was incorrect. Had there been a *common usage* sanctioned by a Court of Justice, allowing the commission in the case alluded to, the decision by Sewall Judge, in Commonwealth, vs. Shaw, 1. M. T. R. 229. would have given countenance to it. For in that case, although the officer took fees *beyond* the statute, it was agreed by the counsel on both sides that the usage in the County had been uniform in taxing the sum complained of, in favour of officers. Here nothing of that nature is presumed, and the Jury have been permitted to inquire whether the law had not been misconceived, without any testimony before them, directed to that object. The general principle that *ignorance of law is no excuse*, for aught I can discern applies to this case. It is a maxim founded in sound policy and general convenience. It is an inquiry of extreme difficulty, if not of impossibility. It seems to be essentially necessary to be adhered to, to prevent fraud.

If the prisoner prosecuted for a crime, might allege his ignorance of law, it would strike at the foundation of the criminal law, and render the community unsafe. The same may be said as to *wrongs done towards* an individual as to *contracts made with* him.

If in either case he could alledge his ignorance of the law, he might evade his contracts, and commit wrongs with impunity. It will sometimes happen that this maxim of law, like other general principles, may produce disadvantage unjustly to an individual.— But this is the condition on which all general rules are adopted. Partial inconvenience is the invariable consequence, but the predominance of general good notwithstanding, authorizes their being established. An officer may very honestly take illegal fees through ignorance of law, but if this was to be an admitted inquiry, it would be endless and dangerous in the extreme. If the rule were to be mitigated or *varied*, one would think it would be where a person was prosecuted criminally for something which involved the severest consequences. But in that case it could not be done, nor in my judgment can it in this. I am of opinion that the Plaintiff was estopped from resorting to the permitted inquiry, and if, through *ignorance of law*, he took illegal fees, that he cannot justify himself in the manner in which the Court permitted.

On the whole, the Court are of opinion that a new Trial ought to be granted.

On promulging this opinion, all the Judges, (except PETERS) agreed with it, *in omnibus*, and he, expressing his own opinion, in substance accorded with it.

NEW TRIAL.



Joshua Stow,
vs.
Sherman Converse. } Superior Court August Term, 1820.

Present HON. STEPHEN TITUS HOSMER, Chief Judge.

JURORS.

HARVEY UPSON,
PHILO BRONSON,
LARMON TOWNSEND,
MARCUS BRONSON,
JARED LEWIS,
JUSTUS BISHOP,

JOEL RAY,
NATHAN MARKS,
ISAAC J. BOOTH,
HERMAN HALL,
TITUS BROCKET,
JAMES BEACH.

This cause came on for a second Trial before the Hon. Stephen T. Hosmer, Chief Judge of the Superior Court, at its August Term 1820.

To the Plaintiff's Declaration which was again read, the Defendant pleaded "not guilty," and gave notice that he should justify, as on the former Trial.

The Counsel for the Plaintiff first selected particular parts of the Libel and read them, leaving out all that part regarding the collection of the taxes, and then by direction of the Court read the whole as published in the "Connecticut Journal" of March 16th 1819. It was admitted on the one hand, that the Defendant was the Editor of the paper which contained the alleged Libel upon the Plaintiff: And on the other, that the Plaintiff was Post Master and Director of the Branch Bank of the United States located at Middletown.*

I. The Defendant's Counsel then read the Deposition of Deacon Abner Reed of East Windsor regarding certain Declarations made by Mr. Stow in the Convention: (which see at large in the report of the first trial, p. 11.)

Dr. Farnham of East Haven, was next introduced, who testified as follows:

Mr. Stow in debating on certain amendments to the article respecting religion, remarked, that government had no more right to compel the support of the worship of God than of the Devil. I sat within five or six feet of him and have no doubt that I heard him. The expressions are strongly impressed upon my mind and were conversed about at our quarters after the Convention adjourned. This article was up frequently, and on different days, and was amended at the close of the session. Mr. Stow was up three or four times, but I cannot say whether he made this remark the

* See p. 9.

last time, or the one preceding. He did not discuss it when first proposed.

Ques. by Plaintiff's Counsel. Did Mr. Stow advocate the article after it was amended as it *now* stands?

Ans. I believe the article as *first* reported went to break down all established Societies. It was *afterwards* altered so as to leave Societies as they were. I took an interest in this article, and at home I have it word for word, as amended.

Benjamin Bull. I agree entirely with Deacon Reed's Deposition. Mr. Stow said that Government had no more right, by law to compel people to worship the Supreme Being, than to provide by law for the support of the worship of the Devil. I was near him. The remark was talked of at our quarters. It was then strongly impressed on my mind, and has been ever since.

Mr. Stow inquired as to the expression made use of by him in the debate, and Col. Bull then substituted the word provide, instead of compel.

Clark Nott, of Saybrook. I recollect but a small part of Mr. Stow's Speech; but I heard him say that Government had no right to make any provision by law for the support of the worship of the Supreme Being. He used the word Devil, but I do not exactly remember how. He said religion was a thing between a man and his God, and would take care of itself.

Ques. by Plaintiff's Counsel. Did not Mr. Stow say it was the *duty* of all men to worship God?

Ans. I don't recollect as he said it was the *duty* of all men to worship God. He said it was the *privilege* of all men to worship *whom* or *what* they pleased, according to the dictates of their consciences.

There were some alterations made in the 7th article but I do not recollect them. I don't know whether Mr. Stow was in favour of the article or not.

The Defendant then offered the Deposition of Calvin Butler, of Plymouth, which was as follows: viz.

"I Calvin Butler of Plymouth in the County of Litchfield, depose and say, that I was in the Convention for forming a Constitution for the State of Connecticut in the year 1818—that on the debate upon the article concerning religion, it is now strongly impressed on my mind, that I heard Joshua Stow Esq. remark, that Government had no more or better right to provide by law for the worship of the Almighty, than for the worship of the Devil, or words to that effect. CALVIN BUTLER."

Dan Lane, of Killingworth. I was a member of the Convention. According to my recollection, the first observations were on the first section of the 7th article. Mr. Stow was not in favour of that article as reported. In remarking on the introduction—declaring it to be the duty of all men to worship the Supreme Being, he said some *might* think it their duty to worship the Devil.

There was a motion to amend the article so as to place men in

some Religious Society. Mr. Stow opposed it, and said Government had no right to provide by law for the worship of the Supreme Being. Religion was a matter between a man and his God, and Government ought not to interfere—Jesus Christ would take care of his own Cause.—Christ's Kingdom is not of this world, and many other similar remarks. This article was up several times, and Mr. Stow took part in the debate. I don't recollect that the word *compel* was used by Mr. Stow. I did not expect to be called upon, but recollect what I have stated.

II. *The Defendant's Counsel next offered testimony regarding the conduct of Mr. Stow as Director of the United States Branch Bank.*

Seth Tibbals testified as follows: I was indorser on a note of 200 dollars signed by Samuel Meeker and Ebenezer Robinson, and payable at the Branch Bank. The day the note became due, they failed in getting the money to pay up their note—they came to me in the morning, and again at noon,—after dinner I went with them to Middletown. Meeker went to the Bank with me, but Robinson did not go. I had a new note and fifty dollars in money—I spoke to Magill about the note and told him I wished to pay it. He said it was too late—the Directors had gone,* and there would be a dollar to pay to the Attorney—he told me I might leave the money and the renewal note, and probably it would be discounted. I left my money and note, and went down street, and told Robinson what had passed. He said he would go and see Mr. Stow. He went, and came back and told me what Mr. Stow said; and I advised him to pay the *two Dollars*. We were all together and met Mr. Stow. Robinson I believe spoke to him first. Mr. Stow said he must have something for his trouble, and would do it for 2 dollars—he could not do business for *nothing*—he supposed he could *borrow* the money or could *get* it—and said that one dollar must go to the Attorney. We got through between 2 and 3 o'clock. Mr. Stow went to the Bank, or that way, and brought the old note and eight dollars back.

Ques. by Defendant's Counsel. Did Mr. Stow take out the *discount* for the new note or not?

Ans. It was my understanding that he took the discount for the new note *together* with the two dollars.

Mr. Magill told me the new note would be discounted and after seeing Mr. Stow I could not get it, but when that note became due I found it at the Bank and gave another renewal. My impression is, that the object in going to Mr. Stow and paying the two dollars was to get the note *discounted*, and think to be sure the old note was given up that day.

Ques. by Plaintiff's Counsel. Was there a word said to you about the *new* note being discounted?

Ans. I think there was, but cannot say certainly.

Ques. by Defendant's Counsel. Did not Mr. Stow tell you that he

* It is understood that the Directors meet at 12, o'clock.

received the two dollars—one for *himself* and one for the *Attorney*?

Ans. Yes.

Ques. by same. When did he tell you?

Ans. About two weeks before the first trial. His confession that he took the money, was made in presence of Mr. Lyman and Mr. Magill. Mr. Stow was told that the money and the new note were at the Bank.

At Lyman's store he first inquired of me. I considered it a favour to be rid of that note.

Daniel Meeker. The note spoken of was signed by my Father and Ebenezer Robinson. I went to Middletown with Mr. Robinson and Mr. Tibbals about the note indorsed by Mr. T. Mr. Tibbals and I went to the Bank and carried fifty dollars and a new note. One of us asked Mr. Magill if the note could be discounted. He said it was too late, but on paying a dollar and letting the note lie over, it would be discounted next discount day. Mr. Robinson went and saw Mr. Stow—got up the old note, and the balance of money, taking out the discount and the two dollars.—We got through about 3 o'clock.

Ques. by Plaintiff's Counsel. Did you see the *old* note?

Ans. I saw the old note.

Ques. by Defendant's Counsel. Did not Mr. Stow say that *one* dollar was going to the Attorney?

Ans. I think he did, and said he must have one dollar for *himself*, as he could not do business for nothing.

I was present when the application was made to Mr. Stow.

Henry Carrington of Middletown. Meeker and Robinson's note was discounted May 4th 1818, for 160 dollars at 60 days from April 30th. The note was offered in the name of Seth Tibbals the indorser, and so went to the Discount Book, but on the margin of the Discount Book J. Stow's name is put, and so I presume it went to Mr. Stow's credit as is usual in such cases. A payment of 20 per cent is required on notes discounted. The Bank at this time shut at 4 o'clock.

Ques. by Defendant's Counsel. Are notes *ever* delivered out to the Attorney *before* 4 o'clock? *Ans.* No Sir, and cannot be.

Ques. by same. Was Mr. Stow's name on the note?

Ans. Mr. Stow's name was not on the back of the note, but would be required if he were known to have an interest in it. If he offered it as *agent* his name need not be on it. He gave no intimation that he had an interest in it. The check ought to be for the person to whose credit the note is put. If in *fact* a note was carried to my credit, the money could be got only by my check. Mr. Stow, as appears by the records, was *present* when this note was discounted. This note was offered on the next discount day. We meet twice a week. The Teller's Book shows that the first note was paid. In cases of forgetfulness, the Directors, if there is no objection, are in the habit of filling up checks. I have filled up such

checks without funds, and have seen Mr. Stow do it fifty times. As soon as the note is discounted, the check is handed back. All the Directors used to do this, except Enoch Parsons. He never would do it. The person who receives the money must indorse the note.

III. *The next subject of inquiry was Mr. Stow's management of the Post Office..*

Hosea Goodrich. Ques. by Defendant's Counsel How far does Mr. Stow live from Middletown?

Ans. He lives in Middlefield, five or six miles from Middletown.

Jared Clark's Deposition was next read, which see at large in the Report of the first Trial, p. 18.

Several witnesses were then called, but were not present.

IV. *The Defendant's Counsel next proposed to prove the Plaintiff's illegal exactions in the collection of the United States' Taxes.*

Mr. Staples offered to read a number of Depositions respecting the 5 per cent commission which Mr. Stow had taken of sundry persons on their taxes.

Mr. Smith objected, remarking, that they did not read that part of the Libel, and did not claim any damages on that point. In support of his objection he cited—7. Johns. 120 1. Saund. 207. Note 2. Doug. 190.

Mr. Staples. The Gentlemen have stated all their claims on this point in one Count in their declaration, and have read the Libel; now we have a right to prove it, and the manner and the circumstances, and every thing attending it. They cannot take this course that they propose; they should have entered a *Nolle prosequi* as to this point, and that before plea pleaded, or issue joined, and then costs may be given.

Mr. Smith.—There is no difference between a written and an unwritten abandonment. We did not read this part of the Libel, and we don't introduce proof to that point.

By the Court.—Had it been verbal I should not hesitate. I at first thought it could only be done by amendment. I am not now certain but the case in Johnson should be the rule in this case. I will take time to consider of it.

Tuesday Morning.

By the Court.—The New-York case *Genet vs. Mitchell*, is I think well supported by the Note in Saunders. The Plaintiff may abandon any part of a Count, and may abandon it *ore tenus*, and that while the case is going on to trial as this is.

This part of the case was therefore abandoned, although the Defendant was fully prepared and offered to make out a complete justification on this point.

This morning the Defendant's Counsel continued the examination of witnesses on the subject of the Post Office.

Ebenezer Southmayd. In the fall of 1818, Hubbard left the Post Office and Clark took it. Soon after he went there he was sick

and I took the charge of the office. Hubbard used to get me occasionally to take care of the office. The mail passed one noon, and a number of times at night while I was there.

Ques. by Defendant's Counsel. Was you sworn?

Ans. I was not.

The witness continued:

The mail frequently passed—I often slept there with Mr. Stow's son. He several times closed the mail *before* 9 o'clock, (the time of closing) and went to bed. Letters that came in *after* this time frequently *remained over*. Mr. Stow kept the Collector's Office at this time, and was not much in the Post Office. I resided near the Office, and was frequently in—Mr. Stow seldom acted as Post Master while I was there. While Hubbard boarded at our house folks often called and complained. While Mr. Stow kept the Collector's Office adjoining, he *sometimes* delivered letters &c. but hardly ever at other times. I was often in the Office at other times—Mr. Stow did little more than call for his letters. The Post Office was kept in William's buildings from the spring to the fall of 1818. Mr. Stow knew that I attended the office.

Ques. by Plaintiff. Did you ever tell me or any one else that Hubbard or I employed you?

Ans. I don't know that I did.

Letters sometimes came back.

I mentioned to Gilbert once at half past 2 o'clock that the mail had gone by. He said, "say nothing about it," and threw the mail under the counter. He used to assist in the Office and had been clerk to Mr. Stow.

Elias S. Townsend. I have been clerk in the Eagle Bank about four years. A year and a half or two years ago, there was great carelessness at this office. We used to receive many letters from this office by the way of Stamford, and notes have been protested that were provided for in letters that had gone by: We had at that time more difficulty from this office than from all others put together, which occasioned much inconvenience.

Ques. by Plaintiff's Counsel. Did you not have as much difficulty with *other* Offices?

Ans. I remember no such difficulty from any other Office.

Ques. by Defendant's Counsel. How many instances of this neglect were there?

Ans. I should say *four* or *five* instances of this kind in from six to nine months: and two or three I should say in two or three weeks.

John Hinsdale. My postage amounts to two or three hundred dollars a year. The Office was pretty regular—I don't remember as Mr. Stow was steadily at the Office two years ago. He went to New Connecticut one year while he was Post Master. He was regularly at the office while Collector: but he was Collector in 1816. I don't know as Mr. Stow ever gave me a letter. Mr. Stow usually kept the Office by a clerk. The Office was opened at a customary hour; I

was well accommodated. He sometimes delivered out letters himself—I do a good deal of business at the Banks here—My letters sometimes went by to Stamford and returned.

Daniel Hinsdale. Mr. Stow never franked any letters for me. I know that a man who used to keep a turn-pike gate, kept the Office. I believe he was a man of sufficient education—I don't know as I ever said he was stupid.

Timothy Southmayd. At a certain period I sent my letters elsewhere for precaution. The mail sometimes closed before the hour, when Mr. Stow's son was there, or when there were new hands in the Office. During the period that Mr. Stow had charge of the Office I was occasionally in. There have been some changes in the Office. I generally put my letters in the Post Office myself. There was a *distrust* in Mr. Stow as Post Master—such as to induce Gentlemen to send letters to other Offices. There was some *little* cause of complaint about closing the mail *before* the time; and also running fingers into letters after I had marked them. I can't say I ever saw Mr. Stow close a mail. When he had a new clerk he used sometimes to attend. My letters have come regularly, except in a few instances. Clark was there but a short time and he was keeper of a turn-pike gate. I have not often seen Mr. Stow at the Office, perhaps once or twice possibly in a week.

V. *The next point respected the Plaintiff's Infidelity; his insults to the Clergy; the establishment and reputation of the Ethosian Society, and the general character of the Plaintiff.*

Polly Augur's deposition was first read. The question regarding Mr. Stow's belief in Divine Revelation as inquired after in this Deposition, was objected to by the Plaintiff's Counsel, and they read the opinion of the Supreme Court of Errors on that point.

Mr. Daggett. This point was not properly considered by the Counsel, or Court of Errors; but this inquiry comes within their opinion. The Court said that Mr. Stow's *declarations* were a part of the *res gesta* and as such admissible. They viewed it as improper, only in rebutting the charge respecting the Infidel Club; not as attempting to *discredit* the Bible or *destroy* religious institutions of which the Scriptures are the foundation. This particular question as to the authenticity of the Bible, saying it was good for something, the *necessary*, is what we want to show.

Mr. Smith. Suppose the case of a Baptist not believing in Taxation. Is this to support the charge of attempting to *destroy* religious institutions? Is uttering this irreverent sentiment, *destroying* religious institutions?

By the Court—The Defendant states the *words* offered to destroy the religious institutions. The Court of Errors made a *pointed* distinction between *actions* and *opinions*—the same as if a special justification had been made. This testimony is directly in the teeth of the decision of the Court of Errors.

Alma Lyman's deposition was read in part, and handed to the Judge.

