

REPORT

OF THE CASE OF

Rev. MOSES THATCHER,

VS.

GEN. PRESTON POND,

FOR SLANDER,

IN CHARGING HIM WITH COMMITTING

THE CRIME OF ADULTERY.

REPORTED FOR THE DEDHAM PATRIOT.

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REPORT.

At the Court of COMMON PLEAS, held at DEDHAM, in the County of Norfolk, December Term, 1837, the case of Rev. MOSES THATCHER vs Gen. PRESTON POND, was brought up for trial, on Monday, 25th inst.

HON. DAVID CUMMINS, JUDGE.

PLINY MERRICK and IRA CLEVELAND, Esqrs. appeared as Counsel, in behalf of the Plaintiff.

RUFUS CHOATE and T. METCALF, Esqrs. conducted the defence.

The following is a copy of the original Writ, upon which the action was founded :

COMMONWEALTH OF MASSACHUSETTS.

NORFOLK, SS.

To the Sheriff of our County of Norfolk, or his Deputy. GREETING:

We command you to attach the goods or estate of Preston Pond of Wrentham, in the county of Norfolk, Yeoman, to the value of thirty hundred dollars, and for want thereof to take the body of the said Preston if he may be found in your precinct, and him safely keep, so that you have him before our justices of our Court of Common Pleas next to be holden at Dedham, within and for our said county of Norfolk, on the fourth Monday of April next, then and there in our said Court to answer unto Moses Thatcher, of Wrentham, in said county of Norfolk, Clerk in a plea of the

case for that whereas the plaintiff is a good and faithful citizen of said Commonwealth, and for more than twelve years now last past has been and still is a preacher and minister of the Gospel, legally settled and ordained over the church and society called the Cleveland Religious Society in North Wrentham, and was always of good reputation and character for virtue and chastity among all his acquaintances, and is and ever has been free from the odious crime of adultery nevertheless the said *Preston Pond*, not being ignorant of the premises, but maliciously and wickedly contriving and intending to blacken and defame the plaintiff in his good name and reputation, injuring him in his ministerial office aforesaid and put him in danger of losing the same and the income and profits therefrom accruing to him, on the fourteenth day of March now current at Wrentham aforesaid, in the county aforesaid, in the presence and hearing of divers good citizens of said Commonwealth, did openly speak utter and publish of and concerning the plaintiff, he being such minister and preacher of the Gospel as aforesaid, the following false, scandalous, malicious and defamatory words, to wit: "I (meaning the said *Preston*) can prove that he (meaning the said *Thatcher*) had criminal intercourse with my brother's wife, (meaning *Jerusha M. Pond* wife of *Smith Pond*) with *Adaline Hawes*, and with *Mrs Simmons*; that he (meaning the plaintiff) had confessed the fact to *Mr Simmons* and *Smith Pond*." And the said *Thatcher* further says that the said *Preston*, at said Wrentham, on the tenth day of March now current in the presence and hearing of divers citizens of said Commonwealth, with the intention and purposes aforesaid, did openly speak, utter and publish of and concerning the plaintiff, he being such minister and preacher of the Gospel, as aforesaid, these other false, scandalous and defamatory words, to wit: "he (meaning the plaintiff) has been in bed with *Adaline* (meaning a certain woman by the name of *Adaline Hawes*) repeatedly." And the said *Thatcher* in fact further says that the said *Preston*, at said Wrentham, on the eighth day of March now current, in the presence and hearing of divers good citizens of said Commonwealth, and with the intention and purpose aforesaid, in a certain discourse which he the said *Preston* then and there had, did openly and publicly, falsely and maliciously charge the plaintiff with the crime of adultery, and did accuse the plaintiff of having committed the crime aforesaid.

By means of the speaking and publishing of which said several false, scandalous and defamatory words, and of the said false and malicious charge and accusation, the plaintiff has been exposed to be unjustly suspected of the crime of adultery, and has been put in danger of being deprived of his ministerial office aforesaid, and of losing the benefits and advantages accruing to him therefrom, and has likewise undergone great pain and distress in body

and mind, and has been greatly injured in his reputation and in his religious character and usefulness, to the damage of the said Thatcher, as he says, the sum of thirty hundred dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein. Witness Artemas Ward, Esquire, at Dedham, the twenty fourth day of March, in the year of our Lord one thousand eight hundred and thirty seven.

JOS. G. KENDALL, *Clerk.*

After the reading of the Writ, the Counsel for the defendant filed the following specification of the grounds of defence:

And now the said Pond comes and defends &c. when &c. and says he is not guilty in manner and form as the plaintiff has above thereof declared against him and thereof for trial put himself on the County.

By R. CHOATE, his *Attorney.*

1. And the said defendant pursuant to an order of the Hon. Court specifies and states, that he shall at the trial offer evidence of matter, tending to rebut and disprove the case which the plaintiff shall make out, and that he shall deny that he spoke the words alleged by the plaintiff in his declaration to have been spoken, and that he shall deny that he spoke them, or any words of the plaintiff maliciously.

2. And the said defendant will on the trial, give evidence to prove that the words alleged in the declaration to have been spoken by him and all such thereof, if any, as the plaintiff may succeed in proving him to have spoken, were, and are true, and that any and all accusations of crime, and all slanderous matter which if any the plaintiff shall succeed in proving upon the defendant, are and were truly made and spoken, and that the plaintiff is and was guilty as accused.

3. And the said defendant will further offer evidence to prove, that, if it shall be proved that at any time he spoke any of the words charged in the declaration, he did uniformly, and at the time of speaking them, declare that they were told to him by some persons or person, whose name he at the same time uniformly and truly gave, and that it was true in fact—that all words which if any he shall be proved to have spoken, have been communicated to him as true, by credible persons, entitled to belief, and that he believed them.

4. And the said defendant will further offer evidence, that if it shall be proved that at any time he spoke any of the word charged in the declaration, he spoke them not maliciously, but in good faith and in the cause, and for the purpose of performing a moral, social and religious duty, and believing the words to be true; and that the plaintiff's official character and functions, and the defendant's relations to the religious community, and to an injured

father, and the cause of religion, morals and decency, require him to speak them.

5. And the said defendant will further offer evidence to prove that the plaintiff has committed the crime of adultery with Adaline Hawes, and has been in bed many times with the said Adaline, and has attempted to commit with the same crime with, and had solicited the chastity of Jerusha Pond, wife of Smith Pond—and has been guilty of indecent levities and familiarities and obscenity of conduct and behaviour with, and towards the said Adaline and Jerusha and Asenath Holbrook and Susan Holbrook both now deceased, and Lavinia H. Hall, inconsistent with, and disgraceful to his character, station and profession as a minister of the Gospel.

6. And the said defendant will further prove, that the general moral character of the plaintiff is, and for several years has been bad, and also, that his general character for chastity and veracity, is, and for several years been bad, and that he is not entitled to claim, and receive, damages grounded on an alleged injury to reputation.

R CHOATE.

MR CLEVELAND opened the case for the prosecution. by remarking with much severity upon the vile character of the slanders said to have been uttered by the defendant; he alluded to the sacred office held by his client, and the great interests which were at issue, on this occasion. He spoke of the plaintiff's abilities; of the perseverance and energy, which he had manifested throughout the whole of his active life; and represented, with much force, the danger of permitting such men—the leaders of society—to be slandered with impunity. He then briefly referred to the points of the case, as they appear in the Writ and specification, and proceeded to call the witnesses in behalf of the plaintiff:

John W. Miller—Said he was acquainted with the defendant, Gen. Preston Pond. Called at his store in the latter part of February, 1837. Had heard that Gen. P. had circulated bad reports respecting Mr. Thatcher. Mr. Daniel Cook was in the shop, when he entered, talking with Gen. Pond about Mr. Thatcher. Asked Pond if the reports in circulation were true. He replied, they were; that Mr. Thatcher was guilty of the crime of adultery, and he could prove it, by his sister, Mrs. Jerusha Pond. He said the act was committed upon Adaline Hawes. Witness reminded him that it was a high charge, and that Mr Thatcher might prosecute him for it. He replied, he thought not, for if he did he could not get much damage—not more than a cent,

Cross-examined—Not certain that Cook and Pond were talking about the reports when he entered the store. Cook is the father of Gen. Pond's partner in business. Witness called at the request of Gen. A. H. Boyd to learn something about the stories concerning Thatcher. Gen. Pond gave Mrs Jerusha Pond as authority for *all* he knew about them. Did not know that lady personally.