Mary Johnson's deposition was next read.

Phineas Augur. I was at the conference referred to—Mr. Davis officiated. Whether he preached, exhorted or prayed, he said God would be just in sending all mankind to hell. Mr. Stow got up and said that a man who pretended to be a preacher and would use such expressions, deserved to be in New Gate, or he wished he was in New Gate. Remarking further on this subject, Mr. Stow said some people were affected—felt some spot as sweet as honey—'twas all worth nothing, or it was not worth that, (snapping his fingers.) He read a Hymn,

“I hate the tempter and his charms,” &c.

—turned towards the Clergyman and put out his hands. This was about five years ago—perhaps a little more—perhaps a little less. Addressing himself to impenitent sinners Mr. D. said if they read their Bible they sinned, and if they did not, they sinned. I never saw any delirium in him.

Eunice Stow—(This witness was affirmed.) My brother was at this conference—it was a full meeting—the minds of people were much exercised on the subject of religion. After there had been considerable proceeding, Mr. Stow, my brother, got up and read from a paper something that was opposed to the doctrines of religion. He said this crying &c. was from sympathy—he had seen it all and it comes to no more than that, (snapping his fingers.) He read a hymn and I understood him to apply it to Mr. Davis. He used pretty harsh expressions, and made pointed remarks as to Mr. Davis and the Missionaries. I don't recollect, particularly what was said, but he was disrespectful and bore hard, according to my impression.

By Defendant's Counsel. Please relate what passed about Hez. Rice's certificate.

Mr. Rice had certificated and belonged to no denomination. Joshua was frequently at his house and urged him to take up his certificate—he told him he ought to take it up and “come to the help of the Lord against the mighty.” He did not wish the Presbyterian order to prevail—that it was something erroneous. I understood this as said against the Society as then formed and acting.

Ques. by Plaintiff's Counsel. Was not your brother talking at this time about *repealing* taxes, and did he not say the certificate was void?

Ans. I don't remember as he was talking about repealing taxes, or that he said the certificate was void. He spoke against taxation as wrong and improper, but I did not get the idea as that was the *chief* thing.

Ques. by Plaintiff's Counsel. Did not Mr. Davis invite the people to speak?

Ans. I think Mr. Davis asked them to speak.

Ques. by same. Was your brother ever at Mr. Wetmore's at any other conference?

Ans. I should think my brother had been at Mr. Wetmore's more than this time.

Ques. by same. Did you not speak in that meeting?

Ans. After my brother spoke, I read a hymn.

Ques. by same. Has there not been a difficulty between you and your brother?

Ans. It is difficult to say if there has been any controversy. There has been a widening of our sentiments as I became a Believer. I don't think we are as friendly as we should be, if our sentiments were more alike. We differed six or seven years ago about a pecuniary matter. He criminated a person in a pecuniary matter and I refunded the money back.

Ques. by same. Did not your brother come to you to reconcile that difficulty, and did you not *refuse* to be reconciled to him?

Ans. I don't remember his ever coming to be reconciled to me. I can't say as I feel the same towards him as formerly.

Ques. by same. Is there not a *hostility* on your part towards your brother?

Ans. I don't know how to separate hostility and widening in opinion. I don't know that I feel any enmity towards him, or any wish to injure him.

By the Court. The Plaintiff's conduct &c. are admitted to repel the Defendant's proof of Infidelity. Alma Lyman's Deposition is inadmissible.

Mr. Southmayd's Deposition was next offered, and was excluded by the Court.

John Bacon, 2nd. (de certificate.) Some years since at the time when there was a strife about reducing the standing order—I left a certificate with the Clerk. It lay two years—Mr. Stow called on me and said I ought to take up my certificate and help to pull down this Presbyterian order. I told him I belonged to another denomination. I never took up my certificate.

Ques. by Plaintiff's Counsel. How long is it since Mr. Stow applied to you about your certificate?

Ans. He applied about 15 or 16 years ago.

Ques. by same. Have you not had a *bitter* controversy with Mr. Stow?

Ans. I have had a controversy with Mr. Stow tolerably bitter.

Ques. by same. How long since?

Ans. It may be from 15 to 20 years ago.

William Lyman. We have had many difficulties in our Society. We have been destitute of stated ordinances about thirty three years, and have had great difficulty in procuring preachers &c.—About the year 1802 an effort was made to lay a tax of one cent, and succeeded. Mr. Stow opposed it strongly. There was a small majority for it, but a part of it was abated. Two taxes of one cent were laid. Another attempt was made but did not suc-

ceed. A new plan was proposed the next year by Mr. Stow, to raise money by subscription, and it finally died after opposition became pretty general. The persons who signed the subscription paper bound themselves to support the Gospel as long as they continued in the Society. In this way preaching was obtained for a part of the time for two or three years. The first paper was lost about the time the new Society was formed. Another subscription was then got up—Mr. Stow said he was not opposed to *preaching*, but to *taxation*. He said he wanted preaching, and if it could be done by *free donation*, he would be one of six to pay the expence. He said it was no matter to what denomination the preachers belonged if they were men of talents and education. We have had no steady meetings, but have been in a broken situation. Methodists, and sometimes Baptists, were admitted among us. I circulated the last subscription paper ten or twelve years ago. I got only 12 or 15 dollars for the year.

At this time a church was formed—they met every Sabbath and went on peaceably under Deacons—and had preaching or reading. About a year after, the Society appointed a committee to regulate the meeting, get books &c. Then there was a clashing between the Church and Society. Mr. Stow once brought a book to be read which was objected to by the people. Mr. Stow read his book on the Sabbath—he made some severe remarks on Deacon Augur, and charged him with hypocritical evasion. The Deacon thought himself injured. The Church meant to go on liberal grounds in inviting other denominations &c. Mr. Stow was often and generally asked to read, before this, but has never been asked since—After this many and great disturbances arose. Methodists, Baptists and Universalists have been admitted, and many have taken up their certificates. Mr. Stow frequently conducted on the Sabbath in such a manner as the Church thought calculated to break up their meetings. One Sabbath something was read which he objected to, and after meeting, on the steps, he said, “Stand by thyself, I am holier than thou.” On Fasts, or perhaps on Thanksgivings Mr. Stow would bring sermons, perhaps on political subjects, which he wished to read. Deacon Augur on one of these occasions (we withdrawing so that Mr. Stow should not take the lead as usual) gave notice that the Church would hold their meeting on the coming Fast at a private house, and invited all to attend. Mr. Stow said it was singular that a few should unite, a club—a clan—he did not care what name they went by and assume the right of meeting and invite others &c.—Then as previously agreed, Deacon Augur said that they would meet at a private house—at Mr. Obed Stow’s. Say eight or ten years ago Mr. Stow said he should bring a book, and the Church then met in the afternoon at a private house. They then concluded if he ever attempted to take the lead it was their unanimous duty and privilege to withdraw; (the members all being present except Eli Coe, Esq.)—After a while the Society got sick of subscriptions, formed a fund and obtained \$1750 for a *permanent* fund for

the Congregational order. Mr. Stow opposed this as being a very improper mode. It was replied that he had *formerly* advocated *free donations*; but he denied it, and the Society passed a vote disapproving of the establishment of a fund. It was an ambiguous vote and had a tendency to disaffect the Society. Since then the members of the Church of the Congregational order, have not attended Society meetings and have ceased applying to him for aid. Mr. Stow has introduced votes on *political* subjects, such as disapproving of the conduct of the Legislature on the subject of the appropriation act &c. Occasionally under leaders, Universalists were admitted into the pulpit; Mr. Flagg of Hartford, and a Mr. Lester were sometimes introduced.

Mr. Stow said it was a wicked thing to establish a fund to support Religion at one Society's meeting; and wanted to know who the money was going to. He said a good deal against the Domestic Missionary Society.

Ques. by Plaintiff's Counsel. Have you had any controversy with Mr. Stow?

Ans. I have not been very friendly with him—I thought he abused me.

Prosper Augur. The sum and substance of what I have to say is barely this. The Society has been in a broken, disagreeable situation for many years. To tell all would exhaust your patience. Whenever we attempted to build up the Society we were always blocked in some way or other, which we, perhaps unjustly, attributed to the agency of Mr. Stow as the leader of that party, and all under his influence. We consider that our disturbances came in at this door. I was wishing to draw a veil over these things, I *know* such disturbances as the witnesses have mentioned, but particulars, owing to the embarrassments I was thrown into, I don't remember. The times mentioned by Mr. Lyman I recollect—"there was a great tumult, but I knew not what it was." I know Mr. Stow brought in a proposition to appoint *leaders*, to take the lead and introduce books. I was one, and having read a book which he did not like, he made some very pointed remarks against me on the Sabbath. He heaped hypocrisy &c. upon me but I don't remember the particular expressions. His interference was so repeated in Society meetings that we could not get along, and the Church concluded to withdraw. In the general way he was not there, but when he was, he often times interrupted and disturbed the meetings. Once at a Society meeting he was very liberal and proposed to appoint a Committee of one from *each denomination* to propose and look out books which finally passed, and we went on so, as long as we could. This plan we finally broke off and thought it wise and prudent to withdraw to a private house, especially when a proposition was made for a Universalist to preach. We did not however have Universalists so often then as now. The Church at length withdrew and went to a private house to hold their meetings. We were finally compelled to build us a new house.

Ques. by Plaintiff's Counsel. Are you able to support a minister?

Ans. If united we might give a decent support. There are not many Methodists and only two or three Baptists. It was not so much the object to unite in *getting* preaching, as to unite *without* preaching. Mr. Stow used to insist that every individual had an equal right to use the meeting house—and exhorted the Society not to give up their right, and not to get a fund, for by and by they would get assistance from the Domestic Missionary Society and then bring their noses to the grind-stone. He procured a vote that any of the Society might invite any Clergymen by leaving a certificate with the Clerk, so that we never could engage for the Church not knowing what certificates would be left. We never claimed to control the meeting house or the Society. I often met with the Committee for selecting books—I objected to each one's choosing—Joseph Coe was with me and Mr. Stow finally assented at that time. Mr. Stow on one occasion said he had a *book*—an aged member asked what book it was he was going to read. He replied it was a good book : another asked ; but he refused to tell—and the Church withdrew and would not attend. In the afternoon when he found the Church would not come, he read the fourth or fifth chapter of Matthew.

Ques. by Defendant's Counsel. Did Mr. Stow ever *pray* in your meetings?

Ans. I believe he never was acquainted with that exercise.

Obed Stow. I did not attend often at Society's meetings and can't state from my own knowledge what happened there. About ten years since I attended : Once on the Sabbath there was so far a union, that Deacon Augur requested Joshua to read. Instead of taking the book which had been selected, he laid it aside, and took another out of his pocket, I believe, not perfectly satisfactory, and read it. A number of times on the Sabbath he claimed the right of reading in the meetings. As to the story about the Bible—I remember he said he was going to read a book, I think he said a sermon—one of the best that ever was written. Once on the steps on the Sabbath, he spoke very contemptuously of the Church ; called them 'a little club'—saying 'I don't care what name they are called by.'—using contemptuous gestures—"how we apples, and we horse-turds swim." This is as much as 5 or 6 years ago. I believe it was out of doors he spoke about the book he should read ; but something was said first in doors He mentioned "a good sermon as ever was."

Ques. by Plaintiff's Counsel. Are you not in a *bitter* controversy with your brother?

Ans. I am not in a bitter controversy and do not feel any bitterness towards him. We don't speak on certain points. I disapprove of his principles and conduct. I think I am not unfriendly to him. We had some controversy once arising out of the settlement of my Father's estate who died about seven years ago—but that is settled.

Ethosian Society or Infidel Club.

Samuel C. Camp. I was a member of the Ethosian Society, but not one that formed it. After the formation of it, (how long I cannot say,) I was called upon to know if I wished to belong to that Society. The persons admitted into it were to stand propounded two or three weeks. This was about thirty years ago. The records were in the hands of Noah Talcott. I was a member two or three years and constantly attended. The pretended object of the Society was to inculcate information, discuss questions civil and political. This was about the time of the adoption of the Constitution of the United States. The Constitution was there debated. Also whether there was such a being as the Devil; and the authenticity of the Scriptures. The President was to decide according to the weight of argument. It was hard for some men to believe that the Scriptures were not written by Divine inspiration, but by weight of talent and argument the society was shaken to the centre. Talent and numbers were considerably on the side of unbelievers. There were some little bickerings between the brethren. Col. David Lyman and Thomas Lyman had a dispute and differed considerably. The Society had a written Constitution. The question whether there was a Devil was discussed there when Mr. Stow was present. He asked me if I believed there was such a Being. I told him yes. He said he did not believe it, for in a very dark night he went out into the field and prayed to him, but he did not appear. I think it was decided that there was no Devil. It was suggested by a member that that Society would *rule* the town in civil, and ecclesiastical matters, and pull down the superstitions of our fathers. It was agreed to get some decent men in, in order to conceal their design. Professors of Religion were solicited to join to *cover* up the objects of the Society and were admitted. I withdrew in 1792, or 1793. Mr. Stow was a member I think, when I left the Society. When I left, the Society were attempting to propagate Infidel sentiments. The members were commonly called *Freethinkers* among themselves. This was their *general* name. It was said that we were Freethinkers and that our sentiments would prevail. Voltaire and Petit Pierre were in the Library—*most* of the Society, tho' not all were members of the Library Company. This Society and the old Library made an attempt to unite. The body of these books I consider as Infidel. Joshua Stow proposed his brother Silas who was living in the State of New York, and then I believe he proposed Obed. Mr. Stow was *not* the founder of the Society—he had nothing to do with the formation of it. I cannot say how long he remained—He joined after I did. While a member he generally attended pretty constantly—perhaps he was a member about twelve months—I attended about two years.

Ques. by Defendant's Counsel. Do you recollect what was the decision on the question about the Divine authenticity of the Scriptures?

Ans. It strikes me it was decided that the Scriptures were not of Divine authenticity.

I joined the Church while a member, and remained a member, say, nine months after. I remained with a view to discover the *real* object of the Society, and remained long enough to ascertain it. I suggested to the Believers whether we ought to remain, *exposed* to the dangers of such a Society, and that it was time to bring up something to withstand the torrent of opposition that was pouring out against Religion.

Ques. by Plaintiff's Counsel. To whom did you say this.?

Ans. I said it to three or four persons when returning from meeting.

HERE THE DEFENDANT'S COUNSEL RESTED.

The Counsel for the Plaintiff then proceeded to introduce their testimony respecting the proceedings in Convention, and first read the original draft of the 7th article of the Constitution as drawn up by Mr. Stow—After which they called—

Judge Bristol. I was a member of the Convention—A general Committee of three from a County was appointed to report a Constitution. Mr. Stow was a member from Middlesex County, and was on that Committee. There was one sub-committee first appointed, and another afterwards, it being found too laborious.—There was a smaller sub-committee first appointed composed of Mr. Smith, Mr. Pitkin and myself. Then a second sub-committee of which Mr. Stow was one. That Committee reported on the 7th article of the Constitution on the subject of Religion in substance as it now stands, I think. I believe I knew at that time that Mr. Stow was the author of this article and that it was reported to the general Committee in substance as it now stands. I recollect there was some debate on the article, arising from some amendment which was proposed by Mr. Terry just before the Convention rose ; say, two days before. It was this, “that all persons belonging to any Society should continue to remain as they were.”

Mr. Converse's Report of Mr. Stow's speech on this subject, under date of Friday Sept. 11th 1818, was next read which was in the following words :

*Mr. Stow—*In answer to the gentleman from Hartford, sir, I deny that the Legislature have a right to compel a man to support public worship: if they have that right, they have a right to say what *is* public worship, and where, and in what manner he shall support it : this is impolitic.—it has been the cause of all the martyrdoms down to the present day : they have a right to legislate on all subjects relative to civil liberties, and in such cases the majority shall rule : but if a society can say that individuals shall worship, it can say *how* they shall worship ; to direct to worship on

this mountain, or on that mountain, and if they vary from this, the right is infringed. It is the duty of *all* to worship in sincerity and truth ; but I deny the right of any power to *make* a man worship—all should be left free, and if men differ, it amounts to only this ; if my neighbor does not think as I do he is accountable to his God for it. If a power has a right to say what is public worship, it may go to support idolatry. The Bill of Rights says, that it shall be free for all men to worship God according to the dictates of their own consciences ; now if you make a law that a man shall worship somewhere, and that man shall think it his duty to worship the *devil* you would *compel* him to worship the *devil* ; and is the gentleman prepared to say, a man shall do that ? Let every man have a *right* to render voluntary worship, and not *compel* him to render it.”

The Plaintiff's Counsel then offered Governor Wolcott's Deposition which was in substance this :—

I was President of the Convention, and present, and am personally and well acquainted with Mr. Stow, and know he was a member.

Ques. by Plaintiff's Counsel. Did you hear Mr. Stow declare “ that Government had no more right to provide by law for the support of the worship of the Supreme Being, than for the support of the worship of the Devil ? ”

Ans. No ; I did not, nor any thing similar to it.

James Stevens' Deposition was next read. I listened attentively to Mr. Stow's remarks, and particularly on the subject of religion, I believe on the 5th article. Mr. Stow discovered much Scripture knowledge, quoted it with facility, and appeared well read.

Gideon Tomlinson's Deposition was next read. I was a member of the Convention. Mr. Stow was one of the sub-committee appointed by the Convention. The article as it now stands was approved by Mr. Stow. It was amended and one of the amendments was proposed by Mr. Stow. I never heard him use the language that Government had no right to *compel* the support of the worship of the Supreme Being any more than the worship of the Devil, or any similar language.

Pierpont Edwards. I was chairman of the Committee and understood that Mr. Stow (who was one of the Committee) was the draftsman of the article on religion. While under discussion I remarked that I did not like the article as it stood. Mr. Terry proposed an amendment—I seconded it. This article interested my feelings. Some Gentlemen were opposed to Mr. Terry's amendment, but I believe I satisfied them that they were wrong. I believe I never heard Mr. Stow use the words attributed to him, and think he never said any such thing. Had this article not been passed I should not have signed the Constitution. Mr. Stow spoke several times on this subject. I can't tell how many times or days it was up. I don't believe it was up several times. I don't remember Mr. Stow's debate as reported in the Journal.

Alexander Wolcott. I was a member of the Convention. The principal debate commenced in the morning. In the afternoon some propositions for amendments were brought forward. I am sure that while present I must have heard what Mr. Stow said, and I feel confident that the words attributed to Mr. Stow were not uttered by him—I should have thought they would have given offence. I can't repeat words, but I did not hear him say any thing that would give offence—I am confident no such words were uttered. I don't remember hearing the word *Devil* made use of at all. The Convention sat about three weeks. I was absent one evening—my understanding was that the scope of Mr. Stow's remarks went to show that government had no right to *compel* the support of the worship of the Supreme Being. The *point* of the argument was that there should be no coercion.

Joseph B. Gilbert. I am a Baptist and attended in the gallery to hear the debates on the 7th article of the Constitution. Mr. Stow's argument went to show that the *civil* power should not make laws to *compel* men to support the worship of God, or to compel them to worship contrary to their will. Government should not interfere between a man's conscience and his God—I did not hear him make use of the expressions attributed to him. I heard him once or twice; I don't recollect whether on the same day or on different days. It was when the final question was about to be taken. I was not in the gallery when Mr. Terry moved his amendment. I think I heard Mr. Stow say something about the Devil—that men might believe in error—that the Scriptures spoke of those who held the doctrine of Devils—and asked whether Governor Treadwell would have them certificate to those who believed in the doctrine of Devils.

Robert Fairchild. I was a member of the Convention and Clerk of that body. The 7th article of the Constitution was debated considerably, and a good many amendments were made.—The *yeas* and *nays* were finally taken. The article was debated three or four times the same forenoon. Mr. Stow spoke several times. He said that Government ought not to *compel* people to support public worship or to support *any* religion. He used the word Devil to show the absurdity of his opponents. His remarks were similar to what appear in Mr. Converse's Report. If Government should undertake to compel men to support religion, they might compel them to support any religion they thought proper—they might even *compel* them to worship the Devil. The Convention sat near four weeks and adjourned say about the 15th or 16th of September.

Ques. by Defendant's Counsel. When was you first inquired of on this subject? *Ans.* I was inquired of after the other trial.

David Tomlinson. I was a member of the Convention. I heard Mr. Stow speak two or three times on the 7th article of the Constitution. I heard him use the word Devil. He said it was every man's duty to worship his Maker, and claimed that men should belong to *some* Society. I can't say as the question was made wheth-

er you might *compel* a man to worship or not, or direct to what particular Society he should belong. He said also that no man or set of men had a right to dictate to another person to worship at all.

William Todd. There were frequent debates on the 7th article of the Constitution, on different days. It was first debated *without* amendments and then *with* amendments, and then the whole Constitution was taken together. Mr. Stow was in favour of the original article, but I did not know at that time that Mr. Stow was the author of that article. He opposed the amendment made by Mr. Terry.

Samuel Hart. Mr. Stow advocated the 7th article of the Constitution as reported and voted for it. I recollect that he *insisted* on the first clause of the article "that it was the duty of all men to worship the Supreme Being." Governor Treadwell made an amendment. Mr. Stow objected to it because he thought it weakened the force of the expression "that it was the duty &c." The Governor thought not, if their sentiments were erroneous; and moved to insert, their right to worship according to the dictates of their conscience. Mr. Stow added by amendment the word "only." Mr. Terry objected to the section and here Mr. Stow contended that Government had *no right* to compel men to worship the Supreme Being at all; it was idle, they could not do it, it transcended their authority. He said errors in various ages had been established by law. Mr. Stow said you might compel men to worship on this mount &c.—that we read of errors, and read of doctrines of Devils. He made use of no such language in my hearing as is ascribed to him. It is certainly a mistake.

Ques by Defendant's Counsel. When was you inquired of on this subject?

Ans. I was not inquired of till after I arrived in town.

Ques. by Defendant's Counsel. Do you recollect *all* the speeches that were made in Convention on this subject?

Ans. I presume I could tell my own speech *verbatim*.

Sylvester Wells. Mr. Stow made use of the expression the Devil in the course of his speech—he contended against the *power* of the Legislature to *compel* men to worship any Being, or worship God in any way. If they had the power, then they had a *right* to compel them to worship the Devil.

John Russ. I was in the gallery—Mr. Stow contended that the Legislature had no right to *compel* men to worship only according to the dictates of conscience. As I was in the gallery I could not hear distinctly and don't remember the particular expressions, but this was the substance of his remarks.

II. *The next subject of investigation was the Plaintiff's conduct as Director of the United States' Branch Bank.*

The Counsel read the rules of the Bank.

Josiah Savage, said the rule which had been read was *generally* adhered to, while he was a Director, which was three years, tho' notwithstanding the Rule, the Directors would *sometimes* volunteer their checks, and then take them back.

Arthur W. Magill. On the afternoon of April 30th, after the Directors had retired, one of the parties to the Meeker and Robinson note, called with a new note and money to pay the instalment. I told him the note could not be done because the Directors had gone. Before the Bank closed on that day the money was paid and the note did not go the Attorney and was not charged to him.

Ques. by Plaintiff's Counsel. Who paid that note?

Ans. I don't recollect which, but it was one of them, it is my impression that it was Tibbals.

Ques. by Defendant's Counsel. How was that note paid?

Ans. It was not paid by *check*, but in *money*, and on that day.

Ques. by same. Was this note sent to the Attorney?

Ans. This note was never sent to the Attorney, and it does not appear on the books that any thing ever went to the Attorney.

Ques. by same. To whose credit was that note placed?

Ans. I don't know to whose credit it was placed—it does not appear to whose credit it went—I think it went to Tibbals' credit.

Ques. by same. By whom was this note indorsed?

Ans. It was *not* indorsed by Joshua Stow.

The witness continued. We frequently discount notes without requiring the *owner* to indorse them. I looked at that note in the offering book—Tibbal's name was on the offering book. Whether it went to his credit I can't tell, tho' I think it did. We put the note as we are requested. We don't pay out money to any man, without, that man's check.

Ques. by Defendant's Counsel. At what *time* did these men call?

Ans. It was after dinner they called.

Ques. by same. Does not Mr. Stow's name appear on the *Discount* book?

Ans. I don't know as Mr. Stow's name appears on the discount book, or note, or on any other book—I don't believe it does, but have not examined—I can't say whether the note was left in the bank on the 30th of April or till the 4th of May.

James Robinson. I had several conversations with Mr. Tibbals. I think he said he would not have run the risk that Mr. Stow did for ten dollars with Meeker and, Robinson and he thought it an act of kindness, and if it had been *his own* case he should not have complained if Mr. Stow took *five* dollars.

Ques. by Defendant's Counsel. At what *time* did you hear this conversation?

Ans. This was the latter part of last winter, before and since the last trial. I had an impression that Mr. Tibbals said he had indorsed.

Ques. by same. When was you first applied to on this subject?

Ans. Mr. Stow applied to me lately—He wished me to have a conversation with Mr. Tibbals as to his testimony—Mr. Stow did not say as he run a risk. Tibbals is a man of property—Meeker is—Robinson was doubted at that time I was not called to this point last winter—It was told me Mr. Stow agreed to do it for two

dollars—one dollar was to go to the Attorney—he thought it cheap enough, and a great kindness in Mr. Stow.

Richard Robinson. I heard Mr. Tibbals make the same remarks at the Post Office as have been related by Mr. Robinson, viz. that he would not run the risk for ten dollars—that he should consider it an act of kindness and if it was his case he should say nothing about it.

Ques. by Defendant's Counsel. How long ago was this ?

Ans. Three or four months ago—since the last trial.

Moses Robinson. Shortly after this note was laid over, Mr. Tibbals told me about it at Mr. Meeker's. He said that by friendship of Mr. Stow he got the note up, and he considered it a great favour.

Charles Robinson. Last winter Mr. Tibbals said he would not run the risk Mr. Stow did for ten dollars.—he considered it as an act of kindness and that there was a risk as to Robinson's circumstances.

Asa Chamberlain. I was knowing to the difficulty about the note and heard the parties talk about it. Mr. Stow befriended them and they considered it a friendly act. Mr. Tibbals told me that 2 dollars were paid—that one dollar went to the attorney, and Mr. Stow asked a dollar for his trouble.

Manoah Camp. I heard Mr. Tibbals say it was a friendly act on the part of Mr. Stow to take up that note.

III. *The Plaintiff's management of the Post Office was the next subject of inquiry.*

Henry Lyman. The Post Office has generally been well kept—I have no fault to find about it. Sometimes the office has been shut at meal times, when there was only one boy there—letters have not often miscarried. Mr. Stow has taken a *general* oversight of the office, though he was not often there. He lives about four or five miles out of town. Mr. Stow frequently lodged at the Hotel where I staid, over night, and got up early and went to the Post Office.

Ques. by Defendant's Counsel. Was not Mr. Stow frequently absent from town while Post Master ?

Ans. He was absent at Philadelphia perhaps two weeks—also at Hartford attending the Convention about four weeks.

Ques. by same. Did he not go to New Connecticut ?

Ans. I believe he did not go to New Connecticut *that* year. He was absent during the time he was engaged in haying and harvest. He used to return from the Convention on Saturdays.

Alexander Wolcott. I don't know of any thing *peculiar* in the manner of attending the office. So far as I know, the office has in general been well attended—I can't say I never heard *any* complaints. I have heard some, while a Mr. Clark was there—he was rather inattentive. Mr. Stow owns a farm and lives out some distance but I have seen him in the office making up mails or busy about the mails. The office was most commonly attended by Clerks.

Ques. by Defendant's Counsel. Have you not been to the office and found it closed?

Ans. I once applied on Sunday morning and could not get in. I found fault with Hubbard once. I have perhaps in two or three other instances found the office closed, and I have *occasionally* found fault.

Nathan Starr Jr. I have always been well accommodated. I went to the office early in the morning and again at ten o'clock. I have generally found Mr. Stow there, the second time, at 10 or 11 o'clock. He was more frequently there than not. He was there the *greatest* part of the time, say three quarters.

John L. Lewis. At the last of the year 1816, and the first of the year 1817, I was frequently at the office. Mr. Stow kept the office in Hinsdale's buildings adjoining the Collector's office. I received letters daily in 1818—I was often there twice a day. Mr. Stow would be there at 8 or 9 o'clock in the morning. He most generally *superintended*—I have seen him *assist* in making up mails. The office was generally well attended so far as I know. Mr. Stow took more superintendence of the office while he was Collector than at other times. Clark the Turnpike gate keeper was there a short time—The complaint was that he was tardy and slow, and was not a proper person to attend the office. He was sick and soon left.

Ques. by Defendant's Counsel. Was not Mr. Stow absent a good deal of the time while he was Post Master?

Ans. He was absent at haying time, at the Convention &c.

Ques. by same. Did you not complain of it?

Ans. I don't know but I complained of it.

Arthur W. Magill. I was always well accommodated while Mr. Stow was Post Master. The office was generally kept by Clerks when Mr. Stow was there. It was not generally the case that he attended. I don't know of any letters miscarrying.

Samuel Mather. Before Mr. Stow got the office it was always open. As soon as he took it we felt the inconvenience of the change a short time. Mr. Stow established office hours. The office was well kept by Mr. Stow. I never had any letters fail. He had three Clerks. I was disappointed in the Turnpike gate keeper. I don't think Mr. Stow spent a great deal of time at the Post Office. I don't know as he made up the mails. The southern mail is the most important mail that we have.

Justin Lyman. I never met with any inconvenience at the Post Office. The Clerks were generally attentive, tho' they were not confined to office hours. I once complained to Mr. Stow of the Turnpike gate keeper—beside this I heard no complaint—I was there six weeks or two months, and was absent five or six months.

Samuel Williams. The office was kept a part of the time in Hinsdale's buildings—I was frequently in, and considered the office well attended. Mistakes occur at other offices—Thirty or forty packages are made up and directed daily. The southern mail arrives at 3 o'clock in the morning, the northern at 9.

Charles Brewer. I generally call for letters every morning—I saw Mr. Stow at the office almost daily, *directing* his Clerks. The office was well kept. There was a little complaint when he first had the office—also when the Gate-keeper kept it.

Ques. by Defendant's Counsel. Was not Mr. Stow absent frequently?

Ans. I believe he went to New Connecticut in 1818, and to Philadelphia, and attended the Convention.

William Starr. I know nothing but that the office was kept as well as ever it was before or since—I am in, two or three times a week.

Elisha Kirby. In May 1817, I moved to Middletown to the Hotel. I had no difficulty—I got my letters, when I called. Mr. Stow had the superintendance of the office and directed his Clerks about their business.

John Alsop. I heard no great complaint, and not being in active business, I did not go there often. The principal complaint that I heard, was that the office was not open at *all* times of day. The Clerks were absent at meals.

Joseph Dunning. I was Clerk of the Post Office, and had charge of it from the first of November 1818, to May 1819. I don't know that there was any difficulty while I was in the office—I was duly sworn, and the oath was sent on to the General Government. Mr. Stow after a few days, did not do much. He came in occasionally—he did not give directions or advice, nor make up mails. I made up the quarterly accounts. The income for three quarters of a year was 625 or 630 dollars. I had three hundred dollars a year exclusive of rent, which was about thirty dollars a year. I succeeded the Turnpike-gate keeper.

Albert G. Stow. I went into the Post Office in April 1816, and continued there most of the year. When my Father was first appointed he was *generally* in the office. He was absent in the summer and fall. He was not so much in the office the latter part of the time. I sometimes asked him about distances, and in one or two instances about double and treble letters, and about some new towns not in the Directory, and other different directions.

I don't recollect as I gave the Hinsdales' letters in the night—I don't recollect my father's sleeping at the office, or being there in the night while I continued in it.

William H. Jones. Mails came as regularly from that office as from any other.

James Robinson. The mail was regular to Durham. There were a good many dunning letters in that mail.

Paschal E. Hubbard. I was there a considerable part of the time from April 1st, 1816, to October of the same year—I was there again in May, 1817, and staid till 1818. Mr. Stow was not absent in New Connecticut while I was in the office. We kept regular office hours.

Ques. by Defendant's Counsel. Was there no complaint while you was in the office? *Ans.* Mr. Hinsdale complained as to his letters. We generally went according to our rules.

Ques. by same. What did Mr. Stow give you for attending the office?

Ans. Mr. Stow gave me two hundred and fifty-six dollars per annum, and I paid my board out of it. I did not take the whole charge but referred to him for information. Mr. Stow was generally in every day—he expected the Clerks to do the business. I don't know as I can say Mr. Stow ever made up a mail but once. Very often in the spring our mail to Hartford went by, and sometimes in the winter. There were not many instances of the Southern mail going by while I was there. There were times when we received no mails at night—I was never absent from the office in the night, while regularly engaged, without leaving another Clerk there. From the first of April 1818, to September, I took the whole charge.

Ques. by Defendant's Counsel. Did you not complain of Mr. Stow's treatment—did you not say you was under no obligation to him?

Ans. I might have said I did not feel that obligation. I might have said he treated me ill. I don't know as I told any person that Mr. Stow did not, and could not make up the mail, and that I had to help him. Mr. Stow never made up the southern mail. In one instance, I think in the evening, he made up a package for some mail; what mail I don't know. Mr. Stow never made up a mail when I was present. Clark, I do not think was competent to take care of the office. I was generally there in the summer of 1818.

Ques. by same. Was not Mr. Stow absent some time at Philadelphia and at haying?

Ans. Mr. Stow was not in Philadelphia more than 12 days. I don't think he was at haying that summer. He was generally at the office about 9 or 10 o'clock—Clark did not request me to inform Mr. Stow that he was going away—I informed Mr. Stow he was not competent. I was with Clark all but twelve days. I don't remember as I ever delivered Mr. Hinsdale his letters by the southern mail.

Warren P. Stow. It is four or five years since Mr. Stow went to New Connecticut previous to his going last fall.

George Hoadly. The Hinsdales do a good deal of business at our Bank. Letters have sometimes been directed to me as Cashier of the Eagle Bank at New York, and at New London. There was one period when I thought the letters did not come so regularly from the Middletown office as from others, but I don't know at what time. I stated it and the cause was mentioned.

Ansel Hubbard. I saw Mr. Stow make up the mail several times when my son was sick. I carry the mail to Killingworth. I was there Wednesdays and Thursdays at 5 o'clock.

IV. *The Plaintiff's Counsel next proceeded to examine his conduct towards the clergy, his charitable contributions and the difficulties between the Church and Society, and first read the deposition of Joseph Wetmore, respecting the conference held at his house, which was in substance as follows:—*

Between four and five years ago there was a conference meeting at my house—Mr. Davis was there—he asked a young lady if she had a hope, she said no—then, he said, you will be damned—He said, if you read your Bible you sin, if you do not read your Bible you sin. I never saw Mr. Stow insult him. He spoke to sooth their feelings, as a number were distressed. He said that God dealt with us as rational creatures. I saw nothing insulting in him. I have known him invite clergymen of different denominations to his house. (*This testimony was objected to by the Defendant's Counsel.*)

By the Court. The Plaintiff's general conduct towards the clergy is admissible. He has a right to *debt* and *credit* in this instance. Suppose the charge were that he insulted the *female sex*—so if it were that he insulted all the inhabitants of New Haven—would he not have a right to show *how* he had treated the female sex, and the inhabitants of New Haven?

Tamzen Wetmore's Deposition was next read. Mr. Davis discoursed chiefly on the eternal misery of the wicked. I have never known him destroy religious institutions, and never saw him insult Mr. Davis, or any other clergyman.