Capt. Benjamin Blake—Knows Gen. P. Pond. Called at his store, in March, 1837. Pond then stated to him that he had heard that Mr Thatcher had had intercourse with, or had had to do with three women—Adaline Hawes, Mrs Simmons, and Jerusha Pond; that he had lain with Adaline time and again. Thatcher is a minister of the gospel in North Wrentham. He has been a preacher about 14 years in all—about 5 years pastor of the new society there.

Cross examined—The conversation mentioned was the first witness had with Gen. Pond, respecting Thatcher's misconduct. Don't know whether Gen P. named any authority for his reports or not. Was about the store half an hour—talked with Gen. P. only about 5 minutes. Several persons were present—Mr Ansel Mann and Mr Sayles, are all that he can swear to. Don't remember saying anything about Mrs Jerusha Pond. Is a member of Mr Thatcher's Society. Thatcher does not exchange with other ministers. Has not for some time—don't know how long. First mentioned the affair revealed by Gen Pond, to his wife.—[Mr Merrick observed that this was sufficient reason for the matter's leaking out.]

Mr Cowell—Saw Gen. Pond the last of March or first of April, 1837, at town meeting, talking with two gentlemen, about Rev. Mr Thatcher. Don't know who the gentlemen were—believes one was Silas P. Fisher. Pond said that Thatcher had been in bed with a woman, or that he had no doubt of it. Believe he said that woman was Miss Hawes. Pond said he had no doubt, and believe he said he could prove, that Mr. Thatcher was guilty of the crime of adultery. Don't recollect whether he had then heard that this action had been commenced. *Cross examined*—Don't recollect that Gen. P. stated from whom he obtained his information respecting Thatcher's bad conduct.

John W. Miller—(Called again.)—Have had a conversation with Gen. Pond respecting Thatcher, since the first mentioned. It was in Walpole on muster day. Witness and Pond were talking—Pond said he understood he (witness) was to be evidence against him in the approaching trial, and inquired what he would say. Told him the substance was, the conversation at the store. Pond said he would admit all that. The Adaline Hawes case was talked over.

Cross examined—The conversation was very brief. Pond gave him no new light.

Joseph Ware—Knows Gen. P. Pond. At a town meeting three or four years ago, heard Pond say, as he passed him, that Thatcher was about to speak—called him “an old whoremaster.” Did not speak directly to him, but spoke quite loud. If it had been still he might have been heard in any part of the house.

On cross examination, said he had lived in Wrentham 29 or 30 years. Does not recollect who was near Gen. Pond when he uttered the words above mentioned. Saw several within a few feet of him. Thinks the word “whoremaster” was spoken louder than the rest of the sentence. Attends Thatcher’s meeting—is not a member of his church. Thatcher does not exchange with other preachers. He had been a candidate for public office, about a year before the affair above mentioned.

The Counsel for the Plaintiff here closed the examination of their witnesses, for the present.

THERON METCALF, Esq., opened the case in behalf of the defendant. He said he should endeavor to show, that Gen. Pond, in making the allegations charged, always gave his authority; and it is a settled principle in law, that reporting what another man says, is not slander. Should he fail on this, he expected to prove the facts charged by Gen. Pond, in the reports to which he gave circulation. He said this more in sorrow than in anger. But if he should fail here also, still he certainly should not fail to prove that the plaintiff was of such disparaged fame—of such entire want of moral character—that he was not entitled to recover more than nominal damages. If he has, for the last five or six years, had that “good reputation and character for virtue,” which he has alleged in his writ, he doubtless ought to recover heavy damages, unless the first or the second point of defence is maintained. But as the evidence will show that the plaintiff’s reputation has long been nearly worthless, he cannot recover such damages. What a man hath not, cannot be taken from him. Mr. M. had no hostile feeling towards the plaintiff; and it was with pain that he entered upon the performance of his duty to the defendant. It was always far more agreeable to him to vindicate character, than to assail it.

The witnesses in behalf of the Defendant, were then called and sworn.

Daniel Cook—Was present at the conversation between Gen. Pond and Mr. J. W. Miller, at the store. Miller came in and inquired about the stories respecting Thatcher. Gen. Pond went over the reports. As to their truth, he said he did not know; said he had them from his sister, Deacon Smith Pond’s wife. She and her husband were both members of Mr Thatcher’s church. Pond said that Mr. Thatcher had attempted to commit adultery with his brother Pond’s wife.

Cross examined—Cannot recollect, so as to state the conversation, so much has been said on this subject, in times past. My son is Gen. Pond’s partner in business.

Daniel A. Cook—Was present at the conversation between Gen. Pond and Capt. Blake. Gen. Pond told Mr. Blake that there had been improper intimacy between Mr Thatcher and certain women. Think he said that Mrs Jerusha Pond was his authority. Said the subject ought to be investigated. If Mr T. was innocent he ought not to suffer by false reports—if guilty, he should not be allowed to preach. Thinks it was at his suggestion that Capt. Blake was called to the store. Being a member of Mr Thatcher's church, they wanted to know what he would say on the subject. Mr Sayles, he thinks, was not present—Mr Anson Mann came into the store just at the close of the conversation. Don't recollect that there was any thing said about Thatcher's having adulterous connection with Mrs Simmons. Don't recollect what advances, or attempts upon his brother's wife, Gen. Pond said Thatcher had made.

Cross examined—Blake was in the store about five minutes. The remark that Thatcher's affairs ought to be investigated, was made, he thinks, in the presence of Blake. Don't think he made any reply. Would not swear positively that Gen. Pond gave Mrs J. Pond as his authority, for the reports—think he did.

Silas P. Fisher—Do not recollect being present at the conversation sworn to by Cowell, nor at any conversation where Gen. Pond spoke of Thatcher's conduct, when Cowell was present.

Oliver Felt.---Live at Wrentham centre. Mr Thatcher's reputation, where he is best known is not very good. His reputation for chastity and morality, is not so good as that of people in general, judging from common report.

Cross-Examined.—His character has been bad for five or six years. Political contests and religious divisions have taken place during the period, in which Mr T. has largely participated. The political contests were severe. Mr T. has been several times a candidate for public office—for the State Senate, and for Representative in Congress. He has once been elected to the State Senate. The bad reports about him, he believes were in circulation before he was a candidate for public office.

Philo Sanford Esq.—I a neighbor of Mr. Felt. Came to Wrentham in 1831. Judging from common report, at that time, Thatcher's character for goodness, fairness and chastity was rather doubtful. At present it falls short of the general standard. Has had but little personal acquaintance with him.

Silas P. Fisher.—(called again) Recollects one conversation with Gen Pond, at which John A. Craig was present, when the subject of Thatcher's misconduct was mentioned. Gen. Pond then said that Mr Thatcher had attempted to commit adultery with Adaline Hawes, and also, he thinks with Mrs. Jerusha Pond. He gave Mrs Jerusha Pond as his authority. This took place in front of Cook's Store. John A. Craig, Elias Whi-

ting, and he thinks, several others were present. Thinks the precise words Pond used were that Thatcher had *attempted* to commit adultery. Don't think Thatcher's reputation as good as that of men in general. The bad reports relate to him as a man, not as a candidate for office.

Cross-examined—This conversation, he thinks, took place in in Spring of 1837. Bad reports respecting Thatcher have been in circulation a number of years. Live at Wrentham centre.

Col. George Hawes—Testified that Thatcher's reputation for chastity and morality so far as he knew had been as good as that of other men, until the present case came up; now it does not stand so fair as that of other men. Lives not far from Wrentham centre.

Daniel Everett—Testified that Thatcher's reputation was bad. It had been so for a number of years before the commencement of this suit. It is now below that of other men.

Cross-examined—Lives at East Wrentham. Bad reports respecting Mr Thatcher have been in circulation 7 or 8 years. Moved from Foxboro' 4 years ago. Had heard bad reports about Mr Thatcher before he entered town.

Maj. John M. Everett—Lives in Foxboro. Thatcher's reputation is bad, and has been so, according to common report, about 10 years. Compared with respectable people, for the first part of that time, his reputation was low, and during the latter part, it has been far below the common standard. These reports relate to him as a man, not as a candidate, and were circulated as much when he was not up for office, as when he was.