Louisa B. Wetmore. I was twelve or thirteen years old at the time Mr. Davis attended the meeting at my father's. I recollect what Mr. Davis said, but not what Mr. Stow said. Mr. Davis said if you pray you sin, &c. I remember no reason that he urged on that occasion.

Eunice Ward. I was at this conference meeting four or five years ago. Mr. Stow said nothing insulting to Mr. Davis. I thought he was not quite regular—he almost ran about my house. My memory is poor, I don't remember particularly what was said. I thought Mr. Stow addressed the congregation and not Mr. Davis. Mr. Davis was only singular, not crazy—he was zealous. It was not customary to remark on Mr. Davis—but he cried out Gallio—I thought it an improper word to be used in the pulpit, so loud and so often.

Almira Ward. Mr. Davis attended the conference at Mr. Wetmore's. Mr. Davis said if you pray you sin, &c. and spoke discouraging to those who were not professors. The subject of Mr. Davis that evening was "Damnation." It was not usual to *dispute* the doctrines; but it was common for the people to speak their minds. Mr. Stow addressed the meeting in a proper manner, I thought. I did not see him abuse or insult Mr. Davis.

Samuel Spalding. About the first of April, 1816, I was at the conference at Mr. Wetmore's—Mr. Davis was present and made an address. He selected a passage of scripture, and remarked on it. His address was on the condition of the impenitent. He said to

the impenitent or wicked, do what they would they sinned—that we sinned in all our doings—he said if you pray you sin, &c. Mr. Stow addressed the meeting in a somewhat different manner. He said God dealt with us as *rational* beings, and required no more of us than we are able to do. It was a time of revival, or general awakening. He observed on the effects of sympathy—that people did not know what they wept for, or rejoiced for—there was nothing real in it—there was no good intention in their doings. I sat near Mr. Stow—Mr. Davis was in the middle of the room—Mr. Stow was at the end of the room, and facing Mr. Davis—there was no turning round. I don't recollect that he addressed himself to Mr. Davis or any other person. I don't remember as he said he could not sleep.—He called on Peggy Swathel, and asked her if she had found any relief—she said she had not—then he said you will be damned if you continue in that situation. Mr. Davis said there was an aged sinner present who wished to hear a particular psalm or hymn. I don't think Mr. Stow read it so far from a candle—he might have repeated it in his remarks. I don't think it was that night the request was made for a hymn. I heard nothing about New Gate or pardon, or saying religion was good as honey—Mr. Davis left his hearers in the dark. I was never at Joseph Wetmore's but once.

Gershom Birdseye. I was at a number of conferences where Mr. Davis was. I don't remember particularly what passed. The meeting was opened in usual form. Mr. Davis made an exhortation and held up a good deal of terror to the unregenerate—said if they remained in that state they would be damned—and said that whatever they did in that unregenerate state was sinful. Easy to speak his usual invitation. Mr. Stow addressed himself to the meeting. His principles were contrary to those of Mr. Davis—he held up free salvation to all mankind—that God was more ready to give than we to ask—and although we were sinners we need not despair of the mercy of God. I did not observe any thing harsh toward Mr. Davis. I can't remember particularly as to the *elect*. Mr. Stow said that *all* had a call; in opposition to *particular* election. I don't remember his reading a hymn, it appears to me he repeated a hymn. Mr. Davis said an old sinner, or grey headed sinner wished to hear a particular hymn; but whether it was that night or not, I don't know. There was no light where Mr. Stow was; there was a universal attention. I don't remember as Mr. Stow said that religion was all a delusion; nor good as honey, &c. nor that Mr. Davis ought to go to New Gate; those expressions I should observe. Deacon Spalding was there when I was. I can't say as Polly Augur or Eunice Stow repeated a hymn. Our conduct was not out of love to God, but from selfish principles, was his general drift. He was regular; not so clear on those points.

Stephen Harding. I was at Mr. Wetmore's. After prayer Mr. Davis got up and said an aged sinner requested a particular hymn read; I think it was the 129th. Mr. Davis read it. Mr. Stow at the close of the meeting repeated one or two verses of the same hymn,

and made some observations upon it. He did not turn round, but spoke to the congregation. I observed nothing offensive; no change of phraseology, nor any thing about New Gate; I had a seat before him.

Fairchild Camp. I can't recollect what Mr. Stow did say. Mr. Davis said an aged or grey headed sinner wished a hymn read, and then read the hymn himself; and said prayers were requested. A number spoke. Obed Stow spoke; Eli Coe spoke; I did not receive what Mr. Stow said as insulting; I heard nothing about New Gate. The candles were in the middle of the room;—we have conferences frequently at Mr. Wetmore's.

Joseph Hale. Mr. Davis held up a good deal of the doctrine of election—if people prayed they sinned, if they did not pray they sinned, &c. and there he left the matter—he did not explain his meaning. He said he had known people that could not rest or sleep or something like that. He said an aged sinner requested prayer.—Mr. Stow said we ought not to despair—that God never required more of his creatures than he had given them power to perform.—I never attended but once and don't remember as Mr. Stow was there but once.

Lyman Thayer. About four years since Mr. Davis at a conference at Mr. Wetmore's after an exhortation gave a general invitation to all to speak to free their minds, and said often people could not sleep. Mr. Stow got up after this and said the doctrine set forth was not according to Scripture—he believed that salvation was free for all. Mr. Davis said an aged sinner wished a hymn read, and then read a hymn. Mr. Stow repeated some part of it. I can't say as he gave encouragement only to the elect. "Salvation was free for all." He repeated part of a hymn—I can't say as it was the same as was sung. I did not see him insult Mr. Davis—he addressed the congregation—I did not see him turn round, or hear him say any thing about New Gate. I attended because it was unusual for Mr. Stow to speak. I heard nothing of *Delusion* or New-Gate.

Sanford Wetmore. After the usual proceedings, Mr. Davis delivered an exhortation—he said if you go to meeting you sin, and if you do not go to meeting you sin &c. Mr. Stow said that God did not require of man any thing more than he was able to do. (*Here Mr. Denison read the hymn which has been quoted.*) Mr. Stow said this hymn was represented as coming from Satan. I saw nothing in Mr. Stow's manner insulting to Mr. Davis—I don't recollect any thing about New Gate. Mr. Davis said the elect only would be saved.

Jephtha Lewis. I was at a conference at Mr. Wetmore's.—Mr. Davis made an exhortation. He said an old grey headed sinner wished a hymn read. The hymn was read, and sung, and a short exhortation made—I don't recollect what it was—Mr. Davis requested all to speak—he thought it their duty—Mr. Stow remarked on the hymn read—Mr. Davis said if they spoke they sinned, if they let it alone they sinned. The people were very attentive to Mr. Stow. I heard

nothing about New Gate or sympathy. I remember Mr. Brown and Mr. Spalding were there.

Hezekiah Hale. I was at the conference mentioned—Mr. Stow was there—Mr. Davis said an old grey headed sinner wished a hymn read—Mr. Davis read the hymn—Mr. Stow did not. Mr. Davis said to a person present, if you have not a hope you will be damned—My understanding was that he meant she would be damned if she continued in this situation—I don't know whether Mr. Stow repeated any part of the hymn.

Ques. by Defendant's Counsel. When was you first inquired of about this case.

Ans. About two weeks ago.

Curtiss Coe. Four or five years ago I was at Mr. Wetmore's—Mr. Davis was there and gave an exhortation; I can't specify as it was about the elect. He said if you go to meeting you sin, &c. After the exhortation he urged the people to speak; it was just as well to be the first one to speak, as afterwards. He said he had known instances of people being kept awake all night because they had not spoken. Obed Stow's wife, Fairchild Camp's wife, Polly Augur and others spoke. He called on Peggy Swathel and Polly Augur by name. Mr. Stow addressed Mr. Davis in front and said God never required more of his creatures than they were able to perform. He read no hymn—said nothing about New Gate or sympathy, &c.

Ques. by Defendant's Counsel. Was you here on the last trial?

Ans. I was not.

Ques. by same. When was you first inquired of about this case?

Ans. Two or three weeks ago.

Eli Coe. I was at this meeting—I am brother-in-law to Mr. Stow. I knew Mr. Davis—I was at the time a little apprehensive of some disturbance, and afraid some dispute would arise. I don't remember as I spoke. I can't say but I have seen Mr. Stow there more than once. If disputes arise they put a damper upon serious impressions—I thought Mr. Davis and Mr. Stow did not think alike, but no dispute arose.

Proclamation for Deaf and Dumb.

Joseph Coe. I was present when Mr. Stow read a proclamation for contribution for the Deaf and Dumb Asylum—I did not lay up the particular conversations. Mr. Stow said nothing that I laid up, that was improper—I can't say he did *at that time* remark on the clergy.

Question by Deft's. Counsel. Did he not call the Clergy drones and lazy rascals?

Ans. I don't remember his calling them *drones* at that time—the folks were pretty much gone.

Joseph Coe Jr. Mr. Stow said he had a proclamation from the Governor recommending a contribution for the Deaf and Dumb—he thought it necessary to subscribe. He had seen those wretched

creatures—they were objects of pity, and he should throw in his mite. He said we had subscriptions frequently for other purposes, but he was not so free to give to them as to this—I can't tell as he said from what quarter. I heard nothing of drones or lazy men supported by subscription.

Bela Coe. Mr. Stow spoke in favour of subscription for the Deaf and Dumb. He said he should cast in his mite. He was sometimes called on to contribute when he did not feel willing to give. He was willing to contribute to this object. I heard nothing about drones or lazy rascals. I don't recollect what he did say about other things.

Warren P. Stow. I was present when the Proclamation was read: Mr. Stow said he had seen the deaf and dumb—they were objects of pity and he should give to them. We sometimes had contributions when he did not give—there were calls he did not approve; I heard nothing of drones or rascals.

Eli Coe. I was present; I cannot say exactly what Mr. Stow said. He said he should throw in his mite. He spoke rather unfavourably of some other proclamations which had been issued—whether he did as to all I cannot say, I won't be sure; I can't repeat a word of his objection.

Seth Miller. I was at the meeting; after meeting Mr. Stow said he had a proclamation for the deaf and dumb—they seemed to be a needy people—We have many proclamations—all of them he did not approve of—this he did.

Ichabod Miller. Mr. Stow read a proclamation—he said it was a good thing to throw in a mite—some objects he thought best not to contribute to—I don't know what he said about them.

Curtiss Coe. Mr. Stow said that this was a good institution and worthy of his notice: He would recommend to people to cast in their mite—he should his.—He said we were called on in divers ways.—Some objects he did not feel as free to contribute to, as to this.

Hezekiah Hale. I heard something said about *drones*, but I don't know what.

Sanford Wetmore. Mr. Stow approved of this object—he had contributed sometimes when he did not feel free to contribute—I heard nothing about drones or rascals.

Gershom Birdseye. I was at this meeting when the proclamation was read—Mr. Stow made some observations approving of it—it was a deed of charity, and was a good thing to contribute—He had seen the pupils, and was astonished to see their improvement. He had frequent calls to which he said he did not feel free to contribute—I heard nothing about drones or rascals. He did not say what his other calls were for—I never inquired of him.

Disputes between the Church and Parish.

Seth Miller. There appears to be something of a disagreement between the Church and Society. The members of the church considered it as their prerogative to govern the meeting house. I can't say as they do now. There was a vote passed in 1793, May 21: that a

Committee should be appointed for books and sermons and discourses, and to direct public worship, and psalms, and funerals, and candour to all denominations and contributions to pay them. Similar votes in 1804 1814-1816-1817 and 1818 were passed. In our meetings the Church are not willing that any body should bring in a book who does not belong to the Church—None but religious books were to be read on the Sabbath. Mr. Stow has been called upon to read books more than any other man for *forty years*. We had no difficulty until the Church was formed about *eight or nine* years ago. I never knew Mr. Stow withdraw from the meeting. This Society is composed of men belonging to different denominations. Mr. Stow has been pretty liberal and has put money into the hat ; how much I cannot say—He has attended public worship of late. I was once in this Church which still remains—Parson Smith went there and organized something I don't know what. The Society was in a broken state (not more broken than the Court—I mean the lawyers). For some years past there have been fifteen members of the Church more or less. A tax was laid. Mr. Stow was willing to pay for aught I know. He says let us not have another tax—let us fling in. I am not able to say how much he gave in a single instance. I have seen him put into the hat, but I can't tell for what preacher—He favoured all denominations, having preachers of good character—The Society was in a broken state. I once certificated, but took it up.

Ques. by Deft's Counsel. Did not Mr. Stow apply to you to take up your certificate?

Ans. I won't say but what Mr. Stow applied to me—that it was important &c—I live near Middlefield—That society was distracted and I returned. The Church was of different denominations as well as the Society. A meeting was held at Mr. Hale's, and Mr. Smith was there. He said he could not stir an atom.

Eli Coe: Ques. by Plaintiff's Counsel. Is not the Church in Middlefield composed of discordant materials?

This question was objected to by the Defendant's Counsel.

Mr. Daggett. You have holden us to *acts* alone.

By the Court: There is no question what it is proper to prove. We go back to the writing, "destroy *all* religious institutions." We are confined to Middlefield at present. The Plaintiff proposes to show that this destruction is not imputable to him. Now he may go to the fact and show what were the materials.

The witness began. About ten or eleven years ago the Church in Middlefield was formed. When Mr. Benedict left us we were in a pretty broken situation. Deacon Giles Miller came and held meetings. We taxed ourselves for a spell but it made a difficulty and the Society grew uneasy, and soon got a majority in favor of subscription and against taxing ourselves. We got subscriptions and continued them some time. In this way we had preaching and continued to harmonize considerably well. Sometimes most all subscribed. About twelve years ago there was some seriousness among us, and some felt a disposition to have the ordinances administered. We had

a minister, Mr. Benjamin Graves, then there, who was a strict Congregationalist. There was a disposition to unite and form a Church—there was a desire to harmonize. We paused at what this Church should be called. It was composed of no particular order, and there was a good deal of difference of opinion about it. It was proposed by some that it should be called the Church of Christ. We then tried to unite with the Society. We got preaching by subscription papers and sometimes by contribution. It was then proposed to have a fund—but some objected. Those who subscribed were acceptable. Some chose to try another subscription, but this failed. We then resorted to contributions every Sabbath, and continued so awhile. There was some falling out between the Church and Society. I cannot tell why or wherefore—I stood where I was despised in a measure by both parties. About this time the meeting house was neglected, and we had no preacher. The Church met at the meeting house when there was no preaching and wished all the Society to meet with them. A meeting was called. The Church thought Mr. Stow had a desire to introduce Books that would not be acceptable to them. The Church of course was not so friendly to him. I cannot say which was to blame. I wished them to unite and laboured with both to reconcile them. The Church thought they had a right to take the lead of the meeting and direct what Books should be read when they set up the meeting. The meeting thought they had not the right. We had a good deal of sorrow of mind, and many trials to wade through. Some would withdraw—Some thought that the meeting house was built for that order and that they had a right to hold it. Mr. Graves pronounced us a Church of Christ, and said, “’tis wonderful.” We were all agreed and have remained so.

Ques. by Defendant's Counsel. Did you not converse with Deacon Augur and Obed Stow on this subject?

Ans. I do not know as I conversed with Deacon Augur, Obed Stow, or William Lyman. I did with females. I was for uniting. I cannot say as Mr. Stow brought irreligious Books, but there was a fear that he would bring in Universalist Books. The Church were always willing to retire when the Society wanted the meeting house exclusively. We were always particular about Books through fear that bad Books would be introduced. The rule was to consult upon Books—I did not myself see all the Books. I once read without showing my Book. When we have had subscription papers, Mr. Stow most generally subscribed. We have repaired our house by tax, and he has paid his taxes. The Church has been very harmonious since its re-organization. Mr. Stow, when I carried the hat used to put in—but he was rather opposed to Election and Foreordination. He has not put in Bills I think. The Pew where Mr. Stow and I sit has given more than all others. He has not been so liberal of late to Congregational preachers. He don't bid them God speed.

Ques. by same. Does Mr. Stow generally attend meeting?

Ans. He generally attends except at Election, &c. on Methodists, Baptists and Universalists. The Church is harmonious, and has been since its re-organization. I have heard Mr. Stow call the Church a Club—and say something about *apples*. I am holier than thou, &c. The Church would rather Joshua Stow should not take the lead. I did not differ from the Church. I have told them they had better not withdraw. I thought it not best for Mr. Stow to direct our meetings. Our difficulties have arisen considerably between Joshua and Obed Stow. The Church were always willing to pay their share of public preaching. None of the Church were willing to meet if Joshua took the lead. I not long since went to see Joshua on the subject; he said he meant to go to meetings and that he should carry a Book but did not know as he should read it, but if the Society was displeased, he thought he should stay at home: He knew I came there for this purpose. He never prayed in meeting. He has read a Psalm and a Book. We thought him a good reader. There was a vote passed in 1816 by the Society, concerning the appropriation act, “Resolved that the Gospel is good news,” &c. I think it likely this vote was introduced and offered by Mr. Stow.

The Defendant's Counsel here claimed that the vote should be read. Mr. Smith objected to its introduction, saying he only disapproves of the doctrine of Decrees.

Mr. Daggett. We are on the point of Mr. Stow's annoyance of the Society. He tried to prevent the Domestic Missionary Society from sending preachers to Middlefield, and to procure votes discarding Clergymen. We show that the Society offered to send and that he tried to defeat them, and to prevent them from receiving money from the Domestic Missionary Society, and also from the Legislature.

Mr. Smith in reply, made some remarks about the appropriation of the Western Reserve, and about the different Religious Sects which the Reporter has not taken down.

By the Court. The objection is in two parts. 1. To the Appropriation on political grounds. If evidence were offered to show that Joshua said he meant the vote for this purpose it is admissible. *Per se* this objection to *absolute decrees* is not *destructive* to the Religious Institutions of the State—Suppose they were settling a Clergyman of this kind. Are there not whole Congregations who disbelieve this doctrine? Can it be said *they* destroy Religious Institutions? This evidence does not conduce *per se* to prove the allegations. You will prove his *intent* from his acts and declarations. There “must be a *declared* intention accompanying the introduction of the vote to destroy Religious Institutions to make it admissible.” [Here the vote was offered.]

Elisha Coe. There has been a difficulty between the Church and Society, and more particularly between the Church and Mr. Stow. The Society formerly was very harmonious, and has been so till within fifteen years. The Church has withdrawn when Mr. Stow

has taken the lead or brought in a Book, or when they supposed or understood that he was about to take the lead. Mr. Stow never to my knowledge brought an irreligious Book into meeting. One fast day he brought in and read a Book bordering on *politics*. I think Books were furnished by other Committee-men—Books against Universal Salvation—I read one. I sat in the same pew with Mr. Stow. I have seen Mr. Stow put in a dollar at a time at contributions. He has invited Presbyterian Clergymen to his house formerly—he once invited a Mr. Woodbridge and paid his proportion of the tax for him—but he has not done this lately. When there was some complaint about taxing and he opposed it, he has drawn up subscription papers to pay for preaching; and this practice was adopted for some years. In 1796, there was a difference of sentiment as to taxes. There was a tax laid of three pence on the pound on the Grand Levy which was not binding unless two thirds were in favour of it. *One subscription paper* was read dated in 1795, this was for Mr. Gibson. Another was offered dated April 1798, which was for Mr. Woodbridge, and another dated April 1810. These subscriptions were for Mr. J. Phelps, (if convenient,) if not, for some such person as they could get. In 1810 another paper was circulated for the same Mr. Phelps. Mr. Phelps received five dollars, Feb. 18th, 1811. Mr. Stow said Mr. Phelps should not be wronged, he would pay. He did not interfere in Church meetings except on the Sabbath day.

Eli Coe called again. Mr. Stow never came into our private meetings to disturb us.

Joseph Coe. A certain class of people in Middlefield, claimed the use of the meeting house. The Church withdrew. Mr. Stow I believe has been pretty liberal in contributions—as much so at least as any one man. He has invited Clergymen to his house—and among them preachers of the Baptist denomination. I once certificated, and Mr. Stow advised me to take up my certificate. He wanted me to come and vote with the Society. I am a Baptist in principle.

Ichabod Miller. Mr. Stow has been pretty liberal. I have seen him put in a dollar or two. He has invited Mr. Woodbridge, Mr. Phelps and Mr. Lester to his house. I have seen him contribute within two or three weeks. I have never known a contribution within twenty years in which he has not put in money.

Ques. by Defendant's Counsel. Has Mr. Stow usually attended when a Presbyterian or Congregational preacher was present, or has he not?

Ans. Sometimes. I cannot say how many.

Joseph Coe, Jun. I have seen Mr. Stow contribute a number of times. I have seen him take out Bills out of his Pocket Book and give. He has contributed as much as any other man, or more. He has invited preachers to his house. I knew him invite a Mr. Dodge there twelve or fourteen years ago.

Bela Coe. We have had pretty large contributions. I have seen Mr. Stow take out money and give to every body except the Presby-

terian order. He did not like that order. Mr. Austin preached there a good deal.

Gershom Birdseye. Mr. Stow contributed to the Baptists. I am of that order though I never certificated. Mr. Stow invited one Baptist Clergyman home with him.

Ashur M. Coe. I have known Mr. Stow contribute. I do not recollect being at meeting in my life when Mr. Stow did not contribute. I never knew him offer any insult to any Clergyman.

Fairchild Camp. Mr. Stow has uniformly contributed for the last twenty years.

Ques. by Plaintiff. Did I not invite preachers to my house?

Ans. Yes. I never knew Mr. Stow insult any Clergyman.

Hezekiah Rice. I never knew any man give more than one dollar at a time, and I have seen Mr. Stow give that. Sometimes we get \$1 50 or 2 50, and sometimes six or eight dollars. I never knew Mr. Stow insult the Clergy.

Hezekiah Hale. I suppose Mr. Stow generally contributed. I have seen him put his hand into the hat.

Joseph Hale. Mr. Stow is very liberal except towards the Standing Order. He has treated the Clergy well.

Giles Miller. I never knew Mr. Stow abuse the Clergy.

Warren P. Stow. I have seen Mr. Stow contribute. He gave a dollar to Mr. Lester. I have seen him invite the Clergy to his house and treat them well.

Sanford Wetmore. I have seen Mr. Stow contribute to preaching a number of times. I have known the Clergy go to his house. I never knew him insult the Clergy.

Benjamin Birdseye. I have seen Mr. Stow contribute frequently. I do not know about his treatment of the Clergy.

James Hart. I have no knowledge about Mr. Stow's contributing. I have carried Clergymen to his house to dine, ten or fifteen years ago. He contributed \$50 to our Society towards building the meeting house.

Ques. by Defendant's Counsel. How did he do this?

Ans. We bought a piece of land of him at three hundred dollars.

Ques. by same. Did you not offer him two hundred and fifty dollars and say it was as much as it was worth?

Ans. No. It was part of the bargain when we agreed to give three hundred dollars. He considered the fifty dollars he allowed as given to the Society. I think it was concluded to give him three hundred dollars before he threw in the fifty dollars. I don't know but another person agreed to give three hundred dollars. We could not obtain it under.

Ques. by same. Was the land worth that money?

Ans. I can't say but it was worth that.

Jos. Lewis. I generally sit in the pew with Mr. Stow. I have seen him contribute frequently. He gave one dollar to Mr. Thorp, a Methodist, about three years ago. I never knew him insult the Clergy.

Joseph B. Gilbert. About ten years ago we bought the land for our meeting house. We considered it worth about three hundred

dollars. I have seen Clergymen at Mr. Stow's house, when baptising.

Patrick Darby. In 1816, Mr. Stow contributed a dollar when Mr. Jewett preached. In 1817, he gave a dollar when Elijah Hibbard preached. When Thomas Thorp preached, he gave one dollar. When Lung was hung he put in fifty cents.

Oliver Prior. Mr. Stow contributed ten dollars towards building a Methodist meeting house ten or fifteen years ago. I never knew him treat the Clergy with abuse.

Samuel Frothingham. Mr. Stow subscribed ten dollars and paid me. He has often called at my house and requested me to call on preachers and ask them to go out and preach. He has had Clergymen at his house over the Sabbath.

William J. French. I am Clerk of the Society and have the records. It appears Mr. Stow subscribed ten dollars and paid it. This was in 1804.

James Plumb. I have generally seen Mr. Stow put in one dollar at a time. I have seen him give fifty cents. I know nothing about his treatment of the Clergy.

Stephen Harding. I know nothing about the hat—I never saw Mr. Stow treat the Clergy ill.

William Jewett. I know nothing about Mr. Stow's contributing but once, and that was in April, 1816. I am a Methodist Clergyman. I saw him put his hand to the hat. He treated me with respect and invited me to see him. I was there about two years,—from May 1816 to 1817.

Linus Coe. I have seen Mr. Stow contribute.

Joseph Coe. There was a man offered to give three hundred dollars for the land which has been mentioned. Mr. Stow bought it for six hundred dollars and paid in New Connecticut lands. It was rather more than half front—The whole lot contained about an acre and a half. Mr. Stow told me, I think, that he paid six hundred dollars for the lot. I thought it high to be sure.

John L. Lewis. Mr. Stow invited Mr. Noble to preach two years ago, and also about four or five years ago.

Ethosian Society.

Manoah Camp. The Ethosian Society was established early in 1787. I joined it after its formation. Its object was to obtain knowledge, encourage industry and every moral virtue, and make good members of society, breathe brotherly love, &c. to warn each other of faults without resentment, to cultivate the doctrines of Religion and every thing tending to good. Its object also was to discuss questions and read Books. We read Blair's Lectures, Elegant Extracts, and we criticised on the language, the reading and the subject. We discussed questions, such as whether it was best to carry produce abroad? Whether it was proper to take life in any case? Whether it was proper to take the life of animals? Whether early marriages were beneficial? Whether the laws of nature were consistent with

the laws of God. Sabbath evenings, we talked over the sermon by our notes. We used to settle our difficulties in the Society and keep the members under our own government. We found great benefit in it.—It created friendship which has extended to this day. No Infidel Book was ever introduced into the Society, and no Infidel sentiments were broached there. There was nothing binding to hinder a man from being a Gentleman. It takes all of a Christian to make one. I am an Episcopalian. My parents were Presbyterians. I continued in that Society till it broke up. I recommended to the members to join Dr. Goodrich's Church. About seven of that Society joined and I joined. I was there before Mr. Stow joined, and continued while he was there and while Mr. Camp was there. I don't know as Mr. Camp met with us after Mr. Stow left. I invited Mr. Stow to become a member, and recommended him about a year after. Mr. Stow came in in 1789, I should say. The latter part of the time the Library bore the name of the Society, and the latter part of the time Voltaire was put in. I never saw *Petit Pierre* in the Society. We conversed freely on Religion, without contests. The Bible was read. We did not take sides according to opinion, we often changed sides. I don't remember that the authenticity of the scriptures was discussed. Nor the Being of the Devil. It was the law of England that the Devil should not be harboured. We had a good deal of conversation about the Devil. We thought we were not bound to believe that the Devil was personified. We called ourselves *Free Inquirers after Truth*. The Society broke up in 1793. There was no charge of its being Infidel at *that* time. My parents and Dr. Goodrich were very fond of it. It was a union to do good, such as watching with the sick, &c. There was nothing said about the influence of the Society in town. Our time of meeting was on Sunday evenings.

Elisha Coe. I joined that Society in Durham about the year 1789. I continued a member until the time when they agreed to adjourn in 1793. I agree with Mr. Camp. Many questions were discussed there. Is slavery justifiable? Is there more satisfaction in anticipation or enjoyment? Are spirituous liquors useful? Is tobacco or snuff beneficial? It was a private and valuable institution, and there was nothing in it irreligious—nothing transpired that any good christian could complain of. A number of years since I wished there was such a Society in Middlefield and it was formed. It had no Infidel object. Voltaire was never read there. The Library did not belong exclusively to the Society. The Bible was read, but not so much as other Books. We criticised each other's reading. We read Blair's Lectures, Locke, Elegant Extracts. I believe Mr. Stow left the Society. He introduced me and one or two more I should think into the Society. Voltaire, Volney, *Petit Pierre* were there. The Society met once a week on Sunday evenings. I attended, say half the time. I do not recollect much about Samuel C. Camp's being there. Thomas Paine's first and second part and the answers thereto are in the Library.

Ques. by Defendant's Counsel. Did not the Society meet on Wednesday or some other week day?

Ans. I believe the Society did not meet on Wednesday. There was a President, Vice-President and Clerk. We used to write billets to each other, and put them in a hat and collect questions. There were no *disbelievers* in the Christian Religion in the Society. I cannot say as any were *reputed* Infidels, though there were some of whom *others might say* they were Infidels.

[*Mr. Daggett.* It seems then something was said by the public about its being wrong.]

Abraham Scranton. I joined the Society about the second year after it was formed. I attended only occasionally. My object was to get information. I considered it a useful Institution. I never heard it called an Infidel Club. Some members of Dr. Goodrich's church belonged to it when I joined it. About half the Library was owned by individuals out of the Society and half in.

Ques. by Defendant's Counsel. Have you not said there was a torrent of Infidelity in the Society?

Ans. I never said there was a torrent of Infidelity, nor any thing tending to Infidelity. I was not there half the time perhaps.

William Chauncey. I joined the Society in 1791 or 1792. I never saw any Infidel Books read in the Society. Blair, Locke and Elegant Extracts were in the Library. Mr. Stow was there only once, and then Thomas Lyman delivered a Funeral Oration. There were no Infidel principles propagated in the Society while I was there. I do not recollect attending with Mr. Camp. I think Mr. Camp left when I joined. I was not a member longer than from 1792 to 1793. Mr. Belknap was not there when I was, nor Dr. Guernsey.

Thursday Morning.

The Defendant's Counsel here introduced Clark Nott to shew Mr. Stow's general reputation as an Infidel.

Clark Nott. Ques. by Defendant's Counsel. Is Mr. Stow an Infidel?

This question was objected to by the Plaintiff's Counsel.

Mr. Smith. This question has been decided by the Court of Errors. They say the question is not whether Infidel or not; so that this is not in the issue. The Libel is of *specific acts*. They will not suffer you to prove the *fact* of Mr. Stow's being an Infidel. It is strange then that they should permit you to prove the *reputation* of this fact. You may prove the fact *charged* or the *reputation* of that fact, but not the reputation of another fact.

Mr. Staples. The principle is this. In a charge of Adultery, you must prove a want of *chastity*, to show that there has been no injury. In the case of Abner Bishop vs. Major Field, there was a charge of *theft* and proof of taking ashes *fraudently* and the general character of a *dishonest man*. The Court in this case say it is not a charge not merely of Infidel principles, but of Infidelity and more too. Is it sense or law to say that a man *notoriously* an *Infidel*, suffers by these charges as if his general character was that of a *Christian*? The Declaration

says he was educated in the Christian Religion and now is and always has been a Believer in the Divine authority of the Scriptures. 1 Maul. & Sel. 284. This evidence cannot be admitted under a *special plea*, but may under the *general issue*. This is the distinction. Leicester vs. Walter, 2 Camp. 251. pl. M. G. Mr. Ingersoll asks the rule of damages. See Peake's Ev. 93 Append. Holt's Rep. 303. Wyatt vs. Gore, Holt's Law of Libel, 269, 270, 271. Williams vs. Callender.

Mr. Smith in reply. It is the office of an *innuendo* to *apply* the matter set forth. You may prove the *fact* charged—that justifies, or you may prove in mitigation of damages that the Plaintiff has the reputation of committing it.

By the Court. In Middlesex County, two or three years ago, in an action of slander, for a charge of theft, there was a question of *this* kind concerning damages and it was decided that the testimony was not to go the whole length, but to that *particular* point. Three Judges were present. They admitted testimony to that *particular* point in *mitigation* of damages, that is, testimony to prove *general character*, in one sense.

Mr. Daggett here cited 1 Root, 354. 2 Esp. 721.

By the Court. I should have no hesitation if the English Books were the *sole* guide. They go no further than to admit testimony in *mitigation* of *damages*. They admit evidence of "similar practices," "such a charge." In Connecticut we have gone further—we have permitted evidence of the general character, in the Middlesex case, and in Bishop's case, and the case in Root.—We have admitted not only the extent of the charge, but also things relating to the same subject. I would permit the enquiry to be gone into as to the *general character* of the Plaintiff as an *Infidel*.

Several witnesses were next called up and examined by the Defendant's Counsel as to the management of the Post Office and the transaction at the Bank.

Ebenezer Southmayd. I have had several conversations with Paschal E. Hubbard—one at my father's, the 6th of this month. Hubbard admitted that my testimony was correct. He said that Mr. Stow promised to use his influence to have him appointed Post Master when he should be appointed a Senator; and that he had injured him. In the spring of 1818, he notified Mr. Stow to get a new Clerk. He said he did not believe Mr. Stow could make a mail—he once tried and could not make it. He said the mail had gone past twice in the day time, and two or three times in the night—that he had employed me in the Post Office a dozen times. He said Mr. Stow gave up the whole charge to him. I told him Mr. Stow's witnesses said that Mr. Stow was not there half the time while the office was kept in Williams' building. He said it was not correct.

Henry Carrington. While the office was attended by Hubbard and Upson we repeatedly failed of getting our letters, &c. before breakfast. I go to the Post Office early in the morning. We most generally, however, got what we wanted. I have been there repeat-

edly at other times of day and found the door locked; heard persons inside laughing; rapped, but could not get in. There was a Frenchman there often when Joseph M. Gilbert kept the office.

Ques. by Defendant's Counsel. Did you ever see Mr. Stow there?

Ans. I think I have seen Mr. Stow there *once*, perhaps more—but I recollect *once*.

Daniel Rand. For a *part* of the time since Mr. Stow has had the office, it has been *well* attended, and for a part of the time, *not*. A part of the time there has been considerable difficulty in getting our letters, especially in the fore part of the day. It is important to us to get our letters early by the southern mail. Some complaint has been made of Gilbert. Hubbard, Upson and Clark were all there under Mr. Stow. I am a Director in the Bank—but was not when Robinson and Meeker's note was due. I have seen the books. I should think that the note was put to the credit of Tibbals, on the *offering* book—On the discount book to J. Stow in the margin in the hand writing of the Cashier.

William Lyman. I was in the city as often as once a week and went to the Post Office. I never discovered but what the Office was well kept before Dunning took the Office. I went there once about the middle of the afternoon, and was troubled to get into the office. I could not get in, and looked round an hour or more to find the Clerk. I went to Southmayd's—I could not find him in a great while.

John Southmayd. My store is next door to the Post Office. There was a good deal of complaint about delivering letters in 1817 or 1818. There was more complaint while Upson was there than since. I spoke to Mr. Stow about it—he said others had spoken to him. In future it would be quite different. Hubbard was like others, fond of pleasure, and neglected the office. Nichols kept the Post Office better than any other Clerk. Hubbard told me Mr. Stow never made up a mail more than once while he was there. I was often in the office. Mr. Stow never gave me a letter or paper as I know. He was not there much of the time.

William W. Woodward. I was often in the office—every morning. It was once kept in William's store. Persons went into the office through the store when the clerks were in bed, and took the bundles out of the bag and put them on the table—they looked them over and handled them. Gilbert was then in the office.