Cross-examined—Have known Thatcher ten or twelve years. When he preached in Foxboro' about that time, his character was not first rate. It has not been so good as some, since he has been at Wrentham. Thinks he was settled in Wrentham within a year or two after he went there from Foxboro'.

Sylvester Robinson—Lives at Foxboro. General reputation of Thatcher for chastity and morality not good. Has heard of these reports about three years. Have never been a member of Mr Thatcher's church. Is a member of Mr Pierce's church, in Foxboro, and has always lived in that town.

John Sumner—Lives in Foxboro. Thatcher's character is bad. Has been so three or four years. Compared with other men it was below the common standard. These reports were spoken of him generally. Witness belongs to Mr Pierce's society. Did not hear unfavorable reports of him when he preached in Foxboro.

Cross examined—Has heard bad reports respecting Thatcher for four or five years. Never heard them from Gen Pond.

Samuel Leonard—Lives in Foxboro'. Thatcher's reputation for chastity &c is bad. Has been so for four or five years. I has been low compared with respectable people generally. Reports were against him as a man, not as a candidate.

Cross examined—Knew Thatcher when he preached before Mr Pierce's society. Heard nothing bad of him then. Rather more than five years since he had heard bad reports.

Lewis Fisher, Esq—Lives in Franklin. Have been a magistrate several years. Thatcher's general reputation is not good. It has been bad several years. Reports were against him as a man, not as a candidate. First reports against Thatcher were circulated about five or seven years ago. Have been a County Commissioner several years. Thatcher has never been settled over a society of which witness was a member.

Cross examined—Bad reports were in circulation at the time he was a candidate for office. Live about a mile from Mr Thatcher now. Always have lived about four miles distant. Candidates for office are likely to run the gauntlet.

John Fisher—Thatcher's reputation is decidedly bad. His character, since 1829, has been on the decline. Thinks the reports were first circulated before he was a candidate for office. Has not been a member of Mr T's society. Lives in Franklin.

Cross examined—Lewis Fisher is my father. Witness said he could fix the precise date when the bad reports were first circulated, if he had certain data. Mr Merrick inquired what data he alluded to. The record of the birth of a boy. What boy? One Morrill, son of a certain Julia Morrill, whom report said Mr Thatcher carried to a town in Connecticut, where the boy was born. Mr Merrick—You may take your seat, sir.

Gen Boyd testified to Thatcher's bad character, by report. Those reports were not such as attended candidates for office in general. Lives in Franklin.

Wm Boyd—Resides at Medway; testified to Thatcher's bad reputation; it has been so six years; it respects his character for chastity.

Wm. Ide—Lives at South Wrentham. Bad reports have of late been circulated about Mr. Thatcher. When candidate for office, reports were circulated disparaging his character for chastity.

Hiram P Fisher—Thatcher's reputation is very bad, as to chastity and morality. Has been so for six or seven years. Reports concerning him as a man, not as a candidate.

Meletiah Everett, Esq—Thatcher's character—has labored about six years. Reports affect his character for chastity—it is below the common standard. First heard these reports when he was candidate for the Senate, in 1831. After the canvass, made some inquiry—found his character bad. His character within a year and a half has declined. Has never been my minister.

Walter H. Fisher—Resides in Franklin. Testified that the reputation of the plaintiff for chastity has been bad, for 10 or 12 years.

Cross-Examined—Witness is a member of the old Society in North Wrentham, separated from Mr Thatcher. Called upon Mr Thatcher, with his sister, for the purpose of a social talk, six or seven years ago. She was not married. Bad reports were in circulation, but did not deem it improper for him to take his sister there. Was friendly then to Mr Thatcher. Since joining the other Society he has not been unfriendly, but has discontinued his personal visits.

Rev. Wm. Herlow—Resides at Wrentham, Thatcher's general reputation is not good. Has been bad three or four years. These reports have related to Mr Thatcher's chastity. Has not been on friendly terms with him for four years.

Cross-Examined—Heard something said, about three years ago, about Mr Thatcher's being on too friendly terms with Miss Hawes. As to common opinion and common report he believed part of the public were ranged upon one side, and part on the other.

Rev. Dr. Park of Stoughton—Mr Thatcher's early reputation was good. Have known him ever since he entered college. General report for three years has been unfavorable. Have not exchanged with him for that period of time; had exchanged with him before. Thatcher belonged to the same clerical association; none of that association have exchanged with him since he has thrown off the Church discipline.

Cross Examined—Thinks the interruption took place in 1831. thought him a fair candidate for the ministry and took a part at his ordination.

Rev Mr. Pierce of Foxboro—Pastor of society there; it is six and a half miles from Wrentham; Thatcher's reputation has been bad 5 or 6 years; these reports regard his chastity.

Cross-Examined—Knew Thatcher in college; he gave Right Hand of Fellowship at my ordination; his reputation stood fair until the division respecting ecclesiastical matters; has not exchanged with him since.

Mrs Jerusha M Pond, was called. This witness is the wife of Mr Smith Pond, and sister-in-law of Gen Preston Pond, the defendant in this case. She is a member of the old religious society in North Wrentham, from which Mr. Thatcher and his congregation separated. A question of law was raised by the counsel for plaintiff, as to the propriety of admitting her testimony. It was overruled by the court, and her evidence was admitted.

Mrs Pond stated that she had a conversation with Gen Pond, on the subject of Mr Thatcher's improprieties of conduct, in Sept. 1836. Gen P. and witness are not members of the same church. Witness said she told her brother-in-law in September, that Adaline Hawes had confessed to her, that Mr Thatcher, the plaintiff, had been in bed with her in his night clothes, more than once.

The first time, as Adaline said, was five or six years ago. It was one night when a printing press came up from Boston, and Mrs. Thatcher, from some cause or other, spent the night at the house of the witness. The next time was one night when Mr Thatcher and herself stopped all night at Mr Nathan Reed's in Attleboro'. Adaline told her when they returned, that Mr Thatcher was that night in bed with her. She said that after all the family had retired, Mr Thatcher got up, and let out, or pretended to let out, a cat. On another occasion, Mr Thatcher went to Abington with his wife to visit a child, at school there. Returning left his wife at Deacon Rhoads' in Foxboro', and arrived at his own house about midnight, and Adaline said they were that night in bed together. Mr Thatcher, the next day went after his wife, and Adaline then told her what had happened. All these things witness said she told Gen Pond, at the conversation in Sept. 1836. In answer to a question—witness said she told Gen Pond that Miss Hawes said Mr. Thatcher "wet her" when they were together, and that this happened more than once.

Cross-examined—Witness said she told Gen Pond all these things at one time—Adaline Hawes told her the events as they occurred. The printing press affair happened about six years ago—Attleboro' affair four or five years ago. Thinks she told Gen Pond where Mr Thatcher had been when he stopped at Attleboro' with Adaline. Witness says she has been an intimate and familiar friend of Miss Hawes. That intimacy does not now continue. It ceased when Miss Hawes knew that she had told her husband of these things, in Nov. 1836. Told her husband not long—a few weeks—before she mentioned the matter to Gen Pond. Adaline broke off the intimacy. Had written very friendly letters to Adaline. Never heard any thing against her reputation. Have been a member of the church since 1824. Was twenty-one at the time of making a profession of religion—had then been married one year. Joined Mr Thatcher's church, and continued a member of it after the separation, till Sept. 1836.

[14 letters were here introduced by Mr Merrick, counsel for the plaintiff, which were identified by the witness, and admitted as evidence.]

The cross-examination continued. Witness wrote very frequently to Mr and Mrs Thatcher. The correspondence did not continue until she left Mr Thatcher's society—it was broken off about a year previous to that time. Was on terms of closest intimacy with Mr and Mrs T. and with Adaline Hawes; did not leave the church on account of Adaline's misconduct. Witness was asked whether she had or had not said, within two or three years past, that she considered Mr Thatcher an eminent christian and a perfect gentleman. She replied, she had no recollection of saying he was a gentleman; did say he was a christian, for I certainly thought so. *Mr Merrick*—Did you love Adaline Hawes while telling Gen Pond

these stories? I did. Do you love her now? I do—I love her with the love of benevolence. Was present when Adaline's deposition was taken; went to hear what she would say. *Mr Merrick*—Did you furnish your husband with any letters or papers to assist in taking that deposition? *Ans.* Gave him one letter, written by Adaline; don't recollect any others. *Mr Merrick*—Did you not prepare and furnish your husband with a statement of what you told Gen Pond? *Ans.* Did furnish one prepared for Mr Thatcher's church examination. I think the statement was prepared before my husband and Gen Pond were sued for defamation. Gave a copy of the statement to my husband, when first prepared, and he gave it into the hands of the church. Don't know that Gen Pond ever saw it. I did have a conversation with Adaline Hawes after the deposition was taken.