Wm. S. Rossiter. I remember there was at one time an irregularity in the mail for a month—perhaps two years ago—it went by to Stamford and returned, containing a number of letters for us. The letters were directed right. I don't recollect any letters misdirected to us. I don't remember but one instance in any other office, that was at Norwich. Some of our letters were from the banks and some from Hinsdale's.

Henry Carrington. (*Called again and questioned.*) I testified last winter as I have now. The hand writing on the discount book was the hand writing of George Nichols, the book keeper. Nichols

was here when Magill testified, he then left the room and went off home.

Ques. by Defendant's Counsel. How many Clerks are there in the bank?

Ans. Burnham is Clerk, Nichols is Clerk, and Meigs is there now.

Ques. by the same. What did Nichols go home for? Could not the business of the bank be done without *him*?

Ans. I should say it could.

Ques. by the same. Do you not require a Director to indorse a note when he presents it?

Ans. When a Director is known to have an interest in a note he is always required to indorse it.

Seth Tibbals. James Robinson told me that Mr. Stow never denied receiving the two dollars—he always acknowledged it. Robinson inquired of me a number of times about the note. I always told him as I have testified here. I have said to Robinson that I run a risk, and that I had rather pay the two dollars myself than be on the note. I never paid that note, and did not go into the bank again on that day. I never received the note of Magill, nor authorized Mr. Stow to receive the old note and the fifty dollars. I had other notes in the bank that I feared this would affect.

The Defendant's Counsel next made some inquiry respecting the Proclamation for the Deaf and Dumb.

Phineas Augur. I was present at the contribution for the Deaf and Dumb. I think Mr. Stow said he was at Hartford and saw them. He said we were frequently called upon for charity to support a set of *drones*, as near as I can recollect, who were burthens to community. We conversed about it at home in the family immediately after.

Prosper Augur. I heard the proclamation. Mr. Stow said the persons sent by the Domestic Missionary Society were *idle drones*. He manifested a disapprobation as to them. *This* object he approved of. My children conversed at home that evening about his remarks.

They then proceeded to inquire as to the general character of the Plaintiff.

Charles Coe. Ques. by Defendant's Counsel. What is Mr. Stow's general character?

Ans. For twenty years his general reputation, so far as I understand, has been that of an *Infidel*.

Ques. by Plaintiff's Counsel. Is it that of an *Infidel*, or disbeliever in *particular* doctrines?

Ans. He has *disbelieved* the Scriptures and Divine Revelation. I believe he *now* sustains the reputation of an Universalist—*heretofore* his reputation was otherwise. He has not been a Universalist till within a year or two.

Ques. by the same. Are you not *unfriendly* to Mr. Stow?

Ans. I am not unfriendly to him.

Clark Nott's deposition was next read, which was in substance this. I have known Mr. Stow ten or fifteen years. His reputation has been that of an *Infidel*.

Daniel Bates. I have always considered Mr. Stow's reputation to be that of an *Infidel*—that is the *general speech* of people.

Ques. by Plaintiff's Counsel. Is he not a *Universalist*?

Ans. I never heard as he was a *Universalist* till very lately. He has not attended on *Universalists'* meetings though his neighbours have.

Prosper Augur. Until lately Mr. Stow's general reputation has been that of an unbeliever. Now I believe he is a *Universalist*.

Dan Lane. As much as fifteen years ago, according to the best of my recollection, some called Mr. Stow a *Deist*, some an *Infidel*. He was open and bold as an *Infidel*—that is his general character.

Henry Carrington. Mr. Stow's character is that of an unbeliever. I never heard him called a *Universalist* till within four or five months.

Daniel Rand. I never heard that Mr. Stow *had any religion*, or *pretended* to have any, till within a few months. So far as I have heard, the general impression is that he is not a believer.

Thomas Hubbard. Mr. Stow was considered as an unbeliever, so far as I have heard, *until lately*—that was his *universal* reputation before the bringing this suit.

Ebenezer Jackson. I have heard it generally said that Mr. Stow had not made up his mind—had not satisfied himself. His general character is that he is not a believer.

Joseph Parsons. Mr. Stow's general character is considered as that of an unbeliever.

Wedworth Wadsworth. I have heard it suggested that Mr. Stow was an *Infidel*, so far as I have heard any thing about it.

Richard Hubbard. As far as my knowledge extends, Mr. Stow has had the reputation of being an *Infidel*.

Ques. by Plaintiff's Counsel. How long has he had it?

Ans. Previous to 1819.

George Geer. I have been acquainted with Mr. Stow a number of years. I have lived in Westfield. I don't recollect an instance in which it was said he believed in the inspiration of the Scriptures, or of the apostles and prophets. I never heard that he believed till since I have been in New-Haven.

Ques. by Plaintiff's Counsel. Have you not had a controversy with Mr. Stow?

Ans. I have had no controversy with him.

William Plumb. I have lived in Middletown thirty or forty years. The general opinion has been that Mr. Stow was an *Infidel* or *Unbeliever*.

Ques. by Plaintiff's Counsel. Have you not had a controversy with Mr. Stow?

Ans. I have not.

Seth Tibbals. I can't say what Mr. Stow's general character is.

He has been called an Atheist, a Deist or Unbeliever, a Universalist.

William Danforth Jr. I have always understood Mr. Stow's general reputation to be that of an Unbeliever.

Josiah J. Linsley. Mr. Stow's general reputation is that of an Unbeliever.

Dan Parmalee. Mr. Stow's general character so long as I have known him for fifteen or twenty years has been that of an Infidel.

James Parmalee. I answer in the same way.

——— *Hitchcock.* Mr. Stow's character is that of an Unbeliever.

Chauncey Wetmore. Mr. Stow has always been considered as an Unbeliever—I never heard any thing else so long as I can remember.

——— *Gaylord.* I preached in that parish, and so far as I have been acquainted, his character is that of an Unbeliever.

David Smith. I have lived twenty one years in Durham and have known Mr. Stow. His reputation has been that of an Infidel.

Phineas Augur. Mr. Stow's reputation is that of an Unbeliever in the authenticity of the Scriptures.

John Southmayd. I never heard Mr. Stow called a believer, but have heard him called otherwise both by friends and foes.

William Lyman. Mr. Stow's general character is that of an Unbeliever. He believes that the Scriptures were not given by inspiration. I never heard this character of him doubted till last winter.

Samuel C. Camp. Mr. Stow's general character has been that of an Infidel.

The Defendant's Counsel next called witness to shew the reputation of the Ethosian Society.

Mr. Smith here took an objection to the introduction of this testimony which was over ruled by the Court.

Charles Coe. Ques. by Defendant's Counsel. Did not the Ethosian Society sustain the reputation of an Infidel Society?

Ans. When it was first set up it was not so considered, but pretty soon afterwards it was considered as Infidel, and its general reputation grew stronger and stronger, and it was considered more and more Infidel so long as it continued.

Dan Parmalee. I was solicited to join this Society. The first part of the time it was not Infidel—It was afterwards generally reputed to be Infidel.

Daniel Bates. I was solicited to join this Society, but I never belonged to it. It has borne the character ascribed to it, towards the close.

Joseph Parsons. I remember the Society. The first part of the time it was not Infidel—the latter part it was.

Josiah J. Linsley. I went to Durham in December 1791. I supposed at that time that Society was propagating Infidel sentiments.

James Parmalee. The latter part of the time the Society was reputed to be Infidel. The latter part of the time religious subjects were discussed. I was a member—the latter part of the time I withdrew. They introduced religious questions—read portions of the Bible, and discussed questions—they *made light* of religious subjects, and called in question those parts which were read. This was done frequently till I left the Society. I dont remember as the existence of the Devil was discussed there.

The Defendant's Counsel offered to show that Mr. Stow was inculcating on the members of the Society Infidelity, to destroy the basis of the Society.

The Judge stopped Mr. Smith in reply, and ruled out the testimony. Agree as you may. If afterwards either party objects, I shall give my opinion to the Jury.

Here the Defendant's testimony was closed.

The Plaintiff's Counsel then introduced witnesses to shew the general character of the Ethosian Society.

Elisha Coe. I should say that the Society was not considered as Infidel by me, though I might have so heard. I do not consider that as the reputation of the Society.

Manoah Camp. I never heard that as the character of the Society.

Abraham Scranton. I never heard this Society called an Infidel Club till this publication.

Wedworth Wadsworth. I never heard any thing about it till the former trial.

Ques. by Deft's. Counsel. How old are you?

Ans. I am thirty-six years old. I never heard its character in any way.

Richard Robinson. I am forty-two years old. I never heard the character of this Society called in question. I had a brother belonging to it. I was at that time about eighteen or nineteen years old.

James Robinson. I never heard this character attached to the Society till this publication.

Ques. by Deft's. Counsel. Have you not been requested by Mr. Stow to assist him in getting witnesses in this case?

Ans. Mr. Stow has requested me to inform the witnesses that the Court would sit at such a time, and to inquire of Ebenezer Robinson and Tibbals about the Bank—I had no other agency.

Asa Chamberlain. I never heard this Society called an Infidel Club, till this publication. I am forty years old.

Seth Miller. I never heard this Society called an Infidel Club, till since I have been in Court. I live about four miles off.

William Plumb. I know but little about the reputation of this Society. I have heard only Mr. Stow and Col. Coe speak of it. I never heard that it was an Infidel Club.

Eli Coe. I have no recollection of hearing any thing about it, one way or the other.

Charles Robinson. I live in Durham. I never heard that it was an Infidel Club. I had a brother belonging to it. I am forty-five years old.

Moses Robinson. I never heard that it was an Infidel Club. I am thirty years old.

The Plaintiff's Counsel next examined witnesses, to show his general character.

Elisha Coe. Mr. Stow's general character is not that of an Unbeliever.

Alexander Wolcott. I never heard Mr. Stow's character called in question till the former trial. I had an impression that there was something *peculiar* in his tenets. I have lived in Middletown nineteen years.

Nathan Starr, Jr. I never heard Mr. Stow's character called in question, as a Believer, till this suit.

Bela Coe. Mr. Stow has been a Believer—of late pretty strong. I can't say how long.

Ashur M. Coe. Mr. Stow's character is that of a Believer. I never heard it questioned till this suit.

Linus Coe. Mr. Stow is a Believer in the authenticity and inspiration of the Scriptures.

Joseph Coe, Jr. Mr. Stow's character has been that of a Believer for twenty years; as much as any *Tolerationist*.

Benjamin Birdseye. Mr. Stow's general character has been that of a Believer ever since I have been acquainted with him. I am thirty-two years old.

Seth Miller. Mr. Stow has been a Believer ever since he was a child. I can't say as he was when he was very young—he has been since—I cannot tell as he has been so fifteen or twenty, or twenty-five years. I am his neighbour.

Fairchild Camp. Mr. Stow has been a Believer ever since I knew him. I have lived next door nineteen or twenty years. Some people called him a Universalist ten or twelve years ago. His general character is that of a Believer in the inspiration of the Scriptures.

Sanford Wetmore. I have been acquainted with Mr. Stow about ten years. His general character has been that of a Believer.

Ques. by Defendant's Counsel. How old are you?

Ans. I am twenty-one years old.

Giles Miller, Jr. Mr. Stow has been a Believer a number of years. Many years ago I heard it suggested that he was not a Believer; but I don't remember much about it.

Joseph Hale. Mr. Stow's general character is that of a Believer. I formerly lived with him eight or nine years. I married his daughter, and now live within a mile of him.

Seth Paddock. I have known Mr. Stow from a child. His general reputation is that of a Believer. It is not called in question by the *Republican side*.

Eli Coe. For ten years past Mr. Stow has believed in Universal Salvation. Before that time I can't state. He is a believer in the Scriptures. He married my sister.

Giles Miller, Jr. In Middletown *now*, and *for years past*, Mr. Stow's character has been that of a Believer. I heard it suggested

some years ago that he was an Unbeliever. I hardly think it was general.

Oliver Prior. Mr. Stow's general character is that of a Believer. I have been acquainted with him thirty years. I have heard numbers question his character, but in general it has not been questioned.

Justin Lyman. I never heard Mr. Stow's character as a Believer called in question. He has been a full believer in Universal Salvation.

Ques. by Deft's Counsel. How long have you lived in Middletown?

Ans. I have lived in Middletown since 1817.

Elisha Kirby. Mr. Stow's general character is that of a Believer. I have heard his character questioned by some denominations.

James Plumb. For thirty years past Mr. Stow's general character has been that of a Believer. I don't know as I ever heard his character questioned.

James Robinson. Mr. Stow's general character is that of a Believer. I have been acquainted with him thirty or forty years. I never heard it questioned.

Richard Robinson. Mr. Stow's general character is that of a Believer. I have been acquainted with him twenty-five years.

Moses Robinson. Mr. Stow's general character is that of a Believer.

Asa Chamberlain. Mr. Stow is a Believer. I have never heard it questioned in twenty years, to my knowledge.

Charles Robinson. Mr. Stow's general character is that of a Believer. I have been acquainted with him twenty years.

Manoah Camp. Mr. Stow's general character is that of a Believer. I have been acquainted with him more than thirty years. I never heard it suggested that he was an Unbeliever.

Abraham Scranton. Mr. Stow's general character is that of a Believer. I have been acquainted with him twenty years. I never heard his belief in the Scriptures doubted.

William J. French. Ques. by Deft's Counsel. How old are you?

Ans. I am thirty-two years old. Mr. Stow is accounted a Believer in the City.

Isaac Bacon. Mr. Stow's character is that of a Believer. I have been acquainted with him more than thirty years. I never heard it doubted whether he believed in the Scriptures. He has been charged with being a Universalist for fifteen years uniformly. People acquainted with him know better.

Jeptha Lewis. Mr. Stow is a Believer. I have been acquainted with him six or seven years.

Ques. by Deft's Counsel. How old are you?

Ans. I am twenty-six years old. I never heard any thing about it till lately.

Patrick Darby, Jr. Mr. Stow's general character is that of a Believer.

Joseph Dunning. I have been acquainted with Mr. Stow about three years and a half. His general character is that of a Believer.

I have heard his character questioned, but it was by those *opposed* to him in *politics*.

David Spencer. Mr. Stow's general character is that of a Believer. I have been acquainted with him four or five years. I never heard any thing about his belief till within three or four years.

Joseph Scofield. Mr. Stow's general character is that of a Universalist. I never heard any thing about his religious tenets.

Ansel Hubbard. Mr. Stow is a believer. I have been acquainted with him more than twenty years. I never heard his character disputed except on days of election or near that time—he was *then* called a Universalist—at *other* times a believer.

Josiah Savage. Mr. Stow's general character is that of a believer, if belief in *Universal Salvation* makes a believer.

Samuel Hart. Mr. Stow's general character is that of a believer in Christianity. I never heard that he believed *not enough*—but that he believed *too much*, or believed differently from others. I was intimately acquainted with him in the fall session of the legislature in 1804. I then boarded with him.

Robert Fairchild. I have been acquainted with Mr. Stow about eighteen years. I can't say I ever heard any thing about his religious character one way or the other till this trial.

Ichabod Miller, Jr. Mr. Stow is a believer—I have been acquainted with him forty years—I never heard it doubted that he was a believer. He believed in Christianity and the Bible.

George W. Bull. I have been acquainted with Mr. Stow five or six years. His general character is that he is a believer in Universal Salvation.

Pierpont Edwards. I never heard Mr. Stow's character questioned as a believer. From his conduct in life, I should say he believed more than hundreds of professors.

John Russ. I never heard Mr. Stow's character questioned. I have known him many years.

Sylvester Wells. Thirty years ago, Mr. Stow's character was good as a believer. He was an *able defender* of the doctrine of Universalism. He is still thought a Universalist among those best acquainted with him. He has been uniformly a believer in Christianity.

Ques. by Defendant's Counsel. Do you recollect, *distinctly*, what Mr. Stow said in Convention?

Ans. My impression is that the statement I made the other day was correct. I remarked to some person by me that the sentiment was correct, but the expression was imprudent and would be misrepresented.

Capt. Starr. I never heard Mr. Stow's character *questioned*. It has always been good except among such a *rabble* as this.

Samuel Williams. I never heard Mr. Stow's character called in question till this trial. I have been acquainted with him five or six years.

Thomas Lyman. Mankind generally say that Mr. Stow believes in the scriptures. I have heard it said that he was an Infidel. What that means I don't know.

William Jewett. So far as my knowledge extends, Mr. Stow sustains the character of a believer. I have been acquainted with him five or six years.

Samuel Spalding. I have been acquainted with Mr. Stow four or five years. He sustains the general character of a believer. There are more in favour of his belief than against it.

Lyman Thayer. I never heard Mr. Stow's character as a believer questioned. He has always been a believer in Universalism.

Hezekiah Hale. Mr. Stow's general character has been that of a believer. I have been acquainted with him about thirty years. I have heard some individuals say to the contrary. I have known his belief in the Scriptures for fifteen years.

Joseph B. Gilbert. For ten or twelve years Mr. Stow has been a believer in *Universal Salvation*. I have heard it observed that he was an Infidel.

Elisha Babcock. Mr. Stow has sustained the general character of a believer in the scriptures.

Elisha Shephard. His general character is that of a believer.

Seth P. Paddock. I have always heard that Mr. Stow was a believer

John L. Lewis. I have been acquainted with Mr. Stow eighteen or nineteen years. He has always had the character of a believer in the Scriptures. He is a Universalist.

The Plaintiff's Counsel here made some further inquiries about the Ethosian Society.

Thomas Lyman. I was a member of the Ethosian Society. I never heard any thing about *infidelity* in the Society—it was a useful institution. I profited by it. There was no opposition in the conduct of its members, or in its articles. A variety of questions was discussed. None doubted the being of God—there were some doubts as to the Devil, as to his person and operation—whether he was spiritual—material, or immortal. It was never solved. Samuel C. Camp was President the evening I entered. The members were free in their inquiries. Every member had a right to question. The Bible was not read as I remember. Grammar, Geography and other things were read. It was thought abroad that it was a good school for improvement.