Counsel for Defendant—We wish you to state, Mrs Pond, your relations to Mr Thatcher and Adaline Hawes, and the reasons why you did not sooner communicate the stories Adaline had told you, to your husband, or some one else. Take ample time, and give the reasons in your own way.

Mrs Pond—Adaline said these things did not occur often, and that after they had happened, Mr Thatcher was always very penitent; that he often kept long seasons of fasting and prayer, and humbled himself greatly before her. On one occasion, Adaline said Mr T. prayed with her, while they were riding together in a chaise; she was then somewhat unwell, and Mr Thatcher said he feared his improprieties of conduct might be the cause of her illness, and no one, he added, could tell how he abhorred himself in dust and ashes. I believed that he had repented. If ever I was converted it was under his preaching—was a member of his church, much attached to him as a pastor. Adaline said Mr Thatcher had told her he had serious thoughts of making himself an eunuch. I regarded him as a man of ability—thought very highly of him in every respect. When his church was divided I went with him, as the children of Israel followed their leader. Mr Thatcher was very kind to us—his conversation was highly edifying and attractive; we relied much upon him, he was our spiritual guide, our eader, our all. We desired union in the church—in this, he told us, our strength consisted. His pecuniary embarrassments were great, and excited our sympathies. I felt too, that I had no right to betray the confidence of Adaline.

Mr Choate. Why did you tell your husband, and Gen. Pond, what Adaline had revealed, at all?

Mrs. Pond—In the autumn of 1836, I applied to Mr Thatcher for a dismissal, and asked for a recommendation to another church, of a testimonial of good standing. After the recommendation was received, Mr. Thatcher called at the house of witness, and said he had no idea that all the members had not consented, when the testimonials were given, he had since learned that some

of the members said she had been *guilty of writing with a pencil during Divine Service*. Witness confessed the charge; said she had, in that way, asked a friend to remain after meeting, and that, on another occasion, she inquired, by writing, "who that was," (meaning a particular person) instead of whispering. Witness acknowledged herself willing to do any thing to wipe away this reproach upon her christian character—and burst into tears. At this moment, her husband, Deacon Smith Pond, came in and Mr. Thatcher immediately left. Mr Pond asked for an explanation of the cause of her tears. She told him what Mr Thatcher had said, and added, "I should not think he would say any thing about it *when he knows what he has done*." Nothing further was said upon the subject at this time. After witness and her husband had retired for the night, he asked what she meant by saying Thatcher knew what he had done. After some hesitation, and with many tears, she related all that Adaline Hawes had told her.

In answer to a question witness said Mr Thatcher had frequently requested her not to say any thing about his improprieties of conduct towards herself.

[Witness said Mr Thatcher urged upon her mind a principle laid down in Rev Dr Park's Moral Philosophy—viz. If a deed is repented of we may truly say it has never been committed. This, she acknowledged, had no effect in inducing her to keep Adaline's secrets, and it was therefore ruled out of the evidence by the Judge.]

Mrs Pond continued: Adaline's indisposition commenced about three years ago last autumn. She lived in Mr Thatcher's family 6 years; is about 33 years old, and was never married.

In January, 1837, Mr Thatcher sent several numbers of his paper called the Congregationalist to our house. Wishing to inform him that the story of his connexion with Adaline had been revealed, and of the danger in which he stood, witness wrote a letter, and handed it to Mr Thatcher on Sabbath day, at church. The following is a copy, as near as the witness can now write it, from memory:

WRENTHAM, June 13, 1837.

Necessity urges me to write to you at this time, to let you know just how I am situated. The last evening I spent with Adaline, I begged her to confess to you that she had made known to me all that had transpired between you, but fearing that she has not done it I feel compelled to do it myself. She has told me *all*—yes, this is a dreadful fact, but she has told me every thing, even to ——— in your study chamber at the Bird place. The various and multiplied times you have been *in bed* with her, and all that transpired between you. Once in Attleborough, at Mr. Reed's,—once when you left your wife here to spend the night with us—and many other times. Now what shall I do? I am questioned continually. If you have any wisdom keep things as quiet as you can or the *whole will certainly come out*. Don't send us another "Congregationalist"—for if you do it will certainly be sent back, and that might lead to enquiries you would not wish to have made.

Mr Choate—Mrs Pond, did Miss Polly Merrifield, now Mrs Harding, ever tell you any circumstances respecting Mr Thatcher, that happened several years ago?

Mrs Pond—She did. One evening, five or six years ago, there was a brilliant display of the Northern lights; all the family, consisting, among others, of Mr and Mrs Thatcher, Polly Merrifield, and Adaline Hawes, went out in front of the house to witness the phenomenon. After looking at the heavens some time, they all returned to the house; and at the usual hour, the whole family, except Mr Thatcher and Adaline, retired to their chambers. Miss Merrifield heard whispers in the entry, and taking off her shoes stepped to the door of her apartment and listened. She heard no words distinctly. After this she heard persons in the study—and in about an hour Adaline came up to bed. She appeared much surprised to find that Miss Merrifield had not retired for the night; and after this, Adaline said she always believed Mrs Thatcher suspected something was wrong. Witness thinks she told Gen. Pond these circumstances, at the conversation in September, 1836, as she told him all that Adaline had revealed—don't recollect positively that she did tell him—certainly thinks she did. Gen. Pond spoke to her in such a way that she thought he knew all she had told her husband—and she therefore, at the time he threw out these hints, revealed the whole, at the conversation alluded to.

Mrs Harding—My maiden name was Polly Merrifield. Recollect the circumstances attending the display of the northern lights, while living in the house with Mr Thatcher. Mr Thatcher and his wife, Adaline Hawes and myself, went out to witness the display. We all retired, except Mr Thatcher and Adaline.—Knew Mrs Thatcher was in her chamber—she was lame, and wore a high-heeled shoe; heard her step. I heard whispers in the entry below, and taking off my shoes, went to the door and listened. Heard whispers about five minutes. The persons then went into the library room, and in about an hour or two Adaline came up to bed. I had not prepared to retire. Adaline appeared much surprised to find me still sitting up. This was about the year 1830. Lived in Mr Thatcher's house, with my brother, about 15 months.

Dea. Smith Pond—Witness is afflicted with an infirmity of hearing; says his deafness has increased one half within 6 months. Has been a Deacon in Mr Thatcher's church, and still holds the same office in the old Society. Called upon Mr Thatcher, about the middle of February, 1837; had a close interview with him in his study; told him reports were in circulation affecting his moral and christian character, and desired an explanation of those rumors. Some of them, he added, he knew to be false—that concerning Eliza Perrigo, now Mrs Simmons, and that respecting improper conduct with his wife (Mrs Jerusha Pond) in London Bridge Woods. But there were other reports, respecting which