Ques. by Defendant's Counsel. How old was you at that time?

Ans. I was not quite *forty* when the Society was established. I am now over *seventy*.

Ques. by Plaintiff's Counsel. Did you hear Mr. Stow use the language ascribed to him in the convention?

Ans. In the Convention Mr. Stow supported the seventh article. I did not hear him use the term Devil at all. He would have been called to order if he had used it—it would not have been decorous.

Esq. Camp. The Ethosian Society had a reputation for useful knowledge. The members used to discuss questions. It had not the reputation of an Infidel Society.

Ques. by Plaintiff's Counsel. What is Mr. Stow's general character?

Ans. His general character is that of a believer. He has been a *Universalist* of late.

The evidence being all in, the Case was argued by Ingersoll and Smith for the Plaintiff, and Staples and Daggett for the Defendant.

The very able arguments of these gentlemen are necessarily omitted.

After the arguments were closed, the Chief Judge charged the Jury as follows :

Gentlemen of the Jury ;

We have arrived at length to the close of this interesting trial, and now it becomes my duty to submit the case to your determination. This is the sanctuary of justice, Gentlemen, and every controversy here ought to be heard and determined independently, impartially, and according to law and the evidence given in court. In a cause so likely to warp the mind by preconceived opinions, it is proper that I should call this subject to recollection, that you should permit no influence to exist except that which legitimately arises from testimony heard within these walls.

The action before you is trespass on the case, for making and publishing *written* slander. The declaration charges that the Defendant falsely and maliciously published, and procured to be published a certain false and defamatory libel, in a newspaper edited by him, of and concerning the Plaintiff. The publication is in a strain of irony, and is recited and accompanied with certain innuendoes, professing to point out its meaning. You, Gentlemen, are to take the words in that sense in which they would be understood by those who hear or read them. The Plaintiff has selected certain parts of the publication to found his action upon ; but to the parts you will recur to ascertain the spirit with which it was written, and to explain, if it may have that effect, the words complained of in the Plaintiff's suit. The words and innuendoes are of the following tenor, and it is necessary that you should critically attend to them or you will not discern the nature of the publication, or whether the expressions alleged are proved to be true.

To the Plaintiff's declaration, the Defendant has plead that he is not guilty of the matters alleged against him, and has given notice that he shall justify, that is, that he shall prove the truth of the allegations complained of.

The inquiry in order is, Did the Defendant *make* and *publish* the writing set forth ? On this point you are relieved from all difficulty—the Defendant admits the fact. It next becomes necessary to ascertain its character.

Between slander by *verbal* conversation and by *writing*, Gentlemen, there is great and essential difference. *Words* pass lightly, but the written letter remains ; the former are usually circulated within a narrow compass only, and are soon forgotten ; but *written* scandal may, and often does circulate extensively, and is read when the persons speaking are no more. Slander by word of mouth is frequently the result of inadvertence or sudden passion ; but written slander is deliberate and premeditated. Hence “ a malicious defamation expres-

sed either in printing or writing, to blacken the memory of the dead, or the reputation of one who is alive, and to expose him to public hatred, contempt, or ridicule," is a libel. On this principle, it has been adjudged, that a writing which declared that a person had the itch and stunk of brimstone, was libellous, because it might be the means of excluding him from society; and even to publish of a man that he is a villain, is actionable slander. I am of opinion, Gentlemen, if the innuendoes or meanings in the Plaintiff's declaration are found by you to be correct, that each of the clauses, in the printed publication which I have distinctly read to you, is a libel, unless the truth of the matter contained in it is proved. It is undoubtedly necessary that the words complained of should have been published *falsely* and *maliciously*; for if they are deficient in either of these particulars, they are not libellous. The act, however, of publishing scandal of another being illegal, unless the matter is true, the law casts the burden of proving the truth on the Defendant, and on failure of this, it implies that the words are false and *malicious*.

In this case, the Defendant justifies the publication, and has assumed on himself to prove that the words alleged are true. Whether he has succeeded or not, it is your province to determine.

Before you recur to the testimony, it is proper that certain principles of law should be stated for the guidance of your deliberations.

The defendant is bound to prove the charges he has made, *not literally*, but in their *substance*, and it becomes your duty carefully to ascertain what is the plain meaning and understanding of the terms used in the publication complained of.

When two witnesses of equal credibility and equal means of information with another witness, testify in contradiction of him, they are to be believed, other things being equal, if their testimony is equally positive, or if it meets his evidence by a contrary positive assertion. But if a witness testifies positively to a fact, and another says he did not hear it, the witness who swears to the fact is to be believed. On this head, however, it is the duty of the triers to attend to every fact; and they must and will decide according to their convictions produced by the supposed weight of evidence, and to ascertain its weight is *your exclusive* province.

It is your duty, Gentlemen, to read the whole publication, in order to understand the meaning and spirit of the charges complained of, but not to inquire why the clauses not declared upon were not prosecuted.

If the Defendant, Gentlemen, prove one or more of the allegations, in the publication complained of, to be true, he *thus far* will have justified himself; but if there is libellous matter remaining unproved, it stands on the same ground as if it were the only matter alleged in the declaration. The Defendant is bound to justify each and every slanderous imputation he has published of the Plaintiff, and unless his proof covers his whole charge, his justification fails, and he must be responsible for the scandal which he has not proved to be true.

Testimony, Gentlemen, has been admitted, to show that the Plaintiff's general character is that of an Infidel; and the Plaintiff, to rebut it, has adduced evidence to prove himself a believer. If you find the Plaintiff not to be an Infidel, the testimony will be of no avail. But if you find that the Plaintiff's *reputation* is that of an Infidel, this proof is alone to be applied to the damages. It is no evidence applicable to the merits of the case.

As to the Ethosian Society, the evidence of its general character, to prove that it was an infidel club is inadmissible, and to be rejected from consideration.

Gentlemen, The Defendant has contended, that the charges made by him in the publication declared on, are all of them true; while, on the other hand, the Plaintiff insists that they are all false and malicious. This is the great question of fact, you are to determine.

I am not permitted by law, Gentlemen, to forestall your opinion on this subject, by the expression of my own, nor shall I attempt a recapitulation of the evidence—it is unnecessary, and perhaps impossible, without communicating the impression it has made on my mind. It is your duty to attend to this inquiry, and I make no doubt you will exercise it by an impartial and deliberate examination of the testimony.

You will take the case into your consideration, and if you shall find that the Defendant made and published the writing declared on, that it is libellous, and that the Defendant has not proved the truth of the defamatory matter contained in it, your verdict must be for the Plaintiff with such damages as you shall think just and reasonable.

On the other hand, if you shall find that the Defendant did not make and publish the writing in question, or that it is not libellous, or that the Defendant has proved the charges contained in it to be true, you will find him not Guilty.

The next morning the Jury returned a verdict for the Plaintiff of three hundred seventy-five dollars damages, and his costs.

The Chief Judge thereupon, by virtue of our Law authorizing the Court, when they disapprove a verdict rendered, to return the Jury to a second or third consideration of the case, addressed the Jury substantially as follows:

Gentlemen of the Jury—The Court think you have found the right way, but they also think you have not awarded sufficient damages to the Plaintiff. The charges of the Defendant against the Plaintiff in this Libel, are very broad and extensive, and it is incumbent upon him to prove them substantially in as broad a sense as he has made them. If a man libels another by accusing him of being in the habit of frequenting *brothels*, for instance, it is not a justification or excuse for him to prove that the person accused has been known to resort to a brothel in one particular instance. The Defendant has charged not merely *single instances* of misconduct, but *habitual* misconduct, against Mr. Stow. He has charged him with insulting the Clergy, and destroying all the religious institutions of the State; now I cannot think that the evidence adduced by him on these points, is sufficient to make out these broad charges.

With respect to Mr. Stow's speech in the Convention, he is charged with using language that would certainly be very irreverent. The language attributed to him is not merely *negative*—it seems to import something more. To say that government have no right by law to compel worship of any kind is a very different thing. Now it is in proof that the Plaintiff himself drew the article in our Constitution on this subject; and that he supported it in the Convention; and this goes to show that he did not use the expression attributed to him: for if he had used it, it would have been a palpable absurdity, and a contradiction. Mr. Converse was present at that time as Reporter of the Debates, and in his Report has not made use of this expression. Such an expression, if it had been used, would have excited indignation, and been remembered by many persons.

As to the Infidel Club, the charge of the Defendant against the Plaintiff is, that he set up and supported it, and seduced the companions of his youth to join it. I doubt, from the proof, whether the Society which has been spoken of, was an Infidel Club, or not. At any rate there is no evidence that the Plaintiff set it up, that he instituted it. The charge is that he was its founder, or patron. It in no respect supports this charge, that he was a member. He is said to have *seduced* others to join it; what does this mean? To seduce, imports to corrupt, deceive, mislead. What evidence is there, that the Plaintiff did this to make others join this Society? What, that he knew this was an Infidel Club, or that any thing was ever done in it, that he saw to be of this nature!

The charge against the Plaintiff as Post-Master is, that he *farmed out* the office, and paid no other attention to it than to *farm it out* to the keeper of a turnpike-gate. To justify this, the Defendant must prove, that the Plaintiff *let it to farm*. There is no evidence that applies to this point. It is *not true* that he paid *no other* attention to it, than to farm it out. The evidence is that he was at least *sometimes* there, and superintended the business of the office. Whether he did not *neglect* the business of the office, is another question, and on this there is a contrariety of evidence.

As Director of the Bank, the Plaintiff is charged with having received notes of the customers of the Banks, and for a compensation aiding in procuring them discounted. The charge is not of *one instance*, but of a habit, and as if this were the Plaintiff's general conduct. The words are, "Notes," in the plural. Of this charge, I think there is no evidence at all. A single instance is adduced by the Defendant in which it appears that the Plaintiff himself advanced money to an individual, to aid him in meeting his note. His conduct was very *honourable* and *friendly* in this case. Admitting that for a compensation Mr. Stow advanced this money, there is nothing in it dishonourable to him as Director of the Bank.

This brings me to the question of damages. To ascertain the amount of which, we must look at the nature, weight, and effect of the charges. These exhibit the Plaintiff, 1st as impious; 2d as having seduced the companions of his youth to join an Infidel Society; 3d

as having insulted the Clergy; 4th as having attempted to destroy all religious institutions; 5th as having misbehaved himself as Post-Master; and 6th as having abused his office as Bank Director. If these charges against the Plaintiff were believed, they would destroy the Plaintiff. Merely the charge respecting his Speech in the Convention, and his ill-treatment of the Clergy, if believed, would eventually drive him from Society. As to the others, if true, no one would ever confide in him as an honest man, or as at all deserving of confidence. They are very *unusual* charges, and *if* false, they show a great degree of malice in the Defendant. In point of *malice* this case is very unusual. It is difficult to find any case before a Court and Jury where the damages ought to be higher. Besides, the Plaintiff's expenses in this case, are obviously very great. The Defendant here has introduced a great number of witnesses to prove the Plaintiff's general reputation to be that of an Infidel; but this point is not supported, if two thirds of the witnesses testify differently respecting it; and if it were supported, the testimony is only applicable to that part of the charges which relates to the Infidel Club. I must therefore return you to another consideration of the case, and must give it as my opinion that this is a case which calls for exemplary damages.

On the 22d of August, the Jury having had the case under re-consideration for three days, again returned into Court a verdict for the Plaintiff of Seven hundred dollars damages, and his costs. The Chief Judge then again addressed them substantially as follows:

Gentlemen of the Jury—I do not know that I can say any thing further in this case, that will be of any use. And yet I am unwilling to concur in this verdict. If this is to be the verdict, I choose it should be the work of the Jury, without my concurrence. This verdict is no compensation to the Plaintiff. If the Libel be false in any one of the articles of charge, as you have found it to be;—for instance, in the charge about the Bank, which imputes not a single instance, but a constant habit of misconduct to the Plaintiff;—in my opinion the verdict is no compensation for such a charge. Even in a case of *verbal* slander recently tried in this County, a case well-known, perhaps to some of the Jury,* heavier damages than these were given. But this is a case where the slander is *written* and *published*, and therefore much more permanent. The mode in which the Defendant treats this case, by *justifying* what he has published, ought to be considered an *aggravation* of the damages. I do not see as the Jury have given the Plaintiff any thing, when we consider the great expenses to which he has been put, in procuring the attendance of so many witnesses, employing counsel, &c. The damages are not equal to his expenses, and indeed are not enough to cover more than a part of his expense. Besides, it should be remembered that the *public* are interested in this case; I must therefore repeat to you that I consider it a case for exemplary damages, and request you again to *re-consider* your verdict.

* The Court here alluded to a case of very gross and unprovoked slander, against a most respectable female. It was the case of Fowler and wife v. Timothy Frisby, tried January Term, 1818.

The Jury, after again reconsidering their verdict, returned it into Court without alteration. This, being their third finding, was *final*; and the Court had not power to send them out again.

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Motion for New Trial.—Supreme Court of Errors, 1821

STOW vs. CONVERSE.

BE it remembered, that on the trial of this case to the Jury—the Plaintiff omitted to read the libellous matter, set forth in the declaration in the following words. Let those who have been compelled to pay their taxes to him, (meaning the Plaintiff,) as collector of the national tax, speak of his, (meaning the Plaintiff's,) fairness and impartiality in his, (meaning the Plaintiff's,) exaction, of the justness of his, (meaning the Plaintiff's,) fees of office. And the Plaintiff likewise omitted to read, on the said trial, the innuendo, explanatory of the next following the preceding recital, and offered no evidence to prove the said allegations and innuendo; but in open court relinquished and abandoned the same. And the Defendant offered to prove by George Geer and others, the truth of the above recited allegations. To the admissibility of which evidence, the Plaintiff objected, that having abandoned that part of the declaration which the Defendant thus offered to justify, the testimony offered was irrelevant, and the court being of this opinion, rejected the same.

2nd. And the Defendant for the purpose of showing that the Plaintiff was an Infidel, offered a part of the deposition of Polly Augur, consisting of a question and answer, as follows, to wit.

What do you consider Mr. Stow's general character, as to Religion?

Answer. I consider him an Infidel, or an unbeliever.

For the same purpose, the Defendant offered the hereinafter recited depositions of Alma Lyman, William Southmayd, and other parol evidence, to prove the Plaintiff to have been an infidel at the publication of the alleged libel.

To the admission of which testimony it was objected by the Plaintiff that his infidelity was not a matter in issue between the parties, and that, therefore, the said evidence offered was incompetent, and the court being of this opinion, repelled the same.

3rd. And the Defendant, to prove that the Plaintiff had attempted to destroy all religious institutions, and particularly the Church, Society, and religious institutions of Middlefield, offered in evidence the deposition of Alma Lyman and William Southmayd of the tenor following, to wit.

Alma Lyman of lawful age, living in Middletown, in Middlesex county, being duly sworn, deposeth and saith that she has sometimes heard Mr. Joshua Stow speak against the authenticity of the Scriptures, but more frequently in terms of ridicule and sarcasm, and once,

after saying something rather contemptuously of them, he said, Well, the Bible is good for something, for after it is worn out, it will do to use at the *little house*. This was spoken with a good deal of emphasis, and a laugh. And further the deponent saith not.

Question by Defendant's Attorney. Please to state what you have heard Mr. Stow say concerning the authenticity of the Scriptures, as being of Divine revelation.

Answer. I have heard him speak against the authenticity of them, and reason against them, but the *particular* language that he made use of I cannot recollect.

Question by the same. How long since?

Answer. Perhaps sixteen or eighteen years.

Question by the same. Have you or have you not heard Mr. Stow say that he did not believe the Scriptures, or any part of them to be the word of God?

Answer. I do not recollect that I have ever heard him say expressly that they were not the word of God. His more general manner of speaking of the Bible, when I have heard him speak of it, was in the way of ridicule, as I mentioned before.

Question by the same. Please to state what abusive or disrespectful language or sentiment, you have heard Mr. Stow use towards, or concerning the Clergy.

Answer. I cannot recollect any particular expression of his about the Clergy; I have heard him speak formerly against the Clergy, the particular form of expression, I do not know.

Question by the same. Please to state what is Mr. Stow's general character, as a believer or unbeliever in Divine revelation.

Answer. I never knew that any person thought him a believer in Divine revelation, till since the court at New-Haven last winter.

Question by the Plaintiff, Mr. Stow. Did you ever talk to me, and tell me you thought I entertained any very erroneous opinion?

Answer. When I have heard you talk, I have sometimes told you that I did not believe as you did; but I have generally found it best to let you go on without making much reply.

Question by the same. At what time did you tell me you did not believe as I did?

Answer. Once when you came to my father's and talked to my sister and myself against religious awakenings. It was about seventeen years ago.

Question by the same. Have you had any friendly intercourse with me, since you were married?

Answer. I think not, therefore have not had much opportunity of hearing your religious sentiments from your own lips since that time. I do not mean by this, that I have never visited at your house, or your family visited me.

Question by the same. Is there not an unfortunate disagreement between your husband and me?

Answer. I do not know of any disagreement that you have.

Question by the same. Has there not been always a very friendly understanding between me and your father's family?

Answer. Undoubtedly.

Question by the same. Do you mean to say that there is a neighbourly and friendly feeling in your husband towards me?

Answer. I cannot tell you any thing about my husband's feelings.

Question by the same. Do you or do you not know of any thing to the contrary of a common neighbourly intercourse between me and your husband?

Answer. I do not wish to answer.

Question by the same. Have not some part of the church agreed that if I lead or exercise any superintendance of any religious meeting in the meeting-house, they will leave the house?

Answer. The church records are open you can examine them.

Dated at Middletown, in Middlesex county, this 9th day of August, 'A. D. 1820.

ALMA LYMAN.