he had evidence enough to carry conviction to his own mind, that they had some foundation in truth. The evidence, he told him, came through his wife from Adaline Hawes, with whom, he was supposed to have had criminal intercourse. Mr. Thatcher said he was aware that reports unfavorable to his character were in circulation. Witness asked if he might state the charges. Mr. Thatcher replied that he might, but he should not hold himself responsible to admit or deny them. Witness mentioned the circumstance of Thatcher's leaving his wife at his house to spend the night, and going home alone—the printing press affair—told him his wife carried Mrs. Thatcher home the next day, and that Adaline then told her that Mr. Thatcher was in bed with her that night. Mr. Thatcher did not deny, or admit the charge—but did not seem to recollect leaving his wife at the witness' house, *that* night. Witness did not press the subject, but proceeded to mention another report; told Mr. Thatcher that he once put up at Dea. Reed's, in Attleboro', with Miss Hawes, and that he was that night in bed with her. Mr. Thatcher denied ever stopping over night at Dea. Reed's with Miss H. Witness told him he was not certain that it was *Dea. Reed's*, but it was at a house in Attleboro'. Mr. Thatcher made no reply. Witness proceeded with his charges—said he, “Mr. Thatcher, you have lain with Adaline Hawes time and again.” Mr. Thatcher replied, “Now there is a chance to play upon words; what do you mean by *laying* or *lodging* with Adaline?” I answered, “You undressed yourself, went to bed with her, and laid till morning;” said he, “If you mean all that, I deny the charge.” Witness said he had not then charged Mr. Thatcher with polluting Miss Hawes. Next said, “Mr. Thatcher, you have——more than a hundred times—no, I won't say a hundred, but a great many times.” The expression used by Miss Hawes to his wife was, “——.” Mr. Thatcher did not confess or deny the last charge, but said the witness could not prove it—he had no tangible evidence. “Besides,” said Mr. Thatcher, “I have a communication from your wife, expressing her confidence in me, written since these things took place, which would go to invalidate or destroy her testimony.” Told him I was aware of that fact, and the only apology she could make, was her apparent belief in his innocence, or sincere repentance. “But with regard to my wife herself,” I added, “we have tangible evidence—your right hand, Mr. Thatcher, has been where it had no business to be; and besides that, you have urged my wife to meet you in the school-house alone, in the dark of the evening.” His reply was “I have a wife and children as dear to me as yours, and I ask you, Dea. Pond, what course you intend to pursue with regard to this matter?” I answered, “I would not hurt a hair of your head, Mr. Thatcher, I want you to repent of these things if possible.” He replied, “I hope I have repented, and received the forgiveness of

God ; I broke away from these things about two years ago ; I then wrote a solemn resolution in my Bible, to which I have endeavored constantly to adhere." He showed me his Bible—the resolution was written upon a blank leaf. I asked him to read it, and he did so ; I told him it was a very good one. He said he had endeavored to keep that resolution unviolated—spoke of the confidence we had reposed in each other, in former times—alluded to the kindness with which my wife had treated his family in seasons of sickness and distress—and asked, if there was now any way by which he could be restored to my confidence. I told him yes, in five minutes, if he would make a proper confession. Mr. Thatcher said, "I confess I have been guilty of astonishing improprieties of conduct, and I do not deny but I have committed adultery with Adaline Hawes in my heart, but I do not think I have been guilty of the overt act ; can I have your forgiveness ?" Witness replied, "Yes, you have it." That was nearly the close of the conversation. Witness told Mr. T. he intended to call with his wife, and prove that he had restored him to favor.

The next evening the weather was very stormy ; witness and his wife, were sitting by the parlor fire ; Mr. Thatcher called in, and took a seat by the fire. He said he had come to humble himself before us both, and ask our forgiveness. Told him I was rejoiced and thankful to find him in that state of mind. Mr. Thatcher said he had recently been to visit Rev. Mr Simmons of Attleboro', who treated him with great severity—told him to go home, and make a public confession of his crimes, to quit the ministry, and retire into obscurity. He complained much of this—said the report had not spread far, and he thought the matter might be got over easier. Told him we would grant all the assistance in our power ; told him I had spontaneously written to Mr Simmons, and showed him the letter. He asked if I would also write to Joseph G. Gerrald, a brother of his wife ; and to Rev. Mr Ide on the same subject. Told him I would. He then asked for a Card, or Certificate, signed by myself and wife, to be published in his paper, testifying to his good character. After some hesitation, refused. Did not want my name brought out in public, in connexion with these reports. About that time, Elder Potter's confession had fallen into the hands of witness—remarked that he was sorry, a man that he so much respected, and had heard preach with so much fervor, should so degrade himself. Mr Thatcher sighed, and said—"Poor man, I know how to pity him ; I have no doubt but I have held more than a hundred days of fasting and prayer, on account of temptation to sensual indulgence." Witness felt much surprised at this declaration. Mr Thatcher soon after left the house. In reply to a question, witness said he made the complaint to Mr Thatcher's church before he knew that he was sued by Mr T. ; was informed that the church had held a meeting on the subject before he prepared his complaint.

Cross examination.—Did not tell Mr Thatcher how long ago, the several circumstances of lying with Adaline took place. Did not tell him at what time he put his right hand where he ought not. Thatcher never asked witness to repair injuries he had done his character by circulating bad reports ; he never said witness had told any thing but the everlasting truth. Witness was shewn a paper, which he acknowledged to be the complaint presented to the church by himself. Witness said Thatcher wrote him a letter, stating how the complaint had been disposed of, the same week it was presented. The complaint charged Mr Thatcher with an attempt to break the seventh commandment. Mr Thatcher's letter stated that the church thought best he should sue it ; understood he was sued, at the same time Gen. Pond was sued.

The examination of Witnesses in behalf of the Defendant closed here.

A number of witnesses were here introduced by the counsel for the plaintiff.

Rev. Mr Thompson.—Known plttf. seventeen years—lived in my family while pursuing his theological studies. So far as he knows, plttf's character has been good. Had not heard bad reports till time of Masonic excitement. They soon passed away ; so far as he knew, his character stood fair—had not heard bad reports till this suit commenced. Live at Rehoboth. Has continued his exchanges once or twice a year with Mr T. until the present time. Does not often exchange. Principally with Thatcher and Simmons. Rehoboth is about 20 miles from N. Wrentham. Preaches in a school house, or private dwelling, and therefore does not solicit exchanges. Heard a report several years ago, circulated by one Sayles, affecting plaintiff's character.

Dr. Seba Carpenter.—Lives at Attleboro' ; has been acquainted with plaintiff about 20 years. While preparing for the ministry, his reputation for chastity and morality was good. Report concerning him, until within two or three years past, has been favorable. Has not heard so many bad reports about people generally, as about the plaintiff.

Benj. Rockwood.—Knows plaintiff. His general reputation in Wrentham, has been good, so far as he has heard any conversation about it. Is a member of Mr Thatcher's society ; lives in N. Wrentham. First heard plaintiff's character called in question in 1829 or '30 ; can't say, but more has been said against plaintiff, than against other men.

Amos Walker.—Has known plaintiff since 1814 ; his general reputation has been good until within a year, and among his particular acquaintance it is good now. On cross examination—said that many suspect his moral character.

Rev Job Cushman.—Known plaintiff about 17 years ; has lived few months in N. Wrentham ; left in September, 1826. In

college he stood high ; up to 1829 his character was good—after that period, there was a general unfavorable impression against him. Preached before the old society separated from Mr Thatcher's ; was well acquainted with Dea Smith Pond and wife. In Sept. 1836, visited Mr Pond's family and staid there over night ; Lives in Prescott, Hampshire Co. On cross examination—witness said—by unfavorable, I mean, deeply, greatly, unfavorable.

Leonard Fuller—Lives at North Wrentham ; has known Thatcher some years ; his general reputation has been good ; attend Mr Thatcher's meeting more than any other.

Ebenezer Blake, Esq—Resides at North Wrentham ; has known plaintiff several years ; his general character for a year past has been bad ; the bad reports circulated in 1829 died away ; within a year and a half they have been revived ; belongs to Mr Thatcher's society ; assisted in forming and sustaining it.

Amos Starkie—Knows plaintiff ; his general character has been good ; lives about 11 miles from North Wrentham. On cross examination—said he had heard unfavorable reports respecting the chastity of plaintiff. Can't say whether the majority of people are for or against him.

Peter Adams—Resides in Franklin ; has known the plaintiff ; his general reputation is good. Perhaps there are not so many unfavorable reports in circulation respecting other people ; these reports have been in circulation more than one year.

Cyrus Allen—Resides in Franklin ; has known plaintiff many years ; has considered his general reputation good, but it is not so good as that of people in general ; it has been so half a dozen years.

James M. Perrigo—Knows Mr Thatcher ; attends his meeting more than any other ; his general reputation is good.

Timothy Ide—Resides in Wrentham ; has known Thatcher 10 years ; considers his general reputation good. Cross examination—Belongs to Thatcher's society ; don't think he has heard more unfavorable reports of other people.

David Pond—Resides in Wrentham ; knows Thatcher ; don't know but Thatcher's reputation is good. Cross examined—don't recollect hearing bad reports concerning plaintiff till commencement of this action. To day his reputation is bad.

Shem Armsby—Has been selectman of Wrentham ; knows Thatcher ; his reputation before 1829 was fair ; since then it has been gradually on the decline ; belongs to Mr Thatcher's society at present time.

Salmon Mann—Resides in Wrentham ; knows plaintiff ; his reputation was good until the commencement of this action. Cross examined—since 1829 one part of the community have held him in a less favorable light than they have other people ; his character to day is bad ; am a member of Mr Thatcher's

church; is not positive the complaint of Mr Pond was read before the church, thinks it was; don't recollect that Mr Thatcher advised postponement of action upon it.

Job Nichols—Has known Mr T. about 8 or 9 years; his reputation until commencement of this suit has been good, with the exception of two unfavorable reports. On cross examination said, two or three years ago he refused to let his daughter ride with him on account of a bad story about him; his general reputation at that time was good; he had heard the bad story only from one person.

Dr. Artemas Brown. Witness resides in Medway; Has known plaintiff 14 or 15 years; Have been his family physician, and has practiced in his parish and throughout the town where he has resided. The aggregate of public sentiment, so far as witness knows, is in favor of his character.

Spencer Hodges—Resides in Foxboro knows the plaintiff. As to his general reputation—more speak against him than for him.

Dea Rhoads—Resides in Foxboro'; known plaintiff fifteen years. His general public reputation was good until he renounced Freemasonry. Since then the majority of the people, he thinks, have been against him.

Mr. Yerrington. Resides in Boston; knows Mr. Thatcher. Previous to 1829, heard nothing against the plaintiff; until within a year past heard nothing against his moral character. Since he renounced masonry, has heard bad reports.

Elizabeth Daniels—I was at Mr. Thatcher's at the time his wife was sick; had some conversation with her. Mrs. Jerusha Pond spoke very highly of Mr. Thatcher—said he was a perfect gentleman, united with a christian—one of the best of men.

Adaline Hawes—Resides in North Wrentham, with her mother; health not good at present. Lived in Mr. Thatcher's family six years—left in 1835. Was acquainted with Jerusha Pond; corresponded with her. Never informed Mrs. Pond that Mr. Thatcher had been guilty of improper intercourse with me, either in his night or any other clothes. Mr. Thatcher never was in or on bed with me. Never informed Mrs. Pond that Mr. Thatcher had humbled himself in dust and ashes, in consequence of any improprieties towards me. Never told Mrs. Pond that Mr. Thatcher said he had thoughts of making an eunuch of himself; never said any thing of that nature. Never made use of any thing indicative of Mr. Thatcher's improper conduct towards me. Lived in Mr. T.'s family when the printing press came up from Boston; Mr. and Mrs. Thatcher and myself, were at home; nothing occurred that night, of an improper nature, on the part of Mr. Thatcher. Stopped with Mr. Thatcher over night at Nathan Reed's, in Attleboro' nothing occurred respecting Mr. Thatcher's coming to my bed—he did not come—did not say he did to Mrs. Pond. No particular

recollection of being in Foxboro' with Mr. Thatcher. Nothing improper transpired at Mr. Thatcher's house, in Mrs. T.'s absence. Recollect the affair of the northern lights ; nothing improper occurred at that time ; recollect of being in the entry with him a moment—do not recollect whispering. Never mentioned the name of Polly Merrifield to Mrs. Pond on any occasion. Never was under any apprehension from any thing that she overheard.

Cross-examined—No recollection of whispering in Mr. Thatcher's entry, on the evening northern lights were seen. Will not swear any thing about it. Remember the evening alluded to distinctly. Don't remember whether I went directly to bed or not.

The examination of witnesses in behalf of plaintiff, closed here.

RUFUS CHOATE, Esq. argued the case for the defendant. His remarks were able, eloquent, and in the highest degree affecting. As we have remarked before, even the cool, philosophic members of the bar could not conceal their emotion. Their hearts swelled almost to bursting, and the tears started into their eyes. Mr Choate consented to prepare a sketch of his remarks for this Report, but the manuscript had not arrived, when the last pages were put to press. The highest compliment the Reporter can pay the Hon. gentleman is, that he was unable to follow him in the argument. Bold thoughts, rich images, happy illustrations, and impassioned bursts of eloquence, followed each other in rapid succession, overwhelmed the mind with admiration and surprise, and the pen dropped powerless from the hand. We took but few notes, and shall only attempt a brief history of the argument. Mr Merrick was more cool, and ingenious, but not the less able.

Mr Choate opened his argument by saying that the case was an important, but not a difficult one. The rule of law was clear.—The jury had chiefly to guard against permitting their feelings to kindle at the astonishing and revolting story revealed by the witnesses. The plaintiff, he said, comes here seeking a reputation. He should have sought forgiveness for his offences from a higher power, and a more familiar acquaintance with Divine commands from the pages of his Bible. He alluded with great severity to the conduct of Mr Thatcher—that “clerical seducer,” as he termed him. There was satisfactory evidence, he believed, that Mr Thatcher had lain again and again with Adaline Hawes—that he had committed adultery with her. He noticed the fact that Mr Thatcher proposed to make an eunuch of himself—that he confessed he was so much under the control of his overboiling and ungovernable passions that he could not resist temptation. He alluded to the fact that Mr Thatcher had made attempts upon the chastity of Mrs Smith Pond—that he had endeavored to induce her to meet him at the school house, alone, in the evening—that

had offered insulting proposals to her—and that he had forcibly placed his hand upon the privacy of her person. And this outrage was perpetrated by a spiritual guide, upon a female converted under his own ministrations! He contrasted with much force, the appearance of Mrs Pond and Adaline Hawes, as the jury had seen them upon the stand: the intelligent, amiable, candid and christian-like deportment of the one, with the peevish, cowering, sullen manner of the other. The ruined creature, he said, dared not raise her head; she shrunk from investigation. He alluded to Mrs Pond's long concealment of the story revealed by Adaline; and the forgiving character of her husband. All this, he said, was perfectly natural, when we take into consideration the powerful religious influences under which they acted, and the fearful ascendancy which Mr Thatcher possessed over the minds of his followers. Mrs Pond's own reasons—so beautifully delivered upon the stand by the witness herself—were sufficient to account for all this. She was converted under his preaching; she was for a long time a member of his church, and her husband held one of its most important offices; that church was divided; in union their strength consisted; the members that remained, rallied around their pastor, and her attachment was strengthened; when he had been guilty of improprieties of conduct, he imposed upon Adaline a belief in his deep and sincere repentance. Besides, a disclosure involved the betrayal of great personal confidence. I cannot believe, said Mr Choate, that my learned brother intends to make an attack upon the character of that respectable witness.

Mr. Choate then alluded to the letter written to Mr. Thatcher, by Mrs. Pond, and handed to him at church. In this she betrayed no resentment, no design to raise money, by her knowledge of his guilt;—no, she was still the devoted woman she appeared throughout the case—still tenderly attached to her perfidious pastor.

Has Mr. Thatcher lain with Adaline Hawes? I grieve to say, remarked Mr. Choate, that the evidence upon this point is too positive to be refuted or even denied.. He wished, he said, to sustain the order of clergy—they were a respectable and useful class—but the whole tenor of the testimony in this case, proved Mr. Thatcher to be a bad man. His reputation has been bad for an average of six or seven years—to-day it is utterly ruined. Even his own witnesses have deserted him upon the stand. Rev. Mr. Thompson, and Dr. Carpenter, confess that his reputation is below the common standard. Job Cushman, brought nearly one hundred miles to assist in supporting the character of the plaintiff, can say nothing in his favor. Shem Armsby tells you that his reputation since 1829, has been gradually declining. Then look at the testimony of Mrs. Harding, with regard to the northern lights. What was that whispering in the entry for?—why did Miss Hawes remain an hour or two in the study with that clerical seducer, at midnight

Mr. Choate then went into an examination of the testimony of Dea. Smith Pond. He noticed the several occasions on which it is said Mr. Thatcher was in bed with Adaline Hawes; the suspicious manner in which he treated Dea. Pond at the interview in his study—the indifference which he manifested, and his disposition to quibble about words and forms, at a time when his character was at stake---and finally, how suddenly he sunk down and confessed his improprieties of conduct, when Dea. Pond presented “tangible” evidence against him---when he declared that his right hand had sought the delicate privacies of his wife. And with how much money, said Mr. Choate will you fill the hand of a man who has thus outraged the decencies of domestic life? At this conversation, Mr. Thatcher said “I hope I have repented.” Repented of what? What was this but a confession of “astonishing improprieties..” When he came in the storm, “to humble himself before Deacon Pond and wife”—a teacher asking the forgiveness of his people—and the subject of Elder Potter’s confession was mentioned, he exclaimed with a sigh, “I know exactly how too feel for that poor man!”