William Southmayd, of Middletown, in Middlesex county, of lawful age, being duly sworn, doth depose and say, That sometime between the years 1813 and 1815, Joshua Stow, Esq. remarked, that his mother-in-law, Mrs. Coe, had frequently talked to him upon the subject of praying in his family. That at a time she was at his house on a visit to spend the night—that in the course of the evening she introduced the subject anew. That he concluded to gratify the old lady by praying. I think that he introduced the prayer in the following manner: That he told the Lord he did not come in his own name, but in the name of mother Coe. She wanted him to pray for her. He said he prayed that the Lord would supply her with plenty of beef and pork in her cellar, that she might have abundance. That she might have corn and rye in abundance. That she might have a plenty of wool and flax, for that mother Coe was fond of spinning and making cloth. That she might have many other articles, mentioned by Mr. Stow, in abundance. That all her children might have those things in plenty, especially son Seth. I think that after he had got through with the things of this world, he mentioned that she might have a good seat in heaven, and that all her children might have the same, especially son Seth. This conversation was at Hinsdale's corner, in Middletown. There were from ten to fifteen persons present. I well remember that Mr. Ephraim Bound was there. And further the Deponent saith not.

Dated at Middletown, this 10th day of August, 1820.

WILLIAM SOUTHMAYD.

The Defendant likewise, to prove that the Plaintiff had attempted to destroy all religious institutions, and particularly, the church, society and religious institutions of Middlefield, offered in evidence, votes proposed by the Plaintiff, and passed at a meeting of the inhabitants of the society of Middlefield, by his procurement, on the 26th of December, 1816, of the following tenor, to wit.

At a meeting of the inhabitants of the society of Middlefield, duly assembled at the public school room in said society, December 26th, 1816.

An act for the support of literature and religion having passed the legislature of Connecticut, purporting to appropriate a large sum to various denominations of Christians, for the support of the Gospel, by which the civil and religious rights of the citizens of Connecticut are deeply affected—Therefore, we deem it proper, in a respectful manner, to express our opinions on the subject.

Resolved, That the claim on the United States, pretended to be appropriated, is of a disputable nature. If it did not originate in opposition to the general government, it was not under their sanction or their authority, but under the sanction and authority, and in the particular and private views of this state only, from which circumstance it is probable that little or nothing will be allowed to the state.

Resolved, That a pretended appropriation, under such circumstances, tends to inlist personal feelings, from personal interests, and thereby create an opposition to the government of the United States.

Resolved, That we think any appropriation of a disputed claim, thus circumstanced, is unwise and impolitic, to say the least. But when considered in connexion with the pretended purpose, namely, for the support of the Gospel, we want for words to express our astonishment.

Will the legislature of the enlightened state of Connecticut, under the pretence of supporting the Gospel, through a mistaken zeal, aid the secret views of individuals, and promote disaffection, discord, and contention? Will they establish a precedent, whereby some future legislature, not as honest or as candid, might grant a large sum of money to prop up a sinking administration and a sinking establishment of religion? The time may come when a wicked priesthood may connect themselves with the government of the state, and control the legislature. Civil and ecclesiastical hypocrisy may league together, and some future legislature may open the Treasury for the purpose of corruption and iniquity: they may find themselves sinking into merited disgrace, to prevent which they may seize upon this precedent.

Resolved, That in our opinion, all mankind have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and that no power can or ought to be vested in any legislature to establish any sectary of religion, or to raise money from the people for the purpose or to appropriate any money raised from the people for the support of any sect or order of religion whatever, and that all laws or grants contravening this principle are unconstitutional, arbitrary, and unjust.

Resolved, That although little or nothing has been granted by the legislature, because little or nothing has been or probably ever will

be received, yet we view the principle recognized in the act, as extremely dangerous to the civil and religious liberties of the people of this state, and that it is the duty, as well as the right, of the citizens to express their pointed disapprobation of the measure.

The preceding is a true extract from the original record, copied and examined by me,

J. STOW, *Society's Clerk.*

At a meeting of the inhabitants of the Society of Middlefield, duly assembled at the school-room in said Society, Dec. 26th, 1816.

Resolved, That we are desirous of having the Gospel preached in our meeting-house in this society, and that, according to our understanding of the scriptures, the Gospel is good news to mankind, it is "*good tidings of great joy, which shall be to all people.*" If the preachers of this gospel should be sent to us by man, or any order of men, we view them, notwithstanding, as being sent of God, and we feel the importance of listening to their instruction, and we trust we are both able and willing, as may be needed, to contribute for the support of such preaching, according to the precepts of the Gospel. But when we find persons coming amongst us under the sanction of any order of men, proclaiming, instead of the Gospel, their discoveries of God's secret decrees, whereby some part of mankind were created for the express purpose of eternal misery, and that, by the decree of God for the manifestation of His glory, some men and angels are predestined to everlasting life, and others fore-ordained to everlasting death: we do consider such preachers, not as commissioned of God to preach, but as teaching for doctrines the commandments of men.

Resolved, That we view such doctrines as wicked and ruinous, calculated to do no good, but much mischief. We do fear they have been the cause of much mental derangement, and some consequent suicide: and we cannot bid such preachers God speed; nor can we conceive how those, who profess to believe this doctrine, can employ themselves and their agents in urging mankind to resist this decree, so far as it relates to the fore-ordained.

And whereas, such preachers have been sent into this Society, by authority we know not from whom, professing and teaching this worst of all doctrines, we deem it proper to express our dislike and abhorrence of the principles, as being totally repugnant to the Scriptures, and to our views of the Gospel—

Resolved, That our meeting-house may be open to any and all denominations of Christians, agreeably to our former vote, but that the missionaries of the description herein before mentioned, be considered as having the right to preach in the meeting-house only, at such times as it may not be needed by others.

Resolved, That so far as any individuals of this society may differ from us in the belief of this doctrine of decrees, we are willing that they should enjoy their equal rights in the meeting-house, and that, in proportion to their numbers, they have the same right with us, but that we do disapprove of the interference of the Domestic Missionary

Society, who have no right to our meeting house, or to dictate to us any creed whatever.

The preceding is a true copy of record. Examined by
J. Stow, *Society's Clerk*.

Likewise to prove that the Pltff. had attempted to destroy all religious institutions, and particularly the church, society, and religious institutions of Middlefield, the Deft. offered parol evidence to prove the Pltff. asserted, in conversation, that the Bible was untrue, and that to a member of the church in Middlefield.

To the inadmissibility of which testimony the Pltff. objected that the same had no relevancy to prove the point for which it was offered, and being of the same opinion, the court rejected the said evidence.

4th. And it having been proved, in the said trial, that a debating society, called the Ethosian society, existed in Durham from 1787 to 1793, of which the Pltff. was a member in the year 1790, and of which he invited his brother Silas Stow, and Col. Elisha Coe, to become members, who were made members accordingly. The Deft. after having introduced witnesses to prove that said society was an Infidel Club, engaged in propagating Infidel principles, adduced Samuel C. Camp and others, to prove that the said society bore the general character of an Infidel society, in order to justify the averment in the declaration, that the same was an Infidel club, and to show that the Pltff. was entitled to no damages on this charge, or to nominal damages only. And in the argument to the jury the Pltff. contended that the said testimony was inadmissible, and prayed the court so to instruct the jury, and being of this opinion the court directed the jury to reject the said testimony from consideration.

5th. And the Pltff. on the said trial, for the purpose of repelling the charge that he attempted to destroy the religious institutions as the Deft. had alledged, offered in evidence certain subscription papers for the support of preaching, drawn up, circulated, and subscribed by himself, accompanied with parol evidence to shew that he paid the money subscribed by him, which subscription papers were of the following tenor, to wit:

We, the subscribers, wishing to continue Mr. J. Phelps to preach in the society of Middlefield, do agree and promise to pay unto the society's committee, the sum of one cent on the dollar on our several polls and rateable estates on list 1809, for the purpose above mentioned, if Mr. Phelps will continue until the money be expended, otherwise for such preaching as said committee shall procure, to be paid whenever the said committee shall call for the same after the first day of November next. Provided, that the grand levy of the subscribers shall be equal to one half of the grand levy of Middlefield, otherwise to be null and void.

Middletown, August 25th, 1820.

Joseph Wetmore, Jr. 50 cts.
Alfred Lyman,
Isaac Bailey,

William Ward,
Abel Birdseye,
David Lyman,

Lumon Wetmore,
 Elisha Coe, 50 cts.
 Joshua Stow,
 Jacob Miller,
 William Lyman,
 Isaac Miller,
 Camp Coe,
 Minerva Dexter, 25 cts.
 John W. Miller,
 Connel Coe, 50 cts.
 Ira Kimball,
 Phineas Augur, 40 cts.
 Asa A. Johnson,
 Oliver Bailey,
 Obed Strong,
 Joseph Hale,
 Joseph Wetmore,
 Lucy Miller,
 Eli Coe,

Ruth Birdseye, 1 dollar.
 Ruth Birdseye, Jr. 50 cts.
 Ichabod Miller,
 Jeremiah Miller,
 Samuel Miller,
 Hezekiah Hale, Jr.
 Eliza Hall,
 Ezra Spencer, 50 cts.
 Samuel Hawley,
 William Cole,
 Julius L. Bowers, 50 cts.
 Stephen Harding, 50 cts.
 Elihu Coe,
 Jacob Miller, Jr.
 Joseph Coe,
 Fairchild Camp,
 John Dickinson, 50 cts.
 Ichabod Miller, Jr. 2 dollars.
 Seth Miller.

The other offered subscription papers were similar. To the admission of which testimony the Deft. objected that the same was irrelevant.. But the court being of opinion that the said testimony was relevant, admitted the same.

And the court charged the Jury as follows :

“*Gentlemen of the Jury;*

We have arrived at length to the close of this interesting trial, and now it becomes my duty to submit the case to your determination. This is the sanctuary of justice, Gentlemen, and every controversy here ought to be heard and determined independently, impartially, and according to law and the evidence given in court. In a cause so likely to warp the mind by preconceived opinions, it is proper that I should call this subject to recollection, that you should permit no influence to exist except that which legitimately arises from testimony heard within these walls.

The action before you is trespass on the case, for making and publishing *written* slander. The declaration charges that the Defendant falsely and maliciously published, and procured to be published a certain false and defamatory libel, in a newspaper edited by him, of and concerning the Plaintiff. The publication is in a strain of irony, and is recited and accompanied with certain innuendoes, professing to point out its meaning. You, Gentlemen, are to take the words in that sense in which they would be understood by those who hear or read them. The Plaintiff has selected certain parts of the publication to found his action upon ; but to the other parts you will recur to ascertain the spirit with which it was written, and to explain, if it may have that effect, the words complained of in the Plaintiff's suit. The words and innuendoes are of the following tenor, and it is ne-

cessary that you should critically attend to them or you will not discern the nature of the publication, or whether the expressions alleged are proved to be true.

To the Plaintiff's declaration, the Defendant has plead that he is not guilty of the matters alleged against him, and has given notice that he shall justify, that is, that he shall prove the truth of the allegations complained of.

The inquiry in order is, Did the Defendant *make* and *publish* the writing set forth? On this point you are relieved from all difficulty—the Defendant admits the fact. It next becomes necessary to ascertain its character.

Between slander by *verbal* conversation and by *writing*, Gentlemen, there is great and essential difference. *Words* pass lightly, but the written letter remains; the former are usually circulated within a narrow compass only, and are soon forgotten; but *written* scandal may, and often does circulate extensively, and is read when the persons speaking are no more. Slander by word of mouth is frequently the result of inadvertence or sudden passion; but written slander is deliberate and premeditated. Hence "a malicious defamation expressed either in printing or writing, to blacken the memory of the dead, or the reputation of one who is alive, and to expose him to public hatred, contempt, or ridicule," is a libel. On this principle, it has been adjudged, that a writing which declared that a person had the itch and stunk of brimstone, was libellous, because it might be the means of excluding him from society; and even to publish of a man that he is a villain, is actionable slander. I am of opinion, Gentlemen, if the innuendoes or meanings in the Plaintiff's declaration are found by you to be correct, that each of the clauses, in the printed publication which I have distinctly read to you, is a libel, unless the truth of the matter contained in it is proved. It is undoubtedly necessary that the words complained of should have been published *falsely* and *maliciously*; for if they are deficient in either of these particulars, they are not libellous. The act, however, of publishing scandal of another being illegal, unless the matter is true, the law casts the burden of proving the truth on the Defendant, and on failure of this, it implies that the words are *false* and *malicious*.

In this case, the Defendant justifies the publication, and has assumed on himself to prove that the words alleged are true. Whether he has succeeded or not, it is your province to determine.

Before you recur to the testimony, it is proper that certain principles of law should be stated for the guidance of your deliberations.

The defendant is bound to prove the charges he has made, *not literally*, but in their *substance*, and it becomes your duty carefully to ascertain what is the plain meaning and understanding of the terms used in the publication complained of.

When two witnesses of equal credibility and equal means of information with another witness, testify in contradiction of him, they are to be believed, other things being equal, if their testimony is equally positive, or if it meets his evidence by a contrary positive assertion.

But if a witness testifies positively to a fact, and another says he did not hear it, the witness who swears to the fact is to be believed. On this head, however, it is the duty of the triers to attend to every fact; and they must and will decide according to their convictions produced by the supposed weight of evidence, and to ascertain its weight is *your exclusive* province.

It is your duty, Gentlemen, to read the whole publication, in order to understand the meaning and spirit of the charges complained of, but not to inquire why the clauses not declared upon were not prosecuted.

If the Defendant, Gentlemen, prove one or more of the allegations, in the publication complained of, to be true, he *thus far* will have justified himself; but if there is libellous matter remaining unproved, it stands on the same ground as if it were the only matter alleged in the declaration. The Defendant is bound to justify each and every slanderous imputation he has published of the Plaintiff, and unless his proof covers his whole charge, his justification fails, and he must be responsible for the scandal which he has not proved to be true.

Testimony, Gentlemen, has been admitted, to show that the Plaintiff's general character is that of an Infidel; and the Plaintiff, to rebut it, has adduced evidence to prove himself a believer. If you find the Plaintiff not to be an Infidel, the testimony will be of no avail. But if you find that the Plaintiff's *reputation* is that of an Infidel, this proof is alone to be applied to the damages. It is no evidence applicable to the merits of the case.

As to the Ethosian Society, the evidence of its general character, to prove that it was an infidel club is inadmissible, and to be rejected from consideration.

Gentlemen, The Defendant has contended, that the charges made by him in the publication declared on, are all of them true; while, on the other hand, the Plaintiff insists that they are all false and malicious. This is the great question of fact, you are to determine.

I am not permitted by law, Gentlemen, to forestall your opinion on this subject, by the expression of my own, nor shall I attempt a recapitulation of the evidence—it is unnecessary, and perhaps impossible, without communicating the impression it has made on my mind. It is your duty to attend to this inquiry, and I make no doubt you will exercise it by an impartial and deliberate examination of the testimony.

You will take the case into your consideration, and if you shall find that the Defendant made and published the writing declared on, that it is libellous, and that the Defendant has not proved the truth of the defamatory matter contained in it, your verdict must be for the Plaintiff with such damages as you shall think just and reasonable.

On the other hand, if you shall find that the Defendant did not make and publish the writing in question, or that it is not libellous, or that the Defendant has proved the charges contained in it to be true, you will find him not Guilty."

The Defendant, believing the various points determined by the said Court, and the charge aforesaid, to be *erroneous*, requests a New Trial in the said case, and that the same may be reserved for the consideration of the Supreme Court of Errors, and that the execution in the said case may be stayed.

Allowed by ' HOSMER, J.

The motion was argued at this Term of the Court, and a New Trial was *refused*.

We have a Statute Law of this State, passed by the Legislature at its May Session, 1820, which continued in force until the 1st day of January, 1822, which runs thus—“*Be it enacted by the Senate, &c.* That in all matters of Law, decided by the Supreme Court of Errors, wherein the Judges shall not *publicly* assign the reasons of their judgment, it shall be the *duty* of the Judges to cause the opinion of the Court to be *reduced to writing*, and lodge the same with the Clerk of the Supreme Court of Errors, in the county where the case is tried, previous to the Session of the Superior Court, *next succeeding* the Session of the Court of Errors in the county where the trial is had.”

The Judges not having complied with the requirements of this Statute, puts it out of our power to furnish the public with the *reasons* for refusing a New Trial in this case.

Middlesex Superior Court, February Term, 1822.

JOSHUA STOW, } This was an action on a Note of hand, dated
 vs. } the 26 of February, 1820, made by the Defen-
 HENRY LYMAN. } dant to the Plaintiff, for 1060 dollars, payable at
 the Eagle Bank in New-Haven, in ninety days from date. Also
 for the sum of 650 dollars, paid by the Plaintiff for the Defendant,
 at the Branch Bank of the United States at Middletown. The plea
 of the Defendant was, that he did not assume, and promise, &c. The
 Plaintiff produced the note, and the Defendant admitted his signa-
 ture, but alleged that the note was not given for any consideration,
 but was borrowed of the Defendant to enable the Plaintiff to raise
 money thereon, and in proof of his defence, among other facts, the
 Defendant read in evidence a receipt under the hand of the Plain-
 tiff, wherein he acknowledged that he had received that note, *and*
promised to account for it. In answer to the claim for the 650 dol-
 lars, paid for the Defendant by the Plaintiff, at the United States
 Bank, the Defendant admitted that the Plaintiff had so paid it, but
 proved that on the day on which the Plaintiff paid it, the Defendant
 gave him his note for the amount, which had since been paid. The
 Plaintiff, on the disclosure of this fact, said to the Court and Jury
 that *he had forgotten that circumstance*, and that he now gave
 up that part of the case; but still insisted on his right to recover on
 the note for 1060 dollars. The Jury, however, composed of his
 neighbours, gave a verdict against him on both claims, and this
 verdict was accepted by the Court.

[The Plaintiff in the above suit, is the same person who appears
 as Plaintiff, in the trial for an alleged libel.]