In conclusion Mr Choate remaked that the performance of his duty on this occasion was extremely painful to his feelings. All his earliest and holiest associations, and all his dearest relations in life, were connected with members of the sacred profession to which the plaintiff belonged. With his brother, who opened the case, he must say that it was always far more agreeable to him to vindicate character than to assail it.

PLINY MERRICK, Esq. then rose, to address the Court and Jury in behalf of the plaintiff. His client, he said, belonged to one of the most sacred and responsible classes of men. In commenting upon the evidence in this case, he should not attempt to compete with the strength and elegance of the argument delivered by his learned and talented friend on the other side—he should confine himself to a careful examination of the facts produced in evidence upon the stand. The plaintiff believed himself to be an injured man. Once, his star of hope beamed brightly—he was a boy of uncommon promise—and the hearts of his parents were filled with fond anticipations of future success. He passed honorably through his collegial course, and the study of his profession, and was greeted with a hearty welcome by Reverend men. He became a preacher of the Gospel, and was settled over a religious society. That society flourished under his pastoral care, and he had reason to hope that, at the final day there would be ‘many souls as the seals of his ministry.’

But a change came over the course of events. A great and acrimonious excitement commenced in the community. Mr. Thatch-

er plunged at once into the sweeping current ; whether he was right or wrong, is not for us to inquire. At that moment, certain scurrilous reports, respecting his moral character, started into being. He was dragged from the sacred altar, and lashed to the wheel of political reform. These scandals became rife in the community. But after a time the excitement subsided, and the evil reports were forgotten. Mr. Thatcher outlived reproach.—Within a short time, a new combination has been formed against him, and injurious reports are again in circulation. The scandal came from high sources—from responsible men. For the sake of his church and his family, Mr. Thatcher felt called upon to defend his reputation. It was in vain for the church to investigate the matter. The slanders had fastened upon the public mind. The brothers of the profession would not exchange with him. He must make an effort to save himself and his little flock. He meets the unjustifiable reproach in a court of law. This, said Mr. Merrick, is no time for excitement—I will school my feelings to the task before me.

The Writ, in this case, contains three counts—the first affirms that Gen. Pond charged the plaintiff with having criminal intercourse with Adaline Hawes, Mrs. Simmons, and Mrs. Jerusha M. Pond ; the second, that he had committed adultery with Adaline Hawes ; and the last, that he charged him generally with the crime of Adultery.

The defendant, said Mr. Merrick, comes elaborately prepared to disprove that he ever uttered the words stated ; then, if that fails, he will say that it was a story told by another ; and standing upon this narrow ground, for narrow ground it is, he then avers, that the words spoken were spoken because they were true. If he proves these points, or either of them, he contends that he is entitled to a verdict. The Court has ruled, that if a person uttering slanderous words, should speak them upon a justifiable occasion, and name a responsible author at the time, it would not be actionable. I contend, said Mr. Merrick, that a person uttering a slander, must not only give the substance—the amount—but *the precise words* of the report, as he heard it. Has Gen. Preston Pond done this ? Is not Mrs. Jerusha M. Pond's story much more than the general charge of Adultery ? Does it not greatly vary from the story as testified by Miller and Blake ? There is no pretence for saying the defendant gave the *words* of his informer.

Dea. Pond forced the confession of the story, upon which these slanders were founded, from his wife. He extorted it from her, and permit me to say, it is in the highest degree improbable. Mrs. Pond was lying upon her husband's pillow, a woman in dishonor—a suspected woman—she must account for her tears, and her mysterious conduct ; her husband wrenched this story from her by his marital authority. Is it to be believed that Mrs. Pond—a woman

of no ordinary capacity of mind—would hold the infamous story in her possession six long years? that Adaline would tell her what had happened, and she express no indignation? They speak of Mr. Thatcher's repentance. The work was performed marvellously quick: Mrs. Thatcher remained all night at the house of Dea. Pond; that night, it is said, Mr. Thatcher was in bed with Adaline. The next day Mrs. Pond carries Mrs. Thatcher home in a carriage, and Adaline then informs her what had happened—but she adds, *he has repented*. And this, we are told, satisfied the virtuous mind of Jerusha Pond. Is this to be believed? Is it to be believed that Adaline Hawes—a virgin—would thus confess the story of her guilt? that she would, unasked, confess to Mrs. Pond that she had again prostituted herself—and add, “It was with your dear friend, your beloved pastor?” Gentlemen, you must go far down into the depths of guilt, before you will find a female willing to confess this degradation. They have carried the living proofs of illicit intercourse within the womb, and refused, even to the last moment that life lingered upon their lips, to make the confession. Is Mrs. Pond's story probable? Adaline rides out alone with Mr. Thatcher—Jerusha raises no warning voice. She returns and informs her that the disgraceful thing has happened again. Mr. Thatcher repents, and Jerusha concludes to forget it. The same thing happens again. Adaline rushes, uncalled for, and without cause, and declares, *he has done it again*—the deed of dalliance has been committed once more! Still Jerusha loves the man who is ruining himself and his family, and debauching her friend. Improbable and idle story! To strengthen it, we are told that Mr. Thatcher was so grieved, so penitent, that he proposed to make himself of a different sex from either—to cut off the offending member. Mrs. Pond ought to have been satisfied with nothing short of this. I respect her, said Mr. Merrick—all who have seen her upon that stand must respect and pity her,—but I consider her story too improbable, to entitle it to a moment's attention.

You will recollect, gentlemen that Gen Pond called Capt Blake to his shop door; Blake was a member of Mr. Thatcher's church, and he called him to taunt him with his pastor's infidelity. Instead of this course, he should have made his charges to the church. He should not go upon his shop door, and hail the passers-by, and make suspicious givings out. Mr. Pond, as defendant in this case, fails in all things. He must not only tell the substance, but he must give *the precise words*, he must tell the whole story as it was. He did not do this to Blake. The Court, I am confident, will sustain me in this position.

The next specification in the Writ, gentlemen, is the general charge of adultery. This rests mainly upon the plaintiff's supposed confession. He has made no such confession. He is charged

with committing the crime of adultery. The testimony of Jerusha M. Pond must be thrown aside. The burden of proof is upon the defendant. He must make out the charge to the satisfaction of reasonable men. First, on this point, we have the testimony of Mrs Harding. About six or eight years ago, there was a display of the northern lights, and Mr Thatcher's family went out to witness the phenomenon. The lights faded away—the hour for retiring arrived. The family sought their respective chambers.—Adaline, as was her custom, sat up after the rest had retired. Mr Thatcher went into his study. Miss Polly Merrifield, deeper advanced in the vale of years, than Miss Hawes, with the true spirit of curiosity predominant at her time of life, took off her shoes for the purpose of listening, and at the dead of night, when every sound was hushed, with all her excited curiosity, could not hear a word! The persons supposed to be whispering in the entry, then went into the study, and remained there an hour, and you are therefore asked to believe that the crime of adultery has been committed by the plaintiff. The fact was, gentlemen, Miss Merrifield's jealousy was excited—she was mistaken: “jealousy doth make the meat it feeds on.”

Next we have the evidence of Dea. Smith Pond. Gentlemen, will you infer from his testimony that Mr Thatcher has committed the crime of adultery? Dea. Pond and Mr Thatcher are equally interested in the result of this trial—Mr Thatcher is interested for his office, and the honor of his profession; and Dea. Pond and his wife for their reputation, and their own safety, should this suit terminate in favor of the plaintiff. Gentlemen, I did not expect to meet Dea. Smith Pond, here. I am not prepared to meet him.—I had conversed freely with my client, but he had not informed me that we should meet this witness here. His appearance upon the stand was wholly unexpected. I am now authorized by my client to say, that the statement of Dea. Pond, although correct in some particulars, in the main is rank distortion. Is it probable, gentlemen, that when Mr Thatcher was on the eve of this prosecution—when he was bearding the lion in his den—that he would make a full and free confession? After the mutual explanation between Dea. Pond and my client, at the conversation in his study, Mr Thatcher called on Dea. Pond, to seek all the reparation he desired at his hands—a card, for publication. This was refused. He had no other resort, to save his injured fame, but a prosecution.—When Dea. Pond called on Mr Thatcher, he said, “Repent, and I'll forgive you.” “Will you?” said Mr Thatcher. What was his reply? “Yes—there's my hand.” The recent evil reports were then in circulation. When Mr Thatcher called upon Dea. Pond, and asked for a card, on the strength of his double forgiveness, he refused. “I'll give my hand to no card; I'll not let my name go before the public.”

My client, gentlemen, declares that the statement of Deacon Pond is not a fair statement. But let us examine it. Thatcher said, I will hear your charges, but I will not hold myself *responsible* to admit or deny *to you*. When Deacon Pond gets through Mr. Thatcher denies all—he says, Deacon Pond, you can prove nothing; your wife has made charges which she cannot sustain; you have no tangible evidence of these things. Deacon Pond says, I have tangible evidence on another point—with regard to my wife. Mr Thatcher inquires, what do you propose to do with that? He denied every thing relating to Adaline. When charged with improprieties of conduct with regard to Mrs. Pond, he inquired, what do you propose to do with that? I have a wife, said he, as well as you—I am the father of children—my family is as dear to me as yours. You seek to charge me with improprieties of conduct. I will not deny it. I will not say that I am better than other men—that I do not sometimes look with eyes that I should not, upon Adaline Hawes and your wife. I feel that I do not always control my desires as my clerical office demands. I feel this, and as I would ask any man's pardon I ask your pardon and forgiveness---and I do feel penitent. With regard to the main charges, I admit nothing, I deny nothing. I will hold myself to answer at another tribunal. As to any improprieties of conduct between your wife and myself, I ask your forgiveness—let us shake hands upon the spot.

By the testimony of a woman, against whom not a breath of slander has been breathed, until this affair was brought before the public, we have proved that the crime of adultery has never been committed. Before you can acquit the defendant, you must say that Adaline Hawes—a virtuous upright woman to this day—is a perjured witness—you must throw her testimony out of the case.

With respect to the verdict, gentlemen, if you do not acquit the defendant, you will bring in either nominal or substantial damages. It is said that the plaintiff stands in a bad light—that his character is bad—that what a man hath not cannot be taken from him—and that he is not, therefore, entitled to substantial damages. Gentlemen if Mr. Thatcher stood fair, there would be no need of bringing this action. He might outlive slander if he stood as fair as other men. He was compelled to bring this action as a means of safety. He has much character left. He has been villified and abused. In times of great political excitement, hard things will be said of public men. Deep seated enmity will be engendered. Public men ought to be protected. Although the majority of the public may be against a man, it is no proof of his guilt. He may still be innocent. People living nearest to Mr. Thatcher, believed him innocent. After having lived down slander, and preached through evil and good report, will you say that a man has no character, because injurious reports are in cir-

culatation about him? Dr. Park, and his brethren in the ministry will not exchange with the plaintiff because he has thrown off their clerical discipline. Do they suspect his piety? They cling to him to the last. Mr. Thatcher is compelled to come here, to preserve his character, and his church.

Unless he defends himself, his church will be charged with having an adulterous pastor, and being a common brothel, in which the members convene for the purposes of adultery. The recent reports do not prove that Mr. Thatcher is a charged man; they only prove that he has lately been more assailed and villified. Has he not been chosen by the people of Wrentham, as the guardian of their children? He has been a school committee man, two years. Bring in a verdict for the defendant, and can Mr. Thatcher be made a school committee man again? Philo Sanford served with him. Would you, Mr. Foreman, serve in such a capacity, with a notorious adulterer? If Mr. Thatcher has submitted to slander too long, and his character has suffered in this way, graduate your verdict accordingly. We know that *some* would rejoice at any evil that should befall the plaintiff—at any thing adverse to Mr. Thatcher. I trust they will not be permitted to triumph over the ruin of an innocent man.

It is not said, but it is hinted in evidence that if---and if---the law would permit, the counsel for the defendant would show as much against Mr. Thatcher concerning Livonia Hall, as of others.—Gentlemen, they have loaded the case with vile matter that they had no right introduce. It comes in the specification of the grounds of defence, in the shape of direct evidence, of insinuations, of letters and depositions. Gentlemen, we trust you will save an injured man from the effect of this vile conspiracy against him—that you will bring in a verdict in his favor, and send a thrill of joy to the heart of his suffering wife and innocent children.

JUDGE CUMMINS charged that this was an action of Slander, brought by the plaintiff, a settled minister, against Gen. Pond, for having charged him with the crime of Adultery. The whole case resolves itself into this. The writ, it is true, contains three counts, but the plaintiff grounds his action upon the general charge of adultery.

There appears to be no doubt that the plaintiff was charged with this crime by the defendant. There is no need of going into the evidence upon this point; the defendant unquestionably put forth this charge. If this was of the nature of privileged communications, in times of election, and the reports were true, then the defendant would be justified.

The defendant sets forth, that he uniformly declared, when uttering the slanderous words charged, that they were told him by Jeru-

sha Pond—and that they were true in fact, and that Jerusha Pond is a credible witness.

The burden of proof lies upon the defendant. He must satisfy the jury that he had some good ground for speaking this report; that he disclosed the name of a credible witness, at the time. Unless he has proved this he cannot be entitled to a verdict. 'This, it is true, is narrow ground. He must have said, at the time he spoke the words, that they were told him by Jerusha Pond. Look at the evidence.—There certainly is a variance in the words spoken by the defendant, from the words given by Jerusha Pond. The Court would have ruled this limitation, had it been called upon in the first part of the examination. The defendant goes upon the ground that he was privileged to speak the words alleged, because they were true, and he could prove them by another. The Court cited a case of slander, where an important witness died before the action was brought to trial—another person was able to give *the substance* of the slanderous matter—not the precise words—but it would not do. The Court did not mean by this that every word must be given—every *the* and *and*—but *the actionable matter*. Did Gen. Pond report the precise matter? He may have put forth the charge of adultery generally—but the Court is inclined to think the statement made by him, was not the same as that which Jerusha Pond revealed. It may be the same in substance, but was it in the precise form? If you think the defendant failed here, he is not entitled to a verdict upon this ground.

The next point of defence is, that the charge was true in fact. The charge put forth, was, that the plaintiff had committed adultery with Adaline Hawes. He must show that this was true. The burden of proof is upon him. If you are satisfied that the plaintiff did commit the crime of adultery with Adaline Hawes, as charged, it covers the whole—it is sufficient. The case rests upon Dea. Smith Pond and Mrs. Harding. Mrs. Pond's testimony does not apply to this point of the defence. Upon Smith Pond's and Mrs. Harding's evidence you must decide. It is said that Smith Pond is interested in the *question* at issue, as there is another case of the same nature, in which he will be a party, to be called up. You may give the suggestion all the consideration it may seem to deserve. You are to take *all* that is admitted as testimony, and make up your verdict accordingly.

If you think Gen. Pond fails on all the grounds of defence, it will then be a question of damages. Of these, you must be the judge.—You must take into consideration the character and station of both parties, and judge how much you will give.

The investigation of this case occupied the attention of the Court two days. The Jury returned a *verdict for the Plaintiff*, in the sum of \$5, damages, and \$1,25 costs. Upon this verdict the parties pay their own expenses, fees of counsel, witnesses, &c.

NOTE BY THE REPORTER.

In justice to the able counsel employed by the opposite parties, in this case, we must remark that the brief sketches of the arguments given in the preceding pages, were prepared from imperfect notes, by the Reporter, and published without being revised by the counsel themselves. Both of them very kindly consented to prepare a sketch of their remarks for the Report, but in consequence of a misunderstanding in one case, and the pressure of professional business in the other, we have not yet received any thing from either. We do not pretend to give a *report* of the arguments—but merely a notice of the most striking points. We trust the counsel will pardon us for speaking of their remarks, at any length, under these circumstances. But a strong desire manifested by the public, to know the truth, and the whole truth, in this case, has induced us to attempt a work, which we are aware, has been imperfectly performed.

The evidence itself we can trust. It was carefully reported, and carefully written out; and has been revised throughout by a member of the bar. The writ, specifications, letters, &c., were copied from the records of the Court.

Jan. 8. 1838.